

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 533 Unfair Insurance Trade Practices

**SPONSOR(S):** Insurance & Banking Subcommittee; Hager and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 756

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Lloyd	Luczynski
2) Commerce Committee	26 Y, 0 N	Lloyd	Hamon

### SUMMARY ANALYSIS

The Unfair Insurance Trade Practices Act provides an extensive list of unfair methods of competition and unfair or deceptive acts prohibited in the business of insurance. Among these is a prohibition on an insurer refusing to insure anyone solely because they have not bought the following services related to the ownership and use of a motor vehicle:

- Towing service;
- Procuring group coverage from an insurer for bail and arrest bonds or for accidental death and dismemberment;
- Emergency service;
- Procuring prepaid legal services, or providing reimbursement for legal services;
- Offering assistance in locating or recovering stolen or missing motor vehicles; or
- Paying emergency living and transportation expenses of the owner of a motor vehicle related to a damaged motor vehicle.

The bill allows a property and casualty insurer to condition the sale of insurance on the purchase of motor vehicle services if such services are purchased from a membership organization affiliated with the property and casualty insurer and the affiliated membership organization has maintained more than one million members in Florida continuously since January 1, 2018. The bill also corrects language used in a cross-reference.

The bill has no fiscal impact on state or local government expenditures. The bill has indeterminate impacts on the private sector.

The bill is effective July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

The Unfair Insurance Trade Practices Act,<sup>1</sup> among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance.<sup>2</sup> It provides an extensive list of prohibited methods and acts. Among these are prohibitions on an insurer refusing to insure<sup>3</sup> anyone solely because of the following reasons:<sup>4</sup>

- The insured's race, color, creed, marital status, sex, or national origin;
- The residence, age, or lawful occupation of the individual or the location of the risk, unless there is a reasonable relationship between the residence, age, or lawful occupation of the individual or the location of the risk and the coverage issued or to be issued;
- The insured's or applicant's failure to agree to place collateral business with any insurer, unless the coverage applied for would provide liability coverage which is excess over that provided in policies maintained on property or motor vehicles;
- The insured's or applicant's failure to purchase noninsurance services or commodities, including automobile services;
- The fact that the insured or applicant is a public official; or
- The fact that the insured or applicant had been previously refused insurance coverage by any insurer, when such refusal to insure or continue to insure for this reason occurs with such frequency as to indicate a general business practice.

Effective October 1, 1982, the Legislature exempted automobile clubs from insurance regulation for the provision of "automobile services" related to motor vehicles.<sup>5,6</sup> Accordingly, the provision of the following services related to the ownership, operation, use, or maintenance of a motor vehicle are not subject to the Insurance Code:<sup>7</sup>

- Towing service;
- Procuring group coverage from an insurer for bail and arrest bonds or for accidental death and dismemberment;
- Emergency service;
- Procuring prepaid legal services, or providing reimbursement for legal services;
- Offering assistance in locating or recovering stolen or missing motor vehicles; or

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<sup>1</sup> part IX, ch. 626, F.S.

<sup>2</sup> s. 626.9541, F.S.

<sup>3</sup> This includes a prohibition on cancelling or non-renewing a policy. s. 626.9541(1)(x), F.S.

<sup>4</sup> s. 626.9541(1)(x), F.S.

<sup>5</sup> Chapter 82-233, Laws of Florida., creating s. 624.21, F.S., which later became s. 624.124, F.S., as s. 4 of Chapter 82-386, Laws of Florida, also created s. 624.21, F.S., in the same session for a substantively different purpose.

<sup>6</sup> Section 624.124, F.S., provides that "motor vehicle" has the same meaning specified by s. 634.011(6), F.S. Accordingly, "motor vehicle" means :

- (a) A self-propelled device operated solely or primarily upon roadways to transport people or property, or the component part of such a self-propelled device, except such term does not include any self-propelled vehicle, or component part of such vehicle, which:
  1. Has a gross vehicle weight rating of 10,000 pounds or more, and is not a recreational vehicle as defined by s. 320.01(1)(b);
  2. Is designed to transport more than 10 passengers, including the driver; or
  3. Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act, as amended, 49 U.S.C. ss. 1801 et seq.; or
- (b) A self-propelled device operated solely or primarily upon water for noncommercial, personal use, the engine of such a vehicle, or a trailer or other device used to transport such vehicle or device.

s. 634.011(6), F.S.

<sup>7</sup> Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code." s. 624.01, F.S.

- Paying emergency living and transportation expenses of the owner of a motor vehicle related to a damaged motor vehicle.

Section 626.9541(1)(x), F.S., provides that an insurer may not refuse to insure or refuse to continue to insure anyone for their failure to purchase “automobile services as defined in s. 624.124.” However, s. 624.124, F.S., does not define “automobile services”; rather, it establishes that providers of the specified “motor vehicle services” are exempt from regulation as an insurer.<sup>8</sup>

#### *Effect of the Bill*

The bill allows a property and casualty insurer to condition the sale of insurance<sup>9</sup> on the purchase of motor vehicle services if the following conditions are met:

- The motor vehicle services are purchased from a membership organization affiliated<sup>10</sup> with the property and casualty insurer; and,
- The affiliated membership organization has maintained more than one million Florida members continuously since January 1, 2018.

It is unknown which or how many Florida property and casualty insurers are affiliated with a qualifying membership organization since such membership information is generally withheld by the membership organization for proprietary and trade secrecy purposes. Proponents of the bill assert that the Auto Club Group, operating in Florida as “AAA,” meets these conditions. The Office of Insurance Regulation will be responsible for approving changes to required company filings by property and casualty insurers that wish to condition their sale of insurance on the purchase of motor vehicle services and auditing property and casualty insurers for qualification to do so and their subsequent compliance with applicable law.

The bill also corrects language used in a cross-reference. It replaces the term “automobile services” with the term “motor vehicle services” to conform to the terminology of the target statute of the cross-reference, i.e., s. 624.124, F.S.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.

**Section 2:** Provides an effective date of July 1, 2018.

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<sup>8</sup> Section 624.124, F.S., originally described “automobile services” that were exempt from insurance regulation. Section 624.124, F.S., was amended to replace the term “automobile services” with the term “motor vehicle services” consistent with the existing body of that section. Section 626.9541(1)(x)4., F.S., which states “automobile services as defined in s. 624.124” was not amended to conform to the change in s. 624.124, F.S.

<sup>9</sup> While this provision is related to the purchase of “motor vehicle services,” any insurer, without limitation of the type of insurance sold, may condition the sale of insurance in the manner allowed by the bill.

<sup>10</sup> “Affiliate” means an entity that exercises control over or is directly or indirectly controlled by the insurer through:

- (a) Equity ownership of voting securities;
- (b) Common managerial control; or
- (c) Collusive participation by the management of the insurer and affiliate in the management of the insurer or the affiliate.

s. 624.10(1), F.S. “Control,” including the terms “controlling,” “controlled by,” and “under common control with,” means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of another person. s. 624.10(3), F.S.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Indeterminate. Insurance purchasers may be refused coverage if they do not purchase motor vehicle services as a prerequisite to purchasing insurance. Accordingly, they may choose to incur the cost of purchasing such services or to obtain coverage from another property and casualty insurer. Whether coverage from other property and casualty insurers will have higher or lower cost for the same coverage level is dependent on the circumstances of the purchaser and the underwriting criteria of the insurers.

Participation in membership organizations that sell motor vehicle services and insurance sales by their affiliated insurers may be affected. Whether this is a positive or negative influence on membership numbers or insurance purchases will be dependent upon a multitude of factors. Membership may shift from non-qualifying membership organizations to ones that qualify if the overall costs of membership and insurance are competitive. In the same manner, membership may shift away from qualifying membership organizations, and their affiliated insurers may see reduced business, if consumers find better coverage or lower costs from others.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

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

Not Applicable. This bill does not appear to affect county or municipal governments.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 10, 2018, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably with a committee substitute. The amendment limited the exception created by the bill to property and casualty insurers, rather than all insurers.

The staff analysis has been updated to reflect the committee substitute.