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1                   A bill to be entitled  
2           An act relating to insurer solvency; creating s.  
3           624.085, F.S.; providing definitions applicable to the  
4           insurance code; amending s. 624.4085, F.S.; revising  
5           definitions; providing additional calculations for  
6           determining whether an insurer has a company action  
7           level event; revising provisions relating to mandatory  
8           control level events; amending s. 642.424, F.S.;  
9           requiring an insurer's annual statement to include an  
10          actuarial opinion summary and providing criteria for  
11          such summary; providing an exception for life and  
12          health insurers; updating provisions; amending s.  
13          625.121, F.S.; protecting a memorandum supporting an  
14          insurer's annual actuarial opinion from subpoena,  
15          discovery, or admissibility in a civil action;  
16          amending s. 628.461, F.S.; deleting a provision  
17          authorizing an insurer to file a disclaimer of  
18          affiliation and control in lieu of a letter notifying  
19          the Office of Insurance Regulation of the Financial  
20          Services Commission of the acquisition of the voting  
21          securities of a domestic stock company under certain  
22          circumstances; requiring the statement notifying the  
23          office to include additional information; providing  
24          for consideration of enterprise risk in an acquisition  
25          application; providing that control is presumed to  
26          exist under certain conditions; specifying how control  
27          may be rebutted and how a controlling interest may be  
28          divested; deleting definitions; amending s. 628.801,

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29 F.S.; requiring an insurer to file annually by a  
30 specified date a registration statement; revising the  
31 requirements and standards for the rules establishing  
32 the information and statement form for the  
33 registration; requiring an insurer to file an annual  
34 enterprise risk report; providing that failure to file  
35 a registration or report is a violation of the  
36 section; authorizing the office to conduct  
37 examinations to determine the financial condition of  
38 registrants; providing additional grounds for a waiver  
39 from the registration requirements; amending s.  
40 628.803, F.S.; providing for sanctions for persons who  
41 violate the provisions of s. 628.461, F.S., relating  
42 to the acquisition of controlling stock; creating s.  
43 628.805, F.S.; authorizing the office to participate  
44 in supervisory colleges; authorizing the office to  
45 assess fees on insurers for participation; amending  
46 ss. 636.045 and 641.255, F.S.; applying certain  
47 statutes related to solvency to prepaid limited health  
48 service organizations and health maintenance  
49 organizations; applying provisions relating to  
50 acquisition of controlling stock to a health  
51 maintenance organization that is a member of a holding  
52 company; providing a contingent effective date.

53  
54 Be It Enacted by the Legislature of the State of Florida:

55  
56 Section 1. Section 624.085, Florida Statutes, is created

57 | to read:

58 | 624.085 Other definitions.—As used in the Florida  
 59 | Insurance Code, the term:

60 | (1) "Affiliate" means any entity that exercises control  
 61 | over or is controlled by the insurer, directly or indirectly,  
 62 | through:

63 | (a) Equity ownership of voting securities;

64 | (b) Common managerial control; or

65 | (c) Collusive participation by the management of the  
 66 | insurer and affiliate in the management of the insurer or the  
 67 | affiliate.

68 | (2) "Affiliated person" of another person means:

69 | (a) The spouse of such other person;

70 | (b) The parents of such other person and their lineal  
 71 | descendants, or the parents of such other person's spouse and  
 72 | their lineal descendants;

73 | (c) Any person who directly or indirectly owns or  
 74 | controls, or holds with the power to vote, 10 percent or more of  
 75 | the outstanding voting securities of such other person;

76 | (d) Any person 10 percent or more of the outstanding  
 77 | voting securities of which are directly or indirectly owned or  
 78 | controlled, or held with power to vote, by such other person;

79 | (e) Any person or group of persons who directly or  
 80 | indirectly control, are controlled by, or are under common  
 81 | control with such other person;

82 | (f) Any officer, director, partner, copartner, or employee  
 83 | of such other person;

84 | (g) If such other person is an investment company, any

85 investment adviser of such company, or any member of an advisory  
 86 board of such company;

87 (h) If such other person is an unincorporated investment  
 88 company not having a board of directors, the depositor of such  
 89 company; or

90 (i) Any person who has entered into an agreement, written  
 91 or unwritten, to act in concert with such other person in  
 92 acquiring or limiting the disposition of securities of a  
 93 domestic stock insurer or controlling company.

94 (3) "Control," including the terms "controlling,"  
 95 "controlled by," and "under common control with" means the  
 96 possession, direct or indirect, of the power to direct or cause  
 97 the direction of the management and policies of a person,  
 98 whether through the ownership of voting securities, by contract  
 99 other than a commercial contract for goods or nonmanagement  
 100 services, or otherwise. Control is presumed to exist if any  
 101 person, directly or indirectly, owns, controls, holds with the  
 102 power to vote, or holds proxies representing 10 percent or more  
 103 of the voting securities of any other person.

104 Section 2. Paragraph (g) of subsection (1), paragraph (a)  
 105 of subsection (3), and paragraph (b) of subsection (6) of  
 106 section 624.4085, Florida Statutes, are amended to read:

107 624.4085 Risk-based capital requirements for insurers.—

108 (1) As used in this section, the term:

109 (g) "Life and health insurer" means any insurer authorized  
 110 or eligible under the Florida Insurance Code to underwrite life  
 111 or health insurance. The term includes a property and casualty  
 112 insurer that writes accident and health insurance only; a health

113 maintenance organization that is authorized in this state and  
 114 one or more other states, jurisdictions, or countries; and a  
 115 prepaid health service organization that is authorized in this  
 116 state and one or more other states, jurisdictions, or countries.

117 (3) (a) A company action level event includes:

118 1. The filing of a risk-based capital report by an insurer  
 119 which indicates that:

120 a. The insurer's total adjusted capital is greater than or  
 121 equal to its regulatory action level risk-based capital but less  
 122 than its company action level risk-based capital; ~~or~~

123 b. If a life and health insurer that reports using the  
 124 life and health annual statement instructions, the insurer has  
 125 total adjusted capital that is greater than or equal to its  
 126 company action level risk-based capital, but is less than the  
 127 product of its authorized control level risk-based capital and  
 128 3.0 ~~2.5~~, and has a negative trend;

129 c. If a life and health or property and casualty insurer  
 130 that reports using the health annual statement instructions, the  
 131 insurer or organization has total adjusted capital that is  
 132 greater than or equal to its company action level risk-based  
 133 capital, but is less than the product of its authorized control  
 134 level risk-based capital and 3.0, and triggers the trend test  
 135 determined in accordance with the trend test calculation  
 136 included in the Risk-Based Capital Forecasting and Instructions,  
 137 Health, updated annually by the National Association of  
 138 Insurance Commissioners; or

139 d. If a property and casualty insurer that reports using  
 140 the property and casualty annual statement instructions, the

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141 insurer has total adjusted capital that is greater than or equal  
142 to its company action level risk-based capital, but is less than  
143 the product of its authorized control level risk-based capital  
144 and 3.0, and triggers the trend test determined in accordance  
145 with the trend test calculation included in the Risk-Based  
146 Capital Forecasting and Instructions, Property/Casualty, updated  
147 annually by the National Association of Insurance Commissioners;

148       2. The notification by the office to the insurer of an  
149 adjusted risk-based capital report that indicates an event in  
150 subparagraph 1., unless the insurer challenges the adjusted  
151 risk-based capital report under subsection (7); or

152       3. If, under subsection (7), an insurer challenges an  
153 adjusted risk-based capital report that indicates an event in  
154 subparagraph 1., the notification by the office to the insurer  
155 that the office has, after a hearing, rejected the insurer's  
156 challenge.

157       (6)

158       (b) If a mandatory control level event occurs:

159       1. With respect to a life and health insurer, the office  
160 shall, after due consideration of s. 624.408, take any action  
161 necessary to place the insurer under regulatory control,  
162 including any remedy available under chapter 631. A mandatory  
163 control level event is sufficient ground for the department to  
164 be appointed as receiver as provided in chapter 631. The office  
165 may forego taking action for up to 90 days after the mandatory  
166 control level event if the office finds there is a reasonable  
167 expectation that the ~~mandatory control level~~ event may be  
168 eliminated within the 90-day period.

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169           2. With respect to a property and casualty insurer, the  
170 office shall, after due consideration of s. 624.408, s. 641.225  
171 for a health maintenance association, or s. 636.045 for a  
172 prepaid limited health service organization, take any action  
173 necessary to place the insurer under regulatory control,  
174 including any remedy available under chapter 631, or, in the  
175 case of an insurer that is not writing new business, may allow  
176 the insurer to continue to operate under the supervision of the  
177 office. In either case, the mandatory control level event is  
178 sufficient ground for the department to be appointed as receiver  
179 as provided in chapter 631. The office may forego taking action  
180 for up to 90 days after the mandatory control level event if the  
181 office finds there is a reasonable expectation that the  
182 ~~mandatory control level~~ event may ~~will~~ be eliminated within the  
183 90-day period.

184           Section 3. Subsection (1) and paragraph (e) of subsection  
185 (8) of section 624.424, Florida Statutes, are amended to read:

186           624.424 Annual statement and other information.—

187           (1) (a) Each authorized insurer shall file with the office  
188 full and true statements of its financial condition,  
189 transactions, and affairs. An annual statement covering the  
190 preceding calendar year shall be filed on or before March 1, and  
191 quarterly statements covering the periods ending on March 31,  
192 June 30, and September 30 shall be filed within 45 days after  
193 each such date. The office may, for good cause, grant an  
194 extension of time for filing ~~of~~ an annual or quarterly  
195 statement. The statements must ~~shall~~ contain information  
196 generally included in insurers' financial statements prepared in

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197 accordance with generally accepted insurance accounting  
198 principles and practices and in a form generally used ~~utilized~~  
199 by insurers for financial statements, sworn to by at least two  
200 executive officers of the insurer or, if a reciprocal insurer,  
201 by ~~the~~ oath of the attorney in fact or its like officer if a  
202 corporation. To facilitate uniformity in financial statements  
203 and to facilitate office analysis, the commission may by rule  
204 adopt the form for financial statements approved by the National  
205 Association of Insurance Commissioners in 2002, and ~~may adopt~~  
206 subsequent amendments thereto if the methodology remains  
207 substantially consistent, and may by rule require each insurer  
208 to submit to the office, or such organization as the office may  
209 designate, all or part of the information contained in the  
210 financial statement in a computer-readable form compatible with  
211 the electronic data processing system specified by the office.

212 (b) Each insurer's annual statement must contain:

213 1. A statement of opinion on loss and loss adjustment  
214 expense reserves made by a member of the American Academy of  
215 Actuaries or by a qualified loss reserve specialist, pursuant to  
216 ~~under~~ criteria established by rule of the commission. In  
217 adopting the rule, the commission shall ~~must~~ consider any  
218 criteria established by the National Association of Insurance  
219 Commissioners. The office may require semiannual updates of the  
220 annual statement of opinion for ~~as to~~ a particular insurer if  
221 the office has reasonable cause to believe that such reserves  
222 are understated to the extent of materially misstating the  
223 financial position of the insurer. Workpapers in support of the  
224 statement of opinion must be provided to the office upon



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225 request. This paragraph does not apply to life insurance, health  
226 insurance, or title insurance.

227 2. An actuarial opinion summary written by the insurer's  
228 appointed actuary. The summary must be filed in accordance with  
229 the appropriate National Association of Insurance Commissioners  
230 property and casualty annual statement instructions. Proprietary  
231 business information contained in the summary is confidential  
232 and exempt under s. 624.4212, and the summary and related  
233 information is not subject to subpoena or discovery, or  
234 admissible in evidence in any private civil action. Neither the  
235 office nor any person who received documents, materials, or any  
236 other information while acting under the authority of the office  
237 or with whom such information is shared pursuant to s. 624.4212  
238 may testify in a private civil action concerning such  
239 confidential information. No waiver of any other applicable  
240 claim of confidentiality or privilege may occur as a result of a  
241 disclosure to the office under this section or any other section  
242 of the insurance code. This paragraph does not apply to life and  
243 health insurers subject to s. 625.121(3).

244 (c) The commission may by rule require reports or filings  
245 required under the insurance code to be submitted by electronic  
246 means in a computer-readable form compatible with the electronic  
247 data processing equipment specified by the commission.

248 (8)

249 (e) The commission shall adopt rules to administer  
250 ~~implement~~ this subsection, which rules must be in substantial  
251 conformity with the 2006 Annual Financial Reporting Model  
252 Regulation ~~1998 Model Rule requiring annual audited financial~~

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253 ~~reports~~ adopted by the National Association of Insurance  
254 Commissioners or subsequent amendments, except where  
255 inconsistent with the requirements of this subsection. Any  
256 exception to, waiver of, or interpretation of accounting  
257 requirements of the commission must be in writing and signed by  
258 an authorized representative of the office. An ~~No~~ insurer may  
259 not raise ~~as a defense in any action,~~ any exception to, waiver  
260 of, or interpretation of accounting requirements as a defense in  
261 an action, unless previously issued in writing by an authorized  
262 representative of the office.

263 Section 4. Paragraph (a) of subsection (3) of section  
264 625.121, Florida Statutes, is amended to read:

265 625.121 Standard Valuation Law; life insurance.—

266 (3) ACTUARIAL OPINION OF RESERVES.—

267 (a)~~1.~~ Each life insurance company doing business in this  
268 state shall annually submit the opinion of a qualified actuary  
269 as to whether the reserves and related actuarial items held in  
270 support of the policies and contracts specified by the  
271 commission by rule are computed appropriately, are based on  
272 assumptions that ~~which~~ satisfy contractual provisions, are  
273 consistent with prior reported amounts, and comply with  
274 applicable laws of this state. The commission by rule shall  
275 define the specifics of this opinion and add any other items  
276 determined to be necessary to its scope.

277 ~~1.2.~~ The opinion shall be submitted with the annual  
278 statement reflecting the valuation of such reserve liabilities  
279 ~~for each year ending on or after December 31, 1992.~~

280 ~~2.3.~~ The opinion applies ~~shall apply~~ to all business in

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281 force, including individual and group health insurance plans, in  
282 the form and substance acceptable to the office as specified by  
283 rule of the commission.

284 ~~3.4.~~ The commission may adopt rules providing the  
285 standards of the actuarial opinion consistent with standards  
286 adopted by the Actuarial Standards Board on December 31, 2002,  
287 and subsequent revisions thereto, if ~~provided that~~ the standards  
288 remain substantially consistent.

289 ~~4.5.~~ ~~In the case of an opinion required to be submitted by~~  
290 ~~a foreign or alien company,~~ The office may accept an ~~the~~ opinion  
291 filed by a foreign or alien ~~that~~ company with the insurance  
292 supervisory official of another state if the office determines  
293 that the opinion reasonably meets the requirements applicable to  
294 a company domiciled in this state.

295 ~~5.6.~~ As used in ~~For the purposes of~~ this subsection, the  
296 term "qualified actuary" means a member in good standing of the  
297 American Academy of Actuaries who also meets the requirements  
298 specified by rule of the commission.

299 ~~6.7.~~ Disciplinary action by the office against the company  
300 or the qualified actuary shall be in accordance with the  
301 insurance code and related rules adopted by the commission.

302 ~~7.8.~~ A memorandum in the form and substance specified by  
303 rule shall be prepared to support each actuarial opinion.

304 ~~8.9.~~ If the insurance company fails to provide a  
305 supporting memorandum at the request of the office within a  
306 period specified by rule of the commission, or if the office  
307 determines that the supporting memorandum provided by the  
308 insurance company fails to meet the standards prescribed by rule

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309 of the commission, the office may engage a qualified actuary at  
310 the expense of the company to review the opinion and the basis  
311 for the opinion and prepare such supporting memorandum as ~~is~~  
312 required by the office.

313 9.10. Except as otherwise provided in this paragraph, any  
314 memorandum or other material in support of the opinion is  
315 confidential and exempt from ~~the provisions of s. 119.07(1) and~~  
316 is not subject to subpoena or discovery, or admissible in  
317 evidence in any private civil action; however, the memorandum or  
318 other material may be released by the office with the written  
319 consent of the company, or to the American Academy of Actuaries  
320 upon request stating that the memorandum or other material is  
321 required for the purpose of professional disciplinary  
322 proceedings and setting forth procedures satisfactory to the  
323 office for preserving the confidentiality of the memorandum or  
324 other material. If any portion of the confidential memorandum is  
325 cited by the company in its marketing, ~~or~~ is cited before any  
326 governmental agency other than a state insurance department, or  
327 is released by the company to the news media, no portion of the  
328 memorandum is confidential. Neither the office nor any person  
329 who received documents, materials, or any other information  
330 while acting under the authority of the office or with whom such  
331 information is shared pursuant to this paragraph may testify in  
332 any private civil action concerning the confidential documents,  
333 materials, or information.

334 Section 5. Subsections (1), (3), (5), (12), and (13) of  
335 section 628.461, Florida Statutes, are amended to read:

336 628.461 Acquisition of controlling stock.-

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337 (1) A person may not, individually or in conjunction with  
338 any affiliated person of such person, acquire directly or  
339 indirectly, conclude a tender offer or exchange offer for, enter  
340 into any agreement to exchange securities for, or otherwise  
341 finally acquire 5 percent or more of the outstanding voting  
342 securities of a domestic stock insurer or of a controlling  
343 company, unless:

344 (a) The person or affiliated person has filed with the  
345 office and sent to the insurer and controlling company a letter  
346 of notification regarding the transaction or proposed  
347 transaction within ~~no later than~~ 5 days after any form of tender  
348 offer or exchange offer is proposed, or within ~~no later than~~ 5  
349 days after the acquisition of the securities if no tender offer  
350 or exchange offer is involved. The notification must be provided  
351 on forms prescribed by the commission containing information  
352 determined necessary to understand the transaction and identify  
353 all purchasers and owners involved;

354 (b) The person or affiliated person has filed with the  
355 office the ~~a~~ statement ~~as~~ specified in subsection (3). The  
356 statement must be completed and filed within 30 days after:

- 357 1. Any definitive acquisition agreement is entered;  
358 2. Any form of tender offer or exchange offer is proposed;

359 or

360 3. The acquisition of the securities, if no definitive  
361 acquisition agreement, tender offer, or exchange offer is  
362 involved; and

363 (c) The office has approved the tender or exchange offer,  
364 or acquisition if no tender offer or exchange offer is involved,

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365 | and approval is in effect.

366 |

367 | ~~In lieu of a filing as required under this subsection, a party~~  
368 | ~~acquiring less than 10 percent of the outstanding voting~~  
369 | ~~securities of an insurer may file a disclaimer of affiliation~~  
370 | ~~and control. The disclaimer shall fully disclose all material~~  
371 | ~~relationships and basis for affiliation between the person and~~  
372 | ~~the insurer as well as the basis for disclaiming the affiliation~~  
373 | ~~and control. After a disclaimer has been filed, the insurer~~  
374 | ~~shall be relieved of any duty to register or report under this~~  
375 | ~~section which may arise out of the insurer's relationship with~~  
376 | ~~the person unless and until the office disallows the disclaimer.~~  
377 | ~~The office shall disallow a disclaimer only after furnishing all~~  
378 | ~~parties in interest with notice and opportunity to be heard and~~  
379 | ~~after making specific findings of fact to support the~~  
380 | ~~disallowance. A filing as required under this subsection must be~~  
381 | ~~made for as to any acquisition that equals or exceeds 10 percent~~  
382 | ~~of the outstanding voting securities.~~

383 |       (3) The statement to be filed with the office under  
384 | subsection (1) and furnished to the insurer and controlling  
385 | company must ~~shall~~ contain all the following information and any  
386 | additional information that ~~as~~ the office deems necessary to  
387 | determine the character, experience, ability, and other  
388 | qualifications of the person or affiliated person of such person  
389 | for the protection of the policyholders and shareholders of the  
390 | insurer and the public:

391 |       (a) The identity of, and the background information  
392 | specified in subsection (4) on, each natural person by whom, or

393 on whose behalf, the acquisition is to be made; and, if the  
 394 acquisition is to be made by, or on behalf of, a corporation,  
 395 association, or trust, as to the corporation, association, or  
 396 trust and as to any person who controls, either directly or  
 397 indirectly, the corporation, association, or trust, the identity  
 398 of, and the background information specified in subsection (4)  
 399 on, each director, officer, trustee, or other natural person  
 400 performing duties similar to those of a director, officer, or  
 401 trustee for the corporation, association, or trust.~~†~~

402 (b) The source and amount of the funds or other  
 403 consideration used, or to be used, in making the acquisition.~~†~~

404 (c) Any plans or proposals that ~~which~~ such persons may  
 405 have made to liquidate such insurer, to sell any of its assets  
 406 or merge or consolidate it with any person, or to make any other  
 407 major change in its business or corporate structure or  
 408 management; and any plans or proposals that ~~which~~ such persons  
 409 may have made to liquidate any controlling company of such  
 410 insurer, to sell any of its assets or merge or consolidate it  
 411 with any person, or to make any other major change in its  
 412 business or corporate structure or management.~~†~~

413 (d) The number of shares or other securities which the  
 414 person or affiliated person of such person proposes to acquire,  
 415 the terms of the proposed acquisition, and the manner in which  
 416 the securities are to be acquired.~~†~~ ~~and~~

417 (e) Information as to any contract, arrangement, or  
 418 understanding with any party with respect to any of the  
 419 securities of the insurer or controlling company, including, but  
 420 not limited to, information relating to the transfer of any of

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421 the securities, option arrangements, puts or calls, or the  
422 giving or withholding of proxies, which information names the  
423 party with whom the contract, arrangement, or understanding has  
424 been entered into and gives the details thereof.

425 (f) An agreement by the person required to file the  
426 statement that the person will provide the annual report  
427 specified in s. 628.801(2) if control exists.

428 (g) An acknowledgement by the person required to file the  
429 statement that the person and all subsidiaries within its  
430 control in the insurance holding company system will provide, as  
431 necessary, information to the office upon request to evaluate  
432 enterprise risk to the insurer.

433 (5) ~~(a)~~ The acquisition of voting securities shall be  
434 deemed approved unless the office disapproves the proposed  
435 acquisition within 90 days after the statement required by  
436 subsection (1) has been filed. The office may on its own  
437 initiate, or if requested to do so in writing by a substantially  
438 affected party shall conduct, a proceeding to consider the  
439 appropriateness of the proposed filing. The 90-day time period  
440 shall be tolled during the pendency of the proceeding. Any  
441 written request for a proceeding must be filed with the office  
442 within 10 days after ~~of~~ the date notice of the filing is given.

443 (a) During the pendency of the proceeding or review period  
444 by the office, any person or affiliated person complying with  
445 the filing requirements of this section may proceed and take all  
446 steps necessary to conclude the acquisition if ~~so long as~~ the  
447 acquisition becoming final is conditioned upon obtaining office  
448 approval. ~~The office shall,~~ However, if at any time the office



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449 ~~that it~~ finds that an immediate danger to the public health,  
450 safety, and welfare of the domestic policyholders exists, it  
451 shall immediately order, pursuant to s. 120.569(2)(n), the  
452 proposed acquisition temporarily disapproved and any further  
453 steps to conclude the acquisition ceased.

454 (b) During the pendency of the office's review of any  
455 acquisition subject to ~~the provisions of~~ this section, the  
456 acquiring person may ~~shall~~ not make any material change in the  
457 operation of the insurer or controlling company unless the  
458 office has specifically approved the change nor may ~~shall~~ the  
459 acquiring person make any material change in the management of  
460 the insurer unless advance written notice of the change in  
461 management is furnished to the office. A material change in the  
462 operation of the insurer is a transaction that ~~which~~ disposes of  
463 or obligates 10 ~~5~~ percent or more of the capital and surplus of  
464 the insurer. A material change in the management of the insurer  
465 is any change in management involving officers or directors of  
466 the insurer or any person of the insurer or controlling company  
467 having authority to dispose of or obligate 10 ~~5~~ percent or more  
468 of the insurer's capital or surplus. The office shall approve a  
469 material change in operation if it finds the applicable  
470 provisions of subsection (7) have been met. The office may  
471 disapprove a material change in management if it finds that the  
472 applicable provisions of subsection (7) have not been met and in  
473 such case the insurer shall promptly change management as  
474 acceptable to the office.

475 (c) If a request for a proceeding is filed, the proceeding  
476 shall be conducted within 60 days after the date the written

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477 request for a proceeding is received by the office. A  
478 recommended order shall be issued within 20 days after ~~of~~ the  
479 date of the close of the proceedings. A final order shall be  
480 issued within 20 days after ~~of~~ the date of the recommended order  
481 or, if exceptions to the recommended order are filed, within 20  
482 days after ~~of~~ the date the exceptions are filed.

483 (12) (a) A presumption of control may be rebutted by filing  
484 a disclaimer of control. Any person may file a disclaimer of  
485 control with the office. The disclaimer must fully disclose all  
486 material relationships and bases for affiliation between the  
487 person and the insurer as well as the basis for disclaiming the  
488 affiliation. After a disclaimer has been filed, the insurer is  
489 relieved of any duty to register or report under this section  
490 which may arise out of the insurer's relationship with the  
491 person unless the office disallows the disclaimer.

492 (b) Any controlling person of a domestic insurer that  
493 seeks to divest its controlling interest in the domestic insurer  
494 in any manner, shall file with the office, with a copy to the  
495 insurer, confidential notice, not subject to public inspection  
496 as provided under s. 624.4212, of its proposed divestiture at  
497 least 30 days before the cessation of control. The office shall  
498 determine those instances in which the party seeking to divest  
499 or to acquire a controlling interest in an insurer must file for  
500 and obtain approval of the transaction. The information remains  
501 confidential until the conclusion of the transaction unless the  
502 office, in its discretion, determines that confidential  
503 treatment interferes with enforcement of this section. If the  
504 statement referred to in subsection (1) is otherwise filed, this

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505 paragraph does not apply. ~~For the purpose of this section, the~~  
506 ~~term "affiliated person" of another person means:~~

507 ~~1. The spouse of such other person;~~

508 ~~2. The parents of such other person and their lineal~~  
509 ~~descendants and the parents of such other person's spouse and~~  
510 ~~their lineal descendants;~~

511 ~~3. Any person who directly or indirectly owns or controls,~~  
512 ~~or holds with power to vote, 5 percent or more of the~~  
513 ~~outstanding voting securities of such other person;~~

514 ~~4. Any person 5 percent or more of the outstanding voting~~  
515 ~~securities of which are directly or indirectly owned or~~  
516 ~~controlled, or held with power to vote, by such other person;~~

517 ~~5. Any person or group of persons who directly or~~  
518 ~~indirectly control, are controlled by, or are under common~~  
519 ~~control with such other person;~~

520 ~~6. Any officer, director, partner, copartner, or employee~~  
521 ~~of such other person;~~

522 ~~7. If such other person is an investment company, any~~  
523 ~~investment adviser of such company or any member of an advisory~~  
524 ~~board of such company;~~

525 ~~8. If such other person is an unincorporated investment~~  
526 ~~company not having a board of directors, the depositor of such~~  
527 ~~company; or~~

528 ~~9. Any person who has entered into an agreement, written~~  
529 ~~or unwritten, to act in concert with such other person in~~  
530 ~~acquiring or limiting the disposition of securities of a~~  
531 ~~domestic stock insurer or controlling company.~~

532 ~~(b) For the purposes of this section, the term~~

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533 ~~"Controlling company" means any corporation, trust, or~~  
534 ~~association owning, directly or indirectly, 25 percent or more~~  
535 ~~of the voting securities of one or more domestic stock insurance~~  
536 ~~companies.~~

537 (13) The commission may adopt, amend, or repeal rules that  
538 are necessary to administer ~~implement the provisions of this~~  
539 ~~section, pursuant to chapter 120.~~

540 Section 6. Section 628.801, Florida Statutes, is amended  
541 to read:

542 628.801 Insurance holding companies; registration;  
543 regulation.-

544 (1) An ~~Every~~ insurer that is authorized to do business in  
545 this state and that is a member of an insurance holding company  
546 shall, on or before April 1 of each year, register with the  
547 office and file a registration statement and be subject to  
548 regulation with respect to its relationship to the holding  
549 company as provided by law or rule ~~or statute~~. The commission  
550 shall adopt rules establishing the information and statement  
551 form required for registration and the manner in which  
552 registered insurers and their affiliates are regulated. The  
553 rules apply to domestic insurers, foreign insurers, and  
554 commercially domiciled insurers, except for a foreign insurer  
555 domiciled in states that were ~~are~~ accredited by the National  
556 Association of Insurance Commissioners by December 31, 1995.  
557 Except to the extent of any conflict with this code, the rules  
558 must include all requirements and standards of ss. 4 and 5 of  
559 the Insurance Holding Company System Regulatory Act and the  
560 Insurance Holding Company System Model Regulation of the

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561 National Association of Insurance Commissioners, as adopted on  
562 December 2010, and may adopt subsequent amendments thereto if  
563 the methodology remains substantially consistent ~~the Regulatory~~  
564 ~~Act and the Model Regulation existed on November 30, 2001, and~~  
565 may include a prohibition on oral contracts between affiliated  
566 entities. Material transactions between an insurer and its  
567 affiliates shall be filed with the office as provided by rule.  
568 Upon request, the office may waive the filing requirements ~~under~~  
569 ~~this section~~ for a domestic insurer that is the subsidiary of an  
570 insurer that is in full compliance with the insurance holding  
571 company registration laws of its state of domicile, which state  
572 is accredited by the National Association of Insurance  
573 Commissioners.

574 (2) The ultimate controlling person of every insurer  
575 subject to registration must also file an annual enterprise risk  
576 report, on or before April 1. As used in this subsection, the  
577 term "ultimate controlling person" means a person that is not  
578 controlled by any other person. The report, to the best of the  
579 ultimate controlling person's knowledge and belief, must  
580 identify the material risks within the insurance holding company  
581 system which could pose enterprise risk to the insurer. The  
582 report shall be filed with the lead state office of the  
583 insurance holding company system as determined by the procedures  
584 within the Financial Analysis Handbook adopted by the National  
585 Association of Insurance Commissioners and is confidential and  
586 exempt from public disclosure as provided in s. 624.4212.

587 (a) No waiver of any applicable privilege or claim of  
588 confidentiality in the annual enterprise risk report and related

589 documents may occur as a result of any disclosure to the office  
590 under this section or any other section of the insurance code as  
591 authorized under s. 624.4212. Neither the office nor any person  
592 who received the report and related documents while acting under  
593 the authority of the office or with whom such information is  
594 shared pursuant to s. 624.4212 is permitted or required to  
595 testify in any private civil action concerning any confidential  
596 documents, materials, or information subject to s. 624.4212. An  
597 insurer may satisfy this requirement by providing the office  
598 with the most recently filed parent corporation reports that  
599 have been filed with the Securities and Exchange Commission  
600 which provide the appropriate enterprise risk information.

601 (b) The term "enterprise risk" means any activity,  
602 circumstance, event, or series of events involving one or more  
603 affiliates of an insurer which, if not remedied promptly, is  
604 likely to have a materially adverse effect upon the financial  
605 condition or liquidity of the insurer or its insurance holding  
606 company system as a whole, including anything that would cause  
607 the insurer's risk-based capital to fall into company action  
608 level as set forth in s. 624.4085 or would cause the insurer to  
609 be in hazardous financial condition.

610 (3) Pursuant to chapter 624 relating to the examination of  
611 insurers, the office may examine any insurer registered under  
612 this section and its affiliates to ascertain the financial  
613 condition of the insurer, including the enterprise risk to the  
614 insurer by the ultimate controlling party, or by any entity or  
615 combination of entities within the insurance holding company  
616 system, or by the insurance holding company system on a

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617 consolidated basis.

618 (4) The failure to file a registration statement, or a  
619 summary of the registration statement, or the enterprise risk  
620 filing report required by this section within the time specified  
621 for filing is a violation of this section.

622 (5) An insurer may apply to the office for a waiver from  
623 the requirements of this section:

624 (a) If the insurer is a domestic insurer that is the  
625 subsidiary of an insurer that is in full compliance with the  
626 insurance holding company registration laws of its state of  
627 domicile, which state is accredited by the National Association  
628 of Insurance Commissioners;

629 (b) If the insurer's annual direct written and assumed  
630 premium, excluding premiums reinsured with the Federal Crop  
631 Insurance Corporation and Federal Flood Program, is less than  
632 \$300,000,000; or

633 (c) Based upon unique circumstances. The office may  
634 consider various factors including, but not limited to, the type  
635 of business entity, volume of business written, availability of  
636 qualified board members, or the ownership or organizational  
637 structure of the entity.

638 Section 7. Present subsection (4) of section 628.803,  
639 Florida Statutes, is renumbered as subsection (5), and a new  
640 subsection (4) is added to that section, to read:

641 628.803 Sanctions.—

642 (4) If it appears to the office that any person has  
643 committed a violation of s. 628.461 which prevents the full  
644 understanding of the enterprise risk to the insurer by

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645 affiliates or by the insurance holding company system, the  
646 violation may serve as an independent basis for disapproving  
647 dividends or distributions and for placing the insurer under an  
648 order of supervision in accordance with part VI of chapter 624.

649 Section 8. Section 628.805, Florida Statutes, is created  
650 to read:

651 628.805 Supervisory colleges.—In order to assess the  
652 business strategy, financial position, legal and regulatory  
653 position, risk exposure, risk management and governance  
654 processes, and as part of the examination of individual insurers  
655 in accordance with ss. 628.801 and 624.316, the office may  
656 participate in a supervisory college with other regulators  
657 charged with supervision of the insurer or its affiliates,  
658 including other state, federal, and international regulatory  
659 agencies. In accordance with s. 624.4212 regarding confidential  
660 information sharing, the office may enter into agreements that  
661 provide the basis for cooperation between the office and the  
662 other regulatory agencies, and the activities of the supervisory  
663 college. This section does not delegate to the supervisory  
664 college the office's authority to regulate or supervise the  
665 insurer or its affiliates under its jurisdiction.

666 (1) With respect to participation in a supervisory  
667 college, the office may:

668 (a) Initiate the establishment of a supervisory college;

669 (b) Clarify the membership and participation of other  
670 supervisors in the supervisory college;

671 (c) Clarify the functions of the supervisory college and  
672 the role of other regulators, including the establishment of a



673 | group-wide supervisor;

674 |       (d) Coordinate the ongoing activities of the supervisory  
 675 | college, including planning meetings, supervisory activities,  
 676 | and processes for information sharing; and

677 |       (e) Establish a crisis management plan.

678 |       (2) With respect to an insurer registered under s.  
 679 | 628.801, and in accordance with this section, the office may  
 680 | participate in a supervisory college for any domestic insurer  
 681 | that is part of an insurance holding company system in order to  
 682 | determine the insurer's compliance with this chapter.

683 |       (3) Each registered insurer subject to this section is  
 684 | liable for and shall pay reasonable expenses for the office's  
 685 | participation in a supervisory college, including reasonable  
 686 | travel expenses. A supervisory college may be convened as a  
 687 | temporary or permanent forum for communication and cooperation  
 688 | between the regulators charged with the supervision of the  
 689 | insurer or its affiliates, and the office may impose a regular  
 690 | assessment on the insurer for the payment of these expenses.

691 |       Section 9. Subsection (3) is added to section 636.045,  
 692 | Florida Statutes, to read:

693 |       636.045 Minimum surplus requirements.—

694 |       (3) A prepaid limited health service organization that is  
 695 | authorized in this state and one or more other states,  
 696 | jurisdictions, or countries is subject to ss. 624.4085 and  
 697 | 624.40851.

698 |       Section 10. Present subsections (3), (4), (5), and (6) of  
 699 | section 641.225, Florida Statutes, are renumbered as subsections  
 700 | (4), (5), (6), and (7), respectively, and new subsections (3)

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701 and (8) are added to that section, to read:

702 641.225 Surplus requirements.—

703 (3) A health maintenance organization that is a member of  
704 a holding company system is subject to s. 628.461 but not s.  
705 628.4615.

706 (8) A health maintenance organization that is authorized  
707 in this state and one or more other states, jurisdictions, or  
708 countries is subject to ss. 624.4085 and 624.40851.

709 Section 11. This act shall take effect October 1, 2013, if  
710 HB 823 or similar legislation is adopted in the same legislative  
711 session or an extension thereof and becomes a law.