

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1053 Motor Vehicle Insurance

SPONSOR(S): Fant

TIED BILLS: **IDEN./SIM. BILLS:** SB 1250

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Lloyd	Cooper
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Private passenger motor vehicle insurance is written to individuals, and family members in the same household, for coverage of automobiles that are not used for commercial purposes. The bill makes four changes regarding motor vehicle insurance.

The Florida Automobile Joint Underwriting Association (Auto JUA) provides motor vehicle insurance to individuals who cannot obtain coverage in the voluntary market. Motor vehicle insurers, including the Auto JUA, are limited regarding the cancellation of insurance policies. An insurer may not cancel a policy within 60 days of the effective date of the policy, except for non-payment of premium. The bill gives specific authority to the Auto JUA to cancel motor vehicle policies within the first 60 days for non-payment and prohibits an insured from cancelling their coverage in the first 90 days of the policy, except if the vehicle is destroyed, ownership of the insured vehicle is transferred, or upon the purchase of a policy elsewhere. This guarantees three month's premium revenue to the Auto JUA, while allowing cancellation of policies for non-payment.

Statute requires insurers who offer bodily injury liability coverage also to offer Uninsured Motorist (UM) coverage in the same amount as any policy limits applying to the bodily injury liability policy. However, an insured may waive UM coverage, select a lower limit, or select "non-stacking" UM coverage, upon signing a waiver form approved by the Office of Insurance Regulation. The form must include a specified warning statement in 12-point bold type. The bill allows the form to be presented and signed electronically. When is provided electronically, the required statement will be larger than the surrounding text.

Florida's Motor Vehicle No-Fault Law requires motorists to carry at least \$10,000 of no-fault insurance, known as personal injury protection (PIP). The purpose of the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault. The No-Fault Law limits the right to bring lawsuits arising from motor vehicle accidents. Payments for PIP related medical services utilize the Medicare fee schedule in effect on March 1 of the year the service is rendered. The fee schedule in effect on March 1 applies for the remainder of that year. The bill aligns the period in which services were rendered with the year the applicable fee schedule is in effect and states precisely the beginning and end of the year.

Under current law, motor vehicle insurers are required to conduct preinsurance motor vehicle inspections. There are exemptions from the preinsurance inspections for "purchased" cars, if certain documents are provided. The bill adds leased vehicles to the specified exemptions; allows insurers to elect to receive the documents, rather than requiring their delivery; revises the types of documents that insurers may require; and, limits claim reimbursement and coverage suspension based on the timing of document delivery.

The bill has no fiscal impact on state or local government expenditures. The bill should have a positive impact on the private sector.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Private passenger motor vehicle insurance¹ is casualty coverage² within the personal lines³ segment of insurance business. Insurers issue it to individuals, or related individuals in the same household, for coverage of private passenger automobiles that are not used as public conveyances, for rental to others, or in the occupation, profession, or business of the insured (excluding farm business use).⁴ Commercial motor vehicles are those that are not private passenger motor vehicles.⁵ Motor vehicle⁶ owners in the state are required to maintain proof of coverage for Personal Injury Protection⁷ (PIP) under the Florida Motor Vehicle No-Fault Law⁸ and financial responsibility, under the Financial Responsibility Law,⁹ for damages arising due to the operation of a motor vehicle.

Cancellation of Florida Automobile Joint Underwriting Association Policies

Insurers¹⁰ that offer motor vehicle insurance in the state must participate in the Florida Automobile Joint Underwriting Association (Auto JUA).¹¹ The Auto JUA exists to provide motor vehicle insurance to individuals who cannot obtain such coverage in the voluntary insurance market. The Auto JUA distributes this risk among its members. It is subject to various limitations regarding issuance and cancellation of coverage, and provision of premium credits/discounts to protect its solvency, the coverage of its insureds, and to avoid Auto JUA policies being competitive with the voluntary market.

Motor vehicle insurers, including the Auto JUA, are limited regarding the cancellation of insurance policies.¹² An insurer may not cancel a policy within 60 days of the effective date of the policy, except for non-payment of premium.¹³ The bill gives the Auto JUA the specific authority to cancel private passenger and commercial motor vehicle policies within the first 60 days of coverage for non-payment, if the reason is the payment check is dishonored for any reason or if any other payment type is rejected or deemed invalid (e.g., credit or debit card transactions). The bill also prohibits someone covered by the Auto JUA from cancelling their coverage in the first 90 days of the policy period, unless the vehicle is destroyed, they transfer ownership of the insured vehicle, or they purchase a voluntary market policy for the insured vehicle.¹⁴ This provision guarantees the Auto JUA a minimum of three months of premium revenue on each policy, while allowing the cancellation of policies for non-payment.

Electronic Delivery/Signature of Uninsured Motorist Insurance Waivers

Uninsured Motorist (UM) coverage protects insureds against injuries caused by owners or operators of uninsured or underinsured motor vehicles. The law requires insurers who offer bodily injury liability coverage also to offer UM coverage in the same amount as any policy limits applying to the bodily injury liability policy.¹⁵

Conventional UM insurance is “stackable.” This means that if one family member purchases one UM policy for one vehicle, that coverage extends to every resident and every vehicle in the household,

¹ Section 627.041, F.S.

² Section 627.021(3), F.S.

³ Personal lines insurance is property and casualty insurance sold to individuals and families for non-commercial purposes. S. 626.015(15), F.S.

⁴ Sections 627.041(8) and 627.728(1)(a), F.S.

⁵ Section 627.732(3)(a), F.S.

⁶ Section 627.732(3), F.S.

⁷ Section 627.736, F.S.

⁸ Sections 627.730-627.7405, F.S.

⁹ Chapter 324, F.S.

¹⁰ Section 624.03, F.S.

¹¹ Section 627.311, F.S.

¹² Section 627.7295 and 627.728, F.S.

¹³ Section 627.7295(4), F.S.

¹⁴ Proof of such coverage is required by statute. Section 627.311(3)(1), F.S.

¹⁵ Section 627.727(1), F.S.

whether or not those residents or vehicles are covered by their own UM policies. Moreover, if a family purchases UM coverage for multiple vehicles, any resident in the household may “stack” the UM benefits and recover the combined policy limits from each insured vehicle.

However, s. 627.727, F.S., allows an insured individual to waive this insurance, select a lower limit, or select “non-stacking” UM coverage if the named insured signs a policy waiver form approved by the Office of Insurance Regulation (OIR). The approved form must include a heading in 12-point bold type stating, “You are electing not to purchase certain valuable coverage which protects you and your family or you are purchasing uninsured motorist limits less than your bodily injury liability limits when you sign this form. Please read carefully.”¹⁶

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.¹⁷ Insurance is specifically included in E-SIGN.¹⁸ E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute’s requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications.

In addition, s. 668.50, F.S., Florida’s Uniform Electronic Transaction Act (UETA), is similar to the federal E-SIGN law. UETA specifically applies to insurance and provides a requirement in statute that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct a transaction by electronic means.

The bill allows electronic presentation and signature of the required UM waiver form. If it is presented electronically, the required header statement must be greater in size than the surrounding text, rather than in 12-point bold.¹⁹ The OIR has the authority to approve the form, including the electronic version, and has the obligation to ensure that the consumer has ready and reasonable access to the required notification based on the display characteristics of the electronic form being approved.

Personal Injury Protection Insurance

Florida’s Motor Vehicle No-Fault Law (the “No-Fault Law”)²⁰ requires motorists to carry at least \$10,000 of no-fault insurance, known as personal injury protection (PIP) coverage. The purpose of the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault. In return for assuring payment of these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents. Florida motorists are required to carry a minimum of \$10,000 of PIP insurance, \$10,000, per person, and \$20,000, per incident, of bodily injury coverage, and \$10,000 of property damage liability coverage.^{21,22}

¹⁶ Id.

¹⁷ Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effective October 1, 2000.

¹⁸ Id.

¹⁹ The specified point size of type is a measure of physical size on a printed page. It is related to typeface printing and the characteristics of type set text. It does not necessarily identify the physical size of the character itself. Rather, it describes a maximum height parameter within the complete font type collection. One point in physical type face is 1/72 of an inch, thus 12-point font is 12/72 of an inch. Point size does not directly translate to graphical display size in electronics. Electronic display size is measured in picture elements, popularly known as pixels. Different size displays contain different numbers of pixels. Accordingly, specifying the point size of electronic text presents challenges that can require a high degree of technical precision. See <http://www.thomasphinney.com/2011/03/point-size/>. (Last accessed March 13, 2015.)

²⁰ Sections 627.730-627.7405, F.S.

²¹ Section 627.7275, F.S.

²² Under Florida’s Financial Responsibility Law (ch. 324, F.S.), motorists must also provide proof of ability to pay monetary damages for bodily injury and property damage liability at the time of motor vehicle accidents or when serious traffic violations occur.

PIP insurance benefits are payable as follows.

- Up to a limit of \$10,000, 80 percent of reasonable medical expenses for:
 - 1) Initial services and care lawfully provided, supervised, ordered or prescribed by a medical doctor, osteopathic physician, chiropractic physician or that are provided in a hospital or in a facility that owns, or is wholly owned by a hospital. Initial services and care may also be provided for emergency transport and treatment.
 - 2) Upon referral by any of the above-listed providers, follow-up services and care consistent with the underlying medical diagnosis, which may be provided, supervised, ordered, or prescribed only by a medical doctor, osteopathic physician, chiropractic physician, or dentist, or, to the extent permitted under applicable law and under the supervision of such provider, by a physician assistant or advanced registered nurse practitioner. Follow-up services and care may also be provided by:
 - a) A licensed hospital or ambulatory surgical center.
 - b) An entity wholly owned²³ by a medical doctor, osteopathic physician, chiropractic physician, or by such practitioner(s) and specified family members.
 - c) An entity that owns or is wholly owned, directly or indirectly, by a hospital or hospitals.
 - d) A licensed physical therapist, based upon a referral by a provider listed in 2).
 - e) A licensed health care clinic that meets specified criteria.
 - 3) Reimbursement for services and care pursuant to 1) or 2) of up to \$10,000 if a medical doctor, osteopathic physician, dentist, physician assistant, or an advanced registered nurse practitioner determines that the injured person had an emergency medical condition.
- Up to a limit of \$2,500, 80 percent of reasonable medical expenses when a provider listed in 1) or 2) determines that the injured person did not have an emergency medical condition.

Medical benefits do not include massages or acupuncture, regardless of the provider that performs the service. Massage therapists and acupuncturists are not eligible for reimbursement under PIP.

Medical providers and entities may charge the insurer and injured party only a reasonable amount for services and care rendered. Insurers that provide reimbursement under the schedule of charges may use all Medicare coding policies and CMS payment methodologies, including applicable modifiers, to determine the appropriate amount of reimbursement for medical services, supplies, or care, if such coding policy or payment methodology does not constitute a utilization limit. Effective July 1, 2012, insurers that want to utilize the PIP schedule of maximum charges must amend their forms to include the schedule.

House Bill 119, the personal injury protection insurance (PIP) reform bill enacted in 2012,²⁴ amended s. 627.736(5)(a)2., F.S., by establishing the date on which changes to the Medicare fee schedule or payment limitation are effective. The legislation provides in part that:

[T]he applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered...*and the applicable fee schedule or payment limitation applies throughout the remainder of that year* [italics added for emphasis]. . . .”

The above-emphasized language created uncertainty as to whether the Medicare fee schedule in place on March 1st applied through the calendar year (through December 31st) or whether it applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M,²⁵ stating that the plain language of the section requires the fee schedule in place on March 1st to apply throughout the following 365 days, or until the following March 1st.

The bill amends s. 627.736(5)(a)2., F.S., to define a “service year” for rendered services, supplies, or care. For this purpose, a “service year” is from March 1 through the end of the following February. The

²³As defined in the bill, “entity wholly owned” means a proprietorship, group practice, partnership, or corporation that provides health care services rendered by licensed health care practitioners and in which licensed health care practitioners are the business owners of all aspects of the business entity. . . .

²⁴Ch. 2012-151, L.O.F.

²⁵Available at <http://www.floir.com/Sections/PandC/ProductReview/PIPInfo.aspx> (last accessed: January 23, 2015).

period for the applicable Medicare fee schedule is then applied to this same period. This should provide certainty that reimbursement for any medical services, supplies, or care under PIP will be reimbursed based on the applicable Medicare fee schedule in effect on the preceding March 1.

Preinsurance Inspection of Private Passenger Motor Vehicles

Section 627.744, F.S., requires insurers to perform preinsurance inspections of private passenger motor vehicles. It also provides various exemptions from the required preinsurance inspection, including for new, unused motor vehicles “purchased” from a licensed motor vehicle dealer or leasing company when the insurer is provided with the bill of sale, buyer’s order, or copy of the title and certain other documentation.

Despite the exemptions, an insurer may require a preinsurance inspection of any motor vehicle as a condition of issuance of physical damage coverage. Physical damage coverage may not be suspended during the policy period due to the applicant’s failure to provide the required documents. However, claim payments are conditioned upon and are not payable until the required documents are received by the insurer. Applicants for insurance may be required to pay the cost of the preinsurance inspection, not to exceed five dollars.

The bill adds an exemption from preinsurance inspection for new, unused “leased” motor vehicles to the existing exemption for “purchased” vehicles, if the vehicle is leased from a licensed motor vehicle dealer or leasing company. If the insurer waives its right to a preinsurance inspection, it also provides an insurer the discretion to require persons who purchase or lease a new, unused motor vehicle to submit certain documents. Currently, such documents are required to be provided whenever the exemption is utilized. Persons who do not submit the required documentation, upon request, at the time the policy is issued are required to submit the document before any physical damage loss is payable under the policy. The bill amends the list of documents that an insurer may require to include the vehicle registration in addition to the existing option of providing the vehicle title along with the window sticker and deletes from the list of documents the detailed dealer’s invoice. Failure of the insurer to request the documentation is added to the prohibition on suspending coverage due to the insured’s failure to provide documentation. Finally, the condition on claim payment pending receipt of documentation is revised to apply only if the carrier exercised its option to require the documentation.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.727, F.S., relating to motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.

Section 2: Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

Section 3: Amends s. 627.744, F.S., relating to required preinsurance inspection of private passenger motor vehicles.

Section 4: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.

2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill should have a positive impact on the private sector by creating savings through the use of electronic notifications and allowing the insurer to limit costs related to preinsurance inspections that they may elect to forego. The extent of this benefit has not been calculated. However, any savings realized by insurers should be passed through to policyholders.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2015, the Insurance & Banking Subcommittee considered the bill, adopted two amendments and reported the bill favorably with a committee substitute. The amendments made the following changes:

- Revised a provision to provide that the applicable Medicare schedule in effect on March 1 would apply to PIP medical services, supplies, and care rendered from March 1 through the end of February of the following year and to provide a definition of “service year” to facilitate reimbursements, and
- Added a new section to the bill revising s. 627.311, F.S., related to the Automotive Joint Underwriters Association (Auto JUA), to allow the Auto JUA to cancel personal or commercial motor vehicle policies in the first 60 days of coverage, in certain circumstances, and to prohibit the insured from cancelling the coverage within the first 90 days, except in certain circumstances.

The staff analysis has been updated to reflect the committee substitute.