

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7263 CS PCB IN 06-03 Motor Vehicle Insurance

**SPONSOR(S):** Insurance Committee

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2114

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Insurance Committee	14 Y, 4 N	Tinney	Cooper
1) Commerce Council	11 Y, 2 N, w/CS	Tinney	Randle
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

All sections of law comprising the No-Fault/PIP laws are scheduled to repeal October 1, 2007 unless reenacted by the Legislature during its 2006 regular session. The bill makes the following major changes to the current No-Fault/PIP laws:

- Increases PIP benefits by \$10,000 specifically for catastrophic injuries sustained in a car crash if the injuries require treatment in an ambulance, emergency room, trauma center, or as a hospital patient.
- Eliminates the application of a contingency risk multiplier to awards of attorney fees stemming from No-Fault/PIP claims.
- Amends provisions relating to a demand letter sent by an insured (or assignee of an insured) to an insurer by:
  - 1) subjecting an insurer to triple damages for engaging in the unfair trade practice of failing to pay valid claims until the insurer receives a pre-suit demand letter;
  - 2) authorizing the court to apply a multiplier to its award of attorney fees under the lodestar method when an unfair trade practice of denying claims has been established; and
  - 3) requiring the Office of Insurance Regulation (OIR) to investigate and initiate actions against an insurer in these limited situations.
- Clarifies that a request for additional information by an insurer to a health care provider relating to services and treatment provided to a PIP claimant is not "civil discovery" as that term is used in a court proceeding.
- Postpones the pending repeal of the No-Fault Law, from October 1, 2007 until October 1, 2012.

The bill creates law and makes other changes to existing law to:

- Require motorcyclists, aged 16 to 20, to purchase medical payments coverage and property damage liability coverage in the amount of \$10,000 per coverage; and
- Amends various other laws relating to matters and criminal activities involving insurance fraud.

There is a fiscal impact to the private sector associated with implementing the bill. The bill currently does not create a fiscal impact to the public sector. See the Fiscal Analysis & Economic Impact section of the analysis for more detailed information.

The bill takes effect October 1, 2006.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h7263b.CC.doc

**DATE:** 4/21/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Ensure Lower Taxes**—An additional fine of \$180 is added by the bill to the cost for a driver to reinstate his or her driver license following a conviction of specified crimes relating to motor vehicle insurance fraud. A motorcycle owner/registrant who fails to purchase the insurance required by the bill is required to pay \$150 to reinstate his or her driver license and motorcycle registration for the first time. The reinstatement fee increases to \$250 for a second suspension, and to \$500 for a third or subsequent license or registration suspension.

**Provide Limited Government**—The bill maintains the basic premise of Florida's Motor Vehicle No-Fault Insurance Law by reenacting and amending several provisions relating to policyholder benefits and legal actions resulting from auto claims.

**Safeguard Individual Liberty and Promote Personal Responsibility**—Florida's laws still will require all registered drivers to purchase a basic level of personal injury protection (PIP) and property damage (PD) auto insurance to protect both the vehicle driver and other persons in the event of an auto accident. Under the bill, motorcyclists, aged 16 to 20 also will be required to purchase similar vehicle insurance coverage to pay for their own injuries and for damages caused to the property of others.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background<sup>1</sup>

In 1971, Florida became the second state in the country to adopt a no-fault automobile insurance plan.<sup>2</sup> The no-fault reform was offered as a viable replacement for the tort system as a means to quickly and efficiently compensate injured parties in auto accidents regardless of fault. Several sections in the Florida Insurance Code comprise Florida's Motor Vehicle No-Fault Insurance Law.<sup>3</sup> All those sections of law are scheduled to repeal October 1, 2007 unless reenacted by the Legislature during its 2006 regular session, provided the reenactment takes effect for policies issued on or after October 1, 2007.<sup>4</sup>

##### **Florida's Motor Vehicle No-Fault Insurance Law (Current Provisions, Mandatory and Optional Coverages, Tort Threshold, Financial Responsibility)**

Under current law, motorists are required to purchase personal injury protection (PIP) and property damage (PD) liability coverages. The no-fault coverage, referred to as PIP, provides \$10,000 of coverage for the following: payment of 80 percent of reasonable medical expenses, 60 percent for disability and lost wages, plus a \$5,000 death benefit. These benefits cover bodily injury sustained in a motor vehicle accident, without regard to fault.<sup>5</sup> Personal injury protection covers the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons struck by the insured motor vehicle.<sup>6</sup> This coverage also

<sup>1</sup> A detailed history of the No-Fault Law, its current provisions, and other similar information is available in *Review of Florida's No-Fault Automobile Insurance Law*; House Insurance Committee; February 2006; available at: <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2246&Session=2006&DocumentType=Reports&FileName=Review%20of%20FL%20auto%20ins%20law.pdf>; viewed March 24, 2006.

<sup>2</sup> Chapter 71-252, Laws of Florida.

<sup>3</sup> The affected sections are: ss. 627.730, 627.731, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S. Insurers are authorized to provide, in all policies issued or renewed after October 1, 2006, that such policies may terminate on or after October 1, 2007.

<sup>4</sup> Chapter 2003-411, LOF, s. 19.

<sup>5</sup> Section 627.736(1), F.S., 2005.

<sup>6</sup> *Id.*

provides the policyholder with immunity from liability for economic damages (medical expenses) up to the \$10,000 policy limits and for non-economic damages (pain and suffering) for most injuries.<sup>7</sup>

Specifically, the immunity provision protects the insured from tort actions by others (and conversely, the insured may not bring suit to recover damages) for pain, suffering, mental anguish, and inconvenience arising out of the vehicle accident, except in the following cases:

1. significant and permanent loss of an important bodily function;
2. permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement;
3. significant and permanent scarring or disfigurement; or
4. death.

This is known as the “verbal threshold” which means that suits for pain and suffering may commence only if injuries meet these levels of seriousness.<sup>8</sup>

Current law also requires vehicle owners to obtain \$10,000 in property damage (PD) liability coverage which pays for the physical damage expenses caused by the insured to third parties in the accident. Additionally, under Florida’s Financial Responsibility law, motorists must provide proof of ability to pay monetary damages for bodily injury liability (BI) and PD liability after motor vehicle accidents or serious traffic violations. The minimum amounts of liability coverage are \$10,000 in the event of injury to one person, \$20,000 for injury to two or more persons, and \$10,000 property damage, or \$30,000 combined single limits.<sup>9</sup>

Many drivers purchase “optional” coverages in addition to mandatory insurance including bodily injury liability, uninsured motorist, collision, comprehensive, medical payments, towing, rental reimbursement and accidental death and dismemberment. Insurers may not require motorists to purchase any of these optional coverages.<sup>10</sup>

The Legislature has amended the No-Fault Law at least 50 times since the law was enacted in 1971, however, the law has not been reorganized during the 35 year period since its enactment.<sup>11</sup> Since the mid-1990s, lawmakers, insurers, and others have become aware that fraud and abuse are seen frequently in PIP claims. As recently as 2001 and 2003, the Legislature acted to curtail fraud in auto insurance claims.<sup>12</sup> However, according to insurers and investigators of the Division of Insurance Fraud of the Department of Financial Services (DFS), these reforms have not gone far enough in resolving the problems within the no-fault system which include fraud, abuse, inappropriate medical treatment, inflated claims, inadequate compensation to victims, increased premiums, and the proliferation of law suits.<sup>13</sup>

As a result of these concerns, in 2003 the Legislature repealed the Florida Motor Vehicle No-Fault Law, effective October 1, 2007, unless reenacted by the Legislature during the 2006 Regular Session and such reenactment takes effect for policies issued or renewed on or after October 1, 2006.<sup>14</sup> In preparation for the pending repeal of the No-Fault Law, both the Senate and the House of Representatives directed their respective standing committees having jurisdiction over insurance matters to review the laws before their scheduled repeal.

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<sup>7</sup> Section 627.736(3), F.S., 2005.

<sup>8</sup> Section 627.737, F.S., 2005.

<sup>9</sup> Section 324.021(7), F.S., 2005.

<sup>10</sup> For a discussion of the optional coverages available to drivers in Florida, see *Review of Florida’s No-Fault Automobile Insurance Law*; House Insurance Committee; February 2006; pp. 17-19; available at:

<http://www.myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?PublicationType=Committees&CommitteeId=2246&Session=2006&DocumentType=Reports&FileName=Review%20of%20FL%20auto%20ins%20law.pdf>; viewed March 24, 2006.

<sup>11</sup> *Id* at p. 8.

<sup>12</sup> See chapter 2001-271, LOF and chapter 2003-411, LOF.

<sup>13</sup> See *supra*, Note 10; pp. 39-52.

<sup>14</sup> Chapter 2003-411, LOF, s. 19.

In the House, the Insurance Committee completed the review, including dedicating all or most of three committee meetings to hearing from parties interested in the future of the No-Fault Law. A report of the committee's findings was published in February 2006.<sup>15</sup> Similarly, the Senate Banking and Insurance Committee undertook a review of the laws, produced a report on the issue, and spent several committee meetings also hearing from stakeholders interested in the future of the No-Fault laws.<sup>16</sup>

Both the House and Senate substantive committees with oversight of insurance issues found in their reviews of the No-Fault laws that fraud and abuse continue to appear in auto claims for PIP services and treatment. As a result, both committees recommended legislative consideration of committee bills to reenact the No-Fault laws while further attempting to curtail fraud in auto claims.

## **Current Law and Changes Proposed by the Bill**

### **Required Security**

Section 627.733, F.S., specifies that the owner or registrant of a motor vehicle must purchase the required PIP and PD coverages required by s. 324.021(7), F.S. as the security required for all licensed drivers and registered vehicles. That law, a part of the state's Financial Responsibility law, requires motorists to provide proof of ability to pay monetary damages for bodily injury liability (BI) and PD liability following involvement in or conviction of charges resulting from motor vehicle accidents or serious traffic violations. The minimum amounts of liability coverage are \$10,000 in the event of injury to one person, \$20,000 for injury to two or more persons, and \$10,000 property damage, or \$30,000 combined single limits. The No-Fault law requires a driver to purchase PIP coverage of \$10,000 per person.

### **Motorcycle Insurance Laws<sup>17</sup>**

In its review of Florida's No-Fault/PIP laws for motor vehicles, the House Insurance Committee also considered whether it might be appropriate to require motorcyclists to carry mandatory insurance for first-party medical (i.e., medical payments or "Med Pay" coverage) and PD coverage. As a result, staff researched other states and their respective insurance requirements for motorcycles in order to compare requirements throughout the country.

Most states have required automobile drivers to demonstrate financial responsibility for damages and injuries caused with their motor vehicles since the 1940s and 1950s. Many states currently also require some form of compulsory liability coverage for motorcycle drivers, as well, although the type of coverage or insurance for motorcycles varies widely among the states.

Florida, New Hampshire, Tennessee, and Wisconsin require drivers to meet a preset financial requirement instead of requiring insurance. Tennessee and Wisconsin, for example, require drivers to be financially responsible for \$25,000 in personal injury damage for one person, or \$50,000 for injuries sustained by a driver and any other passengers. It also requires the driver to show that he or she can pay \$10,000 for the other person's property damage. Most other states require insurance coverage in a similar fashion.

In addition to the compulsory liability requirements, no-fault states (except Florida), require motorcyclists to carry personal injury protection (PIP) insurance. These states include Hawaii, Kansas,

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<sup>15</sup> See *Review of Florida's No-Fault Automobile Insurance Law*; House Insurance Committee; February 2006; available at: <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2246&Session=2006&DocumentType=Reports&FileName=Review%20of%20FL%20auto%20ins%20law.pdf>; viewed March 24, 2006.

<sup>16</sup> The Senate Committee on Banking and Insurance issued a report of its review of the No-Fault Laws entitled *Florida's Motor Vehicle No-Fault Law*; Report #2006-102; November 2005; available at [http://www.fsenate.gov/data/Publications/2006/Senate/reports/interim\\_reports/pdf/2006-102bilong.pdf](http://www.fsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-102bilong.pdf); viewed March 24, 2006.

<sup>17</sup> See *supra*, Note 15; pp. 28-32.

Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania and Utah.

### **Florida's Motorcycle Insurance Law**

Current law in Florida does not require registered motorcycle drivers to carry PIP and property damage coverage. The Department of Highway Safety and Motor Vehicles (DHSMV) reports that Florida is one of only four states including New Hampshire, Tennessee, and Wisconsin not to require minimum property damage and bodily injury insurance coverage for licensed motorcyclists.

The law (s. 316.211, F.S.), governs the use of motorcycle equipment in Florida. Current law generally does not require registered motorcycles and drivers licensed to drive motorcycles to carry PIP and property damage coverage. The same law outlines the conditions under which a motorcyclist in Florida must carry insurance. That law authorizes motorcyclists over the age of 21 to ride a motorcycle without the required headgear (helmet) if the licensed driver has \$10,000 in medical benefits for injuries resulting from a motorcycle crash.

It is an important distinction that the Florida law requiring a motorcyclist to carry insurance specifies that the motorcyclist be “. . . covered by an insurance policy providing for at least \$10,000 in medical benefits for injuries incurred as a result of a crash . . . .” This imperative for “\$10,000 in medical benefits” does not require a motorcyclist to carry PIP or property damage coverage, however. DHSMV indicates that a motorcyclist who is covered by a general health insurance policy or health maintenance organization meets the legal requirement for having \$10,000 in medical benefits.

Staff of DHSMV reports that an estimated 95 percent of licensed motorcyclists in Florida meet the requirement of having at least \$10,000 in medical coverage.<sup>18</sup> The department further notes, however, that most serious injuries resulting from a motorcycle crash in which treatment is provided to the victim in an emergency room, cost more than \$10,000.<sup>19</sup>

### **Changes Proposed by the Bill Relating to Motorcycles**

The bill requires motorcyclists, aged 16 to 20, to purchase medical payments coverage and PD coverage in the amount of \$10,000 per coverage. This requirement is substantially similar to current insurance requirements for licensed drivers and registered motor vehicles, however, the required motorcycle coverage is not no-fault coverage. Provisions regarding motorcycle insurance coverage are created in newly-created sections of law: ss. 324.025 and 627.7441, F.S.

Additionally, the bill requires a motorcyclist who is a minor to present his or her proof of insurance annually when registering his or her motorcycle. A motorcyclist also is required to show his or her proof of insurance to a law enforcement officer upon request. The bill also specifies penalties for a motorcyclist who does not purchase the required insurance; the penalties include suspension of a driver license and motorcycle registration. The bill specifies the fines a motorcyclist must pay to reinstate his or her driver license and motorcycle registration the first, second, and subsequent times the license and registration are suspended for failure to carry the insurance required by the bill.

The Florida Automobile Joint Underwriting Association (FL Auto JUA) is required to provide the medical payments and PD coverage specified by the bill if a motorcyclist is unable to purchase the coverage from a private insurer. The bill requires the insurance to cover the motorcycle, any attached sidecar, or trailer for the motorcycle. Medical payments coverage extends to the driver and any passenger riding the motorcycle at the time of a crash.

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<sup>18</sup> See *supra*, Note 9; p. 30.

<sup>19</sup> *Id.*

Insurers are required to offer the insurance coverage required by the bill. Similarly, insurers are authorized to offer deductibles of \$250, \$500, and \$1,000 to accompany the required motorcycle coverage. An insurer must offer an appropriate discount for each level of deductible. The bill prohibits an insurer from requiring additional insurance to the mandatory coverage specified in the bill.

### **Section 627.736(1), (2), and (3): Required Personal Injury Benefits**

The existing benefits available to policyholders under PIP remain unchanged, however, a new benefit, of \$10,000 for catastrophic medical care, is added. The bill provides an additional \$10,000 benefit for emergency services and care if the services and care are rendered within the first 48 hours after a car crash.

The term “emergency services and care” is defined by s. 395.002(10), F.S., to mean medical screening, examination, and evaluation by a physician or other authorized personnel to determine whether an emergency medical condition exists and, if it does, the care, treatment, or surgery by a physician to eliminate the emergency medical condition.

The additional benefit for emergency care and services is available to the named insured; his or her parents and stepparents; his or her spouse and children, whether natural, adopted, or stepchildren, all of whom must reside in the home of the insured. Ambulance transportation and care rendered in the ambulance also are covered by the additional benefit. Charges due for in-patient hospital admissions also are covered by the additional benefit for emergency care and services if the admission occurred following treatment in an emergency department or trauma center within 48 hours of the accident.

Under the bill, all charges relating to emergency services and care, including inpatient services, are covered by the additional emergency care benefit. As a result, an accident victim has \$20,000 in benefits available for injuries resulting from an auto accident, if treatment is initiated in an ambulance, emergency room, or trauma center within 48 hours of the auto accident. If a policyholder is involved in a minor accident and does not seek emergency care and treatment within 48 hours, the current benefit of \$10,000 for medical care and services remains available to pay for necessary care and services.

### **Discovery of Facts About an Injured Person and Disputes about Such Information**

Current law in s. 627.736(6), F.S., requires an employer to furnish an insurer with a statement of wages for a person injured in an auto accident if the injured person requests payment for lost wages of his or her insurer. The same law describes the process for health care providers to bill PIP insurers for treatment and the manner in which an insurer may request additional or supporting information of a provider relative to its bills or treatment.

### **Changes Proposed by the Bill**

The bill amends the provisions of s. 627.723(6), F.S., relating to an insurer requesting additional information of a health care provider relative to treatment provided to a PIP claimant. The bill clarifies that a PIP insurer’s request to a treating health care provider for information about the diagnostic tests or treatment procedures for auto crash injuries, or a request for a sworn statement from the treating provider about the treatment, is not “civil discovery” as that term is used in a court proceeding.

### **Demand Letter**

Under current law in s. 627.736(11), F.S., an insured or the assignee of an insured is required to notify an insurer at least 15 days before initiating a legal action to collect PIP benefits. The law authorizes an insurer to preclude the legal action by paying the outstanding bill, plus interest, and a penalty of 10 percent of the outstanding amount, not to exceed \$250, within 15 days. The same law states it is an unfair trade practice for an insurer to make a general business practice of postponing payment of valid bills until receipt of a demand letter.

## **Changes Proposed by the Bill**

The bill amends current law to require an insurer to pay three times the amount of benefits due or recovered as a result of establishing an insurer's general business practice of failing to pay valid claims until receipt of a demand letter. The law also is amended by the bill to authorize a judge to add a multiplier to the award of attorney fees determined by the lodestar method.

The bill requires OIR to investigate and initiate legal actions if the office determines an insurer regularly postpones paying valid claims and bills until the insurer is notified via a demand letter of pending legal action to settle the disputed bill or claim. As part of its investigatory powers under the bill, OIR may administer oaths and subpoena records and witnesses as part of an investigation of an insurer's engaging in the unfair practice of delaying the payment of valid claims and bills.

### **Application of a Contingency Risk Multiplier**

Section 627.736(15), F.S., pertains to attorney's fees under the No-Fault/PIP laws. The bill eliminates the application of a contingency risk multiplier to awards of attorney fees in such cases.

### **Miscellaneous Provisions Regarding No-Fault/PIP Coverage**

The bill postpones the pending repeal of the No-Fault Law, currently scheduled for October 1, 2007, until October 1, 2012. This change is made by amendment to section 19 of chapter 2003-411, LOF.

Section 627.7401, F.S., relates to the rights of policyholders/insureds and the notification of these rights. Current law requires the Financial Services Commission to adopt a standard form, to be used by motor vehicle insurers, to notify policyholders of their legal rights under the No-Fault Law. Provisions are added by the bill to require the Financial Services Commission to adopt a form to notify motor vehicle insurance policyholders of the prohibition against soliciting a person injured in an auto accident to file a PIP claim or to initiate a legal action in tort against an insurer. The commission also is required to include notice in its form of the rewards available to consumers for reporting specified information to the Division of Insurance Fraud.

### **Criminal and Other Matters Relating to No-Fault/PIP Claims**

In addition to reenacting and modifying the No-Fault laws, the bill also amends various other laws relating to matters and crimes involving motor vehicle insurance. Current law in s. 627.06501, F.S., authorizes motor vehicle insurers to include in their rate filings submitted to OIR an appropriate premium discount for drivers who complete a driver safety course as long as the driver does not complete the course in lieu of appearing in traffic court for a traffic infraction. Providers of driver safety courses must be approved by the Department of Highway Safety and Motor Vehicles (DHSMV).

The bill amends s. 627.06501, F.S., to authorize insurers to offer "safe driver" discounts ranging from 2 to 15 percent. The bill also specifies DHSMV must require driver safety course providers to include a written examination in courses for driver safety.

Under current law, s. 316.068, F.S., describes the form to be used by law enforcement agencies for reporting car crashes to DHSMV. Although the crash report form provides a description of the information that must be included, the law does not currently specify the information to be included on the form. Under the bill, the following information is specified and required to be included on the form:

- date, time, and location of the crash;
- description of the vehicles involved;
- names and addresses of all parties to the crash;
- names and addresses of all drivers and passengers involved in the crash;
- name, badge number, and employing agency of the officer investigating the crash; and

- names of the insurers for the parties involved in the crash.

The bill further states that if a person is not listed on the crash report as a passenger in a vehicle involved in the accident, such absence becomes a rebuttable presumption that the person was not in the crash. This requirement for passengers to be listed on the crash report by the investigating officer is designed to inhibit the ability of a vehicle owner to add the names of passengers subsequently. The amendment of a crash report after it is filed by adding the names of passengers is one method of committing fraud related to auto insurance claims that has been identified by the DFS Division of Insurance Fraud.

The bill amends s. 316.646, F.S., to specify the requirement for a motorcyclist to present his or her proof of insurance coverage at any time upon the request of a law enforcement officer. If the motorcyclist owner/registrant is unable to provide the required proof of insurance, the bill authorizes DHSMV to suspend the license and registration of the motorcycle owner/registrant. A motorcycle owner/registrant is required by the bill to pay \$150 to reinstate his or her driver license and motorcycle registration for the first time. The reinstatement fee increases to \$250 for a second suspension, and to \$500 for a third or subsequent license or registration suspension.

Section 322.21, F.S., establishes the fees DHSMV may charge for the issuance, renewal, extension, and reinstatement of driver licenses. The bill imposes an additional fee of \$180 for reinstating a driver license following suspension for conviction of making a false or fraudulent insurance claim. Similarly, a fee of \$180 is authorized for reinstating a driver license following a conviction for brokering patients as part of a fraudulent health or motor vehicle insurance claim. The bill also requires DHSMV to revoke the driver license of any person convicted of making a false or fraudulent insurance claim or convicted of brokering patients. The provisions requiring revocation of a driver license are contained in s. 322.26, F.S.

Current law in s. 320.02, F.S., requires a driver to present proof of insurance coverage annually when the vehicle owner renews the registration of his or her motor vehicle. The bill amends the law also to require a motorcycle registrant to present his or her proof of insurance coverage annually when registration for the motorcycle is renewed.

Section 817.234, F.S., relates to false and fraudulent insurance claims. The law currently prohibits in subsection (8)(c), an attorney, health care practitioner, or owner or medical director of a medical clinic from contacting an accident victim to encourage that person to file a motor vehicle insurance claim. Current law prohibits calling an accident victim at home. The law is amended by the bill to prohibit an attorney, health care practitioner, or owner/director of a medical clinic from calling an accident victim either at an office or any other telephone number in order to encourage the accident victim to file an insurance claim. The bill amends the same law to prohibit a person from participating in a scheme to create documentation of an auto crash that did not occur.

Section 817.2361, F.S., relates to false and fraudulent insurance cards. Current law requires a motor vehicle owner to present his or her insurance card annually at the time a vehicle registration is renewed. Under the bill, the reference to an "insurance card" is changed to refer to "proof of insurance" instead. This change clarifies that it is a crime to present false information relating to auto insurance coverage, whether the information is printed on a card or is a counterfeit insurance policy, or other false proof of insurance coverage.

#### C. SECTION DIRECTORY:

**Section 1** amends s. 316.646, F.S., relating to proof of auto and motorcycle insurance coverage.

**Section 2** amends s. 320.02, F.S., relating the annual registration of motor vehicles, including motorcycles.



**Section 3** creates s. 324.025, F.S., to require specified motorcyclists to purchase medical payments and property damage insurance coverage.

**Section 4** amends s. 627.06501, F.S., relating to insurance discounts for driver improvement courses.

**Section 5** amends s. 627.736, F.S., which outlines the benefits insurers are required to offer holders of PIP policies.

**Section 6** amends s. 627.7401, F.S., regarding the notice an insurer is required to mail to each no-fault/PIP claimant.

**Section 7** creates s. 627.7441, F.S., to require motorcyclists aged 16-20 to purchase mandatory motor vehicle insurance coverage.

**Section 8** amends s. 316.068, F.S., relating to vehicle crash report forms.

**Section 9** amends s. 322.21, F.S., relating to the Department of Highway Safety and Motor Vehicles (DHSMV) and its collections of fees for issuing and reinstating driver licenses.

**Section 10** amends s. 322.26, F.S., relating to the requirement for DHSMV to revoke driver licenses under specified conditions.

**Section 11** amends s. 817.234, F.S., relating to filing/making false or fraudulent insurance claims.

**Section 12** amends s. 817.2361, F.S., relating to false and fraudulent motor vehicle insurance cards, i.e., proof of insurance coverage.

**Section 13** amends section 19 of chapter 2003-411, Laws of Florida, to postpone the pending repeal date of the Florida Motor Vehicle No-Fault Law from October 1, 2007, to October 1, 2012.

**Section 14** provides an effective date of October 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill authorizes an additional charge of \$180 charge to reinstate a driver license following conviction for filing false or fraudulent motor vehicle insurance claims. The additional funds are required by the bill to be deposited into the Highway Safety Operating Trust Fund. The Department of Highway Safety and Motor Vehicles (DHSMV) reports that in 2005, approximately 50 drivers sought reinstatement of their driver licenses following a conviction for criminal activities related to insurance claims.

Given the recent staff increases in the Division of Insurance Fraud, along with the addition of state attorneys to prosecute cases involving insurance fraud in the Miami-Dade County judicial circuit, it is likely there will more successful prosecutions involving insurance fraud in the future. It is not possible to estimate the number of convictions, however, or the subsequent number of drivers who will pay the fine to reinstate their driver licenses.

DHSMV also is authorized by the bill to charge \$150 to reinstate the suspended driver license or motorcycle registration of a minor who fails to present the required proof of insurance coverage to a law enforcement officer. The bill authorizes a fine of \$250 for a second reinstatement, and \$500 to reinstate a license or registration after a third or subsequent suspension.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires insurers to notify PIP claimants regarding rewards available from DFS for reporting suspected motor vehicle insurance fraud and of the types of activities that may be fraudulent. The Financial Services Commission is required to adopt a standard form for auto insurers to use to fulfill this requirement. Insurers likely will incur some costs to reproduce the form following its adoption by the Financial Services Commission, however, the costs should be minimal.

Under the bill, PIP benefits are increased by the creation of an additional benefit of \$10,000 for emergency services and care within 48 hours of a car crash. Currently, auto insurers do not charge a premium for this new benefit. This means rate filings by insurers following passage of the bill likely will reflect increases coinciding with the new benefit. It is not possible to estimate the magnitude of the increase, however.

An additional benefit of \$10,000 is provided by the bill for exclusive use in hospital emergency rooms, in-patient departments, and in trauma centers. Similarly, physicians who treat patients in ERs should be paid at a higher rate for treating PIP claimants who are seriously injured in auto accidents. As a result of the bill, a hospital could be reimbursed a maximum of \$20,000 for treating an insured accident victim. This is a \$10,000 increase over the maximum available for hospitals and trauma centers under the current No-Fault Law.

The bill requires owners and registrants of motorcycles, between the ages of 16 and 20, to purchase insurance coverage for medical payments in the amount of \$10,000 and property damage in the amount of \$10,000. This is not a requirement for PIP coverage and the required coverage is not no-fault coverage.

In order to examine the possible cost for such motorcycle coverage, both GEICO and Progressive were asked to provide cost information for three different motorcycle owners, assuming each person lives in Lakeland/Polk County, Miami-Dade County, and in Orlando/Orange County. These two insurers were asked for information because each currently sells motorcycle coverage as a stand-alone policy. Many other insurers provide motorcycle coverage as a part of an auto policy. Only Progressive provided the cost data requested. The chart that follows shows the **annual premium** for each type of coverage for each rider in each locale.

Motorcycle Insurance Coverage Prices

	Lakeland		Miami-Dade		Orlando	
	Med. Pay.	BI/PD	Med. Pay.	BI/PD	Med. Pay.	BI/PD
#1	\$2,884	\$1,011	\$3,665	\$1,285	\$3,261	\$1,144
#2	\$2,271	\$731	\$2,892	\$932	\$2,271	\$731
#3*	\$2,183	\$1,309	\$3,535	\$2,425	\$2,480	\$1,488

NOTE: Progressive does not sell property damage (PD) liability coverage for motorcycles without bodily injury (BI) liability coverage. The prices for BI/PD liability coverage provide \$10,000 in coverage for

injuries caused by the insured to another person; up to \$20,000 in BI coverage if more than one person is injured, and \$10,000 in property damage coverage, i.e., 10/20/10 coverage. All of the price quotes in the chart assume each motorcycle is 2 years old and each insured has average credit.

Person #1 is a single male, age 19. He has received two traffic citations, one for reckless driving and one for speeding. His motorcycle is a Yamaha YZFR1 sport bike with an engine size of 1,000 cubic centimeters.

Person #2 is a single female, age 16. She has a clean driving record, is an honor student who has completed a driver education class, and she qualifies for all available premium discounts. Her motorcycle is a Honda CBR 600 RR sport bike with a 600 c.c. engine.

\*Person #3 is a single male, **age 21**. He has one speeding ticket and his motorcycle is a Harley Davidson Dyna Wide Glide with a 1,450 c.c. engine. **NOTE:** Person #3's information is for comparison purposes as only riders aged 16-20 are required by the bill to purchase insurance coverage for motorcycles.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires both DHSMV and the Financial Services Commission to adopt rules to implement the requirement in the bill for specified motorcyclists to purchase medical payments and property damage vehicle insurance coverage. The commission also is required to adopt a form to be used by insurers to notify PIP claimants of rewards available for reporting suspected fraudulent auto insurance claims and of the types of activities relating to auto claims that may be fraudulent in nature.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In section 4 of the bill, a motor vehicle insurer is authorized to offer a premium discount, ranging from 2 to 15 percent, for drivers who complete a safe driver course. There is a reference in current law in s. 627.06501, F.S., in the same subsection (1) amended by the bill, to a discount "not to exceed 10 percent." The reference to 10 percent should be changed to 15 percent to be consistent with the amendment made by the bill.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its March 30, 2006 meeting, the Insurance Committee adopted a strike-all amendment to the PIP PCB. The strike-all amendment deleted most provisions of the original draft of the PCB and added some new provisions. The new provisions include:

- Authorizing an insured or the assignee of an insured to collect three times the amount owed as a penalty if the insured proves the insurer engages in the unfair trade practice of failing to pay valid claims until the insurer receives a demand letter as notification of impending legal action.
- Authorizing the application of a multiplier to an award of attorney fees relating to a legal action proving an insurer engages in the unfair trade practice of failing to pay valid claims until the insurer receives a demand letter notifying the insurer of impending legal action.
- Postponing, from October 1, 2007 until October 1, 2012, the pending repeal of the No-Fault/PIP laws.

The strike-all amendment deleted the following provisions from the draft PCB:

- Increases in PIP benefits by 1) raising disability/lost wages from 60 percent to 70 percent; 2) eliminating deductibles and co-payments; and 3) increasing the death benefit from \$5,000 to \$7,000;
- Clarification that workers' compensation benefits are primary over PIP benefits;
- Clarifications and updates to billing and coding requirements for PIP benefits;
- Requirement for health care and service providers to maintain patient records for 5 years after the last patient contact;
- Requirement for service providers who render non-emergency services to send a statement of charges to the insurer within 35 days of initiating treatment.
- Precluding licensed chiropractors from determining permanent impairment to a claimant from an auto accident.
- Authorization for charges for emergency care and services to be sent to an insurer within 75 days after treatment.
- Providing new procedures for use in determining the validity and priority of one or more assignment of benefits.
- Requirement for an insured to request an insurer to reserve benefits for lost wages in writing.
- Determination of venue for a PIP lawsuit as the jurisdiction where the injured party resides or where the accident occurred, or in the judicial circuit where services were provided if an insured has assigned his or her benefits to a service provider.
- Increase in the notice requirements of a demand letter from 15 to 21 days.
- Requirement for the medical records of an injured person be available at the provider's principal place of business within 15 working days after receipt of an insurer request to review the records.
- Clarification as to which persons are subject to an examination under oath and requirement for the insurer to pay \$175 per hour for a specified licensed health care provider to attend such an examination.
- Requirement for notice to an insurer of the existence of a claim within 1 year of the accident.
- Specification for procedures relating to independent medical examinations (IMEs).

This analysis has been updated to reflect the changes made to the PCB by the strike-all amendment.

At its April 20, 2006 meeting, the Commerce Council adopted 7 amendments to the bill. The amendments made the following significant changes to the bill:

The first amendment removes section 1 of the bill which requires a 60-day notice to insurers before a policyholder or other person sues an insurer for bad faith.

The second amendment changes s. 627.06501, F.S., to authorize auto insurers to offer "safe driver" discounts ranging between 2 percent and 15 percent of the premium and to require the policyholder to pass a written test to demonstrate knowledge of the information taught in the safe driver class.

The third amendment requires OIR, rather than the Attorney General, to investigate auto insurers who engage in the regular practice of failing to pay claims until receiving a demand letter advising of the intent to sue to recover benefits owed.

The fourth amendment clarifies that the additional PIP benefit of \$10,000 for emergency services and care is also available for transportation and treatment provided by or in an ambulance.

The fifth amendment changes the requirements of the bill for motorcycle insurance coverage in the following manner:

1. Defines "medical payments coverage."
2. Specifies the required insurance covers the motorcycle driver and any passengers.
3. Requires the FL. Auto Joint Underwriting Association to provide coverage to motorcyclists who are unable to purchase the required insurance from an insurer.
4. Describes the required coverage in a new section of law (s. 324.025, F.S.) administered by the Dept. of Highway Safety and Motor Vehicles.
5. Requires a motorcyclist to carry proof of insurance whenever he or she rides the motorcycle.
6. Provides for motorcycle registration and driver license suspension for failure to carry the required insurance; specifies fines for reinstating a suspended registration and license.
7. Requires motorcyclist to present proof of insurance when motorcycle is initially registered and when registration is renewed annually.

The sixth amendment amends s. 817.234, F.S., to prohibit an attorney, health care practitioner, and owner/medical director of a health care clinic from making any type of telephone contact with a person involved in an auto accident in order to encourage the person to file a legal action related to the auto accident.

The seventh amendment amends s. 627.736(6), F.S., to clarify that a PIP insurer's request to a treating health care provider for information about the diagnostic tests or treatment procedures for auto crash injuries, or a request for a sworn statement from the treating provider about the treatment, is not "civil discovery" as that term is used in a court proceeding.

This bill analysis has been updated to reflect the changes made by the Commerce Council at its 4/24/06 meeting.