

By the Council for Competitive Commerce and Representative
Negron

1 A bill to be entitled
2 An act relating to solvency of insurers and
3 health maintenance organizations; amending s.
4 624.404, F.S.; revising a definition; amending
5 s. 624.80, F.S.; revising a definition;
6 amending s. 624.81, F.S.; specifying authority
7 of the Department of Insurance relating to
8 certain notice requirements; authorizing the
9 department to adopt certain rules; amending s.
10 624.84, F.S.; specifying that administrative
11 review of certain orders does not operate as an
12 automatic stay of such orders; specifying that
13 certain actions are not subject to
14 administrative review; amending s. 627.481,
15 F.S.; providing requirements for certain
16 annuity agreements; amending s. 641.19, F.S.;
17 providing a definition; amending s. 641.26,
18 F.S.; revising certain annual report
19 requirements; amending s. 641.35, F.S.;
20 specifying inclusion of certain losses and
21 claims under liabilities of a health
22 maintenance organization under certain
23 circumstances; providing an exception; amending
24 s. 641.365, F.S.; revising limitations on
25 certain dividend payments or distributions to
26 stockholders by a health maintenance
27 organization; specifying criteria for making
28 payments, declaring dividends, or making
29 distributions; specifying criteria for
30 department approval of certain dividends or
31 distributions; providing an effective date.

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

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3 Section 1. Paragraph (b) of subsection (4) of section
4 624.404, Florida Statutes, is amended to read:

5 624.404 General eligibility of insurers for
6 certificate of authority.--To qualify for and hold authority
7 to transact insurance in this state, an insurer must be
8 otherwise in compliance with this code and with its charter
9 powers and must be an incorporated stock insurer, an
10 incorporated mutual insurer, or a reciprocal insurer, of the
11 same general type as may be formed as a domestic insurer under
12 this code; except that:

13 (4)

14 (b) A "fronting company" is an authorized insurer
15 which by reinsurance or otherwise generally transfers more
16 than 50 percent to one unauthorized insurer which does not
17 meet the requirements of s. 624.610(3)(a), (b), or (c)~~is not~~
18 ~~an approved reinsurer~~, or more than 75 percent to two or more
19 unauthorized insurers which do not meet the requirements of s.
20 624.610(3)(a), (b), or (c)~~are not approved reinsurers~~, of the
21 entire risk of loss on all of the insurance written by it in
22 this state, or on one or more lines of insurance, on all of
23 the business produced through one or more agents or agencies,
24 or on all of the business from a designated geographical
25 territory, without obtaining the prior approval of the
26 department.

27 Section 2. Subsection (2) of section 624.80, Florida
28 Statutes, is amended to read:

29 624.80 Definitions.--As used in this part:

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1 (2) "Unsound condition" means that the department has
2 determined that one or more ~~any~~ of the following conditions
3 exist with respect to an insurer:

4 (a) The insurer's required surplus, capital, or
5 capital stock is impaired to an extent prohibited by law;

6 (b) The insurer continues to write new business when
7 it has not maintained the required surplus or capital; ~~or~~

8 (c) The insurer attempts to dissolve or liquidate
9 without first having made provisions, satisfactory to the
10 department, for liabilities arising from insurance policies
11 issued by the insurer; or

12 (d) The insurer meets one or more of the grounds in s.
13 631.051 for the appointment of the department as receiver.

14 Section 3. Subsections (1) and (6) of section 624.81,
15 Florida Statutes, are amended, and subsection (10) is added to
16 said section, to read:

17 624.81 Notice to comply with written requirements of
18 department; noncompliance.--

19 (1) If the department determines that the conditions
20 set forth in subsection (2) exist, the department shall issue
21 an order placing ~~notify~~ the insurer in administrative
22 supervision ~~writing of its determination~~, setting forth the
23 reasons giving rise to the determination, and specifying that
24 the department is applying and effectuating the provisions of
25 this part.

26 (6) If the department and the insurer are unable to
27 agree on the provisions of the plan, the department may
28 require the insurer to take such corrective action as may be
29 reasonably necessary to remove the causes and conditions
30 giving rise to the need for administrative supervision ~~proceed~~
31

1 ~~under applicable provisions of this code other than the~~
2 ~~provisions of this part.~~

3 (10) The department may adopt rules to define
4 standards of hazardous financial condition and corrective
5 action substantially similar to that indicated in the National
6 Association of Insurance Commissioners' 1997 "Model Regulation
7 to Define Standards and Commissioner's Authority for Companies
8 Deemed to be Hazardous Financial Condition," which are
9 necessary to implement the provisions of this part.

10 Section 4. Section 624.84, Florida Statutes, is
11 amended to read:

12 624.84 ~~Review and stay of action.~~ Review under s.
13 120.57 of an order placing an insurer in administrative
14 supervision does not operate as an automatic stay of the
15 order. During the period of supervision, the insurer may
16 contest an action taken or proposed to be taken by the
17 supervisor, specifying the manner wherein the action
18 complained of would not result in improving the condition of
19 the insurer. Such, ~~and the~~ request shall not stay the action
20 specified pending reconsideration of the action by the
21 department. ~~If upon reconsideration the action of the~~
22 ~~department is upheld, the stay shall be lifted.~~ Denial of the
23 insurer's request upon reconsideration entitles the insurer to
24 request a proceeding under ss. 120.569 and 120.57. Such
25 proceeding shall not operate as a stay of the action.

26 Section 5. Subsection (2) of section 627.481, Florida
27 Statutes, is amended to read:

28 627.481 Requirements for certain annuity agreements.--
29 (2)(a) Every such domestic corporation or such
30 domestic or foreign trust shall have and maintain admitted
31 assets at least equal to the sum of the reserves on its

1 ~~outstanding annuity agreements, calculated in accordance with~~
2 ~~the United States Internal Revenue Code as set forth in s.~~
3 ~~220.03(1)(n), and a surplus of 10 ~~25~~ percent of such reserves,~~
4 ~~calculated using:~~

5 1.a. The present value of future guaranteed benefits
6 for individual annuities that have either commenced paying
7 benefits or have fixed a future date for the first benefit
8 payment.

9 b. The commissioner's annuity reserve method as set
10 forth in s. 625.121(7)(c) for individual deferred annuities
11 that have not fixed a date for the first benefit payment.

12 2. The mortality tables used to value individual
13 annuities as defined in s. 625.121(5):

14 a. For annuities issued prior to July 1, 1998:

15 (I) The mortality table described in s. 625.121(5)(h),
16 for individual annuities;

17 (II) At the option of the corporation or trust, the
18 1983 Individual Annuity Mortality Table; or

19 (III) At the option of the corporation or trust, the
20 2000 Individual Annuity Mortality Table for annuities issued
21 between January 1, 1998, and June 30, 1998, inclusive.

22 b. For annuities issued on or after July 1, 1998:

23 (I) The mortality tables set forth in s.
24 625.121(5)(i)3.

25 (II) Any other annuity mortality tables required to be
26 used by insurers in accordance with s. 625.121; or

27 (III) At the option of the corporation or trust, any
28 other annuity mortality tables authorized to be used by
29 insurers in accordance with s. 625.121.

30 3. An interest rate not greater than the maximum
31 interest rate permitted for the valuation of individual

1 annuities issued during the same calendar year as the
2 charitable gift annuity for individual annuities as set forth
3 in s. 625.121(6)(b)-(f).

4 a. The maximum statutory valuation interest rates for
5 single premium immediate annuities for 1992 may be used for
6 annuities issued in 1992 or any prior year. The maximum
7 statutory valuation interest rates for single premium
8 immediate annuities issued in 1992 through 2001 are as
9 follows:

<u>Year of Issue</u>	<u>Single Premium Immediate Annuity Interest Rate</u>
<u>1992</u>	<u>7.75 percent</u>
<u>1993</u>	<u>7.00 percent</u>
<u>1994</u>	<u>6.50 percent</u>
<u>1995</u>	<u>7.25 percent</u>
<u>1996</u>	<u>6.75 percent</u>
<u>1997</u>	<u>6.75 percent</u>
<u>1998</u>	<u>6.25 percent</u>
<u>1999</u>	<u>6.25 percent</u>
<u>2000</u>	<u>7.00 percent</u>
<u>2001</u>	<u>6.75 percent</u>

21 b. The prior year's rate shall be used for annuities
22 issued in 2002 and subsequent years until an interest rate for
23 a specified year can be determined in accordance with s.
24 625.121(6).

25 (b) In determining the reserves of any such
26 corporation or trust, a deduction shall be made for all or any
27 portion of an annuity risk which is reinsured by a life
28 insurance company authorized to do business in this state.

29 (c)1. The assets of such corporation or trust in an
30 amount at least equal to the sum of such reserves and surplus
31 shall be invested only in mutual funds or investments

1 ~~securities~~ permitted under part II of chapter 625 for the
2 investment of the reserves of authorized life insurance
3 companies.
4 2. For purposes of this section, the provisions of s.
5 625.305(2)(a) shall not apply. In lieu thereof, the fair
6 market value of investments made by such corporation or trust
7 in stock authorized by s. 625.324 shall not exceed 50 percent
8 of such corporation's or trust's required reserves and
9 surplus. The fair market value in stock of any single
10 corporation or mutual fund shall not exceed 10 percent of such
11 corporation's or trust's required reserves and surplus. All
12 other provisions of s. 625.305 shall apply. ~~and~~ Such assets
13 shall be segregated as separate and distinct funds,
14 independent of all other funds of such corporation or trust,
15 and shall not be applied for the payment of the debts and
16 obligations of the corporation or trust or for any purpose
17 other than the annuity benefits specified in this section.
18 Section 6. Subsection (21) is added to section 641.19,
19 Florida Statutes, to read:
20 641.19 Definitions.--As used in this part, the term:
21 (21) "Health care risk contract" means a contract
22 under which an individual or entity receives consideration or
23 other compensation in an amount greater than 1 percent of the
24 health maintenance organization's annual gross written premium
25 in exchange for providing to the health maintenance
26 organization a provider network or other services, which may
27 include administrative services. The 1-percent threshold shall
28 be calculated on a contract-by-contract basis for each such
29 individual or entity and not in the aggregate for all health
30 care risk contracts.
31

1 Section 7. Paragraph (f) of subsection (1) and
2 subsections (3) and (8) of section 641.26, Florida Statutes,
3 are amended to read:

4 641.26 Annual report.--

5 (1) Every health maintenance organization shall,
6 annually within 3 months after the end of its fiscal year, or
7 within an extension of time therefor as the department, for
8 good cause, may grant, in a form prescribed by the department,
9 file a report with the department, verified by the oath of two
10 officers of the organization or, if not a corporation, of two
11 persons who are principal managing directors of the affairs of
12 the organization, properly notarized, showing its condition on
13 the last day of the immediately preceding reporting period.

14 Such report shall include:

15 (f) An actuarial certification that:

16 1. The health maintenance organization is actuarially
17 sound, which certification shall consider the rates, benefits,
18 and expenses of, and any other funds available for the payment
19 of obligations of, the organization.

20 2. The rates being charged or to be charged are
21 actuarially adequate to the end of the period for which rates
22 have been guaranteed.

23 3. Incurred but not reported claims and claims
24 reported but not fully paid have been adequately provided for.

25 4. The health maintenance organization has adequately
26 provided for all obligations required by s. 641.35(3)(a).

27 (3) Every health maintenance organization shall file
28 quarterly, for the first three calendar quarters of each year
29 ~~within 45 days after each of its quarterly reporting periods,~~
30 an unaudited financial statement of the organization as
31 described in paragraphs (1)(a) and (b). The statement for the

1 quarter ending March 31 shall be filed on or before May 15,
2 the statement for the quarter ending June 30 shall be filed on
3 or before August 15, and the statement for the quarter ending
4 September 30 shall be filed on or before November 15.The
5 quarterly report shall be verified by the oath of two officers
6 of the organization, properly notarized.

7 (8) Each health maintenance organization shall file
8 one copy of its annual statement convention blank in
9 electronic form, along with such additional filings as
10 prescribed by the department for the preceding calendar year
11 or quarter, with the National Association of Insurance
12 Commissioners. Each health maintenance organization shall pay
13 fees assessed by the National Association of Insurance
14 Commissioners to the department a reasonable fee to cover
15 costs associated with the filing and analysis of the documents
16 by the National Association of Insurance Commissioners.

17 Section 8. Paragraph (a) of subsection (3) of section
18 641.35, Florida Statutes, is amended to read:

19 641.35 Assets, liabilities, and investments.--

20 (3) LIABILITIES.--In any determination of the
21 financial condition of a health maintenance organization,
22 liabilities to be charged against its assets shall include:

23 (a) The amount, estimated consistently with the
24 provisions of this part, necessary to pay all of its unpaid
25 losses and claims incurred for or on behalf of a subscriber,
26 on or prior to the end of the reporting period, whether
27 reported or unreported, including contract and premium
28 deficiency reserves. If a health maintenance organization,
29 through a health care risk contract, transfers to any entity
30 the obligation to pay any provider for any claim arising from
31 services provided to or for the benefit of any subscriber, the

1 liabilities of the health maintenance organization under this
2 section shall include the amount of those losses and claims to
3 the extent that the provider has not received payment. No
4 liability need be established if the entity has provided to
5 the health maintenance organization a financial instrument
6 acceptable to the department securing the obligations under
7 the contract or if the health maintenance organization has in
8 place an escrow or withhold agreement approved by the
9 department that ensures full payment of those claims. For
10 purposes of this paragraph, the term "entity" does not include
11 this state, the United States, or an agency thereof, or an
12 insurer or health maintenance organization authorized in this
13 state.

14
15 The department, upon determining that a health maintenance
16 organization has failed to report liabilities that should have
17 been reported, shall require a corrected report which reflects
18 the proper liabilities to be submitted by the organization to
19 the department within 10 working days of receipt of written
20 notification.

21 Section 9. Subsections (1) and (2) of section 641.365,
22 Florida Statutes, are amended to read:

23 641.365 Dividends.--

24 (1)(a) A health maintenance organization shall not pay
25 any dividend or distribute cash or other property to
26 stockholders except out of that part of its available and
27 accumulated surplus funds which is derived from realized net
28 operating profits on its business and net realized capital
29 gains. ~~Dividend payments or distributions to stockholders~~
30 ~~shall not exceed 10 percent of such surplus in any one year~~
31 ~~unless otherwise approved by the department. In addition to~~

1 ~~such limited payments, a health maintenance organization may~~
2 ~~make dividend payments or distributions out of the health~~
3 ~~maintenance organization's entire net operating profits and~~
4 ~~realized net capital gains derived during the immediately~~
5 ~~preceding calendar or fiscal year, as applicable.~~

6 (b) In no event, unless prior written approval is
7 obtained from the department, shall a health maintenance
8 organization pay or declare any dividend or distribute cash or
9 other property to or on behalf of any stockholder if,
10 immediately before or after such distribution, the health
11 maintenance organization's available and accumulated surplus
12 funds, which are derived from realized net operating profits
13 on its business and net realized gains, are or would be less
14 than zero.

15 (c) A health maintenance organization may make
16 dividend payments or distributions to stockholders without the
17 prior written approval of the department when:

18 1. The dividend is equal to or less than the greater
19 of:

20 a. Ten percent of the health maintenance
21 organization's accumulated surplus funds which are derived
22 from realized net operating profits on its business and net
23 realized capital gains as of the immediate preceding calendar
24 year; or

25 b. The health maintenance organization's entire net
26 operating profit and realized net capital gains derived during
27 the immediately preceding calendar year.

28 2. The health maintenance organization will have
29 surplus equal to or exceeding 115 percent of the minimum
30 required statutory surplus after the dividend or distribution
31 is made.

1 3. The health maintenance organization has filed a
2 notice with the department at least 30 days prior to the
3 dividend payment or distribution, or such shorter period of
4 time as approved by the department on a case-by-case basis.

5 4. The notice includes a certification by an officer
6 of the health maintenance organization attesting that after
7 payment of the dividend or distribution the health maintenance
8 organization will have at least 115 percent of required
9 statutory surplus.

10 5. The health maintenance organization has negative
11 retained earnings, statutory surplus in excess of \$50 million,
12 and statutory surplus greater than or equal to 150 percent of
13 its required statutory surplus before and after the dividend
14 distribution is made, based upon the health maintenance
15 organization's most recently filed annual financial statement.

16 (2) The department shall not approve a dividend or
17 distribution in excess of the maximum amount allowed in
18 subsection (1) unless it determines that the distribution or
19 dividend would not jeopardize the financial condition of the
20 health maintenance organization, considering:

21 (a) The liquidity, quality, and diversification of the
22 health maintenance organization's assets and the effect on its
23 ability to meet its obligations.

24 (b) Any reduction of investment portfolio and
25 investment income.

26 (c) History of capital contributions.

27 (d) Prior dividend distributions of the health
28 maintenance organization.

29 (e) Whether the dividend is only a pass-through
30 dividend from a subsidiary of the health maintenance
31 organization.

1 Section 10. This act shall take effect October 1,
2 2002.
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