

- SUBJECT:** Prohibiting practices of third-party administrators in auto glass repair
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 8 ayes — Hamilton, Quintanilla, Geren, Gutierrez, Harless, Kuempel, Menendez, Thompson
- 0 nays
- 1 absent — Driver
- WITNESSES:** (*On original version:*)
For — Tara Kaye, Nexus; Jeff Searles, DNS Auto Glass Shop, LLC; Larry Cernosek; Jack Riccobono (*Registered, but did not testify*: James Hamilton, National Safety Glass Association)
- Against — Brian Dimasi, Safelite Auto Glass (*Registered, but did not testify*: Frank Galitski, Farmers Insurance Group; Ty Pearson, Safelite Autoglass)
- DIGEST:** (*The analysis is of CSHB 2423 with the author's proposed floor amendment:*)
CSHB 2423, as amended by the author, would prohibit a third-party administrator from referring an insured claimant to an automotive glass repair service if:
- the claimant had an established relationship with a repair service or had submitted a claim or estimate for covered automotive glass work to a service;
 - an inspection was required before an insurance company determined whether an estimate for glass work was payable; and
 - the third-party administrator conducted the inspection.
- A third-party administrator also could not use personal information of a claimant for any purpose other than administering an inspection of a vehicle for glass work under a claim. An administrator could not suggest that an insured claimant use a specified auto glass service, restrict the right of the claimant to do so, or otherwise coerce a claimant into choosing a

particular repair service. A person, including a glass service, affected by a violation could bring a legal action for injunctive or other relief against a third-party administrator who violated those restrictions.

A third-party administrator could refer an insured claimant to an auto glass repair service upon the claimant's request for a referral. The bill as amended would not authorize an action against an insurance company or agent for the actions of a third-party administrator.

The amended bill would define "third-party administrator" as a person who was not regulated as an insurance professional under the Texas Department of Insurance, but who provided administrative services to an insurance company by conducting glass repair inspections in connection with motor vehicle insurance coverage.

The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

The amended version of CSHB 2423 would put an end to certain unfair business practices in the realm of automobile insurance and glass repair services. Many insurance companies require that an insurance claimant get an inspection for a cracked or broken windshield, back glass, or door glass. Under current law, some companies essentially act as both the inspector and the repair facility. These "third party administrators" contract with insurance companies to perform inspections and also have a wide network of glass repair companies to which they refer claimants.

This is a problematic practice for a variety of reasons. First, it reduces customer choice by compelling claimants to use only the repair services sponsored by the third party. Second, it unfairly merges two intentionally distinct roles in insurance — inspection and repair. These roles should be kept separate, since it is a conflict of interest for inspectors to have a vested interest in a repair shop to whom they refer claimants. The preferred repair shop potentially could have an impact on the inspection, as they are likely to be the source of an estimate to repair damage. HB 1131, enacted in 2003, implemented a similar principal in that it prohibits an insurer from owning or acquiring an interest in a repair facility and allows repair facilities to seek legal action against a company that violates those provisions.

The amended version of CSHB 2423 has been through many iterations, both in committee and after, and has resulted in a compromise that would

correct unfair practices without unfairly impeding the operations of third party administrators. It would protect market competition and level the playing field among glass repair services without preventing third party administrators from operating profitably. Prohibitions in the bill would apply only to customers who had an established relationship with a repair service or who had already received a bid, protecting consumers who have already made up their mind against being coerced to use another service. Third parties could still offer services at an affiliated repair shop upon the customer's request for a referral.

OPPONENTS
SAY:

Although the amended version of CSHB 2423 is an improvement over the committee-passed version, it still would limit consumer choice and could unleash a flood of lawsuits. The bill would prevent a company that performed inspections and had affiliated glass repair shops, such as Safelite Auto Glass, from referring an insurance claimant to those services if the customer had received a previous bid for the repair. This would reduce customer choice. The claimant should be able to review the different service options available and make a decision based on their relative merits. Prohibiting an inspector from suggesting a particular shop could prevent the claimant from getting the best deal on a repair.

The amended version of CSHB 2423 would be a windfall for trial lawyers. The bill would allow any glass repair shop that felt it had lost business as a result of Safelite or a similar company to file suit against the company that supposedly took their business. Language in the bill authorizing an "aggrieved" party to "bring an action for injunctive or other appropriate relief" would open the flood gates to a torrent of lawsuits. This provision could result in hundreds of suits each year, severely harming the business of these companies and tying up the courts. The costs that these companies would incur fighting frivolous lawsuits as a result of this allowance would enrich trial lawyers across the state and could cost consumers, since many of the costs would be passed on to them.

Safelite has agreements with hundreds of insurance companies to perform inspections and is able to keep costs low through its affiliated repair services. Insurance companies choose to work with Safelite due to their reasonable fees and professional conduct. Curtailing their operations through unfair legislative requirements would reduce options for consumers and insurance companies and would be a text book example of government interference in the market place.

NOTES:

Without the floor amendment, the committee version of CSHB 2423 would apply the deceptive trade practice law to a third-party administrator that held at least a ten percent ownership interest and referred an insurance claimant to the service or coerced a claimant to use a particular auto glass repair service.