

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 1960

SPONSOR: Banking and Insurance Committee and Senator Margolis

SUBJECT: Service of Process against the Florida Automobile Joint Underwriting Association

DATE: April 4, 2003 REVISED: _____

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

I. Summary:

The bill provides that the Florida Automobile Joint Underwriting Association (FAJUA) is deemed to have appointed its General Manager (GM) as its agent to receive service of all legal process issued against it in any civil action or proceeding in this state and that the process so served is valid and binding upon the FAJUA. It provides that service of process upon the GM is the sole method of service of process to the FAJUA.

This bill substantially amends section 627.311, F.S., of the Florida Statutes.

II. Present Situation:

Operation of the Florida Automobile Joint Underwriting Association (FAJUA)

The Florida Automobile Joint Underwriting Association (FAJUA) was created in 1973 pursuant to an Order issued by the Insurance Commissioner 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.¹ 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.

¹ S. 627.311, 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.

The activities of the FAJUA can readily be analogized to that of a private automobile insurance provider. FAJUA responsibilities are managed and controlled by a Board of Governors composed of 11 members: five are appointed by the Insurance Commissioner (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).² The Florida Department of Insurance (department) regulates FAJUA activity in that rate filings, form content, and plan of operations changes are subject to prior approval by the department before they become effective. Based on figures for February 28, 2003, the FAJUA had a total of 41,156 policies in force.

Officials with the FAJUA state that there is no statutory provision for service of process to the FAJUA. As a result, service of process is submitted to multiple FAJUA locations, e.g., to various directors, to the office in Tallahassee, or to its servicing carrier, American Insurance Group. This causes confusion and delay in answering legal causes of action and could result in a default by the FAJUA, if it does not timely respond. These officials assert that they need a statutory provision providing for service of process to their General Manager (GM) in order to avoid confusion among parties as to where to serve the FAJUA. These officials represent that the FAJUA received approximately 885 services of process between July 2001 through March 28, 2003, which related to automobile insurance claims, and 38 services of process between October 2000 and March 28, 2003, which were not related to such claims.

Service of Process

Under the Insurance Code, each licensed insurer, whether domestic, foreign, or alien,³ is deemed to have appointed the Insurance Commissioner as its attorney to receive service of all legal process issued against it in any civil action or proceeding in this state, and such process is deemed to be valid and binding upon the insurance company.⁴ Under s. 48.151, F.S., the commissioner is also the agent for service of process as to all insurers applying for authority to transact insurance in Florida, licensed nonresident insurance agents,⁵ nonresident disability insurance agents,⁶ unauthorized insurers,⁷ specialty insurers,⁸ domestic reciprocal insurers,⁹

² 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) 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 Association. 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.

³ Under s. 624.06, F.S., a "domestic" insurer is one formed under the laws of Florida; a "foreign" insurer is one formed under the laws of any state of the United States; and, an "alien" insurer is an insurer other than a domestic or foreign insurer.

⁴ As currently provided in s. 624.422, F.S., the Insurance Commissioner and Treasurer is deemed to have been appointed to receive service of process. Effective January 7, 2003, the Department of Insurance was transferred to the Dept. of Financial Services and to the Office of Insurance Regulation. CS/CS/SB 1712 makes changes to the Insurance Code to conform to the 2002 act including a requirement that the Chief Financial Officer shall be the agent for service of process in all instances where the Insurance Commissioner is so designated.

⁵ S. 626.742, F.S.

⁶ S. 626.835, F.S.

⁷ S. 626.906, F.S., or s. 626.937, F.S.

⁸ S. 628.4615, F.S.

⁹ Ch. 629, F.S.

fraternal benefit societies,¹⁰ specified purchasing groups,¹¹ automobile inspection and warranty associations,¹² persons required to file specified statements,¹³ and for law suits which are filed against state agencies.¹⁴ However, none of these provisions apply to the FAJUA.

III. Effect of Proposed Changes:

Section 1. Amends s. 627.311, F.S., to provide that the FAJUA is deemed to have appointed the FAJUA General Manager as its agent to receive service of all legal process issued against it in any civil action or proceeding in this state and that the process so served is valid and binding upon the FAJUA. It states that such service of process upon the GM is the sole method of service of process to the FAJUA.

Section 2. Provides that the act will take effect upon becoming 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:

The provisions in this bill will end the confusion and delay of service of process to the FAJUA by providing statutory authorization for the FAJUA General Manager to receive such process on behalf of the FAJUA.

¹⁰ Ch. 632, F.S.

¹¹ S. 627.948, F.S.

¹² Ch. 634, F.S.

¹³ S. 628.461, F.S. The filing of such statements refers to persons acquiring 5 percent or more of outstanding voting securities of a domestic stock insurer or of a controlling company.

¹⁴ S. 768.28, F.S.

C. Government Sector Impact:

According to representatives with the FAJUA, there will be no fiscal impact on the FAJUA under the provisions of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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