

# 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.)

Prepared By: Community Affairs Committee

BILL: SB 450

SPONSOR: Senator Geller

SUBJECT: Unfair or Deceptive Trade Practices Relating to Military Service Personnel

DATE: March 10, 2005      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<b>Fav/1 amendment</b>
2.	<u>Vickers</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see last section for Summary of Amendments**

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

Senate Bill 450 creates a new unfair or deceptive trade practice provision under the Insurance Code which would prohibit auto insurers from imposing premium increases for persons in military service under certain circumstances. Specifically, the bill would make it unlawful for insurers to charge an increased premium for reinstating a motor vehicle insurance policy that was cancelled or suspended by the insured solely for the reason that he or she was transferred out of this state while serving in the United States Armed Forces or on active duty in the National Guard or United States Armed Forces Reserve.

The bill also provides that it is an unfair or deceptive trade practice for an insurer to charge an increased premium for a new motor vehicle insurance policy if the applicant for coverage was previously insured with a different insurer and cancelled that policy solely for the reason that he or she was transferred out of this state while serving in the United States Armed Forces or on active duty in the National Guard or United States Armed Forces Reserve. For purposes of determining premiums, an insurer shall consider such persons as having maintained continuous coverage.

Under current law, insurers are subject to fines for nonwillful or willful violations of the unfair or deceptive trade practice provisions (s. 626.9521, F.S.). Also, such entities may be subject to

criminal prosecution (e.g., a second degree misdemeanor) for willfully violating the unfair or deceptive trade practice act (s. 624.15, F.S.).

The bill amends the following section of the Florida Statutes: 626.9541.

## II. Present Situation:

### Background

Representatives with the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR) state that both agencies have had reports over the past year that members of the Armed Forces returning from active duty have found that their automobile premium rates had increased, were being denied reinstatement of coverage, or were being refused new coverage.<sup>1</sup> These service personnel had discontinued their automobile insurance coverage when they were activated for duty and transferred out of state. Because insurers took *continuity of coverage* into consideration for underwriting and rating standards, these members of the Armed Forces were being inappropriately penalized, according to these officials. These representatives point out that Florida has 21 active military installations, three joint commands in 13 counties, and nearly 80,000 active-duty military personnel.

Both the Chief Financial Officer and the Insurance Commissioner have requested that automobile insurers waive the continuity of coverage provision for military personnel by requesting that insurers reinstate policies for Armed Forces personnel who were in good standing when they left the state for active duty. For those military personnel who are seeking new coverage due to their activation for duty, it was recommended that such personnel be viewed as if they had continuous coverage.

### Motor Vehicle Insurance

Under the Florida Motor Vehicle No-Fault law, every owner of a four-wheeled motor vehicle registered in Florida is required to maintain \$10,000 of no-fault personal injury protection (PIP) insurance and \$10,000 in property damage (PD) insurance. Subject to co-payments and other restrictions, PIP insurance provides compensation for bodily injuries to the insured driver and passengers regardless of who is at fault in an accident. This coverage also provides the policyholder with immunity from liability for economic damages up to the policy limits and for non-economic damages (pain and suffering) for most injuries. Generally, a plaintiff must suffer a permanent injury in order to seek pain and suffering damages against a motorist with PIP coverage.

Office of Insurance Regulation representatives state that automobile insurers have underwriting and rating policies which have been approved by the agency that take into account an individual's prior insurance status which includes whether there has been a lapse (break) in coverage. The underwriting/rating policies normally provide that the greater the number of days for which there is a lapse in automobile insurance coverage, the higher the premium is for such

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<sup>1</sup> See Press Release dated June 17, 2004, from DFS and Informational Memorandum (OIR 04-003M) issued by OIR dated June 17, 2004. The DFS regulates insurance agents and the OIR regulates insurance companies.

coverage. The number of days which have lapsed may differ among insurers, but that is the general policy, according to these representatives. Normally, lower premiums are charged for individuals who had been continuously insured for five or more years.

Officials with the largest motor vehicle insurer in the State assert that their company already complies with the provisions outlined in this legislation. Their company does reinstate policies for those members of the Armed Forces who were in good standing when they were transferred out of state. Similarly, for those servicemen and women who are seeking new coverage, they are viewed as if they had continuous coverage, so long as they were in good standing with their previous automobile insurer and the only reason for the discontinued coverage was their activation for duty out of Florida. These officials state that military personnel often cancel their policies when they are transferred out of state for more than 6 months because they no longer drive their car. Military personnel who have a tour of less than six months may suspend their coverage for that period with their insurer (and pay no premium) or may pay a reduced premium if, for example, they want to maintain their comprehensive coverage to pay for losses such as fire, theft, or vandalism.

Committee staff contacted another major automobile insurer who states that the company currently waives the continuation of coverage rating/underwriting policy for military personnel. This waiver is predicated upon the fact that these servicewomen and men had discontinued coverage due to their being transferred for duty out of state. Another large insurance company currently has an underwriting guideline specifically for military personnel who are transferred *overseas*, as opposed to being transferred out of state. Should this legislation become law, that company would amend their policy for military personnel who are transferred out of Florida.

Under state law, automobile insurance rates/premiums must not be “excessive, inadequate, or unfairly discriminatory” (s. 627.0651, F.S.). However, the premiums for automobile insurance are not the same for every driver because the level of risk for the insurance company is not the same for every driver. The risk classifications which insurers use in setting automobile insurance premiums are age, gender, driving experience of the operator, the type of vehicle driven, the usage of the vehicle (whether for pleasure or business), and geographic location (where the automobile is principally driven). Additionally, drivers may qualify for premium discounts which range from whether the operator has a good driving record (free of accidents or violations) to whether the policyholder successfully completes a driver-improvement course.

### **Unfair or Deceptive Trade Practices Acts**

Under current law, insurers are prohibited from committing various activities defined under the unfair methods of competition and unfair or deceptive practices acts (s. 626.9541, F.S.). Such activities range from misrepresentations in advertising of insurance policies and making false statements to defamation and illegal dealings in premiums. Insurers may be subject to suspension or revocation of their certificates of authority or fines for violations of the unfair trade practice provisions. The OIR may suspend or revoke the certificate of authority of an insurer for a violation of any provision of the Insurance Code (s. 624.418, F.S.). The OIR may impose an administrative fine on an insurer that violates any unfair trade practice of up to \$2,500 for each nonwillful violation, not to exceed \$10,000 for all nonwillful violations arising out of the same

action. For willful violations, the maximum fine is \$20,000 for each violation, not to exceed \$100,000 for all willful violations arising out of the same action (s. 626.9521, F.S.).

Further, the unfair trade practice laws authorize the OIR to issue cease and desist orders against insurers that violate those provisions (s. 626.9581, F.S.). If an insurer violates the OIR's cease and desist order, the OIR may impose a penalty not to exceed \$50,000 (s. 626.9601, F.S.). Also, insurers may be subject to criminal prosecution (e.g., a second degree misdemeanor) for willfully violating the unfair trade practice acts (s. 624.15, F.S.). An insurance agent that violates this section is subject to suspension or revocation of his or her license and an administrative penalty of up to \$500 or, for willful violations, up to \$3,500, under the authority of the Department of Financial Services (s. 626.681, F.S.).

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 626.9541, F.S., in the Florida Insurance Code, which prohibits any person from engaging in specified unfair methods of competition and unfair or deceptive acts or practices. The bill would create a new unfair or deceptive trade act provision (cc) which is entitled unfair rate increases for persons in military service.

Specifically, the bill would make it unlawful for insurers to charge an increased premium for reinstating a motor vehicle insurance policy that was cancelled or suspended by the insured solely for the reason that he or she was transferred out of this state while serving in the United States Armed Forces or on active duty in the National Guard or United States Armed Forces Reserve. It would also be an unfair practice for an insurer to charge an increased premium for a new motor vehicle insurance policy if the applicant for coverage was previously insured with a different insurer and cancelled that policy solely for the reason that he or she was transferred out of this state while serving in the United States Armed Forces or on active duty in the National Guard or United States Armed Forces Reserve. For purposes of determining premiums, an insurer shall consider such persons as having maintained continuous coverage.

An insurance company that violates this section is subject to suspension or revocation of its certificate of authority or an administrative fine not to exceed, for a nonwillful violation, \$2,500 per violation or \$10,000 for all nonwillful violations arising out of the same action, and for a knowing and willful violation, \$20,000 for each violation, or \$100,000 for all knowing and willful violations arising out of the same action. An insurance agent that violates this section is subject to suspension or revocation of his or her license and an administrative penalty of up to \$500 or, for willful violations, up to \$3,500. The OIR and the DFS may issue a cease and desist order for a violation of this section, including such other relief as may be provided in the Insurance Code.

**Section 2.** Provides that the act shall take effect upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

**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:**

Military personnel would benefit by not having their premiums increased when seeking to either reinstate their motor vehicle insurance policy or obtain a new policy (if previously insured with a different insurer) and they cancelled their policy solely for the reason that they were transferred out of the state while serving in the military. Insurers would be prohibited from increasing insurance premiums for military personnel in the circumstances described above.

**C. Government Sector Impact:**

Both the Department of Financial Services and the Office of Insurance Regulation enforce the provisions of the Unfair Practices Act under s. 626.9541, F.S. Any extra costs to enforce the new provisions under the bill would be insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



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## VIII. Summary of Amendments:

Barcode 860120 by Banking and Insurance:

Clarifies that an insurer may not charge an increased premium if the applicant or his or her covered dependents canceled their prior coverage solely due to being transferred outside of the state for military service. (WITH TITLE AMENDMENT)

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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