

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 704

SPONSOR: Banking and Insurance Committee and Senator Campbell

SUBJECT: Motor Vehicle Financial Responsibility

DATE: February 12, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

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 liability coverage (“PD”). In addition, the Financial Responsibility Law requires vehicles owners and operators to maintain bodily injury liability (“BI”) coverage of \$10,000 per person/\$20,000 per accident, but this requirement is triggered only after an accident or conviction of certain serious traffic offenses.

This bill requires that every owner and operator of a motor vehicle maintain at least \$25,000/50,000 in BI insurance coverage, or other approved form of financial security. This would be in addition to the current PIP and PD requirements. However, an individual may sign an “affidavit of financial hardship” and thereby be exempt from the mandatory BI requirement for a period of 1 year after signing the affidavit.

The direct impact of the bill is to require current owners and drivers who do not have BI coverage, or who have BI limits of \$10,000/20,000, to pay additional premiums to obtain BI coverage with \$25,000/50,000 limits. As a result, accident victims are likely to have greater recoveries for injuries from such owners and drivers if they are liable. Depending upon the level of compliance, the bill is expected to reduce costs for Uninsured Motorist coverage that drivers may purchase to cover their own injuries if an at-fault driver does not have sufficient BI coverage to fully compensate them. Premiums for other coverages, such as PIP, BI, PD, collision, and comprehensive would not be affected, except that costs for BI coverage could possibly increase if a greater proportion of higher risk drivers obtain BI coverage. Also, the increased cost of minimum mandatory coverage could result in a greater number of uninsured drivers - those who currently have only PIP and PD and choose to be uninsured rather than buy

BI. However, all of these impacts may be minimal given the exemption option for persons who sign an affidavit of financial hardship.

This bill substantially amends the following sections of the Florida Statutes: 316.646, 324.021, 324.031, 324.161, 324.171, and 627.733. The bill creates section 324.023, Florida Statutes.

## II. Present Situation:

### Current Automobile Insurance Requirements

In general, every owner of a four-wheeled motor vehicle registered in Florida is required to maintain \$10,000 of no-fault personal injury protection (“PIP”) insurance and \$10,000 in property damage (“PD”) insurance.

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 the motor vehicle while not an occupant of a self-propelled vehicle. With respect to injuries sustained in a motor vehicle accident, regardless of who is at fault, a vehicle owner’s PIP coverage will pay 80 percent of medical costs, 60 percent of lost income, and a \$5,000 per-person death benefit, up to a limit of \$10,000.

PD liability 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. Property damage to a vehicle is not covered under the No-Fault law; that is, the person who negligently causes the property damage is liable, which is covered by PD liability.

The owner, operator or occupant of a vehicle in compliance with the mandatory PIP (no-fault) coverage requirements is immune from tort actions (and the injured party may not bring suit to recover damages) for pain, suffering, mental anguish, or inconvenience arising out of an accident *except* in cases of: (1) significant and permanent loss of an important bodily function; (2) permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement; (3) significant and permanent scarring or disfigurement; or (4) death. This is known as the “verbal threshold.”

The Florida “Financial Responsibility Law” (chapter 324, F.S.), requires drivers to demonstrate their ability to respond to damages for bodily injury caused in an accident. This law requires a minimum level of bodily injury (BI) liability insurance, or other allowable form of security, but only *after* a driver has been involved in an accident or convicted of certain serious traffic offenses. Such proof of BI coverage is *not* required as a condition of registering a vehicle, as required for PIP and PD, unless the Financial Responsibility Law has been triggered by a prior accident or conviction. The minimum amounts of liability 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, and \$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.

Motorcycles are subject to the Financial Responsibility law, but are not subject to the mandatory PIP and PD requirements. However, as a condition of being allowed to ride a motorcycle without a helmet, the operator must have at least \$10,000 insurance for medical benefits.

Commercial motor vehicles are required to maintain a minimum level of BI and PD liability insurance pursuant to s. 627.7415, which amounts are based on the weight of the vehicle.

### **History of Florida's Auto Insurance Laws**

The original "no-fault law" was enacted in Florida in 1971, and included a mandatory liability insurance requirement. The law was significantly revised in 1976, when the limitation on suits based on a "dollar threshold" of \$1,000 was replaced with a "verbal threshold" requirement that an injured party could sue only if certain types of injuries were suffered. In 1977, in an effort to curb rising insurance rates and an increasing number of uninsured drivers, the Legislature eliminated the requirement for all motor vehicle owners to carry liability coverage, but maintaining the mandatory PIP no-fault coverage. A year later, in 1978, the Legislature increased the PIP maximum benefit from \$5,000 to \$10,000, and tightened the verbal threshold by eliminating the right to sue for nonpermanent injuries, which basic threshold remains in effect today.

In 1988, the Legislature enacted the "Motor Vehicle Insurance Reform Act," providing enhanced enforcement of compulsory motor vehicle laws, mandating that drivers obtain property damage liability coverage in the amount of \$10,000, and addressing the cost of uninsured motorist insurance. The key enforcement provision required insurers to report renewals, nonrenewals, and cancellations of PIP policies to the Department of Highway Safety and Motor Vehicles (DHSMV), which must initiate the process of suspending driver's licenses of persons whose coverage is terminated and who do not obtain replacement coverage, with increased license reinstatement fees. Other enforcement methods include required proof of PIP insurance while operating a vehicle; proof of insurance when registering for a motor vehicle; seizure of vehicle license plates for lack of insurance under certain circumstances; proof of insurance to be provided to law enforcement within 24 hours of an accident.

In 2001, the Legislature enacted reforms designed to reduce PIP costs, based on recommendations of a Statewide Grand Jury investigating fraudulent PIP claims, including required registration of medical clinics, PIP fee schedules for certain diagnostic tests, required pre-suit notice for overdue claims, and increased penalties for insurance fraud-related crimes.

### **Purpose of No-Fault Law; Pros and Cons of Mandatory BI Liability**

The No-Fault law was believed to a more fair, efficient, and less costly method of compensating injured parties than a fault-based system. By providing PIP coverage that pays its own insured regardless of fault, no lawsuit is necessary to obtain compensation, which is paid more quickly with less legal and administrative costs. Studies, including an interim project by the staff of the

Banking and Insurance Committee,<sup>1</sup> found that a greater percentage of the PIP premium dollar is paid in actual benefits than the percentage of the BI premium, which has higher legal and administrative costs. Therefore, requiring \$10,000 of PIP coverage provides greater benefits at lower cost, with less litigation, and quicker compensation than requiring \$10,000 of BI coverage. However, insurers continue to express concerns about rising PIP costs, despite the major changes made in 2001, due in part to liability for attorney's fees if PIP claim denials are overturned in a lawsuit.

Legislation has often been proposed to require all drivers to carry a minimum level of BI coverage. It is argued that persons remain liable in suit for negligently caused permanent injuries and should be required to maintain coverage for such liability as a condition of driving, not just after the first accident. Drivers purchase uninsured motorist (UM) coverage to protect themselves against uninsured drivers. The cost of UM coverage is directly impacted by the number of drivers who do not have BI coverage and requiring BI coverage should reduce UM premiums. By providing a greater source of insurance recoveries for injuries, uncompensated medical care for auto accidents should also be reduced.

Critics of mandatory BI point to the increased cost of coverage that will be imposed on someone who must buy PIP, PD, plus BI, particularly young drivers in high-cost areas such as south Florida. This may result in some drivers who currently buy the minimum PIP and PD to completely drop their coverage. UM rates will only go down if mandatory BI is effectively enforced, and UM premiums are a relatively small portion of a full coverage policy. It is also argued that persons buy BI to protect their own assets (and a vast majority of PIP insureds already purchase BI), but should not be forced to do so. Insurers also express concerns that mandated coverages result in more restrictive rate regulation that artificially suppresses premiums. Requiring all drivers to carry PIP instead of BI was intended to reduce costs and reduce the rate of uninsured vehicles. Requiring both PIP and BI is said to be contrary to the original purpose of no-fault.

### **Percentage of Uninsured Vehicles in Florida**

The Department of Highway Safety and Motor Vehicles (DHSMV) reports that as of February 3, 2002, 81.2% (or 8.4 million) of the 10.3 million non-commercial vehicles registered in Florida were insured for PIP. The remaining 18.8% (1.9 million vehicles) were uninsured. However, the Chief of the Bureau of Financial Responsibility states that these statistics reflect a much higher percentage of uninsured drivers than is actually the case, due to errors in reporting. The Bureau Chief estimates that the actual uninsured rate is only about 5 to 8 percent, not 18.8 percent, but DHSMV does not publish an explanation or official estimate of this discrepancy.

In a study prepared for the Academy of Florida Trial Attorneys in March 2001, an analysis of insurance data filed with the Department of Insurance showed that statewide 86.4% of the vehicles insured for PIP were also insured for BI liability. This study used the DHSMV data (as qualified by comments by the Bureau Chief) and assumed that 90.8% of vehicles in Florida were

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<sup>1</sup> *Potential Impact of Mandating Bodily Injury Liability Insurance for Motor Vehicles*, Report No. 98-03, Nov. 1988, Senate Committee on Banking and Insurance. The summary version of this report is available on the Legislative website at <http://www.leg.state.fl.us/data/Publications/1998/Senate/reports>

insured for PIP, and the remaining 9.2 percent were uninsured. Therefore, the study estimated that 78.4% of vehicles were insured for BI liability (86.4% x 90.8%). This study is discussed in Private Sector Economic Impact, below, for its analysis of the impact on UM premiums by mandating BI coverage.

### **Uninsured Motorist (UM) and Other Coverages**

In addition to PIP, PD liability and BI liability, described above, a “full coverage” auto insurance policy may also include:

- *Uninsured motorist (UM)* coverage, which covers the insured for bodily injuries caused by others who were legally liable, but who do not have BI liability or enough BI liability to cover the insured’s damages. UM coverage pays for medical expenses and lost wages, beyond PIP coverage, and includes payment for pain and suffering. UM provides “excess coverage” which means that the full UM limits are payable in addition to any BI coverage of the negligent motorist, if the BI limits do not fully compensate for damages. Insurers must offer UM coverage, which may be affirmatively refused by the insured, and is available in “stackable” and “non-stackable” coverages, generally meaning that stacked coverage on two or more vehicles of the insured can be added together.
- *Collision* coverage pays for repair or replacement to the insured’s own car regardless of fault, typically subject to a deductible of \$250 or \$500.
- *Comprehensive* coverage provides payment for repair or replacement of the insured’s own car, due to losses from incidents other than collision, such as fire, theft, or vandalism.
- *Medical payments* coverage pays the medical expenses of the insured and passengers up to the limits of the policy without regard to legal liability. This coverage typically pays the 20 percent of medical bills not covered by PIP.
- *Towing* coverage reimburses the insured for towing the vehicle, which is usually limited by a dollar amount.
- *Rental reimbursement* provides reimbursement for rental of a replacement vehicle while the insured vehicle is being repaired due to an accident.

### **III. Effect of Proposed Changes:**

This bill requires that every owner of a registered motor vehicle and every operator of any motor vehicle maintain at least \$25,000 in bodily injury (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 is an increase over the current 10/20 BI that is required only after certain accidents or conviction of certain serious traffic offenses.

However, an individual may sign an “affidavit of financial hardship” and thereby be exempt from the bill’s mandatory BI requirement for a period of 1 year. The affidavit, to be prepared by the Department of Highway Safety and Motor Vehicles (DHSMV), must state that the affiant is unable to comply 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. DHSMV must also adopt rules “to enforce this section,” referring the section that includes the mandatory BI requirements.

The bill increases the amount of a surety bond or security deposit with DHSMV that may be used as an alternative to obtaining liability insurance, from \$30,000 to \$60,000. The bill increases the amount of unencumbered assets to qualify as a self-insurer, from \$40,000 to \$60,000 per vehicle for a natural person, and for firms other than natural persons, from \$40,000 to \$60,000 for the first vehicle and from \$20,000 to \$50,000 for each additional vehicle.

This bill increases the required amounts for owners and operators of taxicabs and certain other for-hire vehicles who demonstrate financial responsibility by surety bond or by security deposit with DHSMV, which is increased from \$30,000 to \$60,000 per vehicle, with a cap of \$240,000 rather than \$120,000. Such vehicles must also maintain insurance in excess of limits of \$25,000/50,000/10,000, with excess coverage of \$125,000/250,000/50,000, or \$300,000 combined single limits, which are the current requirements multiplied by a factor of 2.

The definition of “motor vehicle” as currently defined in the Financial Responsibility Law includes motorcycles. However, the bill provides that the new mandatory BI requirements would not apply to any motorcycle.

The bill’s mandatory BI requirements do not apply to any vehicle “that has been continuously and exclusively used for a commercial purpose since being acquired by its current owner.” However, commercial motor vehicles are currently subject to minimum liability insurance requirements pursuant to s. 627.7415, F.S., which is not amended.

The current law requiring persons to maintain proof of PIP and PD insurance while operating a vehicle would be amended to include proof of BI coverage. However, the bill does not amend s. 320.02, F.S., which requires proof of PIP and PD when registering a vehicle, and proof of compliance with Financial Responsibility, if applicable. It may not be clear that proof of BI coverage must be demonstrated at registration because the new mandatory BI statute is not referenced.

The bill does not amend s. 627.736(9), F.S., which requires insurers to notify DHSMV when a PIP policy is issued, cancelled, or non-renewed, which triggers the duty of DHSMV under s. 627.733(6), F.S., to initiate suspension of licenses of drivers who do not obtain replacement coverage. Similarly, the bill does not prohibit PIP insurers from issuing an auto policy that does not include BI coverage, as the current law that prohibits a PIP insurer from selling a policy that does not contain PD coverage (s. 627.727, F.S.). In fact, the bill provides that no insurer or insurance agent shall be liable in a private civil action for the failure of the insurer, agent, or owner or operator of a motor vehicle to comply with the mandatory BI requirements.

The bill amends s. 627.733(7), F.S., which provides requirements for reinstatement of a driver's license and registration after it has been suspended for failure to have PIP/PD insurance. The current law requires a reinstatement fee and proof of "noncancelable" insurance, further described in s. 627.7275, F.S., as requiring the PIP and PD coverage to be noncancelable for a 6-month period. The bill appears to be intended to require proof of the minimum 25/50 BI coverage as a condition of reinstating a suspended license, by requiring the persons to secure "noncancelable coverage as described in ss. 627.7275 and 324.021(8)." However, the bill does not amend s. 627.7275 to require the BI coverage to be noncancelable.

#### **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:

The most direct and immediate impact is to add to the cost of insurance for persons who currently do not purchase bodily injury liability insurance. A motorist who purchases only the current minimum insurance requirements of PIP and PD would be subject to the added cost of BI coverage, unless they sign an affidavit of severe financial hardship. Also, a person who currently buys the minimum Financial Responsibility limits of 10/20 BI would pay the cost of increasing the BI limits to 25/50.

The cost of BI coverage varies significantly, depending on the risk factors, territory, and insurance company. The rates for three relatively low, medium, and high priced insurers, respectively, and for the state-created insurer of last resort, the Florida Automobile Insurance Joint Underwriting Association, in three areas of the state are shown on the chart below.

Annual Premium for 25/50 BI Coverage						
Insurance Company	Tallahassee		Orlando		Dade County	
	Male married age 40	Male single age 21	Male married age 40	Male single age 21	Male married age 40	Male single age 21
Company A (low)	\$134	\$296	\$150	\$330	\$230	\$505
Company B (med.)	\$174	\$304	\$174	\$304	\$344	\$602
Company C (high)	\$242	\$337	\$254	\$352	\$389	\$540
FAJUA (highest)	\$339	\$724	\$528	\$1009	\$1077	\$2057

Persons who already have at least 25/50 BI coverage will not have their BI rates directly affected by this bill. However, if higher risk drivers begin purchasing BI coverage, who do not currently have such coverage, it could have the effect of increasing BI claims and premiums. Uninsured drivers who currently violate the PIP and PD requirements are likely to continue to violate an additional BI mandate.

The cost of uninsured motorist coverage (UM) would be expected to decrease, depending on the increased level of purchase and enforcement of BI coverage. The Academy of Florida Trial Lawyers contracted for an actuarial study to estimate this impact, prepared by Jerome Vogel on March 14, 2001. This study used DHSMV data (as qualified by comments by the Bureau Chief) and assumed that 90.8% of vehicles in Florida were insured for PIP, and the remaining 9.2 percent were uninsured. The analysis used insurance data filed with the Department of Insurance and estimated that 86.4% of the vehicles insured for PIP were also insured for BI liability. Therefore, the study assumed that 78.4% of vehicles were insured for BI liability (86.4% x 90.8%). The study then assumed that mandatory BI would increase the percentage of insured vehicles with BI to 90.8%, the same as for the current mandatory PIP and PD. In other words, the proportion of vehicles without BI liability would decrease from about 22% to 9% statewide, accounting for 1.2 million vehicles.

The study rejected the theory that a higher percentage of drivers would be uninsured, due to the increased cost. Rejecting this theory was said to be supported by the fact that the percentage of vehicles currently carrying mandatory coverages is almost the same for every area of the state and that “there is no apparent significant correlation between the cost of mandatory coverages in an area and the percentage of vehicles carrying mandatory coverages.”

Based on these assumptions, and after averaging statewide premiums, distributions of limits, and other adjustments, the study concluded that the average statewide premium for UM coverage would decrease from \$77 to \$53, or about \$24, representing a 31% decrease. The percentage savings for lower limits of UM coverage would be more than for higher limits of coverage.

Costs for other coverages, such as PIP, PD, BI, comprehensive, and collision would not be directly affected by mandating BI coverage. Only UM coverage would be reduced, depending on the level of compliance. Based on premium examples shown in the Department of Insurance Automobile Insurance Consumers Guide, UM premiums



account for only about 5 to 10 percent of the total premium paid for a policy that includes all of these coverages.

An increased level of BI coverage would provide a greater source of recovery for accident victims suffering permanent injuries due to at-fault drivers. This would also help reduce costs for uncompensated medical care provided by hospitals to auto accident victims.

All of the above private sector impact costs may be significantly lessened by the ability of persons to opt out by signing an affidavit of financial hardship.

#### C. Government Sector Impact:

The bill directs the Department of Highway Safety and Motor Vehicles to adopt rules to enforce the mandatory BI requirements and the financial hardship filing requirement, and to promulgate an affidavit for use by individuals who claim the hardship exemption.

### VI. Technical Deficiencies:

Certain sections in the current law related to enforcement of PIP and PD requirements are not amended to conform to the new BI mandate. For example, the bill does not amend s. 627.736(9), F.S., which requires insurers to notify DHSMV when a PIP policy is issued, cancelled, or non-renewed, which triggers the duty of DHSMV under s. 627.733(6), F.S., to initiate suspension of licenses of drivers who do not obtain replacement coverage. Similarly, the bill does not prohibit insurers from issuing a PIP auto policy that does not include BI coverage, as the current law that prohibits an insurer from selling a PIP policy that does not contain PD coverage (s. 627.727, F.S.). In fact, the bill provides that no insurer or insurance agent shall be liable in a private civil action for the failure of the insurer, agent, or owner or operator of a motor vehicle to comply with the mandatory BI requirements. This issue is complicated by the fact that the definition of “motor vehicle” in s. 324.021, F.S., as used in the Financial Responsibility (FR) law and which would now be subject to the BI mandate, is different than the definition of motor vehicle in s. 627.732, F.S., that is subject to the mandatory PIP and PD requirements.

It also appears that conforming amendments are needed to s. 320.02, F.S., which currently requires proof of PIP and PD insurance when registering a vehicle.

Also, the current law in s. 627.733(7), F.S., provides requirements for reinstatement of a driver’s license and registration after it has been suspended for failure to have PIP/PD insurance, including a reinstatement fee and proof of “noncancelable” insurance as described in s. 627.7275, F.S., which requires the PIP and PD coverage to be noncancelable for a 6-month period. The bill amends s. 627.733(7), apparently intended to require proof of the minimum 25/50 BI coverage as a condition of reinstating a suspended license, by requiring the persons to secure “noncancelable coverage as described in ss. 627.7275 and 324.021(8).” But, the bill does not amend s. 627.7275, F.S., to require the BI coverage to be noncancelable.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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