

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 719 Motor Vehicle Insurance

SPONSOR(S): Judiciary Committee and Civil Justice & Property Rights Subcommittee, Grall

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 54

FINAL HOUSE FLOOR ACTION: 100 Y's 16 N's **GOVERNOR'S ACTION:** Vetoes

SUMMARY ANALYSIS

CS/CS/HB 719 passed the House on April 26, 2020, as CS/CS/SB 54 as amended. The bill was amended in the Senate on April 30, 2021, and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on April 30, 2021.

The Florida Motor Vehicle No-Fault Law requires certain vehicle owners to obtain personal injury protection insurance coverage ("PIP"), which provides \$10,000 in medical, disability, and funeral expenses, without regard to fault, subject to a limit of \$2,500 for non-emergency medical care. In exchange for providing PIP coverage, vehicle owners and operators are immune from tort claims within PIP coverage limits. A vehicle owner must also obtain at least \$10,000 in property damage coverage ("PD"), and, at the time of an accident, show proof of financial responsibility. Bodily injury ("BI") coverage of at least \$10,000 due to the bodily injury or death of any one person and \$20,000 for the bodily injury or death of two or more persons or an allowable form of self-insurance is acceptable proof of financial responsibility.

The bill repeals PIP. By repealing PIP, the bill removes PIP's tort liability limitation, making drivers at fault in an accident fully liable for any damages they cause. Due to this change, the bill also expands the scope of legal liabilities covered under an uninsured/underinsured motorist policy. In place of PIP, the bill requires BI coverage at the time of vehicle registration with a minimum coverage limit of \$25,000 for the bodily injury or death of any one person and \$50,000 for the bodily injury or death of two or more persons. The minimum PD coverage limit remains unchanged at \$10,000. However, the minimum security limits for self-insurance of BI and PD requirements are increased, as are the minimum coverage limits applicable to garage liability policies and commercial motor vehicle coverage.

Motor vehicle policies issued on or after January 1, 2022, may not include PIP coverage. However, suspensions, revocations, and anti-fraud measures for actions occurring under the PIP law continue. The bill provides for the transition of motor vehicle insurance policies issued before January 1, 2022, from PIP to BI/PD and requires insurers to give their policyholders a notice describing the effect of the bill's changes by September 1, 2021. The notice is subject to approval by the Office of Insurance Regulation ("OIR").

The bill provides that resident relatives must be included in coverage provided by a motor vehicle liability policy. It also allows insurers to exclude named individuals and motor vehicles that are not identified in the policy from coverage under specified circumstances. Further, the bill requires insurers to offer medical payments coverage at specified limits with specified deductibles and provides that a policyholder is deemed to have \$10,000 in such coverage unless the policyholder opts out in writing; modifies bad faith law; authorizes a claimant to file an enforcement action if an insurer fails to comply with specified disclosure requirements; allows for a \$10,000 setoff on noneconomic damages for a defendant under specified circumstances; and requires a mandatory death benefit of \$5,000 per covered deceased individual.

An appropriation of \$83,651 is provided to OIR to implement changes made by the bill. The bill may have an indeterminate fiscal impact on state and local governments. The bill may have an indeterminate fiscal impact on the private sector.

The effective date of this bill was January 1, 2022; however, this bill was vetoed by the Governor on June 29, 2021.

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

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I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Financial Responsibility Law

Florida's Financial Responsibility Law requires proof of ability to pay monetary damages for bodily injury ("BI") and property damage ("PD") liability arising out of a motor vehicle accident or serious traffic violation.¹ The owner or operator of a motor vehicle, including a motorcycle, is not required to show proof of BI coverage at the time of vehicle registration. Instead, proof of such coverage is only required after an accident.² At that time, a driver proves financial responsibility by furnishing an active motor vehicle liability policy, a certificate showing a qualifying security deposit with the Department of Highway Safety and Motor Vehicles ("DHSMV"), or proof of qualifying self-insurance.³

A motor vehicle owner or operator must hold minimum:

- BI coverage of at least \$10,000 in the event of the bodily injury to or death of one person and \$20,000 in the event of the bodily injury to or death of two or more persons; and
- PD coverage of at least \$10,000, in the event of damage to property of others; or
- \$30,000 in combined BI and PD coverage.⁴

These coverage amounts are often referred to in a summary manner as \$10,000/\$20,000/\$10,000 or 10/20/10.

A driver's license and vehicle registration are subject to suspension for failure to comply with the PD coverage requirement.⁵ A driver's license and registration suspended for such reasons may be reinstated by obtaining a liability policy and paying a fee to the DHSMV.⁶

All states have financial responsibility laws requiring persons involved in motor vehicle accidents (or serious traffic infractions) to furnish proof of BI and PD liability insurance. However, minimum coverage amounts vary among the states.

Florida Motor Vehicle No-Fault Law

Florida's Motor Vehicle No-Fault Law ("No-Fault Law")⁷ requires motorists to carry no-fault insurance known as personal injury protection ("PIP") coverage. PIP provides immediate medical, surgical, funeral, and disability insurance benefits up to the coverage limits after a motor vehicle accident, regardless of who is at fault. In return for providing such benefits, the No-Fault Law limits the right to

¹ Ch. 324, F.S.

² Ss. 320.02 and 324.011, F.S.

³ Ss. 324.031, 324.061, 324.161, and 324.171, F.S. Businesses that choose to self-insure the financial responsibility requirements must deposit \$30,000 per vehicle, up to a maximum of \$120,000, with the DHSMV and maintain excess insurance with limits of \$125,000/\$250,000/\$300,000. Individuals that choose to self-insure must deposit \$30,000 with the DHSMV. Individuals and businesses can also obtain a certificate of self-insurance to satisfy the financial responsibility requirements. Individuals must have an unencumbered net worth of \$40,000 and businesses must have either an unencumbered net worth of \$40,000 for the first vehicle and \$20,000 for each additional vehicle or a sufficient net worth as determined by DHSMV rule. Currently, the applicable rule provides that \$40,000 for the first vehicle and an amount less than \$20,000 for each additional vehicle is sufficient if the applicant carries excess insurance in the amounts of \$25,000/\$50,000/\$100,000. The amount applicable to each additional vehicle is determined annually under a "Manual of Financial Responsibility Rates" (Revised 05-89) adopted by rule by the Office of Insurance Regulation. Rule 15A-3.011, F.A.C.

⁴ S. 324.022, F.S.

⁵ S. 324.0221(2), F.S. Failure to maintain PIP coverage results in suspension of the driver's license and vehicle registration.

⁶ S. 324.0221(3), F.S.

⁷ Ss. 627.730-627.7405, F.S.

sue in connection to a motor vehicle accident for damages less than available PIP benefits. Most Florida motorists must carry \$10,000 of PIP coverage.⁸

PIP General Provisions

<i>Required Coverage</i>	All owners or registrants of motor vehicles with four or more wheels, except school buses, limos, and taxicabs, are required to carry PIP. ⁹
<i>Individuals Covered</i>	The named insured, relatives living in the same household, persons operating the vehicle, passengers in the vehicle, and persons struck and injured outside the vehicle.
<i>Tort Limitation</i>	Limited exemption from tort liability; injured persons may pursue certain tort claims as specified by the PIP law.
<i>Benefits</i>	\$10,000 in emergency medical and disability benefits (limited to \$2,500 in medical benefits for non-emergency medical conditions) and \$5,000 in death benefits. Coverage of 60 percent of lost income due to disability, not to exceed the \$10,000 overall benefit limit.
<i>Timely Treatment</i>	Medical benefits are paid only if initial treatment is received within 14 days of the accident.
<i>Timely Payment</i>	Payments are overdue if not paid within 30 days of insurer receipt of written notice.
<i>Medical Reimbursement</i>	80 percent of reasonable medical expenses paid to eligible medical providers. ¹⁰
<i>Excluded Treatment</i>	Massage and acupuncture are not covered. Services, supplies, or care that are not reimbursable under Medicare or workers' compensation are also not covered.
<i>Attorney Fees</i>	Prevailing insureds and beneficiaries may receive a reasonable attorney fee award.

PIP in Other States

Over the last 20 years or so, 25 jurisdictions have repealed their No-Fault laws or made them non-compulsory.¹¹ Only 16 jurisdictions have compulsory PIP laws, only nine have No-Fault laws, and only five, including some that do not have compulsory PIP laws, give the insured the option to choose No-Fault protections:

Jurisdiction	Compulsory PIP	No-Fault
Delaware	Yes	No
District of Columbia	No	Optional
Florida	Yes	Yes
Hawaii	Yes	Yes
Kansas	Yes	Yes
Kentucky	No	Optional
Maryland	Yes	No
Massachusetts	Yes	Yes

⁸ S. 627.7275, F.S.

⁹ This includes non-resident owners who keep a vehicle in Florida for more than 90 days during the previous 365 days. S. 627.733(2), F.S.

¹⁰ Insurers may limit reimbursements to a fee schedule tied to the Medicare allowed amount. S. 627.736(5)(a)1., F.S. For many services, 80 percent of 200 percent of the Medicare allowed amount is the standard reimbursement.

¹¹ National Association of Insurance Commissioners, *Final Auto Study Group Report* (Nov. 18, 2014) and Insurance Information Institute, *Compulsory Auto/Uninsured Motorists* (Sept. 2017), <http://www.iii.org/issue-update/compulsory-auto-uninsured-motorists> (last visited May 3, 2021).

Michigan	Yes	Yes
Minnesota	Yes	Yes
New Jersey	Yes	Optional
New York	Yes	Yes
North Dakota	Yes	Yes
Oregon	Yes	No
Pennsylvania	No	Optional
Texas	Yes	Optional
Utah	Yes	Yes
Virgin Islands	Yes	No
Washington	Yes	No

Recent Legislative History

The Legislature revised the PIP law multiple times after a statewide grand jury found rampant PIP fraud, including in 2001 and 2003. The 2003 legislation provided for PIP repeal through a sunset provision effective October 1, 2007, and a bill extending PIP's sunset was vetoed, resulting in the law expiring in 2007. However, after a 2007 Special Session, the PIP law was revived effective January 1, 2008, and the Legislature again revised the PIP law in 2012.

PIP Reform

The reforms enacted between 2001 and 2012 included:

- Establishing requirements for and limiting access to motor vehicle crash reports;
- Limiting medical services, reimbursement, and eligible providers;
- Requiring provider licensing;
- Requiring pre-suit demand letters;
- Increasing criminal penalties;
- Defining certain activities by claims handlers as unfair and deceptive trade practices;
- Limiting benefits for emergency and non-emergency medical conditions; and
- Limiting attorney fees.

The 2012 reform required insurers to make rate filings by October 1, 2012, and January 1, 2014, that provided a minimum of 10 percent and 25 percent decreases in PIP premiums, respectively. However, this reform allowed insurers to file and the Office of Insurance Regulation (OIR) to approve smaller decreases or increases, if appropriately justified. This resulted in an estimated average statewide rate decrease in PIP premiums of 13.2 percent, as of January 22, 2014.

PIP Repeal Proposals

The PIP law has been the subject of multiple repeal proposals over the last several years. The Florida House of Representatives ("House") considered bills in 2013, 2014, 2015, and 2017 that would have repealed PIP and required increased BI coverage under the Financial Responsibility Law.¹² A 2016 bill would have repealed PIP, effective January 1, 2019, but would have maintained current BI and PD requirements. Except for 2017, the House bills died in the Insurance & Banking Subcommittee. CS/HB 1063 (2017) passed the House on April 19, 2017, and died in the Senate Appropriations Subcommittee on Health and Human Services. In 2020, the House considered HB 771, which passed all committees of reference but died on the House floor.

Recent Changes

¹² Ch. 324, F.S.

As part of a pair of broader insurance-related bills, the Legislature amended the PIP law in 2015 and 2016. HB 165 (2015) clarified the application of the PIP medical reimbursement fee schedule. HB 165 (2015) and HB 659 (2016) each created an additional exemption from a licensure requirement under the PIP law that allows reimbursement of certain health care clinics for PIP-related medical services.

Recent OIR Reports

PIP Data Call

HB 119 (2012) required OIR to perform a comprehensive PIP data call and to report the results. 35 insurers representing 83.5 percent of the market participated in the data call, including the top 25 insurers by market share; however, the report did not rely on information from several insurers due to data quality issues. OIR published its data call analysis on January 1, 2015, addressing:

1. Quantity of personal injury protection claims.
2. Type or nature of claimants.
3. Amount and type of personal injury protection benefits paid and expenses incurred.
4. Type and quantity of, and charges for, medical benefits.
5. Direct earned premiums for personal injury protection coverage, pure loss ratios, pure premiums, and other information related to premiums and losses.
6. Licensed drivers and accidents.
7. Fraud and enforcement.

While OIR did not provide a summary of their findings in the body of the report, it summarized its findings in a press release dated January 5, 2015:¹³

The findings showed a general decrease in the per-claim costs and the overall number of claims (frequency and severity) for PIP since the implementation of HB 119 on January 1, 2013. The regional analysis concludes that South Florida and the Tampa/St. Petersburg regions experienced the most significant decreases in Florida. However, the data also exposed that other coverages, such as [BI] and Uninsured Motorists (UM), experienced increases in both frequency and severity when some benefits covered under PIP moved to these coverages. These trends are expected to continue over the next year.

Prior to 2012 and the passage of this law, the pervasive nature of PIP fraud and staged auto accidents created an unsustainable cost trajectory of PIP claims. The Division of Insurance Fraud (DIF), within the Department of Financial Services (DFS), is responsible for investigating this type of fraud. According to the DIF, there has been a substantial decline in PIP fraud since the implementation of HB 119 with a projected 16% decrease during Fiscal Year 2013 – 2014 from Fiscal Year 2011 – 2012.

The Office also compiled a summary of the rate filings effective on or after January 1, 2011 for the top 25 insurers representing 80.9% of the total personal auto market in Florida. These filings were segregated into two sets of data: Pre-HB 119 and Post-HB 119 (to include all filings submitted since, and including, the first required HB 119 filing due on October 1, 2012). The average statewide approved rate changes were:

¹³ Florida Office of Financial Regulation, *News Releases, Office Releases Personal Injury Protection (PIP) Insurance Data Call Report*, <http://www.flair.com/PressReleases/viewmediarelease.aspx?id=2094> (last visited May 3, 2021).

	Pre-HB 119	HB 119
PIP	+46.3%	-13.6%
Liability (incl. PIP)	+20.9%	-0.5%
Overall (incl. Comp. & Coll.)	+12.9%	-0.1%

The report noted many insurers had residual rate need due to deteriorating PIP experience prior to the implementation of the bill that were used to offset some of the expected savings from HB 119. For an individual policyholder, the rate changes may vary considerably from the statewide averages listed above, taking into account other factors, such as differences by insurer, by territory, etc.

Overall, there was limited data available to determine the true impact of HB 119; however, the data call analysis reveals the law has had a major impact on the personal auto market and changed the trajectory of trends being seen prior to its enactment.

The report also documented an increase in the frequency of motor vehicle crashes in Florida during 2013 and 2014, and DHSMV data shows that this trend continued through 2015. OIR reported that crash frequency per 100 licensed drivers in Florida had dropped by 13.7 percent from 2004 to 2011. In 2011, there were 1.48 crashes per 100 licensed drivers. For 2015, crash frequency increased over 61 percent to 2.40 crashes per 100 licensed drivers.

OIR Cost Projection on Certain PIP Reform Proposals

In June 2016, OIR contracted with Pinnacle Actuarial Resources (“Pinnacle”) to produce a “Review of PIP Legislation”¹⁴ to “provide a draft and final report documenting [a] comprehensive study on the effect of HB 119 and the potential impact to Floridians if the personal injury protection coverage requirements were repealed and replaced with varying levels of [BI] coverage, or if the current requirements to purchase motor vehicle insurance were completely repealed.” Pinnacle also produced the 2012 rate impact analysis required by HB 119 (2012).¹⁵

Pinnacle issued its report on September 13, 2016,¹⁶ finding that:

- HB 119 reforms produced an estimated aggregate savings since enactment in PIP claim costs of 17.5 percent and an estimated statewide average savings in PIP premiums of 15.1 percent.
- If no-fault insurance were repealed in Florida, there could be an estimated overall reduction in premiums of 9.6 percent on the liability coverage package or \$81 per motor vehicle annually for the average driver. For all coverages combined, the estimated premium decrease is 6.7 percent.
- There could be an estimated additional reduction in the PIP repeal savings of 0.2 percent to 0.4 percent if the requirement to purchase motor vehicle insurance was repealed along with the no-fault insurance requirement.

Pinnacle also considered the outcome to motor vehicle insurance premiums if the consumer purchased Medical Payments (“Med Pay”) coverage¹⁷ at either \$2,500 or \$5,000 coverage limits and if the BI limit was increased by law to \$25K/\$50K. The following table illustrates the estimated savings by scenario:

¹⁴ DFS OIR RFP 15/16-15, *Actuarial Consulting Services for Review of PIP Legislation*.

¹⁵ In 2012, Pinnacle was retained by OIR to conduct an independent actuarial study to calculate the savings to be expected because of HB 119 (2012). S. 15, HB 119 (2012). OIR published the report on August 21, 2012. Florida Office of Insurance Regulation, *Press Release*, <http://www.floir.com/PressReleases/viewmediarelease.aspx?id=1956> (last visited May 3, 2021).

¹⁶ Pinnacle Actuarial Resources, Inc., *Florida Office of Insurance Regulation: Review of Personal Injury Protection Legislation*, Sept. 13, 2016, available at <https://www.floir.com/siteDocuments/FLAIRReviewPIP20160913.pdf> (last visited May 3, 2021).

¹⁷ Med Pay is optional first-party motor vehicle insurance that, like PIP, provides medical and death benefits for the insured and other covered persons should they be injured in a motor vehicle accident, regardless of who is at fault. Florida Department of Financial Services (“DFS”), Division of Consumer Services, *Automobile Insurance Toolkit*, Sept. 2020, <https://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/Guides/documents/AutoToolkit.pdf> (last visited May 3, 2021).

Estimated Savings on Motor Vehicle Insurance Premiums, by Scenario			
Situation	Coverage Type	Require BI at \$10K/\$20K	Require BI at \$25K/\$50K
PIP repeal	Liabilities, only ¹⁸	9.6%	8.1%
	Overall	6.7%	5.6%
PIP repeal and \$2,500 Med Pay	Liabilities, only	4.9%	3.4%
	Overall	3.4%	2.4%
PIP repeal and \$5,000 Med Pay	Liabilities, only	1.0%	-0.5%
	Overall	0.7%	-0.3%

Overview of Colorado PIP Insurance Reform

Colorado had a no-fault motor vehicle insurance law from 1974 to 2003. In reaction to increasing motor vehicle insurance costs, including a 38 percent increase in motor vehicle insurance premiums from 1992 to 2002, Colorado repealed their no-fault law, effective July 2003. Colorado now handles motor vehicle crash liabilities through the tort system, under which the at-fault person is responsible for paying the losses of the victim, who enforces his or her rights in civil court.

Before the change, Colorado had the ninth highest premium per insured motor vehicle in the nation. For 2014 (the most current year available), Colorado had the 21st highest motor vehicle insurance premium in the nation. According to the Colorado Legislative Council Staff, motor vehicle insurance premiums in the state as of January 2007 had decreased ten to 14 percent after the no-fault system's elimination.¹⁹

Florida Comparison

According to data from the National Association of Insurance Commissioners, reported by the Insurance Information Institute, from 2006 through 2014, Florida has consistently ranked fifth in the nation for highest average motor vehicle insurance cost per vehicle. Florida ranked as low as sixth in 2009 and 2014 and as high as fourth in 2008 and 2012.²⁰

	Colorado			Florida		
	Average Premium Cost	National Rank	Percent Change over 2002 Cost	Average Premium Cost	National Rank	Percent Change over 2003 Cost
2002	\$921.00	9		n/a	n/a	
2003	\$923.00	12		\$1,018.00	5	
2004	\$850.00	18	-7.7%	\$1,062.00	5	4.3%
2005	\$829.00	21	-10.0%	\$1,064.00	6	4.5%
2006	\$785.00	23	-14.8%	\$1,069.00	5	5.0%
2007	\$738.00	24	-19.9%	\$1,043.00	5	2.5%
2008	\$728.67	26	-20.9%	\$1,054.89	5	3.6%
2009	\$741.28	22	-19.5%	\$1,006.20	6	-1.2%
2010	\$730.42	25	-20.7%	\$1,037.36	5	1.9%
2011	\$723.61	27	-21.4%	\$1,090.58	5	7.1%
2012	\$737.95	25	-19.9%	\$1,128.53	4	10.9%
2013	\$777.95	23	-15.5%	\$1,143.73	5	12.4%
2014	\$821.19	21	-10.8%	\$1,140.84	6	12.1%

¹⁸ "Liabilities, only" includes BI, PIP, Uninsured Motorist, and PD coverages.

¹⁹ Colorado Legislative Council, *Issue Brief Number 07-01, Automobile Insurance in Colorado*, Jan. 2007.

²⁰ Insurance Information Institute, *Auto Insurance, Costs and Expenditures*, <http://www.iii.org/table-archive/21247> (last visited May 3, 2021).

Private Passenger Motor Vehicle Insurance Requirement Comparison

	Colorado	Florida
No-Fault/PIP	None	\$10,000 medical, disability and funeral Non-emergency medical limited to \$2,500 Mandatory for vehicle registration
Bodily Injury or Death	\$25,000 per person, \$50,000 per accident Mandatory for vehicle registration	\$10,000 per person, \$20,000 per accident, or \$30,000 single limit Mandatory, may be secured post-registration
Property Damage	\$15,000 Mandatory for vehicle registration	\$10,000 Mandatory for vehicle registration
Uninsured/Under-insured Motorist	Mandatory offer at BI/PD limits, written rejection required	Mandatory coverage at BI limits, if BI purchased; written rejection required
Medical Payment	\$5,000 mandatory offer, written rejection required	Optional

Colorado Reform Impacts

In February 2008, the Office of the Governor of Colorado published a report on the impacts of the repeal of the no-fault system on motor vehicle insurance, health insurance, the trauma system, Medicaid, and the Colorado Indigent Care Program.²¹ The report indicated the following:

- For motor vehicle insurance:
 - For the eight largest motor vehicle insurers in Colorado by market share, average motor vehicle insurance premiums declined 35 percent from July 2003 to December 2007.
 - The average premium decrease attributable to the elimination of PIP was 22 percent immediately following the repeal of the no-fault system.²²
 - Colorado’s national rank for average annual motor vehicle insurance premium per vehicle fell after the repeal.
 - Premiums for each of the non-PIP motor vehicle insurance coverage types increased, except comprehensive coverage, but no baseline data was available for medical payment coverage so the effect there was unknown.
 - 99 percent of Colorado motor vehicle insurers were offering med pay coverage post-reform and 31 percent of consumers were purchasing this coverage.
- For health insurance:
 - Based on the responses of health insurers (totaling 1.57 million policyholders) to a 2003 survey by the Colorado Division of Insurance, health insurance premiums increased by an estimated 1.6 percent.
- For trauma systems, including:
 - Hospitals:
 - The report could not quantify the impact on acute care hospital reimbursements for emergency and outpatient services.
 - Comparing payments for 2002 to those for 2006 for inpatient care of motor vehicle accident patients at acute care hospitals, the percentage of payments from private insurance, which includes both motor vehicle and health insurance, decreased by about one third (75.4 percent for 2002 and 49.3 percent for 2006). The proportion of payment by all other payer types increased. The greatest increase was in self-payment (13.4 percent in 2002 and 27.2 percent in 2006).

²¹ BBC Research & Consulting, *Auto Insurance/Trauma System Study*, 5, Feb. 2008.

²² Information in *Issue Brief Number 07-01* and the *Auto Insurance/Trauma System Study* are seemingly at odds regarding the change in motor vehicle insurance premiums post-reform. The reason for the difference may be that *Issue Brief Number 07-01* references the change in average premiums for Colorado overall in January 2007 and the *Auto Insurance/Trauma System Study* is only focused on the eight largest motor vehicle insurers in Colorado in December 2007.

Self-payment may also include self-filing of insurance. Medicare showed the next highest increase (2.9 percent in 2002 and 7.7 percent in 2006).

- A similar pattern was seen in all inpatient cases; however, the amount of the decrease in the proportion of private insurance payments was much less (51.1 percent for 2002 and 46.6 percent for 2006).
- The reimbursement rate (percent of charge reimbursed) for acute care hospital inpatient motor vehicle crash patients fell from 60 percent to 36 percent for hospitals that responded to a survey. The report asserted the cause of the reduction to be more patients without insurance and, for patients with insurance, more payments based on negotiated rates (non-PIP insurers allegedly rely more on negotiated rates).
- Emergency medical first responders:
 - Based on a small sample of first responders, i.e., those that could provide detailed billing and reimbursement information, non-reimbursed charges increased 37 percent for 2006 over 2002. Governmental first responders indicated that they made up deficits related to lower patient care/transfer reimbursements from non-user sources such as taxes and general fund transfers.
 - The average number of days to collect first responder payments on motor vehicle crash-related cases increased from 74 days in 2002 to 144 days in 2006.
- For Medicaid and the Colorado Indigent Care Program:
 - The Medicaid program's exposure to motor vehicle crash claims increased, but the report could not quantify the cost.
 - While the Colorado Indigent Care Program's exposure increased, caps on the federal and state portions of the program's funding limited expenditure increases. This increased unreimbursed provider charges.

Effect of the Bill

The bill repeals PIP, effective January 1, 2022. However, suspensions,²³ revocations, and anti-fraud measures for actions occurring under the No-Fault Law continue.

²³ The bill also expands DHSMV's authority to suspend the registrations and licenses of drivers who fail to maintain BI when required under ss. 324.023 (DUI conviction), 324.032 (for-hire transportation), 627.7415 (commercial motor vehicles), and 627.742, F.S. (non-public sector buses), and who fail to carry proof of BI when operating a motor vehicle.

Changes to Financial Responsibility

Beginning January 1, 2022, proof of compliance with the Financial Responsibility Law (BI coverage) is required at the time of motor vehicle²⁴ registration,²⁵ instead of post-registration or at the time of an accident as is currently required. The bill increases the minimum BI coverage limits from \$10,000 per person and \$20,000 per incident to \$25,000 per person and \$50,000 per incident, but the minimum PD coverage limit remains unchanged at \$10,000.²⁶ This results in required 25/50/10 coverage in most instances.

The bill also increases minimum security limits for self-insurance of financial responsibility requirements. Specifically, the bill increases certificate of deposit requirements for individuals and businesses²⁷ from \$30,000 per vehicle (up to a maximum of \$120,000) to \$60,000 per vehicle (up to a maximum of \$240,000). Additionally, self-insured persons and businesses must maintain a motor vehicle liability policy in excess of the certificate of deposit providing bodily injury coverage of \$125,000 per person, \$250,000, per accident, and \$50,000 for property damage, or \$300,000 combined property damage and bodily injury coverage. The bill also increases certificate of self-insurance minimum unencumbered net worth requirements from:

- \$40,000 to \$100,000 for individuals.
- \$40,000 for the first vehicle and \$20,000 for each additional vehicle to \$100,000 and \$50,000, respectively, for businesses.²⁸

Further, the bill:

- Increases minimum security limits for garage liability insurance from a \$25,000 combined single limit for BI and PD to a \$60,000 combined limit but specifies that a garage liability policy is not required for the licensure of a mobile home dealer who sells only park trailers.
- Leaves for-hire passenger transportation vehicles at the current 125/250/50 coverage minimums.
- Increases minimum combined BI/PD coverage limits for commercial vehicles between 26,000 pounds and 35,000 pounds from \$50,000 per occurrence to \$60,000 per occurrence.
- Leaves minimum combined BI/PD coverage limits for commercial vehicles 35,000 pounds or more but less than 44,000 pounds at \$120,000 per occurrence.
- Leaves minimum combined BI/PD coverage limits for commercial vehicles 44,000 pounds or more at \$300,000 per occurrence.
- Leaves minimum coverage limits for non-public-sector buses at the current 100/300/50 or combined 300 amounts.
- Leaves minimum transportation network company coverage limits at 50/100/25 when logged on but not engaged in a ride and \$1 million when connected to a rider.

²⁴ The bill excludes electric bicycles from the definition of motor vehicle.

²⁵ Proof of compliance with the Financial Responsibility Law at the time of registration does not change for motorcycles. However, within 30 days after receipt of a specified notice of accident involving a motorcycle within this state, under the bill, the DHSMV must suspend the motorcycle operator's license and all registrations of the motorcycle's owner unless such operator or owner is found to be exempt from such requirement or otherwise had in effect at the time of the crash a motor vehicle liability policy with respect to all of the registered motorcycles owned by such operator or owner. For the purposes of the suspension provision, the term "motor vehicle" includes motorcycles.

²⁶ The allowed combined coverage limit of \$30,000 for property damage and bodily injury is increased to \$60,000.

²⁷ Proof of the certificate of deposit maintained in a financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration must be submitted annually to DHSMV.

²⁸ In the alternative, businesses may qualify for self-insurance by maintaining a sufficient net worth determined annually by the DHSMV. S. 324.171, F.S.

Coverage Transition

The bill provides for the transition of motor vehicle insurance policies from PIP coverage to BI/PD coverage if the policies were issued before January 1, 2022, but still in force on that date. Policies issued on or after January 1, 2022, are prohibited from including PIP coverage. Policies that were issued in compliance with the law in place at the time of issuance are deemed to meet the new requirements until renewed, non-renewed, or canceled. Insurers must allow policyholders with PIP coverage to obtain BI coverage that complies with the changes made by the bill without charge other than payments for increased premium due. Refunds for decreased premiums are also required.

Medical Payments Coverage

The bill requires motor vehicle insurers to offer medical payments (“med pay”) coverage before issuing an initial policy at coverage limits of \$5,000 and \$10,000 with no deductible. The insured may also offer med pay coverage at other limits greater than \$5,000 and coverage with a deductible of up to \$500. Med pay coverage in any amount must also provide an additional death benefit of at least \$5,000. A motor vehicle insurance policy is deemed to have \$10,000 in med pay coverage unless the insurer obtains a named insured’s written refusal of med pay coverage or a written selection of med pay coverage at a limit other than \$10,000.

Med pay forms must fully advise the applicant of the nature of the coverage being rejected or the policy limit or deductible being selected. Unless a named insured requests specified med pay coverage in writing, it need not be provided in or supplemental to any other policy that renews, insures, extends, changes, supersedes, or replaces an existing policy if a named insured has rejected the coverage or selected an alternative coverage limit or deductible. At least annually, the insurer must give the named insured a notice of the availability of med pay coverage in a form approved by OIR, which notice must be part of and attached to the notice of premium and provide for a means to allow a named insured to request med pay coverage at the limits and deductibles required to be offered.

The bill also establishes insurer reserve requirements tied to med pay coverage claims and specifies that med pay coverage benefits are not a lien on personal recoveries associated with the claim event, so the insurer lacks a right to sue a med pay coverage payment recipient unless the payments were the result of fraud. The insurer may include provisions in its policy allowing for subrogation of med pay coverage benefits paid if the expenses giving rise to the payments were caused by the wrongful acts or omissions of another who is not also an insured under the policy, but this right is inferior to the rights of the injured insured and is available only after all the insured’s damages are recovered and the insured is made whole. The insurer may also recover from an insured who receives full payment for damages impairing the insurer’s subrogation rights in specified circumstances. However, death benefits may not be subrogated.

Death Benefits

The bill provides for a mandatory death benefit of \$5,000 per deceased individual upon the death of the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant of a self-propelled motor vehicle when such death arises out of the ownership, maintenance, or use of a motor vehicle. However, death benefits are not payable if the deceased died as a result of causing injury or death to himself or herself intentionally, or because of injuries or death incurred while committing a felony.

Notice Requirements

Insurers must give notice, by September 1, 2021, informing motor vehicle insurance policyholders that, effective January 1, 2022:

- PIP is repealed.
- The policyholder is no longer required to carry PIP coverage.
- PIP is no longer available for purchase.
- New or renewal coverage will not include PIP.
- New BI requirements begin, with minimum coverage limits of 25/50/10.
- A policyholder must be offered med pay coverage.
- A policyholder may obtain uninsured/underinsured motorist coverage to protect themselves and their insureds from damages caused by an uninsured/underinsured driver.
- Policies that comply with the requirements of law at the time of issue are deemed to meet the new requirements, until the policy is renewed, non-renewed, or canceled.
- Insureds may change their policies to comply with the new requirements.
- Insureds may contact the person specified in the notice at the telephone number provided with any questions.

The notice must also state that med pay coverage pays covered medical expenses up to the coverage limits for the policyholder, passengers, and resident relatives,²⁹ while BI protects the insured against loss if he or she is at fault in an accident and responsible for the bodily injury or death of another. The notice is subject to OIR's approval.

Named Driver Exclusion

The bill authorizes a private passenger motor vehicle policy to exclude the following coverages for all claims or suits resulting from the operation of a motor vehicle by an identified individual who is not a named insured, provided that the identified individual is specifically excluded by name on the declarations page or by endorsement and the policyholder consents in writing to the exclusion:

- Property damage liability coverage.
- Bodily injury liability coverage.
- Uninsured motorist coverage for any damages sustained by the identified excluded individual, if the policyholder has purchased such coverage.
- Medical payments coverage for any injuries sustained by the identified excluded individual, if the policyholder has purchased such coverage.
- Any coverage the policyholder is not required by law to purchase.

The bill prohibits exclusion for periods when the excluded named driver is not operating a motor vehicle covered under the policy (such as when he or she is a passenger in the vehicle), if the exclusion is unfairly discriminatory by law, as determined by OIR, or if the exclusion is inconsistent with the underwriting guidelines filed by the insurer with OIR. Individuals who are named as excluded drivers on a particular policy may secure their insurance obligations under another policy, but the exclusion remains valid should the excluded driver fail to do so.

²⁹ "Resident relative" means a person related to a named insured by any degree of blood, marriage, or adoption, including a ward or foster child, who usually makes her or his home in the same family unit as the named insured, whether or not he or she is temporarily living elsewhere.

Newly Acquired and Temporary Substitute Motor Vehicles

The bill allows insurers to exclude coverage of motor vehicles not identified in a policy if the vehicle does not qualify as a “newly acquired vehicle”³⁰ or “temporary substitute”³¹ vehicle and was owned by the insured or given to him or her for his or her use for more than 30 days prior to the claim event.

Rate Filings

Initial insurer rate filings for motor vehicle liability submitted to OIR on or after January 1, 2022, must be based on the new BI/PD coverage requirements and may only be approved through the file and use approval process.³²

Tort Liability

By repealing PIP, the bill removes PIP’s tort liability limitation. Thus, when drivers are at fault in an accident, they are fully liable for any damages they cause. Due to this change, the bill removes the conditional exclusion³³ of tort damages for pain, suffering, mental anguish, and inconvenience and allows punitive damages awards. Beginning January 1, 2022, the bill also makes uninsured motorist insurers subject to tort damages for pain, suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience, and the loss of capacity for the enjoyment of life experienced in the past and to be experienced in the future.

Insurer Bad Faith: First Party

The bill provides that a first-party bad faith cause of action may arise as a result of an insurer failing to communicate to an insured:

- The name, telephone number, e-mail address, and mailing address of the claim adjuster;
- Any issues that may impair an insured’s coverage;
- Information that might promptly resolve the coverage issue;
- Any basis for the insurer’s rejection of non-acceptance of any settlement demand or offer; or
- Any needed extensions to respond to a time-limited settlement offer.

The bill also specifies that a person is not entitled to a judgment under multiple bad faith remedies, so that a person must choose to seek a remedy under either the common law or the statutory scheme.

³⁰ "Newly acquired vehicle" means a vehicle owned by a named insured or resident relative of the named insured which was acquired within 30 days before an accident.

³¹ "Temporary substitute vehicle" means any motor vehicle as defined in s. 320.01(1) which is not owned by the named insured and which is temporarily used with the permission of the owner as a substitute for the owned motor vehicle designated on the policy when the owned vehicle is withdrawn from normal use because of breakdown, repair, servicing, loss, or destruction.

³² In the file and use approval process, an insurer must file its proposed rates with OIR and have them approved before the rates may be implemented. In contrast, under the use and file method, an insurer may implement new rates before getting OIR’s approval.

³³ An uninsured motorist coverage insurer is liable for tort damages for pain, suffering, mental anguish, and inconvenience if the damages exceed the “verbal threshold” provided in s. 627.737(2)(a)-(d), F.S. The verbal threshold allows a plaintiff to recover such damages if the injury or disease consists in whole or in part of:

- Significant and permanent loss of an important bodily function.
- Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement.
- Significant and permanent scarring or disfigurement.
- Death.

Insurer Bad Faith: Third-party

Duties

The bill creates a statutory scheme for a bad faith failure to settle³⁴ a third-party claim under a motor vehicle insurance policy, specifying that an insurer has a duty to handle claims in good faith by complying with the best practices standards set forth in the bill. An insurer's duty begins upon receiving actual notice³⁵ of an incident or a loss that could give rise to a covered liability claim and continues until the claim is resolved.

The bill also specifies that an insured has a duty to cooperate with his or her insurer in the defense of the claim and in making settlements. Accordingly, the insured must take any reasonable action requested by the injured claimant or provided in the policy which is necessary to assist the insured in settling a covered claim. Further, when it is reasonably necessary to settle a covered claim valued in excess of all applicable policy limits, upon the request of the injured claimant, an insured must disclose a summary of specified assets of the insured. No later than 14 days after actual notice is given, the insurer must notify the insured of the insured's duties and the burden is on the insurer to prove it provided such notice to the insured; otherwise, a presumption arises that the insured met its duty to cooperate. An insurer may terminate the defense as to any insured who unreasonably fails to meet its duties under specified circumstances, and when an insured's defense is properly terminated, the insurer is not liable for any damages caused by a failure to settle or defend the liability claim against the insured.

The bill prohibits a trier of fact from attributing the insurer's failure to settle a covered third-party claim to a claimant's lack of communication with the insurer when the claimant truthfully fulfills specified communications requirements. The bill clarifies that the claimant owes no duty to the insured or the insurer, and that the duties of the claimant's attorney are owed solely to the claimant.

Conditions Precedent

The bill provides that it is a condition precedent to filing a third-party bad faith failure to settle claim against an insurer that:

- A third-party claimant obtained a final judgment in excess of the policy limits against the insured or the insured's estate, bankruptcy trustee, or successor in interest, unless the insurer expressly waived the requirement of a final excess judgment or wrongfully breached its duty to defend the insured; and
- The insurer or its agent received actual notice of the incident or loss that could give rise to a covered liability claim.

Safe Harbors

The bill provides that, after an insurer receives actual notice of an incident or loss that could give rise to a covered liability claim, the insurer is entitled to a reasonable opportunity³⁶ to investigate and evaluate the claim. When one claim arises out of a single occurrence, and an insurer initiates settlement negotiations by tendering the applicable policy limits in exchange for a general release of the insured within 45 days after receiving actual notice, the failure to tender the policy limits sooner does not constitute bad faith. When multiple claims arise out of a single occurrence, the combined value of all

³⁴ Under the bill, "bad faith failure to settle" means an insurer's failure to meet its duty of good faith, which is a proximate cause of the insurer not settling a third-party claim when, under all the circumstances, the insurer could and should have done so, had it acted fairly and honestly toward its insured and with due regard for the insured's interests.

³⁵ Notice may be communicated to the insurer by any means, but if actual notice is communicated by means other than through any manner specified in statute, the notice will not be effective if the variation causes actual prejudice to the insurer's ability to settle the claim. The burden is on the party bringing the bad faith claim to prove that the insurer had actual notice of the incident or loss giving rise to the claim that resulted in an excess judgment and when such notice was received.

³⁶ Under the bill, the amount of time required for the insurer's investigation and evaluation will vary depending on the circumstances of the claim.

claims exceeds the total of all applicable policy limits, and an insurer initiates settlement negotiations by globally tendering the applicable policy limits in exchange for a general release of the insured within 45 days after receiving actual notice, the failure to tender policy limits sooner does not constitute bad faith.

An insurer is not liable for the failure to accept a settlement offer within 45 days after receiving actual notice if the settlement offer gives the insurer fewer than 15 days for acceptance or fewer than 30 days for acceptance where the offer contains conditions for acceptance other than the insurer's disclosure of its policy limits. Further, the bill specifies that an insurer is not required to tender policy limits within 45 days in every case.

Burden of Proof

In any action for bad faith failure to settle, the bill requires the party bringing the bad faith claim to prove every element of the claim by the greater weight of the evidence, taking into account the totality of the circumstances. An insurer that relies on the defense termination or safe harbor provisions must prove the elements of the defense by the greater weight of the evidence.

Damages

The bill provides that, if the trier of fact finds that the party bringing the bad faith claim has met its burden of proof, the insurer is liable for the amount of any excess judgment, together with court costs and, if the party bringing the bad faith claim is the insured or an assignee thereof, the reasonable attorney fees incurred by the party bringing the bad faith claim. However, punitive damages may not be awarded.

Information Disclosure by Insurer

The bill authorizes a claimant to file an enforcement action if an insurer fails to comply with the information disclosure requirements of s. 627.4137, F.S. If a court determines that an insurer violated the information disclosure requirements, the bill specifies that a claimant is entitled to an award of reasonable attorney fees and costs to be paid by the insurer.

Setoff on Damages

The bill provides that, for any award of noneconomic damages, a defendant is entitled to a setoff of \$10,000 if a person suffers injury while operating a motor vehicle which lacked required motor vehicle insurance coverage and the person was not in compliance with motor vehicle insurance coverage requirements for more than 30 days immediately preceding the crash. However, the setoff does not apply if the defendant:

- Was driving while under the influence of an alcoholic beverage, an inhalant, or a controlled substance;
- Acted intentionally, recklessly, or with gross negligence;
- Fled from the scene of the crash; or
- Was acting in furtherance of an offense or in immediate flight from an offense that constituted a felony at the time of the crash.

Further, the setoff provision does not apply to a wrongful death claim.

Appropriation

The bill appropriates \$83,651 from the Insurance Regulatory Trust Fund to OIR to implement changes made by the bill.

The bill provides an effective date of January 1, 2022, except as otherwise provided in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. Premium tax revenues may be affected to the extent that lost revenues associated with PIP premiums are offset by changes in revenues associated with expected BI premium increases.

2. Expenditures:

Indeterminate. Hospitals may experience increased costs to the extent that medical reimbursements previously funded through PIP are shifted to secondary coverages or are lost through lack of secondary coverage. Additionally, OIR must approve new forms and rates related to med pay coverage and will receive filings to implement the coverage changes made by the bill, but the bill appropriates \$83,651 to OIR for that purpose.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. Local governments may achieve savings on motor vehicle insurance, depending upon the amount of coverage secured. Local governments operating hospitals may experience increased costs to the extent that medical reimbursements previously funded through PIP are shifted to secondary coverages or are lost through lack of secondary coverage.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Motor vehicle insurers must file new forms and rates and adjust their practices consistent with the bill's changes. Individuals and businesses must secure coverage in compliance with these changes.

D. FISCAL COMMENTS:

None.