

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 541 Motor Vehicle Glass

**SPONSOR(S):** Commerce Committee and Insurance & Banking Subcommittee, Griffiths and others

**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 1002

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**FINAL HOUSE FLOOR ACTION:** 103 Y's

16 N's

**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/HB 541 passed the House on May 2, 2023, as CS/SB 1002, as amended.

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.

The bill:

- Expands the definition of "motor vehicle repair" to include advanced driver assistance system (ADAS) calibration or recalibration.
- Defines 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.
- 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.
- 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.
- Prohibits insurers, agents and adjusters, and anyone working for them, from influencing the selection of a shop to complete a motor vehicle windshield repair, i.e., "steering" a claim, and establishes related conditions.

The bill does not appear to have a fiscal impact on state or local governments. It may have a positive or negative direct economic impact on the private sector.

The bill was approved by the Governor on May 25, 2023, ch. 2023-136, and will become effective upon becoming law.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **General 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 (Repair Act).<sup>1</sup> The Repair Act requires that all motor vehicle repair shops, with minor exceptions, register with DACS.<sup>2</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>3</sup>

Under the Repair Act, it is unlawful for a motor vehicle repair shop or its employee to engage in certain activities including misrepresenting that repairs have been made to a motor vehicle or fraudulently altering any customer contract, estimate, invoice, or other document.<sup>4</sup> The Repair 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>5</sup>

##### ***Motor Vehicle 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 motor vehicle 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 motor vehicle glass.<sup>6</sup> 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.<sup>7</sup>

#### **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.<sup>8</sup> 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 claims were submitted to the motor vehicle insurance companies.<sup>9</sup>

Auto Glass America, a motor vehicle glass repair shop that advertises up to \$100 cash back and a \$100 gift card for submitting a “qualifying” motor vehicle glass insurance claim, filed over 15,300 motor

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<sup>1</sup> Ss. 559.901-559.9221, F.S.

<sup>2</sup> S. 559.904, F.S.

<sup>3</sup> S. 559.903(6) and (7), F.S.

<sup>4</sup> S. 559.920, F.S.

<sup>5</sup> S. 559.921, F.S.

<sup>6</sup> 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](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. 11, 2023).

<sup>7</sup> *Id.* See discussion on deductible below.

<sup>8</sup> See, e.g., <https://webuywindshields.com/> (last visited Mar. 11, 2023).

<sup>9</sup> See, e.g., Consumer Complaint No.: 225337/Case No. 1509-37312, submitted to DACS on Sept. 18, 2015; available on request from DACS.

vehicle glass related lawsuits against insurers in Florida between January 1, 2016, and February 7, 2019.<sup>10</sup>

Recognizing the dangers posed to consumers, many industries and professions currently prohibit incentives in exchange for an act for which the inducer would earn 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.

### **Effect of the Bill – Incentives for Motor Vehicle Glass Insurance Claims**

The bill provides 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 related services. The bill 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 claims, from offering such an inducement.

### **Advanced Driver Assistance Systems (ADAS)**

ADAS include automatic emergency braking, lane and highway assistance features, and driver monitoring.<sup>11</sup> They make roadways safer and help save lives by using radar, lidar, cameras, computer imaging, sensors, networking, and other features.<sup>12</sup> While repair or replacement of motor vehicle glass often includes calibration or recalibration of ADAS, the Repair Act does not currently include a definition of ADAS.

### **Effect of the Bill – ADAS**

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 to a customer whether the calibration or recalibration of an 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 defines ADAS for its use in the Repair Act. According to the bill, ADAS means 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.

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<sup>10</sup> Data retrieved from Department of Financial Services Service of Process Reports application, <https://apps.flds.com/LSOPReports/Reports/Report.aspx> (last visited Feb. 7, 2019).

<sup>11</sup> 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&gclid=Cj0KCQiA6rCgBhDVARIsAK1kGPL3OcDDtID90i-oBymynl453g40Y5iNzmFyjRcQmdqeFYag\\_tACRIYaAoPSEALw\\_wcB](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&gclid=Cj0KCQiA6rCgBhDVARIsAK1kGPL3OcDDtID90i-oBymynl453g40Y5iNzmFyjRcQmdqeFYag_tACRIYaAoPSEALw_wcB) (last visited Mar. 11, 2023).

<sup>12</sup> 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).

Additionally, the bill expands the definition of “motor vehicle repair” to include ADAS calibration or recalibration.

## **Assignment of Post-loss Motor Vehicle Glass Benefits**

### ***Motor Vehicle Glass Replacement and Repair***

Florida law has no specific requirements applicable to insurance claims made for damaged motor vehicle glass.<sup>13</sup> Instead, these claims are handled according to the terms of a consumer’s motor vehicle insurance policy.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

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 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. The glass repair shop to which the insured has assigned benefits can negotiate directly with, or file a lawsuit in the name of the insured against, the insurer if the insurer and the glass repair company do not agree on the amount that the insurer will pay for 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:<sup>18</sup>

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

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 in a lawsuit regarding an motor vehicle insurance claim.<sup>19</sup> However, this operates in one direction. An insurer that prevails in a lawsuit against an insured

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<sup>13</sup> 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).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *See id.*

<sup>17</sup> *See id.*

<sup>18</sup> 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](http://flsenate.gov/PublishedContent/Committees/2018-2020/BI/MeetingRecords/MeetingPacket_4350.pdf) (last visited Mar. 11, 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).

<sup>19</sup> 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.

or assignee is not permitted to recover attorney fees.<sup>20</sup> 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. . . .”<sup>21</sup>

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.<sup>22</sup> They have also alleged that some motor vehicle glass repair shops obtain AOBs from the insured and inflate the costs of the motor vehicle glass repair or replacement when billing insurance companies.<sup>23</sup> Insurers also believe that some motor vehicle glass claims submitted by assignees are fraudulent.<sup>24</sup> If they believe claims are fraudulent or inflated, insurers are left with a choice between paying those claims or paying attorneys to litigate cases that may result in payment of attorney’s fees to assignees if the insurers do not prevail regardless of the amount of increased benefit payment awarded.

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 the insurers will not pay the “prevailing competitive price” for motor vehicle glass repair or replacement.<sup>25</sup> 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 by insurance policies.<sup>26</sup>

### **Effect of the Bill – Assignment of Post-loss Motor Vehicle Glass Benefits**

The bill prohibits a policyholder, or another person, from signing an AOB for motor vehicle glass replacement or repair, including, but not limited to, calibration or recalibration of an ADAS, under an motor vehicle insurance policy issued or renewed on or after July 1, 2023. The bill also provides a definition of an AOB for motor vehicle glass replacement or repair, which includes inspecting, protecting, repairing, restoring, or replacing the glass, or calibrating or recalibrating an ADAS.

### **Steering of Motor Vehicle Windshield Claims**

Steering is the practice of an insurer requiring an claimant to use a specific motor vehicle repair shop for repairs that are covered by an insurance policy. Out-of-network motor vehicle glass repair shops have complained that insurers are engaging in steering of claimants to have windshield repairs and replacements done by in-network shops.<sup>27</sup> Currently, Florida law does not include any specific prohibitions on the steering of repairs.

### **Effect of the Bill – Motor Vehicle Windshield Claims**

For the purposes of the comprehensive or combined additional coverage provisions of personal lines motor vehicle insurance policies, the bill prohibits the steering of motor vehicle windshield repair

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<sup>20</sup> In certain circumstances, insurers can recovery attorney fees by using offers of judgment and proposals for settlement.

See s. 768.79, F.S., and Fla. R. Civ. P. 1.442.

<sup>21</sup> *Wilder v. Wright*, 269 So. 2d 434, 436 (Fla. 2d DCA 1972).

<sup>22</sup> See *Parker and McKay*, *supra* note 10.

<sup>23</sup> *Id.*

<sup>24</sup> See, e.g., *Government Employees Insurance Co. v. Clear Vision Windshield Repair, L.L.C.*, 2017 WL 1196438 (M.D. Fla. Mar. 29, 2017).

<sup>25</sup> *VIP Auto Glass, Inc. v. Geico General Insurance Co.*, 2017 WL 3712918, \*1 (M.D. Fla. Mar. 17, 2017).

<sup>26</sup> *Id.*

<sup>27</sup> See Repairer Driven News, ‘Steering’-related Order Bars No. 2 AAA Group from Letting Safelite Administer Minn. Glass Claims, <https://www.repairerdrivennews.com/2015/02/20/steering-related-order-bars-no-2-aaa-group-from-letting-safelite-administer-minn-glass-claims/> (last visited Apr. 12, 2023).

claims<sup>28</sup> by insurers, agents, adjusters, or anyone acting on their behalf. It permits the explanation of a claimant's motor vehicle comprehensive coverage benefits to the claimant. When offering an optional managed repair arrangement, the bill requires insurers to offer discounts for insureds who select the managed repair arrangement. The bill specifies that no private cause of action is created regarding the steering of motor vehicle windshield repair claims.

## 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:

Indeterminate. Motor vehicle repair shops may claim their business is negatively affected by the inability to provide incentives to consumers. However, given the number motor vehicle glass lawsuits over the past several years, and the reports of individuals receiving incentives to submit motor vehicle 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 disputed motor vehicle glass claims, and thereby reduce the number of motor vehicle glass lawsuits. Additionally, the elimination of AOBs for motor vehicle glass claims, will likely reduce the number of motor vehicle glass lawsuits. The reduction in the number of motor vehicle glass lawsuits may have a positive impact on motor vehicle insurance premiums, particularly the portion of the rate that pertains to comprehensive coverage.

### D. FISCAL COMMENTS:

None.

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<sup>28</sup> Windshield repair claims may include repair or replacement of the windshield, calibration or recalibration of an ADAS, and providing the glass products used for the replacement or repair.