

David Simmons: Start from scratch to rid PIP of fraud

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Florida is one of the distinct minority of states that require drivers of automobiles to maintain a form of insurance called Personal Injury Protection, which is often called no-fault. Today, there is no denying that Florida is in an insurance crisis because its PIP insurance system has proved to be filled with fraud and inefficiencies.

Ever since the Florida Legislature imposed no-fault auto insurance on Florida's drivers in the 1970s, the Legislature has tried every few years to fix the problems inherent in this form of insurance.

It's widely agreed that Florida consumers are paying \$1 billion a year to cover fraud and inefficiencies embedded in the PIP insurance system. That means that one-third of consumers' no-fault auto premium dollars are going to pay for fraud and inefficiencies. This is really a PIP tax that Floridians should not have to pay.

In addition, because PIP is so inadequate, 70 percent of Florida motorists already voluntarily buy an additional form of insurance called bodily injury insurance — the same insurance that a majority of states require their drivers to maintain.

Florida's once-sufficient \$10,000 in no-fault auto insurance coverage in 1970s dollars has not increased along with inflation; \$10,000 in 1978 dollars would be \$35,000 in today's dollars — and that's a calculation using the average Consumer Price Index increase, not the much higher increases in medical costs.

The vast majority of other states have refused to adopt Florida's PIP form of insurance. Many other states require drivers to maintain bodily injury insurance of \$25,000 or more to compensate motorists who are injured by at-fault drivers.

When Colorado abandoned its PIP insurance and went to a mandatory bodily injury form of insurance, consumers saw significant decreases in premiums paid. Because bodily injury insurance requires that the injured claimant prove that the other party to an auto accident was at fault, it is self-policing and significantly reduces fraudulent claims.

In the early 1980s, the Florida Supreme Court held that the \$10,000 PIP payments were barely constitutional. In 2012, in a valiant attempt to try to save no-fault auto insurance and make it affordable to consumers, the Legislature narrowed PIP's \$10,000 coverage so that it is permitted only for emergency care; non-emergency care coverage is limited to \$2,500.

It is no wonder that this past spring a circuit court judge in Leon County ruled that the Legislature's most recent 2012 legislative attempt to fix PIP unconstitutionally denies Florida motorists adequate protection.

In October, the Florida First District Court of Appeal reversed that ruling, but not because the trial judge was wrong in his ruling that no-fault auto insurance is no longer sufficient compensation to injured motorists. Instead, the judges ruled on a procedural technicality that the plaintiffs, who were medical providers, did not have the proper standing to bring the suit.

The First DCA, in a clear indication that the trial judge was correct on the merits, said that there was no reason the real parties in interest, i.e., injured motorists whose constitutional right of access to the courts has been denied, can't bring a lawsuit to have the current law declared unconstitutional.

The problem is that while PIP might be fine in theory, unfortunately it is a disaster in practice. It is premised on the faulty theory that all people are honest and no one will figure out that PIP permits a dishonest motorist to recover \$10,000 by simply saying that he or she hurts.

It's time to do like the majority of other states and adopt a system of insurance that serves and protects the interests of Florida's consumers.

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