

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Berfield offered the following:

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3 **Amendment (with title amendment)**

4 Between lines 202 an 203, insert:

5 Section 4. Paragraph (a) of subsection (3) of section
6 626.2815, Florida Statutes, is amended to read:

7 626.2815 Continuing education required; application;
8 exceptions; requirements; penalties.--

9 (3)(a) Each person subject to the provisions of this
10 section must, except as set forth in paragraphs (b) and (c),
11 complete a minimum of 24 hours of continuing education courses
12 every 2 years in basic or higher-level courses prescribed by
13 this section or in other courses approved by the department.
14 Each person subject to the provisions of this section must
15 complete, as part of his or her required number of continuing
16 education hours, 3 hours of continuing education, approved by

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17 the department, every 2 years on the subject matter of ethics
18 and a minimum of 2 hours of continuing education, approved by
19 the department, every 2 years on the subject matter of
20 unauthorized entities engaging in the business of insurance. The
21 scope of the topic of unauthorized entities shall include the
22 Florida Nonprofit Multiple Employer Welfare Arrangement Act and
23 the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001
24 et seq., as it relates to the provision of health insurance by
25 employers to their employees and the regulation thereof.

26 Section 5. Present subsections (15) through (17) of
27 section 626.015, Florida Statutes, are renumbered as subsections
28 (16) through (18), respectively, and a new subsection (15) is
29 added to said section to read:

30 626.015 Definitions.--As used in this part:

31 (15) "Personal lines agent" means a general lines agent
32 who is limited to transacting business related to property and
33 casualty insurance sold to individuals and families for
34 noncommercial purposes.

35 Section 6. Subsection (3) is added to section 626.022,
36 Florida Statutes, to read:

37 626.022 Scope of part.--

38 (3) Provisions of this part that apply to general lines
39 agents and applicants also apply to personal lines agents and
40 applicants, except where otherwise provided.

41 Section 7. Subsection (8) is added to section 626.241,
42 Florida Statutes, to read:

43 626.241 Scope of examination.--

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44 (8) An examination for licensure as a personal lines agent
45 shall consist of 100 questions and shall be limited in scope to
46 the kinds of business transacted under such license.

47 Section 8. Subsection (1) of section 626.311, Florida
48 Statutes, is amended to read:

49 626.311 Scope of license.--

50 (1) Except as to personal lines agents and limited
51 licenses, the applicant for license as a general lines agent or
52 customer representative shall qualify for all property, marine,
53 casualty, and surety lines except bail bonds which require a
54 separate license under chapter 648. The license of a general
55 lines agent may also cover health insurance if health insurance
56 is included in the agent's appointment by an insurer as to which
57 the licensee is also appointed as agent for property or casualty
58 or surety insurance. The license of a customer representative
59 shall provide, in substance, that it covers all of such classes
60 of insurance that his or her appointing general lines agent or
61 agency is currently so authorized to transact under the general
62 lines agent's license and appointments. No such license shall
63 be issued limited to particular classes of insurance except for
64 bail bonds which require a separate license under chapter 648 or
65 for personal lines agents. Personal lines agents are limited to
66 transacting business related to property and casualty insurance
67 sold to individuals and families for noncommercial purposes.

68 Section 9. Section 626.727, Florida Statutes, is amended
69 to read:

70 626.727 Scope of this part.--This part applies only to
71 general lines agents, customer representatives, service

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72 representatives, and managing general agents, all as defined in
73 s. 626.015. Provisions of this part which apply to general lines
74 agents and applicants also apply to personal lines agents and
75 applicants, except where otherwise provided.

76 Section 10. Subsection (1) of section 626.732, Florida
77 Statutes, is amended to read:

78 626.732 Requirement as to knowledge, experience, or
79 instruction.--

80 (1) Except as provided in subsection (3), no applicant for
81 a license as a general lines agent or personal lines agent,
82 except for a chartered property and casualty underwriter (CPCU),
83 other than as to a limited license as to baggage and motor
84 vehicle excess liability insurance, credit property insurance,
85 credit insurance, in-transit and storage personal property
86 insurance, or communications equipment property insurance or
87 communication equipment inland marine insurance, shall be
88 qualified or licensed unless within the 4 years immediately
89 preceding the date the application for license is filed with the
90 department the applicant has:

91 (a) Taught or successfully completed classroom courses in
92 insurance, 3 hours of which shall be on the subject matter of
93 ethics, satisfactory to the department at a school, college, or
94 extension division thereof, approved by the department. To
95 qualify for licensure as a personal lines agent, the applicant
96 must complete a total of 52 hours of classroom courses in
97 insurance;

98 (b) Completed a correspondence course in insurance, 3
99 hours of which shall be on the subject matter of ethics,

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100 satisfactory to the department and regularly offered by
101 accredited institutions of higher learning in this state and,
102 except if he or she is applying for a limited license under s.
103 626.321, for licensure as a general lines agent, has had at
104 least 6 months of responsible insurance duties as a
105 substantially full-time bona fide employee in all lines of
106 property and casualty insurance set forth in the definition of
107 general lines agent under s. 626.015 or, for licensure as a
108 personal lines agent, has completed at least 3 months in
109 responsible insurance duties as a substantially full-time
110 employee in property and casualty insurance sold to individuals
111 and families for noncommercial purposes;

112 (c) For licensure as a general lines agent, completed at
113 least 1 year in responsible insurance duties as a substantially
114 full-time bona fide employee in all lines of property and
115 casualty insurance, exclusive of aviation and wet marine and
116 transportation insurances but not exclusive of boats of less
117 than 36 feet in length or aircraft not held out for hire, as set
118 forth in the definition of a general lines agent under s.
119 626.015, without the education requirement mentioned in
120 paragraph (a) or paragraph (b) or, for licensure as a personal
121 lines agent, has completed at least 6 months in responsible
122 insurance duties as a substantially full-time employee in
123 property and casualty insurance sold to individuals and families
124 for noncommercial purposes without the education requirement in
125 paragraph (a) or paragraph(b); ~~or~~

126 (d)1. For licensure as a general lines agent, completed at
127 least 1 year of responsible insurance duties as a licensed and

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128 appointed customer representative or limited customer
129 representative in commercial or personal lines of property and
130 casualty insurance and 40 hours of classroom courses approved by
131 the department covering the areas of property, casualty, surety,
132 health, and marine insurance; or

133 2. For licensure as a personal lines agent, completed at
134 least 6 months of responsible duties as a licensed and appointed
135 customer representative or limited customer representative in
136 property and casualty insurance sold to individuals and families
137 for noncommercial purposes and 20 hours of classroom courses
138 approved by the department which are related to property and
139 casualty insurance sold to individuals and families for
140 noncommercial purposes;

141 (e)1.2- For licensure as a general lines agent, completed
142 at least 1 year of responsible insurance duties as a licensed
143 and appointed service representative in either commercial or
144 personal lines of property and casualty insurance and 80 hours
145 of classroom courses approved by the department covering the
146 areas of property, casualty, surety, health, and marine
147 insurance; or-

148 2. For licensure as a personal lines agent, completed at
149 least 6 months of responsible insurance duties as a licensed and
150 appointed service representative in property and casualty
151 insurance sold to individuals and families for noncommercial
152 purposes and 40 hours of classroom courses approved by the
153 department related to property and casualty insurance sold to
154 individuals and families for noncommercial purposes; or

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155 (f) For licensure as a personal lines agent, completed at
156 least 3 years of responsible duties as a licensed and appointed
157 customer representative in property and casualty insurance sold
158 to individuals and families for noncommercial purposes.

159 Section 11. The Department of Financial Services does not
160 have to begin issuing licenses to personal lines agents on the
161 effective date of this act if the department has not completed
162 the process of incorporating necessary procedures for issuing
163 personal lines licenses into its licensing systems.

164 Section 12. Subsection (1) of section 626.747, Florida
165 Statutes, is amended to read:

166 626.747 Branch agencies.--

167 (1) Each branch place of business established by an agent
168 or agency, firm, corporation, or association shall be in the
169 active full-time charge of a licensed general lines agent who is
170 appointed to represent one or more insurers. Any agent or
171 agency, firm, corporation, or association which has established
172 one or more branch places of business shall be required to have
173 at least one licensed general lines agent who is appointed to
174 represent one or more insurers at each location of the agency
175 including its headquarters location.

176 Section 13. Paragraph (r) is added to subsection (6) of
177 section 627.351, Florida Statutes, to read:

178 627.351 Insurance risk apportionment plans.--

179 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

180 (r) A salaried employee of the corporation who performs
181 policy administration services subsequent to the effectuation of

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182 a corporation policy is not required to be licensed as an agent
183 under the provisions of s. 626.112.

184 Section 14. Paragraphs (c) and (d) of subsection (1) of
185 section 626.321, Florida Statutes, are amended to read:

186 626.321 Limited licenses.--

187 (1) The department shall issue to a qualified individual,
188 or a qualified individual or entity under paragraphs (c), (d),
189 (e), and (i), a license as agent authorized to transact a
190 limited class of business in any of the following categories:

191 (c) Personal accident insurance.--License covering only
192 policies of personal accident insurance covering the risks of
193 travel, except as provided in subparagraph 2. The license may
194 be issued only:

195 1. To a full-time salaried employee of a common carrier or
196 a full-time salaried employee or owner of a transportation
197 ticket agency and may authorize the sale of such ticket policies
198 only in connection with the sale of transportation tickets, or
199 to the full-time salaried employee of such an agent. No such
200 policy shall be for a duration of more than 48 hours or for the
201 duration of a specified one-way trip or round trip.

202 2. To a full-time salaried employee of a business which
203 offers motor vehicles for rent or lease, or to a business entity
204 ~~office of a business~~ which offers motor vehicles for rent or
205 ~~lease if insurance sales activities authorized by the license~~
206 ~~are limited to full-time salaried employees.~~ A business office
207 licensed or a person licensed pursuant to this subparagraph may,
208 as an agent of an insurer, transact insurance that provides
209 coverage for accidental personal injury or death of the lessee

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210 and any passenger who is riding or driving with the covered
211 lessee in the rental motor vehicle if the lease or rental
212 agreement is for not more than 30 days, or if the lessee is not
213 provided coverage for more than 30 consecutive days per lease
214 period; however, if the lease is extended beyond 30 days, the
215 coverage may be extended one time only for a period not to
216 exceed an additional 30 days.

217 (d) Baggage and motor vehicle excess liability insurance.-

218 -

219 1. License covering only insurance of personal effects
220 except as provided in subparagraph 2. The license may be issued
221 only:

222 a. To a full-time salaried employee of a common carrier or
223 a full-time salaried employee or owner of a transportation
224 ticket agency, which person is engaged in the sale or handling
225 of transportation of baggage and personal effects of travelers,
226 and may authorize the sale of such insurance only in connection
227 with such transportation; or

228 b. To the full-time salaried employee of a licensed
229 general lines agent, ~~a full-time salaried employee of a business~~
230 ~~which offers motor vehicles for rent or lease,~~ or to ~~a business~~
231 ~~office of~~ a business entity that ~~which~~ offers motor vehicles for
232 rent or lease if insurance sales activities authorized by the
233 license are in connection with and incidental to the rental of
234 a motor vehicle limited to full-time salaried employees. An
235 entity applying for a license under this sub-subparagraph:

236 (I) Is required to submit only one application for a
237 license under s. 626.171. The requirements of s. 626.171(5)

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238 shall apply only to the officers and directors of the entity
239 submitting the application.

240 (II) Is required to obtain a license for each office,
241 branch office, or place of business making use of the entity's
242 business name by applying to the department for the license on a
243 simplified application form developed by rule of the department
244 for this purpose.

245 (III) Is required to pay the applicable fees for a license
246 as prescribed in s. 624.501, be appointed under s. 626.112, and
247 pay the prescribed appointment fee under s. 624.501. A licensed
248 and appointed entity shall be directly responsible and
249 accountable for all acts of the licensee's employees.

250

251 The purchaser of baggage insurance shall be provided written
252 information disclosing that the insured's homeowner's policy may
253 provide coverage for loss of personal effects and that the
254 purchase of such insurance is not required in connection with
255 the purchase of tickets or in connection with the lease or
256 rental of a motor vehicle.

257 2. A business entity that ~~office licensed pursuant to~~
258 ~~subparagraph 1., or a person licensed pursuant to subparagraph~~
259 ~~1. who is a full-time salaried employee of a business which~~
260 offers motor vehicles for rent or lease, may include lessees
261 under a master contract providing coverage to the lessor or may
262 transact excess motor vehicle liability insurance providing
263 coverage in excess of the standard liability limits provided by
264 the lessor in its lease to a person renting or leasing a motor
265 vehicle from the licensee's employer for liability arising in

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266 connection with the negligent operation of the leased or rented
267 motor vehicle, provided that the lease or rental agreement is
268 for not more than 30 days; that the lessee is not provided
269 coverage for more than 30 consecutive days per lease period,
270 and, if the lease is extended beyond 30 days, the coverage may
271 be extended one time only for a period not to exceed an
272 additional 30 days; that the lessee is given written notice that
273 his or her personal insurance policy providing coverage on an
274 owned motor vehicle may provide additional excess coverage; and
275 that the purchase of the insurance is not required in connection
276 with the lease or rental of a motor vehicle. The excess
277 liability insurance may be provided to the lessee as an
278 additional insured on a policy issued to the licensee's
279 employer.

280 3. A business entity that ~~office licensed pursuant to~~
281 ~~subparagraph 1., or a person licensed pursuant to subparagraph~~
282 ~~1. who is a full-time salaried employee of a business which~~
283 offers motor vehicles for rent or lease, may, as an agent of an
284 insurer, transact insurance that provides coverage for the
285 liability of the lessee to the lessor for damage to the leased
286 or rented motor vehicle if:

287 a. The lease or rental agreement is for not more than 30
288 days; or the lessee is not provided coverage for more than 30
289 consecutive days per lease period, but, if the lease is extended
290 beyond 30 days, the coverage may be extended one time only for a
291 period not to exceed an additional 30 days;

292 b. The lessee is given written notice that his or her
293 personal insurance policy that provides coverage on an owned

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294 motor vehicle may provide such coverage with or without a
295 deductible; and

296 c. The purchase of the insurance is not required in
297 connection with the lease or rental of a motor vehicle.

298 Section 15. Subsection (2) of section 628.709, Florida
299 Statutes, is amended to read:

300 628.709 Formation of a mutual insurance holding company.--

301 (2) All of the initial shares of the capital stock of the
302 insurance company which reorganized as a subsidiary insurance
303 company shall be issued either to the mutual insurance holding
304 company, or to an intermediate holding company which is wholly
305 owned by the mutual insurance holding company. This restriction
306 does not preclude the subsequent issuance of additional shares
307 of stock by the subsidiary insurance company so long as the
308 mutual insurance holding company at all times owns directly or
309 through one or more intermediate holding companies, a majority
310 of the voting shares of the capital stock of the subsidiary
311 insurance company. The membership interests of the policyholders
312 of the subsidiary insurance company shall become membership
313 interests in the mutual insurance holding company. Policyholders
314 of the subsidiary insurance company which was formerly the
315 mutual insurer shall be members of the mutual insurance holding
316 company in accordance with the articles of incorporation and
317 bylaws of the mutual insurance holding company. At the time of
318 formation, policyholders of any other subsidiary insurance
319 company of the mutual insurance holding company shall not be
320 members of the mutual insurance holding company unless:

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321 (a) They are policyholders of a subsidiary which was a
322 mutual insurer which merged with the holding company pursuant to
323 s. 628.715; or

324 (b) They are policyholders of an affiliated stock
325 insurance company, provided such policyholders were members of
326 the mutual insurance company at the time the mutual insurance
327 company policies were assumed by the affiliated stock insurance
328 company and the assumption occurred in connection with the
329 conversion.

330
331 Subsequent to formation, membership shall be governed by s.
332 628.727.

333 Section 16. Subsection (6) is added to section 631.021,
334 Florida Statutes, to read:

335 631.021 Jurisdiction of delinquency proceeding; venue;
336 change of venue; exclusiveness of remedy; appeal.--

337 (6) The domiciliary court acquiring jurisdiction over
338 persons subject to this chapter may exercise exclusive
339 jurisdiction to the exclusion of all other courts, except as
340 limited by the provisions of this chapter. Upon the issuance of
341 an order of conservation, rehabilitation, or liquidation, the
342 Circuit Court of Leon County shall have exclusive jurisdiction
343 with respect to assets or property of any insurer subject to
344 such proceedings and claims against said insurer's assets or
345 property.

346 Section 17. Subsection (6) is added to section 631.041,
347 Florida Statutes, to read:

348 631.041 Automatic stay; relief from stay; injunctions.--

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349 (6) The estate of an insurer in rehabilitation or
350 liquidation which is injured by any willful violation of an
351 applicable stay or injunction shall be entitled to actual
352 damages, including costs and attorney's fees, and, in
353 appropriate circumstances, the receivership court may impose
354 additional sanctions.

355 Section 18. Section 631.0515, Florida Statutes, is amended
356 to read:

357 631.0515 Appointment of receiver; insurance holding
358 company.--A delinquency proceeding pursuant to this chapter
359 constitutes the sole and exclusive method of dissolving,
360 liquidating, rehabilitating, reorganizing, conserving, or
361 appointing a receiver of a Florida corporation which is not
362 insolvent as defined by s. 607.01401(16); which through its
363 shareholders, board of directors, or governing body is
364 deadlocked in the management of its affairs; and which directly
365 or indirectly owns all of the stock of a Florida domestic
366 insurer. The department may petition for an order directing it
367 to rehabilitate such corporation if the interests of
368 policyholders or the public will be harmed as a result of the
369 deadlock. The department shall use due diligence to resolve the
370 deadlock. Whether or not the department petitions for an order,
371 the circuit court shall not have jurisdiction pursuant to s.
372 607.271, s. 607.274, or s. 607.277 to dissolve, liquidate, or
373 appoint receivers with respect to, a Florida corporation which
374 directly or indirectly owns all of the stock of a Florida
375 domestic insurer and which is not insolvent as defined by s.
376 607.01401(16). However, a managing general agent or holding

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377 company with a controlling interest in a domestic insurer in
378 this state is subject to jurisdiction of the court under the
379 provisions of s. 631.025.

380 Section 19. Paragraph (a) of subsection (7) of section
381 631.141, Florida Statutes, is amended to read:

382 631.141 Conduct of delinquency proceeding; domestic and
383 alien insurers.--

384 (7)(a) In connection with a delinquency proceeding, the
385 department may appoint one or more special agents to act for it,
386 and it may employ such counsel, clerks, and assistants as it
387 deems necessary. The compensation of the special agents,
388 counsel, clerks, or assistants and all expenses of taking
389 possession of the insurer and of conducting the proceeding shall
390 be fixed by the receiver, subject to the approval of the court,
391 and shall be paid out of the funds or assets of the insurer.
392 Such expenses are administrative expenses and are recoverable by
393 the receiver in any actions in which the receiver is authorized
394 or entitled to recover its administrative expenses. Within the
395 limits of duties imposed upon them, special agents shall possess
396 all the powers given to and, in the exercise of those powers,
397 shall be subject to all duties imposed upon the receiver with
398 respect to such proceeding.

399 Section 20. Section 631.205, Florida Statutes, is amended
400 to read:

401 631.205 Reinsurance proceeds.--All reinsurance proceeds
402 payable under a contract of reinsurance to which the insolvent
403 insurer is a party are to be paid directly to the domiciliary
404 receiver as general assets of the receivership estate unless the

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405 reinsurance contract contains a clause which specifically names
406 the insolvent insurer's insured as a direct beneficiary of the
407 reinsurance contract. The entry of an order of conservation,
408 rehabilitation, or liquidation shall not be deemed an
409 anticipatory breach of any reinsurance contract, nor shall
410 insolvency or notice of insolvency be grounds for retroactive
411 revocation or retroactive cancellation of any reinsurance
412 contracts by the reinsurer.

413 Section 21. Section 631.206, Florida Statutes, is created
414 to read:

415 631.206 Arbitration.--If an insurer in receivership has
416 entered into an agreement containing an arbitration provision
417 for resolution of disputes, that provision is void and shall be
418 replaced by operation of law with the following provision:

419
420 Any controversy or claim arising out of or relating to this
421 contract, or the breach thereof, shall be settled by arbitration
422 pursuant to the American Arbitration Association Commercial
423 Arbitration Rules and chapter 682, Florida Statutes, and
424 judgment on the award rendered by the arbitrators shall be
425 entered by the receivership court. Venue shall be in Leon
426 County, Florida. Disputes shall be submitted to a panel of three
427 arbitrators, one to be chosen by each party and the third by the
428 two so chosen. Arbitrators shall be selected from a list of
429 potential qualified arbitrators with 10 years' experience
430 involving the insurance industry. If the parties do not agree
431 upon the qualifications of a mediator, each party shall select

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432 its mediator from a list of potential mediators approved by the
433 receivership court.

434 Section 22. Subsection (1) of section 631.261, Florida
435 Statutes, is amended, and subsection (4) is added to said
436 section, to read:

437 631.261 Voidable transfers.--

438 (1)(a) Any transfer of, or lien upon, the property of an
439 insurer or affiliate which is made or created within 4 months
440 prior to the commencement of any delinquency proceeding under
441 this chapter which gives ~~with the intent of giving to any~~
442 creditor of the insurer a preference or enables ~~of enabling~~ the
443 creditor to obtain a greater percentage of her or his debt than
444 any other creditor of the same class, ~~and which is accepted by~~
445 ~~such creditor having reasonable cause to believe that such~~
446 ~~preference will occur,~~ shall be voidable.

447 (b) Any transfer of, or lien upon, the property of an
448 insurer or affiliate which is made or created between 4 months
449 and 1 year prior to the commencement of any delinquency
450 proceeding under this chapter is void if such transfer or lien
451 inured to the benefit of a director, officer, employee,
452 stockholder, member, subscriber, affiliate, managing general
453 agent, or insider or any relative of any director, officer,
454 employee, stockholder, member, subscriber, affiliate, managing
455 general agent, or insider.

456 (4) For purposes of this section, a transfer is not made
457 or created until the insurer or affiliate has acquired rights in
458 the property transferred.

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459 Section 23. Subsection (2) of section 631.262, Florida
460 Statutes, is amended to read:

461 631.262 Transfers prior to petition.--

462 (2) Transfers shall be deemed to have been made or
463 suffered, or obligations incurred, when perfected according to
464 the following criteria:

465 (a) A transfer of property other than real property shall
466 be deemed to be made or suffered when it becomes so far
467 perfected that no subsequent lien obtainable by legal or
468 equitable proceedings on a simple contract could become superior
469 to the rights of the transferee.†

470 (b) A transfer of real property shall be deemed to be made
471 or suffered when it becomes so far perfected that no subsequent
472 bona fide purchaser from the insurer could obtain rights
473 superior to the rights of the transferee.†

474 (c) A transfer which creates an equitable lien shall not
475 be deemed to be perfected if there are available means by which
476 a legal lien could be created.†

477 (d) Any transfer not perfected prior to the filing of a
478 petition in a delinquency proceeding shall be deemed to be made
479 immediately before the filing of a successful petition.†

480 (e) For the purposes of this section, a transfer is not
481 made until the insurer or affiliate has acquired rights in the
482 property transferred.

483 (f)(e) Paragraphs (a)-(e) ~~(a)-(d)~~ apply whether or not
484 there are or were creditors who might have obtained any liens or
485 persons who might have become bona fide purchasers.

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486 Section 24. Subsection (6) is added to section 631.263,
487 Florida Statutes, to read:

488 631.263 Transfers after petition.--

489 (6) For the purposes of this section, a transfer is not
490 made until the insurer or affiliate has acquired rights in the
491 property transferred.

492 Section 25. Subsection (3) of section 631.54, Florida
493 Statutes, is amended to read:

494 631.54 Definitions.--As used in this part:

495 (3) "Covered claim" means an unpaid claim, including one
496 of unearned premiums, which arises out of, and is within the
497 coverage, and not in excess of, the applicable limits of an
498 insurance policy to which this part applies, issued by an
499 insurer, if such insurer becomes an insolvent insurer ~~after~~
500 ~~October 1, 1970,~~ and the claimant or insured is a resident of
501 this state at the time of the insured event or the property from
502 which the claim arises is permanently located in this state.

503 "Covered claim" shall not include:

504 (a) Any amount due any reinsurer, insurer, insurance pool,
505 or underwriting association, sought directly or indirectly
506 through a third party, as subrogation, contribution,
507 indemnification, or otherwise; or

508 (b) Any claim that would otherwise be a covered claim
509 under this part that has been rejected by any other state
510 guaranty fund on the grounds that an insured's net worth is
511 greater than that allowed under that state's guaranty law .

512 Member insurers shall have no right of subrogation,
513 contribution, indemnification, or otherwise, sought directly or

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514 indirectly through a third party, against the insured of any
515 insolvent member.

516 Section 26. Subsection (2) of section 631.904, Florida
517 Statutes, is amended to read:

518 631.904 Definitions.--As used in this part, the term:

519 (2) "Covered claim" means an unpaid claim, including a
520 claim for return of unearned premiums, which arises out of, is
521 within the coverage of, and is not in excess of the applicable
522 limits of, an insurance policy to which this part applies, which
523 policy was issued by an insurer and which claim is made on
524 behalf of a claimant or insured who was a resident of this state
525 at the time of the injury. The term "covered claim" does not
526 include any amount sought as a return of premium under any
527 retrospective rating plan; any amount due any reinsurer,
528 insurer, insurance pool, or underwriting association, as
529 subrogation recoveries or otherwise; any claim that would
530 otherwise be a covered claim that has been rejected by any other
531 state guaranty fund on the grounds that the insured's net worth
532 is greater than that allowed under that state's guaranty fund or
533 liquidation law, except this exclusion from the definition of
534 covered claim shall not apply to claims of employers who, prior
535 to April 30, 2004, entered into an agreement with the
536 corporation preserving the employer's right to seek coverage of
537 claims rejected by another state's guaranty fund; or any return
538 of premium resulting from a policy that was not in force on the
539 date of the final order of liquidation. Member insurers have no
540 right of subrogation against the insured of any insolvent
541 insurer. This provision shall be applied retroactively to cover

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542 claims of an insolvent self-insurance fund resulting from
543 accidents or losses incurred prior to January 1, 1994,
544 regardless of the date the petition in circuit court was filed
545 alleging insolvency and the date the court entered an order
546 appointing a receiver.

547 Section 27. Section 634.1815, Florida Statutes, is created
548 to read:

549 634.1815 Rebating; when allowed.--

550 (1) No salesperson shall rebate any portion of his or her
551 commission except as follows:

552 (a) The rebate shall be available to all consumers in the
553 same actuarial class.

554 (b) The rebate shall be in accordance with a rebating
555 schedule filed by the salesperson with the service agreement
556 company issuing the service agreement to which the rebate
557 applies. The service agreement company shall maintain a copy of
558 all rebating schedules for a period of 3 years.

559 (c) The rebating schedule shall be uniformly applied so
560 all consumers who purchase the same service agreement through
561 the salesperson for the same coverage shall receive the same
562 percentage rebate.

563 (d) The rebate schedule shall be prominently displayed in
564 public view in the salesperson's place of business, and a copy
565 shall be made available to consumers on request at no charge.

566 (e) The age, sex, place of residence, race, nationality,
567 ethnic origin, marital status, or occupation of the consumer
568 shall not be used in determining the percentage of the rebate or
569 whether a rebate is available.

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570 (2) No rebate shall be withheld or limited in amount based
571 on factors which are unfairly discriminatory.

572 (3) No rebate shall be given which is not reflected on the
573 rebate schedule.

574 (4) No rebate shall be refused or granted based upon the
575 purchase of or failure to purchase collateral business.

576 Section 28. Section 634.3205, Florida Statutes, is created
577 to read:

578 634.3205 Rebating; when allowed.--

579 (1) No sales representative shall rebate any portion of
580 his or her commission except as follows:

581 (a) The rebate shall be available to all consumers in the
582 same actuarial class.

583 (b) The rebate shall be in accordance with a rebating
584 schedule filed by the sales representative with the home
585 warranty association issuing the home warranty to which the
586 rebate applies. The home warranty association shall maintain a
587 copy of all rebating schedules for a period of 3 years.

588 (c) The rebating schedule shall be uniformly applied so
589 all consumers who purchase the same home warranty through the
590 sales representative for the same coverage shall receive the
591 same percentage rebate.

592 (d) The rebate schedule shall be prominently displayed in
593 public view in the sales representative's place of business, and
594 a copy shall be made available to consumers on request at no
595 charge.

596 (e) The age, sex, place of residence, race, nationality,
597 ethnic origin, marital status, or occupation of the consumer

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598 shall not be used in determining the percentage of the rebate or
599 whether a rebate is available.

600 (2) No rebate shall be withheld or limited in amount based
601 on factors which are unfairly discriminatory.

602 (3) No rebate shall be given which is not reflected on the
603 rebate schedule.

604 (4) No rebate shall be refused or granted based upon the
605 purchase of or failure to purchase collateral business.

606 Section 29. Subsection (8) is added to section 634.406,
607 Florida Statutes, to read:

608 634.406 Financial requirements.--

609 (8) An association licensed under this part and holding no
610 other license under part I or part II of this chapter is not
611 required to establish an unearned premium reserve or maintain
612 contractual liability insurance and may allow its premiums to
613 exceed the ratio to net assets limitation of this section if the
614 association complies with the following:

615 (a) The association or, if the association is a direct or
616 indirect wholly owned subsidiary of a parent corporation, its
617 parent corporation has, and maintains at all times, a minimum
618 net worth of at least \$100 million and provides the office with
619 the following:

620 1. A copy of the association's annual audited financial
621 statements or the audited consolidated financial statements of
622 the association's parent corporation, prepared by an independent
623 certified public accountant in accordance with generally
624 accepted accounting principles, which clearly demonstrate the
625 net worth of the association or its parent corporation to be

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626 \$100 million and a quarterly written certification to the office
627 that such entity continues to maintain the net worth required
628 under this paragraph.

629 2. The association's, or its parent corporation's, Form
630 10K, Form 10Q, or Form 20F as filed with the United States
631 Securities and Exchange Commission or such other documents
632 required to be filed with a recognized stock exchange, which
633 shall be provided on a quarterly and annual basis within 10 days
634 after the last date each such report must be filed with the
635 Securities and Exchange Commission, the National Association of
636 Security Dealers Automated Quotation system, or other recognized
637 stock exchange.

638
639 Failure to timely file the documents required under this
640 paragraph may, at the discretion of the office, subject the
641 association to suspension or revocation of its license under
642 this part. An association or parent corporation demonstrating
643 compliance with subparagraph 1. and subparagraph 2. must
644 maintain outstanding debt obligations, if any, rated in the top
645 four rating categories by a recognized rating service.

646 (b) If the net worth of a parent corporation is used to
647 satisfy the net worth provisions of paragraph (a), the following
648 provisions must be met:

649 1. The parent corporation must guarantee all service
650 warranty obligations of the association, wherever written, on a
651 form approved in advance by the office. No cancellation,
652 termination, or modification of the guarantee shall become
653 effective unless the parent corporation provides the office

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654 written notice at least 90 days before the effective date of the
655 cancellation, termination, or modification and the office
656 approves the request in writing. Prior to the effective date of
657 cancellation, termination, or modification of the guarantee, the
658 association must demonstrate to the satisfaction of the office
659 compliance with all applicable provisions of this part,
660 including whether the association will meet the requirements of
661 this section by the purchase of contractual liability insurance,
662 establishing required reserves, or other method allowed under
663 this section. If the association or parent corporation does not
664 demonstrate to the satisfaction of the office compliance with
665 all applicable provisions of this part, it shall immediately
666 cease writing new and renewal business upon the effective date
667 of the cancellation, termination, or modification.

668 2. The association must maintain at all times net assets
669 of at least \$750,000.

670 Section 30. Section 634.4225, Florida Statutes, is created
671 to read:

672 634.4225 Rebating; when allowed.--

673 (1) No sales representative shall rebate any portion of
674 his or her commission except as follows:

675 (a) The rebate shall be available to all consumers in the
676 same actuarial class.

677 (b) The rebate shall be in accordance with a rebating
678 schedule filed by the sales representative with the association
679 issuing the service warranty to which the rebate applies. The
680 association shall maintain a copy of all rebating schedules for
681 a period of 3 years.

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682 (c) The rebating schedule shall be uniformly applied so
683 all consumers who purchase the same service warranty through the
684 sales representative for the same coverage shall receive the
685 same percentage rebate.

686 (d) The rebate schedule shall be prominently displayed in
687 public view in the sales representative's place of business, and
688 a copy shall be made available to consumers on request at no
689 charge.

690 (e) The age, sex, place of residence, race, nationality,
691 ethnic origin, marital status, or occupation of the consumer
692 shall not be used in determining the percentage of the rebate or
693 whether a rebate is available.

694 (2) No rebate shall be withheld or limited in amount based
695 on factors which are unfairly discriminatory.

696 (3) No rebate shall be given which is not reflected on the
697 rebate schedule.

698 (4) No rebate shall be refused or granted based upon the
699 purchase of or failure to purchase collateral business.

700 Section 31. Subsection (2) of section 624.4072, Florida
701 Statutes, is amended to read:

702 624.4072 Minority-owned property and casualty insurers;
703 limited exemption for taxation and assessments.--

704 (2) Subsection (1) applies only to personal lines and
705 commercial lines residential property insurance policies as
706 defined in s. 627.4025, and applies only to an insurer that has
707 employees in this state and has a home office or a regional
708 office in this state. With respect to any tax year or
709 assessment year, beginning with the original enactment of this

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710 section, the exemptions provided by subsection (1) apply only if
711 during the year ~~an average of at least 10 percent of the~~
712 insurer's Florida residential property policies in force
713 included coverage of covered properties located in enterprise
714 zones designated pursuant to s. 290.0065.

715 Section 32. Subsection (1) of section 627.0629, Florida
716 Statutes, is amended to read:

717 627.0629 Residential property insurance; rate filings.--

718 (1)(a) Effective June 1, 2002, a rate filing for
719 residential property insurance must include actuarially
720 reasonable discounts, credits, or other rate differentials, or
721 appropriate reductions in deductibles, for properties on which
722 fixtures or construction techniques demonstrated to reduce the
723 amount of loss in a windstorm have been installed or
724 implemented. The fixtures or construction techniques shall
725 include, but not be limited to, fixtures or construction
726 techniques which enhance roof strength, roof covering
727 performance, roof-to-wall strength, wall-to-floor-to-foundation
728 strength, opening protection, and window, door, and skylight
729 strength. Credits, discounts, or other rate differentials for
730 fixtures and construction techniques which meet the minimum
731 requirements of the Florida Building Code must be included in
732 the rate filing. All insurance companies must make a rate filing
733 which includes the credits, discounts, or other rate
734 differentials by February 28, 2003.

735 (b) An insurer may petition the office for a hardship
736 exemption from the requirements of this section. In applying for
737 such an exemption, the insurer must demonstrate:

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738 1.a. That the number of policies written is insufficient
739 or of insufficient size to determine the appropriate credit,
740 discount, or other rate differential or reduction in
741 deductibles; or

742 b. That the premium derived from the number of policies
743 written is so low as to render any credit, discount, or other
744 rate differential or appropriate reduction in deductibles not
745 cost-effective;

746 3. That the cost of complying is greater to the insurer
747 than the resultant likely savings by virtue of any such credit,
748 discount, or other rate differential or appropriate reduction in
749 deductibles due to the actuarially demonstrated or actual small
750 number of policyholders likely to qualify for or qualifying for
751 the discount, credit, or other rate differential or appropriate
752 reduction in deductibles;

753 4. That the type and condition of the market generally and
754 specifically to the insurer is such that the discount, credit,
755 or other rate differential or appropriate reduction in
756 deductibles is not actuarially justified;

757 5. That granting the exemption is in the best interest of
758 the insurer; and

759 6. That granting the exemption will not place the insurer
760 in an unfair competitive position with respect to other insurers
761 in the marketplace.

762
763 The office may grant the exemption upon its determination that
764 the conditions and standards set forth in this paragraph have
765 been met. The exemption is valid for 3 years after the date

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766 granted. With respect to any petition for renewal of the
767 exemption, the chief executive officer of the insurer must
768 certify that there has been no material change in the conditions
769 under which the exemption was granted.

770 Section 33. Section 627.066, Florida Statutes, is
771 repealed.

772 Section 34. Paragraph (d) of subsection (2) of section
773 627.0651, Florida Statutes, is amended to read:

774 627.0651 Making and use of rates for motor vehicle
775 insurance.--

776 (2) Upon receiving notice of a rate filing or rate change,
777 the office shall review the rate or rate change to determine if
778 the rate is excessive, inadequate, or unfairly discriminatory.
779 In making that determination, the office shall in accordance
780 with generally accepted and reasonable actuarial techniques
781 consider the following factors:

782 (d) Investment income reasonably expected by the insurer,
783 consistent with the insurer's investment practices, from
784 investable premiums anticipated in the filing, plus any other
785 expected income from currently invested assets representing the
786 amount expected on unearned premium reserves and loss reserves.
787 Such investment income shall not include income from invested
788 surplus. The commission may adopt rules utilizing reasonable
789 techniques of actuarial science and economics to specify the
790 manner in which insurers shall calculate investment income
791 attributable to motor vehicle insurance policies written in this
792 state and the manner in which such investment income is used in
793 the calculation of insurance rates. Such manner shall

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794 contemplate the use of a positive underwriting profit allowance
795 in the rates that will be compatible with a reasonable rate of
796 return plus provisions for contingencies. ~~The total of the~~
797 ~~profit and contingency factor as specified in the filing shall~~
798 ~~be utilized in computing excess profits in conjunction with s.~~
799 ~~627.066.~~ In adopting such rules, the commission shall in all
800 instances adhere to and implement the provisions of this
801 paragraph.

802 Section 35. Subsection (4) of section 628.6017, Florida
803 Statutes, is amended to read:

804 628.6017 Converting assessable mutual insurer.--

805 (4) An assessable mutual insurer becoming a stock insurer
806 or a nonassessable mutual insurer shall not be subject to ~~s.~~
807 ~~627.215~~ or s. 627.351(5) for 5 years following authorization of
808 the conversion by the office. ~~However, the converted stock~~
809 ~~insurer or nonassessable mutual insurer shall file all necessary~~
810 ~~data required by s. 627.215. Such amounts otherwise subject to~~
811 ~~s. 627.215(10) shall be maintained as surplus as to~~
812 ~~policyholders and not be available for dividends for a period of~~
813 ~~5 years.~~

814 Section 36. Effective upon this act becoming a law, and
815 contingent upon the enactment of SB 2910, HB 1629, or similar
816 legislation, subsection (20) of section 627.64872, Florida
817 Statutes, is created to read:

818 627.64872 Florida Health Insurance Plan.--

819 (20) COMBINING MEMBERSHIP OF THE FLORIDA COMPREHENSIVE
820 HEALTH ASSOCIATION.--

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821 (a)1. Upon implementation of the Florida Health Insurance
822 Plan, the Florida Comprehensive Health Association, as specified
823 in s. 627.6488, is abolished as a separate nonprofit entity and
824 shall be subsumed under the Board of Directors of the Florida
825 Health Insurance Plan. All individuals actively enrolled in the
826 Florida Comprehensive Health Association shall be enrolled in
827 the plan subject to its rules and requirements, except as
828 otherwise specified in this section. Maximum lifetime benefits
829 paid to an individual in the plan may not exceed the amount
830 established under subsection (16), and benefits previously paid
831 for any individual by the Florida Comprehensive Health
832 Association shall be used in the determination of the total
833 lifetime benefits paid under the plan.

834 2. All persons enrolled in the Florida Comprehensive
835 Health Association upon implementation of the Florida Health
836 Insurance Plan are eligible only for the benefits authorized
837 under subsection (16). Persons identified by this section shall
838 convert to the benefits authorized under subsection (16) no
839 later than January 1, 2005.

840 3. Except as otherwise provided in this section, the
841 Florida Comprehensive Health Association shall operate under the
842 existing plan of operation without modification until the
843 adoption of the new plan of operation for the Florida Health
844 Insurance Plan.

845 (b) As a condition of doing business in this state, an
846 insurer shall pay an assessment to the board in the amount
847 prescribed by this paragraph. For operating losses incurred on
848 or after July 1, 2004, by persons previously enrolled in the

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849 Florida Comprehensive Health Association, each insurer shall
850 annually be assessed by the board in the following calendar year
851 a portion of such incurred operating losses of the plan. Such
852 portion shall be determined by multiplying such operating losses
853 by a fraction, the numerator of which equals the insurer's
854 earned premium pertaining to direct writings of health insurance
855 in the state during the calendar year proceeding that for which
856 the assessment is levied, and the denominator of which equals
857 the total of all such premiums earned by participating insurers
858 in the state during such calendar year. For the purposes of this
859 section only, the term "health insurance" means any hospital and
860 medical expense incurred policy, minimum premium plan, stop-loss
861 coverage, health maintenance organization contract, prepaid
862 health clinic contract, multiple-employer welfare arrangement
863 contract, or fraternal benefit society health benefits contract,
864 whether sold as an individual or group policy or contract. The
865 term does not include any policy covering medical payment
866 coverage or personal injury protection coverage in a motor
867 vehicle policy, coverage issued as a supplement to liability
868 insurance, or workers' compensation.

869 Section 37. Section 624.428, Florida Statutes, is amended
870 to read:

871 624.428 Licensed agent law, life and health insurances.--

872 (1) No ~~life~~ insurer shall deliver or issue for delivery in
873 this state any policy of life insurance, master group life
874 insurance contract, master credit life policy or agreement,
875 annuity contract, or contract or policy of health insurance,
876 unless the application for such policy or contract is taken by,

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877 and the delivery of such policy or contract is made through, a
878 resident or nonresident ~~an~~ insurance agent of the insurer duly
879 licensed and appointed under the law of this state, who shall
880 receive the usual commission due to an agent from such insurer.

881 (2) Each such insurer shall maintain a licensed and
882 appointed resident or nonresident agent at all times for the
883 purpose of and through whom policies or contracts issued or
884 delivered in this state shall be serviced.

885 (3) This section does not apply to policies of insurance
886 or annuity contracts on nonresidents which are applied for
887 outside, and delivered in, the state or to reissuance of
888 insurance policies or endorsements thereto which are part of a
889 mass reissuance of such policies or endorsements and do not
890 involve a change of premium or payment of agent's commissions.

891 Section 38. Section 627.0915, Florida Statutes, is amended
892 to read:

893 627.0915 Rate filings; workers' compensation, drug-free
894 workplace, and safe employers.—

895 (1) The office shall approve rating plans for workers'
896 compensation and employer's liability insurance that give
897 specific identifiable consideration in the setting of rates to
898 employers that either implement a drug-free workplace program
899 pursuant to s. 440.102 and rules adopted under such section ~~by~~
900 ~~the commission~~ or implement a safety program pursuant to
901 provisions of the rating plan or implement both a drug-free
902 workplace program and a safety program. The plans must be
903 actuarially sound and must state the savings anticipated to
904 result from such drug-testing and safety programs.

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905 (2) An insurer offering a rate plan approved under this
 906 section shall notify the employer at the time of a written offer
 907 of insurance and at the time of each renewal of the policy of
 908 the availability of the premium discount where a drug fee
 909 workplace plan is used by the employer pursuant to s. 440.102
 910 and related rules. The Financial Services Commission may adopt
 911 rules to implement the provisions of this subsection.

912

913 ===== T I T L E A M E N D M E N T =====

914 Remove line 25 and insert:
 915 an insured; providing criteria and limitations; amending s.
 916 626.2815, F.S.; deleting certain minimum continuing education
 917 requirements; amending s. 626.015, F.S.; defining the term
 918 "personal lines agent"; amending s. 626.022, F.S.; providing
 919 for application; amending s. 626.241, F.S.; limiting the scope
 920 of personal lines agent examinations; amending s. 626.311, F.S.;
 921 limiting the types of business that may be transacted by
 922 personal lines agents; amending s. 626.727, F.S.; providing that
 923 certain provisions apply to personal lines agents; amending s.
 924 626.732, F.S.; revising certain education and experience
 925 requirements for personal lines agents; amending s. 626.747,
 926 F.S.; requiring branch agencies to have certain licensed agents
 927 at each location; amending s. 627.351, F.S.; providing that
 928 certain employees of the Citizens' Property Insurance
 929 Corporation need not be licensed as agents; providing that the
 930 act does not require the Department of Financial Services to
 931 begin issuing certain licenses by the effective date of the act,
 932 under specified conditions; amending s. 626.321, F.S.; limiting

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HOUSE AMENDMENT

Bill No. HB 1643 CS

Amendment No. (for drafter's use only)

933 the types of business that may be transacted by personal lines
934 agents; amending s. 628.709, F.S.; revising membership criteria
935 for mutual insurance holding companies relating to policyholders
936 of subsidiary insurance companies; amending s. 631.021, F.S.;
937 authorizing certain domiciliary courts to exercise exclusive
938 jurisdiction over certain persons under certain circumstances;
939 specifying the Circuit Court of Leon County as having exclusive
940 jurisdiction over certain proceedings and claims; amending s.
941 631.041, F.S.; entitling the estates of certain injured insurers
942 to actual damages; authorizing a receivership court to impose
943 additional sanctions; amending s. 631.0515, F.S.; subjecting
944 certain managing general agents or holding companies to court
945 jurisdiction under certain circumstances; amending s. 631.141,
946 F.S.; specifying certain expenses as administrative and
947 recoverable by a receiver in certain proceedings; amending s.
948 631.205, F.S.; specifying that entry of certain orders does not
949 constitute anticipatory breach of certain contracts or serve as
950 grounds for certain adverse contract actions by a reinsurer;
951 creating s. 631.206, F.S.; voiding certain contractual
952 arbitration provisions by insurers in receivership; specifying a
953 replacement arbitration provision; amending s. 631.261, F.S.;
954 voiding certain transfers or liens made by certain persons prior
955 to certain delinquency proceedings; specifying a criterion for
956 making certain transfers; amending ss. 631.262 and 631.263,
957 F.S.; specifying a criterion for making certain transfers;
958 amending ss. 631.54 and 631.904, F.S.; revising the definition
959 of covered claim; excluding certain claims rejected by another
960 state's guaranty fund under certain circumstances; providing an

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HOUSE AMENDMENT

Bill No. HB 1643 CS

Amendment No. (for drafter's use only)

961 exception; denying member insurers any right to indemnification
962 or contribution sought through third parties; creating s.
963 634.1815, F.S.; providing conditions under which a salesperson
964 of a motor vehicle service agreement company may rebate his or
965 her commission; creating s. 634.3205, F.S.; providing conditions
966 under which a sales representative of a home warranty
967 association may rebate his or her commission; amending s.
968 634.406, F.S.; providing conditions under which a service
969 warranty association is exempt from certain premium reserve and
970 liability insurance requirements and may allow premiums to
971 exceed certain limits; creating s. 634.4225, F.S.; providing
972 conditions under which a sales representative of a service
973 warranty association may rebate his or her commission; amending
974 s. 624.4072, F.S.; specifying applicability of certain
975 exemptions for minority-owned property and casualty insurers;
976 amending s. 627.0629, F.S.; authorizing an exemption for certain
977 insurers under certain circumstances; repealing s. 627.066,
978 F.S., relating to insurance profits; amending ss. 627.0651 and
979 628.6017, F.S., to conform; creating s. 627.64872(20), F.S.;
980 defining the term "health insurance" for purposes of this
981 section; creating s. 17.0416, F.S.; amending s. 624.428, F.S.;
982 clarifying provisions relating to resident agent requirements
983 for insurers issuing specified types of life insurance policies;
984 amending s. 627.0915, F.S.; providing for notice by insurers to
985 employers of the availability of premium discounts where drug
986 free workplace programs are used; authorizing the Financial
987 Services Commission to adopt rules; providing

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