

By the Committee on Banking and Insurance; and Senator Carlton

311-1696-01

1 A bill to be entitled
2 An act relating to public records and meetings;
3 creating s. 641.264, F.S.; providing exemptions
4 from public records requirements and public
5 meetings requirements for health maintenance
6 organizations for certain risk-based capital
7 reports, orders, instructions, and plans and
8 related documents, materials, providing for
9 termination of exemptions; and information;
10 providing for future review and repeal;
11 providing a finding of public necessity;
12 providing an effective date.

14 Be It Enacted by the Legislature of the State of Florida:

16 Section 1. Section 641.264, Florida Statutes, is
17 created to read:

18 641.264 Confidentiality of risk-based capital
19 proceedings and records.--

20 (1) For the purposes of this section, the definitions
21 of terms provided in s. 641.263 apply.

22 (2) All documents, materials, or other information
23 specifically related to risk-based capital reports, to the
24 extent that the information is not required to be set forth in
25 a publicly available annual statement schedule, and documents,
26 materials, or other information related to risk-based capital
27 plans, including the results or report of any examination or
28 analysis of a health maintenance organization performed
29 pursuant to s. 641.263 and any corrective order issued by the
30 department pursuant to such examination or analysis, with
31 respect to a health maintenance organization that are in the

1 possession or control of the department shall be confidential
2 by law and privileged, shall be exempt from the provisions of
3 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
4 shall not be subject to subpoena, and shall not be subject to
5 discovery or admissible in evidence in any private civil
6 action. However, the department is authorized to use a
7 risk-based capital report, plan, or related documents,
8 materials, or other information in the furtherance of any
9 regulatory or legal action brought as a part of the
10 department's official duties. Proceedings and hearings
11 conducted pursuant to s. 641.263 relating to the department's
12 actions regarding any health maintenance organization's
13 risk-based capital plan, revised risk-based capital plan,
14 risk-based capital report or adjusted risk-based capital
15 report are exempt from the provisions of s. 286.011 and s.
16 24(b), Art. I of the State Constitution, except as otherwise
17 provided in this section.

18 (3) The exemptions provided by this section expire:

19 (a) One year following the conclusion of any
20 risk-based capital plan or revised risk-based capital plan; or

21 (b) On the date of entry of any order of seizure,
22 rehabilitation, or liquidation pursuant to chapter 631.

23 (4) Neither the department nor any person who received
24 a confidential risk-based capital report, plan, or related
25 documents, materials, or other information while acting under
26 the authority of the department shall be permitted or required
27 to testify in any private civil action concerning such report,
28 plan, or related documents, materials, or information, subject
29 to the exceptions contained in subsections (2) and (5).

30 (5) In order to assist in the performance of its
31 duties, the department may:

1 (a) Share a confidential or privileged risk-based
2 capital report, plan, or related documents, materials, or
3 other information with other state, federal, and international
4 regulatory agencies, with the National Association of
5 Insurance Commissioners and its affiliates and subsidiaries,
6 and with state, federal, and international law enforcement
7 authorities, provided that the recipient agrees to maintain
8 the confidentiality of the document, material, or other
9 information.

10 (b) Receive confidential risk-based capital reports,
11 plans, and related documents, materials, or information from
12 the National Association of Insurance Commissioners and its
13 affiliates and subsidiaries, and from regulatory and law
14 enforcement officials of other foreign or domestic
15 jurisdictions, and shall maintain as confidential or
16 privileged any such report, plan, or related document,
17 material, or information received with notice or the
18 understanding that it is confidential or privileged under the
19 laws of the jurisdiction that is the source of the document,
20 material, or information.

21 (c) Enter into agreements governing sharing and use of
22 information consistent with this subsection.

23 (6) No waiver of any applicable privilege or claim of
24 confidentiality in the documents, materials, or information
25 shall occur as a result of disclosure to the department under
26 this section or as a result of sharing as authorized in
27 paragraph (4)(c).

28 (7) It is the judgment of the Legislature that the
29 comparison of a health maintenance organization's total
30 adjusted capital to any of its risk-based capital levels is a
31 regulatory tool which may indicate the need for corrective

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

30 (8) This section is subject to the Open Government
31 Sunset Review Act of 1995 in accordance with s. 119.15, and

1 shall stand repealed on October 2, 2006, unless reviewed and
2 saved from repeal through reenactment by the Legislature.

3 Section 2. The Legislature finds that the public
4 records and meetings exemptions provided for in section
5 641.264, Florida Statutes, are a public necessity because
6 unrestricted public access to information, proceedings, and
7 hearings relating to a health maintenance organization's
8 risk-based capital plan and risk-based capital adjusted
9 report, and documents and examination reports related thereto,
10 might damage the health maintenance organization if made
11 available to its competitors and could substantially affect
12 the solvency of a health maintenance organization. Damage to a
13 health maintenance organization's solvency could have a
14 substantial negative effect on the public as well as on other
15 health maintenance organizations. Furthermore, public access
16 to such information would not serve a public interest in that
17 such information can be misleading as to a health maintenance
18 organization's ranking because risk-based data does not
19 reflect all of the factors involved in the assessment of a
20 health maintenance organization's financial strength. The
21 Legislature also finds that risk-based capital reports and
22 plans reveal a health maintenance organization's investment
23 decisions and that such decisions are a trade secret that give
24 the health maintenance organization a competitive advantage in
25 the private market. Public access to such information could
26 affect a health maintenance organization's ability to do
27 business in Florida and the health maintenance organization's
28 solvency. The Legislature finds that the risk-based capital
29 reports provide early warning signs that may necessitate
30 corrective action before serious financial problems arise and
31 that such activity is a public benefit. Providing

1 confidentiality for such records and proceedings enables the
2 health maintenance organization to reduce risk to members of
3 the health maintenance organization and encourages the health
4 maintenance organization to be more open and frank in the
5 information so provided, without the attendant fear that
6 honest and truthful exchange of information will result in the
7 public dissemination of information that could be used to harm
8 the health maintenance organization and its members.
9 Therefore, it is a public necessity to maintain the
10 confidentiality of this information and these proceedings and
11 hearings within the regulatory body responsible for the
12 oversight of health maintenance organization solvency.
13 Finally, the Legislature finds that the public has access
14 through other means to information regarding the financial
15 strength of a health maintenance organization and its ranking
16 with regard to other health maintenance organizations.

17 Section 3. This act shall take effect October 1, 2001,
18 if SB 2080 or similar legislation is adopted in the same
19 legislative session or an extension thereof and becomes law.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 2082

Specifies that all documents, materials, or other information specifically related to risk-based capital reports, to the extent the information is not required to be set forth in a publicly available annual statement schedule, and documents, material, or other information related to risk-based capital plans, including department reports and corrective orders, are confidential and privileged and not subject to subpoena, discovery or admissibility in any private civil action.

Provides that the public record exemptions provided by this section are to terminate 1 year following the conclusion of any risk-based capital plan or revised risk-based capital plan, or on the date of entry of an order of seizure, rehabilitation, or liquidation pursuant to chapter 631, F.S.

Provides additional legislative findings in the statement of public necessity for the exemptions to provide that providing confidentiality of the information would encourage the HMOs to be more open and frank in the information provided.

Removes language providing legislative intent for the use of risk-based capital reports and related information.

Provides technical changes.