



CHAMBER ACTION

The Committee on Insurance recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to insurance; amending s. 624.310, F.S.; revising definitions; conforming provisions to a revised definition; conforming provisions to certain governmental reorganization; prohibiting affiliated parties from certain activities constituting a conflict of interest; providing exceptions; authorizing the Office of Insurance Regulation to require certain disclosures of personal interest; specifying certain restrictions governing conduct of an affiliated party of a licensee; amending 624.316, F.S.; deleting provisions providing for an examination of an insurer pursuant to an agreement between the Department of Financial Services and the insurer; requiring such examinations according to rules of the commission; amending s. 624.4095, F.S.; conforming provisions to certain governmental reorganization; providing for calculating certain surplus for certain insurers; amending s. 624.610, F.S.; conforming provisions to certain governmental reorganization; revising



HB 0831

2003
CS

29 requirements for securities of a trust fund for a single
 30 assuming insurer; amending ss. 628.461 and 628.4615, F.S.;
 31 specifying additional nonapplication of acquisition of
 32 controlling stock provisions to changes of ownership of a
 33 domestic insurer or specialty insurer, respectively, under
 34 certain circumstances; creating ss. 634.042, 627.8401,
 35 634.3076, 634.4062, and 651.029, F.S.; prohibiting certain
 36 investments by motor vehicle service agreement companies,
 37 premium finance companies, home warranty associations,
 38 service warranty associations, and continuing care
 39 providers, respectively; amending s. 440.20, F.S.;
 40 correcting a cross reference; providing an effective date.

41

42 Be It Enacted by the Legislature of the State of Florida:

43

44 Section 1. Section 624.310, Florida Statutes, is amended
 45 to read:

46 624.310 Enforcement; cease and desist orders; removal of
 47 certain persons; fines.--

48 (1) DEFINITIONS.--For the purposes of this section, the
 49 term:

50 (a) "Affiliated party of a licensee" means any person who
 51 directs or participates in the conduct of the affairs of a
 52 licensee and who is:

53 1. A director, officer, employee, trustee, committee
 54 member, or controlling stockholder of a licensee or a subsidiary
 55 or service corporation of the licensee, ~~other than a controlling~~



HB 0831

2003
CS

56 ~~stockholder which is a holding company,~~ or an agent of a
57 licensee or a subsidiary or service corporation of the licensee;

58 2. A person who has filed or is required to file a
59 statement or any other information required to be filed under s.
60 628.461 or s. 628.4615;

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

64 4. An independent contractor who:

65 a. Renders a written opinion required by the laws of this
66 state under her or his professional credentials on behalf of the
67 licensee, which opinion is reasonably relied on by the office
68 ~~department~~ in the performance of its duties; or

69 b. Affirmatively and knowingly conceals facts, through a
70 written misrepresentation to the office ~~department~~, with
71 knowledge that such misrepresentation:

72 (I) Constitutes a violation of the insurance code or a
73 lawful rule or order of the office ~~department~~; and

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

76
77 For the purposes of this subparagraph, any representation of
78 fact made by an independent contractor on behalf of a licensee,
79 affirmatively communicated as a representation of the licensee
80 to the independent contractor, shall not be considered a
81 misrepresentation by the independent contractor to the
82 department or office.



HB 0831

2003
CS

83 (b) "Licensee" means a person issued a license or
84 certificate of authority or approval under this code or a person
85 registered under a provision of this code.

86 (2) ENFORCEMENT GENERALLY.--The department or office may
87 institute such suits or other legal proceedings as may be
88 required to enforce any provision of this code. If it appears
89 that any person has violated any provision of this code for
90 which criminal prosecution is provided, the department or office
91 shall provide the appropriate state attorney or other
92 prosecuting agency having jurisdiction with respect to such
93 prosecution with the relevant information in its possession.

94 (3) CEASE AND DESIST ORDERS.--

95 (a) The department or office may issue and serve a
96 complaint stating charges upon any licensee or upon any
97 affiliated party of a licensee, whenever the department or
98 office has reasonable cause to believe that the person or
99 individual named therein is engaging in or has engaged in
100 conduct that is:

101 1. An act that demonstrates a lack of fitness or
102 trustworthiness to engage in the business of insurance, is
103 hazardous to the insurance buying public, or constitutes
104 business operations that are a detriment to policyholders,
105 stockholders, investors, creditors, or the public;

106 2. A violation of any provision of the Florida Insurance
107 Code;

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

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

110 or



HB 0831

2003
CS

111 5. A breach of any written agreement with the department
112 or office.

113 (b) The complaint shall contain a statement of facts and
114 notice of opportunity for a hearing pursuant to ss. 120.569 and
115 120.57.

116 (c) If no hearing is requested within the time allowed by
117 ss. 120.569 and 120.57, or if a hearing is held and the
118 department or office finds that any of the charges are proven,
119 the department or office may enter an order directing the
120 licensee or the affiliated party of a licensee named in the
121 complaint to cease and desist from engaging in the conduct
122 complained of and take corrective action to remedy the effects
123 of past improper conduct and assure future compliance.

124 (d) If the licensee or affiliated party of a licensee
125 named in the order fails to respond to the complaint within the
126 time allotted by ss. 120.569 and 120.57, the failure constitutes
127 a default and justifies the entry of a cease and desist order.

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

132 (f) Whenever the department or office finds that conduct
133 described in paragraph (a) is likely to cause insolvency,
134 substantial dissipation or misvaluation of assets or earnings of
135 the licensee, substantial inability to pay claims on a timely
136 basis, or substantial prejudice to prospective or existing
137 insureds, policyholders, subscribers, or the public, it may
138 issue an emergency cease and desist order requiring the licensee



HB 0831

2003
CS

139 or any affiliated party of a licensee to immediately cease and
140 desist from engaging in the conduct complained of and to take
141 corrective and remedial action. The emergency order is effective
142 immediately upon service of a copy of the order upon the
143 licensee or affiliated party of a licensee named therein and
144 remains effective for 90 days. If the department or office
145 begins nonemergency cease and desist proceedings under this
146 subsection, the emergency order remains effective until the
147 conclusion of the proceedings under ss. 120.569 and 120.57. Any
148 emergency order entered under this subsection is exempt from s.
149 119.07(1) and is confidential until it is made permanent unless
150 the department or office finds that the confidentiality will
151 result in substantial risk of financial loss to the public. All
152 emergency cease and desist orders that are not made permanent
153 are available for public inspection 1 year from the date the
154 emergency cease and desist order expires; however, portions of
155 an emergency cease and desist order remain confidential and
156 exempt from the provisions of s. 119.07(1) if disclosure would:

- 157 1. Jeopardize the integrity of another active
158 investigation;
- 159 2. Impair the safety and financial soundness of the
160 licensee or affiliated party of a licensee;
- 161 3. Reveal personal financial information;
- 162 4. Reveal the identity of a confidential source;
- 163 5. Defame or cause unwarranted damage to the good name or
164 reputation of an individual or jeopardize the safety of an
165 individual; or
- 166 6. Reveal investigative techniques or procedures.



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

169 (a) The department or office may issue and serve a
170 complaint stating charges upon any affiliated party of a
171 licensee and upon the licensee involved, whenever the department
172 or office has reason to believe that an affiliated party of a
173 licensee is engaging in or has engaged in conduct that
174 constitutes:

175 1. An act that demonstrates a lack of fitness or
176 trustworthiness to engage in the business of insurance through
177 engaging in illegal activity or mismanagement of business
178 activities;

179 2. A willful violation of any law relating to the business
180 of insurance; however, if the violation constitutes a
181 misdemeanor, no complaint shall be served as provided in this
182 section until the affiliated party of a licensee is notified in
183 writing of the matter of the violation and has been afforded a
184 reasonable period of time, as set forth in the notice, to
185 correct the violation and has failed to do so;

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

188 4. A willful violation of any rule of the department or
189 office;

190 5. A willful violation of any order of the department or
191 office;

192 6. A material misrepresentation of fact, made knowingly
193 and willfully or made with reckless disregard for the truth of
194 the matter; or



HB 0831

2003
CS

195 | 7. An act of commission or omission or a practice which is
196 | a breach of trust or a breach of fiduciary duty.

197 | (b) The complaint shall contain a statement of facts and
198 | notice of opportunity for a hearing pursuant to ss. 120.569 and
199 | 120.57.

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

204 | 1. The licensee has suffered or will likely suffer loss or
205 | other damage;

206 | 2. The interests of the policyholders, creditors, or
207 | public are, or could be, seriously prejudiced by reason of the
208 | violation or act or breach of fiduciary duty;

209 | 3. The affiliated party of a licensee has received
210 | financial gain by reason of the violation, act, or breach of
211 | fiduciary duty; or

212 | 4. The violation, act, or breach of fiduciary duty is one
213 | involving personal dishonesty on the part of the affiliated
214 | party of a licensee or the conduct jeopardizes or could
215 | reasonably be anticipated to jeopardize the financial soundness
216 | of the licensee,

217 |
218 | The department or office may enter an order removing the
219 | affiliated party of a licensee or restricting or prohibiting
220 | participation by the person in the affairs of that particular
221 | licensee or of any other licensee.



222 (d) If the affiliated party of a licensee fails to respond
 223 to the complaint within the time allotted by ss. 120.569 and
 224 120.57, the failure constitutes a default and justifies the
 225 entry of an order of removal, suspension, or restriction.

226 (e) A contested or default order of removal, restriction,
 227 or prohibition is effective when reduced to writing and served
 228 on the licensee and the affiliated party of a licensee. An
 229 uncontested order of removal, restriction, or prohibition is
 230 effective as agreed.

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

236 2. Whenever any affiliated party of a licensee is charged
 237 with a felony in a state or federal court or with the equivalent
 238 of a felony in the courts of any foreign country with which the
 239 United States maintains diplomatic relations, and the charge
 240 alleges violation of any law involving fraud, theft, or moral
 241 turpitude, the department or office may enter an emergency order
 242 suspending the affiliated party of a licensee or restricting or
 243 prohibiting participation by the affiliated party of a licensee
 244 in the affairs of the particular licensee or of any other
 245 licensee upon service of the order upon the licensee and the
 246 affiliated party of a licensee charged. The order shall contain
 247 notice of opportunity for a hearing pursuant to ss. 120.569 and
 248 120.57, where the affiliated party of a licensee may request a
 249 postsuspension hearing to show that continued service to or



HB 0831

2003
CS

250 participation in the affairs of the licensee does not pose a
251 threat to the interests of the licensee's policyholders or
252 creditors and does not threaten to impair public confidence in
253 the licensee. In accordance with applicable departmental or
254 office rules, the department or office shall notify the
255 affiliated party of a licensee whether the order suspending or
256 prohibiting the person from participation in the affairs of a
257 licensee will be rescinded or otherwise modified. The emergency
258 order remains in effect, unless otherwise modified by the
259 department or office, until the criminal charge is disposed of.
260 The acquittal of the person charged, or the final, unappealed
261 dismissal of all charges against the person, dissolves the
262 emergency order, but does not prohibit the department or office
263 from instituting proceedings under paragraph (a). If the person
264 charged is convicted or pleads guilty or nolo contendere,
265 whether or not an adjudication of guilt is entered by the court,
266 the emergency order shall become final.

267 (g) Any affiliated party of a licensee removed from office
268 pursuant to this section is not eligible for reelection or
269 appointment to the position or to any other official position in
270 any licensee in this state except upon the written consent of
271 the department or office. Any affiliated party of a licensee who
272 is removed, restricted, or prohibited from participation in the
273 affairs of a licensee pursuant to this section may petition the
274 department or office for modification or termination of the
275 removal, restriction, or prohibition.



HB 0831

2003
CS

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

279 (5)(a) CONFLICT OF INTEREST.--An affiliated party of a
280 licensee may not engage or participate, directly or indirectly,
281 in any business or transaction conducted on behalf of or
282 involving the licensee, subsidiary, or service corporation that
283 would result in a conflict of the party's own personal interests
284 with those of the licensee, subsidiary, or service corporation
285 with which he or she is affiliated, unless:

286 1. Such business or transactions are conducted in good
287 faith and are honest, fair, and reasonable to the licensee,
288 subsidiary, or service corporation and are on terms no more
289 favorable than would be offered to a disinterested third party.

290 2. A full disclosure of such business or transaction, and
291 the nature of the interest of the affiliated party of the
292 licensee, is made to the board of directors.

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

296 4. Any profits inuring to the affiliated party of a
297 licensee are not at the expense of the licensee, subsidiary, or
298 service corporation and do not prejudice the best interests of
299 the licensee, subsidiary, or service corporation in any way.

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



HB 0831

2003
CS

303 (b) Without limitation by any of the specific provisions
304 of this section, the office may require the disclosure by
305 affiliated parties of a licensee of their personal interests,
306 directly or indirectly, in any business or transactions on
307 behalf of or involving the licensee, subsidiary, or service
308 corporation and of their control of or active participation in
309 enterprises having activities related to the business of the
310 licensee, subsidiary, or service corporation.

311 (c) The following restrictions governing the conduct of
312 affiliated parties of a licensee are expressly specified, but
313 such specification is not to be construed in any manner as
314 excusing such parties from the observance of any other aspect of
315 the general fiduciary duty owed by such parties to the licensee
316 which they serve:

317 1. A director of a licensee may not accept director fees
318 unless the director fees have been previously approved by the
319 board of directors and such fees represent reasonable
320 compensation for service as a director or member of a committee.
321 This subparagraph does not limit or preclude reasonable
322 compensation as otherwise authorized by paragraph (a) for a
323 director who also provides goods or services to the licensee.

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

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



330 4. An affiliated party of a licensee acting as proxy for a
 331 stockholder of a licensee, subsidiary, or service corporation
 332 may not, directly or indirectly, exercise, transfer, or delegate
 333 such vote or votes in any consideration of a private benefit or
 334 advantage. The voting rights of stockholders and directors may
 335 not be the subject of sale, barter, exchange, or similar
 336 transaction, directly or indirectly. Any affiliated party of a
 337 licensee who violates the provisions of this subparagraph is
 338 accountable to the licensee, subsidiary, or service corporation
 339 for any increment.

340 (d) This subsection shall not apply to foreign or alien
 341 insurers.

342 (e) This subsection shall not apply to a transaction with
 343 an affiliated party of a licensee if the transaction is reported
 344 to the office pursuant to the requirements of s. 628.801.

345 ~~(6)(5)~~ ADMINISTRATIVE FINES; ENFORCEMENT.--

346 (a) The department or office may, in a proceeding
 347 initiated pursuant to chapter 120, impose an administrative fine
 348 against any person found in the proceeding to have violated any
 349 provision of this code, a cease and desist order of the
 350 department or office, or any written agreement with the
 351 department or office. No proceeding shall be initiated and no
 352 fine shall accrue until after the person has been notified in
 353 writing of the nature of the violation and has been afforded a
 354 reasonable period of time, as set forth in the notice, to
 355 correct the violation and has failed to do so.

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



HB 0831

2003
CS

358 (c) The department or office may, in addition to the
359 imposition of an administrative fine under this subsection, also
360 suspend or revoke the license or certificate of authority of the
361 licensee fined under this subsection.

362 (d) Any administrative fine levied by the department or
363 office under this subsection may be enforced by the department
364 or office by appropriate proceedings in the circuit court of the
365 county in which the person resides or in which the principal
366 office of a licensee is located, or, in the case of a foreign
367 insurer or person not residing in this state, in Leon County. In
368 any administrative or judicial proceeding arising under this
369 section, a party may elect to correct the violation asserted by
370 the department or office, and, upon doing so, any fine shall
371 cease to accrue; however, the election to correct the violation
372 does not render any administrative or judicial proceeding moot.
373 All fines collected under this section shall be paid to the
374 Insurance Commissioner's Regulatory Trust Fund.

375 (e) In imposing any administrative penalty or remedy
376 provided for under this section, the department or office shall
377 take into account the appropriateness of the penalty with
378 respect to the size of the financial resources and the good
379 faith of the person charged, the gravity of the violation, the
380 history of previous violations, and other matters as justice may
381 require.

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



HB 0831

2003
CS

385 (7)~~(6)~~ ADMINISTRATIVE PROCEDURES.--All administrative
 386 proceedings brought under this section ~~subsections (3), (4), and~~
 387 ~~(5)~~ shall be conducted in accordance with chapter 120. Any
 388 service required or authorized to be made by the department or
 389 office under this code shall be made by certified mail, return
 390 receipt requested, delivered to the addressee only; by personal
 391 delivery; or in accordance with chapter 48. The service provided
 392 for herein shall be effective from the date of delivery.

393 (8)~~(7)~~ OTHER LAWS NOT SUPERSEDED.--The provisions of this
 394 section are in addition to other provisions of this code, and
 395 shall not be construed to curtail, impede, replace, or delete
 396 any other similar provision or power of the department or office
 397 under the insurance code as defined in s. 624.01 or any power of
 398 the department or office which may exist under the common law of
 399 this state. The procedures set forth in s. 626.9581 do not apply
 400 to regulatory action taken pursuant to the provisions of this
 401 section.

402 Section 2. Paragraph (e) of subsection (2) of section
 403 624.316, Florida Statutes, is amended to read:

404 624.316 Examination of insurers.--

405 (2)

406 (e) The commission ~~department~~ shall adopt rules providing
 407 that, ~~upon agreement between the department and the insurer,~~ an
 408 examination under this section may be conducted by independent
 409 certified public accountants, actuaries, investment specialists,
 410 information technology specialists ~~meeting criteria specified by~~
 411 ~~rule,~~ and reinsurance specialists meeting criteria specified by
 412 rule. The rules shall provide:



HB 0831

2003
CS

413 ~~1. That the agreement of the insurer is not required if~~
414 ~~the department reasonably suspects criminal misconduct on the~~
415 ~~part of the insurer.~~

416 ~~2. That the department shall provide the insurer with a~~
417 ~~list of three firms acceptable to the department, and that the~~
418 ~~insurer shall select the firm to conduct the examination from~~
419 ~~the list provided by the department.~~

420 1.3. That the insurer being examined must make payment for
421 the examination directly to the firm performing the examination
422 in accordance with the rates and terms established ~~agreed to~~ by
423 the office department, the insurer, and the firm performing the
424 examination.

425 2. That the rates charged to the insurer being examined
426 are consistent with rates charged by other firms in a similar
427 profession.

428 3. That the firm selected by the office to perform the
429 examination has no conflicts of interest that might affect its
430 ability to independently perform its responsibilities on the
431 examination.

432 ~~4. That if the examination is conducted without the~~
433 ~~consent of the insurer, the insurer must pay all reasonable~~
434 ~~charges of the examining firm if the examination finds~~
435 ~~impairment, insolvency, or criminal misconduct on the part of~~
436 ~~the insurer.~~

437 Section 3. Section 624.4095, Florida Statutes, is amended
438 to read:

439 624.4095 Premiums written; restrictions.--



HB 0831

2003
CS

440 (1) Whenever an insurer's ratio of actual or projected
441 annual written premiums as adjusted in accordance with
442 subsection (5)~~(4)~~ to current or projected surplus as to
443 policyholders as adjusted in accordance with subsection (6)~~(5)~~
444 exceeds 10 to 1 for gross written premiums or exceeds 4 to 1 for
445 net written premiums, the office ~~department~~ shall suspend the
446 insurer's certificate of authority or establish by order maximum
447 gross or net annual premiums to be written by the insurer
448 consistent with maintaining the ratios specified herein unless
449 the insurer demonstrates to the office's ~~department's~~
450 satisfaction that exceeding the ratios of this section does not
451 endanger the financial condition of the insurer or endanger the
452 interests of the insurer's policyholders.

453 (2) Projected annual net or gross premiums shall be based
454 on the actual writings to date for the insurer's current
455 calendar year or the insurer's writings for the previous
456 calendar year or both. Ratios shall be computed on an annualized
457 basis.

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

460 (4) For the purposes of this section, surplus as to
461 policyholders for property and casualty insurers shall be
462 calculated as follows: (actual surplus as to policyholders)
463 minus (surplus as to policyholders of all subsidiary insurers as
464 allowed pursuant to s. 625.325).

465 (5)~~(4)~~ For the purposes of this section, for the calendar
466 year ending December 31, 1990, and each subsequent year,



HB 0831

2003
CS

467 premiums shall be calculated as the product of the actual or
468 projected premiums and the following:

- 469 (a) For property insurance, 0.90.
- 470 (b) For casualty insurance, 1.25.
- 471 (c) For health insurance, 0.80.
- 472 (d) For all other kinds of insurance, 1.00.

473 ~~(6)~~~~(5)~~ This section shall not apply to:

- 474 (a) Life insurance written by life or life and health
475 insurers; or
- 476 (b) Life and health insurers which have a surplus as to
477 policyholders greater than \$40 million and which have written
478 health insurance during each of the immediately preceding five
479 calendar years.

480 ~~(7)~~~~(6)~~ For the purposes of this section, surplus as to
481 policyholders for life and health insurers shall be calculated
482 as follows:(actual or projected surplus as to policyholders)
483 minus(surplus as to policyholders required to be maintained
484 under s. 624.408 for liabilities relating to life insurance) and
485 minus (surplus as to policyholders of all subsidiary insurers as
486 allowed pursuant to s. 625.325).

487 Note.--Subsection ~~(7)~~~~(6)~~ relates to calculation of surplus
488 as to policyholders.

489 Section 4. Paragraph (c) of subsection (3) of section
490 624.610, Florida Statutes, is amended to read:

491 624.610 Reinsurance.--

492 (3)

493 (c)1. Credit must be allowed when the reinsurance is ceded
494 to an assuming insurer that maintains a trust fund in a



HB 0831

2003
CS

495 | qualified United States financial institution, as defined in
496 | paragraph (5)(b), for the payment of the valid claims of its
497 | United States ceding insurers and their assigns and successors
498 | in interest. To enable the office ~~department~~ to determine the
499 | sufficiency of the trust fund, the assuming insurer shall report
500 | annually to the office ~~department~~ information substantially the
501 | same as that required to be reported on the NAIC Annual
502 | Statement form by authorized insurers. The assuming insurer
503 | shall submit to examination of its books and records by the
504 | office ~~department~~ and bear the expense of examination.

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

508 | (I) The commissioner of the state in which the trust is
509 | domiciled; or

510 | (II) The commissioner of another state who, pursuant to
511 | the terms of the trust instrument, has accepted principal
512 | regulatory oversight of the trust.

513 | b. The form of the trust and any trust amendments must be
514 | filed with the commissioner of every state in which the ceding
515 | insurer beneficiaries of the trust are domiciled. The trust
516 | instrument must provide that contested claims are valid and
517 | enforceable upon the final order of any court of competent
518 | jurisdiction in the United States. The trust must vest legal
519 | title to its assets in its trustees for the benefit of the
520 | assuming insurer's United States ceding insurers and their
521 | assigns and successors in interest. The trust and the assuming



HB 0831

2003
CS

522 insurer are subject to examination as determined by the
523 commissioner.

524 c. The trust remains in effect for as long as the assuming
525 insurer has outstanding obligations due under the reinsurance
526 agreements subject to the trust. No later than February 28 of
527 each year, the trustee of the trust shall report to the
528 commissioner in writing the balance of the trust and list the
529 trust's investments at the preceding year end, and shall certify
530 that the trust will not expire prior to the following December
531 31.

532 3. The following requirements apply to the following
533 categories of assuming insurer:

534 a. The trust fund for a single assuming insurer consists
535 of funds in trust in an amount not less than the assuming
536 insurer's liabilities attributable to reinsurance ceded by
537 United States ceding insurers, and, in addition, the assuming
538 insurer shall maintain a trusteed surplus of not less than \$20
539 million. Not less than 50 percent of the funds in the trust
540 covering the assuming insurer's liabilities attributable to
541 reinsurance ceded by United States ceding insurers and trusteed
542 surplus shall consist of assets of a quality substantially
543 similar to that required in part II of chapter 625. Clean,
544 irrevocable, unconditional, and evergreen letters of credit,
545 issued or confirmed by a qualified United States financial
546 institution, as defined in paragraph (5)(a), effective no later
547 than December 31 of the year for which the filing is made, and
548 in the possession of the trust on or before the filing date of



HB 0831

2003
CS

549 its annual statement, may be used to fund the remainder of the
550 trust fund and trusteed surplus.

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

553 (A) For reinsurance ceded under reinsurance agreements
554 with an inception, amendment, or renewal date on or after August
555 1, 1995, the trust consists of a trusteed account in an amount
556 not less than the group's several liabilities attributable to
557 business ceded by United States domiciled ceding insurers to any
558 member of the group;

559 (B) For reinsurance ceded under reinsurance agreements
560 with an inception date on or before July 31, 1995, and not
561 amended or renewed after that date, notwithstanding the other
562 provisions of this section, the trust consists of a trusteed
563 account in an amount not less than the group's several insurance
564 and reinsurance liabilities attributable to business written in
565 the United States; and

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

570 (II) The incorporated members of the group must not be
571 engaged in any business other than underwriting of a member of
572 the group, and are subject to the same level of regulation and
573 solvency control by the group's domiciliary regulator as the
574 unincorporated members.

575 (III) Within 90 days after its financial statements are
576 due to be filed with the group's domiciliary regulator, the



HB 0831

2003
CS

577 group shall provide to the commissioner an annual certification
578 by the group's domiciliary regulator of the solvency of each
579 underwriter member or, if a certification is unavailable,
580 financial statements, prepared by independent public
581 accountants, of each underwriter member of the group.

582 Section 5. Section 627.8401, Florida Statutes, is created
583 to read:

584 627.8401 Prohibited investments and loans.--A premium
585 finance company shall not directly or indirectly invest in or
586 lend its funds upon the security of any note or other evidence
587 of indebtedness of any director, officer, or controlling
588 stockholder of the premium finance company.

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

591 628.461 Acquisition of controlling stock.--

592 (2) This section does not apply to any acquisition of
593 voting securities of a domestic stock insurer or of a
594 controlling company by any person who, on July 1, 1976, is the
595 owner of a majority of such voting securities or who, on or
596 after July 1, 1976, becomes the owner of a majority of such
597 voting securities with the approval of the department pursuant
598 to this section. Further, the provisions of this section shall
599 not apply to a change of ownership of a domestic insurer
600 resulting from changes within an insurance holding company of
601 which the insurer is a member, provided the insurer establishes
602 that no new person or entity will have the ability to influence
603 or control the activities of the insurer and that the



HB 0831

2003
CS

604 reorganization will not result in any changes in the officers,
605 directors, or business plan of the domestic insurer.

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

608 628.4615 Specialty insurers; acquisition of controlling
609 stock, ownership interest, assets, or control; merger or
610 consolidation.--

611 (3) This section does not apply to any acquisition of
612 voting securities or ownership interest of a specialty insurer
613 or of a controlling company by any person who, on July 9, 1986,
614 is the owner of a majority of such voting securities or
615 ownership interest or who, on or after July 9, 1986, becomes the
616 owner of a majority of such voting securities or ownership
617 interest with the approval of the department pursuant to this
618 section. Further, the provisions of this section shall not apply
619 to a change of ownership of a specialty insurer resulting from
620 changes within a holding company of which the specialty insurer
621 is a member, provided the specialty insurer establishes that no
622 new person or entity will have the ability to influence or
623 control the activities of the specialty insurer and that the
624 reorganization will not result in any changes in the officers,
625 directors, or business plan of the specialty insurer.

626 Section 8. Section 634.042, Florida Statutes, is created
627 to read:

628 634.042 Prohibited investments and loans.--A motor vehicle
629 service agreement company shall not directly or indirectly
630 invest in or lend its funds upon the security of any note or
631 other evidence of indebtedness of any director, officer, or



HB 0831

2003
CS

632 controlling stockholder of the motor vehicle service agreement
633 company.

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

636 634.3076 Prohibited investments and loans.--A home
637 warranty association shall not directly or indirectly invest in
638 or lend its funds upon the security of any note or other
639 evidence of indebtedness of any director, officer, or
640 controlling stockholder of the home warranty association.

641 Section 10. Section 634.4062, Florida Statutes, is created
642 to read:

643 634.4062 Prohibited investments and loans.--A service
644 warranty association shall not directly or indirectly invest in
645 or lend its funds upon the security of any note or other
646 evidence of indebtedness of any director, officer, or
647 controlling stockholder of the service warranty association.

648 Section 11. Section 651.029, Florida Statutes, is created
649 to read:

650 651.029 Prohibited investments and loans.--A provider
651 shall not directly or indirectly invest in or lend its funds
652 upon the security of any note or other evidence of indebtedness
653 of any director, officer, or controlling stockholder of the
654 provider.

655 Section 12. Paragraph (a) of subsection (15) of section
656 440.20, Florida Statutes, is amended to read:

657 440.20 Time for payment of compensation; penalties for
658 late payment.--



HB 0831

2003
CS

659 (15)(a) The department shall examine on an ongoing basis
660 claims files in accordance with s. 624.3161 and may impose fines
661 pursuant to s. 624.310(6)~~(5)~~ and this chapter in order to
662 identify questionable claims-handling techniques, questionable
663 patterns or practices of claims, or a pattern of repeated
664 unreasonably controverted claims by carriers, as defined in s.
665 440.02, providing services to employees pursuant to this
666 chapter. If the department finds such questionable techniques,
667 patterns, or repeated unreasonably controverted claims as
668 constitute a general business practice of a carrier, as defined
669 in s. 440.02, the department shall take appropriate action so as
670 to bring such general business practices to a halt pursuant to
671 s. 440.38(3) or may impose penalties pursuant to s. 624.4211.
672 The department may initiate investigations of questionable
673 techniques, patterns, practices, or repeated unreasonably
674 controverted claims. The department may by rule establish forms
675 and procedures for corrective action plans and for auditing
676 carriers.

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