

1985

Session Law 85-312

Florida Senate & House of Representatives

Follow this and additional works at: <https://ir.law.fsu.edu/staff-analysis>



Part of the Legislation Commons

Recommended Citation

House of Representatives, Florida Senate &, "Session Law 85-312" (1985). *Staff Analysis*. 545.
<https://ir.law.fsu.edu/staff-analysis/545>

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analysis by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.

LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Sess. Law #	85-312	Sec. #		LOF cite	
Prime Bill #	SR 10	Comp./Sim. Bills	1, 10		
JLMC Hist. Cites	Senate 61 House 91	Comms. of Ref.	Senate House		

COMMITTEE RECORDS

H/S	Committee	Year	Record Series: Folder title, etc.	Loc. Cite	✓
A	HCL	1987	Staff	19/1497	✓
"	"	"	Heeler files - full (4 '3-55 on agenda)	19/1495	
"	"	"	Sub (40 50)	"	✓
S	Comms.	1987	Bill 50430	15/1505	✓
<input type="checkbox"/> continued on reverse					

Senate/House Journals

Page #	?	Date	Page #	?	Date

Committee/Floor Tapes

H/S	c/f	Committee/subcommittee name	Date	#	Location Cite

Other Documentation

Record Series Title, folder title, etc.	Location Cite

COMMITTEE RECORDS (continued)

H/S	Committee	Year	Record Series: Folder title, etc.	Loc. Cite	✓

NOTES

COPY

reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R A GRAY BUILDING
Tallahassee, FL 32399-0250
Series 19 Carton 149

273-129-3-5

1 **676** A bill to be entitled
2 An act relating to insurance; amending s.
3 628.461, F.S., relating to the acquisition of
4 controlling stock of domestic insurers;
5 revising acquisition notice requirements and
6 requirements for approval of certain
7 acquisitions; providing for proceedings and
8 editorial changes; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Subsections (1), (2), and (3), paragraph
13 (a) of subsection (4), subsections (5), (6), (7), (9), and
14 (10), paragraph (a) of subsection (11) and subsection (13) of
15 section 628.461, Florida Statutes, 1984 Supplement, are
16 amended to read:
17 628.461 Acquisition of controlling stock.--
18 (1) No person shall, individually or in conjunction
19 with any affiliated person of such person, acquire directly or
20 indirectly, conclude make a tender offer or exchange offer
21 for, enter into any agreement to exchange securities for, or
22 otherwise finally seek-to acquire 5 percent or more of the
23 outstanding voting securities of a domestic stock insurer
24 ~~insurance-company~~ or of a controlling company, unless:
25 (a) The Such person or affiliated person has filed
26 with the department and sent to the such insurer and
27 controlling company a statement as specified in subsection (3)
28 no later than 5 days after at-least-60-days-prior-to-the-time
29 any form of tender offer or exchange offer is proposed to-be
30 ~~furnished-to-securityholders~~, or no later than 5 days after at
31 ~~least-60-days-prior-to~~ the proposed date of the acquisition of

1 the such securities if no such tender offer or exchange offer
2 is involved; and

3 (b) The department has approved the tender or exchange
4 proposed offer or acquisition tender or exchange prior-to-the
5 ~~time-any-form-of-tender-offer-or-exchange-offer-is-made-to~~
6 ~~securityholders,-or-prior-to-the-acquisition-of-such~~
7 securities if no such tender offer or exchange offer is
8 involved; and such approval is in effect.

9 (2) This section does not apply to any acquisition of
10 voting securities of a domestic stock insurer or of a
11 controlling company by any person who, on July 1, 1976, is the
12 owner of a majority of such voting securities or who, on or
13 after July 1, 1976, becomes the owner of a majority of such
14 voting securities with the approval of the department pursuant
15 to this section. It does apply, however, whenever any
16 domestic stock insurer ~~insurance-company~~ or controlling
17 company makes a tender offer or exchange offer, enters into an
18 agreement to exchange securities for 5 percent or more of the
19 voting stock, or otherwise seeks to acquire 5 percent or more
20 of the outstanding voting securities of any stock insurance
21 company or controlling company.

22 (3) The statement to be filed with the department and
23 furnished to the insurer and controlling company shall contain
24 the following information and any such additional information
25 as the department may deem necessary to determine the
26 character, experience, ability, and other qualifications of
27 the such person or affiliated person of such person for the
28 protection of the policyholders and shareholders of the such
29 insurer and the public:

30 (a) The identity of, and the background information
31 specified in subsection (4) on, each natural person by whom,

1 or on whose behalf, the acquisition is to be made; and, if the
2 acquisition is to be made by, or on behalf of, a corporation,
3 association, or trust, as to the ~~such~~ corporation,
4 association, or trust and as to any person who controls either
5 directly or indirectly the ~~such~~ corporation, association, or
6 trust, the identity of, and the background information
7 specified in subsection (4) on, each director, officer,
8 trustee, or other natural person performing duties similar to
9 those of a director, officer, or trustee for the corporation,
10 association, or trust;

11 (b) The source and amount of the funds or other
12 consideration used, or to be used, in making the acquisition;

13 (c) Any plans or proposals which such persons may have
14 made to liquidate ~~such~~ insurer, to sell any of its assets or
15 merge or consolidate it with any person, or to make any other
16 major change in its business or corporate structure or
17 management; and any plans or proposals which such persons may
18 have made to liquidate any controlling company of such
19 insurer, to sell any of its assets or merge or consolidate it
20 with any person, or to make any other major change in its
21 business or corporate structure or management;

22 (d) The number of shares or other securities which the
23 ~~such~~ person or affiliated person of such person proposes to
24 acquire, the terms of the proposed acquisition, and the manner
25 in which the ~~such~~ securities are to be acquired; and

26 (e) Information as to any contract, arrangement, or
27 understanding with any party with respect to any of the
28 securities of the ~~such~~ insurer or controlling company,
29 including, but not limited to, information relating to the
30 transfer of any of the securities, option arrangements, puts
31 or calls, or the giving or withholding of proxies, which

1 information names the party with whom the such contract,
2 arrangement, or understanding has been entered into and gives
3 the details thereof.

4 (4)(a) The information as to the background and
5 identity of each person, which information is required to be
6 furnished pursuant to paragraph (3)(a), shall include:

7 1. The Such person's occupations, positions of
8 employment, and offices held during the past 10 years.

9 2. The principal business and address of any business,
10 corporation, or other organization in which each such office
11 of the person was held, or in which each such occupation or
12 position of employment was carried on.

13 3. Whether the such person was, at any time during
14 such 10-year period, convicted of any crime other than a
15 traffic violation.

16 4. Whether the such person has been, during such 10-
17 year period, the subject of any proceeding for the revocation
18 of any license and, if so, the nature of the such proceeding
19 and the disposition of the proceeding.

20 5. Whether, during the such 10-year period, the such
21 person has been the subject of any proceeding under the
22 federal Bankruptcy Act; or whether, during the such 10-year
23 period, any corporation, partnership, firm, trust, or
24 association in which the such person was a director, officer,
25 trustee, partner, or other official has been subject to any
26 such proceeding, either during the time in which the such
27 person was a director, officer, trustee, partner, or other
28 official or within 12 months thereafter.

29 6. Whether, during the such 10-year period, the such
30 person has been enjoined, either temporarily or permanently,
31 by a court of competent jurisdiction from violating any

1 federal or state law regulating the business of insurance,
2 securities, or banking, or from carrying out any particular
3 practice or practices in the course of the business of
4 insurance, securities, or banking, together with details as to
5 any such event.

6 (5)(a) The acquisition of voting securities shall be
7 deemed approved unless the department disapproves the proposed
8 acquisition, within 90 ~~60~~ days after the statement required by
9 subsection (1) has been filed. The department may on its own
10 initiate, or if requested to do so in writing by a
11 substantially affected party shall, conduct a proceeding to
12 consider the appropriateness of the proposed filing. The 90-
13 day time period shall be tolled during the pendency of the
14 proceeding. Any written request for a proceeding must be
15 filed with the department within 10 days of the date notice of
16 the filing is given. During the pendency of the proceeding or
17 review period by the department any person or affiliated
18 person complying with the filing requirements of this section
19 may proceed and take all steps necessary to conclude the
20 acquisition so long as the acquisition becoming final is
21 conditioned upon obtaining departmental approval. The
22 department shall, however, at any time it finds an immediate
23 danger to the public health, safety, and welfare of the
24 domestic policyholders exists, immediately order, pursuant to
25 s. 120.59(3) the proposed acquisition temporarily disapproved
26 and any further steps to conclude the acquisition ceased.

27 (b) Any proceeding conducted pursuant to this
28 subsection shall be concluded within 30 days after the date
29 the written request for a proceeding is received by the
30 department. A recommended order shall be issued within 20
31 days of the date of the close of the proceedings. A final

1 order shall be issued within 20 days of the date of the
2 recommended order or if exceptions to the recommended order
3 are filed within 20 days of the date the exceptions are filed.
4 ~~calls a public hearing to consider the matter. The~~
5 ~~department shall call and hold such public hearing if the~~
6 ~~department is requested in writing to do so by the insurer or~~
7 ~~controlling company within such 60-day period; and, if there~~
8 ~~is not such a request, the department may call and hold such~~
9 ~~public hearing in its discretion. If the domestic stock~~
10 ~~insurer and controlling company file an instrument in writing~~
11 ~~with the department waiving their right to request a public~~
12 ~~hearing, the department, in its discretion, may by order~~
13 ~~shorten the 60-day period and approve the acquisition.~~
14 (6) The department may disapprove any acquisition
15 subject to the provisions of this section by any person or any
16 affiliated person of such person who:
17 (a) Willfully violates this section;
18 (b) In violation of an order of the department issued
19 pursuant to subsection (10) ~~(14)~~, fails to divest himself of
20 any stock obtained in violation of this section, or fails to
21 divest himself of any direct or indirect control of such
22 stock, within 25 days after such order; or
23 (c) In violation of an order issued by the department
24 pursuant to subsection (10) ~~(14)~~, acquires additional stock of
25 the domestic insurance company or controlling company, or
26 direct or indirect control of such stock, without complying
27 with this section.
28 (7) The person or persons filing the statement
29 required by subsection (1) shall have the burden of proof.
30 The department shall approve any such acquisition if it finds,
31 on the basis of the record made during any proceeding at a

1 ~~public-hearing~~ or on the basis of the filed statement if no
2 proceeding is conducted ~~there-is-no-public-hearing~~, that:
3 (a) Upon completion of the acquisition, the domestic
4 stock insurer will be able to satisfy the requirements for the
5 issuance of a license to write the line or lines of insurance
6 for which it is presently licensed;
7 (b) The financial condition of the acquiring person or
8 persons will not jeopardize the financial stability of the
9 insurer or prejudice the interests of its policyholders or the
10 public ~~and-will-not-prejudice-the-interests-of-any-remaining~~
11 ~~shareholders-who-are-unaffiliated-with-the-acquiring-person~~;
12 (c) Any plan or proposal which the acquiring person
13 has, or acquiring persons have, made:
14 1. To liquidate the insurer, sell its assets, or merge
15 or consolidate it with any person, or to make any other major
16 change in its business or corporate structure or management;
17 or
18 2. To liquidate any controlling company, sell its
19 assets, or merge or consolidate it with any person, or to make
20 any major change in its business or corporate structure or
21 management which would have an effect upon the insurer
22
23 is fair and free of prejudice to the policyholders and
24 shareholders of the domestic stock insurer or to the public;
25 (d) The competence, experience, and integrity of those
26 persons who will control directly or indirectly the operation
27 of the domestic stock insurer indicate that the acquisition is
28 in the best interest of the policyholders ~~and-shareholders~~ of
29 the ~~such~~ insurer, and in the public interest; and
30 (e) The natural persons for whom background
31 information is required to be furnished pursuant to this

1 section have such backgrounds as to indicate that it is in the
 2 best interests of the policyholders ~~and-shareholders~~ of the
 3 domestic stock insurer, and in the public interest, to permit
 4 such persons to exercise control over such domestic stock
 5 insurer;

6 (f) The acquisition is not likely to be hazardous or
 7 prejudicial to the insurer's policyholders or the public; and

8 (g) The effect of the acquisition of control would not
 9 substantially lessen competition in insurance in this state or
 10 would not tend to create a monopoly therein.

11 (9) Any approval by the department under this section
 12 does not constitute a recommendation by the department for an
 13 acquisition, tender offer, or exchange offer. It is unlawful
 14 for a person to represent that the department's any-such
 15 approval constitutes such a recommendation. A person who
 16 violates the provisions of this subsection is guilty of a
 17 felony of the third degree, punishable as provided in s.
 18 775.082, s. 775.083, or s. 775.084. The statute-of-
 19 limitations period for the prosecution of an offense committed
 20 under this subsection is 5 years.

21 (10) Upon notification to the department by the
 22 domestic stock insurer insurance-company or a controlling
 23 company that any person or any affiliated person of such
 24 person has acquired 5 percent or more of the outstanding
 25 voting securities of the such domestic stock insurer insurance
 26 company or controlling company, without complying with the
 27 provisions of this section, the department shall order that
 28 the such person and any affiliated person of such person cease
 29 acquisition of any further securities of the such domestic
 30 stock insurer insurance-company or controlling company;
 31 however, the person or any affiliated person of such person

1 may request a ~~proceeding hearing~~, which proceeding hearing
 2 shall be convened within 7 days after the rendering of the
 3 ~~such order~~ for the sole purpose of determining whether the
 4 ~~such person~~, individually or in connection with any affiliated
 5 person of such person, has acquired 5 percent or more of the
 6 outstanding voting securities of a domestic stock insurer
 7 ~~insurance-company~~ or controlling company. Upon the failure of
 8 the person or affiliated person to request a hearing within 7
 9 days, or upon a determination at a hearing convened pursuant
 10 to this subsection that the ~~such~~ person or affiliated person
 11 has acquired voting securities of a domestic stock insurer or
 12 controlling company in violation of this section, the
 13 department may order the ~~such~~ person and affiliated person to
 14 divest themselves of any voting securities so acquired.

15 (11)(a) The department shall, if necessary to protect
 16 the public interest, suspend or revoke the certificate of
 17 authority of any insurer or controlling company:

18 1. The control of which is acquired in violation of
 19 this section;

20 2. That is controlled, directly or indirectly, by any
 21 person or any affiliated person of such person who, in
 22 violation of this section, has obtained control of a domestic
 23 stock insurer or controlling company; or

24 3. That is controlled, directly or indirectly, by any
 25 person who, directly or indirectly, controls any other person
 26 who, in violation of this section, acquires control of a
 27 domestic stock insurer or controlling company.

28 (13) The department is authorized to adopt, amend, or
 29 repeal rules ~~and-regulations~~ that are necessary to implement
 30 the provisions of this section, pursuant to chapter 120.

31

1 Section 2. This act shall take effect upon becoming a
2 law.
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

AMENDMENT -- FOR DRAFTING ONLY

613

(MUST BE TYPED ON FORM H-29 OR H-39 BEFORE PRESENTATION)

Representative s/The Committee on _____

HB 676

offered the following amendment.

SB COPY

On page 1, line 31, strike

the proposed date of

reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R A GRAY BUILDING
Tallahassee FL 32399-0250

Series 19 Carton 1425

and insert: the proposed date of

adopted

failed of adoption

AMENDMENT -- FOR DRAFTING ONLY

(MUST BE TYPED ON FORM H-29 OR H-39 BEFORE PRESENTATION)

[2]

Representative 5 / The Committee on _____

HB 676 _____

offered the following amendment

SB _____

On page 2, line 4, strike

tender or exchange

COPY

reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R A GRAY BUILDING
Tallahassee, FL 32399-0250
Series 19 - Carton 1495

XXXXXXXXXXXX

adopted

failed of adoption

AMENDMENT -- FOR DRAFTING ONLY

[3]

(MUST BE TYPED ON FORM II-29 OR II-39 BEFORE PRESENTATION)

Representative 8 / The Committee on _____

HB 676 _____

offered the following amendment.

SB _____

On page 5 _____, line 27 _____, strike
all of said line

COPY
reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING
Tallahassee, FL 32399-0258
Series 19 Carton 149

and insert

(b) During the pendency of the department's review of any acquisition subject to the provisions of this section, the acquiring person shall not make any material change in the management or operation of the insurer or controlling company unless the department has specifically approved the change. A material change is a transaction which disposes of or obligates 5 percent or more of the capital and surplus of the insurer or any change in management involving officers or directors of the insurer or any person of the insurer or controlling company having authority to dispose of or obligate 5 percent or more of the insurer's capital or surplus. The department shall approve the change if it finds the applicable provisions of subsection (7) have been met.

(c) Any proceeding conducted pursuant to this

adopted

failed of adoption

AMENDMENT -- FOR DRAFTING ONLY

[4]

(MUST BE TYPED ON FORM H-29 OR H-39 BEFORE PRESENTATION)

Representative of The Committee on

HB 676

offered the following amendment.

SB

On page 7 , lines 23 and 24 strike

COPY

 and shareholders

reproduced by

FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R A GRAY BUILDING
Tallahassee, FL 32399-0250

Series 19 Carton 149

and insert: and shareholders

adopted)

failed of adoption

(MUST BE TYPED ON FORM H-29 OR H-39 BEFORE PRESENTATION)

Representative s/ The Committee on _____

COPY

reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GLADSTONE
Tallahassee, FL 32300
Series 14 - 1495

HB 676

SB

offered the following amendment:

On page 8, line 6 - 8, strike

all of said lines

and insert:

(f) The officers and directors to be employed after the acquisition have sufficient insurance experience, ^{and} ability and standing to assure reasonable promise of successful operation.

(g) The management of the insurer after the acquisition will be competent, trustworthy and will possess sufficient managerial experience so as to make the proposed operation of the insurer not hazardous to the insurance-buying public.

(h) The management of the insurer after the acquisition will not include any person who has directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations unlawfully manipulated the assets, accounts, finances or books of any insurer or otherwise acted in bad faith with respect thereto.

(i) The acquisition is not likely to be hazardous or prejudicial to the insurer's policyholders or the public; and

(j) The effect of the acquisition of control would not
adopted failed of adoption

COPY

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

reproduced by FLORIDA STATE ARCHIVES DEPARTMENT OF STATE R A GILBY BUILDING Tallahassee, FL 32399-0250

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Granger ^{TG}	Carr ^{AC}	1. COM	Fav/CS Series
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT:

Insurance

BILL NO. AND SPONSOR:

CS/SB 0490 by Commerce and Senator Thomas

I. SUMMARY:

A. Present Situation:

Section 628.41 F.S., presently requires Department of Insurance approval of the acquisition of 5 percent or more of the voting stock of a domestic insurance company. A federal district court recently determined that this statute was preempted by the federal Williams Act. The bill attempts to resolve the problems raised by the district court by providing for later notice requirements to the Department and by eliminating references to shareholder protection as a criterion for the Department to consider.

A. CURRENT LAW

Persons acquiring 5 percent or more of the voting securities of a Florida domestic stock insurance company must first obtain the approval of the Department of Insurance, as required by s. 628.461. The statute requires that at least 60 days notice be given to the Department prior to the time any form of tender offer or exchange offer is furnished to the stockholders or, in the case of a straight sale of the stock, at least 60 days prior to the proposed date of the acquisition.

A notice statement, which must also be sent to the insurer and controlling company, must contain information relating to the background of the principals involved, the source of funds to be used, plans to make any major change in the business or corporate structure of the insurer, the number of shares proposed to be acquired, and information related to any agreements affecting the securities.

The criteria for the Department to consider in determining whether to approve an acquisition include whether the financial condition of the acquiring person will jeopardize the financial stability of the insurer or prejudice the policyholders or stockholders.

In August, 1984 the U.S. District Court for the Northern District of Florida issued a preliminary injunction enjoining the Department of Insurance from enforcing section 628.461, in a suit brought by The News Corporation Limited against Commissioner Bill Gunter. News Corporation Limited purchased 5.6 percent of the stock of St. Regis Corporation on the open market. St. Regis owns 100 percent of two Florida domestic insurance companies, Dependable Insurance Company and Dependable Life Insurance Company. News Corporation did not file the information required by Section 628.461 and the Department issued an order to cease acquisition of further securities.

In granting News Corporation's motion for a preliminary injunction to enjoin the Department from enforcing its order, the U.S. District Court determined that section 628.461 conflicts with and is preempted by the federal regulation of securities contained in the Williams Act amendments to Section 13 and 14 of the Securities Exchange Act of 1934. Judge William Stafford reasoned that the federal act embodies a free market approach to the sales of securities, and that the Florida Statute, requiring prior approval for stock purchases that puts management on notice of what may be an impending takeover, directly conflicts with the federal intent of an open market. The judge noted that the statute specifically refers to protection of the interest of shareholders in addition to policyholders and that the protection of shareholders is preempted by the Williams Act. Even though Congress expressly reserved the regulation of the business of insurance to the states in the McCarran-Ferguson Act (16 U.S.C. s.1012 (b)), Judge Stafford determined that the Florida Statute, in the name of regulating the business of insurance, was in effect regulating the non-insurance business of a large, international corporation of which the Florida insurance companies represented only a small portion of corporate business. For similar reasons, the judge also determined that the statute was an unconstitutional burden on interstate commerce. The Department of Insurance appealed the order of the district court to the Eleventh Circuit Court of Appeals, but later withdrew the appeal.

B. Effect of Proposed Changes

This bill attempts to resolve the constitutional and federal preemption problems cited by the federal district court in the present acquisition statute. The primary change is elimination of the requirement that 60 days notice be given prior to the time any tender offer or exchange offer is furnished to stockholders or prior to the proposed date of an acquisition of stock. In its place the bill imposes a requirement that notice be provided to the Department, insurer, and controlling company no later than 5 days after a tender offer or exchange offer is proposed, or no later than 5 days after the proposed date of the acquisition of the securities if no tender offer or exchange offer is involved. The acquisition's becoming final is conditioned upon obtaining Department approval. The acquisition is deemed approved unless the Department disapproves the proposed acquisition within 90 days after the notice has been filed. However, the 90-day time period is tolled during a proceeding to consider the appropriateness of the filing, which proceeding may be initiated by the Department or by a substantially affected party. The proceeding must be concluded within 30 days; a recommended order must be concluded within 20 days after the recommended order or 20 days after the date exceptions to the recommended order are filed.

The bill also revises the criteria that the Department must consider in determining whether to approve an acquisition. References to protection of shareholder interests are deleted while consideration of policyholder interests are retained. In determining whether the acquisition should be approved, the department is required to consider the prejudice to the public that may result from any plan to make a major change in the business or corporate structure of the insurer and requires that during the pendency of the acquisition that the department approve any material change in the management or control of the company. The bill also requires the department to consider whether the acquisition would substantially lessen competition in insurance in this state, would tend to create a monopoly or be hazardous or prejudicial to the insurers policyholders or the public.

By providing for notice after tender offers are proposed, the bill attempts to make the acquisition statute consistent with the open market intent of the Williams Act as expressed by the U.S. District Court. By eliminating references to protection of shareholder interests, the bill attempts to tie the statute more closely to the regulation of insurance that has been reserved to the states by the McCarran-Ferguson Act.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

To the extent that the bill effectively cures constitutional defects in the acquisition statute, policyholders of a domestic stock insurance company will be afforded the protection of Department screening of the competence and integrity of the persons acquiring 5 percent or more of the stock in the company and their plans to make any major changes in the insurer's business. In addition, however, as in the case of the News International purchase of St. Regis stock, the acquisition statute delays and potentially prohibits corporate takeovers of large holding companies that may only do a small amount of insurance business relative to the rest of their operations.

B. Government:

No significant impact.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

COPY
 reproduced by
 FLORIDA STATE ARCHIVES
 DEPARTMENT OF STATE
 R A GRAY BUILDING
 Tallahassee, FL 32399-0250
 Series 11 Carton 150

1 A bill to be entitled
 2 An act relating to insurance; amending s.
 3 628.461, F.S., relating to the acquisition of
 4 controlling stock of domestic insurers;
 5 revising acquisition notice requirements and
 6 requirements for approval of certain
 7 acquisitions; providing for proceedings and
 8 editorial changes; specifying criteria for
 9 approval of acquisitions; providing an
 10 effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Subsections (1), (2), and (3), paragraph
 15 (a) of subsection (4), subsections (5), (6), (7), (9), and
 16 (10), paragraph (a) of subsection (11) and subsection (13) of
 17 section 628.461, Florida Statutes, 1984 Supplement, are
 18 amended to read:

19 628.461 Acquisition of controlling stock.--

20 (1) No person shall, individually or in conjunction
 21 with any affiliated person of such person, acquire directly or
 22 indirectly, conclude ~~make~~ a tender offer or exchange offer
 23 for, enter into any agreement to exchange securities for, or
 24 otherwise finally seek-to ~~seek-to~~ acquire 5 percent or more of the
 25 outstanding voting securities of a domestic stock insurer
 26 ~~insurance-company~~ or of a controlling company, unless:

27 (a) The Such person or affiliated person has filed
 28 with the department and sent to the such insurer and
 29 controlling company a statement as specified in subsection (3)
 30 no later than 5 days after ~~at least 60 days prior to the time~~
 31 any form of tender offer or exchange offer is proposed ~~to be~~

1 ~~furnished to securityholders, or no later than 5 days after at~~
 2 ~~least 60 days prior to the proposed date of~~ the acquisition of
 3 ~~the such~~ securities if no such tender offer or exchange offer
 4 is involved; and

5 (b) The department has approved the tender or exchange
 6 ~~proposed offer or acquisition prior to the time any form of~~
 7 ~~tender offer or exchange offer is made to securityholders, or~~
 8 ~~prior to the acquisition of such securities~~ if no such tender
 9 offer or exchange offer is involved; and such approval is in
 10 effect.

11 (2) This section does not apply to any acquisition of
 12 voting securities of a domestic stock insurer or of a
 13 controlling company by any person who, on July 1, 1976, is the
 14 owner of a majority of such voting securities or who, on or
 15 after July 1, 1976, becomes the owner of a majority of such
 16 voting securities with the approval of the department pursuant
 17 to this section. It does apply, however, whenever any
 18 domestic stock insurer ~~insurance company~~ or controlling
 19 company makes a tender offer or exchange offer, enters into an
 20 agreement to exchange securities for 5 percent or more of the
 21 voting stock, or otherwise seeks to acquire 5 percent or more
 22 of the outstanding voting securities of any stock insurance
 23 company or controlling company.

24 (3) The statement to be filed with the department and
 25 furnished to the insurer and controlling company shall contain
 26 the following information and any such additional information
 27 as the department may deem necessary to determine the
 28 character, experience, ability, and other qualifications of
 29 the such person or affiliated person of such person for the
 30 protection of the policyholders and shareholders of the such
 31 insurer and the public:

1 (a) The identity of, and the background information
2 specified in subsection (4) on, each natural person by whom,
3 or on whose behalf, the acquisition is to be made; and, if the
4 acquisition is to be made by, or on behalf of, a corporation,
5 association, or trust, as to the ~~such~~ corporation,
6 association, or trust and as to any person who controls either
7 directly or indirectly the ~~such~~ corporation, association, or
8 trust, the identity of, and the background information
9 specified in subsection (4) on, each director, officer,
10 trustee, or other natural person performing duties similar to
11 those of a director, officer, or trustee for the corporation,
12 association, or trust;

13 (b) The source and amount of the funds or other
14 consideration used, or to be used, in making the acquisition;

15 (c) Any plans or proposals which such persons may have
16 made to liquidate such insurer, to sell any of its assets or
17 merge or consolidate it with any person, or to make any other
18 major change in its business or corporate structure or
19 management; and any plans or proposals which such persons may
20 have made to liquidate ~~any controlling company of such~~
21 insurer, to sell any of its assets or merge or consolidate it
22 with any person, or to make any other major change in its
23 business or corporate structure or management;

24 (d) The number of shares or other securities which the
25 ~~such~~ person or affiliated person of such person proposes to
26 acquire, the terms of the proposed acquisition, and the manner
27 in which the ~~such~~ securities are to be acquired; and

28 (e) Information as to any contract, arrangement, or
29 understanding with any party with respect to any of the
30 securities of the ~~such~~ insurer or controlling company,
31 including, but not limited to, information relating to the

1 transfer of any of the securities, option arrangements, puts
2 or calls, or the giving or withholding of proxies, which
3 information names the party with whom the such contract,
4 arrangement, or understanding has been entered into and gives
5 the details thereof.

6 (4)(a) The information as to the background and
7 identity of each person, which information is required to be
8 furnished pursuant to paragraph (3)(a), shall include:

9 1. The Such person's occupations, positions of
10 employment, and offices held during the past 10 years.

11 2. The principal business and address of any business,
12 corporation, or other organization in which each such office
13 of the person was held, or in which each such occupation or
14 position of employment was carried on.

15 3. Whether the such person was, at any time during
16 such 10-year period, convicted of any crime other than a
17 traffic violation.

18 4. Whether the such person has been, during such 10-
19 year period, the subject of any proceeding for the revocation
20 of any license and, if so, the nature of the such proceeding
21 and the disposition of the proceeding.

22 5. Whether, during the such 10-year period, the such
23 person has been the subject of any proceeding under the
24 federal Bankruptcy Act; or whether, during the such 10-year
25 period, any corporation, partnership, firm, trust, or
26 association in which the such person was a director, officer,
27 trustee, partner, or other official has been subject to any
28 such proceeding, either during the time in which the such
29 person was a director, officer, trustee, partner, or other
30 official or within 12 months thereafter.

31

1 6. Whether, during the such 10-year period, the such
2 person has been enjoined, either temporarily or permanently,
3 by a court of competent jurisdiction from violating any
4 federal or state law regulating the business of insurance,
5 securities, or banking, or from carrying out any particular
6 practice or practices in the course of the business of
7 insurance, securities, or banking, together with details as to
8 any such event.

9 (5)(a) The acquisition of voting securities shall be
10 deemed approved unless the department disapproves the proposed
11 acquisition, within 90 60 days after the statement required by
12 subsection (1) has been filed. The department may on its own
13 initiate, or if requested to do so in writing by a
14 substantially affected party shall, conduct a proceeding to
15 consider the appropriateness of the proposed filing. The 90-
16 day time period shall be tolled during the pendency of the
17 proceeding. Any written request for a proceeding must be
18 filed with the department within 10 days of the date notice of
19 the filing is given. During the pendency of the proceeding or
20 review period by the department any person or affiliated
21 person complying with the filing requirements of this section
22 may proceed and take all steps necessary to conclude the
23 acquisition so long as the acquisition becoming final is
24 conditioned upon obtaining departmental approval. The
25 department shall, however, at any time it finds an immediate
26 danger to the public health, safety, and welfare of the
27 domestic policyholders exists, immediately order, pursuant to
28 s. 120.59(3) the proposed acquisition temporarily disapproved
29 and any further steps to conclude the acquisition ceased.

30 (b) During the pendency of the department's review of
31 any acquisition subject to the provisions of this section, the

1 acquiring person shall not make any material change in the
 2 management or operation of the insurer or controlling company
 3 unless the department has specifically approved the change. A
 4 material change is a transaction which disposes of or
 5 obligates 5 percent or more of the capital and surplus of the
 6 insurer or any change in management involving officers or
 7 directors of the insurer or any person of the insurer or
 8 controlling company having authority to dispose of or obligate
 9 5 percent or more of the insurer's capital or surplus. The
 10 department shall approve the change if it finds the applicable
 11 provisions of subsection (7) have been met.

12 (c) Any proceeding conducted pursuant to this
 13 subsection shall be concluded within 30 days after the date
 14 the written request for a proceeding is received by the
 15 department. A recommended order shall be issued within 20
 16 days of the date of the close of the proceedings. A final
 17 order shall be issued within 20 days of the date of the
 18 recommended order or if exceptions to the recommended order
 19 are filed within 20 days of the date the exceptions are
 20 filed, calls a public hearing to consider the matter. The
 21 ~~department shall call and hold such public hearing if the~~
 22 ~~department is requested in writing to do so by the insurer or~~
 23 ~~controlling company within such 60 day period, and, if there~~
 24 ~~is not such a request, the department may call and hold such~~
 25 ~~public hearing in its discretion. If the domestic stock~~
 26 ~~insurer and controlling company file an instrument in writing~~
 27 ~~with the department waiving their right to request a public~~
 28 ~~hearing, the department, in its discretion, may by order~~
 29 ~~shorten the 60 day period and approve the acquisition.~~

30
 31

1 (6) The department may disapprove any acquisition
 2 subject to the provisions of this section by any person or any
 3 affiliated person of such person who:

4 (a) Willfully violates this section;

5 (b) In violation of an order of the department issued
 6 pursuant to subsection (10) ~~{14}~~, fails to divest himself of
 7 any stock obtained in violation of this section, or fails to
 8 divest himself of any direct or indirect control of such
 9 stock, within 25 days after such order; or

10 (c) In violation of an order issued by the department
 11 pursuant to subsection (10) ~~{14}~~, acquires additional stock of
 12 the domestic insurance company or controlling company, or
 13 direct or indirect control of such stock, without complying
 14 with this section.

15 (7) The person or persons filing the statement
 16 required by subsection (1) shall have the burden of proof.
 17 The department shall approve any such acquisition if it finds,
 18 on the basis of the record made during any proceeding at a
 19 public hearing or on the basis of the filed statement if no
 20 proceeding is conducted there-is-no-public-hearing, that:

21 (a) Upon completion of the acquisition, the domestic
 22 stock insurer will be able to satisfy the requirements for the
 23 issuance of a license to write the line or lines of insurance
 24 for which it is presently licensed;

25 (b) The financial condition of the acquiring person or
 26 persons will not jeopardize the financial stability of the
 27 insurer or prejudice the interests of its policyholders or the
 28 public and will not prejudice the interests of any remaining
 29 shareholders who are unaffiliated with the acquiring person;

30 (c) Any plan or proposal which the acquiring person
 31 has, or acquiring persons have, made:

1 1. To liquidate the insurer, sell its assets, or merge
2 or consolidate it with any person, or to make any other major
3 change in its business or corporate structure or management;
4 or

5 2. To liquidate any controlling company, sell its
6 assets, or merge or consolidate it with any person, or to make
7 any major change in its business or corporate structure or
8 management which would have an effect upon the insurer

9
10 is fair and free of prejudice to the policyholders and
11 ~~shareholders~~ of the domestic stock insurer or to the public;

12 (d) The competence, experience, and integrity of those
13 persons who will control directly or indirectly the operation
14 of the domestic stock insurer indicate that the acquisition is
15 in the best interest of the policyholders ~~and-shareholders~~ of
16 the such insurer, and in the public interest; and

17 (e) The natural persons for whom background
18 information is required to be furnished pursuant to this
19 section have such backgrounds as to indicate that it is in the
20 best interests of the policyholders ~~and-shareholders~~ of the
21 domestic stock insurer, and in the public interest, to permit
22 such persons to exercise control over such domestic stock
23 insurer;

24 (f) The officers and directors to be employed after
25 the acquisition have sufficient insurance experience and
26 ability to assure reasonable promise of successful operation.

27 (g) The management of the insurer after the
28 acquisition will be competent, trustworthy and will possess
29 sufficient managerial experience so as to make the proposed
30 operation of the insurer not hazardous to the insurance-buying
31 public.

1 (h) The management of the insurer after the
 2 acquisition will not include any person who has directly or
 3 indirectly through ownership, control, reinsurance
 4 transactions, or other insurance or business relations
 5 unlawfully manipulated the assets, accounts, finances or books
 6 of any insurer or otherwise acted in bad faith with respect
 7 thereto.

8 (i) The acquisition is not likely to be hazardous or
 9 prejudicial to the insurer's policyholders or the public; and

10 (j) The effect of the acquisition of control would not
 11 substantially lessen competition in insurance in this state or
 12 would not tend to create a monopoly therein.

13 (9) Any approval by the department under this section
 14 does not constitute a recommendation by the department for an
 15 acquisition, tender offer, or exchange offer. It is unlawful
 16 for a person to represent that the department's any-such
 17 approval constitutes such a recommendation. A person who
 18 violates the provisions of this subsection is guilty of a
 19 felony of the third degree, punishable as provided in s.
 20 775.082, s. 775.083, or s. 775.084. The statute-of-
 21 limitations period for the prosecution of an offense committed
 22 under this subsection is 5 years.

23 (10) Upon notification to the department by the
 24 domestic stock insurer insurance-company or a controlling
 25 company that any person or any affiliated person of such
 26 person has acquired 5 percent or more of the outstanding
 27 voting securities of the such domestic stock insurer insurance
 28 company or controlling company, without complying with the
 29 provisions of this section, the department shall order that
 30 the such person and any affiliated person of such person cease
 31 acquisition of any further securities of the such domestic

1 stock ~~insurer insurance-company~~ or controlling company;
2 however, the person or any affiliated person of such person
3 may request a proceeding hearing, which proceeding hearing
4 shall be convened within 7 days after the rendering of the
5 ~~such~~ order for the sole purpose of determining whether the
6 ~~such~~ person, individually or in connection with any affiliated
7 person of such person, has acquired 5 percent or more of the
8 outstanding voting securities of a domestic stock insurer
9 ~~insurance-company~~ or controlling company. Upon the failure of
10 the person or affiliated person to request a hearing within 7
11 days, or upon a determination at a hearing convened pursuant
12 to this subsection that the ~~such~~ person or affiliated person
13 has acquired voting securities of a domestic stock insurer or
14 controlling company in violation of this section, the
15 department may order the ~~such~~ person and affiliated person to
16 divest themselves of any voting securities so acquired.

17 (11)(a) The department shall, if necessary to protect
18 the public interest, suspend or revoke the certificate of
19 authority of any insurer or controlling company:

20 1. The control of which is acquired in violation of
21 this section;

22 2. That is controlled, directly or indirectly, by any
23 person or any affiliated person of such person who, in
24 violation of this section, has obtained control of a domestic
25 stock insurer or controlling company; or

26 3. That is controlled, directly or indirectly, by any
27 person who, directly or indirectly, controls any other person
28 who, in violation of this section, acquires control of a
29 domestic stock insurer or controlling company.

30
31

1 (13) The department is authorized to adopt, amend, or
2 repeal rules ~~and regulations~~ that are necessary to implement
3 the provisions of this section, pursuant to chapter 120.

4 Section 2. This act shall take effect upon becoming a
5 law.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Granger</u> <i>TGG</i>	<u>Cain</u> <i>AC</i>	1. <u>COM</u>	COPY
2. _____	_____	2. _____	
3. _____	_____	3. _____	

SUBJECT:

Insurance

reproduced by
 BILL NO. AND SPONSOR: FLORIDA STATE ARCHIVES
 DEPARTMENT OF STATE
 R A GRAY BUILDING
 Tallahassee, FL 32399-0250

SB 0490 by
 Senator Thomas

Series 78 Carton 1505

I. SUMMARY:

A. Present Situation:

Section 628.41 F.S., presently requires Department of Insurance approval of the acquisition of 5 percent or more of the voting stock of a domestic insurance company. A federal district court recently determined that this statute was preempted by the federal Williams Act. The bill attempts to resolve the problems raised by the district court by providing for later notice requirements to the Department and by eliminating references to shareholder protection as a criterion for the Department to consider.

A. CURRENT LAW

Persons acquiring 5 percent or more of the voting securities of a Florida domestic stock insurance company must first obtain the approval of the Department of Insurance, as required by s. 628.461. The statute requires that at least 60 days notice be given to the Department prior to the time any form of tender offer or exchange offer is furnished to the stockholders or, in the case of a straight sale of the stock, at least 60 days prior to the proposed date of the acquisition.

A notice statement, which must also be sent to the insurer and controlling company, must contain information relating to the background of the principals involved, the source of funds to be used, plans to make any major change in the business or corporate structure of the insurer, the number of shares proposed to be acquired, and information related to any agreements affecting the securities.

The criteria for the Department to consider in determining whether to approve an acquisition include whether the financial condition of the acquiring person will jeopardize the financial stability of the insurer or prejudice the policyholders or stockholders.

In August, 1984 the U.S. District Court for the Northern District of Florida issued a preliminary injunction enjoining the Department of Insurance from enforcing section 628.461, in a suit brought by The News Corporation Limited against Commissioner Bill Gunter. News Corporation Limited purchased 5.6 percent of the stock of St. Regis Corporation on the open market. St. Regis owns 100 percent of two Florida domestic insurance companies, Dependable Insurance Company and Dependable Life Insurance Company. News Corporation did not file the information required by Section 628.461 and the Department issued an order to cease acquisition of further securities.

In granting News Corporation's motion for a preliminary injunction to enjoin the Department from enforcing its order, the U.S. District Court determined that section 628.461 conflicts with and is preempted by the federal regulation of securities contained in the Williams Act amendments to Section 13 and 14 of the Securities Exchange Act of 1934. Judge William Stafford reasoned that the federal act embodies a free market approach to the sales of securities, and that the Florida Statute, requiring prior approval for stock purchases that puts management on notice of what may be an impending takeover, directly conflicts with the federal intent of an open market. The judge noted that the statute specifically refers to protection of the interest of shareholders in addition to policyholders and that the protection of shareholders is preempted by the William Act. Even though Congress expressly reserved the regulation of the business of insurance to the states in the McCarran-Ferguson Act (16 U.S.C. s.1012 (b)), Judge Stafford determined that the Florida Statute, in the name of regulating the business of insurance, was in effect regulating the non-insurance business of a large, international corporation of which the Florida insurance companies represented only a small portion of corporate business. For similar reasons, the judge also determined that the statute was an unconstitutional burden on interstate commerce. The Department of Insurance appealed the order of the district court to the Eleventh Circuit Court of Appeals, but later withdrew the appeal.

B. Effect of Proposed Changes

This bill attempts to resolve the constitutional and federal preemption problems cited by the federal district court in the present acquisition statute. The primary change is elimination of the requirement that 60 days notice be given prior to the time any tender offer or exchange offer is furnished to stockholders or prior to the proposed date of an acquisition of stock. In its place the bill imposes a requirement that notice be provided to the Department, insurer, and controlling company no later than 5 days after a tender offer or exchange offer is proposed, or no later than 5 days after the proposed date of the acquisition of the securities if no tender offer or exchange offer is involved. The acquisition's becoming final is conditioned upon obtaining Department approval. The acquisition is deemed approved unless the Department disapproves the proposed acquisition within 90 days after the notice has been filed. However, the 90-day time period is tolled during a proceeding to consider the appropriateness of the filing, which proceeding may be initiated by the Department or by a substantially affected party. The proceeding must be concluded within 30 days; a recommended order must be concluded within 20 days after the recommended order or 20 days after the date exceptions to the recommended order are filed.

The bill also revises the criteria that the Department must consider in determining whether to approve an acquisition. References to protection of shareholder interests are deleted while consideration of policyholder interests are retained. (One reference to shareholder interests was not deleted which is reportedly an oversight.) The bill adds a consideration of the prejudice to the public which may result from any plan to make a major change in the business or corporate structure of the insurer. The bill also requires the Department to consider whether the acquisition will substantially lessen competition in insurance in this state or would tend to create a monopoly.

By providing for notice after tender offers are proposed or after a proposed date of acquisition, the bill attempts to make the acquisition statute consistent with the open market intent

of the Williams Act as expressed by the U.S. District Court. By eliminating references to protection of shareholder interests, the bill attempts to tie the statute more closely to the regulation of insurance that has been reserved to the states by the McCarran-Ferguson Act.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

To the extent that the bill effectively cures constitutional defects in the acquisition statute, policyholders of a domestic stock insurance company will be afforded the protection of Department screening of the competence and integrity of the persons acquiring 5 percent or more of the stock in the company and their plans to make any major changes in the insurer's business. In addition, however, as in the case of the News International purchase of St. Regis stock, the acquisition statute delays and potentially prohibits corporate takeovers of large holding companies that may only do a small amount of insurance business relative to the rest of their operations.

B. Government:

No significant impact.

III. COMMENTS:

On page 2, line 4, the new language "tender or exchange" appears to be inappropriately placed and should be deleted with a technical amendment.

As mentioned above, the bill on page 7, line 24, retains one reference to department consideration of the interests of shareholders which appears to be inadvertant since it is inconsistant with deletion of this consideration elsewhere in the bill. This reference should also be deleted.

IV. AMENDMENTS:

None.

SB 490
Thomas

2-927-85

See HB

COPY
reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R A GRAY BUILDING
Tallahassee, FL 32309-0250
Series 18 Carton 1505

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 628.461, F.S., relating to the acquisition of
4 controlling stock of domestic insurers;
5 revising acquisition notice requirements and
6 requirements for approval of certain
7 acquisitions; providing for proceedings and
8 editorial changes; providing an effective date.

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

11
12 Section 1. Subsections (1), (2), and (3), paragraph
13 (a) of subsection (4), subsections (5), (6), (7), (9), and
14 (10), paragraph (a) of subsection (11) and subsection (13) of
15 section 628.461, Florida Statutes, 1984 Supplement, are
16 amended to read:

17 628.461 Acquisition of controlling stock.--

18 (1) No person shall, individually or in conjunction
19 with any affiliated person of such person, acquire directly or
20 indirectly, conclude ~~make~~ a tender offer or exchange offer
21 for, enter into any agreement to exchange securities for, or
22 otherwise finally seek to ~~seek to~~ acquire 5 percent or more of the
23 outstanding voting securities of a domestic stock insurer
24 ~~insurance-company~~ or of a controlling company, unless:

25 (a) The ~~The~~ such person or affiliated person has filed
26 with the department and sent to the ~~such~~ insurer and
27 controlling company a statement as specified in subsection (3)
28 no later than 5 days after ~~at least 60 days prior to the time~~
29 any form of tender offer or exchange offer is proposed ~~to be~~
30 ~~furnished to securityholders~~, or no later than 5 days after ~~at~~
31 ~~least 60 days prior to~~ the proposed date of the acquisition of

1 the such securities if no ~~such~~ tender offer or exchange offer
2 is involved; and

3 (b) The department has approved the tender or exchange
4 ~~proposed offer or acquisition~~ tender or exchange ~~prior to the~~
5 ~~time any form of tender offer or exchange offer is made to~~
6 ~~securityholders, or prior to the acquisition of such~~
7 ~~securities~~ if no ~~such~~ tender offer or exchange offer is
8 involved; and ~~such~~ approval is in effect.

9 (2) This section does not apply to any acquisition of
10 voting securities of a domestic stock insurer or of a
11 controlling company by any person who, on July 1, 1976, is the
12 owner of a majority of such voting securities or who, on or
13 after July 1, 1976, becomes the owner of a majority of such
14 voting securities with the approval of the department pursuant
15 to this section. It does apply, however, whenever any
16 domestic stock insurer ~~insurance company~~ or controlling
17 company makes a tender offer or exchange offer, enters into an
18 agreement to exchange securities for 5 percent or more of the
19 voting stock, or otherwise seeks to acquire 5 percent or more
20 of the outstanding voting securities of any stock insurance
21 company or controlling company.

22 (3) The statement to be filed with the department and
23 furnished to the insurer and controlling company shall contain
24 the following information and any ~~such~~ additional information
25 as the department may deem necessary to determine the
26 character, experience, ability, and other qualifications of
27 the such person or affiliated person of such person for the
28 protection of the policyholders and shareholders of the such
29 insurer and the public:

30 (a) The identity of, and the background information
31 specified in subsection (4) on, each natural person by whom,

1 or on whose behalf, the acquisition is to be made; and, if the
2 acquisition is to be made by, or on behalf of, a corporation,
3 association, or trust, as to the ~~such~~ corporation,
4 association, or trust and as to any person who controls either
5 directly or indirectly the ~~such~~ corporation, association, or
6 trust, the identity of, and the background information
7 specified in subsection (4) on, each director, officer,
8 trustee, or other natural person performing duties similar to
9 those of a director, officer, or trustee for the corporation,
10 association, or trust;

11 (b) The source and amount of the funds or other
12 consideration used, or to be used, in making the acquisition;

13 (c) Any plans or proposals which such persons may have
14 made to liquidate such insurer, to sell any of its assets or
15 merge or consolidate it with any person, or to make any other
16 major change in its business or corporate structure or
17 management; and any plans or proposals which such persons may
18 have made to liquidate any controlling company of such
19 insurer, to sell any of its assets or merge or consolidate it
20 with any person, or to make any other major change in its
21 business or corporate structure or management;

22 (d) The number of shares or other securities which the
23 ~~such~~ person or affiliated person of such person proposes to
24 acquire, the terms of the proposed acquisition, and the manner
25 in which the ~~such~~ securities are to be acquired; and

26 (e) Information as to any contract, arrangement, or
27 understanding with any party with respect to any of the
28 securities of the ~~such~~ insurer or controlling company,
29 including, but not limited to, information relating to the
30 transfer of any of the securities, option arrangements, puts
31 or calls, or the giving or withholding of proxies, which

1 information names the party with whom the such contract,
2 arrangement, or understanding has been entered into and gives
3 the details thereof.

4 (4)(a) The information as to the background and
5 identity of each person, which information is required to be
6 furnished pursuant to paragraph (3)(a), shall include:

7 1. The Such person's occupations, positions of
8 employment, and offices held during the past 10 years.

9 2. The principal business and address of any business,
10 corporation, or other organization in which each such office
11 of the person was held, or in which each such occupation or
12 position of employment was carried on.

13 3. Whether the such person was, at any time during
14 such 10-year period, convicted of any crime other than a
15 traffic violation.

16 4. Whether the such person has been, during such 10-
17 year period, the subject of any proceeding for the revocation
18 of any license and, if so, the nature of the such proceeding
19 and the disposition of the proceeding.

20 5. Whether, during the such 10-year period, the such
21 person has been the subject of any proceeding under the
22 federal Bankruptcy Act; or whether, during the such 10-year
23 period, any corporation, partnership, firm, trust, or
24 association in which the such person was a director, officer,
25 trustee, partner, or other official has been subject to any
26 such proceeding, either during the time in which the such
27 person was a director, officer, trustee, partner, or other
28 official or within 12 months thereafter.

29 6. Whether, during the such 10-year period, the such
30 person has been enjoined, either temporarily or permanently,
31 by a court of competent jurisdiction from violating any

1 federal or state law regulating the business of insurance,
2 securities, or banking, or from carrying out any particular
3 practice or practices in the course of the business of
4 insurance, securities, or banking, together with details as to
5 any such event.

6 (5)(a) The acquisition of voting securities shall be
7 deemed approved unless the department ~~disapproves the proposed~~
8 ~~acquisition,~~ within 90 60 days after the statement required by
9 subsection (1) has been filed. The department may on its own
10 initiate, or if requested to do so in writing by a
11 substantially affected party shall, conduct a proceeding to
12 consider the appropriateness of the proposed filing. The 90-
13 day time period shall be tolled during the pendency of the
14 proceeding. Any written request for a proceeding must be
15 filed with the department within 10 days of the date notice of
16 the filing is given. During the pendency of the proceeding or
17 review period by the department any person or affiliated
18 person complying with the filing requirements of this section
19 may proceed and take all steps necessary to conclude the
20 acquisition so long as the acquisition becoming final is
21 conditioned upon obtaining departmental approval. The
22 department shall, however, at any time it finds an immediate
23 danger to the public health, safety, and welfare of the
24 domestic policyholders exists, immediately order, pursuant to
25 s. 120.59(3) the proposed acquisition temporarily disapproved
26 and any further steps to conclude the acquisition ceased.

27 (b) Any proceeding conducted pursuant to this
28 subsection shall be concluded within 30 days after the date
29 the written request for a proceeding is received by the
30 department. A recommended order shall be issued within 20
31 days of the date of the close of the proceedings. A final

1 order shall be issued within 20 days of the date of the
 2 recommended order or if exceptions to the recommended order
 3 are filed within 20 days of the date the exceptions are filed.
 4 ~~7-calls-a-public-hearing-to-consider-the-matter--The~~
 5 ~~department-shall-call-and-hold-such-public-hearing-if-the~~
 6 ~~department-is-requested-in-writing-to-do-so-by-the-insurer-or~~
 7 ~~controlling-company-within-such-60-day-period;-and;-if-there~~
 8 ~~is-not-such-a-request;-the-department-may-call-and-hold-such~~
 9 ~~public-hearing-in-its-discretion--if-the-domestic-stock~~
 10 ~~insurer-and-controlling-company-file-an-instrument-in-writing~~
 11 ~~with-the-department-waiving-their-right-to-request-a-public~~
 12 ~~hearing;-the-department;-in-its-discretion;-may-by-order~~
 13 ~~shorten-the-60-day-period-and-approve-the-acquisition-~~

14 (6) The department may disapprove any acquisition
 15 subject to the provisions of this section by any person or any
 16 affiliated person of such person who:

17 (a) Willfully violates this section;

18 (b) In violation of an order of the department issued
 19 pursuant to subsection (10) ~~(14)~~, fails to divest himself of
 20 any stock obtained in violation of this section, or fails to
 21 divest himself of any direct or indirect control of such
 22 stock, within 25 days after such order; or

23 (c) In violation of an order issued by the department
 24 pursuant to subsection (10) ~~(14)~~, acquires additional stock of
 25 the domestic insurance company or controlling company, or
 26 direct or indirect control of such stock, without complying
 27 with this section.

28 (7) The person or persons filing the statement
 29 required by subsection (1) shall have the burden of proof.
 30 The department shall approve any such acquisition if it finds,
 31 on the basis of the record made during any proceeding at-a

1 ~~public-hearing~~ or on the basis of the filed statement if no
2 proceeding is conducted ~~there-is-no-public-hearing~~, that:

3 (a) Upon completion of the acquisition, the domestic
4 stock insurer will be able to satisfy the requirements for the
5 issuance of a license to write the line or lines of insurance
6 for which it is presently licensed;

7 (b) The financial condition of the acquiring person or
8 persons will not jeopardize the financial stability of the
9 insurer or prejudice the interests of its policyholders or the
10 public and will not prejudice the interests of any remaining
11 shareholders who are unaffiliated with the acquiring person;

12 (c) Any plan or proposal which the acquiring person
13 has, or acquiring persons have, made:

14 1. To liquidate the insurer, sell its assets, or merge
15 or consolidate it with any person, or to make any other major
16 change in its business or corporate structure or management;
17 or

18 2. To liquidate any controlling company, sell its
19 assets, or merge or consolidate it with any person, or to make
20 any major change in its business or corporate structure or
21 management which would have an effect upon the insurer

22
23 is fair and free of prejudice to the policyholders and
24 shareholders of the domestic stock insurer or to the public;

25 (d) The competence, experience, and integrity of those
26 persons who will control directly or indirectly the operation
27 of the domestic stock insurer indicate that the acquisition is
28 in the best interest of the policyholders ~~and shareholders~~ of
29 the such insurer, and in the public interest; and

30 (e) The natural persons for whom background
31 information is required to be furnished pursuant to this

1 section have such backgrounds as to indicate that it is in the
 2 best interests of the policyholders ~~and-shareholders~~ of the
 3 domestic stock insurer, and in the public interest, to permit
 4 such persons to exercise control over such domestic stock
 5 insurer;

6 (f) The acquisition is not likely to be hazardous or
 7 prejudicial to the insurer's policyholders or the public; and

8 (g) The effect of the acquisition of control would not
 9 substantially lessen competition in insurance in this state or
 10 would not tend to create a monopoly therein.

11 (9) Any approval by the department under this section
 12 does not constitute a recommendation by the department for an
 13 acquisition, tender offer, or exchange offer. It is unlawful
 14 for a person to represent that the department's ~~any-such~~
 15 approval constitutes ~~such~~ a recommendation. A person who
 16 violates the provisions of this subsection is guilty of a
 17 felony of the third degree, punishable as provided in s.
 18 775.082, s. 775.083, or s. 775.084. The statute-of-
 19 limitations period for the prosecution of an offense committed
 20 under this subsection is 5 years.

21 (10) Upon notification to the department by the
 22 domestic stock insurer ~~insurance-company~~ or a controlling
 23 company that any person or any affiliated person of such
 24 person has acquired 5 percent or more of the outstanding
 25 voting securities of the ~~such~~ domestic stock insurer ~~insurance~~
 26 ~~company~~ or controlling company, without complying with the
 27 provisions of this section, the department shall order that
 28 the ~~such~~ person and any affiliated person of such person cease
 29 acquisition of any further securities of the ~~such~~ domestic
 30 stock insurer ~~insurance-company~~ or controlling company;
 31 however, the person or any affiliated person of such person

1 may request a proceeding hearing, which proceeding hearing
 2 shall be convened within 7 days after the rendering of the
 3 such order for the sole purpose of determining whether the
 4 such person, individually or in connection with any affiliated
 5 person of such person, has acquired 5 percent or more of the
 6 outstanding voting securities of a domestic stock insurer
 7 ~~insurance-company~~ or controlling company. Upon the failure of
 8 the person or affiliated person to request a hearing within 7
 9 days, or upon a determination at a hearing convened pursuant
 10 to this subsection that the such person or affiliated person
 11 has acquired voting securities of a domestic stock insurer or
 12 controlling company in violation of this section, the
 13 department may order the such person and affiliated person to
 14 divest themselves of any voting securities so acquired.

15 (11)(a) The department shall, if necessary to protect
 16 the public interest, suspend or revoke the certificate of
 17 authority of any insurer or controlling company:

18 1. The control of which is acquired in violation of
 19 this section;

20 2. That is controlled, directly or indirectly, by any
 21 person or any affiliated person of such person who, in
 22 violation of this section, has obtained control of a domestic
 23 stock insurer or controlling company; or

24 3. That is controlled, directly or indirectly, by any
 25 person who, directly or indirectly, controls any other person
 26 who, in violation of this section, acquires control of a
 27 domestic stock insurer or controlling company.

28 (13) The department is authorized to adopt, amend, or
 29 repeal rules ~~and-regulations~~ that are necessary to implement
 30 the provisions of this section, pursuant to chapter 120.

31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Section 2. This act shall take effect upon becoming a
law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

HOUSE SUMMARY

Revises state law relating to the acquisition of controlling stock of domestic insurers by revising acquisition notice requirements, changing requirements for the approval or described acquisition, and by providing for proceedings.

Final Action: Died on Calendar
CS/SB 490 enacted;
Chapter 85-312, Laws of Florida

STORAGE NAME: HB 676

Date: April 5, 1985

Revised: April 24, 1985

Final: June 27, 1985

COPY

reproduced by

FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING

Tallahassee, FL 32399-0250

Series 19 Carton 1997

HOUSE OF REPRESENTATIVES
COMMITTEE ON HEALTH CARE AND INSURANCE
STAFF ANALYSIS

BILL# HB 676 SPONSOR Representative Lewis

EFFECTIVE DATE Upon Becoming Law

IDENTICAL/SIMILAR BILLS CS/SB 490

RELATING TO Acquisition of Domestic Insurers

OTHER COMMITTEES OF REFERENCE Appropriations

I. SUMMARY:

Section 628.461 F.S., presently requires Department of Insurance approval of the acquisition of 5 percent or more of the voting stock of a domestic insurance company. A federal district court recently determined that this statute was preempted by the federal Williams Act. The bill attempts to resolve the problems raised by the district court by providing for later notice requirements to the Department and by eliminating references to shareholder protection as a criterion for the Department to consider.

A. CURRENT LAW

Persons acquiring 5 percent or more of the voting securities of a Florida domestic stock insurance company must first obtain the approval of the Department of Insurance, as required by s. 628.461. The statute requires that at least 60 days' notice be given to the Department prior to the time any

form of tender offer or exchange offer is furnished to the stockholders or, in the case of a straight sale of the stock, at least 60 days prior to the proposed date of the acquisition.

The notice statement, which must also be sent to the insurer and controlling company, must contain information relating to the background of the principals involved, the source of funds to be used, any plans to make any major change in the business or corporate structure of the insurer, the number of shares proposed to be acquired, and information related to any agreements affecting the securities.

The criteria for the Department to consider in determining whether to approve an acquisition include whether the financial condition of the acquiring person will jeopardize the financial stability of the insurer or prejudice the policyholders or stockholders.

In August, 1984 the U.S. District Court for the Northern District of Florida issued a preliminary injunction enjoining the Department of Insurance from enforcing section 628.461, in a suit brought by The News Corporation Limited against Commissioner Bill Gunter. News Corporation Limited purchased 5.6 percent of the stock of St. Regis Corporation on the open market. St. Regis owns 100 percent of two Florida domestic insurance companies, Dependable Insurance Company and Dependable Life Insurance Company. News Corporation did not file the information required by section 628.461 and the Department issued an order to cease acquisition of further securities.

In granting News Corporation's motion for a preliminary injunction to enjoin the Department from enforcing its order, the U.S. District Court determined that section 628.461 conflicts with and is preempted by the federal regulation of securities contained in the Williams Act amendments to Section 13 and 14 of the Securities Exchange Act of 1934. Judge William Stafford reasoned that the federal act embodies a free market approach to the sales of securities, and that the Florida statute, requiring prior approval for stock purchases that puts management on notice of what may be an impending takeover, directly conflicts with the federal intent of an open market. The judge noted that the statute specifically refers to protection of the interests of shareholders in addition to policyholders and that the protection of shareholders is preempted by the Williams Act. Even though Congress expressly reserved the regulation of the business of insurance to the states in the McCarran-Ferguson Act (16 U.S.C. s. 1012 (b)), Judge Stafford determined that the Florida statute, in the name of regulating the business of insurance, was in effect regulating the non-insurance business of a large, international corporation of which the Florida insurance companies represented only a small portion of corporate business. For similar reasons, the judge also determined that the statute was an unconstitutional burden on interstate commerce. The Department of Insurance appealed the order of the district court

to the Eleventh Circuit Court of Appeals, but later withdrew the appeal.

B. EFFECT OF CHANGES

This bill attempts to resolve the constitutional and federal preemption problems cited by the federal district court in the present acquisition statute. The primary change is elimination of the requirement that 60 days' notice be given prior to the time any tender offer or exchange offer is furnished to stockholders or prior to the proposed date of an acquisition of stock. In its place the bill imposes a requirement that notice be provided to the Department, insurer, and controlling company no later than 5 days after a tender offer or exchange offer is proposed, or no later than 5 days after the proposed date of the acquisition of the securities if no tender offer or exchange offer is involved. The acquisition's becoming final is conditioned upon obtaining Department approval. The acquisition is deemed approved unless the Department disapproves the proposed acquisition within 90 days after the notice has been filed. However, the 90-day time period is tolled during a proceeding to consider the appropriateness of the filing, which proceeding may be initiated by the Department or a substantially affected party. The proceeding must be concluded within 30 days; a recommended order must be concluded within 20 days after the proceedings; and a final order must be issued within 20 days after the recommended order or 20 days after the date exceptions to the recommended order are filed.

The bill also revises the criteria that the Department must consider in determining whether to approve an acquisition. References to protection of shareholder interests are deleted while consideration of policyholder interests are retained. (One reference to shareholder interests was not deleted which is reportedly an oversight.) The bill adds a consideration of the prejudice to the public which may result from any plan to make a major change in the business or corporate structure of the insurer. The bill also requires the Department to consider whether the acquisition will substantially lessen competition in insurance in this state or would tend to create a monopoly.

By providing for notice after tender offers are proposed or after a proposed date of acquisition, the bill attempts to make the acquisition statute consistent with the open market intent of the Williams Act as expressed by the U.S. District Court. By eliminating references to protection of shareholder interests, the bill attempts to tie the statute more closely to the regulation of insurance that has been reserved to the states by the McCarran-Ferguson Act.

II. ECONOMIC IMPACT:

A. PRIVATE SECTOR

To the extent that the bill effectively cures constitutional defects in the acquisition statute, policyholders of a domestic stock insurance company will be afforded the protection of Department screening of the competence and integrity of the persons acquiring 5 percent or more of the stock in the company and their plans to make any major changes in the insurer's business. In addition, however, as in the case of the News International purchase of St. Regis stock, the acquisition statute delays and potentially prohibits corporate takeovers of large holding companies that may only do a small amount of insurance business relative to the rest of their operations.

B. GOVERNMENT

No significant impact.

III. COMMENTS:

On page 2, line 4, the new language "tender or exchange" appears to be inappropriately placed and should be deleted with a technical amendment.

As mentioned above, the bill on page 7, line 24, retains one reference to department consideration of the interests of shareholders which appears to be inadvertant since it is inconsistent with deletion of this consideration elsewhere in the bill, which reference should also be deleted.

IV. AMENDMENTS:

Amendment #1 by Health Care and Insurance : Requires a notice statement to be submitted to the department no later than 5 days after the acquisition of 5% or more of the stock of a domestic insurer, rather than 5 days after "the proposed date" of the acquisition.

Amendment #2 by Health Care and Insurance: Corrects a technical error.

Amendment #3 by Health Care and Insurance: Specifies that during the pendency of the department's review of an acquisition, the acquiring person shall not make any material change in the management or operation of the insurer.

Amendment #4 by Health Care and Insurance: Conforming to other provisions of the bill, the amendment deletes language in the statute requiring the department to consider the interests of the shareholders of an insurer in approving an acquisition.

Amendment #5 by Health Care and Insurance: Specifies additional grounds for the department to consider in approving an

acquisition, primarily relating to the experience, ability and trustworthiness of the officers, directors, and management.

V. LEGISLATIVE HISTORY:

HB 676 was heard by the Subcommittee on Health and Life Insurance and General Insurance Regulation on April 8, 1985, which reported the bill favorably with five amendments. On April 23 the Committee on Health Care and Insurance reported the bill favorably with the same five amendments adopted in subcommittee. The bill was later withdrawn from the Committee on Appropriations. HB 676 died on the House Calendar, but CS/SB 490 was enacted, which was identical to the House bill, as amended by Health Care and Insurance. CS/SB 490 had been referred in the House to the Committees on Health Care and Insurance and Appropriations, but was later withdrawn from both committees. On May 30, CS/SB 490 was passed by the House, 111 - 0. On June 14 the act was presented to the Governor who signed it on June 20; Chapter 85-312, Laws of Florida.

VI. PREPARED BY ^{BD}Brian Deffenbaugh

VII. EDITOR-IN-CHIEF Sandra Anderson