

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.)

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

BILL: CS/SB 396

INTRODUCER: Banking and Insurance Committee; Senator Hukill and others

SUBJECT: Motor Vehicle Insurance Coverage for Windshield Glass

DATE: January 17, 2018 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Billmeier	Knudson	BI	Fav/CS
2.		CM	
3.		RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 396 provides that an automobile insurance policy may require an inspection of a damaged windshield before the windshield repair or replacement is authorized by the insurer. The inspection must be performed by an adjuster licensed in Florida who is an employee of the insurer within 24 hours after the notice of claim. The insurer may not require an inspection where:

- Windshield damage has demonstrably impacted the structural integrity of the vehicle; or
- Continued use of the vehicle would be a violation of law prohibiting the operation of unsafe vehicles.

II. Present Situation:

Automobile Insurance

Automobile insurance consists of different types of insurance coverages. Personal injury protection or “PIP” coverage is required in Florida to cover injuries to the driver regardless of which party is at fault in an accident. Bodily injury liability coverage pays for damage that the insured causes to other drivers and passengers in an accident. Property damage liability coverage covers damage that the insured causes to the property of another individual. Collision coverage pays for damages to the insured automobile caused by a collision with another automobile. Comprehensive coverage generally pays for damages to the insured automobile, including damage to the windshield, caused by events other than a collision.

The “deductible” is the amount the insured must pay before the insurance company pays any amount. Section 627.7288, F.S. states:

The deductible provisions of any policy of motor vehicle insurance, delivered or issued in this state by an authorized insurer, providing comprehensive coverage or combined additional coverage shall not be applicable to damage to the windshield of any motor vehicle covered under such policy.^{1,2}

Consumers who purchase the minimum coverage required by law do not have first-party coverage for windshield repair or replacement. Consumers who purchase comprehensive coverage have coverage if a windshield is damaged or broken. Lenders often require borrowers to purchase comprehensive coverage, so consumers who owe money on their vehicles will often qualify for windshield repair or replacement without a deductible.³

Windshield Replacement and Repair

Florida law does not contain insurer claim handling requirements specific to windshield claims. The claims are handled through the insurance contract. Current law does not prohibit an insurer from including an inspection requirement in policy forms.

Many Florida insurance carriers set up a network of providers that will provide windshield repair or replacement services at negotiated rates. If the insured uses one of these “in-network” providers, an insured windshield is repaired or replaced at no cost to the insured. Some glass shops do not participate in the insurer’s provider network. To claim benefits from an insured’s automobile insurer, the “out-of-network” shop often obtains an assignment of benefits from the insured. Florida law allows an insured to assign the benefits of his or her insurance policy to a third party, in this case, the out-of-network glass shop. The assignee glass shop can negotiate with the insurer and file a lawsuit against the insurance company if the two sides do not agree on the claim amount.⁴

Vehicle Safety Requirements

Section 316.2952, F.S., requires vehicles operated on highways to have a windshield. Section 316.610, F.S., prohibits any person driving a vehicle in such an unsafe condition that it endangers persons or property. A police officer is allowed to stop a vehicle if required equipment is not in proper repair.⁵ Depending on the severity of the equipment damage, a police officer may order a vehicle removed from use until repairs are made or give the driver 48 hours to make the repairs.⁶

¹ Language similar to s. 627.7288, F.S., has been part of Florida law since 1979. See Ch. 79-241, Laws of Florida.

² At least seven other states have provisions prohibiting insurers from requiring a deductible for windshield claims or allow insureds to purchase a policy with no deductible for windshield claims.

³ Florida Department of Financial Services, *Automobile Insurance A Toolkit for Consumers*, <https://www.myfloridacfo.com/division/consumers/UnderstandingCoverage/Guides/documents/AutoToolkit.pdf> (last visited December 1, 2017).

⁴ 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).

⁵ Section 316.610(1), F.S.

⁶ Section 316.610(2), F.S.

Windshield Litigation

According to the Department of Financial Services,⁷ the number of auto glass lawsuits has increased in recent years:

Year Number of Lawsuits

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017 YTD
Auto Glass	397	571	271	709	351	478	1,389	4,331	9,018	12,817	19,695	19,513

Section 627.428, F.S., allows the insured or the assignee to obtain attorney fees from the insurer if the insured or assignee obtains a judgment against an insurer.⁸ The statute does not allow an insurer that prevails in a case involving an insured or assignee to recover attorney fees.⁹ The purpose of the statute 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.”¹⁰

Some insurers argue that the increase in litigation is caused by the ability of some vendors to execute an assignment of benefits and recover attorney fees under s. 627.428, F.S. They allege that some vendors are obtaining an assignment of benefits from the insured and inflating the cost of the claim when they bill the insurance company.¹¹ Insurers also believe that many windshield claims brought by assignees are fraudulent.¹² In such cases, the insurer must determine whether to pay what it believes to be an inflated or fraudulent claim or pay its own attorneys to litigate the case and risk having to pay the other side's attorney fees if it does not prevail.¹³

Some auto glass vendors argue that litigation is necessary because insurers enter into agreements with preferred vendors and will not pay the “prevailing competitive price” for windshield repair or replacement. Instead, some vendors contend, insurers will only pay the price they pay to the preferred vendors and that litigation is necessary to force the insurers to pay the “prevailing competitive price” pursuant to the insurance policy language.¹⁴

⁷ Data provided by the Department of Financial Services (on file with the Senate Committee on Banking and Insurance).

⁸ 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).

⁹ Insurers can recover attorney fees in some cases by using offers of judgment and proposals for settlements. *See* s. 768.79, F.S., and Fla.R.Civ.P. 1.442.

¹⁰ *Roberts v. Carter*, 350 So.2d 78, 79 (Fla. 1977).

¹¹ One provider offers cash rebates and restaurant gift cards to customers “with qualifying insurance” for windshield repair or replacement. *See* <http://www.auto-glassamerica.com> (last accessed November 29, 2017).

¹² *Government Employees Insurance Co. v. Clear Vision Windshield Repair, L.L.C.*, 2017 WL 1196438 (M.D. Florida March 29, 2017).

¹³ Florida Justice Reform Institute, White Paper: *Restoring Balance in Insurance Litigation* (2015)(on file with the Senate Committee on Banking and Insurance).

¹⁴ *See VIP Auto Glass, Inc. v. Geico General Insurance Co.*, 2017 WL 3712918 (M.D. Florida March 17, 2017) at p. 1. (discussing a class action lawsuit against Geico by VIP Auto Glass).

III. Effect of Proposed Changes:

The bill provides that an automobile insurance policy may require an inspection of a damaged windshield before the windshield repair or replacement is authorized by the insurer. Current law does not prohibit the inclusion of inspection requirements in an insurance policy. This bill would affirmatively allow insurers to require an inspection before authorizing a windshield repair or replacement.

An inspection required by an insurer must be performed by an adjuster licensed by the state and employed by the insurer. Section 626.862, F.S., allows licensed insurance agents to adjust claims without being licensed as an adjuster if authorized to do so by their insurer. This bill would not allow agents to adjust windshield claims. Section 626.856, F.S., allows an adjuster employed by an insurer's "parent" company to adjust claims for that insurer. This bill might require the adjuster to be employed by the actual company and not its corporate parent. The Department of Financial Services suggests that the "vast majority" of insurers have business models which do not comply with this provision of the bill.¹⁵

The bill requires that the inspection be performed within 24 hours after the notice of claim or the insurer's right to inspection is waived.

The bill provides that an inspection may not be required if windshield damage has demonstrably impacted the structural integrity of the vehicle or where continued use of the vehicle would be a violation of s. 316.610, F.S.¹⁶

The effective date is July 1, 2018.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

¹⁵ Email from the Department of Financial Services staff to Committee staff dated January 17, 2018.

¹⁶ Section 316.610, F.S., prohibits any person from driving or moving any vehicle on any highway if the vehicle is in such unsafe condition as to endanger any person or property.

B. Private Sector Impact:

The fiscal impact is not known. It is not known how many additional insurers would implement inspection requirements or what the effect of those requirements might be. In addition, it is not known how many insurers employ licensed adjusters who could conduct inspections.

C. Government Sector Impact:

The Office of Insurance Regulation does not anticipate a fiscal impact.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.7288 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Banking and Insurance on January 16, 2018:

The CS requires the insurance company to conduct the inspection within 24 hours. The inspection must be performed by an adjuster licensed in Florida who is an employee of the insurer. The insurer may not require an inspection where:

- Windshield damage has demonstrably impacted the structural integrity of the vehicle; or
- Continued use of the vehicle would be a violation of law prohibiting the operation of unsafe vehicles.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁷ Office of Insurance Regulation, *SB 396 Agency Bill Analysis* (October 17, 2017)(on file with the Senate Committee on Banking and Insurance).