

BILL ANALYSIS

Senate Research Center
78R13096 PB-F

C.S.H.B. 1131
By: Flores (Carona)
Business & Commerce
5/23/2003
Committee Report (Substituted)

DIGEST AND PURPOSE

Under current law an insurer's interest in auto repair facilities is not regulated. Insurer-owned auto repair facilities may eliminate checks and balances, thereby compromising consumer protections. C.S.H.B. 1131 prohibits an insurer from holding or acquiring any ownership interest in a repair facility. This bill authorizes an individual aggrieved by an insurer's violation of these requirements to bring an action for injunctive or other appropriate relief to compel the insurer to comply with the requirements. C.S.H.B. 1131 provides a civil penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 14, Occupations Code, by adding Chapter 2306, as follows:

CHAPTER 2306. INSURER INTERESTS IN REPAIR FACILITIES

Sec. 2306.001. DEFINITIONS. Defines "arms length transaction," "claims center," "favored facility agreement," "insurer," "repair facility," "support services," and "tied repair facility."

Sec. 2306.002. INSURER INTERESTS. (a) Prohibits an insurer from owning or acquiring an interest in a repair facility, except as provided by this section.

(b) Authorizes an insurer that owns an interest in a tied repair facility that was open for business, or on which construction had commenced, on April 15, 2003, to maintain that ownership interest and to operate that facility.

(c) Authorizes an insurer to relocate a tied repair facility described by Subsection (b), but prohibits it from obtaining an ownership interest in any additional facility not described by Subsection (b).

(d) Provides that Subsections (b) and (c) are applicable to an insurer only if the insurer and its tied repair facility are otherwise in compliance with this chapter.

Sec. 2306.003. FAVORITE FACILITY AGREEMENT PRESUMED. Provides that an insurer is presumed to have a favored facility agreement with a repair facility in which it owns an interest.

Sec. 2306.004. CONTRACTUAL CONDITIONS. (a) Authorizes an insurer that owns an interest in a repair facility to use only one favored facility agreement.

(b) Requires the terms under which the insurer enters into a favored facility agreement to be identical for all repair facilities, including a tied repair facility. Authorizes an insurer to vary the terms as necessary to implement technical

differences required by geographical factors or other legitimate business factors.

(c) Prohibits an insurer from cancelling a favored facility agreement until the expiration of the 30th day after the date on which the insurer provides notice to the repair facility of the insurer's intent to cancel the agreement. Requires the insurer to include with the notice a statement offering the repair facility a reasonable opportunity to cure the alleged failure to meet the requirements of the favored facility agreement.

(d) Authorizes an insurer to summarily cancel a favored facility agreement with a repair facility if the insurer, a policyholder of the insurer, or another beneficiary under the insurer's policy establishes reasonable grounds to believe that the repair facility is guilty of fraudulent conduct in its dealings with the insurer.

Sec. 2306.005. NOTICE. (a) Requires an insurer that owns an interest in a repair facility to post a specific notice in each of its tied repair facilities.

(b) Requires the notice to be posted in a prominent location likely to be seen and read by customers.

Sec. 2306.006. PROHIBITIONS. Prohibits an insurer from performing certain activities.

Sec. 2306.007. CONFLICT OF INTEREST PROHIBITED. Requires an agreement between an insurer and its tied repair facility to be negotiated and executed as an arm's length transaction.

Sec. 2306.008. SUPPORT SERVICES. (a) Requires an insurer to provide support services to its tied repair facilities under certain conditions.

(b) Prohibits an agreement by an insurer to provide support services to its tied repair facility from creating the potential for confusion among the policyholders of the insurer, other beneficiaries of an insurance policy issued by the insurer, or other parties.

Sec. 2306.009. ACTION TO COMPEL COMPLIANCE; DISCIPLINARY ACTION.

(a) Authorizes a person, including a repair facility, aggrieved by a violation of this chapter by an insurer to bring an action for injunctive or other appropriate relief to compel the insurer to comply with the requirements adopted under this chapter.

(b) Authorizes the court to impose a civil penalty.

(c) Prohibits a civil penalty imposed under this section from being less than \$1,000 or more than \$5,000 per violation. Provides that each day during which a violation occurs is a separate violation.

(d) Provides that the amount of a civil penalty is based on the seriousness of the violation, and is required to reflect certain factors.

(e) Requires a civil penalty collected under this section to be sent to the comptroller for deposit in the general revenue fund.

(f) Provides that a plaintiff who prevails in an action under this section is entitled to recover reasonable attorney's fees and court costs.

(g) Authorizes a court to award reasonable attorney's fees to the prevailing defendant, if a court finds that an action brought under this section was groundless, brought in bad faith, or brought for the purpose of harassment.

Sec. 2306.010. ANTITRUST ENFORCEMENT. Provides that this chapter does not confer immunity from an antitrust law of this state or the United States. Provides that a sanction or penalty imposed in an action brought under this chapter is in addition to other relief granted on the basis of the violation of an antitrust law of this state or the United States.

Sec. 2306.011. EXCLUSIVITY. Provides that this chapter provides the exclusive authority and rules applicable to the regulation of the relations between an insurer and a tied repair facility, unless otherwise specifically provided by this chapter.

SECTION 2. Effective date: September 1, 2003.