

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.; providing for effect
7 of certain department orders; specifying that
8 certain requests stay certain actions;
9 specifying authority of the Department of
10 Insurance relating to certain notice
11 requirements; authorizing the department to
12 adopt certain rules; amending s. 624.84, F.S.;
13 specifying that certain requests do not stay
14 certain actions; amending s. 625.041, F.S.;
15 revising the liabilities that a workers'
16 compensation insurer must include on its
17 financial statements; amending s. 627.481,
18 F.S.; revising the requirements for minimum
19 assets, reserves, and investments for entities
20 authorized to enter into donor annuity
21 agreements; amending s. 641.26, F.S.; revising
22 certain annual report requirements; amending s.
23 641.35, F.S.; specifying inclusion of certain
24 losses and 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 and 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; amending s. 641.19, F.S. ;
8 defining the term "health care risk contract";
9 providing an effective date.

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

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13 Section 1. Paragraph (b) of subsection (4) of section
14 624.404, Florida Statutes, is amended to read:

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

23 (4)

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

1 this state, or on one or more lines of insurance, on all of
2 the business produced through one or more agents or agencies,
3 or on all of the business from a designated geographical
4 territory, without obtaining the prior approval of the
5 department.

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

8 624.80 Definitions.--As used in this part:

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

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

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

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

20 (d) The insurer meets one or more of the grounds in s.
21 631.051 for the appointment of the department as receiver.

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

25 624.81 Notice to comply with written requirements of
26 department; noncompliance.--

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

1 the department is applying and effectuating the provisions of
2 this part. An order issued by the department pursuant to this
3 subsection entitles the insurer to request a proceeding under
4 ss. 120.569 and 120.57 and such a request shall stay the
5 action pending such proceeding.

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

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

20 Section 4. Section 624.84, Florida Statutes, is
21 amended to read:

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

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 that are due within the current calendar year. In
11 addition, those insurers shall also disclose in the notes to
12 the financial statements required to be filed under s. 624.424
13 an estimate of future Special Disability Trust Fund
14 assessments, if the assessments are likely to occur and can be
15 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 of the first benefit
29 payment.

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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 tables described in s.
8 625.121(5)(h), 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 mortality tables required to be used by
18 insurers in accordance with s. 625.121; or

19 (III) At the option of the corporation or trust, any
20 other mortality tables authorized to be used by insurers in
21 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:

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

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

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

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

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1 2. For purposes of this section, the provisions of s.
2 625.305(2)(a) shall not apply. In lieu thereof, the fair
3 market value of investments made by such corporation or trust
4 in stock authorized by s. 625.324 may not exceed 50 percent of
5 such corporation's or trust's required reserves and surplus.
6 The fair market value in stock of any one corporation or
7 mutual fund may not exceed 10 percent of such corporation's or
8 trust's required reserves and surplus. All other provisions of
9 s. 625.305 shall apply.~~and~~ Such assets shall be segregated
10 as separate and distinct funds, independent of all other funds
11 of such corporation or trust, and shall not be applied for the
12 payment of the debts and obligations of the corporation or
13 trust or for any purpose other than the annuity benefits
14 specified in this section.

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

18 641.26 Annual report.--

19 (1) Every health maintenance organization shall,
20 annually within 3 months after the end of its fiscal year, or
21 within an extension of time therefor as the department, for
22 good cause, may grant, in a form prescribed by the department,
23 file a report with the department, verified by the oath of two
24 officers of the organization or, if not a corporation, of two
25 persons who are principal managing directors of the affairs of
26 the organization, properly notarized, showing its condition on
27 the last day of the immediately preceding reporting period.
28 Such report shall include:

29 (f) An actuarial certification that:

30 1. The health maintenance organization is actuarially
31 sound, which certification shall consider the rates, benefits,

1 and expenses of, and any other funds available for the payment
2 of obligations of, the organization.

3 2. The rates being charged or to be charged are
4 actuarially adequate to the end of the period for which rates
5 have been guaranteed.

6 3. Incurred but not reported claims and claims
7 reported but not fully paid have been adequately provided for.

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

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

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

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

4 641.35 Assets, liabilities, and investments.--

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

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

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1 The department, upon determining that a health maintenance
2 organization has failed to report liabilities that should have
3 been reported, shall require a corrected report which reflects
4 the proper liabilities to be submitted by the organization to
5 the department within 10 working days of receipt of written
6 notification.

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

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

11 1. Without limitation in any investments otherwise
12 authorized by this part; or

13 2. In such other investments not specifically
14 authorized by this part provided such investments do not
15 exceed the lesser 5 percent of the health maintenance
16 organization's admitted assets or 25 percent of the amount by
17 which a health maintenance organization's surplus exceeds its
18 statutorily required minimum surplus. A health maintenance
19 organization may exceed the limitations of this subparagraph
20 only with the prior written approval of the department.

21 (b) Nothing in this section authorizes a health
22 maintenance organization to:

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

26 2. Make any investment prohibited by this code ~~Any~~
27 ~~investment of the health maintenance organization's funds not~~
28 ~~enumerated in this part requires the prior approval of the~~
29 ~~department.~~

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

1 641.365 Dividends.--

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

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

23 **(c) A health maintenance organization may make**
24 **dividend payments or distributions to stockholders without the**
25 **prior written approval of the department when:**

26 **1. The dividend is equal to or less than the greater**
27 **of:**

28 **a. Ten percent of the health maintenance**
29 **organization's accumulated surplus funds which are derived**
30 **from realized net operating profits on its business and net**
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1 realized capital gains as of the immediate preceding calendar
2 year; or

3 b. The health maintenance organization's entire net
4 operating profit and realized net capital gains derived during
5 the immediately preceding calendar year.

6 2. The health maintenance organization will have
7 surplus equal to or exceeding 115 percent of the minimum
8 required statutory surplus after the dividend or distribution
9 is made.

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

14 4. The notice includes a certification by an officer
15 of the health maintenance organization attesting that after
16 payment of the dividend or distribution the health maintenance
17 organization will have at least 115 percent of required
18 statutory surplus.

19 5. The health maintenance organization has negative
20 retained earnings, statutory surplus in excess of \$50 million,
21 and statutory surplus greater than or equal to 150 percent of
22 its required statutory surplus before and after the dividend
23 distribution is made based upon the health maintenance
24 organization's most recently filed annual financial statement.

25 (2) The department shall not approve a dividend or
26 distribution in excess of the maximum amount allowed in
27 subsection (1) unless it determines that the distribution or
28 dividend would not jeopardize the financial condition of the
29 health maintenance organization, considering:
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1 (a) The liquidity, quality, and diversification of the
2 health maintenance organization's assets and the effect on its
3 ability to meet its obligations.

4 (b) Any reduction of investment portfolio and
5 investment income.

6 (c) History of capital contributions.

7 (d) Prior dividend distributions of the health
8 maintenance organization.

9 (e) Whether the dividend is only a pass-through
10 dividend from a subsidiary of the health maintenance
11 organization.

12 Section 10. Subsection (21) is added to section
13 641.19, Florida Statutes, to read:

14 641.19 Definitions.--As used in this part, the term:

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

25 Section 11. Except as otherwise expressly provided in
26 this act, this act shall take effect October 1, 2002.