

HOUSE No. 1108

By Ms. Spiliotis of Peabody, petition of Joyce A. Spiliotis and Frederick E. Berry relative to pricing for motor vehicle glass insurance coverage. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO TRUTH IN PRICING FOR AUTO GLASS INSURANCE
COVERAGE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. This Act may be cited as “The Truth in Pricing
2 for Auto Glass Insurance Coverage Act.”

1 SECTION 2. The Commissioner of the Division of Insurance
2 shall set safety standards and regulations for the installation of
3 auto glass in the commonwealth by September 30, 2009. Such
4 standards and regulations shall be set under the following guide-
5 lines:—

6 a) An Auto Glass Safety Standards Committee shall be empan-
7 elled to set the safety standards and regulations for the installation
8 of auto glass in the commonwealth;

9 b) Such committee shall consist of three representatives of the
10 auto insurance industry appointed by the Automobile Insurers’
11 Bureau (AIB), three representatives of the auto glass industry
12 appointed by the Massachusetts Glass Dealers Association
13 (MGDA), and the Insurance Commissioner or a permanent
14 designee of the commissioner, with such designee serving as
15 chairperson of the committee;

16 c) A permanent designated person employed by the common-
17 wealth’s Division of Standards, which issues licenses under
18 Chapter 100A to auto glass service companies to accept payments

19 from insurance carriers, may serve as a non-voting member of the
20 committee;

21 d) All committee members and liaisons shall serve on a volun-
22 tary basis, and shall not receive any payments of any kind and
23 from any companies or organizations, not including normal and
24 customary salaries, wages, or compensations, directly for serving
25 on the committee;

26 e) The committee shall meet at the offices of the Division of
27 Insurance no less than six times between the date of enactment of
28 this Act and September 30, 2009, the date upon which the safety
29 standards and regulations must be set;

30 f) The committee shall consider information published and
31 expert testimony from, but not limited to, the Insurance Institute
32 for Highway Safety (IIHS), the National Highway Traffic Safety
33 Administration (NHTSA), the Glazing Committee of the Society
34 of Automotive Engineers (SAE), and the Auto Glass Replacement
35 Safety Standard Council (AGRSS), as well as any other person,
36 organization, or entity that possesses credible information perti-
37 nent to the committee in order to set safety standards and regula-
38 tions. All information must be evaluated with regard to
39 compliance with all pertinent Federal Motor Vehicle Safety Stan-
40 dards in effect at the time, most specifically FMVSS 205, FMVSS
41 212, FMVSS 216, and FMVSS 219;

42 g) Upon the issuance of safety standards and the promulgation
43 of the regulations, after the appropriate hearing process required
44 by statute for the Division of Insurance, the committee shall con-
45 tinue to meet annually, after proper notice is distributed to inter-
46 ested parties, to evaluate the performance and implementation of
47 such standards and regulations, hear testimony from witnesses,
48 and recommend updates to the regulations to the Insurance Com-
49 missioner.

1 SECTION 3. All manufacturers and/or fabricators of standard-
2 ized auto glass parts who make available products for sale in the
3 Commonwealth of Massachusetts, either directly or through
4 wholesale and/or retail establishments, must publish a list of all
5 products available with a “Manufacturer’s Suggested Retail Price
6 (MSRP).” Such lists shall be made available, either in printed or
7 electronic form, to all wholesale and retail establishments, insur-

8 ance carriers, and/or third-party billers. Such price lists shall be
9 made available in complete form not later than 180 days after the
10 enactment of this Act, and shall be periodically updated at the sole
11 discretion of each such manufacturer and/or fabricator.

1 SECTION 4. Cost Containment Utilizing a Single Discount
2 Plan.

3 To contain costs, insurance carriers shall establish its lowest
4 possible cost by utilizing a single discount pricing plan that it
5 requests from glass service providers. All glass service providers
6 registered to accept insurance payments from carriers under
7 Chapter 100A of the Commonwealth are eligible to notify any
8 such carrier that their auto glass loss claims will be fulfilled
9 according to that plan, without exception. No other pricing plan,
10 scheme, or manipulation of such plan, can be negotiated and/or
11 agreed to by any insurance carrier with any glass service com-
12 pany, “preferred list” of glass service companies, or cartel of glass
13 service companies exclusively, without the same opportunity for
14 direct negotiation or agreement at that same revised pricing plan
15 being offered to all glass service companies registered under
16 Chapter 100A.

1 SECTION 5. Setting of Prices.

2 No insurance carrier may seek or accept assistance in any way
3 by any company that serves as its third-party biller, in the setting
4 of the prices it will pay to auto glass service companies. Such pro-
5 hibited assistance shall include, but not be limited to, technical
6 assistance, pricing information of other insurance carriers, both
7 domestic and non-domestic, and pricing methodologies of other
8 insurance carriers, both domestic and non-domestic. In the act of
9 setting prices, insurers must act on their own, as third-party billers
10 possess no exemptions from Federal law or statutes, or the laws of
11 the Commonwealth of Massachusetts, as do insurers, in certain
12 cases. Thus, any such assistance in the setting of prices shall be
13 deemed and unfair trade practice.

1 SECTION 6. Tie-In Arrangements.

2 Any third-party biller or any other party or company who is
3 responsible for payments and/or processing auto glass damage or

4 loss claims for any insurance carrier shall be compensated, at a
5 fair and customary rate, specifically for the administration of such
6 claims, and such compensation shall not be construed to subsidize
7 or act as an inducement for the offering of product, labor, and/or
8 service discounts to any insurance carrier by an auto glass service
9 company related to the business entity of a third-party biller, by
10 stock ownership, or ownership by a direct family member, or a
11 cartel of auto glass service companies. In recognition of the
12 monies paid to third-party billers in the form of commission, bro-
13 kerage fees, or other compensation for processing claims, such
14 actions shall be prohibited by this Act and may be considered a
15 form of tie-in arrangement, which may be a violation of Federal
16 law and the laws of the Commonwealth of Massachusetts. Prohi-
17 bition and oversight of these actions shall be the sole responsi-
18 bility of any insurance carrier.

1 SECTION 7. "Incident Pricing".

2 The business entity of any third-party biller that is related to the
3 business entity of any glass service company, either by stock own-
4 ership or by ownership of a direct family relative, shall not engage
5 in the practice or offer to any insurance carrier a business arrange-
6 ment known as "incident pricing." This combination of related
7 business entities is afforded the potential ability to 1) receive pay-
8 ment from an insurance carrier to process the claim, which, if
9 combined with the setting of any price of good and/or services for
10 sale, which actions may violate Federal law, 2) direct, through
11 telephonic links, any auto glass damage or loss claimant to its
12 related glass service company, 3) allocate specific claims based on
13 cost or degree of difficulty, directing easier, less costly claims to
14 its related glass service company and directing difficult, more
15 costly claims to glass service companies with which it competes,
16 and such a practice may be known as "price discrimination,"
17 which actions may violate Federal law, and 4) facilitate the
18 "stealing" of glass service jobs because the third-party biller
19 knows the time and location of jobs scheduled with other glass
20 service companies and can easily dispatch that information to its
21 related glass service company. This combination of related busi-
22 ness entities must be prohibited from co-mingling these exclu-
23 sionary economic benefits to offer to fix a single price for any and

24 all auto glass claims regardless of severity, or “incident price,” for
25 all auto glass claims that it, alone, can segment to the exclusion of
26 all other competitors, can cause the effect of suppressing competi-
27 tion by its offer. Further, such offer of an “incident price” can be
28 construed to be a transfer of risk of insurability that must be borne
28 by the insurance carrier alone, to an entity that is not licensed to
30 offer policies of insurance in the Commonwealth of Massachu-
31 setts. Prohibition and oversight of this action shall be the sole
32 responsibility of any insurance carrier, which shall not accept such
33 offer upon enactment of this Act.

1 SECTION 8. Prohibition of “Gap” Billing by Cartels and
2 Third-Party Billers.

3 Not later than thirty days after the enactment of this Act, no
4 auto glass service company, cartel of auto glass service compa-
5 nies, or any third-party biller shall add any surcharge to, or deduct
6 any special charge from, the price of the single discount plan of
7 the insurance carrier, and bill for such surcharge or impose such
8 deduction, to or from the proceeds forwarded to any glass service
9 company registered under Chapter 100A of the Commonwealth.
10 This extraneous added cost to the auto insurance premiums paid
11 by consumers in the Commonwealth, known as “gap” billing,
12 shall be strictly prohibited by this Act. In order to eliminate “gap”
13 billing, each insurance carrier shall:—

14 a) modify all agreements with any auto glass service company,
15 cartel of auto glass service companies, or third-party billers to
16 include a declarative statement that such entity shall not add any
17 surcharges or impose any deduction from proceeds to any glass
18 service company, registered under Chapter 100A, in the settlement
19 of auto glass damage or loss claims in the Commonwealth of
20 Massachusetts, in accordance with the provisions of this Act;

21 b) circulate on the same day, using either postal mail, electronic
22 mail, facsimile, or other means of efficient communication, a
23 clear, detailed notice delineating its single discount plan, referred
24 to in Section 5 of this Act, to all glass service companies regis-
25 tered under Chapter 100A of this Commonwealth. Such notice
26 shall be circulated directly by each insurance carrier, and shall not
27 be circulated by and/or from the office of any third-party biller, or
28 any other party or company; c) such notice shall include an agree-

29 ment to be completed by any auto glass service company to
30 comply with the provisions of the insurance carrier's single dis-
31 count plan and a date by which the agreement must be signed and
32 returned, such date being at least fifteen days from the date of
33 notice;

34 d) such agreements must be returned to the designated Massa-
35 chusetts office, required by regulations of the Division of Insur-
36 ance, of the insurance carrier, and shall not be required to be
37 returned to any office maintained by any third-party biller or any
38 other party or company;

39 e) conduct an internal audit of claims payments, known as a
40 "closed-claim audit," of its own offices and/or of any third-party
41 biller or any other party or company who is responsible for pay-
42 ments and/or processing of auto glass damage and loss claims;

43 f) such closed-claim audit shall include an adequate representa-
44 tive sampling of claims to either reveal any "gap" pricing discrep-
45 ancies prohibited under this section, or to validate that the
46 insurance carrier paid glass service companies according to the
47 provisions of its single discount plan;

48 g) such closed-claim audit shall be conducted at least once per
49 year and any patterns of irregularities shall be reported forthwith
50 to the Insurance Commissioner.

1 SECTION 9. Specification and Use of Lower-Cost Auto
2 Glass Parts.

3 In the event that an insurance carrier and/or a third-party biller
4 knows of a credible, reliable, and local source of an available auto
5 glass part which shall materially lower the cost of that part to the
6 insurance carrier, and such lower-cost part is compliant with the
7 nationally-recognized AGRSS standard, referred to in Section 2(f)
8 above, then insurance carrier and/or third-party biller may specify
9 that lower-cost part be used before authorizing a claim number to
10 the glass service company. No insurance carrier and/or third-party
11 biller shall restrict payment or deduct any amount in the settle-
12 ment of the claim, unless the sales price of the glass part, and the
13 related discount rate for the part, if applicable, is agreed to by the
14 auto glass service company and the third-party biller or the insur-
15 ance carrier at the time, and not later than the time, of the issuance
16 of a claim or reference number for the claim. If such a part is

17 specified, third-party biller and/or insurance carrier must agree to
18 pay for any additional fees and surcharges which may apply to the
19 purchase of such a part by the auto glass company.

1 SECTION 10. Insurance Carrier and/or Insurance Agent Shop
2 Ownership.

3 Any insurance carrier, insurance agent, or any company or
4 entity related to an insurance carrier or agent shall be prohibited
5 from operating an auto glass service company that is registered
6 under Chapter 100A of the Commonwealth of Massachusetts.

1 SECTION 11. Penalties.

2 a) Any manufacturer and/or fabricator of standardized auto
3 glass parts who offers such products for sale in the Common-
4 wealth of Massachusetts shall comply with Section 3 of this Act.
5 Failure to comply by the date specified in Section 4 of this Act
6 shall be deemed a violation of this Act and be punishable by a fine
7 of \$5,000.00, imposed by the Office of the Attorney General.
8 Repeated failure to comply with the provisions of Section 4 of this
9 Act shall be punishable by an additional fine of \$5,000.00, for
10 every period of sixty days of non-compliance thereafter, imposed
11 by the Office of the Attorney General.

12 b) Any auto insurance carrier who does not comply with the
13 provisions of Section 4, above, shall be deemed in violation of
14 this Act. Any violation of Section 4 of this Act shall be punishable
15 by a fine of \$5,000.00, imposed by the Office of the Attorney
16 General. Repeated violations of Section 4 shall be punishable by
17 an additional fine of \$5,000.00, for every period of sixty days of
18 non-compliance thereafter, imposed by the Office of the Attorney
19 General.

20 c) Any insurance carrier who does not comply with Section 5 of
21 this Act shall be subject to a fine of not less than \$5,000.00,
22 imposed by the Office of the Attorney General.

23 d) Any insurance carrier who accepts and agrees to an offer of
24 an "incident price," as set forth in Section 8 of this Act, shall be
25 deemed in violation of such Section 7, which shall be punishable
26 by a fine of not less than \$10,000.00, imposed by the Office of the
27 Attorney General.

28 e) Any glass service company, cartel of glass service compa-
29 nies, and/or third-party billers shall be subject to a fine of not less
30 than \$1,000.00 for each claim that contains any charges or deduc-
31 tions considered in violation of Section 8 of this Act. Any auto
32 insurance carrier that does not comply with the provisions set
33 forth in Section 8(a), (b), (c), (d), (e), (f), and/or (g), of this Act,
34 shall be subject to a fine of not less than \$300.00 for each viola-
35 tion. All such fines included in this Section 11(d) shall be imposed
36 by the Office of the Attorney General.

37 f) Any auto insurance carrier or third-party biller shall be sub-
38 ject to a fine of not less than \$300.00 for actions deemed in viola-
39 tion of Section 9 of this Act. Such fines included in this Section
40 11(e) shall be imposed by the Office of the Attorney General.