

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 1888

INTRODUCER: Banking and Insurance Committee

SUBJECT: Motor Vehicle Liability Insurance

DATE: April 18, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess		<b>bi SPB 7152 as introduced</b>
2.			AP	
3.				
4.				
5.				
6.				

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**I. Summary:**

SB 1888 revises the financial responsibility and security requirements that apply to every owner or operator of a motor vehicle registered in Florida. Under the bill, each registrant must comply with the requirement to maintain bodily injury liability (BI) coverage. The bill requires a driver to maintain the ability to respond in damages for the driver's liability from a motor vehicle accident in the following amounts:

- Property Damage – At least \$10,000 in any one crash.
- Bodily Injury - \$25,000 for bodily injury or death in any one crash and \$50,000 for bodily injury or death of two or more persons in any one crash (subject to the \$25,000 limit on an individual).

SB 1888 repeals the Florida Motor Vehicle No-Fault Law, effective January 1, 2014, at which point personal injury protection coverage will no longer be required. Motor vehicle insurance policies issued or renewed on or after January 1, 2014, may not include PIP. A policy issued prior to January 1, 2014, that provides PIP coverage but lacks the required BI coverage is deemed to meet the financial responsibility and security requirements until the policy is renewed or cancelled. Such policies will provide PIP benefits to the insured. Insurers must allow each insured to change his or her policy to add the required bodily injury coverage and eliminate PIP coverage on or after January 1, 2014.

Other provisions of the bill include:

- Provides that a policy with at least \$60,000 in combined property damage and bodily injury liability coverage satisfies the financial responsibility requirements;
- Requires a deposit of \$60,000 in cash, securities, or trust funds with the DHSMV in order to obtain a certificate of deposit from the department that satisfies proof of financial responsibility requirements.
- Authorizing electronic proof of insurance and specifying that presenting an electronic device to law enforcement does not constitute consent to otherwise search the device;
- Requiring insurers to report to the Department of Highway Safety and Motor Vehicles (DHSMV) the issuance of a new BI or PD motor vehicle policy within 10 days;
- Increases license and registration reinstatement fees;
- Eliminates the ability of an owner or operator of a motor vehicle (other than a for-hire transportation vehicle) to meet financial responsibility requirements by posting a surety bond with the DHSMV;
- Revises the option to prove financial responsibility by furnishing a certificate of self-insurance showing a deposit of cash or securities;
- Revises the requirements for qualifying as a self-insurer for purposes of satisfying financial responsibility;
- Require motorcycles to comply with financial responsibility requirements; and
- Specifies that all suspensions for failure to maintain required security as required by law prior to January 1, 2014, remain in full force and effect after that date.

The effective date of the bill is January 1, 2014, except as otherwise specified.

This bill substantially amends the following sections of the Florida Statutes: 316.646, 318.18, 320.02, 320.0609, 320.27, 320.771, 322.251, 324.011, 324.021, 324.022, 324.0221, 324.023, 324.031, 324.071, 324.161, 324.171, 400.9905, 400.991, 400.9935, 409.901, 409.910, 456.057, 456.072, 626.9541, 626.989, 626.9895, 627.06501, 627.0652, 627.0653, 627.4132, 627.6482, 627.7263, 627.727, 627.7275, 627.728, 627.7295, 627.732, 627.733, 627.734, 627.7401, 627.8405, 627.915, 628.909, 705.184, 713.78, and 817.234.

The bill repeals the following sections of the Florida Statutes: 627.730, 627.731, 627.7311, 627.736, 627.737, 627.739, 627.7403, 627.7405, 627.7407

The bill creates the following section of the Florida Statutes: 627.7355

## II. Present Situation:

### Florida Motor Vehicle No-Fault Law

Under the Florida Motor Vehicle No-Fault Law (No-Fault law)<sup>1</sup>, owners or registrants of motor vehicles are required to purchase personal injury protection (PIP) insurance which compensates persons injured in accidents regardless of fault.<sup>2</sup> Policyholders are indemnified by their own

<sup>1</sup> Sections 627.730-627.7405, F.S.

<sup>2</sup> Section 627.733, F.S.

insurer. The intent of no-fault insurance is to provide prompt medical treatment without regard to fault.<sup>3</sup> This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold.<sup>4</sup> In contrast, under a tort liability system, the negligent party is responsible for damages caused and an accident victim can sue the at-fault driver to recover economic and non-economic damages.

Florida drivers are required to purchase both personal injury protection (PIP) and property damage liability (PD) insurance.<sup>5</sup> The personal injury protection must provide a minimum benefit of \$10,000 for bodily injury to any one person who sustains an emergency medical condition, which is reduced to a \$2,500 limit for medical benefits if a treating medical provider determines an emergency medical condition did not exist.<sup>6</sup> Personal injury protection coverage provides reimbursement for 80 percent of reasonable medical expenses,<sup>7</sup> 60 percent of loss of income,<sup>8</sup> 100 percent of replacement services,<sup>9</sup> for bodily injury sustained in a motor vehicle accident, without regard to fault. The property damage liability coverage must provide a \$10,000 minimum benefit. A \$5,000 death benefit is also provided.<sup>10</sup>

### **PIP Medical Benefits**

The 2012 Legislature revised the provision of Personal Injury Protection medical benefits under the Florida Motor Vehicle No-Fault Law, effective January 1, 2013.<sup>11</sup> To receive PIP medical benefits, insureds must receive initial services and care within 14 days after the motor vehicle accident.<sup>12</sup> Initial services and care are only reimbursable if lawfully provided, supervised, ordered or prescribed by a licensed physician, licensed osteopathic physician, licensed chiropractic physician, licensed dentist, or must be rendered in a hospital, a facility that owns or is owned by a hospital, or a licensed emergency transportation and treatment provider.<sup>13</sup> Follow up services and care requires a referral from such providers and must be consistent with the underlying medical diagnosis rendered when the individual received initial services and care.<sup>14</sup>

Personal Injury Protection medical benefits now have two different coverage limits, based upon the severity of the medical condition of the individual. An insured may receive up to \$10,000 in medical benefits for services and care if a physician, osteopathic physician, dentist, physician's assistant or advanced registered nurse practitioner has determined that the injured person had an emergency medical condition.<sup>15</sup> An emergency medical condition is defined as a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of

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<sup>3</sup> See s. 627.731, F.S.

<sup>4</sup> Section 627.737, F.S.

<sup>5</sup> See sections 324.022, F.S. and 627.733, F.S.

<sup>6</sup> Section 627.736(1), F.S.

<sup>7</sup> Section 627.736(1)(a), F.S.

<sup>8</sup> Section 627.736(1)(b), F.S.

<sup>9</sup> Id.

<sup>10</sup> Section 627.736(1)(c), F.S.

<sup>11</sup> Chapter 2012-197, L.O.F. (CS/CS/HB 119)

<sup>12</sup> Section 627.736(1)(a), F.S.

<sup>13</sup> Section 627.736(1)(a)1., F.S.

<sup>14</sup> Section 627.736(1)(a)2., F.S.

<sup>15</sup> Section 627.736(a)(a)3., F.S.

immediate medical attention could reasonably be expected to result in serious jeopardy to patient health, serious impairment to bodily functions, or serious dysfunction of a body organ or part.<sup>16</sup> If a provider who rendered treatment or services determines that the insured did not have an emergency medical condition, the PIP medical benefit limit is \$2,500.<sup>17</sup> Massage and acupuncture are not reimbursable, regardless of the type of provider rendering such services.<sup>18</sup>

The \$5,000 PIP death benefit is provided in addition to medical and disability benefits, effective January 1, 2013. Previously, the death benefit was the lesser of the unused PIP benefits, up to a limit of \$5,000.

### **Medical Fee Limits for PIP Reimbursement**

Section 627.736(5), F.S., authorizes insurers to limit reimbursement for benefits payable from PIP coverage to 80 percent of the following schedule of maximum charges:

- For emergency transport and treatment (ambulance and emergency medical technicians), 200 percent of Medicare;
- For emergency services and care provided by a hospital, 75 percent of the hospital's usual and customary charges;
- For emergency services and care and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community;
- For hospital inpatient services, 200 percent of Medicare Part A;
- For hospital outpatient services, 200 percent of Medicare Part A;
- For services supplies and care provided by ambulatory surgical centers and clinical laboratories, 200 percent of Medicare Part B;
- For durable medical equipment, 200 percent of the Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B;
- For all other medical services, supplies, and care, 200 percent of the participating physicians fee schedule of Medicare Part B; and
- For medical care not reimbursable under Medicare, 80 percent of the workers' compensation fee schedule. If the medical care is not reimbursable under either Medicare or workers' compensation then the insurer is not required to provide reimbursement.

The insurer may not apply any utilization limits that apply under Medicare or workers' compensation.<sup>19</sup> Also, the insurer must reimburse a health care provider rendering services under the scope of his or her license, regardless of any restriction under Medicare that restricts payments to certain types of health care providers for specified procedures. Medical providers are not allowed to bill the insured for any excess amount when an insurer limits payment as authorized in the fee schedule, except for amounts that are not covered due to the PIP coinsurance amount (the 20 percent copayment) or for amounts that exceed maximum policy limits.<sup>20</sup>

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<sup>16</sup> Section 627.732(16), F.S.

<sup>17</sup> Section 627.736(1)(a)4., F.S.

<sup>18</sup> Section 627.736(a)(a)5., F.S.

<sup>19</sup> Section 627.736(5)(a)3., F.S.

<sup>20</sup> Section 627.736(5)(a)4., F.S.

CS/CS/HB 119 revised the PIP medical fee schedule in an effort to resolve alleged ambiguities that led to conflicts and litigation between claimants and insurers. The bill clarified the reimbursement levels for care provided by ambulatory surgical centers and clinical laboratories and for durable medical equipment. The bill also provided that Medicare fee schedule in effect on March 1 is applicable for the remainder of that year.<sup>21</sup> Insurers are authorized to use Medicare coding policies and payment methodologies of the Centers for Medicare and Medicare Services, including applicable modifiers, when applying the fee schedule if they do not constitute a utilization limit.<sup>22</sup> The bill also requires insurers to include notice of the fee schedule in their policies.<sup>23</sup>

### **Attorney Fees**

Section 627.428, F.S., requires an insurer to pay the insured's or beneficiary's reasonable attorney fees upon a judgment against the insurer and in favor of the insured or named beneficiary under an insurance policy, and applies to disputes under the No-Fault Law.<sup>24</sup> CS/CS/HB 119 amended provisions related to attorney fee awards in No-Fault disputes. The bill prohibits the application of attorney fee multipliers.<sup>25</sup> The bill also requires that the attorney fees awarded must comply with prevailing professional standards, not overstate or inflate the number of hours reasonably necessary for a case of comparable skill or complexity, and represent legal services that are reasonable to achieve the result obtained.<sup>26</sup> The offer of judgment statute, s. 768.79, F.S., is applied to No-Fault cases, providing statutory authority for insurers to recover fees if the plaintiff's recovery does not exceed the insurer's settlement offer by a statutorily specified percentage.<sup>27</sup>

### **Mandatory Rate Filings and Data Call**

CS/CS/HB 119 required the Office of Insurance Regulation to contract with a consulting firm to calculate the expected savings from the act.<sup>28</sup> The OIR retained Pinnacle Actuarial Resources, Inc., which released an August 20, 2012, report estimating an indicated statewide average savings in PIP premiums of 14 percent to 24.6 percent and an average overall motor vehicle insurance premium reduction ranging from 2.8 percent to 4.9 percent.<sup>29</sup> The report noted that if insurers' current PIP rates were inadequate they would likely offset the savings from CS/CS/HB 119 against their indicated PIP rates. By October 1, 2012, each insurer writing private passenger automobile personal injury protection insurance was required to submit a rate filing providing at least a 10 percent reduction of its PIP rate or explain in detail its reasons for failing to achieve those savings. According to information provided by the OIR, 10 of the 25 largest motor vehicle insurers achieved a 10 percent reduction in PIP premiums. The weighted average of the PIP premium reduction of these carriers was approximately 2 percent.

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<sup>21</sup> Section 627.736(5)(a)2., F.S.

<sup>22</sup> Section 627.736(5)(a)3., F.S.

<sup>23</sup> Section 627.736(5)(a)5., F.S.

<sup>24</sup> Section 627.736(8), F.S.

<sup>25</sup> See id.

<sup>26</sup> See id.

<sup>27</sup> See id.

<sup>28</sup> Section 15, Ch. 2012-197, L.O.F.

<sup>29</sup> Pinnacle Actuarial Resources, Inc., *Impact Analysis of HB 119*, (Aug. 20, 2012).

A second rate filing must be made by January 1, 2014, that provides at least a 25 percent reduction of the insurer's July 1, 2012, PIP rate or explain in detail its reasons for failing to achieve those savings. The Office of Insurance Regulation must order an insurer to stop writing new PIP policies if the insurer requests a rate in excess of the statutorily required rate reduction and fails to provide a detailed explanation for that failure. The Office of Insurance Regulation must perform a comprehensive PIP data call and publish the results by January 1, 2015.<sup>30</sup> The data call will analyze the impact of the act's reforms on the PIP insurance market.

### **Motor Vehicle Insurance Fraud**

Motor vehicle insurance fraud is a long-standing problem in Florida. In November 2005, the Senate Banking and Insurance Committee issued a report entitled Florida's Motor Vehicle No-Fault Law, which was a comprehensive review of Florida's No-Fault system. The report noted that fraud was at an "all-time" high at the time, noting that there were 3,942 PIP fraud referrals received by the Division of Insurance Fraud during the 3 fiscal years beginning in 2002 and ending in 2005. That three-year amount was nearly doubled by the 7,748 PIP fraud referrals received by the division during the 2011/2012 fiscal year. Given this fact, the following description from the 2005 report is an accurate description of the current situation regarding motor vehicle insurance fraud:

"Florida's no-fault laws are being exploited by sophisticated criminal organizations in schemes that involve health care clinic fraud, staging (faking) car crashes, manufacturing false crash reports, adding occupants to existing crash reports, filing PIP claims using contrived injuries, colluding with dishonest medical treatment providers to fraudulently bill insurance companies for medically unnecessary or non-existent treatments, and patient-brokering...

Fraudulent claims are a major cost-driver and result in higher motor vehicle insurance premium costs for Florida policyholders. CS/CS/HB 119 contained numerous provisions designed to curtail PIP fraud. A health care practitioner found guilty of insurance fraud under s. 817.234, F.S., loses his or her license for 5 years and may not receive PIP reimbursement for 10 years. Insurers are provided an additional 60 days (90 total) to investigate suspected fraudulent claims, however, an insurer that ultimately pays the claim must also pay an interest penalty.<sup>31</sup> All entities seeking reimbursement under the No-Fault Law must obtain health care clinic licensure except for hospitals, ambulatory surgical centers, entities owned or wholly owned by a hospital, clinical facilities affiliated with an accredited medical school and practices wholly owned by a physician, dentist, or chiropractic physician or by such physicians and specified family members.<sup>32</sup> The bill also defined failure to pay PIP claims within the time limits of s. 627.736(4)(b), F.S., as an unfair and deceptive practice.

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<sup>30</sup> Section 16, Ch. 2012-197, L.O.F.

<sup>31</sup> Section 627.736(4)(i), F.S.

<sup>32</sup> Section 627.736(5)(h), F.S.

## Financial Responsibility Law

Florida's financial responsibility law requires proof of ability to pay monetary damages for bodily injury and property damage liability arising out of a motor vehicle accident or serious traffic violation.<sup>33</sup> The owner and operator of a motor vehicle need not demonstrate financial responsibility, i.e., obtain BI and PD coverages, until *after the accident*.<sup>34</sup> At that time, a driver's financial responsibility is proved by the furnishing of an active motor vehicle liability policy. The minimum amounts of liability coverages required are \$10,000 in the event of bodily injury to, or death of, one person, \$20,000 in the event of injury to, or death of, two or more persons, and \$10,000 in the event of damage to property of others, or \$30,000 combined BI/PD policy.<sup>35</sup> The driver's license and registration driver who fails to comply with the security requirement to maintain PIP and PD insurance coverage is subject to suspension.<sup>36</sup> A driver's license and registration may be reinstated by obtaining a liability policy and by paying a fee to the Department of Highway Safety and Motor Vehicles.<sup>37</sup>

## Review of Auto Insurance Systems

Two auto insurance systems are utilized throughout the country: the tort system and the no-fault system, with certain variations. Thirty-eight states utilize the tort system in which the at-fault party is liable for damages (medical, economic, property damage and pain and suffering) to other parties in the accident.<sup>38</sup> Parties seeking redress for their injuries do so from the at-fault driver, and must prove negligence on the part of that individual. Nine of the 38 tort states, known as "add-on" states, require auto insurers to offer PIP coverage, but unlike no-fault states, do not restrict the right to pursue a liability claim or lawsuit.<sup>39</sup> Benefits are generally either offered in a PIP coverage form similar to that in no-fault states or as additional wage replacement benefits to medical payments coverage. Three tort add-on states require the purchase of PIP coverage; six do not, but require insurers to offer PIP coverage.

Twelve states (including Florida) have a no-fault system and mandate first party PIP coverage for medical benefits, wage loss, and death benefits, with a limitation on pain and suffering lawsuits.<sup>40</sup> All 12 jurisdictions take different approaches to no-fault legislation in that coverage amounts, deductibles, mandated coverages, tort thresholds for pain and suffering claims and the use of fee schedules or treatment protocols, vary widely among these entities. Each state has either a "verbal" or "monetary" threshold regarding the seriousness of a person's injuries that must be met prior to the filing of a tort suit for noneconomic damages against an at-fault driver. Florida and the four most populous no-fault states use a verbal threshold, which is a statutory

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<sup>33</sup> See Chapter 324, F.S.

<sup>34</sup> Section 324.011, F.S.

<sup>35</sup> Section 324.022, F.S.

<sup>36</sup> Section 324.0221(2), F.S.

<sup>37</sup> Section 324.0221(3), F.S.

<sup>38</sup> Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

<sup>39</sup> Arkansas, Delaware, Maryland, Oregon, South Dakota, Texas, Virginia, Washington, and Wisconsin.

<sup>40</sup> Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, and Utah are the other No-Fault states.

description of the severity of an injury. The seven remaining no-fault states have monetary thresholds ranging from \$1,000 to \$5,000. Three of the 12 no-fault states (Kentucky, New Jersey and Pennsylvania) are known as “choice” states and offer consumers a choice between purchasing PIP coverage or traditional tort liability coverage which does not include PIP benefits.

### **Auto Coverage Requirements**

Forty-eight states require car owners to buy a minimum amount of bodily injury liability (BI) and property damage liability (PD) insurance coverage before they can legally drive their vehicles.<sup>41</sup> Further, all states have financial responsibility laws which require persons involved in auto accidents (or serious traffic infractions) to furnish proof of BI and PD liability insurance. The minimum coverage amounts vary among the states. Florida has a requirement for bodily injury liability coverage for persons subject to the Financial Responsibility Law of \$10,000 per person, \$20,000 per accident, and \$10,000 in the event of damage to property of others, or a \$30,000 combined (BI/PD) single limit. A Florida driver is not required to maintain BI coverage until he or she is involved in a crash or convicted of certain traffic offenses

### **Tort-Based Motor Vehicle Insurance Jurisdictions**

In a tort-based liability system, auto injury claimants seek payment from the at-fault driver for both economic and non-economic damages from dollar one. A tort-based system represents a more traditional legal philosophy of holding persons responsible for injuries caused by their negligent operation of a vehicle. In theory, this encourages safer operation of automobiles and is generally viewed by the public as consistent with the concept of personal responsibility.

If Florida repeals PIP and mandates BI coverage, it will be important for drivers to appreciate coverage applications under the tort system. For the most common type of accident (with one party at-fault), the at-fault party’s BI coverage would pay for injuries to the not at-fault driver, unless the at-fault party was uninsured. If the at-fault party is uninsured (or underinsured), the not at-fault party would utilize his/her UM coverage, if purchased, to pay for injuries sustained in an accident. The at-fault party’s PD coverage would compensate for physical damages to the not at-fault driver’s vehicle. If the not-at-fault party has Med Pay coverage, it can be used to cover his or her own medical expenses, which could then be subrogated into the BI claim by the not at-fault driver’s insurer.

With respect to the at-fault party, that driver’s own health insurance, if available, would cover his or her own expenses. Med Pay coverage, if purchased, would pay for his/her medical expenses up to the Med Pay limits, at which point health insurance would apply. In the event the at-fault party did not have health insurance, then the medical costs would not be reimbursed and the individual would be responsible for these costs or such costs would be assumed by the health care provider.

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<sup>41</sup> New Hampshire does not require auto insurance if the driver complies with alternative financial responsibility requirements. Florida only requires BI coverage after a driver is involved in a crash.



For single car accidents, the driver of the vehicle is presumed to be the at-fault party and therefore will be essentially in the same situation as the at-fault party described above. Occupants in the vehicle can sue the driver of the vehicle for their injuries and are in a similar circumstance to the not at-fault party's situation, previously described. Family members are precluded from suing the driver because of the intra-family exclusion due to the fact that only non-family occupants can pursue a tort claim. Pedestrians who are injured in an accident are in a similar situation as the not at-fault party.

### **III. Effect of Proposed Changes:**

#### **Motor Vehicle Financial Responsibility Law**

**Section 1.** Amends s. 316.646, F.S., to authorize electronic proof of insurance and specify that presenting an electronic device to law enforcement does not constitute consent to otherwise search the device. The officer is not responsible for any damage to the device. DHSMV must adopt rules to administer the proof of insurance requirements.

**Section 2.** Amends s. 324.011, F.S., to revise the purpose of the motor vehicle financial responsibility law.

**Section 3.** Amends s. 324.021, F.S., to amend the definition of "proof of financial responsibility" to mean the ability to respond in damages for liability in the amount of \$25,000 for bodily injury or death to another and, subject to the \$25,000 limit for one person, in the amount of \$50,000 for bodily injury or death of two or more people in one crash.

**Section 4.** Amends s. 324.022, F.S., to revise the financial responsibility requirements that apply to every owner or operator of a motor vehicle registered in Florida. Under the bill, each registrant of a motor vehicle must maintain BI coverage and PD coverage. The bill deletes the exemption from financial responsibility requirements of self-propelled motor vehicles with less than four wheels such as motorcycles. Under current law, BI coverage is required once the operator of a motor vehicle is involved in a crash or convicted of certain traffic offenses (such as driving under the influence). The bill requires a driver to maintain the ability to respond in damages for the driver's liability from a motor vehicle accident in the following amounts:

- Property Damage – At least \$10,000 in any one crash.
- Bodily Injury - \$25,000 for bodily injury or death in any one crash and \$50,000 for bodily injury or death of two or more persons in any one crash (subject to the \$25,000 limit on an individual).

The financial responsibility requirements may be met by maintaining an insurance policy providing coverage in at least the minimum mandatory amounts for property damage coverage and bodily injury liability coverage. A policy that provides at least \$60,000 for combined property damage and bodily injury liability also satisfies the financial responsibility requirements.

Under current law, all owners and operators of private passenger motor vehicles are required to maintain:

- Property Damage – At least \$10,000 in any one crash.
- Personal Injury Protection – At least \$10,000 for a first-party insured and \$20,000 for two or more first-party insureds (subject to the \$10,000 limit on an individual).
- The operator of a motor vehicle who is involved in a crash must subsequently show proof of financial responsibility to pay for bodily injury damages in future crashes in at least \$10,000 for bodily injury or death in one crash and \$20,000 for bodily injury or death of two or more persons in one crash (subject to the \$10,000) limit on liability.

The financial responsibility requirements may be met by maintaining an insurance policy providing coverage in at least the minimum mandatory amounts. A policy providing at least \$30,000 in combined property damage and bodily injury liability coverage meets the requirement for property damage liability coverage.

**Section 5.** Amends s. 324.0221, F.S., to require insurers to report to the DHSMV the issuance of a new BI or PD motor vehicle policy within 10 days. Under current law, the insurer has 30 days to report a new PIP or PD policy to the department.

**Section 6.** Amends s. 324.023, F.S., regarding the financial responsibility requirements for owners or operators who commit a DUI, to conform to the elimination of posting a bond as a means of complying with the financial responsibility laws.

**Section 7.** Amends s. 324.031, F.S., to eliminate the ability of an owner or operator of a motor vehicle (other than a for-hire transportation vehicle) to meet financial responsibility requirements by posting a surety bond with the DHSMV. Representatives from the DHSMV recommend the deletion of this option because it is not currently used.

This section also revises the option to prove financial responsibility by furnishing a certificate of self-insurance showing a deposit of cash or securities, by requiring a deposit of \$60,000 for each vehicle owned, up to a maximum of \$240,000. Current law requires a deposit of \$30,000 for each vehicle owned, up to a maximum of \$120,000. Increasing the deposit requirements reflects the \$25,000/\$50,000 BI requirement imposed by the bill, which is higher than \$10,000/\$20,000 PIP requirement under current law.

**Section 8.** Amends s. 324.071, F.S., to revise the amount of license or registration reinstatement fees, from \$15 to the amounts specified in s. 324.0221, F.S., (\$150 for the first reinstatement, \$250 for the second, and \$500 for any subsequent reinstatement).

**Section 9.** Amends s. 324.161, F.S., to require a deposit of \$60,000 in cash, securities, or trust funds with the DHSMV in order to obtain a certificate of deposit from the department that satisfies proof of financial responsibility requirements. Current law requires a \$30,000 deposit. Increasing the deposit requirements reflects the \$25,000/\$50,000 BI requirement imposed by the bill, which is higher than \$10,000/\$20,000 PIP requirement under current law.

**Section 10.** Amends s. 324.171, F.S., to revise the requirements for qualifying as a self-insurer for purposes of satisfying financial responsibility. A private individual with private passenger vehicles must have a net unencumbered worth of at least \$60,000. Current law requires an unencumbered net worth of \$40,000. A person such as a firm, partnership, association, corporation who is not a natural person must possess a net unencumbered worth of at least \$60,000 for the first motor vehicle (\$40,000 in current law) and \$30,000 for each additional motor vehicle (\$20,000 in current law) or maintain sufficient net worth, as determined by the DHSMV, to be financially responsible for losses. Increasing the net worth requirement reflects the \$25,000/\$50,000 BI requirement imposed by the bill, which is higher than \$10,000/\$20,000 PIP requirement under current law.

### **Repeal of the Florida Motor Vehicle No-Fault Law and Revision of Security Requirements**

**Section 11.** Repeals s. 627.730, F.S., which names ss. 627.730-627.7405, F.S., the “Florida Motor Vehicle No-Fault Law.”

**Section 12.** Repeals s. 627.731, F.S., which provides the purpose of the Florida Motor Vehicle No-Fault Law.

**Section 13.** Repeals s. 627.7311, F.S., which includes the provisions of the Florida Motor Vehicle No-Fault Law in all motor vehicle insurance policies, regardless of their express inclusion.

**Section 14.** Amends s. 627.732, F.S., to repeal definitions unique to provisions of the Florida Motor Vehicle No-Fault law that govern personal injury protection coverage. The bill retains definitions for terms used in ss. 627.733 – 627.7355, F.S., relating to the security requirements placed on owners and registrants of motor vehicles.

The definition of “motor vehicle” is retained and amended to delete language limiting the term to self-propelled vehicles with four or more wheels. The revision of this definition will require motorcycles to comply with security requirements, likely by obtaining an insurance policy that provides bodily injury and property damage liability coverages in at least the limits required by s. 324.022, F.S. The bill retains definitions of “private passenger motor vehicle,” “commercial motor vehicle,” “owner,” and “knowingly.”

**Section 15.** Amends s. 627.733, F.S., to revise the required security that each owner or registrant of a motor vehicle (other than a school bus or limousine) must maintain. The owner or registrant must maintain the security required by s. 324.022, F.S., which is the ability to respond in damages for at least \$10,000 for property damage and \$25,000 for bodily injury incurred by one person and subject to the individual BI limit, \$50,000 for bodily injury incurred by more than one person. The section eliminates the requirement that drivers must maintain personal injury protection.

**Section 16.** Amends s. 627.734, F.S., to conform the proof of security requirements to the repeal of the Florida Motor Vehicle No-Fault Law and the requirement to maintain bodily injury liability coverage.

**Section 17.** Amends s. 627.7401, F.S., and renumbers it as s. 627.7341, F.S., to require the Financial Services Commission to adopt a form to notify insureds of the security requirements of s. 627.733, F.S., and the proof of security requirement under s. 627.734. The notice must describe the benefits provided by bodily injury liability coverage and property damage liability coverage. Under current law, the notice serves to notify insureds of their right to receive PIP benefits.

**Section 18.** Creates s. 627.7355, F.S., which requires all claims arising out of the plaintiff's injuries in any action for which security has been provided as required (PD coverage with limits of at \$10,000 and BI coverage with limits of at least \$25,000/\$50,000) to be brought together. This is currently required for actions brought under the No-Fault law in s. 627.736(15), F.S.

**Section 19.** Repeals s. 627.736, F.S., which sets forth the benefits provided by personal injury protection coverage, the procedure for payment of PIP benefits, the PIP fee schedule, discovery of facts about an injured person under PIP, mental and physical examinations, attorney fees, demand letters and other provisions.

**Section 20.** Repeals s. 627.737, F.S., which contains the tort exemption for damages payable by PIP and the "verbal threshold" that limits the ability of a plaintiff to recover tort damages for pain and suffering.

Under the current No-Fault law, an at-fault driver is not liable for the bodily injury or death of another person up to the \$10,000 PIP policy limit. The at-fault driver is responsible for damages in excess of the PIP policy limit. Current law also prohibits recovery of pain and suffering damages unless the injury or disease caused by the at-fault driver results in death, significant and permanent loss of an important body function, permanent injury within a reasonable degree of medical probability (other than scarring or disfigurement), or significant and permanent scarring or disfigurement.

**Section 21.** Repeals s. 627.739, F.S., which governs the deductibles that may apply to personal injury protection and how the deductible is applied. Current law requires insurers to offer deductibles of \$200, \$500, and \$1,000.

**Section 22.** Repeals s. 627.7403, F.S., which requires mandatory joinder of derivative claims. A similar provision is created in s. 627.7355, F.S., by Section 26 of the bill.

**Section 23.** Repeals s. 627.7405, F.S., which details insurers' right of reimbursement under the Florida Motor Vehicle No-Fault Law.

**Section 24.** Repeals s. 627.7407, F.S., which specifies how to apply Florida Motor Vehicle No-Fault Law in the aftermath of the re-enactment of the law on January 1, 2008.

**Section 25.** Repeals s. 15 and s. 16 of chapter 2012-197, Laws of Florida. Section 15 requires insurers to make rate filings that provide specified premium reductions or provide a detailed explanation why the premium reduction cannot be provided. Section 16 requires the Office of Insurance Regulation to perform a PIP data call and publish the results by January 1, 2015.

## Technical Changes

**Sections 26-57.** Makes technical and conforming changes to the following statutes: 318.18, 320.02, 320.0609, 320.27, 320.771, 322.251, 400.9905, 400.991, 400.9935, 409.901, 409.910, 456.057, 456.072, 626.9541, 626.989, 626.9895, 627.06501, 627.0652, 627.0653, 627.4132, 627.6482, 627.7263, 627.727, 627.7275, 627.728, 627.7295, 627.8405, 627.915, 628.909, 705.184, 713.78, and 817.234, F.S.

## Application of Bill

**Section 58.** Specifies how the provisions of the bill will be applied and requires insurers to provide notice to policyholders regarding the repeal of the Florida Motor Vehicle No-Fault Law and the requirement to maintain security for bodily injury liability. The bill will be applied as follows:

- Effective January 1, 2014, any person subject to the financial responsibility requirements of s. 324.022, F.S., and the security requirements of s. 627.733, F.S., must maintain “minimum security requirements” of at least:
  - \$10,000 related to property damage of others caused by an insured.
  - \$25,000 related to bodily injury of one person caused by an insured.
  - \$50,000 related to bodily injury of more than one person caused by the insured, subject to the \$25,000 limit on an individual.
- Effective January 1, 2014, all new and renewal motor vehicle policies must provide property damage coverage with limits of at least \$10,000 and bodily injury coverage with limits of at least \$25,000/\$50,000.
- On or after January 1, 2014, an existing motor vehicle policy issued prior to that date that provides PIP and PD coverage that met the requirements of s. 324.022, F.S., and s. 627.733, F.S., on December 31, 2013, but subsequently will not meet minimum security requirements (because it lacks the necessary BI coverage) shall be deemed to meet the security requirements of s. 627.022, F.S., and s. 627.733, F.S., until the policy is renewed, nonrenewed, or cancelled on or after January 1, 2014.
- Each insurer must allow each insured to change his or her policy to add the required bodily injury coverage and eliminate PIP coverage. The insurer may not charge an additional fee to the policyholder that is applicable solely to a change in coverage, however, this may not be interpreted to prevent the insurer from charging an appropriate additional premium.
- All motor vehicle insurance policies issued or renewed on or after January 1, 2014, may not include PIP.
- No later than September 1, 2013, each motor vehicle insurer must provide notice of the provisions of this section to each insured.

This section is effective upon the act becoming law.

## Existing Suspensions for Failure to Maintain Security

**Section 59.** Specifies that all suspensions for failure to maintain required security as required by law prior to January 1, 2014, remain in full force and effect after that date.

**Effective Date**

**Section 60.** Except as otherwise provided, the act is effective January 1, 2014.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. Other Constitutional Issues:

In *Myers v. McCarty*, Case No. 2013-CA-73 (Fla. 2<sup>nd</sup> Cir.), the Court granted a temporary injunction against the provisions of chapter 2012-197, L.O.F., which require a finding of an emergency medical condition as a prerequisite for the payment of PIP benefits or that prohibit the payment of benefits for services provided by acupuncturists, chiropractors, and massage therapists. In the Order Granting in Part Motion for Temporary Injunction, the Court found that the No-Fault law likely violates the constitutional right of access to the courts found in Article I, Section 21 of the Florida Constitution. The Court noted that the No-Fault law limits the right of a person injured in a motor vehicle accident to seek redress in the courts, but had been previously found by the Florida Supreme Court to be a “reasonable alternative” to the common law tort system.<sup>42</sup> The injunction was granted because the Court determined that the provisions requiring determination of an emergency medical condition prior to receiving PIP benefits and prohibiting reimbursement of certain types of treatment resulted in a No-Fault system that does not provide a reasonable alternative to the remedies available under common law. A Notice of Appeal of the temporary injunction was filed with the Court on March 21, 2013, which constitutes an automatic stay of the circuit court’s order pursuant to Rule 9.310(b)(2), Florida Rules of Appellate Procedure.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

The bill increases the fees for reinstatement of driver’s licenses and motor vehicle registrations. Under current law, a \$15 fee must be paid to during reinstatement. Under the bill, the fees are \$150 for the first reinstatement, \$250 for the second, and \$500 for any subsequent reinstatement.

<sup>42</sup> *Lasky v. State Farm Ins. Co.*, 296 So.2d 9 (Fla. 1974).

## B. Private Sector Impact:

Repealing No-Fault and returning to a tort system eliminates the requirement that motorists purchase PIP and that insurers provide this coverage, replacing it with a requirement to purchase bodily injury coverage. Insureds who currently have BI coverage with limits of at least \$25,000/\$50,000 should pay a lower premium due to the removal of PIP coverage from the policy.

Representatives from the OIR have provided the Banking and Insurance Committee with calculations of the premium impact of repealing No-Fault and mandating \$25,000/\$50,000 in BI liability coverage for various types of drivers with five sample insurance companies<sup>43</sup> in seven locations<sup>44</sup> of the state.<sup>45</sup> The OIR calculations that policyholders that currently have “full coverage”<sup>46</sup> including BI coverage of at least \$25,000/\$50,000 should see a premium reduction ranging from approximately 3.2 percent to 11.2 percent.

Insureds who currently purchase the minimum required PIP and PD coverages but do not have BI coverage generally will incur increases through the bill, though drivers in densely populated locations that have high amounts of PIP-related fraud may pay lower premiums. A review of the OIR calculations shows that the highest PIP premiums are in densely populated areas that have historically experienced high levels of PIP-related fraud such as Central Tampa and Central Miami. Representatives from the OIR indicate that approximately 90 percent of Florida insureds have BI coverage.

Another effect of switching to a tort system is that loss costs currently attributable to PIP will be absorbed by other coverages. A 2007 study by Pinnacle Actuarial Services (Pinnacle) estimated that 79.5 percent of prior PIP losses would be transferred to other coverages within the auto insurance system, losses shifting into the health care system would be 16.4 percent, while 4.1 percent of losses would not be covered by any type of insurance.

## C. Government Sector Impact:

The DHSMV asserts that the bill results in a negative fiscal impact of approximately \$25 million related to the January 1, 2014, effective date for repealing the No-Fault Law and mandating BI coverage. The Department does not have a system in place to process suspensions for failure to carry BI insurance and is indicating it could not modify its systems to process BI suspensions until July 1, 2014. Accordingly, the DHSMV intends to stop enforcing the financial responsibility laws until July 1, 2014. The department’s anticipated decision to stop enforcing the financial responsibility requirements would lead to the following losses in revenue to the Highway Safety Operating Trust Fund due to the inability to collect reinstatement fees from January 1, 2014 to July 1, 2014:

<sup>43</sup> Allstate Fire & Casualty, Direct General, GEICO General, Progressive American, and State Farm.

<sup>44</sup> Central Fort Lauderdale, Central Jacksonville, Pensacola, Central Tampa, Tallahassee, Central Miami, and Central Florida.

<sup>45</sup> Office of Insurance Regulation, *OIR Presentation on Personal Injury Protection*, (April 2, 2013). On file with the Banking and Insurance Committee.

<sup>46</sup> Full coverage includes PIP, BI, PD, Uninsured Motorist, Medical Payments, Collision, and Comprehensive coverages.

- Fiscal Year 2013-2014: a loss of \$16,613,005
- Fiscal Year 2014-2015: a loss of \$8,081,665
- Fiscal Year 2015-2016: a loss of \$476,670

The OIR will likely experience an increase in its workload related to motor vehicle insurance form and rate filings due to the repeal of PIP and the creation of a BI mandate. Eliminating the comprehensive PIP data call and report that the OIR must publish by January 1, 2015, may reduce the workload of the office.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.