

By Representative Sublette

1 A bill to be entitled
 2 An act relating to insurance anti-affiliation;
 3 amending ss. 626.321, 626.730, and 629.401,
 4 F.S., to conform; repealing s. 626.988, F.S.,
 5 relating to prohibiting certain insurance
 6 affiliation with financial institutions;
 7 providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

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 11 Section 1. Paragraphs (e) and (g) of subsection (1) of
 12 section 626.321, Florida Statutes, 1998 Supplement, are
 13 amended to read:

14 626.321 Limited licenses.--

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

20 (e) Credit life or disability insurance.--License
 21 covering only credit life or disability insurance. The
 22 license may be issued only to an individual employed by a life
 23 or health insurer as an officer or other salaried or
 24 commissioned representative, or to an individual employed by
 25 or associated with a lending or financing institution or
 26 creditor, and may authorize the sale of such insurance only
 27 with respect to borrowers or debtors of such lending or
 28 financing institution or creditor. However, only the
 29 individual or entity whose tax identification number is used
 30 in receiving or is credited with receiving the commission from
 31 the sale of such insurance shall be the licensed agent of the

1 insurer. No individual while so licensed shall hold a license
2 as an agent or solicitor as to any other or additional kind or
3 class of life or health insurance coverage. An entity other
4 than a lending or financial institution ~~defined in s. 626.988~~
5 holding a limited license under this paragraph shall also be
6 authorized to sell credit property insurance.

7 (g) Credit property insurance.--A license covering
8 only credit property insurance may be issued to any individual
9 except an individual employed by or associated with a lending
10 or financial institution ~~defined in s. 626.988~~ and authorized
11 to sell such insurance only with respect to a borrower or
12 debtor, not to exceed the amount of the loan.

13 Section 2. Subsection (4) of section 626.730, Florida
14 Statutes, 1998 Supplement, is amended to read:

15 626.730 Purpose of license.--

16 (4) This section shall not be deemed to prohibit the
17 licensing under a limited license as to motor vehicle physical
18 damage and mechanical breakdown insurance or the licensing
19 under a limited license for credit property insurance of any
20 person employed by or associated with a motor vehicle sales or
21 financing agency, a retail sales establishment, or a consumer
22 loan office, other than a consumer loan office owned by or
23 affiliated with a financial institution ~~as defined in s.~~
24 ~~626.988~~, with respect to insurance of the interest of such
25 agency in a motor vehicle sold or financed by it or in
26 personal property when used as collateral for a loan. This
27 section does not apply with respect to the interest of a real
28 estate mortgagee in or as to insurance covering such interest
29 or in the real estate subject to such mortgage.

30 Section 3. Paragraph (b) of subsection (6) of section
31 629.401, Florida Statutes, is amended to read:

1 629.401 Insurance exchange.--

2 (6)

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

6 1. General examination powers.--The department shall
7 examine the affairs, transactions, accounts, records, and
8 assets of any security fund, exchange, members, and associate
9 brokers as often as it deems advisable. The examination may
10 be conducted by the accredited examiners of the department at
11 the offices of the entity or person being examined. The
12 department shall examine in like manner each prospective
13 member or associate broker applying for membership in an
14 exchange.

15 2. Departmental approval and applications of
16 underwriting members.--No underwriting member shall commence
17 operation without the approval of the department. Before
18 commencing operation, an underwriting member shall provide a
19 written application containing:

20 a. Name, type, and purpose of the underwriting member.

21 b. Name, residence address, business background, and
22 qualifications of each person associated or to be associated
23 in the formation or financing of the underwriting member.

24 c. Full disclosure of the terms of all understandings
25 and agreements existing or proposed among persons so
26 associated relative to the underwriting member, or the
27 formation or financing thereof, accompanied by a copy of each
28 such agreement or understanding.

29 d. Full disclosure of the terms of all understandings
30 and agreements existing or proposed for management or
31 exclusive agency contracts.

1 3. Investigation of underwriting member
2 applications.--In connection with any proposal to establish an
3 underwriting member, the department shall make an
4 investigation of:
5 a. The character, reputation, financial standing, and
6 motives of the organizers, incorporators, or subscribers
7 organizing the proposed underwriting member.
8 b. The character, financial responsibility, insurance
9 experience, and business qualifications of its proposed
10 officers.
11 c. The character, financial responsibility, business
12 experience, and standing of the proposed stockholders and
13 directors, or owners.
14 4. Notice of management changes.--An underwriting
15 member shall promptly give the department written notice of
16 any change among the directors or principal officers of the
17 underwriting member within 30 days after such change. The
18 department shall investigate the new directors or principal
19 officers of the underwriting member. The department's
20 investigation shall include an investigation of the character,
21 financial responsibility, insurance experience, and business
22 qualifications of any new directors or principal officers. As
23 a result of the investigation, the department may require the
24 underwriting member to replace any new directors or principal
25 officers.
26 5. Alternate financial statement.--In lieu of any
27 financial examination, the department may accept an audited
28 financial statement.
29 6. Correction and reconstruction of records.--If the
30 department finds any accounts or records to be inadequate, or
31 inadequately kept or posted, it may employ experts to

1 reconstruct, rewrite, post, or balance them at the expense of
2 the person or entity being examined if such person or entity
3 has failed to maintain, complete, or correct such records or
4 accounts after the department has given him or her or it
5 notice and reasonable opportunity to do so.

6 7. Obstruction of examinations.--Any person or entity
7 who or which willfully obstructs the department or its
8 examiner in an examination is guilty of a misdemeanor of the
9 second degree, punishable as provided in s. 775.082 or s.
10 775.083.

11 8. Filing of annual statement.--Each underwriting
12 member shall file with the department a full and true
13 statement of its financial condition, transactions, and
14 affairs. The statement shall be filed on or before March 1 of
15 each year, or within such extension of time as the department
16 for good cause grants, and shall be for the preceding calendar
17 year. The statement shall contain information generally
18 included in insurer financial statements prepared in
19 accordance with generally accepted insurance accounting
20 principles and practices and in a form generally utilized by
21 insurers for financial statements, sworn to by at least two
22 executive officers of the underwriting member. The form of the
23 financial statements shall be the approved form of the
24 National Association of Insurance Commissioners or its
25 successor organization. The department may by rule require
26 each insurer to submit any part of the information contained
27 in the financial statement in a computer-readable form
28 compatible with the department's electronic data processing
29 system. In addition to information furnished in connection
30 with its annual statement, an underwriting member must furnish
31 to the department as soon as reasonably possible such

1 information about its transactions or affairs as the
2 department requests in writing. All information furnished
3 pursuant to the department's request must be verified by the
4 oath of two executive officers of the underwriting member.

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

11 10. Examination of agents.--If the department has
12 reason to believe that any agent, as defined in s. 626.041, s.
13 626.051, s. 626.062, or s. 626.914, has violated or is
14 violating any provision of the insurance law, or upon receipt
15 of a written complaint signed by any interested person
16 indicating that any such violation may exist, the department
17 shall conduct such examination as it deems necessary of the
18 accounts, records, documents, and transactions pertaining to
19 or affecting the insurance affairs of such agent.

20 11. Written reports of department.--The department or
21 its examiner shall make a full and true written report of any
22 examination. The report shall contain only information
23 obtained from examination of the records, accounts, files, and
24 documents of or relative to the person or entity examined or
25 from testimony of individuals under oath, together with
26 relevant conclusions and recommendations of the examiner based
27 thereon. The department shall furnish a copy of the report to
28 the person or entity examined not less than 30 days prior to
29 filing the report in its office. If such person or entity so
30 requests in writing within such 30-day period, the department
31 shall grant a hearing with respect to the report and shall not

1 file the report until after the hearing and after such
2 modifications have been made therein as the department deems
3 proper.

4 12. Admissibility of reports.--The report of an
5 examination when filed shall be admissible in evidence in any
6 action or proceeding brought by the department against the
7 person or entity examined, or against his or her or its
8 officers, employees, or agents. The department or its
9 examiners may at any time testify and offer other proper
10 evidence as to information secured or matters discovered
11 during the course of an examination, whether or not a written
12 report of the examination has been either made, furnished, or
13 filed in the department.

14 13. Publication of reports.--After an examination
15 report has been filed, the department may publish the results
16 of any such examination in one or more newspapers published in
17 this state whenever it deems it to be in the public interest.

18 14. Consideration of examination reports by entity
19 examined.--After the examination report of an underwriting
20 member has been filed, an affidavit shall be filed with the
21 department, not more than 30 days after the report has been
22 filed, on a form furnished by the department and signed by the
23 person or a representative of any entity examined, stating
24 that the report has been read and that the recommendations
25 made in the report will be considered within a reasonable
26 time.

27 15. Examination costs.--Each person or entity examined
28 by the department shall pay to the department the expenses
29 incurred in such examination.

30 16. Exchange costs.--An exchange shall reimburse the
31 department for any expenses incurred by it relating to the

1 regulation of the exchange and its members, except as
2 specified in subparagraph 15.

3 17. Powers of examiners.--Any examiner appointed by
4 the department, as to the subject of any examination,
5 investigation, or hearing being conducted by him or her, may
6 administer oaths, examine and cross-examine witnesses, and
7 receive oral and documentary evidence, and shall have the
8 power to subpoena witnesses, compel their attendance and
9 testimony, and require by subpoena the production of books,
10 papers, records, files, correspondence, documents, or other
11 evidence which the examiner deems relevant to the inquiry. If
12 any person refuses to comply with any such subpoena or to
13 testify as to any matter concerning which he or she may be
14 lawfully interrogated, the Circuit Court of Leon County or the
15 circuit court of the county wherein such examination,
16 investigation, or hearing is being conducted, or of the county
17 wherein such person resides, on the department's application
18 may issue an order requiring such person to comply with the
19 subpoena and to testify; and any failure to obey such an order
20 of the court may be punished by the court as a contempt
21 thereof. Subpoenas shall be served, and proof of such service
22 made, in the same manner as if issued by a circuit court.
23 Witness fees and mileage, if claimed, shall be allowed the
24 same as for testimony in a circuit court.

25 18. False testimony.--Any person willfully testifying
26 falsely under oath as to any matter material to any
27 examination, investigation, or hearing shall upon conviction
28 thereof be guilty of perjury and shall be punished
29 accordingly.

30 19. Self-incrimination.--
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1 a. If any person asks to be excused from attending or
2 testifying or from producing any books, papers, records,
3 contracts, documents, or other evidence in connection with any
4 examination, hearing, or investigation being conducted by the
5 department or its examiner, on the ground that the testimony
6 or evidence required of the person may tend to incriminate him
7 or her or subject him or her to a penalty or forfeiture, and
8 the person notwithstanding is directed to give such testimony
9 or produce such evidence, he or she shall, if so directed by
10 the department and the Department of Legal Affairs,
11 nonetheless comply with such direction; but the person shall
12 not thereafter be prosecuted or subjected to any penalty or
13 forfeiture for or on account of any transaction, matter, or
14 thing concerning which he or she may have so testified or
15 produced evidence, and no testimony so given or evidence so
16 produced shall be received against him or her upon any
17 criminal action, investigation, or proceeding; except that no
18 such person so testifying shall be exempt from prosecution or
19 punishment for any perjury committed by him or her in such
20 testimony, and the testimony or evidence so given or produced
21 shall be admissible against him or her upon any criminal
22 action, investigation, or proceeding concerning such perjury,
23 nor shall he or she be exempt from the refusal, suspension, or
24 revocation of any license, permission, or authority conferred,
25 or to be conferred, pursuant to the insurance law.

26 b. Any such individual may execute, acknowledge, and
27 file in the office of the department a statement expressly
28 waiving such immunity or privilege in respect to any
29 transaction, matter, or thing specified in such statement, and
30 thereupon the testimony of such individual or such evidence in
31 relation to such transaction, matter, or thing may be received

1 or produced before any judge or justice, court, tribunal,
2 grand jury, or otherwise; and if such testimony or evidence is
3 so received or produced, such individual shall not be entitled
4 to any immunity or privileges on account of any testimony so
5 given or evidence so produced.

6 20. Penalty for failure to testify.--Any person who
7 refuses or fails, without lawful cause, to testify relative to
8 the affairs of any member, associate broker, or other person
9 when subpoenaed and requested by the department to so testify,
10 as provided in subparagraph 17., shall, in addition to the
11 penalty provided in subparagraph 17., be guilty of a
12 misdemeanor of the second degree, punishable as provided in s.
13 775.082 or s. 775.083.

14 21. Name selection.--No underwriting member shall be
15 formed or authorized to transact insurance in this state under
16 a name which is the same as that of any authorized insurer or
17 is so nearly similar thereto as to cause or tend to cause
18 confusion or under a name which would tend to mislead as to
19 the type of organization of the insurer. Before incorporating
20 under or using any name, the underwriting syndicate or
21 proposed underwriting syndicate shall submit its name or
22 proposed name to the department for the approval of the
23 department.

24 22. Capitalization.--An underwriting member approved
25 on or after July 2, 1987, shall provide an initial paid-in
26 capital and surplus of \$3 million and thereafter shall
27 maintain a minimum policyholder surplus of \$2 million in order
28 to be permitted to write insurance. Underwriting members
29 approved prior to July 2, 1987, shall maintain a minimum
30 policyholder surplus of \$1 million. After June 29, 1988,
31 underwriting members approved prior to July 2, 1987, must

1 maintain a minimum policyholder surplus of \$1.5 million to
2 write insurance. After June 29, 1989, underwriting members
3 approved prior to July 2, 1987, must maintain a minimum
4 policyholder surplus of \$1.75 million to write insurance.
5 After December 30, 1989, all underwriting members, regardless
6 of the date they were approved, must maintain a minimum
7 policyholder surplus of \$2 million to write insurance. Except
8 for that portion of the paid-in capital and surplus which
9 shall be maintained in a security fund of an exchange, the
10 paid-in capital and surplus shall be invested by an
11 underwriting member in a manner consistent with ss.
12 625.301-625.340. The portion of the paid-in capital and
13 surplus in any security fund of an exchange shall be invested
14 in a manner limited to investments for life insurance
15 companies under the Florida insurance laws.

16 23. Limitations on coverage written.--

17 a. Limit of risk.--No underwriting member shall expose
18 itself to any loss on any one risk in an amount exceeding 10
19 percent of its surplus to policyholders. Any risk or portion
20 of any risk which shall have been reinsured in an assuming
21 reinsurer authorized or approved to do such business in this
22 state shall be deducted in determining the limitation of risk
23 prescribed in this section.

24 b. Restrictions on premiums written.--If the
25 department has reason to believe that the underwriting
26 member's ratio of actual or projected annual gross written
27 premiums to policyholder surplus exceeds 8 to 1 or the
28 underwriting member's ratio of actual or projected annual net
29 premiums to policyholder surplus exceeds 4 to 1, the
30 department may establish maximum gross or net annual premiums
31

1 to be written by the underwriting member consistent with
2 maintaining the ratios specified in this sub-subparagraph.

3 (I) Projected annual net or gross premiums shall be
4 based on the actual writings to date for the underwriting
5 member's current calendar year, its writings for the previous
6 calendar year, or both. Ratios shall be computed on an
7 annualized basis.

8 (II) For purposes of this sub-subparagraph, the term
9 "gross written premiums" means direct premiums written and
10 reinsurance assumed.

11 c. Surplus as to policyholders.--For the purpose of
12 determining the limitation on coverage written, surplus as to
13 policyholders shall be deemed to include any voluntary
14 reserves, or any part thereof, which are not required by or
15 pursuant to law and shall be determined from the last sworn
16 statement of such underwriting member with the department, or
17 by the last report or examination filed by the department,
18 whichever is more recent at the time of assumption of such
19 risk.

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

26 25. Loss reserves.--All underwriting members of an
27 exchange shall maintain loss reserves, including a reserve for
28 incurred but not reported claims. The reserves shall be
29 subject to review by the department, and, if loss experience
30 shows that an underwriting member's loss reserves are
31 inadequate, the department shall require the underwriting

1 member to maintain loss reserves in such additional amount as
2 is needed to make them adequate.

3 26. Distribution of profits.--An underwriting member
4 shall not distribute any profits in the form of cash or other
5 assets to owners except out of that part of its available and
6 accumulated surplus funds which is derived from realized net
7 operating profits on its business and realized capital gains.
8 In any one year such payments to owners shall not exceed 30
9 percent of such surplus as of December 31 of the immediately
10 preceding year, unless otherwise approved by the department.
11 No distribution of profits shall be made that would render an
12 underwriting member either impaired or insolvent.

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

17 28. Dividends from earned surplus.--A dividend
18 otherwise lawful may be payable out of an underwriting
19 member's earned surplus even though the total surplus of the
20 underwriting member is then less than the aggregate of its
21 past contributed surplus resulting from issuance of its
22 capital stock at a price in excess of the par value thereof.

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

24 a. An underwriting member may borrow money to defray
25 the expenses of its organization, provide it with surplus
26 funds, or for any purpose of its business, upon a written
27 agreement that such money is required to be repaid only out of
28 the underwriting member's surplus in excess of that stipulated
29 in such agreement. The agreement may provide for interest not
30 exceeding 15 percent simple interest per annum. The interest
31 shall or shall not constitute a liability of the underwriting

1 member as to its funds other than such excess of surplus, as
2 stipulated in the agreement. No commission or promotion
3 expense shall be paid in connection with any such loan. The
4 use of any surplus note and any repayments thereof shall be
5 subject to the approval of the department.

6 b. Money so borrowed, together with any interest
7 thereon if so stipulated in the agreement, shall not form a
8 part of the underwriting member's legal liabilities except as
9 to its surplus in excess of the amount thereof stipulated in
10 the agreement, nor be the basis of any setoff; but until
11 repayment, financial statements filed or published by an
12 underwriting member shall show as a footnote thereto the
13 amount thereof then unpaid, together with any interest thereon
14 accrued but unpaid.

15 30. Liquidation, rehabilitation, and
16 restrictions.--The department, upon a showing that a member or
17 associate broker of an exchange has met one or more of the
18 grounds contained in part I of chapter 631, may restrict sales
19 by type of risk, policy or contract limits, premium levels, or
20 policy or contract provisions; increase surplus or capital
21 requirements of underwriting members; issue cease and desist
22 orders; suspend or restrict a member's or associate broker's
23 right to transact business; place an underwriting member under
24 conservatorship or rehabilitation; or seek an order of
25 liquidation as authorized by part I of chapter 631.

26 31. Prohibited conduct.--The following acts by a
27 member, associate broker, or affiliated person shall
28 constitute prohibited conduct:

29 a. Fraud.

30 b. Fraudulent or dishonest acts committed by a member
31 or associate broker prior to admission to an exchange, if the

- 1 facts and circumstances were not disclosed to the department
2 upon application to become a member or associate broker.
- 3 c. Conduct detrimental to the welfare of an exchange.
- 4 d. Unethical or improper practices or conduct,
5 inconsistent with just and equitable principles of trade as
6 set forth in, but not limited to, ss. 626.951-626.9641, and
7 ~~626.973, and 626.988~~.
- 8 e. Failure to use due diligence to ascertain the
9 insurance needs of a client or a principal.
- 10 f. Misstatements made under oath or upon an
11 application for membership on an exchange.
- 12 g. Failure to testify or produce documents when
13 requested by the department.
- 14 h. Willful violation of any law of this state.
- 15 i. Failure of an officer or principal to testify under
16 oath concerning a member, associate broker, or other person's
17 affairs as they relate to the operation of an exchange.
- 18 j. Violation of the constitution and bylaws of the
19 exchange.
- 20 32. Penalties for participating in prohibited
21 conduct.--
- 22 a. The department may order the suspension of further
23 transaction of business on the exchange of any member or
24 associate broker found to have engaged in prohibited conduct.
25 In addition, any member or associate broker found to have
26 engaged in prohibited conduct may be subject to reprimand,
27 censure, and/or a fine not exceeding \$25,000 imposed by the
28 department.
- 29 b. Any member which has an affiliated person who is
30 found to have engaged in prohibited conduct shall be subject
31 to involuntary withdrawal or in addition thereto may be

1 subject to suspension, reprimand, censure, and/or a fine not
2 exceeding \$25,000.

3 33. Reduction of penalties.--Any suspension,
4 reprimand, censure, or fine may be remitted or reduced by the
5 department on such terms and conditions as are deemed fair and
6 equitable.

7 34. Other offenses.--Any member or associate broker
8 that is suspended shall be deprived, during the period of
9 suspension, of all rights and privileges of a member or of an
10 associate broker and may be proceeded against by the
11 department for any offense committed either before or after
12 the date of suspension.

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

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

19 37. Failure to pay fines.--When a member or associate
20 broker has failed to pay a fine for 15 days after it becomes
21 payable, such member or associate broker shall be suspended,
22 unless the department has granted an extension of time to pay
23 such fine.

24 38. Changes in ownership or assets.--In the event of a
25 major change in the ownership or a major change in the assets
26 of an underwriting member, the underwriting member shall
27 report such change in writing to the department within 30 days
28 of the effective date thereof. The report shall set forth the
29 details of the change. Any change in ownership or assets of
30 more than 5 percent shall be considered a major change.

31 39. Retaliation.--

1 a. When by or pursuant to the laws of any other state
2 or foreign country any taxes, licenses, or other fees, in the
3 aggregate, and any fines, penalties, deposit requirements, or
4 other material obligations, prohibitions, or restrictions are
5 or would be imposed upon an exchange or upon the agents or
6 representatives of such exchange which are in excess of such
7 taxes, licenses, and other fees, in the aggregate, or which
8 are in excess of such fines, penalties, deposit requirements,
9 or other obligations, prohibitions, or restrictions directly
10 imposed upon similar exchanges or upon the agents or
11 representatives of such exchanges of such other state or
12 country under the statutes of this state, so long as such laws
13 of such other state or country continue in force or are so
14 applied, the same taxes, licenses, and other fees, in the
15 aggregate, or fines, penalties, deposit requirements, or other
16 material obligations, prohibitions, or restrictions of
17 whatever kind shall be imposed by the department upon the
18 exchanges, or upon the agents or representatives of such
19 exchanges, of such other state or country doing business or
20 seeking to do business in this state.

21 b. Any tax, license, or other obligation imposed by
22 any city, county, or other political subdivision or agency of
23 a state, jurisdiction, or foreign country on an exchange, or
24 on the agents or representatives on an exchange, shall be
25 deemed to be imposed by such state, jurisdiction, or foreign
26 country within the meaning of sub-subparagraph a.

27 40. Agents.--

28 a. Agents as defined in ss. 626.041, 626.051, 626.062,
29 and 626.914 who are broker members or associate broker members
30 of an exchange shall be allowed only to place on an exchange
31 the same kind or kinds of business that the agent is licensed

1 to place pursuant to Florida law. Direct Florida business as
2 defined in s. 626.916 or s. 626.917 shall be written through a
3 broker member who is a surplus lines agent as defined in s.
4 626.914. The activities of each broker member or associate
5 broker with regard to an exchange shall be subject to all
6 applicable provisions of the insurance laws of this state, and
7 all such activities shall constitute transactions under his or
8 her license as an insurance agent for purposes of the Florida
9 insurance law.

10 b. Premium payments and other requirements.--If an
11 underwriting member has assumed the risk as to a surplus lines
12 coverage and if the premium therefor has been received by the
13 surplus lines agent who placed such insurance, then in all
14 questions thereafter arising under the coverage as between the
15 underwriting member and the insured, the underwriting member
16 shall be deemed to have received the premium due to it for
17 such coverage; and the underwriting member shall be liable to
18 the insured as to losses covered by such insurance, and for
19 unearned premiums which may become payable to the insured upon
20 cancellation of such insurance, whether or not in fact the
21 surplus lines agent is indebted to the underwriting member
22 with respect to such insurance or for any other cause.

23 41. Improperly issued contracts, riders, and
24 endorsements.--

25 a. Any insurance policy, rider, or endorsement issued
26 by an underwriting member and otherwise valid which contains
27 any condition or provision not in compliance with the
28 requirements of this section shall not be thereby rendered
29 invalid, except as provided in s. 627.415, but shall be
30 construed and applied in accordance with such conditions and
31 provisions as would have applied had such policy, rider, or

1 endorsement been in full compliance with this section. In the
2 event an underwriting member issues or delivers any policy for
3 an amount which exceeds any limitations otherwise provided in
4 this section, the underwriting member shall be liable to the
5 insured or his or her beneficiary for the full amount stated
6 in the policy in addition to any other penalties that may be
7 imposed.

8 b. Any insurance contract delivered or issued for
9 delivery in this state governing a subject or subjects of
10 insurance resident, located, or to be performed in this state
11 which, pursuant to the provisions of this section, the
12 underwriting member may not lawfully insure under such a
13 contract shall be cancelable at any time by the underwriting
14 member, any provision of the contract to the contrary
15 notwithstanding; and the underwriting member shall promptly
16 cancel the contract in accordance with the request of the
17 department therefor. No such illegality or cancellation shall
18 be deemed to relieve the underwriting syndicate of any
19 liability incurred by it under the contract while in force or
20 to prohibit the underwriting syndicate from retaining the pro
21 rata earned premium thereon. This provision does not relieve
22 the underwriting syndicate from any penalty otherwise incurred
23 by the underwriting syndicate.

24 42. Satisfaction of judgments.--

25 a. Every judgment or decree for the recovery of money
26 heretofore or hereafter entered in any court of competent
27 jurisdiction against any underwriting member shall be fully
28 satisfied within 60 days from and after the entry thereof or,
29 in the case of an appeal from such judgment or decree, within
30 60 days from and after the affirmance of the judgment or
31 decree by the appellate court.

1 b. If the judgment or decree is not satisfied as
2 required under sub-subparagraph a., and proof of such failure
3 to satisfy is made by filing with the department a certified
4 transcript of the docket of the judgment or the decree
5 together with a certificate by the clerk of the court wherein
6 the judgment or decree remains unsatisfied, in whole or in
7 part, after the time provided in sub-subparagraph a., the
8 department shall forthwith prohibit the underwriting member
9 from transacting business. The department shall not permit
10 such underwriting member to write any new business until the
11 judgment or decree is wholly paid and satisfied and proof
12 thereof is filed with the department under the official
13 certificate of the clerk of the court wherein the judgment was
14 recovered, showing that the judgment or decree is satisfied of
15 record, and until the expenses and fees incurred in the case
16 are also paid by the underwriting syndicate.

17 43. Tender and exchange offers.--No person shall
18 conclude a tender offer or an exchange offer or otherwise
19 acquire 5 percent or more of the outstanding voting securities
20 of an underwriting member or controlling company or purchase 5
21 percent or more of the ownership of an underwriting member or
22 controlling company unless such person has filed with, and
23 obtained the approval of, the department and sent to such
24 underwriting member a statement setting forth:

25 a. The identity of, and background information on,
26 each person by whom, or on whose behalf, the acquisition is to
27 be made; and, if the acquisition is to be made by or on behalf
28 of a corporation, association, or trust, the identity of and
29 background information on each director, officer, trustee, or
30 other natural person performing duties similar to those of a
31

1 director, officer, or trustee for the corporation,
2 association, or trust.

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

5 c. Any plans or proposals which such person may have
6 to liquidate such member, to sell its assets, or to merge or
7 consolidate it.

8 d. The percentage of ownership which such person
9 proposes to acquire and the terms of the offer or exchange, as
10 the case may be.

11 e. Information as to any contracts, arrangements, or
12 understandings with any party with respect to any securities
13 of such member or controlling company, including, but not
14 limited to, information relating to the transfer of any
15 securities, option arrangements, or puts or calls or the
16 giving or withholding of proxies, naming the party with whom
17 such contract, arrangements, or understandings have been
18 entered and giving the details thereof.

19 f. The department may disapprove any acquisition
20 subject to the provisions of this subparagraph by any person
21 or any affiliated person of such person who:

22 (I) Willfully violates this subparagraph;

23 (II) In violation of an order of the department issued
24 pursuant to sub-subparagraph j., fails to divest himself or
25 herself of any stock obtained in violation of this
26 subparagraph, or fails to divest himself or herself of any
27 direct or indirect control of such stock, within 25 days after
28 such order; or

29 (III) In violation of an order issued by the
30 department pursuant to sub-subparagraph j., acquires
31 additional stock of the underwriting member or controlling

1 company, or direct or indirect control of such stock, without
2 complying with this subparagraph.

3 g. The person or persons filing the statement required
4 by this subparagraph have the burden of proof. The department
5 shall approve any such acquisition if it finds, on the basis
6 of the record made during any proceeding or on the basis of
7 the filed statement if no proceeding is conducted, that:

8 (I) Upon completion of the acquisition, the
9 underwriting member will be able to satisfy the requirements
10 for the approval to write the line or lines of insurance for
11 which it is presently approved;

12 (II) The financial condition of the acquiring person
13 or persons will not jeopardize the financial stability of the
14 underwriting member or prejudice the interests of its
15 policyholders or the public;

16 (III) Any plan or proposal which the acquiring person
17 has, or acquiring persons have, made:

18 (A) To liquidate the insurer, sell its assets, or
19 merge or consolidate it with any person, or to make any other
20 major change in its business or corporate structure or
21 management; or

22 (B) To liquidate any controlling company, sell its
23 assets, or merge or consolidate it with any person, or to make
24 any major change in its business or corporate structure or
25 management which would have an effect upon the underwriting
26 member

27
28 is fair and free of prejudice to the policyholders of the
29 underwriting member or to the public;

30 (IV) The competence, experience, and integrity of
31 those persons who will control directly or indirectly the

1 operation of the underwriting member indicate that the
2 acquisition is in the best interest of the policyholders of
3 the underwriting member and in the public interest;

4 (V) The natural persons for whom background
5 information is required to be furnished pursuant to this
6 subparagraph have such backgrounds as to indicate that it is
7 in the best interests of the policyholders of the underwriting
8 member, and in the public interest, to permit such persons to
9 exercise control over such underwriting member;

10 (VI) The officers and directors to be employed after
11 the acquisition have sufficient insurance experience and
12 ability to assure reasonable promise of successful operation;

13 (VII) The management of the underwriting member after
14 the acquisition will be competent and trustworthy and will
15 possess sufficient managerial experience so as to make the
16 proposed operation of the underwriting member not hazardous to
17 the insurance-buying public;

18 (VIII) The management of the underwriting member after
19 the acquisition will not include any person who has directly
20 or indirectly through ownership, control, reinsurance
21 transactions, or other insurance or business relations
22 unlawfully manipulated the assets, accounts, finances, or
23 books of any insurer or underwriting member or otherwise acted
24 in bad faith with respect thereto;

25 (IX) The acquisition is not likely to be hazardous or
26 prejudicial to the underwriting member's policyholders or the
27 public; and

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

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1 h. No vote by the stockholder of record, or by any
2 other person, of any security acquired in contravention of the
3 provisions of this subparagraph is valid. Any acquisition of
4 any security contrary to the provisions of this subparagraph
5 is void. Upon the petition of the underwriting member or
6 controlling company, the circuit court for the county in which
7 the principal office of such underwriting member is located
8 may, without limiting the generality of its authority, order
9 the issuance or entry of an injunction or other order to
10 enforce the provisions of this subparagraph. There shall be a
11 private right of action in favor of the underwriting member or
12 controlling company to enforce the provisions of this
13 subparagraph. No demand upon the department that it perform
14 its functions shall be required as a prerequisite to any suit
15 by the underwriting member or controlling company against any
16 other person, and in no case shall the department be deemed a
17 necessary party to any action by such underwriting member or
18 controlling company to enforce the provisions of this
19 subparagraph. Any person who makes or proposes an acquisition
20 requiring the filing of a statement pursuant to this
21 subparagraph, or who files such a statement, shall be deemed
22 to have thereby designated the Insurance Commissioner, or his
23 or her assistant or deputy or another person in charge of his
24 or her office, as such person's agent for service of process
25 under this subparagraph and shall thereby be deemed to have
26 submitted himself or herself to the administrative
27 jurisdiction of the department and to the jurisdiction of the
28 circuit court.

29 i. Any approval by the department under this
30 subparagraph does not constitute a recommendation by the
31 department for an acquisition, tender offer, or exchange

1 offer. It is unlawful for a person to represent that the
2 department's approval constitutes a recommendation. A person
3 who violates the provisions of this sub-subparagraph is guilty
4 of a felony of the third degree, punishable as provided in s.
5 775.082, s. 775.083, or s. 775.084. The
6 statute-of-limitations period for the prosecution of an
7 offense committed under this sub-subparagraph is 5 years.

8 j. Upon notification to the department by the
9 underwriting member or a controlling company that any person
10 or any affiliated person of such person has acquired 5 percent
11 or more of the outstanding voting securities of the
12 underwriting member or controlling company without complying
13 with the provisions of this subparagraph, the department shall
14 order that the person and any affiliated person of such person
15 cease acquisition of any further securities of the
16 underwriting member or controlling company; however, the
17 person or any affiliated person of such person may request a
18 proceeding, which proceeding shall be convened within 7 days
19 after the rendering of the order for the sole purpose of
20 determining whether the person, individually or in connection
21 with any affiliated person of such person, has acquired 5
22 percent or more of the outstanding voting securities of an
23 underwriting member or controlling company. Upon the failure
24 of the person or affiliated person to request a hearing within
25 7 days, or upon a determination at a hearing convened pursuant
26 to this sub-subparagraph that the person or affiliated person
27 has acquired voting securities of an underwriting member or
28 controlling company in violation of this subparagraph, the
29 department may order the person and affiliated person to
30 divest themselves of any voting securities so acquired.

31 k.

1 (I) The department shall, if necessary to protect the
2 public interest, suspend or revoke the certificate of
3 authority of any underwriting member or controlling company:

4 (A) The control of which is acquired in violation of
5 this subparagraph;

6 (B) That is controlled, directly or indirectly, by any
7 person or any affiliated person of such person who, in
8 violation of this subparagraph, has obtained control of an
9 underwriting member or controlling company; or

10 (C) That is controlled, directly or indirectly, by any
11 person who, directly or indirectly, controls any other person
12 who, in violation of this subparagraph, acquires control of an
13 underwriting member or controlling company.

14 (II) If any underwriting member is subject to
15 suspension or revocation pursuant to sub-sub-subparagraph (I),
16 the underwriting member shall be deemed to be in such
17 condition, or to be using or to have been subject to such
18 methods or practices in the conduct of its business, as to
19 render its further transaction of insurance presently or
20 prospectively hazardous to its policyholders, creditors, or
21 stockholders or to the public.

22 1.

23 (I) For the purpose of this sub-sub-subparagraph, the
24 term "affiliated person" of another person means:

25 (A) The spouse of such other person;

26 (B) The parents of such other person and their lineal
27 descendants and the parents of such other person's spouse and
28 their lineal descendants;

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

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

4 (E) Any person or group of persons who directly or
5 indirectly control, are controlled by, or are under common
6 control with such other person; or any officer, director,
7 partner, copartner, or employee of such other person;

8 (F) If such other person is an investment company, any
9 investment adviser of such company or any member of an
10 advisory board of such company;

11 (G) If such other person is an unincorporated
12 investment company not having a board of directors, the
13 depositor of such company; or

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

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

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

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

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

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1 b. The principal business and address of any business,
2 corporation, or other organization in which each such office
3 was held or in which such occupation or position of employment
4 was carried on.

5 c. Whether, at any time during such 10-year period,
6 such person was convicted of any crime other than a traffic
7 violation.

8 d. Whether, during such 10-year period, such person
9 has been the subject of any proceeding for the revocation of
10 any license and, if so, the nature of such proceeding and the
11 disposition thereof.

12 e. Whether, during such 10-year period, such person
13 has been the subject of any proceeding under the federal
14 Bankruptcy Act or whether, during such 10-year period, any
15 corporation, partnership, firm, trust, or association in which
16 such person was a director, officer, trustee, partner, or
17 other official has been subject to any such proceeding, either
18 during the time in which such person was a director, officer,
19 trustee, partner, or other official, or within 12 months
20 thereafter.

21 f. Whether, during such 10-year period, such person
22 has been enjoined, either temporarily or permanently, by a
23 court of competent jurisdiction from violating any federal or
24 state law regulating the business of insurance, securities, or
25 banking, or from carrying out any particular practice or
26 practices in the course of the business of insurance,
27 securities, or banking, together with details of any such
28 event.

29 45. Security fund.--All underwriting members shall be
30 members of the security fund of any exchange.

31

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

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

7 48. Restriction on member ownership.--

8 a. Investments existing prior to July 2, 1987.--The
9 investment in any member by brokers, agents, and
10 intermediaries transacting business on the exchange, and the
11 investment in any such broker, agent, or intermediary by any
12 member, directly or indirectly, shall in each case be limited
13 in the aggregate to less than 20 percent of the total
14 investment in such member, broker, agent, or intermediary, as
15 the case may be. After December 31, 1987, the aggregate
16 percent of the total investment in such member by any broker,
17 agent, or intermediary and the aggregate percent of the total
18 investment in any such broker, agent, or intermediary by any
19 member, directly or indirectly, shall not exceed 15 percent.
20 After June 30, 1988, such aggregate percent shall not exceed
21 10 percent and after December 31, 1988, such aggregate percent
22 shall not exceed 5 percent.

23 b. Investments arising on or after July 2, 1987.--The
24 investment in any underwriting member by brokers, agents, or
25 intermediaries transacting business on the exchange, and the
26 investment in any such broker, agent, or intermediary by any
27 underwriting member, directly or indirectly, shall in each
28 case be limited in the aggregate to less than 5 percent of the
29 total investment in such underwriting member, broker, agent,
30 or intermediary.

31

1 49. "Underwriting manager" defined.--"Underwriting
2 manager" as used in this subparagraph includes any person,
3 partnership, corporation, or organization providing any of the
4 following services to underwriting members of the exchange:
5 a. Office management and allied services, including
6 correspondence and secretarial services.
7 b. Accounting services, including bookkeeping and
8 financial report preparation.
9 c. Investment and banking consultations and services.
10 d. Underwriting functions and services including the
11 acceptance, rejection, placement, and marketing of risk.
12 50. Prohibition of underwriting manager
13 investment.--Any direct or indirect investment in any
14 underwriting manager by a broker member or any affiliated
15 person of a broker member or any direct or indirect investment
16 in a broker member by an underwriting manager or any
17 affiliated person of an underwriting manager is prohibited.
18 "Affiliated person" for purposes of this subparagraph is
19 defined in subparagraph 43. Any direct or indirect investment
20 prohibited by this subparagraph which exists prior to July 2,
21 1987, shall be dissolved by June 30, 1988.
22 51. An underwriting member may not accept reinsurance
23 on an assumed basis from an affiliate or a controlling
24 company, nor may a broker member or management company place
25 reinsurance from an affiliate or controlling company of theirs
26 with an underwriting member. "Affiliate and controlling
27 company" for purposes of this subparagraph is defined in
28 subparagraph 43.
29 52. Premium defined.--"Premium" is the consideration
30 for insurance, by whatever name called. Any "assessment" or
31 any "membership," "policy," "survey," "inspection," "service"

1 fee or charge or similar fee or charge in consideration for an
2 insurance contract is deemed part of the premium.

3 53. Rules.--The department shall promulgate rules
4 necessary for or as an aid to the effectuation of any
5 provision of this section.

6 Section 4. Section 626.988, Florida Statutes, is
7 repealed.

8 Section 5. This act shall take effect July 1, 1999.

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11 HOUSE SUMMARY

12 Repeals a provision prohibiting or limiting licensed
13 insurance agents or solicitors who are associated with,
14 under contract with, retained by, owned or controlled by,
15 or employed by a financial institution from engaging in
16 insurance agency activities as an employee, officer,
17 director, agent, or associate of the financial
18 institution.

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