

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 139 Motor Vehicle Insurance

SPONSOR(S): Government Operations Subcommittee, Fabricio, Rizo, and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 266

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N, As CS	Villa	Toliver
2) Insurance & Banking Subcommittee	15 Y, 0 N	Herendeen	Luczynski
3) Appropriations Committee	23 Y, 0 N	Saag	Pridgeon
4) Judiciary Committee			

SUMMARY ANALYSIS

Chapter 627, part XI, F.S., Motor Vehicle and Casualty Insurance Contracts, and ch. 324, F.S., the Financial Responsibility Law of 1955, establish motor vehicle insurance coverage requirements. Florida law requires owners of motor vehicles to purchase both \$10,000 of personal injury protection (PIP) insurance and \$10,000 of property damage (PD) liability insurance. A liability insurer owes two major contractual duties to its insured in exchange for premium payments—the duty to indemnify and the duty to defend.

A vehicle take-home program is a program in which an agency employing a law enforcement officer (employing agency) assigns a vehicle to a law enforcement officer that the officer may take home at the end of each shift. Approximately 90 percent of the state's law enforcement agencies operate a vehicle take-home program. The rationale for and the benefits of such a program are often cited to include an increased police presence and improved emergency response times.

The bill requires an employing agency that operates a vehicle take-home program, which allows the operation of an official law enforcement vehicle outside of the scope of employment, to maintain motor vehicle insurance that covers the time a law enforcement officer spends going to or coming from work or any other agency assignment.

The bill specifies that any suit or action brought or maintained against an employing agency for damages arising out of tort pursuant to the bill are limited to \$200,000 per person and \$300,000 per incident.

The bill specifies that employing agencies are authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance in order to meet the bill's requirements.

The bill will likely have an indeterminate fiscal impact on local government expenditures and no additional impact to state government. See *Fiscal Analysis & Economic Impact Statement*.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Motor Vehicle Insurance

Chapter 627, part XI, F.S., Motor Vehicle and Casualty Insurance Contracts, and ch. 324, F.S., the Financial Responsibility Law of 1955, establish motor vehicle insurance coverage requirements. Florida's financial responsibility law exists to ensure that the privilege of owning or operating a motor vehicle on the public streets and highways is exercised with due consideration for others and their property, to promote safety, and to provide financial security requirements for the owners or operators of motor vehicles who are responsible to recompense others for injury to person or property caused by a motor vehicle.¹ Florida law requires owners of motor vehicles with four or more wheels to purchase both \$10,000 of property damage (PD) liability insurance and \$10,000 of personal injury protection (PIP) insurance.²

PD liability insurance covers damage to, or destruction of, property of others as a result of a crash.³ PIP insurance, on the other hand, compensates insureds injured in accidents regardless of fault.⁴ Policyholders are indemnified by their own insurer. The intent of no-fault insurance is to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault.⁵ This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold.⁶

A driver's license and vehicle registration are subject to suspension for failure to comply with the security requirement to maintain PD and PIP insurance coverage.⁷ A driver's license and registration may be reinstated by obtaining a liability policy and by paying a fee to the Department of Highway Safety and Motor Vehicles.⁸

Obligations of Insurer to Insured

A liability insurer generally owes two major contractual duties to its insured in exchange for premium payments—the duty to indemnify and the duty to defend. The duty to indemnify refers to the insurer's obligation to issue payment to either the insured or a beneficiary on a valid claim. The duty to defend refers to the insurer's duty to provide a defense for the insured in court against a third party with respect to a claim within the scope of the insurance contract.⁹

Vehicle Take-Home Programs for Law Enforcement Officers

¹ S. 324.011, F.S.

² See ss. 627.733, 627.736, and 324.022, F.S. A driver in compliance with the requirement to carry PIP coverage is not required to maintain bodily injury (BI) liability coverage. However, 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, and \$10,000 in the event of damage to property of others, or \$30,000 combined BI/PD liability insurance after a motor vehicle accident. See ss. 324.011 and 324.051, F.S.

³ S. 324.022, F.S.

⁴ S. 627.733, F.S.

⁵ See s. 627.731, F.S.

⁶ S. 627.737, F.S.

⁷ S. 324.0221(2), F.S.

⁸ S. 324.0221(3), F.S.

⁹ See 16 Williston on Contracts s. 49:105 (4th Ed.).

A vehicle take-home program, also referred to as an assigned vehicle program, is a program in which an agency that employs a law enforcement officer (employing agency) assigns a vehicle to a law enforcement officer that the officer may take home at the end of each shift. Vehicle take-home programs are currently in operation throughout Florida and the country at large. The 2020 Criminal Justice Agency Profile Report by the Florida Department of Law Enforcement shows that about 90 percent of the state's law enforcement agencies operate a vehicle take-home program.¹⁰ This includes all 67 county sheriff's offices, 218 of 232 municipal police departments, 26 of 34 state agencies that employ law enforcement officers, and 32 of 43 school systems and ports that employ law enforcement officers. The often cited rationale for and benefits of such a program include:

- An increased police presence in the community;
- Improved patrol shift transitions;
- Improved operational mobility and flexibility;
- Improved emergency response and control;
- Increased vehicle longevity;
- Lower operating cost; and
- Less down time for vehicle maintenance.¹¹

Tort Claims Against Government Agencies

State government and its subdivisions may be liable for the acts of an employee if the employee was acting within the scope of his or her employment; however, the law limits judgments to \$200,000 per person and \$300,000 per incident unless additional damages are approved by the Legislature.¹² Counties and municipalities are similarly liable for torts committed by employees acting within the scope of their employment, much as private employers may be held liable for the acts committed by employees acting within the scope of their employment.¹³

Courts use a three-part test to determine if an employee's conduct is within the scope of his or her employment: 1) the conduct is of the kind the employee was employed to perform; 2) the conduct occurs substantially within the time and space limits authorized or required by the work to be performed; and 3) The conduct is activated at least in part by a purpose to serve the master.¹⁴

The assignment of a take-home car does not enlarge the state's liability for tortious acts of an employee committed outside the employee's scope of employment.¹⁵ Merely driving to or from work in a vehicle provided by an employer is an act performed outside of the course of employment, unless the employee is on a special errand for the employer.¹⁶

The courts have not been persuaded by plaintiffs who cite the "going and coming" rule associated with workers' compensation law as a reason why the government should be liable for accidents involving law enforcement officers driving take-home vehicles owned by their employer. For the purposes of worker' compensation benefits, an injury suffered by a law enforcement officer while going or coming

¹⁰ Florida Department of Law Enforcement, *Criminal Justice Agency Profile Report*, available at <http://www.fdle.state.fl.us/CJSTC/Publications/CJAP/CJAP.aspx> (last visited November 17, 2021); See also U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics, *Sheriffs' Offices, 2007 – Statistical Table* (December 2012), <https://bjs.ojp.gov/content/pub/pdf/so07st.pdf> (last visited November 17, 2021) (reporting that 93% of sheriffs' departments around the country allow personnel to take department vehicles home).

¹¹ See Pima County Sheriff's Department, *Assigned Vehicle Program*, https://pimasheriff.org/application/files/5415/6346/6464/Assigned_Vehicles_Program.pdf (last visited November 17, 2021). See also 05-36 Fla. Op. Att'y Gen. (June 16, 2005).

¹² Art. 10, s. 13, Fla. Const. and s. 768.28(5), F.S.

¹³ S. 768.28(2), F.S., and *City of Miami v. Simpson*, 172 So. 2d 435, 437, (Fla. 1965).

¹⁴ *Iglesia Cristiana La Casa Del Señor, Inc. v. L.M.*, 783 So. 2d 353, 357 (Fla. 3d DCA 2001); *Hennagan v. Dept of Highway Safety & Motor Vehicles*, 467 So. 2d 748, 750 (Fla. 1st DCA 1985).

¹⁵ *Rabideau v. State of Florida*, 409 So. 2d 1045 (Fla. 1982) (The Secretary of State's office was not liable for an investigator who struck and killed two men who had been repairing a motorcycle at the side of a road, even though the investigator was driving a state-issued vehicle, because the investigator caused the fatal accident after consuming six or seven drinks at a bar after completing his shift).

¹⁶ *Robelo v. United Consumers Club, Inc.*, 555 So. 2d 395, 396 (Fla. 3d DCA 1989).

from work in a law enforcement vehicle is presumed to be an injury arising out of and in the course of employment unless the injury occurred during a “distinct deviation for a nonessential personal errand” that is not permitted by the employer’s take-home vehicle policy or a collective bargaining agreement.¹⁷ This statutory presumption for workers’ compensation benefits does not alter the employer’s liability for accidents involving a take-home vehicle.¹⁸

Garcia v. City of Hollywood is the most compelling example in the line of cases involving take-home vehicles provided to law enforcement officers. In a 2007 decision, the Fourth District Court of Appeals held that the city was not liable for a fatal accident involving a sergeant who was driving a marked patrol car that had been assigned to him on a take-home basis. The sergeant, who was reporting to work one hour early so he could study for a lieutenant’s exam, struck and killed a child while she attempted to cross a roadway to reach her school bus. The sergeant was required to be in uniform while driving the patrol car, and he was required to stop and take action if he witnessed a crime. The sergeant was not acting within the scope of his employment when the accident occurred, because he was not required to drive to work early, to study before beginning his shift.¹⁹

As a result of the *Garcia* opinion, various law enforcement agencies recommend or require their law enforcement officers to obtain a “use of non-owned vehicle” insurance policy that provides liability coverage when the officer is operating a vehicle owned by another person or entity (i.e., an official law enforcement vehicle).²⁰ For example, the Orlando Police Department requires their officers to show proof of non-owned vehicle insurance coverage before issuance of a take-home vehicle. The stated purposes of “this policy is to recognize that certain potential liabilities incurred by employees are not covered by the City’s insurance program, and that requiring personal insurance coverage is in the best interest of the City, the employee, and the public.”²¹

Effect of the Bill

The bill requires an employing agency of a law enforcement officer²² that allows a law enforcement officer to operate an agency-owned vehicle outside the course and scope of the officer’s employment or function to maintain current and valid motor vehicle insurance, including bodily injury, death, and property damage liability coverage that covers the time an officer spends while going to or coming from work or any other agency assignment in an official law enforcement vehicle. However, the bill does not require such motor vehicle insurance to provide for coverage in the following events:

- The officer makes a distinct deviation for a nonessential personal errand unless a provision of an applicable collective bargaining agreement permits such a deviation.

¹⁷ S. 440.092(2), F.S.

¹⁸ *Bencomo v. City of Miami*, 306 So. 3d 268 (Fla. 3d DCA, 2020).

¹⁹ *Garcia v. City of Hollywood*, 966 So. 2d 5 (Fla. 4th DCA 2007).

²⁰ See Collective Bargaining Agreement between the City of Ocala, Florida and Florida State Lodge, Fraternal Order of Police, <https://www.ocalafl.org/home/showpublisheddocument/2130/637504395197530000> (last visited November 17, 2021); City of Hollywood, Florida, Take Home Vehicle Policy HB-038:2, <http://www.hollywoodfl.org/DocumentCenter/View/11445/038-2-Take-Home-Vehicle?bidId> (last visited November 17, 2021); Orlando Police Department Policy and Procedure 1802.17, Use of City Vehicles, <https://www.orlando.gov/files/sharedassets/public/documents/opd/policies-and-procedures/city-owned-vehicles/1802.17-use-of-city-vehicles.pdf> (Last visited November 17, 2021); Collective Bargaining Agreement between Town of Davie, Florida and Florida State Lodge Fraternal Order of Police, Inc., <https://www.davie-fl.gov/DocumentCenter/View/9755/FOP-Collective-Bargaining-Agreement-2019-2022-PDF> (last visited November 17, 2021).

²¹ Orlando Police Department Policy and Procedure 1802.17, Use of City Vehicles, <https://www.orlando.gov/files/sharedassets/public/documents/opd/policies-and-procedures/city-owned-vehicles/1802.17-use-of-city-vehicles.pdf> (Last visited November 17, 2021)

²² The bill specifies that the term “law enforcement officer” means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

- The officer acts in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

The bill specifies that any suit or action brought or maintained against an agency that employs a law enforcement officer for damages arising out of tort pursuant to the bill are limited to \$200,000 per person and \$300,000 per incident.

The bill specifies that employing agencies are authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance in order to meet the bill's requirements.

Lastly, the bill specifies that the Legislature finds and declares that the act fulfills an important state interest.

B. SECTION DIRECTORY:

Section 1: Creates s. 627.7491, F.S., relating to motor vehicle insurance requirements for official law enforcement vehicles.

Section 2: Creates an unnumbered section of law providing that the Legislature finds that the act fulfills an important state interest.

Section 3: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See *Fiscal Comments*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See *Fiscal Comments*.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will likely have an indeterminate, positive fiscal impact on the private sector as a result of premiums collected by insurers on the motor vehicle insurance required by the bill to be maintained by employing agencies that operate a vehicle take-home program.

D. FISCAL COMMENTS:

The bill requires an employing agency that operates a vehicle take-home program to maintain motor vehicle insurance that covers the time an officer spends traveling to and from work or any other agency assignment in an official law enforcement vehicle.

The State of Florida currently provides insurance coverage for state agencies through a self-insurance fund administered by the Department of Financial Services Division of Risk Management (Division). The Division is responsible for the management of claims reported by or against state agencies and

universities for coverage under the self-insurance fund known as the State Risk Management Trust Fund (SRMTF). Coverage provided through the trust fund include:

- Workers' Compensation;
- Property;
- Fleet Automobile Liability;
- General Liability; and
- Federal Civil Rights/Employment Discrimination and Court Awarded Attorney Fees.
- The Division also provides loss prevention services and technical assistance to state agencies and universities for managing risk.²³

There is likely no additional impact to state agencies arising from provisions in the bill relating to motor vehicle insurance coverage for take-home programs, as state agencies are currently covered under the SRMTF.

The bill may have an indeterminate fiscal impact on local government expenditures, to the extent that local agencies may need to purchase additional motor vehicle insurance coverage for employees who are participating in a vehicle take-home program. The dollar amount of expenditures required by the bill are currently unknown and would be dependent upon the insurance selected by the individual agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires an employing agency that operates a vehicle take-home program to maintain motor vehicle insurance that covers the time an officer spends traveling to and from work or any other agency assignment in an official law enforcement vehicle; however, an exemption may apply if the fiscal impact of the bill is insignificant. In addition, an exception may apply because the bill declares it fulfills an important state interest and all similarly situated state and local employing agencies that operate a vehicle take-home program are required to maintain motor vehicle insurance.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority, nor require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 2, 2021, the Government Operations Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from HB 139 in that it:

- Removed a provision amending the definition of "law enforcement officer" providing that service as a law enforcement officer includes time spent on certain activities;
- Removed provisions providing enhanced workers' compensation and death benefits to law enforcement officers injured or killed during defined service time;

²³ Department of Financial Services, Division of Risk Management, <https://myfloridacfo.com/Division/Risk/> (last visited Jan. 28, 2022).

- Required an employing agency that operates a vehicle take home program to maintain motor vehicle insurance that covers the time a law enforcement officer spends going to or coming from work or any other agency assignment in an official law enforcement vehicle;
- Specified that any suit or action brought or maintained against an employing agency for damages arising out of tort are limited to \$200,000 per person and \$300,000 per incident; and
- Specified that employing agencies are authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance.

This analysis is drafted to the committee substitute adopted by the Government Operations Subcommittee.