

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 463 CS

Unfair Insurance Practices

**SPONSOR(S):** Justice

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 450

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	19 Y, 0 N, w/CS	Tinney	Cooper
2) Military & Veteran Affairs Committee	8 Y, 0 N	Marino	Carter
3) Commerce Council	10 Y, 0 N	Tinney	Bohannon
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

Current law allows that members of the United States Armed Forces who are on active duty outside of the United States in an emergency situation are not required to maintain Florida motor vehicle insurance. However, current law does not prohibit an insurer from charging a higher premium to reinsure a member of the United States Armed Forces and Reserve or the Florida National Guard (FNG) after the insured returns to civilian life if his or her motor vehicle policy was terminated during the period of active military service.

Florida has deployed an estimated 3,000 FNG troops, as of mid-February 2005, with an additional 1,200 troops to be deployed to Iraq later in 2005 according to the FNG Public Affairs Office. When federally deployed, FNG troops become part of the United States Armed Forces and are entitled to protections regarding reemployment and quality of life issues under both state and federal laws. In addition to the FNG, Florida based active duty units and reserve component servicemembers are deployed overseas.

This bill with committee substitute amends Chapter 626, F.S., a part of the Florida Insurance Code, which governs insurance field representatives and operations. More specifically, this bill amends s. 626.9541, F.S., which defines methods of competition and acts or practices that are unfair or deceptive, by creating an additional definition of unfair insurance practices regarding persons in military service.

This bill provides that it would be an unfair insurance practice to charge a higher 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 Florida while serving in the U.S. Armed Forces or on active duty in the National Guard or U.S. Armed Forces Reserve. This bill would also make it an unfair insurance practice to charge an increased premium for a new motor vehicle insurance policy if the applicant was previously covered by a different insurer and the previous policy was cancelled or suspended by the insured solely for the reason that he or she was transferred out of Florida while serving in the U.S. Armed Forces or on active duty in the National Guard or U.S. Armed Forces Reserve. These provisions would also extend to the insured's covered dependents.

Under this bill, an insurer would be required to consider such persons and their covered dependents as having maintained continuous motor vehicle insurance coverage. This bill does not appear to block an insurance company's ability to adjust premiums for the insured or their covered dependents for other reasons such as a deleterious driving record.

The bill, which takes effect upon becoming law, does not appear to have a material fiscal impact.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

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**DATE:** 4/1/2005

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background: Unfair Insurance Trade Practices**

Chapter 626, F.S., a part of the Florida Insurance Code, governs insurance field representatives and operations. The laws are administered by the Office of Insurance Regulation (OIR) and the Department of Financial Services (DFS). Part IX of chapter 626, F.S., relates to unfair insurance trade practices. Specifically, s. 626.9541, F.S., defines methods of competition and acts or practices that are unfair or deceptive.

For example, among those acts and practices that are prohibited by law are misrepresenting or making false advertisements about insurance policies. It is also illegal for an insurer to offer unlawful rebates, to discriminate against clients, to settle claims in an unfair manner, and to make false claims in order to sell a policy, among many other activities. Current law in part IX of chapter 626, F.S., does not address raising premiums to reinstate insurance for motor vehicles if a policy is canceled for premium nonpayment.

##### **The Florida National Guard**

The Florida National Guard (FNG) is the state's modern "organized" militia and is an essential reserve component of the national defense force. Its organization, arms, and training correspond to that of the federal military. The National Guard Bureau of the Department of Defense (DOD) determines the number of units and positions for the FNG, consistent with the force structure requirements of the overall national military strategy of DOD.

The Florida Department of Military Affairs (DMA) is the state agency responsible for management, oversight, and administrative support to the FNG. While the Governor is the Commander-in-Chief of the FNG, the Adjutant General is the agency head of DMA, as well as the Commanding General of the Florida Army and Air National Guard. The department is staffed with both state and federal employees.

There are currently more than 12,000 troops serving in more than 100 Air Force and Army units of the FNG. The FNG headquarters are located in St. Augustine, Florida. The FNG's primary training facility is Camp Blanding in Clay County. The FNG also maintains 60 armories throughout the state.

In response to the terrorist attacks of September 11, 2001, the FNG was activated to provide security for Florida's seaports, airports, and nuclear energy facilities. Members of the 44th Weapons of Mass Destruction-Civil Support Team mobilized to support local emergency operations at the anthrax-tainted American Media building in Boca Raton. FNG units have been deployed to Afghanistan, Iraq, Bosnia, Kuwait, among other sites.

In addition, the FNG joined with state law enforcement agencies on the Florida Anti-Terrorism Task Force and several different Regional Anti-Terrorism Task Forces. As of mid-February 2005, Florida has deployed an estimated 7,000 FNG troops, primarily in the middle east. The FNG Public Affairs Office reports that an additional 1,200 troops will be deployed to Iraq later in 2005. When federally deployed, FNG troops become part of the United States Armed Forces.

## **Protections for Military Personnel**

A combination of federal and state laws applies to FNG personnel when they are deployed on active duty. The federal Soldiers' and Sailors' Civil Relief Act protects the civil rights of active duty, uniformed service personnel from any demonstrated prejudice arising from judicial proceeding and transactions conducted by, or against, them in their absence. The federal Uniformed Service Employment and Reemployment Rights Act provides and preserves job security and seniority for service men and women returning to civilian life.

Under Florida law, officials and employees of the state, counties, municipalities, or political subdivisions of the state are to be granted a leave of absence from their respective offices and duties to perform active military service, (see s. 115.09 F. S.) Under current law, both officials and employees are entitled to full pay for the first 30 days; after the first month, an employer may supplement the military pay to increase it to the level earned by the official or employee at the time he or she was called to active duty. By Cabinet resolution adopted September 25, 2001, Florida's Military Compensation Law was implemented to provide, in part, that state employees will receive, after the first 30 days of leave, the difference between their military salary and their government salary as of the time they were called to active duty.

Chapter 250, F.S., also provides protection to members of the Florida National Guard while on state active duty. For example, s. 250.5201, F.S., provides that any civil proceeding involving a member of the FNG called out to active service may be stayed by the court for a period not to exceed 30 days. Similarly, s. 250.5202, F.S., provides that proceedings to enforce actions for rent or possession involving members of the FNG on state active service may not proceed during the period of state active service provided the service person has provided written notice to the landlord, the monthly rental amount does not exceed \$1,200, and the rental unit is used as the primary dwelling for the service member and his or her dependents. As a practical matter, representatives of the FNG indicated that the relatively short duration of state activated service generally precludes the use of these statutory provisions.

Section 627.7283, F.S., establishes requirements governing the cancellation of motor vehicle insurance and the return of unearned premiums. The law specifies that if the insured individual cancels a policy, the insurer must mail the unearned portion of any premium paid within 30 days after the effective date of the policy cancellation or receipt of notice or request for cancellation, whichever is later. If the insurer cancels a policy, the unearned portion of any premium must be mailed to the individual within 15 days after the effective date of the policy cancellation.

The same law specifies that if the insured cancels the policy, the insurer may retain up to 10 percent of the unearned premium and must refund at least 90 percent of the unearned premium. If the insurer cancels the policy, it is required to refund 100 percent of the unearned premium.

Section 627.733(5), F.S., states that members of the United States Armed Forces who are on active duty outside of the United States in an emergency situation are not required to maintain Florida motor vehicle insurance. This exemption applies only for the length of time the armed forces member is on active duty outside of the United States. Current law does not prohibit an insurer from charging a higher premium to reinsure a member of the FNG after the insured returns to civilian life if his or her motor vehicle policy was terminated during the period of active military service.

## **Changes Proposed by the Bill**

Law governing unfair insurance trade practices is amended to specify that an insurer may not charge a higher premium to reinstate a canceled or suspended motor vehicle insurance policy if the policy was canceled or suspended because the policy owner was transferred out of Florida to serve in the U.S. Armed Forces, the Armed Forces Reserve, or the National Guard on active duty. Similarly, it will become an unfair trade practice for an insurer to charge a higher premium for a new motor vehicle

insurance policy if the previous policy of the insured was canceled or suspended because the insured was called to active military service outside of Florida. Under the bill, an insurer is required to consider such persons and their covered dependents as having maintained continuous motor vehicle insurance coverage.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 626.9541, F.S., to specify that it is an unfair method of competition and an unfair or deceptive act or practice to charge an increased premium for reinstating an automobile insurance policy that was canceled or suspended because the policy owner was serving in the U.S. Armed Forces or was called to active duty in the U.S. National Guard or U.S. Armed Forces Reserve.

**Section 2.** Provides that the bill takes effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There are no known or expected fiscal impacts on state government revenues.

2. Expenditures:

There are no known or expected fiscal impacts on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There are no known or expected fiscal impacts on local government revenues.

2. Expenditures:

There are no known or expected fiscal impacts on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

An insurer who charges a higher premium for reinstating a motor vehicle insurance policy is required by the bill to forgo the higher premium for reinstating a policy canceled because the policy owner was serving in the armed forces or called to active duty in the National Guard or military reserves.

According to OIR, at the end of 2003, there were 383 insurers licensed to issue policies for private motor vehicles in Florida. The Department of Highway Safety and Motor Vehicles (DHSMV) indicates that there are currently 13.3 million active motor vehicle policies in effect in Florida. The Department of Highway Safety and Motor Vehicles estimates that it receives notices of cancellation of approximately 400,000 motor vehicle policies monthly, although an estimated 70 percent of the canceled policies are subsequently renewed or replaced. Most of the remaining 30 percent of the 400,000 monthly cancellations are for vehicles that are sold, irreparable, or for owners who leave the state. No state agency or private insurer can provide figures estimating the number of policies that are canceled because the policy owner is serving in the military, however, it is unlikely that the premium increases for reinstating policies once a military serviceman or servicewoman returns home are material to any single insurer.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

##### 2. Other:

There do not appear to be any constitutional issues with this bill.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its February 22, 2005 meeting, the Insurance Committee adopted two amendments to clarify that a motor vehicle insurance policy that was canceled or allowed to lapse while the policy owner was called to active military duty may not be reinstated at a higher premium for the person who served in the military, military reserve, or Florida National Guard **or for that person's covered dependents.**