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CS/HB 941, Engrossed 1

2012 Legislature

1
2 An act relating to insurance; amending s. 440.02,
3 F.S.; redefining the terms "corporate officer" and
4 "employee" for purposes of workers' compensation;
5 amending s. 440.05, F.S.; revising requirements for
6 submitting a notice of election of exemption; revising
7 duties of the Department of Financial Services
8 relating to the expiration of certificates of
9 exemption; expanding applicability of requirements
10 relating to certificates of exemption; amending s.
11 440.107, F.S.; exempting certain limited liability
12 companies from penalties for failure to secure the
13 payment of workers' compensation; amending s. 624.307,
14 F.S.; authorizing the Office of Insurance Regulation
15 to expend funds for the professional development of
16 its employees; amending s. 627.215, F.S.; removing
17 workers' compensation and employer's liability
18 insurance from those types of insurance that must
19 report and refund excess profits; deleting obsolete
20 provisions; amending s. 627.4133, F.S.; providing that
21 the transfer of a policy to certain other insurers is
22 considered a renewal of the policy rather than a
23 cancellation or nonrenewal; requiring notice of such
24 transfer; specifying which types of policies such
25 transfer provisions apply to; amending s. 627.442,
26 F.S.; exempting certain insurers from performing
27 onsite premium audits for workers' compensation
28 insurance; amending s. 628.6017, F.S.; conforming a

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29 cross-reference; providing effective dates.

30

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

32

33 Section 1. Effective July 1, 2013, subsection (9) of
 34 section 440.02, Florida Statutes, is amended to read:

35 440.02 Definitions.—When used in this chapter, unless the
 36 context clearly requires otherwise, the following terms shall
 37 have the following meanings:

38 (9) "Corporate officer" or "officer of a corporation"
 39 means any person who fills an office provided for in the
 40 corporate charter or articles of incorporation filed with the
 41 Division of Corporations of the Department of State or as
 42 permitted or required by chapter 607. ~~As to persons engaged in~~
 43 ~~the construction industry,~~ The term "officer of a corporation"
 44 includes a member owning at least 10 percent of a limited
 45 liability company created and approved under chapter 608.

46 Section 2. Paragraph (b) of subsection (15) of section
 47 440.02, Florida Statutes, is amended to read:

48 440.02 Definitions.—When used in this chapter, unless the
 49 context clearly requires otherwise, the following terms shall
 50 have the following meanings:

51 (15)

52 (b) "Employee" includes any person who is an officer of a
 53 corporation and who performs services for remuneration for such
 54 corporation within this state, whether or not such services are
 55 continuous.

56 1. Any officer of a corporation may elect to be exempt

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57 | from this chapter by filing ~~written~~ notice of the election with
58 | the department as provided in s. 440.05.

59 | 2. As to officers of a corporation who are engaged in the
60 | construction industry, no more than three officers of a
61 | corporation or of any group of affiliated corporations may elect
62 | to be exempt from this chapter by filing a ~~written~~ notice of the
63 | election with the department as provided in s. 440.05. Officers
64 | must be shareholders, each owning at least 10 percent of the
65 | stock of such corporation and listed as an officer of such
66 | corporation with the Division of Corporations of the Department
67 | of State, in order to elect exemptions under this chapter. For
68 | purposes of this subparagraph, the term "affiliated" means and
69 | includes one or more corporations or entities, any one of which
70 | is a corporation engaged in the construction industry, under the
71 | same or substantially the same control of a group of business
72 | entities which are connected or associated so that one entity
73 | controls or has the power to control each of the other business
74 | entities. The term "affiliated" includes, but is not limited to,
75 | the officers, directors, executives, shareholders active in
76 | management, employees, and agents of the affiliated corporation.
77 | The ownership by one business entity of a controlling interest
78 | in another business entity or a pooling of equipment or income
79 | among business entities shall be prima facie evidence that one
80 | business is affiliated with the other.

81 | 3. An officer of a corporation who elects to be exempt
82 | from this chapter by filing a ~~written~~ notice of the election
83 | with the department as provided in s. 440.05 is not an employee.
84 |

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85 Services are presumed to have been rendered to the corporation
 86 if the officer is compensated by other than dividends upon
 87 shares of stock of the corporation which the officer owns.

88 Section 3. Subsections (3) and (6) of section 440.05,
 89 Florida Statutes, are amended to read:

90 440.05 Election of exemption; revocation of election;
 91 notice; certification.—

92 (3) Each officer of a corporation who is engaged in the
 93 construction industry and who elects an exemption from this
 94 chapter or who, after electing such exemption, revokes that
 95 exemption, must submit ~~mail~~ a ~~written~~ notice to such effect to
 96 the department on a form prescribed by the department. ~~The~~
 97 ~~notice of election to be exempt from the provisions of this~~
 98 ~~chapter must be notarized and under oath.~~ The notice of election
 99 to be exempt which is electronically submitted to the department
 100 by the officer of a corporation who is allowed to claim an
 101 exemption as provided by this chapter must list the name,
 102 federal tax identification number, date of birth, Florida driver
 103 license number or Florida identification card number ~~social~~
 104 ~~security number~~, all certified or registered licenses issued
 105 pursuant to chapter 489 held by the person seeking the
 106 exemption, ~~a copy of relevant documentation as to employment~~
 107 ~~status filed with the Internal Revenue Service as specified by~~
 108 ~~the department, a copy of the relevant occupational license in~~
 109 ~~the primary jurisdiction of the business, and the registration~~
 110 number of the corporation filed with the Division of
 111 Corporations of the Department of State, and the percentage of
 112 ownership ~~along with a copy of the stock certificate evidencing~~

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113 | the required ownership under this chapter. The notice of
114 | election to be exempt must identify each corporation that
115 | employs the person electing the exemption and must list the
116 | social security number or federal tax identification number of
117 | each such employer and the additional documentation required by
118 | this section. In addition, the notice of election to be exempt
119 | must provide that the officer electing an exemption is not
120 | entitled to benefits under this chapter, must provide that the
121 | election does not exceed exemption limits for officers provided
122 | in s. 440.02, and must certify that any employees of the
123 | corporation whose officer elects an exemption are covered by
124 | workers' compensation insurance. Upon receipt of the notice of
125 | the election to be exempt, receipt of all application fees, and
126 | a determination by the department that the notice meets the
127 | requirements of this subsection, the department shall issue a
128 | certification of the election to the officer, unless the
129 | department determines that the information contained in the
130 | notice is invalid. The department shall revoke a certificate of
131 | election to be exempt from coverage upon a determination by the
132 | department that the person does not meet the requirements for
133 | exemption or that the information contained in the notice of
134 | election to be exempt is invalid. The certificate of election
135 | must list the name of the corporation listed in the request for
136 | exemption. A new certificate of election must be obtained each
137 | time the person is employed by a new or different corporation
138 | that is not listed on the certificate of election. A copy of the
139 | certificate of election must be sent to each workers'
140 | compensation carrier identified in the request for exemption.

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141 Upon filing a notice of revocation of election, an officer who
142 is a subcontractor or an officer of a corporate subcontractor
143 must notify her or his contractor. Upon revocation of a
144 certificate of election of exemption by the department, the
145 department shall notify the workers' compensation carriers
146 identified in the request for exemption.

147 (6) A construction industry certificate of election to be
148 exempt which is issued in accordance with this section shall be
149 valid for 2 years after the effective date stated thereon. Both
150 the effective date and the expiration date must be listed on the
151 face of the certificate by the department. The construction
152 industry certificate must expire at midnight, 2 years from its
153 issue date, as noted on the face of the exemption certificate. A
154 construction industry certificate of election to be exempt may
155 be revoked before its expiration by the officer for whom it was
156 issued or by the department for the reasons stated in this
157 section. At least 60 days before ~~prior to~~ the expiration date of
158 a construction industry certificate of exemption ~~issued after~~
159 ~~December 1, 1998~~, the department shall send notice of the
160 expiration date ~~and an application for renewal~~ to the
161 certificateholder at the address on the certificate or to the e-
162 mail address on file with the department.

163 Section 4. Effective January 1, 2013, subsection (6) of
164 section 440.05, Florida Statutes, as amended by this act, is
165 amended to read:

166 440.05 Election of exemption; revocation of election;
167 notice; certification.-

168 (6) A ~~construction industry~~ certificate of election to be

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169 exempt which is issued on or after January 1, 2013, in
 170 accordance with this section is ~~shall be~~ valid for 2 years after
 171 the effective date stated thereon. Both the effective date and
 172 the expiration date must be listed on the face of the
 173 certificate by the department. The ~~construction industry~~
 174 certificate must expire at midnight, 2 years from its issue
 175 date, as noted on the face of the exemption certificate. A
 176 ~~construction industry~~ certificate of election to be exempt may
 177 be revoked before its expiration by the officer for whom it was
 178 issued or by the department for the reasons stated in this
 179 section. At least 60 days before the expiration date of a
 180 ~~construction industry~~ certificate of exemption, the department
 181 shall send notice of the expiration date to the
 182 certificateholder at the address on the certificate or to the e-
 183 mail address on file with the department.

184 Section 5. Subsection (15) is added to section 440.107,
 185 Florida Statutes, to read:

186 440.107 Department powers to enforce employer compliance
 187 with coverage requirements.-

188 (15) A limited liability company that is not engaged in
 189 the construction industry and that meets the definition of
 190 "employment" at any time between July 1, 2013, and December 31,
 191 2013, may not be issued a penalty pursuant to this section for
 192 failing to secure the payment of workers' compensation.

193 Section 6. Subsections (7) and (8) of section 624.307,
 194 Florida Statutes, are renumbered as subsections (8) and (9),
 195 respectively, and a new subsection (7) is added to that section,
 196 to read:

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197 624.307 General powers; duties.—
 198 (7) The office, within existing resources, may expend
 199 funds for the professional development of its employees,
 200 including, but not limited to, professional dues for employees
 201 who are required to be members of professional organizations;
 202 examinations leading to professional designations required for
 203 employment with the office; training courses and examinations
 204 provided through, and to ensure compliance with, the National
 205 Association of Insurance Commissioners; or other training
 206 courses related to the regulation of insurance.

207 Section 7. Section 627.215, Florida Statutes, is amended
 208 to read:

209 627.215 Excessive profits for ~~workers' compensation,~~
 210 ~~employer's liability,~~ commercial property, and commercial
 211 casualty insurance prohibited.—

212 (1) (a) Each insurer group writing ~~workers' compensation~~
 213 ~~and employer's liability insurance as defined in s.~~
 214 ~~624.605(1)(c),~~ commercial property insurance as defined in s.
 215 627.0625, commercial umbrella liability insurance as defined in
 216 s. 627.0625, or commercial casualty insurance as defined in s.
 217 627.0625 shall file with the office before ~~prior to~~ July 1 of
 218 each year, on a form prescribed by the commission, the following
 219 data for the component types of such insurance as provided in
 220 the form:

- 221 1. Calendar-year earned premium.
- 222 2. Accident-year incurred losses and loss adjustment
- 223 expenses.
- 224 3. The administrative and selling expenses incurred in

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225 | this state or allocated to this state for the calendar year.

226 | 4. Policyholder dividends applicable to the calendar year.

227 |
 228 | This paragraph does not ~~Nothing herein is intended to prohibit~~
 229 | an insurer from filing on a calendar-year basis.

230 | (b) The data filed for the group shall be a consolidation
 231 | of the data of the individual insurers of the group. However, an
 232 | insurer may elect to ~~either~~ consolidate commercial umbrella
 233 | liability insurance data with commercial casualty insurance data
 234 | or to separately file data for commercial umbrella liability
 235 | insurance. Each insurer shall elect its method of filing
 236 | commercial umbrella liability insurance at the time of filing
 237 | data for accident year 1987 and shall thereafter continue filing
 238 | under the same method. In the case of commercial umbrella
 239 | liability insurance data reported separately, a separate
 240 | excessive profits test shall be applied and the test period
 241 | shall be 10 years. ~~In the case of workers' compensation and~~
 242 | ~~employer's liability insurance, the final report for the test~~
 243 | ~~period including accident years 1984, 1985, and 1986 must be~~
 244 | ~~filed prior to July 1, 1988. In the case of commercial property~~
 245 | ~~and commercial casualty insurance, the final report for the test~~
 246 | ~~period including accident years 1987, 1988, and 1989 must be~~
 247 | ~~filed prior to July 1, 1991.~~

248 | ~~(2) Each insurer group writing workers' compensation and~~
 249 | ~~employer's liability insurance shall also file a schedule of~~
 250 | ~~Florida loss and loss adjustment experience for each of the 3~~
 251 | ~~years previous to the most recent accident year. The incurred~~
 252 | ~~losses and loss adjustment expenses shall be valued as of~~

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253 ~~December 31 of the first year following the latest accident year~~
 254 ~~to be reported, developed to an ultimate basis, and at two 12-~~
 255 ~~month intervals thereafter, each developed to an ultimate basis,~~
 256 ~~so that a total of three evaluations will be provided for each~~
 257 ~~accident year. The first year to be so reported shall be~~
 258 ~~accident year 1984, so that the reporting of 3 accident years~~
 259 ~~under this revised evaluation will not take place until accident~~
 260 ~~years 1985 and 1986 have become available. For reporting~~
 261 ~~purposes unrelated to determining excessive profits, the loss~~
 262 ~~and loss adjustment experience of each accident year shall~~
 263 ~~continue to be reported until each accident year has been~~
 264 ~~reported at eight stages of development.~~

265 (2)~~(3)~~ (a) Each insurer group writing commercial property
 266 insurance or commercial casualty insurance shall also file a
 267 schedule of Florida loss and loss adjustment experience for each
 268 of the 3 years previous to the most recent accident year. The
 269 incurred losses and loss adjustment expenses shall be valued as
 270 of December 31 of the first year following the latest accident
 271 year, developed to an ultimate basis, and at two 12-month
 272 intervals thereafter, each developed to an ultimate basis, so
 273 that a total of 3 evaluations will be provided for each accident
 274 year. ~~The first year to be so reported shall be accident year~~
 275 ~~1987, which shall first be reported on or before July 1, 1989,~~
 276 ~~and the reporting of 3 accident years will not take place until~~
 277 ~~accident years 1988 and 1989 have become available. For medical~~
 278 ~~malpractice insurance, the first year to be so reported shall be~~
 279 ~~accident year 1990, which shall first be reported on or before~~
 280 ~~July 1, 1992, and the reporting of 3 accident years for full~~

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281 ~~inclusion of medical malpractice experience in commercial~~
 282 ~~casualty insurance will not take place until accident years 1991~~
 283 ~~and 1992 become available. Accordingly, no medical malpractice~~
 284 ~~insured shall be eligible for refunds or credits until the~~
 285 ~~reporting period ending with calendar-accident year 1992. For~~
 286 reporting purposes unrelated to determining excess profits, the
 287 loss and loss adjustment experience of each accident year shall
 288 continue to be reported until each accident year has been
 289 reported at eight stages of development.

290 (b) Each insurer group writing commercial umbrella
 291 liability insurance which elects to file separate data for such
 292 insurance shall also file a schedule of Florida loss and loss
 293 adjustment experience for each of the 10 years previous to the
 294 most recent accident year. The incurred losses and loss
 295 adjustment expenses shall be valued as of December 31 of the
 296 first year following the latest accident year, developed to an
 297 ultimate basis, and at nine 12-month intervals thereafter, each
 298 developed to an ultimate basis, so that a total of 10
 299 evaluations will be provided for each accident year. ~~The first~~
 300 ~~year to be so reported shall be accident year 1987, which shall~~
 301 ~~first be reported on or before October 1, 1989, and the~~
 302 ~~reporting of 10 accident years will not take place until~~
 303 ~~accident year 1996 data is reported.~~

304 (3)~~(4)~~ Each insurer group's underwriting gain or loss for
 305 each calendar-accident year shall be computed as follows: The
 306 sum of the accident-year incurred losses and loss adjustment
 307 expenses as of December 31 of the year, developed to an ultimate
 308 basis, plus the administrative and selling expenses incurred in

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309 the calendar year, plus policyholder dividends applicable to the
 310 calendar year, shall be subtracted from the calendar-year earned
 311 premium to determine the underwriting gain or loss.

312 (4)~~(5)~~ For the 3 most recent calendar-accident years for
 313 which data is to be filed under this section, the underwriting
 314 gain or loss shall be compared to the anticipated underwriting
 315 profit, except in the case of separately reported commercial
 316 umbrella liability insurance for which such comparison shall be
 317 made for the 10 most recent calendar-accident years.

318 ~~(6) For those insurer groups writing workers' compensation~~
 319 ~~and employer's liability insurance during the years 1984, 1985,~~
 320 ~~1986, 1987, and 1988, an excessive profit has been realized if~~
 321 ~~underwriting gain is greater than the anticipated underwriting~~
 322 ~~profit plus 5 percent of earned premiums for the 3 most recent~~
 323 ~~calendar years for which data is to be filed under this section.~~
 324 ~~Any excess profit of an insurance company offering workers'~~
 325 ~~compensation or employer's liability insurance during this~~
 326 ~~period of time, shall be returned to policyholders in the form~~
 327 ~~of a cash refund or a credit toward future purchase of~~
 328 ~~insurance. The excessive amount shall be refunded on a pro rata~~
 329 ~~basis in relation to the final compilation year earned premiums~~
 330 ~~to the workers' compensation policyholders of record of the~~
 331 ~~insurer group on December 31 of the final compilation year.~~

332 (5)~~(7)~~(a) Beginning with the July 1, 1991, report for
 333 ~~workers' compensation insurance, employer's liability insurance,~~
 334 ~~commercial property insurance, and commercial casualty~~
 335 ~~insurance, an excessive profit has been realized if the net~~
 336 ~~aggregate underwriting gain for all these lines combined is~~

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337 greater than the net aggregate anticipated underwriting profit
338 for these lines plus 5 percent of earned premiums for the 3 most
339 recent calendar years for which data is to be filed under this
340 section. For calculation purposes commercial property insurance
341 and commercial casualty insurance shall be broken down into
342 sublines in order to ascertain the anticipated underwriting
343 profit factor versus the actual underwriting gain for the given
344 subline.

345 (b) Beginning with the July 1, 1998, report for commercial
346 umbrella liability insurance, if an insurer has elected to file
347 data separately for such insurance, an excessive profit has been
348 realized if the underwriting gain for such insurance is greater
349 than the anticipated underwriting profit for such insurance plus
350 5 percent of earned premiums for the 10 most recent calendar
351 years for which data is to be filed under this section.

352 (6)~~(8)~~ As used in this section with respect to any 3-year
353 period, or with respect to any 10-year period in the case of
354 commercial umbrella liability insurance, "anticipated
355 underwriting profit" means the sum of the dollar amounts
356 obtained by multiplying, for each rate filing of the insurer
357 group in effect during such period, the earned premiums
358 applicable to such rate filing during such period by the
359 percentage factor included in such rate filing for profit and
360 contingencies, such percentage factor having been determined
361 with due recognition to investment income from funds generated
362 by Florida business, except that the anticipated underwriting
363 profit for the purposes of this section shall be calculated
364 using a profit and contingencies factor that is not less than

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365 zero. Separate calculations need not be made for consecutive
 366 rate filings containing the same percentage factor for profits
 367 and contingencies.

368 (7)~~(9)~~ If the insurer group has realized an excessive
 369 profit, the office shall order a return of the excessive amounts
 370 after affording the insurer group an opportunity for hearing and
 371 otherwise complying with the requirements of chapter 120. Such
 372 excessive amounts shall be refunded in all instances unless the
 373 insurer group affirmatively demonstrates to the office that the
 374 refund of the excessive amounts will render a member of the
 375 insurer group financially impaired or will render it insolvent
 376 under the provisions of the Florida Insurance Code.

377 (8)~~(10)~~ Any excess profit of an insurance company ~~as~~
 378 ~~determined on July 1, 1991, and thereafter~~ shall be returned to
 379 policyholders in the form of a cash refund or a credit toward
 380 the future purchase of insurance. The excessive amount shall be
 381 refunded on a pro rata basis in relation to the final
 382 compilation year earned premiums to the policyholders of record
 383 of the insurer group on December 31 of the final compilation
 384 year.

385 (9)~~(11)~~(a) Cash refunds to policyholders may be rounded to
 386 the nearest dollar.

387 (b) Data in required reports to the office may be rounded
 388 to the nearest dollar.

389 (c) Rounding, if elected by the insurer, shall be applied
 390 consistently.

391 (10)~~(12)~~(a) Refunds shall be completed in one of the
 392 following ways:

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393 1. If the insurer group elects to make a cash refund, the
 394 refund shall be completed within 60 days after ~~of~~ entry of a
 395 final order indicating that excessive profits have been
 396 realized.

397 2. If the insurer group elects to make refunds in the form
 398 of a credit to renewal policies, such credits shall be applied
 399 to policy renewal premium notices which are forwarded to
 400 insureds more than 60 calendar days after entry of a final order
 401 indicating that excessive profits have been realized. If an
 402 insurer group has made this election but an insured thereafter
 403 cancels her or his policy or otherwise allows the policy to
 404 terminate, the insurer group shall make a cash refund within ~~not~~
 405 ~~later than~~ 60 days after termination of such coverage.

406 (b) Upon completion of the renewal credits or refund
 407 payments, the insurer group shall immediately certify to the
 408 office that the refunds have been made.

409 ~~(11)-(13)~~ (11) Any refund or renewal credit made pursuant to
 410 this section shall be treated as a policyholder dividend
 411 applicable to the year immediately succeeding the compilation
 412 period giving rise to the refund or credit, for purposes of
 413 reporting under this section for subsequent years.

414 ~~(12)-(14)~~ (12) The application of this law to commercial
 415 property and commercial casualty insurance, which includes
 416 commercial umbrella liability insurance, ceases on January 1,
 417 1997.

418 Section 8. Subsection (8) is added to section 627.4133,
 419 Florida Statutes, to read:

420 627.4133 Notice of cancellation, nonrenewal, or renewal

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421 premium.—

422 (8) Upon expiration of the policy term, an insurer may
 423 transfer a commercial lines policy to another authorized insurer
 424 that is a member of the same group or owned by the same holding
 425 company as the transferring insurer. The transfer constitutes a
 426 renewal of the policy and may not be treated as a cancellation
 427 or a nonrenewal of the policy. The insurer must provide notice
 428 of its intent to transfer the policy at least 45 days before the
 429 effective date of the transfer along with the financial rating
 430 of the authorized insurer to which the policy is being
 431 transferred. Such notice may be provided in the notice of
 432 renewal premium. This subsection does not apply to a policy
 433 providing residential property insurance coverage, except for
 434 farmowners insurance and commercial general liability policies
 435 providing farm coverage or commercial property policies
 436 providing farm coverage.

437 Section 9. Subsection (2) of section 627.442, Florida
 438 Statutes, is amended to read:

439 627.442 Insurance contracts.—

440 (2) Notwithstanding s. 440.381(3), an insurer having at
 441 least \$200 million in surplus, or an insurer within an insurer
 442 group that has at least \$400 million in surplus, as reflected in
 443 the combined annual statement filed by the insurer group with
 444 the office, is not required to perform physical onsite premium
 445 ~~audits are not required~~ for workers' compensation coverage,
 446 other than an audit required by ~~the insurance policy or~~ an order
 447 of the office, or ~~at least once each policy period,~~ if requested
 448 by the insured.

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449 Section 10. Subsection (4) of section 628.6017, Florida
450 Statutes, is amended to read:

451 628.6017 Converting assessable mutual insurer.-

452 (4) An assessable mutual insurer becoming a stock insurer
453 or a nonassessable mutual insurer is ~~shall~~ not ~~be~~ subject to s.
454 627.215 or s. 627.351(5) for 5 years following authorization of
455 the conversion by the office. However, the converted stock
456 insurer or nonassessable mutual insurer must ~~shall~~ file all
457 necessary data required by s. 627.215. Such amounts otherwise
458 subject to s. 627.215(8) must ~~627.215(10) shall~~ be maintained as
459 surplus as to policyholders and are not ~~be~~ available for
460 dividends for ~~a period of~~ 5 years.

461 Section 11. Except as otherwise expressly provided in this
462 act, this act shall take effect July 1, 2012.