

HOUSE BILL No. 5460

February 5, 2004, Introduced by Reps. Daniels, Woronchak, Tobocman, O'Neil, Zelenko, Sak, Cheeks, Accavitti, Gillard, Elkins, Wojno, Meisner, Hopgood, Gleason, Condino, Clack, Vagnozzi, Farrah, Plakas, Phillips, Pastor, Whitmer, Bieda, Jammick, Brown, Rivet, Kolb, Sheltroun, Williams, Gielegem, Woodward, Hager, Hardman and Hunter and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
(MCL 500.100 to 500.8302) by adding chapter 21A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **CHAPTER 21A. INSURER INTERESTS IN REPAIR FACILITIES**

2 **Sec. 2151. As used in this chapter:**

3 (b) "Arm's length transaction" means the standard of conduct
4 under which 2 parties having substantially equal bargaining
5 power, each acting in its own interest, would negotiate or carry
6 out a particular transaction.

7 (b) "Claims center" means a location designated by an insurer
8 where a claims adjuster, employee, or agent of the insurer
9 performs an initial damage estimate on a vehicle under the terms
10 of an insurance policy.

11 (c) "Favored facility agreement" means an agreement between

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1 an insurer and a repair facility under which the insurer agrees
2 to recommend, directly or indirectly, to its policyholders or
3 other beneficiaries under the insurer's policies, that the
4 policyholder or other beneficiary obtain repairs at that repair
5 facility or in any other way agrees to influence its
6 policyholders or other beneficiaries under the insurer's policies
7 to obtain repairs at that repair facility.

8 (d) "Insurer" means an automobile insurer and includes an
9 entity that is an affiliate of the insurer.

10 (e) "Repair facility" means a motor vehicle repair facility
11 as defined in section 2 of the motor vehicle service and repair
12 act, 1974 PA 300, MCL 257.1302.

13 (f) "Support services" means basic services, provided
14 nonspecifically, that are provided internally and to each
15 affiliate or subsidiary, by an insurer, its parent company, or a
16 separate affiliate created to provide basic corporate support.
17 The term does not include a service related to the operation of a
18 repair facility if that service would have no value, or minimal
19 value, to any other type of business.

20 (g) "Tied repair facility" means a repair facility in which
21 an insurer owns an interest.

22 Sec. 2153. (1) Except as provided in this section, an
23 insurer may not own or acquire an interest in a repair facility.

24 (2) An insurer that owns an interest in a tied repair
25 facility that was open for business, or on which construction had
26 commenced, on January 1, 2004 may maintain that ownership
27 interest and may operate that facility.

1 (3) An insurer may relocate a tied repair facility described
2 in subsection (2), but may not obtain an ownership interest in
3 any additional facility not described in subsection (2).

4 (4) Subsections (2) and (3) are applicable to an insurer only
5 if the insurer and its tied repair facility are otherwise in
6 compliance with this chapter.

7 Sec. 2155. (1) An insurer is presumed to have a favored
8 facility agreement with a repair facility in which it owns an
9 interest.

10 (2) An insurer that owns an interest in a repair facility may
11 use only 1 favored facility agreement.

12 (3) Except as otherwise provided by this subsection, the
13 terms under which the insurer enters into a favored facility
14 agreement shall be identical for all repair facilities, including
15 a tied repair facility. An insurer may vary the terms as
16 necessary to implement technical differences required by
17 geographical factors or other legitimate business factors.

18 (4) Except as provided by subsection (5), an insurer shall
19 not cancel a favored facility agreement until the expiration of
20 the thirtieth day after the date on which the insurer provides
21 notice to the repair facility of the insurer's intent to cancel
22 the agreement. The insurer shall include with the notice a
23 statement explaining the reason for the cancellation of the
24 agreement.

25 (5) An insurer may summarily cancel a favored facility
26 agreement with a repair facility if the insurer, a policyholder
27 of the insurer, or another beneficiary under the insurer's policy

1 establishes reasonable grounds to believe that the repair
2 facility is fraudulent in its dealings with the insurer or the
3 policyholder or other beneficiaries under the insurer's policy.

4 Sec. 2157. (1) An insurer that owns an interest in a repair
5 facility shall post the following notice in each of its tied
6 repair facilities:

7 "THIS REPAIR FACILITY IS OWNED IN WHOLE OR IN PART BY (NAME
8 OF INSURER). YOU ARE HEREBY NOTIFIED THAT YOU ARE ENTITLED
9 TO SEEK REPAIRS AT ANY REPAIR FACILITY OF YOUR CHOICE.".

10 (2) The notice required by subsection (1) shall be posted
11 prominently in a location in which it is likely to be seen and
12 read by a repair facility customer.

13 Sec. 2159. An insurer shall not do any of the following:

14 (a) Condition the provision of a product, service, insurance
15 policy renewal, pricing, or other benefit on the purchase of any
16 good or service from its tied repair facilities.

17 (b) Share information with its tied repair facilities that is
18 not made available on identical terms and conditions to other
19 repair facilities with which the insurer has entered into a
20 favored facility agreement.

21 (c) Engage in a joint marketing program with its tied repair
22 facilities.

23 (d) Provide its tied repair facilities a recommendation,
24 referral, description, advantage, or access to its policyholders
25 or other beneficiaries under its insurance policies that is not
26 provided on identical terms to other repair facilities with which
27 the insurer has entered into a favored facility agreement.

1 (e) Provide a tied repair facility access to the insurer's
2 products or services on terms and conditions different from those
3 under which the insurer provides access to the same products or
4 services to another repair facility with which the insurer has
5 entered into a favored facility agreement.

6 (f) Allow a tied repair facility to use the insurer's name,
7 trademark, trade name, brand, or logo in a manner different than
8 that allowed for any other favored facility.

9 (g) Subsidize the business activities or operating expenses
10 of a tied repair facility.

11 (h) Directly or indirectly require a policyholder of the
12 insurer or other beneficiary under the insurer's policy to obtain
13 a damage estimate on a vehicle covered by the insurance policy at
14 a tied repair facility.

15 (i) Authorize or allow a person representing the insurer,
16 whether an employee or an independent contractor, to recommend to
17 a policyholder or other beneficiary under the insurance policy
18 that the policyholder or other beneficiary obtain repairs at a
19 tied repair facility, except to the same extent that the person
20 recommends other repair facilities with whom the insurer has
21 entered into a favored facility agreement.

22 (j) Require a policyholder or beneficiary to use a claims
23 center located on the premises of a tied repair facility.

24 (k) Enter into a favored facility agreement exclusively with
25 its tied repair facilities.

26 (l) Retaliate or discriminate against a person who files an
27 action as provided by this chapter or assists or participates in

1 any manner in an investigation, judicial proceeding, or other
2 action brought or maintained as provided by this chapter.

3 (m) Include earnings or losses of a tied repair facility in a
4 rate filing made under this act.

5 Sec. 2161. Except as otherwise provided by this chapter, an
6 agreement between an insurer and its tied repair facility shall
7 be negotiated and executed as an arm's length transaction.

8 Sec. 2163. (1) Notwithstanding this chapter, and except as
9 provided in subsection (2), an insurer may provide support
10 services to its tied repair facilities if those services are
11 priced at a level that is fair and reasonable to both the insurer
12 and the tied repair facility and do not directly or indirectly
13 confer a competitive advantage to the tied repair facility.

14 (2) Notwithstanding subsection (1), an agreement by an
15 insurer to provide support services to its tied repair facility
16 shall not create the potential for confusion among the
17 policyholders of the insurer, other beneficiaries of an insurance
18 policy issued by the insurer, or other parties.

19 Sec. 2165. (1) A person, including a repair facility,
20 aggrieved by a violation of this chapter by an insurer may bring
21 an action for injunctive or other appropriate relief to compel
22 the insurer to comply with this chapter.

23 (2) In an action brought under this section, in addition to
24 other appropriate relief, the court may impose a civil penalty as
25 provided in this section.

26 (3) A civil penalty imposed under this section shall not be
27 less than \$1,000.00 or more than \$5,000.00 per violation. Each

1 day during which a violation occurs is a separate violation.

2 (4) The amount of a civil penalty under this section is based
3 on the seriousness of the violation and shall reflect the
4 following factors:

5 (a) The nature, circumstances, extent, and gravity of the act
6 or omission that constitutes the violation.

7 (b) The economic harm caused by the violation.

8 (c) The history of previous violations.

9 (d) The need to deter future violations by the person charged
10 with a violation.

11 (e) Efforts, if any, made to correct the violation.

12 (f) Any other factors the court considers appropriate to
13 implement the remedial intent of this chapter.

14 (5) A civil penalty collected under this section shall be
15 deposited into the general revenue fund.

16 (6) A plaintiff who prevails in an action under this section
17 is entitled to recover reasonable attorney fees and court costs.

18 (7) If a court finds that an action brought under this
19 section was groundless, brought in bad faith, or brought for the
20 purpose of harassment, the court may award reasonable attorney
21 fees to the prevailing defendant.

22 Sec. 2167. This chapter does not confer immunity from an
23 antitrust law of this state or the United States. A sanction or
24 penalty imposed in an action brought under this chapter is in
25 addition to other relief granted on the basis of the violation of
26 an antitrust law of this state or the United States.