

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2454

SPONSOR: Banking and Insurance Committee and Senator Margolis

SUBJECT: Florida Automobile Joint Underwriting Association

DATE: April 15, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Florida Automobile Joint Underwriting Association (FAJUA) is the “insurer of last resort” because it provides motor vehicle insurance to applicants who are unable to procure such coverage through the voluntary or competitive market due to a variety of factors, including driving history or status as first-time drivers. The association operates much like a private automobile insurance provider although it is operated by a Board of Governors appointed by the Chief Financial Officer, insurers, and agents.

Committee Substitute for Senate Bill 2454 would provide for the following:

- Require that, as a condition precedent to bringing a civil action against the FAJUA, a party must give the FAJUA and the Department of Financial Services (DFS), 90 days’ written notice of the violation which is the basis of the civil suit. Under current law, a party must provide 60’ days written notice. The extra 30 days will give the FAJUA more time to investigate the basis for the civic action. The 90 day notice will expire effective October 1, 2007, unless reenacted by the Legislature prior to that date.
- Allow the FAJUA to require from its insured proof that he or she has obtained the mandatory types and amounts of automobile coverage prior to the cancellation of the policy and prior to the return of any unearned premium. This does not apply if the insured provides proof of sale or inoperability of his or her vehicle or if such vehicle is relocated outside Florida. This provision is effective July 1, 2004, and applicable to cancellation requests and notices received on or after that date.

This bill substantially amends section 627.311 of the Florida Statutes.

II. Present Situation:

Operation of the Florida Automobile Joint Underwriting Association

The Florida Automobile Joint Underwriting Association (FAJUA)¹ was created in 1973 pursuant to an Order issued by the then Insurance Commissioner² with the purpose to be an “insurer of last resort” to provide motor vehicle insurance to applicants who were unable to procure such coverage through the voluntary or competitive market due to a variety of factors, including driving history or status as first-time drivers.³ Every insurer authorized to write automobile liability insurance or automobile physical damage insurance in Florida is required to be a member of the FAJUA. Expenses, losses, or profits of the FAJUA are apportioned among the insurer members in the ratio to their representation in the voluntary Florida market.

The activities of the FAJUA can readily be analogized to that of a private automobile insurance provider. The FAJUA is managed and controlled by a Board of Governors composed of 11 members: five are appointed by the Chief Financial Officer (two of whom must be chosen from the insurance industry) and six are appointed by the participating insurers (two of whom must be selected from the insurance agents’ associations). The Florida Office of Insurance Regulation (OIR) regulates FAJUA activity in that rate filings, form content, and plan of operations changes are subject to prior approval by the OIR before they become effective. Based on figures as of February 29, 2004, the FAJUA had a total of 24,509 policies in force.⁴

Over the past several years, the association has experienced large net underwriting losses: \$27.2 million for fiscal year 2003; \$29.5 million for fiscal year 2002; and \$11.4 million for fiscal year 2001.⁵ Representatives with the FAJUA state that such losses are due to a variety of reasons:

1. settling and paying of claims at much higher than reasonable levels due to the “threat” of civil law suits against the association;
2. premature cancellation of policies by FAJUA insureds;
3. personal injury protection (PIP) fraud and abuse;
4. loss adjustment expenses; and

¹ Section 627.311, F.S., authorizes the Office of Insurance Regulation to approve a joint underwriting plan which is established for the purpose of the sharing among insurance companies of automobile liability and similar types of insurance. This plan is an alternative to the plan required under s. 627.351(1). The FAJUA is created under this plan.

² Now the Chief Financial Officer.

³ Section 626.311, F.S. Current Florida law provides for compulsory purchase of no-fault automobile insurance coverage, referred to as personal injury protection (PIP), which compensates the policyholder directly up to \$10,000 without regard to fault for bodily injury sustained in a motor vehicle accident. Property damage liability coverage of \$10,000 is also required, which pays for the physical damage expenses caused by the insured to third parties in the accident. (ss. 627.730-627.7405, F.S.)

⁴ The FAJUA has a staff of four people, and under the direction of the Board of Governors, contracts with one servicing carrier (American Insurance Group, or AIG) which issues policies, underwrites risks, processes claims, adjusts losses, and keeps data on all its operations and reports it to the Automobile Insurance Plans Service Office (AIPSO). The AIPSO, also under contract with the FAJUA, assembles the data obtained from AIG and develops financial and rate making information for the FAJUA. Additionally, the AIPSO, utilizing data collected from all insurers, determines the participation percentage of each insurer member of the FAJUA. It then allocates to each member its share of premium, losses, expenses and services fees.

⁵ The association has also had to increase its rates over this same period: 17.6 percent increase in 10/03; 13.8 percent increase in 3/03, 13.3 percent increase in 5/02; and a 33.2 percent increase in 10/01.

5. the “mix” of the association’s insureds which are primarily high risk drivers (resulting in the filing of many claims).

Civil Actions Against the FAJUA

Under the civil remedy provision of the Insurance Code (s. 624.155, F.S.), any person may bring a civil action against an insurer or the FAJUA when the person is damaged by specific enumerated violations of the Insurance Code or the commission of certain “bad faith” claims for economic damages based upon an insurer’s or the FAJUA’s actions. Specifically, any person may bring a civil action against an insurer or the FAJUA when that person is damaged by the insurer or the FAJUA violating certain provisions of the Insurance Code or by committing acts such as not attempting in good faith to settle claims when, under all circumstances, the insurer or the FAJUA could and should have done so, had they acted fairly and honestly toward the insured and with due regard to his or her interests. Such acts also include making claim payments to insureds which are not accompanied by coverage statements or when failing to promptly settle claims when the obligation to settle such claims is clear.

The standards for good faith conduct are summarized in *Boston Old Colony Ins. Co. v. Gutierrez*, 386 So.2d 783 (Fla. 1980). The Supreme Court of Florida stated:

“An insurer, in handling the defense of claims against its insured, has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business. For when the insured has surrendered to the insurer all control over the handling of the claim, including all decisions with regard to litigation and settlement, then the insurer must assume a duty to exercise such control and make such decisions in good faith and with due regard for the interests of the insured.”

As a condition precedent to bringing a civil action against an insurer or the FAJUA, a party must give the insurer or the FAJUA and the Department of Financial Services, 60 days’ written notice of the violation. Along with the notice, the party must provide information concerning the statutory provision which the insurer or the FAJUA allegedly violated; the facts and circumstances giving rise to the violation; the name of the individual involved in the violation; and specific policy information.

Representatives with the FAJUA state that the risk of civil law suits forces the association to often settle and pay claims at or near the policy limits. The association settles claims rather than risk civil bad faith judgments which could result in payment of all damages (at much greater costs than the limit under the policy). These representatives assert that these “coerced” settlements are a major factor in driving up loss costs that they must pay and in driving up their premiums. The FAJUA representatives believe that the association needs more time than the current 60 days for their investigators to attempt to resolve the basis for the prospective civil law suits.

Premature Cancellation of Policies by FAJUA Insureds

The FAJUA officials state that a substantial number of their insureds obtain the minimum premium automobile policy (mandatory personal injury protection (PIP) and property damage (PD) insurance), get their license and car tag, and subsequently cancel their policy within days of purchasing the policy. This has resulted in the association having to refund to these insureds their unearned premium which has cost the FAJUA over 30 percent of the association's total premium over the past year. Specifically, the FAJUA has refunded \$38 million in unearned premium (out of approximately \$101 million in total premium) over the past 15 months to insureds who have prematurely cancelled their policies. Further, many of their insureds never obtain replacement motor vehicle insurance after they cancel their association policy.⁶ Representatives with the FAJUA state that insureds who cancel their policies should be required to establish proof that they have obtained comparable replacement insurance.

III. Effect of Proposed Changes:

Section 1. Amends s. 627.311, F.S., relating to the Florida Automobile Joint Underwriting Association, to require that, notwithstanding the requirements of s. 624.155(3)(a), F.S., (civil remedies law), as a condition precedent to bringing a civil action against the FAJUA, a party must give the FAJUA and the DFS, 90 days' written notice of the violation. Under the current civil remedies law, a party must provide 60' days written notice.⁷ The extra 30 days will give the FAJUA more time to investigate the basis for the civic action. The 90 day notice will expire effective Oct. 1, 2007, unless reenacted by the Legislature prior to that date. Note, this expiration date is the same as the expiration deadline for specified provisions of the Motor Vehicle No-Fault Law which was enacted in ch. 2003-411, L.O.F.

The bill would allow the FAJUA to require from its insured proof that he or she has obtained the mandatory types and amounts of automobile coverage from another admitted carrier prior to the cancellation of the FAJUA policy and prior to the return of any unearned premium the insured paid for such coverage. This requirement does not apply if the insured provides proof of sale or inoperability of his or her vehicle or if such vehicle is relocated outside Florida. This provision is effective July 1, 2004, and applicable to cancellation requests and notices received on or after that date.

Section 2. Provides that the act will take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁶ Under s. 627.7283, F.S., once the insured cancels a motor vehicle insurance policy, the insurer or the FAJUA must mail the unearned premium within 30 days after the effective date of the cancellation. The insurer or FAJUA may keep 10 percent of the unearned premium and must refund 90 percent of the unearned premium to the insured.

⁷ Section 624.155, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Policyholders with the Florida Automobile Joint Underwriting Association may be required to offer proof that they have obtained replacement motor vehicle insurance coverage before canceling their association policy and receiving a refund of unearned premium.

C. Government Sector Impact:

The Florida Automobile Joint Underwriting Association may be less likely to be liable in a civil remedy law suit due to being provided an extra 30 days to investigate and attempt to resolve the basis for the prospective civil law suit.

The Florida Automobile Joint Underwriting Association (FAJUA) is likely to pay lower amounts in refunds of unearned premium, and thereby mitigate assessments against auto insurers to fund deficits, due to the authority to require a policyholder to offer proof of replacement coverage as a condition of cancellation. Over the past 15 months, the FAJUA has refunded \$38 million in unearned premium out of approximately \$101 million in total premium to insureds who have cancelled their policies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.