

**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 Transportation

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BILL: CS/CS/SB 1250

INTRODUCER: Banking and Insurance Committee and Senator Montford

SUBJECT: Motor Vehicle Insurance

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Jones</u>	<u>Eichin</u>	<u>TR</u>	<u>Fav/CS</u>
3.	_____	_____	<u>FP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1250 revises various laws related to motor vehicle insurance.

The bill allows the Florida Automobile Joint Underwriting Association (Auto JUA) the authority to cancel private passenger and commercial motor vehicle policies within the first 60 days of coverage for a rejected or invalid payment. The bill prohibits someone covered by the Auto JUA from cancelling their coverage in the first 90 days of the policy period, unless the vehicle is destroyed, ownership of the insured vehicle is transferred, or a voluntary market policy for the insured vehicle is purchased.

The bill allows insurers to electronically provide and receive the form necessary for an applicant for motor vehicle insurance to reject uninsured motorist (UM) coverage or select UM coverage with lower limits than bodily injury (BI) coverage.

A provision in the personal injury protection (PIP) statute is clarified to resolve an ambiguity relating to the applicability of medical fee schedules.

The bill also exempts new, unused leased motor vehicles from the preinsurance inspection requirements for private passenger motor vehicles, and allows insurers the option of requiring such inspections. The bill further clarifies that an insurer cannot cancel coverage for physical damage to a motor vehicle for failure to provide required documentation related to the

preinsurance inspection requirement, but can withhold payment, until such documents are received.

## II. Present Situation:

### **Cancellation of Florida Automobile Joint Underwriting Association Policies**

Insurers<sup>1</sup> that offer motor vehicle insurance in the state must participate in the Auto JUA.<sup>2</sup> The Auto JUA exists to provide motor vehicle insurance to individuals who cannot obtain such coverage in the voluntary insurance market. The Auto JUA distributes this risk among its members. It is subject to various limitations regarding issuance and cancellation of coverage, and provision of premium credits/discounts to protect its solvency, the coverage of its insureds, and to avoid Auto JUA policies being competitive with the voluntary market.

Motor vehicle insurers, including the Auto JUA, are limited regarding the cancellation of insurance policies.<sup>3</sup> An insurer may not cancel a policy within 60 days of the effective date of the policy, except for non-payment of premium.<sup>4</sup>

### **Electronic Delivery/Signature of Uninsured Motorist Insurance Waivers**

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

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

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

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<sup>1</sup> Section 624.03, F.S.

<sup>2</sup> Section 627.311, F.S.

<sup>3</sup> Sections 627.7295 and 627.728, F.S.

<sup>4</sup> Section 627.7295(4), F.S.

<sup>5</sup> Section 627.727(1), F.S.

<sup>6</sup> *Id.*

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

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

### **Personal Injury Protection Insurance**

Florida's Motor Vehicle No-Fault Law (the "No-Fault Law")<sup>9</sup> requires motorists to carry at least \$10,000 of no-fault insurance, known as personal injury protection (PIP) coverage. The purpose of the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault. In return for assuring payment of these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents. Florida motorists are required to carry a minimum of \$10,000 of PIP insurance, \$10,000 per person and \$20,000 per incident, of bodily injury coverage, and \$10,000 of property damage liability coverage.<sup>10,11</sup>

PIP insurance benefits are payable as follows.<sup>12</sup>

- Up to a limit of \$10,000, 80 percent of reasonable medical expenses for:
  1. Initial services and care lawfully provided, supervised, ordered or prescribed by a medical doctor, osteopathic physician, chiropractic physician, or that are provided in a hospital or in a facility that owns, or is wholly owned by a hospital. Initial services and care may also be provided for emergency transport and treatment.
  2. Upon referral by any of the above-listed providers, follow-up services and care consistent with the underlying medical diagnosis, which may be provided, supervised, ordered, or prescribed only by a medical doctor, osteopathic physician, chiropractic physician, or

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

<sup>8</sup> *Id.*

<sup>9</sup> Sections 627.730-627.7405, F.S.

<sup>10</sup> Section 627.7275, F.S.

<sup>11</sup> Under Florida's Financial Responsibility Law (ch. 324, F.S.), motorists must also provide proof of ability to pay monetary damages for bodily injury and property damage liability at the time of motor vehicle accidents or when serious traffic violations occur.

<sup>12</sup> Section 627.736, F.S.

- dentist, or, to the extent permitted under applicable law and under the supervision of such provider, by a physician assistant or advanced registered nurse practitioner. Follow-up services and care may also be provided by:
- A licensed hospital or ambulatory surgical center.
  - An entity wholly owned<sup>13</sup> by a medical doctor, osteopathic physician, chiropractic physician, or by such practitioner(s) and specified family members.
  - An entity that owns or is wholly owned, directly or indirectly, by a hospital or hospitals.
  - A licensed physical therapist, based upon a referral by a provider listed in 2).
  - A licensed health care clinic that meets specified criteria.
3. Reimbursement for services and care pursuant to 1) or 2) of up to \$10,000 if a medical doctor, osteopathic physician, dentist, physician assistant, or an advanced registered nurse practitioner determines that the injured person had an emergency medical condition.
- Up to a limit of \$2,500, 80 percent of reasonable medical expenses when a provider listed in 1) or 2) determines that the injured person did not have an emergency medical condition.

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

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

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

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

The above-emphasized language created uncertainty as to whether the Medicare fee schedule in place on March 1 applied through the calendar year (through December 31) or whether it applied through the end of February of the following year. On November 6, 2012, the OIR issued

<sup>13</sup> Section 627.732(17), F.S., defines “entity wholly owned” as a proprietorship, group practice, partnership, or corporation that provides health care services rendered by licensed health care practitioners and in which licensed health care practitioners are the business owners of all aspects of the business entity...

<sup>14</sup> Ch. 2012-197, Laws of Fla.

Informational Memorandum OIR-12-06M,<sup>15</sup> stating that the plain language of the section requires the fee schedule be in place on March 1 to apply throughout the following 365 days, or until the following March 1.

### **Preinsurance Inspection of Private Passenger Motor Vehicles**

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

Despite the exemptions, an insurer may require a preinsurance inspection of any motor vehicle as a condition of issuance of physical damage coverage. Physical damage coverage may not be suspended during the policy period due to the applicant’s failure to provide the required documents. However, claim payments are conditioned upon and are not payable until the required documents are received by the insurer. Applicants for insurance may be required to pay the cost of the preinsurance inspection, not to exceed \$5.

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

**Section 1** amends s. 627.311, F.S., to allow the Auto JUA the authority to cancel private passenger and commercial motor vehicle policies within the first 60 days of coverage for non-payment, if the reason is the payment check is dishonored for any reason or if any other payment type is rejected or deemed invalid (e.g., credit or debit card transactions). The bill also prohibits someone covered by the Auto JUA from cancelling their coverage in the first 90 days of the policy period, unless the vehicle is destroyed, they transfer ownership of the insured vehicle, or they purchase a voluntary market policy for the insured vehicle.<sup>16</sup> This provision guarantees the Auto JUA a minimum of three months of premium revenue on each policy, while allowing the cancellation of policies for non-payment.

**Section 2** amends s. 627.727, F.S., to allow electronic presentation and signature of the required uninsured motorist waiver form. If the form is presented electronically, the required header statement must be in boldfaced type and greater in size than the surrounding text, and either black type on a white background or white type on a black background. The electronic signature must be affixed using technology that stores and preserves the form as an exact image as viewed and signed by the insured. The technology used must also create a record of any attempt to modify or tamper with the form after electronically signed. The OIR has the authority to approve the form, including the electronic version, and has the obligation to ensure that the consumer has ready and reasonable access to the required notification based on the display characteristics of the electronic form being approved.

**Section 3** amends s. 627.736(5)(a)2., F.S., clarifying the medical fee schedule provisions of the No-Fault Law by defining a “service year” for rendered services, supplies, or care. For this purpose, a “service year” is from March 1 through the end of the following February. The period

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<sup>15</sup> Available at <http://www.flair.com/siteDocuments/OIR-12-06M.pdf> (last visited April 6, 2015).

<sup>16</sup> Proof of such coverage is required by statute. See Section 627.311(3)(l), F.S.

for the applicable Medicare fee schedule is then applied to this same period. This should provide certainty that reimbursement for any medical services, supplies, or care under PIP will be reimbursed based on the applicable Medicare fee schedule in effect on the preceding March 1.

**Section 4** amends s. 627.744, F.S., adding an exemption from preinsurance inspection for new, unused “leased” motor vehicles to the existing exemption for “purchased” vehicles, if the vehicle is leased from a licensed motor vehicle dealer or leasing company. If the insurer waives its right to a preinsurance inspection, it also provides an insurer the discretion to require persons who purchase or lease a new, unused motor vehicle to submit certain documents. Currently, such documents are required to be provided whenever the exemption is utilized. Persons who do not submit the required documentation, upon request, at the time the policy is issued are required to submit the document before any physical damage loss is payable under the policy. The bill amends the list of documents that an insurer may require to include the vehicle registration in addition to the existing option of providing the vehicle title along with the window sticker, and deletes from the list of documents the detailed dealer’s invoice. Failure of the insurer to request the documentation is added to the prohibition on suspending coverage due to the insured’s failure to provide documentation. Finally, the condition on claim payment pending receipt of documentation is revised to apply only if the carrier exercised its option to require the documentation.

**Section 5** provides an effective date of July 1, 2015.

#### **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:

None.

B. Private Sector Impact:

There could be a cost savings to applicants and insurers that opt to use electronic notifications.

Applicants will save costs when not required by an insurer to pay for and provide a preinsurance inspection.

C. **Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 627.311, 627.727, 627.736 and 627.744.

**IX. Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

**CS/CS by Transportation on April 15, 2015:**

The CS made changes to Section 2 of the bill related to the electronic uninsured motorist waiver form. Specifically, it adds:

- The heading of the form must be in boldfaced type and larger than the surrounding text, and must be in black type on a white background or white type on a black background ;
- An electronic signature of the named insured must be affixed using technology that stores and preserves the form as an exact image; and
- The technology used must create a record of any attempt to modify or tamper the form after it has been signed electronically.

**CS by Banking and Insurance on March 31, 2015:**

The bill made the following changes:

- Changed “applicant” to “named insured.”
- Clarified the “service year” for the medical fee schedule provisions of the No-Fault Law.
- Allow the Auto JUA the authority to cancel private passenger and commercial motor vehicle policies within the first 60 days of coverage for non-payment, if the reason is the payment check is dishonored for any reason or if any other payment type is rejected or deemed invalid.
- Prohibits someone covered by the Auto JUA from cancelling their coverage in the first 90 days of the policy period, unless the vehicle is destroyed, they transfer

ownership of the insured vehicle, or they purchase a voluntary market policy for the insured vehicle.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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