COMMITTEE AMENDMENT AMENDED AND ADOPTED

May 31, 2012

**H. 4042**

Introduced by Reps. Harrison, Brady, Pinson, H.B. Brown, Munnerlyn, Viers, Horne and Hardwick

S. Printed 5/31/12--S. [SEC 6/1/12 4:24 PM]

Read the first time May 24, 2011.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 39‑5‑31 SO AS TO MAKE IT AN UNFAIR TRADE PRACTICE FOR A MOTOR VEHICLE GLASS REPAIR BUSINESS THAT ADMINISTERS INSURANCE CLAIMS FOR MOTOR VEHICLE GLASS REPAIRS TO HAVE AN INSURED’S GLASS REPAIR BUSINESS REFERRED TO ITSELF OR TO USE INFORMATION TO SOLICIT BUSINESS.

Amend Title To Conform

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

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

“Section 38‑57‑75. (A) When an insured has suffered damage to the glass of a motor vehicle (‘vehicle glass’), both the insurer providing glass coverage and the third party administrator that administers glass coverage for that insurer must not require that repairs be made to the insured’s vehicle by a particular provider of glass repair work.

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

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

(D) When an insured requests to have covered glass repair work performed by a specific provider of choice, the insurer or third party administrator must determine whether the selected shop is a member of the insurer’s or third party administrator’s vehicle glass repair program or preferred provider list. If the provider of choice is a member of the insurer’s vehicle repair program or preferred provider network, the insurer or its third party administrator must assign the claim and provide a claim or reference number at that time to the provider of choice.

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

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

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

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

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

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

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

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

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

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

(5) make any representations to an insured as to the vehicle glass coverage available under the insurance policy, including, but not limited to, representations that the insured is entitled to a free windshield; or

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

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

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

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

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

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

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

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

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

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

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

(2) if the services were not provided;

(3) showing work performed in a geographical area that in fact was not the location where the services were provided and that results in a higher payment than would otherwise be paid to the person by the policyholder’s insurer;

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

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

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

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

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

(D) intentionally misrepresent to a policyholder or other person:

(1) the price of the proposed repairs or replacement being billed to the policyholder’s insurer; or

(2) that the insurer or third party administrator has authorized the repairs or replacement of the glass of the insured vehicle;

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

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

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

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

(I) intentionally misrepresent the relationship of the glass repair facility to the policyholder’s insurer. For the purposes of determining whether a person intended the misrepresentation, the person presumably intended the misrepresentation if he was engaged in a regular and consistent pattern of misrepresentation. For the purposes of determining whether a defendant knew of any particular element of the prohibited activity, the person presumably had knowledge if he was engaged in a regular and consistent pattern of the prohibited activity.”

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

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