

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 Commerce and Tourism

BILL: CS/CS/SB 396

INTRODUCER: Commerce and Tourism Committee; Banking and Insurance Committee; and Senator Hukill and others

SUBJECT: Motor Vehicle Insurance Coverage for Windshield Glass

DATE: January 30, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 396 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

A consumer who purchases the minimum insurance coverage required by law, or personal injury protection coverage, does not have first-party insurance coverage for the repair or replacement of a windshield. Conversely, a consumer who purchases comprehensive coverage, which generally pays for damages to the insured automobile caused by events other than a collision, has insurance coverage if his or her windshield is damaged or broken.¹ Lenders often require

¹ See, Florida Department of Financial Services, *Automobile Insurance A Toolkit for Consumers*, <https://www.myfloridacfo.com/division/consumers/UnderstandingCoverage/Guides/documents/AutoToolkit.pdf> (last visited Jan. 30, 2018).

borrowers to purchase comprehensive coverage, so consumers who owe money on their vehicles will often qualify for windshield repair or replacement without having to pay a deductible.²

A “deductible” is the amount the insured must pay before the insurance company pays any amount on an insurance claim. 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.^{3, 4}

Windshield Replacement and Repair

Florida law does not have specific requirements applicable to insurance claims made as a result of a damaged windshield. The claims are handled according to the terms of the insurance policy. Current law does not prohibit an insurer from requiring an inspection of a damaged windshield before it authorizes its repair as a term of the insurance policy.

Many Florida insurers 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’s 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 (payment) 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 or file a lawsuit against the insurance company if the two sides do not agree on the claim amount.⁵

Windshield Litigation

According to the Department of Financial Services,⁶ the number of auto glass lawsuits has increased in recent years:

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

² Florida Department of Financial Services, *Automobile Insurance A Toolkit for Consumers*, <https://www.myfloridacfo.com/division/consumers/UnderstandingCoverage/Guides/documents/AutoToolkit.pdf> (last visited Jan. 30, 2018).

³ Language similar to s. 627.7288, F.S., has been part of Florida law since 1979. *See* Ch. 79-241, Laws of Florida.

⁴ 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.

⁵ 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).

⁶ Data provided by the Department of Financial Services for calendar years 2006- September 30, 2017 (on file with the Senate Committee on Banking and Insurance).

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.⁷ The statute does not allow an insurer that prevails in a case involving an insured or assignee to recover attorney fees.⁸ 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.”⁹

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 obtain an assignment of benefits from the insured and inflate the cost of the claim when they bill the insurance company.¹⁰ Insurers also believe that many windshield claims brought by assignees are fraudulent.¹¹ 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.¹²

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.¹³

Inducements

Some auto glass repair and replacement shops currently offer “rewards” for service, such as a prepaid gift card, if a consumer files a qualified insurance claim for his or her windshield replacement.¹⁴

Several industries bar incentives or inducements in exchange for an act that would earn the inducer additional income. For example:

- Healthcare providers are prohibited from offering a kickback to any person in exchange for patient referrals (s. 456.054, F.S.);

⁷ 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).

⁸ 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.

⁹ *Roberts v. Carter*, 350 So.2d 78, 79 (Fla. 1977).

¹⁰ 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 visited Jan. 30, 2018).

¹¹ *Government Employees Insurance Co. v. Clear Vision Windshield Repair, L.L.C.*, 2017 WL 1196438 (M.D. Florida March 29, 2017).

¹² Florida Justice Reform Institute, White Paper: *Restoring Balance in Insurance Litigation* (2015)(on file with the Senate Committee on Banking and Insurance).

¹³ *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).

¹⁴ *See, e.g.*: <https://www.americanautoglass.biz/auto-glass-replacement.html>, and <https://expressautoglass.biz/windshield-replacement-gift-card.php> (last visited Jan. 30, 2018).

- Athlete agents may not offer anything of value to a student athlete to induce him or her to enter into an agreement of representation (s. 468.456(1)(f), F.S.);
- Public adjusters are subject to prosecution for an unfair and deceptive insurance practice if he or she offers an inducement to an insured in exchange for the insured's submission of an insurance claim (s. 626.854(7)(a)2., F.S.); and
- Insurance agents are barred from offering inducements in many settings, including offering a rebate to induce a consumer to enter into an insurance contract, or offering a reduced fee for provision of title insurance.¹⁵

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 inducements.

Section 2 provides an effective date of 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.

B. Private Sector Impact:

Motor vehicle repair shops will be prohibited from providing certain inducements to consumers; this may negatively affect their businesses.

¹⁵ Section 626.9541, F.S.

C. **Government Sector Impact:**

The Department of Agriculture and Consumer Services may see a rise in prosecutions for violations of this provision.

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 Substantial Changes:**

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

CS by Commerce and Tourism on January 29, 2018:

The CS prohibits motor vehicle repair shops, regulated under part IX of ch. 559, F.S., from offering specific inducements to a customer in exchange for making an insurance claim for a motor vehicle glass replacement or repair.

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.