

SENATE BILL 2414

By Niceley

AN ACT to amend Tennessee Code Annotated, Title 55
and Title 56, relative to automobile glass repair.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 7, Part 11, is amended by adding the following as a new section:

56-7-1118.

(a) As used in this section:

(1) "Automobile glass" means glass of any motor vehicle;

(2) "Glass coverage" means insurance against loss of or damage to automobile glass resulting from any cause;

(3) "Glass repair services" means any automobile glass replacement or glass repair services or the provision of automobile glass products; and

(4) "Provider" means any person or entity, or any other person acting on behalf of the person or entity, engaged in glass repair services.

(b) Notwithstanding this title to the contrary, when an insured has suffered damage to automobile glass, both the insurer providing glass coverage and the third party administrator that administers glass coverage for that insurer shall not require that repairs be made to the insured's automobile by a particular provider of glass repair services.

(c) In processing an automobile glass claim, a third party administrator shall immediately disclose to the insured that the third party administrator is acting on behalf of the insurer.

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

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

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

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

(2) Shall inform the insured that the insured may use the requested provider of choice; and

(3) Shall not make statements regarding the warranty offered by the provider of choice; provided, that if an insured asks the insurer or third party administrator questions regarding a provider's warranty, then the insurer or third party administrator shall refer the insured to the provider for clarification.

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

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

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

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

(k) A violation of this section constitutes a violation of the Unfair Trade Practices and Unfair Claims Settlement Act of 2009, compiled in chapter 8, part 1 of this title. For the purpose of application of the Unfair Trade Practices and Unfair Claims Settlement Act of 2009, any violation of this section shall be construed to constitute an unfair trade practice or unfair claims practice and subject to the penalties and remedies as provided by that act.

(l) Notwithstanding this title to the contrary, 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. Tennessee Code Annotated, Section 56-7-1114, is amended by deleting the section in its entirety and by substituting instead the following:

(a) It is an unfair, deceptive, or fraudulent act for a person or entity, or any person acting on the person or entity's behalf, engaged in automobile glass replacement or glass repair services or the provision of automobile glass products to intentionally misrepresent:

(1) To a policyholder or other person:

(A) The price of the proposed repairs or replacement being billed to the policyholder's insurer; or

(B) That the insurer or third party administrator has authorized the repairs or replacement of the glass of the insured automobile; or

(2) To the policyholder's insurer the relationship of the glass repair facility;

(b) It is an unfair, deceptive, or fraudulent act for a person or entity, or any person acting on the person or entity's behalf, engaged in automobile glass replacement or glass repair services or the provision of automobile glass products to knowingly:

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

(2) Induce an insured to file an automobile glass repair claim when the damage to the automobile glass is insufficient to warrant automobile glass repair or replacement;

(3) Perform automobile glass repair or replacement services under an insurance policy without first obtaining insurer approval;

(4) Submit a claim to an insurer or a third party administrator for automobile glass repair, replacement or related services:

(A) If the automobile glass was not damaged prior to repair or replacement;

(B) If the services were not provided;

(C) 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;

(D) Without having an authorization by the owner, lessee, or insured driver of the automobile for the repair of the automobile;

(E) 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

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

(5) Advise a policyholder to falsify the date of damage to the automobile glass that results in a change of insurance coverage for repair or replacement of the automobile glass;

(6) Sign on behalf of a policyholder or another person a false work order, insurance assignment form, or other related form to submit a claim to an insurer for automobile glass repair or replacement or for related services;

(7) 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;

(8) Add the damage of automobile glass before repair to increase the scope of repair or replacement or encourage a policyholder or other person to add the damage of automobile glass before repair;

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

(10) 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;

(11) Offer to finance payment of the customer's deductible on terms different from terms offered to customers not making an insurance claim;

(12) Engage in a pattern or practice, on more than an occasional or isolated instance, of promising or offering to provide any credit, incentive, gift, rebate or special financing arrangement in satisfaction of all or part of an insurance deductible or co-payment, or both, owed by an insured under a policy of insurance;

(13) Advertise, promote, or represent by any media, web sites, telemarketers or other marketing materials, that services or products are free, if in fact an insurer will pay for the service or product; or to knowingly advertise or make offers for the purpose of soliciting a claim against a property or casualty insurance carrier; or

(14) Engage in a pattern or practice, on more than an occasional or isolated instance of offering to defer collection of, discount, or issue a repayment

of a customer's deductible based in whole, or in part, on the availability of insurance coverage.

(c) For the purposes of subsection (a), a person is presumed to have intended a misrepresentation if the person was engaged in a pattern or practice, on more than an occasional or isolated instance, of misrepresentation. For the purposes of subsection (b), a person is presumed to have had knowledge of any particular element of conduct prohibited by subsection (b) if the person was engaged in a pattern or practice, on more than an occasional or isolated instance, of the prohibited conduct.

(d) Any person or entity who suffers an economic loss as a result of the violation of this section may bring an action to recover actual damages in a court of competent jurisdiction in the county where the violation occurred or in any county where the defendant resides or conducts, transacts, or has transacted business.

(e) A violation of this section constitutes a violation of the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18. For the purpose of application of the Tennessee Consumer Protection Act of 1977, any violation of this section shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce and subject to the penalties and remedies provided in that act, including treble damages and attorney's fees pursuant to § 47-18-109.

SECTION 3. This act shall take effect July 1, 2014, the public welfare requiring it, and shall apply to contracts entered into, or renewed, on or after July 1, 2014.