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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 393
RELATING TO: Motor Veh. Financial Responsibility
SPONSOR(S): Representatives Simmons and Hogan
TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT YEAS 5 NAYS 3
 - (2) INSURANCE
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

The Florida No-Fault Law currently requires an individual owner or operator of a motor vehicle to carry at least \$10,000 of personal injury protection ("PIP") insurance and at least \$10,000 of property damage ("PD") insurance, or \$30,000 of combined PD and bodily injury liability ("BI") insurance.

This bill requires that all individuals also carry at least \$25,000 in BI insurance coverage for injury or death to a single person in a single crash, and at least \$50,000 coverage for injury or death to multiple persons in a single crash (commonly known as a "25/50 policy"). This bill further requires that all motor vehicle owners and operators either carry these BI minimums, post a surety bond, deposit cash or securities with the Department of Highway Safety and Motor Vehicles ("DHSMV"), or possess sufficient unencumbered assets to qualify as a self-insurer. Additionally, an individual may prepare an "affidavit of financial hardship" and thereby exempt out of this additional insurance requirement.

This bill also increases the required amounts for certain vehicle owners to demonstrate financial responsibility by surety bond or by deposit with DHSMV, and increases the minimum insurance coverage required in addition to the surety bond or deposit. In addition, this bill raises the minimum unencumbered net worth required to apply for a certificate of self-insurance. Finally, the bill adds proof of financial responsibility to the requirements for reinstatement of license, registration, or insurance.

This bill appears to have a minimal fiscal impact on state government. This bill does not appear to have a fiscal impact on local government. This bill appears to have a substantial fiscal impact on the private sector; see "Direct Economic Impact on Private Sector" herein.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain: This bill increases the financial responsibility minimums imposed on motor vehicle owners and operators. It also imposes the requirement on a wider class than current law. In addition, it creates a continuing annual obligation on the part of those unable to carry the minimum amount of coverage to prepare an affidavit regarding the inability to afford the required insurance, and requires the Department of Insurance to promulgate this form.

B. PRESENT SITUATION:

No-Fault Motor Vehicle Insurance System¹

In general, every owner of a four-wheeled motor vehicle registered in Florida is required to maintain a minimum level of no-fault personal injury protection ("PIP") insurance² and property damage ("PD") insurance.³ PIP covers the named insured, relatives residing in the same household, passengers, persons driving the vehicle with the insured's permission, and persons "struck by such motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle."⁴ With respect to injuries sustained in a motor vehicle accident, regardless of who is at fault, a vehicle owner's PIP coverage will generally pay 80 percent of medical costs,⁵ 60 percent of lost income and similar costs,⁶ and a \$5,000 per-person death benefit,⁷ up to a limit of \$10,000.⁸ PD insurance must provide a minimum per-crash coverage of \$10,000 for property damage, or \$30,000 for combined property damage and bodily injury liability.⁹

The owner, operator or occupant of a vehicle in compliance with these no-fault coverage requirements is immune from tort actions (and, conversely, may not bring suit to recover damages) for pain, suffering, mental anguish, or inconvenience arising out of an accident except in cases of:

- "Significant and permanent loss of an important bodily function",¹⁰

¹ See generally Mark M. Hager, *No Fault Drives Again: A Contemporary Primer*, 52 U. MIAMI L. REV. 793 (1998).

² See s. 627.733, F.S.

³ See s. 627.7275(1), F.S.

⁴ Section 627.736(1), F.S.

⁵ See s. 627.736(1)(a), F.S.

⁶ See s. 627.736(1)(b), F.S.

⁷ See s. 627.736(1)(c), F.S.

⁸ See s. 627.736(1), F.S.

⁹ See s. 627.7275(1), F.S.

¹⁰ Section 627.737(2)(a), F.S.

- “Permanent injury within a reasonable degree of medical certainty, other than scarring or disfigurement”;¹¹
- “Significant and permanent scarring or disfigurement”;¹² or
- “Death.”¹³

These requirements are known as the “verbal threshold.”¹⁴

A motor vehicle operator must have his or her license,¹⁵ registration¹⁶ and proof of insurance¹⁷ at all times when operating a motor vehicle. To have any of these reinstatement after suspension, a motor vehicle owner or operator must show compliance with the No-Fault Law.¹⁸

Financial Responsibility

The Senate recently described the structure and history of, and rationale behind, Florida’s Financial Responsibility Law:

The philosophical underpinning of financial responsibility laws is to protect tortfeasors of vehicular accidents from financial disaster resulting from judgments rendered against him or her in a court of law and to compensate an accident victim for injuries received in an accident. Florida’s Financial Responsibility Law was enacted in 1947 and currently requires proof of ability to pay monetary damages for bodily injury and property damage liability arising out of motor vehicle accidents or serious traffic violations. [citation omitted] However, the owner and operator of a motor vehicle need not demonstrate financial responsibility until *after* the accident. [Emphasis in original] At that time, a driver’s financial responsibility is proved by the furnishing of an active motor vehicle liability policy. The minimum amounts of coverage required are \$10,000 in the event of bodily injury to, or death of, one person, \$20,000 in the event of injury to two or more persons, \$10,000 in the event of injury to property of others, or \$30,000 combined single limit. If the owner or operator of the vehicle was not financially responsible at the time of the accident, his driver’s license is suspended as well as the registration of the owner of the vehicle. An individual can comply with the Financial Responsibility law in several ways: liability insurance, surety bond, deposit of cash or securities, or self-insurance. [citation omitted]

As noted above [when describing no-fault requirements], compulsory insurance provisions must be maintained continuously throughout the registration or licensing period. However, financial responsibility requirements, sometimes referred to as “one free bite” laws, do not take effect until *after* a motorist has been involved in an accident or serious traffic violation.¹⁹

The owner or operator of a for-hire passenger vehicle can prove financial responsibility only by showing insurance coverage in at least the minimum amounts required by the financial

¹¹ Section 627.737(2)(b), F.S.

¹² Section 627.737(2)(c), F.S.

¹³ Section 627.737(2)(d), F.S.

¹⁴ The Legislature substituted this verbal threshold for the No-Fault Statute’s original \$1,000 “dollar threshold” in 1976. *See* ch. 76-266, L.O.F.

¹⁵ *See* s. 322.15, F.S.

¹⁶ *See* s. 320.0605, F.S.

¹⁷ *See* s. 316.646(1), F.S.

¹⁸ *See* s. 627.733(7), F.S.

¹⁹ Florida Senate Rept. No. 98-03, “Potential Impact of Mandating Bodily Injury Liability Insurance for Motor Vehicles,” p. 12.

responsibility law.²⁰ Other vehicle owners or operators can prove financial responsibility in this way, but they may also do so by:

- “Posting with the department [of Highway Safety & Motor Vehicles] a satisfactory bond of a surety company authorized to do business in this state, conditioned for payment of the amount specified in [the financial responsibility law’s definition of ‘proof of financial responsibility’]”,²¹ or
- “Furnishing a certificate of the department showing a deposit of cash or securities [valued at \$30,000]”,²² or
- “Furnishing a certificate of self-insurance issued by the department.”²³

See Section-by-Section Analysis below for present situation specific to each section of this bill.

C. EFFECT OF PROPOSED CHANGES:

See Section-by-Section Analysis below.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amending s. 324.021, F.S., regarding definitions and minimum insurance required.

Present Situation. Section 324.021(1), F.S., defines “motor vehicle” as:

(1) MOTOR VEHICLE.--Every self-propelled vehicle which is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any bicycle or moped. However, the term "motor vehicle" shall not include any motor vehicle as defined in s. 627.732(3) when the owner of such vehicle has complied with the requirements of ss. 627.730-627.7405, inclusive, unless the provisions of s. 324.051 apply; and, in such case, the applicable proof of insurance provisions of s. 320.02 apply.

In general, the owner or operator of a motor vehicle is required to carry liability insurance. However, the net effect of the exclusion starting at the word “However” is that only an individual that has been involved in an automobile crash and has failed to either show proof of liability insurance or has failed to post security for the owner’s potential liability is required to show proof of financial responsibility. In addition, an individual who cannot, after a crash, show proof of liability insurance or cannot meet the post-crash financial responsibility requirement is subject to suspension of the person’s driver’s license and registration certificate for the motor vehicle.²⁴ Thus, while the statutes encourage liability insurance coverage, it is not required for most individuals.

Effect of Proposed Changes. This bill amends s. 324.021(1), F.S., to eliminate the “after the fact” system. The net effect is to impose upon all owners and operators of motor vehicles the requirement to either purchase liability insurance, or to qualify as a self-insurer.

²⁰ See s. 324.031, F.S.

²¹ Section 324.031(2), F.S.

²² Section 324.031(3), F.S.

²³ Section 324.031(4), F.S.

²⁴ See s. 324.051(2), F.S.

This change also has the effect of imposing the financial responsibility law on owners and operators of motorcycles, who have not previously been required to carry any minimum insurance coverage.²⁵

Present Situation. Section 324.021(7)(a), F.S., provides that the minimum liability insurance coverage that must be purchased to comply with the Financial Responsibility Law is \$10,000 for bodily injury to, or death of, on person in a crash; and, subject to the limits for one person, \$20,000 total bodily injury coverage for any one crash.²⁶ These sums were enacted in 1988, a straight inflationary adjustment to these sums to 2001 is \$14,970.41 and \$29,940.83, respectively.

Effect of Proposed Changes. This bill changes the minimum bodily injury coverage to \$25,000 for one person, and \$50,000 total for any one crash,²⁷ for any person required to comply with the Financial Responsibility Law.

Section 2. Creating s. 324.023, F.S., regarding financial responsibility for bodily injury or death.

Present Situation. In general, an individual driving a personal automobile is required to carry PIP coverage and a \$10,000 property damage policy only. Such individuals are generally not required to carry bodily injury liability coverage, with certain exceptions.

Effect of Proposed Changes. This bill creates new s. 324.023, to require that all owners and operators of motor vehicles, other than motor vehicles used for exclusively commercial purposes, “establish and maintain the ability to respond in damages for liability on accounts of accidents arising out of the use of the motor vehicle in the amounts prescribed in s. 324.021(7)(a) and (b).” Section 1 of this bill raises those minimum coverages in s. 324.021(7), F.S., to \$25,000 per person and \$50,000 total per crash.

Subsection (2) of new s. 324.023, provides that an owner or operator of a motor vehicle who signs an “affidavit of financial hardship” is exempt from the requirement of providing insurance or surety for bodily injury liability. The affidavit “shall, at a minimum, state that the affiant is unable to comply with subsection (1) because to do so would cause severe financial hardship and that the affiant understands that he or she remains fully personally liable for certain accidents arising out of the use of the motor vehicle.” These affidavits are to be collected and maintained by the PIP carrier for the owner or operator.

Insurance companies and their agents are exempted from liability for any failure on their part, or on the part of their insured, to comply with the insurance and/or affidavit requirements.

The Department of Insurance must promulgate the form affidavit of financial hardship, and must adopt administrative rules to enforce s. 324.023.

Section 3. Amending s. 324.031, F.S., regarding manner of proving financial responsibility.

Present Situation. Section 324.031, F.S., provides that operator or owner of any vehicle, other than a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle, may prove his or her financial responsibility by insurance, posting bond, cash deposit, or a certificate of self-

²⁵ See s. 627.732(3) (defining “[m]otor vehicle” for purposes of the No-Fault Law as “any self-propelled vehicle with four or more wheels”).

²⁶ The shorthand reference typically used in the insurance industry is a “10/20 policy”.

²⁷ The shorthand reference typically used in the insurance industry is a “25/50 policy”.

insurance. Any person other than a natural person electing to post a surety bond or a cash deposit must:

- Post a bond or deposit equal to the number of vehicles owner times \$30,000, to a maximum of \$120,000; and
- Maintain excess insurance coverage of a minimum of \$10,000/\$20,000/\$10,000 or \$30,000 combined single limits, and a minimum of \$50,000/\$100,000/\$50,000 or \$150,000 combined single limits.

Effect of Proposed Changes. This bill amends s. 324.031, F.S., to increase the minimum surety bond or cash deposit amounts as follows:

- Post a bond or deposit equal to the number of vehicles owner times \$60,000, to a maximum of \$240,000; and
- Maintain excess insurance coverage of a minimum of \$25,000/\$50,000/\$10,000 or \$60,000 combined single limits, and a minimum of \$125,000/\$250,000/\$50,000 or \$300,000 combined single limits.

Section 4. Amending s. 324.161, F.S., regarding proof of financial responsibility by surety bond or deposit.

Present Situation. Section 324.161, F.S., provides the requirement for the minimum surety bond or deposit to post with the Department of Highway Safety and Motor Vehicles, by a person who has been involved in a crash and cannot show proof of liability insurance, in order for that person to avoid suspension of the owner or operator's driver's license and vehicle registration. The minimum deposit is cash or securities of \$30,000.

Effect of Proposed Changes. This bill amends s. 324.161, F.S., to increase the minimum deposit from \$30,000 to \$60,000.

Section 5. Amending s. 324.031, F.S., regarding persons who may qualify as self-insurers.

Present Situation. Section 324.031(4), F.S., provides that a motor vehicle owner or operator may satisfy the financial responsibility requirements by obtaining a certificate of self-insurance issued by the Department of Highway Safety and Motor Vehicles. To qualify:

- A private individual with private passenger vehicles must possess a net unencumbered worth of at least \$40,000.
- A person, including any firm, partnership, association, corporation, or other person, other than a natural person, must possess a net unencumbered worth of at least \$40,000 for the first motor vehicle and \$20,000 for each additional motor vehicle; or must maintain sufficient net worth, as determined annually by the department, pursuant to rules promulgated by the department, with the assistance of the Department of Insurance, to be financially responsible for potential losses. The rules must take into consideration excess insurance carried by the applicant. The department's determination is based upon reasonable actuarial principles considering the frequency, severity, and loss development of claims incurred by casualty insurers writing coverage on the type of motor vehicles for which a certificate of self-insurance is desired.

Effect of Proposed Changes. This section amends s. 324.171, F.S., to increase the minimum unencumbered net worth of an individual from \$40,000 to \$60,000; and to increase the minimum unencumbered net worth for an entity from \$40,000 to \$60,000 for the first motor vehicle, and from \$20,000 to \$50,000 for each additional vehicle.

Section 6. Amending s. 316.646, F.S., regarding proof of security.

Present Situation. Section 316.646(1), F.S., requires every person required to carry PIP coverage to carry proof of PIP coverage while operating a motor vehicle.

Effect of Proposed Changes. This section amends s. 316.646(1), F.S., to further require every person to carry proof of the liability coverage added or increased by this bill.

Section 7. Amending s. 627.733, F.S., regarding required security.

Present Situation. Section 627.733(6), F.S., requires the Department of Highway Safety and Motor Vehicles to suspend the driver's license and registration of an individual who has failed to carry required insurance. Section 627.733(7), F.S., provides for reinstatement of a driver's license and registration upon a showing of proof of required insurance and payment of a penalty.

Effect of Proposed Changes. This bill amends s. 627.733(7), F.S., to add a requirement that the individual showing proof of required insurance additionally show proof of the liability insurance, or other proof of financial responsibility, required by other sections of this bill.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill requires the Department of Insurance to promulgate an affidavit for use by individuals who claim the hardship exemption. This appears to be a one-time minimal cost.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill increases the minimum legally required automobile insurance coverage that a motor vehicle owner is required to carry. Individuals currently exempt from the insurance requirement, and those carrying the minimum coverage, will be required to purchase additional coverage (unless those persons utilize the hardship exemption). The insurance industry was unable to provide a

good estimate of the number of citizens that this requirement will affect, and there is no known method of determining how many of those persons may avail themselves of the hardship exemption. Nevertheless, it appears that this bill could have a substantial financial effect on many individuals.

Insurance companies and agents will directly incur the costs of printing, copying, supervising the execution of, and storage of, the hardship affidavits.

This bill also increases minimum insurance requirements for many commercial vehicles, which necessarily would result in increased premiums expense.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill directs the Department of Insurance to prepare a form "affidavit of financial hardship" to be executed annually by motor vehicle owners and operators who claim that they are incapable of carrying the minimum amount of required liability insurance coverage. It further directs the Department to adopt rules to enforce the financial responsibility minimums and the financial hardship filing requirement.

C. OTHER COMMENTS:

It is unclear what the standard is for obtaining this bill's proposed affidavit of financial hardship. "Severe financial hardship" could mean very different things to different affiants. A prosecution for perjury on this form is unlikely.

The Florida Insurance Council is “worried that imposing so many new costs on drivers might just encourage more people to evade the law and go without any coverage at all.”²⁸

The director of the Financial Responsibility Section of the Department of Highway Safety and Motor Vehicles provided the following comment regarding this bill: “The biggest problem with this bill is that it forces everyone to carry insurance. It says ‘every operator,’” which he notes “includes rentals, and includes me if I borrow my brother’s car, and let’s say he’s insured in Florida and I’m insured in Ohio.”²⁹ He believes that Florida’s unique “two-tiered” compulsory insurance system “works wonderfully, and other states are looking at it.”³⁰ Finally, he is also “convinced this bill will make most premiums triple, and drive people to go without insurance.”³¹

The Academy of Florida Trial Lawyers (“AFTL”) supports this bill “because right now, uninsured motorists shift costs by imposing uninsured motorist coverage on other drivers.”³² AFTL notes that that would be “significant reductions in the uninsured motorist rates if bodily injury liability were made mandatory at minimum limits of \$25,000/\$50,000.”³³ In addition, AFTL points out that “Florida is one of only 9 states without [mandatory bodily injury] liability insurance.”³⁴

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

David L. Jaroslav, J.D.

Nathan L. Bond, J.D.

²⁸ Telephone conversation with Andy Martinez, Chairman, Automotive Committee, Florida Insurance Council, January 18, 2002.

²⁹ Telephone conversation with T.K. Prakash, January 23, 2002.

³⁰ *Id.*

³¹ *Id.*

³² Telephone conversation with Reggie Garcia, Esq., Academy of Florida Trial Lawyers, January 22, 2002.

³³ Jerome F. Vogel, “Effect of Mandatory Bodily Injury Liability Coverage on Uninsured Motorist Premiums,” March 14, 2001, p. 4. Mr. Vogel, who was retained by AFTL to conduct this study, estimates that imposing a minimum 25/50 policy would reduce uninsured motorist premiums by a statewide average of 31%. *See id.*

³⁴ Letter from Reggie Garcia, Esq., Academy of Florida Trial Lawyers, “Financial Responsibility for Auto Owners Research Summary,” undated but received January 22, 2002. This letter indicates that the other eight states are Alabama, Mississippi, New Hampshire, New Mexico, Tennessee, Utah, Washington and Wisconsin.