

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:

11
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 (d) This subsection does not apply to foreign or alien
16 insurers.

17 (e) This subsection does not apply to a transaction
18 with an affiliated party if the transaction is reported to the
19 office pursuant to the requirements of s. 628.801.

20 ~~(6)(5)~~ ADMINISTRATIVE FINES; ENFORCEMENT.--

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

31

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

3 (c) The department or office may, in addition to the
4 imposition of an administrative fine under this subsection,
5 also suspend or revoke the license or certificate of authority
6 of the licensee fined under this subsection.

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

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

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

31

1 ~~(7)(6)~~ ADMINISTRATIVE PROCEDURES.--All administrative
2 proceedings brought under this section ~~subsections (3), (4),~~
3 ~~and (5)~~ shall be conducted in accordance with chapter 120. Any
4 service required or authorized to be made by the department or
5 office under this code shall be made by certified mail, return
6 receipt requested, delivered to the addressee only; by
7 personal delivery; or in accordance with chapter 48. The
8 service provided for herein shall be effective from the date
9 of delivery.

10 ~~(8)(7)~~ OTHER LAWS NOT SUPERSEDED.--The provisions of
11 this section are in addition to other provisions of this code,
12 and shall not be construed to curtail, impede, replace, or
13 delete any other similar provision or power of the department
14 or office under the insurance code as defined in s. 624.01 or
15 any power of the department or office which may exist under
16 the common law of this state. The procedures set forth in s.
17 626.9581 do not apply to regulatory action taken pursuant to
18 the provisions of this section.

19 Section 2. Paragraph (e) of subsection (2) of section
20 624.316, Florida Statutes, is amended to read:

21 624.316 Examination of insurers.--

22 (2)

23 (e) The commission ~~department~~ shall adopt rules
24 providing that, ~~upon agreement between the department and the~~
25 ~~insurer~~, an examination under this section may be conducted by
26 independent certified public accountants, actuaries,
27 investment specialists, information technology specialists
28 ~~meeting criteria specified by rule~~, and reinsurance
29 specialists meeting criteria specified by rule. The rules
30 shall provide:
31

1 ~~1. That the agreement of the insurer is not required~~
2 ~~if the department reasonably suspects criminal misconduct on~~
3 ~~the part of the insurer.~~

4 ~~2. That the department shall provide the insurer with~~
5 ~~a list of three firms acceptable to the department, and that~~
6 ~~the insurer shall select the firm to conduct the examination~~
7 ~~from the list provided by the department.~~

8 1.3. That the insurer being examined must make payment
9 for the examination directly to the firm performing the
10 examination in accordance with the rates and terms established
11 ~~agreed to by the office department, the insurer, and the firm~~
12 ~~performing the examination.~~

13 2. That the rates charged to the insurer being
14 examined are consistent with rates charged by other firms in a
15 similar profession.

16 3. That the firm selected by the office to perform the
17 examination has no conflicts of interest that might affect its
18 ability to independently perform its responsibilities on the
19 examination.

20 ~~4. That if the examination is conducted without the~~
21 ~~consent of the insurer, the insurer must pay all reasonable~~
22 ~~charges of the examining firm if the examination finds~~
23 ~~impairment, insolvency, or criminal misconduct on the part of~~
24 ~~the insurer.~~

25 Section 3. Section 624.4095, Florida Statutes, is
26 amended to read:

27 624.4095 Premiums written; restrictions.--

28 (1) Whenever an insurer's ratio of actual or projected
29 annual written premiums as adjusted in accordance with
30 subsection ~~(5)~~~~(4)~~ to current or projected surplus as to
31 policyholders as adjusted in accordance with subsection ~~(6)~~~~(5)~~

1 exceeds 10 to 1 for gross written premiums or exceeds 4 to 1
2 for net written premiums, the office ~~department~~ shall suspend
3 the insurer's certificate of authority or establish by order
4 maximum gross or net annual premiums to be written by the
5 insurer consistent with maintaining the ratios specified
6 herein unless the insurer demonstrates to the office's
7 ~~department's~~ satisfaction that exceeding the ratios of this
8 section does not endanger the financial condition of the
9 insurer or endanger the interests of the insurer's
10 policyholders.

11 (2) Projected annual net or gross premiums shall be
12 based on the actual writings to date for the insurer's current
13 calendar year or the insurer's writings for the previous
14 calendar year or both. Ratios shall be computed on an
15 annualized basis.

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

18 (4) For the purposes of this section, surplus as to
19 policyholders for property and casualty insurers shall be
20 calculated as follows: (actual surplus as to policyholders)
21 minus (surplus as to policyholders of all subsidiary insurers
22 as allowed pursuant to s. 625.325).

23 (5)~~(4)~~ For the purposes of this section, for the
24 calendar year ending December 31, 1990, and each subsequent
25 year, premiums shall be calculated as the product of the
26 actual or projected premiums and the following:

- 27 (a) For property insurance, 0.90.
28 (b) For casualty insurance, 1.25.
29 (c) For health insurance, 0.80.
30 (d) For all other kinds of insurance, 1.00.

31 (6)~~(5)~~ This section shall not apply to:

1 (a) Life insurance written by life or life and health
2 insurers; or

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

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

14 Section 4. Paragraph (c) of subsection (3) of section
15 624.610, Florida Statutes, is amended to read:

16 624.610 Reinsurance.--

17 (3)

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

31

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

4 (I) The commissioner of the state in which the trust
5 is domiciled; or

6 (II) The commissioner of another state who, pursuant
7 to the terms of the trust instrument, has accepted principal
8 regulatory oversight of the trust.

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

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

28 3. The following requirements apply to the following
29 categories of assuming insurer:

30 a. The trust fund for a single assuming insurer
31 consists of funds in trust in an amount not less than the

1 assuming insurer's liabilities attributable to reinsurance
2 ceded by United States ceding insurers, and, in addition, the
3 assuming insurer shall maintain a trusted surplus of not less
4 than \$20 million. Not less than 50 percent of the funds in the
5 trust covering the assuming insurer's liabilities attributable
6 to reinsurance ceded by United States ceding insurers and
7 trusted surplus shall consist of assets of a quality
8 substantially similar to that required in part II of chapter
9 625. Clean, irrevocable, unconditional, and evergreen letters
10 of credit, issued or confirmed by a qualified United States
11 financial institution, as defined in paragraph (5)(a),
12 effective no later than December 31 of the year for which the
13 filing is made, and in the possession of the trust on or
14 before the filing date of its annual statement, may be used to
15 fund the remainder of the trust fund and trusted surplus.

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

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

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

31

1 (C) In addition to these trusts, the group shall
2 maintain in trust a trustee surplus of which \$100 million
3 must be held jointly for the benefit of the United States
4 domiciled ceding insurers of any member of the group for all
5 years of account.

6 (II) The incorporated members of the group must not be
7 engaged in any business other than underwriting of a member of
8 the group, and are subject to the same level of regulation and
9 solvency control by the group's domiciliary regulator as the
10 unincorporated members.

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

18 Section 5. Section 627.8401, Florida Statutes, is
19 created to read:

20 627.8401 Prohibited investments and loans.--A premium
21 finance company shall not directly or indirectly invest in or
22 lend its funds upon the security of any note or other evidence
23 of indebtedness of any director, officer, or controlling
24 stockholder of the premium finance company.

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

27 628.461 Acquisition of controlling stock.--

28 (2) This section does not apply to any acquisition of
29 voting securities of a domestic stock insurer or of a
30 controlling company by any person who, on July 1, 1976, is the
31 owner of a majority of such voting securities or who, on or

1 after July 1, 1976, becomes the owner of a majority of such
2 voting securities with the approval of the department pursuant
3 to this section. Further, the provisions of this section shall
4 not apply to a change of ownership of a domestic insurer
5 resulting from changes within an insurance holding company of
6 which the insurer is a member, provided the insurer
7 establishes that no new person or entity will have the ability
8 to influence or control the activities of the insurer and that
9 the reorganization will not result in any changes in the
10 officers, directors, or business plan of the domestic insurer.

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

13 628.4615 Specialty insurers; acquisition of
14 controlling stock, ownership interest, assets, or control;
15 merger or consolidation.--

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

1 Section 8. Section 634.042, Florida Statutes, is
2 created to read:

3 634.042 Prohibited investments and loans.--A motor
4 vehicle service agreement company shall not directly or
5 indirectly invest in or lend its funds upon the security of
6 any note or other evidence of indebtedness of any director,
7 officer, or controlling stockholder of the motor vehicle
8 service agreement company.

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

11 634.3076 Prohibited investments and loans.--A home
12 warranty association shall not directly or indirectly invest
13 in or lend its funds upon the security of any note or other
14 evidence of indebtedness of any director, officer, or
15 controlling stockholder of the home warranty association.

16 Section 10. Section 634.4062, Florida Statutes, is
17 created to read:

18 634.4062 Prohibited investments and loans.--A service
19 warranty association shall not directly or indirectly invest
20 in or lend its funds upon the security of any note or other
21 evidence of indebtedness of any director, officer, or
22 controlling stockholder of the service warranty association.

23 Section 11. Section 651.029, Florida Statutes, is
24 created to read:

25 651.029 Prohibited investments and loans.--A provider
26 shall not directly or indirectly invest in or lend its funds
27 upon the security of any note or other evidence of
28 indebtedness of any director, officer, or controlling
29 stockholder of the provider.

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

1 440.20 Time for payment of compensation; penalties for
2 late payment.--

3 (15)(a) The department shall examine on an ongoing
4 basis claims files in accordance with s. 624.3161 and may
5 impose fines pursuant to s. 624.310(6)~~(5)~~and this chapter in
6 order to identify questionable claims-handling techniques,
7 questionable patterns or practices of claims, or a pattern of
8 repeated unreasonably controverted claims by carriers, as
9 defined in s. 440.02, providing services to employees pursuant
10 to this chapter. If the department finds such questionable
11 techniques, patterns, or repeated unreasonably controverted
12 claims as constitute a general business practice of a carrier,
13 as defined in s. 440.02, the department shall take appropriate
14 action so as to bring such general business practices to a
15 halt pursuant to s. 440.38(3) or may impose penalties pursuant
16 to s. 624.4211. The department may initiate investigations of
17 questionable techniques, patterns, practices, or repeated
18 unreasonably controverted claims. The department may by rule
19 establish forms and procedures for corrective action plans and
20 for auditing carriers.

21 Section 13. This act shall take effect October 1,
22 2003.

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