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LEGISLATIVE ACTION

Senate	.	House
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	.	
Floor: WD	.	
03/09/2012 11:38 AM	.	
	.	

Senator Smith moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

(9) "Corporate officer" or "officer of a corporation" means
any person who fills an office provided for in the corporate
charter or articles of incorporation filed with the Division of
Corporations of the Department of State or as permitted or



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14 required by chapter 607. ~~As to persons engaged in the~~
15 ~~construction industry,~~ The term "officer of a corporation"
16 includes a member owning at least 10 percent of a limited
17 liability company created and approved under chapter 608.

18 Section 2. Paragraph (b) of subsection (15) of section
19 440.02, Florida Statutes, is amended to read:

20 440.02 Definitions.—When used in this chapter, unless the
21 context clearly requires otherwise, the following terms shall
22 have the following meanings:

23 (15)

24 (b) "Employee" includes any person who is an officer of a
25 corporation and who performs services for remuneration for such
26 corporation within this state, whether or not such services are
27 continuous.

28 1. Any officer of a corporation may elect to be exempt from
29 this chapter by filing ~~written~~ notice of the election with the
30 department as provided in s. 440.05.

31 2. As to officers of a corporation who are engaged in the
32 construction industry, no more than three officers of a
33 corporation or of any group of affiliated corporations may elect
34 to be exempt from this chapter by filing a ~~written~~ notice of the
35 election with the department as provided in s. 440.05. Officers
36 must be shareholders, each owning at least 10 percent of the
37 stock of such corporation and listed as an officer of such
38 corporation with the Division of Corporations of the Department
39 of State, in order to elect exemptions under this chapter. For
40 purposes of this subparagraph, the term "affiliated" means and
41 includes one or more corporations or entities, any one of which
42 is a corporation engaged in the construction industry, under the



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43 same or substantially the same control of a group of business
44 entities which are connected or associated so that one entity
45 controls or has the power to control each of the other business
46 entities. The term "affiliated" includes, but is not limited to,
47 the officers, directors, executives, shareholders active in
48 management, employees, and agents of the affiliated corporation.
49 The ownership by one business entity of a controlling interest
50 in another business entity or a pooling of equipment or income
51 among business entities shall be prima facie evidence that one
52 business is affiliated with the other.

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

56
57 Services are presumed to have been rendered to the corporation
58 if the officer is compensated by other than dividends upon
59 shares of stock of the corporation which the officer owns.

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

62 440.05 Election of exemption; revocation of election;
63 notice; certification.-

64 (3) Each officer of a corporation who is engaged in the
65 construction industry and who elects an exemption from this
66 chapter or who, after electing such exemption, revokes that
67 exemption, must submit ~~mail~~ a ~~written~~ notice to such effect to
68 the department on a form prescribed by the department. ~~The~~
69 ~~notice of election to be exempt from the provisions of this~~
70 ~~chapter must be notarized and under oath.~~ The notice of election
71 to be exempt which is electronically submitted to the department



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72 by the officer of a corporation who is allowed to claim an
73 exemption as provided by this chapter must list the name,
74 federal tax identification number, date of birth, Florida driver
75 license number or Florida identification card number ~~social~~
76 ~~security number~~, all certified or registered licenses issued
77 pursuant to chapter 489 held by the person seeking the
78 exemption, ~~a copy of relevant documentation as to employment~~
79 ~~status filed with the Internal Revenue Service as specified by~~
80 ~~the department, a copy of the relevant occupational license in~~
81 ~~the primary jurisdiction of the business, and the registration~~
82 number of the corporation filed with the Division of
83 Corporations of the Department of State, and the percentage of
84 ownership ~~along with a copy of the stock certificate~~ evidencing
85 the required ownership under this chapter. The notice of
86 election to be exempt must identify each corporation that
87 employs the person electing the exemption and must list the
88 social security number or federal tax identification number of
89 each such employer and the additional documentation required by
90 this section. In addition, the notice of election to be exempt
91 must provide that the officer electing an exemption is not
92 entitled to benefits under this chapter, must provide that the
93 election does not exceed exemption limits for officers provided
94 in s. 440.02, and must certify that any employees of the
95 corporation whose officer elects an exemption are covered by
96 workers' compensation insurance. Upon receipt of the notice of
97 the election to be exempt, receipt of all application fees, and
98 a determination by the department that the notice meets the
99 requirements of this subsection, the department shall issue a
100 certification of the election to the officer, unless the



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101 department determines that the information contained in the
102 notice is invalid. The department shall revoke a certificate of
103 election to be exempt from coverage upon a determination by the
104 department that the person does not meet the requirements for
105 exemption or that the information contained in the notice of
106 election to be exempt is invalid. The certificate of election
107 must list the name of the corporation listed in the request for
108 exemption. A new certificate of election must be obtained each
109 time the person is employed by a new or different corporation
110 that is not listed on the certificate of election. A copy of the
111 certificate of election must be sent to each workers'
112 compensation carrier identified in the request for exemption.
113 Upon filing a notice of revocation of election, an officer who
114 is a subcontractor or an officer of a corporate subcontractor
115 must notify her or his contractor. Upon revocation of a
116 certificate of election of exemption by the department, the
117 department shall notify the workers' compensation carriers
118 identified in the request for exemption.

119 (6) A construction industry certificate of election to be
120 exempt which is issued in accordance with this section shall be
121 valid for 2 years after the effective date stated thereon. Both
122 the effective date and the expiration date must be listed on the
123 face of the certificate by the department. The construction
124 industry certificate must expire at midnight, 2 years from its
125 issue date, as noted on the face of the exemption certificate. A
126 construction industry certificate of election to be exempt may
127 be revoked before its expiration by the officer for whom it was
128 issued or by the department for the reasons stated in this
129 section. At least 60 days before ~~prior to~~ the expiration date of



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130 a construction industry certificate of exemption ~~issued after~~
131 ~~December 1, 1998~~, the department shall send notice of the
132 expiration date ~~and an application for renewal~~ to the
133 certificateholder at the address on the certificate or to the e-
134 mail address on file with the department.

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

138 440.05 Election of exemption; revocation of election;
139 notice; certification.-

140 (6) A ~~construction industry~~ certificate of election to be
141 exempt which is issued on or after January 1, 2013, in
142 accordance with this section is ~~shall be~~ valid for 2 years after
143 the effective date stated thereon. Both the effective date and
144 the expiration date must be listed on the face of the
145 certificate by the department. The ~~construction industry~~
146 certificate must expire at midnight, 2 years from its issue
147 date, as noted on the face of the exemption certificate. A
148 ~~construction industry~~ certificate of election to be exempt may
149 be revoked before its expiration by the officer for whom it was
150 issued or by the department for the reasons stated in this
151 section. At least 60 days before the expiration date of a
152 ~~construction industry~~ certificate of exemption, the department
153 shall send notice of the expiration date to the
154 certificateholder at the address on the certificate or to the e-
155 mail address on file with the department.

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

158 440.107 Department powers to enforce employer compliance



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159 with coverage requirements.-

160 (15) A limited liability company that is not engaged in the
161 construction industry and that meets the definition of
162 "employment" at any time between July 1, 2013, and December 31,
163 2013, may not be issued a penalty pursuant to this section for
164 failing to secure the payment of workers' compensation.

165 Section 6. Subsections (7) and (8) of section 624.307,
166 Florida Statutes, are renumbered as subsections (8) and (9),
167 respectively, and a new subsection (7) is added to that section,
168 to read:

169 624.307 General powers; duties.-

170 (7) The office, within existing resources, may expend funds
171 for the professional development of its employees, including,
172 but not limited to, professional dues for employees who are
173 required to be members of professional organizations;
174 examinations leading to professional designations required for
175 employment with the office; training courses and examinations
176 provided through, and to ensure compliance with, the National
177 Association of Insurance Commissioners; or other training
178 courses related to the regulation of insurance.

179 Section 7. Section 627.215, Florida Statutes, is amended to
180 read:

181 627.215 Excessive profits for ~~workers' compensation,~~
182 ~~employer's liability,~~ commercial property, and commercial
183 casualty insurance prohibited.-

184 (1) (a) Each insurer group writing ~~workers' compensation and~~
185 ~~employer's liability insurance as defined in s. 624.605(1)(c),~~
186 commercial property insurance as defined in s. 627.0625,
187 commercial umbrella liability insurance as defined in s.



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188 627.0625, or commercial casualty insurance as defined in s.
189 627.0625 shall file with the office before ~~prior to~~ July 1 of
190 each year, on a form prescribed by the commission, the following
191 data for the component types of such insurance as provided in
192 the form:

- 193 1. Calendar-year earned premium.
- 194 2. Accident-year incurred losses and loss adjustment
195 expenses.
- 196 3. The administrative and selling expenses incurred in this
197 state or allocated to this state for the calendar year.
- 198 4. Policyholder dividends applicable to the calendar year.

199
200 This paragraph does not ~~Nothing herein is intended to~~ prohibit
201 an insurer from filing on a calendar-year basis.

202 (b) The data filed for the group shall be a consolidation
203 of the data of the individual insurers of the group. However, an
204 insurer may elect to ~~either~~ consolidate commercial umbrella
205 liability insurance data with commercial casualty insurance data
206 or to separately file data for commercial umbrella liability
207 insurance. Each insurer shall elect its method of filing
208 commercial umbrella liability insurance at the time of filing
209 data for accident year 1987 and shall thereafter continue filing
210 under the same method. In the case of commercial umbrella
211 liability insurance data reported separately, a separate
212 excessive profits test shall be applied and the test period
213 shall be 10 years. ~~In the case of workers' compensation and
214 employer's liability insurance, the final report for the test
215 period including accident years 1984, 1985, and 1986 must be
216 filed prior to July 1, 1988. In the case of commercial property~~



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217 ~~and commercial casualty insurance, the final report for the test~~
218 ~~period including accident years 1987, 1988, and 1989 must be~~
219 ~~filed prior to July 1, 1991.~~

220 ~~(2) Each insurer group writing workers' compensation and~~
221 ~~employer's liability insurance shall also file a schedule of~~
222 ~~Florida loss and loss adjustment experience for each of the 3~~
223 ~~years previous to the most recent accident year. The incurred~~
224 ~~losses and loss adjustment expenses shall be valued as of~~
225 ~~December 31 of the first year following the latest accident year~~
226 ~~to be reported, developed to an ultimate basis, and at two 12-~~
227 ~~month intervals thereafter, each developed to an ultimate basis,~~
228 ~~so that a total of three evaluations will be provided for each~~
229 ~~accident year. The first year to be so reported shall be~~
230 ~~accident year 1984, so that the reporting of 3 accident years~~
231 ~~under this revised evaluation will not take place until accident~~
232 ~~years 1985 and 1986 have become available. For reporting~~
233 ~~purposes unrelated to determining excessive profits, the loss~~
234 ~~and loss adjustment experience of each accident year shall~~
235 ~~continue to be reported until each accident year has been~~
236 ~~reported at eight stages of development.~~

237 ~~(2)~~(3)(a) Each insurer group writing commercial property
238 insurance or commercial casualty insurance shall also file a
239 schedule of Florida loss and loss adjustment experience for each
240 of the 3 years previous to the most recent accident year. The
241 incurred losses and loss adjustment expenses shall be valued as
242 of December 31 of the first year following the latest accident
243 year, developed to an ultimate basis, and at two 12-month
244 intervals thereafter, each developed to an ultimate basis, so
245 that a total of 3 evaluations will be provided for each accident



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246 ~~year. The first year to be so reported shall be accident year~~
247 ~~1987, which shall first be reported on or before July 1, 1989,~~
248 ~~and the reporting of 3 accident years will not take place until~~
249 ~~accident years 1988 and 1989 have become available. For medical~~
250 ~~malpractice insurance, the first year to be so reported shall be~~
251 ~~accident year 1990, which shall first be reported on or before~~
252 ~~July 1, 1992, and the reporting of 3 accident years for full~~
253 ~~inclusion of medical malpractice experience in commercial~~
254 ~~casualty insurance will not take place until accident years 1991~~
255 ~~and 1992 become available. Accordingly, no medical malpractice~~
256 ~~insured shall be eligible for refunds or credits until the~~
257 ~~reporting period ending with calendar accident year 1992. For~~
258 reporting purposes unrelated to determining excess profits, the
259 loss and loss adjustment experience of each accident year shall
260 continue to be reported until each accident year has been
261 reported at eight stages of development.

262 (b) Each insurer group writing commercial umbrella
263 liability insurance which elects to file separate data for such
264 insurance shall also file a schedule of Florida loss and loss
265 adjustment experience for each of the 10 years previous to the
266 most recent accident year. The incurred losses and loss
267 adjustment expenses shall be valued as of December 31 of the
268 first year following the latest accident year, developed to an
269 ultimate basis, and at nine 12-month intervals thereafter, each
270 developed to an ultimate basis, so that a total of 10
271 evaluations will be provided for each accident year. ~~The first~~
272 ~~year to be so reported shall be accident year 1987, which shall~~
273 ~~first be reported on or before October 1, 1989, and the~~
274 ~~reporting of 10 accident years will not take place until~~



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275 ~~accident year 1996 data is reported.~~

276 (3)~~(4)~~ Each insurer group's underwriting gain or loss for
277 each calendar-accident year shall be computed as follows: The
278 sum of the accident-year incurred losses and loss adjustment
279 expenses as of December 31 of the year, developed to an ultimate
280 basis, plus the administrative and selling expenses incurred in
281 the calendar year, plus policyholder dividends applicable to the
282 calendar year, shall be subtracted from the calendar-year earned
283 premium to determine the underwriting gain or loss.

284 (4)~~(5)~~ For the 3 most recent calendar-accident years for
285 which data is to be filed under this section, the underwriting
286 gain or loss shall be compared to the anticipated underwriting
287 profit, except in the case of separately reported commercial
288 umbrella liability insurance for which such comparison shall be
289 made for the 10 most recent calendar-accident years.

290 ~~(6) For those insurer groups writing workers' compensation~~
291 ~~and employer's liability insurance during the years 1984, 1985,~~
292 ~~1986, 1987, and 1988, an excessive profit has been realized if~~
293 ~~underwriting gain is greater than the anticipated underwriting~~
294 ~~profit plus 5 percent of earned premiums for the 3 most recent~~
295 ~~calendar years for which data is to be filed under this section.~~
296 ~~Any excess profit of an insurance company offering workers'~~
297 ~~compensation or employer's liability insurance during this~~
298 ~~period of time, shall be returned to policyholders in the form~~
299 ~~of a cash refund or a credit toward future purchase of~~
300 ~~insurance. The excessive amount shall be refunded on a pro rata~~
301 ~~basis in relation to the final compilation year earned premiums~~
302 ~~to the workers' compensation policyholders of record of the~~
303 ~~insurer group on December 31 of the final compilation year.~~



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304 (5)~~(7)~~ (a) Beginning with the July 1, 1991, report for
305 ~~workers' compensation insurance, employer's liability insurance,~~
306 commercial property insurance, and commercial casualty
307 insurance, an excessive profit has been realized if the net
308 aggregate underwriting gain for ~~all~~ these lines combined is
309 greater than the net aggregate anticipated underwriting profit
310 for these lines plus 5 percent of earned premiums for the 3 most
311 recent calendar years for which data is to be filed under this
312 section. For calculation purposes commercial property insurance
313 and commercial casualty insurance shall be broken down into
314 sublines in order to ascertain the anticipated underwriting
315 profit factor versus the actual underwriting gain for the given
316 subline.

317 (b) Beginning with the July 1, 1998, report for commercial
318 umbrella liability insurance, if an insurer has elected to file
319 data separately for such insurance, an excessive profit has been
320 realized if the underwriting gain for such insurance is greater
321 than the anticipated underwriting profit for such insurance plus
322 5 percent of earned premiums for the 10 most recent calendar
323 years for which data is to be filed under this section.

324 (6)~~(8)~~ As used in this section with respect to any 3-year
325 period, or with respect to any 10-year period in the case of
326 commercial umbrella liability insurance, "anticipated
327 underwriting profit" means the sum of the dollar amounts
328 obtained by multiplying, for each rate filing of the insurer
329 group in effect during such period, the earned premiums
330 applicable to such rate filing during such period by the
331 percentage factor included in such rate filing for profit and
332 contingencies, such percentage factor having been determined



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333 with due recognition to investment income from funds generated
334 by Florida business, except that the anticipated underwriting
335 profit for the purposes of this section shall be calculated
336 using a profit and contingencies factor that is not less than
337 zero. Separate calculations need not be made for consecutive
338 rate filings containing the same percentage factor for profits
339 and contingencies.

340 (7)~~(9)~~ If the insurer group has realized an excessive
341 profit, the office shall order a return of the excessive amounts
342 after affording the insurer group an opportunity for hearing and
343 otherwise complying with the requirements of chapter 120. Such
344 excessive amounts shall be refunded in all instances unless the
345 insurer group affirmatively demonstrates to the office that the
346 refund of the excessive amounts will render a member of the
347 insurer group financially impaired or will render it insolvent
348 under the provisions of the Florida Insurance Code.

349 (8)~~(10)~~ Any excess profit of an insurance company ~~as~~
350 ~~determined on July 1, 1991, and thereafter~~ shall be returned to
351 policyholders in the form of a cash refund or a credit toward
352 the future purchase of insurance. The excessive amount shall be
353 refunded on a pro rata basis in relation to the final
354 compilation year earned premiums to the policyholders of record
355 of the insurer group on December 31 of the final compilation
356 year.

357 (9)~~(11)~~(a) Cash refunds to policyholders may be rounded to
358 the nearest dollar.

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

361 (c) Rounding, if elected by the insurer, shall be applied



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362 consistently.

363 ~~(10)-(12)~~(a) Refunds shall be completed in one of the
364 following ways:

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

369 2. If the insurer group elects to make refunds in the form
370 of a credit to renewal policies, such credits shall be applied
371 to policy renewal premium notices which are forwarded to
372 insureds more than 60 calendar days after entry of a final order
373 indicating that excessive profits have been realized. If an
374 insurer group has made this election but an insured thereafter
375 cancels her or his policy or otherwise allows the policy to
376 terminate, the insurer group shall make a cash refund within ~~not~~
377 ~~later than~~ 60 days after termination of such coverage.

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

381 ~~(11)-(13)~~ Any refund or renewal credit made pursuant to this
382 section shall be treated as a policyholder dividend applicable
383 to the year immediately succeeding the compilation period giving
384 rise to the refund or credit, for purposes of reporting under
385 this section for subsequent years.

386 ~~(12)-(14)~~ The application of this law to commercial property
387 and commercial casualty insurance, which includes commercial
388 umbrella liability insurance, ceases on January 1, 1997.

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



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391 627.4133 Notice of cancellation, nonrenewal, or renewal
392 premium.—

393 (8) Upon expiration of the policy term, an insurer may
394 transfer a commercial lines policy to another authorized insurer
395 that is a member of the same group or owned by the same holding
396 company as the transferring insurer. The transfer constitutes a
397 renewal of the policy and may not be treated as a cancellation
398 or a nonrenewal of the policy. The insurer must provide notice
399 of its intent to transfer the policy at least 45 days before the
400 effective date of the transfer along with the financial rating
401 of the authorized insurer to which the policy is being
402 transferred. Such notice may be provided in the notice of
403 renewal premium. This subsection does not apply to a policy
404 providing residential property insurance coverage, except for
405 farmowners insurance and commercial general liability policies
406 providing farm coverage or commercial property policies
407 providing farm coverage.

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

410 627.442 Insurance contracts.—

411 (2) Notwithstanding s. 440.381(3), an insurer having at
412 least \$200 million in surplus, or an insurer within an insurer
413 group that has at least \$400 million in surplus, as reflected in
414 the combined annual statement filed by the insurer group with
415 the office, is not required to perform physical onsite premium
416 audits ~~are not required~~ for workers' compensation coverage,
417 other than an audit required by ~~the insurance policy~~ or an order
418 of the office, or ~~at least once each policy period,~~ if requested
419 by the insured.



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

422 628.6017 Converting assessable mutual insurer.—

423 (4) An assessable mutual insurer becoming a stock insurer
424 or a nonassessable mutual insurer is ~~shall~~ not ~~be~~ subject to s.
425 627.215 or s. 627.351(5) for 5 years following authorization of
426 the conversion by the office. However, the converted stock
427 insurer or nonassessable mutual insurer must ~~shall~~ file all
428 necessary data required by s. 627.215. Such amounts otherwise
429 subject to s. 627.215(8) must ~~627.215(10) shall~~ be maintained as
430 surplus as to policyholders and are not ~~be~~ available for
431 dividends for ~~a period of~~ 5 years.

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

434
435 ===== T I T L E A M E N D M E N T =====

436 And the title is amended as follows:

437 Delete everything before the enacting clause
438 and insert:

439 A bill to be entitled
440 An act relating to insurance; amending s. 440.02,
441 F.S.; redefining the terms "corporate officer" and
442 "employee" for purposes of workers' compensation;
443 amending s. 440.05, F.S.; revising requirements for
444 submitting a notice of election of exemption; revising
445 duties of the Department of Financial Services
446 relating to the expiration of certificates of
447 exemption; expanding applicability of requirements
448 relating to certificates of exemption; amending s.



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449 440.107, F.S.; exempting certain limited liability
450 companies from penalties for failure to secure the
451 payment of workers' compensation; amending s. 624.307,
452 F.S.; authorizing the Office of Insurance Regulation
453 to expend funds for the professional development of
454 its employees; amending s. 627.215, F.S.; removing
455 workers' compensation and employer's liability
456 insurance from those types of insurance that must
457 report and refund excess profits; deleting obsolete
458 provisions; amending s. 627.4133, F.S.; providing that
459 the transfer of a policy to certain other insurers is
460 considered a renewal of the policy rather than a
461 cancellation or nonrenewal; requiring notice of such
462 transfer; specifying which types of policies such
463 transfer provisions apply to; amending s. 627.442,
464 F.S.; exempting certain insurers from performing
465 onsite premium audits for workers' compensation
466 insurance; amending s. 628.6017, F.S.; conforming a
467 cross-reference; providing effective dates.