

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 Criminal Justice

BILL: CS/SB 266

INTRODUCER: Criminal Justice Committee and Senator Diaz

SUBJECT: Motor Vehicle Insurance

DATE: January 11, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 266 creates s. 627.7491, F.S., which provides that if an employing agency of a law enforcement officer authorizes the officer to travel to his or her place of residence in an official law enforcement vehicle outside of the course and scope of the officer's employment or function, the employing agency must maintain current and valid motor vehicle insurance.

This motor vehicle insurance includes bodily injury, death, and property damage liability coverage that covers the period in which a law enforcement officer travels to or from work in an official law enforcement vehicle and covers the time a law enforcement officer travels to and from any other employing agency assignment in an official law enforcement vehicle. However, such motor vehicle insurance is not required to provide for coverage if:

- The law enforcement officer makes a distinct deviation for a nonessential personal errand unless a collective bargaining agreement permits such deviation; or
- The law enforcement officer 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 pursuant to the bill are limited to the statutory damages caps in s. 768.28(5), F.S. (\$200,000 per person and \$300,000 per incident). Further, the employing agency is authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance in order to meet the bill's requirements.

Finally, the bill provides a declaration of an important state interest.

The bill may have a fiscal impact on counties and municipalities. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

II. Present Situation:

Motor Vehicle Insurance

Chapter 627, part XI, F.S., Motor Vehicle and Casualty Insurance Contracts, and ch. 324, F.S., Financial Responsibility, 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 insured persons 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 liability insurance 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

¹ Section 324.011, F.S.

² See ss. 627.733 and 324.022, F.S. A driver in compliance with the requirement to carry PIP insurance 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 Section 324.022, F.S.

⁴ Section 627.733, F.S.

⁵ Section 627.731, F.S.

⁶ Section 627.737, F.S.

⁷ Section 324.0221(2), F.S.

⁸ Section 324.0221(3), 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 term *indemnify* is generally interpreted as imposing an obligation on one party (the *indemnitor*) to pay or compensate the other party (the *indemnitee*) for certain legal liabilities or losses, but that obligation does not typically arise until the end of a case when the indemnitee has had a judgment entered against it for damages or has made payments or suffered actual loss. The term *defend*, on the other hand, usually imposes an independent duty to either actively defend or fund the defense of any claim brought against the indemnitee that falls within the scope of the indemnification provision. The duty to defend is a promise to render, or fund, the service of providing a defense on the indemnitee's behalf--a duty that usually arises as soon as a claim is made against the indemnitee and may continue until the claim has been resolved.⁹

Vehicle Take-Home Programs for Law Enforcement Officers

Vehicle take-home programs, also referred to as assigned vehicle programs, are currently in operation throughout Florida. In the 2020 Criminal Justice Agency Profile Report by the Florida Department of Law Enforcement, it was reported that approximately ninety percent of the state's law enforcement agencies operate a vehicle take-home program.¹⁰ Some of the cited reasons 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

⁹ Sean McChristian, *Indemnity vs. Duty to Defend: Know the Differences and Potential Critical Variations in State Law* (Aug. 16, 2019), American Bar Assoc., available at https://www.americanbar.org/groups/construction_industry/publications/under_construction/2019/summer/indemnity-vs-duty/ (last visited on Jan. 11, 2022).

¹⁰ Florida Department of Law Enforcement, Criminal Justice Agency Profile Report, Police Departments and Sheriffs' Offices, Supplemental Programs, available at <http://www.fdle.state.fl.us/CJSTC/Publications/CJAP/CJAP.aspx> (last visited on Jan. 11, 2022); *See also Sheriffs' Offices, 2007* – Statistical Table (Dec. 2012), U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, available at <https://bjs.ojp.gov/content/pub/pdf/so07st.pdf> (last visited on Jan. 11, 2022) (reporting that ninety-three percent of sheriffs' departments around the country allow personnel to take department vehicles home).

¹¹ *See Assigned Vehicle Program*, Pima County Sheriff's Department, available at https://pimasheriff.org/application/files/5415/6346/6464/Assigned_Vehicles_Program.pdf (last visited on Jan. 11, 2022). *See also* 05-36 Fla. Op. Att'y Gen. (June 16, 2005).

Sovereign Immunity and s. 768.28, F.S.

Sovereign immunity is a principle under which a government cannot be sued without its consent.¹² Article X, s. 13, of the Florida Constitution allows the Legislature to waive this immunity. Section 768.28(1), F.S., authorizes suits in tort against the State and its agencies and political subdivisions for damages resulting from the negligence of government employees acting in the scope of their employment. This liability exists only where a private person would be liable for the same conduct. The waiver applies only to “injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee’s office or employment...”¹³ Section 768.28(5)(a), F.S., limits tort recovery from a governmental entity to \$200,000 per person and \$300,000 per accident. This limitation does not prevent a judgement in excess of such amounts from being entered, but a claimant is unable to collect above the statutory limit unless a claim bill is passed by the Legislature.¹⁴

Workers’ Compensation – “Going or Coming” Rule

Section 440.092, F.S., in part, sets forth special requirements for compensability relating to workers’ compensation coverage. Section 440.092(2), F.S., codifies “the ‘going or coming’ rule.”¹⁵ Specifically, subsection (2) provides that an injury suffered while going to or coming from work is not an injury arising out of and in the course of employment whether or not the employer provided transportation if such means of transportation was available for the exclusive personal use by the employee, unless the employee was engaged in a special errand or mission for the employer. For the purposes of subsection (2) and notwithstanding any other provisions of law to the contrary, an injury to a “law enforcement officer” as defined in s. 943.10(1), F.S., during the officer’s work period or while going to or coming from work in an official 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. If, however, the employer’s policy or the collective bargaining agreement that applies to the officer permits such deviations for nonessential errands, the injury is presumed to arise out of and in the course of employment.¹⁶

***Garcia v. City of Hollywood* – Officer was not acting within the course and scope of employment when he struck a pedestrian with his “take home” patrol vehicle**

In *Garcia v. City of Hollywood*,¹⁷ the Florida Fourth District Court of Appeals (Fourth DCA) affirmed a trial court granting summary judgment for the City of Hollywood, finding that the city was not liable for a pedestrian’s injuries incurred when he was struck by a “take home” vehicle owned by the city and operated by a sergeant who traveled to the station an hour before his shift to study for an exam. The marked patrol vehicle was provided to the sergeant pursuant to a

¹² *Sovereign Immunity*, The Legal Information Institute, Cornell Law School, available at https://www.law.cornell.edu/wex/sovereign_immunity (last visited on Jan. 11, 2022).

¹³ Section 768.28(1), F.S.

¹⁴ Section 768.28(5)(a), F.S.

¹⁵ *Dunnam v. Olsten Quality Care*, 667 So.2d 948, 949 (Fla. 1st DCA 1996).

¹⁶ Section 440.092(2), F.S.

¹⁷ 966 So.2d 5 (Fla. 4th DCA 2007).

vehicle take-home policy that was incorporated in a collective bargaining agreement between the Broward County Police Benevolent Association and the City of Hollywood.¹⁸

The Fourth DCA concluded that the sergeant was not within the course and scope of his employment when the accident occurred. The Fourth DCA noted that the uncontradicted testimony in the trial court established that the officer “had yet to begin work when the accident occurred and was merely driving to the police station an hour before his shift began to study for an exam prior to beginning work.”¹⁹ Further, the appellate court commented:

The City notes that although ... [the sergeant] was driving a City-owned police vehicle, the Florida Supreme Court has held that our waiver of sovereign immunity statute, section 768.28(1), Florida Statutes (2004), does not waive sovereign immunity under the dangerous instrumentality doctrine.²⁰ *Rabideau v. State*, 409 So.2d 1045, 1046 (Fla.1982) (“twenty-four-hour assignment of a state-owned vehicle to a state employee does not enlarge state liability under section 768.28 to include acts committed outside the employee’s scope of employment”).²¹

The Fourth DCA found support for its conclusion in the following cases: *Foremost Dairies v. Godwin*,²² a case in which the Florida Supreme Court reversed a negligence judgment against an employee whom the Court held was not in the course of his employment as a matter of law when he was “merely going to or from work in his own car”;²³ and *Everett Ford Co. v. Laney*,²⁴ a case in which the Florida Supreme Court held that an employee who worked irregular hours was not within the scope of her employment when the accident occurred (while driving home to recover a key to the closed office which she had forgotten).²⁵

The Fourth DCA found additional support for its conclusion in *Palm Beach County Sheriff’s Office v. Ginn*,²⁶ a worker’s compensation case involving a deputy who was injured in an accident while driving a vehicle provided by his employer. When the accident occurred, the deputy was off-duty and running a personal errand, which he was authorized by his employer to do. Prior to his accident the deputy had been monitoring a police radio in case he was called and was wearing a beeper. The First District Court of Appeal (First DCA) in *Ginn* found that the deputy was not acting within the course of his employment when the accident occurred.²⁷ The Fourth DCA quoted the following findings of the First DCA:

¹⁸ *Id.* at 5-6.

¹⁹ *Id.* at 6.

²⁰ “Adopted in 1920, Florida’s dangerous instrumentality doctrine imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another.” *Aurbach v. Gallina*, 753 So.2d 60, 63 (Fla. 2000) (citation omitted). Under this doctrine, “an owner who gives authority to another to operate the owner’s vehicle, by either express or implied consent, has a nondelegable obligation to ensure that the vehicle is operated safely.” *Id.* (citation omitted).

²¹ *Garcia*, 966 So.2d at 6.

²² 158 Fla. 245, 26 So.2d 773 (Fla. 1946).

²³ *Garcia*, 966 So.2d at 7, citing *Foremost Dairies, Inc.*, 26 So.2d at 774.

²⁴ 189 So.2d 877.

²⁵ *Garcia*, 966 So.2d at 7, citing *Everett Ford. Co.*, 189 So.2d at 878.

²⁶ 570 So.2d 1059 (Fla. 1st DCA 1990).

²⁷ *Garcia*, 966 So.2d at 7 describing *Ginn*, 570 So.2d at 1060.

The fact that a law enforcement officer is on call for duty and has a police radio and other indicia of his authority in his possession is not dispositive in determining whether an off-duty officer is acting within the course of his employment. Rather, the issue, pursuant to the provisions of Section 440.091, is whether the officer is carrying out his primary responsibility, which is the “prevention or detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.”²⁸

The Fourth DCA found this situation similar to the situation in the case it was reviewing. The sergeant was “not in the process of carrying out a ‘primary responsibility’ of his job as a police officer” and “not engaged in the ‘prevention or detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the State.’”²⁹ The Fourth DCA concluded:

He was not furthering any interest of his employer or performing any duties of his employment. He was simply in transit to the police station an hour before he was required to report for work for the personal reason of studying for the Lieutenant’s exam.³⁰

Impact of *Garcia v. City of Hollywood*

As a result of the *Garcia* opinion, some 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).³¹ 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 purpose 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.”³²

III. Effect of Proposed Changes:

The bill creates s. 627.7491, F.S., which provides that if an employing agency³³ of a law enforcement officer³⁴ authorizes the officer to travel to his or her place of residence in an official

²⁸ *Garcia*, 966 So.2d at 7, quoting *Ginn*, 570 So.2d at 1060.

²⁹ *Garcia*, 966 So.2d at 7.

³⁰ *Id.* at 7-8.

³¹ See e.g. Collective Bargaining Agreement between the City of Ocala, Florida and Florida State Lodge, Fraternal Order of Police, available at <https://www.ocalafl.org/home/showpublisheddocument/2130/637504395197530000>; City of Hollywood, Florida, Take Home Vehicle Policy HB-038:2, available at <http://www.hollywoodfl.org/DocumentCenter/View/11445/038-2-TakeHome-Vehicle?bidId>; Orlando Police Department Policy and Procedure 1802.17, Use of City Vehicles, available at <https://www.orlando.gov/files/sharedassets/public/documents/opd/policies-and-procedures/city-owned-vehicles/1802.17-use-of-city-vehicles.pdf>; and Collective Bargaining Agreement between Town of Davie, Florida and Florida State Lodge Fraternal Order of Police, Inc., available at <https://www.davie-fl.gov/DocumentCenter/View/9755/FOP-CollectiveBargaining-Agreement-2019-2022-PDF> (all sites last visited on Jan. 11, 2022).

³² Orlando Police Department Policy and Procedure 1802.17, Use of City Vehicles, available at <https://www.orlando.gov/files/sharedassets/public/documents/opd/policies-and-procedures/city-owned-vehicles/1802.17-use-of-city-vehicles.pdf> (last visited on Jan. 11, 2021).

³³ The bill defines the term “employing agency” as an agency that employs a law enforcement officer.

³⁴ The bill defines the term “law enforcement officer” by reference to s. 943.10(1), F.S., which defines a “law enforcement officer” as 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

law enforcement vehicle outside of the course and scope of the officer's employment or function, the employing agency must maintain current and valid motor vehicle insurance.

This motor vehicle insurance includes bodily injury, death, and property damage liability coverage that covers the period in which a law enforcement officer travels to or from work in an official law enforcement vehicle and covers the time a law enforcement officer travels to and from any other employing agency assignment in an official law enforcement vehicle. However, such motor vehicle insurance is not required to provide for coverage if:

- The law enforcement officer makes a distinct deviation for a nonessential personal errand unless a collective bargaining agreement permits such deviation; or
- The law enforcement officer 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 pursuant to the bill are limited to the statutory damages caps in s. 768.28(5), F.S. (\$200,000 per person and \$300,000 per incident). Further, the employing agency is authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance in order to meet the bill's requirements.

Finally, the bill provides that the Legislature finds and declares that this act fulfills an important state interest.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a), of the Florida Constitution provides, in relevant part, that: "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: the law requiring such expenditure is approved by two-thirds vote of the membership of each house of the legislature; [or] . . . the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments...."

The bill provides a declaration of an important state interest. Further, the provisions of the bill appear to apply to all persons similarly situated (state and local law enforcement agencies).

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 mandate requirements do not apply to laws having an “insignificant impact” which, for Fiscal Year 2021-2022, appears to be an amount not exceeding \$2.2 million.³⁵ The fiscal impact of this bill on municipalities and counties is indeterminate. If costs imposed by the bill are determined to exceed \$2.2 million in the aggregate, the bill may be binding on municipalities and counties if the bill contains a finding of important state interest and meets one of the exceptions specified in Article VII, s. 18(a) of the State Constitution (e.g., applies to all persons similarly situated or is enacted by a vote of two-thirds of the membership of each house of the Legislature).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will likely have an indeterminate, positive fiscal impact on the private sector as a result of premiums collected by insurers on this coverage.

C. Government Sector Impact:

An employing agency with a vehicle take-home program would no longer be able to recommend or require their law enforcement officers to obtain a “use of non-owned vehicle” insurance policy. The employing agency would have to provide motor vehicle insurance coverage. The cost of this coverage is currently indeterminate.

³⁵ A 2012 Senate interim report indicated that an “insignificant fiscal impact” is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See *Insignificant Impact*, Interim Report 2012-115: (Sep. 2011), Florida Senate Committee on Community Affairs, available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited on Jan. 11, 2022). The Florida Demographic Estimating Conference’s November 3, 2020, population forecast for 2021 was 21,830,364 persons. The conference packet is available at: <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited on Jan. 11, 2022).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 627.7491 of the 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 Criminal Justice on January 11, 2022:

The committee substitute:

- Creates s. 627.7491, F.S., which provides that if an employing agency of a law enforcement officer authorizes the officer to travel to his or her place of residence in an official law enforcement vehicle outside of the course and scope of the officer's employment or function, the employing agency must maintain current and valid motor vehicle insurance.
- Specifies types of vehicle insurance that must be obtained.
- Provides exceptions to providing vehicle insurance.
- Provides 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 the statutory damages caps in s. 768.28(5), F.S. (\$200,000 per person and \$300,000 per incident).
- Provides that the employing agency is authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance in order to meet the bill's requirements.
- Provides a declaration of an important state interest.

- B. **Amendments:**

None.