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.)

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

BILL: SB 54

INTRODUCER: Senators Burgess and Rouson

SUBJECT: Motor Vehicle Insurance

DATE: January 26, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Pre-meeting**
2.			JU	
3.			RC	

I. Summary:

SB 54 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 Personal Injury Protection (PIP) coverage. Beginning January 1, 2022, the bill enacts financial responsibility requirements for liability for motor vehicle ownership or operation, as follows:

- For bodily injury (BI) or death of one person in any one crash, $25,000, and
- Subject to that limit for one person, $50,000 for BI or death of two or more people in any one crash.

The bill retains the existing $10,000 financial responsibility requirement for property damage (PD).

The bill increases required coverage amounts for garage liability and commercial motor vehicle insurance. It increases the cash deposit amount required for a certificate of self-insurance establishing financial responsibility for owners and operators of motor vehicles that are not for-hire vehicles.

The bill requires insurers to offer medical payments coverage (MedPay) with limits of $5,000 or $10,000 to cover medical expenses of the insured. Insurers may also offer other policy limits that exceed $5,000. Insurers must offer a zero deductible option for MedPay, and may also offer deductibles of up to $500. Insurers must reserve $5,000 of MedPay benefits for 30 days to pay physicians or dentists who provide emergency services and care or who provide hospital inpatient care.

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. Under the bill, the legal liability of an uninsured motorist insurer includes damages in tort for pain, suffering, disability or physical impairment, disfigurement, mental

anguish, inconvenience, and the loss of past and future capacity for the enjoyment of life.

The bill creates a new framework to govern claims against motor vehicle insurers for bad faith failure to settle. The bill requires the claimant in a bad faith failure to settle action to show the insurer violated its duty of good faith to the insured and in bad faith failed to settle the claim. The bill motor vehicle insurers to follow claims handling best practices standards based on long-established good faith duties related to claim handling, claim investigation, defense of the insured, and settlement negotiations.

The bill establishes that it is a condition precedent to bringing a third-party bad faith action, if that action is not brought under s. 624.155, F.S., that the claimant serve a detailed demand for settlement within the insured's policy limits. The third-party bad faith claimant may condition the demand for settlement on taking a 2 hour examination under oath (EUO) of the insured, limited to discovering possible sources of recovery. The bad faith claimant may withdraw the demand for settlement after the EUO. If the insured refuses to submit to the EUO, the insurer may tender policy limits without obtaining a release of the insured, and if it does so, no longer has a duty to defend the insured and may not be held liable if there is an excess judgment against the insured. The bill provides a safe harbor to the insurer in a third-party bad faith action that is not brought under s. 624.155, F.S., providing that an insurer is not liable for bad faith if it tenders (offers to pay) policy limits in exchange for a release of its insured from further liability within 30 days of receiving a demand for settlement.

The bill requires the trier of fact, when determining if an insurer in bad faith failed to settle, to consider certain actions of the insurer such as compliance with best practices along with certain actions of the insured and claimant. The bill also prohibits punitive damages in a bad faith failure to settle action.

The bill provides that if a motor vehicle insurer fails to timely provide information related to liability insurance coverage as required by s. 627.4137, F.S., the claimant may file an action to enforce the section and is entitled to an award of reasonable attorney fees and costs to be paid by the insurer.

The bill authorizes the exclusion of a specifically named individual from specified insurance coverages under a private passenger motor vehicle policy, with the written consent of the policyholder.

II. Present Situation:

Motor Vehicle Insurance

The first recorded motor vehicle accident occurred in Ohio City, Ohio in 1891.[1] Only 6 years later, the first automobile liability insurance policy would be issued by Travelers Insurance Company in Dayton, Ohio, protecting the driver if his vehicle killed or injured someone or damaged their property.[2] These coverages today are known as bodily injury liability and property damage liability insurance. In 1925 Connecticut passed the first financial responsibility law

[1] https://ohiohistorycentral.org/w/World%27s_First_Automobile_Accident
[2] https://ohiohistorycentral.org/w/World's_First_Automobile_Insurance_Policy?rec=2597.

requiring owners of automobiles to demonstrate the ability to financially respond when they are at fault for damages caused to other persons and property. As the automobile became an ubiquitous part of American life, more states passed financial responsibility laws. Today, every state has a financial responsibility law regarding owning or operating a motor vehicle.

All states except New Hampshire require the purchase of property damage coverage. Every state except Florida and New Hampshire requires bodily injury liability coverage (BI), which covers an insured that is at-fault in an accident for damages related to the bodily injuries of others negligently caused by the insured.[3] Bodily injury liability coverage does not provide coverage for an insured's own injuries. The most common minimum mandatory limit of bodily injury coverage – mandated by 34 states – is $25,000 in coverage for injuries to any one person and $50,000 in coverage for injuries to multiple persons, subject to the $25,000 limit for one person. This is often referred to as limits of $25,000/$50,000. Of the 48 states that require BI coverage, the lowest mandatory limit is $15,000/$30,000. The highest required limit is $50,000/$100,000. The following table details the financial responsibility insurance coverage requirements by state:

[3] National Association of Insurance Commissioners, Does Your Vehicle Have the Right Protection? Best Practices for Buying Auto Insurance, https://content.naic.org/article/consumer_insight_does_your_vehicle_have_right_protection_best_practices_buying_auto_insurance.htm (last accessed January 25, 2021).

FINANCIAL RESPONSIBILITY REQUIREMENTS BY STATE

ST	Minimum Limits (thousands)	ST	Minimum Limits (thousands)
AL	BI 25/50 PD 25	**MT**	BI 25/50 PD 20
AK	BI 50/100 PD 25	**NE**	BI 25/50 PD 25 UM 25/50
AZ	BI 25/50 PD 15	**NV**	BI 25/50 PD 20
AR	BI 25/50 PD 25	**NH**	Financial Responsibility Only[4]
CA	BI 15/30 PD 5	**NJ**	BI[5] 15/30 PD 5 PIP[6] 15
CO	BI 25/50 PD15	**NM**	BI 25/50 PD 10
CT	BI 25/50 PD 25 UM 25/50	**NY**	BI[7] 25/50 PD 10 PIP 50
DE	BI 25/50 PD 10 PIP 15/30	**NC**	BI 30/60 PD 25 UM 30/60/25
FL	PIP 10 PD 10	**ND**	BI 25/50 PD 25 UM 25/50 PIP 30
GA	BI 25/50 PD 25	**OH**	BI 25/50 PD 25
HI	BI 20/40 PD 10 PIP 10	**OK**	BI 25/50 PD 25
ID	BI 25/50 PD 15	**OR**	BI 25/50 PD 20 UM 25/50 PIP 15
IL	BI 25/50 PD 20 UM 25/50	**PA**	BI 15/30 PD 5 Med 5
IN	BI 25/50 PD 25	**RI**	BI 25/50 PD 25
IA	BI 20/40 PD 15	**SC**	BI 25/50 PD 25 UM 25/50/25
KS	BI 25/50 PD 25 PIP[8]	**SD**	BI 25/50 PD 25 UM 25/50
KY	BI 25/50 PD 25	**TN**	BI 25/50 PD 15
LA	BI 15/30 PD 25	**TX**	BI 30/60 PD 25
ME	BI 50/100 PD 25 Med 2 UM 50/100	**UT**	BI 25/65 PD 15 PIP 3
MD	BI 30/60 PD 15 UM 30/60/15	**VT**	BI 25/50 PD 10 UM 50/100/10
MA	BI 20/40 PD 5 UM 20/40 PIP 8	**VA**	BI 25/50 PD 20 UM 25/50/20
MI	BI 20/40 PD 10 PIP[9] PPI 1000	**WA**	BI 25/50 PD 10
MN	BI 30/60 PD 10 PIP 40 UM 25/50	**WV**	BI 25/50 PD 25 UM 25/50/25
MS	BI 25/50 PD 25	**WI**	BI 25/50 PD 10 UM 25/50
MO	BI 25/50 PD 20 UM 25/50	**WY**	BI 25/50 PD 20

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[4] New Hampshire does not require the purchase of insurance to meet the state's financial responsibility law, but drivers that purchase insurance must do so at minimum limits of $25,000/$50,000 for BI, $25,000 for PD, and $1,000 for medical payments coverage.
[5] New Jersey allows drivers to purchase a "basic policy" that only includes $5,000 of PD, $15,000 of PIP, and an optional $10,000 for BI.
[6] The New Jersey PIP benefit provides $250,000 in benefits for specified severe injuries. https://www.state.nj.us/dobi/division_consumers/insurance/basicpolicy.shtml (last accessed January 25, 2021).
[7] New York requires that BI limits be at least $50,000/$100,000 for death. https://dmv.ny.gov/insurance/insurance-requirements (last accessed January 25, 2021).
[8] Kansas PIP coverage must provide $4,500 per person for medical expenses, $900 per month for one year for disability or loss of income, $25 per day for in-home services, $2,000 for funeral expenses, $4,500 for rehabilitation expenses, survivor benefits for loss of income up to $900 per month for 1 year.
[9] Michigan changed its mandatory PIP medical coverage effective July 1, 2020. Previously, Michigan required PIP coverage with no maximum limit. Now, Michigan requires the purchase of PIP coverage with a coverage limit of at least $250,000. However, Medicaid enrollees may purchase only $50,000 in PIP coverage if other household members have an auto insurance policy or health insurance covering accidents. A Medicare enrollee (parts A and B) may opt-out of PIP if their household members have an auto insurance policy or health insurance covering auto accidents. https://www.michigan.gov/documents/autoinsurance/MI_New_Auto_Ins_Law_678454_7.pdf (last accessed Jan. 25, 2021).

Florida's Financial Responsibility Law

Florida's financial responsibility law exists to ensure that the privilege of owning or operating a motor vehicle on the public streets and highways is exercised with due consideration for others and their property, to promote safety, and to provide financial security requirements for the owners or operators of motor vehicles who are responsible to recompense others for injury to person or property caused by a motor vehicle.[10] The financial responsibility law requires drivers of motor vehicles with 4 or more wheels to purchase both personal injury protection (PIP) and property damage liability (PD) insurance.[11] Florida law does not require insurance coverage for motorcycles; however, if a motorcyclist is involved in an accident, that person's license and registration are subject to suspension if insurance was not purchased.

A driver in compliance with the requirement to carry PIP coverage is not required to maintain bodily injury liability coverage, except that Florida 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.[12] The owner and operator of a motor vehicle need not demonstrate financial responsibility, i.e., obtain BI and PD coverages, until *after the accident*.[13] 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.[14] The driver's license and registration of the driver who fails to comply with the security requirement to maintain PIP and PD insurance coverage is subject to suspension.[15] A driver's license and registration may be reinstated by obtaining a liability policy and by paying a fee to the Department of Highway Safety and Motor Vehicles.[16]

Personal injury protection (PIP) insurance compensates insureds injured in accidents regardless of fault.[17] Policyholders are indemnified by their own insurer. The intent of no-fault insurance is to provide prompt medical treatment without regard to fault.[18] 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.[19] 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. The concept of PIP insurance was developed during the 1960's in response to concerns that began to be voiced regarding some of the perceived shortcomings of the tort system, in particular its ability to handle automobile accident claims in an accurate and

[10] Section 324.011, F.S.
[11] See ss. 324.022, F.S. and 627.733, F.S.
[12] See ch. 324, F.S.
[13] Section 324.011, F.S.
[14] Section 324.022, F.S.
[15] Section 324.0221(2), F.S.
[16] Section 324.0221(3), F.S.
[17] Section 627.733, F.S.
[18] See s. 627.731, F.S.
[19] Section 627.737, F.S.

expeditious fashion.[20] The proposed solution was the "no-fault" system in which each driver insures him or herself for bodily injuries caused by an auto accident, and to the extent of that first-party coverage, tort claims based on fault would be abandoned.

In Florida, 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 does not determine an emergency medical condition existed.[21] PIP coverage provides reimbursement for 80 percent of reasonable medical expenses,[22] 60 percent of loss of income,[23] and 100 percent of replacement services,[24] 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.[25]

PIP Medical Benefits

The 2012 Legislature revised the provision of PIP medical benefits under the No-Fault Law, effective January 1, 2013.[26] To receive PIP medical benefits, insureds must receive initial services and care within 14 days after the motor vehicle accident.[27] 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.[28] Follow-up services and care require a referral from such providers and must be consistent with the underlying medical diagnosis rendered when the individual received initial services and care.[29]

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.[30] 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.[31] If a provider who rendered treatment or services does not determine that the insured had an emergency medical condition,

[20] Florida Senate Banking and Insurance Committee, Florida's Motor Vehicle No-Fault Law, pg. 6, Report No. 2006-102 (Nov. 2005).
[21] Section 627.736(1), F.S.
[22] Section 627.736(1)(a), F.S.
[23] Section 627.736(1)(b), F.S.
[24] *Id.*
[25] Section 627.736(1)(c), F.S.
[26] Chapter 2012-197, L.O.F. (CS/CS/HB 119).
[27] Section 627.736(1)(a), F.S.
[28] Section 627.736(1)(a)1., F.S.
[29] Section 627.736(1)(a)2., F.S.
[30] Section 627.736(1)(a)3., F.S.
[31] Section 627.732(16), F.S.

the PIP medical benefit limit is $2,500.[32] Massage and acupuncture are not reimbursable, regardless of the type of provider rendering such services.[33]

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.

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.

Bad Faith

Common Law and Statutory Bad Faith

Bad faith law was designed to protect insureds who have paid their premiums and who have fulfilled their contractual obligations by cooperating fully with their insurer in the resolution of claims. Bad faith jurisprudence holds insurers accountable for failing to fulfill their obligations.[34] There are two distinct but very similar types of bad faith causes of action that may be initiated against an insurer: first-party and third-party.

Florida courts have recognized common law third-party bad faith causes of action since 1938.[35] A third-party bad faith cause of action arises when an insurer fails in good faith to settle a third party's claim against the insured within policy limits and exposes the insured to liability in excess of his or her insurance coverage.[36] Third-party bad faith causes of actions arose in response to the argument that there was a practice in the insurance industry of rejecting without sufficient investigation or consideration claims presented by third parties against an insured, thereby exposing the insured individual to judgments exceeding the coverage limits of the policy while the insurer remained protected by a policy limit.[37] With no actionable remedy, insureds in this state and elsewhere were left personally responsible for the excess judgment amount.[38] Florida courts recognized common law third-party bad faith causes of action in part because the insurers had the power and authority to litigate or settle any claim, and thus owed the insured a corresponding duty of good faith and fair dealing in handling these third-party claims.[39]

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[32] Section 627.736(1)(a)4., F.S.
[33] Section 627.736(1)(a)5., F.S.
[34] *Harvey v. GEICO General Insurance Company*, 251 So.3d 1, 6, (Fla. 2018)(quoting *Berges v. Infinity Insurance Company*, 896 So.2d 665 at 682).
[35] *Auto Mut. Indem. Co. v. Shaw*, 184, So. 852 (Fla. 1938).
[36] *Opperman v. Nationwide Mutual Fire Insurance Company,* 515 So.2d 263, 265 (Fla. 5th DCA 1987).
[37] *Allstate Indem. Co. v. Ruiz*, 899 So.2d 1121, 1125 (Fla. 2005).
[38] *Id*.
[39] *Id*.

In contrast to common law third-party bad faith causes of action, Florida courts do not recognize a common law first-party bad faith cause of action by the insured against its own insurer.[40] If an insurer acts in bad faith in settling a claim filed by its insured, the only common law remedy available to the insured is a breach of contract action against its own insurer with recoverable damages limited to those contemplated by the parties to the policy.[41]

The 1982 Legislature's enactment of s. 624.155, F.S., created a statutory first-party bad faith cause of action,[42] codified Florida Supreme Court precedent authorizing a common-law third-party bad faith cause of action,[43] and eliminated the distinction between statutory first- and third-party bad faith causes of action.[44]

Section 624.155, F.S., provides that any party may bring a bad faith action against an insurer, and defines bad faith on the part of the insurer as:

- Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured with due regard for her or his interests;
- Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or
- Except as to liability coverages, failing to promptly settle claims, when the obligation to settle the claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.[45]

Civil Remedy Notice

As a condition precedent to bringing a bad faith action under s. 624.155, F.S., the insured must have provided the insurer and the Department of Financial Services at least 60 days written notice of the alleged violation.[46] The notice must specify the following information:

- The statutory provision, including the specific language of the statute, which the authorized insurer allegedly violated;
- The facts and circumstance giving rise to the violation;
- The name of any individual involved in the violation;
- A reference to specific policy language that is relevant to the violation, if any. If the person bringing the civil action is a third-party claimant, she or he shall not be required to reference the specific policy language if the authorized insurer has not provided a copy of the policy to the third party claimant pursuant to written request; and
- A statement that the notice is given in order to perfect the right to pursue the civil remedy authorized under s. 624.155, F.S.[47]

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[40] *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 58-59 (Fla. 1995).
[41] *Talat Enterprises, Inc. v. Aetna Cas. and Sur. Co.*, 753 So.2d 1278, 1281 (Fla. 2000).
[42] Chapter 82-243, s. 9, L.O.F.
[43] *Macola v. Government Employees Ins. Co.*, 953 So.2d 451, 456 (Fla. 2006). *See also State Farm Fire & Cas. Co. v. Zebrowski*, 706 So.2d 275, 277 (Fla. 1997).
[44] *Id.*
[45] Section 624.155(1)(b)(1)-(3), F.S.
[46] Section 624.155(3), F.S.
[47] Section 624.155(3)(b)(1)-(5), F.S.

The 60-day window contemplated under s. 624.155, F.S., provides insurers with a final opportunity to comply with their claim-handling obligations when a good-faith decision by the insurer would indicate that contractual benefits are owed.[48] If the insurer in turn fails to respond to a civil remedy notice within the 60-day window, there is presumption of bad faith sufficient to shift the burden to the insurer to show why it did not respond.[49]

In *Talat Enterprises, Inc. v. Aetna Cas. and Sur. Co.*, the Florida Supreme Court addressed the question of whether an insurer that paid all contractual damages within the 60-day window, but none of the extra-contractual damages, satisfied the requirement for payment of damages under s. 624.155(3)(c), F.S., thereby precluding the claimant's bad faith action. The Florida Supreme Court answered in the affirmative, explaining:

> Section 624.155 does not impose on an insurer the obligation to pay whatever the insured demands. The 60-day window is designed to be a cure period that will encourage payment of the underlying claim, and avoid unnecessary bad faith litigation. Surely an insurer need not immediately pay 100percent of the damages claimed to flow from bad faith conduct in order to avoid the chance that the insured will succeed on a bad faith cause of action. If the insurer may avoid a bad faith action only by paying in advance every penny of the damages that it faces if it loses at trial, the insurer would have no reason to pay.[50]

Legal Standard of Proof

Each bad faith case is determined on its own facts and ordinarily the question of failure to act in good faith with due regard for the interests of the insured is for the jury.[51] In Florida, the question of whether an insurer has acted in bad faith in handling claims against the insured is determined under a "totality of the circumstances" standard.[52] In *Harvey v. Geico General Insurance Company*, the Florida Supreme Court explained that the critical inquiry in a bad faith case is whether "the insurer diligently, and with the same haste and precision as if it were in the insured's shoes, worked on the insured's behalf to avoid an excess judgment."[53] The claimant bringing the bad faith action has the burden of proving the insurer acted in bad faith by a preponderance of the evidence.[54]

The Florida Supreme Court in Boston Old Colony Ins. v. Gutierrez explained why insurers have a duty of good faith to their insured:

> An insurer, in handling the defense of claims against its insured, has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business. For when the insured has surrendered to the insurer all control over the handling of the claim, including all

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[48] *See Talat Enterprises, Inc.*, 753 So.2d at 1284.
[49] *Fridman v. Safeco Ins. Co. of Illinois*, 185 So.3d 1214, 1220, (Fla. 2016); *Imhof v. Nationwide Mut. Ins. Co.*, 643 So.2d 617, 619 (Fla 1994).
[50] *See Talat Enterprises, Inc.*, 753 So.2d at 1282. (quoting *Talat Enterprises, Inc. v. Aetna Cas. & Sur. Co.*, 952 F.Supp. 773, 778 (M.D.Fla.1996)).
[51] *Boston Old Colony Insurance Company v. Gutierrez*, 386 So.2d 783, 785 (Fla. 1980).
[52] *Berges v. Infinity Insurance Company*, 896 So.2d 665, 680 (Fla. 2005).
[53] See *Harvey*, 259 So.3d at 7.
[54] *Cadle v. GEICO General Insurance Company*, 838 F.3d 1113, 1119 (11th Cir. 2016).

> decisions with regard to litigation and settlement, then the insurer must assume a duty to exercise such control and make such decisions in good faith and with due regard for the interests of the insured.[55] (citations omitted)

The court further explained what constitutes good faith claims handling:

> This good faith duty obligates the insurer to advise the insured of settlement opportunities, to advise as to the probable outcome of the litigation, to warn of the possibility of an excess judgment, and to advise the insured of any steps he might take to avoid same. The insurer must investigate the facts, give fair consideration to a settlement offer that is not unreasonable under the facts, and settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so. (citations omitted)

III. Effect of Proposed Changes:

Repeal of the Florida Motor Vehicle No-Fault Law

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

The most significant provisions repealed are s. 627.733, F.S., which contains the requirement to maintain PIP coverage, s. 627.736, F.S., which sets forth the benefits that PIP coverage must provide, and 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.

Chapter 324, F.S., requires the owners and operators of motor vehicles to demonstrate the ability to respond to damages for liability because of crashes arising out of the use of a motor vehicle.[56] This requirement is usually met through the purchase of motor vehicle insurance.

Mandatory Bodily Injury Liability Coverage Requirements

Sections 12 and 13 amend ss. 324.021 and 324.022, F.S., respectively, to require beginning January 1, 2022, that every owner or operator of a motor vehicle that is registered in this state maintains the ability to respond to damages for liability that results from accidents arising out of the ownership, maintenance, or use of a motor vehicle that is not a commercial motor vehicle, nonpublic sector bus, or for-hire passenger transportation vehicle as follows:

- For BI or death of one person in any one crash, $25,000.

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[55] *Boston Old Colony Ins. v. Gutierrez*, 386 So.2d 783 (Fla. 1980).

[56] 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.

- Subject to that limit for one person, $50,000 for BI 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 to damages of $10,000 for damage to, or the destruction of, other's property in a crash.

An owner or operator may meet the financial responsibility requirement obtaining 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. Beginning January 1, 2022, the minimum combined single limit will be $60,000. An owner or operator may also meet financial responsibility requirements through alternate methods authorized under s. 324.031, F.S., such as furnishing a certificate of self-insurance under s. 324.161, F.S., or s. 324.171, F.S.

Other vehicle types are subject to financial responsibility requirements of different sections of statute:
- Commercial motor vehicles are subject to s. 627.7415. F.S.
- Nonpublic sector buses are subject to s. 627.742, F.S.
- For-hire passenger transportation vehicles are subject to s. 324.032, F.S.

Motorcycles are not required to meet the foregoing requirements established by the bill, as the bill specifies that motor vehicles are self-propelled vehicles with four or more wheels. However, as under current law, if a motorcycle is involved in a crash and caused bodily injury to another, the license of the operator and registration of the motorcycle is subject to suspension under s. 324.051, F.S., if the operator or owner does not have a motor vehicle liability policy in effect at the time of the crash.

Required Provisions in Motor Vehicle Liability Policies

Section 22 amends s. 324.151, F.S., which requires motor vehicle liability insurance policies that serve as proof of financial responsibility under s. 324.031(a), F.S. The bill requires policies issued to the owner of a motor vehicle that is required to be registered in this state to insure all named insureds, except for a named driver excluded pursuant to new s. 727.747, F.S., discussed below; and to also insure:
- Any resident relative[57] of a named insured, and
- Any operator using the vehicle with the permission of the owner of the vehicle insured by the policy from liability resulting from the use of the motor vehicle referenced in the policy.

The bill authorizes an insurer to include provisions in its policy excluding coverage for a motor vehicle not designated as an insured vehicle on the policy if such motor vehicle does not qualify

[57] Defined in this section to mean" 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 or residence as the named insured, whether or not he or she temporarily lives elsewhere."

as a newly acquired vehicle,[58] does not qualify as a temporary substitute vehicle,[59] and was owned by the insured or furnished for an insured's regular use for more than 30 consecutive days before an event giving rise to a claim.

A motor vehicle liability insurance policy issued to a person who does not own a motor vehicle must insure the named insureds against liability for damages arising out of the use of any motor vehicle not owned by the named insureds.

All motor vehicle liability policies providing coverage for accidents occurring within the United States or Canada must provide liability coverage with the minimum limits of $25,000 for BI or death of one person in any one crash; $50,000 for BI or death of two or more people in any one crash; and $10,000 for PD.

Section 46 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 the minimum limits of BI liability coverage and PD liability coverage as required by s. 324.022, F.S.

Motor vehicle insurance under policies made available to applicants seeking reinstatement of the applicant's driving privileges after such privileges were revoked or suspended for driving under the influence must provide coverage of at least the minimum limits of BI and PD liability coverage under s. 324.021(7), F.S.,[60] or s. 324.023,[61] F.S. These sections require drivers who plead guilty or nolo contendere to a charge of driving under the influence to meet additional liability insurance requirements.

Meeting Financial Responsibility through a Certificate of Self-Insurance

Section 17 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 covering the motor vehicle being operated. Two alternatives are also available under the statute. Such persons 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.

A person furnishing a certificate of self-insurance showing a deposit of cash must, beginning January 1, 2022, furnish a certificate of deposit equal to the number of vehicles owned times $60,000, to a maximum of $240,000. Current law requires a deposit equal to the number of vehicles times $30,000, to a maximum of $120,000. All persons using this method must maintain insurance coverage with limits of at least $125,000/$250,000/$50,000 BI/PD or a $300,000

[58] Defined in this section to mean "a vehicle owned by a named insured or resident relative of the named insured which was acquired within 30 days before an accident."
[59] Defined in this section to mean "any motor vehicle, as defined in s. 320.01(1), F.S., which is not owned by the named insured and 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."
[60] $10,000/$20,000 for BI or death and $10,000 for PD.
[61] $100,000/$300,000 for BI or death and $50,000 for PD.

BI/PD combined single limit. Under current law, this coverage must be maintained as an excess coverage in excess of $10,000/$20,000/$10,000 BI/PD or $30,000 combined single limits.

Under **Section 23** of the bill amending s. 324.161, F.S., the proof of a certificate of deposit must be provided annually, and must be from a financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

The second alternative method is obtaining a certificate of self-insurance issued by the DHSMV. **Section 24** amends s. 324.171, F.S., effective January 1, 2022, to provide that a certificate of self-insurance from the DHSMV issued pursuant to this section may be obtained by a private individual with private passenger vehicles by demonstrating sufficient net unencumbered worth of at least $100,000. 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 $100,000 for the first motor vehicle and $50,000 for each additional vehicle. Current law requires a net unencumbered worth of $40,000 for the first motor vehicle and $20,000 for each additional motor vehicle. The bill retains current law that authorizes the DHSMV to promulgate by rule an alternative net worth requirement for persons other than natural persons.

Garage Liability Insurance Requirement

Section 7 amends s. 320.27, F.S., which requires the licensure of motor vehicle dealers. The bill defines "garage liability insurance" to mean, beginning January 1, 2022, combined single-limit liability coverage, including PD and BI liability coverage, of at least $60,000.

Current law only requires at least $25,000 in such coverage and requires $10,000 of PIP coverage.

Section 8 amends s. 320.771, F.S., and applies the garage liability insurance requirement of s. 320.27, F.S., to recreational vehicle dealers.

Financial Responsibility Requirement for For-Hire Vehicles

Section 18 amends s. 324.032, F.S., which provides the financial responsibility requirements for for-hire passenger vehicles. The bill retains current law requiring the owner or lessee to meet the financial responsibility requirement and retains the minimum limits of coverage, which are $125,000/$250,000 of BI and $50,000 of PD. The bill amends current law by specifying the coverage must be purchased by an insurer that is a member of the Florida Insurance Guaranty Association.

Commercial Motor Vehicle Coverage Requirements

Section 50 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.

Beginning January 1, 2022, a commercial motor vehicle that weighs 26,000 pounds or more but less than 35,000 pounds must have coverage of no less than $60,000. 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 $120,000 per occurrence beginning January 1, 2022. Current law requires $100,000 of coverage.

The bill retains current law that a commercial motor vehicle weighing 44,000 pounds or more must have coverage of no less than $300,000 per occurrence.

Medical Payments Coverage Benefits

Section 44 creates s. 627.7265, F.S., which requires insurers to offer medical payments coverage with limits of $5,000 and $10,000 before issuing a motor vehicle liability insurance policy used to meet the financial responsibility requirements of s. 324.031, F.S. Medical payments coverage must be offered with no deductible, but insurers may also offer such coverage with a deductible of up to $500. Insurers may also offer medical payments coverage with any policy limit greater than $5,000.

Medical payments coverage must provide coverage of at least $5,000 for medical expense incurred due to bodily injury, sickness, or disease arising out of the ownership, maintenance, or use of a motor vehicle. Medical payments coverage must pay for reasonable expenses for necessary medical, diagnostic, and rehabilitative services lawfully provided, supervised, ordered, or prescribed by specified physicians, dentists, or chiropractic physicians, or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. The coverage also includes a death benefit of at least $5,000. Medical payments coverage protects the named insured, resident relatives, all passengers and operators of the insured vehicle, and all persons struck by the motor vehicle while not occupying a self-propelled motor vehicle.

Upon receiving notice of an accident potentially covered by medical payments coverage benefits, the insurer must reserve $5,000 for payment to licensed physicians and licensed dentists who provide emergency services and care or who provide hospital indigent care. The reserve amount may be used only to pay claims from such physicians or dentists until 30 days after the date the insurer receives notice of the accident. After the 30-day period, any amount of the reserve for which the insurer has not received notice may be used by the insurer to pay other claims.

An insurer providing medical payments coverage benefits may not have a:

- Lien on any recovery in tort by judgment, settlement, or otherwise for medical payments coverage benefits, whether suit has been filed or settlement has been reached; or
- Cause of action against a person to whom or for whom medical payments coverage benefits were paid, except when benefits are paid by reason of fraud by such person.

The bill authorizes an insurer providing medical payments coverage to include provisions in its policy allowing for subrogation[62] for payment of medical payments coverage benefits if the payments resulted from the wrongful act or omission of another who is not also insured under the

[62] Subrogation is the principle establishing that when an insurance company pays an insured's claim of loss caused by a third party's negligence, the insurance company stands in the place of the insured with respect to the insured's right to sue the negligent third party for damages.

policy paying the benefits. However, the bill makes this subrogation right inferior to the rights of the injured insured and available only after all of the insured's damages are recovered and the insured is made whole.[63]

Under the bill, if an insured obtains a recovery from a third party of the full amount of the damages the insured has sustained, and delivers a release or satisfaction that impairs an insurer's subrogation right, the insured is liable to the insurer for repayment of the medical payments benefits, less any expenses of acquiring the recovery, including a prorated share of attorney fees and costs. The insured is also required to hold that net recovery in trust to be delivered to the medical payments insurer. The bill prohibits an insurer from including any provision in its policy allowing for subrogation for any death benefit paid.

Clinic Licensure and Reimbursement under Medical Payments Coverage

Section 26 amends s. 400.9905, F.S., providing that an entity is deemed a "clinic" and must be licensed in order to receive medical payments coverage reimbursement under s. 627.7265, F.S., unless the entity is:

- Wholly owned by a licensed physician, a licensed dentist, or a licensed chiropractic physician; or by the physician, dentist, or chiropractic physician and the spouse, parent, child, or sibling of the physician, dentist, or chiropractic physician;
- A licensed hospital or ambulatory surgical center;
- An entity that wholly owns or is wholly owned, directly or indirectly, by a licensed hospital or hospitals;
- A clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
- A clinic certified under federal law to provide outpatient physical therapy and speech pathology services; or
- Owned by a publicly traded corporation which has $250 million or more in total annual sales of health care services provided by licensed health care practitioners, if one or more of the persons responsible for operations of the entity are licensed health care practitioners in this state and are responsible for supervising the business and the entity's compliance with state law.

The above language is currently in s. 627.736(5)(h), F.S., and requires clinic licensure to receive reimbursement under PIP. The bill moves the requirement to this section, requires clinic licensure to receive reimbursement under medical payments coverage, and retains the exemptions from the definition of clinic detailed above.

[63] This appears to be a codification of the "made whole" doctrine acknowledged by the Florida Supreme Court in *Insurance Co. of North America v. Lexow*, 602 So.2d 528 (Fla. 1992). *See also Magsipock v. Larsen*, 639 So.2d 1038 (Fla. App. 1994), Generally, the principle is that an insurer does not have a common law right to subrogation, or reimbursement, against a third party causing the damages sustained by the insured unless the insured has been compensated for all of the insured's damages and been "made whole." However, the made whole doctrine may be overridden by contractual agreement under current case law. *See Florida Farm Bureau Ins. Co. v. Martin,* 377 So.2d 827 (Fla. 1979) and *Blue Cross & Blue Shield of Fla. V. Matthews,* 498 So.2d 421, 422 (Fla 1986).

This section of the bill also 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 medical payments coverage.

Uninsured and Underinsured Motor Vehicle Insurance Coverage

Section 45 amends s. 627.727, F.S., which governs uninsured and underinsured motor vehicle insurance coverage. Under PIP, a person cannot recover "pain and suffering" damages from the at-fault driver's bodily injury coverage unless the person's injuries exceed a certain severity threshold,[64] commonly referred to as the "verbal threshold." Current law specifies that the legal liability of an uninsured motorist insurer 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" provisions in s. 627.737(2), F.S. 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. The bill repeals the "verbal threshold" provisions contained in the No-Fault Law in s. 627.737, F.S.

Under the bill, the legal liability of an uninsured motorist insurer *includes* damages in tort for pain, suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience, and the loss of past and future capacity for the enjoyment of life.

Disclosure of Information Related to Liability Insurance Coverage

Section 41 amends s. 627.4137, F.S., to provide that if an insurer fails to timely comply with s. 627.4137, F.S., the claimant may file an action to enforce the section and is entitled to an award of reasonable attorney fees and costs to be paid by the insurer. Section 627.4137, F.S., requires liability insurers to provide, within 30 days of receiving a written request from a clamant, a sworn statement setting forth the name of the insurer, name of the insured, limits of liability coverage, a statement of any policy or coverage defense the insurer currently believes is reasonably available to it, and a copy of the insurance policy. Current law also requires an insured or an insured's insurance agent to disclose to the claimant and all affected insurers, upon written request of the claimant or claimant's attorney, the name and coverage of each known insurer.

Bad Faith Actions - Civil Remedy in Section 624.155, F.S.

Section 33 amends subsections (5) and (8) of s. 624.155, F.S. Section 624.155, F.S., authorizes any person to bring a civil action against insurers when damaged by an insurer through specified bad faith acts or statutory violations. The bill specifies that subsection (5), which provides limited conditions under which punitive damages may be awarded under s. 624.155, F.S., does not apply to civil actions subject to s. 624.156, F.S. Section 624.156, F.S., is created in Section 34 of the bill and applies to all bad faith failure to settle actions under a motor vehicle insurance

[64] The injury or disease must consist in whole or in part of significant and permanent loss of an important bodily function; permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement; significant and permanent scarring or disfigurement; or death. See s. 627.737(2), F.S.

policy. The bill also clarifies the prohibition in subsection (8) against a person obtaining judgments under multiple bad faith remedies, whether under statute or common law.

Bad Faith Failure to Settle Actions Against Motor Vehicle Insurers

Section 34 creates s. 624.156, F.S., the provisions of which generally apply to all bad faith failure to settle actions against motor vehicle insurers, except that subsections (5)-(10) and (13) apply only to third-party bad faith failure to settle actions not brought under s. 624.155, F.S. Thus, the entirety of s. 624.156, F.S., revises the common law cause of action and does not allow bringing a common law cause of action outside the provisions of this section. Subsections (1)-(4), (11), (12), (14), and (15) also apply to bad faith failure to settle civil actions brought under s. 624.155, F.S., which may be brought by the first-party insured or a third-party claimant.

Provisions Applicable in All Bad Faith Failure to Settle Actions Against a Motor Vehicle Insurer

The bill specifies that certain subsections of s. 624.156, F.S., will apply to and govern all bad faith failure to settle actions against motor vehicle insurers.

Defining the Duty of Good Faith – Subsection (2) provides that in handling claims, an insurer stands as a fiduciary for its insured and must handle claims in good faith. The insurer must comply with the best practice standards of subsection (4) using the same degree of care and diligence as a person of ordinary care and prudence would exercise in the management of his or her own business. This is essentially the duty of good faith that the Florida Supreme Court established in a 1938 decision,[65] and since then has consistency maintained.[66]

Defining Bad Faith Failure to Settle – Subsection (3) defines "bad faith failure to settle" as an insurer's failure to settle a claim when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for the insured's interests. This definition reflects Florida common law and is directly taken from section 404.4 of the Florida Standard Jury Instructions in Civil Cases. [67] This standard is used in both first and third party bad faith failure to settle claims.[68]

Best Practice Standards for Insurance Claim Handling – Subsection (4) sets forth best practice claim handling standards that a motor vehicle insurer is subject to upon the earlier of receiving notice of a claim or a demand for settlement under subsection (6). An insurer must:

- Assign a licensed and appointed insurance adjuster to investigate the claim and resolve coverage questions.
- Evaluate every claim fairly, honestly, and with due regard for the insured's interests; consider the full extent of the claimant's recoverable damages; and consider the information in a reasonable and prudent manner.
- Request from an insured or claimant additional relevant information deemed necessary.

[65] *Auto Mut. Indem. Co. v. Shaw*, 184 So. 852 (Fla. 1938).
[66] See *Boston Old Colony Ins. v. Gutierrez*, 386 So.2d 783 (Fla. 1980*), Berges v. Infinity Ins. Co.*, 896 So.2d 665 at 672-673 (Fla. 2004), and *Harvey v. GEICO General Ins. Co.*, 259 So.3d 1, at 6-7 (Fla 2018).
[67] https://jury.flcourts.org/civil-jury-instructions-home/civil-instructions/#404.
[68] See *State Farm Mutual Automobile Insurance Co. v. LaForet*, 658 So.2d 55 (Fla. 1995).

- Communicate with the utmost honesty and with complete candor.
- Make reasonable efforts to explain to nonattorneys matters requiring expertise beyond the level normally expected of a layperson with no training in insurance or claims handling.
- Save all written communications and note and save all verbal communications.
- Provide the insured, upon request, with all nonprivileged communications related to the insurer's handling of the claim.
- Provide, at the insurer's expense, reasonable accommodations necessary to communicate effectively with an insured covered under the Americans with Disabilities Act.
- In first-party claims, communicate to the insured: information on who is adjusting the claim, issues that may impair the insured's coverage, information that might promptly resolve the issue, any basis for the insurer's rejection or nonacceptance of any settlement offer, and any needed extensions to respond to a time-limited settlement offer.
- In third-party claims, communicate to the insured: the identity of any other person or entity the insurer knows may be liable, the insurer's activity on and evaluation of the claim, the likelihood and possible extent of an excess judgment, steps the insured can take to avoid exposure to an excess judgment, requests for examinations under oath and an explanation of the consequences of an insured's failure to submit to an examination under oath, and any demands for settlement under subsection (6) or settlement offers.

Burden of Proof in Bad Faith Failure to Settle Actions; – Subsection (11) provides that in all bad faith failure to settle actions the claimant must prove by the preponderance of the evidence that the insurer violated its duty of good faith as defined in subsection (2), and that the insurer in bad faith failed to settle as defined in subsection (3). This will be the burden of proof in any failure to settle action, whether under common law or statute.

Matters the Trier of Fact Must Consider – Subsection (11) also requires the trier of fact, when determining whether the claimant has met its burden to prove the insurer violated the duty of good faith and in bad faith failed to settle, to consider all of the following:

- Whether the insurer complied with the best practice claim handling standards of subsection (4).
- Whether the insurer in bad faith failed to settle the claim.
- Whether the claimant or insured failed to timely provide relevant information to the insurer.
- Whether the claimant or insured misrepresented or omitted material facts to the insurer.
- In third-party bad faith failure to settle actions not brought under s. 624.155, F.S.:
  - Whether the insured denied liability or requested that the case be defended after the insurer fully advised the insured as to the facts and risks.
  - Whether the insurer timely informed the insured of a demand to settle within the limits of coverage, the right to retain personal counsel, and the risk of litigation.
- The insurer's willingness to negotiate with the claimant in anticipation of settlement.
- The amount of damages the claimant incurred or was likely to incur in the future under the facts known or reasonably available at the time of the insurer's response.
- If applicable, whether there were multiple third-party claimants seeking compensation that in the aggregate exceeded the insureds policy limits, and if so, whether the insurer breached its duty to attempt to minimize the magnitude of possible excess judgments against the insured and settle as many claims as possible within policy limits in exchange for a release of the insured from further liability.

- Additional factors the court determines to be relevant.

The bill allows the trier of fact to be informed that an excess judgment occurred, but prohibits informing the trier of fact of the amount of the excess judgment.

Damages – Subsection (12) provides that a motor vehicle insurer that is found to have violated its duty of good faith and to have in bad faith failed to settle is liable for the amount of the excess judgment. Other damages, including punitive damages, are not recoverable.

Limitation on Multiple Remedies – Subsection (14) specifies that a person is not entitled to judgment under multiple bad faith remedies.

Application of s. 624.155, F.S. – Subsection (15) specifies that this section modifies actions brought under s. 624.155, F.S.

Provisions Applicable only to Third-Party Bad Faith Failure to Settle Actions Not Brought Under s. 624.155, F.S.

The following provisions of the section are applicable to third-party actions for bad faith failure to settle actions against a motor vehicle insurer, if the action is not brought under the civil remedy statute in s. 624.155, F.S.:

Conditions Precedent to Filing a Third-Party Action for Bad Faith Failure to Settle – Subsection (5) requires the claimant, as a condition precedent to file a third-party bad faith failure to settle action to:

- Serve a demand for settlement under subsection (6) within the insurer's limits of liability in exchange for a release of further liability against the insured; and
- Obtain a final judgment in excess of the policy limits against the insured.

Demand for Settlement – Subsection (6) provides that the claimant's demand for settlement, which is a condition precedent to filing a third-party bad faith failure to settle action, must do all of the following:

- Identify the date and location of the loss; the name, address, and birthdate of the claimant; the name of each insured to whom the demand is directed; and the legal and factual basis of the claim.
- Provide a reasonably detailed description of the claimant's known injuries caused or aggravated by the incident on which the claim is based, the medical treatment causally related to the incident on which the claim is based, and the type and amount of known damages incurred and any future damages the claimant reasonably anticipates incurring.
- State the amount of the demand for settlement.
- State whether the demand is conditioned on the completion of the claimant examining the insured under oath as provided in subsection (8).
- Provide a physical address, e-mail address, and facsimile number for further communications.
- Release the insured from further liability if the settlement is completed.
- Be served upon the insurer by certified mail at a specified address.

Prohibition on Conditions for Accepting a Demand for Settlement; Exception – Subsection (7) generally prohibits a claimant from placing conditions on a demand for settlement. The claimant may, however, condition the demand on conducting an examination under oath (EUO) of the insured as provided in subsection (8). The EUO may be regarding whether:

- The insured can satisfy a claim for damages in excess of the insurance policy limits;
- Any other person may be liable for the insured's negligence; and
- Other insurance exists which may cover damages sustained by the claimant.

Examinations Under Oath – Subsection (8) provides a third-party claimant the right to examine under oath the insured one time for up to 2 hours.

Only the issues detailed in subsection (7) may be addressed in the EUO; the claimant may not examine the insured regarding liability. The claimant may request that the insured bring to the EUO relevant documents in the insured's possession, custody or control. Examples of such documents are credit reports, insurance policies, bank statements, tax returns, deeds, titles, and other documents that prove assets and liabilities. The parties must cooperate when scheduling the EUO, which must occur within 30 days after an insurer accepts a settlement demand.

The claimant may withdraw a settlement demand within 7 days after an examination under oath. This is necessitated because the demand must be within policy limits and made prior to conducting the EUO.

The claimant may also withdraw a settlement demand if the insured refuses to submit to an EUO. When the insured refuses to submit to an EUO, an insurer may accept a demand for settlement without requiring the claimant release the insured from liability. When an insurer accepts a demand for settlement under such a circumstance, the insurer is excused from its duty to defend the insured.

Safe Harbor – Subsection (9) provides that an insurer may not be held liable in any third-party action for bad faith failure to settle if the insurer tenders its policy limits within 30 days of receiving a demand for settlement under subsection (6). Black's Law Dictionary defines "tender" as "a valid and sufficient offer of performance" thus the insurer obtains the safe harbor when it offers to accept a settlement demand within 30 days of receiving the demand. The safe harbor will also apply when the insurer tenders policy limits and the claimant withdraws a settlement demand within 7 days after conducting an EUO.

Release – Subsection (10) provides that an insurer that accepts a settlement demand is entitled to a release of its insured, unless the insured refused to submit to an EUO under paragraph (8)(f).

Demand for Settlement by a Judgment Creditor – Subsection (13) provides that a judgment creditor that serves a demand for settlement must be subrogated to the rights of the insured against the insurer when the judgment exceeds the insured's limits of liability.

Rate Filings

Section 38 amends s. 627.0651, F.S., providing that initial rate filings for motor vehicle liability policies submitted to the OIR on or after January 1, 2021, must reflect the financial responsibility

requirements of the amended s. 324.022, F.S., and may be approved only through the file and use process for making rates for motor vehicle insurance set out in that section of law.

Named Driver Exclusion

Section 51 creates s. 627.747, F.S., authorizing a private passenger motor vehicle policy to exclude an identified individual from coverages. Currently, the OIR requires insurers to provide exceptions to named driver exclusions up to statutorily required minimum limits for PIP coverage, property damage liability coverage, BI liability coverage (if the policy is used to meet financial responsibility requirements), and UM coverage in certain circumstances.[69]

Under the bill, if an identified individual is specifically excluded by name on the policy declarations page or by endorsement, and a policyholder consents to such exclusion in writing, a private passenger motor vehicle policy may exclude an identified individual from the following coverages:

- Property damage liability coverage.
- Bodily injury liability coverage.
- Uninsured motorist coverage for any damages sustained by the identified excluded individual, if the policyholder has purchased such coverage.
- Any coverage the policyholder is not required by law to purchase.

However, a private passenger motor vehicle policy may not exclude coverage when:

- The identified excluded individual is injured while not operating a motor vehicle;
- The exclusion is unfairly discriminatory under the Florida Insurance Code, as determined by the Office of Insurance Regulation; or
- The exclusion is inconsistent with the underwriting rules filed by the insurer.

An individual excluded by name in an insurance policy would not be covered for damages that occur while operating a motor vehicle that is insured under the policy, unless the excluded driver has purchased a separate policy that provides motor vehicle insurance coverage.

Application of Bill

Applicability and Construction of Bill and Notice to Policyholders of New Motor Vehicle Insurance Requirements

Section 47 creates s. 627.7278, F.S., applying financial responsibility requirements and optional medical payments coverage created by the bill as follows:

- Effective January 1, 2022:
    - 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 to damages for liability because of motor vehicle crashes in the amounts required in s. 324.021(7), F.S., for private use motor vehicles, for-hire passenger transportation vehicles, commercial motor vehicles, and nonpublic sector buses.

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[69] See Office of Insurance Regulation, *2018 Agency Bill Analysis SB 518*, pg. 2 (Oct. 30, 2017). On file with the Senate Banking and Insurance Committee.

  - Any new or renewal motor vehicle insurance policy delivered or issued in this state must provide coverage that complies with minimum security requirements.
  - An existing motor vehicle insurance policy that provides PIP and property damage liability coverage, but does not meet the new bodily injury liability requirements, is deemed to meet the bodily injury requirements until the policy is renewed, non-renewed or cancelled on or after January 1, 2022, and the provisions of the No-Fault law and other related statutes remain in full force and effect for motor vehicle accidents covered under a policy issued under the No-Fault law before that date, until the policy is renewed, nonrenewed, or canceled.
- Insurers must allow each insured who has a policy providing PIP that is effective before January 1, 2022, 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, 2022. The insurer is also required to offer each insured the optional medical payments coverage required by the bill. Insurers may not impose additional fees solely to change coverage, but may charge an additional premium that is actuarially indicated.
- By September 1, 2021, each motor vehicle insurer shall provide notice that:
  - The Florida Motor Vehicle No-Fault Law is repealed effective January 1, 2022, and that PIP coverage is no longer required or available for purchase.
  - Effective January 1, 2022, a person subject to the financial security requirements of s. 324.022, F.S., must maintain minimum security requirements for BI and PD liability in the following amounts:
    - $25,000 for BI or death of one person in any one crash and, subject to such limits, $50,000 for BI or death of two or more persons in any one crash, and
    - $10,000 for PD in any one crash.
  - BI liability coverage protects the insured, up to the coverage limits, against loss if the insured is legally responsible for the death of or bodily injury to others in a motor vehicle accident.
  - Effective January 1, 2022, each holder of a motor vehicle liability insurance policy purchased as proof of financial responsibility must be offered the optional medical payments coverage benefits at limits of $5,000 and $10,000 without a deductible, may be offered such coverage at limits greater than $5,000, and may be offered coverage with a deductible of up to $500. Medical payments coverage pays covered medical expenses, up to the limits, for injuries sustained in a motor vehicle crash by the named insured, resident relatives, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons who are struck by the insured motor vehicle and suffer bodily injury while not an occupant of a self-propelled motor vehicle. Medical payments coverage pays for reasonable expenses for necessary medical, diagnostic, and rehabilitative services that are lawfully provided, supervised, ordered, or prescribed by a licensed physician, a licensed dentist, or a licensed chiropractic physician, or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. Medical payments coverage also provides a death benefit of at least $5,000.
  - A policyholder may obtain uninsured and 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.

- A policy effective before January 1, 2022, is deemed to meet minimum security requirements until it is renewed, non-renewed, or canceled on or after January 1, 2022.
- A policyholder may change coverages to eliminate PIP protection and obtain coverage providing minimum security requirements.
- 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.

Application of Suspensions for Failure to Maintain Security

Section 15 creates s. 324.0222, F.S., requiring all driver license and motor vehicle registration suspensions for failure to maintain security as required by law in effect before January 1, 2022, to remain in full force and effect after January 1, 2022. A driver may reinstate a suspended driver's license or registration as provided under s. 324.0221, F.S.

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 makes conforming changes necessitated by the bill's amendment or repeal of other sections of law and inserts a cross-reference to the revised s. 324.021(7), F.S., which contains the minimum insurance requirements for purposes of proof of financial responsibility beginning January 1, 2022.

Section 4 amends s. 318.18(2), F.S., regarding nonmoving traffic violations, to remove a reference to PIP and 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 BI and PD liability, remove references to PIP, and make other conforming changes.

Section 6 amends s. 320.0609, F.S., to eliminate a reference to PIP in a provision specifying that transferring a license plate from a vehicle disposed of to a newly acquired vehicle does not constitute a new registration.

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., regarding driving on a suspended, revoked, canceled, or disqualified driver's license, to delete 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 under the chapter all owners or operators of a motor vehicle required to be registered in this state must 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 replace the reference to PD coverage with a reference to liability coverage, and conform cross references.

Section 16 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 19 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. 324.071, F.S., to provide stylistic changes to provisions governing the reinstatement of a suspended license.

Section 21 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 an automobile liability policy while retaining references to a motor vehicle liability policy.

Section 25 amends s. 324.251, F.S., to revise the short title of ch. 324, F.S., to the "Financial Responsibility Law of 2021" and state it will be effective at 12:01 a.m., on January 1, 2022. Currently the chapter is the "Financial Responsibility Law of 1955."

Sections 27 and 28 amend s. 400.991, F.S., and s. 400.9935, F.S., respectively, of the Health Care Clinic Act to remove references to PIP and the No-Fault Law and insert references to medical payments coverage.

Section 29 revises the definition of a "third party benefit" in s. 409.901, F.S., for purposes of Medicaid to refer to medical payments coverage rather than PIP coverage.

Section 30 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 31 amends s. 456.057, F.S., regarding patient records, to correct a cross-reference.

Section 32 amends s. 456.072, F.S., to allow the Department of Health to discipline licensees for submitting claims for medical payments coverage reimbursement when treatment is not rendered or when treatment is intentionally upcoded. The department currently has such disciplinary authority with regard to false billing under PIP coverage. The bill relocates from the repealed s. 627.732, F.S., the existing definition of "upcoded," and replaces references to PIP with references to medical payments coverage.

Section 35 amends s. 626.9541(1)(i) and (o), F.S., regarding unfair insurance trade practices related to motor vehicle insurance. The bill deletes the unfair trade practice in paragraph (i) for failing to pay claims within statutory time periods required under the No-Fault Law to conform to the repeal of those time frames by the bill. The section makes a technical amendment to

paragraph (o) to reference BI liability coverage, PD liability coverage, and medical payments coverage, rather than PIP, in the prohibitions against the unfair insurance trade 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 36 amends s. 626.989, F.S., to revise the "fraudulent insurance acts" detailed in the section to refer to medical payments coverage, rather than the No-Fault Law.

Section 37 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 medical payments coverage.

Sections 39 and 40 amend s. 627.0652, F.S., and s. 627.0653, F.S., respectively, relating to insurance discounts for motor vehicle coverage, by replacing references to PIP with references to medical payments coverage.

Section 41 amends s. 627.4132, F.S., regarding the general prohibition against stacking of motor vehicle coverages, to refer to BI and PD instead of PIP or other coverage.

Section 43 amends s. 627.7263, F.S., which generally makes the rental and leasing driver's insurance primary, to delete references to PIP and insert references to medical payments coverage.

Section 48 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 49 amends s. 627.7295, F.S., to revise definitions relating to motor vehicle insurance contracts by deleting references to PIP and inserting references to BI liability coverage, and make other conforming and editorial changes.

Section 52 amends s. 627.748, F.S., relating to insurance requirements for transportation network companies, to remove references to PIP required under the repealed No-Fault law and inserts cross-references to the revised financial responsibility requirements applied to for-hire passenger transportation vehicles in Section 17 of the bill.

Section 53 amends s. 627.749, F.S., relating to insurance requirements for autonomous vehicles, to delete a reference to PIP in those insurance requirements.

Section 54 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.

Section 55 amends s. 627.915, F.S., which requires private passenger automobile insurers to report information annually to the office, to remove references to PIP.

Section 56 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 57 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 58 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 59 amends s. 817.234, F.S., regarding false and fraudulent insurance claims, to delete references to PIP and replace them with references to medical payments coverage.

Appropriation

Section 60 appropriates for the 2021-2022 fiscal year $83,651 in nonrecurring funds from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation for the purpose of implementing the act.

Effective Date

Section 61 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, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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 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. The bill retains this reinstatement fee for a license suspension based upon a crash report under s. 324.051(2), F.S.; a registration suspension under s. 324.072, F.S., based on a license suspension pursuant to s. 322.26, F.S., or s. 322.27, F.S.; suspension of the operating privileges of a nonresident driver under s. 324.081, F.S.; or suspension of license and registration under s. 324.121, F.S., for failure to satisfy a judgment.

The bill retains the current reinstatement fees under s. 324.0221, F.S., for a suspended license or registration for failure to maintain required insurance based on a report by an insurer. 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.

B. Private Sector Impact:

The fiscal impact to policyholders, health insurers, health care providers, and injured claimants is indeterminate. However, in a 2016 report, *Florida Office of Insurance Regulation: Review of Personal Injury Protection Legislation,* provided, among other information, actuarial estimates of the savings expected from repealing the No-Fault Law.[70] The report concludes, based only on repeal of the No-Fault Law with financial responsibility limits of $25,000/$50,000, that a 5.6 percent savings would be realized in the statewide average premium charge.[71] The 2016 PIP Study estimated that health insurers would cover approximately $469.7 million of current PIP loss if No-Fault were repealed.[72] Health care providers would cover approximately $32.8 million of current PIP losses.[73] Injured claimants would cover approximately $82.9 million of current PIP losses.[74]

The actuarial consulting firm Milliman, Inc., estimated the impact of similar, but not identical, legislation in 2018, on behalf of the Property and Casualty Insurers Association of America. The Milliman report, dated January 25, 2018, estimated that repealing PIP and mandating BI coverage of at least $25,000/$50,000 would increase premiums on average by $67 (5.3 percent), increase premiums on average for drivers that currently purchase full coverage by $105 (7.2 percent), and increase premiums on average $230 (50.1 percent) for drivers who currently purchase only PIP and PD at the minimum

[70] Office of Insurance Regulation, *Review of Personal Injury Protection Legislation*, (Sept. 13, 2016), Appendix 3, p. 1. Available at http://www.floir.com/siteDocuments/FLOIRReviewPIP20160913.pdf (last viewed January 25, 2021).
[71] That is the average premium savings for a driver purchasing BI, UM, PD, Comprehensive, and Collision coverages.
[72] *See* Office of Insurance Regulation fn. 52 at pg. 68.
[73] *See id.*
[74] *See id.*

mandatory limits.[75] The report estimates that *mandating* $5,000 of MedPay in addition to mandating BI coverage of at least $25,000/$50,000 would increase premiums on average by $115.85 (9.2 percent).[76] The report identifies as cost-drivers increasing premium the elimination of the No-Fault verbal threshold for noneconomic damages and the elimination of the PIP co-insurance provisions (20 percent for medical expenses and 40 percent for loss of income expenses).[77]

Policyholders who reside in the same household as a high-risk individual who is of driving age could see a decrease in their rates if they exclude such drivers from one or more of the specified coverages.

C. Government Sector Impact:

The bill appropriates for the 2020-2021 fiscal year $83,651 in nonrecurring funds from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation to implement the act. The fiscal impact to state and local governments is otherwise indeterminate.

VI. Technical Deficiencies:

None.

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, 624.155, 626.9541, 626.989, 627.06501, 627.0651, 627.0652, 627.0653, 627.4132, 627.4137, 627.7263, 627.727, 627.7275, 627.728, 627.7295, 627.7415, 627.748, 627.749, 627.8405, 627.915, 628.909, 705.184, 713.78, and 817.234.

This bill creates the following sections of the Florida Statutes: 324.0222, 624.156, 627.726, 627.7278, and 627.747.

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.

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[75] Milliman, Inc., *Florida Personal Auto Insurance Impact of Repealing No-Fault Coverage – Prepared for Property Casualty Insurers Association of America*, pg. 4 (Jan. 25, 2018). Available at http://floridapolitics.com/wp-content/uploads/2018/02/Impact-of-Repealing-No-Fault_Final.pdf (last viewed January 25, 2021).
[76] *See* Milliman at pg. 6.
[77] *See* Milliman at pgs. 9-10.

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.

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