

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/SB 396

INTRODUCER: Banking and Insurance Committee and Senator Hukill and others

SUBJECT: Motor Vehicle Insurance Coverage for Windshield Glass

DATE: January 26, 2018

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 396 provides that automobile insurance companies may include in their insurance policies a requirement that damaged windshields be inspected before the insurer authorizes the windshield repair or replacement. 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.¹

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.^{2,3}

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 their 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.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 insurance policy. Current law does not prohibit an insurer from including an inspection requirement in the 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

Insurance Adjusters

Insurance adjusters are regulated by the Florida Department of Financial Services under Part VI of ch. 626, F.S., “Insurance Adjusters.” An adjuster may be licensed as either a public adjuster,

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. 26, 2018).

² Language similar to s. 627.7288, F.S., has been part of Florida law since 1979. See Ch. 79-241, Laws of Florida.

³ 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.

⁴ 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. 26, 2018).

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).

or an all-lines adjuster. A public adjuster is anyone who prepares an insurance claim for, or otherwise acts on behalf of, an insured in negotiating a claim with an insurance company.⁶ An all-lines adjuster inspects a claim, loss, or damage on behalf of a public adjuster or an insurer to determine the amount of a claim, loss, or damage payable under an insurance policy.⁷ Therefore, an inspection of a damaged vehicle may generally be performed by an all-lines adjuster who performs work for a broad range of adjusting firms, companies, or adjusters; or by a company employee adjuster who is licensed as an all-lines adjuster and is employed and appointed by an insurance company.⁸

An all-lines adjuster must meet the following qualifications to become licensed by the department:⁹

- Be at least 18 years old;
- Be a U.S. citizen or legal alien who is authorized to work in the U.S.;
- Have a good business reputation and be trustworthy;
- Have sufficient experience, training, or instruction regarding adjusting damage or loss under insurance contracts; and
- Have successfully passed any required exams.

An adjuster must also maintain an appointment during the entire term of his or her licensure.¹⁰

Vehicle Safety Requirements

A vehicle must be in a safe condition so as not to endanger persons or property,¹¹ and if driven on a highway, must have a windshield.¹² A police officer is allowed to stop a vehicle if required equipment is not in proper repair.¹³ Depending on the severity of the equipment damage, a police officer may order a vehicle removed from use until repairs are made or the officer may give the driver 48 hours to make the repairs.¹⁴

Windshield Litigation

According to the Department of Financial Services,¹⁵ the number of auto glass lawsuits has increased in recent years:

⁶ Section 626.860, F.S.

⁷ Section 626.8548

⁸ Section 626.856, F.S. *See generally*, Florida Department of Financial Services, *Resident All-Lines Adjuster License*, <https://www.myfloridacfo.com/division/agents/licensure/general/docs/6-series.htm> (last visited Jan. 26, 2018).

⁹ Section 626.866, F.S.

¹⁰ Section 626.112, F.S.

¹¹ Section 316.610, F.S.

¹² Section 316.2952, F.S.

¹³ Section 316.610(1), F.S.

¹⁴ Section 316.610(2), F.S.

¹⁵ 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).

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

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.¹⁶ The statute does not allow an insurer that prevails in a case involving an insured or assignee to recover attorney fees.¹⁷ 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.”¹⁸

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.¹⁹ Insurers also believe that many windshield claims brought by assignees are fraudulent.²⁰ 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.²¹

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.²²

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 insurance companies from including an inspection requirement in its insurance policy. This bill would affirmatively allow insurers to require an inspection before authorizing a windshield repair or replacement.

¹⁶ 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).

¹⁷ 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.

¹⁸ *Roberts v. Carter*, 350 So.2d 78, 79 (Fla. 1977).

¹⁹ 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).

²⁰ *Government Employees Insurance Co. v. Clear Vision Windshield Repair, L.L.C.*, 2017 WL 1196438 (M.D. Florida March 29, 2017).

²¹ Florida Justice Reform Institute, White Paper: *Restoring Balance in Insurance Litigation* (2015)(on file with the Senate Committee on Banking and Insurance).

²² *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).

A windshield inspection required by an insurer must be performed by an adjuster who is licensed in Florida and employed by the insurer.

The bill further requires the inspection to be performed within 24 hours after the insured files a 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.²³

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.

B. Private Sector Impact:

The fiscal impact unknown. 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.²⁴

²³ 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.

²⁴ Office of Insurance Regulation, *SB 396 Agency Bill Analysis* (October 17, 2017)(on file with the Senate Committee on Banking and Insurance).

VI. Technical Deficiencies:

None.

VII. Related Issues:

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 that do not comply with this provision of the bill.²⁵

It is unclear how the inspection exemption in cases where the windshield damage affects the car's structural integrity or causes use of the vehicle to be unsafe insurance company will be implemented and applied. Additionally, the use of the term "employee" is vague and could lead to disparate application of the bill.

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.

²⁵ Email from the Department of Financial Services staff to Committee staff dated January 17, 2018.