

1 COMMITTEE AMENDMENT AMENDED AND ADOPTED

2 May 31, 2012

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H. 4042

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6 Introduced by Reps. Harrison, Brady, Pinson, H.B. Brown,

7 Munnerlyn, Viers, Horne and Hardwick

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9 S. Printed 5/31/12--S.

10 Read the first time May 24, 2011.

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A BILL

11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,
12 1976, BY ADDING SECTION 39-5-31 SO AS TO MAKE IT AN
13 UNFAIR TRADE PRACTICE FOR A MOTOR VEHICLE
14 GLASS REPAIR BUSINESS THAT ADMINISTERS
15 INSURANCE CLAIMS FOR MOTOR VEHICLE GLASS
16 REPAIRS TO HAVE AN INSURED'S GLASS REPAIR
17 BUSINESS REFERRED TO ITSELF OR TO USE
18 INFORMATION TO SOLICIT BUSINESS.

19 Amend Title To Conform

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21 Be it enacted by the General Assembly of the State of South
22 Carolina:

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24 SECTION 1. Chapter 57, Title 38 of the 1976 Code is amended
25 by adding:

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27 "Section 38-57-75. (A) When an insured has suffered damage
28 to the glass of a motor vehicle ('vehicle glass'), both the insurer
29 providing glass coverage and the third party administrator that
30 administers glass coverage for that insurer must not require that
31 repairs be made to the insured's vehicle by a particular provider of
32 glass repair work.

33 (B) In processing a vehicle glass claim, a third party
34 administrator must immediately disclose to the insured that the
35 third party administrator is acting on behalf of the insurer.

36 (C) Immediately after verification of coverage and evaluation
37 of the damage, an insurer or third party administrator must
38 ascertain whether an insured has a provider of choice.

39 (D) When an insured requests to have covered glass repair work
40 performed by a specific provider of choice, the insurer or third
41 party administrator must determine whether the selected shop is a
42 member of the insurer's or third party administrator's vehicle glass

1 repair program or preferred provider list. If the provider of choice
2 is a member of the insurer's vehicle repair program or preferred
3 provider network, the insurer or its third party administrator must
4 assign the claim and provide a claim or reference number at that
5 time to the provider of choice.

6 (E) When an insured requests to have covered glass repair work
7 performed by a provider who is not a member of the insurer's or
8 third party administrator's vehicle repair program or preferred
9 provider list, the insurer or third party administrator:

10 (1) must confirm that the provider agrees to perform the
11 repair at the insurer's fair and reasonable rate of reimbursement. If
12 the provider refuses to accept the rate, the insurer or third party
13 administrator may inform the insured that he will be responsible
14 for additional costs. If the provider agrees to accept the fair and
15 reasonable rates, no further statements regarding costs shall occur
16 and the provider must be paid the agreed fair and reasonable rate
17 of reimbursement;

18 (2) must inform the insured that he or she may use the
19 requested provider of choice; and

20 (3) must not make statements regarding the warranty offered
21 by the provider of choice. If an insured asks the insurer or third
22 party administrator questions regarding a provider's warranty, the
23 insurer or third party administrator must refer the insured to the
24 provider for clarification.

25 (F) When an insured does not request to have covered glass
26 repair work performed by a specific provider of choice, the insurer
27 or third party administrator may refer the repair to a vehicle glass
28 repairer who is a member of the insurer's or third party
29 administrator's preferred network of providers.

30 (G) A vehicle glass repair or replacement facility, including any
31 agent, contractor, vendor, representative, or anyone acting on its
32 behalf, must not:

33 (1) threaten, coerce, or intimidate an insured to file a claim
34 for vehicle glass repair or replacement;

35 (2) engage in unfair or deceptive practices to induce an
36 insured to file a vehicle glass repair claim;

37 (3) induce an insured to file a vehicle glass repair claim
38 when the damage to the vehicle glass is insufficient to warrant
39 vehicle glass repair or replacement;

40 (4) perform vehicle glass repair or replacement services
41 under an insurance policy without first obtaining insurer approval;

42 (5) make any representations to an insured as to the vehicle
43 glass coverage available under the insurance policy, including but

1 not limited to representations that the insured is entitled to a free
2 windshield; or

3 (6) represent verbally, electronically, or in any other way,
4 including but not limited to advertisements, websites or any
5 marketing materials that a claim for a windshield replacement
6 under an insurance policy is free.

7 (H) The owner, lessee, or insured driver of the vehicle, or the
8 designee of the owner, lessee, or insured driver of the vehicle, if
9 any, must be party to the filing of a vehicle glass repair claim,
10 otherwise known as first notice of loss. A provider of vehicle glass
11 repair services may not serve as the designee for the insured.

12 (I) When an insurer or third party administrator determines
13 that an insured's requested glass repair must be physically
14 inspected, and the inspection is carried out by a representative of a
15 third party administrator, that representative must not make any
16 offer to make repairs, engage in any discussion of other glass
17 repair facilities, or recommend any glass repair facility during the
18 course of the inspection.

19 (J) An insurer, agent, or third party administrator may only
20 provide information about a claim to a vehicle glass repairer after
21 the insured has selected that repairer to provide glass services.

22 (K) The provisions of this section do not apply to insurers or
23 third party administrators who do not have a ten percent or greater
24 ownership interest in a vehicle glass repair business.

25 (L) Violations of this section are subject to the provisions of
26 the South Carolina Insurance Unfair Claim Practices Act.

27 (M) Notwithstanding the provisions of this chapter, the insurer
28 has the right to inform the insured that the insurer will not
29 guarantee the work performed by a provider that is not in the
30 network of the insurer or third party administrator.”

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32 SECTION 2. Chapter 5, Title 39 of the 1976 Code is amended by
33 adding:

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35 “Section 39-5-170. It is an unlawful practice for a person who
36 sells, repairs, or replaces vehicle glass to knowingly:

37 (A) submit a claim to an insurer or a third party administrator
38 for vehicle glass repair, replacement, or related services:

39 (1) if the vehicle glass was not damaged prior to repair or
40 replacement;

41 (2) if the services were not provided;

42 (3) showing work performed in a geographical area that in
43 fact was not the location where the services were provided and that

1 results in a higher payment than would otherwise be paid to the
2 person by the policyholder's insurer;

3 (4) without having an authorization by the owner, lessee, or
4 insured driver of the vehicle for the repair of the vehicle;

5 (5) showing work performed on a date other than the date
6 the work was actually performed and resulting in a change of
7 insurance coverage status; or

8 (6) making any other material misrepresentation related to
9 the repair or an insurance claim submitted in relation to that repair;

10 (B) advise a policyholder to falsify the date of damage to the
11 vehicle glass that results in a change of insurance coverage for
12 repair or replacement of the vehicle glass;

13 (C) falsely sign on behalf of a policyholder or another person a
14 work order, insurance assignment form, or other related form in
15 order to submit a claim to an insurer for vehicle glass repair or
16 replacement or for related services;

17 (D) intentionally misrepresent to a policyholder or other person:
18 (1) the price of the proposed repairs or replacement being
19 billed to the policyholder's insurer; or
20 (2) that the insurer or third party administrator has
21 authorized the repairs or replacement of the glass of the insured
22 vehicle;

23 (E) represent to a policyholder or other person that the repair or
24 replacement will be paid for entirely by the policyholder's insurer
25 and at no cost to the policyholder unless the insurance coverage
26 has been verified by a person who is employed by, or is a producer
27 contracted with the policyholder's insurer, or is a third party
28 administrator contracted with the insurer;

29 (F) add to the damage of vehicle glass before repair in order to
30 increase the scope of repair or replacement or encourage a
31 policyholder or other person to add to the damage of vehicle glass
32 before repair;

33 (G) perform work clearly and substantially beyond the level of
34 work necessary to repair or replace the vehicle glass to put the
35 vehicle back into a pre-loss condition in accordance with accepted
36 or approved reasonable and customary glass repair or replacement
37 techniques;

38 (H) engage in business practices that have the effect of
39 providing rebates or something of value to an insured who files a
40 claim to pay for the glass repair or replacement services provided;
41 or

42 (I) intentionally misrepresent the relationship of the glass
43 repair facility to the policyholder's insurer. For the purposes of

1 determining whether a person intended the misrepresentation, the
2 person presumably intended the misrepresentation if he was
3 engaged in a regular and consistent pattern of misrepresentation.
4 For the purposes of determining whether a defendant knew of any
5 particular element of the prohibited activity, the person presumably
6 had knowledge if he was engaged in a regular and consistent
7 pattern of the prohibited activity.”

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9 SECTION 3. SECTION 1 of this act takes effect on January 1,
10 2013. SECTION 2 of this act takes effect upon approval by the
11 Governor.

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