

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 150

INTRODUCER: Senator Lee

SUBJECT: Motor Vehicle Insurance

DATE: December 4, 2017      REVISED: 1/9/18

|    | ANALYST                     | STAFF DIRECTOR              | REFERENCE  | ACTION                      |
|----|-----------------------------|-----------------------------|------------|-----------------------------|
| 1. | <u>Knudson</u>              | <u>Knudson</u>              | <u>BI</u>  | <u>Pre-meeting</u>          |
| 2. | <u>                    </u> | <u>                    </u> | <u>AHS</u> | <u>                    </u> |
| 3. | <u>                    </u> | <u>                    </u> | <u>AP</u>  | <u>                    </u> |

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**I. Summary:**

SB 150 repeals the Florida Motor Vehicle No-Fault Law (No-Fault Law), which requires every owner and registrant of a motor vehicle in this state to maintain \$10,000 Personal Injury Protection (PIP) coverage. The bill replaces the PIP coverage mandate with a medical payments (MedPay) coverage mandate of \$5,000. Medical payments coverage under the bill provides substantially similar coverage to current PIP medical benefits, except that it provides reimbursement for 100 percent of covered medical losses, whereas PIP reimburses only 80 percent of covered medical losses. The repeal of the No-Fault Law eliminates the limitations on recovering pain and suffering damages from PIP insureds which currently require bodily injury that causes death or significant and permanent injury.

The bill enacts financial responsibility requirements for damages for liability on account of accidents arising out of the ownership, maintenance, or use of a motor vehicle in the amount of:

- Beginning January 1, 2019, through December 31, 2020, \$20,000 for bodily injury (BI) or death of one person in any one crash, and subject to that limit for one person, \$40,000 for bodily injury or death of two or more people in any one crash.
- Beginning January 1, 2021, through December 31, 2022, \$25,000 for bodily injury or death of one person in any one crash, and subject to that limit for one person, \$50,000 for bodily injury or death of two or more people in any one crash.
- Beginning January 1, 2023, and thereafter \$30,000 for bodily injury or death of one person in any one crash, and subject to that limit for one person, \$60,000 for bodily injury or death of two or more people in any one crash.

The bill retains the \$10,000 financial responsibility requirement for property damage.

The repeal of the No-Fault Law and the financial responsibility requirements for bodily injury take effect January 1, 2019.

## II. Present Situation:

Under the Florida Motor Vehicle No-Fault Law (No-Fault Law)<sup>1</sup>, owners or registrants of motor vehicles are required to purchase personal injury protection (PIP) insurance which compensates persons injured in accidents regardless of fault.<sup>2</sup> Policyholders are indemnified by their own insurer. The intent of no-fault insurance is to provide prompt medical treatment without regard to fault.<sup>3</sup> This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold.<sup>4</sup> In contrast, under a tort liability system, the negligent party is responsible for damages caused and an accident victim can sue the at-fault driver to recover economic and non-economic damages.

Florida drivers are required to purchase both PIP and property damage liability (PD) insurance.<sup>5</sup> The personal injury protection must provide a minimum benefit of \$10,000 for bodily injury to any one person who sustains an emergency medical condition, which is reduced to a \$2,500 limit for medical benefits if a treating medical provider determines an emergency medical condition did not exist.<sup>6</sup> PIP coverage provides reimbursement for 80 percent of reasonable medical expenses,<sup>7</sup> 60 percent of loss of income,<sup>8</sup> and 100 percent of replacement services,<sup>9</sup> for bodily injury sustained in a motor vehicle accident, without regard to fault. The property damage liability coverage must provide a \$10,000 minimum benefit. A \$5,000 death benefit is also provided.<sup>10</sup>

### PIP Medical Benefits

The 2012 Legislature revised the provision of PIP medical benefits under the No-Fault Law, effective January 1, 2013.<sup>11</sup> To receive PIP medical benefits, insureds must receive initial services and care within 14 days after the motor vehicle accident.<sup>12</sup> Initial services and care are only reimbursable if lawfully provided, supervised, ordered or prescribed by a licensed physician, licensed osteopathic physician, licensed chiropractic physician, licensed dentist, or must be rendered in a hospital, a facility that owns or is owned by a hospital, or a licensed emergency transportation and treatment provider.<sup>13</sup> Follow up services and care requires a referral from such providers and must be consistent with the underlying medical diagnosis rendered when the individual received initial services and care.<sup>14</sup>

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<sup>1</sup> Sections 627.730-627.7405, F.S.

<sup>2</sup> Section 627.733, F.S.

<sup>3</sup> See s. 627.731, F.S.

<sup>4</sup> Section 627.737, F.S.

<sup>5</sup> See ss. 324.022, F.S. and 627.733, F.S.

<sup>6</sup> Section 627.736(1), F.S.

<sup>7</sup> Section 627.736(1)(a), F.S.

<sup>8</sup> Section 627.736(1)(b), F.S.

<sup>9</sup> Id.

<sup>10</sup> Section 627.736(1)(c), F.S.

<sup>11</sup> Chapter 2012-197, L.O.F. (CS/CS/HB 119)

<sup>12</sup> Section 627.736(1)(a), F.S.

<sup>13</sup> Section 627.736(1)(a)1., F.S.

<sup>14</sup> Section 627.736(1)(a)2., F.S.

PIP medical benefits have two different coverage limits, based upon the severity of the medical condition of the individual. An insured may receive up to \$10,000 in medical benefits for services and care if a physician, osteopathic physician, dentist, physician's assistant or advanced registered nurse practitioner has determined that the injured person had an emergency medical condition.<sup>15</sup> An emergency medical condition is defined as a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to patient health, serious impairment to bodily functions, or serious dysfunction of a body organ or part.<sup>16</sup> If a provider who rendered treatment or services determines that the insured did not have an emergency medical condition, the PIP medical benefit limit is \$2,500.<sup>17</sup> Massage and acupuncture are not reimbursable, regardless of the type of provider rendering such services.<sup>18</sup>

The \$5,000 PIP death benefit is provided in addition to medical and disability benefits, effective January 1, 2013. Previously, the death benefit was the lesser of the unused PIP benefits, up to a limit of \$5,000.

### **Medical Fee Limits for PIP Reimbursement**

Section 627.736(5), F.S., authorizes insurers to limit reimbursement for benefits payable from PIP coverage to 80 percent of the following schedule of maximum charges:

- For emergency transport and treatment (ambulance and emergency medical technicians), 200 percent of Medicare;
- For emergency services and care provided by a hospital, 75 percent of the hospital's usual and customary charges;
- For emergency services and care and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community;
- For hospital inpatient services, 200 percent of Medicare Part A;
- For hospital outpatient services, 200 percent of Medicare Part A;
- For services supplies and care provided by ambulatory surgical centers and clinical laboratories, 200 percent of Medicare Part B;
- For durable medical equipment, 200 percent of the Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B;
- For all other medical services, supplies, and care, 200 percent of the participating physicians fee schedule of Medicare Part B; and
- For medical care not reimbursable under Medicare, 80 percent of the workers' compensation fee schedule. If the medical care is not reimbursable under either Medicare or workers' compensation then the insurer is not required to provide reimbursement.

The insurer may not apply any utilization limits that apply under Medicare or workers' compensation.<sup>19</sup> Also, the insurer must reimburse a health care provider rendering services under the scope of his or her license, regardless of any restriction under Medicare that restricts

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<sup>15</sup> Section 627.736(1)(a)3., F.S.

<sup>16</sup> Section 627.732(16), F.S.

<sup>17</sup> Section 627.736(1)(a)4., F.S.

<sup>18</sup> Section 627.736(1)(a)5., F.S.

<sup>19</sup> Section 627.736(5)(a)3., F.S.

payments to certain types of health care providers for specified procedures. Medical providers are not allowed to bill the insured for any excess amount when an insurer limits payment as authorized in the fee schedule, except for amounts that are not covered due to the PIP coinsurance amount (the 20 percent copayment) or for amounts that exceed maximum policy limits.<sup>20</sup>

CS/CS/HB 119 revised the PIP medical fee schedule in an effort to resolve alleged ambiguities that led to conflicts and litigation between claimants and insurers. The bill clarified the reimbursement levels for care provided by ambulatory surgical centers and clinical laboratories and for durable medical equipment. The bill also provided that Medicare fee schedule in effect on March 1 is applicable for the remainder of that year.<sup>21</sup> Insurers are authorized to use Medicare coding policies and payment methodologies of the Centers for Medicare and Medicare Services, including applicable modifiers, when applying the fee schedule if they do not constitute a utilization limit.<sup>22</sup> The bill also requires insurers to include notice of the fee schedule in their policies.<sup>23</sup>

### **Attorney Fees**

Section 627.428, F.S., requires an insurer to pay the insured's or beneficiary's reasonable attorney fees upon a judgment against the insurer and in favor of the insured or named beneficiary under an insurance policy, and applies to disputes under the No-Fault Law.<sup>24</sup> CS/CS/HB 119 amended provisions related to attorney fee awards in No-Fault disputes. The bill prohibits the application of attorney fee multipliers.<sup>25</sup> The bill also requires that the attorney fees awarded must comply with prevailing professional standards, not overstate or inflate the number of hours reasonably necessary for a case of comparable skill or complexity, and represent legal services that are reasonable to achieve the result obtained.<sup>26</sup> The offer of judgment statute, s. 768.79, F.S., is applied to No-Fault cases, providing statutory authority for insurers to recover fees if the plaintiff's recovery does not exceed the insurer's settlement offer by a statutorily specified percentage.<sup>27</sup>

### **Mandatory Rate Filings and Data Call**

CS/CS/HB 119 required the Office of Insurance Regulation to contract with a consulting firm to calculate the expected savings from the act.<sup>28</sup> The OIR retained Pinnacle Actuarial Resources, Inc., which released an August 20, 2012, report estimating an indicated statewide average savings in PIP premiums of 14 percent to 24.6 percent and an average overall motor vehicle insurance premium reduction ranging from 2.8 percent to 4.9 percent.<sup>29</sup> The report noted that if insurers' current PIP rates were inadequate they would likely offset the savings from

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<sup>20</sup> Section 627.736(5)(a)4., F.S.

<sup>21</sup> Section 627.736(5)(a)2., F.S.

<sup>22</sup> Section 627.736(5)(a)3., F.S.

<sup>23</sup> Section 627.736(5)(a)5., F.S.

<sup>24</sup> Section 627.736(8), F.S.

<sup>25</sup> See id.

<sup>26</sup> See id.

<sup>27</sup> See id.

<sup>28</sup> Section 15, Ch. 2012-197, L.O.F.

<sup>29</sup> Pinnacle Actuarial Resources, Inc., *Impact Analysis of HB 119*, (Aug. 20, 2012).

CS/CS/HB 119 against their indicated PIP rates. By October 1, 2012, each insurer writing private passenger automobile PIP insurance was required to submit a rate filing providing at least a 10 percent reduction of its PIP rate or explain in detail its reasons for failing to achieve those savings. The Legislature required a second mandatory rate filing due January 1, 2014, that provided at least a 25 percent reduction of the insurer's July 1, 2012, PIP rate or explained in detail its reasons for failing to achieve those savings.

The Office of Insurance Regulation performed a comprehensive PIP data call on January 1, 2015, that analyzed the impact of the act's reforms on the PIP insurance market. The top 25 personal lines automobile insurers<sup>30</sup> generally failed to achieve a 25 percent rate reduction and instead reduced PIP rates an average of 13.6 percent.<sup>31</sup> Rates were only reduced an average of 0.1 percent for a full auto insurance premium consisting of PIP, property damage, bodily injury, uninsured motorists, collision and comprehensive coverages.<sup>32</sup> The OIR noted that though the post-HB 119 rate filings were on the low end of 2012 Pinnacle report, prior to CS/CS/HB 119 the statewide average approved rate changes were a 46.3 percent increase in PIP rates, and a 12.9 percent rate increase for full auto insurance.<sup>33</sup>

Rate filings by top 25 auto insurers from January 1, 2015 to January 18, 2017, reversed the entirety of the rate reductions achieved post HB 119, resulting in average premiums higher than those charged before CS/CS/HB 119 became law.<sup>34</sup> Generally, motor vehicle insurance rates increased nationally. The United States Department of Labor calculates that the consumer price index for motor vehicle insurance (U.S. city average for urban consumers) increased 8.2 percent<sup>35</sup> from October 2016 to October 2017, with followed a 6.7 percent<sup>36</sup> increase from October 2015 to October 2016. The number of crashes and crashes involving injuries reported to the Florida Department of Highway Safety has increased in recent years. The number of crashes (346,326) and injury crashes (143,981) from January 1, 2017 through November 28, 2017 exceeds the number of crashes for the entire year of 2013 (317,355 crashes with 140,241 being injury crashes).<sup>37</sup>

### **Motor Vehicle Insurance Fraud**

Motor vehicle insurance fraud is a long-standing problem in Florida. In November 2005, the Senate Banking and Insurance Committee issued a report entitled Florida's Motor Vehicle No-Fault Law, which was a comprehensive review of Florida's No-Fault system. The report noted that fraud was at an "all-time" high at the time, noting that there were 3,942 PIP fraud referrals

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<sup>30</sup> On an earned premium basis.

<sup>31</sup> Office of Insurance Regulation, *Report on Review of the Data Call Pursuant to HB 119 – Motor Vehicle Personal Injury Protection (PIP) Insurance*, Pg. 43 (January 1, 2015).

<sup>32</sup> See id.

<sup>33</sup> See id. at pg. 41.

<sup>34</sup> See Office of Insurance Regulation, *Florida Personal Auto Market Presented to The Florida Senate Committee on Banking and Insurance*, pg. 3 (January 24, 2017).

<sup>35</sup> United States Department of Labor, *Economic News Release Consumer Price Index Summary: Table 2* (November 15, 2017) <https://www.bls.gov/news.release/cpi.t02.htm> (last accessed November 29, 2017).

<sup>36</sup> United States Department of Labor, *Economic News Release Consumer Price Index Summary: Table 2* (November 17, 2016) [https://www.bls.gov/news.release/archives/cpi\\_11172016.htm](https://www.bls.gov/news.release/archives/cpi_11172016.htm) (last accessed November 29, 2017).

<sup>37</sup> See Florida Department of Highway Safety and Motor Vehicles, Florida Integrated Report Exchange System Quick Statistics at <https://firesportal.com/Pages/Public/QuickStats.aspx> (last accessed on November 29, 2017).

received by the Division of Insurance Fraud during the 3 fiscal years beginning in 2002 and ending in 2005. That 3-year amount was nearly doubled by the 7,240 PIP fraud referrals received by the division during the 2014/2015 fiscal year.<sup>38</sup> Given this fact, the following description from the 2005 report is an accurate description of the current situation regarding motor vehicle insurance fraud:

“Florida’s no-fault laws are being exploited by sophisticated criminal organizations in schemes that involve health care clinic fraud, staging (faking) car crashes, manufacturing false crash reports, adding occupants to existing crash reports, filing PIP claims using contrived injuries, colluding with dishonest medical treatment providers to fraudulently bill insurance companies for medically unnecessary or non-existent treatments, and patient-brokering...”

Fraudulent claims are a major cost-driver and result in higher motor vehicle insurance premium costs for Florida policyholders. CS/CS/HB 119 contained numerous provisions designed to curtail PIP fraud. A health care practitioner found guilty of insurance fraud under s. 817.234, F.S., loses his or her license for 5 years and may not receive PIP reimbursement for 10 years. Insurers are provided an additional 60 days (90 total) to investigate suspected fraudulent claims, however, an insurer that ultimately pays the claim must also pay an interest penalty.<sup>39</sup> All entities seeking reimbursement under the No-Fault Law must obtain health care clinic licensure except for hospitals, ambulatory surgical centers, entities owned or wholly owned by a hospital, clinical facilities affiliated with an accredited medical school and practices wholly owned by a physician, dentist, or chiropractic physician or by such physicians and specified family members.<sup>40</sup> The bill also defined failure to pay PIP claims within the time limits of s. 627.736(4)(b), F.S., as an unfair and deceptive practice.

### **Financial Responsibility Law**

Florida’s financial responsibility law requires proof of ability to pay monetary damages for bodily injury and property damage liability arising out of a motor vehicle accident or serious traffic violation.<sup>41</sup> The owner and operator of a motor vehicle need not demonstrate financial responsibility, i.e., obtain BI and PD coverages, until *after the accident*.<sup>42</sup> At that time, a driver’s financial responsibility is proved by the furnishing of an active motor vehicle liability policy. The minimum amounts of liability coverages required are \$10,000 in the event of bodily injury to, or death of, one person, \$20,000 in the event of injury to, or death of, two or more persons, and \$10,000 in the event of damage to property of others, or \$30,000 combined BI/PD policy.<sup>43</sup> The driver’s license and registration driver who fails to comply with the security requirement to maintain PIP and PD insurance coverage is subject to suspension.<sup>44</sup> A driver’s license and

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<sup>38</sup> Florida Department of Financial Services, *Division of Insurance Fraud Annual Report Fiscal Year 2014 – 2015*, pg. 28 [http://www.myfloridacfo.com/Division/DIFS/resources/documents/2014-15\\_Annual-Report.pdf](http://www.myfloridacfo.com/Division/DIFS/resources/documents/2014-15_Annual-Report.pdf) (last accessed on December 4, 2017).

<sup>39</sup> Section 627.736(4)(i), F.S.

<sup>40</sup> Section 627.736(5)(h), F.S.

<sup>41</sup> See ch. 324, F.S.

<sup>42</sup> Section 324.011, F.S.

<sup>43</sup> Section 324.022, F.S.

<sup>44</sup> Section 324.0221(2), F.S.

registration may be reinstated by obtaining a liability policy and by paying a fee to the Department of Highway Safety and Motor Vehicles.<sup>45</sup>

### **Review of Auto Insurance Systems**

Two auto insurance systems are utilized throughout the country: the tort system and the no-fault system, with certain variations. Thirty-eight states utilize the tort system in which the at-fault party is liable for damages (medical, economic, property damage and pain and suffering) to other parties in the accident.<sup>46</sup> Parties seeking redress for their injuries do so from the at-fault driver, and must prove negligence on the part of that individual. Nine of the 38 tort states, known as “add-on” states, require auto insurers to offer PIP coverage, but unlike no-fault states, do not restrict the right to pursue a liability claim or lawsuit.<sup>47</sup> Benefits are generally either offered in a PIP coverage form similar to that in no-fault states or as additional wage replacement benefits to medical payments coverage. Three tort add-on states require the purchase of PIP coverage; six do not, but require insurers to offer PIP coverage.

Twelve states (including Florida) have a no-fault system and mandate first party PIP coverage for medical benefits, wage loss, and death benefits, with a limitation on pain and suffering lawsuits.<sup>48</sup> All 12 jurisdictions take different approaches to no-fault legislation in that coverage amounts, deductibles, mandated coverages, tort thresholds for pain and suffering claims and the use of fee schedules or treatment protocols, vary widely among these entities. Each state has either a “verbal” or “monetary” threshold regarding the seriousness of a person’s injuries that must be met prior to the filing of a tort suit for noneconomic damages against an at-fault driver. Florida and the four most populous no-fault states use a verbal threshold, which is a statutory description of the severity of an injury. The seven remaining no-fault states have monetary thresholds ranging from \$1,000 to \$5,000. Three of the 12 no-fault states (Kentucky, New Jersey and Pennsylvania) are known as “choice” states and offer consumers a choice between purchasing PIP coverage or traditional tort liability coverage which does not include PIP benefits.

### **Auto Coverage Requirements**

Forty-eight states require car owners to buy a minimum amount of bodily injury liability (BI) and property damage liability (PD) insurance coverage before they can legally drive their vehicles.<sup>49</sup> Further, all states have financial responsibility laws which require persons involved in auto accidents (or serious traffic infractions) to furnish proof of BI and PD liability insurance. The minimum coverage amounts vary among the states. Florida has a requirement for bodily liability coverage for persons subject to the Financial Responsibility Law of \$10,000 per person,

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<sup>45</sup> Section 324.0221(3), F.S.

<sup>46</sup> Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

<sup>47</sup> Arkansas, Delaware, Maryland, Oregon, South Dakota, Texas, Virginia, Washington, and Wisconsin.

<sup>48</sup> Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, and Utah are the other No-Fault states.

<sup>49</sup> New Hampshire does not require auto insurance if the driver complies with alternative financial responsibility requirements. Florida only requires BI coverage after a driver is involved in a crash.

\$20,000 per accident, and \$10,000 in the event of damage to property of others, or a \$30,000 combined (BI/PD) single limit. A Florida driver is not required to maintain BI coverage until he or she is involved in a crash or convicted of certain traffic offenses. The following chart shows the required motor vehicle insurance coverages in each state and the minimum coverages for bodily injury liability coverage and property damage coverage.

**State Motor Vehicle Insurance Requirements**

| ST | Ins. Req. | Min. BI/PD | ST | Ins. Req.    | Min. BI/PD | ST | Ins. Req.    | Min. BI/PD |
|----|-----------|------------|----|--------------|------------|----|--------------|------------|
| AL | BI/PD     | 25/50/25   | LA | BI/PD        | 15/30/25   | OH | BI/PD        | 25/50/25   |
| AK | BI/PD     | 50/100/25  | ME | BI/PD/UM     | 50/100/25  | OK | BI/PD        | 25/50/25   |
| AZ | BI/PD     | 15/30/10   | MD | BI/PD/PIP/UM | 30/60/15   | OR | BI/PD/PIP/UM | 25/50/25   |
| AR | BI/PD/PIP | 25/50/25   | MA | BI/PD/PIP/UM | 20/40/5    | PA | BI/PD/PIP    | 15/30/5    |
| CA | BI/PD     | 15/30/5    | MI | BI/PD/PIP    | 20/40/10   | RI | BI/PD        | 25/50/25   |
| CO | BI/PD     | 25/50/15   | MN | BI/PD/PIP/UM | 30/60/10   | SC | BI/PD/UM     | 25/50/25   |
| CT | BI/PD/UM  | 20/40/10   | MS | BI/PD        | 25/50/25   | SD | BI/PD/UM     | 25/50/25   |
| DE | BI/PD/PIP | 15/30/10   | MO | BI/PD/UM     | 25/50/10   | TN | BI/PD        | 25/50/15   |
| FL | PIP/PD    | 10/20/10   | MT | BI/PD        | 25/50/20   | TX | BI/PD        | 30/60/25   |
| GA | BI/PD     | 25/50/25   | NE | BI/PD/UM     | 25/50/25   | UT | BI/PD/PIP    | 25/65/15   |
| HI | BI/PD/PIP | 20/40/10   | NV | BI/PD        | 15/30/10   | VT | BI/PD/UM     | 25/50/10   |
| ID | BI/PD     | 25/50/15   | NH | None         | 25/50/25   | VA | BI/PD/UM     | 25/50/20   |
| IL | BI/PD/UM  | 25/50/20   | NJ | BI/PD/PIP/UM | 15/30/5    | WA | BI/PD        | 25/50/10   |
| IN | BI/PD     | 25/50/25   | NM | BI/PD        | 25/50/10   | WV | BI/PD/UM     | 25/50/25   |
| IA | BI/PD     | 20/40/15   | NY | BI/PD/PIP/UM | 35/50/10   | WI | BI/PD/UM     | 25/50/10   |
| KS | BI/PD/PIP | 25/50/25   | NC | BI/PD/UM     | 30/60/25   | WY | BI/PD        | 25/50/20   |
| KY | BI/PD/PIP | 25/50/10   | ND | BI/PD/PIP/UM | 25/50/25   | DC | BI/PD/PIP/UM | 25/50/10   |

**Tort-Based Motor Vehicle Insurance Jurisdictions**

In a tort-based liability system, auto injury claimants seek payment from the at-fault driver for both economic and non-economic damages from dollar one. A tort-based system represents a more traditional legal philosophy of holding persons responsible for injuries caused by their negligent operation of a vehicle. In theory, this encourages safer operation of automobiles and is generally viewed by the public as consistent with the concept of personal responsibility.

If Florida repeals PIP and mandates BI coverage, it will be important for drivers to appreciate coverage applications under the tort system. For the most common type of accident (with one party at-fault), the at-fault party’s BI coverage would pay for injuries to the not at-fault driver, unless the at-fault party was uninsured. If the at-fault party is uninsured (or underinsured), the not at-fault party would utilize his/her UM coverage, if purchased, to pay for injuries sustained in an accident. The at-fault party’s PD coverage would compensate for physical damages to the not at-fault driver’s vehicle. If the not-at-fault party has Med Pay coverage, it can be used to cover



his or her own medical expenses, which could then be subrogated into the BI claim by the not at-fault driver's insurer.

With respect to the at-fault party, that driver's own health insurance, if available, would cover his or her own expenses. Med Pay coverage, if purchased, would pay for his/her medical expenses up to the Med Pay limits, at which point health insurance would apply. In the event the at-fault party did not have health insurance, then the medical costs would not be reimbursed and the individual would be responsible for these costs or such costs would be assumed by the health care provider.

For single car accidents, the driver of the vehicle is presumed to be the at-fault party and therefore will be essentially in the same situation as the at-fault party described above. Occupants in the vehicle can sue the driver of the vehicle for their injuries and are in a similar circumstance to the not at-fault party's situation, previously described. Family members are precluded from suing the driver because of the intra-family exclusion due to the fact that only non-family occupants can pursue a tort claim. Pedestrians who are injured in an accident are in a similar situation as the not at-fault party.

### III. Effect of Proposed Changes:

#### Repeal of the Florida Motor Vehicle No-Fault Law

**Sections 1** repeals ss. 627.730-627.7405, F.S., which constitute the Florida Motor Vehicle No-Fault Law.

Many of the provisions of the No-Fault Law are retained in s. 627.7265, F.S., as detailed below. Two of the most significant provisions not retained are the tort exemption in s. 627.737, F.S., which prohibits tort actions to recover pain and suffering damages from PIP insureds unless death or significant and permanent injury causes such damages, and coverage for disability and death benefits under PIP.

**Section 2** repeals s. 627.7407, F.S., which explained how the Florida Motor Vehicle No-Fault Law was to be applied after being reinstated by ch. 2007-324, Laws of Florida.

#### Mandatory Bodily Injury Liability Coverage Requirements

Chapter 324, F.S., requires the owners and operators of motor vehicles to demonstrate the ability to respond in damages for liability because of crashes arising out of the use of a motor vehicle.<sup>50</sup> This requirement is usually met through the purchase of motor vehicle insurance.

**Sections 12 and 13** amend s. 324.021, F.S., and s. 324.022, F.S., to require every owner of a motor vehicle registered in this state, and every operator of a motor vehicle licensed in this state, to maintain the ability to respond in damages for liability on account of accidents arising out of the ownership, maintenance, or use of a motor vehicle in the amount of:

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<sup>50</sup> Owners and operators of motor vehicles may satisfy financial responsibility requirements by alternate means, such as depositing security with the Department of Highway Safety and Motor Vehicles pursuant to s. 324.161, F.S., or qualifying as a self-insurer pursuant to s. 324.171, F.S.

- Beginning January 1, 2019, through December 31, 2020, \$20,000 for bodily injury or death of one person in any one crash, and subject to that limit for one person, \$40,000 for bodily injury or death of two or more people in any one crash.
- Beginning January 1, 2021, through December 31, 2022, \$25,000 for bodily injury or death of one person in any one crash, and subject to that limit for one person, \$50,000 for bodily injury or death of two or more people in any one crash.
- Beginning January 1, 2023, and thereafter, \$30,000 for bodily injury or death of one person in any one crash, and subject to that limit for one person, \$60,000 for bodily injury or death of two or more people in any one crash.

The bill retains current law that requires drivers to maintain the ability to respond in damages of \$10,000 for damage to or the destruction of other's property in a crash.

Financial responsibility may be met through motor vehicle insurance that provides BI and PD coverage in at least the minimum amounts required to meet responsibility or through insurance that provides BI and PD with a combined single coverage limit that equals the BI requirement for more than one person plus the PD requirement. From January 1, 2019, through December 31, 2020, minimum combined single limit will be \$50,000 and will subsequently increase to \$60,000 on January 1, 2021, and \$70,000 on January 1, 2023.

#### ***Required Provisions in Motor Vehicle Liability Policies***

**Section 21** amends s. 324.151, F.S., which requires motor vehicle liability insurance policies that serve as proof of financial responsibility to contain certain provisions.

The bill requires policies issued to the owner of a motor vehicle to cover all named insureds, resident relatives, and permissive users of vehicle from liability resulting from the use of any motor vehicle. A vehicle may only be excluded from liability coverage if the vehicle is not a newly acquired vehicle or a temporary substitute vehicle and was owned more than 30 consecutive days prior to the event giving rise to a claim.

A policy issued to a person who does not own a motor vehicle registered in this state and is not insured under an owner's policy must insure all named insureds from liability arising out of the use of any motor vehicle not owned by him or her unless the vehicle was furnished for his or her regular use and was used more than 30 consecutive days prior to the event giving rise to the claim.

The bill requires all such motor vehicle insurance policies to provide liability coverage to all insureds covered under the policy from liability imposed for any litigation costs or attorney fees in any civil action defended by the insurer which arises out of the ownership, maintenance, or use of a motor vehicle. Current law requires the policy to explicitly describe or reference all motor vehicles covered by the policy and must insure the owner and any other person using an insured motor vehicle with the express or implied permission of the owner.

The bill defines the following terms:

- "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.

- “Resident relative” means a person related to a named insured by any degree by blood, marriage, or adoption, including a ward or foster child, who usually makes his or her home in the same family unit as the named insured, whether or not he or she temporarily lives elsewhere.
- Temporary substitute vehicle” means any motor vehicle as defined in s. 320.01(1), F.S., not owned by the named insured 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.

### *Meeting Financial Responsibility through a Certificate of Self-Insurance*

**Section 16** amends s. 324.031, F.S., which allows owners and operators of motor vehicles that are not for-hire vehicles to prove financial responsibility by providing evidence of holding a motor vehicle liability policy. Two alternatives are also available under the statute. A person may prove financial responsibility by furnishing a certificate of self-insurance that shows a deposit of cash with a financial institution, or furnishing a certificate of self-insurance issued by the DHSMV based on demonstrating sufficient net unencumbered worth. The bill increases the amounts that must be deposited under both alternatives.

**Section 22** amends s. 324.161, F.S., to provide that a certificate of self-insurance must, beginning January 1, 2019, equal the number of vehicles owned times \$50,000, to a maximum of \$200,000. As of January 1, 2021, the deposit must equal the number of vehicles owned times \$60,000, to a maximum of \$240,000. On January 1, 2023, and thereafter, the deposit must equal the number of vehicles owned times \$70,000, to a maximum of \$280,000. Current law requires a deposit equal to the number of vehicles times \$30,000, to a maximum of \$120,000. The bill also requires all persons using this method to maintain excess coverage of the amount deposited. Current law does not require this of natural persons, and requires the excess coverage of a \$10,000/\$20,000/\$10,000 BI/PD or a \$30,000 combined single limit. The bill retains current law that the excess coverage must have limits of at least \$125,000/\$250,000/\$50,000 BI/PD or a \$300,000 BI/PD combined single limit.

**Section 23** amends s. 324.171, F.S., to provide that a certificate of self-insurance from the DHSMV pursuant to this section may be obtained by a private individual with private passenger vehicles by demonstrating sufficient net unencumbered worth of at least \$80,000 beginning January 1, 2019; at least \$100,000 beginning January 1, 2021; and at least \$120,000 beginning January 1, 2023, and thereafter. Current law requires a net unencumbered worth of at least \$40,000. A person other than a natural person may obtain a certificate of self-insurance from the DHSMV by possessing a net unencumbered worth of at least \$80,000 for the first motor vehicle and \$40,000 for each additional vehicle beginning on January 1, 2019; a net unencumbered worth of at least \$100,000 for the first motor vehicle and \$50,000 for each additional motor vehicle beginning January 1, 2021; and a net unencumbered worth of at least \$120,000 for the first motor vehicle and \$60,000 for each additional motor vehicle beginning January 1, 2023. The bill retains current law that authorizes the DHSMV to promulgate by rule an alternative net worth requirement for persons other than natural persons. Current law requires a net unencumbered worth of \$40,000 for the first motor vehicle and \$20,000 for each additional motor vehicle.

### ***Garage Liability Insurance Requirement***

**Section 7** amends s. 320.27, F.S., which requires the licensure of motor vehicle dealers. The bill increases the garage liability insurance requirement, requiring at least a \$70,000 combined single limit policy that provides BI liability and PD liability coverage. Current law only requires at least \$25,000 in such coverage and also requires PIP. The section also corrects a cross reference in the exemption from this requirement for salvage motor dealers.

**Section 8** amends s. 320.771, F.S., and applies the same garage liability insurance requirement to recreational vehicle dealers.

### ***Financial Responsibility Requirement for For-Hire Vehicles***

**Section 17** amends s. 324.032, F.S., to apply the financial responsibility requirements for for-hire passenger vehicles to the operators of such vehicles. The bill retains current law requiring the owner or lessee to meet the financial responsibility requirement and also retains the minimum limits of coverage, which are \$125,000/\$250,000 of BI and \$50,000 of PD.

### ***Reinstatement Fees***

**Section 19** amends s. 324.071, F.S., to create uniform fees for the reinstatement of a suspended license. Under the bill, all reinstatement fees are \$150 for the first reinstatement. A second reinstatement within 3 years of the first requires a \$250 reinstatement fee and a third and subsequent reinstatements require a \$500 fee. These are the current reinstatement fees for failure to maintain required PIP insurance in s. 324.0221, F.S. Currently, s. 324.071, F.S., requires a lower \$25 fee for failure to maintain BI liability coverage in certain circumstances.

**Section 14** requires that such policies also insure any resident relative of a named insured. The bill also requires the policy to provide liability coverage for motor vehicles not described or referenced in the policy that are newly acquired vehicles and temporary substitute vehicles. The policy may only exclude a motor vehicle that is not described in the policy if it was owned by an insured or furnished for an insured's regular use for more than 30 consecutive days before the event giving rise to the claim and is not a newly acquired vehicle or temporary substitute vehicle.

The bill requires a motor vehicle liability insurance policy issued to a person who does not own a Florida-registered motor vehicle (and who is not already insured as a named insured, resident relative, or permissive operator of an insured motor vehicle) to insure named insureds against loss from liability. The policy need not provide such coverage if the vehicle was furnished for the named insured's regular use and was used by the named insured for more than 30 consecutive days before giving rise to the claim.

The bill requires motor vehicle liability insurance policies to insure all covered persons against loss from legal liability for litigation costs or attorney fees in any civil action defended by the insurer.

The bill also allows motor vehicle insurance policies to exclude liability coverage for a vehicle being used outside the United States or Canada at the time of the accident. Current law allows the policies to limit coverage to motor vehicles used in the United States and Canada.

**Section 41** amends s. 627.7275, F.S., to require all motor vehicle insurance policies delivered or issued in Florida for a motor vehicle registered or principally garaged in this state to include BI liability coverage and PD liability coverage as required by s. 324.022, F.S., and MedPay coverage as required by s. 627.7265, F.S.

### **Mandatory Medical Payments Coverage<sup>51</sup>**

#### ***Medical Payments Coverage Benefits***

**Section 39** creates s. 627.7265, F.S., which requires the inclusion of medical payments coverage of at least \$5,000 in each motor vehicle liability insurance policy used to meet the financial responsibility requirements of s. 324.031, F.S.

Medical payments coverage protects the named insured, resident relatives, all passengers and operators of the insured vehicle, and all persons stuck by the motor vehicle while not occupying a self-propelled motor vehicle. Medical payments coverage must provide reimbursement of medically necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices, and ambulance, hospital, and nursing services.

MedPay provides reimbursement of 100 percent of covered medical care and services, which differs from PIP, which provides reimbursement for 80 percent of such services and care. Deductibles are prohibited. Massage and acupuncture are not reimbursable under MedPay coverage, nor is treatment provided by a licensed massage therapist or licensed acupuncturist. MedPay benefits are generally primary except that workers' compensation benefits are primary and MedPay must reimburse the state Medicaid program for any benefits it pays.

The bill retains within MedPay the PIP requirements for obtaining medical reimbursement. An individual seeking reimbursement must receive initial services and care within 14 days of the motor vehicle accident from specified medical providers.<sup>52</sup> Follow-up services and care are available upon the referral of one of the providers of initial services and care and must be consistent with the underlying medical diagnosis initially rendered. The bill specifies the licensed medical providers and entities that may provide MedPay benefits.

#### ***Requirements for Billing and Payment of MedPay Claims***

The insurer must pay MedPay benefits to the insured within 30 days of receiving written notice of a covered loss. An insurer that denies a claim or makes partial payment must provide specifically itemize the treatments and services denied and provide medical necessity information the insurer wants the claimant to consider. If the claim denies a claim because of an alleged claim error, the insurer must provide an itemized explanation of benefits due to the specific error. The claimant has 15 days from receipt of the explanation to submit a revised claim. The bill provides standards for determining when payment is overdue and the interest that is due, and specifies that a general business practice of failing to timely provide benefits violates

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<sup>51</sup> Footnotes in the Effect of Proposed Changes section of this analysis refer to the statutory citations contained in SB 150, and not current law.

<sup>52</sup> A licensed physician, licensed dentist, licensed chiropractor, by a person or entity licensed under part III of ch. 401, F.S. Initial services and care may also be provided in a licensed hospital, or in a facility that owns or is wholly owned by a licensed hospital.

the Insurance Code. The bill specifies the procedures for an insurer to investigate potential acts of insurance fraud. Insurers are required to maintain a log of medical benefits paid for each insured and to give an insured that requests it, a copy of the log within 30 days of the request.

MedPay generally retains provisions in the PIP statute related to payment of medical claims. These include the grounds for an insurer not paying a claim.<sup>53</sup> Billing requirements are retained, including requiring providers of medical services bill insurers for specified services within certain periods,<sup>54</sup> using specified forms for billing,<sup>55</sup> and directing insurers to investigate claims of improper billing.<sup>56</sup> Disclosure requirements are retained, including that insurers must notify insureds of MedPay rights<sup>57</sup> and medical providers must obtain from an insured a signed disclosure and acknowledgment form.<sup>58</sup> The law continues to require that specified entities obtain health care clinic licensure as a condition of receiving reimbursement, with exceptions.<sup>59</sup>

### ***Medical Fee Schedule for MedPay Reimbursement***

Medical payments coverage reimbursement contains a medical fee schedule that is identical to the fee schedule for PIP. The fee schedule allows insurers to limit reimbursement to the following:

- Emergency services transport and treatment by licensed medical transportation service – 200 percent of Medicare.
- Emergency services and care provided by a licensed hospital – 75 percent of a hospital’s usual and customary charges.
- Emergency services and care and related hospital inpatient services provided by a licensed physician or dentist, if rendered in a facility licensed under ch. 395, F.S., (hospitals, ambulatory surgical centers, and mobile surgical facilities) – usual and customary charges in the community.
- Hospital inpatient services other than emergency services and care – 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services.
- Hospital outpatient services other than emergency services and care – 200 percent of the Medicare Part A Ambulatory Payment Classification for that particular hospital.
- All other medical supplies, services, and care – 200 percent of the participating physician’s fee schedule of Medicare Part B, with the following exceptions:
  - Services, supplies, and care provided by ambulatory surgical centers and clinical laboratories – 200 percent of Medicare Part B.
  - Durable medical equipment – 200 percent of the Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B.
  - Services, supplies, or care not reimbursable under Medicare Part B – 80 percent of the maximum reimbursement under workers’ compensation.

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<sup>53</sup> See s. 627.7265(6)(b), F.S.

<sup>54</sup> See s. 627.7265(6)(c), F.S.

<sup>55</sup> See s. 627.7265(6)(d), F.S.

<sup>56</sup> See s. 627.7265(6)(f), F.S.

<sup>57</sup> See s. 627.7265(7), F.S.

<sup>58</sup> See s. 627.7265(6)(e), F.S.

<sup>59</sup> See s. 627.7265(6)(h), F.S.

- Services, supplies, or care that are not reimbursable under Medicare or workers' compensation – no reimbursement.

### ***Claimant Compliance with MedPay Claims Investigations***

The bill retains requirements that claimants comply with the insurer's claim investigation. These include that the claimant comply with the insurer's discovery of facts about an injured person,<sup>60</sup> insureds comply with policy terms, including submitting to an examination under oath,<sup>61</sup> and that an insured is prohibited from unreasonably not notifying the insurer of the existence of a claim.<sup>62</sup> The insured must also submit to a mental or physical examination upon the request of the insurer.<sup>63</sup>

### ***Prohibitions against Certain Acts by Insurers***

Insurers are prohibited from systematically downcoding with intent to deny due reimbursement.<sup>64</sup> Insurers must notify insureds or assignees that policy limits have been reached within 15 days of that occurring.<sup>65</sup> Insurers may not limit the number of treatments or impose other utilization limits that apply under Medicare or workers' compensation. Insurers that engage in a general business practice of not paying valid claims until receiving a demand letter are subject to punishment under s. 626.9521, F.S., of the Unfair Insurance Trade Practices Act.

### ***Insurance Fraud Related to MedPay Claims***

The bill retains provisions in the PIP law related to insurance fraud. An insurer may bring a civil action against any person convicted of insurance fraud associated with a MedPay claim, and may recover punitive damages, attorney fees and costs.<sup>66</sup> Claims generated as a result of patient brokering are not reimbursable.<sup>67</sup> Insurers must send a fraud advisory notice to MedPay claimants informing them of potential monetary rewards for providing information related to insurance fraud and that claimants should report any solicitation of persons injured in a motor vehicle crash for the purpose of filing a MedPay claim or lawsuit to the Department of Financial Services.<sup>68</sup>

### ***Demand Letter and Single Action Requirements***

As under PIP, a prospective plaintiff must provide a written demand letter to the insurer as a condition precedent to filing a legal action.<sup>69</sup> All claims related to the same health care provider for the same injured person, must be brought in one action, unless good cause is shown for bringing multiple claims.<sup>70</sup>

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<sup>60</sup> See s. 627.7265(8)

<sup>61</sup> See s. 627.7265(8)(g)

<sup>62</sup> See s. 627.7265(8)(d)

<sup>63</sup> See s. 627.7265(9)

<sup>64</sup> See s. 627.7265(6)(g), F.S.

<sup>65</sup> See s. 627.7265(8)(e)

<sup>66</sup> See s. 627.7265(14)

<sup>67</sup> See s. 627.7265(16)

<sup>68</sup> See s. 627.7265(15)

<sup>69</sup> See s. 627.7265(11)

<sup>70</sup> See s. 627.7265(12)

### ***Insurer Subrogation Rights***

The bill allows insurers to subrogate losses paid by MedPay coverage when the wrongful act or omission of another causes such losses. The subrogation right is inferior to the rights of the injured insured, and is available only after all the insured's damages have been recovered and the insured has been made whole. If an insured recovers from a third party the full amount of damages sustained and delivers a release that impairs the insurer's subrogation right, the insured must repay MedPay benefits, less any expenses of acquiring the recovery, including a prorated share of attorney fees and costs.

### **Uninsured and Underinsured Motor Vehicle Insurance Coverage**

**Section 40** amends s. 627.727, F.S., which governs uninsured and underinsured motor vehicle insurance coverage. The bill specifies that the liability of an insurer providing UM coverage includes 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 future.

Current law specifies that UM coverage does not include damages in tort for pain, suffering, mental anguish, and inconvenience unless the injury or disease is of sufficient severity under "verbal threshold" s. 627.737(2), F.S. Under PIP an injured person's injuries exceed a certain severity threshold, that person cannot recover "pain and suffering" damages from the at-fault driver's bodily injury coverage. Personal injury protection is considered a no-fault coverage because the injured person trades a limitation on the ability to recover pain and suffering damages for the ability to get PIP benefits even if the injured person is at fault in the accident. Uninsured motorist coverage generally provides the policyholder with benefits if the at-fault driver does not have sufficient bodily injury coverage. Current law does not allow the recovery of uninsured motorist benefits for pain and suffering damages unless the injury surpasses the "verbal threshold" because an injured person cannot recovery bodily injury coverage for pain and suffering damages unless the injury is sufficiently severe.

### **Commercial Motor Vehicle Coverage Requirements**

**Section 44** amends s. 627.7415, F.S., to increase the minimum levels of combined BI liability and PD liability coverage that commercial motor vehicles must have.

A commercial motor vehicle that weighs 26,000 pounds or more but less than 35,000 pounds must have coverage of no less than \$50,000 per occurrence beginning January 1, 2019; of no less than \$60,000 per occurrence beginning January 1, 2021; and of no less than \$70,000 per occurrence beginning January 1, 2023, and thereafter. Current law requires \$50,000 of coverage.

A commercial motor vehicle that weighs 35,000 pounds or more but less than 44,000 pounds must have coverage of no less than \$100,000 per occurrence beginning January 1, 2019; of no less than \$120,000 per occurrence beginning January 1, 2021; and of no less than \$140,000 per occurrence beginning January 1, 2023, and thereafter. Current law requires \$100,000 of coverage.



### **Technical and Conforming Changes**

**Section 3** amends s. 316.646, F.S., which requires drivers to maintain and be able to display proof of security demonstrating compliance with financial responsibility requirements. The bill specifies that any person operating a motor vehicle must have proof of security in his or her immediate possession and deletes references to PIP and amended sections of law, and instead references the new financial responsibility requirements created by the bill.

**Section 4** amends s. 318.18(2), F.S., regarding nonmoving traffic violations to conform cross references.

**Section 5** amends s. 320.02, F.S., which contains the requirements to register a motor vehicle. The bill amends the section to require proof of motor vehicle insurance that meets the minimum limits of bodily injury liability, property damage liability, and medical payments coverage.

**Section 6** amends s. 320.0609, F.S., regarding transfer and exchange of registration license plates to eliminate a reference to PIP.

**Section 9** amends s. 322.251, F.S., regarding notice of cancellation, suspension, or revocation of a driver's license to repeal references to the No-Fault Law.

**Section 10** amends s. 322.34, F.S., deleting a reference to the No-Fault Law.

**Section 11** amends s. 324.011, F.S., which provides the purpose of ch. 324, F.S., to specify that the chapter applies to the owners and operators of motor vehicles and requires all owners and operators to establish, maintain and show proof of financial responsibility. Currently, financial responsibility requirements only apply after an operator is involved in a crash or convicted of certain traffic offenses.

**Section 14** amends s. 324.0221, F.S., which requires insurers to report motor vehicle insurance cancellations to the DHSMV, to remove references to PIP and insert references to MedPay coverage and BI liability coverage.

**Section 15** corrects cross references in s. 324.023, F.S., which requires drivers who plead guilty or nolo contendere to a charge of driving under the influence to meet additional liability insurance requirements.

**Section 18** amends s. 324.051, F.S., regarding crash reports, to refer to motor vehicle liability policies rather than automobile liability policies.

**Section 20** amends s. 324.091, F.S., which requires owners and operators involved in a crash or conviction case to furnish evidence of liability insurance, by deleting references to automobile liability policy while retaining references to a motor vehicle liability policy.

**Section 24** amends s. 324.251, F.S., to revise the short title of ch. 324, F.S., to the "Financial Responsibility Law of 2019" and state it will be effective at 12:01 a.m., on January 1, 2019. Currently the chapter is the "Financial Responsibility Law of 1955."

**Section 25** revises the definition of a “clinic” contained in s. 400.9905, F.S., of the Health Care Clinic Act, to replace references to PIP coverage and the Florida Motor Vehicle No-Fault Law with references to MedPay or bodily injury coverage.

**Sections 26 and 27** amend s. 400.991, F.S., and s. 400.9935, F.S., of the Health Care Clinic Act to remove references to PIP and the No-Fault Law and insert references to MedPay coverage.

**Section 28** revises the definition of a “third party benefit” in s. 409.901, F.S., for purposes of Medicaid to refer to MedPay rather than PIP coverage.

**Section 29** amends s. 409.910(11), F.S., to specify that the Agency for Health Care Administration may recoup the total amount of medical assistance provided by Medicaid from motor vehicle insurance coverage benefits provided to a Medicaid beneficiary. Current law refers to PIP.

**Section 30** amends s. 456.057, F.S., regarding patient records, to correct a reference.

**Section 31** amends s. 456.072, F.S., which allows the Department of Health to discipline licensees for submitting claims for PIP reimbursement when treatment was not rendered or that is intentionally upcoded, to instead refer to MedPay coverage.

**Section 32** amends s. 626.9541(1)(i) and (o), F.S., to reference MedPay coverage rather than PIP in the prohibitions against the unfair insurance trade practice of not timely paying PIP claims, and the unfair practice of increasing premium or cancelling a motor vehicle insurance policy solely because the insured was involved in a motor vehicle accident without having information the insured was substantially at fault.

**Section 33** amends s. 626.989, F.S., to revise the “fraudulent insurance acts” detailed in the section to refer to MedPay coverage rather than the No-Fault Law.

**Section 34** amends s. 627.06501, F.S., regarding insurance discounts for completing a driver improvement course, to delete a reference to PIP and insert a reference to MedPay.

**Sections 35 and 36** amend s. 627.0652 and s. 627.0653, F.S., relating to insurance discounts for motor vehicle coverage, by replacing references to PIP with references to MedPay coverage.

**Section 37** amends s. 627.4132, regarding the general prohibition against stacking of motor vehicle coverages, to refer to BI and PD instead of PIP or other coverage.

**Section 38** amends s. 627.7263, F.S., which generally makes rental and leasing driver’s insurance primary, to delete references to PIP and insert references to MedPay.

**Section 42** amends s. 627.728, F.S., which governs cancellations of motor vehicle insurance policies, to delete a reference to PIP in the definition of “policy.”

**Section 43** amends s. 627.7295, F.S., to revise definitions relating to motor vehicle insurance contracts by deleting references to PIP and insert references to BI liability coverage and MedPay coverage.

**Section 45** amends s. 627.8405, F.S., regarding prohibited acts of premium finance companies to replace a reference to a PIP/PD only policy with a reference to a policy that only provides BI/PD/MedPay.

**Section 46** amends s. 627.915, F.S., which requires private passenger automobile insurers to annually report information to the office, to remove references to PIP.

**Section 47** amends s. 628.909, F.S., which applies certain provisions of the Insurance Code to captive insurance companies, to delete references to the No-Fault Law.

**Section 48** amends s. 705.184, F.S., which governs derelict or abandoned motor vehicles on the premises of public-use airports, to delete references to s. 627.736, F.S., which is repealed by the bill.

**Section 49** amends s. 713.78, F.S., regarding liens for recovering, towing, or storing vehicles and vessels, to delete references to s. 627.736, F.S., which is repealed by the bill.

**Section 50** amends s. 817.234, F.S., regarding false and fraudulent insurance claims, to delete references to PIP and replace them with references to MedPay coverage.

### **Application of Bill and Effective Date**

**Section 51** applies financial responsibility and medical payments coverage requirements created by the bill as follows:

- Effective January 1, 2019:
  - All Motor vehicle insurance policies issued or renewed may not include PIP.
  - All persons must maintain at least minimum security requirements, which is the ability to respond in damages for liability because of motor vehicle crashes in the amounts required by s. 324.021, F.S.
  - Any new or renewal motor vehicle insurance policy delivered or issued in this state must provide coverage that complies with minimum security requirements.
  - New and renewal motor vehicle insurance policies used to prove financial responsibility must also provide medical payments coverage.
  - An existing motor vehicle insurance policy that provide PIP and property damage liability coverage but do not meet the new bodily injury liability requirements is deemed to meet the bodily injury and MedPay requirements until the policy is renewed, nonrenewed or cancelled on or after January 1, 2019.
- Insurers must allow each insured who has a policy providing PIP which is effective before January 1, 2019, and whose policy does not meet minimum security requirements, to eliminate PIP coverage and obtain coverage providing minimum security requirements effective on or after January 1, 2019. Insurers may not impose additional fees solely to change coverage, but may charge an additional premium that is actuarially indicated.
- By September 1, 2018, each motor vehicle insurer shall provide notice that:

- The Florida Motor Vehicle No-Fault Law is repealed effective January 1, 2019, and that PIP coverage is no longer required or available for purchase.
- That effective January 1, 2019, a person subject to the financial security requirements of s. 324.022, F.S., must maintain medical payments coverage and applicable minimum security requirements for bodily injury liability and property damage liability.
- That a policyholder may obtain underinsured motorist coverage, which provides benefits to a policyholder entitled to recover bodily injury damages resulting from a motor vehicle accident with an uninsured or underinsured owner or operator of a motor vehicle.
- That a policy effective before January 1, 2019, is deemed to meet minimum security requirements until it is renewed, nonrenewed, or canceled.
- That a policyholder may change coverages to eliminate PIP protection and obtain coverage providing minimum security requirements.
- That if the policyholder has any questions, he or she should contact the person named at the telephone number provided in the notice.

This section is effective upon the act becoming a law.

**Section 52** requires all suspensions for failure to maintain required security as required by law in effect before January 1, 2019, remain in full force and effect after the effective date of this act. A driver may reinstate a suspended driver's license or registration as provided under s. 324.0221, F.S.

**Section 53** provides that except as otherwise expressly provided in the act and this section, which take effect upon this act becoming a law, the act is effective January 1, 2019.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

Bodily injury coverage is not a required coverage under Florida law unless a person is involved in a certain accidents causing bodily injury, convicted of certain offenses, or is otherwise required to maintain BI liability coverage in statute. Failure to maintain BI coverage, when required, can result in the suspension of a license or registration. The reinstatement fee under s. 324.071, F.S., for such suspension under current law is \$15.

Personal Injury Protection and property damage liability coverage are required under Florida law, and failure to maintain them is grounds for the suspension of a license or registration. The reinstatement fee for such suspensions under s. 324.0221, F.S., is \$150 for a first reinstatement, while second and subsequent reinstatements within 3 years of the first reinstatement require fees of \$250 and \$500, respectively.

The bill applies the reinstatement fees for failure to maintain mandatory coverage under s. 324.0221, F.S., to the failure to maintain BI liability coverage because the bill creates a financial responsibility requirement for bodily injury. See the “Government Sector Impact” section below additional information.

**B. Private Sector Impact:**

The report *Florida Office of Insurance Regulation: Review of Personal Injury Protection Legislation* provides actuarial estimates of the savings expected from repealing the No-Fault Law.<sup>71</sup> The charts in this section are taken from data in Appendix 2 and Appendix 3 of the report.

The following chart provides the statewide average premium for each auto insurance coverage under current law and premium estimates if the No-Fault Law is repealed and replaced with mandatory financial responsibility for bodily injury and mandatory medical payments coverage.

**Average Annual Statewide Premium Paid by Coverage and Estimates of Average Statewide Premium<sup>72</sup>**

| Coverage           | Current Law<br>10/20/10 PIP/PD | Repeal PIP & Mandate<br>15/30/5 BI/MedPay | Repeal PIP & Mandate<br>25/50/5 BI/MedPay |
|--------------------|--------------------------------|-------------------------------------------|-------------------------------------------|
| Bodily Injury      | \$329.22                       | \$462.32                                  | \$469.37                                  |
| PIP/MedPay         | \$219.10                       | \$72.30                                   | \$72.30                                   |
| Uninsured Motorist | \$111.60                       | \$122.43                                  | \$122.43                                  |
| Property Damage    | \$180.06                       | \$180.06                                  | \$180.06                                  |
| Comprehensive      | \$102.03                       | \$102.03                                  | \$102.03                                  |
| Collision          | \$267.50                       | \$267.50                                  | \$267.50                                  |
| <b>TOTAL</b>       | <b>\$1,209.51</b>              | <b>\$1,206.94</b>                         | <b>\$1213.69</b>                          |

The chart below provides select average countywide estimates of the change in what policyholders will annually pay in premiums for certain coverages if the No-Fault law is repealed and replaced with a mandate to carry \$5,000 in MedPay insurance coverage and a financial responsibility requirement for bodily injury. The 2016 PIP Study indicated

<sup>71</sup> Office of Insurance Regulation, *Review of Personal Injury Protection Legislation*, (Sept. 13, 2016). Available at <http://www.floir.com/siteDocuments/FLOIRReviewPIP20160913.pdf> (last viewed December 4, 2017).

<sup>72</sup> The header on the chart details the current minimum mandatory coverage limit for PIP/PD and possible minimum mandatory coverage limits for BI/MedPay. The statewide average premiums are for the coverages at any policy limit, not the minimum required limits under state law.

that replacing the \$10,000 PIP requirement with a \$5,000 MedPay coverage requirement will lower the premium paid for first-party medical motor vehicle insurance coverage. This reduction is offset by increases in premium for bodily injury liability coverage and uninsured motorist’s coverage.

| County       | Avg. MedPay 5 | Avg. BI 15/30 | Avg. BI 25/50 | Avg. UM   |
|--------------|---------------|---------------|---------------|-----------|
| Alachua      | - \$84.83     | + \$101.03    | + \$106.15    | + \$8.88  |
| Brevard      | - \$94.07     | + \$113.84    | + \$119.60    | + \$9.66  |
| Desoto       | - \$121.87    | + \$107.98    | + \$113.44    | + \$9.30  |
| Duval        | - \$117.42    | + \$124.26    | + \$130.55    | + \$9.39  |
| Escambia     | - \$96.47     | + \$101.05    | + \$106.17    | + \$8.30  |
| Hillsborough | - \$177.01    | + \$162.66    | + \$170.89    | + \$12.15 |
| Leon         | - \$82.88     | + \$102.79    | + \$107.99    | + \$8.36  |
| Miami/Dade   | - \$279.50    | + \$138.64    | + \$145.65    | + \$12.77 |
| Orange       | - \$161.52    | + \$131.99    | + \$138.67    | + \$9.94  |

The 2016 PIP Study estimated that health insurers will cover approximately \$469.7 million of current PIP loss if No-Fault is repealed.<sup>73</sup> Health care providers will cover approximately \$32.8 million of current PIP losses. Injured claimants will cover approximately \$82.9 million in current PIP losses.

The Department of Highway Safety and Motor Vehicles (DHSMV) believes that the bill may require every operator of a motor vehicle in Florida obtain and maintain property damage liability and bodily injury liability coverage, regardless of whether or not they register a vehicle in this state.<sup>74</sup> This would mean that 16,568,874 drivers/operators (Source: CY 2017 Licensed Drivers by License Type and County Report) would have to be screened to determine whether they have appropriate insurance when applying for a driver license (i.e., at new issuance, renewal issuance, or replacement issuance). In the process of verifying insurance at the time of issuing/renewing/replacing a driver license, the Department and Tax Collectors would identify a significant number of drivers/operators who would not have the required insurance. Consequently, the number of suspensions for failure to provide proof of financial responsibility would grow exponentially.

According to the DHSMV, 5,124,641 residents<sup>75</sup> in Florida hold a Florida driver license, but do not have a vehicle registered in their name. These residents would now be forced to purchase a Florida motor vehicle insurance policy or potentially face the suspension of their driver license. Persons possibly impacted by this change may be:

<sup>73</sup>Office of Insurance Regulation, *Florida Office of Insurance Regulation Review of Personal Injury Protection Legislation*, pg. 6 (September 13, 2016).

<sup>74</sup> Department of Highway Safety and Motor Vehicles, *2018 Agency Legislative Bill Analysis SB 150* (January 4, 2018).

<sup>75</sup> Updated to incorporate the revised calculation of this number by the DHSMV in its revised legislative bill analysis. The previous, erroneous calculation was 2,507,914 drivers.

- Residents who must maintain a driver license for employment, but do not own a personal vehicle;
- Residents who have a driver license to assist non-drivers (elderly, disabled, etc.), but do not own a personal vehicle;
- Students in college who have a driver license as a credential, but do not own a personal vehicle; and
- Inmates who are incarcerated and have a driver license, but do not own a personal vehicle.

**C. Government Sector Impact:**

The Department of Highway Safety and Motor Vehicles<sup>76</sup> noted that financial responsibility reinstatement fee for the suspensions identified in s. 324.071, F.S. is increased from \$15 to \$150 for the first offense, \$250 for the second offense, and \$500 for third and subsequent offenses within three years. Assuming a 100% of the liability suspensions will be reinstated, this fee increase will generate \$1.7M in FY 2018-19. This increase is based on the historical and projected number of reinstatements for liability.

Overall, the DHSMV expects the legislation will have an indeterminate, but positive impact on Department revenues related to reinstating a suspension triggered by a lapse in required insurance coverage.

The DHSMV states work would be performed on the its driver licensing system, which is to be replaced as part of the Motorist Modernization Phase I project. The DHSMV has completed gathering and validation requirements for this phase. Development of Motorist Modernization Phase I is slated to finish by August 2019. Additional requirements due to changes in law will result in an increase in the complexity and cost. The DHSMV estimates that 7,869 hours will be required for programming and implementation. These hours are estimated to have a fiscal impact to the DHSMV of \$553,935 in FTE and contracted resources. (Development: 604 hours @ \$40/hour + 4,642 hours @ \$100/hour and Testing: 2,623 hours @ \$25/hour).

The DHSMV also recommends the implementation of an education campaign to raise awareness of the changes to the insurance and financial responsibility laws. This campaign would include, but is not limited to, the initial brand and campaign creation, mass media purchases (television, radio, social media, and online advertisements), printed materials for stakeholders (tax collectors, insurance companies, dealerships, and law enforcement partners), and potential mailing fees. The DHSMV estimates approximately \$5,000,000 would be needed to successfully implement the campaign.

**VI. Technical Deficiencies:**

None.

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<sup>76</sup> Department of Highway Safety and Motor Vehicles, *2018 Agency Legislative Bill Analysis SB 150* (January 4, 2018).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 316.646, 318.18, 320.02, 320.0609, 320.27, 320.771, 322.251, 322.34, 324.011, 324.021, 324.022, 324.0221, 324.023, 324.031, 324.032, 324.051, 324.071, 324.091, 324.151, 324.161, 324.171, 324.251, 400.9905, 400.991, 400.9935, 409.901, 409.910, 456.057, 456.072, 626.9541, 626.989, 627.06501, 627.0652, 627.0653, 627.4132, 627.7263, 627.727, 627.7275, 627.728, 627.7295, 627.7415, 627.8405, 627.915, 628.909, 705.184, 713.78, and 817.234.

This bill creates section 627.7265 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 627.730, 627.731, 627.7311, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, 627.7405, and 627.7407.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.