

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 Florida Insurance Code; amending s. 624.4085, F.S.;
5 revising a definition; providing additional
6 calculations for determining whether an insurer has a
7 company action level event; revising provisions
8 relating to mandatory control level events; amending
9 s. 624.424, F.S.; requiring an insurer's annual
10 statement to include an actuarial opinion summary;
11 providing criteria for such summary; providing an
12 exception for life and health insurers; updating
13 provisions; amending s. 625.121, F.S.; protecting
14 material supporting an insurer's annual actuarial
15 opinion from subpoena, discovery, or admissibility in
16 a civil action; amending s. 628.461, F.S.; revising
17 the amount of outstanding voting securities of a
18 domestic stock insurer or a controlling company that a
19 person is prohibited from acquiring unless certain
20 requirements have been met; deleting a provision
21 authorizing an insurer to file a disclaimer of
22 affiliation and control in lieu of a letter notifying
23 the Office of Insurance Regulation of the Financial
24 Services Commission of the acquisition of the voting
25 securities of a domestic stock company under certain
26 circumstances; requiring the statement notifying the
27 office to include additional information; conforming a
28 provision to changes made by the act; providing that

29 | control is presumed to exist under certain conditions;
30 | specifying how control may be rebutted and how a
31 | controlling interest may be divested; deleting
32 | definitions; amending s. 628.801, F.S.; requiring an
33 | insurer to file annually by a specified date a
34 | registration statement; revising the requirements and
35 | standards for the rules establishing the information
36 | and statement form for the registration; requiring an
37 | insurer to file an annual enterprise risk report;
38 | authorizing the office to conduct examinations to
39 | determine the financial condition of registrants;
40 | providing that failure to file a registration or
41 | report is a violation of the section; providing
42 | additional grounds, requirements, and conditions with
43 | respect to a waiver from the registration
44 | requirements; amending s. 628.803, F.S.; providing for
45 | sanctions for persons who violate s. 628.461, F.S.,
46 | relating to the acquisition of controlling stock;
47 | creating s. 628.805, F.S.; authorizing the office to
48 | participate in supervisory colleges; authorizing the
49 | office to assess fees on insurers for participation;
50 | amending ss. 636.045 and 641.225, F.S.; applying
51 | certain statutes related to solvency to prepaid
52 | limited health service organizations and health
53 | maintenance organizations; amending s. 641.255, F.S.;
54 | providing for applicability of specified provisions to
55 | a health maintenance organization that is a member of
56 | a holding company; providing a contingent effective

57 | date.

58 |
59 | Be It Enacted by the Legislature of the State of Florida:

60 |
61 | Section 1. Section 624.085, Florida Statutes, is created
62 | to read:

63 | 624.085 Other definitions.—As used in the Florida
64 | Insurance Code, the term:

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

68 | (a) Equity ownership of voting securities;

69 | (b) Common managerial control; or

70 | (c) Collusive participation by the management of the
71 | insurer and affiliate in the management of the insurer or the
72 | affiliate.

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

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

75 | (b) The parents of such other person and their lineal
76 | descendants, or the parents of such other person's spouse and
77 | their lineal descendants;

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

81 | (d) Any person 10 percent or more of whose outstanding
82 | voting securities are directly or indirectly owned or
83 | controlled, or held with power to vote, by such other person;

84 | (e) Any person or group of persons who directly or

85 indirectly control, are controlled by, or are under common
 86 control with such other person;

87 (f) Any officer, director, partner, copartner, or employee
 88 of such other person;

89 (g) If such other person is an investment company, any
 90 investment adviser of such company, or any member of an advisory
 91 board of such company;

92 (h) If such other person is an unincorporated investment
 93 company not having a board of directors, the depositor of such
 94 company; or

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

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

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

112 624.4085 Risk-based capital requirements for insurers.—

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

114 (g) "Life and health insurer" means any insurer authorized
 115 or eligible under the Florida Insurance Code to underwrite life
 116 or health insurance. The term includes a property and casualty
 117 insurer that writes accident and health insurance only; a health
 118 maintenance organization that is authorized in this state and
 119 one or more other states, jurisdictions, or countries; and a
 120 prepaid health service organization that is authorized in this
 121 state and one or more other states, jurisdictions, or countries.

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

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

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

128 b. If a life and health insurer that reports using the
 129 life and health annual statement instructions, the insurer has
 130 total adjusted capital that is greater than or equal to its
 131 company action level risk-based capital, but is less than the
 132 product of its authorized control level risk-based capital and
 133 3.0 ~~2.5~~, and has a negative trend;

134 c. If a life and health or property and casualty insurer
 135 that reports using the health annual statement instructions, the
 136 insurer or organization has total adjusted capital that is
 137 greater than or equal to its company action level risk-based
 138 capital, but is less than the product of its authorized control
 139 level risk-based capital and 3.0, and triggers the trend test
 140 determined in accordance with the trend test calculation

141 included in the Risk-Based Capital Forecasting and Instructions,
142 Health, updated annually by the National Association of
143 Insurance Commissioners; or

144 d. If a property and casualty insurer that reports using
145 the property and casualty annual statement instructions, the
146 insurer has total adjusted capital that is greater than or equal
147 to its company action level risk-based capital, but is less than
148 the product of its authorized control level risk-based capital
149 and 3.0, and triggers the trend test determined in accordance
150 with the trend test calculation included in the Risk-Based
151 Capital Forecasting and Instructions, Property/Casualty, updated
152 annually by the National Association of Insurance Commissioners;

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

157 3. If, under subsection (7), an insurer challenges an
158 adjusted risk-based capital report that indicates an event in
159 subparagraph 1., the notification by the office to the insurer
160 that the office has, after a hearing, rejected the insurer's
161 challenge.

162 (6)

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

164 1. With respect to a life and health insurer, the office
165 shall, after due consideration of s. 624.408, take any action
166 necessary to place the insurer under regulatory control,
167 including any remedy available under chapter 631. A mandatory
168 control level event is sufficient ground for the department to

169 be appointed as receiver as provided in chapter 631. The office
170 may forego taking action for up to 90 days after the mandatory
171 control level event if the office finds there is a reasonable
172 expectation that the ~~mandatory control level~~ event may be
173 eliminated within the 90-day period.

174 2. With respect to a property and casualty insurer, the
175 office shall, after due consideration of s. 624.408, s. 641.225
176 for a health maintenance organization, or s. 636.045 for a
177 prepaid limited health service organization, take any action
178 necessary to place the insurer under regulatory control,
179 including any remedy available under chapter 631, or, in the
180 case of an insurer that is not writing new business, may allow
181 the insurer to continue to operate under the supervision of the
182 office. In either case, the mandatory control level event is
183 sufficient ground for the department to be appointed as receiver
184 as provided in chapter 631. The office may forego taking action
185 for up to 90 days after the mandatory control level event if the
186 office finds there is a reasonable expectation that the
187 ~~mandatory control level~~ event may ~~will~~ be eliminated within the
188 90-day period.

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

191 624.424 Annual statement and other information.—

192 (1)(a) Each authorized insurer shall file with the office
193 full and true statements of its financial condition,
194 transactions, and affairs. An annual statement covering the
195 preceding calendar year shall be filed on or before March 1, and
196 quarterly statements covering the periods ending on March 31,

CS/HB 821

2013

197 June 30, and September 30 shall be filed within 45 days after
198 each such date. The office may, for good cause, grant an
199 extension of time for filing ~~of~~ an annual or quarterly
200 statement. The statements must ~~shall~~ contain information
201 generally included in insurers' financial statements prepared in
202 accordance with generally accepted insurance accounting
203 principles and practices and in a form generally used ~~utilized~~
204 by insurers for financial statements, sworn to by at least two
205 executive officers of the insurer or, if a reciprocal insurer,
206 by ~~the~~ oath of the attorney in fact or its like officer if a
207 corporation. To facilitate uniformity in financial statements
208 and to facilitate office analysis, the commission may by rule
209 adopt the form for financial statements approved by the National
210 Association of Insurance Commissioners in 2002, and ~~may adopt~~
211 subsequent amendments thereto if the methodology remains
212 substantially consistent, and may by rule require each insurer
213 to submit to the office, or such organization as the office may
214 designate, all or part of the information contained in the
215 financial statement in a computer-readable form compatible with
216 the electronic data processing system specified by the office.

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

218 1. A statement of opinion on loss and loss adjustment
219 expense reserves made by a member of the American Academy of
220 Actuaries or by a qualified loss reserve specialist, pursuant to
221 ~~under~~ criteria established by rule of the commission. In
222 adopting the rule, the commission shall ~~must~~ consider any
223 criteria established by the National Association of Insurance
224 Commissioners. The office may require semiannual updates of the

225 | annual statement of opinion for ~~as to~~ a particular insurer if
226 | the office has reasonable cause to believe that such reserves
227 | are understated to the extent of materially misstating the
228 | financial position of the insurer. Workpapers in support of the
229 | statement of opinion must be provided to the office upon
230 | request. This paragraph does not apply to life insurance, health
231 | insurance, or title insurance.

232 | 2. An actuarial opinion summary written by the insurer's
233 | appointed actuary. The summary must be filed in accordance with
234 | the appropriate National Association of Insurance Commissioners
235 | property and casualty annual statement instructions. Proprietary
236 | business information contained in the summary is confidential
237 | and exempt under s. 624.4212, and the summary and related
238 | information are not subject to subpoena or discovery or
239 | admissible in evidence in any private civil action. Neither the
240 | office nor any person who received documents, materials, or any
241 | other information while acting under the authority of the office
242 | or with whom such information is shared pursuant to s. 624.4212
243 | may testify in a private civil action concerning such
244 | confidential information. A waiver of any other applicable claim
245 | of confidentiality or privilege may not occur as a result of a
246 | disclosure to the office under this section or any other section
247 | of the insurance code. This paragraph does not apply to life and
248 | health insurers subject to s. 625.121(3).

249 | (c) The commission may by rule require reports or filings
250 | required under the insurance code to be submitted by electronic
251 | means in a computer-readable form compatible with the electronic
252 | data processing equipment specified by the commission.

253 (8)
 254 (e) The commission shall adopt rules to administer
 255 ~~implement~~ this subsection, which rules must be in substantial
 256 conformity with the 2006 Annual Financial Reporting Model
 257 Regulation ~~1998 Model Rule~~ requiring annual audited financial
 258 ~~reports~~ adopted by the National Association of Insurance
 259 Commissioners or subsequent amendments, except where
 260 inconsistent with the requirements of this subsection. Any
 261 exception to, waiver of, or interpretation of accounting
 262 requirements of the commission must be in writing and signed by
 263 an authorized representative of the office. An ~~No~~ insurer may
 264 not ~~raise as a defense in any action,~~ any exception to, waiver
 265 of, or interpretation of accounting requirements as a defense in
 266 an action, unless previously issued in writing by an authorized
 267 representative of the office.

268 Section 4. Paragraphs (a) and (b) of subsection (3) of
 269 section 625.121, Florida Statutes, are amended to read:

270 625.121 Standard Valuation Law; life insurance.—

271 (3) ACTUARIAL OPINION OF RESERVES.—

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

281 determined to be necessary to its scope.

282 ~~1.2.~~ The opinion shall be submitted with the annual
283 statement reflecting the valuation of such reserve liabilities
284 ~~for each year ending on or after December 31, 1992.~~

285 ~~2.3.~~ The opinion applies ~~shall apply~~ to all business in
286 force, including individual and group health insurance plans, in
287 the form and substance acceptable to the office as specified by
288 rule of the commission.

289 ~~3.4.~~ The commission may adopt rules providing the
290 standards of the actuarial opinion consistent with standards
291 adopted by the Actuarial Standards Board on December 31, 2002,
292 and subsequent revisions thereto, if ~~provided that~~ the standards
293 remain substantially consistent.

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

300 ~~5.6.~~ As used in ~~For the purposes of~~ this subsection, the
301 term "qualified actuary" means a member in good standing of the
302 American Academy of Actuaries who also meets the requirements
303 specified by rule of the commission.

304 ~~6.7.~~ Disciplinary action by the office against the company
305 or the qualified actuary shall be in accordance with the
306 insurance code and related rules adopted by the commission.

307 ~~7.8.~~ A memorandum in the form and substance specified by
308 rule shall be prepared to support each actuarial opinion.

309 ~~8.9.~~ If the insurance company fails to provide a
310 supporting memorandum at the request of the office within a
311 period specified by rule of the commission, or if the office
312 determines that the supporting memorandum provided by the
313 insurance company fails to meet the standards prescribed by rule
314 of the commission, the office may engage a qualified actuary at
315 the expense of the company to review the opinion and the basis
316 for the opinion and prepare such supporting memorandum as ~~is~~
317 required by the office.

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

337 | any private civil action concerning the confidential documents,
 338 | materials, or information.

339 | (b) In addition to the opinion required by paragraph (a)
 340 | ~~subparagraph (a)1.~~, the office may, pursuant to commission rule,
 341 | require an opinion of the same qualified actuary as to whether
 342 | the reserves and related actuarial items held in support of the
 343 | policies and contracts specified by the commission by rule, when
 344 | considered in light of the assets held by the company with
 345 | respect to the reserves and related actuarial items, including,
 346 | but not limited to, the investment earnings on the assets and
 347 | considerations anticipated to be received and retained under the
 348 | policies and contracts, make adequate provision for the
 349 | company's obligations under the policies and contracts,
 350 | including, but not limited to, the benefits under, and expenses
 351 | associated with, the policies and contracts.

352 | Section 5. Subsections (1), (3), (10), (12), and (13) of
 353 | section 628.461, Florida Statutes, are amended to read:

354 | 628.461 Acquisition of controlling stock.—

355 | (1) A person may not, individually or in conjunction with
 356 | any affiliated person of such person, acquire directly or
 357 | indirectly, conclude a tender offer or exchange offer for, enter
 358 | into any agreement to exchange securities for, or otherwise
 359 | finally acquire 10 ~~5~~ percent or more of the outstanding voting
 360 | securities of a domestic stock insurer or of a controlling
 361 | company, unless:

362 | (a) The person or affiliated person has filed with the
 363 | office and sent to the insurer and controlling company a letter
 364 | of notification regarding the transaction or proposed

CS/HB 821

2013

365 transaction within ~~no later than~~ 5 days after any form of tender
366 offer or exchange offer is proposed, or within ~~no later than~~ 5
367 days after the acquisition of the securities if no tender offer
368 or exchange offer is involved. The notification must be provided
369 on forms prescribed by the commission containing information
370 determined necessary to understand the transaction and identify
371 all purchasers and owners involved;

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

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

377 or

378 3. The acquisition of the securities, if no definitive
379 acquisition agreement, tender offer, or exchange offer is
380 involved; and

381 (c) The office has approved the tender or exchange offer,
382 or acquisition if no tender offer or exchange offer is involved,
383 and approval is in effect.

384
385 ~~In lieu of a filing as required under this subsection, a party~~
386 ~~acquiring less than 10 percent of the outstanding voting~~
387 ~~securities of an insurer may file a disclaimer of affiliation~~
388 ~~and control. The disclaimer shall fully disclose all material~~
389 ~~relationships and basis for affiliation between the person and~~
390 ~~the insurer as well as the basis for disclaiming the affiliation~~
391 ~~and control. After a disclaimer has been filed, the insurer~~
392 ~~shall be relieved of any duty to register or report under this~~

393 ~~section which may arise out of the insurer's relationship with~~
 394 ~~the person unless and until the office disallows the disclaimer.~~
 395 ~~The office shall disallow a disclaimer only after furnishing all~~
 396 ~~parties in interest with notice and opportunity to be heard and~~
 397 ~~after making specific findings of fact to support the~~
 398 ~~disallowance.~~ A filing ~~as~~ required under this subsection must be
 399 made for ~~as to~~ any acquisition that equals or exceeds 10 percent
 400 of the outstanding voting securities.

401 (3) The statement to be filed with the office under
 402 subsection (1) and furnished to the insurer and controlling
 403 company must ~~shall~~ contain all the following information and any
 404 additional information that ~~as~~ the office deems necessary to
 405 determine the character, experience, ability, and other
 406 qualifications of the person or affiliated person of such person
 407 for the protection of the policyholders and shareholders of the
 408 insurer and the public:

409 (a) The identity of, and the background information
 410 specified in subsection (4) on, each natural person by whom, or
 411 on whose behalf, the acquisition is to be made; and, if the
 412 acquisition is to be made by, or on behalf of, a corporation,
 413 association, or trust, as to the corporation, association, or
 414 trust and as to any person who controls, either ~~either~~ directly or
 415 indirectly, the corporation, association, or trust, the identity
 416 of, and the background information specified in subsection (4)
 417 on, each director, officer, trustee, or other natural person
 418 performing duties similar to those of a director, officer, or
 419 trustee for the corporation, association, or trust. †

420 (b) The source and amount of the funds or other

421 consideration used, or to be used, in making the acquisition.~~†~~

422 (c) Any plans or proposals that ~~which~~ such persons may
 423 have made to liquidate such insurer, to sell any of its assets
 424 or merge or consolidate it with any person, or to make any other
 425 major change in its business or corporate structure or
 426 management; and any plans or proposals that ~~which~~ such persons
 427 may have made to liquidate any controlling company of such
 428 insurer, to sell any of its assets or merge or consolidate it
 429 with any person, or to make any other major change in its
 430 business or corporate structure or management.~~†~~

431 (d) The number of shares or other securities that ~~which~~
 432 the person or affiliated person of such person proposes to
 433 acquire, the terms of the proposed acquisition, and the manner
 434 in which the securities are to be acquired.~~†~~ ~~and~~

435 (e) Information as to any contract, arrangement, or
 436 understanding with any party with respect to any of the
 437 securities of the insurer or controlling company, including, but
 438 not limited to, information relating to the transfer of any of
 439 the securities, option arrangements, puts or calls, or the
 440 giving or withholding of proxies, which information names the
 441 party with whom the contract, arrangement, or understanding has
 442 been entered into and gives the details thereof.

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

446 (g) An acknowledgement by the person required to file the
 447 statement that the person and all subsidiaries within the
 448 person's control in the insurance holding company system will

449 provide, as necessary, information to the office upon request to
450 evaluate enterprise risk to the insurer.

451 (10) Upon notification to the office by the domestic stock
452 insurer or a controlling company that any person or any
453 affiliated person of such person has acquired 10 ~~5~~ percent or
454 more of the outstanding voting securities of the domestic stock
455 insurer or controlling company without complying with the
456 provisions of this section, the office shall order that the
457 person and any affiliated person of such person cease
458 acquisition of any further securities of the domestic stock
459 insurer or controlling company; however, the person or any
460 affiliated person of such person may request a proceeding, which
461 proceeding shall be convened within 7 days after the rendering
462 of the order for the sole purpose of determining whether the
463 person, individually or in connection with any affiliated person
464 of such person, has acquired 10 ~~5~~ percent or more of the
465 outstanding voting securities of a domestic stock insurer or
466 controlling company. Upon the failure of the person or
467 affiliated person to request a hearing within 7 days, or upon a
468 determination at a hearing convened pursuant to this subsection
469 that the person or affiliated person has acquired voting
470 securities of a domestic stock insurer or controlling company in
471 violation of this section, the office may order the person and
472 affiliated person to divest themselves of any voting securities
473 so acquired.

474 (12) (a) A presumption of control may be rebutted by filing
475 a disclaimer of control. Any person may file a disclaimer of
476 control with the office. The disclaimer must fully disclose all

477 material relationships and bases for affiliation between the
 478 person and the insurer as well as the basis for disclaiming the
 479 affiliation. After a disclaimer has been filed, the insurer is
 480 relieved of any duty to register or report under this section
 481 that may arise out of the insurer's relationship with the person
 482 unless the office disallows the disclaimer.

483 (b) Any controlling person of a domestic insurer who seeks
 484 to divest the person's controlling interest in the domestic
 485 insurer in any manner shall file with the office, with a copy to
 486 the insurer, confidential notice, not subject to public
 487 inspection as provided under s. 624.4212, of the person's
 488 proposed divestiture at least 30 days before the cessation of
 489 control. The office shall determine those instances in which the
 490 party seeking to divest or to acquire a controlling interest in
 491 an insurer must file for and obtain approval of the transaction.
 492 The information remains confidential until the conclusion of the
 493 transaction unless the office, in its discretion, determines
 494 that confidential treatment interferes with enforcement of this
 495 section. If the statement referred to in subsection (1) is
 496 otherwise filed, this paragraph does not apply. For the purpose
 497 of this section, the term "affiliated person" of another person
 498 means:

- 499 ~~1. The spouse of such other person;~~
- 500 ~~2. The parents of such other person and their lineal~~
 501 ~~descendants and the parents of such other person's spouse and~~
 502 ~~their lineal descendants;~~
- 503 ~~3. Any person who directly or indirectly owns or controls,~~
 504 ~~or holds with power to vote, 5 percent or more of the~~

CS/HB 821

2013

505 ~~outstanding voting securities of such other person;~~

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

509 ~~5. Any person or group of persons who directly or~~
510 ~~indirectly control, are controlled by, or are under common~~
511 ~~control with such other person;~~

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

514 ~~7. If such other person is an investment company, any~~
515 ~~investment adviser of such company or any member of an advisory~~
516 ~~board of such company;~~

517 ~~8. If such other person is an unincorporated investment~~
518 ~~company not having a board of directors, the depositor of such~~
519 ~~company; or~~

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

524 ~~(b) For the purposes of this section, the term~~
525 ~~"Controlling company" means any corporation, trust, or~~
526 ~~association owning, directly or indirectly, 25 percent or more~~
527 ~~of the voting securities of one or more domestic stock insurance~~
528 ~~companies.~~

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

532 Section 6. Section 628.801, Florida Statutes, is amended

533 to read:

534 628.801 Insurance holding companies; registration;
535 regulation.—

536 (1) An ~~Every~~ insurer that is authorized to do business in
537 this state and that is a member of an insurance holding company
538 shall, on or before April 1 of each year, register with the
539 office and file a registration statement and be subject to
540 regulation with respect to its relationship to the holding
541 company as provided by law or rule ~~or statute~~. The commission
542 shall adopt rules establishing the information and statement
543 form required for registration and the manner in which
544 registered insurers and their affiliates are regulated. The
545 rules apply to domestic insurers, foreign insurers, and
546 commercially domiciled insurers, except for a foreign insurer
547 domiciled in states that were ~~are~~ accredited by the National
548 Association of Insurance Commissioners by December 31, 1995.
549 Except to the extent of any conflict with this code, the rules
550 must include all requirements and standards of ss. 4 and 5 of
551 the Insurance Holding Company System Regulatory Act and the
552 Insurance Holding Company System Model Regulation of the
553 National Association of Insurance Commissioners, as adopted on
554 December 2010. The commission may adopt subsequent amendments
555 thereto if the methodology remains substantially consistent. The
556 rules ~~Regulatory Act and the Model Regulation existed on~~
557 ~~November 30, 2001,~~ and may include a prohibition on oral
558 contracts between affiliated entities. Material transactions
559 between an insurer and its affiliates shall be filed with the
560 office as provided by rule ~~Upon request, the office may waive~~

561 ~~filing requirements under this section for a domestic insurer~~
562 ~~that is the subsidiary of an insurer that is in full compliance~~
563 ~~with the insurance holding company registration laws of its~~
564 ~~state of domicile, which state is accredited by the National~~
565 ~~Association of Insurance Commissioners.~~

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

579 (a) A waiver of any applicable privilege or claim of
580 confidentiality in the annual enterprise risk report and related
581 documents may not occur as a result of any disclosure to the
582 office under this section or any other section of the insurance
583 code as authorized under s. 624.4212. Neither the office nor any
584 person who received the report and related documents while
585 acting under the authority of the office or with whom such
586 information is shared pursuant to s. 624.4212 is permitted or
587 required to testify in any private civil action concerning any
588 confidential documents, materials, or information subject to s.

589 624.4212. An insurer may satisfy this requirement by providing
590 the office with the most recently filed parent corporation
591 reports that have been filed with the Securities and Exchange
592 Commission which provide the appropriate enterprise risk
593 information.

594 (b) As used in this section, the term "enterprise risk"
595 means any activity, circumstance, event, or series of events
596 involving one or more affiliates of an insurer that, if not
597 remedied promptly, is likely to have a materially adverse effect
598 upon the financial condition or liquidity of the insurer or its
599 insurance holding company system as a whole, including anything
600 that would cause the insurer's risk-based capital to fall into
601 company action level as set forth in s. 624.4085 or would cause
602 the insurer to be in hazardous financial condition.

603 (3) Pursuant to the provisions of chapter 624 relating to
604 the examination of insurers, the office may examine any insurer
605 registered under this section and its affiliates to ascertain
606 the financial condition of the insurer, including the enterprise
607 risk to the insurer by the ultimate controlling party, or by any
608 entity or combination of entities within the insurance holding
609 company system, or by the insurance holding company system on a
610 consolidated basis.

611 (4) The failure to file a registration statement, or a
612 summary of the registration statement, or the enterprise risk
613 filing report required by this section within the time specified
614 for filing is a violation of this section.

615 (5) Upon request, the office may waive the filing
616 requirements of this section:

CS/HB 821

2013

617 (a) If the insurer is a domestic insurer that is the
618 subsidiary of an insurer that is in full compliance with the
619 insurance holding company registration laws of its state of
620 domicile, which state is accredited by the National Association
621 of Insurance Commissioners; or

622 (b) If the insurer is a domestic insurer that writes only
623 in this state and has annual direct written and assumed premium
624 of less than \$300 million, excluding premiums reinsured with the
625 Federal Crop Insurance Corporation and Federal Flood Program,
626 and demonstrates that compliance with this section would not
627 provide substantial regulatory or consumer benefit. In
628 evaluating a waiver request made under this paragraph, the
629 office may consider various factors including, but not limited
630 to, the type of business entity, the volume of business written,
631 the ownership or organizational structure of the entity, or
632 whether the company is in run-off.

633
634 A waiver granted pursuant to this subsection is valid for 2
635 years unless sooner withdrawn due to a change in the
636 circumstances under which the waiver was granted.

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

640 628.803 Sanctions.—

641 (4) If it appears to the office that any person has
642 committed a violation of s. 628.461 that prevents the full
643 understanding of the enterprise risk to the insurer by
644 affiliates or by the insurance holding company system, the

645 violation may serve as an independent basis for disapproving
646 dividends or distributions and for placing the insurer under an
647 order of supervision in accordance with part VI of chapter 624.

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

650 628.805 Supervisory colleges.—In order to assess the
651 business strategy, financial position, legal and regulatory
652 position, risk exposure, risk management, and governance
653 processes, and as part of the examination of individual insurers
654 in accordance with ss. 628.801 and 624.316, the office may
655 participate in a supervisory college with other regulators
656 charged with supervision of the insurer or its affiliates,
657 including other state, federal, and international regulatory
658 agencies. In accordance with s. 624.4212 regarding confidential
659 information sharing, the office may enter into agreements that
660 provide the basis for cooperation between the office and the
661 other regulatory agencies and the activities of the supervisory
662 college. This section does not delegate to the supervisory
663 college the office's authority to regulate or supervise the
664 insurer or its affiliates under its jurisdiction.

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

667 (a) Initiate the establishment of a supervisory college.

668 (b) Clarify the membership and participation of other
669 supervisors in the supervisory college.

670 (c) Clarify the functions of the supervisory college and
671 the role of other regulators, including the establishment of a
672 group-wide supervisor.

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

676 (e) Establish a crisis management plan.

677 (2) With respect to an insurer registered under s.
 678 628.801, and in accordance with this section, the office may
 679 participate in a supervisory college for any domestic insurer
 680 that is part of an insurance holding company system that has
 681 international operations in order to determine the insurer's
 682 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. Subsection (7) is added to section 641.225,
 699 Florida Statutes, to read:

700 641.225 Surplus requirements.—

CS/HB 821

2013

701 (7) A health maintenance organization that is authorized
702 in this state and one or more other states, jurisdictions, or
703 countries is subject to ss. 624.4085 and 624.40851.

704 Section 11. Subsection (3) is added to section 641.255,
705 Florida Statutes, to read:

706 641.255 Acquisition, merger, or consolidation.—

707 (3) A health maintenance organization that is a member of
708 a holding company system is subject to s. 628.461 but not s.
709 628.4615.

710 Section 12. This act shall take effect October 1, 2013, if
711 HB 823 or similar legislation is adopted in the same legislative
712 session or an extension thereof and becomes law.