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CS/CS/HB 465, Engrossed 2

2018 Legislature

1  
 2 An act relating to insurance; amending s. 625.151,  
 3 F.S.; providing an exception from valuation rules for  
 4 stocks in subsidiaries for certain foreign insurers  
 5 under certain conditions; amending s. 625.325, F.S.;  
 6 exempting foreign insurers from investment  
 7 requirements relating to subsidiaries and corporations  
 8 under certain conditions; amending s. 626.221, F.S.;  
 9 providing an exception from an examination requirement  
 10 for an all-lines adjuster license applicant with a  
 11 specified designation; repealing s. 626.918(2)(a),  
 12 F.S., relating to eligibility of certain surplus lines  
 13 insurers; amending s. 626.9651, F.S.; revising  
 14 requirements for rules adopted by the Department of  
 15 Financial Services and the Financial Services  
 16 Commission relating to the privacy of certain consumer  
 17 information; amending s. 627.416, F.S.; revising  
 18 requirements for execution of insurance policies;  
 19 amending s. 627.43141, F.S.; revising the requirements  
 20 for notice of change in policy terms; amending s.  
 21 627.7015, F.S.; authorizing insurers to participate in  
 22 mediations requested by third parties; revising  
 23 terminology; amending s. 627.728, F.S.; providing  
 24 requirements for sufficient proof of notice for  
 25 certain motor vehicle insurance notices; amending s.

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

26 | 628.4615, F.S.; revising the definition of the term  
27 | "specialty insurer" to include viatical settlement  
28 | providers; providing requirements and procedures for a  
29 | person seeking to rebut a presumption of control in a  
30 | specialty insurer; amending s. 628.8015, F.S.;  
31 | revising the type of documents that are not admissible  
32 | in evidence in a private civil action; amending s.  
33 | 629.401, F.S.; revising reserve requirements for  
34 | reciprocal insurers; amending s. 634.121, F.S.;  
35 | providing definitions; providing that provisions  
36 | relating to the delivery of insurance policy documents  
37 | by insurers to policyholders apply to certain motor  
38 | vehicle service agreements provided by motor vehicle  
39 | service agreement companies; deleting specified  
40 | methods for the delivery of such documents; amending  
41 | s. 641.3107, F.S.; providing definitions; providing  
42 | that provisions relating to the delivery of insurance  
43 | policy documents by insurers to policyholders apply to  
44 | delivery of such documents by health maintenance  
45 | organizations to subscribers; providing effective  
46 | dates.

47 |  
48 | Be It Enacted by the Legislature of the State of Florida:

49 |  
50 | Section 1. Paragraph (c) is added to subsection (3) of

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

51 | section 625.151, Florida Statutes, to read:

52 |       625.151 Valuation of other securities.—

53 |       (3) Stock of a subsidiary corporation of an insurer may  
 54 | ~~shall~~ not be valued at an amount in excess of the net value  
 55 | thereof as based upon those assets only of the subsidiary which  
 56 | would be eligible under part II for investment of the funds of  
 57 | the insurer directly.

58 |       (c) This subsection does not apply to stock of a  
 59 | subsidiary corporation or related entities of a foreign insurer  
 60 | that is permissible under the laws of its state of domicile if  
 61 | the state of domicile is a member of the National Association of  
 62 | Insurance Commissioners.

63 |       Section 2. Subsection (7) is added to section 625.325,  
 64 | Florida Statutes, to read:

65 |       625.325 Investments in subsidiaries and related  
 66 | corporations.—

67 |       (7) APPLICABILITY.—This section does not apply to a  
 68 | foreign insurer's investments in its subsidiaries or related  
 69 | corporations if:

70 |       (a) The foreign insurer is domiciled in a state that is a  
 71 | member of the National Association of Insurance Commissioners.

72 |       (b) Such investments in the foreign insurer's subsidiaries  
 73 | or related corporations are:

74 |       1. Permitted under the laws of the foreign insurer's state  
 75 | of domicile.

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

76           2.a. Assigned a rating of 1, 2, or 3 by the Securities  
 77 Valuation Office of the of the National Association of Insurance  
 78 Commissioners; or

79           b. Qualify for the National Association of Insurance  
 80 Commissioners' filing exemption rule and assigned a rating by a  
 81 nationally recognized statistical rating organization that would  
 82 be equivalent to a rating of 1, 2, or 3 by the Securities  
 83 Valuation Office.

84           Section 3. Paragraph (j) of subsection (2) of section  
 85 626.221, Florida Statutes, is amended to read:

86           626.221 Examination requirement; exemptions.—

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

89           (j) An applicant for license as an all-lines adjuster who  
 90 has the designation of Accredited Claims Adjuster (ACA) from a  
 91 regionally accredited postsecondary institution in this state,  
 92 Associate in Claims (AIC) from the Insurance Institute of  
 93 America, Professional Claims Adjuster (PCA) from the  
 94 Professional Career Institute, Professional Property Insurance  
 95 Adjuster (PPIA) from the HurriClaim Training Academy, Certified  
 96 Adjuster (CA) from ALL LINES Training, Certified Claims Adjuster  
 97 (CCA) from AE21 Incorporated, Claims Adjuster Certified  
 98 Professional (CACP) from WebCE, Inc., or Universal Claims  
 99 Certification (UCC) from Claims and Litigation Management  
 100 Alliance (CLM) whose curriculum has been approved by the

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

101 department and which includes comprehensive analysis of basic  
102 property and casualty lines of insurance and testing at least  
103 equal to that of standard department testing for the all-lines  
104 adjuster license. The department shall adopt rules establishing  
105 standards for the approval of curriculum.

106 Section 4. Paragraph (a) of subsection (2) of section  
107 626.918, Florida Statutes, is repealed.

108 Section 5. Section 626.9651, Florida Statutes, is amended  
109 to read:

110 626.9651 Privacy.—The department and commission must ~~shall~~  
111 each adopt rules consistent with other provisions of the Florida  
112 Insurance Code to govern the use of a consumer's nonpublic  
113 personal financial and health information. These rules must be  
114 based on, consistent with, and not more restrictive than the  
115 Privacy of Consumer Financial and Health Information Regulation,  
116 adopted September 26, 2000, by the National Association of  
117 Insurance Commissioners; however, the rules must permit the use  
118 and disclosure of nonpublic personal health information for  
119 scientific, medical, or public policy research, in accordance  
120 with federal law. In addition, these rules must be consistent  
121 with, and not more restrictive than, the standards contained in  
122 Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-  
123 102, as amended in Title LXXV of the Fixing America's Surface  
124 Transportation (FAST) Act, Pub. L. No. 114-94. If the office  
125 determines that a health insurer or health maintenance

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

126 organization is in compliance with, or is actively undertaking  
 127 compliance with, the consumer privacy protection rules adopted  
 128 by the United States Department of Health and Human Services, in  
 129 conformance with the Health Insurance Portability and  
 130 Affordability Act, that health insurer or health maintenance  
 131 organization is in compliance with this section.

132 Section 6. Subsection (1) of section 627.416, Florida  
 133 Statutes, is amended, and subsection (4) is added to that  
 134 section, to read:

135 627.416 Execution of policies.—

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

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

144 Section 7. Subsection (2) of section 627.43141, Florida  
 145 Statutes, is amended to read:

146 627.43141 Notice of change in policy terms.—

147 (2) A renewal policy may contain a change in policy terms.  
 148 If such change occurs, the insurer shall give the named insured  
 149 advance written notice summarizing ~~of~~ the change, which may be  
 150 enclosed along with the written notice of renewal premium

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

151 required under ss. 627.4133 and 627.728 or sent separately  
152 within the timeframe required under the Florida Insurance Code  
153 for the provision of a notice of nonrenewal to the named insured  
154 for that line of insurance. The insurer must also provide a  
155 sample copy of the notice to the named insured's insurance agent  
156 before or at the same time that notice is provided to the named  
157 insured. Such notice shall be entitled "Notice of Change in  
158 Policy Terms."

159 Section 8. Subsections (1), (3), (6), and (9) of section  
160 627.7015, Florida Statutes, are amended to read:

161 627.7015 Alternative procedure for resolution of disputed  
162 property insurance claims.—

163 (1) This section sets forth a nonadversarial alternative  
164 dispute resolution procedure for a mediated claim resolution  
165 conference prompted by the need for effective, fair, and timely  
166 handling of property insurance claims. There is a particular  
167 need for an informal, nonthreatening forum for helping parties  
168 who elect this procedure to resolve their claims disputes  
169 because most homeowner and commercial residential insurance  
170 policies obligate policyholders to participate in a potentially  
171 expensive and time-consuming adversarial appraisal process  
172 before litigation. The procedure set forth in this section is  
173 designed to bring the parties together for a mediated claims  
174 settlement conference without any of the trappings or drawbacks  
175 of an adversarial process. Before resorting to these procedures,

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

176 policyholders and insurers are encouraged to resolve claims as  
 177 quickly and fairly as possible. This section is available with  
 178 respect to claims under personal lines and commercial  
 179 residential policies before commencing the appraisal process, or  
 180 before commencing litigation. Mediation may be requested only by  
 181 the policyholder, as a first-party claimant, a third-party, as  
 182 an assignee of the policy benefits, or the insurer. However, an  
 183 insurer is not required to participate in any mediation  
 184 requested by a third-party assignee of the policy benefits. If  
 185 requested by the policyholder, participation by legal counsel is  
 186 permitted. Mediation under this section is also available to  
 187 litigants referred to the department by a county court or  
 188 circuit court. This section does not apply to commercial  
 189 coverages, to private passenger motor vehicle insurance  
 190 coverages, or to disputes relating to liability coverages in  
 191 policies of property insurance.

192 (3) The costs of mediation must ~~shall~~ be reasonable, and  
 193 the insurer must ~~shall~~ bear all of the cost of conducting  
 194 mediation conferences, except as otherwise provided in this  
 195 section. If a policyholder ~~an insured~~ fails to appear at the  
 196 conference, the conference must ~~shall~~ be rescheduled upon the  
 197 policyholder's ~~insured's~~ payment of the costs of a rescheduled  
 198 conference. If the insurer fails to appear at the conference,  
 199 the insurer must ~~shall~~ pay the policyholder's ~~insured's~~ actual  
 200 cash expenses incurred in attending the conference if the



ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

201 insurer's failure to attend was not due to a good cause  
 202 acceptable to the department. An insurer will be deemed to have  
 203 failed to appear if the insurer's representative lacks authority  
 204 to settle the full value of the claim. The insurer shall incur  
 205 an additional fee for a rescheduled conference necessitated by  
 206 the insurer's failure to appear at a scheduled conference. The  
 207 fees assessed by the administrator must ~~shall~~ include a charge  
 208 necessary to defray the expenses of the department related to  
 209 its duties under this section and must ~~shall~~ be deposited in the  
 210 Insurance Regulatory Trust Fund.

211 (6) Mediation is nonbinding; however, if a written  
 212 settlement is reached, the policyholder ~~insured~~ has 3 business  
 213 days within which the policyholder ~~insured~~ may rescind the  
 214 settlement unless the policyholder ~~insured~~ has cashed or  
 215 deposited any check or draft disbursed to the policyholder  
 216 ~~insured~~ for the disputed matters as a result of the conference.  
 217 If a settlement agreement is reached and is not rescinded, it is  
 218 ~~shall be~~ binding and acts ~~act~~ as a release of all specific  
 219 claims that were presented in that mediation conference.

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

223 (a) With respect to which the insurer has a reasonable  
 224 basis to suspect fraud;

225 (b) When ~~Where~~, based on agreed-upon facts as to the cause

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

226 of loss, there is no coverage under the policy;

227 (c) With respect to which the insurer has a reasonable  
 228 basis to believe that the policyholder has intentionally made a  
 229 material misrepresentation of fact which is relevant to the  
 230 claim, and the entire request for payment of a loss has been  
 231 denied on the basis of the material misrepresentation;

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

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

237 Section 9. Subsection (5) of section 627.728, Florida  
 238 Statutes, is amended to read:

239 627.728 Cancellations; nonrenewals.—

240 (5) United States postal proof of mailing, ~~or~~ certified or  
 241 registered mailing, or other mailing using the Intelligent Mail  
 242 barcode or other similar tracking method used or approved by the  
 243 United States Postal Service of notice of cancellation, of  
 244 intention not to renew, or of reasons for cancellation, or of  
 245 the intention of the insurer to issue a policy by an insurer  
 246 under the same ownership or management, to the first-named  
 247 insured at the address shown in the policy, are ~~shall be~~  
 248 sufficient proof of notice.

249 Section 10. Subsections (11) through (14) of section  
 250 628.4615, Florida Statutes, are renumbered as subsections (12)

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

251 through (15), respectively, subsections (1) and (7) of that  
 252 section are amended, and a new subsection (11) is added to that  
 253 section, to read:

254 628.4615 Specialty insurers; acquisition of controlling  
 255 stock, ownership interest, assets, or control; merger or  
 256 consolidation.—

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

260 (a) A motor vehicle service agreement company authorized  
 261 to issue motor vehicle service agreements as those terms are  
 262 defined in s. 634.011;

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

265 (c) A service warranty association authorized to issue  
 266 "service warranties" as those terms are defined in s.  
 267 634.401(13) and (14);

268 (d) A prepaid limited health service organization  
 269 authorized to issue prepaid limited health service contracts, as  
 270 those terms are defined in chapter 636;

271 (e) An authorized health maintenance organization  
 272 operating pursuant to s. 641.21;

273 (f) An authorized prepaid health clinic operating pursuant  
 274 to s. 641.405;

275 (g) A legal expense insurance corporation authorized to

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

276 engage in a legal expense insurance business pursuant to s.  
277 642.021;

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

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

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

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

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

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

292 (a) Willfully violates this section;

293 (b) In violation of an order of the office issued pursuant  
294 to subsection (12) ~~(11)~~, fails to divest himself or herself of  
295 any stock or ownership interest obtained in violation of this  
296 section or fails to divest himself or herself of any direct or  
297 indirect control of such stock or ownership interest, within 25  
298 days after such order; or

299 (c) In violation of an order issued by the office pursuant  
300 to subsection (12) ~~(11)~~, acquires an additional stock or

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

301 ownership interest in a specialty insurer or controlling company  
302 or direct or indirect control of such stock or ownership  
303 interest, without complying with this section.

304 (11) A person may rebut a presumption of control by filing  
305 a disclaimer of control with the office on a form prescribed by  
306 the commission. The disclaimer must fully disclose all material  
307 relationships and bases for affiliation between the person and  
308 the specialty insurer as well as the basis for disclaiming the  
309 affiliation. In lieu of such form, a person or acquiring party  
310 may file with the office a copy of a Schedule 13G filed with the  
311 Securities and Exchange Commission pursuant to Rule 13d-1(b) or  
312 (c), 17 C.F.R. s. 240.13d-1, under the Securities Exchange Act  
313 of 1934, as amended. After a disclaimer has been filed, the  
314 specialty insurer is relieved of any duty to register or report  
315 under this section which may arise out of the specialty  
316 insurer's relationship with the person unless the office  
317 disallows the disclaimer.

318 Section 11. Subsection (4) of section 628.8015, Florida  
319 Statutes, is amended to read:

320 628.8015 Own-risk and solvency assessment; corporate  
321 governance annual disclosure.—

322 (4) CONFIDENTIALITY.—The required filings and related  
323 documents submitted pursuant to subsections (2) and (3) are  
324 privileged such that they may not be produced in response to a  
325 subpoena or other discovery directed to the office, and any such

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

326 | filings and related documents, ~~if obtained from the office,~~ are  
 327 | not admissible in evidence in any private civil action. However,  
 328 | the department or office may use these filings and related  
 329 | documents in the furtherance of any regulatory or legal action  
 330 | brought against an insurer as part of the official duties of the  
 331 | department or office. A waiver of any applicable claim of  
 332 | privilege in these filings and related documents may not occur  
 333 | because of a disclosure to the office under this section,  
 334 | because of any other provision of the Insurance Code, or because  
 335 | of sharing under s. 624.4212. The office or a person receiving  
 336 | these filings and related documents, while acting under the  
 337 | authority of the office, or with whom such filings and related  
 338 | documents are shared pursuant to s. 624.4212, is not permitted  
 339 | or required to testify in any private civil action concerning  
 340 | any such filings or related documents.

341 | Section 12. Paragraph (b) of subsection (6) of section  
 342 | 629.401, Florida Statutes, is amended to read:

343 | 629.401 Insurance exchange.—

344 | (6)

345 | (b) In addition to the insurance laws specified in  
 346 | paragraph (a), the office shall regulate the exchange pursuant  
 347 | to the following powers, rights, and duties:

348 | 1. General examination powers.—The office shall examine  
 349 | the affairs, transactions, accounts, records, and assets of any  
 350 | security fund, exchange, members, and associate brokers as often

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

351 as it deems advisable. The examination may be conducted by the  
352 accredited examiners of the office at the offices of the entity  
353 or person being examined. The office shall examine in like  
354 manner each prospective member or associate broker applying for  
355 membership in an exchange.

356 2. Office approval and applications of underwriting  
357 members.—No underwriting member shall commence operation without  
358 the approval of the office. Before commencing operation, an  
359 underwriting member shall provide a written application  
360 containing:

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

362 b. Name, residence address, business background, and  
363 qualifications of each person associated or to be associated in  
364 the formation or financing of the underwriting member.

365 c. Full disclosure of the terms of all understandings and  
366 agreements existing or proposed among persons so associated  
367 relative to the underwriting member, or the formation or  
368 financing thereof, accompanied by a copy of each such agreement  
369 or understanding.

370 d. Full disclosure of the terms of all understandings and  
371 agreements existing or proposed for management or exclusive  
372 agency contracts.

373 3. Investigation of underwriting member applications.—In  
374 connection with any proposal to establish an underwriting  
375 member, the office shall make an investigation of:

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

376 a. The character, reputation, financial standing, and  
 377 motives of the organizers, incorporators, or subscribers  
 378 organizing the proposed underwriting member.

379 b. The character, financial responsibility, insurance  
 380 experience, and business qualifications of its proposed  
 381 officers.

382 c. The character, financial responsibility, business  
 383 experience, and standing of the proposed stockholders and  
 384 directors, or owners.

385 4. Notice of management changes.—An underwriting member  
 386 shall promptly give the office written notice of any change  
 387 among the directors or principal officers of the underwriting  
 388 member within 30 days after such change. The office shall  
 389 investigate the new directors or principal officers of the  
 390 underwriting member. The office's investigation shall include an  
 391 investigation of the character, financial responsibility,  
 392 insurance experience, and business qualifications of any new  
 393 directors or principal officers. As a result of the  
 394 investigation, the office may require the underwriting member to  
 395 replace any new directors or principal officers.

396 5. Alternate financial statement.—In lieu of any financial  
 397 examination, the office may accept an audited financial  
 398 statement.

399 6. Correction and reconstruction of records.—If the office  
 400 finds any accounts or records to be inadequate, or inadequately



ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

401 kept or posted, it may employ experts to reconstruct, rewrite,  
402 post, or balance them at the expense of the person or entity  
403 being examined if such person or entity has failed to maintain,  
404 complete, or correct such records or accounts after the office  
405 has given him or her or it notice and reasonable opportunity to  
406 do so.

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

411 8. Filing of annual statement.—Each underwriting member  
412 shall file with the office a full and true statement of its  
413 financial condition, transactions, and affairs. The statement  
414 shall be filed on or before March 1 of each year, or within such  
415 extension of time as the office for good cause grants, and shall  
416 be for the preceding calendar year. The statement shall contain  
417 information generally included in insurer financial statements  
418 prepared in accordance with generally accepted insurance  
419 accounting principles and practices and in a form generally  
420 utilized by insurers for financial statements, sworn to by at  
421 least two executive officers of the underwriting member. The  
422 form of the financial statements shall be the approved form of  
423 the National Association of Insurance Commissioners or its  
424 successor organization. The commission may by rule require each  
425 insurer to submit any part of the information contained in the

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

426 | financial statement in a computer-readable form compatible with  
427 | the office's electronic data processing system. In addition to  
428 | information furnished in connection with its annual statement,  
429 | an underwriting member must furnish to the office as soon as  
430 | reasonably possible such information about its transactions or  
431 | affairs as the office requests in writing. All information  
432 | furnished pursuant to the office's request must be verified by  
433 | the oath of two executive officers of the underwriting member.

434 |       9. Record maintenance.—Each underwriting member shall have  
435 | and maintain its principal place of business in this state and  
436 | shall keep therein complete records of its assets, transactions,  
437 | and affairs in accordance with such methods and systems as are  
438 | customary for or suitable to the kind or kinds of insurance  
439 | transacted.

440 |       10. Examination of agents.—If the department has reason to  
441 | believe that any agent, as defined in s. 626.015 or s. 626.914,  
442 | has violated or is violating any provision of the insurance law,  
443 | or upon receipt of a written complaint signed by any interested  
444 | person indicating that any such violation may exist, the  
445 | department shall conduct such examination as it deems necessary  
446 | of the accounts, records, documents, and transactions pertaining  
447 | to or affecting the insurance affairs of such agent.

448 |       11. Written reports of office.—The office or its examiner  
449 | shall make a full and true written report of any examination.  
450 | The report shall contain only information obtained from

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

451 examination of the records, accounts, files, and documents of or  
452 relative to the person or entity examined or from testimony of  
453 individuals under oath, together with relevant conclusions and  
454 recommendations of the examiner based thereon. The office shall  
455 furnish a copy of the report to the person or entity examined  
456 not less than 30 days prior to filing the report in its office.  
457 If such person or entity so requests in writing within such 30-  
458 day period, the office shall grant a hearing with respect to the  
459 report and shall not file the report until after the hearing and  
460 after such modifications have been made therein as the office  
461 deems proper.

462 12. Admissibility of reports.—The report of an examination  
463 when filed shall be admissible in evidence in any action or  
464 proceeding brought by the office against the person or entity  
465 examined, or against his or her or its officers, employees, or  
466 agents. The office or its examiners may at any time testify and  
467 offer other proper evidence as to information secured or matters  
468 discovered during the course of an examination, whether or not a  
469 written report of the examination has been either made,  
470 furnished, or filed in the office.

471 13. Publication of reports.—After an examination report  
472 has been filed, the office may publish the results of any such  
473 examination in one or more newspapers published in this state  
474 whenever it deems it to be in the public interest.

475 14. Consideration of examination reports by entity

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

476 examined.—After the examination report of an underwriting member  
477 has been filed, an affidavit shall be filed with the office, not  
478 more than 30 days after the report has been filed, on a form  
479 furnished by the office and signed by the person or a  
480 representative of any entity examined, stating that the report  
481 has been read and that the recommendations made in the report  
482 will be considered within a reasonable time.

483 15. Examination costs.—Each person or entity examined by  
484 the office shall pay to the office the expenses incurred in such  
485 examination.

486 16. Exchange costs.—An exchange shall reimburse the office  
487 for any expenses incurred by it relating to the regulation of  
488 the exchange and its members, except as specified in  
489 subparagraph 15.

490 17. Powers of examiners.—Any examiner appointed by the  
491 office, as to the subject of any examination, investigation, or  
492 hearing being conducted by him or her, may administer oaths,  
493 examine and cross-examine witnesses, and receive oral and  
494 documentary evidence, and shall have the power to subpoena  
495 witnesses, compel their attendance and testimony, and require by  
496 subpoena the production of books, papers, records, files,  
497 correspondence, documents, or other evidence which the examiner  
498 deems relevant to the inquiry. If any person refuses to comply  
499 with any such subpoena or to testify as to any matter concerning  
500 which he or she may be lawfully interrogated, the Circuit Court

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

501 of Leon County or the circuit court of the county wherein such  
502 examination, investigation, or hearing is being conducted, or of  
503 the county wherein such person resides, on the office's  
504 application may issue an order requiring such person to comply  
505 with the subpoena and to testify; and any failure to obey such  
506 an order of the court may be punished by the court as a contempt  
507 thereof. Subpoenas shall be served, and proof of such service  
508 made, in the same manner as if issued by a circuit court.  
509 Witness fees and mileage, if claimed, shall be allowed the same  
510 as for testimony in a circuit court.

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

515 19. Self-incrimination.—

516 a. If any person asks to be excused from attending or  
517 testifying or from producing any books, papers, records,  
518 contracts, documents, or other evidence in connection with any  
519 examination, hearing, or investigation being conducted by the  
520 office or its examiner, on the ground that the testimony or  
521 evidence required of the person may tend to incriminate him or  
522 her or subject him or her to a penalty or forfeiture, and the  
523 person notwithstanding is directed to give such testimony or  
524 produce such evidence, he or she shall, if so directed by the  
525 office and the Department of Legal Affairs, nonetheless comply

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CS/CS/HB 465, Engrossed 2

2018 Legislature

526 | with such direction; but the person shall not thereafter be  
527 | prosecuted or subjected to any penalty or forfeiture for or on  
528 | account of any transaction, matter, or thing concerning which he  
529 | or she may have so testified or produced evidence, and no  
530 | testimony so given or evidence so produced shall be received  
531 | against him or her upon any criminal action, investigation, or  
532 | proceeding; except that no such person so testifying shall be  
533 | exempt from prosecution or punishment for any perjury committed  
534 | by him or her in such testimony, and the testimony or evidence  
535 | so given or produced shall be admissible against him or her upon  
536 | any criminal action, investigation, or proceeding concerning  
537 | such perjury, nor shall he or she be exempt from the refusal,  
538 | suspension, or revocation of any license, permission, or  
539 | authority conferred, or to be conferred, pursuant to the  
540 | insurance law.

541 |       b. Any such individual may execute, acknowledge, and file  
542 | with the office a statement expressly waiving such immunity or  
543 | privilege in respect to any transaction, matter, or thing  
544 | specified in such statement, and thereupon the testimony of such  
545 | individual or such evidence in relation to such transaction,  
546 | matter, or thing may be received or produced before any judge or  
547 | justice, court, tribunal, grand jury, or otherwise; and if such  
548 | testimony or evidence is so received or produced, such  
549 | individual shall not be entitled to any immunity or privileges  
550 | on account of any testimony so given or evidence so produced.

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

551           20. Penalty for failure to testify.—Any person who refuses  
552 or fails, without lawful cause, to testify relative to the  
553 affairs of any member, associate broker, or other person when  
554 subpoenaed and requested by the office to so testify, as  
555 provided in subparagraph 17., shall, in addition to the penalty  
556 provided in subparagraph 17., be guilty of a misdemeanor of the  
557 second degree, punishable as provided in s. 775.082 or s.  
558 775.083.

559           21. Name selection.—No underwriting member shall be formed  
560 or authorized to transact insurance in this state under a name  
561 which is the same as that of any authorized insurer or is so  
562 nearly similar thereto as to cause or tend to cause confusion or  
563 under a name which would tend to mislead as to the type of  
564 organization of the insurer. Before incorporating under or using  
565 any name, the underwriting syndicate or proposed underwriting  
566 syndicate shall submit its name or proposed name to the office  
567 for the approval of the office.

568           22. Capitalization.—An underwriting member approved on or  
569 after July 2, 1987, shall provide an initial paid-in capital and  
570 surplus of \$3 million and thereafter shall maintain a minimum  
571 policyholder surplus of \$2 million in order to be permitted to  
572 write insurance. Underwriting members approved prior to July 2,  
573 1987, shall maintain a minimum policyholder surplus of \$1  
574 million. After June 29, 1988, underwriting members approved  
575 prior to July 2, 1987, must maintain a minimum policyholder

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

576 surplus of \$1.5 million to write insurance. After June 29, 1989,  
577 underwriting members approved prior to July 2, 1987, must  
578 maintain a minimum policyholder surplus of \$1.75 million to  
579 write insurance. After December 30, 1989, all underwriting  
580 members, regardless of the date they were approved, must  
581 maintain a minimum policyholder surplus of \$2 million to write  
582 insurance. Except for that portion of the paid-in capital and  
583 surplus which shall be maintained in a security fund of an  
584 exchange, the paid-in capital and surplus shall be invested by  
585 an underwriting member in a manner consistent with ss. 625.301-  
586 625.340. The portion of the paid-in capital and surplus in any  
587 security fund of an exchange shall be invested in a manner  
588 limited to investments for life insurance companies under the  
589 Florida insurance laws.

590 23. Limitations on coverage written.-

591 a. Limit of risk.-No underwriting member shall expose  
592 itself to any loss on any one risk in an amount exceeding 10  
593 percent of its surplus to policyholders. Any risk or portion of  
594 any risk which shall have been reinsured in an assuming  
595 reinsurer authorized or approved to do such business in this  
596 state shall be deducted in determining the limitation of risk  
597 prescribed in this section.

598 b. Restrictions on premiums written.-If the office has  
599 reason to believe that the underwriting member's ratio of actual  
600 or projected annual gross written premiums to policyholder



ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

601 surplus exceeds 8 to 1 or the underwriting member's ratio of  
602 actual or projected annual net premiums to policyholder surplus  
603 exceeds 4 to 1, the office may establish maximum gross or net  
604 annual premiums to be written by the underwriting member  
605 consistent with maintaining the ratios specified in this sub-  
606 subparagraph.

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

611 (II) For purposes of this sub-subparagraph, the term  
612 "gross written premiums" means direct premiums written and  
613 reinsurance assumed.

614 c. Surplus as to policyholders.—For the purpose of  
615 determining the limitation on coverage written, surplus as to  
616 policyholders shall be deemed to include any voluntary reserves,  
617 or any part thereof, which are not required by or pursuant to  
618 law and shall be determined from the last sworn statement of  
619 such underwriting member with the office, or by the last report  
620 or examination filed by the office, whichever is more recent at  
621 the time of assumption of such risk.

622 24. Unearned premium reserves.—An underwriting member must  
623 at all times maintain an unearned premium reserve equal to 50  
624 percent of the net written premiums of the subscribers on  
625 policies having 1 year or less to run, and pro rata on those for

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CS/CS/HB 465, Engrossed 2

2018 Legislature

626 longer periods, All unearned premium reserves for business  
627 written on the exchange shall be calculated on a monthly or more  
628 frequent basis or on such other basis as determined by the  
629 office; except that all premiums on any marine or transportation  
630 insurance trip risk shall be deemed unearned until the trip is  
631 terminated. For the purpose of this subparagraph, the term "net  
632 written premiums" means the premium payments made by subscribers  
633 plus the premiums due from subscribers, after deducting the  
634 amounts specifically provided in the subscribers' agreements for  
635 expenses, including reinsurance costs and fees paid to the  
636 attorney in fact, provided that the power of attorney agreement  
637 contains an explicit provision requiring the attorney in fact to  
638 refund any unearned subscribers fees on a pro-rata basis for  
639 cancelled policies. If there is no such provision, the unearned  
640 premium reserve shall be calculated without any adjustment for  
641 fees paid to the attorney in fact. If the unearned premium  
642 reserves at any time do not amount to \$100,000, there shall be  
643 maintained on deposit at the exchange at all times additional  
644 funds in cash or eligible securities which, together with the  
645 unearned premium reserves, equal \$100,000. In calculating the  
646 foregoing reserves, the amount of the attorney's bond, as filed  
647 with the office and as required by s. 629.121, shall be included  
648 in such reserves. If at any time the unearned premium reserves  
649 is less than the foregoing requirements, the subscribers, or the  
650 attorney in fact, shall advance funds to make up the deficiency.

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

651 Such advances shall only be repaid out of the surplus of the  
652 exchange and only after receiving written approval from the  
653 office.

654 25. Loss reserves.—All underwriting members of an exchange  
655 shall maintain loss reserves, including a reserve for incurred  
656 but not reported claims. The reserves shall be subject to review  
657 by the office, and, if loss experience shows that an  
658 underwriting member's loss reserves are inadequate, the office  
659 shall require the underwriting member to maintain loss reserves  
660 in such additional amount as is needed to make them adequate.

661 26. Distribution of profits.—An underwriting member shall  
662 not distribute any profits in the form of cash or other assets  
663 to owners except out of that part of its available and  
664 accumulated surplus funds which is derived from realized net  
665 operating profits on its business and realized capital gains. In  
666 any one year such payments to owners shall not exceed 30 percent  
667 of such surplus as of December 31 of the immediately preceding  
668 year, unless otherwise approved by the office. No distribution  
669 of profits shall be made that would render an underwriting  
670 member either impaired or insolvent.

671 27. Stock dividends.—A stock dividend may be paid by an  
672 underwriting member out of any available surplus funds in excess  
673 of the aggregate amount of surplus advanced to the underwriting  
674 member under subparagraph 29.

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

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CS/CS/HB 465, Engrossed 2

2018 Legislature

676 lawful may be payable out of an underwriting member's earned  
677 surplus even though the total surplus of the underwriting member  
678 is then less than the aggregate of its past contributed surplus  
679 resulting from issuance of its capital stock at a price in  
680 excess of the par value thereof.

681 29. Borrowing of money by underwriting members.—

682 a. An underwriting member may borrow money to defray the  
683 expenses of its organization, provide it with surplus funds, or  
684 for any purpose of its business, upon a written agreement that  
685 such money is required to be repaid only out of the underwriting  
686 member's surplus in excess of that stipulated in such agreement.  
687 The agreement may provide for interest not exceeding 15 percent  
688 simple interest per annum. The interest shall or shall not  
689 constitute a liability of the underwriting member as to its  
690 funds other than such excess of surplus, as stipulated in the  
691 agreement. No commission or promotion expense shall be paid in  
692 connection with any such loan. The use of any surplus note and  
693 any repayments thereof shall be subject to the approval of the  
694 office.

695 b. Money so borrowed, together with any interest thereon  
696 if so stipulated in the agreement, shall not form a part of the  
697 underwriting member's legal liabilities except as to its surplus  
698 in excess of the amount thereof stipulated in the agreement, nor  
699 be the basis of any setoff; but until repayment, financial  
700 statements filed or published by an underwriting member shall

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

701 show as a footnote thereto the amount thereof then unpaid,  
 702 together with any interest thereon accrued but unpaid.

703 30. Liquidation, rehabilitation, and restrictions.—The  
 704 office, upon a showing that a member or associate broker of an  
 705 exchange has met one or more of the grounds contained in part I  
 706 of chapter 631, may restrict sales by type of risk, policy or  
 707 contract limits, premium levels, or policy or contract  
 708 provisions; increase surplus or capital requirements of  
 709 underwriting members; issue cease and desist orders; suspend or  
 710 restrict a member's or associate broker's right to transact  
 711 business; place an underwriting member under conservatorship or  
 712 rehabilitation; or seek an order of liquidation as authorized by  
 713 part I of chapter 631.

714 31. Prohibited conduct.—The following acts by a member,  
 715 associate broker, or affiliated person shall constitute  
 716 prohibited conduct:

717 a. Fraud.

718 b. Fraudulent or dishonest acts committed by a member or  
 719 associate broker prior to admission to an exchange, if the facts  
 720 and circumstances were not disclosed to the office upon  
 721 application to become a member or associate broker.

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

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

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

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

728 f. Misstatements made under oath or upon an application  
729 for membership on an exchange.

730 g. Failure to testify or produce documents when requested  
731 by the office.

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

733 i. Failure of an officer or principal to testify under  
734 oath concerning a member, associate broker, or other person's  
735 affairs as they relate to the operation of an exchange.

736 j. Violation of the constitution and bylaws of the  
737 exchange.

738 32. Penalties for participating in prohibited conduct.—

739 a. The office may order the suspension of further  
740 transaction of business on the exchange of any member or  
741 associate broker found to have engaged in prohibited conduct. In  
742 addition, any member or associate broker found to have engaged  
743 in prohibited conduct may be subject to reprimand, censure,  
744 and/or a fine not exceeding \$25,000 imposed by the office.

745 b. Any member which has an affiliated person who is found  
746 to have engaged in prohibited conduct shall be subject to  
747 involuntary withdrawal or in addition thereto may be subject to  
748 suspension, reprimand, censure, and/or a fine not exceeding  
749 \$25,000.

750 33. Reduction of penalties.—Any suspension, reprimand,

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CS/CS/HB 465, Engrossed 2

2018 Legislature

751 | censure, or fine may be remitted or reduced by the office on  
752 | such terms and conditions as are deemed fair and equitable.

753 |       34. Other offenses.—Any member or associate broker that is  
754 | suspended shall be deprived, during the period of suspension, of  
755 | all rights and privileges of a member or of an associate broker  
756 | and may be proceeded against by the office for any offense  
757 | committed either before or after the date of suspension.

758 |       35. Reinstatement.—Any member or associate broker that is  
759 | suspended may be reinstated at any time on such terms and  
760 | conditions as the office may specify.

761 |       36. Remittance of fines.—Fines imposed under this section  
762 | shall be remitted to the office and shall be paid into the  
763 | Insurance Regulatory Trust Fund.

764 |       37. Failure to pay fines.—When a member or associate  
765 | broker has failed to pay a fine for 15 days after it becomes  
766 | payable, such member or associate broker shall be suspended,  
767 | unless the office has granted an extension of time to pay such  
768 | fine.

769 |       38. Changes in ownership or assets.—In the event of a  
770 | major change in the ownership or a major change in the assets of  
771 | an underwriting member, the underwriting member shall report  
772 | such change in writing to the office within 30 days of the  
773 | effective date thereof. The report shall set forth the details  
774 | of the change. Any change in ownership or assets of more than 5  
775 | percent shall be considered a major change.

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

776           39. Retaliation.—  
 777           a. When by or pursuant to the laws of any other state or  
 778 foreign country any taxes, licenses, or other fees, in the  
 779 aggregate, and any fines, penalties, deposit requirements, or  
 780 other material obligations, prohibitions, or restrictions are or  
 781 would be imposed upon an exchange or upon the agents or  
 782 representatives of such exchange which are in excess of such  
 783 taxes, licenses, and other fees, in the aggregate, or which are  
 784 in excess of such fines, penalties, deposit requirements, or  
 785 other obligations, prohibitions, or restrictions directly  
 786 imposed upon similar exchanges or upon the agents or  
 787 representatives of such exchanges of such other state or country  
 788 under the statutes of this state, so long as such laws of such  
 789 other state or country continue in force or are so applied, the  
 790 same taxes, licenses, and other fees, in the aggregate, or  
 791 fines, penalties, deposit requirements, or other material  
 792 obligations, prohibitions, or restrictions of whatever kind  
 793 shall be imposed by the office upon the exchanges, or upon the  
 794 agents or representatives of such exchanges, of such other state  
 795 or country doing business or seeking to do business in this  
 796 state.  
 797           b. Any tax, license, or other obligation imposed by any  
 798 city, county, or other political subdivision or agency of a  
 799 state, jurisdiction, or foreign country on an exchange, or on  
 800 the agents or representatives on an exchange, shall be deemed to



ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

801 be imposed by such state, jurisdiction, or foreign country  
802 within the meaning of sub-subparagraph a.

803 40. Agents.—

804 a. Agents as defined in ss. 626.015 and 626.914 who are  
805 broker members or associate broker members of an exchange shall  
806 be allowed only to place on an exchange the same kind or kinds  
807 of business that the agent is licensed to place pursuant to  
808 Florida law. Direct Florida business as defined in s. 626.916 or  
809 s. 626.917 shall be written through a broker member who is a  
810 surplus lines agent as defined in s. 626.914. The activities of  
811 each broker member or associate broker with regard to an  
812 exchange shall be subject to all applicable provisions of the  
813 insurance laws of this state, and all such activities shall  
814 constitute transactions under his or her license as an insurance  
815 agent for purposes of the Florida insurance law.

816 b. Premium payments and other requirements.—If an  
817 underwriting member has assumed the risk as to a surplus lines  
818 coverage and if the premium therefor has been received by the  
819 surplus lines agent who placed such insurance, then in all  
820 questions thereafter arising under the coverage as between the  
821 underwriting member and the insured, the underwriting member  
822 shall be deemed to have received the premium due to it for such  
823 coverage; and the underwriting member shall be liable to the  
824 insured as to losses covered by such insurance, and for unearned  
825 premiums which may become payable to the insured upon

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

826 | cancellation of such insurance, whether or not in fact the  
827 | surplus lines agent is indebted to the underwriting member with  
828 | respect to such insurance or for any other cause.

829 |         41. Improperly issued contracts, riders, and  
830 | endorsements.—

831 |             a. Any insurance policy, rider, or endorsement issued by  
832 | an underwriting member and otherwise valid which contains any  
833 | condition or provision not in compliance with the requirements  
834 | of this section shall not be thereby rendered invalid, except as  
835 | provided in s. 627.415, but shall be construed and applied in  
836 | accordance with such conditions and provisions as would have  
837 | applied had such policy, rider, or endorsement been in full  
838 | compliance with this section. In the event an underwriting  
839 | member issues or delivers any policy for an amount which exceeds  
840 | any limitations otherwise provided in this section, the  
841 | underwriting member shall be liable to the insured or his or her  
842 | beneficiary for the full amount stated in the policy in addition  
843 | to any other penalties that may be imposed.

844 |             b. Any insurance contract delivered or issued for delivery  
845 | in this state governing a subject or subjects of insurance  
846 | resident, located, or to be performed in this state which,  
847 | pursuant to the provisions of this section, the underwriting  
848 | member may not lawfully insure under such a contract shall be  
849 | cancelable at any time by the underwriting member, any provision  
850 | of the contract to the contrary notwithstanding; and the

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CS/CS/HB 465, Engrossed 2

2018 Legislature

851 | underwriting member shall promptly cancel the contract in  
852 | accordance with the request of the office therefor. No such  
853 | illegality or cancellation shall be deemed to relieve the  
854 | underwriting syndicate of any liability incurred by it under the  
855 | contract while in force or to prohibit the underwriting  
856 | syndicate from retaining the pro rata earned premium thereon.  
857 | This provision does not relieve the underwriting syndicate from  
858 | any penalty otherwise incurred by the underwriting syndicate.

859 |       42. Satisfaction of judgments.—

860 |       a. Every judgment or decree for the recovery of money  
861 | heretofore or hereafter entered in any court of competent  
862 | jurisdiction against any underwriting member shall be fully  
863 | satisfied within 60 days from and after the entry thereof or, in  
864 | the case of an appeal from such judgment or decree, within 60  
865 | days from and after the affirmance of the judgment or decree by  
866 | the appellate court.

867 |       b. If the judgment or decree is not satisfied as required  
868 | under sub-subparagraph a., and proof of such failure to satisfy  
869 | is made by filing with the office a certified transcript of the  
870 | docket of the judgment or the decree together with a certificate  
871 | by the clerk of the court wherein the judgment or decree remains  
872 | unsatisfied, in whole or in part, after the time provided in  
873 | sub-subparagraph a., the office shall forthwith prohibit the  
874 | underwriting member from transacting business. The office shall  
875 | not permit such underwriting member to write any new business

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

876 | until the judgment or decree is wholly paid and satisfied and  
 877 | proof thereof is filed with the office under the official  
 878 | certificate of the clerk of the court wherein the judgment was  
 879 | recovered, showing that the judgment or decree is satisfied of  
 880 | record, and until the expenses and fees incurred in the case are  
 881 | also paid by the underwriting syndicate.

882 |       43. Tender and exchange offers.—No person shall conclude a  
 883 | tender offer or an exchange offer or otherwise acquire 5 percent  
 884 | or more of the outstanding voting securities of an underwriting  
 885 | member or controlling company or purchase 5 percent or more of  
 886 | the ownership of an underwriting member or controlling company  
 887 | unless such person has filed with, and obtained the approval of,  
 888 | the office and sent to such underwriting member a statement  
 889 | setting forth:

890 |       a. The identity of, and background information on, each  
 891 | person by whom, or on whose behalf, the acquisition is to be  
 892 | made; and, if the acquisition is to be made by or on behalf of a  
 893 | corporation, association, or trust, the identity of and  
 894 | background information on each director, officer, trustee, or  
 895 | other natural person performing duties similar to those of a  
 896 | director, officer, or trustee for the corporation, association,  
 897 | or trust.

898 |       b. The source and amount of the funds or other  
 899 | consideration used, or to be used, in making the acquisition.

900 |       c. Any plans or proposals which such person may have to

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

901 liquidate such member, to sell its assets, or to merge or  
 902 consolidate it.

903 d. The percentage of ownership which such person proposes  
 904 to acquire and the terms of the offer or exchange, as the case  
 905 may be.

906 e. Information as to any contracts, arrangements, or  
 907 understandings with any party with respect to any securities of  
 908 such member or controlling company, including, but not limited  
 909 to, information relating to the transfer of any securities,  
 910 option arrangements, or puts or calls or the giving or  
 911 withholding of proxies, naming the party with whom such  
 912 contract, arrangements, or understandings have been entered and  
 913 giving the details thereof.

914 f. The office may disapprove any acquisition subject to  
 915 the provisions of this subparagraph by any person or any  
 916 affiliated person of such person who:

917 (I) Willfully violates this subparagraph;

918 (II) In violation of an order of the office issued  
 919 pursuant to sub-subparagraph j., fails to divest himself or  
 920 herself of any stock obtained in violation of this subparagraph,  
 921 or fails to divest himself or herself of any direct or indirect  
 922 control of such stock, within 25 days after such order; or

923 (III) In violation of an order issued by the office  
 924 pursuant to sub-subparagraph j., acquires additional stock of  
 925 the underwriting member or controlling company, or direct or

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

926 indirect control of such stock, without complying with this  
 927 subparagraph.

928 g. The person or persons filing the statement required by  
 929 this subparagraph have the burden of proof. The office shall  
 930 approve any such acquisition if it finds, on the basis of the  
 931 record made during any proceeding or on the basis of the filed  
 932 statement if no proceeding is conducted, that:

933 (I) Upon completion of the acquisition, the underwriting  
 934 member will be able to satisfy the requirements for the approval  
 935 to write the line or lines of insurance for which it is  
 936 presently approved;

937 (II) The financial condition of the acquiring person or  
 938 persons will not jeopardize the financial stability of the  
 939 underwriting member or prejudice the interests of its  
 940 policyholders or the public;

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

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

946 (B) To liquidate any controlling company, sell its assets,  
 947 or merge or consolidate it with any person, or to make any major  
 948 change in its business or corporate structure or management  
 949 which would have an effect upon the underwriting member  
 950

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

951 is fair and free of prejudice to the policyholders of the  
 952 underwriting member or to the public;

953 (IV) The competence, experience, and integrity of those  
 954 persons who will control directly or indirectly the operation of  
 955 the underwriting member indicate that the acquisition is in the  
 956 best interest of the policyholders of the underwriting member  
 957 and in the public interest;

958 (V) The natural persons for whom background information is  
 959 required to be furnished pursuant to this subparagraph have such  
 960 backgrounds as to indicate that it is in the best interests of  
 961 the policyholders of the underwriting member, and in the public  
 962 interest, to permit such persons to exercise control over such  
 963 underwriting member;

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

967 (VII) The management of the underwriting member after the  
 968 acquisition will be competent and trustworthy and will possess  
 969 sufficient managerial experience so as to make the proposed  
 970 operation of the underwriting member not hazardous to the  
 971 insurance-buying public;

972 (VIII) The management of the underwriting member after the  
 973 acquisition will not include any person who has directly or  
 974 indirectly through ownership, control, reinsurance transactions,  
 975 or other insurance or business relations unlawfully manipulated

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

976 | the assets, accounts, finances, or books of any insurer or  
977 | underwriting member or otherwise acted in bad faith with respect  
978 | thereto;

979 |       (IX) The acquisition is not likely to be hazardous or  
980 | prejudicial to the underwriting member's policyholders or the  
981 | public; and

982 |       (X) The effect of the acquisition of control would not  
983 | substantially lessen competition in insurance in this state or  
984 | would not tend to create a monopoly therein.

985 |       h. No vote by the stockholder of record, or by any other  
986 | person, of any security acquired in contravention of the  
987 | provisions of this subparagraph is valid. Any acquisition of any  
988 | security contrary to the provisions of this subparagraph is  
989 | void. Upon the petition of the underwriting member or  
990 | controlling company, the circuit court for the county in which  
991 | the principal office of such underwriting member is located may,  
992 | without limiting the generality of its authority, order the  
993 | issuance or entry of an injunction or other order to enforce the  
994 | provisions of this subparagraph. There shall be a private right  
995 | of action in favor of the underwriting member or controlling  
996 | company to enforce the provisions of this subparagraph. No  
997 | demand upon the office that it perform its functions shall be  
998 | required as a prerequisite to any suit by the underwriting  
999 | member or controlling company against any other person, and in  
1000 | no case shall the office be deemed a necessary party to any



ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

1001 action by such underwriting member or controlling company to  
1002 enforce the provisions of this subparagraph. Any person who  
1003 makes or proposes an acquisition requiring the filing of a  
1004 statement pursuant to this subparagraph, or who files such a  
1005 statement, shall be deemed to have thereby designated the Chief  
1006 Financial Officer as such person's agent for service of process  
1007 under this subparagraph and shall thereby be deemed to have  
1008 submitted himself or herself to the administrative jurisdiction  
1009 of the office and to the jurisdiction of the circuit court.

1010 i. Any approval by the office under this subparagraph does  
1011 not constitute a recommendation by the office for an  
1012 acquisition, tender offer, or exchange offer. It is unlawful for  
1013 a person to represent that the office's approval constitutes a  
1014 recommendation. A person who violates the provisions of this  
1015 sub-subparagraph is guilty of a felony of the third degree,  
1016 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
1017 The statute-of-limitations period for the prosecution of an  
1018 offense committed under this sub-subparagraph is 5 years.

1019 j. Upon notification to the office by the underwriting  
1020 member or a controlling company that any person or any  
1021 affiliated person of such person has acquired 5 percent or more  
1022 of the outstanding voting securities of the underwriting member  
1023 or controlling company without complying with the provisions of  
1024 this subparagraph, the office shall order that the person and  
1025 any affiliated person of such person cease acquisition of any

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

1026 further securities of the underwriting member or controlling  
1027 company; however, the person or any affiliated person of such  
1028 person may request a proceeding, which proceeding shall be  
1029 convened within 7 days after the rendering of the order for the  
1030 sole purpose of determining whether the person, individually or  
1031 in connection with any affiliated person of such person, has  
1032 acquired 5 percent or more of the outstanding voting securities  
1033 of an underwriting member or controlling company. Upon the  
1034 failure of the person or affiliated person to request a hearing  
1035 within 7 days, or upon a determination at a hearing convened  
1036 pursuant to this sub-subparagraph that the person or affiliated  
1037 person has acquired voting securities of an underwriting member  
1038 or controlling company in violation of this subparagraph, the  
1039 office may order the person and affiliated person to divest  
1040 themselves of any voting securities so acquired.

1041 k.(I) The office shall, if necessary to protect the public  
1042 interest, suspend or revoke the certificate of authority of any  
1043 underwriting member or controlling company:

1044 (A) The control of which is acquired in violation of this  
1045 subparagraph;

1046 (B) That is controlled, directly or indirectly, by any  
1047 person or any affiliated person of such person who, in violation  
1048 of this subparagraph, has obtained control of an underwriting  
1049 member or controlling company; or

1050 (C) That is controlled, directly or indirectly, by any

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

1051 person who, directly or indirectly, controls any other person  
 1052 who, in violation of this subparagraph, acquires control of an  
 1053 underwriting member or controlling company.

1054 (II) If any underwriting member is subject to suspension  
 1055 or revocation pursuant to sub-sub-subparagraph (I), the  
 1056 underwriting member shall be deemed to be in such condition, or  
 1057 to be using or to have been subject to such methods or practices  
 1058 in the conduct of its business, as to render its further  
 1059 transaction of insurance presently or prospectively hazardous to  
 1060 its policyholders, creditors, or stockholders or to the public.

1061 1.(I) For the purpose of this sub-sub-subparagraph, the  
 1062 term "affiliated person" of another person means:

1063 (A) The spouse of such other person;

1064 (B) The parents of such other person and their lineal  
 1065 descendants and the parents of such other person's spouse and  
 1066 their lineal descendants;

1067 (C) Any person who directly or indirectly owns or  
 1068 controls, or holds with power to vote, 5 percent or more of the  
 1069 outstanding voting securities of such other person;

1070 (D) Any person 5 percent or more of the outstanding voting  
 1071 securities of which are directly or indirectly owned or  
 1072 controlled, or held with power to vote, by such other person;

1073 (E) Any person or group of persons who directly or  
 1074 indirectly control, are controlled by, or are under common  
 1075 control with such other person; or any officer, director,

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

1076 partner, copartner, or employee of such other person;  
 1077 (F) If such other person is an investment company, any  
 1078 investment adviser of such company or any member of an advisory  
 1079 board of such company;

1080 (G) If such other person is an unincorporated investment  
 1081 company not having a board of directors, the depositor of such  
 1082 company; or

1083 (H) Any person who has entered into an agreement, written  
 1084 or unwritten, to act in concert with such other person in  
 1085 acquiring or limiting the disposition of securities of an  
 1086 underwriting member or controlling company.

1087 (II) For the purposes of this section, the term  
 1088 "controlling company" means any corporation, trust, or  
 1089 association owning, directly or indirectly, 25 percent or more  
 1090 of the voting securities of one or more underwriting members.

1091 m. The commission may adopt, amend, or repeal rules that  
 1092 are necessary to implement the provisions of this subparagraph,  
 1093 pursuant to chapter 120.

1094 44. Background information.—The information as to the  
 1095 background and identity of each person about whom information is  
 1096 required to be furnished pursuant to sub-subparagraph 43.a.  
 1097 shall include, but shall not be limited to:

1098 a. Such person's occupations, positions of employment, and  
 1099 offices held during the past 10 years.

1100 b. The principal business and address of any business,

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

1101 corporation, or other organization in which each such office was  
 1102 held or in which such occupation or position of employment was  
 1103 carried on.

1104 c. Whether, at any time during such 10-year period, such  
 1105 person was convicted of any crime other than a traffic  
 1106 violation.

1107 d. Whether, during such 10-year period, such person has  
 1108 been the subject of any proceeding for the revocation of any  
 1109 license and, if so, the nature of such proceeding and the  
 1110 disposition thereof.

1111 e. Whether, during such 10-year period, such person has  
 1112 been the subject of any proceeding under the federal Bankruptcy  
 1113 Act or whether, during such 10-year period, any corporation,  
 1114 partnership, firm, trust, or association in which such person  
 1115 was a director, officer, trustee, partner, or other official has  
 1116 been subject to any such proceeding, either during the time in  
 1117 which such person was a director, officer, trustee, partner, or  
 1118 other official, or within 12 months thereafter.

1119 f. Whether, during such 10-year period, such person has  
 1120 been enjoined, either temporarily or permanently, by a court of  
 1121 competent jurisdiction from violating any federal or state law  
 1122 regulating the business of insurance, securities, or banking, or  
 1123 from carrying out any particular practice or practices in the  
 1124 course of the business of insurance, securities, or banking,  
 1125 together with details of any such event.

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

1126 45. Security fund.—All underwriting members shall be  
 1127 members of the security fund of any exchange.

1128 46. Underwriting member defined.—Whenever the term  
 1129 "underwriting member" is used in this subsection, it shall be  
 1130 construed to mean "underwriting syndicate."

1131 47. Offsets.—Any action, requirement, or constraint  
 1132 imposed by the office shall reduce or offset similar actions,  
 1133 requirements, or constraints of any exchange.

1134 48. Restriction on member ownership.—

1135 a. Investments existing prior to July 2, 1987.—The  
 1136 investment in any member by brokers, agents, and intermediaries  
 1137 transacting business on the exchange, and the investment in any  
 1138 such broker, agent, or intermediary by any member, directly or  
 1139 indirectly, shall in each case be limited in the aggregate to  
 1140 less than 20 percent of the total investment in such member,  
 1141 broker, agent, or intermediary, as the case may be. After  
 1142 December 31, 1987, the aggregate percent of the total investment  
 1143 in such member by any broker, agent, or intermediary and the  
 1144 aggregate percent of the total investment in any such broker,  
 1145 agent, or intermediary by any member, directly or indirectly,  
 1146 shall not exceed 15 percent. After June 30, 1988, such aggregate  
 1147 percent shall not exceed 10 percent and after December 31, 1988,  
 1148 such aggregate percent shall not exceed 5 percent.

1149 b. Investments arising on or after July 2, 1987.—The  
 1150 investment in any underwriting member by brokers, agents, or

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

1151 intermediaries transacting business on the exchange, and the  
1152 investment in any such broker, agent, or intermediary by any  
1153 underwriting member, directly or indirectly, shall in each case  
1154 be limited in the aggregate to less than 5 percent of the total  
1155 investment in such underwriting member, broker, agent, or  
1156 intermediary.

1157 49. "Underwriting manager" defined.—"Underwriting manager"  
1158 as used in this subparagraph includes any person, partnership,  
1159 corporation, or organization providing any of the following  
1160 services to underwriting members of the exchange:

1161 a. Office management and allied services, including  
1162 correspondence and secretarial services.

1163 b. Accounting services, including bookkeeping and  
1164 financial report preparation.

1165 c. Investment and banking consultations and services.

1166 d. Underwriting functions and services including the  
1167 acceptance, rejection, placement, and marketing of risk.

1168 50. Prohibition of underwriting manager investment.—Any  
1169 direct or indirect investment in any underwriting manager by a  
1170 broker member or any affiliated person of a broker member or any  
1171 direct or indirect investment in a broker member by an  
1172 underwriting manager or any affiliated person of an underwriting  
1173 manager is prohibited. "Affiliated person" for purposes of this  
1174 subparagraph is defined in subparagraph 43.

1175 51. An underwriting member may not accept reinsurance on

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

1176 an assumed basis from an affiliate or a controlling company, nor  
 1177 may a broker member or management company place reinsurance from  
 1178 an affiliate or controlling company of theirs with an  
 1179 underwriting member. "Affiliate and controlling company" for  
 1180 purposes of this subparagraph is defined in subparagraph 43.

1181 52. Premium defined.—"Premium" is the consideration for  
 1182 insurance, by whatever name called. Any "assessment" or any  
 1183 "membership," "policy," "survey," "inspection," "service" fee or  
 1184 charge or similar fee or charge in consideration for an  
 1185 insurance contract is deemed part of the premium.

1186 53. Rules.—The commission shall adopt rules necessary for  
 1187 or as an aid to the effectuation of any provision of this  
 1188 section.

1189 Section 13. Subsection (6) of section 634.121, Florida  
 1190 Statutes, is amended to read:

1191 634.121 Forms, required procedures, provisions; delivery  
 1192 and definitions.—

1193 (6) (a) Each service agreement, which includes a copy of  
 1194 the application form, must be mailed, delivered, or otherwise  
 1195 provided electronically transmitted to the agreement holder as  
 1196 provided in s. 627.421. As used in s. 627.421, the term:

1197 1. "Insurance policies and endorsements," "policy and  
 1198 endorsements," "policy," and "policy form and endorsement form"  
 1199 include a motor vehicle service agreement and related  
 1200 endorsement forms.



ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

1201           2. "Insured" includes a motor vehicle service agreement  
 1202 holder.

1203           3. "Insurer" includes a motor vehicle service agreement  
 1204 company.

1205           (b) If the motor vehicle service agreement company elects  
 1206 to post motor vehicle service agreements on its Internet website  
 1207 in lieu of mailing or delivery to agreement holders the motor  
 1208 vehicle service agreement company must comply with the  
 1209 requirements of s. 627.421(4) within 45 days after the date of  
 1210 purchase. Electronic transmission of a service agreement  
 1211 constitutes delivery to the agreement holder. The electronic  
 1212 transmission must notify the agreement holder of his or her  
 1213 right to receive the service agreement via United States mail  
 1214 rather than electronic transmission. If the agreement holder  
 1215 communicates to the service agreement company electronically or  
 1216 in writing that he or she does not agree to receipt by  
 1217 electronic transmission, a paper copy of the service agreement  
 1218 shall be provided to the agreement holder.

1219           Section 14. Section 641.3107, Florida Statutes, is amended  
 1220 to read:

1221           641.3107 Delivery of contract; definitions.—

1222           (1) Unless delivered upon execution or issuance, A health  
 1223 maintenance contract, certificate of coverage, endorsements and  
 1224 riders, or member handbook shall be mailed, or delivered, or  
 1225 otherwise provided to the subscriber or, in the case of a group

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

1226 health maintenance contract, to the employer or other person who  
 1227 will hold the contract on behalf of the subscriber group, as  
 1228 provided in s. 627.421.

1229 (2) As used in s. 627.421, the term:

1230 (a) "Insurance policies and endorsements," "policy and  
 1231 endorsements," "policy," and "policy form and endorsement form"  
 1232 include the health maintenance contract, endorsement and riders,  
 1233 certificate of coverage, or member handbook.

1234 (b) "Insured" includes a subscriber or, in the case of a  
 1235 group health maintenance contract, to the employer or other  
 1236 person who will hold the contract on behalf of the subscriber  
 1237 group.

1238 (c) "Insurer" includes a health maintenance organization.

1239 (3) If the health maintenance organization elects to post  
 1240 health maintenance contracts on its Internet website in lieu of  
 1241 mailing or delivery to subscribers or the person who will hold  
 1242 the contract on behalf of a subscriber group the health  
 1243 maintenance organization must comply with the requirements of s.  
 1244 627.421(4) ~~within 10 working days from approval of the~~  
 1245 ~~enrollment form by the health maintenance organization or by the~~  
 1246 ~~effective date of coverage, whichever occurs first. However, if~~  
 1247 ~~the employer or other person who will hold the contract on~~  
 1248 ~~behalf of the subscriber group requires retroactive enrollment~~  
 1249 ~~of a subscriber, the organization shall deliver the contract,~~  
 1250 ~~certificate, or member handbook to the subscriber within 10 days~~

ENROLLED

CS/CS/HB 465, Engrossed 2

2018 Legislature

1251 | ~~after receiving notice from the employer of the retroactive~~  
1252 | ~~enrollment.~~ This section does not apply to the delivery of those  
1253 | contracts specified in s. 641.31(13).

1254 |       Section 15. Except as otherwise expressly provided in this  
1255 | act, this act shall take effect upon becoming a law.