

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 312

INTRODUCER: Senator Stewart

SUBJECT: Motor Vehicle Insurance Coverage for Windshield Glass

DATE: November 8, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<u>Unfavorable</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 312 prohibits motor vehicle repair shops and their employees from offering an inducement to a customer in exchange for making an insurance claim for motor vehicle glass replacement or repair. This prohibition also applies to individuals who are not employees of the repair shop, but are compensated for their solicitation of insurance claims.

**II. Present Situation:**

**Automobile Insurance Coverage Related to Windshield Repair**

Comprehensive coverage provides coverage for damage to the insured vehicle caused by events other than a collision.<sup>1</sup> This coverage type also covers damage to the vehicle's windshield, and is required by most lenders for purposes of protecting the financial interest of the lender.<sup>2</sup> For insured vehicles with comprehensive coverage, insurers may not apply the insurance policy deductible to the damaged windshield.<sup>3</sup>

**In-Network Versus Out-of-Network Motor Vehicle Repair Shops**

Insurers frequently create preferred vendor networks with motor vehicle repair shops to expedite windshield repairs and negotiate rates for services to be paid directly by the insurer.<sup>4</sup> An out-of-network motor vehicle repair shop receives payment either from the insured in the form of direct payment or from the insurer by obtaining an assignment of benefits (AOB) of the insured's

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<sup>1</sup>Florida Department of Financial Services, *Automobile Insurance A Toolkit for Consumers*, <https://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/Guides/documents/AutoToolkit.pdf> (last visited October 8, 2019)

<sup>2</sup> *Id.*

<sup>3</sup> Section 627.7288, F.S.

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

insurance policy.<sup>5</sup> Where the policyholder has executed an AOB with the out-of-network motor vehicle repair shop, the shop can either negotiate with, or file a lawsuit against, the insurer if the two sides do not agree on the claim amount.<sup>6</sup>

In Florida, the insured has the right to select either an in-network motor vehicle repair shop or an out-of-network motor vehicle repair shop to repair the damaged windshield.<sup>7</sup> However, an insurer can elect to require a particular repair shop to restore the damaged windshield, in which case the shop must restore the windshield to its pre-accident condition no matter the cost to the insurer.<sup>8</sup>

### Windshield Litigation

The Florida Department of Financial Services provided the following information on the volume of windshield litigation involving an AOB<sup>9</sup>:

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Auto Glass Lawsuits	397	571	271	709	351	478	1,389	4,331	9,018	12,817	19,695	26,664	17,399

Similarly, the Office of Insurance Regulation notes the rising volume of windshield litigation involving an AOB supersedes the volume of water remediation litigation involving an AOB.<sup>10</sup>

### Florida Motor Vehicle Repair Act

The Department of Agriculture and Consumer Services (DACS) regulates motor vehicle repair shops in Florida under the Florida Motor Vehicle Repair Act.<sup>11</sup> This Act requires that all motor vehicle repair shops, with limited exceptions, register with the DACS.<sup>12</sup> A motor vehicle repair shop may be fixed or mobile and includes a person or business that does motor vehicle glass work for compensation.<sup>13</sup> 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 have been made to a motor vehicle or fraudulently altering any customer contract, estimate, invoice, or other document.<sup>14</sup> 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.<sup>15</sup> In addition, a customer

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Florida Department of Financial Services, *Automobile Insurance A Toolkit for Consumers*, <https://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/Guides/documents/AutoToolkit.pdf> (last visited October 8, 2019)

<sup>8</sup> Section 626.9743(3), F.S.

<sup>9</sup> Data provided by the Florida 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](http://flsenate.gov/PublishedContent/Committees/2018-2020/BI/MeetingRecords/MeetingPacket_4350.pdf) (last visited October 24, 2019).

<sup>10</sup> Florida Financial Services Commission, *Meeting of the Governor and Cabinet* (August 17, 2017) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

<sup>11</sup> Sections 559.901-559.9221, F.S.

<sup>12</sup> Section 559.904, F.S.

<sup>13</sup> Section 559.903(6) and (7), F.S.

<sup>14</sup> Section. 559.920, F.S.

<sup>15</sup> Section 559.921, F.S.

injured by a violation of the Motor Vehicle Repair Act may bring an action against a repair shop. The prevailing party is entitled to damages plus court costs and reasonable attorney fees.<sup>16</sup>

### **Use of Inducements by Motor Vehicle Repair Shops**

The Florida Motor Vehicle Repair Act does not prohibit motor vehicle repair shops from offering inducements to consumers. Some out-of-network motor vehicle repair shops advertise inducements to compete for business with in-network vehicle repair shops,<sup>17</sup> while others offer inducements if a consumer files a qualified insurance claim for windshield replacement.<sup>18</sup>

### **Regulation of Inducements in Related Insurance Fields**

#### ***Prohibited Practices by Insurance Agents***

Insurance agents are subject to prosecution under the Unfair Insurance Trade Practices Act<sup>19</sup> for knowingly misrepresenting the benefits, advantages, conditions, or terms of any insurance policy,<sup>20</sup> offering inducements to enter into an insurance contract in many settings,<sup>21</sup> and causing false insurance claims to be filed.<sup>22</sup>

#### ***Prohibited Practices by Public Adjusters***

Public adjusters are subject to prosecution for unfair and deceptive insurance practices<sup>23</sup> if the adjuster offers a monetary or other valuable inducement to invite a policyholder to submit a claim.<sup>24</sup> Such unfair and deceptive trade practices also include making an untrue, deceptive, or misleading representation with respect to the business of insurance,<sup>25</sup> inviting a policyholder to submit a claim when the policyholder does not have coverage,<sup>26</sup> or inviting a policyholder to submit a claim by stating that there is “no risk” to the policyholder by submitting such claim.<sup>27</sup>

### **III. Effect of Proposed Changes:**

The bill provides that a motor vehicle repair shop may not provide an inducement in the form of a rebate, gift, gift card, cash, coupon, or any other thing of value, in exchange for making an insurance claim for motor vehicle glass replacement or repair. An employee of the motor vehicle repair shop and a nonemployee who is compensated for soliciting insurance claims based on the repair of a motor vehicle glass replacement or repair are both also prohibited from offering such

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<sup>16</sup> Section 559.921(1), F.S.

<sup>17</sup> Florida Senate, *Meeting of the Committee on Banking and Insurance* (March 11, 2019) (statement of Keith Seamann, Glass Replacements, LLC).

<sup>18</sup> See, e.g.: <https://www.auto-glassamerica.com/freewindshieldflorida> <https://expressautoglass.biz/windshield-replacement-gift-card.php> (last visited November 1, 2019).

<sup>19</sup> Section 626.9541, F.S.

<sup>20</sup> Section 626.9541(1)(a)(1), F.S.

<sup>21</sup> Section 626.9541(1)(h), F.S.

<sup>22</sup> Section 626.9541(1)(u)(1), F.S.

<sup>23</sup> Section 626.854(7), F.S.

<sup>24</sup> Section 626.854(7)(a)(2), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Section 626.854(7)(a)(1), F.S.

<sup>27</sup> Section 626.851(7)(a)(3), F.S.

inducements. Motor vehicle repair shops would be subject to disciplinary actions by the DACS for violations of the bill's provisions.

The bill provides an effective date of July 1, 2020.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Motor vehicle repair shops will be prohibited from providing certain inducements to customers. This may negatively affect their businesses.

Indeterminate with respect to insurance premium. A reduction in auto glass costs resulting in a reduction in insurance premiums for auto comprehensive coverage is difficult to estimate as comprehensive coverage includes a wide variety of coverages including, but not limited to, flood, hail, theft, and hurricane.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 559.920 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.