

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 Rules

BILL: CS/SB 420

INTRODUCER: Judiciary Committee and Senator Hooper

SUBJECT: Motor Vehicle Insurance Coverage Exclusions

DATE: April 15, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Arnold</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 420 authorizes private passenger motor vehicle policyholders to exclude identified individuals from the following coverages under their policy:

- Personal injury protection (PIP) coverage applicable to the identified individual's injuries, lost wages, and death benefits;
- Property damage liability coverage;
- Bodily injury liability coverage, when required by law;
- Uninsured motorist coverage for any damages sustained by the excluded individual; and
- Any coverage the policyholder is not required by law to purchase.

However, a private passenger motor vehicle policy may not exclude coverage when:

- The identified excluded individual is injured while not operating a motor vehicle;
- The exclusion is unfairly discriminatory under the Florida Insurance Code; or
- The exclusion is inconsistent with the underwriting rules filed by the insurer.

The exclusion of an identified named driver is invalid unless the named policyholder consents in writing to the exclusion of a named driver and the excluded named drivers are listed on the policy's declarations page or policy endorsement.

An individual excluded by name in an insurance policy would not be covered for damages that occur while operating a motor vehicle that is insured under the policy. An excluded driver, however, must separately comply with financial responsibility laws.

II. Present Situation:

Part XI of ch. 627, F.S., Motor Vehicle and Casualty Insurance Contracts, and ch. 324, F.S., the Financial Responsibility Law of 1955, establish motor vehicle coverage requirements. Owners and operators of motor vehicles must maintain the ability to respond in damages at specified minimum amounts for personal injury protection, bodily injury or death, and property damage. Current law requires insurance coverage that provides personal injury protection, or that is used to meet mandatory financial responsibility requirements, be issued to all driving age individuals residing in the same household.¹

Florida's motor vehicle insurance laws do not currently authorize an insurer to exclude mandatory coverages of a named individual, up to minimum limits required under the laws. Thus, the Office of Insurance Regulation (OIR) requires that an insurer provide coverages satisfying minimum financial responsibilities requirements under Florida law, even when a named driver exclusion is elected.²

Minimum Insurance Requirements for Motor Vehicles

Florida's Financial Responsibility Law of 1955³ provides financial security requirements for motor vehicle owners and operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle.⁴ In combination with the Florida Motor Vehicle No-Fault Law,⁵ operators of motor vehicles with four or more wheels are required to purchase minimum insurance coverages for property damage liability⁶ and personal injury protection.⁷ Proof of such coverage is required only after an accident.⁸

Property damage liability (PD) coverage pays damages to the third-party's property caused by the insured or member of the insured's household up to policy limits. Florida law currently requires minimum PD coverage limits in the amount of \$10,000, or \$30,000 for a combined PD and bodily injury liability policy.⁹

Personal injury protection (PIP) coverage pays the reasonable expenses for necessary medical services, lost wages, replacement services, and a death benefit to the insured for damages incurred in an accident regardless of fault. PIP coverage extends beyond the insured to include household relatives, pedestrians, and passengers without PIP coverage. Florida law currently requires minimum PIP coverage limits in the amount of \$10,000 in the event of bodily injury to any one person who sustains an emergency medical condition,¹⁰ which is reduced to a \$2,500

¹ Section 627.736(1), F.S.

² See Office of Insurance Regulation, *Senate Bill 420 Agency Analysis*, p. 4 (February 18, 2021); see also Office of Insurance Regulation, *Senate Bill 518 Agency Analysis*, p. 2 (October 30, 2017) (on file with the Senate Committee on Banking and Insurance).

³ Chapter 624, F.S.

⁴ Section 324.011, F.S.

⁵ Sections 627.730 – 627.7405, F.S.

⁶ Section 324.022, F.S.

⁷ Section 627.733, F.S.

⁸ Section 324.011, F.S.

⁹ Section 324.022(1), F.S.

¹⁰ Section 627.736(1), F.S.

limit for medical benefits if a treating medical provider does not determine an emergency medical condition existed.¹¹ PIP coverage provides reimbursement for 80 percent of reasonable medical expenses, 60 percent of loss of income, and 100 of replacement services, for bodily injuries sustained in a motor vehicle accident, without regard to fault. PIP coverage also provides a \$5,000 death benefit.¹²

Additional Optional Insurance Coverages for Motor Vehicles

Bodily injury liability (BI) coverage pays for bodily injury expenses caused by the insured or members of the insured's household to third-party in an accident. This coverage pays economic damages, such as medical bills and lost wages, and non-economic damages, such as pain and suffering of the third-party, up to policy limits. This coverage also provides legal representation and attorney fees to the insured in the event of a lawsuit. A driver in compliance with the requirement to carry PIP coverage is not required to maintain BI, except that Florida law requires proof of ability to pay monetary damages in the amount of \$10,000 because of bodily injury to, or death of, one person in any one crash, and \$20,000 for bodily injury to, or death of, two or more persons in any one crash.¹³ This requirement is triggered when an operator or owner of a motor vehicle does not have an automobile liability policy and is in a motor vehicle crash that causes injury or death to others, does not stay at the scene of the crash, was driving under the influence, or is involved in a crash that requires a wrecker.¹⁴ An owner or operator who drives under the influence must maintain non-cancelable coverage that provides BI with limits of at least \$100,000/\$300,000 and PD with limits of at least \$50,000.¹⁵ Additionally, motor vehicle insurance policies providing BI must also provide uninsured motor coverage, unless such coverage is declined by a named insured.¹⁶ Uninsured motorist (UM) coverage pays the insured and passengers if injured by an uninsured or underinsured at-fault party. The coverage pays medical benefits and lost wages, and also covers pain and suffering damages. In Florida, UM is an optional coverage but must be offered up to the same limits as the insured has for BI.¹⁷

III. Effect of Proposed Changes:

Section 1 creates s. 627.747, F.S., authorizing a private passenger motor vehicle policyholder to exclude an identified individual of their household from the following coverages under their policy:

- Personal injury protection coverage applicable to the identified individual's injuries, lost wages, and death benefits;
- Property damage liability coverage;
- Bodily injury liability coverage;
- Uninsured motorist coverage for any damages sustained by the identified excluded individual, if the policyholder has purchased such coverage; and
- Any coverage the policyholder is not required by law to purchase.

¹¹ Section 627.736(1)(a)(4), F.S.

¹² Section 627.736(1)(c), F.S.

¹³ Chapter 324.022, F.S.

¹⁴ Section 324.051, F.S.

¹⁵ Section 324.023, F.S.

¹⁶ Section 627.727(1), F.S.

¹⁷ Section 627.727(2), F.S.

However, a private passenger motor vehicle policy may not exclude coverage when:

- The identified excluded individual is injured while not operating a motor vehicle;
- The exclusion is unfairly discriminatory under the Florida Insurance Code, as determined by OIR; or
- The exclusion is inconsistent with the underwriting rules filed by the insurer.

The exclusion of an identified named driver is invalid unless the named policyholder consents in writing to the exclusion of a named driver and the excluded named drivers are listed on the policy's declarations page or policy endorsement.

An excluded driver must separately establish, maintain, and show proof of financial ability to respond for damages arising out of the ownership, maintenance, or use of a motor vehicle as required by the financial responsibility law¹⁸ and must maintain financial security.¹⁹

Section 2 amends s. 324.151, F.S., governing motor vehicle liability policy provisions for satisfying financial responsibility requirements, to provide conforming changes consistent with the named drive exclusion provisions of the bill.

Section 3 amends s. 627.736, F.S., governing personal injury protection benefits, to provide conforming changes consistent with the named driver exclusion provisions of the bill.

Section 4 amends s. 627.7407, F.S., governing the personal injury protection requirements under Florida's Motor Vehicle No-Fault Law, to provide conforming changes consistent with the named drive exclusion provisions of the bill.

Section 5 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁸ Chapter 324, F.S.

¹⁹ Security can be shown by commercially purchased insurance or qualifying self-insurance. s. 627.733, F.S.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Policyholders are most likely to exclude drivers whose presence in their households results in the policyholder either paying substantially more in premium or not being able to obtain coverage from a preferred insurer. Thus, the bill creates more choice for the consumer of motor vehicle insurance to obtain insurance from a preferred insurer, and likely at a more affordable price. In this scenario, the owner of the vehicle should take special care to prevent the excluded driver from having access to the vehicle because the owner's liability coverage will not cover damages caused by the excluded driver.

Certain losses that are currently required to be covered under a private passenger motor vehicle policy would no longer be covered. This will negatively affect parties who suffer injury to their persons and property caused by an excluded driver who does not obtain their own insurance coverage. The excluded driver may also be negatively affected, as he or she will not receive PIP reimbursement for medical and wage loss damages. This problem will not arise, however, if the excluded driver has motor vehicle insurance coverage of his or her own.

SB 420 may also cause an indeterminate increase in uncompensated medical care. Medical providers may not be reimbursed for medical services provided to a named excluded driver injured as a result of an auto accident unless the named excluded driver had been injured as a passenger, has their own motor vehicle coverage, or has medical insurance. Similarly, when an excluded driver lacks insurance, treatment for injuries to others caused by the excluded driver may go uncompensated.

C. Government Sector Impact:

Public hospitals may not be reimbursed for emergency medical services provided to a named excluded driver injured as a result of an auto accident in certain circumstances.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 324.151, 627.736, and 627.7407.

This bill creates section 627.747, Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 9, 2020:

The committee substitute adds the requirement that an excluded driver must comply with existing financial responsibility and security requirements.

- B. **Amendments:**

None.