

HOUSE BILL REPORT

SHB 3053

As Passed House:
February 4, 2008

Title: An act relating to auto glass repair.

Brief Description: Regulating auto glass repair.

Sponsors: By House Committee on Insurance, Financial Services & Consumer Protection (originally sponsored by Representatives Kirby, Rodne, Simpson, Roach, Kelley, Sullivan, Conway and Ormsby).

Brief History:

Committee Activity:

Insurance, Financial Services & Consumer Protection: 1/24/08, 1/31/08 [DPS].

Floor Activity:

Passed House: 2/4/08, 66-31.

Brief Summary of Substitute Bill

- Prohibits an insurer or its third-party administrator (TPA) from recommending an automobile glass repair or replacement facility (facility) that is owned by the insurer or TPA for a glass claim if the person making the claim indicates that they have chosen a facility.
- Requires an insurer or its TPA that recommends a facility that is owned wholly or in part by the insurer or TPA to person making a glass claim who has not chosen a facility to provide the person with a list of facilities that are comparable and in reasonable proximity to the person.

HOUSE COMMITTEE ON INSURANCE, FINANCIAL SERVICES & CONSUMER PROTECTION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Kirby, Chair; Kelley, Vice Chair; Loomis, Rodne, Santos and Simpson.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 3 members: Representatives Roach, Ranking Minority Member; Hurst and Smith.

Staff: Jon Hedegard (786-7127).

Background:

The insurance industry is regulated by the Insurance Commissioner, under the statutory provisions set forth in Title 48 RCW. Under current insurance rules, an insurer generally must make a good faith effort to honor a request for repairs to be made in a specific repair shop and cannot arbitrarily deny a request.

A third-party administrator (TPA) is an entity that manages an insurance program for an organization, and functions as an intermediary between an insurer and an insured. A TPA is sometimes used by insurers with respect to insurance programs. A TPA typically processes claims or provides administrative services.

In 2007 the Legislature passed SSB 5052. The new law provides that a person has the right to choose any automobile glass repair or replacement facility for the repair of a loss relating to motor vehicle glass.

If an insurer or its TPA owns, in whole or in part, a facility, the insurer or TPA must:

- verbally inform the person making the claim of their right to choose any facility and of the TPA's relationship to the insurer; and
- post a notice in each of the facilities. The notice must state that the facility is owned in whole or in part by the insurer or the insurer's TPA and that the consumer has a right to seek repairs at any facility. If it is a mobile facility, the insurer or its TPA must verbally provide the notice before beginning the repair or replacement.

A private right of action does not exist for violations.

Summary of Substitute Bill:

When a person is making a glass claim, the insurer must verbally ask the person if they have chosen a facility. If the person indicates a facility, the insurer or TPA may not recommend a facility that is owned, whole or in part, by the insurer or TPA.

If no choice is indicated, the insurer may recommend a facility owned, whole or in part, by the insurer or TPA. If it does so, the insurer or TPA must provide a:

- notice regarding the relationship between the facility and the insurer or TPA; and
- choice of facilities including a list of facilities that are comparable and in reasonable proximity to the person.

The provision regarding notice where a mobile facility is concerned is removed.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is another small step in the ongoing effort to limit undue influence by insurers in auto repairs. Last year's bill was a significant step but there were some loopholes in that law. Illegal steering still can and does happen. Insurers can unfairly sway business to shops that they own or have an interest in. In a vast majority of cases, the insured will go to the shop recommended by an insurer. This bill doesn't prevent that from happening. It does not affect those people who want to go where the insurer recommended shop. The bill allows a person the opportunity to make an informed choice about repair facilities.

The bill is designed to protect a consumer's choice and to provide appropriate disclosure at an appropriate time. The industry has some concerns and those can be addressed. This bill honors the choice of consumers. The disclosure is not coming at the right time in the right manner. Few, if any, consumers understand when they call the number that they are not talking to the insurer. The disclosure is an automated message in a phone tree that precedes a person coming on the line. When the insurer owns a shop, they have no reason to treat an independent shop in a fair manner. Waiving deductibles is illegal and there is not enough money in the business to do that. A TPA that also provides repairs will assign more business to their shops. Consumers are forced to accept lower-quality work. The repairs may not be safe. Competition improves efficiency and quality. The problem is the TPA doesn't have to compete for business. There aren't concerns about the manner of disclosure by insurers that do not use a TPA. A TPA isn't always able to tell a consumer if a specific shop is in the network.

(Opposed) Last year the industry worked with the stakeholders and interested members in the House and Senate to negotiate a bill. We do not believe that bill was necessary because existing anti-steering laws have always allowed for a consumer's choice of shops. Those were difficult negotiations but they resulted in a law that has been in effect for just six months. There is no sign that there is any significant consumer demand for changes in the law. There doesn't seem to be a problem. There are four specific concerns with the bill. First, the word "interfering" is a subjective standard that invites litigation. Second, the language in the bill looks like a gag rule. An insurer is prohibited in some circumstances from saying anything to an insured. This means an insurer can't inform an insured about policy benefits that may be available to the insured. Third, the insured must provide the names of two competing facilities. This seems to contradict the provision that prohibits the insurer from saying anything. Fourth, the removal of the provision precludes a private right of action. The current law allows for an Attorney General right of action and that is an appropriate remedy. A private right of action is unnecessary and costly. Insurers want to make sure that repairs are safe, timely, and cost-effective. A free market helps this process. Some auto repair shops have been found to illegally waive deductibles. Others provide an assortment of financial

incentives to have repairs done at their facilities. This indicates that they may have relatively high margins of profit. It also leads to cost-containment concerns. Consumers need to understand that they may have benefits in their contract like a lifetime guarantee if they use a recommended shop. People want a seamless repair of their car. Two thirds of our repairs went to independent shops last year. This is not a problem. Insurers need to be able to make consumers aware that if they do not use a recommended shop, they may have to pay out-of-pocket costs. A TPA can provide one-stop services for an insured. The insured can make a claim, get referred, get repaired, and get back on the road with one phone call. The provisions in the bill limiting free speech is troubling and is likely to be found unconstitutional. It also prevents a consumer from being able to make an informed choice. This bill is not supported by the hundreds of thousands of people whose cars we serviced in Washington. We will connect a customer to any shop inside or outside of our network. If the shop will not accept standard rates, the person may face out-of-pocket costs.

Persons Testifying: (In support) Representative Kirby, prime sponsor; Lisa Thatcher, Tom Grim, and Chris King, All-Star Auto Glass; and Pam Schearer, Auto Glass Plus.

(Opposed) Mel Sorensen, Property Casualty Insurance Associates; Jean Leonard, State Farm Washington Insurers; Mike Kapphahn, Farmers Insurance; Carrie Tellefson, Progressive Insurance; Cliff Webster, American Insurance Association; and Dan Coyne and Brian Dimassi, Safelife Group.

Persons Signed In To Testify But Not Testifying: None.