

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Banking and Insurance Committee

BILL: SB 2044

SPONSOR: Senator Crist

SUBJECT: Motor vehicle and motorcycle insurance

DATE: April 13, 2005

REVISED: _____

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

I. Summary:

Senate Bill 2044 mandates that any insurer issuing insurance policies in Florida covering motor vehicles or motorcycles include in the comprehensive coverage provisions of the policies coverage for the costs of towing and impoundment in connection with the recovery of stolen motor vehicles or motorcycles covered under such policies. The legislation further provides that the deductible provisions of such policies providing comprehensive coverage shall not apply to coverage for the costs of towing and impoundment in connection with the recovery of the vehicles or cycles under such policy. The Office of Insurance Regulation must enforce the provisions of this section.

Under the Florida Motor Vehicle No-Fault law, every owner of a four-wheeled motor vehicle registered in Florida is required to maintain \$10,000 of no-fault personal injury protection (PIP) insurance¹ and \$10,000 in property damage (PD) insurance. An insured may elect to purchase “comprehensive coverage” which covers theft of the vehicle, and other optional benefits associated with such coverage. According to the Office of Insurance Regulation (OIR), optional comprehensive coverage offered by most insurers pays the towing and storage related fees for the recovery of a stolen vehicle, although currently such fees may be applied against a policy deductible.

Motorcycle owners are *not* subject to the “no-fault” insurance requirements noted above for motor vehicles and thus do not have to purchase PIP, PD, or any optional coverage, including comprehensive coverage. However, such owners may purchase these coverages.² Motorcycle

¹ Sections 627.730-627.7405, F.S.

² Motorcycle owners do have to obtain \$10,000 in medical benefits coverage if they are over 21 years of age and choose not to wear protective headgear while operating a motorcycle (s. 316.211, F.S.).

owners are subject to the Financial Responsibility law³ under chapter 324, F.S., which requires owners or operators of motorcycles to have liability insurance in the amounts of \$10,000/\$20,000/\$10,000 (per person/per occurrence/property damage), but proof of financial responsibility does *not* have to be presented until *after* a person is involved in an accident requiring an accident report or until the person is convicted of certain traffic offenses.

State law authorizes either a county or a municipality to set maximum towing and storage rates to be used by local wrecker services. An informal telephone poll of several wrecker services in the state revealed that towing fees range from \$50-100 and storage charges range from \$5-15 per day, as authorized by local ordinances.

This bill creates the following section of the Florida Statutes: 627.7289.

II. Present Situation:

Motor Vehicle and Motorcycle Insurance

The Legislature enacted Florida's "no-fault" insurance provisions in 1971.⁴ Under the Florida Motor Vehicle No-Fault law, every owner of a four-wheeled motor vehicle registered in Florida is required to maintain \$10,000 of no-fault personal injury protection (PIP) insurance⁵ and \$10,000 in property damage (PD) insurance.

Subject to co-payments and other restrictions, PIP insurance provides compensation for bodily injuries to the insured driver and passengers *regardless of who is at fault in an accident*. This coverage also provides the policyholder with immunity from liability for economic damages up to the policy limits and for non-economic damages (pain and suffering) for most injuries.⁶ Persons required to have PIP must also obtain property damage liability coverage. Property damage liability insurance must provide a minimum per-crash coverage of \$10,000 for property damage, or \$30,000 for combined property damage and bodily injury liability. Property damage to a vehicle is not covered under the no-fault law; that is, the person who negligently causes the property damage is liable, which is covered by PD liability.

Many drivers may buy additional coverages, such as bodily injury liability, collision, comprehensive, uninsured motorist, medical payments, and rental reimbursement. Florida law prohibits an insurance agent or company from requiring owners to buy any of these additional optional coverages, even though some coverages may offer more protection. Comprehensive coverage pays for losses from incidents other than collision,⁷ such as theft, fire, windstorm,

³ Section 324.021, F.S. Motor vehicle owners/operators are subject to Florida's Financial Responsibility provisions (s. 627.734, F.S.).

⁴ Ch. 71-252, L.O.F. The law became effective January 1, 1972.

⁵ Sections 627.730-627.7405, F.S.

⁶ However, the immunity does not extend to injuries consisting of: (1) significant and permanent loss of an important bodily function; (2) permanent injury within a reasonable degree of medical probability (other than scarring or disfigurement); (3) significant and permanent scarring or disfigurement; or (4) death. This is known as the "verbal threshold." In summary, a plaintiff must suffer a permanent injury in order to seek pain and suffering damages against a motorist with PIP coverage.

⁷ Collision coverage pays for repair or replacement of a motor vehicle if it collides with another vehicle or crashes into an object, regardless of who causes the accident. It does not cover injuries to people or damage to property other than the owners' covered vehicle.

vandalism, or flood. The law does not require a comprehensive policy to pay for towing or impoundment fees associated with a covered vehicle that is stolen and later recovered.

According to OIR, most insurers in the state under a motor vehicle insurance policy providing comprehensive coverage do pay towing and storage related fees for the recovery of a stolen vehicle, although such fees may be applied against a policy deductible. The two largest automobile insurance companies indicated to committee staff that they include towing and storage fees for the recovery of stolen vehicles under their comprehensive coverage. According to a representative with State Farm Mutual Automobile Insurance Company, the comprehensive coverage includes towing and storage fees as “damages associated with a covered loss” in their policy. There are no monetary limits for towing or storage fees in connection with a stolen vehicle. However, storage fees can be significant for a recovered vehicle since it is not unusual for vehicles to be impounded for more than thirty days, according to this representative.

Motorcycle owners are *not* subject to the “no-fault” insurance requirements noted above for motor vehicles and thus do not have to purchase PIP, PD, or any optional coverage, including comprehensive coverage. However, such owners may purchase these coverages.⁸ Motorcycle owners are subject to the Financial Responsibility law⁹ under chapter 324, F.S., which requires owners or operators of motorcycles to have liability insurance in the amounts of \$10,000/\$20,000/\$10,000 (per person/per occurrence/property damage), but proof of financial responsibility does *not* have to be presented until *after* a person is involved in an accident requiring an accident report or until the person is convicted of certain traffic offenses.

Deductibles

A deductible provision in an insurance policy specifies the amount of money an insured must pay per insurance claim. After an accident, the policyholder pays the deductible and the insurer pays the remainder of the approved claim. Usually, the higher a policy’s deductible, the lower the insurance premium. The law does not require that any specific deductible be offered for comprehensive or collision coverages, but insurers typically offer \$250 and \$500 deductibles for such coverages, or even higher amounts.

Under s. 627.7288, F.S., a motor vehicle policy in Florida providing comprehensive coverage or combined additional coverage may not charge the cost to replace the windshield against the applicable deductible associated with the policy.

Theft of Motor Vehicles in Florida

The Florida Department of Law Enforcement (FDLE), through the Uniform Crime Report (UCR) Program, compiles crime statistics reported by local law enforcement agencies throughout the state. According to information provided by FDLE, for the period January-June, 2003, there were 38,972 vehicles stolen in the state; this includes automobiles, commercial and passenger trucks, buses, and motorcycles. During that same period, approximately 31,193 vehicles were recovered, some in the same area from which they were stolen and some vehicles are recovered elsewhere in Florida or in another state. Of the recovered vehicles, some may have

⁸ Motorcycle owners do have to obtain \$10,000 in medical benefits coverage if they are over 21 years of age and chose not to wear protective headgear while operating a motorcycle (s. 316.211, F.S.).

⁹ Section 324.021, F.S. Motor vehicle owners/operators are subject to Florida’s Financial Responsibility provisions (s. 627.734, F.S.).

been reported stolen before the January-June 2003 reporting period, so there is not an exact correlation between the number of vehicles stolen and subsequently recovered.

For January-June 2004, FDLE reports 36,102 autos, commercial and passenger trucks, buses, and motorcycles were stolen. In the same reporting period, law enforcement officials recovered an estimated 32,305 vehicles.

Towing and Wrecker Fees

Chapter 323, F.S., generally governs the operations of wreckers and tow trucks as the operations relate to towing, storing, or impounding a vehicle at the request of a law enforcement officer. Generally, each city and county commission sets the towing and storage rates for vehicles within their jurisdictions. This means the costs for towing and storing a vehicle are different throughout the state, depending upon the rates approved by the local city or county commission.

Section 166.043(1)(b), F.S., authorizes a municipality to set towing and storage rates to be used by local wrecker services. The law also provides that that each county must establish the maximum rates to be charged for towing, removal, and storage of a vehicle from private property or to remove a vehicle at the request of law enforcement, however, the same law authorizes a municipality to set the maximum fee for the same towing services within the city's boundaries, at the discretion of the local city commission.¹⁰ In the event a city sets towing rates, the county's rates do not apply within the city limits. Similarly, s. 125.0103, F.S., authorizes a county to set the maximum fee for towing or storing a motor vehicle, but also allows a municipality within the county to establish the fees applicable within the city limits. An informal telephone poll of several wrecker services in the state revealed that towing fees range from \$50-100 and storage charges range from \$5-15 per day, as authorized by local ordinances.

The Florida Highway Patrol (FHP) of DHSMV is authorized by s. 321.051, F.S., to establish a wrecker operator system for use within areas under the jurisdiction of the Highway Patrol, i.e., state roads, highways, and interstate highways. The law directs FHP to use its wrecker operator system for removal and storage of abandoned vehicles or vehicles involved in crashes, in the event the owner or operator is incapacitated or unavailable or leaves the procurement of wrecker service to the officer at the scene. The law authorizes the FHP to "establish maximum rates for the towing and storage of vehicles" requested by FHP to be towed, however, the authority of FHP to set towing rates is granted only if the city or county in which the wrecker service is located has not already set towing rates for that city or county. Staff of FHP reports its wrecker operator system relies on the towing rates set within each local jurisdiction.

Under s. 713.78, F.S., a wrecker is authorized to claim a lien for towing and storage services if costs for such services remain unpaid despite attempts to contact the vehicle owner. A wrecker service must notify the vehicle owner, the owner's insurer, and any other lien holders, after verifying the owner's name and address through a local law enforcement agency or Department of Highway Safety and Motor Vehicles. If an owner does not retrieve an impounded automobile and pay associated fees after receiving the required notices by certified mail and if no lien holder or insurer exists, a wrecker service may sell or take possession of the vehicle as provided by law.

¹⁰ Section 166.043(1)(c), F.S.

III. Effect of Proposed Changes:

Section 1. Creates s. 627.7289, F.S., relating to comprehensive coverage for motor vehicle and motor cycle insurance policies. The bill mandates that any insurer issuing insurance policies in Florida covering motor vehicles or motorcycles include in the comprehensive coverage, provisions of the policies coverage for the costs of towing and impoundment in connection with the recovery of stolen motor vehicles or motorcycles covered under such policies. The legislation further provides that the deductible provisions of such policies providing comprehensive coverage or combined additional coverage shall not apply to coverage for the costs of towing and impoundment in connection with the recovery of the vehicles or cycles under such policy. The OIR of the Financial Services Commission shall enforce the provisions of this section.

Section 2. Specifies that the act takes effect July 1, 2005.

The effect of this legislation is that towing and storage fees associated with the recovery of stolen vehicles or motorcycles under a comprehensive policy shall not be charged by the insurer to the insured and that the insured does not have to pay a deductible amount under such policy.

According to OIR, comprehensive coverages offered by most insurers under a motor vehicle insurance policy pays the towing and storage related fees for the recovery of a stolen vehicle, although currently such fees may be applied against a policy deductible. The OIR further indicates that the cost to any single insurer for such fees may become a factor for the insurer in its rate filings, although the amount to the insurer for paying such fees and costs is not likely to be material.

However, since the bill does impose a mandate for insurers who offer comprehensive motor vehicle and motorcycle policies, an insurer may increase rates associated with such policies, depending upon the amount of towing and impound fees the insurer pays in aggregate annually. Any request to increase policy rates requires approval by OIR before an insurer may raise rates.

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:

A motor vehicle insured who purchases the optional comprehensive coverage for an automobile or motorcycle will not have to pay for towing or impound costs associated with recovery of the stolen vehicle or cycle and will not have to pay a deductible. If the vehicle or cycle is damaged, however, the deductible will be applied to the overall damage expense, excluding the towing/impound fee, which the insured would have to pay.

The OIR further indicates that the cost to any single insurer for such fees may become a factor for the insurer in its rate filings, although the amount to the insurer for paying such fees and costs is not likely to be material.

C. Government Sector Impact:

Representatives with the OIR state that there will be no extra costs for the agency under the provisions of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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