

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 323 Motor Vehicle Insurance Coverage for Windshield Glass
SPONSOR(S): Stark
TIED BILLS: IDEN./SIM. **BILLS:** SB 754

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 2 N	Fortenberry	Luczynski
2) Civil Justice Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

When a consumer purchases comprehensive motor vehicle insurance in Florida, that consumer is entitled to have broken or damaged auto glass repaired or replaced under the motor vehicle insurance policy without paying a deductible for that claim. Florida law provides no specific requirements regarding insurance claims for damaged auto glass. Instead, these claims are handled according to the terms of the consumer's motor vehicle insurance policy.

Some Florida motor vehicle insurers have set up a network of auto glass repair shops that will provide auto glass repair or replacement at negotiated rates. If a consumer utilizes one of these network shops, the consumer's auto glass is repaired or replaced and paid for directly by the insurance company. If an insured uses an auto glass repair shop that is not within the insurer's network, the provider often obtains an assignment of benefits (AOB) from the consumer. The glass repair shop to which the insured has assigned benefits can negotiate with, or file a lawsuit against, the insurer if the insurer and the glass repair company do not agree on the amount that the insurer will pay for the auto glass claim.

The number of auto glass lawsuits against insurers has increased in recent years. Some insurers assert that the increased litigation is the result of the execution of AOBs by auto glass repair shops, which provides a mechanism for filing a lawsuit for disputed claims and attorney fees.

Some auto glass repair shops currently offer incentives, including cash and gift cards, in exchange for a consumer filing an auto glass insurance claim. Some consumers have complained to the Department of Agriculture and Consumer Services that they never received the incentives promised by the auto glass repair shops, even after their auto glass claim was complete. Many of the auto glass repair shops that advertise incentives have also filed lawsuits against insurers over the past several years.

The bill provides that a motor vehicle repair shop or an employee may not offer a customer an incentive in the form of a rebate, gift, gift card, cash, coupon, or other thing of value in exchange for making an insurance claim for motor vehicle glass replacement or repair. The bill also prohibits a nonemployee, who is compensated by a motor vehicle repair shop for the solicitation of insurance claims for the replacement or repair of motor vehicle glass, from offering any such incentive.

The bill has an indeterminate impact on state government revenues and expenditures. It has no impact on local government revenues or expenditures. It may have a positive or negative direct impact on certain aspects of the private sector including motor vehicle insurance purchasers and auto glass repair shops.

This bill has an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Motor Vehicle Repair Shops

Motor vehicle repair shops in Florida are regulated by the Department of Agriculture and Consumer Services (DACS) under the Florida Motor Vehicle Repair Act.¹ This Act requires that all motor vehicle repair shops, with minor exceptions, register with DACS.² A motor vehicle repair shop may be fixed or mobile and includes a person or business that does motor vehicle glass work for compensation.³ Under the Act, it is unlawful for a motor vehicle repair shop or its employee to engage in various activities such as misrepresenting that repairs of been made to a motor vehicle or fraudulently altering any customer contract, estimate, invoice, or other document.⁴ The Act provides for various remedies for unlawful acts by motor vehicle repair shops, including notices of noncompliance, administrative fines, orders to cease and desist, probation of registrants, and suspension or revocation of registrations.⁵

Automobile Insurance

When a consumer purchases the minimum motor vehicle insurance required by Florida law, including personal injury protection coverage (PIP), that consumer does not have first-party insurance coverage for the repair or replacement of auto glass. However, a consumer who purchases comprehensive coverage, which pays for damage to a motor vehicle caused by an event besides a collision, generally has coverage for damaged or broken auto glass.⁶ Because lenders often require borrowers who obtain motor vehicle loans to also purchase comprehensive motor vehicle insurance coverage, a consumer who owes money on a motor vehicle often has auto glass coverage.⁷

A “deductible” is the amount an insured must pay before an insurance company will make any payment on an insurance claim. Pursuant to s. 627.7288, F.S., the deductible provisions of a motor vehicle insurance policy “delivered or issued” in Florida and providing “comprehensive coverage or combined additional coverage shall not be applicable to the damage to the windshield of any motor vehicle covered under such policy.” Therefore, a consumer who owes money on a motor vehicle often qualifies for auto glass repair or replacement without paying a deductible.⁸

Auto Glass Replacement and Repair

Florida law has no specific requirements applicable to insurance claims made for damaged auto glass.⁹ Instead, these claims are handled according to the terms of a consumer’s motor vehicle insurance

¹ Ss. 559.901-559.9221, F.S.

² S. 559.904, F.S.

³ S. 559.903(6) and (7), F.S.

⁴ S. 559.920, F.S.

⁵ S. 559.921, F.S.

⁶ See Florida Department of Financial Services, *Automobile Insurance a Toolkit for Consumers*, <https://www.myfloridacfo.com/division/consumers/UnderstandingCoverage/Guides/documents/AutoToolkit.pdf> (last visited Feb. 6, 2019).

⁷ *Id.*

⁸ *Id.*

⁹ Dale Parker and Brendan McKay, *Florida Auto Glass Claims: A Cracked System*, Trial Advocate Quarterly Fall 2016, *21 (Westlaw Citation: 35 No. 4 Trial Advoc. Q. 20).

policy.¹⁰ Some Florida motor vehicle insurers have set up a network of auto glass repair shops that will provide auto glass repair or replacement at negotiated rates.¹¹ If a consumer utilizes one of these network shops, the consumer's auto glass is repaired or replaced and paid for directly by the insurance company.¹² If an insured uses an auto glass repair shop that is not within the insurer's network, the provider often obtains an assignment of benefits from the consumer.¹³

An assignment of benefits (AOB) is a binding agreement between an insured and a provider of repair services that allows a third-party, in this instance an auto glass repair shop, to "stand in the shoes" of the insured to obtain the benefits the insured is entitled to under the motor vehicle insurance contract, including payment of the claim. The glass repair shop to which the insured has assigned benefits can negotiate with, or file a lawsuit against, the insurer if the insurer and the glass repair company do not agree on the amount that the insurer will pay for the auto glass claim.

Auto Glass Litigation

According to data provided by the Department of Financial Services, the number of auto glass lawsuits has increased in recent years¹⁴:

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Auto Glass	397	571	271	709	351	478	1,389	4,331	9,018	12,817	19,695	25,664	17,399

Florida law allows the insured or the assignee to obtain attorney fees from the insurer if the insured or assignee obtains a judgment against an insurer.¹⁵ This law does not allow an insurer that prevails in a lawsuit against an insured or assigned to recovery attorney fees.¹⁶ The purpose is to "discourage contesting of valid claims of insureds against insurance companies . . . and to reimburse successful insureds reasonably for their outlays for attorney's fees when they are compelled to defend or to sue to enforce their contracts. . . ."¹⁷

Some insurers have asserted that the increase in litigation is the result of the practice by some auto glass repair shops to execute AOBs, sue for unpaid claims, and collect attorney fees under s. 627.428, F.S.¹⁸ They have also alleged that some auto glass repair shops obtain AOBs from the insured and inflate the costs of the auto glass repair or replacement when billing the insurance company.¹⁹ Insurers also believe that some auto glass claims submitted by assignees are fraudulent.²⁰ If they believe claims are fraudulent or inflated, insurers are left with a choice between paying those claims or paying

¹⁰ *Id.*
¹¹ Parker and McKay, *supra* note 9.
¹² *See id.*
¹³ *See id.*
¹⁴ Data provided by the Department of Financial Services to the Senate Committee on Banking and Insurance on January 22, 2019 (Senate Meeting Packet), http://flsenate.gov/PublishedContent/Committees/2018-2020/BI/MeetingRecords/MeetingPacket_4350.pdf (last visited Feb. 7, 2019).
¹⁵ S. 627.428, F.S.; The Florida Supreme Court has recognized the right of assignees to obtain attorney fees under s. 627.428, F.S., (and its predecessor statute) since at least 1972. *See All Ways Reliable Building Maintenance, Inc. v. Moore*, 261 So. 2d 131 (Fla. 1972). The First District Court of Appeal has recognized the right since at least 1961. *See Travelers Insurance Co. v. Tallahassee Bank and Trust Co.*, 133 So. 2d 463 (Fla. 1st DCA 1961).
¹⁶ In certain circumstances, insurers can recovery attorney fees by using offers of judgment and proposals for settlements. *See s. 768.79, F.S., and Fla. R. Civ. P. 1.442.*
¹⁷ *Wilder v. Wright*, 269 So. 2d 434, 436 (Fla. 2d DCA 1972).
¹⁸ *See Parker and McKay, supra* note 9.
¹⁹ *Id.*
²⁰ *See, e.g., Government Employees Insurance Co. v. Clear Vision Windshield Repair, L.L.C.*, 2017 WL 1196438 (M.D. Fla. Mar. 29, 2017).

attorneys to litigate cases that may result in payment of attorney's fees to assignees if the insurers do not prevail.

Some auto glass repair shops have argued that the litigation is necessary because motor vehicle insurers have entered into agreements with preferred vendors (i.e., the network shops) and the insurers will not pay the "prevailing competitive price" for auto glass repair or replacement.²¹ These repair shops contend that the insurers will only pay them the price that they pay to their preferred vendors and that they must litigate against the insurers to force them to pay the "prevailing competitive price" provided for in insurance policies.²²

Incentives for Auto Glass Insurance Claims

Some auto glass repair shops currently offer incentives, including cash and gift cards, in exchange for a consumer filing an insurance claim for auto glass repair or replacement.²³ One auto glass repair shop has advertised on its website the following:

Along with your windshield replacement insurance claim, Express Auto Glass will give you your cash back after the job is completed! All you have to do to qualify is to have us file an insurance claim for your windshield replacement. You will receive the same great service as all our clients, but with an extra bonus.²⁴

Consumers have also complained to DACS that they never received the incentives promised by the auto glass repair shops, even after their auto glass was replaced and the claims were submitted to the motor vehicle insurance companies.²⁵

Auto Glass America, an auto glass repair shop that advertises up to \$100 cash back and a \$100 gift card for submitting a "qualifying" auto glass insurance claim, filed over 15,300 auto glass lawsuits against insurers in Florida between January 1, 2016, and February 7, 2019.²⁶

Many industries and professions currently prohibit incentives in exchange for an act that would earn the inducer additional income. For example:

- Section 456.054, F.S., prohibits a healthcare provider from offering a kickback to anyone in exchange for patient referrals;
- Section 468.456(1)(f), F.S., prohibits an athlete agent from offering anything of value to a student athlete to induce the athlete to enter into an agreement for representation;
- Section 626.854(7)(a)2., F.S., prohibits a public adjuster from inducing an insured to submit an insurance claim; and
- Section 626.9541, F.S., prohibits an insurance agent from offering inducements in many situations, including offering a rebate to induce a customer to enter into an insurance contract, or offering a reduced fee for providing title insurance.

²¹ *VIP Auto Glass, Inc. v. Geico General Insurance Co.*, 2017 WL 3712918, *1 (M.D. Fla. Mar. 17, 2017).

²² *Id.*

²³ See, e.g., <http://americanwindshield.com/best-cash-incentive>, <https://expressautoglass.biz/windshield-replacement-gift-card/php>, and <https://www.auto-glassamerica.com> (last visited Feb. 5, 2019).

²⁴ <https://expressautoglass.biz/windshield-replacement-gift-card/php> (last visited Feb. 5, 2019). This particular company offers up to \$125 cash back for auto glass replacement insurance claims. Another company offers up to a "\$250 Cracked Windshield Buy Back Incentive." <https://americanwindshield.com/best-cash-incentive/> (last visited Feb. 5, 2019).

²⁵ See, e.g., Consumer Complaint No.: 225337/Case No. 1509-37312, submitted to DACS on Sept. 18, 2015; available on request from DACS.

²⁶ Data retrieved from Department of Financial Services Service of Process Reports application, <https://apps.fldfs.com/LSOPReports/Reports/Report.aspx> (last visited Feb. 7, 2019).

Effect of the Bill

The bill provides that a motor vehicle repair shop may not offer a customer an incentive in the form of a rebate, gift, gift card, cash, coupon, or other thing of value in exchange for making an insurance claim for motor vehicle glass replacement or repair. The bill also prohibits an employee of a motor vehicle repair shop or a nonemployee, who is compensated by a motor vehicle repair shop for the solicitation of insurance claims for the replacement or repair of motor vehicle glass, from offering any such incentive.

B. SECTION DIRECTORY:

Section 1. Amends s. 559.20, F.S., relating to unlawful acts and practices.

Section 2. Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate.²⁷ The Department of Agriculture and Consumer Services could see an increase in revenues associated with the collection of administrative fines imposed for violations of the new motor vehicle repair shop prohibitions.

2. Expenditures:

Indeterminate.²⁸ The Department of Agriculture and Consumer Services could see an increase in costs associated with investigations and prosecutions of violations of the new motor vehicle repair shop prohibitions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Given the number of auto glass lawsuits over the past 13 years,²⁹ and the reports of individuals receiving incentives to submit auto glass claims to their motor vehicle insurers, it is possible that eliminating incentives provided by motor vehicle repair shops for these claims would reduce the number of auto glass claims, and, thereby, the corresponding number of auto glass lawsuits. The reduction in the number of auto glass lawsuits may have a positive impact on motor vehicle insurance rates, particularly the portion of the rate that pertains to comprehensive coverage. Conversely, motor

²⁷ As of February 8, 2019, neither the Department of Agriculture and Consumer Services nor the Office of Insurance Regulation have provided an agency analysis. The Department of Highway Safety and Motor Vehicles has indicated that the bill as written would have no impact on that agency.

²⁸ *Id.*

²⁹ Senate Meeting Packet, *supra* note 14.

vehicle repair shops may claim their business is negatively affected by the inability to provide incentives to consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES