



LEGISLATIVE POSITION

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PIANY is concerned that the effect of S.6065/A.9057 may be to expose vehicle owners to losses that are not covered by insurance

Memo of concern regarding: S.6065—by Senator Seward
A.9057—by M. of A. Lafayette

An act to amend the Vehicle and Traffic Law in relation to proof of insurance

This bill would newly provide that “proof of insurance for an existing vehicle, owned and registered by an insured, shall be sufficient proof of coverage for purposes of purchasing and operating a newly acquired vehicle *to replace the existing vehicle*” [emphasis added].

Further, the bill newly provides that “Such proof of insurance *shall be valid for a period of up to five days following the date of sale of the replacement vehicle* by an authorized, duly licensed dealer or reseller of motor vehicles, and *shall represent the identical level of coverage indicated by the insurance identification card for the vehicle being replaced*” [emphasis added].

PIANY appreciates the beneficial intent of this bill, which would be to allow the policyholder to present an I.D. card showing coverage for an existing vehicle, with this I.D. card sufficing to complete the purchase and, temporarily, to operate the vehicle. As we understand the bill, the existing vehicle’s I.D. card would be sufficient for the purpose of enabling the dealer to issue a temporary registration for the newly acquired vehicle. The existing vehicle’s I.D. card also would suffice for purposes of operating the newly acquired vehicle, including providing sufficient proof of insurance in case the driver is asked for proof by law enforcement officers during the five days following the date of sale of the replacement vehicle.

Currently, dealers cannot issue a temporary registration without proof of insurance for the newly acquired vehicle itself. This can impose a hardship, especially when the policyholder needs to complete the sale outside of normal business hours.

However, there are advantages to the current system, including greater certainty of coverage and prevention of uninsured operation, whether deliberate or inadvertent. The procedure for requiring a valid I.D. card to be obtained before the temporary registration can be issued by the dealer is a valuable step that ensures orderly completion of the whole process that includes ensuring that appropriate coverage (including physical damage coverage) is in force, and ensuring that coverage required by the financial responsibility law is reported to the DMV on a timely basis.

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However convenient, an exception to the current procedure in the case of replacement vehicles, in PIANY's opinion, greatly increases the chances that the insured will delay or overlook contacting the insurance agent or company so that these important steps take place.

Here are PIANY's specific questions and concerns.

1) **Is the I.D. card still valid?** A hard-copy I.D. card represents a snapshot of insurance that is in force at the moment in time when the card is issued. If a dealer is given an I.D. card, is there a way for the dealer to know if that policy is still in force? Currently, the procedure of procuring a new I.D. card reflecting the newly acquired vehicle is a means of ascertaining that the insurance remains in effect at the time the new vehicle is registered.

2) **DMV insurance reporting requirements.** Currently, the Department of Motor Vehicles ensures compliance with New York's financial responsibility requirements by requiring insurers to provide an electronic confirmation of insurance that matches each new vehicle registration. Even a registration of a newly acquired vehicle replacing a vehicle insured on an existing requirement triggers the requirement that the insurer verify coverage through a "new business" transaction in the DMV's Insurance Information and Enforcement System.

The current procedure of requiring a valid I.D. card for the newly acquired vehicle ensures that this process is initiated in plenty of time for the insurer to complete the transaction within the IIES time frame and prevent the motorist from running into problems when the DMV's registration record receives no corresponding notice of insurance coverage.

The DMV allows 14 days after a vehicle is registered before it inquires of the insurer whether the insurance I.D. card presented for purposes of registration is actually valid.

3) **"Replacement vehicle"—how is the term defined?** Is it intended that "a newly acquired vehicle to replace the existing vehicle" be defined as strictly as the term "replacement vehicle" under DMV Regulation 32.3(s)? The DMV's regulations governing proof of insurance contain a very specific definition of the term "replacement vehicle" but the bill does not define the term. This could cause problems; yet, simply referencing or replicating the definition used in the regulation probably is not going to work well for use in the bill.

This definition of "replacement vehicle" reads: "A vehicle added to an in-force policy in conjunction with a vehicle deleted from such in-force policy on the same date and

time.” The regulation also requires that: “A replacement vehicle must be identified on the first issuance of an I.D. card in accordance with the provisions of Section 32.9(j) of this Part.”

The bill language leaves it somewhat more vague as to the time frames—and would seem to allow for the use of the existing vehicle’s I.D. card even if the existing vehicle is not disposed of at the same time as the new vehicle is acquired, so long as the buyer says the new vehicle is intended as a replacement.

There seems to be no explicit requirement in the bill that the sale of the replacement vehicle and the sale or other disposition of the existing vehicle must occur simultaneously. Rather, it provides that the existing vehicle’s I.D. card is valid as proof of coverage for the newly acquired vehicle for five days *following the date of the sale of the replacement (new) vehicle*, with no reference made to the status of the existing vehicle.

Already, PIANY members report that problems arise when someone buys a new vehicle, intending for it to replace an existing vehicle, but the two transactions do not occur simultaneously. The bill could magnify such problems.

Say the insured has advertised the old vehicle for sale, but has not consummated a deal. Or, the insured is not satisfied with the trade-in value offered by the dealer and decides to sell it privately instead. Or, the insured plans to give the old vehicle to a child as soon as the new vehicle is in the driveway.

In these cases, would or would not the existing I.D. card suffice for the purposes listed in the bill?

4) DMV procedures: Re-registration vs. new registration. The DMV Regulation 32 “replacement vehicle” definition is important in terms of DMV registration procedures. Only a “replacement vehicle” is eligible for a Re-registration (Vehicle change) procedure. This is a transaction whereby “a different vehicle (a replacement vehicle) is substituted for a currently registered vehicle (replaced vehicle) on a specific registration” [Regulation 32.3(t)]. Thus, if the dealer merely switches plates from the old vehicle to the new vehicle, it is important for the dealer to know whether the new vehicle truly is a “replacement vehicle,” i.e., that the existing vehicle has been dropped from, and the new vehicle added to, the existing policy.

Without obtaining a new I.D. card specifically prepared for the newly acquired vehicle (and noting whether it qualifies as a “replacement vehicle”), it would be hard for the dealer to have absolute certainty about the status of the new vehicle unless the existing vehicle is taken as a trade-in.

5) **Deliberate fraud.** One purpose of the DMV's rules is to keep people from acquiring new plates while retaining their old plates, and thus possibly putting the old plates to fraudulent use by continuing to operate the old vehicle. Would this bill make such frauds easier? If the insured does not elect a re-registration procedure and instead elects to begin a new registration for the newly acquired vehicle, would this situation also be covered by the provisions of this bill? In this case, how long could an insured operate two vehicles using the same I.D. card, without detection? Would law enforcement need to check in every case where an I.D. card is presented that does not match the vehicle being operated? Would they get so used to seeing mis-matches that fraud would be easier to commit?

6) **Definition problems.** The definition of "replacement vehicle" in DMV Regulation 32 depends upon an insurance transaction taking place; however, the bill does not mention any insurance transaction. So, in thinking about drafting any clarifications, it might not be possible to simply reference the DMV's definition because the whole purpose of the bill is to allow the insured to defer notification to the insurer or agent for purposes of obtaining a new I.D. card.

7) **Delay in notifying agent or insurer: the likelihood is increased.** Frankly, the advantage of the current system is that the insured is precluded from delaying notification to the agent or insurer when a new vehicle is acquired—whether or not it is a replacement vehicle—because a new I.D. card is needed in order to get the temporary registration. Such notice effectively guarantees that other relevant transactions will occur, such as a timely electronic notification to the DMV by the insurer that the new vehicle has coverage.

If an insured has purchased the vehicle and is on the road, there may be less sense of urgency about taking this step. Yes, it is the insured's contractual obligation to provide such notice. But, from a practical standpoint, it often is the immediate need at the dealership which ensures that such notice occurs.

If the insured fails to provide timely notice to the insurer, the DMV eventually will issue a notice of suspension. Thus, what should be a routine transaction for the insured, the agent and the insurer, now becomes a costly "exception" transaction, with additional urgency created by the potential DMV penalties for the insured. The delay also can present coverage problems.

8) **Exposure to uninsured loss.** If the insured fails to get rid of the existing vehicle, and also fails to notify the insurance company of the new vehicle, this new vehicle is not automatically covered for liability coverage beyond a certain grace period. Some policies provide as little as 14 days' automatic liability coverage for additional

vehicles without notification, and some provide up to 30 days. (If the newly acquired vehicle is truly a “replacement vehicle,” however, the liability coverage remains in force for the duration of the policy term.)

Here, the failure to notify the insurer could prove extremely costly if the insured has ended up retaining the existing vehicle. The “automatic” coverage for the additional vehicle could expire without any notice to the insured (because neither the agent nor the insurer would know that an additional vehicle has been acquired), and there could be a loss that is not covered under the policy.

9) **Physical damage coverage.** The provisions governing the inception and suspension of physical damage coverage are complex, and in nearly all cases are highly dependent upon prompt notice to the insurer or agent. Here, too, the danger of delayed notice could result in a claim that is not covered.

The bill says the existing vehicle’s I.D. card “shall represent the identical level of coverage indicated by the insurance identification for the vehicle being replaced.” Due to this broad wording, placement of this provision within the financial responsibility section of the law should not necessarily be interpreted as restricting this “identical coverage” provision only to the insurance coverages required under New York’s financial responsibility law, but should be interpreted as extending also to physical damage coverage. So, the question arises, how does this wording interact with other pre-existing provisions that govern when and whether physical damage coverage takes effect?

Here are the current requirements regarding provision of physical damage:

a) **No physical damage currently.** If the existing vehicle does not have physical damage coverage, no such coverage will be afforded a replacement vehicle unless the insured requests it. Especially if the existing vehicle is an older model, the insured needs physical damage coverage for the replacement, but has dropped this coverage for the old vehicle. The current need to obtain an I.D. card for the new vehicle is an opportunity for the agent to discuss this coverage need and remind the insured that the policy no longer has physical damage.

b) **Physical damage on existing vehicle.** New York’s physical damage inspection requirements and policy provisions say that physical damage for a new vehicle must be specifically requested, *even if there is existing physical damage coverage on the policy*. The general rule is that “automobile physical damage coverage shall not be effective on an additional or replacement private passenger automobile until the insurer has inspected the vehicle.” [Insurance Regulation 79, Section 67.2(b)]. The regulation then goes on to provide for a confusing mix of mandatory and optional “waivers” of this provision.

10) **New York’s complex physical damage inspection requirements.** In only two cases is an insurer **REQUIRED** to waive the inspection and thereby provide physical damage coverage immediately. These mandatory waivers apply to:

- a) temporary substitute autos (e.g., “loaners”); or
- b) automobiles leased or rented for less than six months.

Note that neither of these instances is the typical replacement vehicle. In all other cases, the insurance company can require an inspection prior to providing the physical damage coverage. So, would the bill’s provision trump any conflicting pre-inspection requirement?

In practice, many voluntary-market insurers **DO** waive inspections in many cases, but again, these waivers are not required, and insurance company practices vary. If an inspection is required, it is only upon notice to the insurer or the agent that the policyholder will be informed of the inspection requirement.

A couple of common inspection waivers that are **permitted, but not required, to be afforded by the insurance company** are:

- new, unused vehicles purchased or leased, provided the insured presents the required documentation [67.3(b)(2)]; and
- for an additional and/or replacement vehicle, where the named insured has been continuously insured for automobile insurance, with the same insurer, or affiliate, for four or more policy years. (An insurer may, in its filed plan of operation, elect to inspect specified vehicles included within this waiver.) [67.3(b)(3)]

It follows that additional and/or replacement vehicles acquired by a named insured who has **NOT** been with the same insurer for four or more policy years are **NOT** eligible for a waiver unless it qualifies for, and has been granted, a waiver under the “new, unused vehicle” provision or another provision of Regulation 79.

11) **NYAIP business—waivers for new, unused vehicles only.** The only vehicles that can be afforded immediate physical damage coverage under the rules of the New York Automobile Insurance Plan are new, unused vehicles that are purchased or leased. All others must be inspected. But the bill includes dealers who are “resellers”—so it would apply to used vehicles as well. Again, which provision would prevail?

12) **Physical damage coverage—policy provisions.** Even vehicles that are not subject to physical damage inspections (due to mandatory or optional waivers that

apply to their particular situation, the ISO Personal Auto Policy form does not necessarily provide automatic coverage.

This form states:

“We do not provide Coverage for Damage To Your Auto for any additional or replacement vehicle you acquire until after you:

- a) notify us; and
- b) request coverage to that vehicle.”

An exception is provided where a replacement vehicle is acquired, and the company has provided physical damage coverage on the vehicle that is being replaced for at least 12 months prior to the date of replacement. However, this exception applies *only for the three-day period beginning on the date the policyholder becomes the owner of the replacement vehicle* (extended by one day for each Saturday, Sunday or legal holiday). In other words, in such cases (and only in such cases) the policy affords at least three days’ automatic coverage—but not necessarily five days, as would appear to be provided under the terms of the new bill.

In conclusion, we are concerned that the provision allowing the insured to purchase and operate a new vehicle, using an I.D. card of an existing vehicle, will create additional confusion or a false sense of security in the insured, and will effectively delay the insured’s notification to the agent or the insurer.