## CHAMBER ACTION

The Committee on Insurance recommends the following:

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## Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to insurers; amending s. 626.321, F.S.; limiting the types of business that may be transacted by personal lines agents; amending s. 626.854, F.S.; specifying duties of a public adjuster relating to contractors; prohibiting a public adjuster from restricting certain access and communications; amending s. 631.021, F.S.; authorizing certain domiciliary courts to exercise exclusive jurisdiction over certain persons under certain circumstances; specifying the Circuit Court of Leon County as having exclusive jurisdiction over certain proceedings and claims; amending s. 631.041, F.S.; entitling the estates of certain injured insurers to actual damages; authorizing a receivership court to impose additional sanctions; amending s. 631.0515, F.S.; subjecting certain managing general agents or holding companies to court jurisdiction under certain circumstances; amending s. 631.141, F.S.; specifying certain expenses as administrative and recoverable by a

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receiver in certain proceedings; amending s. 631.205, F.S.; specifying that entry of certain orders does not constitute anticipatory breach of certain contracts or serve as grounds for certain adverse contract actions by a reinsurer; creating s. 631.206, F.S.; voiding certain contractual arbitration provisions by insurers in receivership; specifying a replacement arbitration provision; amending s. 631.261, F.S.; voiding certain transfers or liens made by certain persons prior to certain delinquency proceedings; specifying a criterion for making certain transfers; amending ss. 631.262 and 631.263, F.S.; specifying a criterion for making certain transfers; amending s. 625.081, F.S.; excepting credit disability insurance from certain active life reserve requirements for health insurance; amending s. 625.121, F.S.; providing for additional minimum standards for valuation of certain policies and contracts; providing minimum reserve requirements for credit life and disability policies; repealing s. 625.131, F.S., relating to special reserve bases for credit life and disability policies; providing an effective date.

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

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Section 1. Paragraph (d) of subsection (1) of section 626.321, Florida Statutes, is amended to read:

50 626.321 Limited licenses.--

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

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

- 1. License covering only insurance of personal effects except as provided in subparagraph 2. The license may be issued only:
- a. To a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency, which person is engaged in the sale or handling of transportation of baggage and personal effects of travelers, and may authorize the sale of such insurance only in connection with such transportation; or
- b. To the full-time salaried employee of a licensed general lines agent or to, a full-time salaried employee of a business which offers motor vehicles for rent or lease, or to a business office of a business entity that which offers motor vehicles for rent or lease if insurance sales activities authorized by the license are in connection with and incidental to the rental of a motor vehicle limited to full-time salaried employees. An entity applying for a license under this subsection:
- (I) Is required to submit only one application for a license under s. 626.171. The requirements of s. 626.171(5) shall apply only to the officers and directors of the entity submitting the application.

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

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

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

2. A business entity that office licensed pursuant to subparagraph 1., or a person licensed pursuant to subparagraph 1. who is a full-time salaried employee of a business which offers motor vehicles for rent or lease, may include lessees under a master contract providing coverage to the lessor or may transact excess motor vehicle liability insurance providing coverage in excess of the standard liability limits provided by the lessor in its lease to a person renting or leasing a motor vehicle from the licensee's employer for liability arising in connection with the negligent operation of the leased or rented motor vehicle, provided that the lease or rental agreement is

for not more than 30 days; that the lessee is not provided coverage for more than 30 consecutive days per lease period, and, if the lease is extended beyond 30 days, the coverage may be extended one time only for a period not to exceed an additional 30 days; that the lessee is given written notice that his or her personal insurance policy providing coverage on an owned motor vehicle may provide additional excess coverage; and that the purchase of the insurance is not required in connection with the lease or rental of a motor vehicle. The excess liability insurance may be provided to the lessee as an additional insured on a policy issued to the licensee's employer.

- 3. A business entity that office licensed pursuant to subparagraph 1., or a person licensed pursuant to subparagraph 1. who is a full-time salaried employee of a business which offers motor vehicles for rent or lease, may, as an agent of an insurer, transact insurance that provides coverage for the liability of the lessee to the lessor for damage to the leased or rented motor vehicle if:
- a. The lease or rental agreement is for not more than 30 days; or the lessee is not provided coverage for more than 30 consecutive days per lease period, but, if the lease is extended beyond 30 days, the coverage may be extended one time only for a period not to exceed an additional 30 days;
- b. The lessee is given written notice that his or her personal insurance policy that provides coverage on an owned motor vehicle may provide such coverage with or without a deductible; and

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

Section 2. Subsections (1) and (3) of section 626.854, Florida Statutes, are amended to read:

626.854 "Public adjuster" defined; prohibitions.--The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

- (1) A "public adjuster" is any person, except a duly licensed attorney at law as hereinafter in s. 626.860 provided, or an employee of such an attorney under the attorney's supervision, who, for money, commission, or any other thing of value, prepares, completes, or files an insurance claim form for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts or aids in any manner on behalf of an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims, and also includes any person who, for money, commission, or any other thing of value, solicits, investigates, or adjusts such claims on behalf of any such public adjuster.
- (3)(a) A public adjuster may not give legal advice. A public adjuster may not act on behalf of or aid any person in negotiating or settling a claim relating to bodily injury, death, or noneconomic damages, extra-contractual damages unrelated to the damages under the policy, unfair claims practices violations, tort claims, or statutory interest, costs,

and attorney's fees. Nothing in this paragraph shall be construed to prohibit a public adjuster from testifying or consulting with an attorney in pursuing claims for extracontractual damages or unfair claims settlement practices.

- (b) A public adjuster shall ensure that if a contractor, architect, engineer, or other licensed professional is used in formulating estimates or otherwise participates in the adjustment of the claim, the professional must be licensed by the Florida Department of Business and Professional Regulation.
- (c) A public adjuster shall not restrict or prevent an insurer, company or independent adjuster, attorney, or any other person acting on behalf of the insurer from having reasonable access at reasonable times to an insured or claimant or to the insured property which is the subject of a claim.
- Section 3. Subsection (6) is added to section 631.021, Florida Statutes, to read:
- 631.021 Jurisdiction of delinquency proceeding; venue; change of venue; exclusiveness of remedy; appeal.--
- (6) The domiciliary court acquiring jurisdiction over persons subject to this section may exercise exclusive jurisdiction to the exclusion of all other courts, except as limited by the provisions of this section. Upon the issuance of an order of conservation, rehabilitation, or liquidation, the Circuit Court of Leon County shall have exclusive jurisdiction with respect to assets or property of any insurer subject to such proceedings and claims against said insurer's assets or property.

Section 4. Subsection (6) is added to section 631.041, Florida Statutes, to read:

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- 631.041 Automatic stay; relief from stay; injunctions.--
- (6) The estate of an insurer in rehabilitation or liquidation which is injured by any willful violation of an applicable stay or injunction shall be entitled to actual damages, including costs and attorney's fees, and, in appropriate circumstances, the receivership court may impose additional sanctions.

Section 5. Section 631.0515, Florida Statutes, is amended to read:

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

directly or indirectly owns all of the stock of a Florida domestic insurer and which is not insolvent as defined by s. 607.01401(16). However, a managing general agent or holding company with a controlling interest in a domestic insurer in this state is subject to jurisdiction of the court under the provisions of s. 631.025.

Section 6. Paragraph (a) of subsection (7) of section 631.141, Florida Statutes, is amended to read:

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

(7)(a) In connection with a delinquency proceeding, the department may appoint one or more special agents to act for it, and it may employ such counsel, clerks, and assistants as it deems necessary. The compensation of the special agents, counsel, clerks, or assistants and all expenses of taking possession of the insurer and of conducting the proceeding shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer.

Such expenses are administrative expenses and are recoverable by the receiver in any actions in which the receiver is authorized or entitled to recover its administrative expenses. Within the limits of duties imposed upon them, special agents shall possess all the powers given to and, in the exercise of those powers, shall be subject to all duties imposed upon the receiver with respect to such proceeding.

Section 7. Section 631.205, Florida Statutes, is amended to read:

payable under a contract of reinsurance to which the insolvent insurer is a party are to be paid directly to the domiciliary receiver as general assets of the receivership estate unless the reinsurance contract contains a clause which specifically names the insolvent insurer's insured as a direct beneficiary of the reinsurance contract. The entry of an order of conservation, rehabilitation, or liquidation shall not be deemed an anticipatory breach of any reinsurance contract, nor shall it be grounds for retroactive revocation or retroactive cancellation of any reinsurance contracts by the reinsurer.

Section 8. Section 631.206, Florida Statutes, is created to read:

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

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration pursuant to the American Arbitration Association Commercial Arbitration Rules and chapter 682, Florida Statutes, and judgment on the award rendered by the arbitrators shall be entered by the receivership court. Venue shall be in Leon County, Florida. Disputes shall be submitted to a panel of three arbitrators, one to be chosen by each party and the third by the two so chosen. Arbitrators shall be

selected from a list of potential qualified
arbitrators with 10 years' experience involving the
insurance industry. If the parties do not agree upon
the qualifications of a mediator, each party shall
select its mediator from a list of potential mediators
approved by the receivership court.

Section 9. Subsection (1) of section 631.261, Florida Statutes, is amended, and subsection (4) is added to said section, to read:

631.261 Voidable transfers.--

- (1)(a) Any transfer of, or lien upon, the property of an insurer or affiliate which is made or created within 4 months prior to the commencement of any delinquency proceeding under this chapter which gives with the intent of giving to any creditor of the insurer a preference or enables of enabling the creditor to obtain a greater percentage of her or his debt than any other creditor of the same class, and which is accepted by such creditor having reasonable cause to believe that such preference will occur, shall be voidable.
- (b) Any transfer of, or lien upon, the property of an insurer or affiliate which is made or created between 4 months and 1 year prior to the commencement of any delinquency proceeding under this chapter is void if such transfer or lien inured to the benefit of a director, officer, employee, stockholder, member, subscriber, affiliate, managing general agent, or insider or any relative of any director, officer,

employee, stockholder, member, subscriber, affiliate, managing general agent, or insider.

- (4) For purposes of this section, a transfer is not made or created until the insurer or affiliate has acquired rights in the property transferred.
- Section 10. Subsection (2) of section 631.262, Florida Statutes, is amended to read:
  - 631.262 Transfers prior to petition. --

- (2) Transfers shall be deemed to have been made or suffered, or obligations incurred, when perfected according to the following criteria:
- (a) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.÷
- (b) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.
- (c) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.  $\div$
- (d) Any transfer not perfected prior to the filing of a petition in a delinquency proceeding shall be deemed to be made immediately before the filing of a successful petition. $\div$

326	(e) For the purposes of this section, a transfer is not
327	made until the insurer or affiliate has acquired rights in the
328	property transferred.
329	$\frac{(f)(e)}{(e)}$ Paragraphs (a)- $\frac{(e)(d)}{(e)}$ apply whether or not there
330	are or were creditors who might have obtained any liens or
331	persons who might have become bona fide purchasers.
332	Section 11. Subsection (6) is added to section 631.263,
333	Florida Statutes, to read:
334	631.263 Transfers after petition
335	(6) For the purposes of this section, a transfer is not
336	made until the insurer or affiliate has acquired rights in the
337	property transferred.
338	Section 12. Section 625.081, Florida Statutes, is amended
339	to read:
340	625.081 Reserve for health insuranceFor all health
341	insurance policies, the insurer shall maintain an active life
342	reserve which places a sound value on the insurer's liabilities
343	under such policies; is not less than the reserve according to
344	appropriate standards set forth in rules issued by the
345	commission; and, with the exception of credit disability
346	insurance, in no event, is less in the aggregate than the pro
347	rata gross unearned premiums for such policies.
348	Section 13. Paragraphs (a), (e), and (f) of subsection (5)
349	and subsection (13) of section 625.121, Florida Statutes, are
350	amended, and paragraphs (k) and (l) are added to subsection (5)

625.121 Standard Valuation Law; life insurance.--

of said section, to read:

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MINIMUM STANDARD FOR VALUATION OF POLICIES AND CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF STANDARD NONFORFEITURE LAW. -- Except as otherwise provided in paragraph (h) and subsections (6), (11), and (14), the minimum standard for the valuation of all such policies and contracts issued on or after the operative date of s. 627.476 (Standard Nonforfeiture Law for Life Insurance) shall be the commissioners' reserve valuation method defined in subsections (7), (11), and (14); 5 percent interest for group annuity and pure endowment contracts and 3.5 percent interest for all other such policies and contracts, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after July 1, 1973, 4 percent interest for such policies issued prior to October 1, 1979, and 4.5 percent interest for such policies issued on or after October 1, 1979; and the following tables:

- (a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies:
- 1. For policies issued prior to the operative date of s. 627.476(9), the commissioners' 1958 Standard Ordinary Mortality Table; except that, for any category of such policies issued on female risks, modified net premiums and present values, referred to in subsection (7), may be calculated according to an age not more than 6 years younger than the actual age of the insured.÷
- 2. For policies issued on or after the operative date of s. 627.476(9), the commissioners' 1980 Standard Ordinary

Mortality Table or, at the election of the insurer for any one or more specified plans of life insurance, the commissioners' 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors.

- 3. For policies issued on or after July 1, 2004, ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, adopted by rule by the commission for use in determining the minimum standard of valuation for those policies.
- (e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts:
- For policies or contracts issued on or after January 1,
   the tables of period 2 disablement rates and the 1930 to
   termination rates of the 1952 disability study of the
   Society of Actuaries, with due regard to the type of benefit.÷
- 2. For policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either those tables or, at the option of the insurer, the class three disability table (1926).; and
- 3. For policies issued prior to January 1, 1961, the class three disability table (1926).
- 4. For policies or contracts issued on or after July 1,
  2004, tables of disablement rates and termination rates adopted
  after 1980 by the National Association of Insurance
  Commissioners, adopted by rule by the commission for use in
  determining the minimum standard of valuation for those policies
  or contracts.

Any such table for active lives shall be combined with a
mortality table permitted for calculating the reserves for life
insurance policies.

(f) For accidental death benefits in or supplementary to policies:

- 1. For policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table.  $\div$
- 2. For policies issued on or after January 1, 1961, and prior to January 1, 1966, either that table or, at the option of the insurer, the Intercompany Double Indemnity Mortality Table.÷
- 3. For policies issued prior to January 1, 1961, the Intercompany Double Indemnity Mortality Table.
- 4. For policies issued on or after July 1, 2004, tables of accidental death benefits adopted after 1980 by the National Association of Insurance Commissioners, adopted by rule by the commission for use in determining the minimum standard of valuation for those policies.

Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(k) For individual annuity and pure endowment contracts issued on or after July 1, 2004, excluding any disability and accidental death benefits purchased under those contracts, individual annuity mortality tables adopted after 1980 by the National Association of Insurance Commissioners, adopted by rule by the commission for use in determining the minimum standard of valuation for those contracts.

(1) For all annuities and pure endowments purchased on or after July 1, 2004, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts, group annuity mortality tables adopted after 1980 by the National Association of Insurance Commissioners, adopted by rule by the commission for use in determining the minimum standard of valuation for those contracts.

- (13) APPLICABILITY TO CREDIT LIFE AND DISABILITY INSURANCE
  POLICIES. --
  - (a) For policies issued prior to January 1, 2004:
- 1. The minimum reserve for single-premium credit disability insurance, monthly premium credit life insurance, and monthly premium credit disability insurance shall be the unearned gross premium.
- 2. As to single-premium credit life insurance policies, the insurer shall establish and maintain reserves which are not less than the value, at the valuation date, of the risk for the unexpired portion of the period for which the premium has been paid as computed on the basis of the commissioners' 1980

  Standard Ordinary Mortality Table, plus 3.5 percent interest. At the discretion of the office, the insurer may make a reasonable assumption as to the ages at which net premiums are to be determined. In lieu of such basis, reserves based upon unearned gross premiums may be used at the option of the insurer.
  - (b) For policies issued on or after January 1, 2004:
- 1. The minimum reserve for single-premium credit disability insurance shall be:

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a. The unearned gross premium; or

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- b. Based upon a morbidity table that is adopted by the National Association of Insurance Commissioners and is specified in a rule the commission shall adopt pursuant to s. 625.121(14).
- 2. The minimum reserve for monthly premium credit disability insurance shall be the unearned gross premium.
- 3. The minimum reserve for monthly premium credit life insurance shall be the unearned gross premium.
- 4. As to single-premium credit life insurance policies, the insurer shall establish and maintain reserves which are not less than the value, at the valuation date, of the risk for the unexpired portion of the period for which the premium has been paid as computed on the basis of the commissioners' 1980 Standard Ordinary Mortality Table or any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule adopted by the commission for use in determining the minimum standard of valuation for such policies, plus an interest rate determined in accordance with s. 625.121(6). At the discretion of the office, the insurer may make a reasonable assumption as to the ages at which net premiums are to be determined. In lieu of such basis, reserves based upon unearned gross premiums may be used at the option of the insurer. This section does not apply as to those credit life insurance policies for which reserves are computed and maintained as required under s. 625.131.

Section 14. <u>Section 625.131</u>, Florida Statutes, is repealed.

Section 15. This act shall take effect upon becoming a law.

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