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LEGISLATIVE UPDATE

I have been told that there will be a bill introduced in the State Legislature, sponsored by David Livingston, majority whip in the House, amending the insurance statutes to regulate the marketing of automobile glass. I am attaching what I have been provided as a draft of this bill. My understanding is that its filing is imminent.

I understand that the prime mover behind the bill is Safelite, in conjunction with certain glass shop owners. The primary backer of the bill is Safelite.

My purpose here is to analyze the effect of this bill as written. My understanding is that this bill has not been distributed for comment by members of the auto glass community. Instead, through Safelite, it reflects the thoughts of the insurance community (although not perhaps local agents). I take no position on the bill, but am merely trying to explain its potential effects on the glass community.

First and foremost, the statute the bill intends to amend is 26-463.01. A violation of this section with the requisite intent is a crime:

20-466.01. *Fraud; classification*

A person who violates section 20-463 or 20-463.01 with the intent to injure, defraud or deceive an insurer is guilty of a class 6 felony.

The suggested restrictions in the bill must be read in the context of creating possible criminal prosecutions of its targets. In addition, there are civil monetary penalties:

20-466.02. *Injunction; restitution; civil penalties; costs*

A. On request by the director, the attorney general may seek and obtain in an action in the superior court an injunction that prohibits a person from engaging in practices or doing any acts that violate section 20-463, 20-463.01 or 23-1028. The court may enter any order or judgment that is necessary to:



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1. Prevent any act or practice that is unlawful under section 20-463, 20-463.01 or 23-1028.

2. Return any monies, interest or real or personal property that was acquired by an act or practice that is unlawful under section 20-463, 20-463.01 or 23-1028.

B. An order of restitution may also include expenses incurred and paid by an insurer in connection with any medical evaluation or treatment services.

C. If the court finds that a person has violated section 20-463, 20-463.01 or 23-1028, the attorney general on petition or complaint to the court may recover from that person on behalf of the state a civil penalty of not more than five thousand dollars for each violation.

D. In any action pursuant to this section, the court may award the attorney general costs including reasonable attorney fees and investigative costs for the services rendered.

The proposed bill also does not specifically restrict its use as a “private right of action,” meaning that insurance companies or others may attempt to sue glass repair or replacement companies directly under this bill.

Substantive Change

The proposed bill’s title refers to “relating to auto glass repair unlawful practices.”

Section A.5. (the capitalized language is new language the bill proposes for the statute). It is an unlawful practice to:

Represent to a policyholder or other person WHAT AUTO GLASS COVERAGE IS AVAILABLE UNDER THE INSURANCE POLICY OR 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.

Comment: This change appears to restrict “a person who sells or repairs auto glass, AN AUTO GLASS REPAIR OR REPLACEMENT FACILITY OR ANY AGENT, CONTRACTOR, VENDOR, REPRESENTATIVE OR ANYONE ACTING ON BEHALF OF THE PERSON OR FACILITY” from telling or representing to anyone what glass coverage is available under an insurance policy. This seems



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very vague and without justification: this section already addresses misrepresentations; extending it to all representations about insurance glass coverage is very broad, and could violate rights to commercial free speech.

Section A.8. It is an unlawful practice to:

8. THREATEN, COERCE OR INTIMIDATE AN INSURED TO FILE A CLAIM FOR AUTO GLASS REPAIR OR REPLACEMENT.

Comment: This creates criminal liability for behaviors for which I have seen no evidence that a real problem exists. Again, the terms “coerce” and “intimidate” are, to me, vague.

Section A.9. It is an unlawful practice to:

9. INDUCE AN INSURED TO FILE AN AUTO GLASS REPAIR OR REPLACEMENT CLAIM IF THE DAMAGE TO THE AUTO GLASS IS INSUFFICIENT TO WARRANT AUTO GLASS REPAIR OR REPLACEMENT.

Comment: There is a grey area about what is “damage to the auto glass insufficient to warrant glass repair or replacement.” This pits the glass shop’s opinion against the insurance company’s, or its third party administrator’s, opinion, or that of the Department of Insurance or law enforcement.

Section A.10. It is an unlawful practice to:

10. WAIVE OR OFFER TO WAIVE THE INSURED’S DEDUCTIBLE OR OFFER A REBATE, GIFT, GIFT CARD, CASH OR COUPON OR ANYTHING OF VALUE TO ANY PERSON IN EXCHANGE FOR EITHER A REFERRAL OF AN INSURED TO THE AUTO GLASS REPAIR FACILITY IN CONNECTION WITH AN AUTO GLASS REPAIR OR REPLACEMENT CLAIM UNDER AN INSURANCE POLICY OR THE INSURED FILING AN AUTO GLASS REPAIR OR REPLACEMENT CLAIM UNDER AN INSURANCE POLICY. Comment: This outlaws: 1) waiving deductibles; 2) providing financial or other incentives and applies to the customer, agents, and all others. The obvious is that all financial incentives, whether in cash or otherwise, would be made unlawful whether to the customer or insurance agents. Read literally, it would apply to paying a marketing company of perhaps a car wash for referring claims, which might be an unintentional, but serious implication for third parties, including independent contractors.



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Section A.11. It is an unlawful practice to:

11. REPRESENT VERBALLY, ELECTRONICALLY OR IN ANY OTHER WAY, INCLUDING AN ADVERTISEMENT OR WEBSITE OR ANY MARKETING MATERIALS, THAT A CLAIM FOR A WINDSHIELD REPAIR OR REPLACEMENT UNDER AN INSURANCE POLICY IS FREE.

Comment: This is another attempt to restrict what can be said during the auto glass transaction. The problem, of course, is at times there may be no deductible and the glass replacement, with insurance, may be at no cost to the customer. Insurance companies are not transparent with regard to how claims for auto glass affect premiums.

Section A.12. It is an unlawful practice to:

12. PERFORM AUTO GLASS REPAIR OR REPLACEMENT SERVICES IN THIS STATE WITHOUT OBTAINING A TRANSACTION PRIVILEGE TAX LICENSE NUMBER ISSUED BY THE DEPARTMENT OF REVENUE PURSUANT TO SECTION 42-5005.

Comment: In Arizona, if you are sell a product or engaging in a service subject to transaction privilege tax, you need to obtain the state transaction privilege tax (TPT) license from the Arizona Department of Revenue (commonly referred to as a sales tax, resale, wholesale, vendor or tax license) and a transaction privilege tax or business/occupational license from the city(ies) in which you are based and/or operate. Making the TPT regulation part of the insurance code, and providing separate civil criminal penalties for it in the insurance code, seems to be bad drafting and illogical.

Section A.13. It is an unlawful practice to:

13. IF THE PERSON REPAIRING OR REPLACING THE AUTO GLASS DOES NOT ACCEPT THE INSURER'S RATE, PERFORM WORK WITHOUT PROVIDING A WRITTEN ESTIMATE TO THE INSURED BEFORE THE WORK BEGINS THAT INCLUDES ALL OF THE FOLLOWING:

(a) A STATEMENT WHETHER THE PERSON REPAIRING OR REPLACING THE AUTO GLASS AGREES TO ACCEPT THE INSURER'S RATE FOR PARTS, KITS AND LABOR.

(b) THE ACTUAL RATE THAT WILL BE CHARGED FOR THAT WORK AND THE DIFFERENCE BETWEEN THAT RATE AND THE INSURER'S RATE.



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(c) A STATEMENT THAT THE INSURED MAY BE FINANCIALLY RESPONSIBLE TO PAY THE DIFFERENCE BETWEEN THE ACTUAL RATE THAT WILL BE CHARGED FOR THAT WORK AND THE INSURER'S RATE.

(d) THE SIGNATURE OF THE INSURED.

(e) THE BUSINESS'S TRANSACTION PRIVILEGE TAX LICENSE NUMBER ISSUED BY THE DEPARTMENT OF REVENUE PURSUANT TO SECTION 42-5005.

Comment: This provision places requirements on sales documents during the transaction, requiring disclosure of whether 1) the shop accepts insurance rates; 2) the rate charged; 3) a warning to the customer that they may be charged; 4) a signature; and 5) the TPT number. Most shops do most of this anyway; but, again, the TPT in the insurance code is odd. A shop need not, I understand, charge the TPT, but must pay it. To fail to disclose one's charges or that a shop may hold a customer responsible if insurance does not pay or does not fully pay would be a misrepresentation, which is already covered.

Section A.14. It is an unlawful practice to:

14. PERFORM AUTO GLASS REPAIR OR REPLACEMENT SERVICES UNDER AN INSURANCE POLICY WITHOUT FIRST OBTAINING THE INSURED'S AND INSURER'S APPROVAL FOR THE SPECIFIC WORK TO BE PERFORMED.

Comment: This appears to restrict a shop from performing a repair or replacement without first obtaining insurance company approval if a claim is to be made. It may have the unintended effect of making unlawful a cash transaction without approval if the customer makes an independent claim to the insurance company and no approval has occurred.

Section A.15. It is an unlawful practice to:

15. TRANPOSE OR DUPLICATE, EITHER ELECTRONICALLY OR IN ANY OTHER FORM, AN INSURED'S SIGNATURE ONTO A DOCUMENT THAT IS REQUIRED TO AUTHORIZE THE REPAIR OR REPLACEMENT OF AUTO GLASS. FOR THE PURPOSES OF THIS PARAGRAPH, DUPLICATE DOES NOT INCLUDE MAKING COPIES OF A DOCUMENT FOR RECORD RETENTION PURPOSES.

Comment: This would prevent signing for the insured, and according to proposed A. 13 above, a signature would be required. Signing for another without authorization is already a misrepresentation.



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Section A.16. It is an unlawful practice to:

16. BILL THE INSURER FOR MORE THAN THE RATE AGREED ON WITH THE INSURED, A THIRD-PARTY ADMINISTRATOR OF THE INSURER OR AN AGENT REPRESENTING THE INSURER FOR THE WRITTEN ESTIMATE.

B. IF THE PERSON REPAIRING OR REPLACING THE AUTO GLASS FAILS TO PROVIDE THE STATEMENT REQUIRED IN SUBSECTION A, PARAGRAPH 13, SUBDIVISION (c) OF THIS SECTION IN WRITING TO THE INSURED, NEITHER THE INSURED OR THE INSURER IS RESPONSIBLE FOR THE PAYMENT OF THE DIFFERENCE IN THE RATES.

D. IT IS UNLAWFUL FOR A PERSON WHO SELLS OR REPAIRS AND REPLACES AUTO GLASS TO FAIL TO MAKE THE VEHICLE AVAILABLE FOR INSPECTION AT THE REQUEST OF THE INSURER BEFORE PERFORMING AUTO GLASS REPAIR AND REPLACEMENT SERVICES ON AN INSURED VEHICLE.

Comment: This section is confusing. It makes unlawful billing any rate greater than that agreed upon. Since the insurance company or its agent must approve the transaction, it puts them in the middle of the transaction. One might imagine the insurance company waving inspection if its rates are accepted. It would be a misrepresentation under current law to bill more than the proffered price.

Section D requires inspection before performing services, if requested, on an insured vehicle. The shop cannot make the vehicle available; only its owner can. This would make repairing a vehicle for cash a violation if the vehicle is insured, which, literally would prohibit all cash transactions. The inspection right is already in an insured's policy.