COMMITTEE REPORT

February 22, 2012

**H. 4042**

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

S. Printed 2/22/12--S.

Read the first time May 24, 2011.

**THE COMMITTEE ON BANKING AND INSURANCE**

To whom was referred a Bill (H. 4042) 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, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting all after the enacting words and inserting:

/ SECTION 1. Chapter 5, Title 39 of the 1976 Code is amended by adding:

“Section 39‑5‑31. (A) Whenever an insured has suffered damage to automobile glass, no insurer providing glass coverage or third party administrator which administers glass coverage for that insurer shall require that repairs be made to the insured’s vehicle in a particular place or shop or by a particular concern.

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

(C)(1) A third party administrator of glass claims for an automobile insurer shall compile a list of all automobile glass repairers which work or are willing to work in a particular county, municipality, or area of this State and which desire to be included on the third party administrator’s provider list for that county, municipality, or area. An ‘area’ for purposes of this subsection is defined as a distance not exceeding thirty‑five miles from a county or municipal border. A request by an automobile glass repairer to be included on a third party administrator’s provider list must be accommodated without charge or other consideration, including a reduction in the allowed charge for the glass repair service provided, and is subject only to a reasonable information transmittal process. The third party administrator shall utilize all reasonable means, including advertisements or solicitations, in the public domain to ascertain these automobile glass repairers in the county, municipality, or area concerned who desire to be included on the provider list. The list so compiled is known as the ‘provider list’ for that county, municipality, or area.

(2) In compiling the provider list as provided in item (1), the third party administrator must include providers regardless of its opinion of the quality or workmanship of the provider concerned if that provider in performing glass repair services will meet all requirements of the policy of automobile insurance issued by the automobile insurer which the third party administrator represents. The provider list so compiled shall show each automobile glass repairer in alphabetical order and by a corresponding numerical designation.

(D) The provider list required by subsection (C) must be compiled before a third party administrator may begin communicating with insureds of the automobile insurer in regard to automobile glass repairs if no existing relationship then exists between the third party administrator and the automobile insurer. If an existing relationship does exist, the provider list must be compiled and used as required in this section within ninety days of the effective date of this section.

(E)(1) Upon receiving a communication from an insured of the automobile’s insurer which a third party administrator represents that the insured needs an automobile glass repair covered by the provisions of his policy of automobile insurance, the third party administrator immediately shall ascertain if the insured has any preference as to the provider of the desired automobile glass repair services. If the insured expresses a preference for a provider on the third party administrator’s provider list for the county, municipality, or area concerned, the third party administrator shall refer the claim to that provider and inform the insured that he may use that provider.

(2) If the insured requests that work be done by a provider not on the provider list, the third party administrator may advise the insured about differences in costs, including the warning that work performed by providers who are not on the third party administrator’s provider list may not be covered completely, and payment by the insurer may be limited to a reasonable rate in accordance with the insured’s auto insurance policy. If the insured then insists on using that provider not on the provider list, he must be permitted to do so.

(3) If the insured expresses no preference for a provider, the insured must be provided the names of the next three providers on the provider list not previously recommended by that particular adjuster of the third party administrator so that provider names must be furnished to insureds on a strictly rotating basis with no preference for any provider expressed. The provisions of this subsection must be followed by each adjuster of the third party administrator working from his copy of the provider list. Once all names on the provider list have been recommended, the adjuster shall return to the top of the list and begin the process again.

(4) If there are not at least three automobile glass repairers on a third party administrator’s provider list for a particular county, municipality, or area, the third party administrator, if the insured has expressed no preference, shall provide the insured with all the names on the list.

(F) Nothing herein prevents a third party administrator from including on the provider list automobile glass repairers in which the third party administrator has a financial or ownership interest so long as that automobile glass repairer’s name is provided to insureds only in the manner provided in this section. If a third party administrator has financial or ownership interests in multiple entities providing glass repair services in a county, municipality, or area served, only one such entity may be included on the provider list for that county, municipality, or area involved.

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

(H) The third party administrator shall refer questions about warranties or guarantees of an automobile glass repairer whose name has been provided to an insured under this section to the automobile glass repairer or repairers recommended and shall further state that the third party administrator can make no representation of the workmanship or quality of service of any glass repairer recommended which is a matter between the insured and the individual automobile glass repairer.

(I)(1) Violations of this section are subject to a civil fine which may be imposed by the Department of Insurance against a violator in an amount not exceeding five hundred dollars per violation. Each violation constitutes a separate offense.

(2) An automobile insurer is responsible for its third party administrator’s compliance with the provisions of this section.”

SECTION 2. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

DAVID L. THOMAS ROBERT FORD

For Majority. For Minority.

**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.

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

SECTION 1. Chapter 5, Title 39 of the 1976 Code is amended by adding:

“Section 39‑5‑31. It is an unlawful trade practice pursuant to Section 39‑5‑20 for a motor vehicle glass repair business actively engaged in the repair of motor vehicle glass, or a person or entity with a ten percent or more ownership interest in that business, and acting as a third party administrator of insurance claims made pursuant to insurance coverage for motor vehicle glass repair to:

(1) refer or steer, or cause to be referred or steered, an insured’s motor vehicle glass repair business to itself; or

(2) use consumer information obtained in the process of acting in that dual capacity to solicit motor vehicle glass repair business.”

SECTION 2. This act takes effect upon approval by the Governor.

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