

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1525 Motor Vehicle Insurance  
**SPONSOR(S):** Grall  
**TIED BILLS:** IDEN./SIM. BILLS: SB 150

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	15 Y, 3 N	Mawn	Jones
2) Judiciary Committee			

### SUMMARY ANALYSIS

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 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. An insurance policy or allowable form of self-insurance is acceptable proof of BI coverage.

HB 1525 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 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. Further, the bill requires an insurance company complying with the new financial responsibility requirements to:

- Provide a death benefit of \$5,000 for each deceased person upon the death of the named insured, relatives living in the same household, persons operating or passengers in the insured motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant of a self-propelled motor vehicle under certain circumstances.
- Offer opt-in medical payments coverage at specified limits with specified deductibles.

Motor vehicle policies issued on or after July 1, 2023, 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 July 1, 2023, from PIP to BI/PD and requires insurers to give their policyholders a notice describing the effect of the bill's changes by April 1, 2023. The notice is subject to approval by the Office of Insurance Regulation ("OIR"). Further, the bill allows for a \$10,000 setoff on noneconomic damages for a defendant under specified circumstances.

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

The bill provides an effective date of July 1, 2023, except as otherwise expressly provided.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

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 may be suspended for failure to comply with the PD and PIP coverage requirements but may be reinstated by obtaining a liability insurance policy and paying a fee to the DHSMV.<sup>5</sup>

Each state has 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.

##### Motor Vehicle No-Fault Law

Florida's Motor Vehicle No-Fault Law ("No-Fault Law")<sup>6</sup> 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 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.<sup>7</sup>

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<sup>1</sup> Ch. 324, F.S.

<sup>2</sup> Ss. 324.011 and 324.022, F.S.

<sup>3</sup> Businesses that choose to self-insure 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. To do this, 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 by OIR Rule. Rule 15A-3.011, F.A.C; ss. 324.031, 324.061, 324.161, and 324.171, F.S.

<sup>4</sup> S. 324.022, F.S.

<sup>5</sup> S. 324.0221(2) and (3), F.S.

<sup>6</sup> Ss. 627.730-627.7405, F.S.

<sup>7</sup> S. 627.7275, F.S.

PIP General Provisions

Provision	Explanation
Required Coverage	All owners or registrants of motor vehicles with four or more wheels, except school buses, limos, and taxicabs, must carry PIP. <sup>8</sup>
Individuals Covered	The named insured, relatives living in the same house, persons operating and passengers in the vehicle, and persons struck and injured outside the vehicle.
Tort Limitation	Limited exemption from tort liability; injured persons may pursue certain tort claims as specified by the PIP law.
Benefits	\$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.
Timely Treatment	Medical benefits are paid only if treatment is begun within 14 days of the accident.
Timely Payment	Payments are late if not paid within 30 days of insurer's receipt of written notice.
Medical Reimbursement	80 percent of reasonable medical expenses paid to eligible medical providers. <sup>9</sup>
Excluded Treatment	Massage and acupuncture are not covered. Services, supplies, or care that are not reimbursable under Medicare or workers' compensation are also not covered.
Attorney Fees	Prevailing insureds and beneficiaries may receive reasonable attorney fees.

PIP in Other States

Over the last 20 years or so, 25 jurisdictions have repealed their No-Fault laws or made them non-compulsory.<sup>10</sup> Only 16 jurisdictions now have compulsory PIP laws, only nine have No-Fault laws, and only five, including some without compulsory PIP laws, give the insured the option to choose No-Fault protections, as noted in the chart below:

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
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

<sup>8</sup> This includes a non-resident keeping a vehicle in Florida for more than 90 days during the previous 365 days. S. 627.733(2), F.S.

<sup>9</sup> Insurers may limit reimbursements to a fee schedule tied to the Medicare allowed amount. For many services, 80 percent of 200 percent of the Medicare allowed amount is the standard reimbursement. S. 627.736(5)(a)1., F.S.

<sup>10</sup> National Assoc. of Ins. Commissioners, *Final Auto Study Group Report* (Nov. 18, 2014) and Ins. Information Institute, *Compulsory Auto/Uninsured Motorists* (Sept. 2017), <http://www.iii.org/issue-update/compulsory-auto-uninsured-motorists> (last visited Feb. 7, 2022).

The Florida 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 2014.<sup>11</sup>

### *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, 2017, 2020, and 2021 that would have repealed PIP and required increased BI coverage under the Financial Responsibility Law.<sup>12</sup> 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. In 2021, the House considered HB 719, which passed the House as CS/CS/SB 54; however, on June 29, 2021, Governor DeSantis vetoed CS/CS/SB 54, stating that the bill "does not adequately address the current issues facing Florida drivers and may have unintended consequences that would negatively impact both the market and consumers."<sup>13</sup>

### *Recent Changes*

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. Thirty-five insurers representing 83.5 percent of the market participated in the data call, including the top

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<sup>11</sup> Michael Adams, *Report Finds Florida PIP Reforms Helping to Lower Rates*, Insurance Journal (Jan. 24, 2014), <https://www.insurancejournal.com/news/southeast/2014/01/24/318288.htm> (last visited Feb. 7, 2022).

<sup>12</sup> Ch. 324, F.S.

<sup>13</sup> Veto Letter of Ron DeSantis, Governor (June 29, 2021), <https://www.flgov.com/wp-content/uploads/2021/06/SB-54-Transmittal-Letter.pdf> (last visited Feb. 7, 2022).

twenty-five 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 its findings in the body of the report, it summarized its findings in a press release dated January 5, 2015:<sup>14</sup>

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:

	<b>Pre-HB 119</b>	<b>HB 119</b>
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.

<sup>14</sup> Florida Office of Financial Regulation, *News Releases, Office Releases Personal Injury Protection (PIP) Insurance Data Call Report*, <http://www.flor.com/PressReleases/viewmediarelease.aspx?id=2094> (last visited Feb. 7, 2022).

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 Reform Proposals in 2021 CS/CS/SB 54*

In 2021, OIR contracted with Pinnacle Actuarial Resources (“Pinnacle”) to produce a report analyzing the projected impact of 2021 CS/CS/SB 54, which would have repealed PIP and replaced it with a traditional tort liability system.<sup>15</sup> Pinnacle issued its report on June 14, 2021,<sup>16</sup> and projected that:

- There would be an overall increase in premiums of 13.3 percent for all coverages combined, or \$202 per vehicle annually, for insureds buying \$10,000 in med pay coverage.<sup>17</sup>
- Insureds rejecting first party med pay coverage will see an overall increase in premiums of 1.5 percent, or \$23 per vehicle annually, while insureds buying \$5,000 in med pay coverage would see an overall increase in premiums of 8.6 percent annually, or \$131 per vehicle annually.
- The estimated liability premium would increase by 19.6 percent with \$10,000 in med pay coverage; 2.2 percent with no med pay coverage; and 12.7% with \$5,000 in med pay coverage.

These projections, broken down by impact based on current coverage, are illustrated here:

Coverage Package	Financial Responsibility Limit	Medical Payments Limit	Liability Percent Change	All Coverage Percent Change
Full Coverage	25/50	None	2.2%	1.5%
Full Coverage	25/50	\$5,000	12.7%	8.6%
Full Coverage	25/50	\$10,000	19.6%	13.3%
Minimum Coverage	25/50	None	48.3%	48.3%
Minimum Coverage	25/50	\$5,000	65.8%	65.8%
Minimum Coverage	25/50	\$10,000	77.2%	77.2%

The report also estimated that, due to the PIP repeal, health insurance claims would rise by more than \$300 million and leave health care providers on the hook for an estimated \$13 million.

#### 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 its 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 decreased 10 to 14 percent after the no-fault system’s elimination.<sup>18</sup>

#### *Florida Comparison*

According to data from the National Association of Insurance Commissioners, reported by the Insurance Information Institute, from 2006 through 2018, Florida has consistently ranked among the top

<sup>15</sup> Pinnacle Actuarial Resources, Inc., *Florida Office Of Insurance Regulation: Impact of Repealing Personal Injury Protection Coverage in Florida*, June 14, 2021, <https://www.floir.com/siteDocuments/FloridaOIRPIRepealImpactFinalReport06142021.pdf> (last visited Feb. 7, 2022).

<sup>16</sup> The report was based on assumptions about the implementation of CS/CS/SB 54, which was later vetoed. *Id.*

<sup>17</sup> This assumed that PIP coverage would be eliminated and replaced with med pay coverage with a default limit of \$10,000. *Id.*

<sup>18</sup> Colorado Legislative Council, *Issue Brief Number 07-01, Automobile Insurance in Colorado*, Jan. 2007.

five states 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 third in 2017.<sup>19</sup>

*Private Passenger Motor Vehicle Insurance Requirement Comparison*

Coverage	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, and \$50,000 per accident. Mandatory for vehicle registration.	\$10,000 per person, and \$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.<sup>20</sup> 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.<sup>21</sup>
  - 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).

<sup>19</sup> Ins. Information Institute, *Auto Insurance, Costs and Expenditures*, <http://www.iii.org/table-archive/21247> (last visited Feb. 7, 2022).

<sup>20</sup> BBC Research & Consulting, *Auto Insurance/Trauma System Study*, 5, Feb. 2008.

<sup>21</sup> 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

HB 1525 repeals PIP, effective July 1, 2023. However, suspensions,<sup>22</sup> revocations, and anti-fraud measures for actions occurring under the No-Fault Law continue.

### Changes to Financial Responsibility

Beginning July 1, 2023, proof of compliance with the Financial Responsibility Law (BI coverage) is required at the time of motor vehicle registration,<sup>23</sup> instead of 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.<sup>24</sup> 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 businesses<sup>25</sup> 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.<sup>26</sup>

Further, the bill:

- Increases minimum security limits for garage liability insurance from a \$25,000 combined single BI/PD coverage limit to a \$60,000 combined coverage limit.<sup>27</sup>
- 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.

### Coverage Transition

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<sup>22</sup> 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.

<sup>23</sup> 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.

<sup>24</sup> The allowed a combined coverage limit of \$30,000 for property damage and bodily injury is increased to \$60,000.

<sup>25</sup> 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.

<sup>26</sup> 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.

<sup>27</sup> The bill also requires a licensed motor vehicle dealer to deliver to DHSMV, within 10 calendar days after renewal or continuation of or change in a garage liability insurance policy or within 10 calendar days after an issuance of a new policy, a copy of the renewed, continued, changed, or new policy.

The bill provides for the transition of motor vehicle insurance policies from PIP coverage to BI/PD coverage if the policies were issued before July 1, 2023, but still in force on that date. Policies issued on or after July 1, 2023, 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.

#### “Opt In” 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.

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 cannot sue a med pay coverage payment recipient unless the payments were the result of fraud. The insurance policy may provide 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 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, but death benefits may not be subrogated.

#### Death Benefits

The bill provides for a mandatory death benefit of \$5,000 per deceased person upon the death of the named insured, relatives residing in the same household, persons operating or passengers in the insured 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 April 1, 2023, informing motor vehicle insurance policyholders that, effective July 1, 2023:

- 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.
- New death benefit requirements begin, with minimum coverage of \$5,000 per deceased person.
- A policyholder must be offered med pay coverage.
- Policyholders may obtain uninsured/underinsured motorist coverage to protect themselves and their insureds from damages caused by an uninsured/underinsured driver.
- A policy that complies with the requirements of law at the time of issue are deemed to meet the new requirements until the policy is renewed, not 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,<sup>28</sup> 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.

### 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"<sup>29</sup> or "temporary substitute"<sup>30</sup> vehicle and was owned by the insured or given to him or her for his or her use for more than 30 days before the claim event.

### Rate Filings

Initial insurer rate filings for motor vehicle liability, except for exempt commercial motor vehicle insurance policies, submitted to OIR on or after July 1, 2023, must be based on the new BI/PD coverage requirements and may only be approved through the file and use approval process.<sup>31</sup>

### 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 exclusion<sup>32</sup> of tort damages for pain, suffering, mental anguish, and inconvenience and allows punitive damages awards. Beginning July 1, 2023, 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.

### 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:

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<sup>28</sup> "Resident relative" means a person related to a named insured by any degree of blood, marriage, or a doption, 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.

<sup>29</sup> "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.

<sup>30</sup> "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.

<sup>31</sup> 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.

<sup>32</sup> 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.

- 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.

#### Effective Date

The bill provides an effective date of July 1, 2023, except as otherwise provided in the bill.

#### B. SECTION DIRECTORY:

- Section 1:** The bill repeals ss. 627.730, 627.731, 627.7311, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S.
- Section 2:** Repeals s. 627.7407, F.S., relating to Application of Florida Motor Vehicle No-Fault Law.
- Section 3:** Amends s. 316.2122, F.S., relating to operation of a low-speed vehicle, mini truck, or low-speed autonomous delivery vehicle on certain roadways.
- Section 4:** Amends s. 316.646, F.S., relating to security required; proof of security and display thereof.
- Section 5:** Amends s. 318.18, F.S., relating to amount of penalties.
- Section 6:** Amends s. 320.02, F.S., relating to registration required; application for registration; forms.
- Section 7:** Amends s. 320.0609, F.S. relating to transfer and exchange of registration license plates; transfer fee.
- Section 8:** Amends s. 320.27, F.S., relating to motor vehicle dealers.
- Section 9:** Amends s. 320.771, F.S., relating to license required of recreational vehicle dealers.
- Section 10:** Amends s. 322.251, F.S., relating to notice of cancellation, suspension, revocation, or disqualification of license.
- Section 11:** Amends s. 322.34, F.S., relating to driving while license suspended, revoked, canceled, or disqualified.
- Section 12:** Amends s. 324.011, F.S., purpose of chapter.
- Section 13:** Amends s. 324.021, F.S., relating to definitions; minimum insurance required.
- Section 14:** Amends s. 324.022, F.S., relating to financial responsibility for property damage.
- Section 15:** Amends s. 324.0221, F.S., relating to reports by insurers to the department; suspension of driver license and vehicle registrations; reinstatement.
- Section 16:** Creates s. 324.0222, F.S., relating to application for driver license and registration suspensions for failure to maintain security; reinstatement.
- Section 17:** Amends s. 324.023, F.S., relating to financial responsibility for bodily injury or death.
- Section 18:** Amends s. 324.031, F.S., relating to manner of providing financial responsibility.
- Section 19:** Amends s. 324.032, F.S., relating to manner of proving financial responsibility; for-hire passenger transportation vehicles.
- Section 20:** Amends s. 324.051, F.S., relating to reports of crashes; suspensions of licenses and registrations.
- Section 21:** Amends s. 324.071, F.S., relating to reinstatement; renewal of license; reinstatement fee.
- Section 22:** Amends s. 324.091, F.S., relating to notice to department; notice to insurer.
- Section 23:** Amends s. 324.151, F.S., relating to motor vehicle liability policies; required provisions.
- Section 24:** Amends s. 324.161, F.S., relating to proof of financial responsibility; deposit.
- Section 25:** Amends s. 324.171, F.S., relating to self-insurer.
- Section 26:** Amends s. 324.251, F.S., relating to short title.
- Section 27:** Amends s. 400.9905, F.S., relating to definitions.
- Section 28:** Amends s. 400.991, F.S., relating to license requirement; background screenings; prohibitions.

- Section 29:** Amends s. 400.9935, F.S., relating to clinic responsibilities.
- Section 30:** Amends s. 409.901, F.S., relating to definitions; ss. 409.901-409.920.
- Section 31:** Amends s. 409.910, F.S., relating to responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable.
- Section 32:** Amends s. 456.057, F.S., relating to ownership and control of patient records; report or copies of records to be furnished; disclosure of information.
- Section 33:** Amends s. 456.072, F.S., relating to grounds for discipline; penalties; enforcement.
- Section 34:** Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts.
- Section 35:** Amends s. 626.989, F.S., relating to investigation by department or Division of Investigative and Forensic Services; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.
- Section 36:** Amends s. 627.06501, F.S., relating to insurance discounts for certain person completing driver improvement course.
- Section 37:** Amends s. 627.0651, F.S., relating to making and use of rates for motor vehicle insurance.
- Section 38:** Amends s. 627.0652, F.S., relating to insurance discounts for certain persons completing safety course.
- Section 39:** Amends s. 627.0653, F.S., relating to insurance discounts for specified motor vehicle equipment.
- Section 40:** Amends s. 627.4132, F.S., relating to stacking of coverages prohibited.
- Section 41:** Amends s. 627.4137, F.S., relating to disclosure of certain information required.
- Section 42:** Amends s. 627.7263, F.S., relating to rental and leasing driver's insurance to be primary; exception.
- Section 43:** Creates s. 627.7265, F.S., relating to motor vehicle insurance; medical payments coverage.
- Section 44:** Amends s. 627.727, F.S., relating to motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.
- Section 45:** Amends s. 627.7275, F.S., relating to motor vehicle insurance liability.
- Section 46:** Creates s. 627.72761, F.S., relating to required motor vehicle death benefit coverage.
- Section 47:** Creates s. 627.7278, F.S., relating to applicability and construction; notice to policyholders.
- Section 48:** Amends s. 627.728, F.S., relating to cancellations; nonrenewals.
- Section 49:** Amends s. 627.7295, F.S., relating to motor vehicle insurance contracts.
- Section 50:** Amends s. 627.7415, F.S., relating to commercial motor vehicles; additional liability insurance coverage.
- Section 51:** Amends s. 627.747, F.S., relating to named driver exclusion.
- Section 52:** Amends s. 627.748, F.S., relating to transportation network companies.
- Section 53:** Amends s. 627.7483, F.S., relating to peer-to-peer car sharing; insurance requirements.
- Section 54:** Amends s. 627.749, F.S., relating to autonomous vehicles; insurance requirements.
- Section 55:** Amends s. 627.8405, F.S., relating to prohibited acts; financing companies.
- Section 56:** Amends s. 627.915, F.S., relating to insurer experience reporting.
- Section 57:** Amends s. 628.909, F.S., relating to applicability of other laws.
- Section 58:** Amends s. 705.184, F.S., relating to derelict or abandoned motor vehicles on the premises of public-use airports.
- Section 59:** Amends s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.
- Section 60:** Creates s. 768.582, F.S., relating to setoff on damages as a result of a motor vehicle crash while uninsured.
- Section 61:** Amends s. 817.234, F.S., relating to false and fraudulent insurance claims.
- Section 62:** Appropriates \$83,651 from the Insurance Regulatory Trust Fund to OIR for the purpose of implementing the bill.
- Section 63:** Provides an effective date of July 1, 2023, except as otherwise provided.

## 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 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, and it is unclear whether premiums will be affected.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking, but any rules referencing PIP or BI coverage requirements may require revision due to changes made by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

A similar version of this bill passed the Legislature as CS/CS/SB 54 during the 2021 legislative session but was subsequently vetoed by the Governor on June 29, 2021.<sup>33</sup>

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<sup>33</sup> Veto Letter of Ron DeSantis, Governor, *supra* note 13.  
STORAGE NAME: h1525a.CIV  
DATE: 2/7/2022

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES