

By the Committee on Banking and Insurance; and Senator Rossin

311-2006-99

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 626.9541, F.S.; prohibiting as an unfair
4 insurance practice use of certain misleading
5 advertisements; amending s. 626.9551, F.S.;
6 prohibiting any person from engaging in certain
7 acts related to insurance sold in connection
8 with a loan or extension of credit; requiring
9 disclosure of certain information for such
10 transactions; requiring separate documents for
11 policies of insurance for such transactions;
12 prohibiting loan officers who are involved in
13 the loan transaction from soliciting insurance
14 in connection with the same loan, subject to
15 certain exceptions; amending s. 626.592, F.S.;
16 providing that a primary agent need not be
17 designated at each location where an agent
18 conducts certain insurance transactions;
19 creating s. 626.9885, F.S.; requiring financial
20 institutions, as defined, to conduct insurance
21 transactions only through Florida-licensed
22 insurance agents representing certain types of
23 insurers; amending ss. 626.321, 626.730,
24 629.401, F.S., to conform cross-references;
25 repealing s. 626.988, F.S.; relating to
26 prohibition of insurance activities by persons
27 employed or associated with financial
28 institutions; providing an effective date.

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30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Paragraph (a) of subsection (1) of section
2 626.9541, Florida Statutes, is amended to read:

3 626.9541 Unfair methods of competition and unfair or
4 deceptive acts or practices defined.--

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

8 (a) Misrepresentations and false advertising of
9 insurance policies.--Knowingly making, issuing, circulating,
10 or causing to be made, issued, or circulated, any estimate,
11 illustration, circular, statement, sales presentation,
12 omission, or comparison which:

13 1. Misrepresents the benefits, advantages, conditions,
14 or terms of any insurance policy.

15 2. Misrepresents the dividends or share of the surplus
16 to be received on any insurance policy.

17 3. Makes any false or misleading statements as to the
18 dividends or share of surplus previously paid on any insurance
19 policy.

20 4. Is misleading, or is a misrepresentation, as to the
21 financial condition of any person or as to the legal reserve
22 system upon which any life insurer operates.

23 5. Uses any name or title of any insurance policy or
24 class of insurance policies misrepresenting the true nature
25 thereof.

26 6. Is a misrepresentation for the purpose of inducing,
27 or tending to induce, the lapse, forfeiture, exchange,
28 conversion, or surrender of any insurance policy.

29 7. Is a misrepresentation for the purpose of effecting
30 a pledge or assignment of, or effecting a loan against, any
31 insurance policy.

1 8. Misrepresents any insurance policy as being shares
2 of stock or misrepresents ownership interest in the company.

3 9. Uses any advertisement that would mislead or
4 otherwise cause a reasonable person to believe mistakenly that
5 the state or the Federal Government is responsible for the
6 insurance sales activities of any person or stands behind any
7 person's credit or that any person, the state, or the Federal
8 Government guarantees any returns on insurance products or is
9 a source of payment of any insurance obligation of or sold by
10 any person.

11 Section 2. Section 626.9551, Florida Statutes, is
12 amended to read:

13 626.9551 Favored agent or insurer; coercion of
14 debtors.--

15 (1) No person may:

16 (a) Require, as a condition precedent or condition
17 subsequent to the lending of money or extension of credit or
18 any renewal thereof, that the person to whom such money or
19 credit is extended, or whose obligation the creditor is to
20 acquire or finance, negotiate any policy or contract of
21 insurance through a particular insurer or group of insurers or
22 agent or broker or group of agents or brokers.

23 (b) Reject an insurance policy solely because the
24 policy has been issued or underwritten by any person who is
25 not associated with a financial institution, or with any
26 subsidiary or affiliate thereof, when such insurance is
27 required in connection with a loan or extension of credit; or
28 unreasonably disapprove the insurance policy provided by a
29 borrower for the protection of the property securing the
30 credit or lien. For purposes of this paragraph, such
31 disapproval shall be deemed unreasonable if it is not based

1 solely on reasonable standards, uniformly applied, relating to
2 the extent of coverage required by such lender or person
3 extending credit and the financial soundness and the services
4 of an insurer. Such standards shall not discriminate against
5 any particular type of insurer, nor shall such standards call
6 for the disapproval of an insurance policy because such policy
7 contains coverage in addition to that required.

8 (c) Require, directly or indirectly, that any
9 borrower, mortgagor, purchaser, insurer, broker, or agent pay
10 a separate charge in connection with the handling of any
11 insurance policy that is required in connection with a loan or
12 other extension of credit or the provision of another
13 traditional banking product,~~required as security for a loan~~
14 ~~on real estate~~ or pay a separate charge to substitute the
15 insurance policy of one insurer for that of another, unless
16 such charge would be required if the person were providing the
17 insurance. This paragraph does not include the interest which
18 may be charged on premium loans or premium advances in
19 accordance with the security instrument.

20 (d) Use or provide to others insurance information
21 required to be disclosed by a customer to a financial
22 institution, or a subsidiary or affiliate thereof, in
23 connection with the extension of credit for the purpose of
24 soliciting the sale of insurance, unless the customer has
25 given express written consent or has been given the
26 opportunity to object to such use of the information.
27 Insurance information means information concerning premiums,
28 terms, and conditions of insurance coverage, insurance claims,
29 and insurance history provided by the customer. The
30 opportunity to object to the use of insurance information must
31 be in writing and must be clearly and conspicuously made.~~Use~~

1 ~~or disclose information resulting from a requirement that a~~
2 ~~borrower, mortgagor, or purchaser furnish insurance of any~~
3 ~~kind on real property being conveyed or used as collateral~~
4 ~~security to a loan, when such information is to the advantage~~
5 ~~of the mortgagee, vendor, or lender, or is to the detriment of~~
6 ~~the borrower, mortgagor, purchaser, or insurer, or the agent~~
7 ~~or broker, complying with such a requirement.~~

8 (2)(a) Any person offering the sale of insurance at
9 the time of and in connection with an extension of credit or
10 the sale or lease of goods or services shall disclose in
11 writing that the choice of an insurance provider will not
12 affect the decision regarding the extension of credit or sale
13 or lease of goods or services, except that reasonable
14 requirements may be imposed pursuant to subsection (1).

15 (b) Federally insured or state-insured depository
16 institutions and credit unions shall make clear and
17 conspicuous disclosure in writing prior to the sale of any
18 insurance policy that such policy is not a deposit, is not
19 insured by the Federal Deposit Insurance Corporation or any
20 other entity, is not guaranteed by the insured depository
21 institution or any person soliciting the purchase of or
22 selling the policy; that the financial institution is not
23 obligated to provide benefits under the insurance contract;
24 and, where appropriate, that the policy involves investment
25 risk, including potential loss of principal.

26 (c) All documents constituting policies of insurance
27 shall be separate and shall not be combined with or be a part
28 of other documents. A person may not include the expense of
29 insurance premiums in a primary credit transaction without the
30 express written consent of the customer.

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1 (d) A loan officer of a financial institution who is
2 involved in the application, solicitation, or closing of a
3 loan transaction may not solicit or sell insurance in
4 connection with the same loan, but such loan officer may refer
5 the loan customer to another insurance agent who is not
6 involved in the application, solicitation, or closing of the
7 same loan transaction. This paragraph does not apply to an
8 agent located on premises having only a single person with
9 lending authority, or to a broker or dealer registered under
10 the Federal Securities Exchange Act of 1934 in connection with
11 a margin loan secured by securities.

12 (3) Paragraphs (2)(a), (b), (c), and (d) do not apply
13 to sales of insurance regulated under ss. 627.676-627.6845, s.
14 655.946, or parts XV-XVI of chapter 627.

15 (4) No person may make an extension of credit or the
16 sale of any product or service that is the equivalent to an
17 extension of credit or lease or sale of property of any kind,
18 or furnish any services or fix or vary the consideration for
19 any of the foregoing, on the condition or requirement that the
20 customer obtain insurance from that person, or a subsidiary or
21 affiliate of that person, or a particular insurer, agent, or
22 broker; however, this subsection does not prohibit any person
23 from engaging in any activity that if done by a financial
24 institution would not violate section 106 of the Bank Holding
25 Company Act Amendments of 1970, 12 U.S.C. 1972, as interpreted
26 by the Board of Governors of the Federal Reserve System.

27 (5)(2) The department may investigate the affairs of
28 any person to whom this section applies to determine whether
29 such person has violated this section. If a violation of this
30 section is found to have been committed knowingly, the person
31 in violation shall be subject to the same procedures and

1 penalties as provided in ss. 626.9571, 626.9581, 626.9591, and
2 626.9601.

3 Section 3. Subsection (9) is added to section 626.592,
4 Florida Statutes, 1998 Supplement, to read:

5 626.592 Primary agents.--

6 (9) When an agent conducts insurance transactions at
7 two or more locations, a separate primary agent need not be
8 designated at each location, provided that no insurance
9 transactions occur at any location when the agent is not
10 present and no unlicensed employee at the location has engaged
11 in insurance activities requiring licensure. In those
12 instances, the agent shall be responsible for insurance
13 transactions occurring at each location.

14 Section 4. Section 626.9885, Florida Statutes, is
15 created to read:

16 626.9885 Financial institutions conducting insurance
17 transactions.--A financial institution, as defined in
18 paragraph (g), paragraph (h), or paragraph (p) of subsection
19 (1) of s. 655.005 may conduct insurance transactions only
20 through Florida-licensed insurance agents representing
21 Florida-authorized insurers or representing Florida-eligible
22 surplus lines insurers.

23 Section 5. Paragraphs (e) and (g) of subsection (1) of
24 section 626.321, Florida Statutes, 1998 Supplement, are
25 amended to read:

26 626.321 Limited licenses.--

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

1 (e) Credit life or disability insurance.--License
2 covering only credit life or disability insurance. The
3 license may be issued only to an individual employed by a life
4 or health insurer as an officer or other salaried or
5 commissioned representative, or to an individual employed by
6 or associated with a lending or financing institution or
7 creditor, and may authorize the sale of such insurance only
8 with respect to borrowers or debtors of such lending or
9 financing institution or creditor. However, only the
10 individual or entity whose tax identification number is used
11 in receiving or is credited with receiving the commission from
12 the sale of such insurance shall be the licensed agent of the
13 insurer. No individual while so licensed shall hold a license
14 as an agent or solicitor as to any other or additional kind or
15 class of life or health insurance coverage. An entity other
16 than a lending or financial institution defined in s.
17 655.005(1)(g), (h), or (p)~~626.988~~ holding a limited license
18 under this paragraph shall also be authorized to sell credit
19 property insurance.

20 (g) Credit property insurance.--A license covering
21 only credit property insurance may be issued to any individual
22 except an individual employed by or associated with a lending
23 or financial institution defined in s. 655.005(1)(g), (h), or
24 (p)~~626.988~~ and authorized to sell such insurance only with
25 respect to a borrower or debtor, not to exceed the amount of
26 the loan.

27 Section 6. Subsection (4) of section 626.730, Florida
28 Statutes, 1998 Supplement, is amended to read:

29 626.730 Purpose of license.--

30 (4) This section shall not be deemed to prohibit the
31 licensing under a limited license as to motor vehicle physical

1 damage and mechanical breakdown insurance or the licensing
2 under a limited license for credit property insurance of any
3 person employed by or associated with a motor vehicle sales or
4 financing agency, a retail sales establishment, or a consumer
5 loan office, other than a consumer loan office owned by or
6 affiliated with a financial institution as defined in s.
7 655.005(1)(g), (h), or (p)~~626.988~~, with respect to insurance
8 of the interest of such agency in a motor vehicle sold or
9 financed by it or in personal property when used as collateral
10 for a loan. This section does not apply with respect to the
11 interest of a real estate mortgagee in or as to insurance
12 covering such interest or in the real estate subject to such
13 mortgage.

14 Section 7. Paragraph (b) of subsection (6) of section
15 629.401, Florida Statutes, is amended to read:

16 629.401 Insurance exchange.--

17 (6)

18 (b) In addition to the insurance laws specified in
19 paragraph (a), the department shall regulate the exchange
20 pursuant to the following powers, rights, and duties:

21 1. General examination powers.--The department shall
22 examine the affairs, transactions, accounts, records, and
23 assets of any security fund, exchange, members, and associate
24 brokers as often as it deems advisable. The examination may
25 be conducted by the accredited examiners of the department at
26 the offices of the entity or person being examined. The
27 department shall examine in like manner each prospective
28 member or associate broker applying for membership in an
29 exchange.

30 2. Departmental approval and applications of
31 underwriting members.--No underwriting member shall commence

1 operation without the approval of the department. Before
2 commencing operation, an underwriting member shall provide a
3 written application containing:

4 a. Name, type, and purpose of the underwriting member.
5 b. Name, residence address, business background, and
6 qualifications of each person associated or to be associated
7 in the formation or financing of the underwriting member.
8 c. Full disclosure of the terms of all understandings
9 and agreements existing or proposed among persons so
10 associated relative to the underwriting member, or the
11 formation or financing thereof, accompanied by a copy of each
12 such agreement or understanding.
13 d. Full disclosure of the terms of all understandings
14 and agreements existing or proposed for management or
15 exclusive agency contracts.

16 3. Investigation of underwriting member
17 applications.--In connection with any proposal to establish an
18 underwriting member, the department shall make an
19 investigation of:

20 a. The character, reputation, financial standing, and
21 motives of the organizers, incorporators, or subscribers
22 organizing the proposed underwriting member.
23 b. The character, financial responsibility, insurance
24 experience, and business qualifications of its proposed
25 officers.
26 c. The character, financial responsibility, business
27 experience, and standing of the proposed stockholders and
28 directors, or owners.

29 4. Notice of management changes.--An underwriting
30 member shall promptly give the department written notice of
31 any change among the directors or principal officers of the

1 underwriting member within 30 days after such change. The
2 department shall investigate the new directors or principal
3 officers of the underwriting member. The department's
4 investigation shall include an investigation of the character,
5 financial responsibility, insurance experience, and business
6 qualifications of any new directors or principal officers. As
7 a result of the investigation, the department may require the
8 underwriting member to replace any new directors or principal
9 officers.

10 5. Alternate financial statement.--In lieu of any
11 financial examination, the department may accept an audited
12 financial statement.

13 6. Correction and reconstruction of records.--If the
14 department finds any accounts or records to be inadequate, or
15 inadequately kept or posted, it may employ experts to
16 reconstruct, rewrite, post, or balance them at the expense of
17 the person or entity being examined if such person or entity
18 has failed to maintain, complete, or correct such records or
19 accounts after the department has given him or her or it
20 notice and reasonable opportunity to do so.

21 7. Obstruction of examinations.--Any person or entity
22 who or which willfully obstructs the department or its
23 examiner in an examination is guilty of a misdemeanor of the
24 second degree, punishable as provided in s. 775.082 or s.
25 775.083.

26 8. Filing of annual statement.--Each underwriting
27 member shall file with the department a full and true
28 statement of its financial condition, transactions, and
29 affairs. The statement shall be filed on or before March 1 of
30 each year, or within such extension of time as the department
31 for good cause grants, and shall be for the preceding calendar

1 year. The statement shall contain information generally
2 included in insurer financial statements prepared in
3 accordance with generally accepted insurance accounting
4 principles and practices and in a form generally utilized by
5 insurers for financial statements, sworn to by at least two
6 executive officers of the underwriting member. The form of the
7 financial statements shall be the approved form of the
8 National Association of Insurance Commissioners or its
9 successor organization. The department may by rule require
10 each insurer to submit any part of the information contained
11 in the financial statement in a computer-readable form
12 compatible with the department's electronic data processing
13 system. In addition to information furnished in connection
14 with its annual statement, an underwriting member must furnish
15 to the department as soon as reasonably possible such
16 information about its transactions or affairs as the
17 department requests in writing. All information furnished
18 pursuant to the department's request must be verified by the
19 oath of two executive officers of the underwriting member.

20 9. Record maintenance.--Each underwriting member shall
21 have and maintain its principal place of business in this
22 state and shall keep therein complete records of its assets,
23 transactions, and affairs in accordance with such methods and
24 systems as are customary for or suitable to the kind or kinds
25 of insurance transacted.

26 10. Examination of agents.--If the department has
27 reason to believe that any agent, as defined in s. 626.041, s.
28 626.051, s. 626.062, or s. 626.914, has violated or is
29 violating any provision of the insurance law, or upon receipt
30 of a written complaint signed by any interested person
31 indicating that any such violation may exist, the department

1 shall conduct such examination as it deems necessary of the
2 accounts, records, documents, and transactions pertaining to
3 or affecting the insurance affairs of such agent.

4 11. Written reports of department.--The department or
5 its examiner shall make a full and true written report of any
6 examination. The report shall contain only information
7 obtained from examination of the records, accounts, files, and
8 documents of or relative to the person or entity examined or
9 from testimony of individuals under oath, together with
10 relevant conclusions and recommendations of the examiner based
11 thereon. The department shall furnish a copy of the report to
12 the person or entity examined not less than 30 days prior to
13 filing the report in its office. If such person or entity so
14 requests in writing within such 30-day period, the department
15 shall grant a hearing with respect to the report and shall not
16 file the report until after the hearing and after such
17 modifications have been made therein as the department deems
18 proper.

19 12. Admissibility of reports.--The report of an
20 examination when filed shall be admissible in evidence in any
21 action or proceeding brought by the department against the
22 person or entity examined, or against his or her or its
23 officers, employees, or agents. The department or its
24 examiners may at any time testify and offer other proper
25 evidence as to information secured or matters discovered
26 during the course of an examination, whether or not a written
27 report of the examination has been either made, furnished, or
28 filed in the department.

29 13. Publication of reports.--After an examination
30 report has been filed, the department may publish the results

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1 of any such examination in one or more newspapers published in
2 this state whenever it deems it to be in the public interest.

3 14. Consideration of examination reports by entity
4 examined.--After the examination report of an underwriting
5 member has been filed, an affidavit shall be filed with the
6 department, not more than 30 days after the report has been
7 filed, on a form furnished by the department and signed by the
8 person or a representative of any entity examined, stating
9 that the report has been read and that the recommendations
10 made in the report will be considered within a reasonable
11 time.

12 15. Examination costs.--Each person or entity examined
13 by the department shall pay to the department the expenses
14 incurred in such examination.

15 16. Exchange costs.--An exchange shall reimburse the
16 department for any expenses incurred by it relating to the
17 regulation of the exchange and its members, except as
18 specified in subparagraph 15.

19 17. Powers of examiners.--Any examiner appointed by
20 the department, as to the subject of any examination,
21 investigation, or hearing being conducted by him or her, may
22 administer oaths, examine and cross-examine witnesses, and
23 receive oral and documentary evidence, and shall have the
24 power to subpoena witnesses, compel their attendance and
25 testimony, and require by subpoena the production of books,
26 papers, records, files, correspondence, documents, or other
27 evidence which the examiner deems relevant to the inquiry. If
28 any person refuses to comply with any such subpoena or to
29 testify as to any matter concerning which he or she may be
30 lawfully interrogated, the Circuit Court of Leon County or the
31 circuit court of the county wherein such examination,

1 investigation, or hearing is being conducted, or of the county
2 wherein such person resides, on the department's application
3 may issue an order requiring such person to comply with the
4 subpoena and to testify; and any failure to obey such an order
5 of the court may be punished by the court as a contempt
6 thereof. Subpoenas shall be served, and proof of such service
7 made, in the same manner as if issued by a circuit court.
8 Witness fees and mileage, if claimed, shall be allowed the
9 same as for testimony in a circuit court.

10 18. False testimony.--Any person willfully testifying
11 falsely under oath as to any matter material to any
12 examination, investigation, or hearing shall upon conviction
13 thereof be guilty of perjury and shall be punished
14 accordingly.

15 19. Self-incrimination.--

16 a. If any person asks to be excused from attending or
17 testifying or from producing any books, papers, records,
18 contracts, documents, or other evidence in connection with any
19 examination, hearing, or investigation being conducted by the
20 department or its examiner, on the ground that the testimony
21 or evidence required of the person may tend to incriminate him
22 or her or subject him or her to a penalty or forfeiture, and
23 the person notwithstanding is directed to give such testimony
24 or produce such evidence, he or she shall, if so directed by
25 the department and the Department of Legal Affairs,
26 nonetheless comply with such direction; but the person shall
27 not thereafter be prosecuted or subjected to any penalty or
28 forfeiture for or on account of any transaction, matter, or
29 thing concerning which he or she may have so testified or
30 produced evidence, and no testimony so given or evidence so
31 produced shall be received against him or her upon any

1 criminal action, investigation, or proceeding; except that no
2 such person so testifying shall be exempt from prosecution or
3 punishment for any perjury committed by him or her in such
4 testimony, and the testimony or evidence so given or produced
5 shall be admissible against him or her upon any criminal
6 action, investigation, or proceeding concerning such perjury,
7 nor shall he or she be exempt from the refusal, suspension, or
8 revocation of any license, permission, or authority conferred,
9 or to be conferred, pursuant to the insurance law.

10 b. Any such individual may execute, acknowledge, and
11 file in the office of the department a statement expressly
12 waiving such immunity or privilege in respect to any
13 transaction, matter, or thing specified in such statement, and
14 thereupon the testimony of such individual or such evidence in
15 relation to such transaction, matter, or thing may be received
16 or produced before any judge or justice, court, tribunal,
17 grand jury, or otherwise; and if such testimony or evidence is
18 so received or produced, such individual shall not be entitled
19 to any immunity or privileges on account of any testimony so
20 given or evidence so produced.

21 20. Penalty for failure to testify.--Any person who
22 refuses or fails, without lawful cause, to testify relative to
23 the affairs of any member, associate broker, or other person
24 when subpoenaed and requested by the department to so testify,
25 as provided in subparagraph 17., shall, in addition to the
26 penalty provided in subparagraph 17., be guilty of a
27 misdemeanor of the second degree, punishable as provided in s.
28 775.082 or s. 775.083.

29 21. Name selection.--No underwriting member shall be
30 formed or authorized to transact insurance in this state under
31 a name which is the same as that of any authorized insurer or

1 is so nearly similar thereto as to cause or tend to cause
2 confusion or under a name which would tend to mislead as to
3 the type of organization of the insurer. Before incorporating
4 under or using any name, the underwriting syndicate or
5 proposed underwriting syndicate shall submit its name or
6 proposed name to the department for the approval of the
7 department.

8 22. Capitalization.--An underwriting member approved
9 on or after July 2, 1987, shall provide an initial paid-in
10 capital and surplus of \$3 million and thereafter shall
11 maintain a minimum policyholder surplus of \$2 million in order
12 to be permitted to write insurance. Underwriting members
13 approved prior to July 2, 1987, shall maintain a minimum
14 policyholder surplus of \$1 million. After June 29, 1988,
15 underwriting members approved prior to July 2, 1987, must
16 maintain a minimum policyholder surplus of \$1.5 million to
17 write insurance. After June 29, 1989, underwriting members
18 approved prior to July 2, 1987, must maintain a minimum
19 policyholder surplus of \$1.75 million to write insurance.
20 After December 30, 1989, all underwriting members, regardless
21 of the date they were approved, must maintain a minimum
22 policyholder surplus of \$2 million to write insurance. Except
23 for that portion of the paid-in capital and surplus which
24 shall be maintained in a security fund of an exchange, the
25 paid-in capital and surplus shall be invested by an
26 underwriting member in a manner consistent with ss.
27 625.301-625.340. The portion of the paid-in capital and
28 surplus in any security fund of an exchange shall be invested
29 in a manner limited to investments for life insurance
30 companies under the Florida insurance laws.

31 23. Limitations on coverage written.--

1 a. Limit of risk.--No underwriting member shall expose
2 itself to any loss on any one risk in an amount exceeding 10
3 percent of its surplus to policyholders. Any risk or portion
4 of any risk which shall have been reinsured in an assuming
5 reinsurer authorized or approved to do such business in this
6 state shall be deducted in determining the limitation of risk
7 prescribed in this section.

8 b. Restrictions on premiums written.--If the
9 department has reason to believe that the underwriting
10 member's ratio of actual or projected annual gross written
11 premiums to policyholder surplus exceeds 8 to 1 or the
12 underwriting member's ratio of actual or projected annual net
13 premiums to policyholder surplus exceeds 4 to 1, the
14 department may establish maximum gross or net annual premiums
15 to be written by the underwriting member consistent with
16 maintaining the ratios specified in this sub-subparagraph.

17 (I) Projected annual net or gross premiums shall be
18 based on the actual writings to date for the underwriting
19 member's current calendar year, its writings for the previous
20 calendar year, or both. Ratios shall be computed on an
21 annualized basis.

22 (II) For purposes of this sub-subparagraph, the term
23 "gross written premiums" means direct premiums written and
24 reinsurance assumed.

25 c. Surplus as to policyholders.--For the purpose of
26 determining the limitation on coverage written, surplus as to
27 policyholders shall be deemed to include any voluntary
28 reserves, or any part thereof, which are not required by or
29 pursuant to law and shall be determined from the last sworn
30 statement of such underwriting member with the department, or
31 by the last report or examination filed by the department,

1 whichever is more recent at the time of assumption of such
2 risk.

3 24. Unearned premium reserves.--All unearned premium
4 reserves for business written on the exchange shall be
5 calculated on a monthly or more frequent basis or on such
6 other basis as determined by the department; except that all
7 premiums on any marine or transportation insurance trip risk
8 shall be deemed unearned until the trip is terminated.

9 25. Loss reserves.--All underwriting members of an
10 exchange shall maintain loss reserves, including a reserve for
11 incurred but not reported claims. The reserves shall be
12 subject to review by the department, and, if loss experience
13 shows that an underwriting member's loss reserves are
14 inadequate, the department shall require the underwriting
15 member to maintain loss reserves in such additional amount as
16 is needed to make them adequate.

17 26. Distribution of profits.--An underwriting member
18 shall not distribute any profits in the form of cash or other
19 assets to owners except out of that part of its available and
20 accumulated surplus funds which is derived from realized net
21 operating profits on its business and realized capital gains.
22 In any one year such payments to owners shall not exceed 30
23 percent of such surplus as of December 31 of the immediately
24 preceding year, unless otherwise approved by the department.
25 No distribution of profits shall be made that would render an
26 underwriting member either impaired or insolvent.

27 27. Stock dividends.--A stock dividend may be paid by
28 an underwriting member out of any available surplus funds in
29 excess of the aggregate amount of surplus advanced to the
30 underwriting member under subparagraph 29.

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1 28. Dividends from earned surplus.--A dividend
2 otherwise lawful may be payable out of an underwriting
3 member's earned surplus even though the total surplus of the
4 underwriting member is then less than the aggregate of its
5 past contributed surplus resulting from issuance of its
6 capital stock at a price in excess of the par value thereof.

7 29. Borrowing of money by underwriting members.--

8 a. An underwriting member may borrow money to defray
9 the expenses of its organization, provide it with surplus
10 funds, or for any purpose of its business, upon a written
11 agreement that such money is required to be repaid only out of
12 the underwriting member's surplus in excess of that stipulated
13 in such agreement. The agreement may provide for interest not
14 exceeding 15 percent simple interest per annum. The interest
15 shall or shall not constitute a liability of the underwriting
16 member as to its funds other than such excess of surplus, as
17 stipulated in the agreement. No commission or promotion
18 expense shall be paid in connection with any such loan. The
19 use of any surplus note and any repayments thereof shall be
20 subject to the approval of the department.

21 b. Money so borrowed, together with any interest
22 thereon if so stipulated in the agreement, shall not form a
23 part of the underwriting member's legal liabilities except as
24 to its surplus in excess of the amount thereof stipulated in
25 the agreement, nor be the basis of any setoff; but until
26 repayment, financial statements filed or published by an
27 underwriting member shall show as a footnote thereto the
28 amount thereof then unpaid, together with any interest thereon
29 accrued but unpaid.

30 30. Liquidation, rehabilitation, and
31 restrictions.--The department, upon a showing that a member or

1 associate broker of an exchange has met one or more of the
2 grounds contained in part I of chapter 631, may restrict sales
3 by type of risk, policy or contract limits, premium levels, or
4 policy or contract provisions; increase surplus or capital
5 requirements of underwriting members; issue cease and desist
6 orders; suspend or restrict a member's or associate broker's
7 right to transact business; place an underwriting member under
8 conservatorship or rehabilitation; or seek an order of
9 liquidation as authorized by part I of chapter 631.

10 31. Prohibited conduct.--The following acts by a
11 member, associate broker, or affiliated person shall
12 constitute prohibited conduct:

13 a. Fraud.

14 b. Fraudulent or dishonest acts committed by a member
15 or associate broker prior to admission to an exchange, if the
16 facts and circumstances were not disclosed to the department
17 upon application to become a member or associate broker.

18 c. Conduct detrimental to the welfare of an exchange.

19 d. Unethical or improper practices or conduct,
20 inconsistent with just and equitable principles of trade as
21 set forth in, but not limited to, ss. 626.951-626.9641 and,
22 626.973, ~~and 626.988~~.

23 e. Failure to use due diligence to ascertain the
24 insurance needs of a client or a principal.

25 f. Misstatements made under oath or upon an
26 application for membership on an exchange.

27 g. Failure to testify or produce documents when
28 requested by the department.

29 h. Willful violation of any law of this state.

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1 i. Failure of an officer or principal to testify under
2 oath concerning a member, associate broker, or other person's
3 affairs as they relate to the operation of an exchange.

4 j. Violation of the constitution and bylaws of the
5 exchange.

6 32. Penalties for participating in prohibited
7 conduct.--

8 a. The department may order the suspension of further
9 transaction of business on the exchange of any member or
10 associate broker found to have engaged in prohibited conduct.
11 In addition, any member or associate broker found to have
12 engaged in prohibited conduct may be subject to reprimand,
13 censure, and/or a fine not exceeding \$25,000 imposed by the
14 department.

15 b. Any member which has an affiliated person who is
16 found to have engaged in prohibited conduct shall be subject
17 to involuntary withdrawal or in addition thereto may be
18 subject to suspension, reprimand, censure, and/or a fine not
19 exceeding \$25,000.

20 33. Reduction of penalties.--Any suspension,
21 reprimand, censure, or fine may be remitted or reduced by the
22 department on such terms and conditions as are deemed fair and
23 equitable.

24 34. Other offenses.--Any member or associate broker
25 that is suspended shall be deprived, during the period of
26 suspension, of all rights and privileges of a member or of an
27 associate broker and may be proceeded against by the
28 department for any offense committed either before or after
29 the date of suspension.

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1 35. Reinstatement.--Any member or associate broker
2 that is suspended may be reinstated at any time on such terms
3 and conditions as the department may specify.

4 36. Remittance of fines.--Fines imposed under this
5 section shall be remitted to the department and shall be paid
6 into the Insurance Commissioner's Regulatory Trust Fund.

7 37. Failure to pay fines.--When a member or associate
8 broker has failed to pay a fine for 15 days after it becomes
9 payable, such member or associate broker shall be suspended,
10 unless the department has granted an extension of time to pay
11 such fine.

12 38. Changes in ownership or assets.--In the event of a
13 major change in the ownership or a major change in the assets
14 of an underwriting member, the underwriting member shall
15 report such change in writing to the department within 30 days
16 of the effective date thereof. The report shall set forth the
17 details of the change. Any change in ownership or assets of
18 more than 5 percent shall be considered a major change.

19 39. Retaliation.--

20 a. When by or pursuant to the laws of any other state
21 or foreign country any taxes, licenses, or other fees, in the
22 aggregate, and any fines, penalties, deposit requirements, or
23 other material obligations, prohibitions, or restrictions are
24 or would be imposed upon an exchange or upon the agents or
25 representatives of such exchange which are in excess of such
26 taxes, licenses, and other fees, in the aggregate, or which
27 are in excess of such fines, penalties, deposit requirements,
28 or other obligations, prohibitions, or restrictions directly
29 imposed upon similar exchanges or upon the agents or
30 representatives of such exchanges of such other state or
31 country under the statutes of this state, so long as such laws

1 of such other state or country continue in force or are so
2 applied, the same taxes, licenses, and other fees, in the
3 aggregate, or fines, penalties, deposit requirements, or other
4 material obligations, prohibitions, or restrictions of
5 whatever kind shall be imposed by the department upon the
6 exchanges, or upon the agents or representatives of such
7 exchanges, of such other state or country doing business or
8 seeking to do business in this state.

9 b. Any tax, license, or other obligation imposed by
10 any city, county, or other political subdivision or agency of
11 a state, jurisdiction, or foreign country on an exchange, or
12 on the agents or representatives on an exchange, shall be
13 deemed to be imposed by such state, jurisdiction, or foreign
14 country within the meaning of sub-subparagraph a.

15 40. Agents.--

16 a. Agents as defined in ss. 626.041, 626.051, 626.062,
17 and 626.914 who are broker members or associate broker members
18 of an exchange shall be allowed only to place on an exchange
19 the same kind or kinds of business that the agent is licensed
20 to place pursuant to Florida law. Direct Florida business as
21 defined in s. 626.916 or s. 626.917 shall be written through a
22 broker member who is a surplus lines agent as defined in s.
23 626.914. The activities of each broker member or associate
24 broker with regard to an exchange shall be subject to all
25 applicable provisions of the insurance laws of this state, and
26 all such activities shall constitute transactions under his or
27 her license as an insurance agent for purposes of the Florida
28 insurance law.

29 b. Premium payments and other requirements.--If an
30 underwriting member has assumed the risk as to a surplus lines
31 coverage and if the premium therefor has been received by the

1 surplus lines agent who placed such insurance, then in all
2 questions thereafter arising under the coverage as between the
3 underwriting member and the insured, the underwriting member
4 shall be deemed to have received the premium due to it for
5 such coverage; and the underwriting member shall be liable to
6 the insured as to losses covered by such insurance, and for
7 unearned premiums which may become payable to the insured upon
8 cancellation of such insurance, whether or not in fact the
9 surplus lines agent is indebted to the underwriting member
10 with respect to such insurance or for any other cause.

11 41. Improperly issued contracts, riders, and
12 endorsements.--

13 a. Any insurance policy, rider, or endorsement issued
14 by an underwriting member and otherwise valid which contains
15 any condition or provision not in compliance with the
16 requirements of this section shall not be thereby rendered
17 invalid, except as provided in s. 627.415, but shall be
18 construed and applied in accordance with such conditions and
19 provisions as would have applied had such policy, rider, or
20 endorsement been in full compliance with this section. In the
21 event an underwriting member issues or delivers any policy for
22 an amount which exceeds any limitations otherwise provided in
23 this section, the underwriting member shall be liable to the
24 insured or his or her beneficiary for the full amount stated
25 in the policy in addition to any other penalties that may be
26 imposed.

27 b. Any insurance contract delivered or issued for
28 delivery in this state governing a subject or subjects of
29 insurance resident, located, or to be performed in this state
30 which, pursuant to the provisions of this section, the
31 underwriting member may not lawfully insure under such a

1 contract shall be cancelable at any time by the underwriting
2 member, any provision of the contract to the contrary
3 notwithstanding; and the underwriting member shall promptly
4 cancel the contract in accordance with the request of the
5 department therefor. No such illegality or cancellation shall
6 be deemed to relieve the underwriting syndicate of any
7 liability incurred by it under the contract while in force or
8 to prohibit the underwriting syndicate from retaining the pro
9 rata earned premium thereon. This provision does not relieve
10 the underwriting syndicate from any penalty otherwise incurred
11 by the underwriting syndicate.

12 42. Satisfaction of judgments.--

13 a. Every judgment or decree for the recovery of money
14 heretofore or hereafter entered in any court of competent
15 jurisdiction against any underwriting member shall be fully
16 satisfied within 60 days from and after the entry thereof or,
17 in the case of an appeal from such judgment or decree, within
18 60 days from and after the affirmance of the judgment or
19 decree by the appellate court.

20 b. If the judgment or decree is not satisfied as
21 required under sub-subparagraph a., and proof of such failure
22 to satisfy is made by filing with the department a certified
23 transcript of the docket of the judgment or the decree
24 together with a certificate by the clerk of the court wherein
25 the judgment or decree remains unsatisfied, in whole or in
26 part, after the time provided in sub-subparagraph a., the
27 department shall forthwith prohibit the underwriting member
28 from transacting business. The department shall not permit
29 such underwriting member to write any new business until the
30 judgment or decree is wholly paid and satisfied and proof
31 thereof is filed with the department under the official

1 certificate of the clerk of the court wherein the judgment was
2 recovered, showing that the judgment or decree is satisfied of
3 record, and until the expenses and fees incurred in the case
4 are also paid by the underwriting syndicate.

5 43. Tender and exchange offers.--No person shall
6 conclude a tender offer or an exchange offer or otherwise
7 acquire 5 percent or more of the outstanding voting securities
8 of an underwriting member or controlling company or purchase 5
9 percent or more of the ownership of an underwriting member or
10 controlling company unless such person has filed with, and
11 obtained the approval of, the department and sent to such
12 underwriting member a statement setting forth:

13 a. The identity of, and background information on,
14 each person by whom, or on whose behalf, the acquisition is to
15 be made; and, if the acquisition is to be made by or on behalf
16 of a corporation, association, or trust, the identity of and
17 background information on each director, officer, trustee, or
18 other natural person performing duties similar to those of a
19 director, officer, or trustee for the corporation,
20 association, or trust.

21 b. The source and amount of the funds or other
22 consideration used, or to be used, in making the acquisition.

23 c. Any plans or proposals which such person may have
24 to liquidate such member, to sell its assets, or to merge or
25 consolidate it.

26 d. The percentage of ownership which such person
27 proposes to acquire and the terms of the offer or exchange, as
28 the case may be.

29 e. Information as to any contracts, arrangements, or
30 understandings with any party with respect to any securities
31 of such member or controlling company, including, but not

1 limited to, information relating to the transfer of any
2 securities, option arrangements, or puts or calls or the
3 giving or withholding of proxies, naming the party with whom
4 such contract, arrangements, or understandings have been
5 entered and giving the details thereof.

6 f. The department may disapprove any acquisition
7 subject to the provisions of this subparagraph by any person
8 or any affiliated person of such person who:

9 (I) Willfully violates this subparagraph;

10 (II) In violation of an order of the department issued
11 pursuant to sub-subparagraph j., fails to divest himself or
12 herself of any stock obtained in violation of this
13 subparagraph, or fails to divest himself or herself of any
14 direct or indirect control of such stock, within 25 days after
15 such order; or

16 (III) In violation of an order issued by the
17 department pursuant to sub-subparagraph j., acquires
18 additional stock of the underwriting member or controlling
19 company, or direct or indirect control of such stock, without
20 complying with this subparagraph.

21 g. The person or persons filing the statement required
22 by this subparagraph have the burden of proof. The department
23 shall approve any such acquisition if it finds, on the basis
24 of the record made during any proceeding or on the basis of
25 the filed statement if no proceeding is conducted, that:

26 (I) Upon completion of the acquisition, the
27 underwriting member will be able to satisfy the requirements
28 for the approval to write the line or lines of insurance for
29 which it is presently approved;

30 (II) The financial condition of the acquiring person
31 or persons will not jeopardize the financial stability of the

1 | underwriting member or prejudice the interests of its
2 | policyholders or the public;
3 | (III) Any plan or proposal which the acquiring person
4 | has, or acquiring persons have, made:
5 | (A) To liquidate the insurer, sell its assets, or
6 | merge or consolidate it with any person, or to make any other
7 | major change in its business or corporate structure or
8 | management; or
9 | (B) To liquidate any controlling company, sell its
10 | assets, or merge or consolidate it with any person, or to make
11 | any major change in its business or corporate structure or
12 | management which would have an effect upon the underwriting
13 | member
14 |
15 | is fair and free of prejudice to the policyholders of the
16 | underwriting member or to the public;
17 | (IV) The competence, experience, and integrity of
18 | those persons who will control directly or indirectly the
19 | operation of the underwriting member indicate that the
20 | acquisition is in the best interest of the policyholders of
21 | the underwriting member and in the public interest;
22 | (V) The natural persons for whom background
23 | information is required to be furnished pursuant to this
24 | subparagraph have such backgrounds as to indicate that it is
25 | in the best interests of the policyholders of the underwriting
26 | member, and in the public interest, to permit such persons to
27 | exercise control over such underwriting member;
28 | (VI) The officers and directors to be employed after
29 | the acquisition have sufficient insurance experience and
30 | ability to assure reasonable promise of successful operation;
31 |

1 (VII) The management of the underwriting member after
2 the acquisition will be competent and trustworthy and will
3 possess sufficient managerial experience so as to make the
4 proposed operation of the underwriting member not hazardous to
5 the insurance-buying public;

6 (VIII) The management of the underwriting member after
7 the acquisition will not include any person who has directly
8 or indirectly through ownership, control, reinsurance
9 transactions, or other insurance or business relations
10 unlawfully manipulated the assets, accounts, finances, or
11 books of any insurer or underwriting member or otherwise acted
12 in bad faith with respect thereto;

13 (IX) The acquisition is not likely to be hazardous or
14 prejudicial to the underwriting member's policyholders or the
15 public; and

16 (X) The effect of the acquisition of control would not
17 substantially lessen competition in insurance in this state or
18 would not tend to create a monopoly therein.

19 h. No vote by the stockholder of record, or by any
20 other person, of any security acquired in contravention of the
21 provisions of this subparagraph is valid. Any acquisition of
22 any security contrary to the provisions of this subparagraph
23 is void. Upon the petition of the underwriting member or
24 controlling company, the circuit court for the county in which
25 the principal office of such underwriting member is located
26 may, without limiting the generality of its authority, order
27 the issuance or entry of an injunction or other order to
28 enforce the provisions of this subparagraph. There shall be a
29 private right of action in favor of the underwriting member or
30 controlling company to enforce the provisions of this
31 subparagraph. No demand upon the department that it perform

1 its functions shall be required as a prerequisite to any suit
2 by the underwriting member or controlling company against any
3 other person, and in no case shall the department be deemed a
4 necessary party to any action by such underwriting member or
5 controlling company to enforce the provisions of this
6 subparagraph. Any person who makes or proposes an acquisition
7 requiring the filing of a statement pursuant to this
8 subparagraph, or who files such a statement, shall be deemed
9 to have thereby designated the Insurance Commissioner, or his
10 or her assistant or deputy or another person in charge of his
11 or her office, as such person's agent for service of process
12 under this subparagraph and shall thereby be deemed to have
13 submitted himself or herself to the administrative
14 jurisdiction of the department and to the jurisdiction of the
15 circuit court.

16 i. Any approval by the department under this
17 subparagraph does not constitute a recommendation by the
18 department for an acquisition, tender offer, or exchange
19 offer. It is unlawful for a person to represent that the
20 department's approval constitutes a recommendation. A person
21 who violates the provisions of this sub-subparagraph is guilty
22 of a felony of the third degree, punishable as provided in s.
23 775.082, s. 775.083, or s. 775.084. The
24 statute-of-limitations period for the prosecution of an
25 offense committed under this sub-subparagraph is 5 years.

26 j. Upon notification to the department by the
27 underwriting member or a controlling company that any person
28 or any affiliated person of such person has acquired 5 percent
29 or more of the outstanding voting securities of the
30 underwriting member or controlling company without complying
31 with the provisions of this subparagraph, the department shall

1 order that the person and any affiliated person of such person
2 cease acquisition of any further securities of the
3 underwriting member or controlling company; however, the
4 person or any affiliated person of such person may request a
5 proceeding, which proceeding shall be convened within 7 days
6 after the rendering of the order for the sole purpose of
7 determining whether the person, individually or in connection
8 with any affiliated person of such person, has acquired 5
9 percent or more of the outstanding voting securities of an
10 underwriting member or controlling company. Upon the failure
11 of the person or affiliated person to request a hearing within
12 7 days, or upon a determination at a hearing convened pursuant
13 to this sub-subparagraph that the person or affiliated person
14 has acquired voting securities of an underwriting member or
15 controlling company in violation of this subparagraph, the
16 department may order the person and affiliated person to
17 divest themselves of any voting securities so acquired.

18 k.(I) The department shall, if necessary to protect
19 the public interest, suspend or revoke the certificate of
20 authority of any underwriting member or controlling company:

21 (A) The control of which is acquired in violation of
22 this subparagraph;

23 (B) That is controlled, directly or indirectly, by any
24 person or any affiliated person of such person who, in
25 violation of this subparagraph, has obtained control of an
26 underwriting member or controlling company; or

27 (C) That is controlled, directly or indirectly, by any
28 person who, directly or indirectly, controls any other person
29 who, in violation of this subparagraph, acquires control of an
30 underwriting member or controlling company.

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1 (II) If any underwriting member is subject to
2 suspension or revocation pursuant to sub-sub-subparagraph (I),
3 the underwriting member shall be deemed to be in such
4 condition, or to be using or to have been subject to such
5 methods or practices in the conduct of its business, as to
6 render its further transaction of insurance presently or
7 prospectively hazardous to its policyholders, creditors, or
8 stockholders or to the public.

9 1.(I) For the purpose of this sub-sub-subparagraph,
10 the term "affiliated person" of another person means:

11 (A) The spouse of such other person;

12 (B) The parents of such other person and their lineal
13 descendants and the parents of such other person's spouse and
14 their lineal descendants;

15 (C) Any person who directly or indirectly owns or
16 controls, or holds with power to vote, 5 percent or more of
17 the outstanding voting securities of such other person;

18 (D) Any person 5 percent or more of the outstanding
19 voting securities of which are directly or indirectly owned or
20 controlled, or held with power to vote, by such other person;

21 (E) Any person or group of persons who directly or
22 indirectly control, are controlled by, or are under common
23 control with such other person; or any officer, director,
24 partner, copartner, or employee of such other person;

25 (F) If such other person is an investment company, any
26 investment adviser of such company or any member of an
27 advisory board of such company;

28 (G) If such other person is an unincorporated
29 investment company not having a board of directors, the
30 depositor of such company; or

31

1 (H) Any person who has entered into an agreement,
2 written or unwritten, to act in concert with such other person
3 in acquiring or limiting the disposition of securities of an
4 underwriting member or controlling company.

5 (II) For the purposes of this section, the term
6 "controlling company" means any corporation, trust, or
7 association owning, directly or indirectly, 25 percent or more
8 of the voting securities of one or more underwriting members.

9 m. The department is authorized to adopt, amend, or
10 repeal rules that are necessary to implement the provisions of
11 this subparagraph, pursuant to chapter 120.

12 44. Background information.--The information as to the
13 background and identity of each person about whom information
14 is required to be furnished pursuant to sub-subparagraph 43.a.
15 shall include, but shall not be limited to:

16 a. Such person's occupations, positions of employment,
17 and offices held during the past 10 years.

18 b. The principal business and address of any business,
19 corporation, or other organization in which each such office
20 was held or in which such occupation or position of employment
21 was carried on.

22 c. Whether, at any time during such 10-year period,
23 such person was convicted of any crime other than a traffic
24 violation.

25 d. Whether, during such 10-year period, such person
26 has been the subject of any proceeding for the revocation of
27 any license and, if so, the nature of such proceeding and the
28 disposition thereof.

29 e. Whether, during such 10-year period, such person
30 has been the subject of any proceeding under the federal
31 Bankruptcy Act or whether, during such 10-year period, any

1 corporation, partnership, firm, trust, or association in which
2 such person was a director, officer, trustee, partner, or
3 other official has been subject to any such proceeding, either
4 during the time in which such person was a director, officer,
5 trustee, partner, or other official, or within 12 months
6 thereafter.

7 f. Whether, during such 10-year period, such person
8 has been enjoined, either temporarily or permanently, by a
9 court of competent jurisdiction from violating any federal or
10 state law regulating the business of insurance, securities, or
11 banking, or from carrying out any particular practice or
12 practices in the course of the business of insurance,
13 securities, or banking, together with details of any such
14 event.

15 45. Security fund.--All underwriting members shall be
16 members of the security fund of any exchange.

17 46. Underwriting member defined.--Whenever the term
18 "underwriting member" is used in this subsection, it shall be
19 construed to mean "underwriting syndicate."

20 47. Offsets.--Any action, requirement, or constraint
21 imposed by the department shall reduce or offset similar
22 actions, requirements, or constraints of any exchange.

23 48. Restriction on member ownership.--

24 a. Investments existing prior to July 2, 1987.--The
25 investment in any member by brokers, agents, and
26 intermediaries transacting business on the exchange, and the
27 investment in any such broker, agent, or intermediary by any
28 member, directly or indirectly, shall in each case be limited
29 in the aggregate to less than 20 percent of the total
30 investment in such member, broker, agent, or intermediary, as
31 the case may be. After December 31, 1987, the aggregate

1 percent of the total investment in such member by any broker,
2 agent, or intermediary and the aggregate percent of the total
3 investment in any such broker, agent, or intermediary by any
4 member, directly or indirectly, shall not exceed 15 percent.
5 After June 30, 1988, such aggregate percent shall not exceed
6 10 percent and after December 31, 1988, such aggregate percent
7 shall not exceed 5 percent.

8 b. Investments arising on or after July 2, 1987.--The
9 investment in any underwriting member by brokers, agents, or
10 intermediaries transacting business on the exchange, and the
11 investment in any such broker, agent, or intermediary by any
12 underwriting member, directly or indirectly, shall in each
13 case be limited in the aggregate to less than 5 percent of the
14 total investment in such underwriting member, broker, agent,
15 or intermediary.

16 49. "Underwriting manager" defined.--"Underwriting
17 manager" as used in this subparagraph includes any person,
18 partnership, corporation, or organization providing any of the
19 following services to underwriting members of the exchange:

20 a. Office management and allied services, including
21 correspondence and secretarial services.

22 b. Accounting services, including bookkeeping and
23 financial report preparation.

24 c. Investment and banking consultations and services.

25 d. Underwriting functions and services including the
26 acceptance, rejection, placement, and marketing of risk.

27 50. Prohibition of underwriting manager
28 investment.--Any direct or indirect investment in any
29 underwriting manager by a broker member or any affiliated
30 person of a broker member or any direct or indirect investment
31 in a broker member by an underwriting manager or any

1 affiliated person of an underwriting manager is prohibited.
2 "Affiliated person" for purposes of this subparagraph is
3 defined in subparagraph 43. Any direct or indirect investment
4 prohibited by this subparagraph which exists prior to July 2,
5 1987, shall be dissolved by June 30, 1988.

6 51. An underwriting member may not accept reinsurance
7 on an assumed basis from an affiliate or a controlling
8 company, nor may a broker member or management company place
9 reinsurance from an affiliate or controlling company of theirs
10 with an underwriting member. "Affiliate and controlling
11 company" for purposes of this subparagraph is defined in
12 subparagraph 43.

13 52. Premium defined.--"Premium" is the consideration
14 for insurance, by whatever name called. Any "assessment" or
15 any "membership," "policy," "survey," "inspection," "service"
16 fee or charge or similar fee or charge in consideration for an
17 insurance contract is deemed part of the premium.

18 53. Rules.--The department shall promulgate rules
19 necessary for or as an aid to the effectuation of any
20 provision of this section.

21 Section 8. Section 626.988, Florida Statutes, is
22 repealed.

23 Section 9. This act shall take effect July 1, 1999.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 2402

4 1. Clarifies the following provisions:

5 * That financial institutions conduct insurance
6 transactions only through Florida-licensed agents
7 representing Florida-authorized insurers or
8 eligible surplus lines insurers.

9 * That persons must provide written disclosure to a
10 customer that the choice of insurance will not
11 affect credit decisions.

12 * That Federally insured or state insured depository
13 institutions and credit unions provide in writing,
14 prior to the sale of any insurance policy, that
15 such policy is not deposit, FDIC insured, not
16 guaranteed by the bank where appropriate, involves
17 investment risk, including loss of principal.

18 2. Creates a provision under the "Unfair Competition and
19 Deceptive Practices Act" within the Insurance Code to
20 prohibit the use of any advertisement that would mislead
21 a reasonable person to believe mistakenly that the state
22 or Federal Government is responsible for the insurance
23 sales activities of any person or stands behind a
24 person's credit or that any person, state or the Federal
25 Government guarantees any returns on insurance products
26 or is the source of payment of any insurance obligation
27 of or sold by any person.

28 3. Creates several provisions under the "Favored Agent or
29 Insurer" section of the Insurance Code to provide for
30 the following:

31 * Prohibits any person from rejecting an insurance
policy solely because the policy has been issued
or underwritten by any person not associated with
the financial institution, where such insurance is
required in connection with a loan or extension of
credit.

* Prohibits any person from requiring a borrower,
mortgagor, purchaser, insurer, broker, or agent to
pay a separate charge in connection with a loan,
extension of credit, or another banking product,
unless such charge would be required if the person
were providing the insurance.

* Prohibits any person from using insurance
information required to be disclosed by a customer
to a financial institution, in connection with the
extension of credit for the purpose of soliciting
the sale of insurance, unless the customer has
given express written consent or has been given
the opportunity to object which must be in writing
and must be clearly made. "Insurance information"
means information concerning premiums, terms and

- 1 conditions of insurance coverage, claims, and
2 history provided by the customer.
- 3 * Requires all documents constituting policies of
4 insurance to be separate and not be combined with
5 other documents. Also, prohibits the expense of
6 insurance premiums from being included in a
7 primary credit transaction without the express
8 written consent of the customer.
- 9 * Requires that a loan officer of a financial
10 institution who is involved in the application,
11 solicitation, or closing of a loan transaction may
12 not solicit or sell insurance in connection with
13 the same loan, but such officer may refer the loan
14 customer to another insurance agent who is not
15 involved in the same loan transaction. However,
16 this provision does not apply to an agent located
17 on premises having only a single person with
18 lending authority, or to a broker or dealer
19 registered under the Federal Securities Exchange
20 Act in connection with a margin loan secured by
21 securities.
- 22 * Prohibits persons from making an extension of
23 credit or the furnishing of services on the
24 condition that the customer obtain insurance from
25 the financial institution.
- 26 4. Provides that when an agent conducts insurance
27 transactions at two or more locations, a separate
28 primary agent need not be designated at each location,
29 provided that no transaction occur at a location when
30 the agent is not present and no unlicensed employee has
31 engaged in insurance activities requiring licensure.