

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: General Government Appropriations Committee

BILL: CS/CS/SB 1880

INTRODUCER: General Government Appropriations Committee, Banking and Insurance Committee,
and Senators Posey and Jones

SUBJECT: Motor Vehicle Insurance

DATE: April 24, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Kynoch</u>	<u>DeLoach</u>	<u>GA</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

In 2003, the Legislature repealed the Florida Motor Vehicle No-Fault law,¹ effective October 1, 2007, unless the provisions are reenacted by the Legislature.² In November 2005, the Senate Committee on Banking and Insurance published *Florida's Motor Vehicle No-Fault Law* (Interim Project Report 2006-102).³ The report recommended that the Legislature reenact the no-fault law along with additional reforms.

This bill:

- Reenacts and extends the repeal of the Florid Motor Vehicle No-Fault law until January 1, 2012.
- Requires the Department of Financial Services and the Office of Insurance Regulation to conduct a review and submit a report on the Florida Motor Vehicle No-Fault Law by October 2010.
- Authorizes 30 positions and appropriates \$2,398,278 from the Insurance Regulatory Trust Fund to the Department of Financial Services for investigation of insurance fraud.

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

² Section 19, ch. 2003-411, L.O.F.

³ See report available at http://www.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-102bilong.pdf.

- Appropriates \$408,000 from the Insurance Regulatory Trust Fund to the Department of Financial Services for transfer to the Justice Administration Commission to fund positions authorized in the Justice Administration Commission for prosecution of insurance fraud in Miami, Orlando, and Tampa.
- Authorizes six positions and appropriates \$408,000 from the Grants and Donations Trust Fund to the Justice Administration Commission for prosecution of insurance fraud in Miami, Orlando, and Tampa.

This bill amends section 627.736, Florida Statutes.

II. Present Situation:

Florida's Motor Vehicle No-Fault Insurance Law

In 1971, Florida became the second state in the country to adopt a no-fault automobile insurance plan.⁴ The no-fault reform was offered as a viable replacement for the tort system as a means to quickly and efficiently compensate injured parties in auto accidents regardless of fault.

Under current law, motorists are required to purchase personal injury protection (PIP) and property damage (PD) liability coverage. The no-fault coverage, referred to as PIP, provides \$10,000 of coverage for the following: payment of 80 percent of reasonable medical expenses, 60 percent of loss of income, plus a \$5,000 death benefit, for bodily injury sustained in a motor vehicle accident, without regard to fault. Personal injury protection covers the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons struck by the insured motor vehicle. This coverage also provides the policyholder with immunity from liability for economic damages (medical expenses and lost wages) to the extent not covered by PIP and for non-economic damages (pain and suffering) for most injuries.

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

- 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.

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

Current law also requires vehicle owners to obtain \$10,000 in property damage (PD) liability coverage which pays for the physical damage expenses caused by the insured to third parties in the accident. Additionally, under Florida's Financial Responsibility law, motorists must provide

⁴ Sections 627-730-627.7405, F.S.

proof of ability to pay monetary damages for bodily injury liability (BI) and PD liability after motor vehicle accidents or serious traffic violations. The minimum amounts of liability coverage are \$10,000 in the event of injury to one person, \$20,000 for injury to two or more persons, and \$10,000 property damage, or \$30,000 combined single limits. Many drivers purchase “optional” coverage in addition to mandatory insurance including bodily injury liability, (which may be required by the Financial Responsibility Law), uninsured motorist, collision, comprehensive, medical payments, towing, rental reimbursement and accidental death and dismemberment. Insurers may not require motorists to purchase any of the optional coverage.

The Legislature enacted significant no-fault reforms in 2001 and 2003;⁵ however, according to many stakeholders, these reforms have not gone far enough in resolving the problems within the no-fault system which include fraud, abuse, inappropriate medical treatment, inflated claims, inadequate compensation to victims, increased premiums, and the proliferation of law suits. As a result of these concerns, in 2003 the Legislature repealed the Motor Vehicle No-Fault law to take effect October 1, 2007, unless reenacted by the Legislature during the 2006 Regular Session and such reenactment becomes law to take effect for policies issued or renewed on or after October 1, 2006.

PIP Premiums and Loss Costs

According to data obtained from the Insurance Services Office (ISO), the average amount paid in PIP losses in Florida for each insured vehicle increased 25 percent from 2000 (4th quarter) to 2005 (4th quarter). This period saw a relatively steep rise from 2000 to 2002 and a more moderate increase from 2002 to 2005. However, PIP loss costs decreased 10.8 percent from 2005 (4th quarter) to 2006 (3rd quarter). The trend in these loss costs are not as favorable in comparison to other PIP states or no-fault states. The 2006 interim report of the Banking and Insurance Committee found that in 2000, the Florida average PIP loss costs were 13.2 percent above the average of the 17 states⁶ that provide PIP coverage, but by 2005 (2nd quarter), the Florida loss costs were 69.7 percent greater than the 17-state average. More recent data from ISO compares Florida PIP loss costs with the 10 states⁷ identified by ISO as no-fault states, which shows Florida’s costs to be more closely in line, but which still show Florida’s trend in loss costs outpacing the average. In 2001 (4th quarter), Florida average PIP loss costs were 8 percent below the average of the 10 no-fault states, but by 2006 (3rd quarter), Florida’s PIP loss costs were 3.5 percent above the average.

PIP premiums charged by insurers vary across the state depending upon the insured’s driving history, status as first-time driver, gender, age, credit history, insurance coverage, limits and deductibles as well as the year and type of vehicle driven, usage of the vehicle and territory.⁸ The

⁵ Chapters 2001-271, L.O.F., 2001-163, L.O.F., and 2003-411, L.O.F.

⁶ Delaware, Florida, Hawaii, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New York, North Dakota, Oregon, South Carolina, Texas, Utah, and Washington, plus the District of Columbia. These include both no-fault states and “add-on” states that require PIP to be offered, but do not restrict the right to sue in tort.

⁷ Florida, Hawaii, Kansas, Kentucky, Massachusetts, Minnesota, New York, North Dakota, and Utah. Pennsylvania and New Jersey are excluded.

⁸ “Territory” factors would include where the vehicle is kept and driven, road conditions, the number of accidents in the particular area, etc. Insurers may also offer discounts for safety equipment, for drivers with records free of accidents and violations and for drivers who complete driver education courses.

Department of Financial Services provided Committee staff with examples of annual PIP premiums in three Florida cities in 2006 for nine major auto insurers in the chart below.⁹

Average Annual PIP Premiums in 2006 for Nine Major Insurers¹⁰

Company	Tallahassee			Orlando			Miami		
	Driver A	Driver B	Driver C	Driver A	Driver B	Driver C	Driver A	Driver B	Driver C
Allstate	\$125	\$88	\$136	\$212	\$143	\$233	\$350	\$230	\$387
Direct General	\$268	\$262	\$451	\$359	\$351	\$608	\$960	\$938	\$1,649
Gov't. Employees	\$98	\$33	\$123	\$145	\$124	\$47	\$269	\$397	\$236
Liberty Mutual	\$101	\$98	\$179	\$160	\$153	\$304	\$227	\$217	\$448
Mercury Ins.	\$94	\$84	\$274	\$128	\$112	\$380	\$186	\$162	\$566
Nationwide Mutual.	\$108	\$90	\$345	\$159	\$128	\$558	\$176	\$141	\$628
Progressive	\$73	\$84	\$182	\$134	\$155	\$347	\$233	\$272	\$618
State Farm	\$105	\$94	\$281	\$183	\$162	\$515	\$316	\$279	\$882
United Auto	\$303	\$289	\$778	\$311	\$298	\$801	\$499	\$476	\$1,320

Driver A is a 40 year-old married female whose care is not operated by a youthful driver. She has one moving violation for speeding less than 15 miles per hour over the speed limit within the past 18 months. She drives a 3-year old sport utility vehicle valued at \$25,000. She drives 15,000 miles annually for work and pleasure. Her drive to work is less than 15 miles one-way.

Driver B is a 71 year-old married male. He has had one moving violation for failing to obey a stop sign within the past 18 months. He drives an 8-year old car valued at \$10,000. He drives 10,000 miles annually for pleasure.

Driver C is a single 18 year-old male driver who lives with his family. He has had no accidents or moving violations during his two-year driving history. He drives a 5 year-old car valued at \$15,000. He drives 12,000 miles annually for school, work, and pleasure. His drive to work is less than 15 miles one-way.

PIP Health Care Fraud and Abuse

High costs for health care services drive up PIP insurance costs. Health care fraud and abuse are at an all time high and are the leading cost “drivers” of motor vehicle insurance fraud according

⁹ This data was based on rates in effect on January 1, 2006, based on three hypothetical drivers with a PIP deductible of \$250.

¹⁰ The insurers are: Allstate Property and Casualty Ins. Co.; Direct General Ins. Co.; Government Employees Ins. Co.; Liberty Mutual Ins. Co.; Mercury Ins. Co. of Florida; Nationwide Mutual Fire Ins. Co.; Progressive American; State Farm Mutual Automobile Insurance Co.; and United Automobile Ins. Co.

to the Director of Insurance Fraud (DIF or division) with the Department of Financial Services. Florida's no-fault laws are being exploited by sophisticated criminal organizations in schemes that involve health care clinic fraud,¹¹ filing PIP claims using contrived injuries, colluding with dishonest medical treatment providers to fraudulently bill insurance companies at exorbitant fees for medically unnecessary or non-existent treatments, and patient-brokering (referring patients to medical providers for a bounty), according to representatives with the division. The high cost of health care is driven by increases in per service fees and over-utilization of medical services, according to state division officials.

The latest statistics for the DIF indicate that the total number of PIP fraud referrals for 2005-06 were 3,159; this represents an increase of 430 percent over referrals from 1996-97.¹² For 2005-06, the number of criminal investigations opened was 329, the number of arrests made was 307, and 225 cases resulted in convictions. PIP arrests account for approximately 40 percent of all insurance fraud arrests made by the Division.

Florida Auto Injury Insurance Claim Study

In February 2007, the Insurance Research Council¹³ released its report entitled, *Florida Auto Injury Insurance Claim Environment*, which was based on a sample of 4,162 auto injury insurance claims from Florida that closed with payment in 2005.¹⁴ The report included the following findings:

- The average total claimed PIP economic loss, consisting primarily of medical expenses, increased 18 percent in three years, from \$8,289 in 2002 to \$9,769 in 2005. The general rate of inflation based on the Consumer Price Index (CPI) increased 9 percent during this same period and medical care inflation increased 13 percent during this time.
- The average total PIP claim payment also increased significantly faster than the CPI. From 2002 to 2005, the average total PIP payment increased 24 percent to \$5,712, compared with \$4,606.
- Chiropractors were the most common medical provider submitting charges for treatment of PIP claimants. The percentage of PIP claims with chiropractor charges reached 44 percent, an increase from 33 percent in 2002. In addition, the average total amount charged by chiropractors increased 35 percent over three years, from \$4,837 in 2002 to \$6,510 in 2005.
- An increased percentage of PIP claimants hired attorneys. More than four in ten PIP claimants (45 percent) hired attorneys in 2005, compared with 34 percent in 2002. The percentage of PIP claimants who qualified for a tort claim steadily increased from 1997 to 2005. In 2005, half (50 percent) of PIP claimants qualified for a Bodily Injury (BI) tort recovery under Florida's no-fault regulation, compared with 42 percent in 2002 and 34 percent in 1997.
- The proportion of PIP claimants who had an MRI (magnetic resonance imaging) rose from 26 percent of all PIP claimants in 2002, to 33 percent in 2005. Another key cost driver is the

¹¹ A health care clinic means an entity at which health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider (s. 400.9905(4), F.S.).

¹² February 2007.

¹³ The Insurance Research Council is a division of the American Institute for Chartered Property Casualty Underwriters and the Insurance Institute of America.

¹⁴ Earlier Florida claim data were collected as part of national IRC studies in 2002 and 1997.

rapid growth in the cost of computerized tomography (CT) services. The average total CT charge for PIP claimants increased 31 percent, from \$2,755 in 2002, to \$3,601 in 2005.

III. Effect of Proposed Changes:

Section 1 requires the Department of Financial Services and the Office of Insurance Regulation to conduct a review and submit a report on the Florida Motor Vehicle No-Fault Law by October 1, 2010. Provides that the Legislature may not reenact the Florida Motor Vehicle No-Fault Law after the 2011 regular legislative session if reforms are not made to solve the issues identified in the report. (This would effectively be considered as legislative intent, since a future Legislature would not be bound by this provision.)

Section 2 provides that effective January 1, 2012, sections 627.730, 627.731, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S., constituting the Florida Motor Vehicle No-Fault law, unless reviewed and reenacted by the Legislature before that date.

Section 3 provides that Section 19 of chapter 2003-411, F.S., is repealed, and sections 627.730, 627.731, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S., (constituting the Florida Motor Vehicle No-Fault Law) are reenacted and shall not stand repealed on October 1, 2007, as provided for in that section.

Section 4 authorizes 30 positions and appropriates \$2,398,278 from the Insurance Regulatory Trust Fund to the Department of Financial Services for investigation of insurance fraud. The salary rate associated with the positions is 1,387,860. The positions are authorized as senior insurance fraud investigators and are included in the certified law enforcement collective bargaining unit.

Section 5 appropriates \$408,000 from the Insurance Regulatory Trust Fund to the Department of Financial Services for transfer to the Justice Administration Commission. The cash transferred in this appropriation will be used to fund positions authorized in the Justice Administration Commission for prosecution of insurance fraud in Miami, Orlando, and Tampa.

Section 6 authorizes 6 positions and appropriates \$408,000 from the Grants and Donations Trust Fund to the Justice Administration Commission for prosecution of insurance fraud in Miami, Orlando, and Tampa.

Section 7 provides that the bill will take effect July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If the additional funding and positions related to the investigation, arrest, and prosecution of PIP-related insurance fraud crimes are effective in reducing such fraud, PIP insurers will benefit from reduced payments for PIP and policyholders would benefit from reduced PIP premiums.

Reenacting the No-Fault law and the requirement to purchase PIP insurance will benefit persons injured in auto accidents who do not have health insurance and for which an at-fault driver does not have liability insurance or personal resources to pay for such damages. Reenacting the No-Fault law also benefits health care providers who provide medical care or services to persons covered under PIP.

C. Government Sector Impact:

Authorizes 30 positions and appropriates \$2,398,278 from the Insurance Regulatory Trust Fund to the Department of Financial Services for investigation of insurance fraud. The salary rate associated with the positions is 1,387,860. The positions are authorized as senior insurance fraud investigators and are included in the certified law enforcement collective bargaining unit.

Authorizes 6 positions and appropriates \$408,000 from the Grants and Donations Trust Fund to the Justice Administration Commission for prosecution of insurance fraud in Miami, Orlando, and Tampa. \$408,000 is appropriated from the Insurance Regulatory Trust Fund in the Department of Financial Services for transfer to the Justice Administration Commission. This appropriation provides the cash to fund the positions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
