

HOUSE No. 02768

The Commonwealth of Massachusetts

PRESENTED BY:

Paul McMurtry

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act prohibiting auto glass insurance claims third party billers from participating as vendors of auto glass replacement and/or repair services for the same insurance carrier.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Edward Copping</i>	<i>10th Suffolk</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>

HOUSE No. 02768

By Mr. McMurtry of Dedham, a petition (accompanied by bill, House, No. 2768) of DiNatale and others relative to prohibiting auto glass insurance claims third party billers from participating as vendors of auto glass replacement and/or repair services for the same insurance carrier Joint Committee on Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act prohibiting auto glass insurance claims third party billers from participating as vendors of auto glass replacement and/or repair services for the same insurance carrier.

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

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

3 SECTION 1. Notwithstanding any provisions of any general or special law to the contrary, no
4 company which serves as a third-party biller for a particular insurance company, whether a
5 carrier or an agency, may additionally provide auto glass replacement and/or repair services for
6 such insurance company, whether under its own business entity that it is related to, by either
7 stock ownership, license agreement, franchise agreement, or such ownership by any direct family
8 relative. A third-party biller shall be defined as any person or company who processes, pays or
9 monitors the payment of auto glass claims on behalf of an insurance carrier or insurance agency.

10 SECTION 2 All third-party billers of auto glass claims, or any other party that answers telephone
11 calls from telephone numbers advertised or prescribed by insurance carriers or agents for the
12 purpose of reporting auto glass claims by policyholders or glass companies, must disclose, either
13 by recorded message or live voice from a script at the outset of each telephonic interaction, that
14 the person is not a direct employee of the insurance carrier or insurance agent, and that such
15 third-party biller company is not a subsidiary or division of the insurance carrier or insurance
16 agent.

17 SECTION 3. All third-party billers of auto glass claims must ask in clear language if the
18 policyholder or caller would like to use a particular auto glass company. Such question must be
19 asked before the name of any auto glass service provider company shall be mentioned. If the
20 policyholder or caller mentions the name of any auto glass service company, such mention shall
21 constitute “customer choice,” and the name of no other auto glass service company shall be
22 introduced by the person or automated voice during the entirety of the telephonic interaction. In
23 the course of, or following a policyholder’s call to report an insurance claim for auto glass loss or
24 damage, no third-party biller may authorize any employee or independent contractor to forward
25 any information gathered during such call, including but not limited to the name of the
26 policyholder, the year, make and model of the policyholder’s vehicle, and the location of said
27 vehicle, to any glass company other than the glass services company with which the claim
28 fulfillment has been agreed to and scheduled with, between the policyholder and the third-party
29 biller. Such methods of forwarding policyholder information shall include, but not be limited to,
30 telephonic links, direct telephone calls, transmission by facsimile, transmission by electronic
31 mail, or any other method.

32 SECTION 4. Privacy of Proprietary Customer Information.

33 No third-party biller and/or auto insurance carrier shall forward to any policyholder any
34 letter or notification that said policyholder's claim for auto glass loss or damage was settled for a
35 price that exceeded the expressed or inferred price, by any auto glass service company, unless
36 such price, in fact, did exceed said expressed or inferred price in effect at the time of such claim
37 settlement. Further, no auto glass service company shall receive and/or utilize any information
38 gathered by a third-party biller, in the administration of its responsibilities to issue verification of
39 auto glass loss or damage claims, for its use in any marketing efforts, to discredit and/or
40 disparage any trade practices of any other auto glass service company, expressed or implied, and
41 enter into its database any vital information of any claimant for any future use.

42 SECTION 5. No employee or independent contractor of any third-party biller of auto glass
43 claims, insurance carrier, and/or insurance agency shall offer any information regarding the
44 quality of workmanship, warranties and/or guarantees, or any possibility of additional costs to
45 the insured during any telephonic interaction, unless the employee or independent contractor
46 holds a permanent license as an insurance adjuster or auto damage appraiser in the
47 Commonwealth of Massachusetts, and that such license is in full force at the time of the
48 telephonic interaction. In the event that such employee or independent contractor holds a
49 permanent license as an insurance adjuster or auto damage appraiser in the Commonwealth, and
50 duly discloses the license number to the caller, the information concerning workmanship,
51 warranties and/or guarantees, or the possibility of additional costs to the insured by any specific
52 auto glass service provider must be based on verifiable facts, duly noted, held in electronic
53 information systems, and accountable for substantiation to the person holding such license.

54 SECTION 6. All third-party billers providing any auto glass claims-related services to insurance
55 companies that offer policies of insurance in the Commonwealth of Massachusetts shall file

56 annually on March 31st with the Office of the Insurance Commissioner, all auto glass claims-
57 related contracts in force with each specific insurance company, either carriers or producers,
58 which delineate the provisions of the business relationship, excluding the amount of payment
59 and/or consideration provided for third-party billing services. The Commissioner of the Division
60 of Insurance shall promulgate rules and regulations for the administration and enforcement of
61 this section, and shall create and make available all required forms for such reports.

62 SECTION 7. Each violation of Section 1 of this act shall result in a fine of \$1,000.00, to be paid
63 by the insurance carrier or insurance agency that utilizes the services of a third-party biller. Each
64 glass claim completed in contradiction with the letter and/or intent of Section 1 shall constitute
65 one violation. Allegations of violations shall be reported to the Office of the Insurance
66 Commissioner who shall have the authority to levy such fine(s). Such fines shall be collected by
67 the Division of Insurance and deposited in a retained revenue account to be used by the division
68 to carry out the enforcement of this act. Furthermore, the Division of Insurance shall create and
69 make available forms for reporting such violations of this section. Any violations Section 1 are
70 subject to the provisions of Chapter 93A.

71 SECTION 8. Each violation of Section 2, Section 3, and/or Section 5 of this act, shall result in a
72 fine of \$500.00, to be paid by the third-party biller or other offending company or person. Each
73 glass claim completed in contradiction with the letter and/or intent of Section 1 shall constitute
74 one violation of Section 2, Section 3, and/or Section 5 of this act. Allegations of violations shall
75 be reported to the Office of the Insurance Commissioner who shall have the authority to levy
76 such fine(s). Such fines shall be collected by the Division of Insurance and deposited in a
77 retained revenue account to be used by the division to carry out the enforcement of this act.
78 Furthermore, the Division of Insurance shall create and make available forms for reporting such

79 violations of each of these sections. Any violations Section 2, Section 3, and/or Section 5 are
80 subject to the provisions of Chapter 93A.

81 SECTION 9. Each violation of Section 4 shall result in a fine of not less than \$1,000.00, to be
82 paid by the insurance carrier or insurance agency that utilizes the services of a third-party biller.
83 Each glass claim completed in contradiction with the letter and/or intent of Section 4 shall
84 constitute one violation. Allegations of violations shall be reported to the Office of the Insurance
85 Commissioner who shall have the authority to levy such fine(s). Such fines shall be collected by
86 the Division of Insurance and deposited in a retained revenue account to be used by the division
87 to carry out the enforcement of this act. Furthermore, the Division of Insurance shall create and
88 make available forms for reporting such violations of this section. Any violations Section 4 are
89 subject to the provisions of chapter 93A.

90 SECTION 10. Each violation of Section 6 of this act shall result in a fine of not less than
91 \$5,000.00 per incident. Failure to file the statement of ownership shall constitute one incident.
92 Failure to file an agreement and/or agreements with one insurance company or insurance agency
93 also shall constitute one incident. Failure of any third-party biller to file three or more statements
94 of ownership and/or agreements during one filing period may be deemed a pattern of non-
95 compliance, at the sole discretion of the Commissioner of Insurance. In the event the
96 Commissioner deems that a pattern of non-compliance exists, then the Commissioner shall
97 forthwith send notice of such pattern of non-compliance to the third-party biller and send an
98 additional copy of such notice to any insurance company and/or insurance agency that is known
99 to utilize the services of such third-party biller. During the thirty (30) days immediately
100 following such notice to the third-party biller, such third-party biller shall have the opportunity to
101 submit all filings listed in the notice. If the third-party biller does not submit appropriate and

102 conforming filings within such thirty (30) day period, then the Commissioner of Insurance shall
103 levy a fine of not less than \$25,000.00 in addition to the fines for each filing not submitted in a
104 timely manner. Such fines shall be collected by the Division of Insurance and deposited in a
105 retained revenue account to be used by the division to carry out the enforcement of this act.