

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 541 Motor Vehicle Glass
SPONSOR(S): Insurance & Banking Subcommittee, Griffiths
TIED BILLS: IDEN./SIM. **BILLS:** SB 1002

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Fortenberry	Lloyd
2) Civil Justice Subcommittee	12 Y, 4 N	Mawn	Jones
3) Commerce Committee			

SUMMARY ANALYSIS

The deductible provisions of a motor vehicle insurance policy providing comprehensive or combined additional coverage do not apply to the repair or replacement of the damaged windshield of any motor vehicle covered under such policy. Therefore, a consumer often qualifies for motor vehicle glass repair or replacement without paying a deductible out-of-pocket. Further, some motor vehicle glass repair shops (“repair shop”) currently offer incentives, including cash and gift cards, in exchange for a consumer filing an insurance claim for motor vehicle glass repair or replacement. This, combined with the practice of repair shops accepting an assignment of the consumer’s post-loss repair benefits for windshield repair or replacement under a motor vehicle insurance policy, may have contributed to the steep rise in motor vehicle glass lawsuits over the last few years. The rise in such lawsuits may have, in turn, contributed to the increase in motor vehicle insurance premiums faced by Florida consumers in recent years.

CS/HB 541:

- Defines “advanced driver assistance system” (“ADAS”) 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.
- Expands the definition of “motor vehicle repair” to include ADAS calibration or recalibration.
- Prohibits a repair shop or its employees from:
 - Offering to a customer anything of value in exchange for making an insurance claim for motor vehicle glass replacement or repair, including ADAS calibration or recalibration, and prohibits a non-employee who is compensated for soliciting insurance claims from making such offers.
 - Failing to provide electronic or written notice to the customer as to whether the calibration or recalibration of ADAS is required as part of the replacement or repair of motor vehicle glass.
- Authorizes an insurer to offer to an insured or an applicant for insurance, upon the issuance or renewal of a policy providing comprehensive or combined additional coverage, a deductible of \$250 for claims of damage to the windshield of any motor vehicle covered under such policy, which offer the insured or applicant may decline.
- Prohibits a policyholder or any other person from entering into an assignment agreement for post-loss benefits for motor vehicle glass replacement or repair under a motor vehicle insurance policy issued or renewed on or after July 1, 2023, provides that any such agreement is void and unenforceable, and defines “assignment agreement” for the purposes of this provision.

The bill does not appear to have a fiscal impact on state or local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Motor Vehicle Repair Shops

The Department of Agriculture and Consumer Services (“DACCS”) regulates motor vehicle repair shops under the Florida Motor Vehicle Repair Act (“Repair Act”).¹ The Repair Act requires that all motor vehicle repair shops, with minor exceptions, register with DACCS,² and provides that 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

Further, under the Repair Act, it is unlawful for a motor vehicle repair shop or its employees to engage in specified activities, including misrepresenting that repairs have been made to a motor vehicle or fraudulently altering any customer contract, estimate, invoice, or other document.⁴ The Repair Act provides various remedies for unlawful acts by a motor vehicle repair shop, which remedies include notices of noncompliance; administrative fines; orders to cease and desist; registrant probation; and registration suspension or revocation.⁵

Motor Vehicle Insurance

When a consumer purchases the minimum motor vehicle insurance required by Florida law, including personal injury protection coverage (“PIP”), the consumer does not have first-party insurance coverage for the repair or replacement of motor vehicle glass. However, a consumer who purchases comprehensive coverage, which covers damage to a motor vehicle caused by an event other than a collision, generally has coverage for damaged or broken motor vehicle 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 motor vehicle glass coverage.⁷

Windshield Deductibles

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.”⁸ Therefore, a consumer who owes money on a motor vehicle often qualifies for motor vehicle glass repair or replacement without paying a deductible out of pocket.⁹

Assignment of Post-loss Motor Vehicle Glass Benefits

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/docs-sf/consumer-services-libraries/consumerservices-documents/understanding-coverage/consumer-guides/english---automobile-insurance-toolkit.pdf?sfvrsn=6b999793_4 (last visited Mar. 27, 2023).

⁷ *Id.*

⁸ Combined additional coverage is an obsolete auto physical damage term that still appears in the Florida Insurance Code. It refers to hazards other than fire or theft. *IRMI*, combined additional coverage, <https://www.irmi.com/term/insurance-definitions/combined-additional-coverage> (last visited Mar. 27, 2023).

⁹ Department of Financial Services, *supra* note 6.

Motor Vehicle Glass Replacement and Repair

Florida law has no specific requirements applicable to insurance claims made for damaged motor vehicle glass.¹⁰ Instead, these claims are handled according to the terms of a consumer's motor vehicle insurance policy.¹¹ Some Florida motor vehicle insurers have set up a network of motor vehicle glass repair shops that will provide motor vehicle glass repair or replacement at negotiated rates.¹² If a consumer utilizes one of these network shops, the consumer's motor vehicle glass is repaired or replaced and paid for directly by the insurance company.¹³ If an insured uses an motor vehicle glass repair shop that is not within the insurer's network, the provider often obtains an assignment of benefits from the consumer.¹⁴

An assignment of benefits ("AOB") is a binding agreement between an insured and a provider of repair services that allows the provider, in this instance a motor vehicle 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. Under an AOB, the motor vehicle glass repair shop can negotiate directly with, or file a lawsuit in the name of the insured against, the insurer if the glass repair company does not agree to the amount that the insurer offers to resolve the motor vehicle glass claim.

Motor Vehicle Glass Litigation

According to data provided by the Department of Financial Services, the number of motor vehicle glass lawsuits has increased significantly in the past decade, as shown in this chart:¹⁵

Year	2011	2012	2021	2022
Number of Lawsuits	478	1,389	24,080	33,196

Florida law currently allows the insured or the assignee to obtain attorney fees from the insurer if the insured or assignee obtains a judgment against an insurer in a lawsuit regarding a motor vehicle insurance claim.¹⁶ However, this operates in one direction; thus, an insurer that prevails in a lawsuit against an insured or assignee is not permitted to recover its attorney fees.¹⁷ The purpose of the "one-way attorney fee provision" 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. . . ."¹⁸

Some insurers have asserted that the increase in litigation is the result of the practice by some motor vehicle glass repair shops to execute AOBs, sue for unpaid claims, and collect attorney fees under s. 627.428, F.S.¹⁹ Insurers have also alleged that some motor vehicle glass repair shops obtain an AOB

¹⁰ 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).

¹¹ *Id.*

¹² *Id.*

¹³ *See id.*

¹⁴ *See id.*

¹⁵ 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 Mar. 27, 2023) and data provided in Florida Department of Financial Services, Agency Analysis of 2023 Senate Bill 1002, p. 1 (Feb. 27, 2023) (Senate Bill 1002 is the companion bill to PCS for HB 541).

¹⁶ 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). However, in December 2022, the Legislature prohibited the use of AOBs for property insurance claims, and the recovery of attorney fees for litigation regarding property insurance claims.

¹⁷ In certain circumstances, insurers can recover attorney fees by using offers of judgment and proposals for settlement. *See s. 768.79, F.S.*, and Fla. R. Civ. P. 1.442.

¹⁸ *Wilder v. Wright*, 269 So. 2d 434, 436 (Fla. 2d DCA 1972).

¹⁹ *See Parker and McKay, supra* note 10.

from an insured and then inflate the costs of the motor vehicle glass repair or replacement when billing the insurance company, while other claims submitted by such assignees are outright fraudulent.²⁰ If an insurer believes claims are fraudulent or inflated, the insurer is left with a choice between paying those claims or paying attorneys to litigate cases that may result in the payment of attorney's fees if the insurers do not prevail, regardless of the amount of increased benefit payment awarded.

However, some motor vehicle glass repair shops have argued that litigation is necessary because motor vehicle insurers have entered into agreements with preferred vendors (i.e., the network shops) and will not pay to non-preferred vendors the "prevailing competitive price" for motor vehicle glass repair or replacement.²¹ Such repair shops contend that, instead, the insurers will only pay them the price that the insurers pay to their preferred vendors and that they must litigate against the insurers to obtain the amounts they believe they are fairly owed.²²

Incentives for Motor Vehicle Glass Insurance Claims

Some motor vehicle glass repair shops currently offer incentives, including cash and gift cards, in exchange for a consumer filing an insurance claim for motor vehicle glass repair or replacement or for granting an AOB to the repair shop.²³ Consumers have also complained to DACS that they never received the incentives promised by the motor vehicle glass repair shops, even after their motor vehicle glass was replaced and the necessary claims were submitted to the motor vehicle insurance companies or the AOB was executed.²⁴

Recognizing the dangers that incentives present to consumers, Florida law currently prohibits many professions from offering 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.

Advanced Driver Assistance Systems

Advanced Drive Assistance Systems ("ADAS") include automatic emergency braking, lane and highway assistance features, and driver monitoring.²⁵ ADAS make roadways safer and help save lives by using radar, lidar, cameras, computer imaging, sensors, networking, and other features to prevent or reduce the likelihood of accidents.²⁶ While repair or replacement of motor vehicle glass often includes calibration or recalibration of ADAS, the Repair Act does not currently define ADAS.

Effect of Proposed Changes

²⁰ *Id.*; See, e.g., *Government Employees Insurance Co. v. Clear Vision Windshield Repair, L.L.C.*, 2017 WL 1196438 (M.D. Fla. Mar. 29, 2017).

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., <https://webuywindshields.com/> (last visited Mar. 27, 2023).

²⁴ See, e.g., Consumer Complaint No.: 225337/Case No. 1509-37312, submitted to DACS on Sept. 18, 2015; available on request from DACS.

²⁵ ARM, *Advanced Driver Assistance Systems*,

https://www.arm.com/markets/automotive/adas?utm_source=google&utm_medium=cpc&utm_content=solutions&utm_campaign=2022_automotive_mk12_adas&utm_term=adas%20system&qclid=Cj0KCCQiA6rCgBhDVARIsAK1kGPL3OcDDtID90i-oBymynl453g40Y5iNZmFjRcQmdqeFYag_tACRIYaAoPSEALw_wcB (last visited Mar. 27, 2023).

²⁶ Florida Department of Financial Services, Agency Analysis of 2023 Senate Bill 1002, p. 1 (March 21, 2023).

Incentives for Motor Vehicle Glass Insurance Claims

CS/HB 541 prohibits a motor vehicle repair shop or its employees from offering to a customer 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 calibration or recalibration of an ADAS. The bill also prohibits a nonemployee who is compensated for the solicitation of insurance claims from offering such an inducement.

Windshield Deductibles

The bill authorizes an insurer, when issuing or renewing a policy providing comprehensive coverage or combined additional coverage, to offer an insured or applicant for insurance a deductible of \$250 for claims of damage to the windshield of any motor vehicle covered under such policy. However, under the bill, the insured or applicant may decline the offer of a deductible. Further, the bill also establishes that, if a deductible for comprehensive coverage or combined additional coverage is applied to a loss that includes damage in addition to windshield damage, the windshield damage deductible may not apply.

Assignment of Post-loss Motor Vehicle Glass Benefits

The bill prohibits a policyholder, or any other person, from entering into an AOB for post-loss benefits for motor vehicle glass replacement or repair, including, but not limited to, for calibration or recalibration of ADAS, under a motor vehicle insurance policy issued or renewed on or after July 1, 2023. The bill also:

- Provides that any such AOB entered into is void and unenforceable.
- Defines “assignment agreement” to mean any instrument, regardless of how such agreement is named or styled, by which post-loss benefits, including, but not limited to, claim payments, under a motor vehicle insurance policy are, in whole or in part, assigned or transferred to, or acquired in any manner by, a person providing services for motor vehicle glass replacement or repair, including but not limited to, inspecting, protecting, repairing, restoring, or replacing the motor vehicle glass or calibrating or recalibrating ADAS.

Advanced Driver Assistance Systems

The bill establishes that it is a violation of law for a motor vehicle repair shop, or an employee of such shop, to fail to provide electronic or written notice in at least 12-point type to a customer as to whether the calibration or recalibration of ADAS is required as part of the replacement or repair of motor vehicle glass to make the ADAS operable and ensure that the service meets or exceeds the specifications of the vehicle manufacturer. The bill also defines:

- “Advanced Drive Assistance System,” as used in the Repair Act, to mean any motor vehicle electronic safety system associated with motor vehicle glass and 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.
- “Motor vehicle repair” to include calibration or recalibration of ADAS.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 559.903, F.S., relating to definitions.

Section 2. Amends s. 559.920, F.S., relating to unlawful acts and practices.

Section 3. Amends s. 627.7288, F.S., relating to comprehensive coverage; deductible not to apply to motor vehicle glass.

Section 4. Creates s. 627.7289, F.S., relating to assignment of post-loss motor vehicle glass benefits prohibited.

Section 5. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate economic impact on the private sector. Motor vehicle repair shops may claim their business will be negatively affected by their inability to provide incentives to consumers or receive AOBs for post-loss benefits for motor vehicle glass repair or replacement. However, given the number of motor vehicle glass lawsuits over the past several years, it is possible that eliminating such AOBs and incentives may reduce the number of disputed motor vehicle glass claims, and thereby reduce the number of motor vehicle glass lawsuits filed in the state.

The reduction in the number of such lawsuits may have a positive impact on motor vehicle insurance premiums, particularly the portion of the rate that pertains to comprehensive coverage. Further, a policyholder's election of deductibles for windshield glass may also reduce his or her motor vehicle insurance premiums.

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 14, 2023, the Insurance & Banking Subcommittee considered a proposed committee substitute ("PCS") for the bill, and reported the bill favorably as a committee substitute. The PCS differed from the underlying bill in that it:

- Provided that a motor vehicle repair shop may not offer a customer 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, including calibration or recalibration of an ADAS.
- Prohibited an employee of a motor vehicle repair shop or a nonemployee, who is compensated by a motor vehicle repair shop for the solicitation of claims, from offering such an inducement.
- Established that it is a violation of law for a motor vehicle repair shop, or an employee of such shop, to fail to provide electronic or written notice to a customer as to whether the calibration or recalibration of ADAS is required as part of the replacement or repair of motor vehicle glass to make the ADAS operable and ensure that the service meets or exceeds the specifications of the vehicle manufacturer.
- Defined ADAS, as it is used in the Repair Act, to mean any motor vehicle electronic safety system associated with motor vehicle glass and 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.
- Authorized an insurer, when issuing or renewing a policy providing comprehensive coverage or combined additional coverage, to offer an insured or applicant a deductible of \$250 for claims of damage to the windshield of a motor vehicle, which offer the insured or applicant may decline.
- Established that, if a deductible for comprehensive coverage or combined additional coverage is applied to a loss that includes other damage in addition to windshield damage, no windshield damage deductible may apply.
- Clarified the definition of an AOB for a motor vehicle glass claim to include calibrating or recalibrating an ADAS.
- Applied the prohibition on AOBs only to motor vehicle glass claims, rather than to motor vehicle insurance generally.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.