

By Representatives Fields, Bendross-Mindingall, Wilson,  
Brutus, Peterman, Harper, Siplin and Holloway

1                                   A bill to be entitled  
2           An act relating to investments by insurers and  
3           health maintenance organizations; amending s.  
4           625.012, F.S.; including derivative instruments  
5           within a definition of assets; amending s.  
6           625.305, F.S.; revising limitations on certain  
7           investments for purposes of diversification;  
8           amending s. 625.324, F.S.; authorizing insurers  
9           to invest in certain additional stocks;  
10          creating ss. 625.336 and 641.195, F.S.;  
11          providing for investments by insurers and  
12          health maintenance organizations in financial  
13          derivative instruments; providing requirements  
14          and limitations; amending s. 641.35, F.S.;  
15          including derivative instruments within a  
16          definition of assets; including certain notes  
17          and accounts receivable within certain assets  
18          for certain purposes; increasing allowable  
19          investments by health maintenance organizations  
20          in certain corporate stocks; clarifying and  
21          revising special consent investments; providing  
22          limitations; authorizing certain health  
23          maintenance organizations to elect regulation  
24          under alternative provisions of law for  
25          determining certain practices; providing election  
26          requirements; providing an effective date.

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28 Be It Enacted by the Legislature of the State of Florida:  
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1           Section 1. Subsection (12) of section 625.012, Florida  
2 Statutes, is renumbered as subsection (13) and a new  
3 subsection (12) is added to said section to read:

4           625.012 "Assets" defined.--In any determination of the  
5 financial condition of an insurer, there shall be allowed as  
6 "assets" only such assets as are owned by the insurer and  
7 which consist of:

8           (12) Derivative instruments used for hedging, income  
9 enhancement, or replication of other investment instruments,  
10 provided the derivative instruments are not contributing to  
11 financial leverage or speculation. For purposes of this  
12 chapter, "hedging" means investing in an asset to reduce  
13 overall risk, "income enhancement" means using an existing  
14 asset to modestly increase return without increasing risk, and  
15 "replication" means combining two or more assets to duplicate  
16 the characteristics of the desired asset.

17           Section 2. Paragraph (a) of subsection (2) of section  
18 625.305, Florida Statutes, is amended to read:

19           625.305 Diversification.--

20           (2) Investments eligible under subsection (1), except  
21 investments acquired pursuant to s. 625.331, are subject to  
22 the following limitations:

23           (a) The cost of investments made by insurers in stock  
24 authorized by s. 625.324 shall not exceed 30 ~~15~~ percent of the  
25 insurer's admitted assets; the cost of such investment in  
26 common stocks shall not exceed 20 ~~10~~ percent of the insurer's  
27 admitted assets; and the cost of such investment in stock of  
28 any one corporation, excluding diversified investment  
29 companies or common trust funds, shall not exceed 3 percent of  
30 the insurer's admitted assets. Notwithstanding any other  
31 provision in this chapter, the cost basis or market value, if

1 lower, of all stock investment shall be used for the purpose  
2 of determining the asset value against which such percentage  
3 limitations are to be applied.

4 Section 3. Section 625.324, Florida Statutes, is  
5 amended to read:

6 625.324 Corporate stocks.--An insurer may invest in  
7 stocks, common or preferred, of any corporation created or  
8 existing under the laws of the United States or of any state  
9 or Canada or any province thereof. An insurer may invest in  
10 stocks, common or preferred, of any corporation created or  
11 existing under the laws of any foreign country other than  
12 Canada if such stocks are listed and traded on a national  
13 securities exchange in the United States, listed and traded on  
14 foreign securities exchanges, or traded in foreign  
15 over-the-counter markets subject to a governing authority  
16 authorized for such purposes in the foreign country, or, in  
17 the alternative, if such investment in stocks of any  
18 corporation created or existing under the laws of any foreign  
19 country are first approved by the department. Nothing in this  
20 section shall apply to qualifying investments made by an  
21 insurer in a foreign country under authority of s. 625.326.

22 Section 4. Section 625.336, Florida Statutes, is  
23 created to read:

24 625.336 Financial derivative instruments.--An insurer  
25 may invest any of its funds in derivative instruments, as  
26 defined in the National Association of Insurance Commissioners  
27 Derivative Instruments Model Regulation adopted in October  
28 1997, subject to the following requirements:

29 (1) A derivative transaction is an investment by an  
30 insurer in a derivative instrument and is limited to options,  
31 warrants, or futures.

1           (2) Before engaging in a derivative transaction, an  
2 insurer shall establish written guidelines that shall be used  
3 for effecting and maintaining the transactions. The guidelines  
4 shall:  
5           (a) Address investment or, if applicable, underwriting  
6 objectives, and risk constraints, including, but not limited  
7 to, credit risk limits.  
8           (b) Address permissible transactions and the  
9 relationship of those transactions to its operations,  
10 including, but not limited to, a precise identification of the  
11 risks being hedged by a derivative transaction.  
12           (c) Require compliance with internal control  
13 procedures.  
14           (3) An insurer shall have a system for determining  
15 whether a derivative instrument used for hedging has been  
16 effective.  
17           (4) An insurer shall have a credit risk management  
18 system for over-the-counter derivative transactions that  
19 measures credit risk exposure using the counterparty exposure  
20 amount. A counterparty is a business entity other than an  
21 exchange or clearing house.  
22           (5) An insurer's board of directors shall, in  
23 accordance with relevant state rules:  
24           (a) Approve the guidelines required by subsection (1)  
25 and the systems required by subsections (2) and (3).  
26           (b) Determine whether the insurer has adequate  
27 professional personnel, technical expertise, and systems to  
28 implement investment practices involving derivative  
29 instruments.  
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1       (6) An insurer shall maintain documentation and  
2 records relating to each derivative transaction, including,  
3 but not limited to:  
4       (a) The purposes of the transactions.  
5       (b) The assets or liabilities to which the transaction  
6 relates.  
7       (c) The specific derivative instrument used in the  
8 transaction.  
9       (d) For over-the-counter derivative transactions, the  
10 name of the counterparty and the counterparty exposure amount.  
11       (e) For exchange traded derivative instruments, the  
12 name of the exchange and the name of the firm that handled the  
13 trade.  
14       (7) Each derivative instrument shall be:  
15       (a) Traded on a qualified exchange;  
16       (b) Entered into with, or guaranteed by, a business;  
17       (c) Issued or written by or entered into with the  
18 issuer of the underlying interest on which the derivative  
19 instrument is based; or  
20       (d) Entered into with a qualified foreign exchange.  
21       Section 5. Section 641.195, Florida Statutes, is  
22 created to read:  
23       641.195 Financial derivative instruments.--A health  
24 maintenance organization may invest any of its funds in  
25 derivative instruments, as defined in the National Association  
26 of Insurance Commissioners Derivative Instruments Model  
27 Regulation adopted in October 1997, subject to the following  
28 requirements:  
29       (1) A derivative transaction is an investment by a  
30 health maintenance organization in a derivative instrument and  
31 is limited to options, warrants, or futures.

1           (2) Before engaging in a derivative transaction, a  
2 health maintenance organization shall establish written  
3 guidelines that shall be used for effecting and maintaining  
4 the transactions. The guidelines shall:  
5           (a) Address investment or, if applicable, underwriting  
6 objectives, and risk constraints, including, but not limited  
7 to, credit risk limits.  
8           (b) Address permissible transactions and the  
9 relationship of those transactions to its operations,  
10 including, but not limited to, a precise identification of the  
11 risks being hedged by a derivative transaction.  
12           (c) Require compliance with internal control  
13 procedures.  
14           (3) A health maintenance organization shall have a  
15 system for determining whether a derivative instrument used  
16 for hedging has been effective.  
17           (4) A health maintenance organization shall have a  
18 credit risk management system for over-the-counter derivative  
19 transactions that measures credit risk exposure using the  
20 counterparty exposure amount. A counterparty is a business  
21 entity other than an exchange or clearing house.  
22           (5) A health maintenance organization's board of  
23 directors shall, in accordance with relevant state rules:  
24           (a) Approve the guidelines required by subsection (1)  
25 and the systems required by subsections (2) and (3).  
26           (b) Determine whether the health maintenance  
27 organization has adequate professional personnel, technical  
28 expertise, and systems to implement investment practices  
29 involving derivative instruments.  
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1           (6) A health maintenance organization shall maintain  
2 documentation and records relating to each derivative  
3 transaction, including, but not limited to:  
4           (a) The purposes of the transactions.  
5           (b) The assets or liabilities to which the transaction  
6 relates.  
7           (c) The specific derivative instrument used in the  
8 transaction.  
9           (d) For over-the-counter derivative transactions, the  
10 name of the counterparty and the counterparty exposure amount.  
11           (e) For exchange traded derivative instruments, the  
12 name of the exchange and the name of the firm that handled the  
13 trade.  
14           (7) Each derivative instrument shall be:  
15           (a) Traded on a qualified exchange;  
16           (b) Entered into with, or guaranteed by, a business;  
17           (c) Issued or written by or entered into with the  
18 issuer of the underlying interest on which the derivative  
19 instrument is based; or  
20           (d) Entered into with a qualified foreign exchange.  
21           Section 6. Paragraph (h) is added to subsection (1) of  
22 section 641.35, Florida Statutes, paragraph (b) of subsection  
23 (2) and subsections (14) and (15) are amended, and subsection  
24 (19) is added to said section, to read:  
25           641.35 Assets, liabilities, and investments.--  
26           (1) ASSETS.--In any determination of the financial  
27 condition of a health maintenance organization, there shall be  
28 allowed as "assets" only those assets that are owned by the  
29 health maintenance organization and which assets consist of:  
30           (h) Derivative instruments used for hedging, income  
31 enhancement, or replication of other investment instruments,

1 provided the derivative instruments are not contributing to  
2 financial leverage or speculation. For purposes of this  
3 chapter, "hedging" means investing in an asset to reduce  
4 overall risk, "income enhancement" means using an existing  
5 asset to modestly increase return without increasing risk, and  
6 "replication" means combining two or more assets to duplicate  
7 the characteristics of the desired asset.

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9 The department, upon determining that a health maintenance  
10 organization's asset has not been evaluated according to  
11 applicable law or that it does not qualify as an asset, shall  
12 require the health maintenance organization to properly  
13 reevaluate the asset or replace the asset with an asset  
14 suitable to the department within 30 days of receipt of  
15 written notification by the department of this determination,  
16 if the removal of the asset from the organization's assets  
17 would impair the organization's solvency.

18 (2) ASSETS NOT ALLOWED.--In addition to assets  
19 impliedly excluded by the provisions of subsection (1), the  
20 following assets expressly shall not be allowed as assets in  
21 any determination of the financial condition of a health  
22 maintenance organization:

23 (b) Any note or account receivable from or advances to  
24 officers, directors, or controlling stockholders, whether  
25 secured or not, and advances to employees, agents, or other  
26 persons on personal security only, unless such note or account  
27 receivable is payable by the controlling stockholder or entity  
28 to the health maintenance organization and is secured by  
29 assets that are allowable as admitted assets under this  
30 section.

31 (14) SPECIAL LIMITATION INVESTMENTS.--



1           (a) After satisfying the requirements of this part,  
2 any funds of the health maintenance organization may be  
3 invested in the following investments, subject to a cost  
4 limitation of 10 percent of its admitted assets in each  
5 category of investment:  
6           1. Anticipation obligations of political subdivisions  
7 of a state.--Anticipation obligations of any political  
8 subdivision of any state of the United States, including, but  
9 not limited to, bond anticipation notes, tax anticipation  
10 notes, preliminary loan anticipation notes, revenue  
11 anticipation notes, and construction anticipation notes, for  
12 the payment of money within 12 months from the issuance of the  
13 obligation, on the following conditions:  
14           a. The anticipation notes are a direct obligation of  
15 the issuer under conditions set forth in subsection (9).  
16           b. The political subdivision is not in default in the  
17 payment of the principal or interest on any of its direct  
18 general obligations or any obligation guaranteed by such  
19 political subdivision.  
20           c. The anticipated funds are specifically pledged to  
21 secure the obligations.  
22           2. Revenue obligations of state or municipal public  
23 utilities.--Obligations of any state of the United States, a  
24 political subdivision thereof, or a public instrumentality of  
25 any one or more of the foregoing for the payment of money, on  
26 the following conditions:  
27           a. The obligations are payable from revenues or  
28 earnings of a public utility of such state, political  
29 subdivision, or public instrumentality which are specifically  
30 pledged therefor.  
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1           b. The law under which the obligations are issued  
2 requires that such rates for service shall be charged and  
3 collected at all times so as to produce sufficient revenue or  
4 earning, together with any other revenues or moneys pledged,  
5 to pay all operating and maintenance charges of the public  
6 utility and all principal and interest on such charges.

7           c. No prior or parity obligations payable from the  
8 revenues or earnings of that public utility are in default at  
9 the date of such investment.

10           3. Other revenue obligations.--Obligations of any  
11 state of the United States, a political subdivision thereof,  
12 or a public instrumentality of any of the foregoing for the  
13 payment of money, on the following conditions:

14           a. The obligations are payable from revenues or  
15 earnings, excluding revenues or earnings from public  
16 utilities, specifically pledged therefor by such state,  
17 political subdivision, or public instrumentality.

18           b. No prior or parity obligation of the same issuer  
19 payable from revenues or earnings from the same source has  
20 been in default as to principal or interest during the 5 years  
21 next preceding the date of the investment, but the issuer need  
22 not have been in existence for that period, and obligations  
23 acquired under this paragraph may be newly issued.

24           ~~4. Corporate stocks.--Stocks, common or preferred, of~~  
25 ~~any corporation created or existing under the laws of the~~  
26 ~~United States or any state thereof. The organization may~~  
27 ~~invest in stocks, common or preferred, of any corporation~~  
28 ~~created or existing under the laws of any foreign country if~~  
29 ~~such stocks are listed and traded on a national securities~~  
30 ~~exchange in the United States or, in the alternative, if such~~  
31 ~~investment in stocks of any corporation created or existing~~

1 ~~under the laws of any foreign country are first approved by~~  
2 ~~the department. Investment in common stock of any one~~  
3 ~~corporation shall not exceed 3 percent of the health~~  
4 ~~maintenance organization's admitted assets.~~

5 (b) After satisfying the requirements of this part,  
6 any funds of the health maintenance organization may be  
7 invested, subject to a cost limitation of 20 percent of  
8 admitted assets, in stocks, common or preferred, of any  
9 corporation created or existing under the laws of the United  
10 States or any state thereof. The health maintenance  
11 organization may invest in stocks, common or preferred, of any  
12 corporation created or existing under the laws of any foreign  
13 country if such stocks are listed and traded on a national  
14 securities exchange in the United States, listed and traded on  
15 foreign securities exchanges, or traded in foreign  
16 over-the-counter markets subject to a governing authority  
17 authorized for such purposes in the foreign country, or, in  
18 the alternative, if such investment in stocks of any  
19 corporation created or existing under the laws of any foreign  
20 country are first approved by the department. Investment in  
21 common stock of any one corporation, excluding diversified  
22 investment companies or common trust funds, shall not exceed 3  
23 percent of the health maintenance organization's admitted  
24 assets.

25 ~~(c)~~(b) After satisfying the requirements of this part,  
26 the health maintenance organization may invest its funds and  
27 accumulations in the following investments, subject to a cost  
28 limitation of 5 percent of admitted assets in each category of  
29 investment:

30 1. Obligations of the International Bank for  
31 Reconstruction and Development.--Obligations issued or

1 guaranteed by the International Bank for Reconstruction and  
2 Development.

3 2. Obligations of the Inter-American Development  
4 Bank.--Obligations issued or guaranteed by the Inter-American  
5 Development Bank.

6 3. Obligations of the Asian Development  
7 Bank.--Obligations issued or guaranteed by the Asian  
8 Development Bank.

9 4. Obligations of the State of Israel.--Direct  
10 obligations of the State of Israel for the payment of money,  
11 or obligations for the payment of money which are guaranteed  
12 as to the payment of principal and interest by the State of  
13 Israel, on the condition that the State of Israel shall not be  
14 in default in the payment of principal or interest on any of  
15 its direct, general obligations on the date of such  
16 investment.

17 5. Obligations of the African Development  
18 Bank.--Obligations issued or guaranteed by the African  
19 Development Bank.

20 6. Obligations of the Government of Canada or any  
21 province thereof.--Obligations issued or guaranteed by the  
22 Government of Canada or any province thereof.

23 7. Obligations of the International Finance  
24 Corporation.--Obligations issued or guaranteed by the  
25 International Finance Corporation.

26 (15) SPECIAL CONSENT INVESTMENT.--Any investment of  
27 the health maintenance organization's funds not enumerated in  
28 this part requires the prior approval of the department.

29 (a) After satisfying the requirements of this part,  
30 any funds of a health maintenance organization in excess of  
31 its statutorily required reserves and surplus may be invested:

1           1. Without limitation in any investments otherwise  
2 authorized by this part; or  
3           2. In such other investments not specifically  
4 authorized by this part provided such investments do not  
5 exceed the lesser 5 percent of the health maintenance  
6 organization's admitted assets or 25 percent of the amount by  
7 which a health maintenance organization's surplus exceeds its  
8 statutorily required minimum surplus. A health maintenance  
9 organization may exceed the limitations of this subparagraph  
10 only with the prior written approval of the department.

11           (b) Nothing in this subsection authorizes a health  
12 maintenance organization to:

13           1. Invest any funds in excess of the amount by which  
14 its actual surplus exceeds its statutorily required minimum  
15 surplus; or

16           2. Make any investment prohibited by this code.

17           (19) Notwithstanding any other provision of law, a  
18 health maintenance organization, which reports surplus on its  
19 most recently filed annual report that is equal to or in  
20 excess of the greater of \$3 million, 20 percent of total  
21 liabilities, or 4 percent of annualized premium, may elect to  
22 be regulated under parts I and II of chapter 625, instead of  
23 chapter 641, for determining assets, liabilities, and  
24 investment practices. A health maintenance organization shall  
25 notify the department of an intent to make such election 90  
26 days prior to the end of the calendar year and the election  
27 shall take effect on the first day of the next calendar year.

28           Section 7. This act shall take effect upon becoming a  
29 law and shall operate retroactively to January 1, 2001.

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HOUSE SUMMARY

Revises and clarifies authorized investments by insurers and health maintenance organizations to authorize investments in derivative instruments and in corporate stocks listed and traded on foreign securities exchanges or traded in foreign over-the-counter markets subject to a governing authority authorized for such purposes in the foreign country, clarify and revise special consent investments by health maintenance organizations, and authorize health maintenance organizations to elect regulation under alternative provisions of law for determining assets, liabilities, and investment practices. See bill for details.