

By Senator Webster

9-767A-03

See HB 831

1                                   A bill to be entitled  
2           An act relating to insurance; amending s.  
3           624.310, F.S.; revising definitions; conforming  
4           provisions to a revised definition; conforming  
5           provisions to certain governmental  
6           reorganization; prohibiting affiliated parties  
7           from certain activities constituting a conflict  
8           of interest; providing exceptions; authorizing  
9           the Office of Insurance Regulation to require  
10          certain disclosures of personal interest;  
11          specifying certain restrictions governing  
12          affiliated party conduct; amending s. 624.316,  
13          F.S.; deleting provisions providing for an  
14          examination of an insurer pursuant to an  
15          agreement between the Department of Financial  
16          Services and the insurer; requiring such  
17          examinations according to rules of the  
18          department; amending s. 624.4095, F.S.;  
19          conforming provisions to certain governmental  
20          reorganization; providing for calculating  
21          certain surplus for certain insurers; amending  
22          s. 624.610, F.S.; conforming provisions to  
23          certain governmental reorganization; revising  
24          requirements for securities of a trust fund for  
25          a single assuming insurer; amending ss. 628.461  
26          and 628.4615, F.S.; specifying additional  
27          nonapplication of acquisition of controlling  
28          stock provisions to changes of ownership of a  
29          domestic insurer or specialty insurer,  
30          respectively, under certain circumstances;  
31          creating ss. 634.042, 627.8401, 634.3076,

1           634.4062, and 651.029, F.S.; prohibiting  
2           certain investments by motor vehicle service  
3           agreement companies, premium finance companies,  
4           home warranty associations, service warranty  
5           associations, and continuing care providers,  
6           respectively; creating s. 641.263, F.S.;  
7           providing definitions; providing for risk-based  
8           capital for health maintenance organizations;  
9           requiring risk-based capital reports; providing  
10          reporting requirements; providing requirements  
11          for determining risk-based capital; providing  
12          legislative findings; providing for adjusting  
13          risk-based capital reports under certain  
14          circumstances; providing requirements for  
15          health maintenance organizations upon the  
16          occurrence of certain events; providing notice  
17          requirements; requiring a risk-based capital  
18          plan for such events; providing plan  
19          requirements; providing duties and  
20          responsibilities of the Office of Insurance  
21          Regulation; providing for office hearings of  
22          challenges by health maintenance organizations;  
23          providing notice requirements; providing  
24          construction; authorizing the office to adopt  
25          rules; authorizing the office to exempt certain  
26          health maintenance organizations; specifying  
27          absence of liability of the office or the  
28          Financial Services Commission for certain  
29          actions; providing for effect of certain  
30          notices; providing alternative requirements for  
31          risk-based capital reports for certain time

1 periods; providing legislative intent for the  
2 use of risk-based capital reports and other  
3 related documents; amending s. 440.20, F.S.;  
4 correcting a cross-reference; providing an  
5 effective date.

6  
7 Be It Enacted by the Legislature of the State of Florida:

8  
9 Section 1. Section 624.310, Florida Statutes, is  
10 amended to read:

11 624.310 Enforcement; cease and desist orders; removal  
12 of certain persons; fines.--

13 (1) DEFINITIONS.--For the purposes of this section,  
14 the term:

15 (a) "Affiliated party of a licensee" means any person  
16 who directs or participates in the conduct of the affairs of a  
17 licensee and who is:

18 1. A director, officer, employee, trustee, committee  
19 member, or controlling stockholder of a licensee or a  
20 subsidiary or service corporation of the licensee, ~~other than~~  
21 ~~a controlling stockholder which is a holding company,~~ or an  
22 agent of a licensee or a subsidiary or service corporation of  
23 the licensee;

24 2. A person who has filed or is required to file a  
25 statement or any other information required to be filed under  
26 s. 628.461 or s. 628.4615;

27 3. A stockholder, ~~other than a stockholder that is a~~  
28 ~~holding company of the licensee,~~ who participates in the  
29 conduct of the affairs of the licensee; or

30 4. An independent contractor who:  
31

1 a. Renders a written opinion required by the laws of  
2 this state under her or his professional credentials on behalf  
3 of the licensee, which opinion is reasonably relied on by the  
4 office department in the performance of its duties; or

5 b. Affirmatively and knowingly conceals facts, through  
6 a written misrepresentation to the office department, with  
7 knowledge that such misrepresentation:

8 (I) Constitutes a violation of the insurance code or a  
9 lawful rule or order of the office department; and

10 (II) Directly and materially endangers the ability of  
11 the licensee to meet its obligations to policyholders.

12  
13 For the purposes of this subparagraph, any representation of  
14 fact made by an independent contractor on behalf of a  
15 licensee, affirmatively communicated as a representation of  
16 the licensee to the independent contractor, shall not be  
17 considered a misrepresentation by the independent contractor  
18 to the office department.

19 (b) "Licensee" means a person issued a license or  
20 certificate of authority or approval under this code or a  
21 person registered under a provision of this code.

22 (2) ENFORCEMENT GENERALLY.--The office department may  
23 institute such suits or other legal proceedings as may be  
24 required to enforce any provision of this code. If it appears  
25 that any person has violated any provision of this code for  
26 which criminal prosecution is provided, the office department  
27 shall provide the appropriate state attorney or other  
28 prosecuting agency having jurisdiction with respect to such  
29 prosecution with the relevant information in its possession.

30 (3) CEASE AND DESIST ORDERS.--

31

1           (a) The office ~~department~~ may issue and serve a  
2 complaint stating charges upon any licensee or upon any  
3 affiliated party of a licensee, whenever the office ~~department~~  
4 has reasonable cause to believe that the person or individual  
5 named therein is engaging in or has engaged in conduct that  
6 is:

7           1. An act that demonstrates a lack of fitness or  
8 trustworthiness to engage in the business of insurance, is  
9 hazardous to the insurance buying public, or constitutes  
10 business operations that are a detriment to policyholders,  
11 stockholders, investors, creditors, or the public;

12           2. A violation of any provision of the Florida  
13 Insurance Code;

14           3. A violation of any rule of the office ~~department~~;

15           4. A violation of any order of the office ~~department~~;  
16 or

17           5. A breach of any written agreement with the office  
18 ~~department~~.

19           (b) The complaint shall contain a statement of facts  
20 and notice of opportunity for a hearing pursuant to ss.  
21 120.569 and 120.57.

22           (c) If no hearing is requested within the time allowed  
23 by ss. 120.569 and 120.57, or if a hearing is held and the  
24 office ~~department~~ finds that any of the charges are proven,  
25 the office ~~department~~ may enter an order directing the  
26 licensee or the affiliated party of a licensee named in the  
27 complaint to cease and desist from engaging in the conduct  
28 complained of and take corrective action to remedy the effects  
29 of past improper conduct and assure future compliance.

30           (d) If the licensee or affiliated party of a licensee  
31 named in the order fails to respond to the complaint within

1 the time allotted by ss. 120.569 and 120.57, the failure  
2 constitutes a default and justifies the entry of a cease and  
3 desist order.

4 (e) A contested or default cease and desist order is  
5 effective when reduced to writing and served upon the licensee  
6 or affiliated party of a licensee named therein. An  
7 uncontested cease and desist order is effective as agreed.

8 (f) Whenever the office ~~department~~ finds that conduct  
9 described in paragraph (a) is likely to cause insolvency,  
10 substantial dissipation or misvaluation of assets or earnings  
11 of the licensee, substantial inability to pay claims on a  
12 timely basis, or substantial prejudice to prospective or  
13 existing insureds, policyholders, subscribers, or the public,  
14 it may issue an emergency cease and desist order requiring the  
15 licensee or any affiliated party of a licensee to immediately  
16 cease and desist from engaging in the conduct complained of  
17 and to take corrective and remedial action. The emergency  
18 order is effective immediately upon service of a copy of the  
19 order upon the licensee or affiliated party of a licensee  
20 named therein and remains effective for 90 days. If the office  
21 ~~department~~ begins nonemergency cease and desist proceedings  
22 under this subsection, the emergency order remains effective  
23 until the conclusion of the proceedings under ss. 120.569 and  
24 120.57. Any emergency order entered under this subsection is  
25 exempt from s. 119.07(1) and is confidential until it is made  
26 permanent unless the office ~~department~~ finds that the  
27 confidentiality will result in substantial risk of financial  
28 loss to the public. All emergency cease and desist orders that  
29 are not made permanent are available for public inspection 1  
30 year from the date the emergency cease and desist order  
31 expires; however, portions of an emergency cease and desist

1 order remain confidential and exempt from the provisions of s.  
2 119.07(1) if disclosure would:

- 3 1. Jeopardize the integrity of another active  
4 investigation;
- 5 2. Impair the safety and financial soundness of the  
6 licensee or affiliated party of a licensee;
- 7 3. Reveal personal financial information;
- 8 4. Reveal the identity of a confidential source;
- 9 5. Defame or cause unwarranted damage to the good name  
10 or reputation of an individual or jeopardize the safety of an  
11 individual; or
- 12 6. Reveal investigative techniques or procedures.

13 (4) REMOVAL OF AFFILIATED PARTIES OF A LICENSEE BY THE  
14 OFFICE ~~DEPARTMENT~~.--

15 (a) The office ~~department~~ may issue and serve a  
16 complaint stating charges upon any affiliated party of a  
17 licensee and upon the licensee involved, whenever the office  
18 ~~department~~ has reason to believe that an affiliated party of a  
19 licensee is engaging in or has engaged in conduct that  
20 constitutes:

- 21 1. An act that demonstrates a lack of fitness or  
22 trustworthiness to engage in the business of insurance through  
23 engaging in illegal activity or mismanagement of business  
24 activities;
- 25 2. A willful violation of any law relating to the  
26 business of insurance; however, if the violation constitutes a  
27 misdemeanor, no complaint shall be served as provided in this  
28 section until the affiliated party of a licensee is notified  
29 in writing of the matter of the violation and has been  
30 afforded a reasonable period of time, as set forth in the  
31 notice, to correct the violation and has failed to do so;

1           3. A violation of any other law involving fraud or  
2 moral turpitude that constitutes a felony;

3           4. A willful violation of any rule of the office  
4 ~~department~~;

5           5. A willful violation of any order of the office  
6 ~~department~~;

7           6. A material misrepresentation of fact, made  
8 knowingly and willfully or made with reckless disregard for  
9 the truth of the matter; or

10          7. An act of commission or omission or a practice  
11 which is a breach of trust or a breach of fiduciary duty.

12          (b) The complaint shall contain a statement of facts  
13 and notice of opportunity for a hearing pursuant to ss.  
14 120.569 and 120.57.

15          (c) If no hearing is requested within the time  
16 allotted by ss. 120.569 and 120.57, or if a hearing is held  
17 and the office ~~department~~ finds that any of the charges in the  
18 complaint are proven true and that:

19           1. The licensee has suffered or will likely suffer  
20 loss or other damage;

21           2. The interests of the policyholders, creditors, or  
22 public are, or could be, seriously prejudiced by reason of the  
23 violation or act or breach of fiduciary duty;

24           3. The affiliated party of a licensee has received  
25 financial gain by reason of the violation, act, or breach of  
26 fiduciary duty; or

27           4. The violation, act, or breach of fiduciary duty is  
28 one involving personal dishonesty on the part of the  
29 affiliated party of a licensee or the conduct jeopardizes or  
30 could reasonably be anticipated to jeopardize the financial  
31 soundness of the licensee,



1  
2 The office department may enter an order removing the  
3 affiliated party of a licensee or restricting or prohibiting  
4 participation by the person in the affairs of that particular  
5 licensee or of any other licensee.

6 (d) If the affiliated party of a licensee fails to  
7 respond to the complaint within the time allotted by ss.  
8 120.569 and 120.57, the failure constitutes a default and  
9 justifies the entry of an order of removal, suspension, or  
10 restriction.

11 (e) A contested or default order of removal,  
12 restriction, or prohibition is effective when reduced to  
13 writing and served on the licensee and the affiliated party of  
14 a licensee. An uncontested order of removal, restriction, or  
15 prohibition is effective as agreed.

16 (f)1. The chief executive officer, or the person  
17 holding the equivalent office, of a licensee shall promptly  
18 notify the office department if she or he has actual knowledge  
19 that any affiliated party of a licensee is charged with a  
20 felony in a state or federal court.

21 2. Whenever any affiliated party of a licensee is  
22 charged with a felony in a state or federal court or with the  
23 equivalent of a felony in the courts of any foreign country  
24 with which the United States maintains diplomatic relations,  
25 and the charge alleges violation of any law involving fraud,  
26 theft, or moral turpitude, the office department may enter an  
27 emergency order suspending the affiliated party of a licensee  
28 or restricting or prohibiting participation by the affiliated  
29 party of a licensee in the affairs of the particular licensee  
30 or of any other licensee upon service of the order upon the  
31 licensee and the affiliated party of a licensee charged. The

1 order shall contain notice of opportunity for a hearing  
2 pursuant to ss. 120.569 and 120.57, where the affiliated party  
3 of a licensee may request a postsuspension hearing to show  
4 that continued service to or participation in the affairs of  
5 the licensee does not pose a threat to the interests of the  
6 licensee's policyholders or creditors and does not threaten to  
7 impair public confidence in the licensee. In accordance with  
8 applicable office ~~departmental~~ rules, the office ~~department~~  
9 shall notify the affiliated party of a licensee whether the  
10 order suspending or prohibiting the person from participation  
11 in the affairs of a licensee will be rescinded or otherwise  
12 modified. The emergency order remains in effect, unless  
13 otherwise modified by the office ~~department~~, until the  
14 criminal charge is disposed of. The acquittal of the person  
15 charged, or the final, unappealed dismissal of all charges  
16 against the person, dissolves the emergency order, but does  
17 not prohibit the office ~~department~~ from instituting  
18 proceedings under paragraph (a). If the person charged is  
19 convicted or pleads guilty or nolo contendere, whether or not  
20 an adjudication of guilt is entered by the court, the  
21 emergency order shall become final.

22 (g) Any affiliated party of a licensee removed from  
23 office pursuant to this section is not eligible for reelection  
24 or appointment to the position or to any other official  
25 position in any licensee in this state except upon the written  
26 consent of the office ~~department~~. Any affiliated party of a  
27 licensee who is removed, restricted, or prohibited from  
28 participation in the affairs of a licensee pursuant to this  
29 section may petition the office ~~department~~ for modification or  
30 termination of the removal, restriction, or prohibition.

31

1           (h) Resignation or termination of an affiliated party  
2 of a licensee does not affect the office's department's  
3 jurisdiction to proceed under this subsection.

4           (5)(a) CONFLICT OF INTEREST.--An affiliated party of a  
5 licensee may not engage or participate, directly or  
6 indirectly, in any business or transaction conducted on behalf  
7 of or involving the licensee, subsidiary, or service  
8 corporation that would result in a conflict of the party's own  
9 personal interests with those of the licensee, subsidiary, or  
10 service corporation with which he or she is affiliated,  
11 unless:

12           1. Such business or transactions are conducted in good  
13 faith and are honest, fair, and reasonable to the licensee,  
14 subsidiary, or service corporation and are on terms no more  
15 favorable than would be offered to a disinterested third  
16 party.

17           2. A full disclosure of such business or transaction,  
18 and the nature of the interest of the affiliated party of the  
19 licensee, is made to the board of directors.

20           3. Such business or transactions are approved in good  
21 faith by the board of directors and any interested director  
22 abstaining and such approval is recorded in the minutes.

23           4. Any profits inuring to the affiliated party of a  
24 licensee are not at the expense of the licensee, subsidiary,  
25 or service corporation and do not prejudice the best interests  
26 of the licensee, subsidiary, or service corporation in any  
27 way.

28           5. Such business or transactions do not represent a  
29 breach of the fiduciary duty of an affiliated party of a  
30 licensee and are not fraudulent, illegal, or ultra vires.  
31

1           (b) Without limitation by any of the specific  
2 provisions of this section, the office may require the  
3 disclosure by affiliated parties of a licensee of their  
4 personal interests, directly or indirectly, in any business or  
5 transactions on behalf of or involving the licensee,  
6 subsidiary, or service corporation and of their control of or  
7 active participation in enterprises having activities related  
8 to the business of the licensee, subsidiary, or service  
9 corporation.

10           (c) The following restrictions governing the conduct  
11 of affiliated parties of a licensee are expressly specified,  
12 but such specification is not to be construed in any manner as  
13 excusing such parties from the observance of any other aspect  
14 of the general fiduciary duty owed by such parties to the  
15 licensee which they serve:

16           1. A director of a licensee may not accept director  
17 fees unless the director fees have been previously approved by  
18 the board of directors and such fees represent reasonable  
19 compensation for service as a director or member of a  
20 committee. This subparagraph does not limit or preclude  
21 reasonable compensation as otherwise authorized by paragraph  
22 (a) for a director who also provides goods or services to the  
23 licensee.

24           2. An affiliated party of a licensee may not purchase  
25 or otherwise obtain ownership of any asset of the licensee or  
26 subsidiary at less than fair market value of such asset.

27           3. An affiliated party of a licensee may not have any  
28 interest, direct or indirect, of any evidence of indebtedness  
29 of the licensee or subsidiary.

30           4. An affiliated party of a licensee acting as proxy  
31 for a stockholder of a licensee, subsidiary, or service

1 corporation may not, directly or indirectly, exercise,  
2 transfer, or delegate such vote or votes in any consideration  
3 of a private benefit or advantage. The voting rights of  
4 stockholders and directors may not be the subject of sale,  
5 barter, exchange, or similar transaction, directly or  
6 indirectly. Any affiliated party of a licensee who violates  
7 the provisions of this subparagraph is accountable to the  
8 licensee, subsidiary, or service corporation for any  
9 increment.

10 ~~(6)~~~~(5)~~ ADMINISTRATIVE FINES; ENFORCEMENT.--

11 (a) The office ~~department~~ may, in a proceeding  
12 initiated pursuant to chapter 120, impose an administrative  
13 fine against any person found in the proceeding to have  
14 violated any provision of this code, a cease and desist order  
15 of the office ~~department~~, or any written agreement with the  
16 office ~~department~~. No proceeding shall be initiated and no  
17 fine shall accrue until after the person has been notified in  
18 writing of the nature of the violation and has been afforded a  
19 reasonable period of time, as set forth in the notice, to  
20 correct the violation and has failed to do so.

21 (b) A fine imposed under this subsection may not  
22 exceed the amounts specified in s. 624.4211, per violation.

23 (c) The office ~~department~~ may, in addition to the  
24 imposition of an administrative fine under this subsection,  
25 also suspend or revoke the license or certificate of authority  
26 of the licensee fined under this subsection.

27 (d) Any administrative fine levied by the office  
28 ~~department~~ under this subsection may be enforced by the office  
29 ~~department~~ by appropriate proceedings in the circuit court of  
30 the county in which the person resides or in which the  
31 principal office of a licensee is located, or, in the case of

1 a foreign insurer or person not residing in this state, in  
2 Leon County. In any administrative or judicial proceeding  
3 arising under this section, a party may elect to correct the  
4 violation asserted by the office ~~department~~, and, upon doing  
5 so, any fine shall cease to accrue; however, the election to  
6 correct the violation does not render any administrative or  
7 judicial proceeding moot. All fines collected under this  
8 section shall be paid to the Insurance Commissioner's  
9 Regulatory Trust Fund.

10 (e) In imposing any administrative penalty or remedy  
11 provided for under this section, the office ~~department~~ shall  
12 take into account the appropriateness of the penalty with  
13 respect to the size of the financial resources and the good  
14 faith of the person charged, the gravity of the violation, the  
15 history of previous violations, and other matters as justice  
16 may require.

17 (f) The imposition of an administrative fine under  
18 this subsection may be in addition to any other penalty or  
19 administrative fine authorized under this code.

20 (7)~~(6)~~ ADMINISTRATIVE PROCEDURES.--All administrative  
21 proceedings brought under this section ~~subsections (3), (4),~~  
22 ~~and (5)~~ shall be conducted in accordance with chapter 120. Any  
23 service required or authorized to be made by the office  
24 ~~department~~ under this code shall be made by certified mail,  
25 return receipt requested, delivered to the addressee only; by  
26 personal delivery; or in accordance with chapter 48. The  
27 service provided for herein shall be effective from the date  
28 of delivery.

29 (8)~~(7)~~ OTHER LAWS NOT SUPERSEDED.--The provisions of  
30 this section are in addition to other provisions of this code,  
31 and shall not be construed to curtail, impede, replace, or

1 delete any other similar provision or power of the office  
2 ~~department~~ under the insurance code as defined in s. 624.01 or  
3 any power of the office ~~department~~ which may exist under the  
4 common law of this state. The procedures set forth in s.  
5 626.9581 do not apply to regulatory action taken pursuant to  
6 the provisions of this section.

7 Section 2. Paragraph (e) of subsection (2) of section  
8 624.316, Florida Statutes, is amended to read:

9 624.316 Examination of insurers.--

10 (2)

11 (e) The department shall adopt rules providing that,  
12 ~~upon agreement between the department and the insurer, an~~  
13 examination under this section may be conducted by independent  
14 certified public accountants, actuaries meeting criteria  
15 specified by rule, and reinsurance specialists meeting  
16 criteria specified by rule. The rules shall provide+

17 1. ~~That the agreement of the insurer is not required~~  
18 ~~if the department reasonably suspects criminal misconduct on~~  
19 ~~the part of the insurer.~~

20 2. ~~That the department shall provide the insurer with~~  
21 ~~a list of three firms acceptable to the department, and that~~  
22 ~~the insurer shall select the firm to conduct the examination~~  
23 ~~from the list provided by the department.~~

24 3. that the insurer being examined must make payment  
25 for the examination directly to the firm performing the  
26 examination in accordance with the rates and terms established  
27 ~~agreed to~~ by the department, ~~the insurer,~~ and the firm  
28 performing the examination.

29 4. ~~That if the examination is conducted without the~~  
30 ~~consent of the insurer, the insurer must pay all reasonable~~  
31 ~~charges of the examining firm if the examination finds~~

1 ~~impairment, insolvency, or criminal misconduct on the part of~~  
2 ~~the insurer.~~

3 Section 3. Section 624.4095, Florida Statutes, is  
4 amended to read:

5 624.4095 Premiums written; restrictions.--

6 (1) Whenever an insurer's ratio of actual or projected  
7 annual written premiums as adjusted in accordance with  
8 subsection ~~(5)~~~~(4)~~ to current or projected surplus as to  
9 policyholders as adjusted in accordance with subsection ~~(6)~~~~(5)~~  
10 exceeds 10 to 1 for gross written premiums or exceeds 4 to 1  
11 for net written premiums, the office ~~department~~ shall suspend  
12 the insurer's certificate of authority or establish by order  
13 maximum gross or net annual premiums to be written by the  
14 insurer consistent with maintaining the ratios specified  
15 herein unless the insurer demonstrates to the office's  
16 ~~department's~~ satisfaction that exceeding the ratios of this  
17 section does not endanger the financial condition of the  
18 insurer or endanger the interests of the insurer's  
19 policyholders.

20 (2) Projected annual net or gross premiums shall be  
21 based on the actual writings to date for the insurer's current  
22 calendar year or the insurer's writings for the previous  
23 calendar year or both. Ratios shall be computed on an  
24 annualized basis.

25 (3) For the purposes of this section, gross premiums  
26 written means direct premiums written and reinsurance assumed.

27 (4) For the purposes of this section, surplus as to  
28 policyholders for property and casualty insurers shall be  
29 calculated as follows: (actual surplus as to policyholders)  
30 minus (surplus as to policyholders of all subsidiary insurers  
31 as allowed pursuant to s. 625.325).



1           ~~(5)(4)~~ For the purposes of this section, for the  
2 calendar year ending December 31, 1990, and each subsequent  
3 year, premiums shall be calculated as the product of the  
4 actual or projected premiums and the following:

5           (a) For property insurance, 0.90.

6           (b) For casualty insurance, 1.25.

7           (c) For health insurance, 0.80.

8           (d) For all other kinds of insurance, 1.00.

9           ~~(6)(5)~~ This section shall not apply to:

10           (a) Life insurance written by life or life and health  
11 insurers; or

12           (b) Life and health insurers which have a surplus as  
13 to policyholders greater than \$40 million and which have  
14 written health insurance during each of the immediately  
15 preceding five calendar years.

16           ~~(7)(6)~~ For the purposes of this section, surplus as to  
17 policyholders for life and health insurers shall be calculated  
18 as follows: (actual or projected surplus as to policyholders)  
19 minus (surplus as to policyholders required to be maintained  
20 under s. 624.408 for liabilities relating to life insurance)  
21 and minus (surplus as to policyholders of all subsidiary  
22 insurers as allowed pursuant to s. 625.325).

23           Section 4. Paragraph (c) of subsection (3) of section  
24 624.610, Florida Statutes, is amended to read:

25           624.610 Reinsurance.--

26           (3)

27           (c)1. Credit must be allowed when the reinsurance is  
28 ceded to an assuming insurer that maintains a trust fund in a  
29 qualified United States financial institution, as defined in  
30 paragraph (5)(b), for the payment of the valid claims of its  
31 United States ceding insurers and their assigns and successors

1 in interest. To enable the office ~~department~~ to determine the  
2 sufficiency of the trust fund, the assuming insurer shall  
3 report annually to the office ~~department~~ information  
4 substantially the same as that required to be reported on the  
5 NAIC Annual Statement form by authorized insurers. The  
6 assuming insurer shall submit to examination of its books and  
7 records by the office ~~department~~ and bear the expense of  
8 examination.

9           2.a. Credit for reinsurance must not be granted under  
10 this subsection unless the form of the trust and any  
11 amendments to the trust have been approved by:

12           (I) The commissioner of the state in which the trust  
13 is domiciled; or

14           (II) The commissioner of another state who, pursuant  
15 to the terms of the trust instrument, has accepted principal  
16 regulatory oversight of the trust.

17           b. The form of the trust and any trust amendments must  
18 be filed with the commissioner of every state in which the  
19 ceding insurer beneficiaries of the trust are domiciled. The  
20 trust instrument must provide that contested claims are valid  
21 and enforceable upon the final order of any court of competent  
22 jurisdiction in the United States. The trust must vest legal  
23 title to its assets in its trustees for the benefit of the  
24 assuming insurer's United States ceding insurers and their  
25 assigns and successors in interest. The trust and the assuming  
26 insurer are subject to examination as determined by the  
27 commissioner.

28           c. The trust remains in effect for as long as the  
29 assuming insurer has outstanding obligations due under the  
30 reinsurance agreements subject to the trust. No later than  
31 February 28 of each year, the trustee of the trust shall

1 report to the commissioner in writing the balance of the trust  
2 and list the trust's investments at the preceding year end,  
3 and shall certify that the trust will not expire prior to the  
4 following December 31.

5 3. The following requirements apply to the following  
6 categories of assuming insurer:

7 a. The trust fund for a single assuming insurer  
8 consists of funds in trust in an amount not less than the  
9 assuming insurer's liabilities attributable to reinsurance  
10 ceded by United States ceding insurers, and, in addition, the  
11 assuming insurer shall maintain a trusted surplus of not less  
12 than \$20 million. Not less than 50 percent of the funds in the  
13 trust covering the assuming insurer's liabilities attributable  
14 to reinsurance ceded by United States ceding insurers and  
15 trusted surplus shall consist of assets of a quality  
16 substantially similar to that required in part II of chapter  
17 625. Clean, irrevocable, unconditional, and evergreen letters  
18 of credit, issued or confirmed by a qualified United States  
19 financial institution, as defined in paragraph (5)(a),  
20 effective no later than December 31 of the year for which the  
21 filing is made, and in the possession of the trust on or  
22 before the filing date of its annual statement, may be used to  
23 fund the remainder of the trust fund and trusted surplus.

24 b.(I) In the case of a group including incorporated  
25 and individual unincorporated underwriters:

26 (A) For reinsurance ceded under reinsurance agreements  
27 with an inception, amendment, or renewal date on or after  
28 August 1, 1995, the trust consists of a trusted account in an  
29 amount not less than the group's several liabilities  
30 attributable to business ceded by United States domiciled  
31 ceding insurers to any member of the group;

1 (B) For reinsurance ceded under reinsurance agreements  
2 with an inception date on or before July 31, 1995, and not  
3 amended or renewed after that date, notwithstanding the other  
4 provisions of this section, the trust consists of a trusteed  
5 account in an amount not less than the group's several  
6 insurance and reinsurance liabilities attributable to business  
7 written in the United States; and

8 (C) In addition to these trusts, the group shall  
9 maintain in trust a trusteed surplus of which \$100 million  
10 must be held jointly for the benefit of the United States  
11 domiciled ceding insurers of any member of the group for all  
12 years of account.

13 (II) The incorporated members of the group must not be  
14 engaged in any business other than underwriting of a member of  
15 the group, and are subject to the same level of regulation and  
16 solvency control by the group's domiciliary regulator as the  
17 unincorporated members.

18 (III) Within 90 days after its financial statements  
19 are due to be filed with the group's domiciliary regulator,  
20 the group shall provide to the commissioner an annual  
21 certification by the group's domiciliary regulator of the  
22 solvency of each underwriter member or, if a certification is  
23 unavailable, financial statements, prepared by independent  
24 public accountants, of each underwriter member of the group.

25 Section 5. Section 627.8401, Florida Statutes, is  
26 created to read:

27 627.8401 Prohibited investments and loans.--A premium  
28 finance company shall not directly or indirectly invest in or  
29 lend its funds upon the security of any note or other evidence  
30 of indebtedness of any director, officer, or controlling  
31 stockholder of the premium finance company.

1           Section 6. Subsection (2) of section 628.461, Florida  
2 Statutes, is amended to read:

3           628.461 Acquisition of controlling stock.--

4           (2) This section does not apply to any acquisition of  
5 voting securities of a domestic stock insurer or of a  
6 controlling company by any person who, on July 1, 1976, is the  
7 owner of a majority of such voting securities or who, on or  
8 after July 1, 1976, becomes the owner of a majority of such  
9 voting securities with the approval of the department pursuant  
10 to this section. Further, the provisions of this section shall  
11 not apply to a change of ownership of a domestic insurer  
12 resulting from changes within an insurance holding company of  
13 which the insurer is a member, provided the insurer  
14 establishes that no new person or entity will have the ability  
15 to influence or control the activities of the insurer and that  
16 the reorganization will not result in any changes in the  
17 officers, directors, or business plan of the domestic insurer.

18           Section 7. Subsection (3) of section 628.4615, Florida  
19 Statutes, is amended to read:

20           628.4615 Specialty insurers; acquisition of  
21 controlling stock, ownership interest, assets, or control;  
22 merger or consolidation.--

23           (3) This section does not apply to any acquisition of  
24 voting securities or ownership interest of a specialty insurer  
25 or of a controlling company by any person who, on July 9,  
26 1986, is the owner of a majority of such voting securities or  
27 ownership interest or who, on or after July 9, 1986, becomes  
28 the owner of a majority of such voting securities or ownership  
29 interest with the approval of the department pursuant to this  
30 section. Further, the provisions of this section shall not  
31 apply to a change of ownership of a specialty insurer

1 resulting from changes within a holding company of which the  
2 specialty insurer is a member, provided the specialty insurer  
3 establishes that no new person or entity will have the ability  
4 to influence or control the activities of the specialty  
5 insurer and that the reorganization will not result in any  
6 changes in the officers, directors, or business plan of the  
7 specialty insurer.

8 Section 8. Section 634.042, Florida Statutes, is  
9 created to read:

10 634.042 Prohibited investments and loans.--A motor  
11 vehicle service agreement company shall not directly or  
12 indirectly invest in or lend its funds upon the security of  
13 any note or other evidence of indebtedness of any director,  
14 officer, or controlling stockholder of the motor vehicle  
15 service agreement company.

16 Section 9. Section 634.3076, Florida Statutes, is  
17 created to read:

18 634.3076 Prohibited investments and loans.--A home  
19 warranty association shall not directly or indirectly invest  
20 in or lend its funds upon the security of any note or other  
21 evidence of indebtedness of any director, officer, or  
22 controlling stockholder of the home warranty association.

23 Section 10. Section 634.4062, Florida Statutes, is  
24 created to read:

25 634.4062 Prohibited investments and loans.--A service  
26 warranty association shall not directly or indirectly invest  
27 in or lend its funds upon the security of any note or other  
28 evidence of indebtedness of any director, officer, or  
29 controlling stockholder of the service warranty association.

30 Section 11. Section 641.263, Florida Statutes, is  
31 created to read:

1           641.263 Risk-based capital.--  
2           (1) For purposes of this section, the term:  
3           (a) "Adjusted risk-based capital report" means a  
4 risk-based capital report which has been adjusted by the  
5 office in accordance with paragraph (2)(b).  
6           (b) "Association" means the National Association of  
7 Insurance Commissioners.  
8           (c) "Corrective order" means an order issued by the  
9 office specifying corrective actions which the office has  
10 determined are required.  
11           (d) "Risk-based capital instructions" means the  
12 risk-based capital report, including risk-based capital  
13 instructions adopted by the association, as these risk-based  
14 capital instructions may be amended by the association from  
15 time to time in accordance with the procedures adopted by the  
16 association.  
17           (e) "Risk-based capital level" means a health  
18 maintenance organization's company action level risk-based  
19 capital, regulatory action level risk-based capital,  
20 authorized control level risk-based capital, or mandatory  
21 control level risk-based capital. For purposes of this  
22 paragraph, the term:  
23           1. "Company action level risk-based capital" means the  
24 product of 2.0 and the health maintenance organization's  
25 authorized control level risk-based capital.  
26           2. "Regulatory action level risk-based capital" means  
27 the product of 1.5 and the health maintenance organization's  
28 authorized control level risk-based capital.  
29           3. "Authorized control level risk-based capital" means  
30 the number determined under the risk-based capital formula in  
31 accordance with the risk-based capital instructions.

1           4. "Mandatory control level risk-based capital" means  
2 the product of .70 and the authorized control level risk-based  
3 capital.

4           (f) "Risk-based capital plan" means a comprehensive  
5 financial plan containing the elements specified in paragraph  
6 (3)(b). If the office rejects the risk-based capital plan and  
7 the plan is revised by the health maintenance organization,  
8 with or without the office's recommendation, the plan shall be  
9 called the "revised risk-based capital plan."

10           (g) "Risk-based capital report" means the report  
11 required in subsection (2).

12           (h) "Total adjusted capital" means the sum of:

13           1. A health maintenance organization's net worth,  
14 consisting of its statutory capital and surplus, as determined  
15 in accordance with the statutory accounting applicable to the  
16 annual financial statements required to be filed under s.  
17 641.26.

18           2. Such other items, if any, as the risk-based capital  
19 instructions may provide.

20           (2)(a) A health maintenance organization shall, on or  
21 prior to April 1 of each year, prepare and submit to the  
22 office a report of its risk-based capital levels as of the end  
23 of the calendar year, in a form and containing such  
24 information as is required by the risk-based capital  
25 instructions. In addition, a health maintenance organization  
26 shall file its risk-based capital report:

27           1. With the association in accordance with the  
28 risk-based capital instructions.

29           2. With the chief insurance regulatory official in any  
30 state in which the health maintenance organization is  
31 authorized to do business. If such official has notified the



1 health maintenance organization of his or her request in  
2 writing, the health maintenance organization shall file its  
3 risk-based capital report no later than the later of 15 days  
4 after the receipt of notice to file its risk-based capital  
5 report with that state or April 1.

6 (b) A health maintenance organization's risk-based  
7 capital shall be determined in accordance with the formula set  
8 forth in the risk-based capital instructions. The formula  
9 shall take into account and may adjust for the covariance  
10 between:

- 11 1. Asset risks.
- 12 2. Credit risks.
- 13 3. Underwriting risks.
- 14 4. All other business risks and such other relevant  
15 risks as are set forth in the risk-based capital instructions,  
16 determined in each case by applying the factors in the manner  
17 set forth in the risk-based capital instructions.

18 (c) The Legislature finds that an excess of capital  
19 over the amount produced by the risk-based capital  
20 requirements contained in this section and the formulas,  
21 schedules, and instructions referenced in this section is  
22 desirable in the health maintenance organization business.  
23 Accordingly, health maintenance organizations should seek to  
24 maintain capital above the risk-based capital levels required  
25 by this section. Further, the Legislature finds that  
26 additional capital is used and useful in the health  
27 maintenance organization business and helps to secure a health  
28 maintenance organization against various risks inherent in, or  
29 affecting, such business and not accounted for or only  
30 partially measured by the risk-based capital requirements  
31 contained in this section.

1           (d) If a health maintenance organization files a  
2 risk-based capital report that in the judgment of the office  
3 is inaccurate, the office shall adjust the risk-based capital  
4 report to correct the inaccuracy and shall notify the health  
5 maintenance organization of the adjustment. The notice shall  
6 contain a statement of the reason for the adjustment. A  
7 risk-based capital report as so adjusted is referred to as an  
8 "adjusted risk-based capital report."

9           (3)(a) A company action level event includes:

10           1. The filing of a risk-based capital report by a  
11 health maintenance organization that indicates that the health  
12 maintenance organization's total adjusted capital is greater  
13 than or equal to its regulatory action level risk-based  
14 capital but less than its company action level risk-based  
15 capital;

16           2. Notification by the office to the health  
17 maintenance organization of an adjusted risk-based capital  
18 report that indicates the event described in subparagraph 1.,  
19 provided the health maintenance organization does not  
20 challenge the adjusted risk-based capital report under  
21 subsection (7); or

22           3. If, pursuant to the provisions of subsection (7), a  
23 health maintenance organization challenges an adjusted  
24 risk-based capital report that indicates the event described  
25 in subparagraph 1., the notification by the office to the  
26 health maintenance organization that the office has, after a  
27 hearing, rejected the health maintenance organization's  
28 challenge.

29           (b) If a company action level event occurs, the health  
30 maintenance organization shall prepare and submit to the  
31 office a risk-based capital plan that shall:

1           1. Identify the conditions that contribute to the  
2 company action level event.

3           2. Contain proposals of corrective actions that the  
4 health maintenance organization intends to take and that would  
5 be expected to result in the elimination of the company action  
6 level event.

7           3. Provide projections of the health maintenance  
8 organization's financial results in the current year and at  
9 least the 2 succeeding years, both in the absence of proposed  
10 corrective actions and giving effect to the proposed  
11 corrective actions, including projections of statutory balance  
12 sheets, operating income, net income, capital and surplus, and  
13 risk-based capital levels. The projections for both new and  
14 renewal businesses might include separate projections for each  
15 major line of business and might separately identify each  
16 significant income, expense, and benefit component.

17           4. Identify the key assumptions impacting the health  
18 maintenance organization's projections and the sensitivity of  
19 the projections to the assumptions.

20           5. Identify the quality of, and problems associated  
21 with, the health maintenance organization's business,  
22 including, but not limited to, its assets, anticipated  
23 business growth and associated surplus strain, extraordinary  
24 exposure to risk, mix of business, and use of reinsurance, if  
25 any, in each case.

26           (c) The risk-based capital plan shall be submitted:

27           1. Within 45 days after a company action level event;

28 or

29           2. If the health maintenance organization challenges  
30 an adjusted risk-based capital report pursuant to the  
31 provisions of subsection (7), within 45 days after

1 notification to the health maintenance organization that the  
2 office has, after a hearing, rejected the health maintenance  
3 organization's challenge.

4 (d) Within 60 days after the submission by a health  
5 maintenance organization of a risk-based capital plan to the  
6 office, the office shall notify the health maintenance  
7 organization whether the risk-based capital plan shall be  
8 implemented or is, in the judgment of the office,  
9 unsatisfactory. If the office determines the risk-based  
10 capital plan is unsatisfactory, the notification to the health  
11 maintenance organization shall set forth the reasons for the  
12 determination and may set forth proposed revisions which will  
13 render the risk-based capital plan satisfactory in the  
14 judgment of the office. Upon notification from the office, the  
15 health maintenance organization shall prepare a revised  
16 risk-based capital plan, which may incorporate by reference  
17 any revisions proposed by the office, and shall submit the  
18 revised risk-based capital plan to the office:

19 1. Within 45 days after the notification from the  
20 office; or

21 2. If the health maintenance organization challenges  
22 the notification from the office under the provisions of  
23 subsection (7), within 45 days after a notification to the  
24 health maintenance organization that the office has, after a  
25 hearing, rejected the health maintenance organization's  
26 challenge.

27 (e) If the office notifies a health maintenance  
28 organization that the health maintenance organization's  
29 risk-based capital plan or revised risk-based capital plan is  
30 unsatisfactory, the office may, at its discretion, subject to  
31 the health maintenance organization's right to a hearing under

1 the provisions of subsection (7), specify in the notification  
2 that the notification constitutes a regulatory action level  
3 event.

4 (f) Each domestic health maintenance organization that  
5 files a risk-based capital plan or revised risk-based capital  
6 plan with the office shall file a copy of the risk-based  
7 capital plan or revised risk-based capital plan with the  
8 insurance office in any state in which the health maintenance  
9 organization is authorized to do business if:

10 1. The state has a risk-based capital provision  
11 substantially similar to the provisions of s. 641.264.

12 2. The insurance office of that state has notified the  
13 health maintenance organization of its request for the filing  
14 in writing, in which case the health maintenance organization  
15 shall file a copy of the risk-based capital plan or revised  
16 risk-based capital plan in that state no later than the later  
17 of:

18 a. Fifteen days after the receipt of notice to file a  
19 copy of its risk-based capital plan or revised risk-based  
20 capital plan with the state; or

21 b. The date on which the risk-based capital plan or  
22 revised risk-based capital plan is filed under paragraph (c)  
23 or paragraph (d).

24 (4)(a) A regulatory action level event includes, with  
25 respect to a health maintenance organization:

26 1. The filing of a risk-based capital report by the  
27 health maintenance organization that indicates that the health  
28 maintenance organization's total adjusted capital is greater  
29 than or equal to its authorized control level risk-based  
30 capital but less than its regulatory action level risk-based  
31 capital;

1           2. Notification by the office to a health maintenance  
2 organization of an adjusted risk-based capital report that  
3 indicates the event described in subparagraph 1., provided the  
4 health maintenance organization does not challenge the  
5 adjusted risk-based capital report under the provisions of  
6 subsection (7);

7           3. If, pursuant to the provisions of subsection (7),  
8 the health maintenance organization challenges an adjusted  
9 risk-based capital report that indicates the event described  
10 in subparagraph 1., the notification by the office to the  
11 health maintenance organization that the office has, after a  
12 hearing, rejected the health maintenance organization's  
13 challenge;

14           4. The failure of the health maintenance organization  
15 to file a risk-based capital report by April 1, unless the  
16 health maintenance organization has provided an explanation  
17 for the failure that is satisfactory to the office and has  
18 cured the failure within 10 days after April 1;

19           5. The failure of the health maintenance organization  
20 to submit a risk-based capital plan to the office within the  
21 time period set forth in paragraph (3)(c);

22           6. Notification by the office to the health  
23 maintenance organization that:

24           a. The risk-based capital plan or revised risk-based  
25 capital plan submitted by the health maintenance organization  
26 is, in the judgment of the office, unsatisfactory; and

27           b. Notification constitutes a regulatory action level  
28 event with respect to the health maintenance organization,  
29 provided the health maintenance organization has not  
30 challenged the determination under subsection (7);

31

1           7. If, pursuant to subsection (7), the health  
2 maintenance organization challenges a determination by the  
3 office under subparagraph 6., the notification by the office  
4 to the health maintenance organization that the office has,  
5 after a hearing, rejected the health maintenance  
6 organization's challenge;

7           8. Notification by the office to the health  
8 maintenance organization that the health maintenance  
9 organization has failed to adhere to its risk-based capital  
10 plan or revised risk-based capital plan, but only if the  
11 failure has a substantial adverse effect on the ability of the  
12 health maintenance organization to eliminate the company  
13 action level event in accordance with its risk-based capital  
14 plan or revised risk-based capital plan and the office has so  
15 stated in the notification, provided the health maintenance  
16 organization has not challenged the determination under  
17 subsection (7); or

18           9. If, pursuant to subsection (7), the health  
19 maintenance organization challenges a determination by the  
20 office under subparagraph 8., the notification by the office  
21 to the health maintenance organization that the office has,  
22 after a hearing, rejected the health maintenance  
23 organization's challenge.

24           (b) If a regulatory action level event occurs, the  
25 office shall:

26           1. Require the health maintenance organization to  
27 prepare and submit a risk-based capital plan or, if  
28 applicable, a revised risk-based capital plan.

29           2. Perform such examination or analysis as the office  
30 deems necessary of the assets, liabilities, and operations of  
31

1 the health maintenance organization, including a review of its  
2 risk-based capital plan or revised risk-based capital plan.

3 3. Subsequent to the examination or analysis, issue a  
4 corrective order specifying such corrective actions as the  
5 office shall determine are required.

6 (c) In determining corrective actions, the office may  
7 take into account factors the office deems relevant with  
8 respect to the health maintenance organization based upon the  
9 office's examination or analysis of the assets, liabilities,  
10 and operations of the health maintenance organization,  
11 including, but not limited to, the results of any sensitivity  
12 tests undertaken pursuant to the risk-based capital  
13 instructions. The risk-based capital plan or revised  
14 risk-based capital plan shall be submitted:

15 1. Within 45 days after the occurrence of the  
16 regulatory action level event;

17 2. If the health maintenance organization challenges  
18 an adjusted risk-based capital report pursuant to subsection  
19 (7) and the challenge is not frivolous in the judgment of the  
20 office, within 45 days after the notification to the health  
21 maintenance organization that the office has, after a hearing,  
22 rejected the health maintenance organization's challenge; or

23 3. If the health maintenance organization challenges a  
24 revised risk-based capital plan pursuant to subsection (7) and  
25 the challenge is not frivolous in the judgment of the office,  
26 within 45 days after the notification to the health  
27 maintenance organization that the office has, after a hearing,  
28 rejected the health maintenance organization's challenge.

29 (d) The office may retain actuaries, investment  
30 experts, and other consultants as may be necessary in the  
31 judgment of the office to review the health maintenance



1 organization's risk-based capital plan or revised risk-based  
2 capital plan; examine or analyze the assets, liabilities, and  
3 operations, including contractual relationships, of the health  
4 maintenance organization; and formulate the corrective order  
5 with respect to the health maintenance organization. The fees,  
6 costs, and expenses relating to consultants shall be borne by  
7 the affected health maintenance organization or such other  
8 party as directed by the office.

9 (5)(a) An authorized control level event includes:

10 1. The filing of a risk-based capital report by the  
11 health maintenance organization that indicates that the health  
12 maintenance organization's total adjusted capital is greater  
13 than or equal to its mandatory control level risk-based  
14 capital but less than its authorized control level risk-based  
15 capital;

16 2. Notification by the office to the health  
17 maintenance organization of an adjusted risk-based capital  
18 report that indicates the event described in subparagraph 1.,  
19 provided the health maintenance organization does not  
20 challenge the adjusted risk-based capital report under  
21 subsection (7);

22 3. If, pursuant to subsection (7), the health  
23 maintenance organization challenges an adjusted risk-based  
24 capital report that indicates the event described in  
25 subparagraph 1., notification by the office to the health  
26 maintenance organization that the office has, after a hearing,  
27 rejected the health maintenance organization's challenge;

28 4. The failure of the health maintenance organization  
29 to respond, in a manner satisfactory to the office, to a  
30 corrective order, provided the health maintenance organization  
31

1 has not challenged the corrective order under subsection (7);  
2 or  
3 5. If the health maintenance organization has  
4 challenged a corrective order under subsection (7) and the  
5 office has, after a hearing, rejected the challenge or  
6 modified the corrective order, the failure of the health  
7 maintenance organization to respond, in a manner satisfactory  
8 to the office, to the corrective order subsequent to rejection  
9 or modification by the office.  
10 (b) If an authorized control level event occurs, with  
11 respect to a health maintenance organization, the office  
12 shall:  
13 1. Take such actions as are required under paragraph  
14 (4)(b) regarding a health maintenance organization with  
15 respect to which regulatory action level event has occurred;  
16 or  
17 2. If the office deems it to be in the best interests  
18 of the subscribers and creditors of the health maintenance  
19 organization and of the public, take such actions as are  
20 necessary to cause the health maintenance organization to be  
21 placed under regulatory control under chapter 631. If the  
22 office takes such actions, the authorized control level event  
23 shall be deemed sufficient grounds for the office to take  
24 action under chapter 631 and the office shall have the rights,  
25 powers, and duties with respect to the health maintenance  
26 organization as are set forth in such chapter. If the office  
27 takes actions under this subparagraph pursuant to an adjusted  
28 risk-based capital report, the health maintenance organization  
29 shall be entitled to such protections as are afforded to  
30 health maintenance organizations under the summary proceedings  
31 provisions of s. 120.574.

1           (6)(a) A mandatory control level event includes:  
2           1. The filing of a risk-based capital report by the  
3 health maintenance organization that indicates that the health  
4 maintenance organization's total adjusted capital is less than  
5 its mandatory control level risk-based capital;  
6           2. Notification by the office to the health  
7 maintenance organization of an adjusted risk-based capital  
8 report that indicates the event described in subparagraph 1.,  
9 provided the health maintenance organization does not  
10 challenge the adjusted risk-based capital report under  
11 subsection (7); or  
12           3. If, pursuant to subsection (7), the health  
13 maintenance organization challenges an adjusted risk-based  
14 capital report that indicates the event described in  
15 subparagraph 1., notification by the office to the health  
16 maintenance organization that the office has, after a hearing,  
17 rejected the health maintenance organization's challenge.  
18           (b) If a mandatory control level event occurs, the  
19 office shall take such actions as are necessary to place the  
20 health maintenance organization under regulatory control under  
21 chapter 631. If the office takes such actions, the mandatory  
22 control level event shall be deemed sufficient grounds for the  
23 office to take action under chapter 631 and the office shall  
24 have the rights, powers, and duties with respect to the health  
25 maintenance organization as are set forth in such chapter. If  
26 the office takes actions under this paragraph pursuant to an  
27 adjusted risk-based capital report, the health maintenance  
28 organization shall be entitled to the summary proceedings  
29 protections of s. 120.574. However, the office may forego  
30 action for up to 90 days after the mandatory control level  
31 event if the office finds there is a reasonable expectation

1 that the mandatory control level event may be eliminated  
2 within the 90-day period.

3 (7) Upon the occurrence of any of the following  
4 events, the health maintenance organization shall have the  
5 right to a confidential official hearing, on record, at which  
6 the health maintenance organization may challenge any  
7 determination or action by the office. The health maintenance  
8 organization shall notify the office of its request for a  
9 hearing within 5 days after the notification by the office  
10 under this subsection. Upon receipt of the health maintenance  
11 organization's request for a hearing, the office shall set a  
12 date for the hearing, which shall be no less than 10 nor more  
13 than 30 days after the date of the health maintenance  
14 organization's request. Such events are:

15 (a) Notification to a health maintenance organization  
16 by the office of an adjusted risk-based capital report.

17 (b) Notification to a health maintenance organization  
18 by the office that:

19 1. The health maintenance organization's risk-based  
20 capital plan or revised risk-based capital plan is  
21 unsatisfactory.

22 2. Notification constitutes a regulatory action level  
23 event with respect to the health maintenance organization.

24 (c) Notification to a health maintenance organization  
25 by the office that the health maintenance organization has  
26 failed to adhere to its risk-based capital plan or revised  
27 risk-based capital plan and that the failure has a substantial  
28 adverse effect on the ability of the health maintenance  
29 organization to eliminate the company action level event with  
30 respect to the health maintenance organization in accordance

31

1 with its risk-based capital plan or revised risk-based capital  
2 plan.

3 (d) Notification to a health maintenance organization  
4 by the office of a corrective order with respect to the health  
5 maintenance organization.

6 (8)(a) This section is supplemental to any other  
7 provisions of this part and shall not preclude or limit any  
8 other powers or duties of the office as provided in the  
9 insurance code.

10 (b) The office may adopt reasonable rules necessary to  
11 implement this section.

12 (c) The office may exempt from the application of this  
13 section a health maintenance organization that:

14 1. Writes direct business only in this state;

15 2. Assumes no reinsurance in excess of 5 percent of  
16 direct premium written, and writes direct annual premiums for  
17 comprehensive medical business of \$2 million or less; or

18 3. Is a limited health service organization that  
19 covers less than 2,000 lives.

20 (9) There shall be no liability on the part of, and no  
21 cause of action shall arise against, the commissioner or the  
22 office or its employees or agents for any action taken by them  
23 in the performance of their powers and duties under this  
24 section.

25 (10) All notices by the office to a health maintenance  
26 organization that may result in regulatory action under this  
27 section shall be effective upon dispatch if transmitted by  
28 registered or certified mail or, in the case of any other  
29 transmission, shall be effective upon the health maintenance  
30 organization's receipt of notice.

31

1           (11) For risk-based capital reports required to be  
2 filed in 2004, 2005, and 2006 by health maintenance  
3 organizations with respect to their 2003, 2004, and 2005  
4 annual statement data, the following requirements shall apply  
5 in lieu of the provisions of subsections (3), (4), (5), and  
6 (6):

7           (a) If a company action level event occurs with  
8 respect to a health maintenance organization, the office shall  
9 take no regulatory action under this section.

10           (b) If a regulatory action level event as provided in  
11 subparagraphs (4)(a)1., 2., or 3. occurs, the office shall  
12 take the actions required under subsection (3).

13           (c) If a regulatory action level event as provided in  
14 subparagraphs (4)(a)4., 5., 6., 7., 8., or 9. occurs or an  
15 authorized control level event occurs, the office shall take  
16 the actions required under subsection (4) with respect to the  
17 health maintenance organization.

18           (d) If a mandatory control level event occurs with  
19 respect to a health maintenance organization, the office shall  
20 take the actions required under subsection (5) with respect to  
21 the health maintenance organization.

22  
23 Nothing in this subsection restricts or otherwise limits the  
24 office's authority under other provisions of the insurance  
25 code.

26           (12) It is the intent of the Legislature that the  
27 risk-based capital instructions, risk-based capital reports,  
28 adjusted risk-based capital reports, risk-based capital plans,  
29 revised risk-based capital plans, and related documents,  
30 materials, or information are intended solely for use by the  
31 office in monitoring the solvency of health maintenance

1 organizations and the need for possible corrective action with  
2 respect to health maintenance organizations and shall not be  
3 used by the office for ratemaking, considered or introduced as  
4 evidence in any rate proceeding, or used by the office to  
5 calculate or derive any elements of an appropriate premium  
6 level or rate of return for any line of insurance that a  
7 health maintenance organization or any affiliate is authorized  
8 to write.

9           Section 12. Section 651.029, Florida Statutes, is  
10 created to read:

11           651.029 Prohibited investments and loans.--A provider  
12 shall not directly or indirectly invest in or lend its funds  
13 upon the security of any note or other evidence of  
14 indebtedness of any director, officer, or controlling  
15 stockholder of the provider.

16           Section 13. Paragraph (a) of subsection (15) of  
17 section 440.20, Florida Statutes, is amended to read:

18           440.20 Time for payment of compensation; penalties for  
19 late payment.--

20           (15)(a) The department shall examine on an ongoing  
21 basis claims files in accordance with s. 624.3161 and may  
22 impose fines pursuant to s. 624.310(6)(5)and this chapter in  
23 order to identify questionable claims-handling techniques,  
24 questionable patterns or practices of claims, or a pattern of  
25 repeated unreasonably controverted claims by carriers, as  
26 defined in s. 440.02, providing services to employees pursuant  
27 to this chapter. If the department finds such questionable  
28 techniques, patterns, or repeated unreasonably controverted  
29 claims as constitute a general business practice of a carrier,  
30 as defined in s. 440.02, the department shall take appropriate  
31 action so as to bring such general business practices to a

1 halt pursuant to s. 440.38(3) or may impose penalties pursuant  
2 to s. 624.4211. The department may initiate investigations of  
3 questionable techniques, patterns, practices, or repeated  
4 unreasonably controverted claims. The department may by rule  
5 establish forms and procedures for corrective action plans and  
6 for auditing carriers.

7           Section 14. This act shall take effect October 1,  
8 2003.

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