

---

## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 1, 1998 Revised: \_\_\_\_\_

Subject: Motor Vehicle Insurance (Liens and Payment)

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

---

### I. Summary:

The Committee Substitute for Senate Bill 2338 would require insurers making payments on a claim for damage to an automobile for a partial loss to have printed either on the loss estimate, if prepared by the insurer, or on the check or draft, a statement that the failure to use the insurance proceeds in accordance with the terms of the auto loan could constitute a violation of Florida law (theft), and that the borrower should contact the lender if there are any questions.

The bill would also add exceptions to the current requirement that a minimum of 2 months premium be paid as a down payment for new auto insurance policies. The exceptions would be provided for auto premiums paid through payroll deduction plans or electronic funds transfer.

This bill substantially amends sections 627.743 and 627.7295 of the Florida Statutes.

### II. Present Situation:

*Payment of Claims for Damage to a Vehicle* -- Before an insurer may pay a 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. (s. 627.743, F.S.) If the vehicle is subject to a lien, the insurer is required to make payment jointly to the owner of the vehicles and the first lienholder of record (typically, a lender). These requirements do not apply if the claimant shows a title certificate for the vehicle (a clear title showing that any liens have been satisfied). These requirements are apparently intended to protect the lender's interest by assuring that the insurance payment is used to pay off the loan.

The current law's requirements apply only to the situation of a total loss. 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.

The catch line of the current statute refers to "payment of third-party claims" but the language of the statute does not limit its requirements to third-party claims (liability claims covering the total loss of another vehicle). It is not clear whether the current requirements apply to payment of first-party claims (under collision or comprehensive coverage) when the policyholder's vehicle is a total loss.

*Minimum Down Payment Requirement* -- Since 1995, applicants for new private passenger motor vehicle insurance policies have been required to make a down payment equal to at least 2 months' premium on the 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. The primary purpose of the minimum down payment requirement is for 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 secondary 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 without collecting a down payment.

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.

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

Insurers making payments on a claim for damage to an automobile for a partial loss would be required to have printed either on the loss estimate, if prepared by the insurer, or on the check or draft, the following: "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." Notice would not be required if the insurer did not prepare the loss estimate. 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.

The bill also adds two exceptions to the current 2-month minimum down payment requirement for new auto insurance policies. Exceptions would be provided for payment of premiums by an employer on behalf of an employee pursuant to a payroll deduction plan or an automatic electronic funds transfer payment plan.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The requirement that insurers provide a specified notice to motor vehicle property damage claimants could cause insurers to incur additional claims-administration costs. Lenders who are lienholders of record on titles to vehicles may have their financial interests in the collateral property better protected under the provisions of this bill.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

---

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

---