HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 341 Uninsured Motorist Insurance Coverage
SPONSOR(S): Ingram
TIED BILLS: None **IDEN./SIM. BILLS:** SB 706

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N	Vanlandingham	Cooper
2) Civil Justice Subcommittee	13 Y, 0 N	Keegan	Bond
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Uninsured Motorist (UM) coverage protects motorists against injuries caused by owners or operators of uninsured or underinsured motor vehicles. Such policies are available on a “stacked” or “non-stacked” basis. UM policies that are “stacking” extend to every resident and vehicle in a household and allow residents or others to recover the combined policy limits from each insured vehicle. “Non-stacking” policies limit coverage to the insured vehicle operated at the time of the accident.

Current law provides that UM policies are “stacked” by default, and “non-stacked” coverage must be affirmatively selected by the insured by signing a waiver of any rights to combine policy limits from multiple vehicles. However, a recent decision by Florida’s First District Court of Appeal has created uncertainty whether a “non-stacking” policy waiver signed by a named insured will waive “stacking” benefits on behalf of all insureds. The court held that due to a discrepancy in the wording between two subsections of the statute, a resident relative who occupies an insured’s vehicle during an accident may still claim “stacked” benefits despite any waiver signed by the named insured.

This bill restores the general effectiveness of a “non-stacking” waiver for UM coverage whereby the person buying the coverage makes an election between stacking or non-stacking coverage that is binding on the family. The result would return current insurance law to the status quo that existed before the court decision and clarify, for both insurers and insureds, the true extent of coverage offered by UM policies.

This bill does not appear to have a fiscal impact on state or local government.

The legislation takes effect July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on "stacking" and "non-stacking" Uninsured Motorist Insurance

Uninsured Motorist (UM) coverage protects motorists against injuries caused by owners or operators of uninsured or underinsured motor vehicles. Section 627.727(1), F.S., requires insurers who offer bodily injury liability coverage also to offer UM coverage in the same amount as any policy limits applying to the bodily injury liability policy. Pursuant to the Florida Supreme Court's decision in *Mullis v. State Farm Mut. Auto. Ins. Co.*, 252 So. 2d 229 (Fla. 1971), conventional UM coverage extends not only to the named insured but also to family members, household residents, or any other lawful occupant of the insured vehicle.

Thus, conventional UM insurance "stacks." This means that if one family member purchases one UM policy for one vehicle, that coverage extends to every resident and every vehicle in the household, whether or not those residents or vehicles were covered by their own UM policies. Moreover, if a family purchases UM coverage for multiple vehicles, any resident in the household may "stack" the UM benefits and recover the combined policy limits from each insured vehicle.

However, s. 627.727, F.S., allows that an insured individual can waive this insurance, select a lower limit, or select "non-stacking" UM coverage if the named insured signs a policy waiver form approved by the Florida Office of Insurance Regulation.

"Non-stacking" UM policies typically include two critical exclusions or limitations: (1) a limitation of UM benefits to the particular insured vehicle operated at the time of the accident and not from any other vehicles insured in the household that carry this limited form of UM coverage; and (2) an exclusion of UM benefits for the insured or their resident relatives or others who are injured while occupying any vehicle owned by them for which UM coverage was not purchased.

If insurers do properly obtain a waiver and offer "nonstacked" policy limitations or exclusions for UM coverage, s. 627.727(9), F.S., also provides that the premium charged for this limited form of UM coverage must be at least 20 percent less expensive than traditional "stacked" insurance.

The First District Court of Appeal's decision in *Traveler's Com. Ins. Co. v. Harrington*

A recent decision by Florida's First District Court of Appeal has created uncertainty whether a "non-stacking" policy waiver extends beyond the named insured to include resident relatives who occupy an insured's vehicle during an accident. In *Traveler's Com. Ins. Co. v. Harrington*, 86 So. 3d 1274 (Fla. 1st DCA 2012), a daughter was injured while riding as a passenger in a vehicle insured by her mother. The mother insured three vehicles in all, with both liability and UM policies, but the mother had expressly accepted and endorsed a "non-stacking" limitation. The *Harrington* court held that while the "non-stacking" limitation applied to the mother, it did not apply to the daughter, who had not signed the waiver and thus had not knowingly accepted the policy limitation.

In reaching that conclusion, the court focused on the construction of s. 627.727(9), F.S., as contrasted with s. 627.727(1), F.S. Under s. 627.727(1), F.S., UM coverage must be provided with a policy for liability coverage unless there is a knowing rejection of the UM coverage. Section 627.727(1), F.S., further refers to a "written rejection . . . on behalf of all insureds," and specifies that an approved form be used when UM coverage is selected at a lower limit than the liability coverage. The subsection also provides that: "If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing rejection of coverage or election of lower limits on behalf of all insureds."

Section 627.727(9), F.S., likewise requires that an approved form be used when non-stacking coverage is selected. However, unlike subsection (1), which makes an election-of-coverage-limits binding on all insureds, subsection (9) provides for non-stacking elections: "If this form is signed by a named insured,

applicant, or lessee, it shall be conclusively presumed that there was an informed, knowing acceptance of such limitations."

In light of the differing language describing the different waivers in ss. 627.727(1) and (9), F.S., the court reasoned that the subsection (9) waiver of "stackable" coverage must be personally made by the insured who claims such benefits. This is in contrast to the subsection (1) waiver of coverage (at the liability limit), which may be made "on behalf of all insureds." The court concluded that the Legislature's use of different language in separate parts of the statute suggests that different meanings were intended, and that when language is used in one part of a statute but omitted in another part it should not be inferred that such language was intended where it has been omitted.

For this reason, the *Harrington* court determined that the mother's waiver of "stacked" UM coverage did not extend to her daughter. Thus, the daughter was entitled to "stack" the UM coverage limits from all three insured automobiles to pay medical bills for the bodily injuries she suffered during the accident as an occupant of an insured vehicle, notwithstanding her mother's express rejection of such "stacking" benefits.

Possible effects of the *Harrington* decision

As a result of the court's decision in *Harrington*, policy waivers signed by a named insured selecting "non-stacked" UM coverage may be ineffective as to other vehicle occupants who have not personally signed the waiver.

The result would appear to leave few options to insurers seeking to offer "non-stacked" coverage, as attempts to get consent for a waiver from all persons who potentially could claim UM benefits would present clear administrative difficulties. Insurers generally do not know what other persons are likely to be passengers in an insured automobile, nor do they obtain signatures from such persons on the underlying insurance policy or associated waivers. If insurers were to require named insureds to obtain such consents as a condition of policy renewal, it is likely that few insureds could predict every person who would ride as a passenger in their vehicle during the policy term, let alone gain those persons' consent for policy waivers in advance.

This uncertainty as to the extent of potential liability under "non-stacking" UM policies may present difficulties to insurers seeking to accurately assess their underwriting risk with regard to such policies. One potential result is higher premiums, as insurers seek to recover costs from payouts that previously would have been excluded or limited by "non-stacking" policy waivers.

Because such waivers may still offer insurers at least some limitations on liability, it is unclear whether the holding in *Harrington* would prevent insurers from offering "non-stacked" coverage altogether. However, s. 627.727(9), F.S., mandates that "non-stacking" policies must be offered at a premium at least 20 percent less than traditional "stacked" insurance. If insurers believe they can no longer offer such a discount for "non-stacked" policies, the market for such policies may dissolve. If that outcome were to occur, Florida consumers seeking UM coverage would be limited to more expensive "stacked" policies that provide more benefits at a higher price.

Effect of HB 341

HB 341 amends s. 627.727(9), F.S., to clarify that if a named insured signs a "non-stacking" waiver, "it shall be conclusively presumed that there was an informed, knowing acceptance of such limitations <u>on behalf of all insureds</u>." The addition of the phrase "on behalf of all insureds" mirrors the language of s. 627.727(1), F.S., thus removing the statutory ambiguity cited by the *Harrington* court as the basis for its decision.

By removing this ambiguous difference in the language of ss. 627.727(1) and (9), F.S., it is likely this statutory change would remove the uncertainty that has resulted from the *Harrington* case and restore the general effectiveness of "non-stacking" waivers for UM coverage. This would return Florida

insurance law to the status quo that existed before the *Harrington* decision and clarify, for both insurers and insureds, the true extent of coverage offered by UM policies.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.727, F.S., to clarify that specified persons who elect non-stacking limitations on their uninsured motorist insurance coverage are conclusively presumed to have made an informed, knowing acceptance of the limitations on behalf of all insureds.

Section 2: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector. The bill may have an indirect impact on the private sector, see Fiscal Comments.

D. FISCAL COMMENTS:

HB 341 may allow insurers to more accurately assess their underwriting risk with regard to "non-stacking" uninsured motorist insurance policies. Moreover, to the extent that insurers would no longer need to recover costs from new payouts under the Harrington decision, the bill may prevent UM insurance premiums from rising. For this reason, it is also possible that HB 341 could prevent the availability of "non-stacked" UM insurance from deteriorating, as s. 627.727(9), F.S., mandates that such "non-stacked" coverage may only be offered at a 20 percent price discount relative to the cost of traditional "stacked" coverage.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.