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MOTOR VEHICLE INSURANCE REFORM: REVISITING THE UNINSURED DRIVER

ROBERT A. HENDERSON* AND PATRICK F. MARONEY**

The Florida Legislature in 1988 addressed problems regarding uninsured motorists by passing the Motor Vehicle Insurance Reform Act of 1988. In this Article, the authors analyze the problems and the Legislature's latest attempt to solve them. The authors detail the specific mechanisms designed to eliminate financially irresponsible motorists in Florida, and explain the various policy considerations behind the enactments.

*"How much coverage should we require in Florida? How do we enforce it, and at what cost. And is that really going to solve the problem? Because if it doesn't, we're just going to be back here again in the future, wondering what more we have to do."*¹

UNDER the present law, Florida motorists are required to maintain personal injury protection (PIP) insurance.² Yet many drivers ignore the law and risk having their driver's licenses and vehicle registrations suspended. Also, there is no requirement that motorists obtain coverage for bodily injury liability or property damage liability. If a driver sustains damages in a motor vehicle accident for which the driver is not at fault, the injured party most likely will be left without a source of recovery. To compound the problem, the cost of first-party coverage, especially uninsured motorist (UM) insurance, has become unaffordable for many motorists.

In response to these concerns, the Florida Legislature enacted the Motor Vehicle Insurance Reform Act of 1988.³ The Act provides for

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1. Whited, *Insurance Solutions at a Premium*, Miami Herald, Feb. 23, 1988, at F-1, col. 1 (quoting Rep. Art Simon, Dem., Miami, Chairman, Fla. H.R. Comm. on Ins.)

2. FLA. STAT. § 320.02(5)(a) (Supp. 1988).

3. Ch. 88-370, 1988 Fla. Laws 1348.

enhanced enforcement of Florida's compulsory motor vehicle insurance laws, mandates that drivers carry additional liability coverage for property damage, and addresses the rising cost of uninsured motorist insurance.⁴ This Article examines the compulsory motor vehicle insurance laws, reviews the legislative process preceding the passage of the Motor Vehicle Insurance Reform Act, and discusses the enacted statutory provisions.

I. FLORIDA'S MOTOR VEHICLE INSURANCE LAWS

The Florida Motor Vehicle No-Fault Law requires the owner or registrant of a specified motor vehicle to maintain PIP security throughout the registration or licensing period.⁵ Personal injury protection may be provided by an insurance policy, a satisfactory bond of a surety company posted with the Department of Highway Safety and Motor Vehicles (DHSMV), cash or securities in a certain amount deposited with the DHSMV, or a self-insurance policy issued by the DHSMV.⁶ Benefits from PIP are payable without regard to fault. They reimburse eighty percent of certain medical expenses, sixty percent of any loss of gross income and loss of earning capacity, and funeral, burial, or cremation expenses in an amount up to \$1750 per person.⁷ The maximum benefits payable are capped at \$10,000 per person per accident.⁸

4. *Id.*

5. FLA. STAT. §§ 627.730-.7405 (1987). The legislative objectives of the No-Fault Law were enumerated by the Supreme Court of Florida in *Lasky v. State Farm Ins. Co.*, 296 So. 2d 9 (Fla. 1974). In *Lasky*, the court wrote that the objectives included a lessening of court congestion, a reduction in concomitant court calendar delays, a reduction of automobile insurance premiums, and an assurance that accident victims would receive damages for medical expenses and lost wages. The No-Fault Law was expected to prevent the overpayment of major claims and to replace a system that was slow. See Maroney, *No-Fault Automobile Insurance: A Success or Failure After Eleven Years?*, 51 INS. COUNS. J. 75 (1984).

6. FLA. STAT. §§ 324.031(4), 627.733(3) (1987).

7. *Id.* § 627.736(1). In 1977, the Legislature reduced the medical expense reimbursement from 100% to 80%. *Id.* § 627.736(1)(a). That same year, the reimbursement for loss of income and loss of earning capacity also was reduced from 85% to 60%. *Id.* § 627.736(1)(b). In 1982, the amount allocated for funeral, burial, or cremation expenses was increased from \$1000 to \$1750. *Id.* § 627.736(1)(c) (Supp. 1982). The amount allocated for death benefits was addressed during the 1988 legislative session with House Bill 1071 by Representative Hamilton Upchurch, Dem., St. Augustine; and Committee Substitute for Senate Bill 875 by the Senate Committee on Commerce and Senator John Grant, Repub., Tampa. FLA. H.R. JOUR. 101 (Reg. Sess. Apr. 8, 1988); FLA. S. JOUR. 212 (Reg. Sess. Apr. 27, 1988). House Bill 1071 sought to increase the death benefit from \$1750 to \$10,000, while the committee substitute for the Senate bill raised the death benefit to \$5000. Neither bill was passed by the Legislature.

8. FLA. STAT. § 627.736(1) (1987). The No-Fault Law which became effective on January 1, 1972, provided for PIP benefits of \$5000 per person per accident. *Id.* § 627.736(1) (1971). In 1978, the per-person, No-Fault Law benefit was increased from \$5000 to \$10,000. *Id.* § 627.736(1) (Supp. 1978).

Motorists who comply with the No-Fault Law enjoy limited immunity from tort liability for "damages because of bodily injury, sickness, or disease arising out of the ownership, operation, maintenance, or use" of a motor vehicle in Florida.⁹ Limited immunity is provided to the extent that a plaintiff's economic loss is compensated by the statutory coverage.¹⁰ Recovery for noneconomic damages including pain and suffering, mental anguish and inconvenience may be sought when the injury consists 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.¹¹

There are various methods of enforcing the No-Fault Law. These include: (1) requiring proof (at the time of vehicle registration) that PIP benefits have been purchased;¹² (2) reviewing of accident reports by DHSMV;¹³ (3) requiring insurers to report specified policy cancellations or terminations;¹⁴ and (4) requiring owners to have proof of PIP while operating a motor vehicle.¹⁵ However, compliance with the No-

9. *Id.* § 627.737(1) (1987).

10. *Id.* The statutory exemption from tort liability for such damages is granted to the owner, registrant, operator, or occupant of a motor vehicle for which PIP security has been provided, as well as every person or organization legally responsible for the acts or omissions in question.

11. *Id.* § 627.737(2). In the original law, a suit for pain and suffering could be brought if the insured's medical expenses exceeded \$1000, or if the injury or disease consisted in whole or in part of permanent disfigurement, a fracture to a weight bearing bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of a bodily function, or death. *Id.* § 627.737(2) (1971). In *Lasky v. State Farm Ins. Co.*, 296 So. 2d 9 (Fla. 1974), the Supreme Court of Florida held that the threshold provision, which permitted recovery for pain and suffering if the injury involved a fracture to a weight bearing bone, constituted a denial of equal protection. The court severed the invalid provision from the No-Fault Law. In 1976 the Legislature changed the threshold to allow suits for pain and suffering, mental anguish and inconvenience when the injury or disease consisted in whole or in part of (a) the loss of a body member; (b) permanent loss of a bodily function; (c) permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement; (d) significant permanent scarring or disfigurement; (e) a serious nonpermanent injury which has a material degree of bearing on the injured person's ability to resume normal activity and lifestyle during all or substantially all of the 90-day period after the occurrence of the injury, and the effects of which are medically or scientifically demonstrable at the end of such period; or (f) death. FLA. STAT. § 627.737(2) (Supp. 1976). The Legislature amended the tort threshold again in 1978, by allowing suits for pain and suffering if the injury or disease consisted in whole or in part of (a) significant and permanent loss of an important bodily function; (b) permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement; (c) significant and permanent scarring or disfigurement; or (d) death. *Id.* § 627.737(2) (Supp. 1978).

12. *Id.* § 320.02(5)(a) (1987).

13. *Id.* § 324.051.

14. *Id.* § 627.733(5).

15. *Id.* § 316.646(1).

Fault Law has become a serious problem. Although some motorists cannot afford PIP security, others, who are financially able, choose not to obtain it. The Florida Department of Insurance estimated in 1985 that thirty-one percent of the private passenger motor vehicles operated statewide were totally uninsured.¹⁶ In Dade County, the number of uninsured automobiles was estimated to be an incredible sixty-three percent.¹⁷

Personal injury insurance does not cover damage to one's property.¹⁸ Thus, unless a driver obtains collision insurance¹⁹ in addition to PIP, the driver may not be reimbursed for property damage to the driver's automobile where the driver is at fault.

The Financial Responsibility Law requires proof of ability to pay monetary damages for bodily injury and property damage liability arising out of motor vehicle accidents. However, the owner and operator of a motor vehicle need not demonstrate financial responsibility until after an accident has occurred.²⁰ At that time, financial responsi-

16. Memorandum from Ken Ritzenthaler, Actuary, Fla. Dep't of Ins., to Bill Gunter, Insurance Commissioner (Jan. 6, 1988) (on file with H.R. Comm. on Ins.).

17. *Id.*

18. FLA. STAT. § 627.736 (1987). The original No-Fault Law provided for either basic or full property damage coverage. Basic coverage was limited to insurance against damage caused by the at-fault driver. Full property damage provided insurance without regard to fault. The insureds were given the option of purchasing either basic or full property damage coverage. The supreme court in *Kluger v. White*, 281 So. 2d 1 (Fla. 1973), found this aspect of the law to be unconstitutional. In *Kluger*, the court addressed a situation where the plaintiff had sustained damage to her vehicle in an amount below the \$550 threshold and had purchased neither basic nor full coverage. Thus, she was left without a remedy even though she was not at fault. The court held that the Legislature is without power to abolish the right of access to the courts for redress for a particular injury without providing a reasonable alternative, unless it can be shown that there was an overpowering public necessity for the abolition of the right, and there is no alternative method of meeting the public necessity. *Id.* at 4.

19. Collision insurance covers damage to the insured's motor vehicle caused by a collision with another vehicle, regardless of who was at fault. See D. BICKELHAUPT, GENERAL INSURANCE 628 (11th ed. 1983); FLA. STAT. § 324.011 (1987).

20. FLA. STAT. § 324.011 (1987). Thirty days after receipt of an accident report by the investigating officer, and after there has been provided due notice and opportunity to be heard, DHSMV is authorized to suspend the license of each operator and all of the registrations of the owner of the vehicles operated by the operator, whether or not involved in the accident, unless the operator or owner qualifies for one of the seven exemptions from the provisions of section 324.051(2)(a). The seven exemptions are as follows:

- (1) no injury was caused to any person or property other than the operator or owner;
- (2) the motor vehicle was legally parked at the time of the accident;
- (3) the motor vehicle was owned by the United States Government, the state, or any of its political subdivisions;
- (4) the operator or owner has been finally adjudicated not to be liable for damages;
- (5) the operator or owner has secured a duly acknowledged written agreement providing for release from liability by all parties injured as a result of the accident and has complied with one of the provisions for proving financial responsibility;

bility may be proved by furnishing evidence of an active motor vehicle liability policy.²¹ The minimum amounts of liability coverage required per accident by the Financial Responsibility Law are \$10,000 in the event of bodily injury to, or death of, one person, \$20,000 in the event of bodily injury to, or death of, two or more persons, and \$5000 in the event of injury to, or destruction of, property of others.²²

If the operator of a motor vehicle which is involved in an accident does not have the minimum liability coverage required by the Financial Responsibility Law, the operator's license to drive and vehicle registrations will be suspended, unless the operator qualifies for an exemption.²³ However, because of the "after-the-accident" requirement, innocent drivers may be uncompensated for property damage caused by motorists who were not required to carry or did not possess liability insurance at the time of the accident, and who are later found to be judgment proof because of the economic status of the operator.

All motor vehicle liability insurance policies issued in Florida must include uninsured motorist coverage at limits equal to those for bodily injury liability unless the coverage is rejected or lower limits are elected.²⁴ Uninsured motorist insurance will reimburse the insured for economic damages resulting from bodily injury, sickness, or disease, including death, stemming from an accident caused by an uninsured motor vehicle.²⁵ Uninsured motor vehicles include those not covered by liability insurance as well as those having liability insurance of limits less than the damages sustained by the injured claimant.²⁶ To re-

(6) the operator or owner has deposited with DHSMV security which is sufficient to compensate the claims for all injuries arising out of the accident and has complied with one of the provisions for proving financial responsibility;

(7) one year has elapsed since the owner or operator was suspended, the owner or operator has complied with one of the provisions for financial responsibility, and no bill of complaint, of which DHSMV has notice, has been filed in court.

Id.

21. *Id.* § 324.031(1). While chapter 324 deals with liability insurance, section 627.734(1) provides that the provisions of the Financial Responsibility Law pertaining to the method of giving and maintaining proof of financial responsibility also apply to filing and maintaining proof of PIP security.

22. *Id.* § 324.021(7). *See id.* § 627.7415 (regarding bodily liability and property damage liability insurance requirements for commercial motor vehicles); *id.* § 627.742 (proof of ability to respond in damages for liability on account of accidents arising out of the use of nonpublic-sector buses).

23. *Id.* § 324.051. *See supra* note 20 (statutory exemptions from ch. 324).

24. *Id.* § 627.727(1).

25. *Id.*

26. *Id.* § 627.727(3).

cover noneconomic damages, the UM insured must meet the requirements found in the No-Fault Law.²⁷

Uninsured motorist benefits are over and above the benefits available to an insured under any motor vehicle liability insurance coverage.²⁸ Thus, UM coverage is said to be "excess" over any amount of liability coverage the claimant may be entitled to receive. This excess feature is one of the two characteristics of UM coverage which make this type of insurance costly, and it has been estimated to increase the cost of a basic policy by thirty percent.²⁹

The second expensive characteristic of UM insurance pertains to "stacking."³⁰ "Stacked" coverage is equal to the limit of purchased UM coverage times the number of insured vehicles.³¹ "Non-stacked" UM coverage is equal to the amount of coverage purchased for the specific vehicle.³² "Stacked" UM coverage is considerably more expensive than "non-stacked" coverage, and has been estimated to increase the cost of a basic UM policy by twenty percent.³³ Thus, stacked coverage is costly because the premium is calculated per vehicle, not per driver.

One of the major causes of the high cost of UM coverage is the number of uninsured motorists.³⁴ An increase in the number of uninsured drivers has fueled the increase in the cost of UM premiums sig-

27. *Id.* § 627.727(7).

28. *Id.* § 627.727(1). The amount of UM benefits will not be reduced by a setoff against any coverage, including liability insurance.

29. In 1984, section 627.727 was amended to provide for the "excess" feature of UM coverage regarding benefits available to the insured from the liability insurer of the at-fault party. FLA. STAT. § 627.727(1) (Supp. 1984). Shortly thereafter, insurers filed their revised UM rates with the Department of Insurance. The average rate filing reflected a 30% increase for the basic coverage of \$10,000/\$20,000, which was attributed to the "excess" feature. Telephone conversation with Ken Ritzenthaler, Actuary, Fla. Dep't of Ins. (Sept. 20, 1988) (notes on file with author).

30. In *Tucker v. Government Employees Ins. Co.*, 288 So. 2d 238 (Fla. 1973), the supreme court held that an insured with two automobiles who was injured while operating one of the vehicles was entitled to UM benefits equal to the number of vehicles insured times the policy limit. Thus, an insured who carried limits of \$10,000 per person, \$20,000 per occurrence of UM coverage, who had paid separate premiums for each vehicle, and who owned three vehicles, would have available UM limits in the amount of \$30,000 per person, \$60,000 per occurrence. In 1976, the Legislature prohibited the stacking of uninsured motorist coverage. FLA. STAT. § 627.4132 (Supp. 1976). However, in 1980, the statutory prohibition against stacking was removed. *Id.* § 627.4132 (Supp. 1980).

31. See *Tucker v. Gov't Employees Ins. Co.*, 228 So. 2d 238 (Fla. 1973).

32. FLA. STAT. § 627.727(9) (1987).

33. The 1987 revision to section 627.727 required any insurer who offers nonstacked UM coverage to reflect a reduction in the UM premium of at least 20% for policies with such limitations. *Id.*

34. Telephone conversation with Ken Ritzenthaler, *supra* note 29. Other components affecting the price of UM coverage include health and medical costs.

nificantly since 1980.³⁵ Obviously, the more uninsured motorists there are, the more likely it will be that the financially responsible motorists will pay for the total cost of the accident. As a result, insured motorists are legitimately questioning why they should continue to subsidize those who drive without insurance.³⁶

II. LEGISLATIVE HISTORY OF THE 1988 ACT

The House began to study the topic of motor vehicle liability insurance on April 6, 1988, at the meeting of the Subcommittee on Property and Casualty Insurance.³⁷ During that meeting, at the request of Subcommittee Chairman Young,³⁸ public testimony was taken from all those interested in the issue.³⁹ Among those testifying was Insurance Commissioner Bill Gunter, who acknowledged that the PIP feature of the No-Fault Law was working well.⁴⁰ However, the Commissioner informed subcommittee members that his office had drafted tough and effective legislation to fill the "gap" in the present system.⁴¹ The gap referred to compensation for property damage caused by uninsured motorists. The Commissioner's position was set forth in House Bill 1216, filed by Representative Ronald A. Silver,⁴² which included provisions that mandated property damage liability insurance, and also enhanced the enforcement of the No-Fault Law.⁴³ The next meeting of the subcommittee was held on April 11.⁴⁴ At that time, subcommittee members reviewed Proposed Committee Bill 7

35. Memorandum to Gerald Wester, Deputy Insurance Commissioner and others, from Ken Ritzenthaler, Actuary, Fla. Dep't of Ins. (Feb. 25, 1988) (on file with H.R. Comm. on Ins.).

36. One proposed cure for the rising UM rates was to mandate bodily injury liability insurance. Conceptually, if all drivers maintained bodily injury liability insurance the cost of UM should be reduced.

37. Fla. H.R. Comm. on Ins., Subcomm. on Property and Casualty Insurance, tape recording of proceedings (Apr. 6, 1988) (on file with committee).

38. Rep. Walter C. Young, Dem., Pembroke Pines.

39. See *supra* note 37.

40. At the subcommittee meeting, Commissioner Gunter said generally that the PIP portion of the No-Fault Law was working well as it pays benefits to injured parties of around \$.70 on the insurance premium dollar, as opposed to only \$.43 on the dollar paid by insurance coverages prior to the enactment of No-Fault. The Commissioner also cited a 1985 study by the U.S. Department of Transportation which concluded that No-Fault compensates accident victims more swiftly and generally at a higher dollar level. See *supra* note 37.

41. Commissioner Gunter informed the subcommittee members that his proposal included the following three elements: (1) mandating property damage liability coverage in the amount of \$10,000; (2) making available nonstackable, nonexcess UM coverage; and (3) prohibiting one month insurance policies. *Id.*

42. Dem., North Miami Beach. See FLA. H.R. JOUR. 122 (Reg. Sess. Apr. 12, 1988).

43. See Fla. HB 1216 (1988).

44. Fla. H.R. Comm. on Ins., Subcomm. on Property & Casualty Insurance (notice of committee meeting of Apr. 11, 1988) (on file with committee).

which had been prepared at the direction of Chairman Art Simon.⁴⁵ Proposed Committee Bill 7 embodied many of the enforcement recommendations of House Bill 1216 but differed in that it proposed mandatory bodily injury as well as property damage liability insurance.⁴⁶ There was concern in the subcommittee that simply mandating property damage liability coverage was insufficient. Both bodily injury and property damage liability insurance should be required of all motorists. The subcommittee met again on April 19 to review and amend the Proposed Committee Bill.⁴⁷ After an extensive amendatory process, Proposed Committee Bill 7 was reported favorably by the subcommittee on April 20.⁴⁸ On April 28, the full Committee on Insurance, under the direction of Chairman Simon, combined Proposed Committee Bill 7 with House Bill 1216; House Bill 1188 by Representative Ray Liberti;⁴⁹ and House Bills 552, 882, and 883, which were filed by Representative Carol G. Hanson.⁵⁰ The result was the favorable reporting of the consolidated package as Committee Substitute for House Bill 1216.⁵¹ In combining the various House bills into one product, most of the proposed ideas of the committee members were included in the collective proposal, and Committee Substitute for House Bill 1216 became the operative vehicle for motor vehicle liability insurance reform. However, the bill as amended by the Committee on Insurance closely resembled Proposed Committee Bill 7 since it mandated both bodily injury and property damage liability insurance.⁵² On May 10, Committee Substitute for House Bill 1216 was further amended by the Committee on Appropriations, from which it traveled to the House floor.⁵³ After an explanation of the bill on the

45. Dem., Miami. See Fla. H.R. Comm. on Ins., Subcomm. on Property & Casualty Insurance (committee agenda of Apr. 11, 1988) (on file with committee).

46. See Fla. H.R. Comm. on Ins., PCB 7 (1988).

47. When Proposed Committee Bill 7 was heard in Subcommittee on April 19, 1988, 11 amendments were adopted. Fla. H.R. Comm. on Ins., Subcomm. on Property & Casualty Insurance (committee agenda of Apr. 19, 1988) (on file with committee).

48. When Proposed Committee Bill 7 was heard in the Property & Casualty Insurance Subcommittee on April 20, four amendments were adopted. Fla. H.R. Comm. on Ins., Subcomm. on Property & Casualty Insurance (preliminary committee report for meeting of Apr. 20, 1988) (on file with committee).

49. Dem., West Palm Beach.

50. Repub., Boca Raton. When Proposed Committee Bill 7 was heard in the Committee on Insurance on April 28, 18 amendments were adopted. Fla. H.R. Comm. on Ins. (preliminary committee report for meeting of Apr. 28, 1988) (amendments on file with committee).

51. Fla. H.R. Comm. on Ins. (preliminary committee report for meeting of Apr. 28, 1988) (on file with committee).

52. Compare Fla. H.R. Comm. on Ins., PCB 7 (1988) with Fla. CS for HB 1216 (1988).

53. When Committee Substitute for House Bill 1216 was heard by the Committee on Appropriations on May 10, five amendments were adopted. Fla. H.R. Comm. on Approp. (preliminary committee report of meeting of May 10, 1988) (on file with committee).

floor by Representative Simon, Committee Substitute for House Bill 1216 passed out of the House on May 26, by a vote of 110-6.⁵⁴ The bill immediately was certified to the Senate where it was referred to the Committees on Commerce, Transportation, and Appropriations.⁵⁵

Prior to the passage of the House Bill, the Senate Commerce Committee reported favorably the Committee Substitute for Senate Bill 1107 on May 5.⁵⁶ To create the Committee Substitute, the Senators consolidated⁵⁷ Senate Bill 1107 by Senator Kenneth C. Jenne,⁵⁸ Senate Bill 776 by Senator William G. Myers,⁵⁹ Senate Bill 798 by Senator Donnell C. Childers,⁶⁰ and Senate Bill 1180 by Senator Peter Weinstein.⁶¹ A major difference between the Committee Substitute for Senate Bill 1107 and the Committee Substitute for House Bill 1216 was that the Senate bill did not mandate bodily injury liability insurance, but only required vehicle owners to carry property damage liability insurance.⁶² The major reason cited for not mandating bodily injury liability insurance was cost. There was concern in the Senate Commerce Committee that requiring both bodily injury and property damage liability insurance would create a financial hardship for many Florida drivers. Thus, the Senate Bill was more similar to the originally filed House Bill 1216.⁶³ On May 10, Committee Substitute for Senate Bill 1107 was withdrawn from the Senate Transportation Committee.⁶⁴ On May 24, Committee Substitute for Senate Bills 1107, 776, 798, and 1180 was reported favorably by the Senate Appropriations Committee as a Committee Substitute for a Committee Substitute, and placed on the Senate calendar.⁶⁵ The differences between Committee Substitute for House Bill 1216 and the senate product were resolved in a meeting between Representative Simon, Representative John F. Cosgrove,⁶⁶ and Senator Mattox S. Hair.⁶⁷ At that meeting Representative Simon effectively argued the need for the legislation. In doing so, he was successful in working with Senator Hair on a

54. FLA. H.R. JOUR. 727 (Reg. Sess. May 26, 1988).

55. FLA. S. JOUR. 470 (Reg. Sess. May 30, 1988).

56. *Id.* at 229 (Reg. Sess. May 5, 1988).

57. *See id.*

58. Dem., Hollywood, 1978-1988.

59. Repub., Hobe Sound.

60. Dem., West Palm Beach.

61. Dem., Coral Springs.

62. *Compare* Fla. CS for SB 1107 (1988) with Fla. CS for CS for HB 1216 (1988).

63. *See* HB 1216 (1988).

64. FLA. S. JOUR. 253 (Reg. Sess. May 10, 1988).

65. *Id.* at 426 (Reg. Sess. May 24, 1988).

66. Dem., Miami.

67. Dem., Jacksonville, 1974-1988. *Compare* Fla. CS for HB 1216 (1988) and Fla. CS for CS for SB 1107 (1988) (on file with committee).

compromise between the two Houses. Although bodily injury liability would not be made mandatory, most of the enforcement provisions of the House bill would remain intact. As a result of that meeting, Committee Substitute for House Bills 1216, 1188, 552, 882, and 883 was withdrawn from the Senate Committees on Commerce, Transportation and Appropriations, and substituted for Committee Substitute for Committee Substitute for Senate Bill 1107.⁶⁸ On June 3, Committee Substitute for House Bills 1216, 1188, 552, 882, and 883 was passed by the Senate by a vote of 35 to 0.⁶⁹ The bill passed intact, the only modification being the deletion of the mandatory bodily injury requirement. The bill then traveled back to the House where it passed by a vote of 111 to 4.⁷⁰ On June 21, Committee Substitute for House Bills 1216, 1188, 552, 882, and 883 was presented to Governor Martinez, who signed it into law.⁷¹

III. SIGNIFICANT PROVISIONS OF THE 1988 ACT

The 1988 Act's major provisions were aimed at enhancing enforcement of existing laws, and creating additional incentives for the motorist to comply with the requirements of financial responsibility.

A. *Enhanced Enforcement of Compulsory Insurance Laws*

The Legislature believed that increasing the reinstatement fee for a driver whose license or registration has been suspended for lack of insurance would send a message to the uninsured motorists that driving without insurance would be costly.⁷² Effective July 1, 1988, the Act increased the reinstatement fee for drivers whose licenses or vehicle registrations have been suspended for driving without insurance. The \$15 penalty increased to \$150 for a first offense, \$250 for a second offense, and \$500 for each subsequent offense during the three-year period following the first reinstatement.⁷³

68. FLA. S. JOUR. 998 (Reg. Sess. June 3, 1988).

69. *Id.* at 1005.

70. FLA. H.R. JOUR. 1704 (Reg. Sess. June 7, 1988).

71. Ch. 88-370, 1988 Fla. Laws 1906 (codified at FLA. STAT. chs. 316, 320, 324, 626, 627, & 817 (Supp. 1988)).

72. The idea for increasing the reinstatement fee originated with Commissioner Gunter, who recommended that the fee should be increased from \$15 to \$150 for a first offense, and to \$250 for a second offense. *See* Remarks by Insurance Commissioner Bill Gunter for Auto Insurance Reform Press Conference, Miami, Florida (Jan. 27, 1988) (on file with committee). Representative Peter Deutsch, Dem., Tamarac, of the Subcommittee on Property and Casualty Insurance, suggested that there should be an even larger reinstatement fee in the amount of \$500 for a third offense within a three-year period. His suggestion was put forth in an amendment which was adopted by the subcommittee on April 19.

73. Ch. 88-370, § 18, 1988 Fla. Laws 1906, 1919-20 (codified at FLA. STAT. § 627.733(6) (Supp. 1988)).

The increased reinstatement fee also was implemented to help finance a more sophisticated data processing system to be used by DHSMV to monitor motor vehicle operators.⁷⁴ The DHSMV will collect all reinstatement fees and will deposit them in the Accident Reports Trust Fund.⁷⁵

To identify uninsured drivers, DHSMV needed more complete information from insurance companies as to policies in force.⁷⁶ As a result, effective April 1, 1989, insurers must report to DHSMV the renewal, cancellation, or nonrenewal of an insurance policy providing PIP benefits within forty five days from the effective date of the policy change.⁷⁷ In the case of new policies, insurers must notify DHSMV within thirty days of issuance.⁷⁸ Insurers also must notify DHSMV by May 1, 1989, of existing policies that provide PIP benefits.⁷⁹ Failure of an insurer to report this policy information will constitute a violation of the Florida Insurance Code.⁸⁰ Reports received by DHSMV will not constitute a public record and will be retained as confidential records to be used for enforcement and regulatory purposes only.⁸¹

Insurers issuing policies which provide PIP benefits must notify the named insured in writing that any cancellation or nonrenewal will be reported to DHSMV.⁸² The notice also must inform the named insured that failure to maintain PIP and property damage liability insurance required by law may result in the loss of registration and driving privileges.⁸³ Further, the notice must inform the named insured of the amount of the reinstatement fees.⁸⁴ No civil liability will attach to an insurer for failure to provide the notice.⁸⁵

74. With the funds from the increased reinstatement fees, DHSMV plans to make the driver license data base compatible with the vehicle registration data base. The merging of that information ultimately should allow an investigating officer to use a car radio to simultaneously check the validity of a person's driver's license and vehicle registration.

75. Ch. 88-370, § 18, 1988 Fla. Laws 1906, 1919-1920 (codified at FLA. STAT. § 627.733(6) (Supp. 1988)).

76. Prior to passage of the Act, DHSMV was receiving only notice of cancellations by insurers for nonpayment of premium and underwriting reasons. See *supra* note 14.

77. Ch. 88-370, § 21, 1988 Fla. Laws 1906, 1921-22 (codified at FLA. STAT. § 627.736(10)(a) (Supp. 1988)).

78. *Id.* The reporting of policies by insurers must be in a format compatible with the data processing capabilities of the Department of Highway Safety and Motor Vehicles. DHSMV is authorized to adopt any necessary rules to facilitate the reporting process. *Id.*

79. *Id.* (codified at FLA. STAT. § 627.736(10)(c) (Supp. 1988)).

80. *Id.* (codified at FLA. STAT. § 627.736(10)(a) (Supp. 1988)).

81. *Id.*

82. *Id.* (codified at FLA. STAT. § 627.736(10)(b) (Supp. 1988)).

83. *Id.*

84. *Id.* The increased reinstatement fee for a suspended license or registration became effective July 1, 1988.

85. *Id.*

There was a consensus among the members of the House Subcommittee on Property and Casualty Insurance that meaningful insurance reform must have a direct impact on those driving without the required amount of insurance. The subcommittee agreed that the seizure of license plates was the appropriate penalty to be imposed on those continuing to drive without insurance. Thus, effective October 1, 1989, a law enforcement officer must immediately seize the tag of a vehicle if the officer determines that a person operating a motor vehicle is both (1) the owner or registrant of the motor vehicle, and (2) is operating the vehicle with a driver's license or vehicle registration under suspension for at least thirty days because of a violation of the Financial Responsibility Law.⁸⁶ Additionally, any person operating a motor vehicle with a license plate not registered under the name of the owner of the vehicle, and whose driver's license or vehicle registration is currently under suspension because of a violation of the Financial Responsibility Law, may be found guilty of a misdemeanor of the first degree.⁸⁷

All of the information obtained by DHSMV regarding compliance with the Financial Responsibility Law will be made available to law enforcement agencies.⁸⁸ Law enforcement agencies may utilize this information in seizing the license plate of any motor vehicle with a registration which has been suspended as a result of failure to comply with the provisions of the Financial Responsibility Law.⁸⁹

One-third of the reinstatement fee collected by DHSMV will be distributed to the local entity or state agency employing the law enforcement officer who seized the license plate.⁹⁰ The funds distributed may be used for any authorized purpose.⁹¹

Although motorists are required to maintain PIP coverage continuously while operating a motor vehicle, drivers can obtain or renew vehicle registrations by acquiring coverage of minimal duration because of the availability of one-month policies in the marketplace.⁹² Furthermore, after registration is secured, insurance coverage of any duration may be cancelled. Commissioner Gunter recommended that

86. Ch. 88-370, § 10, 1988 Fla. Laws 1906, 1911 (codified at FLA. STAT. § 324.201(3) (Supp. 1988)).

87. *Id.* (codified at FLA. STAT. § 324.221(3) (Supp. 1988)).

88. *Id.* (codified at FLA. STAT. § 324.201(4) (Supp. 1988)).

89. *Id.*

90. *Id.* § 18, 1988 Fla. Laws at 1919-20 (codified at FLA. STAT. § 627.733(6) (Supp. 1988)).

91. *Id.*

92. The Commissioner opined that one-month policies were very hard for the Department of Insurance to monitor because they lapse so often. See Remarks by Insurance Commissioner, *supra* note 72.

one-month PIP policies be outlawed and that PIP insurance be sold for a term of at least six months.⁹³ However, members of the House Subcommittee on Property and Casualty Insurance were concerned that simply mandating six-month minimum PIP policies would not discourage motorists from cancelling the coverage after obtaining their registration.⁹⁴ An incentive not to cancel was needed.

Thus, effective October 1, 1989, no insurance policy providing PIP and property damage liability coverage may be issued for a term of less than six months,⁹⁵ nor may those coverages be cancelled by the insured during the first third of the policy term immediately following the date of issuance or renewal.⁹⁶ Exceptions have been provided for policies issued to achieve common expiration dates or to complete the unexpired portion of a previous policy period for a policyholder with more than one vehicle.⁹⁷ Exceptions also are provided for cancellation upon total destruction of a motor vehicle, and upon the transfer of ownership.⁹⁸ Finally, an insurer may cancel such a policy for reasons other than nonpayment of premium if it is not a renewal, and if it has been in effect for less than sixty days.⁹⁹

The statute also changes the reporting of motor vehicle accidents. Prior to the Act, law enforcement officers who investigated motor vehicle accidents were required to forward a written long-form accident report to DHSMV within twenty-four hours after completing the investigation.¹⁰⁰ Accidents which required the completion of a long-form report consisted of those resulting in death or personal injury and those involving the failure to stop at the scene of an accident or driving while under the influence.¹⁰¹ The forwarding of a report to DHSMV for an accident in which a wrecker was required to remove a vehicle was discretionary.¹⁰² For other types of motor vehicle accidents, the investigating officer was required to submit a short-form report to the parties involved.¹⁰³ As a means of developing a more complete data base, the Act requires law enforcement officers who

93. *Id.*

94. Fla. H.R. Comm. on Ins., Subcomm. on Property & Casualty Insurance, tape recording of proceedings (Apr. 6, 1988) (on file with committee).

95. Ch. 88-370, § 17, 1988 Fla. Laws 1906, 1919 (codified at FLA. STAT. § 627.7295 (Supp. 1988)).

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. FLA. STAT. § 316.066(3)(a) (1987).

101. *Id.* § 316.066(3)(a)(1), (2).

102. *Id.* § 316.066(3)(a)(3).

103. *Id.*

investigate motor vehicle accidents to forward *all* long-form and short-form accident reports to DHSMV within twenty-four hours after completing the investigation¹⁰⁴ and each party to an accident must furnish proof of insurance to the law enforcement officer within twenty-four hours after the incident.¹⁰⁵ Any party failing to do so will be guilty of an infraction for a nonmoving violation.¹⁰⁶

B. *Mandatory Property Damage Liability Insurance*

To afford more protection against uninsured motorists, the position of the House was to require bodily injury liability insurance as well as property damage liability insurance.¹⁰⁷ However, the Senate, agreeing with Commissioner Gunter, was concerned about the cost of such a proposal and preferred to mandate only property damage liability insurance.¹⁰⁸ Contrary to what one might have expected, representatives of the insurance industry were not in favor of mandating property damage liability insurance. Generally, the insurers believed that the imposition of compulsory liability insurance would result in "hard-to-insure" drivers seeking coverage from the Florida Joint Underwriting Association (FJUA). Should the FJUA incur an underwriting deficit from the influx of such drivers, statutory authority exists for assessments of member insurers. The member insurers must compensate FJUA for any operating deficit to keep the fund solvent.

The Senate position ultimately was adopted, so that effective October 1, 1989, every owner and operator of a motor vehicle subject to the No-Fault Law must maintain property damage liability insurance in the amount of \$10,000 per accident.¹⁰⁹ Property damage liability insurance may be maintained by an insurance policy, a bond posted with DHSMV, a certificate furnished by DHSMV evidencing a deposit of cash or other securities, or a certificate of self-insurance issued by DHSMV.¹¹⁰

104. Ch. 88-370, § 2, 1988 Fla. Laws 1906, 1907-08 (codified at FLA. STAT. § 316.066(3)(a)(3) (Supp. 1988)).

105. *Id.*

106. *Id.*

107. *See* Fla. CS for HB 1216 (1988).

108. *See id.*

109. Ch. 88-370, § 8, 1988 Fla. Laws 1906, 1910 (codified at FLA. STAT. § 324.022 (Supp. 1988)).

110. *Id.* The Act provides that the owner or operator of a motor vehicle subject to the requirements of the No-Fault Law must maintain the ability to respond for property damage liability on account of motor vehicle accidents in the amount of \$10,000 per accident by one of the methods established in section 324.031 (1987), Florida Statutes, or by having a policy of insurance that complies with chapter 88-370. *Id.* § 16, 1988 Fla. Laws at 1918-19 (codified at FLA. STAT. § 627.7275 (Supp. 1988)).

The purpose of property damage liability insurance is to compensate for the destruction of property by the at-fault driver. It reimburses the faultless motorist for the repair of the motor vehicle and compensates for the loss of its use.

In addition, effective October 1, 1989, an insurer will not have the duty to defend uncovered claims, irrespective of their joinder with covered claims.¹¹¹ This provision of the Act remedies the problem associated with the duty of a liability insurer to defend the insured from an entire claim, which may include allegations of bodily injury as well as property damage.¹¹²

C. *Uninsured Motorist Coverage*

Various proposals were developed to reduce the cost of UM coverage. The Commissioner advocated that UM coverage no longer should be excess over liability insurance and no longer should be stackable.¹¹³ Representative Simon disagreed and believed that the consumers should have a choice between what he referred to as basic UM coverage which was non-excess and non-stackable, and "enriched" UM coverage which was both excess and stackable.¹¹⁴ The House adopted Representative Simon's idea.¹¹⁵ However, the Senate agreed only to abolish excess UM coverage, leaving intact existing statutory language which authorizes insurers to sell a non-stackable policy.¹¹⁶ Agreeing that removing the "excess" feature from the UM law should have a positive effect on the cost of coverage, the House concurred with the Senate position.¹¹⁷ The result is that effective October 1, 1989, UM coverage no longer will be excess over liability insurance.¹¹⁸ The amount of available UM coverage will be reduced by the amount of benefits collected from the at-fault party's liability insurer.

D. *Surcharging and Nonrenewing of Policies*

An area of concern to the Commissioner and legislative members alike has been the surcharging by insurers of those involved in an acci-

111. *Id.*

112. *Id.*

113. See Remarks by Insurance Commissioner, *supra* note 72.

114. H.R. Comm. on Ins., tape recording of proceedings (May 28, 1988) (testimony of Rep. Simon regarding "enriched" UM coverage versus the basic variety) (on file with committee).

115. See *supra* note 54.

116. See *supra* note 69.

117. See *supra* note 70; ch. 88-370, § 15, 1988 Fla. Laws 1906, 1915-16 (codified at FLA. STAT. § 627.727 (Supp. 1988)).

118. Ch. 88-370, § 15, 1988 Fla. Laws 1906, 1915-16 (codified at FLA. STAT. § 627.727 (Supp. 1988)).

dent. Revision of this provision began with the Insurance Commissioner's proposal embodied in House Bill 1216.¹¹⁹ That language was replaced by the House Committee on Insurance¹²⁰ but later reinstated, for the most part, on the Senate floor.¹²¹ The result is that the Act expands the types of insurance to which the statutory restrictions on surcharging and nonrenewing apply. Those coverages now include PIP, medical payment, and collision, as well as liability insurance.¹²² Insurers are prohibited from surcharging or nonrenewing those types of insurance policies solely because the insured was involved in an accident unless certain circumstances are met. Where the insured has not been in an accident within the preceding three years, the insurer may not surcharge or nonrenew unless it has incurred a loss under the insured's policy, and the insurer's file contains information from which a good faith determination can be made that the insured was substantially at fault.¹²³ However, where there has been at least one accident within the preceding three years, the insurer may surcharge or nonrenew if either a loss has been incurred under the insured's policy or there exists information from which the insurer in good faith determines that the insured was substantially at fault in the accident.¹²⁴ The restrictions against nonrenewing do not apply if the insurer has paid three or more losses on the policy within the most recent three years.¹²⁵

The Act adds an eighth defense to an insurer's surcharge in addition to the existing seven statutory defenses. The defenses also are applicable to an insurer's intense refusal to renew a policy.¹²⁶ The eighth defense requires an insurer to reimburse the insured for a surcharge or to renew a policy if the insured was "[n]ot at fault, as evidenced by a written statement from the insured establishing facts demonstrating

119. See Fla. HB 1216, § 9 (1988).

120. See *supra* note 51. See also Fla. CS for HB 1216, § 18 (draft of Apr. 28, 1988).

121. See FLA. S. JOUR. 998, 1005 (Reg. Sess. June 3, 1988).

122. Ch. 88-370, § 13, 1988 Fla. Laws 1912-13 (codified at FLA. STAT. § 626.9541(1)(o)(3)(a) (Supp. 1988)).

123. *Id.* (codified at FLA. STAT. § 626.9541(1)(o)(3)(a)(I) (Supp. 1988)).

124. *Id.* (codified at FLA. STAT. § 626.9541(1)(o)(3)(a)(II) (Supp. 1988)).

125. *Id.* (codified at FLA. STAT. § 626.9541(1)(o)(3)(c) (Supp. 1988)).

126. The seven existing statutory defenses to a surcharge include where the operator was: (1) Lawfully parked; (2) Reimbursed by a person responsible for the accident or has a judgment against such person; (3) Struck in the rear by another vehicle headed in the same direction and was not convicted of a moving traffic violation in connection with the accident; (4) Hit by a "hit-and-run" driver, if the accident was reported to the proper authorities within twenty-four hours; (5) Not convicted of a moving traffic violation in connection with the accident, but the operator of the other automobile was so convicted; (6) Finally adjudicated not to be liable by a court of competent jurisdiction; and (7) In receipt of a traffic citation which was dismissed or nolle prossed. FLA. STAT. § 626.9541(1)(o)(3) (1987).

lack of fault, which are not rebutted by information in the insurer's file from which the insurer in good faith determines that the insured was substantially at fault."¹²⁷

E. Proof of Personal Injury Protection

Every person required to maintain PIP security on a motor vehicle must possess proof of such coverage while operating the motor vehicle.¹²⁸ Proof may consist of either a uniform proof-of-insurance card, a valid insurance policy, an insurance policy binder, a certificate of insurance, or such other proof as may be prescribed by DHSMV.¹²⁹ If the operator also is the motor vehicle owner, and is unable to display proof of PIP to a law enforcement officer, the operator is subject to a suspension of license and vehicle registration if proof is not furnished by the court appearance date.¹³⁰

However, there was concern that the law should be strengthened to close a loophole which allowed motorists to purchase PIP insurance prior to the court appearance and avoid suspension of their license and registration. Thus, effective October 1, 1989, if the owner of a motor vehicle is unable to establish proof of PIP security at the time the owner was stopped, the court will suspend the driver's license and vehicle registration.¹³¹

F. Payment of Personal Injury Protection Benefits

The Act makes clear that the provisions regarding payment of PIP insurance benefits apply to charges for treatment of injured parties.¹³² These benefits are overdue if not paid within thirty days after the insurer is furnished written notice of the amount of the covered loss.¹³³ All overdue payments bear simple interest at the rate of ten percent per annum.¹³⁴ Additionally, the Act provides that a PIP insurer may pay benefits directly to the treating person or institution if the insured receiving treatment, or the insured's guardian, has countersigned a

127. Ch. 88-370, § 13, 1988 Fla. Laws 1906, 1912-13 (codified at FLA. STAT. § 626.9541(1)(o)(3)(b)(VIII) (Supp. 1988)).

128. FLA. STAT. § 316.646(1) (1987).

129. *Id.*

130. *Id.* § 316.646(3).

131. Ch. 88-370, § 3, 1988 Fla. Laws 1906, 1908 (codified at FLA. STAT. § 316.646(3) (Supp. 1988)).

132. *Id.* § 19, 1988 Fla. Laws at 1920 (codified at FLA. STAT. § 627.736(4) (Supp. 1988)).

133. *Id.*

134. FLA. STAT. § 627.736(4)(c) (1987).

claim form approved by the Department of Insurance in lieu of having countersigned the invoice or bill.¹³⁵

G. Examination Regarding Personal Injury Protection Benefits

An insurer may require an individual who has filed a claim for PIP benefits to submit to a mental or physical examination.¹³⁶ Prior to the passage of the Act, the examination must have been conducted within the insured's city of residence, unless there was no qualified physician available in that city.¹³⁷ In that case the examination was to be conducted in the area of closest proximity to the residence of the insured.¹³⁸ The Act enlarges the area in which the PIP examination may be conducted. In doing so, the Act authorizes the examination to be conducted within the municipality of residence of the insured or within the municipality where the insured is receiving treatment.¹³⁹ Thus, a carrier may insist that the insured submit to an examination where the injured motorist is being treated. The cost of the examination is borne by the insurer.¹⁴⁰

H. Property Damage Liability Deductible

Motor vehicle liability insurance policies no longer are required to contain an optional deductible provision for property damage. Rather, insurers need only make available a property damage liability deductible in an amount not to exceed \$500.¹⁴¹ In the event of a loss covered by a property damage liability policy that contains a deductible, the insurer must pay to the third-party claimant the full amount of any settlement or judgment, up to the policy limits, as if no deductible existed.¹⁴² This codifies the current practice of requiring the insurer to tender the full amount of the judgment (or policy limit) regardless of the insured's obligation to pay a deductible.

I. Premium Finance Agreements

Premium finance agreements¹⁴³ may provide for the payment of a delinquency charge on an installment in default.¹⁴⁴ In order to encour-

135. Ch. 88-370, § 19, 1988 Fla. Laws 1906, 1920 (codified at FLA. STAT. § 627.736(5) (Supp. 1988)).

136. FLA. STAT. § 627.736(7)(a) (1987).

137. *Id.*

138. *Id.*

139. Ch. 88-370, § 20, 1988 Fla. Laws 1906, 1921 (codified at FLA. STAT. § 627.736(7)(a) (Supp. 1988)).

140. *Id.*

141. *Id.* § 9, 1988 Fla. Laws at 1911 (codified at FLA. STAT. § 324.151(1)(a) (Supp. 1988)).

142. *Id.*

143. A premium finance agreement is defined as a promissory note or other written agree-

age commercial insureds to avoid delinquent payment on a premium finance agreement, the amount of the delinquency charge has been revised from ten dollars to be the greater of ten dollars or five percent of the delinquent installment.¹⁴⁵ If the premium finance agreement is for primarily personal, family, or household purposes, the delinquency charge remains capped at ten dollars.¹⁴⁶

J. Attorney Advertising

The Act prohibits attorneys from advertising and soliciting business related to the representation of a person injured in a motor vehicle accident unless permitted by the rules governing the Florida Bar.¹⁴⁷ Attorney advertising as well as direct contact with prospective clients (solicitation) are specifically addressed in the rules regulating the Florida Bar.¹⁴⁸

K. Task Force Study

To further study the impact of motor vehicle insurance in Florida, a task force was created to (1) examine the affordability and availability of motor vehicle insurance for purposes of determining methods to lower rates; (2) examine and evaluate the cost impact of compulsory property damage liability insurance on the cost of collision coverage and the cost impact of compulsory bodily injury liability insurance on the cost of uninsured motorists coverage; and (3) examine and evaluate methods of effective enforcement of the financial responsibility laws.¹⁴⁹ The task force will be comprised of the Insurance Commissioner, the Executive Director of the DHSMV, the General Manager of the Florida Motor Vehicle Joint Underwriting Association, and four Florida residents, two to be appointed by the President of the Senate, and two to be appointed by the Speaker of the House.¹⁵⁰ The

ment by which an insured promises to pay to a premium finance company the amount advanced under an agreement to an insurer or insurance agent in payment of premium on an insurance contract along with a statutorily authorized service charge. FLA. STAT. § 627.827 (1987).

144. *Id.* § 627.841(1).

145. Ch. 88-370, § 23, 1988 Fla. Laws 1906, 1923 (codified at FLA. STAT. § 627.841(1) (Supp. 1988)).

146. *Id.*

147. *Id.* (codified at FLA. STAT. § 817.234(9) (Supp. 1988)). The constitutional validity of this provision now may be suspect because of the recent opinion of the United States Supreme Court in *Shapero v. Kentucky Bar Association*, 108 S. Ct. 1916 (1988). In *Shapero*, the court held that a state may not prohibit lawyers from soliciting business for pecuniary gain by sending truthful and nondeceptive letters to potential clients known to face particular legal problems.

148. FLA. BAR RULES OF PROF. RESP. 4-7.2, -7.4.

149. Ch. 88-370, 1988 Fla. Laws 1906, 1924.

150. *Id.*

task force members are charged to submit their recommendations to the President of the Senate and to the Speaker of the House on or before April 1, 1989.¹⁵¹

L. Departmental Study

The Act further requires the Department of Insurance to conduct a closed claim study.¹⁵² The Department must examine the cost impact of compulsory motor vehicle bodily injury and property damage liability insurance.¹⁵³ The Department is required to report its findings to the Legislature by March 1, 1989.¹⁵⁴ Theoretically, one might conclude that if all drivers maintain property damage liability insurance, the cost of first-party collision coverage will decline. The relationship between these two types of coverages, from a cost perspective, should be more precisely understood upon the conclusion of the closed claim analysis.

Additionally, there was concern whether all of the revisions to the law would be disseminated to the public in a timely manner. In response, the Act required that DHSMV conduct an education program to inform the public of the revised motor vehicle insurance requirements.¹⁵⁵

IV. CONCLUSION

In response to the alarming size of Florida's uninsured motorist population, as well as the rising cost of motor vehicle insurance, the Florida Legislature has enacted the Motor Vehicle Insurance Reform Act of 1988. The Act was designed to address the problems associated with the enforcement of Florida's compulsory insurance laws, solve the problem of property damage liability coverage within the No-Fault Law, and to reverse the rising cost of uninsured motorist coverage.

Many of the provisions of the Act do not become effective until October 1, 1989, allowing the Legislature to readdress those sections of the law prior to enactment. The Legislature also will evaluate the recommendations of the newly created task force, as well as the results of the study to be conducted by the Department of Insurance, before the next regular legislative session.

When all of the provisions of the Act become effective, more cost effective insurance protection will be available to Florida Drivers. Al-

151. *Id.*, 1988 Fla. Laws at 1925.

152. *Id.*, 1988 Fla. Laws at 1924-25.

153. *Id.*

154. *Id.*

155. *Id.*, 1988 Fla. Laws at 1925.

though compliance with the new law may never reach one hundred percent, the provisions of the Act hopefully will have a significant beneficial impact on the identified problems.

