

**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 Committee on Judiciary

BILL: SB 706  
 INTRODUCER: Senator Montford  
 SUBJECT: Uninsured Motorist Insurance Coverage  
 DATE: March 29, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Burgess</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Shankle</u>	<u>Cibula</u>	<u>JU</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 706 deals with the rejection of stackable Uninsured Motorist (UM) benefits. Current law states that when the named insured, applicant, or lessee signs a form rejecting UM coverage, a conclusive presumption arises that “there was an informed knowing acceptance of such limitations” of coverage. The bill specifies that the signed form gives rise to a conclusive presumption that the rejection of stackable coverage benefits was made “on behalf of all insureds.” The bill addresses the decision of the Florida First District Court of Appeal in *Travelers Commercial Insurance Company v. Harrington*.<sup>1</sup>

This bill substantially amends section 627.727, Florida Statutes.

**II. Present Situation:**

**Uninsured Motorist Coverage**

Uninsured Motorist or UM coverage provides a basis for persons to directly insure themselves against the effects of bodily injuries caused by others who are legally liable but uninsured or underinsured. Such coverage pays for medical expenses and lost wages, after personal injury protection coverage is exhausted and includes payment for pain and suffering.<sup>2</sup> Uninsured Motorist also provides “excess coverage” which means that when a motorist is injured because of the negligence of another, the injured party is able to collect from the liability insurance of the

<sup>1</sup> *Travelers Commercial Insurance Company v. Harrington* , 86 So. 3d 1274 (Fla. 1st DCA 1012).

<sup>2</sup> The insurer providing UM coverage has liability for damages in tort for pain and suffering only if the injury or disease is described in s. 627.737(2), F.S.

negligent motorist and from his or her own uninsured motorist insurance if the negligent motorist is unable to provide full reimbursement.

Bodily injury liability policies must include UM coverage at limits equal to those for Bodily Injury (BI) liability insurance, unless the coverage is rejected or lower limits are elected by the insured. The rejection or selection of lower UM coverage limits must be made in writing on a form approved by the Office of Insurance Regulation. If a named insured signs the form, “it will be conclusively presumed that there was an informed knowing rejection of coverage or election of lower limits on behalf of all insureds.”<sup>3</sup>

Uninsured Motorist coverage is available in “stackable” and “non-stackable” coverages. Stackable UM coverage means that the coverage limits for each car insured under a motorist’s policy may be added together. Non-stackable UM coverage only pays up to the limits for one insured vehicle. Section 627.727(9), F.S., states that, “[i]nsurers may offer policies of uninsured motorist coverage...establishing that if the insured accepts the offer...coverage provided as to two or more motor vehicles shall not be added together to determine the limit of insurance coverage available to an injured person for any one accident...” If the insured elects non-stackable coverage, the insurer must provide at least a 20 percent coverage premium discount to the policyholder to account for the reduced coverage available under the policy.<sup>4</sup> Under s. 627.727(9), F.S., UM coverage is stackable unless the insured waives stackable coverage in writing. The written waiver establishes a conclusive presumption that “there was an informed, knowing acceptance of such limitations.”<sup>5</sup>

In *Travelers Commercial Insurance Company v. Harrington*, the First District Court of Appeal affirmed a trial court decision determining that stackable coverage benefits are available to an insured claimant under an insurance policy where the purchaser executed a signed waiver of stacking benefits, but the insured claimant did not waive such benefits.<sup>6</sup> In *Harrington*, the daughter of an insured was injured in a car accident and sought recovery under an insurance policy purchased by her father who had purchased UM benefits but rejected stackable benefits in writing. The Court ruled that Ms. Harrington could recover stackable coverage benefits because the statutory language for a waiver of stackable UM coverage does not apply to other insureds under the policy who do not execute the rejection of stacking coverage.<sup>7</sup>

The Court compared the provision governing written rejection<sup>8</sup> of coverage in subsection (1) of s. 627.727, F.S., with the provision in subsection (9) governing written rejection of stackable coverage. The court noted that the conclusive presumption in subsection (1) that is created when the insured executes a signed, written form declining UM coverage or electing limits of such coverage that are lower than the BI coverage is “on behalf of all insureds.” The Court reasoned

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<sup>3</sup> See s. 627.727(1), F.S. The conclusive presumption related to the insured’s rejection of UM Coverage or election to obtain UM Coverage with lower limits than BI coverage was enacted in CS/HB 319 by the 1984 Legislature. See chapter 84-41, s. 1, Laws of Fla.

<sup>4</sup> Section 627.727(9), F.S.

<sup>5</sup> The conclusive presumption related to the insured’s rejection of stackable UM Coverage or election to obtain UM Coverage with lower limits than BI coverage was enacted in HB 1029 by the 1987 Legislature. See chapter 87-213, s. 1, Laws of Fla.

<sup>6</sup> *Harrington*, 86 So. 3d at 1278.

<sup>7</sup> *Id.* at 1277-1278.

<sup>8</sup> Or election of UM Coverage limits that are less than Bodily Injury coverage limits under the policy.

that the conclusive presumption in subsection (9) that is created when the insured executes a signed, written form declining stackable coverage only applies to the named insured because the statute does not specify that it is made on behalf of all insureds under the policy.<sup>9</sup> The District Court of Appeal certified the stacking issue to the Florida Supreme Court, which has accepted jurisdiction.<sup>10</sup>

### III. Effect of Proposed Changes:

The bill amends s. 627.727, F.S., regarding the rejection of stackable Uninsured Motorist benefits. Current law states that when the named insured, applicant, or lessee signs a form rejecting coverage, a conclusive presumption arises that “there was an informed knowing acceptance of such limitations” of coverage. The bill specifies that the signed form gives rise to a conclusive presumption that the rejection of stackable coverage benefits was made “on behalf of all insureds.”

The bill takes effect upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

The *Harrington* decision of the First District Court of Appeals may reduce the availability of non-stackable coverage. If the named insured or an applicant for an insurance policy cannot waive stackable UM coverage on behalf of other insureds under the policy, the loss costs associated with unstacked UM coverage are likely to rise. Florida law requires that insurers provide at least a 20 percent UM coverage premium discount if stackable benefits are waived. If the difference in loss costs between stacked and unstacked UM coverage loss costs is less than 20 percent, insurers may cease

<sup>9</sup> *Id.*

<sup>10</sup> Florida Supreme Court Case Number SC12–1257.

offering unstacked UM coverage. Consumers who want to purchase UM coverage would then be deprived of the choice of selecting the less expensive unstacked version of such coverage.

**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.