

# HOUSE BILL REPORT

## HB 1066

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### As Reported by House Committee On:

Insurance, Financial Services & Consumer Protection

**Title:** An act relating to auto glass repair and third party administrators.

**Brief Description:** Prohibiting interested third parties from processing insurance claims.

**Sponsors:** Representatives Kirby, Strow, Simpson, Rodne, Lovick, Clibborn, Dunshee, Sells, P. Sullivan, Morrell and Kenney.

### Brief History:

#### Committee Activity:

Insurance, Financial Services & Consumer Protection: 1/16/07, 2/20/07 [DPS].

#### Brief Summary of Substitute Bill

- States that a person has a right to choose any automobile glass repair or replacement facility for the repair of a loss relating to motor vehicle glass.
- Prohibits an insurer or third-party administrator from interfering with the right to choose any automobile glass repair or replacement facility.
- Establishes notice requirements for an insurer or third-party administrator processing automobile glass claims.

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### HOUSE COMMITTEE ON INSURANCE, FINANCIAL SERVICES & CONSUMER PROTECTION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Kirby, Chair; Kelley, Vice Chair; Hurst, Santos and Simpson.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Roach, Ranking Minority Member; Strow, Assistant Ranking Minority Member and Rodne.

**Staff:** Sarah Beznoska (786-7109).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Background:**

The insurance industry is regulated by the Insurance Commissioner (Commissioner), pursuant to the statutory provisions set forth in Title 48 RCW.

A third-party administrator (TPA) is an entity that manages an insurance program for an organization, and functions as an intermediary between an insurer and an insured. The TPAs are sometimes used by insurers with respect to insurance programs. The TPAs typically process claims and may also collect premiums, solicit enrollees, and underwrite.

There are currently no state statutes or regulations related to the use of certain TPAs by insurers.

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**Summary of Substitute Bill:**

A person has the right to choose any automobile glass repair or replacement facility for the repair of a loss relating to motor vehicle glass.

An insurer or third party administrator (TPA) is prohibited from interfering with the right to choose any automobile glass repair or replacement facility. In addition, after a person making a glass-only claim informs an insurer or TPA that the person has chosen an automobile glass repair or replacement facility to conduct the repairs, the insurer or TPA shall not recommend that a different automobile glass repair or replacement facility be chosen to conduct the repairs.

An insurer or its TPA is required, when processing a glass-only claim, to verbally inform the person making the claim of the right to choose any automobile glass repair or replacement facility and of the TPA's relationship to the insurer.

In addition, if an insurer or an insurer's TPA owns an interest in an automobile glass repair or replacement facility, a notice must be posted in each of the automobile glass repair or replacement facilities. The notice must state that the facility is owned in whole or in part by the insurer or the insurer's TPA and that the consumer has a right to seek repairs at any automobile glass repair or replacement facility.

The notice must be prominently posted, in not less than 18-point font, in a location where it is likely to be seen and read by a customer. If the automobile glass repair or replacement facility is mobile, the insurer or its TPA must verbally provide the notice prior to commencement of the repair or replacement.

**Substitute Bill Compared to Original Bill:**

The original bill prohibited an insurer from contracting with a TPA if the TPA directly or indirectly engages in the retail auto glass business. The substitute bill states that a consumer has a right to choose any automobile glass repair or replacement facility and establishes notice requirements related to this right. The substitute bill also contains provisions prohibiting an insurer or TPA from interfering in the right to choose.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:**

(In support) This is a consumer protection issue. Consumers are required to purchase automobile insurance from private for-profit entities and the government must put in place certain consumer protections to avoid potential abuses by these private organizations. When insurance companies are allowed to have total control of all of the money received in premiums and paid out in claims, it creates a recipe for victimization of consumers. Insurance companies are moving closer to total control of the insurance dollar.

The insurance business was invented as a method to pool money to cover losses and make consumers whole when disaster strikes. We have moved away from that concept. Insurance companies are no longer about making customers whole, they are about collecting premiums and paying out as little in claims as possible. The question is whether they are doing so responsibly.

This bill rights a wrong in the administration of claims. If a customer gets a rock in his or her windshield, he or she will call an insurance company and get the number of a glass shop that the insurance company uses as a third-party administrator (TPA). That is steering. It is not clear that an insured is entitled to take business to the company of his or her choice. Individuals need to argue to exercise their rights under the law.

Steering happens. There are numerous examples of TPAs trying to talk consumers out of going to independent glass shops. The issue is that insurance networks that own retail glass shops are steering customers to their stores. Third Party Administrators will bad mouth an independent shop and steer consumers to other shops. Consumers think they are speaking to the insurance company and if the insured does not adamantly request a specific shop, the consumer will be sent to a shop owned by a TPA. The TPAs misrepresent who is speaking. When these conversations are recorded, the consumer cannot get the recording to prove that steering occurred. This bill is about leveling the playing field and eliminating a predatory practice by TPAs.

The formation of glass networks was a good idea, but are now an entity using the insurance company antitrust protection to abuse the market. Retailer TPA networks are affecting client confidence in the services of independent glass companies and the ability of a consumer to choose to use an independent glass business. This stagnates the bottom line of an independent business and paralyzes the ability to function as a healthy business. Consumer confidence is obliterated.

One example is a customer who asked for a particular glass shop by name and was told by the TPA that the glass shop could not provide the service. But the glass shop could provide the service. Customers have terminated already-started service after calling in the claim and being steered by the TPA. Nationwide the estimate is more than 60 percent of client called-in claims fall into the hands of the TPA retailer. If that business went to other shops, maybe those other shops could raise wages or provide benefits.

Private and confidential client invoices are used by the networks to help determine where to set up their next shop. This further hurts a customer's ability to choose and networks use confidential information and an unfair business practice to expand.

This is also a safety issue. Strength of windshield is important in rollover accidents and consumers need good service.

Small businesses constantly invest and re-invest in bringing in new clients. When clients are steered elsewhere, this is like robbing the small business of its investment. Choice must be returned to consumers.

When one company makes glass, installs it, and acts as a TPA, there are three ways to make a profit and there are ways of choosing where to make the profit. The price that an independent shop can charge to install glass is told to it. Third Party Administrators dictate the price and the price is set artificially low. The largest TPA that has glass shops has gone through bankruptcy on several occasions. Small shops cannot do the same. This bill will require all glass shops to compete in the market in the same way.

There is no other business where your competition is called in advance of service, discuss pricing, and ultimately get paid by your competition.

(Opposed) The state of the law is that steering is prohibited and steering does not happen. To the extent that there are facts associated with steering activities, it is unlawful. The pattern or practice of an insurer working with a known facility is different from steering. Working with a known facility means working with a facility the insurer knows is experienced and can provide quality work that the insurer can stand behind. Consumers can and do select the repair facility of their choice without any difficulty.

Insurers have a diversity of administrative practices for glass claims. Some insurers hire TPAs under contract, but there is no one pattern. Generally insurers look for an experienced TPA. The sweeping definitions in this bill, particularly of "claim administrator process," and the reference to "directly or indirectly engaging" in the glass business are too broad. This language prevents an insurer from working with a TPA that knows anything at all about the glass business. It is unclear who this bill applies to or what kind of administrative services it applies to.

If insurers comply with current fair practices requirements, the insured is asked about his or her preferred shop. At that point, does it matter who an insured is talking to? It is not clear what this bill accomplishes. Insurers still have to comply with existing law. If the bill is passed, the effective date should be delayed.

An insurance company can currently manage a relationship with an auto glass repair company. It could hire someone to manage that relationship. This bill is a flat prohibition even when it is in the best interests of the insurer to hire a company that knows about the auto glass business. This will make it more expensive to do business.

This bill goes further than it should. It interferes with contractual relationships.

Not all insurers use TPAs to administer glass claims, but even those insurers have general concerns.

**Persons Testifying:** (In support) Representative Kirby, prime sponsor; John Gore, Grizzly Glass; Chris King, Ding Doctor Glass Services; Mike McKinney, McKinney's Auto Glass Inc.; Pam Shearer, Washington Independent Glass Association and Auto Glass Plus; Bill Goodnight, Genuine Glass; and Tom Grim, Washington Independent Glass Association.

(Opposed) Mel Sorensen, Allstate Insurance Company, Property Casualty Insurers Association, and American Family Insurance; Mike Kapphahn, Farmers Insurance; Cliff Webster, American Insurance Association; Jean Leonard, State Farm Insurance Company and Washington Insurers; and Carrie Tellefson, Progressive Corporation.

**Persons Signed In To Testify But Not Testifying:** None.