

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 139 Motor Vehicle Insurance

**SPONSOR(S):** Judiciary Committee, 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	18 Y, 0 N, As CS	Mawn	Kramer

### SUMMARY ANALYSIS

Chapter 627, part XI, F.S. (relating to motor vehicle and casualty insurance contracts), and ch. 324, F.S. (the Financial Responsibility Law of 1955), establish motor vehicle insurance coverage requirements for vehicles owned or operated in the state. Florida law requires motor vehicle owners and operators to, at the time of motor vehicle registration, show proof of \$10,000 of personal injury protection (PIP) insurance and \$10,000 of property damage (PD) liability insurance and, after a motor vehicle accident, proof of the ability to pay for monetary damages for bodily injury in specified amounts. 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 an official law enforcement vehicle to a law enforcement officer that the officer may drive to and from work. Approximately 90 percent of the state's law enforcement agencies operate a vehicle take-home program. The benefits of such a program include an increased police presence and improved emergency response times.

CS/CS/HB 139 requires an employing agency operating a vehicle take-home program to maintain motor vehicle insurance covering the time a law enforcement officer spends going to or coming from work or any other agency assignment in an official law enforcement vehicle. The bill also specifies that:

- Such motor vehicle insurance is not required to provide for coverage if the officer:
  - Makes a distinct deviation for a nonessential personal errand unless permitted to do so by a collective bargaining agreement; or
  - Acts in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
- Any suit or action brought or maintained against an employing agency for damages arising out of tort under the bill is limited to \$200,000 per person and \$300,000 per incident.
- Employing agencies may be self-insured, enter into risk management programs, or purchase liability insurance in order to satisfy the bill's requirements.
- The bill fulfills an important state interest.

The bill may have an indeterminate fiscal impact on local government expenditures but there is likely no additional fiscal impact on 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. (relating to motor vehicle and casualty insurance contracts), and ch. 324, F.S. (the Financial Responsibility Law of 1955), establish motor vehicle insurance coverage requirements for motor vehicle owners or operators in Florida. Florida's motor vehicle insurance laws exist to:

- Ensure that the privilege of operating a motor vehicle on the public streets is exercised with due consideration for others and their property;
- Promote safety; and
- Provide financial security requirements for motor vehicle owners and operators so that they may compensate others for injury to person or property caused by a motor vehicle accident for which they were at fault.<sup>1</sup>

##### *Coverage Requirements – Property Damage and PIP*

Florida law requires the owners or operators of motor vehicles with four or more wheels to show proof, at the time of vehicle registration, of the purchase of \$10,000 of property damage (PD) liability insurance and \$10,000 of personal injury protection (PIP) insurance.<sup>2</sup> PD liability insurance is third-party insurance covering damage to, or the destruction of, the property of others due to a motor vehicle accident caused by the insured.<sup>3</sup> PIP insurance, on the other hand, is first-party insurance which compensates an insured injured in a motor vehicle accident for certain medical, surgical, funeral, and disability insurance expenses regardless of who was at fault.<sup>4</sup> PD and PIP coverage also provide policyholders with immunity from civil liability for economic damages up to the policy limits and limit tort suits for non-economic damages (such as pain and suffering) below a specified injury threshold.<sup>5</sup>

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.<sup>6</sup> A driver's license and registration suspended for failure to comply with such coverage requirements may be reinstated by obtaining a liability policy and paying a fee to the Department of Highway Safety and Motor Vehicles.<sup>7</sup>

##### *Coverage Requirements – Bodily Injury*

Florida law does not require proof of bodily injury (BI) liability insurance coverage at the time of motor vehicle registration. However, Florida law requires, after a motor vehicle accident, that a driver show proof of his or her ability to pay monetary damages in the amount of \$10,000 because of bodily injury to, or the death of, one person, and \$20,000 for bodily injury to, or the death of, two or more persons, or \$30,000 combined BI/PD liability insurance coverage.<sup>8</sup>

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<sup>1</sup> S. 324.011, F.S.

<sup>2</sup> Ss. 324.011, 324.022, 324.051, 627.733, and 627.736, F.S.

<sup>3</sup> S. 324.022, F.S.

<sup>4</sup> Ss. 627.731 and 627.733, F.S.

<sup>5</sup> S. 627.737, F.S.

<sup>6</sup> S. 324.0221(2), F.S.

<sup>7</sup> S. 324.0221(3), F.S.

<sup>8</sup> Ss. 324.011, 324.022, 324.051, 627.733, and 627.736, F.S.

## *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, while 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.<sup>9</sup>

### Vehicle Take-Home Programs

A vehicle take-home program is a program in which an agency employing law enforcement officers (employing agency) assigns an official law enforcement vehicle to a law enforcement officer that the officer may drive to and from work.<sup>10</sup> Vehicle take-home programs are currently in operation throughout the state; in fact, the Florida Department of Law Enforcement's 2020 Criminal Justice Agency Profile Report shows that about 90 percent of the state's law enforcement agencies operate a vehicle take-home program.<sup>11</sup> This includes all 67 county sheriff's offices, 218 of 232 municipal police departments, 26 of 34 state agencies employing law enforcement officers, and 32 of 43 school systems and ports employing law enforcement officers.<sup>12</sup> The 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.<sup>13</sup>

### Tort Claims Against Government Agencies

#### *Torts*

A "tort" is a wrong for which the law provides a remedy. The purpose of tort law is to fairly compensate a person harmed by another person's wrongful acts, whether intentional, reckless, or negligent, through a civil action or other comparable process. A properly-functioning tort system:

- Provides a fair and equitable forum to resolve disputes;
- Appropriately compensates legitimately harmed persons;
- Shifts the loss to responsible parties;
- Provides an incentive to prevent future harm; and
- Deters undesirable behavior.<sup>14</sup>

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

<sup>10</sup> Florida Department of Law Enforcement (FDLE), *Take-Home Vehicle Program*, <https://www.fdle.state.fl.us/FCJEI/Programs/SLP/Documents/Full-Text/Woods,-William-paper#:~:text=The%20purpose%20of%20a%20take,on%20vehicle%20maintenance%20and%20repair> (last visited Feb. 21, 2022).

<sup>11</sup> FDLE, *Criminal Justice Agency Profile Report*, available at <http://www.fdle.state.fl.us/CJSTC/Publications/CJAP/CJAP.aspx> (last visited Feb. 21, 2022).

<sup>12</sup> *Id.*

<sup>13</sup> See Pima County Sheriff's Dept., *Assigned Vehicle Program*, [https://pimasheriff.org/application/files/5415/6346/6464/Assigned\\_Vehicles\\_Program.pdf](https://pimasheriff.org/application/files/5415/6346/6464/Assigned_Vehicles_Program.pdf) (last visited Feb. 21, 2022). See also 05-36 Fla. Op. Att'y Gen. (June 16, 2005).

<sup>14</sup> Am. Jur. 2d Torts s.2.

## Sovereign Immunity

Sovereign immunity is a principle recognizing that a government cannot be sued without its consent.<sup>15</sup> The State Constitution itself may waive sovereign immunity for specified claims.<sup>16</sup> Further, article X, section 13 of the State Constitution authorizes the legislature to waive sovereign immunity by statute, as it has done to a limited extent for tort claims. Under this waiver, the state and its agencies and political subdivisions may be liable for the torts of an employee if the employee acted within the scope of his or her employment; however, damages awardable in such an action are capped at \$200,000 per person and \$300,000 per incident unless additional damages are approved by special act of the Legislature.<sup>17</sup> Courts use a three-part test to determine whether an employee's actions were within the scope of his or her employment. Specifically, courts examine whether the employee's conduct:

- Was of the kind the employee was employed to perform;
- Occurred substantially within the time and space limits authorized or required by the work to be performed; and
- Was activated at least in part by a purpose to serve the master.<sup>18</sup>

### Application to Vehicle Take-Home Programs

The assignment of a vehicle through a vehicle take-home program does not enlarge the state's liability for an employee's tortious acts committed outside the employee's scope of employment.<sup>19</sup> Courts have held that 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.<sup>20</sup> Further, courts have not been persuaded by plaintiffs who cite the "going and coming" rule for workers' compensation as a reason why the state or its political subdivisions should be liable for accidents caused by a law enforcement officer driving a vehicle assigned through a vehicle take-home program.<sup>21</sup>

For example, in 2007, the Fourth District Court of Appeal held in *Garcia v. City of Hollywood* that the city was not liable for a fatal accident involving a sergeant who was driving a marked patrol car assigned to him through a vehicle take-home program.<sup>22</sup> 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. Though the sergeant was required to be in uniform while driving the patrol car and to stop and act if he witnessed a crime, the court found that 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.

As a result of the *Garcia* opinion, law enforcement agencies across the state now recommend or require their law enforcement officers to obtain a "use of non-owned vehicle" insurance policy that provides liability coverage for the officer's operation of a vehicle assigned through a vehicle take-home program.<sup>23</sup> For example, the Orlando Police Department now requires its law enforcement officers to

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<sup>15</sup> Legal Information Institute, *Sovereign Immunity*, [https://www.law.cornell.edu/wex/sovereign\\_immunity](https://www.law.cornell.edu/wex/sovereign_immunity) (last visited Feb. 21, 2022).

<sup>16</sup> Art. X, s. 6, Fla. Const.

<sup>17</sup> Art. 10, s. 13, Fla. Const.; s. 768.28(2) and (5), F.S.; *City of Miami v. Simpson*, 172 So. 2d 435, 437, (Fla. 1965).

<sup>18</sup> *Iglesia Cristiana La Casa Del Señor, Inc. v. L.M.*, 783 So. 2d 353, 357 (Fla. 3d DCA 2001); *Hennagan v. Dep't of Highway Safety & Motor Vehicles*, 467 So. 2d 748, 750 (Fla. 1st DCA 1985).

<sup>19</sup> *Rabideau v. State of Fla.*, 409 So. 2d 1045 (Fla. 1982) (Holding that the Secretary of State's office was not liable for the acts of an employee who struck and killed two men at the side of a road, even though the investigator was driving a state-issued vehicle, because the investigator caused the fatal accident after drinking at a bar after his shift).

<sup>20</sup> *Robelo v. United Consumers Club, Inc.*, 555 So. 2d 395, 396 (Fla. 3d DCA 1989).

<sup>21</sup> The "going and coming rule" provides that, for the purposes of workers' compensation benefits, an injury suffered by a law enforcement officer while going to or coming 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 was not permitted by the employer's take-home vehicle program policies or a collective bargaining agreement. *Bencomo v. City of Miami*, 306 So. 3d 268 (Fla. 3d DCA, 2020); s. 440.092(2), F.S.

<sup>22</sup> *Garcia v. City of Hollywood*, 966 So. 2d 5 (Fla. 4th DCA 2007).

<sup>23</sup> See, e.g., 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 Feb. 21, 2022); City of Hollywood, Fla. Take Home Vehicle Policy HB-038:2, <http://www.hollywoodfl.org/DocumentCenter/View/11445/038-2-Take-Home-Vehicle?bidId> (last visited Feb. 3, 2022); Orlando Police Dept. 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 Feb. 21, 2022); Collective Bargaining Agreement between Town of Davie, Florida and Florida State Lodge

show proof of non-owned vehicle insurance coverage before it will issue the officer a vehicle under its vehicle take-home program.<sup>24</sup> 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.”<sup>25</sup>

## Effect of the Bill

CS/CS/HB 139 requires an employing agency that authorizes a law enforcement officer<sup>26</sup> to travel to and from work in an official law enforcement vehicle to maintain current and valid motor vehicle insurance, including BI, death, and PD liability coverage, covering the period in which the officer travels to or from work or any other employing agency assignment in an official law enforcement vehicle.

However, the bill does not require such motor vehicle insurance to provide for coverage if the officer:

- Makes a distinct deviation for a nonessential personal errand unless permitted to do so by a collective bargaining agreement; or
- 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 also specifies that:

- Any suit or action brought or maintained against an employing agency for damages arising out of tort under the bill is limited to \$200,000 per person and \$300,000 per incident.
- Employing agencies may be self-insured, enter into risk management programs, or purchase liability insurance in order to satisfy the bill’s requirements.
- The bill fulfills an important state interest.

## B. SECTION DIRECTORY:

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

**Section 2:** Creates an unnumbered section of law finding 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*.

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Fraternal Order of Police, Inc., <https://www.davie-fl.gov/DocumentCenter/View/9755/FOP-Collective-Bargaining-Agreement-2019-2022-PDF> (last visited Feb. 21, 2022).

<sup>24</sup> Orlando Police Dept., *supra* note 23.

<sup>25</sup> *Id.*

<sup>26</sup> “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.

## B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

### 1. Revenues:

None.

### 2. Expenditures:

See *Fiscal Comments*.

## C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive indeterminate fiscal impact on the private sector by:

- Increasing the likelihood that a person injured in an accident caused by a law enforcement officer driving a vehicle assigned through a vehicle take-home program may recover damages for his or her injuries, whether personal or to property, if the officer was travelling to or from work at the time of the accident.
- Reducing the personal, out-of-pocket expenses for a law enforcement officer desiring to participate in a vehicle take-home program, as he or she will no longer be required to pay for personal insurance coverage for the period in which he or she is driving his or her assigned vehicle to or from work or any agency assignment; such costs will instead be borne by his or her employing agency.
- Giving the insurer an opportunity to collect new premiums on the motor vehicle insurance required by the bill, to the extent that such insurance is not already in place on an assigned vehicle for the time periods contemplated by the bill.

## 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.<sup>27</sup>

There is likely no additional fiscal impact to state agencies arising under the bill relating to motor vehicle insurance coverage for take-home vehicle programs, as state agencies are currently covered under the SRMTF. However, the bill may have an indeterminate fiscal impact on local government expenditures, if local agencies would need to purchase additional motor vehicle insurance coverage for employees who are participating in a vehicle take-home program. The dollar amount of required expenditures is currently unknown and depends upon the insurance selected by the individual agencies.

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<sup>27</sup> Dept. of Financial Services, Div. of Risk Management, <https://myfloridacfo.com/Division/Risk/> (last visited Feb. 21, 2022).

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates 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. Additionally, an exception may apply because the bill declares it fulfills an important state interest and requires all similarly situated state and local employing agencies operating a vehicle take-home program to maintain motor vehicle insurance.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

Not applicable.

#### 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 the original bill in that it:

- Removed a provision amending the definition of “law enforcement officer” to provide 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;
- Required an employing agency operating 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 in tort arising under the bill is limited to \$200,000 per person and \$300,000 per incident; and
- Specified that employing agencies may be self-insured, enter into risk management programs, or purchase liability insurance.

On February 21, 2022, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment deleted language suggesting that an officer traveling to his or her home in an official law enforcement vehicle assigned to him or her under a vehicle take-home program is acting outside the course and scope of the officer’s employment or function.

This analysis is drafted to the committee substitute as adopted by the Judiciary Committee.