

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1053 Motor Vehicle Insurance
SPONSOR(S): Fant
TIED BILLS: IDEN./SIM. BILLS: SB 1250

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Lloyd	Cooper
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

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

Electronic Delivery/Signature of Uninsured Motorist Insurance Waivers – Uninsured Motorist (UM) coverage protects motorists against injuries caused by owners or operators of uninsured or underinsured motor vehicles. The law requires insurers who offer bodily injury liability coverage also to offer UM coverage in the same amount as any policy limits applying to the bodily injury liability policy. However, s. 627.727, F.S., allows an insured individual to waive UM coverage, select a lower limit, or select “non-stacking” UM coverage, if the named insured signs a policy waiver form approved by the Office of Insurance Regulation. The approved form must include a heading in 12-point bold type and state, “You are electing not to purchase certain valuable coverage which protects you and your family or you are purchasing uninsured motorist limits less than your bodily injury liability limits when you sign this form. Please read carefully.” The bill allows the required form to be presented to and signed by the insured electronically. The required header statement will be larger than the surrounding text when the waiver form is provided electronically.

Personal Injury Protection (PIP) Insurance – Florida’s Motor Vehicle No-Fault Law (the “No-Fault Law”) requires motorists to carry at least \$10,000 of no-fault insurance, known as personal injury protection (PIP) coverage. The purpose of the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault. In return for assuring payment of these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents. Payments for PIP related medical services utilize the Medicare fee schedule in effect on March 1 of the year the service is rendered. The fee schedule in effect on March 1 applies for the remainder of that year; it is unclear what period “remainder of that year” describes (e.g., the calendar year or until the following March 1); the bill provides that the fee schedule applies until the last day of February of the following year.

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

The bill has no fiscal impact on state or local government expenditures. The bill should have a positive impact on the private sector. The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Private passenger motor vehicle insurance is casualty coverage¹ within the personal lines² segment of insurance business. Insurers issue it to individuals, or related individuals in the same household, for coverage of private passenger automobiles that are not used as public conveyances, for rental to others, or in the occupation, profession, or business of the insured (excluding farm business use).³ Commercial motor vehicles are those that are not private passenger motor vehicles.⁴

Electronic Delivery/Signature of Uninsured Motorist Insurance Waivers

Uninsured Motorist (UM) coverage protects insureds against injuries caused by owners or operators of uninsured or underinsured motor vehicles. The law requires insurers who offer bodily injury liability coverage also to offer UM coverage in the same amount as any policy limits applying to the bodily injury liability policy.⁵

Conventional UM insurance is “stackable.” This means that if one family member purchases one UM policy for one vehicle, that coverage extends to every resident and every vehicle in the household, whether or not those residents or vehicles are covered by their own UM policies. Moreover, if a family purchases UM coverage for multiple vehicles, any resident in the household may “stack” the UM benefits and recover the combined policy limits from each insured vehicle.

However, s. 627.727, F.S., allows an insured individual to waive this insurance, select a lower limit, or select “non-stacking” UM coverage if the named insured signs a policy waiver form approved by the Office of Insurance Regulation (OIR). The approved form must include a heading in 12-point bold type stating, “You are electing not to purchase certain valuable coverage which protects you and your family or you are purchasing uninsured motorist limits less than your bodily injury liability limits when you sign this form. Please read carefully.”⁶

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.⁷ Insurance is specifically included in E-SIGN.⁸ E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute’s requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications.

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

¹ Section 627.021(3), F.S.

² Personal lines insurance is property and casualty insurance sold to individuals and families for non-commercial purposes. S. 626.015(15), F.S.

³ Sections 627.041(8) and 627.728(1)(a), F.S.

⁴ Section 627.732(3)(a), F.S.

⁵ Section 627.727(1), F.S.

⁶ Id.

⁷ Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effective October 1, 2000.

⁸ Id.

The bill allows electronic presentation and signature of the required UM waiver form. If it is presented electronically, the required header statement must be greater in size than the surrounding text, rather than in 12-point bold.⁹ The OIR has the authority to approve the form, including the electronic version, and has the obligation to ensure that the consumer has ready and reasonable access to the required notification based on the display characteristics of the electronic form being approved.

Personal Injury Protection Insurance

Florida's Motor Vehicle No-Fault Law (the "No-Fault Law")¹⁰ requires motorists to carry at least \$10,000 of no-fault insurance, known as personal injury protection (PIP) coverage. The purpose of the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault. In return for assuring payment of these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents. Florida motorists are required to carry a minimum of \$10,000 of PIP insurance, \$10,000, per person, and \$20,000, per incident, of bodily injury coverage, and \$10,000 of property damage liability coverage.^{11,12}

PIP insurance benefits are payable as follows.

- Up to a limit of \$10,000, 80 percent of reasonable medical expenses for:
 - 1) Initial services and care lawfully provided, supervised, ordered or prescribed by a medical doctor, osteopathic physician, chiropractic physician or that are provided in a hospital or in a facility that owns, or is wholly owned by a hospital. Initial services and care may also be provided for emergency transport and treatment.
 - 2) Upon referral by any of the above-listed providers, follow-up services and care consistent with the underlying medical diagnosis, which may be provided, supervised, ordered, or prescribed only by a medical doctor, osteopathic physician, chiropractic physician, or dentist, or, to the extent permitted under applicable law and under the supervision of such provider, by a physician assistant or advanced registered nurse practitioner. Follow-up services and care may also be provided by:
 - a) A licensed hospital or ambulatory surgical center.
 - b) An entity wholly owned¹³ by a medical doctor, osteopathic physician, chiropractic physician, or by such practitioner(s) and specified family members.
 - c) An entity that owns or is wholly owned, directly or indirectly, by a hospital or hospitals.
 - d) A licensed physical therapist, based upon a referral by a provider listed in 2).
 - e) A licensed health care clinic that meets specified criteria.
 - 3) Reimbursement for services and care pursuant to 1) or 2) of up to \$10,000 if a medical doctor, osteopathic physician, dentist, physician assistant, or an advanced registered nurse practitioner determines that the injured person had an emergency medical condition.
- Up to a limit of \$2,500, 80 percent of reasonable medical expenses when a provider listed in 1) or 2) determines that the injured person did not have an emergency medical condition.

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

⁹ The specified point size of type is a measure of physical size on a printed page. It is related to typeface printing and the characteristics of type set text. It does not necessarily identify the physical size of the character itself. Rather, it describes a maximum height parameter within the complete font type collection. One point in physical type face is 1/72 of an inch, thus 12-point font is 12/72 of an inch. Point size does not directly translate to graphical display size in electronics. Electronic display size is measured in picture elements, popularly known as pixels. Different size displays contain different numbers of pixels. Accordingly, specifying the point size of electronic text presents challenges that can require a high degree of technical precision. See <http://www.thomasphinney.com/2011/03/point-size/>. (Last accessed March 13, 2015.)

¹⁰ Sections 627.730-627.7405, F.S.

¹¹ Section 627.7275, F.S.

¹² Under Florida's Financial Responsibility Law (ch. 324, F.S.), motorists must also provide proof of ability to pay monetary damages for bodily injury and property damage liability at the time of motor vehicle accidents or when serious traffic violations occur.

¹³ As defined in the bill, "entity wholly owned" means a proprietorship, group practice, partnership, or corporation that provides health care services rendered by licensed health care practitioners and in which licensed health care practitioners are the business owners of all aspects of the business entity. . . .

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

House Bill 119, the personal injury protection insurance (PIP) reform bill enacted in 2012,¹⁴ amended s. 627.736(5)(a)2., F.S., by establishing the date on which changes to the Medicare fee schedule or payment limitation are effective. The legislation provides in part that:

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

The above-emphasized language created uncertainty as to whether the Medicare fee schedule in place on March 1st applied through the calendar year (through December 31st) or whether it applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M,¹⁵ stating that the plain language of the section requires the fee schedule in place on March 1st to apply throughout the following 365 days, or until the following March 1st.

The bill amends s. 627.736(5)(a)2., F.S., to provide that the applicable Medicare fee schedule applies from March 1 until the last day of February the following year, rather than for the remainder of that year. The bill also removes the language from s. 627.736(5)(a)5., F.S., referencing the inception date of July 1, 2012, for insurers to being noticing their use of the Medicare fees schedule on their policies.

Preinsurance Inspection of Private Passenger Motor Vehicles

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

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

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

¹⁴ Ch. 2012-151, L.O.F.

¹⁵ Available at <http://www.flor.com/Sections/PandC/ProductReview/PIPInfo.aspx> (last accessed: January 23, 2015).

B. SECTION DIRECTORY:

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill amends section 627.736(5)(a)2., F.S., to provide that the applicable Medicare fee schedule applies from March 1 until the last day of February of the following year. To include the last day of February in this period, the language should be revised to have it apply from March 1 through the last day of February of the following year. Also, under the current law and the bill, it is unclear whether a medical service rendered in January or February would be reimbursed under the Medicare fee schedule from the previous March 1 or the next March 1. Addressing this point will avoid confusion over the applicable fee schedule and expected reimbursement for January and February dates of service.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES