

By the Committee on Banking and Insurance; and Senator Margolis

311-2540-04

1 A bill to be entitled
2 An act relating to the automobile insurance
3 joint underwriting plan; amending s. 627.311,
4 F.S.; allowing the automobile insurance joint
5 underwriting plan to require additional proof
6 from insureds regarding cancellation of
7 coverage; allowing additional time for the
8 investigation of claims against the plan;
9 providing for expiration of the provision;
10 providing an effective date.

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12 Be It Enacted by the Legislature of the State of Florida:

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14 Section 1. Effective July 1, 2004, and applicable to
15 cancellation requests and notices received on or after that
16 date, subsection (3) of section 627.311, Florida Statutes, is
17 amended to read:

18 627.311 Joint underwriters and joint reinsurers;
19 public records and public meetings exemptions.--

20 (3) The office may, after consultation with insurers
21 licensed to write automobile insurance in this state, approve
22 a joint underwriting plan for purposes of equitable
23 apportionment or sharing among insurers of automobile
24 liability insurance and other motor vehicle insurance, as an
25 alternate to the plan required in s. 627.351(1). All insurers
26 authorized to write automobile insurance in this state shall
27 subscribe to the plan and participate therein. The plan shall
28 be subject to continuous review by the office which may at any
29 time disapprove the entire plan or any part thereof if it
30 determines that conditions have changed since prior approval
31 and that in view of the purposes of the plan changes are

1 warranted. Any disapproval by the office shall be subject to
2 the provisions of chapter 120. The Florida Automobile Joint
3 Underwriting Association is created under the plan. The plan
4 and the association:

5 (a) Must be subject to all provisions of s.
6 627.351(1), except apportionment of applicants.

7 (b) May provide for one or more designated insurers,
8 able and willing to provide policy and claims service, to act
9 on behalf of all other insurers to provide insurance for
10 applicants who are in good faith entitled to, but unable to,
11 procure insurance through the voluntary insurance market at
12 standard rates.

13 (c) Must provide that designated insurers will issue
14 policies of insurance and provide policyholder and claims
15 service on behalf of all insurers for the joint underwriting
16 association.

17 (d) Must provide for the equitable apportionment among
18 insurers of losses and expenses incurred.

19 (e) Must provide that the joint underwriting
20 association will operate subject to the supervision and
21 approval of a board of governors consisting of 11 individuals,
22 including 1 who will be elected as chair. Five members of the
23 board must be appointed by the Chief Financial Officer. Two of
24 the Chief Financial Officer's appointees must be chosen from
25 the insurance industry. Any board member appointed by the
26 Chief Financial Officer may be removed and replaced by her or
27 him at any time without cause. Six members of the board must
28 be appointed by the participating insurers, two of whom must
29 be from the insurance agents' associations. All board members,
30 including the chair, must be appointed to serve for 2-year
31 terms beginning annually on a date designated by the plan.

1 (f) Must provide that an agent appointed to a
2 servicing carrier must be a licensed general lines agent of an
3 insurer which is authorized to write automobile liability and
4 physical damage insurance in the state and which is actively
5 writing such coverage in the county in which the agent is
6 located, or the immediately adjoining counties, or an agent
7 who places a volume of other property and casualty insurance
8 in an amount equal to the premium volume placed with the
9 Florida Joint Underwriting Association. The office may,
10 however, determine that an agent may be appointed to a
11 servicing carrier if, after public hearing, the office finds
12 that consumers in the agent's operating area would not have
13 adequate and reasonable access to the purchase of automobile
14 insurance if the agent were not appointed to a servicing
15 carrier.

16 (g) Must make available noncancelable coverage as
17 provided in s. 627.7275(2).

18 (h) Must provide for the furnishing of a list of
19 insureds and their mailing addresses upon the request of a
20 member of the association or an insurance agent licensed to
21 place business with an association member. The list must
22 indicate whether the insured is currently receiving a good
23 driver discount from the association. The plan may charge a
24 reasonable fee to cover the cost incurred in providing the
25 list.

26 (i) Must not provide a renewal credit or discount or
27 any other inducement designed to retain a risk.

28 (j) Must not provide any other good driver credit or
29 discount that is not actuarially sound. In addition to other
30 criteria that the plan may specify, to be eligible for a good
31 driver credit, an insured must not have any criminal traffic

1 violations within the most recent 36-month period preceding
2 the date the discount is received.

3 (k)1. Shall have no liability, and no cause of action
4 of any nature shall arise against any member insurer or its
5 agents or employees, agents or employees of the association,
6 members of the board of governors of the association, the
7 Chief Financial Officer, or the office or its representatives
8 for any action taken by them in the performance of their
9 duties or responsibilities under this subsection. Such
10 immunity does not apply to actions for or arising out of
11 breach of any contract or agreement pertaining to insurance,
12 or any willful tort.

13 2. Notwithstanding the requirements of s.
14 624.155(3)(a), as a condition precedent to bringing an action
15 against the plan under s. 624.155, the department and the plan
16 must have been given 90 days' written notice of the violation.
17 If the department returns a notice for lack of specificity,
18 the 90-day time period shall not begin until a proper notice
19 is filed. This notice must comply with the information
20 requirements of s. 624.155(3)(b). Effective October 1, 2007,
21 this subparagraph shall expire unless reenacted by the
22 Legislature prior to that date.

23 (l) May require from the insured proof that he or she
24 has obtained the mandatory types and amounts of insurance from
25 another admitted carrier prior to the cancellation of a policy
26 the insured obtained from the plan and prior to the return of
27 any unearned premium the insured paid for such coverage from
28 the plan. This paragraph does not apply to any person who
29 provides proof of sale or inoperability of the vehicle covered
30 under the policy purchased from the plan or relocation outside
31 the state.

1 Section 2. This act shall take effect July 1, 2004.

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3 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
4 COMMITTEE SUBSTITUTE FOR
5 Senate Bill 2454

6

6 Provides that, as a condition to bringing a civil action
7 against the Florida Automobile Joint Underwriting Association
8 (FAJUA), a party must give the FAJUA and the Department of
9 Financial Services, 90 days' written notice of the violation.

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9 Provides that the 90-day notice will expire effective October
10 1, 2007, unless reenacted by the Legislature prior to that
11 date.

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11 Provides that the FAJUA may require from its insured proof
12 that he or she has obtained the mandatory types and amounts of
13 coverage prior to the cancellation of the FAJUA policy and
14 prior to the return of any unearned premium. This provision
15 does not apply if the insured provides proof of sale or
16 inoperability of his or her vehicle. Provides that this
17 provision is effective July 1, 2004, and applicable to
18 cancellation requests and notices received on or after that
19 date.

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16 Removes the provision in the bill which prohibited a suit
17 against the FAJUA alleging a cause of action for "bad faith."

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