

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 1806

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Motor Vehicle Insurance

DATE: March 24, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	TR	_____
4.	_____	_____	BC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill requires persons renting or leasing a motor vehicle for less than 1 year to provide proof of insurance coverage in the amount not less than \$500,000 combined property damage and bodily injury liability. If the person renting or leasing the vehicle does not obtain or possess this coverage and is involved in an accident, the rental or leasing company would be liable in the amounts up to \$100,000 per person, \$300,000 per incident for bodily injury, \$50,000 for property damage, and an additional \$500,000 for economic damages arising from the use of the vehicle. The additional economic damages would be reduced by the amount recovered from the person who rented or leased the vehicle. Further, if the person renting or leasing the vehicle does not obtain or possess the \$500,000 combined coverage and is involved in an accident, the rental or leasing company would also be liable for any amounts that were not able to be recovered from the person who rented or leased the vehicle. The bill exempts vehicles rented or leased for commercial purposes.

This bill substantially amends the following section of the Florida Statutes: 324.021.

II. Present Situation:

In 1999, the Legislature created s. 324.021(9)(b)2, F.S.,¹ which states:

The lessor, under an agreement to rent or lease a motor vehicle for a period of less than 1 year, shall be deemed the owner of the motor vehicle for the purpose of determining liability for the operation of the vehicle or the acts of

¹ Ch. 99-225; s.28, L.O.F.

the operator in connection therewith only up to \$100,000 per person and up to \$300,000 per incident for bodily injury and up to \$50,000 for property damage. If the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than \$500,000 combined property damage and bodily injury liability, the lessor shall be liable for up to an additional \$500,000 in economic damages only arising out of the use of the motor vehicle. The additional specified liability of the lessor for economic damages shall be reduced by amounts actually recovered from the lessee, from the operator, and from any insurance or self-insurance covering the lessee or operator. Nothing in this subparagraph shall be construed to affect the liability of the lessor for its own negligence.

Graves Amendment

In 2005, Congress addressed the vicarious liability issue (meaning liability without fault) with regard to rental and leasing car companies, by passing 49 U.S.C. 30106, also known as the Graves Amendment. The Graves Amendment states:

(a) In general.-An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if:

(1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and

(2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

(b) Financial responsibility laws.-Nothing in this section supersedes the law of any State or political subdivision thereof-

(1) imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle; or

(2) imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law.

(c) Applicability and effective date.-Notwithstanding any other provision of law, this section shall apply with respect to any action commenced on or after the date of enactment of this section without regard to whether the harm that is the subject of the action, or the conduct that caused the harm, occurred before such date of enactment.

Court Challenges

There have been several Florida court rulings holding that s. 324.021(9)(b)2, F.S., was not a “financial responsibility” law exempt from the Graves Amendment, which preempted state vicarious liability laws.² As a result of these decisions, Florida rental and leasing companies continue to be subject to the requirements of s. 324.021(7), F.S., “Proof of Financial Responsibility” which requires coverage amounts of \$10,000 for bodily injury or death to one person, or \$20,000 for bodily injury or death to two or more persons and \$10,000 coverage for property damage. The \$10,000/\$20,000/\$10,000 coverage amounts are the same minimum amounts that all vehicle owners must carry to register a vehicle in the State of Florida.

III. Effect of Proposed Changes:

The bill requires the lessee or renter to possess or obtain liability coverage in the amounts of \$100,000 per person and up to \$300,000 per incident for bodily injury and up to \$50,000 for property damage. Section 627.7275(2)(b), F.S., requires auto insurance policies to be issued for a period of at least 6 months. As a result, opponents to the bill argue that a consumer wanting to rent a vehicle for one day could be forced to purchase a 6 month policy if the consumer does not already carry the required coverage set forth in the bill. If this is the case, tourists from other states and countries would be impacted by this requirement. Proponents argue that the leasing and rental car companies currently offer this coverage under the company’s umbrella policy, but there is debate on whether a policy not issued in the name of the lessee or renter meets the requirements of the bill that the lessee or renter possess or obtain the coverage.

If a consumer does not wish to purchase the additional coverage limits of the bill, then the rental or leasing company will be liable for \$100,000 per person and up to \$300,000 per incident for bodily injury and up to \$50,000 for property damage, and an additional \$500,000 in economic damages arising out of the use of the motor vehicle. Furthermore, the rental/leasing company will be liable for “any amount” of damage not recovered from the person who leased the vehicle. Opponents of the bill argue that rental and leasing companies will not be able to afford the insurance necessary to cover the risk of being liable for “any amount” if a vast majority of their customers do not have the additional coverage. The additional coverage, whether purchased by the customer or by the rental or leasing company, will increase the cost of renting a car in Florida.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²*West v. Enterprise Leasing Co.*, 997 So.2d 1196 (Fla. 2d DCA 2008).
Blanks v. Enterprise Leasing Co., 17 So.3d 857 (Fla. 3d DCA 2009).
Caraker v. Hertz Corp., 11 Fla. L. Weekly 1004220 (Fla. March 23, 2011).
Vargas v. Enterprise Leasing Co., 993 So. 2d 614 (Fla. 4th DCA 2008).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Courts may find the provisions of this bill to be in violation of the Graves Amendment.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None

B. Private Sector Impact:

Persons injured by a driver of a leased or rented vehicle would have additional coverage to pay for expenses incurred as a result of such injuries.

Persons wanting to rent or lease a car for less than 1 year could be required to purchase insurance that would cause the cost of renting or leasing a vehicle to increase.

Rental and leasing companies could be liable for “any amount” not recovered from the person who did not have the required amounts of coverage when renting or leasing the vehicle. This could cause the prices of renting a car in Florida to increase, as rental car companies purchase additional liability insurance to cover the open-ended exposure.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
