

By the Committee on Banking and Insurance; and Senator Webster

311-2191-03

1                                   A bill to be entitled  
2           An act relating to insurance; amending s.  
3           624.310, F.S.; revising definitions; conforming  
4           provisions to a revised definition; conforming  
5           provisions to certain governmental  
6           reorganization; prohibiting affiliated parties  
7           from certain activities constituting a conflict  
8           of interest; providing exceptions; authorizing  
9           the Office of Insurance Regulation to require  
10          certain disclosures of personal interest;  
11          specifying certain restrictions governing  
12          affiliated party conduct; amending s. 624.316,  
13          F.S.; deleting provisions providing for an  
14          examination of an insurer pursuant to an  
15          agreement between the Department of Financial  
16          Services and the insurer; requiring such  
17          examinations according to rules of the  
18          department; amending s. 624.4095, F.S.;  
19          conforming provisions to certain governmental  
20          reorganization; providing for calculating  
21          certain surplus for certain insurers; amending  
22          s. 624.610, F.S.; conforming provisions to  
23          certain governmental reorganization; revising  
24          requirements for securities of a trust fund for  
25          a single assuming insurer; amending ss. 628.461  
26          and 628.4615, F.S.; specifying additional  
27          nonapplication of acquisition of controlling  
28          stock provisions to changes of ownership of a  
29          domestic insurer or specialty insurer,  
30          respectively, under certain circumstances;  
31          creating ss. 634.042, 627.8401, 634.3076,

1           634.4062, and 651.029, F.S.; prohibiting  
2           certain investments by motor vehicle service  
3           agreement companies, premium finance companies,  
4           home warranty associations, service warranty  
5           associations, and continuing care providers,  
6           respectively; amending s. 440.20, F.S.;  
7           correcting a cross-reference; providing an  
8           effective date.

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

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12           Section 1. Section 624.310, Florida Statutes, is  
13       amended to read:

14           624.310 Enforcement; cease and desist orders; removal  
15       of certain persons; fines.--

16           (1) DEFINITIONS.--For the purposes of this section,  
17       the term:

18           (a) "Affiliated party of a licensee" means any person  
19       who directs or participates in the conduct of the affairs of a  
20       licensee and who is:

21           1. A director, officer, employee, trustee, committee  
22       member, or controlling stockholder of a licensee or a  
23       subsidiary or service corporation of the licensee, ~~other than~~  
24       ~~a controlling stockholder which is a holding company,~~ or an  
25       agent of a licensee or a subsidiary or service corporation of  
26       the licensee;

27           2. A person who has filed or is required to file a  
28       statement or any other information required to be filed under  
29       s. 628.461 or s. 628.4615;

30  
31

1           3. A stockholder, ~~other than a stockholder that is a~~  
2 ~~holding company of the licensee,~~ who participates in the  
3 conduct of the affairs of the licensee; or

4           4. An independent contractor who:

5           a. Renders a written opinion required by the laws of  
6 this state under her or his professional credentials on behalf  
7 of the licensee, which opinion is reasonably relied on by the  
8 department or office in the performance of its duties; or

9           b. Affirmatively and knowingly conceals facts, through  
10 a written misrepresentation to the department or office, with  
11 knowledge that such misrepresentation:

12           (I) Constitutes a violation of the insurance code or a  
13 lawful rule or order of the department or office; and

14           (II) Directly and materially endangers the ability of  
15 the licensee to meet its obligations to policyholders.

16  
17 For the purposes of this subparagraph, any representation of  
18 fact made by an independent contractor on behalf of a  
19 licensee, affirmatively communicated as a representation of  
20 the licensee to the independent contractor, shall not be  
21 considered a misrepresentation by the independent contractor  
22 to the department or office.

23           (b) "Licensee" means a person issued a license or  
24 certificate of authority or approval under this code or a  
25 person registered under a provision of this code.

26           (2) ENFORCEMENT GENERALLY.--The department or office  
27 may institute such suits or other legal proceedings as may be  
28 required to enforce any provision of this code. If it appears  
29 that any person has violated any provision of this code for  
30 which criminal prosecution is provided, the department or  
31 office shall provide the appropriate state attorney or other

1 prosecuting agency having jurisdiction with respect to such  
2 prosecution with the relevant information in its possession.

3 (3) CEASE AND DESIST ORDERS.--

4 (a) The department or office may issue and serve a  
5 complaint stating charges upon any licensee or upon any  
6 affiliated party of a licensee, whenever the department or  
7 office has reasonable cause to believe that the person or  
8 individual named therein is engaging in or has engaged in  
9 conduct that is:

10 1. An act that demonstrates a lack of fitness or  
11 trustworthiness to engage in the business of insurance, is  
12 hazardous to the insurance buying public, or constitutes  
13 business operations that are a detriment to policyholders,  
14 stockholders, investors, creditors, or the public;

15 2. A violation of any provision of the Florida  
16 Insurance Code;

17 3. A violation of any rule of the department or  
18 office;

19 4. A violation of any order of the department or  
20 office; or

21 5. A breach of any written agreement with the  
22 department or office.

23 (b) The complaint shall contain a statement of facts  
24 and notice of opportunity for a hearing pursuant to ss.  
25 120.569 and 120.57.

26 (c) If no hearing is requested within the time allowed  
27 by ss. 120.569 and 120.57, or if a hearing is held and the  
28 department or office finds that any of the charges are proven,  
29 the department or office may enter an order directing the  
30 licensee or the affiliated party of a licensee named in the  
31 complaint to cease and desist from engaging in the conduct

1 complained of and take corrective action to remedy the effects  
2 of past improper conduct and assure future compliance.

3 (d) If the licensee or affiliated party of a licensee  
4 named in the order fails to respond to the complaint within  
5 the time allotted by ss. 120.569 and 120.57, the failure  
6 constitutes a default and justifies the entry of a cease and  
7 desist order.

8 (e) A contested or default cease and desist order is  
9 effective when reduced to writing and served upon the licensee  
10 or affiliated party of a licensee named therein. An  
11 uncontested cease and desist order is effective as agreed.

12 (f) Whenever the department or office finds that  
13 conduct described in paragraph (a) is likely to cause  
14 insolvency, substantial dissipation or misvaluation of assets  
15 or earnings of the licensee, substantial inability to pay  
16 claims on a timely basis, or substantial prejudice to  
17 prospective or existing insureds, policyholders, subscribers,  
18 or the public, it may issue an emergency cease and desist  
19 order requiring the licensee or any affiliated party of a  
20 licensee to immediately cease and desist from engaging in the  
21 conduct complained of and to take corrective and remedial  
22 action. The emergency order is effective immediately upon  
23 service of a copy of the order upon the licensee or affiliated  
24 party of a licensee named therein and remains effective for 90  
25 days. If the department or office begins nonemergency cease  
26 and desist proceedings under this subsection, the emergency  
27 order remains effective until the conclusion of the  
28 proceedings under ss. 120.569 and 120.57. Any emergency order  
29 entered under this subsection is exempt from s. 119.07(1) and  
30 is confidential until it is made permanent unless the  
31 department or office finds that the confidentiality will

1 result in substantial risk of financial loss to the public.  
2 All emergency cease and desist orders that are not made  
3 permanent are available for public inspection 1 year from the  
4 date the emergency cease and desist order expires; however,  
5 portions of an emergency cease and desist order remain  
6 confidential and exempt from the provisions of s. 119.07(1) if  
7 disclosure would:

- 8 1. Jeopardize the integrity of another active  
9 investigation;
- 10 2. Impair the safety and financial soundness of the  
11 licensee or affiliated party of a licensee;
- 12 3. Reveal personal financial information;
- 13 4. Reveal the identity of a confidential source;
- 14 5. Defame or cause unwarranted damage to the good name  
15 or reputation of an individual or jeopardize the safety of an  
16 individual; or
- 17 6. Reveal investigative techniques or procedures.

18 (4) REMOVAL OF AFFILIATED PARTIES OF A LICENSEE BY THE  
19 DEPARTMENT OR OFFICE.--

20 (a) The department or office may issue and serve a  
21 complaint stating charges upon any affiliated party of a  
22 licensee and upon the licensee involved, whenever the  
23 department or office has reason to believe that an affiliated  
24 party of a licensee is engaging in or has engaged in conduct  
25 that constitutes:

- 26 1. An act that demonstrates a lack of fitness or  
27 trustworthiness to engage in the business of insurance through  
28 engaging in illegal activity or mismanagement of business  
29 activities;
- 30 2. A willful violation of any law relating to the  
31 business of insurance; however, if the violation constitutes a

1 misdemeanor, no complaint shall be served as provided in this  
2 section until the affiliated party of a licensee is notified  
3 in writing of the matter of the violation and has been  
4 afforded a reasonable period of time, as set forth in the  
5 notice, to correct the violation and has failed to do so;

6           3. A violation of any other law involving fraud or  
7 moral turpitude that constitutes a felony;

8           4. A willful violation of any rule of the department  
9 or office;

10           5. A willful violation of any order of the department  
11 or office;

12           6. A material misrepresentation of fact, made  
13 knowingly and willfully or made with reckless disregard for  
14 the truth of the matter; or

15           7. An act of commission or omission or a practice  
16 which is a breach of trust or a breach of fiduciary duty.

17           (b) The complaint shall contain a statement of facts  
18 and notice of opportunity for a hearing pursuant to ss.  
19 120.569 and 120.57.

20           (c) If no hearing is requested within the time  
21 allotted by ss. 120.569 and 120.57, or if a hearing is held  
22 and the department or office finds that any of the charges in  
23 the complaint are proven true and that:

24           1. The licensee has suffered or will likely suffer  
25 loss or other damage;

26           2. The interests of the policyholders, creditors, or  
27 public are, or could be, seriously prejudiced by reason of the  
28 violation or act or breach of fiduciary duty;

29           3. The affiliated party of a licensee has received  
30 financial gain by reason of the violation, act, or breach of  
31 fiduciary duty; or

1           4. The violation, act, or breach of fiduciary duty is  
2 one involving personal dishonesty on the part of the  
3 affiliated party of a licensee or the conduct jeopardizes or  
4 could reasonably be anticipated to jeopardize the financial  
5 soundness of the licensee,

6  
7 The department or office may enter an order removing the  
8 affiliated party of a licensee or restricting or prohibiting  
9 participation by the person in the affairs of that particular  
10 licensee or of any other licensee.

11           (d) If the affiliated party of a licensee fails to  
12 respond to the complaint within the time allotted by ss.  
13 120.569 and 120.57, the failure constitutes a default and  
14 justifies the entry of an order of removal, suspension, or  
15 restriction.

16           (e) A contested or default order of removal,  
17 restriction, or prohibition is effective when reduced to  
18 writing and served on the licensee and the affiliated party of  
19 a licensee. An uncontested order of removal, restriction, or  
20 prohibition is effective as agreed.

21           (f)1. The chief executive officer, or the person  
22 holding the equivalent office, of a licensee shall promptly  
23 notify the department or office if she or he has actual  
24 knowledge that any affiliated party of a licensee is charged  
25 with a felony in a state or federal court.

26           2. Whenever any affiliated party of a licensee is  
27 charged with a felony in a state or federal court or with the  
28 equivalent of a felony in the courts of any foreign country  
29 with which the United States maintains diplomatic relations,  
30 and the charge alleges violation of any law involving fraud,  
31 theft, or moral turpitude, the department or office may enter



1 an emergency order suspending the affiliated party of a  
2 licensee or restricting or prohibiting participation by the  
3 affiliated party of a licensee in the affairs of the  
4 particular licensee or of any other licensee upon service of  
5 the order upon the licensee and the affiliated party of a  
6 licensee charged. The order shall contain notice of  
7 opportunity for a hearing pursuant to ss. 120.569 and 120.57,  
8 where the affiliated party of a licensee may request a  
9 postsuspension hearing to show that continued service to or  
10 participation in the affairs of the licensee does not pose a  
11 threat to the interests of the licensee's policyholders or  
12 creditors and does not threaten to impair public confidence in  
13 the licensee. In accordance with applicable departmental or  
14 office rules, the department or office shall notify the  
15 affiliated party of a licensee whether the order suspending or  
16 prohibiting the person from participation in the affairs of a  
17 licensee will be rescinded or otherwise modified. The  
18 emergency order remains in effect, unless otherwise modified  
19 by the department or office, until the criminal charge is  
20 disposed of. The acquittal of the person charged, or the  
21 final, unappealed dismissal of all charges against the person,  
22 dissolves the emergency order, but does not prohibit the  
23 department or office from instituting proceedings under  
24 paragraph (a). If the person charged is convicted or pleads  
25 guilty or nolo contendere, whether or not an adjudication of  
26 guilt is entered by the court, the emergency order shall  
27 become final.

28 (g) Any affiliated party of a licensee removed from  
29 office pursuant to this section is not eligible for reelection  
30 or appointment to the position or to any other official  
31 position in any licensee in this state except upon the written

1 consent of the department or office. Any affiliated party of a  
2 licensee who is removed, restricted, or prohibited from  
3 participation in the affairs of a licensee pursuant to this  
4 section may petition the department or office for modification  
5 or termination of the removal, restriction, or prohibition.

6 (h) Resignation or termination of an affiliated party  
7 of a licensee does not affect the department's or office's  
8 jurisdiction to proceed under this subsection.

9 (5)(a) CONFLICT OF INTEREST.--An affiliated party of a  
10 licensee may not engage or participate, directly or  
11 indirectly, in any business or transaction conducted on behalf  
12 of or involving the licensee, subsidiary, or service  
13 corporation that would result in a conflict of the party's own  
14 personal interests with those of the licensee, subsidiary, or  
15 service corporation with which he or she is affiliated,  
16 unless:

17 1. Such business or transactions are conducted in good  
18 faith and are honest, fair, and reasonable to the licensee,  
19 subsidiary, or service corporation and are on terms no more  
20 favorable than would be offered to a disinterested third  
21 party.

22 2. A full disclosure of such business or transaction,  
23 and the nature of the interest of the affiliated party of the  
24 licensee, is made to the board of directors.

25 3. Such business or transactions are approved in good  
26 faith by the board of directors and any interested director  
27 abstaining and such approval is recorded in the minutes.

28 4. Any profits inuring to the affiliated party of a  
29 licensee are not at the expense of the licensee, subsidiary,  
30 or service corporation and do not prejudice the best interests  
31

1 of the licensee, subsidiary, or service corporation in any  
2 way.

3 5. Such business or transactions do not represent a  
4 breach of the fiduciary duty of an affiliated party of a  
5 licensee and are not fraudulent, illegal, or ultra vires.

6 (b) Without limitation by any of the specific  
7 provisions of this section, the office may require the  
8 disclosure by affiliated parties of a licensee of their  
9 personal interests, directly or indirectly, in any business or  
10 transactions on behalf of or involving the licensee,  
11 subsidiary, or service corporation and of their control of or  
12 active participation in enterprises having activities related  
13 to the business of the licensee, subsidiary, or service  
14 corporation.

15 (c) The following restrictions governing the conduct  
16 of affiliated parties of a licensee are expressly specified,  
17 but such specification is not to be construed in any manner as  
18 excusing such parties from the observance of any other aspect  
19 of the general fiduciary duty owed by such parties to the  
20 licensee which they serve:

21 1. A director of a licensee may not accept director  
22 fees unless the director fees have been previously approved by  
23 the board of directors and such fees represent reasonable  
24 compensation for service as a director or member of a  
25 committee. This subparagraph does not limit or preclude  
26 reasonable compensation as otherwise authorized by paragraph  
27 (a) for a director who also provides goods or services to the  
28 licensee.

29 2. An affiliated party of a licensee may not purchase  
30 or otherwise obtain ownership of any asset of the licensee or  
31 subsidiary at less than fair market value of such asset.

1           3. An affiliated party of a licensee may not have any  
2 interest, direct or indirect, of any evidence of indebtedness  
3 of the licensee or subsidiary.

4           4. An affiliated party of a licensee acting as proxy  
5 for a stockholder of a licensee, subsidiary, or service  
6 corporation may not, directly or indirectly, exercise,  
7 transfer, or delegate such vote or votes in any consideration  
8 of a private benefit or advantage. The voting rights of  
9 stockholders and directors may not be the subject of sale,  
10 barter, exchange, or similar transaction, directly or  
11 indirectly. Any affiliated party of a licensee who violates  
12 the provisions of this subparagraph is accountable to the  
13 licensee, subsidiary, or service corporation for any  
14 increment.

15           ~~(6)(5)~~ ADMINISTRATIVE FINES; ENFORCEMENT.--

16           (a) The department or office may, in a proceeding  
17 initiated pursuant to chapter 120, impose an administrative  
18 fine against any person found in the proceeding to have  
19 violated any provision of this code, a cease and desist order  
20 of the department or office, or any written agreement with the  
21 department or office. No proceeding shall be initiated and no  
22 fine shall accrue until after the person has been notified in  
23 writing of the nature of the violation and has been afforded a  
24 reasonable period of time, as set forth in the notice, to  
25 correct the violation and has failed to do so.

26           (b) A fine imposed under this subsection may not  
27 exceed the amounts specified in s. 624.4211, per violation.

28           (c) The department or office may, in addition to the  
29 imposition of an administrative fine under this subsection,  
30 also suspend or revoke the license or certificate of authority  
31 of the licensee fined under this subsection.

1           (d) Any administrative fine levied by the department  
2 or office under this subsection may be enforced by the  
3 department or office by appropriate proceedings in the circuit  
4 court of the county in which the person resides or in which  
5 the principal office of a licensee is located, or, in the case  
6 of a foreign insurer or person not residing in this state, in  
7 Leon County. In any administrative or judicial proceeding  
8 arising under this section, a party may elect to correct the  
9 violation asserted by the department or office, and, upon  
10 doing so, any fine shall cease to accrue; however, the  
11 election to correct the violation does not render any  
12 administrative or judicial proceeding moot. All fines  
13 collected under this section shall be paid to the Insurance  
14 Commissioner's Regulatory Trust Fund.

15           (e) In imposing any administrative penalty or remedy  
16 provided for under this section, the department or office  
17 shall take into account the appropriateness of the penalty  
18 with respect to the size of the financial resources and the  
19 good faith of the person charged, the gravity of the  
20 violation, the history of previous violations, and other  
21 matters as justice may require.

22           (f) The imposition of an administrative fine under  
23 this subsection may be in addition to any other penalty or  
24 administrative fine authorized under this code.

25           ~~(7)(6)~~ ADMINISTRATIVE PROCEDURES.--All administrative  
26 proceedings brought under this section ~~subsections (3), (4),~~  
27 ~~and (5)~~ shall be conducted in accordance with chapter 120. Any  
28 service required or authorized to be made by the department or  
29 office under this code shall be made by certified mail, return  
30 receipt requested, delivered to the addressee only; by  
31 personal delivery; or in accordance with chapter 48. The

1 service provided for herein shall be effective from the date  
2 of delivery.

3 (8)~~(7)~~ OTHER LAWS NOT SUPERSEDED.--The provisions of  
4 this section are in addition to other provisions of this code,  
5 and shall not be construed to curtail, impede, replace, or  
6 delete any other similar provision or power of the department  
7 or office under the insurance code as defined in s. 624.01 or  
8 any power of the department or office which may exist under  
9 the common law of this state. The procedures set forth in s.  
10 626.9581 do not apply to regulatory action taken pursuant to  
11 the provisions of this section.

12 Section 2. Paragraph (e) of subsection (2) of section  
13 624.316, Florida Statutes, is amended to read:

14 624.316 Examination of insurers.--

15 (2)

16 (e) The commission ~~department~~ shall adopt rules  
17 providing that, ~~upon agreement between the department and the~~  
18 ~~insurer,~~ an examination under this section may be conducted by  
19 independent certified public accountants, actuaries,  
20 investment specialists, information technology specialists  
21 ~~meeting criteria specified by rule,~~ and reinsurance  
22 specialists meeting criteria specified by rule. The rules  
23 shall provide:

24 1. ~~That the agreement of the insurer is not required~~  
25 ~~if the department reasonably suspects criminal misconduct on~~  
26 ~~the part of the insurer.~~

27 2. ~~That the department shall provide the insurer with~~  
28 ~~a list of three firms acceptable to the department, and that~~  
29 ~~the insurer shall select the firm to conduct the examination~~  
30 ~~from the list provided by the department.~~

31

1           1.3. That the insurer being examined must make payment  
2 for the examination directly to the firm performing the  
3 examination in accordance with the rates and terms established  
4 ~~agreed to~~ by the office department, ~~the insurer~~, and the firm  
5 performing the examination.

6           2. That the rates charged to the insurer being  
7 examined are consistent with rates charged by other firms in a  
8 similar profession.

9           3. That the firm selected by the office to perform the  
10 examination has no conflicts of interest that might affect its  
11 ability to independently perform its responsibilities on the  
12 examination.

13           ~~4.~~ That if the examination is conducted without the  
14 consent of the insurer, the insurer must pay all reasonable  
15 charges of the examining firm if the examination finds  
16 impairment, insolvency, or criminal misconduct on the part of  
17 the insurer.

18           Section 3. Section 624.4095, Florida Statutes, is  
19 amended to read:

20           624.4095 Premiums written; restrictions.--

21           (1) Whenever an insurer's ratio of actual or projected  
22 annual written premiums as adjusted in accordance with  
23 subsection (5) ~~(4)~~ to current or projected surplus as to  
24 policyholders as adjusted in accordance with subsection (6) ~~(5)~~  
25 exceeds 10 to 1 for gross written premiums or exceeds 4 to 1  
26 for net written premiums, the office department shall suspend  
27 the insurer's certificate of authority or establish by order  
28 maximum gross or net annual premiums to be written by the  
29 insurer consistent with maintaining the ratios specified  
30 herein unless the insurer demonstrates to the office's  
31 ~~department's~~ satisfaction that exceeding the ratios of this

1 section does not endanger the financial condition of the  
2 insurer or endanger the interests of the insurer's  
3 policyholders.

4 (2) Projected annual net or gross premiums shall be  
5 based on the actual writings to date for the insurer's current  
6 calendar year or the insurer's writings for the previous  
7 calendar year or both. Ratios shall be computed on an  
8 annualized basis.

9 (3) For the purposes of this section, gross premiums  
10 written means direct premiums written and reinsurance assumed.

11 (4) For the purposes of this section, surplus as to  
12 policyholders for property and casualty insurers shall be  
13 calculated as follows: (actual surplus as to policyholders)  
14 minus (surplus as to policyholders of all subsidiary insurers  
15 as allowed pursuant to s. 625.325).

16 (5)~~(4)~~ For the purposes of this section, for the  
17 calendar year ending December 31, 1990, and each subsequent  
18 year, premiums shall be calculated as the product of the  
19 actual or projected premiums and the following:

- 20 (a) For property insurance, 0.90.  
21 (b) For casualty insurance, 1.25.  
22 (c) For health insurance, 0.80.  
23 (d) For all other kinds of insurance, 1.00.

24 (6)~~(5)~~ This section shall not apply to:

25 (a) Life insurance written by life or life and health  
26 insurers; or

27 (b) Life and health insurers which have a surplus as  
28 to policyholders greater than \$40 million and which have  
29 written health insurance during each of the immediately  
30 preceding five calendar years.

31



1            ~~(7)(6)~~ For the purposes of this section, surplus as to  
2 policyholders for life and health insurers shall be calculated  
3 as follows: (actual or projected surplus as to policyholders)  
4 minus (surplus as to policyholders required to be maintained  
5 under s. 624.408 for liabilities relating to life insurance)  
6 and minus (surplus as to policyholders of all subsidiary  
7 insurers as allowed pursuant to s. 625.325).

8            Section 4. Paragraph (c) of subsection (3) of section  
9 624.610, Florida Statutes, is amended to read:

10            624.610 Reinsurance.--

11            (3)

12            (c)1. Credit must be allowed when the reinsurance is  
13 ceded to an assuming insurer that maintains a trust fund in a  
14 qualified United States financial institution, as defined in  
15 paragraph (5)(b), for the payment of the valid claims of its  
16 United States ceding insurers and their assigns and successors  
17 in interest. To enable the office ~~department~~ to determine the  
18 sufficiency of the trust fund, the assuming insurer shall  
19 report annually to the office ~~department~~ information  
20 substantially the same as that required to be reported on the  
21 NAIC Annual Statement form by authorized insurers. The  
22 assuming insurer shall submit to examination of its books and  
23 records by the office ~~department~~ and bear the expense of  
24 examination.

25            2.a. Credit for reinsurance must not be granted under  
26 this subsection unless the form of the trust and any  
27 amendments to the trust have been approved by:

28            (I) The commissioner of the state in which the trust  
29 is domiciled; or

1 (II) The commissioner of another state who, pursuant  
2 to the terms of the trust instrument, has accepted principal  
3 regulatory oversight of the trust.

4 b. The form of the trust and any trust amendments must  
5 be filed with the commissioner of every state in which the  
6 ceding insurer beneficiaries of the trust are domiciled. The  
7 trust instrument must provide that contested claims are valid  
8 and enforceable upon the final order of any court of competent  
9 jurisdiction in the United States. The trust must vest legal  
10 title to its assets in its trustees for the benefit of the  
11 assuming insurer's United States ceding insurers and their  
12 assigns and successors in interest. The trust and the assuming  
13 insurer are subject to examination as determined by the  
14 commissioner.

15 c. The trust remains in effect for as long as the  
16 assuming insurer has outstanding obligations due under the  
17 reinsurance agreements subject to the trust. No later than  
18 February 28 of each year, the trustee of the trust shall  
19 report to the commissioner in writing the balance of the trust  
20 and list the trust's investments at the preceding year end,  
21 and shall certify that the trust will not expire prior to the  
22 following December 31.

23 3. The following requirements apply to the following  
24 categories of assuming insurer:

25 a. The trust fund for a single assuming insurer  
26 consists of funds in trust in an amount not less than the  
27 assuming insurer's liabilities attributable to reinsurance  
28 ceded by United States ceding insurers, and, in addition, the  
29 assuming insurer shall maintain a trusteed surplus of not less  
30 than \$20 million. Not less than 50 percent of the funds in the  
31 trust covering the assuming insurer's liabilities attributable

1 to reinsurance ceded by United States ceding insurers and  
2 trusteed surplus shall consist of assets of a quality  
3 substantially similar to that required in part II of chapter  
4 625. Clean, irrevocable, unconditional, and evergreen letters  
5 of credit, issued or confirmed by a qualified United States  
6 financial institution, as defined in paragraph (5)(a),  
7 effective no later than December 31 of the year for which the  
8 filing is made, and in the possession of the trust on or  
9 before the filing date of its annual statement, may be used to  
10 fund the remainder of the trust fund and trusteed surplus.

11           b.(I) In the case of a group including incorporated  
12 and individual unincorporated underwriters:

13           (A) For reinsurance ceded under reinsurance agreements  
14 with an inception, amendment, or renewal date on or after  
15 August 1, 1995, the trust consists of a trusteed account in an  
16 amount not less than the group's several liabilities  
17 attributable to business ceded by United States domiciled  
18 ceding insurers to any member of the group;

19           (B) For reinsurance ceded under reinsurance agreements  
20 with an inception date on or before July 31, 1995, and not  
21 amended or renewed after that date, notwithstanding the other  
22 provisions of this section, the trust consists of a trusteed  
23 account in an amount not less than the group's several  
24 insurance and reinsurance liabilities attributable to business  
25 written in the United States; and

26           (C) In addition to these trusts, the group shall  
27 maintain in trust a trusteed surplus of which \$100 million  
28 must be held jointly for the benefit of the United States  
29 domiciled ceding insurers of any member of the group for all  
30 years of account.

31

1           (II) The incorporated members of the group must not be  
2 engaged in any business other than underwriting of a member of  
3 the group, and are subject to the same level of regulation and  
4 solvency control by the group's domiciliary regulator as the  
5 unincorporated members.

6           (III) Within 90 days after its financial statements  
7 are due to be filed with the group's domiciliary regulator,  
8 the group shall provide to the commissioner an annual  
9 certification by the group's domiciliary regulator of the  
10 solvency of each underwriter member or, if a certification is  
11 unavailable, financial statements, prepared by independent  
12 public accountants, of each underwriter member of the group.

13           Section 5. Section 627.8401, Florida Statutes, is  
14 created to read:

15           627.8401 Prohibited investments and loans.--A premium  
16 finance company shall not directly or indirectly invest in or  
17 lend its funds upon the security of any note or other evidence  
18 of indebtedness of any director, officer, or controlling  
19 stockholder of the premium finance company.

20           Section 6. Subsection (2) of section 628.461, Florida  
21 Statutes, is amended to read:

22           628.461 Acquisition of controlling stock.--

23           (2) This section does not apply to any acquisition of  
24 voting securities of a domestic stock insurer or of a  
25 controlling company by any person who, on July 1, 1976, is the  
26 owner of a majority of such voting securities or who, on or  
27 after July 1, 1976, becomes the owner of a majority of such  
28 voting securities with the approval of the department pursuant  
29 to this section. Further, the provisions of this section shall  
30 not apply to a change of ownership of a domestic insurer  
31 resulting from changes within an insurance holding company of

1 which the insurer is a member, provided the insurer  
2 establishes that no new person or entity will have the ability  
3 to influence or control the activities of the insurer and that  
4 the reorganization will not result in any changes in the  
5 officers, directors, or business plan of the domestic insurer.

6 Section 7. Subsection (3) of section 628.4615, Florida  
7 Statutes, is amended to read:

8 628.4615 Specialty insurers; acquisition of  
9 controlling stock, ownership interest, assets, or control;  
10 merger or consolidation.--

11 (3) This section does not apply to any acquisition of  
12 voting securities or ownership interest of a specialty insurer  
13 or of a controlling company by any person who, on July 9,  
14 1986, is the owner of a majority of such voting securities or  
15 ownership interest or who, on or after July 9, 1986, becomes  
16 the owner of a majority of such voting securities or ownership  
17 interest with the approval of the department pursuant to this  
18 section. Further, the provisions of this section shall not  
19 apply to a change of ownership of a specialty insurer  
20 resulting from changes within a holding company of which the  
21 specialty insurer is a member, provided the specialty insurer  
22 establishes that no new person or entity will have the ability  
23 to influence or control the activities of the specialty  
24 insurer and that the reorganization will not result in any  
25 changes in the officers, directors, or business plan of the  
26 specialty insurer.

27 Section 8. Section 634.042, Florida Statutes, is  
28 created to read:

29 634.042 Prohibited investments and loans.--A motor  
30 vehicle service agreement company shall not directly or  
31 indirectly invest in or lend its funds upon the security of

1 any note or other evidence of indebtedness of any director,  
2 officer, or controlling stockholder of the motor vehicle  
3 service agreement company.

4 Section 9. Section 634.3076, Florida Statutes, is  
5 created to read:

6 634.3076 Prohibited investments and loans.--A home  
7 warranty association shall not directly or indirectly invest  
8 in or lend its funds upon the security of any note or other  
9 evidence of indebtedness of any director, officer, or  
10 controlling stockholder of the home warranty association.

11 Section 10. Section 634.4062, Florida Statutes, is  
12 created to read:

13 634.4062 Prohibited investments and loans.--A service  
14 warranty association shall not directly or indirectly invest  
15 in or lend its funds upon the security of any note or other  
16 evidence of indebtedness of any director, officer, or  
17 controlling stockholder of the service warranty association.

18 Section 11. Section 651.029, Florida Statutes, is  
19 created to read:

20 651.029 Prohibited investments and loans.--A provider  
21 shall not directly or indirectly invest in or lend its funds  
22 upon the security of any note or other evidence of  
23 indebtedness of any director, officer, or controlling  
24 stockholder of the provider.

25 Section 12. Paragraph (a) of subsection (15) of  
26 section 440.20, Florida Statutes, is amended to read:

27 440.20 Time for payment of compensation; penalties for  
28 late payment.--

29 (15)(a) The department shall examine on an ongoing  
30 basis claims files in accordance with s. 624.3161 and may  
31 impose fines pursuant to s. 624.310(6)~~(5)~~and this chapter in

1 order to identify questionable claims-handling techniques,  
2 questionable patterns or practices of claims, or a pattern of  
3 repeated unreasonably controverted claims by carriers, as  
4 defined in s. 440.02, providing services to employees pursuant  
5 to this chapter. If the department finds such questionable  
6 techniques, patterns, or repeated unreasonably controverted  
7 claims as constitute a general business practice of a carrier,  
8 as defined in s. 440.02, the department shall take appropriate  
9 action so as to bring such general business practices to a  
10 halt pursuant to s. 440.38(3) or may impose penalties pursuant  
11 to s. 624.4211. The department may initiate investigations of  
12 questionable techniques, patterns, practices, or repeated  
13 unreasonably controverted claims. The department may by rule  
14 establish forms and procedures for corrective action plans and  
15 for auditing carriers.

16 Section 13. This act shall take effect October 1,  
17 2003.

18

19 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
20 COMMITTEE SUBSTITUTE FOR  
21 Senate Bill 2518

22

The committee substitute does the following:

- 23 - Provides requirements relating to examinations of  
24 insurance companies to include that the rates charged to  
25 the insurer being examined are consistent with rates  
26 charged by other firms in a similar profession and that  
27 the firm selected by the office to perform the  
28 examination has no conflict of interest.
- 29 - Removes the requirement that health maintenance  
30 organizations must prepare and submit to the Office of  
31 Insurance Regulation a report of its risk-based capital  
provisions.
- 30 - Reinserts the term "department" in current law.

30

31