

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. 625.041,
15 F.S.; revising the liabilities a workers'
16 compensation insurer must include on its
17 financial statements; amending s. 627.481,
18 F.S.; providing requirements for certain
19 annuity agreements; amending s. 641.19, F.S.;
20 providing a definition; amending s. 641.26,
21 F.S.; revising certain annual report
22 requirements; amending s. 641.35, F.S.;
23 specifying inclusion of certain losses and
24 claims under liabilities of a health
25 maintenance organization under certain
26 circumstances; providing an exception;
27 providing for the investment of funds of a
28 health maintenance organization in excess of
29 certain reserves or surplus under certain
30 circumstances; providing a limitation; amending
31 s. 641.365, F.S.; revising limitations on

1 certain dividend payments or distributions to
2 stockholders by a health maintenance
3 organization; specifying criteria for making
4 payments, declaring dividends, or making
5 distributions; specifying criteria for
6 department approval of certain dividends or
7 distributions; providing an effective date.

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

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11 Section 1. Paragraph (b) of subsection (4) of section
12 624.404, Florida Statutes, is amended to read:

13 624.404 General eligibility of insurers for
14 certificate of authority.--To qualify for and hold authority
15 to transact insurance in this state, an insurer must be
16 otherwise in compliance with this code and with its charter
17 powers and must be an incorporated stock insurer, an
18 incorporated mutual insurer, or a reciprocal insurer, of the
19 same general type as may be formed as a domestic insurer under
20 this code; except that:

21 (4)

22 (b) A "fronting company" is an authorized insurer
23 which by reinsurance or otherwise generally transfers more
24 than 50 percent to one unauthorized insurer which does not
25 meet the requirements of s. 624.610(3)(a), (b), or (c)~~is not~~
26 ~~an approved reinsurer~~, or more than 75 percent to two or more
27 unauthorized insurers which do not meet the requirements of s.
28 624.610(3)(a), (b), or (c)~~are not approved reinsurers~~, of the
29 entire risk of loss on all of the insurance written by it in
30 this state, or on one or more lines of insurance, on all of
31 the business produced through one or more agents or agencies,

1 or on all of the business from a designated geographical
2 territory, without obtaining the prior approval of the
3 department.

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

6 624.80 Definitions.--As used in this part:

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

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

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

14 (c) The insurer attempts to dissolve or liquidate
15 without first having made provisions, satisfactory to the
16 department, for liabilities arising from insurance policies
17 issued by the insurer; or

18 (d) The insurer meets one or more of the grounds in s.
19 631.051 for the appointment of the department as receiver.

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

23 624.81 Notice to comply with written requirements of
24 department; noncompliance.--

25 (1) If the department determines that the conditions
26 set forth in subsection (2) exist, the department shall issue
27 an order placing ~~notify~~ the insurer in administrative
28 supervision ~~writing of its determination~~, setting forth the
29 reasons giving rise to the determination, and specifying that
30 the department is applying and effectuating the provisions of
31 this part.

1 (6) If the department and the insurer are unable to
2 agree on the provisions of the plan, the department may
3 require the insurer to take such corrective action as may be
4 reasonably necessary to remove the causes and conditions
5 giving rise to the need for administrative supervision ~~proceed~~
6 ~~under applicable provisions of this code other than the~~
7 ~~provisions of this part.~~

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

15 Section 4. Section 624.84, Florida Statutes, is
16 amended to read:

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

1 Section 5. Effective retroactively to January 1, 2002,
2 subsection (5) is added to section 625.041, Florida Statutes,
3 to read:

4 625.041 Liabilities, in general.--In any determination
5 of the financial condition of an insurer, liabilities to be
6 charged against its assets shall include:

7 (5) Any insurer in this state that writes workers'
8 compensation insurance shall accrue a liability on its
9 financial statements for all Special Disability Trust Fund
10 assessments which are due within the current calendar year. In
11 addition, such insurers shall also disclose in the notes to
12 the financial statements required to be filed pursuant to s.
13 624.424 an estimate of future Special Disability Trust Fund
14 assessments, if such assessments are likely to occur and can
15 be estimated with reasonable certainty.

16 Section 6. Subsection (2) of section 627.481, Florida
17 Statutes, is amended to read:

18 627.481 Requirements for certain annuity agreements.--

19 (2)(a) Every such domestic corporation or such
20 domestic or foreign trust shall have and maintain admitted
21 assets at least equal to the sum of the reserves on its
22 outstanding annuity agreements, ~~calculated in accordance with~~
23 ~~the United States Internal Revenue Code as set forth in s.~~
24 ~~220.03(1)(n),~~ and a surplus of 10 ~~25~~ percent of such reserves,
25 calculated using:

26 1.a. The present value of future guaranteed benefits
27 for individual annuities that have either commenced paying
28 benefits or have fixed a future date for the first benefit
29 payment.

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

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

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

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

9 (II) At the option of the corporation or trust, the
10 1983 Individual Annuity Mortality Table; or

11 (III) At the option of the corporation or trust, the
12 2000 Individual Annuity Mortality Table for annuities issued
13 between January 1, 1998, and June 30, 1998, inclusive.

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

15 (I) The mortality tables set forth in s.
16 625.121(5)(i)3.

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

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

22 3. An interest rate not greater than the maximum
23 interest rate permitted for the valuation of individual
24 annuities issued during the same calendar year as the
25 charitable gift annuity for individual annuities as set forth
26 in s. 625.121(6)(b)-(f).

27 a. The maximum statutory valuation interest rates for
28 single premium immediate annuities for 1992 may be used for
29 annuities issued in 1992 or any prior year. The maximum
30 statutory valuation interest rates for single premium
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1 immediate annuities issued in 1992 through 2001 are as
 2 follows:

3 <u>Year of Issue</u>	<u>Single Premium Immediate Annuity Interest Rate</u>
4 <u>1992</u>	<u>7.75 percent</u>
5 <u>1993</u>	<u>7.00 percent</u>
6 <u>1994</u>	<u>6.50 percent</u>
7 <u>1995</u>	<u>7.25 percent</u>
8 <u>1996</u>	<u>6.75 percent</u>
9 <u>1997</u>	<u>6.75 percent</u>
10 <u>1998</u>	<u>6.25 percent</u>
11 <u>1999</u>	<u>6.25 percent</u>
12 <u>2000</u>	<u>7.00 percent</u>
13 <u>2001</u>	<u>6.75 percent</u>

14 b. The prior year's rate shall be used for annuities
 15 issued in 2002 and subsequent years until an interest rate for
 16 a specified year can be determined in accordance with s.
 17 625.121(6).

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

22 (c)1. The assets of such corporation or trust in an
 23 amount at least equal to the sum of such reserves and surplus
 24 shall be invested only in mutual funds or investments
 25 ~~securities~~ permitted under part II of chapter 625 for the
 26 investment of the reserves of authorized life insurance
 27 companies.

28 2. For purposes of this section, the provisions of s.
 29 625.305(2)(a) shall not apply. In lieu thereof, the fair
 30 market value of investments made by such corporation or trust
 31 in stock authorized by s. 625.324 shall not exceed 50 percent

1 of such corporation's or trust's required reserves and
2 surplus. The fair market value in stock of any single
3 corporation or mutual fund shall not exceed 10 percent of such
4 corporation's or trust's required reserves and surplus. All
5 other provisions of s. 625.305 shall apply. ~~and~~ Such assets
6 shall be segregated as separate and distinct funds,
7 independent of all other funds of such corporation or trust,
8 and shall not be applied for the payment of the debts and
9 obligations of the corporation or trust or for any purpose
10 other than the annuity benefits specified in this section.

11 Section 7. Subsection (21) is added to section 641.19,
12 Florida Statutes, to read:

13 641.19 Definitions.--As used in this part, the term:

14 (21) "Health care risk contract" means a contract
15 under which an individual or entity receives consideration or
16 other compensation in an amount greater than 1 percent of the
17 health maintenance organization's annual gross written premium
18 in exchange for providing to the health maintenance
19 organization a provider network or other services, which may
20 include administrative services. The 1-percent threshold shall
21 be calculated on a contract-by-contract basis for each such
22 individual or entity and not in the aggregate for all health
23 care risk contracts.

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

27 641.26 Annual report.--

28 (1) Every health maintenance organization shall,
29 annually within 3 months after the end of its fiscal year, or
30 within an extension of time therefor as the department, for
31 good cause, may grant, in a form prescribed by the department,

1 file a report with the department, verified by the oath of two
2 officers of the organization or, if not a corporation, of two
3 persons who are principal managing directors of the affairs of
4 the organization, properly notarized, showing its condition on
5 the last day of the immediately preceding reporting period.

6 Such report shall include:

7 (f) An actuarial certification that:

8 1. The health maintenance organization is actuarially
9 sound, which certification shall consider the rates, benefits,
10 and expenses of, and any other funds available for the payment
11 of obligations of, the organization.

12 2. The rates being charged or to be charged are
13 actuarially adequate to the end of the period for which rates
14 have been guaranteed.

15 3. Incurred but not reported claims and claims
16 reported but not fully paid have been adequately provided for.

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

19 (3) Every health maintenance organization shall file
20 quarterly, for the first three calendar quarters of each year
21 within 45 days after each of its quarterly reporting periods,
22 an unaudited financial statement of the organization as
23 described in paragraphs (1)(a) and (b). The statement for the
24 quarter ending March 31 shall be filed on or before May 15,
25 the statement for the quarter ending June 30 shall be filed on
26 or before August 15, and the statement for the quarter ending
27 September 30 shall be filed on or before November 15.The
28 quarterly report shall be verified by the oath of two officers
29 of the organization, properly notarized.

30 (8) Each health maintenance organization shall file
31 one copy of its annual statement convention blank in

1 electronic form, along with such additional filings as
2 prescribed by the department for the preceding calendar year
3 or quarter, with the National Association of Insurance
4 Commissioners. Each health maintenance organization shall pay
5 fees assessed by the National Association of Insurance
6 Commissioners to the department a reasonable fee to cover
7 costs associated with the filing and analysis of the documents
8 by the National Association of Insurance Commissioners.

9 Section 9. Paragraph (a) of subsection (3) and
10 subsection (15) of section 641.35, Florida Statutes, are
11 amended to read:

12 641.35 Assets, liabilities, and investments.--

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

16 (a) The amount, estimated consistently with the
17 provisions of this part, necessary to pay all of its unpaid
18 losses and claims incurred for or on behalf of a subscriber,
19 on or prior to the end of the reporting period, whether
20 reported or unreported, including contract and premium
21 deficiency reserves. If a health maintenance organization,
22 through a health care risk contract, transfers to any entity
23 the obligation to pay any provider for any claim arising from
24 services provided to or for the benefit of any subscriber, the
25 liabilities of the health maintenance organization under this
26 section shall include the amount of those losses and claims to
27 the extent that the provider has not received payment. No
28 liability need be established if the entity has provided to
29 the health maintenance organization a financial instrument
30 acceptable to the department securing the obligations under
31 the contract or if the health maintenance organization has in

1 place an escrow or withhold agreement approved by the
2 department that ensures full payment of those claims.
3 Financial instruments may include irrevocable, clean, and
4 evergreen letters of credit. For purposes of this paragraph,
5 the term "entity" does not include this state, the United
6 States, or an agency thereof, or an insurer or health
7 maintenance organization authorized in this state.

8
9 The department, upon determining that a health maintenance
10 organization has failed to report liabilities that should have
11 been reported, shall require a corrected report which reflects
12 the proper liabilities to be submitted by the organization to
13 the department within 10 working days of receipt of written
14 notification.

15 (15) ~~SPECIAL CONSENT~~ INVESTMENT OF EXCESS FUNDS.--

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

19 1. Without limitation in any investments otherwise
20 authorized by this part; or

21 2. In such other investments not specifically
22 authorized by this part provided such investments do not
23 exceed the lesser 5 percent of the health maintenance
24 organization's admitted assets or 25 percent of the amount by
25 which a health maintenance organization's surplus exceeds its
26 statutorily required minimum surplus. A health maintenance
27 organization may exceed the limitations of this subparagraph
28 only with the prior written approval of the department.

29 (b) Nothing in this subsection authorizes a health
30 maintenance organization to:

31

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

4 2. Make any investment prohibited by this code Any
5 ~~investment of the health maintenance organization's funds not~~
6 ~~enumerated in this part requires the prior approval of the~~
7 ~~department.~~

8 Section 10. Subsections (1) and (2) of section
9 641.365, Florida Statutes, are amended to read:

10 641.365 Dividends.--

11 (1)(a) A health maintenance organization shall not pay
12 any dividend or distribute cash or other property to
13 stockholders except out of that part of its available and
14 accumulated surplus funds which is derived from realized net
15 operating profits on its business and net realized capital
16 gains. ~~Dividend payments or distributions to stockholders~~
17 ~~shall not exceed 10 percent of such surplus in any one year~~
18 ~~unless otherwise approved by the department. In addition to~~
19 ~~such limited payments, a health maintenance organization may~~
20 ~~make dividend payments or distributions out of the health~~
21 ~~maintenance organization's entire net operating profits and~~
22 ~~realized net capital gains derived during the immediately~~
23 ~~preceding calendar or fiscal year, as applicable.~~

24 (b) In no event, unless prior written approval is
25 obtained from the department, shall a health maintenance
26 organization pay or declare any dividend or distribute cash or
27 other property to or on behalf of any stockholder if,
28 immediately before or after such distribution, the health
29 maintenance organization's available and accumulated surplus
30 funds, which are derived from realized net operating profits

1 on its business and net realized gains, are or would be less
2 than zero.

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

6 1. The dividend is equal to or less than the greater
7 of:

8 a. Ten percent of the health maintenance
9 organization's accumulated surplus funds which are derived
10 from realized net operating profits on its business and net
11 realized capital gains as of the immediate preceding calendar
12 year; or

13 b. The health maintenance organization's entire net
14 operating profit and realized net capital gains derived during
15 the immediately preceding calendar year.

16 2. The health maintenance organization will have
17 surplus equal to or exceeding 115 percent of the minimum
18 required statutory surplus after the dividend or distribution
19 is made.

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

24 4. The notice includes a certification by an officer
25 of the health maintenance organization attesting that after
26 payment of the dividend or distribution the health maintenance
27 organization will have at least 115 percent of required
28 statutory surplus.

29 5. The health maintenance organization has negative
30 retained earnings, statutory surplus in excess of \$50 million,
31 and statutory surplus greater than or equal to 150 percent of

1 its required statutory surplus before and after the dividend
2 distribution is made, based upon the health maintenance
3 organization's most recently filed annual financial statement.

4 (2) The department shall not approve a dividend or
5 distribution in excess of the maximum amount allowed in
6 subsection (1) unless it determines that the distribution or
7 dividend would not jeopardize the financial condition of the
8 health maintenance organization, considering:

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

12 (b) Any reduction of investment portfolio and
13 investment income.

14 (c) History of capital contributions.

15 (d) Prior dividend distributions of the health
16 maintenance organization.

17 (e) Whether the dividend is only a pass-through
18 dividend from a subsidiary of the health maintenance
19 organization.

20 Section 11. Except as otherwise provided herein, this
21 act shall take effect October 1, 2002.
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