

By the Committee on Banking and Insurance; and Senator Sanderson

311-2189-02

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; amending s.  
13          625.041, F.S.; revising the liabilities that a  
14          workers' compensation insurer must include on  
15          its financial statements; amending s. 627.481,  
16          F.S.; revising the requirements for minimum  
17          assets, reserves, and investments for entities  
18          authorized to enter into donor annuity  
19          agreements; amending s. 641.26, F.S.; revising  
20          certain annual report requirements; amending s.  
21          641.35, F.S.; specifying inclusion of certain  
22          losses and claims under liabilities of a health  
23          maintenance organization under certain  
24          circumstances; providing an exception;  
25          providing for the investment of funds of a  
26          health maintenance organization in excess of  
27          certain reserves and surplus under certain  
28          circumstances; providing a limitation; amending  
29          s. 641.365, F.S.; revising limitations on  
30          certain dividend payments or distributions to  
31          stockholders by a health maintenance

1 organization; specifying criteria for making  
2 payments, declaring dividends, or making  
3 distributions; specifying criteria for  
4 department approval of certain dividends or  
5 distributions; amending s. 641.19, F.S.;  
6 defining the term "health care risk contract";  
7 providing an effective date.

8

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

10

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 that 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 similar to that indicated in the National Association  
11 of Insurance Commissioners' 1997 "Model Regulation to Define  
12 Standards and Commissioner's Authority for Companies Deemed to  
13 Be in Hazardous Financial Condition," which are necessary to  
14 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 a, 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 a  
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) A workers' compensation insurer shall include as  
8 liabilities on their financial statements only Special  
9 Disability Trust Fund annual assessments that the insurer has  
10 actually received and such assessments that the insurer has  
11 been notified in writing are or will be due and payable.

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

14           627.481 Requirements for certain annuity agreements.--

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

22           1.a. The present value of future guaranteed benefits  
23 for individual annuities that have either commenced paying  
24 benefits or have fixed a future date of the first benefit  
25 payment.

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

29           2. The mortality tables used to value individual  
30 annuities, as defined in s. 625.121(5).

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

1           (I) The mortality tables described in s.  
2 625.121(5)(h), for individual annuities;

3           (II) At the option of the corporation or trust, the  
4 1983 Individual Annuity Mortality Table; or

5           (III) At the option of the corporation or trust, the  
6 2000 Individual Annuity Mortality Table for annuities issued  
7 between January 1, 1998, and June 30, 1998, inclusive.

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

9           (I) The mortality tables set forth in s.  
10 625.121(5)(i)3.;

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

13           (III) At the option of the corporation or trust, any  
14 other mortality tables authorized to be used by insurers in  
15 accordance with s. 625.121.

16           3. An interest rate not greater than the maximum  
17 interest rate permitted for the valuation of individual  
18 annuities issued during the same calendar year as the  
19 charitable gift annuity for individual annuities as set forth  
20 in s. 625.121(6)(b)-(f).

21           a. The maximum statutory valuation interest rates for  
22 single-premium immediate annuities for 1992 may be used for  
23 annuities issued in 1992 or any prior year. The maximum  
24 statutory valuation interest rates for single-premium  
25 immediate annuities issued in 1992 through 2001 are as  
26 follows:

<u>Year of Issue</u>	<u>Single Premium Immediate</u> <u>Annuity Interest Rate</u>
<u>1992</u>	<u>7.75 percent</u>
<u>1993</u>	<u>7.00 percent</u>

1	<u>1994</u>	<u>6.50 percent</u>
2	<u>1995</u>	<u>7.25 percent</u>
3	<u>1996</u>	<u>6.75 percent</u>
4	<u>1997</u>	<u>6.75 percent</u>
5	<u>1998</u>	<u>6.25 percent</u>
6	<u>1999</u>	<u>6.25 percent</u>
7	<u>2000</u>	<u>7.00 percent</u>
8	<u>2001</u>	<u>6.75 percent</u>

9  
10           b. For 2002 and subsequent years, until an interest  
11 rate for a specified year can be determined in accordance with  
12 s. 625.121(6), the prior year's rate shall be used unless the  
13 department requires use of a lower rate.

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

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

24           2. For purposes of this section, the provisions of s.  
25 625.305(2)(a) shall not apply. In lieu thereof, the fair  
26 market value of investments made by such corporation or trust  
27 in stock authorized by s. 625.324 may not exceed 50 percent of  
28 such corporation's or trust's required reserves and surplus.  
29 The fair market value in stock of any one corporation or  
30 mutual fund may not exceed 10 percent of such corporation's or  
31 trust's required reserves and surplus. All other provisions of

1 s. 625.305 shall apply. ~~and~~ Such assets shall be segregated  
2 as separate and distinct funds, independent of all other funds  
3 of such corporation or trust, and shall not be applied for the  
4 payment of the debts and obligations of the corporation or  
5 trust or for any purpose other than the annuity benefits  
6 specified in this section.

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

10 641.26 Annual report.--

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

20 Such report shall include:

21 (f) An actuarial certification that:

22 1. The health maintenance organization is actuarially  
23 sound, which certification shall consider the rates, benefits,  
24 and expenses of, and any other funds available for the payment  
25 of obligations of, the organization.

26 2. The rates being charged or to be charged are  
27 actuarially adequate to the end of the period for which rates  
28 have been guaranteed.

29 3. Incurred but not reported claims and claims  
30 reported but not fully paid have been adequately provided for.

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

3           (3) Every health maintenance organization shall file  
4 quarterly, for the first three calendar quarters of each year  
5 ~~within 45 days after each of its quarterly reporting periods,~~  
6 an unaudited financial statement of the organization as  
7 described in paragraphs (1)(a) and (b). The statement for the  
8 quarter ending March 31 shall be filed on or before May 15,  
9 the statement for the quarter ending June 30 shall be filed on  
10 or before August 15, and the statement for the quarter ending  
11 September 30 shall be filed on or before November 15.The  
12 quarterly report shall be verified by the oath of two officers  
13 of the organization, properly notarized.

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

24           Section 8. Paragraph (a) of subsection (3) and  
25 subsection (15) of section 641.35, Florida Statutes, are  
26 amended to read:

27           641.35 Assets, liabilities, and investments.--

28           (3) LIABILITIES.--In any determination of the  
29 financial condition of a health maintenance organization,  
30 liabilities to be charged against its assets shall include:  
31

1           (a) The amount, estimated consistently with the  
2 provisions of this part, necessary to pay all of its unpaid  
3 losses and claims incurred for or on behalf of a subscriber,  
4 on or prior to the end of the reporting period, whether  
5 reported or unreported, including contract and premium  
6 deficiency reserves. If a health maintenance organization,  
7 through a health care risk contract, transfers to any entity  
8 the obligation to pay any provider for any claim arising from  
9 services provided to or for the benefit of any subscriber, the  
10 liabilities of the health maintenance organization under this  
11 section shall include the amount of those losses and claims to  
12 the extent that the provider has not received payment. No  
13 liability need be established if the entity has provided to  
14 the health maintenance organization a financial instrument  
15 acceptable to the department securing the obligations under  
16 the contract or if the health maintenance organization has in  
17 place an escrow or withhold agreement approved by the  
18 department which assures full payment of those claims. As used  
19 in this paragraph, the term "entity" does not include this  
20 state, the United States, or an agency thereof or an insurer  
21 or health maintenance organization authorized in this state.

22  
23 The department, upon determining that a health maintenance  
24 organization has failed to report liabilities that should have  
25 been reported, shall require a corrected report which reflects  
26 the proper liabilities to be submitted by the organization to  
27 the department within 10 working days of receipt of written  
28 notification.

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

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

4           1. Without limitation in any investments otherwise  
5 authorized by this part; or

6           2. In such other investments not specifically  
7 authorized by this part provided such investments do not  
8 exceed the lesser 5 percent of the health maintenance  
9 organization's admitted assets or 25 percent of the amount by  
10 which a health maintenance organization's surplus exceeds its  
11 statutorily required minimum surplus. A health maintenance  
12 organization may exceed the limitations of this subparagraph  
13 only with the prior written approval of the department.

14           (b) Nothing in this section authorizes a health  
15 maintenance organization to:

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

19           2. Make any investment prohibited by this code ~~Any~~  
20 ~~investment of the health maintenance organization's funds not~~  
21 ~~enumerated in this part requires the prior approval of the~~  
22 ~~department.~~

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

25           641.365 Dividends.--

26           (1)(a) A health maintenance organization shall not pay  
27 any dividend or distribute cash or other property to  
28 stockholders except out of that part of its available and  
29 accumulated surplus funds which is derived from realized net  
30 operating profits on its business and net realized capital  
31 gains. ~~Dividend payments or distributions to stockholders~~

1 ~~shall not exceed 10 percent of such surplus in any one year~~  
2 ~~unless otherwise approved by the department. In addition to~~  
3 ~~such limited payments, a health maintenance organization may~~  
4 ~~make dividend payments or distributions out of the health~~  
5 ~~maintenance organization's entire net operating profits and~~  
6 ~~realized net capital gains derived during the immediately~~  
7 ~~preceding calendar or fiscal year, as applicable.~~

8 (b) Unless prior written approval is obtained from the  
9 department, a health maintenance organization may not pay or  
10 declare any dividend or distribute cash or other property to  
11 or on behalf of any stockholder if, immediately before or  
12 after such distribution, the health maintenance organization's  
13 available and accumulated surplus funds, which are derived  
14 from realized net operating profits on its business and net  
15 realized gains, are or would be less than zero.

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

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

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

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

29 2. The health maintenance organization will have  
30 surplus equal to or exceeding 115 percent of the minimum  
31

1 required statutory surplus after the dividend or distribution  
2 is made.

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

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

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

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

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

26 (b) Any reduction of investment portfolio and  
27 investment income.

28 (c) History of capital contributions.

29 (d) Prior dividend distributions of the health  
30 maintenance organization.

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1           (e) Whether the dividend is only a pass-through  
2 dividend from a subsidiary of the health maintenance  
3 organization.

4           (21) "Health care risk contract" means a contract  
5 under which an individual or entity receives consideration or  
6 other compensation in an amount greater than 1 percent of the  
7 health maintenance organization's annual gross written premium  
8 in exchange for providing to the health maintenance  
9 organization a provider network or other services, which may  
10 include administrative services.

11           Section 10. Subsection (21) is added to section  
12 641.19, 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 11. This act shall take effect October 1,  
25 2002.

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   Senate Bill 2192  
4                   Allows HMOs to invest funds in excess of statutory reserves  
5                   and surplus up to specified limits.  
6                   Provides an insurer's right for review before the Division of  
7                   Administrative Hearings (DOAH) under s. 120.57, F.S., of a  
8                   Department of Insurance order placing the insurer under  
9                   administrative supervision does not operate as an automatic  
10                  stay of the order, and that during the period of supervision,  
11                  an insurer may contest an action by the Department to DOAH,  
12                  but such an appeal would not operate as an automatic stay.  
13                  Deletes the provision which prohibited insurers from appealing  
14                  actions taken by the Department, during the administration  
15                  supervision of the insurer, to the Division of Administrative  
16                  Hearings.  
17                  Substitutes the term "health care risk contract" for the terms  
18                  "capitation or other contractual arrangement" and defines this  
19                  term.  
20                  Exempts HMOs from recording liabilities associated with  
21                  certain transferred risk when such HMOs have in place an  
22                  acceptable financial instruments or agreement approved by the  
23                  Department which assures full payment of those claims.  
24                  Permits HMOs with no retained earnings to pay or declare  
25                  dividends if they obtain prior written approval from the  
26                  Department, and requires the Department to consider certain  
27                  factors when considering whether to approve a dividend in  
28                  excess of a certain amount.  
29                  Revises financial requirements for charitable organizations  
30                  that are authorized by the Department to issue donor annuity  
31                  agreements.  
                  Specifies the method for how insurers report liabilities for  
                  Special Disability Trust Fund assessments.