

ASSEMBLY BILL NO. 297—COMMITTEE ON TRANSPORTATION

MARCH 11, 2009

Referred to Committee on Transportation

SUMMARY—Enacts provisions governing tied body shops.
(BDR 43-718)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to insurers; prohibiting an insurer from owning or acquiring an interest in a body shop; providing an exception to the prohibition; setting forth the circumstances under which an insurer may use a favored facility agreement; requiring an insurer to post a certain notice in each tied body shop of the insurer; authorizing a person to bring and maintain an action against an insurer for injunctive and other appropriate relief for certain violations; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 This bill enacts a new chapter of NRS governing tied body shops and favored
2 facility agreements between an insurer who issues a policy of motor vehicle
3 insurance and a body shop. **Section 9** of this bill defines a tied body shop as one in
4 which an insurer owns an interest. **Section 6** of this bill defines a favored facility
5 agreement as an agreement between an insurer and a body shop wherein the insurer
6 agrees to recommend that a policyholder or beneficiary under a policy of insurance
7 obtain repairs of a motor vehicle at the body shop. **Section 12** of this bill prohibits
8 an insurer from owning or otherwise acquiring an interest in a body shop, unless the
9 insurer owned or had an ownership interest in the body shop on July 1, 2009.
10 **Section 14** of this bill sets forth the circumstances under which an insurer may use
11 a favored facility agreement. **Section 15** of this bill requires an insurer who owns
12 an interest in a tied body shop to post a certain notice in the tied body shop. **Section**
13 **16** of this bill prohibits certain actions by an insurer concerning tied body shops and
14 favored facility agreements. **Section 19** of this bill authorizes a person to bring and
15 maintain an action against an insurer for injunctive and other appropriate relief for
16 violations concerning tied body shops and favored facility agreements, including
17 the imposition by the court of a civil penalty of not less than \$1,000 or more than
18 \$5,000 for each violation.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Title 43 of NRS is hereby amended by adding
2 thereto a new chapter to consist of the provisions set forth as
3 sections 2 to 19, inclusive, of this act.

4 **Sec. 2.** *As used in this chapter, unless the context otherwise*
5 *requires, the words and terms defined in sections 3 to 9, inclusive,*
6 *of this act have the meanings ascribed to them in those sections.*

7 **Sec. 3.** *“Arm’s length transaction” means a standard of*
8 *conduct under which two or more parties having substantially*
9 *equal bargaining power and acting in their own interests negotiate*
10 *or carry out a transaction.*

11 **Sec. 4.** *“Body shop” has the meaning ascribed to it in*
12 *NRS 487.602.*

13 **Sec. 5.** *“Claims center” means a location designated by an*
14 *insurer at which a claims adjuster, employee or agent of the*
15 *insurer performs an initial estimate of any damage to a motor*
16 *vehicle in accordance with a policy of insurance covering the*
17 *motor vehicle.*

18 **Sec. 6.** *“Favored facility agreement” means an agreement*
19 *between an insurer and a body shop under which the insurer*
20 *agrees to recommend, directly or indirectly, to a policyholder of*
21 *the insurer or other beneficiary under a policy of insurance that*
22 *the policyholder or beneficiary obtain repairs of a motor vehicle at*
23 *that body shop.*

24 **Sec. 7.** *“Insurer” means any insurer, as defined in NRS*
25 *679A.100, who issues a policy of motor vehicle insurance in this*
26 *State.*

27 **Sec. 8.** *“Support services” means any basic service that is*
28 *provided internally and to each affiliate or subsidiary by an*
29 *insurer or any parent company or affiliate of an insurer.*

30 **Sec. 9.** *“Tied body shop” means any body shop in which an*
31 *insurer owns an interest.*

32 **Sec. 10.** *The provisions of this chapter are in addition to, and*
33 *do not confer any immunity from, any provision of chapter 597,*
34 *598 or 598A of NRS or any provision of title 57 of NRS or any*
35 *regulation adopted pursuant thereto, and must be construed in a*
36 *manner that is consistent with any federal antitrust laws.*

37 **Sec. 11.** *Notwithstanding any provision of law to the*
38 *contrary, the provisions of this chapter provide the exclusive*
39 *authority applicable to the business relationship between an*
40 *insurer and a tied body shop of the insurer.*



1 **Sec. 12. 1.** *An insurer shall not own or otherwise acquire*
2 *an ownership interest in a body shop.*

3 **2.** *The provisions of subsection 1 do not apply to a tied body*
4 *shop that is owned by the insurer or in which the insurer has an*
5 *ownership interest on July 1, 2009, if the tied body shop and the*
6 *insurer are otherwise in compliance with the provisions of this*
7 *chapter.*

8 **Sec. 13.** *An insurer is presumed to have a favored facility*
9 *agreement with a body shop in which the insurer owns an interest.*

10 **Sec. 14. 1.** *An insurer who owns an interest in a body shop*
11 *may use only one favored facility agreement.*

12 **2.** *The terms under which an insurer enters into a favored*
13 *facility agreement must be identical for all body shops, except that*
14 *the insurer may vary the terms of the favored facility agreement as*
15 *necessary to accommodate any technical differences based upon*
16 *any geographical factors or other legitimate business factors.*

17 **3.** *Except as otherwise provided in subsection 4, an insurer*
18 *may not cancel a favored facility agreement until the expiration of*
19 *30 days after the date on which the insurer provides notice to the*
20 *body shop of the intent of the insurer to cancel the favored facility*
21 *agreement. The insurer shall include in the notice a statement*
22 *setting forth the reason for the cancellation of the favored facility*
23 *agreement.*

24 **4.** *An insurer may summarily cancel a favored facility*
25 *agreement with a body shop if the insurer, a policyholder of the*
26 *insurer or another beneficiary under the policy of the insurer*
27 *establishes reasonable grounds to believe that the body shop is*
28 *fraudulent in its dealings with the insurer, policyholder or*
29 *beneficiary.*

30 **Sec. 15. 1.** *An insurer who owns a tied body shop shall post*
31 *the following notice in the tied body shop in boldface letters:*

32
33 ***THIS BODY SHOP IS OWNED IN WHOLE OR IN***
34 ***PART BY (NAME OF INSURER). YOU ARE HEREBY***
35 ***NOTIFIED THAT YOU ARE ENTITLED TO SEEK***
36 ***REPAIRS AT ANY BODY SHOP OF YOUR CHOICE.***
37

38 **2.** *The notice required by subsection 1 must be not less than*
39 *22 inches by 28 inches in size, be posted in a prominent location of*
40 *the tied body shop and be clearly visible to each customer of the*
41 *tied body shop.*

42 **Sec. 16.** *An insurer shall not:*

43 **1.** *Condition the provision of a product or service, the*
44 *renewal of a policy of insurance or any pricing or other benefit*
45 *upon the purchase of any good or service from any tied body shop*



1 of the insurer or in accordance with any favored facility
2 agreement.

3 2. Share any proprietary information with a tied body shop of
4 the insurer unless the information is made available on identical
5 terms and conditions to each body shop that has entered into a
6 favored facility agreement with the insurer.

7 3. Provide a tied body shop with access to any product or
8 service of the insurer on terms and conditions that are different
9 from the terms and conditions under which the insurer provides
10 access to that product or service to another body shop with which
11 the insurer has entered into a favored facility agreement.

12 4. Subsidize any business activity or operating expense of a
13 tied body shop.

14 5. Directly or indirectly require a policyholder of the insurer
15 or another beneficiary under the policy of the insurer to obtain at
16 a tied body shop an estimate of damages to a motor vehicle that is
17 covered under the policy.

18 6. Require a policyholder or beneficiary to use a claims
19 center that is located on the premises of a tied body shop.

20 7. Enter into a favored facility agreement exclusively with
21 any tied body shop of the insurer.

22 8. Retaliate or discriminate against a person who:

23 (a) Files an action as provided in this chapter; or

24 (b) Assists or participates in any manner in an investigation,
25 judicial proceeding or other action brought or maintained
26 pursuant to this chapter.

27 9. Include any earnings or losses of a tied body shop in any
28 rate or supplementary rate information filed with the
29 Commissioner of Insurance pursuant to chapter 686B of NRS.

30 **Sec. 17.** Except as otherwise provided in this chapter, an
31 agreement between an insurer and a tied body shop must be
32 negotiated and executed in an arm's length transaction.

33 **Sec. 18.** An insurer may provide support services to a tied
34 body shop of the insurer if those services:

35 1. Are priced in an amount that is fair and reasonable to the
36 insurer and the tied body shop;

37 2. Do not directly or indirectly confer a competitive advantage
38 upon the tied body shop; and

39 3. Are set forth in an agreement that does not confuse or
40 potentially confuse the policyholder of the insurer, any beneficiary
41 under the policy of insurance or any other person.

42 **Sec. 19.** 1. Any body shop or other person aggrieved by a
43 violation of this chapter by an insurer may bring and maintain an
44 action for injunctive or other appropriate relief to compel the
45 insurer to comply with the provisions of this chapter.



1 2. *In an action brought pursuant to this section, the court*
2 *may, in addition to granting any other appropriate relief, impose a*
3 *civil penalty of not less than \$1,000 or more than \$5,000 for each*
4 *violation. Each day or portion of a day during which a violation of*
5 *this chapter occurs constitutes a separate violation.*

6 3. *The imposition of a civil penalty pursuant to this section*
7 *must be based upon the seriousness of the violation and upon the*
8 *following factors:*

9 (a) *The nature, circumstances, extent and gravity of the act or*
10 *omission that constitutes the violation;*

11 (b) *The economic harm, if any, caused by the violation;*

12 (c) *Any history of previous violations of this chapter by the*
13 *insurer;*

14 (d) *The need to deter any possible future violation of this*
15 *chapter by the person charged with the violation;*

16 (e) *The efforts, if any, made to correct the violation; and*

17 (f) *Any other factors that the court considers appropriate*
18 *under the circumstances.*

19 4. *A plaintiff who is the prevailing party in an action brought*
20 *pursuant to this section may recover reasonable attorney's fees*
21 *and costs.*

22 5. *If a court finds that an action brought pursuant to this*
23 *section is groundless or brought in bad faith or for the purpose of*
24 *harassment, the court may award reasonable attorney's fees to the*
25 *prevailing defendant.*

26 **Sec. 20.** This act becomes effective on July 1, 2009.

