

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: SB 396

INTRODUCER: Senator Hukill and others

SUBJECT: Motor Vehicle Insurance Coverage for Windshield Glass

DATE: December 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Pre-meeting
2.			CM	
3.			RC	

I. Summary:

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. Current law provides that the deductible provisions of an automobile insurance policy providing comprehensive or combined additional coverage do not apply to damage to a windshield covered under the policy. While current law does not prohibit insurers from requiring inspections, this bill affirmatively states that an insurer may require an inspection before authorizing windshield repair or replacement.

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 while 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

Windshield Litigation

According to the Department of Financial Services, the number of auto glass lawsuits has increased in recent years: (PROVIDE CITATION)

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

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).

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.⁵ The statute does not allow an insurer that prevails in a case involving an insured or assignee to recover attorney fees.⁶ 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.”⁷

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.⁸ Insurers also believe that many windshield claims brought by assignees are fraudulent.⁹ 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.¹⁰

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.¹¹

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. The inspection may help to reduce or prevent fraud by allowing the insurer to verify that the windshield was actually damaged before authorizing repair or replacement.¹²

The effective date is July 1, 2018.

⁵ 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).

⁶ 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.

⁷ *Roberts v. Carter*, 350 So.2d 78, 79 (Fla. 1977).

⁸ 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).

⁹ *Government Employees Insurance Co. v. Clear Vision Windshield Repair, L.L.C.*, 2017 WL 1196438 (M.D. Florida March 29, 2017).

¹⁰ Florida Justice Reform Institute, White Paper: *Restoring Balance in Insurance Litigation* (2015)(on file with the Senate Committee on Banking and Insurance).

¹¹ 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).

¹² Office of Insurance Regulation, *SB 396 Agency Bill Analysis* (October 17, 2017)(on file with the Senate Committee on Banking and Insurance).

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:

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.

C. Government Sector Impact:

The Office of Insurance Regulation does not anticipate a fiscal impact.¹³

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 Changes:

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

None.

¹³ Office of Insurance Regulation, *SB 396 Agency Bill Analysis* (October 17, 2017)(on file with the Senate Committee on Banking and Insurance).

B. Amendments:

None.

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