Committee on Banking and Insurance

CS/CS/SB 54 — Motor Vehicle Insurance

by Judiciary Committee; Banking and Insurance Committee; and Senators Burgess and Rouson

Motor Vehicle Financial Responsibility Requirements

CS/CS/SB 54 repeals the Florida Motor Vehicle No-Fault Law (No-Fault Law), which requires every owner and registrant of a motor vehicle in this state to maintain Personal Injury Protection (PIP) coverage. The bill enacts, effective January 1, 2022, financial responsibility requirements for liability for motor vehicle ownership or operation, as follows:

- For bodily injury (BI) or death of one person in any one crash, $25,000, and
- Subject to that limit for one person, $50,000 for BI or death of two or more people in any one crash.

The bill retains the existing $10,000 financial responsibility requirement for property damage (PD).

The bill increases required coverage amounts for garage liability and commercial motor vehicle insurance. It also increases the cash deposit amount required for a certificate of self-insurance establishing financial responsibility for owners and operators of motor vehicles that are not for-hire vehicles.

Mandatory Offer of Medical Payments Coverage

The bill requires insurers to offer medical payments coverage (MedPay), which protects the named insured, resident relatives, vehicle operators, vehicle passengers, and pedestrians struck by a motor vehicle to a limit of at least $5,000 for medical expenses incurred due to bodily injury, sickness, or disease arising out of the ownership, maintenance, or use of a motor vehicle. Coverage must be offered at limits of both $5,000 and $10,000. Insurers may also offer other policy limits that exceed $5,000. Insurers must offer a zero deductible option for MedPay, and may also offer deductibles of up to $500. MedPay must provide an additional death benefit of at least $5,000. MedPay coverage to a limit of $10,000 with no deductible is presumed to be contained in the policy unless a named insured signs a form declining the coverage or selects a different coverage limit or a deductible. Insurers must reserve $5,000 of MedPay benefits for 30 days to pay physicians or dentists who provide emergency services and care or hospital inpatient care.

The repeal of the No-Fault Law eliminates the limitations on recovering pain and suffering damages from PIP insureds, which currently requires bodily injury that causes death or significant and permanent injury. Because this limitation is repealed, the bill also specifies that legal liability of an uninsured motorist insurer includes damages in tort for pain, suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience, and the loss of past and future capacity for the enjoyment of life.

Mandatory Death Benefit

The bill requires that each motor vehicle insurance policy issued to meet the financial responsibility requirements established by the bill must also provide a first-party death benefit of $5,000 per deceased individual. As with MedPay, the death benefit covers the named insured, resident relatives, vehicle operators, vehicle passengers, and pedestrians struck by a motor vehicle. The benefit is payable when the death arises out of the ownership, maintenance, or use of a motor vehicle.

Actions Against Motor Vehicle Insurers for Bad Faith Failure to Settle Third-Party Claims

The bill creates a new framework governing all actions against motor vehicle insurers for bad faith failure to settle a third-party claim. The bill requires motor vehicle insurers to follow claims handling best practices standards based on long-established good faith duties related to claim handling, claim investigation, defense of the insured, and settlement negotiations. The bill also specifies an insured's duty to cooperate with their insurer in attempting to settle third-party claims, and specifies conditions in which an insurer may terminate its defense because of the insured's failure to cooperate. The bill prohibits the trier of fact in a bad faith action from attributing the insurer's failure to settle a covered claim to the claimant's lack of communication when the claimant makes certain communications to the insurer.

The bill defines "bad faith failure to settle" as an insurer's violation of a best practice, which is a proximate cause of the insurer not settling a third-party claim when, under all the circumstances, the insurer could and should have done so, had it acted fairly and honestly toward its insured and with due regard for the insured's interests. The party bringing the bad faith action has the burden to prove both elements.

The bill creates "safe harbors" to provide insurers a reasonable opportunity to investigate and evaluate a claim. The safe harbors specify that an insurer that follows the best practices does not act in bad faith when the insurer:

- Does not initiate settlement negotiations by tendering applicable policy limits in exchange for a general release of the insured within 45 days after receiving actual notice of the loss.
- Does not accept a settlement offer within 45 days after receiving actual notice of the loss if:
  - The settlement offer provides the insurer fewer than 15 days for acceptance; or
  - The settlement offer provides the insurer fewer than 30 days for acceptance where the offer contains conditions for acceptance other than the insurer's disclosure of its policy limits.

The best practices require that an insurer must initiate settlement negotiations after the expiration of the foregoing safe harbor periods by tendering its policy limits to the claimant in exchange for a general release of the insured, if the facts available to the insurer indicate the insured's liability is likely to exceed the policy limits.

The bill specifies that the damages in a bad faith action are the amount of the excess judgment and court costs. If the party bringing the bad faith action is the insured or an assignee of the insured, the damages also include reasonable attorney fees incurred by the party bringing the action. Punitive damages may not be awarded.

Setoff on Noneconomic Damages

The bill provides the defendant a $10,000 setoff on noneconomic damages for injuries suffered by a person who operated a motor vehicle that lacked the minimum required motor vehicle insurance under the financial responsibility law while such operator was not in compliance with financial responsibility requirements for more than 30 days immediately preceding the crash. The setoff on noneconomic damages does not apply if the person who is liable for the injury was driving under the influence; acted intentionally, recklessly, or with gross negligence; fled from the scene of the crash; or was acting in furtherance of, or immediate flight from, a felony.
The setoff on noneconomic damages does not apply to wrongful death claims.

Other Provisions

The bill also:

- Requires motor vehicle insurers to notify policyholders by September 1, 2021, of the new financial responsibility requirements and to allow policyholders to change their existing coverage to meet the new financial responsibility requirements.
- Specifies that any policy issued before January 1, 2022, in compliance with the Florida Motor Vehicle No-Fault Law, is deemed to comply with the financial responsibility requirements established by the bill until the end of the policy term.
- Increases required coverage amounts for garage liability and commercial motor vehicle insurance.
- Provides that if a motor vehicle insurer fails to timely provide information related to liability insurance coverage as required by s. 627.4137, F.S., the claimant may file an action to enforce the section, and is entitled to an award of reasonable attorney fees and costs to be paid by the insurer.
- Allows policyholders to obtain motor vehicle insurance that excludes specified coverages for claims or suits resulting from the operation of a motor vehicle by an identified individual who is specifically excluded by name.

If approved by the Governor, these provisions take effect January 1, 2022, except where otherwise provided.
Vote: Senate 37-3; House 100-16