

**STORAGE NAME:** h3889.fs

**DATE:** March 4, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
FINANCIAL SERVICES  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 3889 (PCB FS 98-01)

**RELATING TO:** Motor vehicle insurance

**SPONSOR(S):** Committee on Financial Services, Rep. Safley, and others

**COMPANION BILL(S):**

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

(1) FINANCIAL SERVICES YEAS 10 NAYS 0

(2)

(3)

(4)

(5)

---

I. SUMMARY:

In general, every owner or registrant of a four-wheeled motor vehicle is required to maintain personal injury protection (PIP) insurance, also known as no-fault insurance. Subject to copayments and other restrictions, PIP covers injuries sustained in motor vehicle accidents without regard to fault.

This bill would revise the PIP law to:

Provide that when a treatment provider bills the insurer, the bill may not include, and the insurer is not required to pay, charges for services provided more than 30 days before the date of the bill, except for past due amounts and except for hospital services provided within the first 30 days after the accident.

Provide that an insurer's independent medical examination could be conducted within the municipality where the injured person is being treated, within the municipality where the injured person resides, or within 10 miles of the injured person's home, provided the location is within the insured's county of residence.

Provide presumptions as to who is the "prevailing party" entitled to attorney's fees and costs when a dispute between an insurer and a medical provider is arbitrated.

Provide alternative methods for meeting the insurer's obligation to pay interest on overdue PIP payments when the amount of interest is less than \$5.

The bill also allows an insurance agent to charge an applicant a fee to cover the agent's costs of obtaining motor vehicle records, to the extent that those costs are not otherwise compensated.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Personal Injury Protection (PIP) insurance: background.

In general, every owner or registrant of a four-wheeled motor vehicle is required to maintain personal injury protection (PIP) insurance, also known as no-fault insurance. PIP covers the vehicle owner, relatives residing in the same household, passengers who do not have their own PIP coverage, and persons driving the vehicle with the owner's permission. With respect to injuries sustained in a motor vehicle accident, regardless of who is at fault, a vehicle owner's PIP coverage will generally pay 80 percent of medical costs and 60 percent of lost wages and similar costs, up to a limit of \$10,000.

Premiums charged for PIP coverage vary by company, location, and driving record. According to premium comparisons provided by the Department of Insurance, a vehicle owner with a clean record and no youthful drivers in the household could expect to pay an annual PIP premium of \$115 to \$363 in Miami, \$81 to \$275 in Orlando, and \$54 to \$166 in Tallahassee. If the owner had one at-fault accident and two moving violations within the preceding 18 months, the owner could expect to pay PIP premiums of \$195 to \$430 in Miami, \$142 to \$348 in Orlando, and \$99 to \$180 in Tallahassee. Other motor vehicle insurance coverages, such as bodily injury liability and collision, are generally much more expensive than PIP coverage.

PIP: payment of claims; interest on overdue payments; independent medical examinations.

An insurer must pay PIP benefits within 30 days after receiving notice of the claim and the amount of the loss; overdue payments bear interest at the rate of 10 percent a year simple interest. In practice, the interest payment is often in the form of an additional check, rather than an addition to the check representing the benefits payment.

When a dispute arises between an insurer and a provider of medical services as to the appropriate charge, the dispute is subject to binding arbitration, with the prevailing party (as determined by the arbitrator, or, if challenged, by a court) being entitled to attorney's fees and costs. The statutory provision requiring an arbitration clause in all PIP policies does not specify what constitutes a "prevailing party;" when the result of arbitration is an award higher than the amount offered by the insurer but lower than the amount claimed by the provider, either party could be viewed as the "prevailing" party. Staff research located no reported cases construing the term "prevailing party" in the context of PIP arbitration.

A PIP insurer may refuse to pay for treatment when the treatment is not reasonable, not related to the covered motor vehicle accident, or not necessary. Such a determination is generally based on a medical examination conducted by a physician selected by the insurer, known as an independent medical examination (IME). In order for an insurer to exercise its right to require an IME, the insurer must be aware of the fact that treatment is being provided. The insurer has the authority to require that it be given written notice "as soon as practicable" after an accident, but there is no statutory authorization for a PIP policy to require notice of treatment and PIP policies generally do not include such a requirement. The lack of a notice requirement means that an insured could receive a

lengthy series of treatments and be fully recovered before the insurer becomes aware of the treatment; in such a situation, the insurer would lose its ability to determine whether the treatment was reasonable, related, or necessary, and would be required to pay the claim.

The IME must be conducted within the municipality in which the injured party resides or within the municipality in which the injured party is receiving treatment. When there is no qualified physician within the municipality of the injured party's residence, the IME must be conducted "in an area of the closest proximity" to the residence. With respect to an injured party who resides in a small municipality that has few practicing physicians, the requirement of an IME within the municipality may limit the independence of an IME by restricting the choice of physicians to conduct the IME; if there are no qualified physicians in the municipality, the ambiguous term "area of closest proximity" could be read either to give insurers broad discretion or to require insurers to select the one physician who is geographically closest to the injured party's home.

Agent fees. In general, the unfair insurance trade practices law, s. 626.9541, F.S., prohibits insurance agents from collecting charges for insurance in excess of the approved premium. Subsection 627.7295(5), F.S., provides an exception to the general prohibition: with respect to a policy providing only PIP and property damage liability coverage (the minimum automobile coverage allowed by law), the agent may charge a per-policy fee of up to \$10 to cover administrative costs associated with selling the policy if the fee is included in the insurer's rate filing.

Motor vehicle records are used by some agents in determining the appropriate insurer for a particular applicant for insurance and in calculating the appropriate premium. The cost of obtaining a motor vehicle report from the Department of Highway Safety and Motor Vehicles is between \$3.10 and \$3.60, depending on the method used to access the data; commercial services also provide motor vehicle reports to agents. An insurance agent who obtains a motor vehicle report will absorb the cost of the motor vehicle report in certain circumstances, such as when the insurer does not compensate the agent for the report or when the transaction does not result in the sale of a policy.

**B. EFFECT OF PROPOSED CHANGES:**

The bill makes the following changes to laws governing personal injury protection (PIP) and agent fees:

Billing requirements: Except in the case of hospital services provided within the first 30 days after the motor vehicle accident, when the insured assigns or otherwise directs payment of PIP benefits to a treatment provider, the statement of charges presented to the insurer could not cover--and the insurer would not be required to pay--charges for treatment or services provided more than 30 days before the postmark date of the statement. The injured party would not be liable for any charges that were unpaid as a result of the failure to comply with the 30-day billing requirement. A specified notice of the 30-day billing requirement would be required on the notice of insured's rights which the insurer is required to provide after notice of an accident and on any assignment-of-benefits form or equivalent form. The result of the 30-day billing requirement is that insurers would be aware of the commencement of treatment and would be in a better

position to assure that treatment is reasonable, related to the motor vehicle accident, or necessary.

PIP arbitration: The bill would create presumptions as to which party is the "prevailing party" and therefore entitled to an award of attorney's fees and costs. When the award to the claimant (provider) consists of the amount offered by the insurer at arbitration plus more than 50% of the difference between the offer and the amount claimed at arbitration, the claimant would be rebuttably presumed to be the prevailing party; when the award consists of the amount offered by the insurer at arbitration plus less than 50% of the difference between the offer and the amount claimed at arbitration, the insurer would be rebuttably presumed to be the prevailing party; and when the award consists of the amount offered by the insurer at arbitration plus 50% of the difference between the offer and the amount claimed at arbitration, there would be no presumption as to who is the prevailing party. To the extent that a claimant may currently be considered the "prevailing" party in any case in which the arbitration award exceeds the amount offered by the insurer, this change could be expected to reduce the number of situations in which insurers are required to pay the attorney's fees and costs of medical services providers.

Location of independent medical examination: An IME could be conducted in the municipality in which the injured party is receiving treatment or in a location reasonably accessible to the injured party, defined as a location within the municipality in which the injured party resides or a location within 10 miles by road of the injured party's residence, as long as the location is within the county in which the injured party resides. When there is no qualified physician within a "location reasonably accessible," the IME could, as under current law, be conducted in "an area of the closest proximity to the insured's residence." These changes would broaden an insurance company's choice of physicians to conduct the IME in situations where the number of practicing physicians in a municipality is limited.

Interest on overdue claims: Rather than being required to make an immediate payment of interest on an overdue PIP claims payment, an insurer would have several options for meeting its obligation to pay interest when the amount of interest is \$5 or less. An insurer could:

Pay the interest in the same manner as it pays interest amounts greater than \$5;

Provide the interest to the policyholder as a credit on renewal of the policy, and, for policies that are canceled or nonrenewed, pay the interest upon cancellation or nonrenewal;

Aggregate all interest amounts of \$5 or less and annually remit the total to the Insurance Commissioner's Regulatory Trust Fund; or

Provide the interest to the policyholder as a credit on renewal of the policy, and, for policies that are canceled or nonrenewed, aggregate all interest amounts under \$5 and annually remit them to the Insurance Commissioner's Regulatory Trust Fund.

Agent fees: When an agent's cost of obtaining motor vehicle reports on applicants for motor vehicle insurance is not otherwise compensated, the agent could charge the applicant a nonrefundable fee, in addition to any other authorized fees. The amount of

the fee could not exceed the agent's actual costs that are not otherwise compensated; that is, if the agent's out-of-pocket cost of obtaining the motor vehicle reports was not included in the insurer's rate filing or otherwise included in the commission paid to the agent, the agent could recoup the actual cost from the applicant.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The bill establishes requirements for a medical services provider's bill for treatment covered by personal injury protection insurance, with exceptions for hospital services within 30 days after an accident and for situations where the insurer pays the injured party directly.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

Yes. The bill authorizes insurance agents to charge a fee to cover their uncompensated costs of obtaining motor vehicle reports on applicants for insurance.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill broadens the authority of insurance companies to select physicians to conduct independent medical examinations in connection with personal injury protection claims.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

Sections 627.7295, 627.736, F.S.

**E. SECTION-BY-SECTION RESEARCH:**

Section 1 amends s. 627.7295, F.S., to authorize agents to charge additional fees as described in "Effect of Proposed Changes," above.

Section 2 amends s. 627.736, F.S., to make the changes to the personal injury protection insurance law described in "Effect of Proposed Changes," above.

Section 3 provides that the bill will take effect October 1, 1998.

**III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

See "Fiscal Comments," below.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:**



1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

To the extent that insurers choose to pay interest penalties of \$5 or less on overdue PIP claims to the state rather than to insureds, insureds will not receive those interest payments.

The bill's presumptions as to who is the prevailing party (and therefore entitled to award of attorney's fees and costs) in arbitration of disputes between PIP insurers and medical services providers could reduce the number of instances in which fees and costs are awarded to the provider.

To the extent that the revision of geographic requirements for an independent medical examination (IME) increases the likelihood that an IME would be conducted by a physician preferred by the insurer, there may be an increase in denied claims; however, to the extent that this change reduces the likelihood that an IME would be conducted by a physician not preferred by the insurer, there may be a decrease in PIP claims payments for treatments that are unreasonable, unrelated to the motor vehicle accident, or unnecessary.

Insurance agents could charge consumers fees to cover the cost of obtaining motor vehicle reports.

2. Direct Private Sector Benefits:

The bill would increase a PIP insurer's ability to prevent payment for treatment that was unreasonable, unrelated to a covered accident, or unnecessary, and could thereby lower the insurer's cost of providing PIP coverage. The 30-day billing requirement and the revision of geographic requirements for an independent medical examination (IME) of a claimant could make the IME a more effective cost-control tool. These cost savings could benefit consumers by reducing the costs upon which insurers base PIP premiums and counteracting upward pressures on PIP premiums.

The bill would reduce a PIP insurer's costs by allowing the insurer to pay certain interest penalties to the state in a lump sum rather than making individual payments of interest amounts of \$5 or less. One major insurer has estimated that its cost of issuing a check is about \$25.

**STORAGE NAME:** h3889.fs

**DATE:** March 4, 1998

**PAGE 10**

The bill would allow agents to recover their otherwise uncompensated costs of obtaining motor vehicle reports on applicants for insurance.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The bill provides several options under which an insurer may meet its obligation to pay interest on overdue personal injury protection (PIP) claims payments when the amount of interest is \$5 or less. Two of these options involve remitting the aggregate amount of such interest payments to the Insurance Commissioner's Regulatory Trust Fund. It is not possible to estimate the number of insurers that would choose to pay the interest to the state rather than to insureds. There is no industry-wide information available as to the total dollar value of all \$5-or-lower interest penalties on overdue PIP payments.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

**STORAGE NAME:** h3889.fs

**DATE:** March 4, 1998

**PAGE 11**

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

---

Leonard Schulte

---

Stephen Hogge