



## **Opposition to NCOIL Proposed Model Act**

### **Regarding Motor Vehicle Crash Parts and Repair**

The Proposed Model Act Regarding Motor Vehicle Crash Parts and Repair under consideration by the NCOIL Property-Casualty Committee on July 11, 2009 (Proposed Model Act) is the type of legislation that would have a harmful effect on consumers, would increase the cost of vehicle repairs, would increase insurance premiums and is an unconstitutional restriction of commercial free speech under the United States Constitution.

Belron® US is the largest provider in the United States of vehicle glass repair and replacement services, in addition to serving as a third party administrator of vehicle glass claims for numerous insurance companies throughout the country. The Belron® Group of companies operates in 29 countries throughout the world employing over 18,000 people, including approximately 7,500 in the United States. We serve over 7.5 million customers annually through our global vehicle glass service and claims administration businesses.

Without question, the vehicle glass claims administration process has changed drastically over the past 15 years, particularly with the advent of direct repair programs and repair networks. Networks have streamlined the claims process and consumers continuously reap the benefits of the efficiencies and total lower costs networks promote. Insurance premiums are reduced when insurance carriers enter into agreements with glass shops to provide excellent service, guaranteed pricing and a lifetime national warranty backed by the insurance company. Additionally, as a direct result of the free market competition networks promote, consumers are paying far less for vehicle glass services now than they were fifteen years ago.

It is hard to argue against the simplicity of a consumer placing one toll-free telephone call to any vehicle glass claims administrator to have their vehicle glass repaired or replaced. Gone is the era where a consumer was required to reach out to multiple vehicle glass service providers, obtain quotes, call their insurance company and negotiate with their insurer as to which estimate should prevail. At a time when consumers demand efficiencies in the processing of their vehicle glass insurance claims, third party administrators and vehicle glass networks provide them with a valued and demanded service that is based on trust and is supported by high customer satisfaction ratings.

#### Existing State Laws Already Require Insurers to Honor Policyholder Preference

Insurance companies must and do honor the policyholder's preference with respect to a vehicle glass repair facility. In fact, most states already have existing laws which prohibit an insurer from requiring its policyholder to use a particular repair shop. As such, consumers are not the proponents of this type of model legislation. Instead the main proponents of this type of legislation are the repair facilities that want to charge more than the agreed upon pricing between insurance companies and other repair shops in the network. By limiting the insurance company's ability to explain the benefits of a repair network, the proponents of this type of legislation stand a better chance of charging more to consumers. This is not a consumer issue. Rather, this is a matter of non-network glass shops wanting to charge more than network shops, and seeking to do so

through legislation. An unintended consequence of this type of legislation, specifically Section 6, would be higher prices for consumers.

### Policyholders Demand Excellent Claims Service

Customers have their vehicle glass replaced, on average, once every seven years. They rely on their insurance company to assist them in the claims process. Customer satisfaction surveys consistently prove that consumers demand excellent customer service and low costs in their vehicle glass claims process which networks provide. Insurance companies strive to compete for policyholders by providing excellent claims service. Section 6, *Choice of Repair Facility*, restricts the ability of insurance companies to do so. Section 6 would prohibit the insurance company from informing its policyholders as to the features and benefits under their policy. When insurers are not permitted to explain high quality, low cost alternatives under the policy, policyholders suffer. Section 6 fails to promote excellent claims service and, in fact, promotes the contrary.

### Section 6 Conflicts With Many State Statutes and Insurance Regulations.

Not only does Section 6 prohibit the insurer from advising their policyholders as to the features and benefits of their policy, it runs contrary to many state insurance statutes and regulations which *require* insurance companies to provide all relevant information to policyholders during the claims process. The reason for this is the recognized need for insurance companies to assist their policyholders throughout what can be a difficult claims process. Insurance companies would have to choose to violate the model act or state insurance statutes and/or regulations.

### Section 6 is Unconstitutional

The language found in Section 6 (B), which states, "In processing any such claim, the insurer shall not, unless expressly requested by the insured, recommend or suggest repairs be made to such vehicle in a particular place or shop or by a particular concern." is an unconstitutional restriction of commercial free speech under the First Amendment of the United States Constitution.

Similar legislative attempts in other jurisdictions have been considered by the courts and declared unconstitutional (See Allstate Insurance Company v. State of South Dakota, 871 F.Supp. 355 (1994)). In Allstate Insurance Company v. State of South Dakota, 871 F.Supp. 355 (1994), Allstate provided its policyholders with a vehicle glass network's toll-free number and informed them that the network could repair the glass and bill Allstate directly. South Dakota argued that Allstate's practice was deceptive because it failed to disclose the relationship between the insurer and the network and could thus be restricted without violating the First Amendment. The Court, however, held that the speech was not deceptive because it did not harm the policyholders who would pay their deductible regardless of who performed the work. The Court also opined that "[o]nly false, deceptive, or misleading commercial speech may be banned by the State without further justification." While South Dakota claimed that restricting the speech would advance its interests in "(a) maintaining policyholder choice of glass replacement services (b) preventing local business closures, and (c) protecting consumer safety," the Court held that the restriction was not reasonably tailored to advance substantial state interests. The Court further recognized that existing state law already prohibited insurers from requiring their policyholders to use certain repair shops. The Court held that South Dakota could not legitimately protect local businesses by eliminating the

price competition created by interstate networks. As such, the legislation was determined to be an unconstitutional restriction of commercial free speech.

### Claims of Systematic “Steering” Are Unfounded

Proponents of this type of model act argue that it is necessary to prevent systematic “steering” of policyholders to network repair facilities. Allegations of “steering” have become the rallying cry for proponents of legislation such as Section 6 of the Model Act. These allegations are unfounded. In fact, the New York State Insurance Department, after an 18 month investigation of insurance company claims practices, issued a Press Statement on January 21, 2009 titled: **INSURERS DID NOT SYSTEMATICALLY “STEER” AUTO BODY REPAIR CUSTOMERS TO DESIGNATED SHOPS, INVESTIGATION FINDS.**<sup>1</sup> This finding from the New York State Insurance Department clearly refutes the “steering” allegations from proponents of Section 6, which serve as the basis for Section 6.

### Belron® US Claims Administration Business Has Withstood Judicial Scrutiny

In January of 2000, a federal court validated Belron US’s network of vehicle glass shops while recognizing its value to the industry, including consumers. A group of small, independent vehicle glass repair shops filed suit against Safelite Glass Corp. (the former name of Belron US Inc.), alleging violations of anti-trust laws and intentional interference with contract arising out of Safelite’s network. After extensive discovery, the Court granted Safelite’s motion for summary judgment, stating:

[T]he insurance companies, the relevant consumer in this marketplace, desired and demanded increased cost-efficiency in the auto glass repair industry. **All the evidence indicates that they have managed to achieve just that—millions of dollars in savings annually—by insisting on a competitive environment in which various networks compete for insurance company business. These are savings that are passed down to the ultimate consumer-policyholders in a system that only benefits an open marketplace in terms of price reductions.**

See *Stewart Glass & Mirror, Inc. v. U.S. Auto Glass Discount Centers et al.*, 200 F.3d 307 (5<sup>th</sup> Cir., 2000) (Emphasis added). Clearly, the Court viewed with favor the key role the Safelite network plays in the vehicle glass repair and replacement markets.

As recently as July 31, 2006, another federal court validated, *as a matter of law*, Safelite’s claims administration business. In 2002, Safelite competitor Diamond Triumph AutoGlass filed suit against Safelite alleging, among other things, unfair and deceptive trade practices (federal Lanham Act) in attempting to influence insureds to use a shop other than Diamond Triumph. In many ways, the issues before the court in the Diamond case are almost identical to those “steering” issues Section 6 of the Model Act is meant to address. Diamond alleged Safelite improperly

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<sup>1</sup>See <http://www.ins.state.ny.us/press/2009/p0901211.htm>

attempted to influence insureds to use a repair shop other than Diamond by informing insureds that by selecting a non-network shop such as Diamond, they may have to pay the difference between what Diamond ultimately charges for the work performed and what their insurer is willing to pay for the same. Diamond alleged that information Safelite provided to insureds about Diamond was false and deceptive. The Court, in granting Safelite a summary judgment on this claim, concluded that the scripts were neither false nor deceptive. See Diamond Triumph AutoGlass v. Safelite Glass Corp., 3:02cv514, Middle District of Pennsylvania.

Safelite has been under the judicial microscope for well over four and a half years in the Diamond Triumph litigation alone. We have been accused of “steering” and conflict of interest in our role as third party administrators for insurers and retailers of vehicle glass services. After more than 100 depositions, millions of pages of documents, and the scrutiny of one million telephone call recordings of consumers, the Court in the Diamond Triumph case dismissed, as a matter of law, the “steering” allegations.

### Conclusion

We urge you to oppose this Proposed Model Act. Belron® US remains steadfastly committed to defeating it. We encourage the Committee to work with us and others in the industry to address allegations of “steering” while protecting the rights of consumers and their insurers’ rights of commercial free speech.