

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1978

SPONSOR: Banking and Insurance Committee and Senator Diaz-Balart

SUBJECT: Automobile Insurance: Personal Injury Protection

DATE: March 22, 1999 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|--------------------|-----------|---------------------|
| 1. | <u>Emrich</u> | <u>Deffenbaugh</u> | <u>BI</u> | <u>Favorable/CS</u> |
| 2. | _____ | _____ | _____ | _____ |
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I. Summary:

Under current law, every owner or registrant of a motor vehicle is required to maintain personal injury protection (PIP) coverage, also known as no-fault insurance. Florida law also allows limited alternatives to the standard PIP policy which includes the election of *one* of the following policy limitations: a PIP deductible, a coordination of certain military medical benefits with PIP benefits, or a waiver of coverage for loss of income. Committee Substitute for Senate Bill 1978 would allow motor vehicle policyholders to elect more than one, or a combination, of PIP benefit coverage limitations pursuant to s. 627.739, F.S. Such insureds would receive a premium reduction that would be associated with each election of coverage limitation. Additionally, the committee substitute requires insurance companies to provide sufficient notice to insureds of these coverage modifications and that such notice be made in clear and unambiguous language at the time of initial application and before each annual renewal.

Furthermore, the committee substitute requires private passenger automobile insurers to give policyholders at least 30 days' advance written notice of the renewal premium of the policy, to be sent to the policyholder's last address as shown by the insurer's records. Failure to provide the notice of a premium increase results in coverage remaining in effect at the existing rate until 30 days after the notice is given or until the effective date of replacement coverage obtained by the insured, whichever occurs first.

This committee substitute substantially amends section 627.739 and creates section 627.7277 of the Florida Statutes.

II. Present Situation:

Current law provides for compulsory purchase of no-fault coverage, referred to as personal injury protection (PIP), which compensates the policyholder directly up to \$10,000 without regard to fault for bodily injury sustained in a motor vehicle accident (s. 627.736, F.S.). Personal injury protection insurance reimburses 80 percent of all medical expenses, 60 percent of any loss of

income, and funeral expenses up to \$5,000. Personal injury protection benefits cover the named insured, any relatives that live with the insured, and occupants of a vehicle that do not have their own PIP insurance. This coverage also provides the policyholder with immunity from liability for economic damages up to the policy limits and for non-economic damages (pain and suffering) for most injuries. Property damage liability coverage of \$10,000 is also required which pays for the physical damage expenses caused by the insured to third parties in the accident.

Section 627.739, F.S., requires that insurers offer the following coverage options for PIP insurance:

- ▶ deductibles in the amounts of \$250, \$500, \$1,000 and \$2,000;
- ▶ coordination of PIP benefits with military benefits; and,
- ▶ exclusion of benefits for loss of income and earning capacity.

This section also states that insurers must offer PIP coverage which coordinates with Medicare benefits. However, due to a change in federal rules adopted by the Federal Health Care Financing Administration in 1983, PIP payments become primary over Medicare payments which has had the effect of negating the Medicare coordination provision.

Under present law, as interpreted by the Department of Insurance, an insured has the option of selecting only *one* of the policy limitations described above. Each of these options reduces the amount of an insured's PIP premium since the insurer assumes less liability. However, an insured cannot select more than one of these options. For example, insureds who elect a deductible of \$250 may *not* opt out of the wage loss provision, even if those insureds are retired or otherwise earn no income.

According to representatives with the Department of Insurance, it is estimated that an approximate average annual savings of \$18.85 per policy would be achieved if wage loss coverage were eliminated. That estimate is based on a 15 percent discount for the wage loss exclusion for insurance companies which represent 55 percent of the private passenger automobile market in Florida. Additionally, department officials estimate that insureds who currently have no deductible, but decide to elect a \$2,000 deductible, could receive a discount of approximately 40 percent off their PIP premium. That estimate is also based on companies which represent 55 percent of the private passenger automobile market. Department officials further note that the Insurance Services Office (ISO), a national organization that supplies advisory services to insurers, recommends a 7 percent premium discount for the named insured, or an 11 percent premium discount for exclusion of wage loss benefits for the named insured *and* any dependent relatives.

Presently, s. 627.4133, F.S., provides that an insurer provide 45 days' advance written notice of nonrenewal or of the renewal premium. This statute applies to policies providing coverage for workers' compensation and employer's liability insurance, property and casualty, surety, and marine insurance, but specifically excludes motor vehicle insurance subject to s. 627.728, F.S.

Similarly, s. 627.6043, F.S., provides that an insurer delivering or issuing an individual health insurance policy, give the policyholder at least 45 days' advance written notice of cancellation, nonrenewal or a change in rates.

Section 627.7282, F.S., covers notice of additional premium or cancellation upon nonpayment by the holder of a private passenger motor vehicle policy. However, this section only applies in the limited circumstance where a policyholder has been charged a premium which is incorrect for the coverage set forth in the insurance application. The policyholder then has 10 days from the notice in which to pay the additional premium or cancel the policy.

Section 627.728, F.S., requires 45 days' written notice be mailed to the named insured prior to cancellation of a motor vehicle policy, except when the cancellation is for nonpayment of premium, only 10 days' notice is required. The section also sets forth what constitutes sufficient proof of notice. The section specifically excludes nonrenewals from this requirement.

However, the case of Boman v. State Farm Mutual Automobile Insurance Co., 505 So.2d 445 (Fla. 1st DCA 1987), applied the notice requirement of s. 627.728, F.S., in conjunction with the policy provisions under review in that case, to require notice of the renewal premium. The court held that for purposes of shifting the burden of proof of non-delivery of notice to the insured, the insurer must show proof of mailing as set forth in s. 627.728(5). Provisions in the insurance policy regarding the method of notice, which were inconsistent with the proof of notice requirements of s. 627.728, F.S., were rendered invalid by the court. The policy provisions and the Florida Insurance Code were construed in context with each other to create an *implied* duty on the insurer to notify its insured of the amount of the renewal premium and the date the premium was due. Although not expressly stated in the opinion, it would appear that the statute's minimum 10-day notice for nonrenewal due to nonpayment of premium would be implied for notice of the renewal premium in that case.

The court in Boman also noted that the provision regarding mailing contained in s. 627.728(5), F.S., indicated a legislative intent that the act of mailing would no longer be treated as sufficient proof of notice to the insured unless accomplished in the specified manner. Customary evidence of mailing, such as the testimony of an employee that it is the usual custom and practice to place the notice in the post office mail receptacle, is competent proof of mailing, but it may be rebutted by evidence to the contrary, including evidence of non-receipt, by the insured.

III. Effect of Proposed Changes:

Section 1. Amends s. 627.739, F.S., relating to PIP optional limitations and deductibles, to allow insureds to elect multiple PIP policy benefit limitations and receive appropriate premium reductions. All such offers by insurance companies to insureds must be made in clear and unambiguous language at the time the initial application is taken and before each annual renewal, and shall indicate that a premium reduction will result from each election. At the option of the insurer, the notice requirements may be met by using specific forms of notice approved by the Department of Insurance or provide notice in 10-point type specifying the benefit coverage limitations in the insurance application and the annual notice of renewal premium. The effect of this committee substitute is that insureds would be able to choose a deductible in combination with the exclusion of wage loss benefits and military medical benefits, thereby reducing their automobile premium. The Medicare provision is deleted from this section because, as noted above, federal rules mandate that Medicare benefits are secondary to PIP benefits, thus negating the effect of the Medicare coordination provision.

Section 2. Creates s. 627.7277, F.S., relating to notice of renewal premiums for private passenger motor vehicle insurance policies, as described in s. 627.728(1)(a), F.S. The created section mandates that insurers of private passenger motor vehicles provide 30 days' advance written notice of the renewal premium for the policy. The section further provides a description of what constitutes sufficient proof of notice. An insurer must mail the notice by United States postal proof of mailing or certified or registered mail to the named insured at the address shown in the policy, in order to be deemed sufficient proof of notice. Evidence of providing notice by other means, such as regular mail, could be rebutted by evidence to the contrary and create a question of fact for a judge or a jury.

If the insurer fails to provide the 30 days' notice of the renewal premium, which results in a premium increase, then the coverage under the policy remains in effect until after the 30 days' notice has been given, or until the effective date of replacement coverage by the insured, whichever is first.

This section does not affect notice required for additional premiums when an incorrect premium has been charged or notice required for cancellation of a private passenger vehicle policy which are specifically addressed in ss. 627.7282 and 627.728, F.S., respectively.

Section 3. Provides that the committee substitute shall take effect July 1, 1999, however, the act will apply to policies issued or renewed or after July 1, 2000. This will effectively require an insurer of private passenger automobiles to notify a policyholder on June 1, 2000, of the renewal premium for a policy having an effective date of renewal on July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Motor vehicle policyholders would benefit because they would be able to choose various combinations of discounts, i.e., a deductible in combination with coordination of military benefits and wage loss benefits, thereby reducing their PIP premiums.

Insurance companies will have to expend resources to modify their underwriting and claims systems and to develop rates for the various optional discounts provided for under this committee substitute. Insurance companies will have to re-file with the Department of Insurance a portion of their motor vehicle policy rates, forms, and underwriting manuals to accommodate the various combinations of discounts that an insurer would be required to provide.

By requiring insurers to provide 30 days' advance written notice of renewal premiums, individuals holding a private passenger automobile insurance policy should have a sufficient amount of time to evaluate their insurance options and obtain coverage estimates from other insurance providers, or choose to retain coverage with their current insurer.

Since insurers currently send premium notices to policyholders, no additional expenses should result from this bill, other than the potential costs of continuing to provide coverage at the old rate if the insurer fails to provide the required notice of a premium increase.

C. Government Sector Impact:

The Department of Insurance would be required to review insurance company rate and other filings to assure compliance with the provisions of this committee substitute.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.