COMMUTERS BEWARE: LAWMAKERS AND RIDESHARE COMPANIES JEOPARDIZE PASSENGERS

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Abstract

Rideshare passengers reasonably expect that the companies soliciting their business will take care of them in the event of a crash. But the reality is that in many states, including Florida, passengers that are injured by an uninsured motorist, by an underinsured motorist, or in a hit-and-run crash may be liable for the subsequent medical costs with no avenue for adequate reimbursement. Only twenty-six states require rideshare companies to provide their passengers with uninsured motorist coverage to mitigate the financial fallout of a car crash. This Note examines the current insurance regulations that Florida and other states impose upon rideshare companies, explores how specific aspects of Florida law expose rideshare passengers to additional risk, advocates for the legislature to mandate uninsured motorist coverage, and discusses the potential increase in costs consumers may experience. If private companies do not take it upon themselves to protect their passengers, it falls upon the government to shift financial risks to those who are best suited to bear them.

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INTRODUCTION

In December 2023, a driver of a stolen Mustang fled from Florida Highway Patrol troopers at a speed exceeding 140 MPH.[1] During the pursuit, the stolen vehicle merged into oncoming traffic and crashed head-on into an Uber vehicle occupied by four people.[2] Three of those people—the Uber driver and two of the passengers—died.[3] The driver of the stolen Mustang has been indicted for three counts of murder in the first degree, three counts of vehicular homicide, one count of reckless driving with serious bodily injury, and one count of driving while license suspended or revoked.[4] The state is seeking the death penalty against the driver.[5]

1. Michaela Mulligan, *Driver Arrested in Wrong-Way Skyway Crash That Killed Uber Driver, Two Passengers*, TAMPA BAY TIMES (Dec. 9, 2023), https://www.tampabay.com/news/breaking-news/2023/12/07/driver-arrested-wrong-way-skyway-crash-that-killed-uber-driver-passenger/ [https://perma.cc/XS9F-L9PX].

2. *Id.*

3. *Id.*

4. The case is ongoing. State v. Arias-Roman, No. 23-11783-CF-T, Indictment (Fla. 6th Cir. Ct., 2023).

5. *Roman*, No. 23-11783-CF-T, Notice of Intent to Seek Death Penalty (Feb. 7, 2024), [https://perma.cc/94L4-8XJ2].

In July 2022, Tracy Carson, an Uber driver, was transporting Daniel Whitfield to the Tampa International Airport when the two were rear-ended by a distracted driver in a pickup truck.[6] The two victims, each a parent of three children, died at the scene of the crash.[7] The insurance coverage carried by the at-fault driver is not publicly available.

The minimum amount of insurance the Florida Statutes mandate for non-commercial vehicles does not include bodily injury (BI) liability coverage.[8] This may leave the victims' estates to pursue the at-fault driver's personal assets[9]—if any—and the coverage afforded by personal injury protection (PIP) coverage. This PIP coverage is limited by Florida law to $10,000 in medical and disability benefits and $5,000 in death benefits.[10] This death benefit coverage is woefully inadequate in comparison to the value of a favorable jury verdict in a wrongful death suit.[11]

If the tragedy involving Tracy Carson and Daniel Whitfield had occurred in California, the at-fault driver would have been required to carry at least $30,000 in per-incident BI coverage.[12] Additionally, the victims of both tragedies could have recovered under the $1,000,000 uninsured motorist (UM) coverage that rideshare companies are required to maintain while a passenger is inside the rideshare vehicle.[13] Those victims were

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6. Tony Marrero & Michaela Mulligan, *An Uber Ride, a Dropped Phone and 2 Lives Lost on a Tampa Exit Ramp*, TAMPA BAY TIMES (Sept. 4, 2022), https://www.tampabay.com/news/hillsborough/2022/09/02/an-uber-ride-a-dropped-phone-and-two-lives-lost-on-a-tampa-exit-ramp/ [https://perma.cc/C2XP-QGUP].

7. *Id.*

8. FLA. STAT. § 324.023 (2023).

9. Nicholas J. Giles, Comment, *Rethinking the Cooperation Clause in Standard Liability Insurance Contracts*, 161 U. PA. L. REV. 585, 600 (2013) (explaining that an insurer's refusal to indemnify a policyholder against liability "expos[es] the policyholder to personal liability and leav[es] the victim to seek compensation from the policyholder's personal assets or not at all"); *cf.* Note, *Uninsured Motorist Coverage in Virginia: The Scope of Protection and the New Underinsurance Provisions*, 69 VA. L. REV. 355, 368 (1983) ("Individuals who buy higher limit liability insurance usually do so because they have personal assets that they want to protect from large personal injury judgments.").

10. FLA. STAT. § 627.736(1) (2023).

11. *See* Mark Geistfeld, *Negligence, Compensation, and the Coherence of Tort Law*, 91 GEO. L.J. 585, 603 (2003) ("[D]uring the period 1984–93, the average jury verdict in New York City in a wrongful death suit ranged from $1.2 million to $1.9 million.").

12. CAL. INS. CODE § 11580.1(b)(1) (West 2023); CAL. VEH. CODE § 16056(a) (West 2023).

13. CAL. PUB. UTIL. CODE § 5433(b)(2) (West 2023). For the purposes of this Note, the abbreviation "UM" will be used to refer simultaneously to both uninsured

not afforded the same protection in Florida, where rideshare companies are not required to provide their own drivers and passengers UM coverage.[14] Currently, neither Uber nor Lyft voluntarily provide this coverage in Florida.[15]

The decision to not provide UM coverage is striking given that rideshare companies themselves may increase the risk of injury for their passengers. The number of annual fatal car accidents per capita in the United States trended downwards from the mid-1980s until 2010, shortly after the launch of the first ridesharing services.[16] The number of fatalities caused by car accidents in 2010 was the lowest recorded since 1949.[17] Research suggests that ridesharing is associated with a roughly 2% to 4% increase in fatal car accidents since 2010,[18] with no observed reduction in fatalities involving pedestrians or impaired drivers to counterbalance this increase. The number of fatal accidents involving a pedestrian increased by 2.45%, and the number of pedestrians involved in fatal accidents increased by 2.77%.[19] The change in alcohol-related accidents, both fatal and non-fatal, ranges from statistically insignificant to an approximate 1.5% *increase*.[20] These increases coincide with the additional vehicular miles traveled that rideshare companies contribute to the communities they operate in.[21] Put

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and underinsured motorist coverage. However, some states do treat the coverages differently in their financial responsibility laws. *See, e.g.*, S.C. CODE ANN. §§ 38-77-150, 160 (2023).

14. FLA. STAT. § 627.748(7)(b)–(c) (2023); § 627.727(1).

15. *Uber's Florida Certificate of Insurance* (effective May 1, 2023 to May 1, 2024), https://uber.app.box.com/s/c7bc0s56tfg9qexrxxso8gap5yca4ge5 [https://perma.cc/J9CV-J246]; *Lyft's Florida Certificate of Insurance* (effective Oct. 1, 2023 to Oct. 1, 2024), https://assets.ctfassets.net/ecaxsf5u3xse/2VuX5s7Ln3LLHemnqmobB7/e242f0485d55d4792a15afbc58727dc0/florida.pdf [https://perma.cc/B8VL-6BM5].

16. John M. Barrios et al., *The Cost of Convenience: Ridehailing and Traffic Fatalities* 30 (Becker Friedman Inst., Working Paper No. 2019-49, 2020), https://bfi.uchicago.edu/wp-content/uploads/BFI_WP_201949-1.pdf [https://perma.cc/YVQ3-3SL4].

17. *Id.*

18. *Id.*

19. *Id.* at 21.

20. *Id.* at 27. This slight increase in the number of alcohol-related fatal accidents may be partially attributable to the fact that rideshare drivers themselves are susceptible to driving while under the influence. Carolyn Said, *California Tells Uber It's Sloppy About Ditching Drunken Drivers*, SFGATE (Apr. 13, 2017, 1:03 PM), https://www.sfgate.com/business/article/California-tells-Uber-it-s-sloppy-about-11069749.php [https://perma.cc/KRS4-WD4B].

21. Rideshare companies add approximately 5.7 billion miles of driving annually across nine selected metro areas, including Miami. Barrios et al., *supra* note 16, at 2 n.3.

more simply, rideshare vehicles increase road congestion and increased road congestion leads to more accidents. Though there is not sufficient data available to examine national non-fatal accident trends,[22] it is reasonable to conclude from the available municipal-level data that such accidents have also increased nationwide.[23]

Twenty-six states require rideshare companies to provide some form of UM coverage.[24] The requirements vary depending on the status of the rideshare driver. A summary of my analysis of the relevant insurance laws of each state is organized in Appendix A. Any state not included in Appendix A does not currently require rideshare companies to carry UM coverage for any period. The "Period One Coverage" column in Appendix A describes the time when a driver is logged into the digital network but has not yet accepted a ride request. The "Period Two Coverage" column describes the time from when a driver has accepted a ride request up until the last passenger has exited the rideshare vehicle, though some states limit period two strictly to the time a passenger is inside the rideshare vehicle.[25] The states selected and the coverage amounts displayed reflect the statutory minimum allowed in each state, which accounts for the possibility that a rideshare company rejects coverage completely[26] or coverage in excess of the statutory minimum.[27] The amounts shown are the true compulsory minimums. If two numbers are displayed for a state's coverage requirement, the first number represents the "per person" minimum, and the second number represents the "per incident" minimum. If only one number is displayed for a state's coverage requirement, that number represents the minimum combined single-limit (CSL) coverage.

22. *Id.* at 31.

23. In sampled cities, researchers have observed an increase in non-fatal accidents in the quarters immediately following the launch of rideshare services versus the quarters preceding launch. *Id.* at 3.

24. *See infra* Appendix A.

25. *E.g.*, CAL. PUB. UTIL. CODE § 5433(b)(2) (West 2023); 625 ILL. COMP. STAT. 57/10(c)(2) (2023); VA. CODE ANN. § 46.2-2099.52(B)(2) (2023); WASH. REV. CODE 46.72B.180(1)(b)(iii) (2023).

26. *E.g.*, MONT. CODE ANN. § 33-23-201(2) (2023) ("The named insured has the right to reject the coverage.").

27. *E.g.*, KAN. STAT. ANN. § 40-284(c) (2023) ("The insured named in the policy shall have the right to reject, in writing, the uninsured motorist coverage required by subsections (a) and (b) which is in excess of the limits for bodily injury or death set forth in K.S.A. 40-3107.").

California was the first state to mandate UM coverage for rideshare passengers.[28] Delaware is the most recent.[29] Notably, the Delaware law was passed with unanimous, bipartisan support.[30] New Jersey currently mandates the highest amount of UM coverage, by requiring rideshare companies to carry $1.5 million in CSL coverage for period two.[31] Five states require at least $1 million in CSL coverage for period two.[32] Of the states that require rideshare companies to carry UM coverage, Massachusetts mandates the lowest amount for both periods with a minimum coverage of $20,000/$40,000.[33] Six states require UM coverage for only period two.[34] The highest coverage required per incident for period one is $100,000, as implemented by Delaware,[35] Maine,[36] South Dakota,[37] and Vermont.[38] Of the twelve states with a no-fault insurance system, six of them require rideshare companies to carry UM coverage.[39] Additionally, fifteen of the included states do not impose on rideshare companies UM coverage requirements more stringent than those placed on the general populace.[40]

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28. *See* Carolyn Said, *Hybrid Insurance for Uber, Lyft Drivers Is on the Way*, SFGATE (Nov. 14, 2014, 5:17 PM), https://www.sfgate.com/business/article/Hybrid-insurance-for-Uber-Lyft-drivers-is-on-the-5894075.php [https://perma.cc/XCW9-BES5]; 2014 Cal. Legis. Serv. 389 (West).

29. 83 Del. Laws 464, § 3 (2022).

30. The bill passed with sixty-one total "yes" votes across both houses of the Delaware legislature. Legislative History of S.B. 209, 151st Gen. Assemb., Reg. Sess. (Del. 2022), https://legis.delaware.gov/BillDetail/79062 [https://perma.cc/9M2Z-824S].

31. N.J. STAT. ANN. § 39:5H-10(c)(3) (West 2023).

32. Those five states are California, Delaware, New Jersey, New York, and Vermont. *See infra* Appendix A.

33. MASS. GEN. LAWS ch. 175, § 228(c)–(d) (2023) (requiring the $20k/$40k minimum coverage by reference to MASS. GEN. LAWS ch. 90, § 34A).

34. Those six states are Arizona, California, Colorado, Georgia, Illinois, and Washington. *See infra* Appendix A.

35. DEL. CODE ANN. tit. 2., § 1908(2)(c) (2023).

36. ME. STAT. tit. 24-A, § 2902(2) (2023).

37. S.D. CODIFIED LAWS § 58-11-9 (2023).

38. VT. STAT. ANN. tit. 23, § 941(a), (c) (2023).

39. Those six states are Kansas, Massachusetts, Minnesota, New Jersey, New York, and North Dakota. *See infra* Appendix A; *Background On: No-fault Auto Insurance*, INS. INFO. INST. (Nov. 6, 2018), https://www.iii.org/article/background-on-no-fault-auto-insurance [https://perma.cc/7HHQ-EDGE].

40. These fifteen states are Connecticut, Kansas, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, North Carolina, North Dakota, Oregon, South Carolina, Virginia, and West Virginia. *See infra* Appendix A.

Tort victims cannot choose their tortfeasor, but the legislature can choose to minimize those victims' financial hardship. Part I of this Note summarizes how the current rideshare regulatory scheme in Florida came into existence. Part II explores how that regulatory scheme may further victimize consumers that are involved in a crash while using ridesharing services.[41] Part III proposes model legislation to address the current regulatory scheme's shortcomings. Part IV examines the potential costs and drawbacks of requiring rideshare companies to provide passengers with UM coverage and proposes an alternative, private solution.

I. How Florida Regulates Rideshare Companies

One early problem posed by rideshare companies involved the insurance coverage afforded to drivers and tort victims. Until 2014,[42] an "insurance gap" existed where Uber's insurance policy did not cover the damages caused by an Uber driver that was not transporting a passenger, even if that driver was logged into the Uber app and available to accept a ride request.[43] Uber and insurers partnered together to close this gap after an Uber driver struck and killed six-year-old Sofia Liu while she was in a crosswalk.[44] Though the driver was logged into the Uber app, Uber denied any responsibility to insure him

41. Though the focus of this Note will be on rideshare companies, it should be noted that much of the discussion herein is also applicable to taxi companies and other livery services because Florida similarly does not require these companies to provide UM coverage to passengers. *See* FLA. STAT. § 324.032(1)(a) (2023). Bifurcating rideshare companies from other livery services is a continuation of the special treatment rideshare companies previously lobbied for. *See* discussion *infra* Section I.A.

42. Brian X. Chen, *Uber Expands Insurance Program for Community Drivers*, N.Y. TIMES: BITS (Mar. 14, 2014, 6:00 AM), bits.blogs.nytimes.com/2014/03/14/uber-expands-insurance-program-for-community-drivers [https://perma.cc/XML4-56YZ].

43. Catherine Lee Rassman, Note, *Regulating Rideshare Without Stifling Innovation: Examining the Drivers, the Insurance "Gap," and Why Pennsylvania Should Get on Board*, 15 PITT. J. TECH. L. & POL'Y 81, 88 (2014); *see also* Yanelys Crespo, *Uber v. Regulation: "Ride-Sharing" Creates a Legal Gray Area*, 25 U. MIA. BUS. L. REV. 79, 101 (2016) ("In Uber's prior arrangement, drivers were not covered for accidents occurring in between trips.").

44. Rassman, *supra* note 43, at 88–89. Sofia's mother and brother were both walking with her at the time of the collision, and both survived the accident. Bob Egelko, *Uber Settles Suit with Family over Girl's New Year's Eve Death*, SFGATE (July 15, 2015, 9:37 AM), https://www.sfgate.com/bayarea/article/Uber-settles-suit-with-family-over-girl-s-New-6385063.php [https://perma.cc/974F-XA96]. Sofia's mother was hospitalized for several weeks and underwent eye surgery. *Id.*

because he had not yet accepted a ride request.[45] The subsequent agreement between rideshare companies and insurers to close the insurance gap for damage caused by drivers was a key development in the adoption of rideshare laws.[46] Within the following year, Colorado and California passed legislation specifically aimed to regulate rideshare companies, including minimum insurance requirements.[47] Both states categorized rideshare companies as "transportation network companies" or TNCs.[48] This moniker was later adopted by the Florida legislature.[49]

A. *Florida Finally Joins the Club*

In 2017, after forty-seven other jurisdictions had already done so,[50] Florida passed state-wide legislation of its own to formally legalize and regulate rideshare companies.[51] This legislative breakthrough followed failed attempts in both 2015 and 2016 to regulate the rideshare industry.[52] Both Uber and Lyft supported the legislation.[53] Lyft's communication manager praised the law for the "consistent statewide framework" it provided.[54] As discussed in this Section, the law created more

45. Rassman, *supra* note 43, at 89. Uber eventually settled a lawsuit with the Liu family for an undisclosed amount. Egelko, *supra* note 44.

46. *See* Kevin Werbach, *The Song Remains the Same: What Cyberlaw Might Teach the Next Internet Economy*, 69 FLA. L. REV. 887, 943 (2017) ("And even when providers have insurance, the question is whether it applies any time they use the on-demand app or only when they interact with a customer. These limitations are gradually falling away, in part due to government action. One of the key developments allowing adoption of TNC laws has been negotiation of a compromise between ride-hailing companies and insurance companies regarding insurance requirements for drivers.").

47. Rassman, *supra* note 43, at 92–93; Transportation Network Company Act, ch. 323, sec. 6, § 40-10.1-604(2) to (3), 2014 Colo. Sess. Laws 1409, 1411 (codified at COLO. REV. STAT. § 40-10.1-604); Act of Sept. 17, 2014, ch. 389, sec. 1, § 5433(b)–(c), 2014 CAL. STAT. 3019, 3021 (codified at CAL. PUB. UTIL. CODE § 5433(b)–(c)).

48. CAL. PUB. UTIL. CODE § 5431(a) (West 2015); COLO. REV. STAT. § 40-10.1-602(3) (2014).

49. FLA. STAT. § 627.748(1)(e) (2023).

50. Carlos Ibarcena, Note, *Going Under the Hood: The Winners and Losers of Florida's Transportation Network Companies Law*, 42 NOVA L. REV. 45, 45–46 (2017).

51. *See generally* H.B. 221, 25th Leg., Reg. Sess., 2017 Fla. Laws 125.

52. *See, e.g.*, H.B. 757, 24th Leg., Reg. Sess. (Fla. 2015); S.B. 1118, 24th Leg., Reg. Sess. (Fla. 2016).

53. Daniel Ducassi, *Bill with Backing of Uber, Lyft and Insurance Industry Clears First Committee*, POLITICO (Feb. 8, 2017, 3:32 PM), https://www.politico.com/states/florida/story/2017/02/uber-bill-clears-first-committee-109447 [https://perma.cc/3DPY-H2JB].

54. Mitch Perry, *Senate Judiciary Committee Gives Big Win for Ridesharing*

favorable business conditions for rideshare companies by removing burdensome, inconsistent regulations imposed by local governments.

Before the enactment of Florida's TNC law, regulations governing taxi cabs—which are traditionally promulgated by local governments[55]—were applied to rideshare companies.[56] However, rideshare companies disregarded these regulations and went so far as to reimburse drivers for accumulated fines to keep their operations alive.[57] For example, in Miami, Uber ignored regulations that (1) required drivers to purchase and carry medallions (worth $300,000 at the time); (2) required passengers to schedule a ride at least an hour in advance; and (3) set minimum fares.[58] After rideshare companies operated illegally for almost two years, the Miami-Dade County Commission passed ordinances that legalized the companies' business model.[59] Similar storylines played out throughout Florida and led to a patchwork of regulations enacted by local governments.[60]

As an example of what these local rideshare regulations entailed, Miami-Dade County required mechanic inspections of all rideshare vehicles, rideshare company logos on those vehicles, and the payment of license fees.[61] Miami-Dade earned approximately $1.8 million in revenue from the license fees.[62] The enactment of Florida's TNC law preempted these local regulations, and rideshare vehicles are now governed solely under state law,[63] with minor exceptions in place to allow

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Regulation, FLA. POL. (Mar. 28, 2017), https://floridapolitics.com/archives/234884-senate-judiciary-committee-gives-big-win-ridesharing-regulation/ [https://perma.cc/QE88-MNZ3]. Uber also supported the legislation for its approach to uniformity. Michael Auslen & Christopher O'Donnell, *It's Up to Rick Scott Now: Should Local Governments Be Allowed to Regulate Uber?*, MIAMI HERALD (Apr. 19, 2017, 5:57 PM), http://www.miamiherald.com/news/business/article145556644.html [https://perma.cc/7T5E-Y7SC] (quoting Colin Tooze, Spokesman for Uber: "We go from a patchwork of local regulations that were in conflict to each other to a statewide regime that provides harmony, stability and certainty for riders and drivers alike").

55. Rideshare companies were subject to different rules in all of Florida's sixty-seven counties and in over four hundred cities. Auslen & O'Donnell, *supra* note 54.

56. Ibarcena, *supra* note 50, at 47.

57. *Id.* at 47–48.

58. Crespo, *supra* note 43, at 96–97.

59. *Id.* at 99.

60. *Id.* at 99–100; Ibarcena, *supra* note 50, at 66.

61. Auslen & O'Donnell, *supra* note 54.

62. *Id.*

63. FLA. STAT. § 627.748(17)(a) (2023).

airports and seaports to charge pickup fees.[64] This is not to say that rideshare companies are now lightly regulated in the absence of local regulations. Florida's TNC law imposes regulations pertaining to driver background checks,[65] advertising,[66] and zero-tolerance policies.[67]

B. *Current Rideshare Insurance Requirements*

In Florida, a TNC is defined as an entity "using a digital network to connect a rider to a TNC driver, who provides prearranged rides."[68] A digital network is further defined as "any online-enabled technology application service, website, or system offered or used by a transportation network company which enables the prearrangement of rides with transportation network company drivers."[69] Uber and Lyft fall squarely under these definitions.[70] The TNC statute imposes two different insurance requirements depending on the driver's status.[71] First, when a driver is logged into the digital network but has not yet accepted a ride request (period one)[72] and, second, when the driver has accepted a ride request up until the last passenger has exited the rideshare vehicle (period two).[73] During period one, a rideshare driver must be covered by a \$50,000/\$100,000/\$25,000 policy, at a minimum.[74] During period two, a rideshare driver must be covered by a CSL policy of at least \$1 million.[75] PIP coverage is required during both periods.[76]

The TNC statute seemingly requires uninsured motorist coverage, as it states that uninsured and underinsured coverage is required as described in section 627.727 of the Florida Statutes.[77] However, that statute requires UM coverage

64. *Id.* § 627.748(17)(b).
65. *Id.* § 627.748(12)(a)(2).
66. *Id.* § 627.748(11).
67. *Id.* § 627.748(10)(a).
68. *Id.* § 627.748(1)(e).
69. *Id.* § 627.748(1)(a).
70. *See* Checker Cab Operators, Inc. v. Miami-Dade Cnty., 899 F.3d 908, 912 (11th Cir. 2018) (using both Uber and Lyft as examples of "Transportation Network Entities" during a discussion of Florida's TNC law).
71. FLA. STAT. § 627.748(7)(b)–(c).
72. *Id.* § 627.748(7)(b).
73. *See id.* § 627.748(1)(b), (7)(c).
74. *Id.* § 627.748(7)(b)(1)(a).
75. *Id.* § 627.748(7)(c)(1)(a).
76. *Id.* § 627.748(7)(b)–(c).
77. *Id.*

to be carried at limits equal to the BI coverage on a policy, but allows the policyholder to reject that coverage.[78] Thus, coverage is not compulsory.

II. THE FLORIDA PROBLEM

The legal elements of tort liability are a staple of American legal education: duty, breach, causation, and damages.[79] Outside the law school classroom, proving liability is often insufficient, because the defendant must also be able to pay.[80] Defendants that are unable to pay damages are considered judgment-proof.[81] Alternatively, those defendants that do have sufficient assets to pay a substantial part of a judgment may still be judgment-proof because of laws that shield their income and assets from tort plaintiffs.[82] Without liability insurance, most Americans will be judgment-proof to most tort claims worth litigating.[83] With that in mind, plaintiffs' attorneys will typically decline to litigate tort claims against uninsured or underinsured tortfeasors because the best outcome will be to collect a fraction of a claim's value.[84] Thus, liability insurance has become a de facto element of tort liability.[85] Because judgment-proof defendants will likely not pay a substantial portion of a judgment from their personal assets, liability insurance policy limits may serve as a de facto cap on tort damages.[86]

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78. *Id.* § 627.727(1) ("However, the coverage required under this section is not applicable when, or to the extent that, an insured named in the policy makes a written rejection of the coverage on behalf of all insureds under the policy.").

79. David S. Schwartz & Elliott Sober, *The Conjunction Problem and the Logic of Jury Findings*, 59 WM. & MARY L. REV. 619, 662 (2017).

80. Tom Baker, *Liability Insurance as Tort Regulation: Six Ways That Liability Insurance Shapes Tort Law in Action*, 12 CONN. INS. L.J. 1, 4 (2005).

81. *See* Mary Anne Franks, *"Revenge Porn" Reform: A View from the Front Lines*, 69 FLA. L. REV. 1251, 1299 (2017).

82. Stephen G. Gilles, *The Judgment-Proof Society*, 63 WASH. & LEE L. REV. 603, 607 (2006) ("Most Americans are judgment-proof not because we are poor, but because state and federal laws entitle us to be judgment-proof.").

83. *Id.* at 609.

84. *Id.* at 606; *see also* Kent D. Syverud, *On the Demand for Liability Insurance*, 72 TEX. L. REV. 1629, 1634 (1994) ("[Americans] are most likely to find an attorney to handle [their] case and then to collect a judgment when [their] complaint alleges conduct covered by a liability insurance policy.").

85. Baker, *supra* note 80, at 3.

86. Tom Baker, *Blood Money, New Money, and the Moral Economy of Tort Law in Action*, 35 LAW & SOC'Y REV. 275, 314 (2001) ("[L]iability insurance limits function as a cap on tort damages and . . . tort claims are shaped to match the available insurance coverage, with the active participation of both the plaintiff's and the

These outlined principles place special importance on circumstances where BI liability coverage is unavailable to tort plaintiffs. This Part will explore specific aspects of Florida law that exacerbate the difficulties a rideshare passenger may face when seeking compensation in the aftermath of a crash. Sections A, B, and C reference laws that effectively create uninsured drivers in many situations. The purpose of discussing those laws is not to advocate for their repeal or modification, but rather to demonstrate instances where the legislature has actively decreased the likelihood that an injured rideshare passenger can be adequately compensated. Additionally, the average consumer is likely unaware of these laws and therefore cannot effectively take steps to manage their risk or exposure while inside a rideshare vehicle.[87] The countervailing consideration is that limiting an insurer's potential liability lowers the costs of premiums.[88] Requiring rideshare companies to provide UM coverage allows the general population to benefit from the lower premiums promoted by these laws while pushing the protection costs to those being protected.

A. *Livery Exclusions*

Automobile insurance policies commonly exclude coverage "for damages arising out of the insured's ownership or operation of a vehicle while it is being used to carry persons or property for a fee."[89] Rideshare drivers are subject to these livery or for-hire exclusions.[90] Such exclusions, as they apply to a driver's policy, are held to be valid by Florida courts.[91] Furthermore,

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defendant's lawyers.").

87. *See, e.g.*, NAT'L ASS'N INS. COMM'RS, TRANSPORTATION NETWORK COMPANY INSURANCE PRINCIPLES FOR LEGISLATORS AND REGULATORS 3 (2015).

88. George L. Priest, *The Current Insurance Crisis and Modern Tort Law*, 96 YALE L.J. 1521, 1541 (1987) ("An insurer must collect into a risk pool individuals with a sufficiently narrow range of exposure to risk for the insurance to remain financially attractive to each member of the pool. The insurance premium for the pool must be set according to the average level of risk brought to the pool.").

89. Randy J. Sutton, Annotation, *What Constitutes Use of Automobile "To Carry Persons or Property for Fee" Within Exclusion of Automobile Insurance Policy*, 57 A.L.R. 5th 591 (1998).

90. LANE FINCH, 6 NEW APPLEMAN ON INSURANCE LAW LIBRARY EDITION § 63.06[4] (2023) ("Transportation network drivers using their own vehicles would be subject to the for-hire or livery exclusion in their personal automobile policies. . . . The ISO Personal Auto Policy excludes coverage for the insured's liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance.").

91. Almendral v. Sec. Nat'l Ins. Co., 704 So. 2d 728, 730 (Fla. Dist. Ct. App.

Florida's TNC statute expressly permits insurers to exclude any coverage in the driver's insurance policy while that driver is logged into the rideshare application or providing a ride.[92] This right to exclude extends to any UM coverage the driver may have on their personal policy.[93] The result of this is to leave rideshare drivers—and passengers who would otherwise be covered—financially vulnerable to uninsured motorists, unless the driver shoulders the expense of purchasing additional rideshare coverage to close this gap.[94] However, drivers are commonly unaware of the extent of livery exclusions.[95] Such exclusions make it virtually impossible for a tort victim to pursue the for-hire driver's personal insurance coverage. The victim is left to pursue any available coverage provided by the rideshare company or the at-fault party.

B. *Named Driver Exclusions*

A named driver exclusion occurs when an insurer designates a person by name in the policy to exclude that person from coverage.[96] Such exclusions are justified as a means for insureds to lower their insurance premium by excluding those in their household that their insurer may deem to be high risk.[97] Excluded drivers may be deemed a high risk for reasons

1998) ("By the clear and unambiguous terms of the business exclusionary provision, except for carpool expenses, [the driver] had no uninsured motorist coverage whenever his van was being used to transport any persons or property for a fee.").

92. FLA. STAT. § 627.748(8)(b)(1) (2023) ("An insurer that provides an automobile liability insurance policy under this part may exclude any and all coverage afforded under the policy issued to an owner or operator of a TNC vehicle while driving that vehicle for any loss or injury that occurs while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride. . . . This right to exclude all coverage may apply to any coverage included in an automobile insurance policy.").

93. *Id.* § 627.748(8)(b)1(b).

94. *See, e.g.*, *Rideshare Insurance*, Progressive, https://www.progressive.com/auto/insurance-coverages/rideshare/ [https://perma.cc/NQ5Y-ZN2H].

95. NAT'L ASS'N INS. COMM'RS, *supra* note 87 ("Even though the largest TNCs provide commercial coverage, those TNC's policies may not provide the same uninsured/underinsured motorist (UM/UIM) coverage, medical payments coverage, comprehensive coverage or collision coverage that the drivers had purchased in their personal auto policies. Drivers are often unaware of the extent of the livery exclusions. Other drivers are aware of the livery exclusions and simply hope for the best.").

96. CHRISTOPHER J. ROBINETTE, 6 NEW APPLEMAN ON INSURANCE LAW LIBRARY EDITION § 61.05[4][a] (2023).

97. Renzo Downey, *Gov. DeSantis Signs Auto Insurance Flexibility Bill*, FLA. POL. (June 17, 2021), https://floridapolitics.com/archives/435660-auto-insurance-flexibility-bill-hits-gov-desantis-desk/ [https://perma.cc/D3ZH-CN3T].

such as a history of previous traffic offenses[98] or because they are a young driver.[99] Florida began to allow named driver exclusions in 2021.[100] Under the named driver exclusion statute, an insurer may exclude coverage for any claims or suits arising from the operation of a vehicle by an excluded driver.[101] This includes PIP coverage, property damage liability coverage, BI coverage, and UM coverage.[102] Notably, these exclusions go beyond withholding coverage for damage that the excluded driver suffers to the damage that a victim suffers.

This policy choice makes the following hypothetical possible: The parents of a teenage driver request to have the teenager removed from the family's auto policy to lower the premium and free up funds for other necessary expenses. Despite this exclusion, the parents allow the teenager to use one of the family's vehicles for a date (or the teenager does so without permission), to drop off a younger sibling at school, to run a quick errand, or to practice driving. The parents may not fully understand the implications of excluding the teenager from their auto policy. Perhaps the parents do understand but view the chance of a serious accident as remote because the younger sibling's school is just a few minutes away.[103] While the teenager is driving the vehicle, they become distracted and collide with a rideshare vehicle. The rideshare vehicle is not at fault. Though the teenager's vehicle is insured, the insurance company lawfully excludes PIP coverage for the teenager—of which the parents accepted the risk—and the insurance company excludes BI coverage for the rideshare passenger's personal injury claim—in which the passenger had no choice. The rideshare vehicle similarly provides the passenger with no UM coverage. The passenger now must pay for an emergency room visit and months of physical therapy or other care with whatever health insurance they may have[104] and the $10,000 of maximum coverage available through PIP coverage. If that

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98. ROBINETTE, *supra* note 96.

99. Downey, *supra* note 97.

100. Act of June 16, 2021, ch. 96, 2021 Fla. Laws 1402.

101. FLA. STAT. § 627.747(1) (2023).

102. *Id.* § 627.747(1)(a)–(d).

103. Florida requires that the excluded driver complies with the state's financial responsibility laws, but it has no proactive mechanism to ensure that excluded drivers do not operate a vehicle. *Id.* § 627.747(3)(a)–(b).

104. 85% of Florida's population is covered by health insurance, which is slightly lower than the national average of 90%. PINNACLE ACTUARIAL RES., INC., REVIEW OF PERSONAL INJURY PROTECTION LEGISLATION 61 (2016), https://www.floir.com/siteDocuments/FLOIRReview-PIP20160913.pdf [https://perma.cc/H2A2-SDQ3].

passenger is on Medicaid, taxpayers will help subsidize the healthcare costs.[105] Either way, the passenger likely has no way of recovering for their general damages from the tortfeasor, who is functionally judgment-proof.[106]

By allowing the denial of third-party liability coverage, Florida's named driver exclusion law goes beyond allowing families to make choices about what insurance coverages they purchase. The consequences of those choices fall on tort victims, who are commonly the least able to bear them.

C. *Misrepresentation in Application*

Insurers commonly raise the misrepresentation of information in an application for coverage as a defense against coverage.[107] In Florida, misrepresentation in an application may prevent insurance recovery under the following circumstances:

> (a) The misrepresentation, omission, concealment, or statement is fraudulent or is material to the acceptance of the risk or to the hazard assumed by the insurer.
>
> (b) If the true facts had been known to the insurer pursuant to a policy requirement or other requirement, the insurer in good faith would not have issued the policy or contract, would not have issued it at the same premium rate, would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss.[108]

This coverage defense extends to unintentional misrepresentations and omissions if the insurer can prove that the misrepresentation is material to the risk accepted, that the insurer would have altered the policy offered, or that the insurer would have not issued the policy if the true facts were known.[109] Misrepresentations that have prevented recovery under an insurance policy include misstatements of an

105. *See How Do States Pay for Medicaid?*, PETER G. PETERSON FOUND. (Apr. 26, 2022), https://www.pgpf.org/budget-basics/budget-explainer-how-do-states-pay-for-medicaid [https://perma.cc/FV5G-Z5VU].

106. *See* Gilles, *supra* note 82, at 609.

107. TRACY RAFFLES GUNN, FLORIDA AUTOMOBILE INSURANCE LAW § 5.6(B) (2023).

108. FLA. STAT. § 627.409(1)(a)–(b) (2023).

109. GUNN, *supra* note 107.

insured's marital status,[110] where the insured vehicle will be principally garaged,[111] and whether a truck was modified with larger tires and a lift-kit.[112]

Similar to the named driver exclusion, an insurer may withhold coverage not only to reimburse the insured for damages they suffer[113] but also to tort victims that suffer damages as a result of the insured's negligence.[114] Therefore, a passenger in a rideshare vehicle that is injured in a crash may be left with no remedy because the tortfeasor did not tell the insurer that the tortfeasor's truck was modified with a lift-kit.[115] Of course, this is assuming that there is BI coverage in the first place.

D. *Florida's No-Fault Law*

Florida is one of twelve states that have a no-fault automobile insurance system.[116] However, Florida is one of only two states that do not require drivers to carry insurance with BI coverage.[117] The other state, New Hampshire, allows drivers to make a cash or security deposit with the state's treasurer to satisfy the state's financial responsibility law.[118] This deposit must be sufficient to be able to respond in damages for $25,000 in bodily injury liability per person and $50,000 in bodily injury coverage per incident.[119] This leaves Florida as the lone state where a driver can satisfy the state's financial responsibility laws while not being able to respond to even minor claims of bodily injury liability.

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110. Gov't Emps. Ins. Co. v. Decheona, 610 So. 2d 480, 481 (Fla. Dist. Ct. App. 1992).

111. Penaranda v. Progressive Am. Ins. Co., 747 So. 2d 953, 953–54 (Fla. Dist. Ct. App. 1999).

112. Mercury Ins. Co. v. Markham, 36 So. 3d 730, 730–32 (Fla. Dist. Ct. App. 2010).

113. United Auto. Ins. Co. v. Salgado, 22 So. 3d 594, 596 (Fla. Dist. Ct. App. 2009).

114. *Mercury Ins. Co.*, 36 So. 3d at 730–31.

115. *Id.*

116. AARON DRAIZIN & RANDY MARTIN, FLORIDA AUTOMOBILE INSURANCE LAW § 3.1(A) (2023).

117. *See Automobile Financial Responsibility Laws By State*, INS. INFO. INST., https://www.iii.org/automobile-financial-responsibility-laws-by-state [https://perma.cc/76XQ-9KPF].

118. N.H. REV. STAT. ANN. § 264:21(II) (2023).

119. *Id.* §§ 264:20, 264:22.

Florida's no-fault law[120] requires every owner of a vehicle registered and licensed in the state to maintain PIP coverage.[121] The intent of this law is to provide "medical, surgical, funeral, and disability insurance benefits without regard to fault."[122] PIP benefits are payable for losses arising out of the ownership, maintenance, or use of a motor vehicle.[123] This causation threshold is broad.[124] PIP coverage is provided for in a rideshare company's insurance policy[125] and may represent the only source of compensation available to rideshare passengers that are victimized by an uninsured motorist.

Florida's no-fault law was intended to lessen court congestion,[126] lower premiums,[127] and hasten a tort victim's recovery for damages.[128] Though the law has ultimately failed to lessen court congestion,[129] lower premiums,[130] or hasten adequate tort recovery,[131] the third goal is the most relevant for this Note. The reality is that the $10,000 maximum benefit available through PIP coverage is insufficient in light of the

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120. FLA. STAT. § 627.730 (2023).

121. *See id.* § 627.736(1).

122. *Id.* § 627.731.

123. *Id.* § 627.736(1).

124. *See, e.g.*, Hernandez v. Protective Cas. Ins. Co., 473 So. 2d 1241, 1242–43 (Fla. 1985) (granting coverage to insured for injuries caused by police during a traffic stop).

125. FLA. STAT. § 627.748(7)(b)–(c).

126. *See* Lasky v. State Farm Ins. Co., 296 So. 2d 9, 16–17 (Fla. 1974).

127. *Id.* at 16.

128. *Id.*

129. PIP fuels over half of Florida's insurance litigation, resulting in a record 60,000 lawsuits in 2017. *See* Charles Elmore, *PIP Lawsuits Explode to Record*, THE PALM BEACH POST (Feb. 23, 2018, 6:10 PM), https://www.palmbeachpost.com/story/news/2018/02/23/pip-lawsuits-explode-to-record/6994742007/ [https://perma.cc/5V9V-WDNJ]. However, Florida recently enacted significant tort reform with the intent of lowering the number of PIP lawsuits through means such as eliminating one way attorney's fees. *See Governor Ron DeSantis Signs Comprehensive Legal Reforms into Law* (Mar. 24, 2023), https://www.flgov.com/2023/03/24/governor-ron-desantis-signs-comprehensive-legal-reforms-into-law/ [https://perma.cc/D7PV-PS4T].

130. *See* Charles Elmore, *'Lying Through Their Teeth': How PIP Repeal Died in the Florida Senate*, THE PALM BEACH POST (Mar. 2, 2018, 12:28 AM), https://www.palmbeachpost.com/story/business/2018/03/01/lying-through-their-teeth/6892004007/ [https://perma.cc/MPX3-9GAW].

131. Robert N. Heath, Jr., *Proposals for Settlement in PIP Cases: Should* U.S. Security Ins. Co. v. Cahuasqui *Be Overturned?,* 75 FLA. BAR J. 39, 39 (2001) ("PIP cases by their very definition involve disputes over small amounts, frequently in the hundreds of dollars. The damages in such cases do not generally justify hiring counsel to litigate with the insurance company, despite the merits of the issues involved.").

ever-increasing costs of healthcare,[132] and may only be sufficient for a single day of hospital care.[133] Not requiring drivers to carry BI coverage increases the risk that injured rideshare passengers will be left incurring the costs after PIP benefits are exhausted.

Approximately 6.6% of insured motorists in Florida carry the minimum coverage allowed.[134] In three Florida counties, the portion of minimally insured motorists climbs over 10%.[135] In Miami-Dade, Florida's most populous county,[136] the rate is 10.2%.[137] This alone represents to rideshare passengers a serious risk that they may fall victim to a tortfeasor who is unable to respond to a BI claim. However, the problem only becomes more urgent when one also considers that over 20% of Florida motorists are uninsured.[138] UM coverage is necessary to protect rideshare passengers from this sizeable portion of motorists.

III. PROPOSED LANGUAGE TO PROTECT FLORIDIANS FROM UNDERINSURED MOTORISTS

The proposed changes below to section 627.748(7)(b)–(c) of the Florida Statutes are designed to bring the required UM coverage to parity with the BI and CSL coverages currently required. This is consistent with the methodology used in Florida House Bill 757, an early draft of Florida's TNC statute

132. Shameek Rakshit et al., *How Does Medical Inflation Compare to Inflation in the Rest of the Economy?*, PETERSON-KFF (July 26, 2023), https://www.healthsystemtracker.org/brief/how-does-medical-inflation-compare-to-inflation-in-the-rest-of-the-economy/ [https://perma.cc/L2D4-CYG9] ("Since 2000, the price of medical care, including services provided as well as insurance, drugs, and medical equipment, has increased by 114.3%. In contrast, prices for all consumer goods and services rose by 80.8% in the same period.").

133. *See* Charles Elmore, *Car Insurers Hike PIP Up to 54%, but Lobbyists Pump Brakes on Repeal*, THE PALM BEACH POST (Feb. 9, 2018, 5:50 PM), https://www.palmbeachpost.com/story/business/2018/02/09/car-insurers-hike-pip-up/6812689007/ [https://perma.cc/H4SR-XJ3T] ("HCA hospitals in Palm Beach County and other locations charged up to [sixty-five] times what Medicare does for PIP injury scans, often using up the entire $10,000 benefit in a single day.").

134. *See* PINNACLE ACTUARIAL RES., INC., *supra* note 104, at exhibit 16.

135. *Id.*

136. BUREAU OF ECON. & BUS. RSCH., UNIV. OF FLA., FLORIDA POPULATION: CENSUS SUMMARY 2020, at 15–16 tbl.1 (2021), https://www.bebr.ufl.edu/wp-content/uploads/2022/01/census_summary_2020.pdf [https://perma.cc/NB2F-RLWH].

137. PINNACLE ACTUARIAL RES., INC., *supra* note 104, at exhibit 16.

138. 20.4% of Florida motorists are uninsured. *Facts + Statistics: Uninsured Motorists*, INS. INFO. INST., https://www.iii.org/fact-statistic/facts-statistics-uninsured-motorists [https://perma.cc/Z4S4-HKN3].

that ultimately died in committee.[139] The National Association of Insurance Commissioners also recommends that legislators consider requiring UM coverage in the same amount as liability coverage to adequately protect passengers.[140] The absolute amount of coverage provided below for period one is lower than in House Bill 757 because that bill set out higher liability coverages to begin with.[141] Finally, the new subsection (j) below is modeled after Virginia's TNC statute[142] to remove a potential ambiguity that may arise if a rideshare application malfunctions while the rideshare driver is engaged in a prearranged ride. The strikethrough language below is the current language of the statute to be deleted. The underlined portions are proposed additions.

139. H.B. 757, 24th Leg., Reg. Sess. (Fla. 2015).
140. NAT'L ASS'N INS. COMM'RS, *supra* note 87, at 17.
141. *See* H.B. 757, 24th Leg., Reg. Sess. (Fla. 2015).
142. *See* VA. CODE ANN. § 46.2-2099.52(D) (2023).

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(b) The following automobile insurance requirements apply while a participating TNC driver is logged on to the digital network but is not engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405; and

~~c. Uninsured and underinsured vehicle coverage as required by s. 627.727.~~

c. Uninsured and underinsured motorist coverage in the amount of at least $50,000 for death and bodily injury per person, and $100,000 for death and bodily injury per incident.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(c) The following automobile insurance requirements apply while a TNC driver is engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under ss. 627.730-627.7405; and

~~c. Uninsured and underinsured vehicle coverage as required by s. 627.727.~~

c. Uninsured and underinsured motorist coverage in the amount of $1 million from the moment a passenger enters the vehicle of a participating driver until the passenger exits the vehicle.

. . . .

(j) In the event that the digital network becomes inaccessible due to failure or malfunction while a TNC driver is en route to or transporting a passenger during a prearranged ride, as described in subsection (c), TNC insurance coverage shall be presumed to be that required in subsection (c) until the passenger exits the vehicle.

The proposed language is added to section 627.748(7)(b)–(c) instead of section 627.727 to keep all the statewide rideshare regulations located in one section of the Florida Statutes. Additionally, though requiring mandatory BI coverage across Florida and repealing the current no-fault scheme is prudent for a multitude of reasons that extend beyond the scope of this Note,[143] it is not the best route for the specific goal of protecting consumers from the financial consequences of a crash while riding in a rideshare vehicle. Florida's no-fault system has been entrenched for decades[144] and has survived prior repeal efforts.[145] Targeted legislation is more likely to succeed because fewer statutes would need to be modified,[146] there would be no need for a large multitude of Floridians to purchase new (potentially more expensive)[147] automobile insurance, and the legislation would likely see less resistance from special interest groups as a result.[148] Interestingly, Uber has supported prior repeal efforts of Florida's no-fault scheme.[149]

Finally, many rideshare passengers would not see a net benefit from requiring BI coverage statewide if the amount mandated is something akin to $10,000 per person. There are many uninsured motorists in Florida who could still leave injured rideshare passengers without a means for compensation.[150] If such a law is passed, neither rideshare

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143. *See* Lawrence C. Falzon, Comment, *Michigan No-Fault: The Rise and Fall of Socialized Negligence*, 56 U. DET. J. URB. L. 99, 110–20 (1978). *But see* F. Patrick Hubbard, *"Sophisticated Robots": Balancing Liability, Regulation, and Innovation*, 66 FLA. L. REV. 1803, 1868–69 (2014) (discussing the benefits of a no-fault insurance scheme as autonomous automobiles become more prevalent).

144. Mark J. Rose, *Florida's No-Fault Law and the 2012 Statutory Amendments*, 31 TRIAL ADVOC. Q. 23, 23 (2012) ("Florida has utilized some version of No-Fault automobile insurance since January 1, 1972 with only a three month gap in mandatory No-Fault coverage at the end of 2007 following the 'sunset' of Florida's No-Fault law.").

145. *See Florida Senate Pushing Ahead with No-Fault Auto Repeal, Despite Last Year's Veto*, INS. J. (Feb. 4, 2022), https://www.insurancejournal.com/news/southeast/2022/02/04/652335.htm [https://perma.cc/DG63-DU5X].

146. *See, e.g.*, S.B. 150, 27th Leg., Reg. Sess. (Fla. 2022) (demonstrating how many statutes are affected by PIP coverage reform).

147. *But see* PINNACLE ACTUARIAL RES., INC., *supra* note 104, at 5 (estimating an overall reduction in premiums of 9.6% for the average Florida driver if PIP coverage is eliminated in conjunction to a repeal of Florida's no-fault law).

148. *See* Elmore, *supra* note 130.

149. *See id.* Uber seems to support this action because it would lead to a decrease in insurance premiums. *See id.*

150. *See Facts + Statistics: Uninsured Motorists*, *supra* note 138.

companies nor many Floridians would carry PIP coverage (or MedPay), so injured passengers would no longer get access to the $10,000 afforded by PIP.[151] Such consumers may be in the same position as before with only $10,000 available in compensation, but instead of PIP coverage where a physical therapist can directly bill the insurer and receive payments, the consumer may enter an adversarial process with the at-fault party's insurer.[152] This may delay how long it takes to receive payment, and the consumer may lose a portion of those funds in attorney's fees and other costs less likely to be accrued with PIP coverage.[153] This all assumes that the tortfeasor is insured.

IV. THE COST TO THE CONSUMER

Brian Fritts worked as a cook at a sports bar in Colorado.[154] He did not own auto insurance for the simple reason that he did not own a car.[155] He relied on Lyft and Uber to get to work.[156] In September 2020, Brian was riding in the backseat of a Lyft when it was struck by another vehicle in a hit-and-run crash.[157] Brian's Lyft was pushed off the road, went through a fence, and rolled over before coming to a stop.[158] Five of his vertebrae shattered, his jaw fractured, and a fractured rib punctured one of his lungs.[159] He accrued at least $173,000 in medical bills

151. *See* FLA. STAT. § 627.736(1) (2023).

152. *See* Lasky v. State Farm Ins. Co., 296 So. 2d 9, 14 (Fla. 1974) ("[W]ith recovery limited to those situations where he can prove that the other party was at fault, the injured party is assured of recovery of his major and salient economic losses from his own insurer.").

153. *Id.* at 16–17.

154. Catie Cheshire, *After a Lyft Accident, Brian Fritts Got a Crash Course in Changing the Law*, WESTWORD (May 27, 2022), https://www.westword.com/news/rideshare-lyft-uber-uninsured-motorist-accident-passenger-14176190 [https://perma.cc/T8XH-ZEK3].

155. *Lyft Won't Pay for Rider's Medical Bills After Hit & Run Crash in Denver*, CBS COLO. (Jan. 3, 2021, 6:04 PM), https://www.cbsnews.com/colorado/news/lyft-denies-payment-rider-medical-bills-colorado-hit-run-crash-denver/ [https://perma.cc/SWM7-ZW27].

156. *Id.*

157. Hannah Metzger, *Colorado Legislature Passes Protections for Ride-Sharing Passengers in Hit-and-Runs*, COLO. POL. (Apr. 26, 2022), https://www.coloradopolitics.com/legislature/colorado-legislature-passes-protections-for-ride-sharing-passengers-in-hit-and-runs/article_01c9b838-b1e5-11ec-afac-f733ad336daf.html [https://perma.cc/8NM2-B3KY].

158. *Lyft Won't Pay for Rider's Medical Bills After Hit & Run Crash in Denver*, *supra* note 155.

159. Meghan Lopez, *New Law Requires Rideshares to Offer More Insurance Coverage for Passengers, at a Cost*, DENVER7 (May 20, 2022, 10:09 AM), https://www.denver7.com/news/local-news/new-law-requires-rideshares-to-offer-

after five vertebrae were fused and a metal rod was placed in his neck.[160] Brian retained a personal injury attorney; however, the insurance companies for both the driver and Lyft denied coverage,[161] much to Brian's surprise.[162] Lyft previously provided passengers in Colorado with UM coverage but had stopped doing so earlier that year.[163]

Brian's story spurred Colorado lawmakers to close this insurance gap.[164] Colorado now requires rideshare companies to cover passengers with at least a $200,000/$400,000 UM policy.[165] Both Lyft and Uber opposed the law.[166] In a statement before the law passed, Lyft said, "We continue to disagree with this bill. It does little to achieve its stated goals, but would significantly increase costs for riders and inhibit our ability to invest in other vital Colorado priorities, such as increasing electric vehicle adoption to reduce carbon emissions across the state."[167] Uber stated, "We're disappointed that the legislature rejected compromises that would have protected riders without higher costs, and instead opted to pass legislation that singles out rideshare companies and will almost certainly lead to significant price hikes for everyday Coloradans."[168]

Lyft estimated at the time that it would need to raise fares by 6% to cover the cost of the additional insurance,[169] though it should be noted that the 6% cost increase estimate was presented when the legislature was considering a $1 million policy limit.[170] There is no evidence that Lyft provided an

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more-insurance-coverage-for-passengers-at-a-cost [https://perma.cc/68NR-GB6Z].

160. *Lyft Won't Pay for Rider's Medical Bills After Hit & Run Crash in Denver*, *supra* note 155.

161. *Id.*

162. *See* Dillon Thomas, *Colorado Man's Injuries Suffered During Rideshare Crash Leads to New Law*, CBS COLO. (May 19, 2022, 11:28 PM), https://www.cbsnews.com/colorado/news/rideshare-insurance-uber-lyft-brian-fritts/ [https://perma.cc/L46W-G2B6] ("Because Fritts did not own a vehicle he did not purchase motorist insurance that would cover his bills if injured in another vehicle. He always assumed that companies like Lyft and Uber would have either insurance or policies for their drivers that would cover riders like himself.").

163. *Lyft Won't Pay for Rider's Medical Bills After Hit & Run Crash in Denver*, *supra* note 155.

164. Lopez, *supra* note 159.

165. COLO. REV. STAT. § 40-10.1-604(2.5) (2023).

166. Lopez, *supra* note 159.

167. *Id.*

168. *Id.*

169. *Id.*

170. *Rideshares & Uninsured Motorist Insurance: Hearing on H.B. 1098 Before the S. Comm. on Transp. and Energy*, 73d Sess., at 5:15:04 PM (Colo. 2022) [hereinafter *Rideshares & Uninsured Motorist Insurance Hearing*] (statement of

updated cost estimate when the limits were adjusted to $200,000/$400,000. Some lawmakers opposed this cost increase.[171] One such lawmaker stated, "Anything that might incrementally increase costs for Colorado citizens, particularly in this year where we have the highest inflation costs in [forty] years, is a concern to me."[172] During a committee hearing, a lobbyist for Lyft testified that approximately 42% of rides start or end in low-income neighborhoods,[173] and 21% of riders use rideshare to access healthcare.[174] These riders would bear some of the worst effects of any kind of cost increase.

As of September 30, 2022, Uber had approximately $4.86 billion of cash and cash equivalents on hand, among other assets.[175] Lyft had approximately $1.78 billion of cash, cash equivalents, and short-term investments on hand, among other assets.[176] An assignment of the costs of additional insurance to consumers is not necessary for these companies, even if it is likely.[177] As previously discussed, Lyft formerly provided UM coverage to passengers in Colorado.[178] Notably, the cost savings from reducing insurance coverage were not passed on to consumers in Colorado.[179]

Brad Nail, Partner, Converge Public Strategies).

171. Metzger, *supra* note 157. The bill was approved by the Colorado Senate with a 21-3 vote and by the Colorado House with a 36-24 vote. *Id.*

172. *Id.* (quoting Colorado State Representative Richard Holtorf, a Republican Legislator from Akron, Colorado).

173. *Rideshares & Uninsured Motorist Insurance Hearing*, *supra* note 170, at 5:15 PM (statement of Brad Nail, Partner, Converge Public Strategies). "Low-income neighborhood" is undefined.

174. *Id.* at 5:15:46 PM.

175. Press Release, Uber, Uber Announces Results for Third Quarter 2022, at 8 (Nov. 1, 2022), https://s23.q4cdn.com/407969754/files/doc_financials/2022/q3/Uber-Q3-22-Earnings-Press-Release-(1).pdf [https://perma.cc/UL95-99PT].

176. Lyft, Inc. Quarterly Report (Form 10-Q), at 3 (Nov. 8, 2022) https://s27.q4cdn.com/263799617/files/doc_financials/2022/q3/eb5d3d16-3782-42ca-8984-d8e67558cb72.pdf [https://perma.cc/EG6A-KHFE].

177. *But see* Kellen Browning, *Financial Woes Thrust Lyft, Long in Uber's Shadow, into the Spotlight*, N.Y. TIMES (Feb. 15, 2023), https://www.nytimes.com/2023/02/15/technology/lyft-financial-woes.html?smid=nytcore-ios-share&referringSource=articleShare [https://perma.cc/LU62-53T5] ("Lyft's projections for its current quarter were well below investors' estimates. The company said it expected to earn $975 million in revenue and $5 million to $15 million in adjusted earnings . . . . Investors had projected Lyft would earn $1.09 billion in revenue and $82 million in adjusted earnings.").

178. *Lyft Won't Pay for Rider's Medical Bills After Hit & Run Crash in Denver*, *supra* note 155.

179. *Rideshares & Uninsured Motorist Insurance: Consideration of Senate Amendments to H.B. 1098 Before the House of Representatives*, 73d Sess., at 1:01:08

However, even a 6% increase in fares is negligible compared to the thousands of dollars of medical bills that could accrue in even a modest car accident. To put the potential increase in perspective, an UberX ride of approximately ten miles from the Guitar Hotel in Fort Lauderdale, Florida, to Hard Rock Stadium in Miami Gardens may cost a passenger approximately $21.27.[180] A 6% increase of $1.28 would increase the cost of the trip to $22.55.

Like in Colorado, rideshare companies previously provided Floridians with UM coverage. The UM coverage Uber and Lyft provided was originally $1 million[181] before both companies lowered the limit to $250,000 in 2019.[182] No evidence was found that either company passed any of the cost savings from those coverage cuts on to consumers.

To put Uber's and Lyft's warnings of a price increase in context, both companies use captive insurance companies to self-insure portions of their risk exposure.[183] Captive insurance companies ("captives") are subsidiaries that insure the risks of the parent company.[184] Because captives are typically only licensed to issue policies in one jurisdiction, they must enter into fronting arrangements with third-party insurance companies to conduct business in other jurisdictions.[185] The third-party insurer will issue the policy but then transfer the risks and premiums associated with the policy back to the captive for a fee.[186]

In practice, Lyft will purchase insurance from a third-party insurance company, and then Lyft's captive insurer—Pacific Valley Insurance Company—will sell reinsurance to the third-

(Co. 2022) [hereinafter *Consideration of Senate Amendments to H.B. 1098*] (statement of Rep. Steven Woodrow, Member, H. Judiciary Comm.), https://archive.org/details/colorado-house-2022-legislative-day-084.

180. UBER, *Price-Estimate*, https://www.uber.com/global/en/price-estimate/ [https://perma.cc/T7AT-QX7C].

181. *Changes to Insurance Coverage for Uber and Lyft Accidents in Effect in 2020*, FAIRWAY L. GRP., https://fairwaylawgroup.com/changes-to-insurance-coverage-for-uber-and-lyft-accidents-in-effect-in-2020/ [https://perma.cc/U8NQ-UUAV].

182. *Id.*

183. Tatyana Shumsky, *Lyft's $864 Million Insurance Unit Shows Ride Hailing Is a Risky Business*, WALL ST. J. (Mar. 12, 2019, 12:34 PM), https://www.wsj.com/articles/lyfts-864-million-insurance-unit-shows-ride-hailing-is-a-risky-business-11552406401 [https://perma.cc/SL5D-4A8M].

184. Shuwen Deng, *Regulation of Captives in the Face of Global Domiciles' Competition: Challenges and Perspectives*, 12 GEO. MASON INT'L L.J. 43, 43 (2021).

185. *Id.* at 70.

186. *Id.* at 70–71.

party insurer to shift the risk and premiums to the captive.[187] This "allows Lyft to invest the premiums it collects from third-party insurers until those funds are needed to pay claims, while also allowing the insurers to offload the risk back to Lyft."[188] When Lyft or Uber warn legislators of price increases, legislators should ask the company to show their work and disclose both the company's assumptions and how the cost advantages of self-insurance affect the calculation.

It is possible that any resulting price increase in Florida would be greater than the 6% increase estimated for Colorado. Florida is the second most expensive state for both maximum and minimum coverage auto insurance.[189] In comparison, Colorado is the tenth most expensive state for full coverage auto insurance and the twenty-seventh most expensive state for minimum coverage auto insurance.[190] Factors that contribute to this discrepancy likely include Florida's higher rate of uninsured motorists,[191] those motorists who are minimally insured with no BI coverage,[192] and the rising costs of PIP coverage.[193]

Any cost increase will hurt frequent rideshare passengers the most. If a passenger relies on rideshare to commute back and forth from work, that passenger may be taking several hundred trips in any given year. Even a marginal cost increase per trip would accumulate into a large additional expenditure. That passenger also has a higher risk of falling victim to an

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187. Shumsky, *supra* note 183.

188. *Id.* Uber's captive insurer is Aleka Insurance Inc. Luke Gallin, *Sharing Economy Looks to Captives*, REINSURANCE NEWS (Mar. 20, 2019), https://www.reinsurancene.ws/sharing-economy-looks-to-captives/ [https://perma.cc/XVZ8-MXR4].

189. *See* Penny Gusner, *Car Insurance Rates by State 2024*, FORBES (Jan. 2, 2024), https://www.forbes.com/advisor/car-insurance/rates-by-state/ [https://perma.cc/77V3-W7CS]. The average annual cost for full coverage auto insurance in Florida is $4,326. *Id.* Nationally, the average annual cost of full coverage auto insurance is $2,118. *Id.* The average annual cost for minimum coverage auto insurance in Florida is $1,286. *Id.*

190. *Id.* The average annual cost for full coverage auto insurance in Colorado is $2,489. *Id.* The average annual cost for minimum coverage auto insurance in Colorado is $516. *Id.*

191. 20.4% of Florida's drivers are uninsured compared to 16.3% of Colorado's drivers. *See Facts + Statistics: Uninsured Motorists*, *supra* note 138.

192. Approximately 6.6% of insureds in Florida purchase the legal minimum. PINNACLE ACTUARIAL RES., INC., *supra* note 104, at exhibit 16.

193. Florida insurers increased PIP premiums by 54% in 2017, which outpaced an increase in overall premiums by 35%. Elmore, *supra* note 133.

underinsured driver while inside a rideshare vehicle.[194] The proposed legislative solution in Part III admittedly takes a one-size-fits-all approach. A passenger may have a high-risk tolerance and may want to forgo coverage to save money. A passenger with a low-risk tolerance may want more coverage than what is mandated. Unfortunately, neither of these hypothetical passengers likely knows what insurance coverage they have while inside a rideshare vehicle. One cannot actively manage their risk without being informed about what coverage or exposure exists.

An alternative legislative solution is to require rideshare companies to conspicuously disclose to a consumer what insurance coverage does and does not apply to their ride. This disclosure could enable a passenger to make an informed decision regarding their insurance needs and may encourage the passenger to purchase their own UM coverage.

A disclosure requirement may spur rideshare companies and insurers to collaborate and offer an insurance product specifically for frequent rideshare passengers. The two industries have a history of meeting consumer demand to close other insurance gaps.[195] Perhaps the disclosure could include an advertisement of a partner insurer for an insurance product specifically tailored for rideshare passengers. This would allow passengers the opportunity to manage their own risk while preventing a widespread cost increase.

Of course, the downside to this approach is that frequent rideshare passengers may not be able to purchase UM coverage because they do not carry auto insurance to begin with.[196]

Ultimately, it is the responsibility of legislators to balance the needs of their constituents. To mandate UM coverage, it may be necessary to adjust the limits proposed in the previous Part downward to not disproportionally harm those who

194. *See supra* Part II.

195. *See* Werbach, *supra* note 46, at 943–44 ("One of the key developments allowing adoption of TNC laws has been negotiation of a compromise between ride-hailing companies and insurance companies regarding insurance requirements for drivers. Most states have used the resulting model language to impose mandatory insurance requirements on drivers, and in response, insurance companies have begun to offer policies tailored to the new business model."); *California Commissioner OKs New Insurance Products to Fill Ridesharing Gap,* INS. J. (Jan. 21, 2016), https://www.insurancejournal.com/news/west/2016/01/21/395994.htm [https://perma.cc/G4YD-8G77] (describing how State Farm and USAA created new, gap-closing coverage for Uber and Lyft drivers in California).

196. *See, e.g.*, *Lyft Won't Pay for Rider's Medical Bills After Hit & Run Crash in Denver*, *supra* note 155.

frequently rely on rideshare services to access critical services or to make a living.[197] A mandatory disclosure law is an improvement over the current system, but the most vulnerable consumers will still be at risk of substantial financial harm[198] if they cannot afford to adequately insure themselves.[199]

Conclusion

Not only are the laws in Florida insufficient to protect rideshare passengers from the risks that are inherent in the services that rideshare companies offer, but the laws in place exacerbate those risks. Florida's roads are flooded with drivers who are uninsured, legally underinsured because of the lack of a requirement to carry BI coverage, or effectively uninsured because of laws like those that allow insurers to deny coverage for minor misstatements.

Given the heightened risks rideshare passengers face in Florida, the State should follow the lead of the twenty-six other states that mandate rideshare companies to provide UM coverage. The minor cost increases that rideshare companies may choose to pass along to consumers are negligible in light of the potential medical costs that consumers may ultimately be responsible for—a financial risk that consumers are likely unaware of. Alternatively, the legislature can impose a disclosure requirement to help ensure that consumers are aware of the risks they face while commuting in a rideshare vehicle.

Florida was one of the last states to enact statewide regulations on the rideshare industry. Yet, Florida does not have to be one of the last states to affirmatively protect the most vulnerable consumers. It would behoove Florida, as well as the

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197. This downward adjustment of the mandated policy limits is similar to the compromise struck in Colorado, where the proposed coverage minimums were changed from $1 million in CSL coverage to $200,000/$400,000 in coverage. *Consideration of Senate Amendments to H.B. 1098, supra* note 179, at 1:00:04 (statement of Rep. Steven Woodrow, Member, H. Judiciary Comm.).

198. Metzger, *supra* note 157 (quoting Colorado State Representative Steven Woodrow, a Democratic Legislator from Denver: "When people are hit in hit-and-runs and there's no coverage for them, they end up going essentially into medical bankruptcy.").

199. Lyft reports that 42% of their rides start or end in low-income neighborhoods. *Rideshares & Uninsured Motorist Insurance Hearing*, *supra* note 170, at 5:15:41 PM (statement of Brad Nail, Partner, Converge Public Strategies). Practically, the benefits of an informed consumer base are blunted if the consumers cannot afford to act on the information.

legislatures of the twenty-three remaining states who have not done so, to close this uninsured motorist insurance gap.

APPENDIX A

State	Period One Coverage [200]	Citation	Period Two Coverage [201]	Citation
AZ	NA	NA	$250k	ARIZ. REV. STAT. ANN. § 28-4038(b)(2) (2023)
CA	NA	NA	$1 million	CAL. PUB. UTIL. CODE § 5433(b)(2) (West 2023)
CO	NA	NA	$200k/ $400k	COLO. REV. STAT. § 40-10.1-604(2.5) (2023)
CT	$20k/$50k	CONN. GEN. STAT. § 13b-120(a)(1)(B) (2023)	$20k/$50k	CONN. GEN. STAT. § 13b-120(a)(2)(B) (2023)
DE	$100k	DEL. CODE ANN., tit. 2, § 1908(2)(c) (2023)	$1 million	DEL. CODE ANN., tit. 2, § 1908(3)(c) (2023)
GA	NA	NA	$100k/ $300k	GA. CODE ANN. § 33-1-24 (b)(3) (2023)
IL	NA	NA	$50k	625 ILL. COMP. STAT. 57/10(c)(2) (2023)
KS	$20k/$50k	KAN. STAT. ANN. § 8-2708(b)(1)(B) (2023)	$20k/$50k	KAN. STAT. ANN. § 8-2708(c)(1)(B) (2023)
ME	$50k/$100k	ME. STAT. tit. 24-A, § 7303(2)(c) (2023)	$50k/$100k	ME. STAT. tit. 24-A, § 7303(3)(c) (2023)
MD	$30k/$60k	MD. CODE ANN., PUB. UTIL. § 10-405(a)(1) (West 2023)	$30k/$60k	MD. CODE ANN., PUB. UTIL. § 10-405(a)(2)(i) (West 2023)

200. "Period One Coverage" describes the time when a driver is logged into the digital network but has not yet accepted a ride request.

201. "Period Two Coverage" describes the time from when a driver has accepted a ride request up until the last passenger has exited the rideshare vehicle, though some states limit period two strictly to the time a passenger is inside the rideshare vehicle. *E.g.*, CAL. PUB. UTIL. CODE § 5433(b)(2) (West 2023); 625 ILL. COMP. STAT. 57/10(c)(2) (2023); VA. CODE ANN. § 46.2-2099.52(B)(2) (2023); WASH. REV. CODE 46.72B.180(1)(b)(iii) (2023).

MA	$20k/$40k	MASS. GEN. LAWS ch. 175 § 228(c) (2023)	$20k/$40k	MASS. GEN. LAWS ch. 175 § 228(d) (2023)
MN	$25k/$50k	MINN. STAT. § 65B.472(2)(b)(3) (2023)	$25k/$50k	MINN. STAT. § 65B.472(2)(c)(3) (2023)
MO	$25k/$50k	MO. REV. STAT. § 379.1702(2)(2) (2023)	$25k/$50k	MO. REV. STAT. § 379.1702(3)(2) (2023)
NE	$25k/$50k	NEB. REV. STAT. § 75-334(1)(b) (2023)	$25k/$50k	NEB. REV. STAT. § 75-333(1)(b) (2023)
NH	$50k/$100k	N.H. REV. STAT. ANN. § 359-U:8(II)(b) (2023)	$300k	N.H. REV. STAT. ANN. § 359-U:8(IV)(b) (2023)
NJ	$25k/$50k	N.J. STAT. ANN. § 39:5H-10(b)(3) (2023)	$1.5 million	N.J. STAT. ANN. § 39:5H-10(c)(3) (2023)
NY[202]	$25k/$50k	N.Y. VEH. & TRAF. LAW § 1693(2)(a) (Consol. 2023)	$1.25 million	N.Y. VEH. & TRAF. LAW § 1693(3)(a) (Consol. 2023)
NC	$30k/$60k	N.C. GEN. STAT. § 20-279.21(b)(3) (2023)	$30k/$60k	N.C. GEN. STAT. § 20-279.21(b)(3) (2023)
ND	$25k/$50k	N.D. CENT. CODE § 26.1-40.1-04(1)(b) (2023)	$25k/$50k	N.D. CENT. CODE § 26.1-40.1-03(2) (2023)
OR[203]	$25k/$50k	OR. REV. STAT. § 742.502(2) (2023)	$25k/$50k	OR. REV. STAT. § 742.502(2) (2023)
SC	$25k/$50k	S.C. CODE ANN. § 58-23-1630(B)(2) (2023)	$25k/$50k	S.C. CODE ANN. § 58-23-1630(C)(2) (2023)
SD	$50k/$100k	S.D. CODIFIED LAWS § 32-40-8(2) (2023)	$100k/ $300k	S.D. CODIFIED LAWS § 32-40-9(2) (2023)

202. The New York UM minimum coverages for period one are: $25,000/$50,000 for injuries not resulting in death and $50,000/$100,000 for injuries resulting in death.

203. Oregon allows local governments to place more stringent insurance regulations on rideshare companies. *See, e.g.*, PORTLAND, OR., CODE § 16.40.230(G)(2) (2023) (requiring $1 million in UM coverage from the time a driver accepts a ride request to the time the passenger exits the rideshare vehicle).

VT	$50k/$100k	VT. STAT. ANN. tit. 23, § 750(b)(2)(A)(ii) (2023)	$1 million	VT. STAT. ANN. tit. 23, § 750(b)(3)(A)(ii) (2023)
VA	$30k/$60k	VA. CODE ANN. § 46.2-2099.52(C)(1) (2023)	$30k/$60k	VA. CODE ANN. § 46.2-2099.52(B)(2) (2023)
WA	NA	NA	$100k/ $300k	WASH. REV. CODE 46.72B.180(1)(b)(iii) (2023)
WV	$25k/$50k	W. VA. CODE § 17-29-8(b)(2) (2023)	$25k/$50k	W. VA. CODE § 17-29-8(c)(2) (2023)