

SENATE No. 464

The Commonwealth of Massachusetts

PRESENTED BY:

Michael F. Rush

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 adoption 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:

Michael F. Rush

Norfolk and Suffolk

Edward F. Coppinger

10th Suffolk

SENATE No. 464

By Mr. Rush, a petition (accompanied by bill, Senate, No. 464) of Michael F. Rush and Edward F. Coppinger for legislation to prohibit auto glass insurance claims third party billers from participating as vendors of auto glass replacement and/or repair services for the same insurance carrier. 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 SECTION 1. Notwithstanding any provisions of any general or special law to
2 the contrary, no company which serves as a third-party biller for a particular insurance company,
3 whether a carrier or an agency, may additionally provide auto glass replacement and/or repair
4 services for such insurance company, whether under its own business entity that it is related to,
5 by either stock ownership, license agreement, franchise agreement, or such ownership by any
6 direct family relative. A third-party biller shall be defined as any person or company who
7 processes, pays or monitors the payment of auto glass claims on behalf of an insurance carrier or
8 insurance agency.

9 SECTION 2 All third-party billers of auto glass claims, or any other party that
10 answers telephone calls from telephone numbers advertised or prescribed by insurance carriers or
11 agents for the purpose of reporting auto glass claims by policyholders or glass companies, must
12 disclose, either by recorded message or live voice from a script at the outset of each telephonic

13 interaction, that the person is not a direct employee of the insurance carrier or insurance agent,
14 and that such third-party biller company is not a subsidiary or division of the insurance carrier or
15 insurance agent.

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

31 SECTION 4. Privacy of Proprietary Customer Information.

32 No third-party biller and/or auto insurance carrier shall forward to any
33 policyholder any letter or notification that said policyholder’s claim for auto glass loss or damage
34 was settled for a price that exceeded the expressed or inferred price, by any auto glass service

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

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

54 SECTION 6. All third-party billers providing any auto glass claims-related
55 services to insurance companies that offer policies of insurance in the Commonwealth of
56 Massachusetts shall file annually on March 31st with the Office of the Insurance Commissioner,
57 all auto glass claims-related contracts in force with each specific insurance company, either

58 carriers or producers, which delineate the provisions of the business relationship, excluding the
59 amount of payment and/or consideration provided for third-party billing services. The
60 Commissioner of the Division of Insurance shall promulgate rules and regulations for the
61 administration and enforcement of this section, and shall create and make available all required
62 forms for such reports.

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

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

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

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

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

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