

STORAGE NAME: h1127s1.fs

DATE: March 18, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1127

RELATING TO: Motor vehicle insurance

SPONSOR(S): Committee on Financial Services and Representative Jones & others

COMPANION BILL(S):

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

(1) FINANCIAL SERVICES YEAS 7 NAYS 0

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I. SUMMARY:

When a motor vehicle is a total loss and is the subject of a property damage liability insurance claim, Florida law currently protects the interest of the lender (lienholder) by requiring the insurance company to search public records for lienholders and to pay the claim jointly to the vehicle owner and the lienholder. There is no comparable provision with respect to a vehicle that is not a total loss.

The apparent purpose of these requirements is to protect the lender's interest by assuring that the insurance payment is used to pay off the loan. When the vehicle is less than a total loss, the lender's interest is in protecting the value of the vehicle by assuring that the vehicle is repaired. The failure to repair the vehicle would diminish the value of the collateral providing security for the loan, and could put the borrower in default on the auto loan.

This bill requires insurers to provide notice in connection with a payment of a damage claim for less than the total loss of a vehicle, stating that the failure to use the insurance proceeds in accordance with the terms of the auto loan could constitute theft, and stating that the borrower should contact the lender if there are any questions.

Since 1995, applicants for auto insurance policies have been required to pay a down payment equal to 2 months' premium. The bill would add an exception to the minimum down payment requirement for auto premiums paid through payroll deduction plans.

The bill appears to have no fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Payment of property damage claims

Before an insurer may pay a third-party (i.e., liability) claim for a total loss of an automobile, the insurer must cause a search to be made of the records of the Department of Highway Safety and Motor Vehicles to determine whether the vehicle is subject to any liens. If the vehicle is subject to a lien, the insurer is required to make payment jointly to the third-party claimant and the first lienholder of record (typically, a lender). These requirements do not apply if the claimant shows a title certificate for the vehicle (indicating that the liens have been satisfied).¹ These requirements are apparently intended to protect the lender's interest by assuring that the insurance payment is used to pay off the loan.

When the vehicle is less than a total loss, the lender's interest is in protecting the value of the vehicle by assuring that the vehicle is repaired. The failure to repair the vehicle would diminish the value of the collateral providing security for the loan.

With respect to first-party claims (i.e., claims made by a named insured under collision, comprehensive, or similar coverages), there does not appear to be any consistent industry practice. Insurers generally obtain the identity of any lienholders when issuing a policy, but, according to the Department of Insurance, this practice is not universal. When paying a claim, some insurers will issue a draft jointly to the named insured and the lienholder shown on the insurer's records, and some will issue the draft to the named insured only.

When payment for a claim is not made jointly to the lienholder and the vehicle owner, the interests of the lienholder could be compromised in either of the following scenarios:

If the vehicle is a total loss, the insurer will take title to the wrecked vehicle and sell it for salvage, and the vehicle owner could retain the claims payment. The lienholder is left to collect a debt with no collateral.

If the vehicle is not a total loss, the vehicle owner could retain the claims payment and fail to make repairs to the vehicle; in this case, the debt would remain, but the value of the collateral would be diminished. The vehicle owner could retain the claims payment, abandon the unrepaired vehicle, and stop making payments on the motor vehicle loan; the result could be a loss for the lender, since the lender would be deprived of the collateral, the loan payments, and the insurance recovery.

Minimum down payments and payroll deduction plans

Since 1995,² an applicant for a new private passenger motor vehicle insurance policy has been required to make a down payment equal to at least 2 months' premium on the

¹ Section 627.743, Florida Statutes.

² See s. 627.7295(7), Florida Statutes, as created by Chapter 95-424, Laws of Florida.

policy. Insurers, agents, and premium finance companies are prohibited from advancing the down payment to the applicant or otherwise circumventing the requirement that the down payment come from the applicant.

According to the House Insurance Committee staff summary of the law that created the minimum down payment requirement:

There are at least two distinct purposes served by the minimum down payment requirement. One is enforcement of mandatory auto insurance laws, in order to prevent the sale of insurance with no down payment to someone who may immediately cancel coverage after registering a vehicle. A second purpose is related to insurer solvency, to prevent financial loss to an insurer with a premium payment plan or affiliated with a premium finance company by assuming liability for auto insurance claims upon issuance of a policy without collecting a down payment. One additional impact of the law, if not a purpose, is to eliminate a market advantage of any insurer or premium finance company that would finance premiums without a minimum down payment.³

There are several exceptions to the minimum down payment requirement, including exceptions for replacement policies and for policies issued by an insurer that limits its insureds to current and former military personnel.

B. EFFECT OF PROPOSED CHANGES:

Payment of property damage claims

A person who is receiving an insurance payment for less than the total loss of an automobile would be notified that: "Failure to use the insurance proceeds in accordance with the security agreement, if any, could be a violation of s. 812.014, Florida Statutes. If you have any questions, contact your lending institution."⁴ The notice would appear on the loss estimate, if prepared by the insurer, or on the check or draft. Notice would not be required if the insurer did not prepare the loss estimate.

Minimum down payments and payroll deduction plans

When an employer's payroll deduction plan provides for payment of employees' private passenger motor vehicle insurance premiums, the employees would be exempt from the minimum down payment requirement.

³ Final Bill Analysis and Economic Impact Statement, HB 2471, House Committee on Insurance, June 18, 1995.

⁴ Section 812.014, Florida Statutes, the general theft statute, provides that the crime of theft includes the appropriating of property to the use of any person not entitled to the use of the property. When a person uses insurance proceeds for his or her own purposes in contravention of the terms of the security agreement on the vehicle, that action could be construed as appropriating the payment to the use of a person not entitled to the use of the payment.

At least one insurer collects motor vehicle insurance premiums from employees of state universities through payroll deduction. Staff research was unable to identify any other instances of payroll deduction plans being used to pay automobile insurance premiums.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The bill would require insurers to provide specified notice to the claimant with respect to a claim for damage to an automobile that was less than a total loss.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 627.7295, 627.743.

E. SECTION-BY-SECTION RESEARCH:

Section 1 amends s. 627.743, F.S., relating to payment of claims, to require notice to the claimant as described in "Effect of Proposed Changes," above.

Section 2 amends s. 627.7295, F.S., relating to motor vehicle insurance policies, to provide an exemption to the minimum down payment requirement, as described in "Effect of Proposed Changes," above.

Section 3 provides that the bill will take effect on October 1 of the year in which it is enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

The requirement that insurers provide a specified notice to motor vehicle property damage claimants could cause insurers to incur additional claims-administration costs.

2. Direct Private Sector Benefits:

The bill could enhance the ability of a lienholder (lending institution) to protect its interests by protecting the collateral on an auto loan. To the extent that this enhanced ability reduces the number of automobile loans in default, it may increase the availability or affordability of such loans.

Where a payroll deduction plan provides for payment of auto insurance premiums, both the initial payment and subsequent payments could be made by payroll deduction, rather than only the subsequent payments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See above.

D. **FISCAL COMMENTS:**

N/A

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

A. **APPLICABILITY OF THE MANDATES PROVISION:**

N/A

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

N/A

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

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

As filed, the bill would have required an insurer, before paying a first-party (collision or comprehensive) or third-party (liability) claim for damage to a motor vehicle in excess of \$500, to search the records of the Department of Highway Safety and Motor Vehicles (DHSMV) to determine the existence of a lien on the vehicle. If the vehicle is subject to a lien, the payment would have been required to be made jointly to the lienholder and the claimant.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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