PLEASE NOTE: In most BUT NOT ALL instances, the page and line numbering of bills on this web site co
to the page and line numbering of the official printed version of the bills.

REFERENCE TITLE: insurers; repair faciliti

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

HB 2298

Introduced by
Representatives Jayne, Hanson, Huppenthal, O'Halleran: Aguirre A, Arnold, Bradley, Carruthers, Chase, Gallardo, Graf, Hubbs, Jackson Jr, Konopnicki, Landrum Taylor, Lo Lopez L, Nichols, Pearce, Prezelski, Thompson, Wagner

AN ACT

AMENDING TITLE 20, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 15; RELATING TO INSURERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 20, chapter 2, Arizona Revised Statutes, is amended by adding article 15, to read:

ARTICLE 15. INSURER INTEREST IN REPAIR FACILITIES

20-491. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "CLAIMS CENTER" MEANS A LOCATION THAT IS DESIGNATED BY AN INSURER AND AT W
CLAIMS ADJUSTER, EMPLOYEE OR INSURANCE PRODUCER PERFORMS AN INITIAL DAMAGE

ESTIMATE ON A MOTOR VEHICLE UNDER THE TERMS OF AN INSURANCE POLICY.

2. "REPAIR FACILITY" MEANS A PERSON THAT ENGAGES IN THE BUSINESS OF REPAIRING O
REPLACING THE NONMECHANICAL EXTERIOR OR INTERIOR BODY PARTS OF A DAMAGED M
VEHICLE.

3. "TIED REPAIR FACILITY" MEANS A REPAIR FACILITY IN WHICH AN INSURER OWNS AN IN
THAT WAS ACQUIRED BEFORE JULY 1, 2004 IF THE REPAIR FACILITY WAS IN OPERATION AN
ACTUALLY ENGAGED IN THE BUSINESS OF A REPAIR FACILITY BEFORE JULY 1, 2004.

20-491.01 Prohibition against insurer owning repair facility

A. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ON OR AFTER JULY 1, 2004, AN INSU
MAY NOT OWN OR ACQUIRE AN INTEREST IN A REPAIR FACILITY, INCLUDING A MOBILE RE
FACILITY, OR EMPLOY ANY INDIVIDUAL WHO CONDUCTS AN AUTOMOBILE REPAIR OPERA

B. AN INSURER THAT OWNS AN INTEREST IN A TIED REPAIR FACILITY MAY MAINTAIN THA
OWNERSHIP INTEREST AND MAY OPERATE THAT FACILITY.

20-491.02 Notice requirements

AN INSURER THAT OWNS A TIED REPAIR FACILITY SHALL POST A NOTICE IN EACH OF ITS T
REPAIR FACILITIES STATING THAT:

1. THE REPAIR FACILITY IS OWNED IN WHOLE OR IN PART BY THE INSURER.

2. THE REPAIR FACILITY WAS OWNED OR ACQUIRED BEFORE JULY 1, 2004.

3. AN INSURED IS ENTITLED TO SEEK REPAIRS AT ANY REPAIR FACILITY OF THE INSURED'S
CHOICE.

20-491.03 Prohibited acts

AN INSURER SHALL NOT:

1. CONDITION THE PROVISION OF A PRODUCT, SERVICE, INSURANCE POLICY RENEWAL, PRI
OR OTHER BENEFIT ON THE PURCHASE OF ANY GOOD OR SERVICE FROM ITS TIED REPAIR
FACILITY.

2. DIRECTLY OR INDIRECTLY REQUIRE A POLICYHOLDER OF THE INSURER OR OTHER
BENEFICIARY TO OBTAIN A DAMAGE ESTIMATE ON A MOTOR VEHICLE THAT IS COVERED I
INSURANCE POLICY AT A TIED REPAIR FACILITY.

3. REQUIRE A POLICYHOLDER OR BENEFICIARY TO USE A CLAIMS CENTER LOCATED ON TH
PREMISES OF A TIED REPAIR FACILITY.

4. RETALIATE OR DISCRIMINATE AGAINST A PERSON WHO:

(a) FILES AN ACTION AS PROVIDED IN THIS ARTICLE.

(b) ASSISTS OR PARTICIPATES IN ANY MANNER IN AN INVESTIGATION, JUDICIAL PROCEEDI
OTHER ACTION THAT IS BROUGHT OR MAINTAINED AS PROVIDED IN THIS ARTICLE.

20-491.04 Action to compel compliance; relief; civil penalty; attorney fees

A. A PERSON, INCLUDING A REPAIR FACILITY, THAT IS AGGRIEVED BY A VIOLATION OF TH
ARTICLE BY AN INSURER MAY BRING AN ACTION FOR INJUNCTIVE OR OTHER APPROPRIAT
RELIEF TO COMPEL THE INSURER TO COMPLY WITH THIS ARTICLE.

B. IN ADDITION TO ANY OTHER APPROPRIATE RELIEF, A COURT MAY IMPOSE A CIVIL PENA
PROVIDED IN THIS SECTION.

C. A CIVIL PENALTY IMPOSED UNDER THIS SECTION MAY NOT BE MORE THAN FIVE THOUS
DOLLARS PER VIOLATION. EACH DAY DURING WHICH A VIOLATION OCCURS IS A SEPARAT
VIOLATION. THE AMOUNT OF A CIVIL PENALTY UNDER THIS SECTION IS BASED ON THE
SERIOUSNESS OF THE VIOLATION AND SHALL REFLECT THE FOLLOWING FACTORS:

1. THE NATURE, CIRCUMSTANCES, EXTENT AND GRAVITY OF THE ACT OR OMISSION THAT
CONSTITUTES THE VIOLATION.

2. THE ECONOMIC HARM THAT IS CAUSED BY THE VIOLATION.

3. THE HISTORY OF PREVIOUS VIOLATIONS AND THE NEED TO DETER FUTURE VIOLATIONS
PERSON CHARGED WITH A VIOLATION.

4. EFFORTS, IF ANY, THAT ARE MADE TO CORRECT THE VIOLATION.

5. ANY OTHER FACTOR THE COURT CONSIDERS APPROPRIATE TO IMPLEMENT THE REMEDI
INTENT OF THIS ARTICLE.

D. A COURT SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, ANY CIVIL PENAL
COLLECTED PURSUANT TO THIS SECTION IN THE STATE GENERAL FUND.

E. A PLAINTIFF WHO PREVAILS IN AN ACTION UNDER THIS SECTION IS ENTITLED TO RECOV
REASONABLE ATTORNEY FEES AND COURT COSTS.

F. IF A COURT FINDS THAT AN ACTION BROUGHT UNDER THIS SECTION WAS GROUNDLESS,
BROUGHT IN BAD FAITH OR BROUGHT FOR THE PURPOSE OF HARASSMENT, THE COURT MA
AWARD REASONABLE ATTORNEY FEES TO THE PREVAILING DEFENDANT.

20-491.05 Antitrust enforcement

THIS ARTICLE DOES NOT CONFER IMMUNITY FROM AN ANTITRUST LAW OF THIS STATE OR
UNITED STATES. A SANCTION OR CIVIL PENALTY IMPOSED IN AN ACTION BROUGHT UNDE
ARTICLE IS IN ADDITION TO ANY OTHER RELIEF THAT IS GRANTED ON THE BASIS OF A VIO
OF AN ANTITRUST LAW OF THIS STATE OR THE UNITED STATES.

Sec. 2. Retroactivity

This act is effective retroactively to from and after June 30, 2004.