

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 624.424, F.S.; increasing the time limit on an
4 insurer's use of certain accountants; amending
5 s. 627.311, F.S.; providing civil immunity for
6 certain persons associated with the Florida
7 Joint Underwriting Association; providing an
8 exception; amending s. 626.321, F.S.;
9 authorizing certain entities that hold a
10 limited license for credit life and disability
11 insurance to sell credit property insurance;
12 providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Section 624.22, Florida Statutes, is
17 created to read:

18 624.22 Purpose of chapter.--The purpose of this
19 chapter is to protect the interest of insureds, claimants,
20 ceding insurers, assuming insurers, and the public. It is the
21 intent of the Legislature to ensure adequate regulation of
22 insurers and reinsurers and adequate protection for those to
23 whom they owe obligations. In furtherance of that state
24 interest, the Legislature requires that upon the insolvency of
25 a non-United States insurer or reinsurer which provides
26 security to fund its United States obligations in accordance
27 with this chapter, such security shall be maintained in the
28 United States and claims shall be filed with and valued by the
29 state insurance commissioner with regulatory oversight, and
30 the assets shall be distributed in accordance with the
31 insurance laws of the state in which the trust is domiciled

1 that are applicable to the liquidation of domestic United
2 States insurance companies. The Legislature declares that the
3 matters contained in this chapter are fundamental to the
4 business of insurance in accordance with 15 U.S.C. ss.
5 1011-1012.

6 Section 2. Paragraph (b) of subsection (2) of section
7 624.610, Florida Statutes, is amended to read:

8 624.610 Reinsurance.--

9 (2)

10 (b) Credit in accounting and financial statements on
11 account of reinsurance ceded to a nonapproved reinsurer may be
12 allowed only:

13 1. When it is demonstrated by the ceding insurer to
14 the satisfaction of the department that such reinsurer
15 maintains the standards and meets the financial requirements
16 applicable to an authorized insurer;

17 2. To the extent of deposits by, or funds withheld
18 from, such reinsurer pursuant to express provision therefor in
19 the reinsurance contract as security for the payment of the
20 obligations thereunder if such deposits or funds are held
21 subject to withdrawal by, and under the control of, the ceding
22 insurer or such deposits or funds are placed in trust for such
23 purposes in a bank which is a member of the Federal Reserve
24 System if withdrawals from the trust cannot be made without
25 the consent of the ceding insurer. The funds withheld may be
26 cash or securities which are qualified as admitted assets
27 under part II of chapter 625 and which have a market value
28 equal to or greater than the credit taken; or

29 3. To the extent that the amount of a clean,
30 unconditional, evergreen, and irrevocable letter of credit,
31 issued for a term of not less than 1 year and in conformity

1 with the requirements set forth in this subparagraph, equals
 2 or exceeds the liability of an unauthorized or unapproved
 3 reinsurer for unearned premiums, outstanding losses, and an
 4 adequate reserve for incurred but not reported losses under a
 5 specific reinsurance agreement. The requirements are that such
 6 a clean and irrevocable letter of credit be issued under
 7 arrangements satisfactory to the department as constituting
 8 security to the ceding insurer substantially equal to that of
 9 a deposit under subparagraph 2. and that the letter be issued
 10 by a banking institution which is a member of the Federal
 11 Reserve System and which has financial standing satisfactory
 12 to the commissioner. The department may adopt rules requiring
 13 that the letter adhere in its wording to a format for letters
 14 of credit as the format has been or may be adopted or approved
 15 by the National Association of Insurance Commissioners.

16 4. When the reinsurance is ceded to a reinsurer which
 17 maintains a trust fund, in a bank or trust company that is
 18 subject to supervision by any state of the United States or
 19 that is a member of the Federal Reserve System, for the
 20 payment of the valid claims for business written in the United
 21 States. The trust shall consist of a trusted account in an
 22 amount not less than the reinsurer's liabilities attributable
 23 to reinsurance by ceding insurers for business written in the
 24 United States and, in addition, the reinsurer shall maintain a
 25 trusted surplus of not less than \$20 million. Such trust
 26 shall be established in a form approved, and any amendments to
 27 the trust approved, by the insurance commissioner where the
 28 trust is domiciled, or the insurance commissioner of another
 29 state who, pursuant to the terms of the trust agreement, has
 30 accepted principal regulatory oversight of the trust. The
 31 trust shall remain in effect for as long as the reinsurer has

1 outstanding obligations due under the reinsurance agreements
2 subject to the trust. The trust assets must be in cash or
3 securities which are qualified as admitted assets under part
4 II of chapter 625 and which have a market value of the
5 required liabilities and trusteed surplus. The reinsurer shall
6 report quarterly to the insurance commissioner information
7 substantially the same as that required to be reported on the
8 National Association of Insurance Commissioners Annual
9 Statement form by licensed insurers to enable the insurance
10 commissioner to determine the sufficiency of the trust fund.
11 The trust and the reinsurer shall be subject to examination as
12 determined by the commissioner.

13 5. The credit permitted by subparagraph 4. and the
14 credit permitted by subparagraph 2. shall not be allowed
15 unless the assuming insurer in substance agrees in the trust
16 agreement to the following conditions:

17 a. Notwithstanding any other provisions in the trust
18 instrument, if the trust fund is inadequate because it
19 contains an amount less than the amount required by the
20 department or, if the grantor of the trust has been declared
21 insolvent or placed into receivership, rehabilitation,
22 liquidation, or similar proceedings under the laws of its
23 state or country of domicile, the trustee shall comply with an
24 order of the superintendent with regulatory oversight over the
25 trust or with an order of a court of competent jurisdiction
26 directing the trustee to transfer to the superintendent with
27 regulatory oversight all of the assets of United States trust
28 beneficiaries.

29 b. The assets shall be distributed by, and claims of
30 United States trust beneficiaries shall be filed with and
31 valued by, the superintendent with regulatory oversight in

1 accordance with the laws of the state in which the trust is
2 domiciled that are applicable to the liquidation of domestic
3 insurance companies.

4 c. If the superintendent with regulatory oversight
5 determines that the assets of the trust fund or any part
6 thereof are not necessary to satisfy the claims for business
7 written in the United States, the assets or any part thereof
8 shall be returned by the superintendent with regulatory
9 oversight to the trustee for distribution in accordance with
10 the trust agreement.

11 d. The grantor shall waive any right otherwise
12 available to it under United States law that is inconsistent
13 with this provision.

14 Section 3. Paragraph (d) of subsection (8) of section
15 624.424, Florida Statutes, is amended to read:

16 624.424 Annual statement and other information.--

17 (8)

18 (d) An insurer may not use the same accountant or
19 partner of an accounting firm responsible for preparing the
20 report required by this subsection for more than 7 5
21 consecutive years. Following this period, the insurer may not
22 use such accountant or partner for a period of 2 years, but
23 may use another accountant or partner of the same firm. An
24 insurer may request the department to waive this prohibition
25 based upon an unusual hardship to the insurer and a
26 determination that the accountant is exercising independent
27 judgment that is not unduly influenced by the insurer
28 considering such factors as the number of partners, expertise
29 of the partners or the number of insurance clients of the
30 accounting firm; the premium volume of the insurer; and the
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1 number of jurisdictions in which the insurer transacts
2 business.

3 Section 4. Subsection (3) of section 627.311, Florida
4 Statutes, is amended to read:

5 627.311 Joint underwriters and joint reinsurers.--

6 (3) The department may, after consultation with
7 insurers licensed to write automobile insurance in this state,
8 approve a joint underwriting plan for purposes of equitable
9 apportionment or sharing among insurers of automobile
10 liability insurance and other motor vehicle insurance, as an
11 alternate to the plan required in s. 627.351(1). All insurers
12 authorized to write automobile insurance in this state shall
13 subscribe to the plan and participate therein. The plan shall
14 be subject to continuous review by the department which may at
15 any time disapprove the entire plan or any part thereof if it
16 determines that conditions have changed since prior approval
17 and that in view of the purposes of the plan changes are
18 warranted. Any disapproval by the department shall be subject
19 to the provisions of chapter 120. If adopted, the plan and
20 the association created under the plan:

21 (a) Must be subject to all provisions of s.
22 627.351(1), except apportionment of applicants.

23 (b) May provide for one or more designated insurers,
24 able and willing to provide policy and claims service, to act
25 on behalf of all other insurers to provide insurance for
26 applicants who are in good faith entitled to, but unable to,
27 procure insurance through the voluntary insurance market at
28 standard rates.

29 (c) Must provide that designated insurers will issue
30 policies of insurance and provide policyholder and claims
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1 service on behalf of all insurers for the joint underwriting
2 association.

3 (d) Must provide for the equitable apportionment among
4 insurers of losses and expenses incurred.

5 (e) Must provide that the joint underwriting
6 association will operate subject to the supervision and
7 approval of a board of governors consisting of 11 individuals,
8 including 1 who will be elected as chairman. Five members of
9 the board must be appointed by the Insurance Commissioner. Two
10 of the commissioner's appointees must be chosen from the
11 insurance industry. Any board member appointed by the
12 Insurance Commissioner may be removed and replaced by him at
13 any time without cause. Six members of the board must be
14 appointed by the participating insurers, two of whom must be
15 from the insurance agents' associations. All board members,
16 including the chairman, must be appointed to serve for 2-year
17 terms beginning annually on a date designated by the plan.

18 (f) Must provide that an agent appointed to a
19 servicing carrier must be a licensed general lines agent of an
20 insurer which is authorized to write automobile liability and
21 physical damage insurance in the state and which is actively
22 writing such coverage in the county in which the agent is
23 located, or the immediately adjoining counties, or an agent
24 who places a volume of other property and casualty insurance
25 in an amount equal to the premium volume placed with the
26 Florida Joint Underwriting Association. The department may,
27 however, determine that an agent may be appointed to a
28 servicing carrier if, after public hearing, the department
29 finds that consumers in the agent's operating area would not
30 have adequate and reasonable access to the purchase of

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1 automobile insurance if the agent were not appointed to a
2 servicing carrier.

3 (g) Must make available noncancelable coverage as
4 provided in s. 627.7275(2).

5 (h) Must provide for the furnishing of a list of
6 insureds and their mailing addresses upon the request of a
7 member of the association or an insurance agent licensed to
8 place business with an association member. The list must
9 indicate whether the insured is currently receiving a good
10 driver discount from the association. The plan may charge a
11 reasonable fee to cover the cost incurred in providing the
12 list.

13 (i) Must not provide a renewal credit or discount or
14 any other inducement designed to retain a risk.

15 (j) Must not provide any other good driver credit or
16 discount that is not actuarially sound. In addition to other
17 criteria that the plan may specify, to be eligible for a good
18 driver credit, an insured must not have any criminal traffic
19 violations within the most recent 36-month period preceding
20 the date the discount is received.

21 (k) Shall have no liability, and no cause of action of
22 any nature shall arise against, any member insurer or its
23 agents or employees, agents or employees of the association,
24 members of the board of governors of the association, or the
25 department or its representatives, for any action taken by
26 them in the performance of their duties or responsibilities
27 under this subsection. Such immunity does not apply to
28 actions for or arising out of breach of any contract or
29 agreement pertaining to insurance, or any willful tort.

30 Section 5. Paragraph (e) of subsection (1) of section
31 626.321, Florida Statutes, is amended to read:

1 626.321 Limited licenses.--

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

7 (e) Credit life or disability insurance.--License
8 covering only credit life or disability insurance. The
9 license may be issued only to an individual employed by a life
10 or health insurer as an officer or other salaried or
11 commissioned representative, or to an individual employed by
12 or associated with a lending or financing institution or
13 creditor, and may authorize the sale of such insurance only
14 with respect to borrowers or debtors of such lending or
15 financing institution or creditor. However, only the
16 individual or entity whose tax identification number is used
17 in receiving or is credited with receiving the commission from
18 the sale of such insurance shall be the licensed agent of the
19 insurer. No individual while so licensed shall hold a license
20 as an agent or solicitor as to any other or additional kind or
21 class of life or health insurance coverage. An entity other
22 than a lending or financial institution defined in s. 626.988
23 holding a limited license under this paragraph shall also be
24 authorized to sell credit property insurance.

25 Section 6. This act shall take effect upon becoming a
26 law.

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