

1 A bill to be entitled
2 An act relating to insurance; requiring certain
3 insurers to file reports concerning their risk
4 based capital; requiring the Department of
5 Insurance to request such reports under certain
6 circumstances; providing for hearings;
7 providing definitions and reporting
8 requirements; requiring certain insurers to
9 file reports of material transactions
10 concerning their assets or their ceded
11 reinsurance agreements; providing definitions
12 and reporting requirements; prescribing
13 authority of the Department of Insurance with
14 respect to such reports; amending s. 624.3161,
15 F.S.; deleting a limitation on frequency of
16 certain market conduct examinations; revising
17 contract specifications for independent
18 examiners; amending s. 626.321, F.S.;
19 authorizing persons who hold a limited license
20 for credit insurance to hold certain additional
21 licenses; amending s. 624.424, F.S.; increasing
22 the time limitation on insurers using certain
23 accounting services for certain purposes;
24 creating s. 624.5094, F.S.; providing for
25 offset of dividends or premium refunds in
26 calculating the annual assessment for the
27 Special Disability Trust Fund and expenses of
28 administration; amending s. 625.121, F.S.;
29 providing for the use of additional mortality
30 tables; amending s. 627.476, F.S.; providing
31 for the use of additional mortality tables;

1 amending ss. 627.4555 and 627.5045, F.S.;
2 revising provisions requiring notice to
3 policyowners and secondary addressees of
4 impending lapse of certain insurance policies
5 under certain circumstances; providing
6 procedures; providing application; amending s.
7 628.801, F.S.; updating a reference to the
8 Insurance Holding Company System Regulatory
9 Act; providing effective dates.

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

12
13 Section 1. Risk based capital requirements for
14 insurers.--

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

16 (a) "Adjusted risk based capital report" means a risk
17 based capital report that has been adjusted by the department
18 in accordance with this section.

19 (b) "Authorized control level risk based capital"
20 means the number determined under the risk based capital
21 formula in the risk based capital instructions.

22 (c) "Company action level risk based capital" means
23 the product of 2.0 and an insurer's authorized control level
24 risk based capital.

25 (d) "Corrective order" means an order issued by the
26 department specifying corrective actions that the department
27 has determined are required.

28 (e) "Department" means the Department of Insurance.

29 (f) "Domestic insurer" means any insurer domiciled in
30 this state.

31

1 (g) "Foreign insurer" means any insurer that is
2 authorized or eligible to do business in this state but that
3 is not domiciled in this state.

4 (h) "Life and health insurer" means any insurer
5 authorized or eligible under the Florida Insurance Code to
6 underwrite life or health insurance. The term includes a
7 property and casualty insurer that writes accident and health
8 insurance only.

9 (i) "Mandatory control level risk based capital" means
10 the product of 0.70 and the authorized control level risk
11 based capital.

12 (j) "Negative trend" means, with respect to a life and
13 health insurer, a negative trend over a period of time, as
14 determined in accordance with the trend test calculation
15 included in the risk based capital instructions.

16 (k) "Property and casualty insurer" means any insurer
17 licensed under the Florida Insurance Code, but does not
18 include a single-line mortgage guaranty insurer, financial
19 guaranty insurer, or title insurer or a life and health
20 insurer.

21 (l) "Regulatory action level risk based capital" means
22 the product of 1.5 and an insurer's authorized control level
23 risk based capital.

24 (m) "Revised risk based capital plan" means the
25 revision of the risk based capital plan which is prepared by
26 an insurer after the department rejects the original plan.

27 (n) "Risk based capital instructions" means the
28 instructions for preparing a risk based capital report as
29 adopted by the National Association of Insurance
30 Commissioners.

31

1 (o) "Risk based capital level" means an insurer's
2 company action level risk based capital, regulatory action
3 level risk based capital, authorized control level risk based
4 capital, or mandatory control level risk based capital.

5 (p) "Risk based capital plan" means a comprehensive
6 financial plan specified in paragraph (4)(b).

7 (q) "Risk based capital report" means the report
8 required in subsection (2).

9 (r) "Total adjusted capital" means the sum of:

- 10 1. An insurer's statutory capital and surplus; and
11 2. Any other item required by the risk based capital
12 instructions.

13 (2)(a) Each domestic insurer that is subject to this
14 section shall, on or before March 1 of each year, prepare and
15 file with the National Association of Insurance Commissioners
16 a report of its risk based capital levels as of the end of the
17 calendar year just ended, in a form and containing the
18 information required in the risk based capital instructions.
19 In addition, each domestic insurer shall file a printed copy
20 of its risk based capital report:

21 1. With the department on or before March 1 of each
22 year.

23 2. With the insurance department in any other state in
24 which the insurer is authorized to do business, if that
25 department has notified the insurer of its request in writing,
26 in which case the insurer shall file its risk based capital
27 report not later than the later of:

28 a. Fifteen days after the receipt of notice to file
29 its risk based capital report with that state; or

30 b. March 1.
31

1 (b) The comparison of an insurer's total adjusted
 2 capital to any of its risk based capital levels is a
 3 regulatory tool that may indicate the need for possible
 4 corrective action with respect to the insurer, and may not be
 5 used as a means to rank insurers generally. Therefore, except
 6 as otherwise required under this section, the making,
 7 publishing, disseminating, circulating, or placing before the
 8 public, or causing, directly or indirectly, to be made,
 9 published, disseminated, circulated, or placed before the
 10 public, in a newspaper, magazine, or other publication, or in
 11 the form of a notice, circular, pamphlet, letter, or poster,
 12 or over any radio or television station, or in any other way,
 13 an advertisement, announcement, or statement containing an
 14 assertion, representation, or statement with regard to the
 15 risk based capital levels of any insurer, or of any component
 16 derived in the calculation, by any insurer, agent, broker, or
 17 other person engaged in any manner in the insurance business
 18 would be misleading and is therefore prohibited; however, if
 19 any materially false statement with respect to the comparison
 20 regarding an insurer's total adjusted capital to its risk
 21 based capital levels (or any of them) or an inappropriate
 22 comparison of any other amount to the insurer's risk based
 23 capital levels is published in any written publication and the
 24 insurer is able to demonstrate to the commissioner with
 25 substantial proof the falsity or inappropriateness of the
 26 statement, the insurer may publish in a written publication an
 27 announcement the sole purpose of which is to rebut the
 28 materially false statement.

29 (c) The department shall use the risk based capital
 30 instructions, risk based capital reports, adjusted risk based
 31 capital reports, risk based capital plans, and revised risk

1 based capital plans solely for monitoring the solvency of
2 insurers and assessing the need for corrective action with
3 respect to insurers. The department may not use that
4 information for ratemaking, as evidence in any rate
5 proceeding, or for calculating or deriving any elements of an
6 appropriate premium level or rate of return for any line of
7 insurance which an insurer or an affiliate of such insurer is
8 authorized to write.

9 (d) A life and health insurer's risk based capital is
10 determined in accordance with the formula set forth in the
11 risk based capital instructions. The formula takes into
12 account and may adjust for the covariance between:

- 13 1. The risk with respect to the insurer's assets;
- 14 2. The risk of adverse insurance experience with
15 respect to the insurer's liabilities and obligations;
- 16 3. The interest rate risk with respect to the
17 insurer's business; and
- 18 4. Any other business or other relevant risk set out
19 in the risk based capital instructions,

20
21 determined in each case by applying the factors in the manner
22 set forth in the risk based capital instructions.

23 (e) A property and casualty insurer's risk based
24 capital is determined in accordance with the formula set forth
25 in the risk based capital instructions. The formula takes into
26 account and may adjust for the covariance between:

- 27 1. The asset risk;
- 28 2. The credit risk;
- 29 3. The underwriting risk; and
- 30 4. Any other business or other relevant risk set out
31 in the risk based capital instructions,

1
2 determined in each case by applying the factors in the manner
3 set forth in the risk based capital instructions.

4 (f) The Legislature finds that an excess of capital
5 over the amount produced by the risk based capital
6 requirements and the formulas, schedules, and instructions
7 specified in this section is a desirable goal with respect to
8 the business of insurance. Accordingly, insurers should seek
9 to maintain capital above the risk based capital levels
10 required by this section. Additional capital is used and
11 useful in the insurance business and helps to secure an
12 insurer against various risks inherent in, or affecting, the
13 business of insurance and not accounted for or only partially
14 measured by the risk based capital requirements contained in
15 this section.

16 (g) If a domestic insurer files a risk based capital
17 report that the department finds is inaccurate, the department
18 shall adjust the risk based capital report to correct the
19 inaccuracy and shall notify the insurer of the adjustment. The
20 notice must state the reason for the adjustment. A risk based
21 capital report that is so adjusted is referred to as the
22 adjusted risk based capital report. The adjusted risk based
23 capital report must also be filed by the insurer with the
24 National Association of Insurance Commissioners.

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

26 1. The filing of a risk based capital report by an
27 insurer which indicates that:

28 a. The insurer's total adjusted capital is greater
29 than or equal to its regulatory action level risk based
30 capital but less than its company action level risk based
31 capital; or

1 b. If a life and health insurer, the insurer has total
2 adjusted capital that is greater than or equal to its company
3 action level risk based capital, but is less than the product
4 of its authorized control level risk based capital and 2.5,
5 and has a negative trend;

6 2. The notification by the department to the insurer
7 of an adjusted risk based capital report that indicates an
8 event in subparagraph 1., unless the insurer challenges the
9 adjusted risk based capital report under subsection (7); or

10 3. If, under subsection (7), an insurer challenges an
11 adjusted risk based capital report that indicates an event in
12 subparagraph 1., the notification by the department to the
13 insurer that the department has, after a hearing, rejected the
14 insurer's challenge.

15 (b) If a company action level event occurs, the
16 insurer shall prepare and submit to the department a risk
17 based capital plan, which must:

18 1. Identify the conditions that contribute to the
19 company action level event;

20 2. Contain proposals of corrective actions that the
21 insurer intends to take and that are reasonably expected to
22 result in the elimination of the company action level event;

23 3. Provide projections of the insurer's financial
24 results in the current year and at least the 4 succeeding
25 years, both in the absence of proposed corrective actions and
26 giving effect to the proposed corrective actions, including
27 projections of statutory operating income, net income,
28 capital, and surplus. The projections for both new and renewal
29 business may include separate projections for each major line
30 of business and, if separate projections are provided, must
31

1 separately identify each significant income, expense, and
2 benefit component;

3 4. Identify the key assumptions affecting the
4 insurer's projections and the sensitivity of the projections
5 to the assumptions; and

6 5. Identify the quality of, and problems associated
7 with, the insurer's business, including, but not limited to,
8 its assets, anticipated business growth and associated surplus
9 strain, extraordinary exposure to risk, mix of business, and
10 any use of reinsurance.

11 (c) The risk based capital plan must be submitted:

12 1. Within 45 days after the company action level
13 event; or

14 2. If the insurer challenges an adjusted risk based
15 capital report under subsection (7), within 45 days after
16 notification to the insurer that the department has, after a
17 hearing, rejected the insurer's challenge.

18 (d) Within 60 days after the submission by an insurer
19 of a risk based capital plan to the department, the department
20 shall notify the insurer whether the risk based capital plan
21 must be implemented or is, in the judgment of the department,
22 unsatisfactory. If the department determines that the risk
23 based capital plan is unsatisfactory, the notification to the
24 insurer must set forth the reasons for the determination and
25 may set forth proposed revisions. Upon notification from the
26 department, the insurer shall prepare a revised risk based
27 capital plan, which may incorporate by reference any revisions
28 proposed by the department, and shall submit the revised risk
29 based capital plan to the department:

30 1. Within 45 days after the notification from the
31 department; or

1 2. If the insurer challenges the notification from the
2 department under subsection (7), within 45 days after a
3 notification to the insurer that the department has, after a
4 hearing, rejected the insurer's challenge.

5 (e) If the department notifies an insurer that the
6 insurer's risk based capital plan or revised risk based
7 capital plan is unsatisfactory, the department may, at its
8 discretion and subject to the insurer's right to a hearing
9 under subsection (7), specify in the notification that the
10 notification is a regulatory action level event.

11 (f) Each domestic insurer that files a risk based
12 capital plan or a revised risk based capital plan with the
13 department shall file a copy of the risk based capital plan or
14 the revised risk based capital plan with the insurance
15 department in any other state in which the insurer is
16 authorized to do business if:

17 1. That state has a risk based capital law that is
18 substantially similar to paragraph (8)(a); and

19 2. The insurance department of that state has notified
20 the insurer of its request for the filing in writing, in which
21 case the insurer shall file a copy of the risk based capital
22 plan or the revised risk based capital plan in that state no
23 later than the later of:

24 a. Fifteen days after the receipt of notice to file a
25 copy of its risk based capital plan or revised risk based
26 capital plan with the state; or

27 b. The date on which the risk based capital plan or
28 the revised risk based capital plan is filed under paragraph
29 (c) or paragraph (d).

30 (4)(a) A regulatory action level event includes:

31

1 1. The filing of a risk based capital report by the
2 insurer which indicates that the insurer's total adjusted
3 capital is greater than or equal to its authorized control
4 level risk based capital but is less than its regulatory
5 action level risk based capital;

6 2. The notification by the department to the insurer
7 of an adjusted risk based capital report that indicates the
8 event described in subparagraph 1., unless the insurer
9 challenges the adjusted risk based capital report under
10 subsection (7);

11 3. If, under subsection (7), the insurer challenges an
12 adjusted risk based capital report that indicates the event
13 described in subparagraph 1., the notification by the
14 department to the insurer that the department has, after a
15 hearing, rejected the insurer's challenge;

16 4. The failure of the insurer to file a risk based
17 capital report by the filing date, unless the insurer provides
18 an explanation for such failure which is satisfactory to the
19 department and cures the failure within 10 days after the
20 filing date;

21 5. The failure of the insurer to submit a risk based
22 capital plan to the department within the time period set
23 forth in paragraph (3)(c);

24 6. Notification by the department to the insurer that:

25 a. The risk based capital plan or the revised risk
26 based capital plan submitted by the insurer is, in the
27 judgment of the department, unsatisfactory; and

28 b. This notification constitutes a regulatory action
29 level event with respect to the insurer, unless the insurer
30 challenges the determination under subsection (7);

31

1 7. If, under subsection (7), the insurer challenges a
2 determination by the department under subparagraph 6., the
3 notification by the department to the insurer that the
4 department has, after a hearing, rejected the challenge;

5 8. Notification by the department to the insurer that
6 the insurer has failed to adhere to its risk based capital
7 plan or revised risk based capital plan, but only if this
8 failure has a substantial adverse effect on the ability of the
9 insurer to eliminate the company action level event in
10 accordance with its risk based capital plan or revised risk
11 based capital plan and the department has so stated in the
12 notification, unless the insurer challenges the determination
13 under subsection (7); or

14 9. If, under subsection (7), the insurer challenges a
15 determination by the department under subparagraph 8., the
16 notification by the department to the insurer that the
17 department has, after a hearing, rejected the challenge.

18 (b) If a regulatory action level event occurs, the
19 department shall:

20 1. Require the insurer to prepare and submit a risk
21 based capital plan or, if applicable, a revised risk based
22 capital plan;

23 2. Perform an examination pursuant to section 624.316,
24 Florida Statutes, or an analysis, as the department considers
25 necessary, of the assets, liabilities, and operations of the
26 insurer, including a review of the risk based capital plan or
27 the revised risk based capital plan; and

28 3. After the examination or analysis, issue a
29 corrective order specifying such corrective actions as the
30 department determines are required.

31

1 (c) In determining corrective actions, the department
2 shall consider any factor relevant to the insurer based upon
3 the department's examination or analysis of the assets,
4 liabilities, and operations of the insurer, including, but not
5 limited to, the results of any sensitivity tests undertaken as
6 provided in the risk based capital instructions. The risk
7 based capital plan or the revised risk based capital plan must
8 be submitted:

9 1. Within 45 days after the occurrence of the
10 regulatory action level event;

11 2. If the insurer challenges an adjusted risk based
12 capital report under subsection (7), within 45 days after the
13 notification to the insurer that the department has, after a
14 hearing, rejected the insurer's challenge; or

15 3. If the insurer challenges a revised risk based
16 capital plan under subsection (7), within 45 days after the
17 notification to the insurer that the department has, after a
18 hearing, rejected the insurer's challenge.

19 (d) The department may retain actuaries, investment
20 experts, and other consultants to review an insurer's risk
21 based capital plan or revised risk based capital plan, examine
22 or analyze the assets, liabilities, and operations of an
23 insurer, and formulate the corrective order with respect to
24 the insurer. The fees, costs, and expenses relating to
25 consultants must be borne by the affected insurer or by any
26 other party as directed by the department.

27 (5)(a) An authorized control level event includes:

28 1. The filing of a risk based capital report by the
29 insurer which indicates that the insurer's total adjusted
30 capital is greater than or equal to its mandatory control
31

1 level risk based capital but is less than its authorized
2 control level risk based capital;

3 2. The notification by the department to the insurer
4 of an adjusted risk based capital report that indicates the
5 event in subparagraph 1., unless the insurer challenges the
6 adjusted risk based capital report under subsection (7);

7 3. If, under subsection (7), the insurer challenges an
8 adjusted risk based capital report that indicates the event in
9 subparagraph 1., notification by the department to the insurer
10 that the department has, after a hearing, rejected the
11 insurer's challenge;

12 4. The failure of the insurer to respond, in a manner
13 satisfactory to the department, to a corrective order, unless
14 the insurer challenges the corrective order under subsection
15 (7); or

16 5. If the insurer challenges a corrective order under
17 subsection (7) and the department has, after a hearing,
18 rejected the challenge or modified the corrective order, the
19 failure of the insurer to respond, in a manner satisfactory to
20 the department, to the corrective order after rejection or
21 modification by the department.

22 (b) If an authorized control level event occurs, the
23 department shall:

24 1. Take any action required under subsection (4)
25 regarding the insurer with respect to which a regulatory
26 action level event has occurred; or

27 2. If the department considers it to be in the best
28 interests of the policyholders and creditors of the insurer
29 and of the public, take any action as necessary to cause the
30 insurer to be placed under regulatory control under chapter
31 631, Florida Statutes. An authorized control level event is

1 sufficient ground for the department to be appointed as
2 receiver as provided in chapter 631, Florida Statutes.

3 (6)(a) A mandatory control level event includes:

4 1. The filing of a risk based capital report that
5 indicates that the insurer's total adjusted capital is less
6 than its mandatory control level risk based capital;

7 2. Notification by the department to the insurer of an
8 adjusted risk based capital report that indicates the event in
9 subparagraph 1., unless the insurer challenges the adjusted
10 risk based capital report under subsection (7); or

11 3. If, under subsection (7), the insurer challenges an
12 adjusted risk based capital report that indicates the event in
13 subparagraph 1., notification by the department to the insurer
14 that the department has, after a hearing, rejected the
15 insurer's challenge.

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

17 1. With respect to a life and health insurer, the
18 department shall, after due consideration of s. 624.408,
19 Florida Statutes, take any action necessary to place the
20 insurer under regulatory control, including any remedy
21 available under chapter 631, Florida Statutes. A mandatory
22 control level event is sufficient ground for the department to
23 be appointed as receiver as provided in chapter 631, Florida
24 Statutes. The department may forego taking action for up to
25 90 days after the mandatory control level event if the
26 department finds there is a reasonable expectation that the
27 mandatory control level event may be eliminated within the
28 90-day period.

29 2. With respect to a property and casualty insurer,
30 the department shall, after due consideration of s. 624.408,
31 Florida Statutes, take any action necessary to place the

1 insurer under regulatory control, including any remedy
2 available under chapter 631, Florida Statutes, or, in the case
3 of an insurer that is not writing new business, may allow the
4 insurer to continue to operate under the supervision of the
5 department. In either case, the mandatory control level event
6 is sufficient ground for the department to be appointed as
7 receiver as provided in chapter 631, Florida Statutes. The
8 department may forego taking action for up to 90 days after
9 the mandatory control level event if the department finds
10 there is a reasonable expectation that the mandatory control
11 level event will be eliminated within the 90-day period.

12 (7)(a) An insurer has a right to a hearing before the
13 department upon:

14 1. Notification to an insurer by the department of an
15 adjusted risk based capital report;

16 2. Notification to an insurer by the department that
17 the insurer's risk based capital plan or revised risk based
18 capital plan is unsatisfactory, and that the notification
19 constitutes a regulatory action level event with respect to
20 such insurer;

21 3. Notification to any insurer by the department that
22 the insurer has failed to adhere to its risk based capital
23 plan or revised risk based capital plan and that the failure
24 has a substantial adverse effect on the ability of the insurer
25 to eliminate the company action level event in accordance with
26 its risk based capital plan or its revised risk based capital
27 plan; or

28 4. Notification to an insurer by the department of a
29 corrective order with respect to the insurer.

30 (b) At such hearing the insurer may challenge any
31 determination or action by the department. The insurer shall

1 notify the department of its request for a hearing within 5
2 days after receipt of the notification by the department under
3 this subsection. Upon receipt of the request for a hearing,
4 the department shall set a date for the hearing, which date
5 must be no fewer than 10 nor more than 30 days after the date
6 the department receives the insurer's request. The hearing
7 must be conducted as provided in section 624.324, Florida
8 Statutes, with the right to appellate review under section
9 120.68, Florida Statutes.

10 (8)(a) Any foreign insurer shall, upon the written
11 request of the department, submit to the department a risk
12 based capital report, as of the end of the calendar year just
13 ended, no later than the later of:

14 1. The date a risk based capital report is required to
15 be filed by a domestic insurer under this section; or

16 2. Fifteen days after the request is received by the
17 foreign insurer.

18 (b) Any foreign insurer shall, upon the written
19 request of the department, promptly submit to the department a
20 copy of any risk based capital plan that is filed with the
21 insurance department of another state.

22 (c) The department may require a foreign insurer to
23 file a risk based capital plan if:

24 1. A company action level event, regulatory action
25 level event, or authorized control level event occurs with
26 respect to any foreign insurer as determined under the risk
27 based capital law of the state of domicile of the insurer, or,
28 if there is no risk based capital law in that state, under
29 this section.

30 2. The insurance department of the state of domicile
31 of the foreign insurer fails to require the foreign insurer to

1 file a risk based capital plan in the manner specified under
2 the risk based capital law of that state, or, if there is no
3 risk based capital law in that state, under subsection (3).

4
5 The failure of the foreign insurer to file a risk based
6 capital plan with the department when required under this
7 paragraph is a ground for the department to take any action
8 under section 624.418, Florida Statutes, which it determines
9 is necessary.

10 (d) If a mandatory control level event occurs with
11 respect to any foreign insurer and a domiciliary receiver has
12 not been appointed with respect to the foreign insurer under
13 the rehabilitation and liquidation law of the state of
14 domicile of the foreign insurer, the department may apply to
15 the Circuit Court of Leon County and such event constitutes
16 grounds for the department to be appointed as receiver as
17 provided in chapter 631, Florida Statutes, with respect to the
18 liquidation of property of foreign insurers found in this
19 state. The occurrence of a mandatory control level event is a
20 ground for such application.

21 (9) There shall be no liability on the part of, and no
22 cause of action shall arise against, the commissioner, the
23 department, or its employees or agents for any action taken by
24 them in the performance of their powers and duties under this
25 section.

26 (10) The department shall transmit any notice that may
27 result in regulatory action by registered mail, certified
28 mail, or any other method of transmission. Notice is
29 effective when the insurer receives it.

30 (11) For the purposes of the risk based capital
31 reports required to be filed by life and health insurers with

1 respect to their 1997 annual statement data and the risk based
2 capital reports required to be filed by property and casualty
3 insurers with respect to their 1997 annual statement data, the
4 following requirements apply in lieu of the provisions of
5 subsections (3), (4), (5), and (6):

6 (a) If a company action level event occurs with
7 respect to a domestic insurer, the department may not take any
8 regulatory action.

9 (b) If a regulatory action level event occurs under
10 subparagraph 1., subparagraph 2., or subparagraph 3. of
11 paragraph (4)(a), the department shall take the actions
12 required under subsection (3).

13 (c) If a regulatory action level event occurs under
14 subparagraph 4., subparagraph 5., subparagraph 6.,
15 subparagraph 7., subparagraph 8., or subparagraph 9. of
16 paragraph (4)(a), or an authorized control level event occurs,
17 the department shall take the actions required under
18 subsection (4).

19 (d) If a mandatory control level event occurs with
20 respect to an insurer, the department shall take the actions
21 required under subsection (5).

22 (12) This section is supplemental to the other laws of
23 this state and does not preclude or limit any power or duty of
24 the department under those laws or under the rules adopted
25 under those laws.

26 (13) This section does not apply to a domestic
27 property and casualty insurer that meets all of the following
28 conditions:

29 (a) Writes direct business only in this state;

30 (b) Writes direct annual premiums of \$2 million or
31 less; and

1 (c) Assumes no reinsurance in excess of 5 percent of
2 direct premiums written.

3 (14) The department may adopt rules to administer this
4 section, including, but not limited to, those regarding risk
5 based capital reports, adjusted risk based capital reports,
6 risk based capital plans, corrective orders and procedures to
7 be followed in the event of a triggering of a company action
8 level event, a regulatory action level event, an authorized
9 control level event, or a mandatory control level event.

10 Section 2. Assets of insurers; reporting
11 requirements.--

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

13 (a) "Material acquisition of assets" or "material
14 disposition of assets" means one or more transactions
15 occurring during any 30-day period which are nonrecurring and
16 not in the ordinary course of business and involve more than 5
17 percent of the reporting insurer's total admitted assets as
18 reported in its most recent statutory statement filed with the
19 insurance department of the insurer's state of domicile.

20 (b) "Material nonrenewal, cancellation, or revision of
21 a ceded reinsurance agreement" is one that affects:

22 1. With respect to property and casualty business,
23 including accident and health business written by a property
24 and casualty insurer:

25 a. More than 50 percent of the insurer's total ceded
26 written premium; or

27 b. More than 50 percent of the insurer's total ceded
28 indemnity and loss-adjustment reserves.

29 2. With respect to life, annuity, and accident and
30 health business, more than 50 percent of the total reserve
31

1 credit taken for business ceded, on an annualized basis, as
2 indicated in the insurer's most recent annual statement.

3 3. With respect to property and casualty business or
4 life, annuity, and accident and health business, a material
5 revision includes:

6 a. The replacement of an authorized reinsurer
7 representing more than 10 percent of a total cession by one or
8 more unauthorized reinsurers; or

9 b. The reduction or waiver, with respect to one or
10 more unauthorized insurers, of previously established
11 collateral requirements representing more than 10 percent of a
12 total cession.

13 (2) Each domestic insurer shall file a report with the
14 Department of Insurance disclosing a material acquisition of
15 assets, a material disposition of assets, or a material
16 nonrenewal, cancellation, or revision of a ceded reinsurance
17 agreement, unless the material acquisition or disposition of
18 assets or the material nonrenewal, cancellation, or revision
19 of a ceded reinsurance agreement has been submitted to the
20 department for review, approval, or informational purposes
21 under another section of the Florida Insurance Code or a rule
22 adopted thereunder. A copy of the report and each exhibit or
23 other attachment must be filed by the insurer with the
24 National Association of Insurance Commissioners. The report
25 required in this section is due within 15 days after the end
26 of the calendar month in which the transaction occurs.

27 (3) An immaterial acquisition or disposition of assets
28 need not be reported under this section.

29 (4)(a) Acquisitions of assets which are subject to
30 this section include each purchase, lease, exchange, merger,
31 consolidation, succession, or other acquisition of assets.

1 Asset acquisitions for the construction or development of real
2 property by or for the reporting insurer and the acquisition
3 of construction materials for this purpose are not subject to
4 this section.

5 (b) Dispositions of assets which are subject to this
6 section include each sale, lease, exchange, merger,
7 consolidation, mortgage, hypothecation, assignment for the
8 benefit of a creditor or otherwise, abandonment, destruction,
9 or other disposition of assets.

10 (5)(a) The following information must be disclosed in
11 any report of a material acquisition or disposition of assets:

- 12 1. The date of the transaction;
- 13 2. The manner of acquisition or disposition;
- 14 3. The description of the assets involved;
- 15 4. The nature and amount of the consideration given or
16 received;
- 17 5. The purpose of, or reason for, the transaction;
- 18 6. The manner by which the amount of consideration was
19 determined;
- 20 7. The gain or loss recognized or realized as a result
21 of the transaction; and
- 22 8. The name of the person from whom the assets were
23 acquired or to whom they were disposed.

24 (b) Insurers must report material acquisitions or
25 dispositions on a nonconsolidated basis unless the insurer is
26 part of a consolidated group of insurers which uses a pooling
27 arrangement or a 100-percent reinsurance agreement that
28 affects the solvency and integrity of the insurer's reserves
29 and the insurer has ceded substantially all of its direct and
30 assumed business to the pool. An insurer is deemed to have
31 ceded substantially all of its direct and assumed business to

1 a pool if the insurer has less than \$1 million in total direct
2 and assumed written premiums during a calendar year which are
3 not subject to a pooling arrangement and if the net income of
4 the business which is not subject to the pooling arrangement
5 represents less than 5 percent of the insurer's capital and
6 surplus.

7 (6) The nonrenewal, cancellation, or revision of a
8 ceded reinsurance agreement need not be reported if the
9 renewal or the revision is not material or if:

10 (a) With respect to property and casualty business,
11 including accident and health business written by a property
12 and casualty insurer, the insurer's total ceded written
13 premium represents, on an annualized basis, less than 10
14 percent of its total written premium for direct and assumed
15 business; or

16 (b) With respect to life, annuity, and accident and
17 health business, the total reserve credit taken for business
18 ceded represents, on an annualized basis, less than 10 percent
19 of the statutory reserve requirement before the cession.

20 (7)(a) The following information must be disclosed in
21 any report of a material nonrenewal, cancellation, or revision
22 of a ceded reinsurance agreement:

23 1. The effective date of the nonrenewal, cancellation,
24 or revision;

25 2. The description of the transaction and the
26 identification of the initiator of the transaction;

27 3. The purpose of, or reason for, the transaction; and

28 4. If applicable, the identity of each replacement
29 reinsurer.

30 (b) Insurers shall report the material nonrenewal,
31 cancellation, or revision of a ceded reinsurance agreement on

1 a nonconsolidated basis unless the insurer is part of a
2 consolidated group of insurers which uses a pooling
3 arrangement or a 100-percent reinsurance agreement that
4 affects the solvency and integrity of the insurer's reserves
5 and the insurer has ceded substantially all of its direct and
6 assumed business to the pool. An insurer is deemed to have
7 ceded substantially all of its direct and assumed business to
8 a pool if the insurer has less than \$1 million in total direct
9 and assumed written premiums during a calendar year which are
10 not subject to a pooling arrangement and if the net income of
11 the business not subject to the pooling arrangement represents
12 less than 5 percent of the insurer's capital and surplus.

13 Section 3. Subsections (1) and (3) of section
14 624.3161, Florida Statutes, are amended to read:

15 624.3161 Market conduct examinations.--

16 (1) As often as it deems necessary, ~~and not less~~
17 ~~frequently than each 5 years,~~ the department shall examine
18 each licensed rating organization, each advisory organization,
19 each group, association, or other organization of insurers
20 which engages in joint underwriting or joint reinsurance, and
21 each authorized insurer transacting in this state any class of
22 insurance to which the provisions of ~~part I of~~ chapter 627 are
23 applicable. The examination shall be for the purpose of
24 ascertaining compliance by the person examined with the
25 applicable provisions of chapters 624, 626, 627, and 635.

26 (3) ~~Upon agreement between the department and the~~
27 ~~insurer,~~ Such examination may be conducted by an independent
28 professional examiner under contract to the department, in
29 which case payment shall be made directly to the contracted
30 examiner by the insurer examined in accordance with the rates

31

1 and terms agreed to by the department, ~~the insurer,~~ and the
2 examiner.

3 Section 4. Paragraph (d) of subsection (8) of section
4 624.424, Florida Statutes, is amended to read:

5 624.424 Annual statement and other information.--

6 (8)

7 (d) An insurer may not use the same accountant or
8 partner of an accounting firm responsible for preparing the
9 report required by this subsection for more than 7 5
10 consecutive years. Following this period, the insurer may not
11 use such accountant or partner for a period of 2 years, but
12 may use another accountant or partner of the same firm. An
13 insurer may request the department to waive this prohibition
14 based upon an unusual hardship to the insurer and a
15 determination that the accountant is exercising independent
16 judgment that is not unduly influenced by the insurer
17 considering such factors as the number of partners, expertise
18 of the partners or the number of insurance clients of the
19 accounting firm; the premium volume of the insurer; and the
20 number of jurisdictions in which the insurer transacts
21 business.

22 Section 5. Section 624.5094, Florida Statutes, is
23 created to read:

24 624.5094 Casualty insurance premiums.--Notwithstanding
25 any statutory provision to the contrary, for the purposes of
26 calculating the annual assessments for the Special Disability
27 Trust Fund under s. 440.49 and expenses of administration
28 under s. 440.51, any amount paid or credited as dividends or
29 premium refunds in the same calendar year by the insurer to
30 its policyholders must be deducted from "net premium," "net
31 premiums written," "direct premium," and "net premium

1 collected" for the calendar year. Such offset for dividends or
2 premium refunds paid or credited for the current year must be
3 applied against the current year's net premium for that year's
4 assessment regardless of the policy year for which the
5 dividends or premium refunds are being reimbursed.

6 Section 6. Paragraph (i) is added to subsection (5) of
7 section 625.121, Florida Statutes, 1996 Supplement, to read:

8 625.121 Standard Valuation Law; life insurance.--

9 (5) MINIMUM STANDARD FOR VALUATION OF POLICIES AND
10 CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF STANDARD
11 NONFORFEITURE LAW.--Except as otherwise provided in paragraph
12 (h) and subsections (6), (11), and (14), the minimum standard
13 for the valuation of all such policies and contracts issued on
14 or after the operative date of s. 627.476 (Standard
15 Nonforfeiture Law for Life Insurance) shall be the
16 commissioners' reserve valuation method defined in subsections
17 (7), (11), and (14); 5 percent interest for group annuity and
18 pure endowment contracts and 3.5 percent interest for all
19 other such policies and contracts, or in the case of life
20 insurance policies and contracts, other than annuity and pure
21 endowment contracts, issued on or after July 1, 1973, 4
22 percent interest for such policies issued prior to October 1,
23 1979, and 4.5 percent interest for such policies issued on or
24 after October 1, 1979; and the following tables:

25 (i) In lieu of the mortality tables specified in this
26 subsection, and subject to rules adopted by the department,
27 the insurance company may, at its option:

28 1. Substitute the applicable 1958 CSO or CET Smoker
29 and Nonsmoker Mortality Tables, in lieu of the 1980 CSO or CET
30 mortality table standard, for policies issued on or after the
31 operative date of s. 627.476(9) and before January 1, 1989.

1 2. Substitute the applicable 1980 CSO or CET Smoker
2 and Nonsmoker Mortality Tables in lieu of the 1980 CSO or CET
3 mortality table standard;

4 3. Use the Annuity 2000 Mortality Table for
5 determining the minimum standard of valuation for individual
6 annuity and pure endowment contracts issued on or after the
7 operative date of this section until the department, on a date
8 certain that is on or after January 1, 1998, adopts by rule
9 that table for determining the minimum standard for valuation
10 purposes.

11 4. Use the 1994 GAR Table for determining the minimum
12 standard of valuation for annuities and pure endowments
13 purchased on or after the operative date of this section under
14 group annuity and pure endowment contracts until the
15 department, on a date certain that is on or after January 1,
16 1998, adopts by rule that table for determining the minimum
17 standard for valuation purposes.

18 Section 7. Paragraph (e) of subsection (1) of section
19 626.321, Florida Statutes, is amended to read:

20 626.321 Limited licenses.--

21 (1) The department shall issue to a qualified
22 individual, or a qualified individual or entity under
23 paragraphs (d) and (e), a license as agent authorized to
24 transact a limited class of business in any of the following
25 categories:

26 (e) Credit life or disability insurance.--License
27 covering only credit life or disability insurance. The
28 license may be issued only to an individual employed by a life
29 or health insurer as an officer or other salaried or
30 commissioned representative, or to an individual employed by
31 or associated with a lending or financing institution or

1 creditor, and may authorize the sale of such insurance only
2 with respect to borrowers or debtors of such lending or
3 financing institution or creditor. However, only the
4 individual or entity whose tax identification number is used
5 in receiving or is credited with receiving the commission from
6 the sale of such insurance shall be the licensed agent of the
7 insurer. No individual while so licensed shall hold a license
8 as an agent or solicitor as to any other or additional kind or
9 class of life or health insurance coverage. An entity other
10 than a lending or financial institution defined in s. 626.988
11 holding a limited license under this subsection (1)(e) shall
12 also be authorized to sell credit property insurance.

13 Section 8. Paragraph (h) of subsection (9) of section
14 627.476, Florida Statutes, is amended to read:

15 627.476 Standard Nonforfeiture Law for Life
16 Insurance.--

17 (9) CALCULATION OF ADJUSTED PREMIUMS AND PRESENT
18 VALUES FOR POLICIES ISSUED AFTER OPERATIVE DATE OF THIS
19 SUBSECTION.--

20 (h) All adjusted premiums and present values referred
21 to in this section shall for all policies of ordinary
22 insurance be calculated on the basis of the Commissioners'
23 1980 Standard Ordinary Mortality Table or, at the election of
24 the insurer for any one or more specified plans of life
25 insurance, the Commissioners' 1980 Standard Ordinary Mortality
26 Table with Ten-Year Select Mortality Factors; shall for all
27 policies of industrial insurance be calculated on the basis of
28 the Commissioners' 1961 Standard Industrial Mortality Table;
29 and shall for all policies issued in a particular calendar
30 year be calculated on the basis of a rate of interest not
31

1 exceeding the nonforfeiture interest rate as defined in this
2 subsection for policies issued in that calendar year. However:

3 1. At the option of the insurer, calculations for all
4 policies issued in a particular calendar year may be made on
5 the basis of a rate of interest not exceeding the
6 nonforfeiture interest rate, as defined in this subsection,
7 for policies issued in the immediately preceding calendar
8 year.

9 2. Under any paid-up nonforfeiture benefit, including
10 any paid-up dividend additions, any cash surrender value
11 available, whether or not required by subsection (2), shall be
12 calculated on the basis of the mortality table and rate of
13 interest used in determining the amount of such paid-up
14 nonforfeiture benefit and paid-up dividend additions, if any.

15 3. An insurer may calculate the amount of any
16 guaranteed paid-up nonforfeiture benefit, including any
17 paid-up additions under the policy, on the basis of an
18 interest rate no lower than that specified in the policy for
19 calculating cash surrender values.

20 4. In calculating the present value of any paid-up
21 term insurance with accompanying pure endowment, if any,
22 offered as a nonforfeiture benefit, the rates of mortality
23 assumed may be not more than those shown in the Commissioners'
24 1980 Extended Term Insurance Table for policies of ordinary
25 insurance and not more than the Commissioners' 1961 Industrial
26 Extended Term Insurance Table for policies of industrial
27 insurance.

28 5. In lieu of the mortality tables specified in this
29 section, at the option of the insurance company and subject to
30 rules adopted by the department, the insurance company may
31 substitute:

1 a. The 1958 CSO or CET Smoker and Nonsmoker Mortality
2 Tables, whichever is applicable, for policies issued on or
3 after the operative date of this subsection and before January
4 1, 1989;

5 b. The 1980 CSO or CET Smoker and Nonsmoker Mortality
6 Tables, whichever is applicable, for policies issued on or
7 after the operative date of this subsection;

8 c. A mortality table that is a blend of the
9 sex-distinct 1980 CSO or CET mortality table standard,
10 whichever is applicable, or a mortality table that is a blend
11 of the sex-distinct 1980 CSO or CET smoker and nonsmoker
12 mortality table standards, whichever is applicable, for
13 policies that are subject to the United States Supreme Court
14 decision in Arizona Governing Committee v. Norris to prevent
15 unfair discrimination in employment situations.

16 6.5. For insurance issued on a substandard basis, the
17 calculation of any such adjusted premiums and present values
18 may be based on appropriate modifications of the
19 aforementioned tables.

20 Section 9. Section 627.4555, Florida Statutes, is
21 amended to read:

22 627.4555 Secondary notice.--Except as provided in this
23 section, a no contract for life insurance issued or issued for
24 delivery in this state on or after October 1, 1997, covering a
25 natural person 64 years of age or older or owned by a natural
26 person 64 years of age or older, which has been in force for
27 at least 1 year, may not shall be lapsed canceled for
28 nonpayment of premium unless, after expiration of the grace
29 period, and at least 21 days before prior to the effective
30 date of any such lapse cancellation, the insurer has mailed a
31 notification of the impending possible lapse in coverage to

1 the policyowner ~~owner of the policy~~ and to a specified
 2 secondary addressee if such addressee has been designated in
 3 writing by name and address by the policyowner. An insurer
 4 issuing a life insurance contract on or after October 1, 1997
 5 ~~1995~~, shall notify the applicant of the right to designate a
 6 secondary addressee at the time of application for the policy,
 7 on a form provided by the insurer, and at any time the policy
 8 is in force, by submitting a written notice to the insurer
 9 containing the name and address of the secondary addressee.
 10 For purposes of any life insurance policy that provides a
 11 grace period of more than 51 days for nonpayment of premiums,
 12 the notice of impending lapse in coverage required by this
 13 section must be mailed to the policyowner and the secondary
 14 addressee at least 21 days before the expiration of the grace
 15 period provided in the policy. This section does not apply to
 16 any life insurance contract under which premiums are payable
 17 monthly or more frequently and are regularly collected by a
 18 licensed agent or are paid by credit card or any preauthorized
 19 check processing or automatic debit service of a financial
 20 institution.~~For policies of life insurance issued or renewed~~
 21 ~~on or after October 1, 1995, the insurer shall notify the~~
 22 ~~owner, at least annually, of the right to designate a~~
 23 ~~secondary addressee.~~

24 Section 10. Section 627.5045, Florida Statutes, is
 25 amended to read:

26 627.5045 Secondary notice.--Except as provided in this
 27 section, a ~~no~~ contract for an industrial life insurance policy
 28 ~~<U>~~issued or issued for delivery in this state on or after
 29 October 1, 1997, for which premiums are paid monthly, covering
 30 a natural person 64 years of age or older or owned by a
 31 natural person 64 years of age or older, which has been in

1 force for at least 1 year, may not ~~shall~~ be lapsed ~~canceled~~
 2 for nonpayment of premium unless, after expiration of the
 3 grace period, and at least 21 days before ~~prior to~~ the
 4 effective date of such lapse ~~cancellation~~, the insurer has
 5 mailed a notification of the impending ~~possible~~ lapse in
 6 coverage to the policyowner ~~owner of the policy~~ and to a
 7 specified secondary addressee if such addressee has been
 8 designated in writing by name and address by the policyowner.
 9 An insurer issuing an industrial life insurance contract on or
 10 after October 1, 1997 ~~1995~~, shall notify the applicant of the
 11 right to designate a secondary addressee at the time of
 12 application for the policy on a form provided by the insurer
 13 and at any time the policy is in force by submitting a written
 14 notice to the insurer containing the name and address of the
 15 secondary addressee. This section does not apply to any life
 16 insurance contract under which premiums are payable monthly or
 17 more frequently and are regularly collected by a licensed
 18 agent. ~~For policies of industrial life insurance issued or~~
 19 ~~renewed on or after October 1, 1995, the insurer shall notify~~
 20 ~~the owner, at least annually, of the right to designate a~~
 21 ~~secondary addressee.~~

22 Section 11. Section 628.801, Florida Statutes, is
 23 amended to read:

24 628.801 Insurance holding companies; registration;
 25 regulation.--Every insurer which is authorized to do business
 26 in this state and which is a member of an insurance holding
 27 company shall register with the department and be subject to
 28 regulation with respect to its relationship to such holding
 29 company as provided by rule or statute. The department shall
 30 adopt rules establishing the information and form required for
 31 registration and the manner in which registered insurers and

1 their affiliates shall be regulated. The rules shall apply to
2 domestic insurers, foreign insurers, and commercially
3 domiciled insurers, except a foreign insurer domiciled in
4 states that are accredited by the National Association of
5 Insurance Commissioners by December 31, 1995. Except to the
6 extent of any conflict with this code, the rules must include
7 all requirements and standards of ss. 4 and 5 of the Insurance
8 Holding Company System Regulatory Act and the Insurance
9 Holding Company System Model Regulation of the National
10 Association of Insurance Commissioners, as the Regulatory Act
11 and the Model Regulation existed on January 1, 1997 ~~1993~~, and
12 may include a prohibition on oral contracts between affiliated
13 entities. Upon request, the department may waive filing
14 requirements under this section for a domestic insurer that is
15 the subsidiary of an insurer that is in full compliance with
16 the insurance holding company registration laws of its state
17 of domicile, which state is accredited by the National
18 Association of Insurance Commissioners.

19 Section 12. This act shall take effect upon becoming a
20 law, except that sections 9, 10, and 11 shall take effect
21 October 1, 1997.

22
23
24
25
26
27
28
29
30
31