

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

The Committee on Insurance offered the following:

Amendment (with title amendment)

Remove from the bill: Everything after the enacting clause
and insert in lieu thereof:

Section 1. Subsection (6) is added to section
624.3161, Florida Statutes, to read:

624.3161 Market conduct examinations.--

(6) The department shall adopt rules as necessary to
effectuate the market conduct examination process, to assure
compliance by the person examined with the applicable
provisions of the Insurance Code. Such rules shall not exceed
the authority of the statutes involved in the market conduct
examination.

Section 2. Subsection (8) is added to section 626.171,
Florida Statutes, to read:

626.171 Application for license.--

(8) The department shall adopt rules to effectuate the
license application process, including photo identification,
background checks and credit reports, prelicensing courses,

Amendment No. 1 (for drafter's use only)

1 the impact of criminal and law enforcement history, and other
2 relevant information in an effort to determine an applicant's
3 fitness and trustworthiness to engage in the business of
4 insurance.

5 Section 3. Paragraph (o) of subsection (1) of section
6 626.9541, Florida Statutes, is amended to read:

7 626.9541 Unfair methods of competition and unfair or
8 deceptive acts or practices defined.--

9 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR
10 DECEPTIVE ACTS.--The following are defined as unfair methods
11 of competition and unfair or deceptive acts or practices:

12 (o) Illegal dealings in premiums; excess or reduced
13 charges for insurance.--

14 1. Knowingly collecting any sum as a premium or charge
15 for insurance, which is not then provided, or is not in due
16 course to be provided, subject to acceptance of the risk by
17 the insurer, by an insurance policy issued by an insurer as
18 permitted by this code.

19 2. Knowingly collecting as a premium or charge for
20 insurance any sum in excess of or less than the premium or
21 charge applicable to such insurance, in accordance with the
22 applicable classifications and rates as filed with and
23 approved by the department, and as specified in the policy;
24 or, in cases when classifications, premiums, or rates are not
25 required by this code to be so filed and approved, premiums
26 and charges in excess of or less than those specified in the
27 policy and as fixed by the insurer. This provision shall not
28 be deemed to prohibit the charging and collection, by surplus
29 lines agents licensed under part VIII of this chapter, of the
30 amount of applicable state and federal taxes, or fees as
31 authorized by s. 626.916(4), in addition to the premium

Amendment No. 1 (for drafter's use only)

1 required by the insurer or the charging and collection, by
2 licensed agents, of the exact amount of any discount or other
3 such fee charged by a credit card facility in connection with
4 the use of a credit card, as authorized by subparagraph (q)3.,
5 in addition to the premium required by the insurer. This
6 subparagraph shall not be construed to prohibit collection of
7 a premium for a universal life or a variable or indeterminate
8 value insurance policy made in accordance with the terms of
9 the contract.

10 3.a. Imposing or requesting an additional premium for
11 a policy of motor vehicle liability, personal injury
12 protection, medical payment, or collision insurance or any
13 combination thereof or refusing to renew the policy solely
14 because the insured was involved in a motor vehicle accident
15 unless the insurer's file contains information from which the
16 insurer in good faith determines that the insured was
17 substantially at fault in the accident.

18 b. An insurer which imposes and collects such a
19 surcharge or which refuses to renew such policy shall, in
20 conjunction with the notice of premium due or notice of
21 nonrenewal, notify the named insured that he or she is
22 entitled to reimbursement of such amount or renewal of the
23 policy under the conditions listed below and will subsequently
24 reimburse him or her or renew the policy, if the named insured
25 demonstrates that the operator involved in the accident was:

26 (I) Lawfully parked;

27 (II) Reimbursed by, or on behalf of, a person
28 responsible for the accident or has a judgment against such
29 person;

30 (III) Struck in the rear by another vehicle headed in
31 the same direction and was not convicted of a moving traffic

Amendment No. 1 (for drafter's use only)

1 violation in connection with the accident;

2 (IV) Hit by a "hit-and-run" driver, if the accident
3 was reported to the proper authorities within 24 hours after
4 discovering the accident;

5 (V) Not convicted of a moving traffic violation in
6 connection with the accident, but the operator of the other
7 automobile involved in such accident was convicted of a moving
8 traffic violation;

9 (VI) Finally adjudicated not to be liable by a court
10 of competent jurisdiction;

11 (VII) In receipt of a traffic citation which was
12 dismissed or nolle prossed; or

13 (VIII) Not at fault as evidenced by a written
14 statement from the insured establishing facts demonstrating
15 lack of fault which are not rebutted by information in the
16 insurer's file from which the insurer in good faith determines
17 that the insured was substantially at fault.

18 c. In addition to the other provisions of this
19 subparagraph, an insurer may not fail to renew a policy if the
20 insured has had only one accident in which he or she was at
21 fault within the current 3-year period. However, an insurer
22 may nonrenew a policy for reasons other than accidents in
23 accordance with s. 627.728. This subparagraph does not
24 prohibit nonrenewal of a policy under which the insured has
25 had three or more accidents, regardless of fault, during the
26 most recent 3-year period.

27 4. Imposing or requesting an additional premium for,
28 or refusing to renew, a policy for motor vehicle insurance
29 solely because the insured committed a noncriminal traffic
30 infraction as described in s. 318.14 unless the infraction is:

31 a. A second infraction committed within an 18-month

Amendment No. 1 (for drafter's use only)

1 period, or a third or subsequent infraction committed within a
2 36-month period.

3 b. A violation of s. 316.183, when such violation is a
4 result of exceeding the lawful speed limit by more than 15
5 miles per hour.

6 5. Upon the request of the insured, the insurer and
7 licensed agent shall supply to the insured the complete proof
8 of fault or other criteria which justifies the additional
9 charge or cancellation.

10 6. No insurer shall impose or request an additional
11 premium for motor vehicle insurance, cancel or refuse to issue
12 a policy, or refuse to renew a policy because the insured or
13 the applicant is a handicapped or physically disabled person,
14 so long as such handicap or physical disability does not
15 substantially impair such person's mechanically assisted
16 driving ability.

17 7. No insurer may cancel or otherwise terminate any
18 insurance contract or coverage, or require execution of a
19 consent to rate endorsement, during the stated policy term for
20 the purpose of offering to issue, or issuing, a similar or
21 identical contract or coverage to the same insured with the
22 same exposure at a higher premium rate or continuing an
23 existing contract or coverage with the same exposure at an
24 increased premium.

25 8. No insurer may issue a nonrenewal notice on any
26 insurance contract or coverage, or require execution of a
27 consent to rate endorsement, for the purpose of offering to
28 issue, or issuing, a similar or identical contract or coverage
29 to the same insured at a higher premium rate or continuing an
30 existing contract or coverage at an increased premium without
31 meeting any applicable notice requirements.

Amendment No. 1 (for drafter's use only)

1 9. No insurer shall, with respect to premiums charged
2 for motor vehicle insurance, unfairly discriminate solely on
3 the basis of age, sex, marital status, location of the risk,
4 accidents more than 3 years old, or scholastic achievement.

5 10. Imposing or requesting an additional premium for
6 motor vehicle comprehensive or uninsured motorist coverage
7 solely because the insured was involved in a motor vehicle
8 accident or was convicted of a moving traffic violation.

9 11. No insurer shall cancel or issue a nonrenewal
10 notice on any insurance policy or contract without complying
11 with any applicable cancellation or nonrenewal provision
12 required under the Florida Insurance Code.

13 12. No insurer shall impose or request an additional
14 premium, cancel a policy, or issue a nonrenewal notice on any
15 insurance policy or contract because of any traffic infraction
16 when adjudication has been withheld and no points have been
17 assessed pursuant to s. 318.14(9) and (10). However, this
18 subparagraph does not apply to traffic infractions involving
19 accidents in which the insurer has incurred a loss due to the
20 fault of the insured.

21 Section 4. Paragraph (a) of subsection (2) of section
22 627.062, Florida Statutes, is amended to read:

23 627.062 Rate standards.--

24 (2) As to all such classes of insurance:

25 (a) Insurers or rating organizations shall establish
26 and use rates, rating schedules, or rating manuals to allow
27 the insurer a reasonable rate of return on such classes of
28 insurance written in this state. Copies ~~A copy~~ of rates,
29 rating schedules, rating manuals, premium credits or discount
30 schedules, and surcharge schedules, and changes thereto, shall
31 be filed with the department under one of the following

Amendment No. 1 (for drafter's use only)

1 procedures:

2 1. If the filing is made at least 90 days before the
3 proposed effective date and the filing is not implemented
4 during the department's review of the filing and any
5 proceeding and judicial review, then such filing shall be
6 considered a "file and use" filing. In such case, the
7 department shall finalize its review by issuance of a notice
8 of intent to approve or a notice of intent to disapprove
9 within 90 days after receipt of the filing. The notice of
10 intent to approve and the notice of intent to disapprove
11 constitute agency action for purposes of the Administrative
12 Procedure Act. Requests for supporting information, requests
13 for mathematical or mechanical corrections, or notification to
14 the insurer by the department of its preliminary findings
15 shall not toll the 90-day period during any such proceedings
16 and subsequent judicial review. The rate shall be deemed
17 approved if the department does not issue a notice of intent
18 to approve or a notice of intent to disapprove within 90 days
19 after receipt of the filing.

20 2. If the filing is not made in accordance with the
21 provisions of subparagraph 1., such filing shall be made as
22 soon as practicable, but no later than 30 days after the
23 effective date, and shall be considered a "use and file"
24 filing. An insurer making a "use and file" filing is
25 potentially subject to an order by the department to return to
26 policyholders portions of rates found to be excessive, as
27 provided in paragraph (h).

28 Section 5. Subsection (4) is added to Section
29 627.0625, Florida Statutes, to read:

30 627.0625 Commercial property and casualty risk
31 management plans.--

Amendment No. 1 (for drafter's use only)

1 (4) Commercial motor vehicle policies that are issued
2 to satisfy mandatory financial responsibility requirements of
3 a state or local government must provide first dollar coverage
4 to third-party claimants without a deductible. With respect to
5 such policies, the department may adopt rules necessary to
6 assure that claims are administered fairly as required by law.

7 Section 6. Subsection (8) of section 627.0651, Florida
8 Statutes, is amended to read:

9 627.0651 Making and use of rates for motor vehicle
10 insurance.--

11 (8) Rates are not unfairly discriminatory if averaged
12 broadly among members of a group; nor are rates unfairly
13 discriminatory even though they are lower than rates for
14 nonmembers of the group. However, such rates are unfairly
15 discriminatory if they are not actuarially measurable and
16 credible and sufficiently related to actual or expected loss
17 and expense experience of the group so as to assure that
18 nonmembers of the group are not unfairly discriminated
19 against. Use of a single United States Postal Service zip code
20 as a rating territory shall be deemed unfairly discriminatory.
21 An insurer may not impose a surcharge or discount for
22 liability coverages based on the type of vehicle without
23 providing acceptable actuarial justification.

24 Section 7. Section 627.385, Florida Statutes, is
25 created to read:

26 627.385 Conduct of residual market board members.--

27 (1)(a) For various insurance coverages, a residual
28 market has been created by legislation to provide a market of
29 last resort for individuals unable to secure coverage in the
30 voluntary market.

31 (b) Each residual market's enabling legislation calls

Amendment No. 1 (for drafter's use only)

1 for the establishment of a board of governors or directors
2 that operates subject to a plan of operation. The board, in
3 carrying out its obligations, must engage in business
4 transactions in order to provide and administer the required
5 coverage and maintain adequate funds to support the plan. In
6 order for the board to fully execute its responsibilities
7 required by law, conflict of interest or inappropriate
8 activity by board members, or the appearance thereof, with
9 regard to member insurers or policyholders of the residual
10 market mechanism must be avoided. The Legislature has
11 determined that the provisions set forth in subsection (2) are
12 necessary to protect the public interest by ensuring fair,
13 reasonable, and beneficial board practice and activity.

14 (c) This section applies to the Florida Medical
15 Malpractice Joint Underwriting Association, the Florida
16 Automobile Joint Underwriting Association, the Florida
17 Workers' Compensation Joint Underwriting Association, the
18 Florida Comprehensive Health Association, the Florida
19 Windstorm Underwriting Association, the Florida Property and
20 Casualty Joint Underwriting Association, the Florida
21 Residential Property and Casualty Joint Underwriting
22 Association, and the board members thereof.

23 (2) To ensure that the board is free from potential
24 conflict or inappropriate behavior the following are adopted
25 in the plan of operation of the subject residual market in
26 this state.

27 (a) A board member may not act as a servicing carrier
28 or administering entity for the subject plan, other than a
29 claim adjustment contract open to all members of the plan.

30 (b) A board member or board member representative may
31 not use his or her position to foster or facilitate any

Amendment No. 1 (for drafter's use only)

1 special pecuniary gain for himself or herself, his or her
2 member company, or any other entity in which the board member
3 or board member representative or the member company has a
4 substantial financial interest, except as otherwise provided
5 in paragraph (a).

6 (c) A board member or board member representative may
7 not use his or her position on the board to secure or promote
8 any business relationship from which he or she may derive a
9 financial gain.

10 (d) A board member or designee may not receive any
11 gift or gratuity, except as provided in s. 112.3248, other
12 than meals, while acting in his or her capacity as a board
13 member.

14 (3) Board members and board member representatives
15 shall maintain reasonable board expenses based on state travel
16 policy as set forth in s. 112.061. The board shall develop a
17 detailed policy regarding board member travel, which policy
18 must be based on s. 112.061 and is subject to the approval of
19 the department.

20 Section 8. Section 627.4065, Florida Statutes, is
21 created to read:

22 627.4065 Insured's right to return policy; notice.--A
23 health insurance policy issued or issued for delivery in this
24 state must have printed or stamped thereon or attached thereto
25 a notice in a prominent place stating in substance that the
26 policyholder may return the policy to the insurer within 10
27 days after its delivery and may have the premium paid refunded
28 if, after examination of the policy or contract, the
29 policyholder is not satisfied with it for any reason. The
30 notice must provide that if the policyholder, pursuant to such
31 notice, returns the policy or contract to the insurer at its

Amendment No. 1 (for drafter's use only)

1 home office or branch office or to the agent through whom it
2 was purchased, it is considered void from the beginning and
3 the parties are in the same position as if no policy or
4 contract had been issued. This section does not apply to group
5 policies, single premium nonrenewable policies, or travel
6 accident policies.

7 Section 9. Section 627.41345 Certificate of
8 insurance.--An insurer or agent may not issue or sign a
9 certificate of insurance that contains terms or conditions
10 that differ from those in the policy under which the
11 certificate of insurance is issued. In the event of a
12 conflict, the terms of the policy under which the certificate
13 of insurance is issued shall control.

14 Section 10. Subsection (9) is added to section
15 627.7015, Florida Statutes, to read:

16 627.7015 Alternative procedure for resolution of
17 disputed property insurance claims.--

18 (9) For purposes of this section, the term "claim"
19 refers to any dispute between an insurer and an insured
20 relating to a material issue of fact other than a dispute:

21 (a) With respect to which the insurer has a reasonable
22 basis to suspect fraud;

23 (b) Where, based on agreed-upon facts as to the cause
24 of loss, there is no coverage under the policy;

25 (c) With respect to which the insurer has a reasonable
26 basis to believe that the claimant has intentionally made a
27 material misrepresentation of fact which is relevant to the
28 claim, and the entire request for payment of a loss has been
29 denied on the basis of the material misrepresentation; or

30 (d) Where the amount in controversy is less than \$500,
31 unless the parties agree to mediate a dispute involving a

Amendment No. 1 (for drafter's use only)

1 lesser amount.

2 Section 11. Section 627.7276, Florida Statutes, is
3 amended to read:

4 627.7276 Notice of limited coverage.--

5 (1) The following notice of limited coverage shall ~~An~~
6 ~~automobile policy that does not contain coverage for bodily~~
7 ~~injury and property damage must~~ be clearly stamped or printed
8 on any motor vehicle insurance policy that provides coverage
9 only for first-party damage to the insured vehicle, but does
10 not provide coverage for bodily injury liability, property
11 damage liability, or personal injury protection to the effect
12 ~~that such coverage is not included in the policy in the~~
13 ~~following manner:~~

14
15 "THIS POLICY DOES NOT PROVIDE BODILY INJURY
16 LIABILITY, AND PROPERTY DAMAGE LIABILITY, OR
17 PERSONAL INJURY PROTECTION INSURANCE OR ANY
18 OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM
19 CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH
20 ANY FINANCIAL RESPONSIBILITY LAW OR WITH THE
21 FLORIDA MOTOR VEHICLE NO-FAULT LAW."

22
23 (2) This legend must appear on the policy declaration
24 ~~page and on the filing back of the policy~~ and be printed in a
25 contrasting color from that used on the policy and in type
26 larger than the largest type used in the text thereof, as an
27 overprint or by a rubber stamp impression.

28 Section 12. Section 627.795, Florida Statutes, is
29 created to read:

30 627.795 Policy exceptions.--

31 (1) A title insurance commitment must be issued on all

Amendment No. 1 (for drafter's use only)

1 real estate closing transactions when a title insurance policy
2 is to be issued, except for multiple conveyances on the same
3 property such as timesharing.

4 (2) A gap exception may not be deleted on a commitment
5 until the time of closing.

6 Section 13. Section 626.9552, Florida Statutes, is
7 created to read:

8 626.9552 Single interest insurance.--

9 (1) When single interest insurance is written at the
10 expense of the purchaser or borrower in connection with a
11 finance or loan transaction, a clear and concise statement
12 must be furnished the purchaser or borrower advising the
13 purchaser or borrower that the insurance effected is solely
14 for the interest of the financing entity, and that no
15 protection thereunder exists for the benefit of the purchaser
16 or borrower. When single interest insurance is written, no
17 effort may be made by the insurer to recover the amount of any
18 payment from the borrower. Single interest insurance policies
19 must be clearly stamped or printed on the declarations page,
20 "Single Interest Only----No Subrogation." Single interest
21 insurance is to be placed only after it has been determined
22 that no other kind of insurance can be placed on the risk,
23 except with the consent of the purchaser or borrower. Single
24 interest may be written in cases of inland marine installment
25 sales floater policies. If insurance cannot be obtained for
26 the dual protection of the purchaser or borrower, and the
27 seller or lender or financing entity for all the coverages
28 contemplated, or if obtained, is canceled by the insurer
29 before expiration, the seller or lender or financing entity
30 may obtain insurance to protect his or her interest in the
31 motor vehicle or other personal property, and the purchaser or

Amendment No. 1 (for drafter's use only)

1 borrower may be required to pay the cost thereof. In such
2 event the seller or lender or financing entity shall promptly
3 notify the purchaser or borrower that such insurance cannot be
4 obtained, or has been canceled, and credit to the purchaser or
5 borrower the difference between the amount charged for dual
6 protection insurance and the actual cost of such single
7 interest insurance, less, in the event of cancellation, the
8 earned premium on the dual interest insurance for the period
9 it was in force. If the purchaser or borrower procures
10 acceptable dual interest insurance within 30 days after the
11 date of such notice and provides the seller or lender, or
12 finance entity with evidence that the premium therefore has
13 been paid, there is no charge to him or her for the single
14 interest coverage. As used in this section, the term
15 "financing entity" means a finance company, bank, or other
16 lending institution. However, those lenders licensed under the
17 Consumer Finance Act, chapter 516, must provide coverage
18 issued in the name of the borrower containing the customary
19 mortgagee or loss payee clause.

20 (2) If a certificate is issued under a master policy,
21 the same coverage as provided in an individual policy will
22 apply.

23 (3) The provisions of this section do not apply to
24 title insurance as defined in s. 624.608.

25 Section 14. Subsection (1) of section 627.918, Florida
26 Statutes, is amended to read:

27 627.918 Reporting formats.--

28 (1) The department shall require that the reporting
29 provided for in this part be made on forms adopted ~~established~~
30 by the department or in a format compatible with the
31 department's ~~its~~ electronic data processing equipment. The

Amendment No. 1 (for drafter's use only)

1 department shall adopt by rule standards for such approval.

2 Section 15. Subsection (12) of section 641.31, Florida
3 Statutes, is amended to read:

4 641.31 Health maintenance contracts.--

5 (12) Each health maintenance contract, certificate, or
6 member handbook shall state that emergency services and care
7 shall be provided to subscribers in emergency situations not
8 permitting treatment through the health maintenance
9 organization's providers, without prior notification to and
10 approval of the organization. Reimbursement for covered
11 services and supplies under this section shall be governed by
12 the provisions of s. 641.513(5), up to the subscriber contract
13 benefit limits.~~Not less than 75 percent of the reasonable~~
14 ~~charges for covered services and supplies shall be paid by the~~
15 ~~organization, up to the subscriber contract benefit limits.~~
16 Payment also may be subject to additional applicable copayment
17 provisions, not to exceed \$100 per claim. The health
18 maintenance contract, certificate, or member handbook shall
19 contain the definitions of "emergency services and care" and
20 "emergency medical condition" as specified in s. 641.19(7) and
21 (8), shall describe procedures for determination by the health
22 maintenance organization of whether the services qualify for
23 reimbursement as emergency services and care, and shall
24 contain specific examples of what does constitute an
25 emergency. In providing for emergency services and care as a
26 covered service, a health maintenance organization shall be
27 governed by s. 641.513.

28 Section 16. Subsection (3) of section 641.3108,
29 Florida Statutes, is amended to read:

30 641.3108 Notice of cancellation of contract.--

31 (3) In the case of a health maintenance contract

Amendment No. 1 (for drafter's use only)

1 issued to an employer or person holding the contract on behalf
2 of the subscriber group, the health maintenance organization
3 may make the notification through the employer or group
4 contract holder, and, if the health maintenance organization
5 elects to take this action through the employer or group
6 contract holder, the organization shall be deemed to have
7 complied with the provisions of this section upon notifying
8 the employer or group contract holder of the requirements of
9 this section and requesting the employer or group contract
10 holder to forward to all subscribers the notice required
11 herein. If a subscriber group contract is not renewed due to
12 claim experience, the subscriber group is entitled to receive
13 information concerning its loss ratio. If requested by a
14 subscriber group, a detailed claim experience record may be
15 provided at a reasonable expense. The record shall maintain
16 subscriber confidentiality.

17 Section 17. This act shall take effect upon becoming a
18 law.

19
20
21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 On page 1,
24 remove the entire title

25
26 and insert in lieu thereof:

27 A bill to be entitled
28 An act relating to the Department of Insurance;
29 amending ss. 624.3161, 626.171, F.S.; directing
30 the department to adopt rules relating to
31 market conduct examinations and license

Amendment No. 1 (for drafter's use only)

1 applications; amending s. 626.9541, F.S.;
2 revising provisions relating to unfair
3 competition and deceptive practices; amending
4 s. 627.062, F.S.; providing for filing forms
5 for rate standards; amending s. 627.0625, F.S.;
6 authorizing the department to adopt rules
7 relating to third-party claimants; amending s.
8 627.0651, F.S.; prohibiting motor vehicle
9 insurers from imposing a surcharge or a
10 discount due to certain factors; creating s.
11 627.385, F.S.; providing rules of conduct for
12 residual market board members; creating s.
13 627.4065, F.S.; providing for notice of right
14 to return health insurance policies; creating
15 s. 627.41345, F.S.; prohibiting an insurer or
16 agent from issuing or signing certain
17 certificates of insurance; providing that the
18 terms of the policy control in case of
19 conflict; amending s. 627.7015, F.S.; defining
20 "claim" for purposes of alternative procedures
21 for resolution of disputed property insurance
22 claims; amending s. 627.7276, F.S.; providing
23 for notice of coverage of automobile policies;
24 creating s. 627.795, F.S.; providing guidelines
25 for title insurance policies; creating
26 626.9552, F.S.; providing standards for single
27 interest insurance; amending s. 627.918, F.S.;
28 directing the department to adopt rules
29 relating to reporting formats; amending s.
30 641.31, F.S.; specifying reimbursement for
31 emergency services under health maintenance

Amendment No. 1 (for drafter's use only)

1 organization contracts; amending s. 641.3108,
2 F.S.; requiring health maintenance
3 organizations to provide certain information to
4 subscriber groups whose contract is not renewed
5 for certain reasons; providing an effective
6 date.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31