

**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 Commerce and Tourism

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BILL: SB 1002

INTRODUCER: Senators Stewart and Hooper

SUBJECT: Motor Vehicle Glass

DATE: March 17, 2023

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Thomas</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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## I. Summary:

SB 1002 revises definitions under the Florida Motor Vehicle Repair Act to ensure that businesses that calibrate or recalibrate advanced driver assistance systems associated with windshields are regulated under the Act. The bill prohibits motor vehicle repair shops, their employees, and their representatives, from offering an inducement to a customer in exchange for making an insurance claim for motor vehicle glass replacement or repair. Finally, the bill prohibits a policyholder, or any other person, from entering an assignment agreement of post-loss benefits for motor vehicle glass replacement or repair, including for calibration or recalibration of advanced driver assistance systems.

It is not anticipated that the bill will have any significant fiscal impact on state or local government.

The bill is effective July 1, 2023.

## II. Present Situation:

### **Automobile Insurance Coverage Related to Windshield Repair**

Comprehensive motor vehicle insurance 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>

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<sup>1</sup>Florida Department of Financial Services, *Automobile Insurance Toolkit*, available at [automobile-insurance-toolkit](#) (last accessed March 17, 2023).

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

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

**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 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 insurer’s preferred motor vehicle repair shop or one not in the insurer’s preferred network of motor vehicle repair shops to repair the damaged windshield.<sup>7</sup> However, an insurer that requires a particular repair shop to restore the damaged windshield, must require that particular repair shop to restore the damaged windshield to its pre-accident condition no matter the cost to the insurer.<sup>8</sup> An insurer may not require the use of replacement parts that are not at least equivalent in kind and quality to the damaged parts prior to the loss.<sup>9</sup>

**Windshield Litigation**

The Florida Department of Financial Services provided the following information on the volume of windshield litigation involving an AOB<sup>10</sup>:

Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Auto Glass Lawsuits	435	1,200	3,329	6,753	11,077	17,768	21,851	14,539	16,168	21,094	24,080	33,196

**Florida Motor Vehicle Repair Act**

The Department of Agriculture and Consumer Services (DACCS) 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 DACCS.<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

<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), available at [Florida-Auto-Glass-Claims-A-Cracked-System](#) (last accessed March 17, 2023).

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

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

<sup>7</sup> *Ibid*, fn. 1.

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

<sup>9</sup> Section 626.9743(4), F.S.

<sup>10</sup> Data provided by the Florida Department of Financial Services to the Senate Committee on Banking and Insurance on January 19, 2023 (on file with the Senate Banking and Insurance Committee).

<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.

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 injured by a violation of the Motor Vehicle Repair Act may bring an action against a repair shop.<sup>16</sup> The prevailing party is entitled to damages plus court costs and reasonable attorney fees.<sup>17</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, 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>

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

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

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

<sup>17</sup> *Id.*

<sup>18</sup> *See, e.g.*: [FREE WINDSHIELD](#) “up to \$150 cash back at the time of service”; [Cash Back Quote](#) “Get up to \$100 - \$200 Cash Back with FL Insurance” (last accessed March 17, 2023).

<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> Section 626.854(7), F.S.

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

<sup>27</sup> Section 626.854(7)(a)3., F.S.

## Advanced Driver Assistance Systems

Advanced driver assistance systems (ADAS) are technological features of a motor vehicle that are designed to increase the safety of driving a vehicle by reducing traffic crashes. Traffic crashes are a leading cause of death in the United States for people ages 1–54 and each year, 1.35 million people are killed on roadways around the world. More than half of those killed are pedestrians, motorcyclists, or cyclists.<sup>28</sup>

Such technologies help keep the driver and passengers safe, but also other drivers and pedestrians. Driver assistance systems may warn of an impending crash, while others are designed to take action to avoid a crash. A forward collision warning system monitors the vehicle's speed, the speed of the vehicle in front of it and the distance between the vehicles. A lane departure warning system monitors lane markings and alerts the driver when it detects that the vehicle is drifting out of its lane. Automatic emergency braking systems apply the vehicle's brakes automatically in time to avoid or mitigate an impending forward crash with another vehicle. Other systems include backup cameras, adaptive cruise control, lane centering, blind spot warning, lane keeping assistance, and automatic high beams.<sup>29</sup>

These ADAS functions are typically based on one front camera or on a front stereovision camera. The camera information may be supplemented with information from other sensors like light detection and ranging or radio detection. The ADAS cameras are located inside the car, against the front windshield, behind the central rear view mirror. The ADAS camera field of view is located in the wiper area to keep the glass in front of the camera as clean as possible.<sup>30</sup> An ADAS sensor calibration is required whenever a sensor's aiming is disturbed in any way. This can occur in a collision, even a minor fender bender, or be a byproduct of common service work such as windshield replacement, suspension repairs or wheel alignment.<sup>31</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 559.903, F.S., to:

- Define the term “advanced driver assistance system” to mean “any motor vehicle electronic safety system that is associated with motor vehicle glass and is designed to support the driver and motor vehicle in a manner intended to increase motor vehicle safety and reduce losses associated with motor vehicle crashes.”
- Revise the definition of the term “motor vehicle repair” to include the “calibration or recalibration of advanced driver assistance systems.”

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<sup>28</sup> *Road Traffic Injuries and Deaths—A Global Problem*, Centers for Disease Control and Prevention, available at [global-road-safety](#) (last accessed March 17, 2023).

<sup>29</sup> *Driver assistance technologies*, National Highway Traffic Safety Administration, available at [driver-assistance-technologies](#) (last accessed March 17, 2023).

<sup>30</sup> *Advanced Driver Assistance Systems*, On-Road Intelligent Vehicles, Rahul Kala, 2016, available at [advanced-driver-assistance-systems](#) (last accessed March 17, 2023).

<sup>31</sup> *ADAS Sensor Calibration Increases Repair Costs*, available at <https://www.aaa.com/autorepair/articles/adas-sensor-calibration-increases-repair-costs> (last accessed March 17, 2023).

These changes will ensure that businesses that calibrate or recalibrate electronic safety systems associated with windshields are regulated by the DACS pursuant to the Florida Motor Vehicle Repair Act.

**Section 2** amends s. 559.920, F.S., to provide 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, including the calibration or recalibration of an advanced driver assistance system. A nonemployee who is compensated for soliciting insurance claims is also prohibited from offering such inducements. Motor vehicle repair shops would be subject to disciplinary actions by the DACS for violations of the bill's provisions.

**Section 3** creates s. 627.7289, F.S., to prohibit a policyholder, or any other person, from entering an assignment agreement of post-loss benefits for motor vehicle glass replacement or repair, including for calibration or recalibration of advanced driver assistance systems. This prohibition will apply to motor vehicle insurance policies issued or renewed in this state on or after July 1, 2023. An "assignment agreement" includes any agreement whereby post-loss benefits under a motor vehicle insurance policy are assigned or transferred to a person providing services for motor vehicle glass replacement or repair, including inspecting, protecting, repairing, restoring, or replacing the motor vehicle glass or calibrating or recalibrating advanced driver assistance systems.

The bill provides an effective date of July 1, 2023.

#### **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 identified.

**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 premiums. 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 sections 559.903 and 559.920 of the Florida Statutes.

This bill creates section 627.7289 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.