

By the Committee on Banking and Insurance; and Senator Brandes

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1                                   A bill to be entitled  
2       An act relating to insurance; amending s. 625.151,  
3       F.S.; providing that certain securities valuation  
4       limitations do not apply to certain stock of certain  
5       foreign insurers' subsidiary corporations or related  
6       entities; amending s. 625.325, F.S.; providing that  
7       certain provisions relating to insurer investments in  
8       subsidiaries and related corporations do not apply to  
9       foreign insurers under certain circumstances; amending  
10      s. 626.221, F.S.; revising professional designations  
11      that exempt all-lines adjuster license applicants from  
12      an examination requirement; amending s. 626.914, F.S.;  
13      revising the definition of the term "diligent effort"  
14      to decrease the dwelling replacement cost threshold of  
15      a residential structure to which a different diligent  
16      effort requirement under the Surplus Lines Law  
17      applies; repealing s. 626.918(2)(a), F.S., relating to  
18      a certain condition before an unauthorized insurer may  
19      be or become an eligible surplus lines insurer;  
20      amending s. 626.932, F.S.; reducing the tax on surplus  
21      lines insurance; deleting a limitation on the tax rate  
22      for certain surplus lines policies; amending s.  
23      626.9651, F.S.; revising federal standards applicable  
24      to Department of Financial Services and Financial  
25      Services Commission rules governing the use of  
26      consumer nonpublic personal financial and health  
27      information; amending s. 627.416, F.S.; authorizing  
28      insurers to issue policies that are not executed by  
29      certain authorized persons; amending s. 627.43141,

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30 F.S.; specifying that a written notice of a change in  
31 policy terms must summarize the change; amending s.  
32 627.7015, F.S.; authorizing a third party, as assignee  
33 of the policy benefits, to request mediation for  
34 disputed property insurance claims; providing that  
35 insurers are not required to participate in such  
36 mediations; making technical changes; amending s.  
37 627.728, F.S.; adding certain proofs of mailing that  
38 an insurer may use to provide certain notices relating  
39 to cancellation and nonrenewals of policies to certain  
40 insureds; amending s. 627.756, F.S.; providing that  
41 certain attorney fee provisions apply to suits brought  
42 by contractors against surety insurers under payment  
43 or performance bonds for building or construction  
44 contracts; providing that contractors are deemed to be  
45 insureds or beneficiaries for the purposes of such  
46 provisions; providing applicability; amending s.  
47 628.4615, F.S.; revising the definition of the term  
48 "specialty insurer" to include viatical settlement  
49 providers; providing that a person may rebut a  
50 presumption of control by filing a specified  
51 disclaimer with the Office of Insurance Regulation;  
52 providing an alternative to a form prescribed by the  
53 commission; providing construction; conforming cross-  
54 references; amending s. 628.8015, F.S.; deleting a  
55 condition that certain filings and documents relating  
56 to insurer own-risk and solvency assessments and  
57 corporate governance annual disclosures must be  
58 obtained from the office to be inadmissible in

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59 evidence in private civil actions; amending s.  
60 629.401, F.S.; revising unearned premium reserve  
61 requirements for insurance exchanges regulated by the  
62 office; defining the term "net written premiums";  
63 amending s. 634.121, F.S.; revising requirements and  
64 procedures for the delivery of motor vehicle service  
65 agreements and certain forms by motor vehicle service  
66 agreement companies to agreement holders; defining  
67 terms; specifying requirements if a motor vehicle  
68 service agreement company elects to post service  
69 agreements on its website in lieu of mailing or  
70 delivering to agreement holders; amending s. 641.3107,  
71 F.S.; revising requirements and procedures for the  
72 delivery of health maintenance contracts and certain  
73 documents by health maintenance organizations to  
74 subscribers; defining terms; specifying requirements  
75 if a health maintenance organization elects to post  
76 health maintenance contracts on its website in lieu of  
77 mailing or delivering to subscribers or certain  
78 persons; providing an effective date.

79

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

81

82 Section 1. Paragraph (c) is added to subsection (3) of  
83 section 625.151, Florida Statutes, to read:

84 625.151 Valuation of other securities.—

85 (3) Stock of a subsidiary corporation of an insurer may  
86 ~~shall~~ not be valued at an amount in excess of the net value  
87 thereof as based upon those assets only of the subsidiary which

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88 would be eligible under part II for investment of the funds of  
89 the insurer directly.

90 (c) This subsection does not apply to stock of a subsidiary  
91 corporation or related entities of a foreign insurer which is  
92 permissible under the laws of its state of domicile, if the  
93 state of domicile is a member of the National Association of  
94 Insurance Commissioners.

95 Section 2. Subsection (7) is added to section 625.325,  
96 Florida Statutes, to read:

97 625.325 Investments in subsidiaries and related  
98 corporations.—

99 (7) APPLICABILITY.—This section does not apply to a foreign  
100 insurer's investments in its subsidiaries or related  
101 corporations if:

102 (a) The foreign insurer is domiciled in a state that is a  
103 member of the National Association of Insurance Commissioners  
104 (NAIC).

105 (b) Such investments in the foreign insurer's subsidiaries  
106 or related corporations are:

107 1. Permitted under the laws of the foreign insurer's state  
108 of domicile.

109 2.a. Assigned a rating of 1, 2, or 3 by the NAIC's  
110 Securities Valuation Office (SVO); or

111 b. Qualify for the NAIC's filing exemption rule and  
112 assigned a rating by a nationally recognized statistical rating  
113 organization which would be equivalent to a rating of 1, 2, or 3  
114 by the SVO.

115 Section 3. Paragraph (j) of subsection (2) of section  
116 626.221, Florida Statutes, is amended to read:

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117 626.221 Examination requirement; exemptions.—

118 (2) However, an examination is not necessary for any of the  
119 following:

120 (j) An applicant for license as an all-lines adjuster who  
121 has the designation of Accredited Claims Adjuster (ACA) from a  
122 regionally accredited postsecondary institution in this state,  
123 Associate in Claims (AIC) from the Insurance Institute of  
124 America, Professional Claims Adjuster (PCA) from the  
125 Professional Career Institute, Professional Property Insurance  
126 Adjuster (PPIA) from the HurriClaim Training Academy, Certified  
127 Adjuster (CA) from ALL LINES Training, Certified Claims Adjuster  
128 (CCA) from AE21 Incorporated, Claims Adjuster Certified  
129 Professional (CACP) from WebCE, Inc., ~~or~~ Universal Claims  
130 Certification (UCC) from Claims and Litigation Management  
131 Alliance (CLM), or any similar designation from a similar entity  
132 whose curriculum has been approved by the department and which  
133 includes comprehensive analysis of basic property and casualty  
134 lines of insurance and testing at least equal to that of  
135 standard department testing for the all-lines adjuster license.  
136 The department shall adopt rules establishing standards for the  
137 approval of curriculum.

138 Section 4. Subsection (4) of section 626.914, Florida  
139 Statutes, is amended to read:

140 626.914 Definitions.—As used in this Surplus Lines Law, the  
141 term:

142 (4) "Diligent effort" means seeking coverage from and  
143 having been rejected by at least three authorized insurers  
144 currently writing this type of coverage and documenting these  
145 rejections. However, if the residential structure has a dwelling

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146 replacement cost of \$700,000 ~~\$1 million~~ or more, the term means  
147 seeking coverage from and having been rejected by at least one  
148 authorized insurer currently writing this type of coverage and  
149 documenting this rejection.

150 Section 5. Paragraph (a) of subsection (2) of section  
151 626.918, Florida Statutes, is repealed.

152 Section 6. Subsections (1) and (3) of section 626.932,  
153 Florida Statutes, are amended to read:

154 626.932 Surplus lines tax.—

155 (1) The premiums charged for surplus lines coverages are  
156 subject to a premium receipts tax of 4.936 ~~5~~ percent of all  
157 gross premiums charged for such insurance. The surplus lines  
158 agent shall collect from the insured the amount of the tax at  
159 the time of the delivery of the cover note, certificate of  
160 insurance, policy, or other initial confirmation of insurance,  
161 in addition to the full amount of the gross premium charged by  
162 the insurer for the insurance. The surplus lines agent is  
163 prohibited from absorbing such tax or, as an inducement for  
164 insurance or for any other reason, rebating all or any part of  
165 such tax or of his or her commission.

166 (3) If a surplus lines policy covers risks or exposures  
167 only partially in this state and the state is the home state as  
168 defined in the federal Nonadmitted and Reinsurance Reform Act of  
169 2010 (NRRA), the tax payable must ~~shall~~ be computed on the gross  
170 premium. ~~The tax must not exceed the tax rate where the risk or~~  
171 ~~exposure is located.~~

172 Section 7. Section 626.9651, Florida Statutes, is amended  
173 to read:

174 626.9651 Privacy.—The department and commission shall each

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175 adopt rules consistent with other provisions of the Florida  
176 Insurance Code to govern the use of a consumer's nonpublic  
177 personal financial and health information. These rules must be  
178 based on, consistent with, and not more restrictive than the  
179 Privacy of Consumer Financial and Health Information Regulation,  
180 adopted September 26, 2000, by the National Association of  
181 Insurance Commissioners; however, the rules must permit the use  
182 and disclosure of nonpublic personal health information for  
183 scientific, medical, or public policy research, in accordance  
184 with federal law. In addition, these rules must be consistent  
185 with, and not more restrictive than, the standards contained in  
186 Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-  
187 102, as amended in Title LXXV of the Fixing America's Surface  
188 Transportation (FAST) Act, Pub. L. No. 114-94. If the office  
189 determines that a health insurer or health maintenance  
190 organization is in compliance with, or is actively undertaking  
191 compliance with, the consumer privacy protection rules adopted  
192 by the United States Department of Health and Human Services, in  
193 conformance with the Health Insurance Portability and  
194 Affordability Act, that health insurer or health maintenance  
195 organization is in compliance with this section.

196 Section 8. Subsection (1) of section 627.416, Florida  
197 Statutes, is amended, and subsection (4) is added to that  
198 section, to read:

199 627.416 Execution of policies.—

200 (1) Except as set forth in subsection (4), every insurance  
201 policy must ~~shall~~ be executed in the name of and on behalf of  
202 the insurer by its officer, attorney in fact, employee, or  
203 representative duly authorized by the insurer.

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204       (4) An insurer may elect to issue an insurance policy that  
205 is not executed by an officer, attorney in fact, employee, or  
206 representative, provided that such policy may not be rendered  
207 invalid by reason of the lack of execution thereof.

208       Section 9. Subsection (2) of section 627.43141, Florida  
209 Statutes, is amended to read:

210       627.43141 Notice of change in policy terms.—

211       (2) A renewal policy may contain a change in policy terms.  
212 If such change occurs, the insurer shall give the named insured  
213 advance written notice summarizing ~~of~~ the change, which may be  
214 enclosed along with the written notice of renewal premium  
215 required under ss. 627.4133 and 627.728 or sent separately  
216 within the timeframe required under the Florida Insurance Code  
217 for the provision of a notice of nonrenewal to the named insured  
218 for that line of insurance. The insurer must also provide a  
219 sample copy of the notice to the named insured's insurance agent  
220 before or at the same time that notice is provided to the named  
221 insured. Such notice must ~~shall~~ be entitled "Notice of Change in  
222 Policy Terms."

223       Section 10. Subsections (1), (3), (6), and (9) of section  
224 627.7015, Florida Statutes, are amended to read:

225       627.7015 Alternative procedure for resolution of disputed  
226 property insurance claims.—

227       (1) This section sets forth a nonadversarial alternative  
228 dispute resolution procedure for a mediated claim resolution  
229 conference prompted by the need for effective, fair, and timely  
230 handling of property insurance claims. There is a particular  
231 need for an informal, nonthreatening forum for helping parties  
232 who elect this procedure to resolve their claims disputes



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233 because most homeowner and commercial residential insurance  
234 policies obligate policyholders to participate in a potentially  
235 expensive and time-consuming adversarial appraisal process  
236 before litigation. The procedure set forth in this section is  
237 designed to bring the parties together for a mediated claims  
238 settlement conference without any of the trappings or drawbacks  
239 of an adversarial process. Before resorting to these procedures,  
240 policyholders and insurers are encouraged to resolve claims as  
241 quickly and fairly as possible. This section is available with  
242 respect to claims under personal lines and commercial  
243 residential policies before commencing the appraisal process, or  
244 before commencing litigation. Mediation may be requested only by  
245 the policyholder, as a first-party claimant; a third party, as  
246 assignee of the policy benefits;~~7~~ or the insurer. However, an  
247 insurer is not required to participate in any mediation  
248 requested by a third party assignee of policy benefits. If  
249 requested by the policyholder, participation by legal counsel is  
250 permitted. Mediation under this section is also available to  
251 litigants referred to the department by a county court or  
252 circuit court. This section does not apply to commercial  
253 coverages, to private passenger motor vehicle insurance  
254 coverages, or to disputes relating to liability coverages in  
255 policies of property insurance.

256 (3) The costs of mediation must ~~shall~~ be reasonable, and  
257 the insurer shall bear all of the cost of conducting mediation  
258 conferences, except as otherwise provided in this section. If  
259 the policyholder ~~an insured~~ fails to appear at the conference,  
260 the conference must ~~shall~~ be rescheduled upon the policyholder's  
261 ~~insured's~~ payment of the costs of a rescheduled conference. If

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262 the insurer fails to appear at the conference, the insurer must  
263 ~~shall~~ pay the policyholder's insured's actual cash expenses  
264 incurred in attending the conference if the insurer's failure to  
265 attend was not due to a good cause acceptable to the department.  
266 An insurer will be deemed to have failed to appear if the  
267 insurer's representative lacks authority to settle the full  
268 value of the claim. The insurer shall incur an additional fee  
269 for a rescheduled conference necessitated by the insurer's  
270 failure to appear at a scheduled conference. The fees assessed  
271 by the administrator must ~~shall~~ include a charge necessary to  
272 defray the expenses of the department related to its duties  
273 under this section and must ~~shall~~ be deposited in the Insurance  
274 Regulatory Trust Fund.

275 (6) Mediation is nonbinding; however, if a written  
276 settlement is reached, the policyholder insured has 3 business  
277 days within which the policyholder insured may rescind the  
278 settlement unless the policyholder insured has cashed or  
279 deposited any check or draft disbursed to the policyholder  
280 ~~insured~~ for the disputed matters as a result of the conference.  
281 If a settlement agreement is reached and is not rescinded, it is  
282 ~~shall be~~ binding and acts as ~~act~~ as a release of all specific  
283 claims that were presented in that mediation conference.

284 (9) For purposes of this section, the term "claim" refers  
285 to any dispute between an insurer and a policyholder relating to  
286 a material issue of fact other than a dispute:

287 (a) With respect to which the insurer has a reasonable  
288 basis to suspect fraud;

289 (b) When ~~where~~, based on agreed-upon facts as to the cause  
290 of loss, there is no coverage under the policy;

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291 (c) With respect to which the insurer has a reasonable  
292 basis to believe that the policyholder has intentionally made a  
293 material misrepresentation of fact which is relevant to the  
294 claim, and the entire request for payment of a loss has been  
295 denied on the basis of the material misrepresentation;

296 (d) With respect to which the amount in controversy is less  
297 than \$500, unless the parties agree to mediate a dispute  
298 involving a lesser amount; or

299 (e) With respect to a windstorm or hurricane loss that does  
300 not comply with s. 627.70132.

301 Section 11. Subsection (5) of section 627.728, Florida  
302 Statutes, is amended to read:

303 627.728 Cancellations; nonrenewals.—

304 (5) United States postal proof of mailing, ~~or~~ certified or  
305 registered mailing, or other mailing using the Intelligent Mail  
306 barcode or other similar tracking method used or approved by the  
307 United States Postal Service of notice of cancellation, of  
308 intention not to renew, or of reasons for cancellation, or of  
309 the intention of the insurer to issue a policy by an insurer  
310 under the same ownership or management, to the first-named  
311 insured at the address shown in the policy is ~~shall be~~  
312 sufficient proof of notice.

313 Section 12. Subsection (1) of section 627.756, Florida  
314 Statutes, is amended to read:

315 627.756 Bonds for construction contracts; attorney fees in  
316 case of suit.—

317 (1) Section 627.428 applies to suits brought by owners,  
318 contractors, subcontractors, laborers, and materialmen against a  
319 surety insurer under payment or performance bonds written by the

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320 insurer under the laws of this state to indemnify against  
321 pecuniary loss by breach of a building or construction contract.  
322 Owners, contractors, subcontractors, laborers, and materialmen  
323 are ~~shall be~~ deemed to be insureds or beneficiaries for the  
324 purposes of this section.

325 Section 13. The amendment made by this act to s. 627.756,  
326 Florida Statutes, applies only to payment or performance bonds  
327 issued on or after October 1, 2018.

328 Section 14. Subsections (1) and (7) of section 628.4615,  
329 Florida Statutes, are amended, present subsections (11) through  
330 (14) of that section are redesignated as subsections (12)  
331 through (15), respectively, and a new subsection (11) is added  
332 to that section, to read:

333 628.4615 Specialty insurers; acquisition of controlling  
334 stock, ownership interest, assets, or control; merger or  
335 consolidation.—

336 (1) For the purposes of this section, the term "specialty  
337 insurer" means any person holding a license or certificate of  
338 authority as:

339 (a) A motor vehicle service agreement company authorized to  
340 issue motor vehicle service agreements as those terms are  
341 defined in s. 634.011;

342 (b) A home warranty association authorized to issue "home  
343 warranties" as those terms are defined in s. 634.301;

344 (c) A service warranty association authorized to issue  
345 "service warranties" as those terms are defined in s.  
346 634.401(13) and (14);

347 (d) A prepaid limited health service organization  
348 authorized to issue prepaid limited health service contracts, as

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349 those terms are defined in chapter 636;

350 (e) An authorized health maintenance organization operating  
351 pursuant to s. 641.21;

352 (f) An authorized prepaid health clinic operating pursuant  
353 to s. 641.405;

354 (g) A legal expense insurance corporation authorized to  
355 engage in a legal expense insurance business pursuant to s.  
356 642.021;

357 (h) A provider that is licensed to operate a facility that  
358 undertakes to provide continuing care as those terms are defined  
359 in s. 651.011;

360 (i) A multiple-employer welfare arrangement operating  
361 pursuant to ss. 624.436-624.446;

362 (j) A premium finance company authorized to finance  
363 insurance premiums pursuant to s. 627.828; ~~or~~

364 (k) A corporation authorized to accept donor annuity  
365 agreements pursuant to s. 627.481; or

366 (l) A viatical settlement provider authorized to do  
367 business in this state under part X of chapter 626.

368 (7) The office may disapprove any acquisition subject to  
369 ~~the provisions of~~ this section by any person or any affiliated  
370 person of such person who:

371 (a) Willfully violates this section;

372 (b) In violation of an order of the office issued pursuant  
373 to subsection (12) ~~(11)~~, fails to divest himself or herself of  
374 any stock or ownership interest obtained in violation of this  
375 section or fails to divest himself or herself of any direct or  
376 indirect control of such stock or ownership interest, within 25  
377 days after such order; or

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378 (c) In violation of an order issued by the office pursuant  
379 to subsection (12) ~~(11)~~, acquires an additional stock or  
380 ownership interest in a specialty insurer or controlling company  
381 or direct or indirect control of such stock or ownership  
382 interest, without complying with this section.

383 (11) A person may rebut a presumption of control by filing  
384 a disclaimer of control with the office on a form prescribed by  
385 the commission. The disclaimer must fully disclose all material  
386 relationships and bases for affiliation between the person and  
387 the specialty insurer as well as the basis for disclaiming the  
388 affiliation. In lieu of such form, a person or acquiring party  
389 may file with the office a copy of a Schedule 13G filed with the  
390 Securities and Exchange Commission pursuant to Rule 13d-1(b) or  
391 (c), 17 C.F.R. s. 240.13d-1, under the Securities Exchange Act  
392 of 1934, as amended. After a disclaimer has been filed, the  
393 specialty insurer is relieved of any duty to register or report  
394 under this section which may arise out of the specialty  
395 insurer's relationship with the person unless the office  
396 disallows the disclaimer.

397 Section 15. Subsection (4) of section 628.8015, Florida  
398 Statutes, is amended to read:

399 628.8015 Own-risk and solvency assessment; corporate  
400 governance annual disclosure.—

401 (4) CONFIDENTIALITY.—The required filings and related  
402 documents submitted pursuant to subsections (2) and (3) are  
403 privileged such that they may not be produced in response to a  
404 subpoena or other discovery directed to the office, and any such  
405 filings and related documents, ~~if obtained from the office,~~ are  
406 not admissible in evidence in any private civil action. However,

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407 the department or office may use these filings and related  
408 documents in the furtherance of any regulatory or legal action  
409 brought against an insurer as part of the official duties of the  
410 department or office. A waiver of any applicable claim of  
411 privilege in these filings and related documents may not occur  
412 because of a disclosure to the office under this section,  
413 because of any other provision of the Insurance Code, or because  
414 of sharing under s. 624.4212. The office or a person receiving  
415 these filings and related documents, while acting under the  
416 authority of the office, or with whom such filings and related  
417 documents are shared pursuant to s. 624.4212, is not permitted  
418 or required to testify in any private civil action concerning  
419 any such filings or related documents.

420 Section 16. Paragraph (b) of subsection (6) of section  
421 629.401, Florida Statutes, is amended to read:

422 629.401 Insurance exchange.—

423 (6)

424 (b) In addition to the insurance laws specified in  
425 paragraph (a), the office shall regulate the exchange pursuant  
426 to the following powers, rights, and duties:

427 1. General examination powers.—The office shall examine the  
428 affairs, transactions, accounts, records, and assets of any  
429 security fund, exchange, members, and associate brokers as often  
430 as it deems advisable. The examination may be conducted by the  
431 accredited examiners of the office at the offices of the entity  
432 or person being examined. The office shall examine in like  
433 manner each prospective member or associate broker applying for  
434 membership in an exchange.

435 2. Office approval and applications of underwriting

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436 members.—No underwriting member shall commence operation without  
437 the approval of the office. Before commencing operation, an  
438 underwriting member shall provide a written application  
439 containing:

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

441 b. Name, residence address, business background, and  
442 qualifications of each person associated or to be associated in  
443 the formation or financing of the underwriting member.

444 c. Full disclosure of the terms of all understandings and  
445 agreements existing or proposed among persons so associated  
446 relative to the underwriting member, or the formation or  
447 financing thereof, accompanied by a copy of each such agreement  
448 or understanding.

449 d. Full disclosure of the terms of all understandings and  
450 agreements existing or proposed for management or exclusive  
451 agency contracts.

452 3. Investigation of underwriting member applications.—In  
453 connection with any proposal to establish an underwriting  
454 member, the office shall make an investigation of:

455 a. The character, reputation, financial standing, and  
456 motives of the organizers, incorporators, or subscribers  
457 organizing the proposed underwriting member.

458 b. The character, financial responsibility, insurance  
459 experience, and business qualifications of its proposed  
460 officers.

461 c. The character, financial responsibility, business  
462 experience, and standing of the proposed stockholders and  
463 directors, or owners.

464 4. Notice of management changes.—An underwriting member



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465 shall promptly give the office written notice of any change  
466 among the directors or principal officers of the underwriting  
467 member within 30 days after such change. The office shall  
468 investigate the new directors or principal officers of the  
469 underwriting member. The office's investigation shall include an  
470 investigation of the character, financial responsibility,  
471 insurance experience, and business qualifications of any new  
472 directors or principal officers. As a result of the  
473 investigation, the office may require the underwriting member to  
474 replace any new directors or principal officers.

475 5. Alternate financial statement.—In lieu of any financial  
476 examination, the office may accept an audited financial  
477 statement.

478 6. Correction and reconstruction of records.—If the office  
479 finds any accounts or records to be inadequate, or inadequately  
480 kept or posted, it may employ experts to reconstruct, rewrite,  
481 post, or balance them at the expense of the person or entity  
482 being examined if such person or entity has failed to maintain,  
483 complete, or correct such records or accounts after the office  
484 has given him or her or it notice and reasonable opportunity to  
485 do so.

486 7. Obstruction of examinations.—Any person or entity who or  
487 which willfully obstructs the office or its examiner in an  
488 examination is guilty of a misdemeanor of the second degree,  
489 punishable as provided in s. 775.082 or s. 775.083.

490 8. Filing of annual statement.—Each underwriting member  
491 shall file with the office a full and true statement of its  
492 financial condition, transactions, and affairs. The statement  
493 shall be filed on or before March 1 of each year, or within such

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494 extension of time as the office for good cause grants, and shall  
495 be for the preceding calendar year. The statement shall contain  
496 information generally included in insurer financial statements  
497 prepared in accordance with generally accepted insurance  
498 accounting principles and practices and in a form generally  
499 utilized by insurers for financial statements, sworn to by at  
500 least two executive officers of the underwriting member. The  
501 form of the financial statements shall be the approved form of  
502 the National Association of Insurance Commissioners or its  
503 successor organization. The commission may by rule require each  
504 insurer to submit any part of the information contained in the  
505 financial statement in a computer-readable form compatible with  
506 the office's electronic data processing system. In addition to  
507 information furnished in connection with its annual statement,  
508 an underwriting member must furnish to the office as soon as  
509 reasonably possible such information about its transactions or  
510 affairs as the office requests in writing. All information  
511 furnished pursuant to the office's request must be verified by  
512 the oath of two executive officers of the underwriting member.

513 9. Record maintenance.—Each underwriting member shall have  
514 and maintain its principal place of business in this state and  
515 shall keep therein complete records of its assets, transactions,  
516 and affairs in accordance with such methods and systems as are  
517 customary for or suitable to the kind or kinds of insurance  
518 transacted.

519 10. Examination of agents.—If the department has reason to  
520 believe that any agent, as defined in s. 626.015 or s. 626.914,  
521 has violated or is violating any provision of the insurance law,  
522 or upon receipt of a written complaint signed by any interested

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523 person indicating that any such violation may exist, the  
524 department shall conduct such examination as it deems necessary  
525 of the accounts, records, documents, and transactions pertaining  
526 to or affecting the insurance affairs of such agent.

527 11. Written reports of office.—The office or its examiner  
528 shall make a full and true written report of any examination.  
529 The report shall contain only information obtained from  
530 examination of the records, accounts, files, and documents of or  
531 relative to the person or entity examined or from testimony of  
532 individuals under oath, together with relevant conclusions and  
533 recommendations of the examiner based thereon. The office shall  
534 furnish a copy of the report to the person or entity examined  
535 not less than 30 days prior to filing the report in its office.  
536 If such person or entity so requests in writing within such 30-  
537 day period, the office shall grant a hearing with respect to the  
538 report and shall not file the report until after the hearing and  
539 after such modifications have been made therein as the office  
540 deems proper.

541 12. Admissibility of reports.—The report of an examination  
542 when filed shall be admissible in evidence in any action or  
543 proceeding brought by the office against the person or entity  
544 examined, or against his or her or its officers, employees, or  
545 agents. The office or its examiners may at any time testify and  
546 offer other proper evidence as to information secured or matters  
547 discovered during the course of an examination, whether or not a  
548 written report of the examination has been either made,  
549 furnished, or filed in the office.

550 13. Publication of reports.—After an examination report has  
551 been filed, the office may publish the results of any such

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552 examination in one or more newspapers published in this state  
553 whenever it deems it to be in the public interest.

554 14. Consideration of examination reports by entity  
555 examined.—After the examination report of an underwriting member  
556 has been filed, an affidavit shall be filed with the office, not  
557 more than 30 days after the report has been filed, on a form  
558 furnished by the office and signed by the person or a  
559 representative of any entity examined, stating that the report  
560 has been read and that the recommendations made in the report  
561 will be considered within a reasonable time.

562 15. Examination costs.—Each person or entity examined by  
563 the office shall pay to the office the expenses incurred in such  
564 examination.

565 16. Exchange costs.—An exchange shall reimburse the office  
566 for any expenses incurred by it relating to the regulation of  
567 the exchange and its members, except as specified in  
568 subparagraph 15.

569 17. Powers of examiners.—Any examiner appointed by the  
570 office, as to the subject of any examination, investigation, or  
571 hearing being conducted by him or her, may administer oaths,  
572 examine and cross-examine witnesses, and receive oral and  
573 documentary evidence, and shall have the power to subpoena  
574 witnesses, compel their attendance and testimony, and require by  
575 subpoena the production of books, papers, records, files,  
576 correspondence, documents, or other evidence which the examiner  
577 deems relevant to the inquiry. If any person refuses to comply  
578 with any such subpoena or to testify as to any matter concerning  
579 which he or she may be lawfully interrogated, the Circuit Court  
580 of Leon County or the circuit court of the county wherein such

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581 examination, investigation, or hearing is being conducted, or of  
582 the county wherein such person resides, on the office's  
583 application may issue an order requiring such person to comply  
584 with the subpoena and to testify; and any failure to obey such  
585 an order of the court may be punished by the court as a contempt  
586 thereof. Subpoenas shall be served, and proof of such service  
587 made, in the same manner as if issued by a circuit court.  
588 Witness fees and mileage, if claimed, shall be allowed the same  
589 as for testimony in a circuit court.

590 18. False testimony.—Any person willfully testifying  
591 falsely under oath as to any matter material to any examination,  
592 investigation, or hearing shall upon conviction thereof be  
593 guilty of perjury and shall be punished accordingly.

594 19. Self-incrimination.—

595 a. If any person asks to be excused from attending or  
596 testifying or from producing any books, papers, records,  
597 contracts, documents, or other evidence in connection with any  
598 examination, hearing, or investigation being conducted by the  
599 office or its examiner, on the ground that the testimony or  
600 evidence required of the person may tend to incriminate him or  
601 her or subject him or her to a penalty or forfeiture, and the  
602 person notwithstanding is directed to give such testimony or  
603 produce such evidence, he or she shall, if so directed by the  
604 office and the Department of Legal Affairs, nonetheless comply  
605 with such direction; but the person shall not thereafter be  
606 prosecuted or subjected to any penalty or forfeiture for or on  
607 account of any transaction, matter, or thing concerning which he  
608 or she may have so testified or produced evidence, and no  
609 testimony so given or evidence so produced shall be received

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610 against him or her upon any criminal action, investigation, or  
611 proceeding; except that no such person so testifying shall be  
612 exempt from prosecution or punishment for any perjury committed  
613 by him or her in such testimony, and the testimony or evidence  
614 so given or produced shall be admissible against him or her upon  
615 any criminal action, investigation, or proceeding concerning  
616 such perjury, nor shall he or she be exempt from the refusal,  
617 suspension, or revocation of any license, permission, or  
618 authority conferred, or to be conferred, pursuant to the  
619 insurance law.

620 b. Any such individual may execute, acknowledge, and file  
621 with the office a statement expressly waiving such immunity or  
622 privilege in respect to any transaction, matter, or thing  
623 specified in such statement, and thereupon the testimony of such  
624 individual or such evidence in relation to such transaction,  
625 matter, or thing may be received or produced before any judge or  
626 justice, court, tribunal, grand jury, or otherwise; and if such  
627 testimony or evidence is so received or produced, such  
628 individual shall not be entitled to any immunity or privileges  
629 on account of any testimony so given or evidence so produced.

630 20. Penalty for failure to testify.—Any person who refuses  
631 or fails, without lawful cause, to testify relative to the  
632 affairs of any member, associate broker, or other person when  
633 subpoenaed and requested by the office to so testify, as  
634 provided in subparagraph 17., shall, in addition to the penalty  
635 provided in subparagraph 17., be guilty of a misdemeanor of the  
636 second degree, punishable as provided in s. 775.082 or s.  
637 775.083.

638 21. Name selection.—No underwriting member shall be formed

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639 or authorized to transact insurance in this state under a name  
640 which is the same as that of any authorized insurer or is so  
641 nearly similar thereto as to cause or tend to cause confusion or  
642 under a name which would tend to mislead as to the type of  
643 organization of the insurer. Before incorporating under or using  
644 any name, the underwriting syndicate or proposed underwriting  
645 syndicate shall submit its name or proposed name to the office  
646 for the approval of the office.

647 22. Capitalization.—An underwriting member approved on or  
648 after July 2, 1987, shall provide an initial paid-in capital and  
649 surplus of \$3 million and thereafter shall maintain a minimum  
650 policyholder surplus of \$2 million in order to be permitted to  
651 write insurance. Underwriting members approved prior to July 2,  
652 1987, shall maintain a minimum policyholder surplus of \$1  
653 million. After June 29, 1988, underwriting members approved  
654 prior to July 2, 1987, must maintain a minimum policyholder  
655 surplus of \$1.5 million to write insurance. After June 29, 1989,  
656 underwriting members approved prior to July 2, 1987, must  
657 maintain a minimum policyholder surplus of \$1.75 million to  
658 write insurance. After December 30, 1989, all underwriting  
659 members, regardless of the date they were approved, must  
660 maintain a minimum policyholder surplus of \$2 million to write  
661 insurance. Except for that portion of the paid-in capital and  
662 surplus which shall be maintained in a security fund of an  
663 exchange, the paid-in capital and surplus shall be invested by  
664 an underwriting member in a manner consistent with ss. 625.301-  
665 625.340. The portion of the paid-in capital and surplus in any  
666 security fund of an exchange shall be invested in a manner  
667 limited to investments for life insurance companies under the

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668 Florida insurance laws.

669 23. Limitations on coverage written.—

670 a. Limit of risk.—No underwriting member shall expose  
671 itself to any loss on any one risk in an amount exceeding 10  
672 percent of its surplus to policyholders. Any risk or portion of  
673 any risk which shall have been reinsured in an assuming  
674 reinsurer authorized or approved to do such business in this  
675 state shall be deducted in determining the limitation of risk  
676 prescribed in this section.

677 b. Restrictions on premiums written.—If the office has  
678 reason to believe that the underwriting member's ratio of actual  
679 or projected annual gross written premiums to policyholder  
680 surplus exceeds 8 to 1 or the underwriting member's ratio of  
681 actual or projected annual net premiums to policyholder surplus  
682 exceeds 4 to 1, the office may establish maximum gross or net  
683 annual premiums to be written by the underwriting member  
684 consistent with maintaining the ratios specified in this sub-  
685 subparagraph.

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

690 (II) For purposes of this sub-subparagraph, the term "gross  
691 written premiums" means direct premiums written and reinsurance  
692 assumed.

693 c. Surplus as to policyholders.—For the purpose of  
694 determining the limitation on coverage written, surplus as to  
695 policyholders shall be deemed to include any voluntary reserves,  
696 or any part thereof, which are not required by or pursuant to



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697 law and shall be determined from the last sworn statement of  
698 such underwriting member with the office, or by the last report  
699 or examination filed by the office, whichever is more recent at  
700 the time of assumption of such risk.

701 24. Unearned premium reserves.—An underwriting member must  
702 at all times maintain an unearned premium reserve equal to 50  
703 percent of the net written premiums of the subscribers on  
704 policies having 1 year or less to run, and pro rata on those for  
705 longer periods, All unearned premium reserves for business  
706 written on the exchange shall be calculated on a monthly or more  
707 frequent basis or on such other basis as determined by the  
708 office; except that all premiums on any marine or transportation  
709 insurance trip risk shall be deemed unearned until the trip is  
710 terminated. For the purpose of this subparagraph, the term "net  
711 written premiums" means the premium payments made by subscribers  
712 plus the premiums due from subscribers, after deducting the  
713 amounts specifically provided in the subscribers' agreements for  
714 expenses, including reinsurance costs and fees paid to the  
715 attorney in fact, provided that the power of attorney agreement  
716 contains an explicit provision requiring the attorney in fact to  
717 refund any unearned subscribers fees on a pro-rata basis for  
718 cancelled policies. If there is no such provision, the unearned  
719 premium reserves must be calculated without any adjustment for  
720 fees paid to the attorney in fact. If the unearned premium  
721 reserves at any time do not amount to \$100,000, there must be  
722 maintained on deposit at the exchange at all times additional  
723 funds in cash or eligible securities, which, together with the  
724 unearned premium reserves, equal \$100,000. In calculating the  
725 foregoing reserves, the amount of the attorney's bond, as filed

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726 with the office and as required by s. 629.121, must be included  
727 in such reserves. If at any time the unearned premium reserves  
728 are less than the foregoing requirements, the subscribers or the  
729 attorney in fact shall advance funds to make up the deficiency.  
730 Such advances must be repaid only out of the surplus of the  
731 exchange and only after receiving written approval from the  
732 office.

733 25. Loss reserves.—All underwriting members of an exchange  
734 shall maintain loss reserves, including a reserve for incurred  
735 but not reported claims. The reserves shall be subject to review  
736 by the office, and, if loss experience shows that an  
737 underwriting member's loss reserves are inadequate, the office  
738 shall require the underwriting member to maintain loss reserves  
739 in such additional amount as is needed to make them adequate.

740 26. Distribution of profits.—An underwriting member shall  
741 not distribute any profits in the form of cash or other assets  
742 to owners except out of that part of its available and  
743 accumulated surplus funds which is derived from realized net  
744 operating profits on its business and realized capital gains. In  
745 any one year such payments to owners shall not exceed 30 percent  
746 of such surplus as of December 31 of the immediately preceding  
747 year, unless otherwise approved by the office. No distribution  
748 of profits shall be made that would render an underwriting  
749 member either impaired or insolvent.

750 27. Stock dividends.—A stock dividend may be paid by an  
751 underwriting member out of any available surplus funds in excess  
752 of the aggregate amount of surplus advanced to the underwriting  
753 member under subparagraph 29.

754 28. Dividends from earned surplus.—A dividend otherwise

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755 lawful may be payable out of an underwriting member's earned  
756 surplus even though the total surplus of the underwriting member  
757 is then less than the aggregate of its past contributed surplus  
758 resulting from issuance of its capital stock at a price in  
759 excess of the par value thereof.

760 29. Borrowing of money by underwriting members.—

761 a. An underwriting member may borrow money to defray the  
762 expenses of its organization, provide it with surplus funds, or  
763 for any purpose of its business, upon a written agreement that  
764 such money is required to be repaid only out of the underwriting  
765 member's surplus in excess of that stipulated in such agreement.  
766 The agreement may provide for interest not exceeding 15 percent  
767 simple interest per annum. The interest shall or shall not  
768 constitute a liability of the underwriting member as to its  
769 funds other than such excess of surplus, as stipulated in the  
770 agreement. No commission or promotion expense shall be paid in  
771 connection with any such loan. The use of any surplus note and  
772 any repayments thereof shall be subject to the approval of the  
773 office.

774 b. Money so borrowed, together with any interest thereon if  
775 so stipulated in the agreement, shall not form a part of the  
776 underwriting member's legal liabilities except as to its surplus  
777 in excess of the amount thereof stipulated in the agreement, nor  
778 be the basis of any setoff; but until repayment, financial  
779 statements filed or published by an underwriting member shall  
780 show as a footnote thereto the amount thereof then unpaid,  
781 together with any interest thereon accrued but unpaid.

782 30. Liquidation, rehabilitation, and restrictions.—The  
783 office, upon a showing that a member or associate broker of an

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784 exchange has met one or more of the grounds contained in part I  
785 of chapter 631, may restrict sales by type of risk, policy or  
786 contract limits, premium levels, or policy or contract  
787 provisions; increase surplus or capital requirements of  
788 underwriting members; issue cease and desist orders; suspend or  
789 restrict a member's or associate broker's right to transact  
790 business; place an underwriting member under conservatorship or  
791 rehabilitation; or seek an order of liquidation as authorized by  
792 part I of chapter 631.

793 31. Prohibited conduct.—The following acts by a member,  
794 associate broker, or affiliated person shall constitute  
795 prohibited conduct:

796 a. Fraud.

797 b. Fraudulent or dishonest acts committed by a member or  
798 associate broker prior to admission to an exchange, if the facts  
799 and circumstances were not disclosed to the office upon  
800 application to become a member or associate broker.

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

802 d. Unethical or improper practices or conduct, inconsistent  
803 with just and equitable principles of trade as set forth in, but  
804 not limited to, ss. 626.951-626.9641 and 626.973.

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

807 f. Misstatements made under oath or upon an application for  
808 membership on an exchange.

809 g. Failure to testify or produce documents when requested  
810 by the office.

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

812 i. Failure of an officer or principal to testify under oath

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813 concerning a member, associate broker, or other person's affairs  
814 as they relate to the operation of an exchange.

815 j. Violation of the constitution and bylaws of the  
816 exchange.

817 32. Penalties for participating in prohibited conduct.—

818 a. The office may order the suspension of further  
819 transaction of business on the exchange of any member or  
820 associate broker found to have engaged in prohibited conduct. In  
821 addition, any member or associate broker found to have engaged  
822 in prohibited conduct may be subject to reprimand, censure,  
823 and/or a fine not exceeding \$25,000 imposed by the office.

824 b. Any member which has an affiliated person who is found  
825 to have engaged in prohibited conduct shall be subject to  
826 involuntary withdrawal or in addition thereto may be subject to  
827 suspension, reprimand, censure, and/or a fine not exceeding  
828 \$25,000.

829 33. Reduction of penalties.—Any suspension, reprimand,  
830 censure, or fine may be remitted or reduced by the office on  
831 such terms and conditions as are deemed fair and equitable.

832 34. Other offenses.—Any member or associate broker that is  
833 suspended shall be deprived, during the period of suspension, of  
834 all rights and privileges of a member or of an associate broker  
835 and may be proceeded against by the office for any offense  
836 committed either before or after the date of suspension.

837 35. Reinstatement.—Any member or associate broker that is  
838 suspended may be reinstated at any time on such terms and  
839 conditions as the office may specify.

840 36. Remittance of fines.—Fines imposed under this section  
841 shall be remitted to the office and shall be paid into the

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842 Insurance Regulatory Trust Fund.

843 37. Failure to pay fines.—When a member or associate broker  
844 has failed to pay a fine for 15 days after it becomes payable,  
845 such member or associate broker shall be suspended, unless the  
846 office has granted an extension of time to pay such fine.

847 38. Changes in ownership or assets.—In the event of a major  
848 change in the ownership or a major change in the assets of an  
849 underwriting member, the underwriting member shall report such  
850 change in writing to the office within 30 days of the effective  
851 date thereof. The report shall set forth the details of the  
852 change. Any change in ownership or assets of more than 5 percent  
853 shall be considered a major change.

854 39. Retaliation.—

855 a. When by or pursuant to the laws of any other state or  
856 foreign country any taxes, licenses, or other fees, in the  
857 aggregate, and any fines, penalties, deposit requirements, or  
858 other material obligations, prohibitions, or restrictions are or  
859 would be imposed upon an exchange or upon the agents or  
860 representatives of such exchange which are in excess of such  
861 taxes, licenses, and other fees, in the aggregate, or which are  
862 in excess of such fines, penalties, deposit requirements, or  
863 other obligations, prohibitions, or restrictions directly  
864 imposed upon similar exchanges or upon the agents or  
865 representatives of such exchanges of such other state or country  
866 under the statutes of this state, so long as such laws of such  
867 other state or country continue in force or are so applied, the  
868 same taxes, licenses, and other fees, in the aggregate, or  
869 fines, penalties, deposit requirements, or other material  
870 obligations, prohibitions, or restrictions of whatever kind

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871 shall be imposed by the office upon the exchanges, or upon the  
872 agents or representatives of such exchanges, of such other state  
873 or country doing business or seeking to do business in this  
874 state.

875 b. Any tax, license, or other obligation imposed by any  
876 city, county, or other political subdivision or agency of a  
877 state, jurisdiction, or foreign country on an exchange, or on  
878 the agents or representatives on an exchange, shall be deemed to  
879 be imposed by such state, jurisdiction, or foreign country  
880 within the meaning of sub-subparagraph a.

881 40. Agents.—

882 a. Agents as defined in ss. 626.015 and 626.914 who are  
883 broker members or associate broker members of an exchange shall  
884 be allowed only to place on an exchange the same kind or kinds  
885 of business that the agent is licensed to place pursuant to  
886 Florida law. Direct Florida business as defined in s. 626.916 or  
887 s. 626.917 shall be written through a broker member who is a  
888 surplus lines agent as defined in s. 626.914. The activities of  
889 each broker member or associate broker with regard to an  
890 exchange shall be subject to all applicable provisions of the  
891 insurance laws of this state, and all such activities shall  
892 constitute transactions under his or her license as an insurance  
893 agent for purposes of the Florida insurance law.

894 b. Premium payments and other requirements.—If an  
895 underwriting member has assumed the risk as to a surplus lines  
896 coverage and if the premium therefor has been received by the  
897 surplus lines agent who placed such insurance, then in all  
898 questions thereafter arising under the coverage as between the  
899 underwriting member and the insured, the underwriting member

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900 shall be deemed to have received the premium due to it for such  
901 coverage; and the underwriting member shall be liable to the  
902 insured as to losses covered by such insurance, and for unearned  
903 premiums which may become payable to the insured upon  
904 cancellation of such insurance, whether or not in fact the  
905 surplus lines agent is indebted to the underwriting member with  
906 respect to such insurance or for any other cause.

907 41. Improperly issued contracts, riders, and endorsements.—

908 a. Any insurance policy, rider, or endorsement issued by an  
909 underwriting member and otherwise valid which contains any  
910 condition or provision not in compliance with the requirements  
911 of this section shall not be thereby rendered invalid, except as  
912 provided in s. 627.415, but shall be construed and applied in  
913 accordance with such conditions and provisions as would have  
914 applied had such policy, rider, or endorsement been in full  
915 compliance with this section. In the event an underwriting  
916 member issues or delivers any policy for an amount which exceeds  
917 any limitations otherwise provided in this section, the  
918 underwriting member shall be liable to the insured or his or her  
919 beneficiary for the full amount stated in the policy in addition  
920 to any other penalties that may be imposed.

921 b. Any insurance contract delivered or issued for delivery  
922 in this state governing a subject or subjects of insurance  
923 resident, located, or to be performed in this state which,  
924 pursuant to the provisions of this section, the underwriting  
925 member may not lawfully insure under such a contract shall be  
926 cancelable at any time by the underwriting member, any provision  
927 of the contract to the contrary notwithstanding; and the  
928 underwriting member shall promptly cancel the contract in



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929 accordance with the request of the office therefor. No such  
930 illegality or cancellation shall be deemed to relieve the  
931 underwriting syndicate of any liability incurred by it under the  
932 contract while in force or to prohibit the underwriting  
933 syndicate from retaining the pro rata earned premium thereon.  
934 This provision does not relieve the underwriting syndicate from  
935 any penalty otherwise incurred by the underwriting syndicate.

936 42. Satisfaction of judgments.—

937 a. Every judgment or decree for the recovery of money  
938 heretofore or hereafter entered in any court of competent  
939 jurisdiction against any underwriting member shall be fully  
940 satisfied within 60 days from and after the entry thereof or, in  
941 the case of an appeal from such judgment or decree, within 60  
942 days from and after the affirmance of the judgment or decree by  
943 the appellate court.

944 b. If the judgment or decree is not satisfied as required  
945 under sub-subparagraph a., and proof of such failure to satisfy  
946 is made by filing with the office a certified transcript of the  
947 docket of the judgment or the decree together with a certificate  
948 by the clerk of the court wherein the judgment or decree remains  
949 unsatisfied, in whole or in part, after the time provided in  
950 sub-subparagraph a., the office shall forthwith prohibit the  
951 underwriting member from transacting business. The office shall  
952 not permit such underwriting member to write any new business  
953 until the judgment or decree is wholly paid and satisfied and  
954 proof thereof is filed with the office under the official  
955 certificate of the clerk of the court wherein the judgment was  
956 recovered, showing that the judgment or decree is satisfied of  
957 record, and until the expenses and fees incurred in the case are

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958 also paid by the underwriting syndicate.

959 43. Tender and exchange offers.—No person shall conclude a  
960 tender offer or an exchange offer or otherwise acquire 5 percent  
961 or more of the outstanding voting securities of an underwriting  
962 member or controlling company or purchase 5 percent or more of  
963 the ownership of an underwriting member or controlling company  
964 unless such person has filed with, and obtained the approval of,  
965 the office and sent to such underwriting member a statement  
966 setting forth:

967 a. The identity of, and background information on, each  
968 person by whom, or on whose behalf, the acquisition is to be  
969 made; and, if the acquisition is to be made by or on behalf of a  
970 corporation, association, or trust, the identity of and  
971 background information on each director, officer, trustee, or  
972 other natural person performing duties similar to those of a  
973 director, officer, or trustee for the corporation, association,  
974 or trust.

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

977 c. Any plans or proposals which such person may have to  
978 liquidate such member, to sell its assets, or to merge or  
979 consolidate it.

980 d. The percentage of ownership which such person proposes  
981 to acquire and the terms of the offer or exchange, as the case  
982 may be.

983 e. Information as to any contracts, arrangements, or  
984 understandings with any party with respect to any securities of  
985 such member or controlling company, including, but not limited  
986 to, information relating to the transfer of any securities,

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987 option arrangements, or puts or calls or the giving or  
988 withholding of proxies, naming the party with whom such  
989 contract, arrangements, or understandings have been entered and  
990 giving the details thereof.

991 f. The office may disapprove any acquisition subject to the  
992 provisions of this subparagraph by any person or any affiliated  
993 person of such person who:

994 (I) Willfully violates this subparagraph;

995 (II) In violation of an order of the office issued pursuant  
996 to sub-subparagraph j., fails to divest himself or herself of  
997 any stock obtained in violation of this subparagraph, or fails  
998 to divest himself or herself of any direct or indirect control  
999 of such stock, within 25 days after such order; or

1000 (III) In violation of an order issued by the office  
1001 pursuant to sub-subparagraph j., acquires additional stock of  
1002 the underwriting member or controlling company, or direct or  
1003 indirect control of such stock, without complying with this  
1004 subparagraph.

1005 g. The person or persons filing the statement required by  
1006 this subparagraph have the burden of proof. The office shall  
1007 approve any such acquisition if it finds, on the basis of the  
1008 record made during any proceeding or on the basis of the filed  
1009 statement if no proceeding is conducted, that:

1010 (I) Upon completion of the acquisition, the underwriting  
1011 member will be able to satisfy the requirements for the approval  
1012 to write the line or lines of insurance for which it is  
1013 presently approved;

1014 (II) The financial condition of the acquiring person or  
1015 persons will not jeopardize the financial stability of the

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1016 underwriting member or prejudice the interests of its  
1017 policyholders or the public;

1018 (III) Any plan or proposal which the acquiring person has,  
1019 or acquiring persons have, made:

1020 (A) To liquidate the insurer, sell its assets, or merge or  
1021 consolidate it with any person, or to make any other major  
1022 change in its business or corporate structure or management; or

1023 (B) To liquidate any controlling company, sell its assets,  
1024 or merge or consolidate it with any person, or to make any major  
1025 change in its business or corporate structure or management  
1026 which would have an effect upon the underwriting member

1027  
1028 is fair and free of prejudice to the policyholders of the  
1029 underwriting member or to the public;

1030 (IV) The competence, experience, and integrity of those  
1031 persons who will control directly or indirectly the operation of  
1032 the underwriting member indicate that the acquisition is in the  
1033 best interest of the policyholders of the underwriting member  
1034 and in the public interest;

1035 (V) The natural persons for whom background information is  
1036 required to be furnished pursuant to this subparagraph have such  
1037 backgrounds as to indicate that it is in the best interests of  
1038 the policyholders of the underwriting member, and in the public  
1039 interest, to permit such persons to exercise control over such  
1040 underwriting member;

1041 (VI) The officers and directors to be employed after the  
1042 acquisition have sufficient insurance experience and ability to  
1043 assure reasonable promise of successful operation;

1044 (VII) The management of the underwriting member after the

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1045 acquisition will be competent and trustworthy and will possess  
1046 sufficient managerial experience so as to make the proposed  
1047 operation of the underwriting member not hazardous to the  
1048 insurance-buying public;

1049 (VIII) The management of the underwriting member after the  
1050 acquisition will not include any person who has directly or  
1051 indirectly through ownership, control, reinsurance transactions,  
1052 or other insurance or business relations unlawfully manipulated  
1053 the assets, accounts, finances, or books of any insurer or  
1054 underwriting member or otherwise acted in bad faith with respect  
1055 thereto;

1056 (IX) The acquisition is not likely to be hazardous or  
1057 prejudicial to the underwriting member's policyholders or the  
1058 public; and

1059 (X) The effect of the acquisition of control would not  
1060 substantially lessen competition in insurance in this state or  
1061 would not tend to create a monopoly therein.

1062 h. No vote by the stockholder of record, or by any other  
1063 person, of any security acquired in contravention of the  
1064 provisions of this subparagraph is valid. Any acquisition of any  
1065 security contrary to the provisions of this subparagraph is  
1066 void. Upon the petition of the underwriting member or  
1067 controlling company, the circuit court for the county in which  
1068 the principal office of such underwriting member is located may,  
1069 without limiting the generality of its authority, order the  
1070 issuance or entry of an injunction or other order to enforce the  
1071 provisions of this subparagraph. There shall be a private right  
1072 of action in favor of the underwriting member or controlling  
1073 company to enforce the provisions of this subparagraph. No

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1074 demand upon the office that it perform its functions shall be  
1075 required as a prerequisite to any suit by the underwriting  
1076 member or controlling company against any other person, and in  
1077 no case shall the office be deemed a necessary party to any  
1078 action by such underwriting member or controlling company to  
1079 enforce the provisions of this subparagraph. Any person who  
1080 makes or proposes an acquisition requiring the filing of a  
1081 statement pursuant to this subparagraph, or who files such a  
1082 statement, shall be deemed to have thereby designated the Chief  
1083 Financial Officer as such person's agent for service of process  
1084 under this subparagraph and shall thereby be deemed to have  
1085 submitted himself or herself to the administrative jurisdiction  
1086 of the office and to the jurisdiction of the circuit court.

1087 i. Any approval by the office under this subparagraph does  
1088 not constitute a recommendation by the office for an  
1089 acquisition, tender offer, or exchange offer. It is unlawful for  
1090 a person to represent that the office's approval constitutes a  
1091 recommendation. A person who violates the provisions of this  
1092 sub-subparagraph is guilty of a felony of the third degree,  
1093 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
1094 The statute-of-limitations period for the prosecution of an  
1095 offense committed under this sub-subparagraph is 5 years.

1096 j. Upon notification to the office by the underwriting  
1097 member or a controlling company that any person or any  
1098 affiliated person of such person has acquired 5 percent or more  
1099 of the outstanding voting securities of the underwriting member  
1100 or controlling company without complying with the provisions of  
1101 this subparagraph, the office shall order that the person and  
1102 any affiliated person of such person cease acquisition of any

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1103 further securities of the underwriting member or controlling  
1104 company; however, the person or any affiliated person of such  
1105 person may request a proceeding, which proceeding shall be  
1106 convened within 7 days after the rendering of the order for the  
1107 sole purpose of determining whether the person, individually or  
1108 in connection with any affiliated person of such person, has  
1109 acquired 5 percent or more of the outstanding voting securities  
1110 of an underwriting member or controlling company. Upon the  
1111 failure of the person or affiliated person to request a hearing  
1112 within 7 days, or upon a determination at a hearing convened  
1113 pursuant to this sub-subparagraph that the person or affiliated  
1114 person has acquired voting securities of an underwriting member  
1115 or controlling company in violation of this subparagraph, the  
1116 office may order the person and affiliated person to divest  
1117 themselves of any voting securities so acquired.

1118 k.(I) The office shall, if necessary to protect the public  
1119 interest, suspend or revoke the certificate of authority of any  
1120 underwriting member or controlling company:

1121 (A) The control of which is acquired in violation of this  
1122 subparagraph;

1123 (B) That is controlled, directly or indirectly, by any  
1124 person or any affiliated person of such person who, in violation  
1125 of this subparagraph, has obtained control of an underwriting  
1126 member or controlling company; or

1127 (C) That is controlled, directly or indirectly, by any  
1128 person who, directly or indirectly, controls any other person  
1129 who, in violation of this subparagraph, acquires control of an  
1130 underwriting member or controlling company.

1131 (II) If any underwriting member is subject to suspension or

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1132 revocation pursuant to sub-sub-subparagraph (I), the  
1133 underwriting member shall be deemed to be in such condition, or  
1134 to be using or to have been subject to such methods or practices  
1135 in the conduct of its business, as to render its further  
1136 transaction of insurance presently or prospectively hazardous to  
1137 its policyholders, creditors, or stockholders or to the public.

1138 1.(I) For the purpose of this sub-sub-subparagraph, the  
1139 term "affiliated person" of another person means:

1140 (A) The spouse of such other person;

1141 (B) The parents of such other person and their lineal  
1142 descendants and the parents of such other person's spouse and  
1143 their lineal descendants;

1144 (C) Any person who directly or indirectly owns or controls,  
1145 or holds with power to vote, 5 percent or more of the  
1146 outstanding voting securities of such other person;

1147 (D) Any person 5 percent or more of the outstanding voting  
1148 securities of which are directly or indirectly owned or  
1149 controlled, or held with power to vote, by such other person;

1150 (E) Any person or group of persons who directly or  
1151 indirectly control, are controlled by, or are under common  
1152 control with such other person; or any officer, director,  
1153 partner, copartner, or employee of such other person;

1154 (F) If such other person is an investment company, any  
1155 investment adviser of such company or any member of an advisory  
1156 board of such company;

1157 (G) If such other person is an unincorporated investment  
1158 company not having a board of directors, the depositor of such  
1159 company; or

1160 (H) Any person who has entered into an agreement, written



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1161 or unwritten, to act in concert with such other person in  
1162 acquiring or limiting the disposition of securities of an  
1163 underwriting member or controlling company.

1164 (II) For the purposes of this section, the term  
1165 "controlling company" means any corporation, trust, or  
1166 association owning, directly or indirectly, 25 percent or more  
1167 of the voting securities of one or more underwriting members.

1168 m. The commission may adopt, amend, or repeal rules that  
1169 are necessary to implement the provisions of this subparagraph,  
1170 pursuant to chapter 120.

1171 44. Background information.—The information as to the  
1172 background and identity of each person about whom information is  
1173 required to be furnished pursuant to sub-subparagraph 43.a.  
1174 shall include, but shall not be limited to:

1175 a. Such person's occupations, positions of employment, and  
1176 offices held during the past 10 years.

1177 b. The principal business and address of any business,  
1178 corporation, or other organization in which each such office was  
1179 held or in which such occupation or position of employment was  
1180 carried on.

1181 c. Whether, at any time during such 10-year period, such  
1182 person was convicted of any crime other than a traffic  
1183 violation.

1184 d. Whether, during such 10-year period, such person has  
1185 been the subject of any proceeding for the revocation of any  
1186 license and, if so, the nature of such proceeding and the  
1187 disposition thereof.

1188 e. Whether, during such 10-year period, such person has  
1189 been the subject of any proceeding under the federal Bankruptcy

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1190 Act or whether, during such 10-year period, any corporation,  
1191 partnership, firm, trust, or association in which such person  
1192 was a director, officer, trustee, partner, or other official has  
1193 been subject to any such proceeding, either during the time in  
1194 which such person was a director, officer, trustee, partner, or  
1195 other official, or within 12 months thereafter.

1196 f. Whether, during such 10-year period, such person has  
1197 been enjoined, either temporarily or permanently, by a court of  
1198 competent jurisdiction from violating any federal or state law  
1199 regulating the business of insurance, securities, or banking, or  
1200 from carrying out any particular practice or practices in the  
1201 course of the business of insurance, securities, or banking,  
1202 together with details of any such event.

1203 45. Security fund.—All underwriting members shall be  
1204 members of the security fund of any exchange.

1205 46. Underwriting member defined.—Whenever the term  
1206 “underwriting member” is used in this subsection, it shall be  
1207 construed to mean “underwriting syndicate.”

1208 47. Offsets.—Any action, requirement, or constraint imposed  
1209 by the office shall reduce or offset similar actions,  
1210 requirements, or constraints of any exchange.

1211 48. Restriction on member ownership.—

1212 a. Investments existing prior to July 2, 1987.—The  
1213 investment in any member by brokers, agents, and intermediaries  
1214 transacting business on the exchange, and the investment in any  
1215 such broker, agent, or intermediary by any member, directly or  
1216 indirectly, shall in each case be limited in the aggregate to  
1217 less than 20 percent of the total investment in such member,  
1218 broker, agent, or intermediary, as the case may be. After

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1219 December 31, 1987, the aggregate percent of the total investment  
1220 in such member by any broker, agent, or intermediary and the  
1221 aggregate percent of the total investment in any such broker,  
1222 agent, or intermediary by any member, directly or indirectly,  
1223 shall not exceed 15 percent. After June 30, 1988, such aggregate  
1224 percent shall not exceed 10 percent and after December 31, 1988,  
1225 such aggregate percent shall not exceed 5 percent.

1226 b. Investments arising on or after July 2, 1987.—The  
1227 investment in any underwriting member by brokers, agents, or  
1228 intermediaries transacting business on the exchange, and the  
1229 investment in any such broker, agent, or intermediary by any  
1230 underwriting member, directly or indirectly, shall in each case  
1231 be limited in the aggregate to less than 5 percent of the total  
1232 investment in such underwriting member, broker, agent, or  
1233 intermediary.

1234 49. "Underwriting manager" defined.—"Underwriting manager"  
1235 as used in this subparagraph includes any person, partnership,  
1236 corporation, or organization providing any of the following  
1237 services to underwriting members of the exchange:

1238 a. Office management and allied services, including  
1239 correspondence and secretarial services.

1240 b. Accounting services, including bookkeeping and financial  
1241 report preparation.

1242 c. Investment and banking consultations and services.

1243 d. Underwriting functions and services including the  
1244 acceptance, rejection, placement, and marketing of risk.

1245 50. Prohibition of underwriting manager investment.—Any  
1246 direct or indirect investment in any underwriting manager by a  
1247 broker member or any affiliated person of a broker member or any

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1248 direct or indirect investment in a broker member by an  
 1249 underwriting manager or any affiliated person of an underwriting  
 1250 manager is prohibited. "Affiliated person" for purposes of this  
 1251 subparagraph is defined in subparagraph 43.

1252 51. An underwriting member may not accept reinsurance on an  
 1253 assumed basis from an affiliate or a controlling company, nor  
 1254 may a broker member or management company place reinsurance from  
 1255 an affiliate or controlling company of theirs with an  
 1256 underwriting member. "Affiliate and controlling company" for  
 1257 purposes of this subparagraph is defined in subparagraph 43.

1258 52. Premium defined.—"Premium" is the consideration for  
 1259 insurance, by whatever name called. Any "assessment" or any  
 1260 "membership," "policy," "survey," "inspection," "service" fee or  
 1261 charge or similar fee or charge in consideration for an  
 1262 insurance contract is deemed part of the premium.

1263 53. Rules.—The commission shall adopt rules necessary for  
 1264 or as an aid to the effectuation of any provision of this  
 1265 section.

1266 Section 17. Subsection (6) of section 634.121, Florida  
 1267 Statutes, is amended to read:

1268 634.121 Forms, required procedures, provisions; delivery  
 1269 and definitions.—

1270 (6) (a) Each service agreement, which includes a copy of the  
 1271 application form, must be mailed, delivered, or otherwise  
 1272 provided electronically ~~transmitted~~ to the agreement holder as  
 1273 provided in s. 627.421. As used in s. 627.421, the term:

1274 1. "Insurance policies and endorsements," "policy and  
 1275 endorsement," "policy," or "policy form and endorsement form"  
 1276 includes a motor vehicle service agreement and related

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1277 endorsement forms.

1278 2. "Insured" includes a motor vehicle service agreement  
1279 holder.

1280 3. "Insurer" includes a motor vehicle service agreement  
1281 company.

1282 (b) Section 627.421(4) applies if the motor vehicle service  
1283 agreement company elects to post motor vehicle service  
1284 agreements on its Internet website in lieu of mailing or  
1285 delivery to agreement holders within 45 days after the date of  
1286 purchase. Electronic transmission of a service agreement  
1287 constitutes delivery to the agreement holder. The electronic  
1288 transmission must notify the agreement holder of his or her  
1289 right to receive the service agreement via United States mail  
1290 rather than electronic transmission. If the agreement holder  
1291 communicates to the service agreement company electronically or  
1292 in writing that he or she does not agree to receipt by  
1293 electronic transmission, a paper copy of the service agreement  
1294 shall be provided to the agreement holder.

1295 Section 18. Section 641.3107, Florida Statutes, is amended  
1296 to read:

1297 641.3107 Delivery of contract and certain documents;  
1298 definitions.-

1299 (1) Unless delivered upon execution or issuance, A health  
1300 maintenance contract, certificate of coverage, endorsements and  
1301 riders, or member handbook must shall be mailed, or delivered,  
1302 or otherwise provided to the subscriber or, in the case of a  
1303 group health maintenance contract, to the employer or other  
1304 person who will hold the contract on behalf of the subscriber  
1305 group, as provided in s. 627.421.

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(2) As used in s. 627.421, the term:

(a) "Insurance policies and endorsements," "policy and endorsement," "policy," or "policy form and endorsement form" includes the health maintenance contract, endorsement and riders, certificate of coverage, or member handbook.

(b) "Insured" includes a subscriber or, in the case of a group health maintenance contract, to the employer or other person who will hold the contract on behalf of the subscriber group.

(c) "Insurer" includes a health maintenance organization.

(3) Section 627.421(4) applies if the health maintenance organization elects to post health maintenance contracts on its Internet website in lieu of mailing or delivery to subscribers or the person who will hold the contract on behalf of a subscriber group within 10 working days from approval of the enrollment form by the health maintenance organization or by the effective date of coverage, whichever occurs first. However, if the employer or other person who will hold the contract on behalf of the subscriber group requires retroactive enrollment of a subscriber, the organization shall deliver the contract, certificate, or member handbook to the subscriber within 10 days after receiving notice from the employer of the retroactive enrollment. This section does not apply to the delivery of those contracts specified in s. 641.31(13).

Section 19. This act shall take effect upon becoming a law.