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1 A bill to be entitled
2 An act relating to insurance; amending s. 624.310, F.S.;
3 revising definitions; conforming provisions to a revised
4 definition; conforming provisions to certain governmental
5 reorganization; prohibiting affiliated parties from
6 certain activities constituting a conflict of interest;
7 providing exceptions; authorizing the Office of Insurance
8 Regulation to require certain disclosures of personal
9 interest; specifying certain restrictions governing
10 affiliated party conduct; amending s. 624.4095, F.S.;
11 conforming provisions to certain governmental
12 reorganization; providing for calculating certain surplus
13 for certain insurers; amending s. 624.610, F.S.;
14 conforming provisions to certain governmental
15 reorganization; revising requirements for securities of a
16 trust fund for a single assuming insurer; amending ss.
17 628.461 and 628.4615, F.S.; specifying additional
18 nonapplication of acquisition of controlling stock
19 provisions to changes of ownership of a domestic insurer
20 or specialty insurer, respectively, under certain
21 circumstances; creating ss. 634.042, 627.8401, 634.3076,
22 634.4062, and 651.029, F.S.; prohibiting certain
23 investments by motor vehicle service agreement companies,
24 premium finance companies, home warranty associations,
25 service warranty associations, and continuing care
26 providers, respectively; creating s. 641.263, F.S.;
27 providing definitions; providing for risk-based capital
28 for health maintenance organizations; requiring risk-based
29 capital reports; providing reporting requirements;
30 providing requirements for determining risk-based capital;



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31 providing legislative findings; providing for adjusting
32 risk-based capital reports under certain circumstances;
33 providing requirements for health maintenance
34 organizations upon the occurrence of certain events;
35 providing notice requirements; requiring a risk-based
36 capital plan for such events; providing plan requirements;
37 providing duties and responsibilities of the Office of
38 Insurance Regulation; providing for office hearings of
39 challenges by health maintenance organizations; providing
40 notice requirements; providing construction; authorizing
41 the office to adopt rules; authorizing the office to
42 exempt certain health maintenance organizations;
43 specifying absence of liability of the office or the
44 Financial Services Commission for certain actions;
45 providing for effect of certain notices; providing
46 alternative requirements for risk-based capital reports
47 for certain time periods; providing legislative intent for
48 the use of risk-based capital reports and other related
49 documents; amending s. 440.20, F.S.; correcting a cross
50 reference; providing an effective date.

51

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

53

54 Section 1. Section 624.310, Florida Statutes, is amended
55 to read:

56 624.310 Enforcement; cease and desist orders; removal of
57 certain persons; fines.--

58 (1) DEFINITIONS.--For the purposes of this section, the
59 term:



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60 (a) "Affiliated party of a licensee" means any person who
 61 directs or participates in the conduct of the affairs of a
 62 licensee and who is:

63 1. A director, officer, employee, trustee, committee
 64 member, or controlling stockholder of a licensee or a subsidiary
 65 or service corporation of the licensee, ~~other than a controlling~~
 66 ~~stockholder which is a holding company,~~ or an agent of a
 67 licensee or a subsidiary or service corporation of the licensee;

68 2. A person who has filed or is required to file a
 69 statement or any other information required to be filed under s.
 70 628.461 or s. 628.4615;

71 3. A stockholder, ~~other than a stockholder that is a~~
 72 ~~holding company of the licensee,~~ who participates in the conduct
 73 of the affairs of the licensee; or

74 4. An independent contractor who:

75 a. Renders a written opinion required by the laws of this
 76 state under her or his professional credentials on behalf of the
 77 licensee, which opinion is reasonably relied on by the office
 78 ~~department~~ in the performance of its duties; or

79 b. Affirmatively and knowingly conceals facts, through a
 80 written misrepresentation to the office ~~department~~, with
 81 knowledge that such misrepresentation:

82 (I) Constitutes a violation of the insurance code or a
 83 lawful rule or order of the office ~~department~~; and

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

86

87 For the purposes of this subparagraph, any representation of
 88 fact made by an independent contractor on behalf of a licensee,
 89 affirmatively communicated as a representation of the licensee



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90 to the independent contractor, shall not be considered a
 91 misrepresentation by the independent contractor to the office
 92 ~~department~~.

93 (b) "Licensee" means a person issued a license or
 94 certificate of authority or approval under this code or a person
 95 registered under a provision of this code.

96 (2) ENFORCEMENT GENERALLY.--The office ~~department~~ may
 97 institute such suits or other legal proceedings as may be
 98 required to enforce any provision of this code. If it appears
 99 that any person has violated any provision of this code for
 100 which criminal prosecution is provided, the office ~~department~~
 101 shall provide the appropriate state attorney or other
 102 prosecuting agency having jurisdiction with respect to such
 103 prosecution with the relevant information in its possession.

104 (3) CEASE AND DESIST ORDERS.--

105 (a) The office ~~department~~ may issue and serve a complaint
 106 stating charges upon any licensee or upon any affiliated party
 107 of a licensee, whenever the office ~~department~~ has reasonable
 108 cause to believe that the person or individual named therein is
 109 engaging in or has engaged in conduct that is:

110 1. An act that demonstrates a lack of fitness or
 111 trustworthiness to engage in the business of insurance, is
 112 hazardous to the insurance buying public, or constitutes
 113 business operations that are a detriment to policyholders,
 114 stockholders, investors, creditors, or the public;

115 2. A violation of any provision of the Florida Insurance
 116 Code;

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

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



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119 5. A breach of any written agreement with the office
120 ~~department~~.

121 (b) The complaint shall contain a statement of facts and
122 notice of opportunity for a hearing pursuant to ss. 120.569 and
123 120.57.

124 (c) If no hearing is requested within the time allowed by
125 ss. 120.569 and 120.57, or if a hearing is held and the office
126 ~~department~~ finds that any of the charges are proven, the office
127 ~~department~~ may enter an order directing the licensee or the
128 affiliated party of a licensee named in the complaint to cease
129 and desist from engaging in the conduct complained of and take
130 corrective action to remedy the effects of past improper conduct
131 and assure future compliance.

132 (d) If the licensee or affiliated party of a licensee
133 named in the order fails to respond to the complaint within the
134 time allotted by ss. 120.569 and 120.57, the failure constitutes
135 a default and justifies the entry of a cease and desist order.

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

140 (f) Whenever the office ~~department~~ finds that conduct
141 described in paragraph (a) is likely to cause insolvency,
142 substantial dissipation or misvaluation of assets or earnings of
143 the licensee, substantial inability to pay claims on a timely
144 basis, or substantial prejudice to prospective or existing
145 insureds, policyholders, subscribers, or the public, it may
146 issue an emergency cease and desist order requiring the licensee
147 or any affiliated party of a licensee to immediately cease and
148 desist from engaging in the conduct complained of and to take



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149 corrective and remedial action. The emergency order is effective
 150 immediately upon service of a copy of the order upon the
 151 licensee or affiliated party of a licensee named therein and
 152 remains effective for 90 days. If the office ~~department~~ begins
 153 nonemergency cease and desist proceedings under this subsection,
 154 the emergency order remains effective until the conclusion of
 155 the proceedings under ss. 120.569 and 120.57. Any emergency
 156 order entered under this subsection is exempt from s. 119.07(1)
 157 and is confidential until it is made permanent unless the office
 158 ~~department~~ finds that the confidentiality will result in
 159 substantial risk of financial loss to the public. All emergency
 160 cease and desist orders that are not made permanent are
 161 available for public inspection 1 year from the date the
 162 emergency cease and desist order expires; however, portions of
 163 an emergency cease and desist order remain confidential and
 164 exempt from the provisions of s. 119.07(1) if disclosure would:

- 165 1. Jeopardize the integrity of another active
- 166 investigation;
- 167 2. Impair the safety and financial soundness of the
- 168 licensee or affiliated party of a licensee;
- 169 3. Reveal personal financial information;
- 170 4. Reveal the identity of a confidential source;
- 171 5. Defame or cause unwarranted damage to the good name or
- 172 reputation of an individual or jeopardize the safety of an
- 173 individual; or
- 174 6. Reveal investigative techniques or procedures.

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

177 (a) The office ~~department~~ may issue and serve a complaint
 178 stating charges upon any affiliated party of a licensee and upon



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179 the licensee involved, whenever the office ~~department~~ has reason
180 to believe that an affiliated party of a licensee is engaging in
181 or has engaged in conduct that constitutes:

182 1. An act that demonstrates a lack of fitness or
183 trustworthiness to engage in the business of insurance through
184 engaging in illegal activity or mismanagement of business
185 activities;

186 2. A willful violation of any law relating to the business
187 of insurance; however, if the violation constitutes a
188 misdemeanor, no complaint shall be served as provided in this
189 section until the affiliated party of a licensee is notified in
190 writing of the matter of the violation and has been afforded a
191 reasonable period of time, as set forth in the notice, to
192 correct the violation and has failed to do so;

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

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

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

199 6. A material misrepresentation of fact, made knowingly
200 and willfully or made with reckless disregard for the truth of
201 the matter; or

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

204 (b) The complaint shall contain a statement of facts and
205 notice of opportunity for a hearing pursuant to ss. 120.569 and
206 120.57.

207 (c) If no hearing is requested within the time allotted by
208 ss. 120.569 and 120.57, or if a hearing is held and the office



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209 ~~department~~ finds that any of the charges in the complaint are
210 proven true and that:

211 1. The licensee has suffered or will likely suffer loss or
212 other damage;

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

216 3. The affiliated party of a licensee has received
217 financial gain by reason of the violation, act, or breach of
218 fiduciary duty; or

219 4. The violation, act, or breach of fiduciary duty is one
220 involving personal dishonesty on the part of the affiliated
221 party of a licensee or the conduct jeopardizes or could
222 reasonably be anticipated to jeopardize the financial soundness
223 of the licensee,

224

225 The office ~~department~~ may enter an order removing the affiliated
226 party of a licensee or restricting or prohibiting participation
227 by the person in the affairs of that particular licensee or of
228 any other licensee.

229 (d) If the affiliated party of a licensee fails to respond
230 to the complaint within the time allotted by ss. 120.569 and
231 120.57, the failure constitutes a default and justifies the
232 entry of an order of removal, suspension, or restriction.

233 (e) A contested or default order of removal, restriction,
234 or prohibition is effective when reduced to writing and served
235 on the licensee and the affiliated party of a licensee. An
236 uncontested order of removal, restriction, or prohibition is
237 effective as agreed.



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

243 2. Whenever any affiliated party of a licensee is charged
244 with a felony in a state or federal court or with the equivalent
245 of a felony in the courts of any foreign country with which the
246 United States maintains diplomatic relations, and the charge
247 alleges violation of any law involving fraud, theft, or moral
248 turpitude, the office department may enter an emergency order
249 suspending the affiliated party of a licensee or restricting or
250 prohibiting participation by the affiliated party of a licensee
251 in the affairs of the particular licensee or of any other
252 licensee upon service of the order upon the licensee and the
253 affiliated party of a licensee charged. The order shall contain
254 notice of opportunity for a hearing pursuant to ss. 120.569 and
255 120.57, where the affiliated party of a licensee may request a
256 postsuspension hearing to show that continued service to or
257 participation in the affairs of the licensee does not pose a
258 threat to the interests of the licensee's policyholders or
259 creditors and does not threaten to impair public confidence in
260 the licensee. In accordance with applicable office departmental
261 rules, the office department shall notify the affiliated party
262 of a licensee whether the order suspending or prohibiting the
263 person from participation in the affairs of a licensee will be
264 rescinded or otherwise modified. The emergency order remains in
265 effect, unless otherwise modified by the office department,
266 until the criminal charge is disposed of. The acquittal of the
267 person charged, or the final, unappealed dismissal of all



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268 charges against the person, dissolves the emergency order, but
 269 does not prohibit the office ~~department~~ from instituting
 270 proceedings under paragraph (a). If the person charged is
 271 convicted or pleads guilty or nolo contendere, whether or not an
 272 adjudication of guilt is entered by the court, the emergency
 273 order shall become final.

274 (g) Any affiliated party of a licensee removed from office
 275 pursuant to this section is not eligible for reelection or
 276 appointment to the position or to any other official position in
 277 any licensee in this state except upon the written consent of
 278 the office ~~department~~. Any affiliated party of a licensee who is
 279 removed, restricted, or prohibited from participation in the
 280 affairs of a licensee pursuant to this section may petition the
 281 office ~~department~~ for modification or termination of the
 282 removal, restriction, or prohibition.

283 (h) Resignation or termination of an affiliated party of a
 284 licensee does not affect the office's ~~department's~~ jurisdiction
 285 to proceed under this subsection.

286 (5)(a) CONFLICT OF INTEREST.--An affiliated party of a
 287 licensee may not engage or participate, directly or indirectly,
 288 in any business or transaction conducted on behalf of or
 289 involving the licensee, subsidiary, or service corporation that
 290 would result in a conflict of the party's own personal interests
 291 with those of the licensee, subsidiary, or service corporation
 292 with which he or she is affiliated, unless:

293 1. Such business or transactions are conducted in good
 294 faith and are honest, fair, and reasonable to the licensee,
 295 subsidiary, or service corporation and are on terms no more
 296 favorable than would be offered to a disinterested third party.

297 2. A full disclosure of such business or transaction, and



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298 the nature of the interest of the affiliated party of the
299 licensee, is made to the board of directors.

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

303 4. Any profits inuring to the affiliated party of a
304 licensee are not at the expense of the licensee, subsidiary, or
305 service corporation and do not prejudice the best interests of
306 the licensee, subsidiary, or service corporation in any way.

307 5. Such business or transactions do not represent a breach
308 of the fiduciary duty of an affiliated party of a licensee and
309 are not fraudulent, illegal, or ultra vires.

310 (b) Without limitation by any of the specific provisions
311 of this section, the office may require the disclosure by
312 affiliated parties of a licensee of their personal interests,
313 directly or indirectly, in any business or transactions on
314 behalf of or involving the licensee, subsidiary, or service
315 corporation and of their control of or active participation in
316 enterprises having activities related to the business of the
317 licensee, subsidiary, or service corporation.

318 (c) The following restrictions governing the conduct of
319 affiliated parties of a licensee are expressly specified, but
320 such specification is not to be construed in any manner as
321 excusing such parties from the observance of any other aspect of
322 the general fiduciary duty owed by such parties to the licensee
323 which they serve:

324 1. A director of a licensee may not accept director fees
325 unless the director fees have been previously approved by the
326 board of directors and such fees represent reasonable
327 compensation for service as a director or member of a committee.



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328 This subparagraph does not limit or preclude reasonable
 329 compensation as otherwise authorized by paragraph (a) for a
 330 director who also provides goods or services to the licensee.

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

334 3. An affiliated party of a licensee may not have any
 335 interest, direct or indirect, of any evidence of indebtedness of
 336 the licensee or subsidiary.

337 4. An affiliated party of a licensee acting as proxy for a
 338 stockholder of a licensee, subsidiary, or service corporation
 339 may not, directly or indirectly, exercise, transfer, or delegate
 340 such vote or votes in any consideration of a private benefit or
 341 advantage. The voting rights of stockholders and directors may
 342 not be the subject of sale, barter, exchange, or similar
 343 transaction, directly or indirectly. Any affiliated party of a
 344 licensee who violates the provisions of this subparagraph is
 345 accountable to the licensee, subsidiary, or service corporation
 346 for any increment.

347 ~~(6)(5)~~ ADMINISTRATIVE FINES; ENFORCEMENT.--

348 (a) The office department may, in a proceeding initiated
 349 pursuant to chapter 120, impose an administrative fine against
 350 any person found in the proceeding to have violated any
 351 provision of this code, a cease and desist order of the office
 352 ~~department~~, or any written agreement with the office department.
 353 No proceeding shall be initiated and no fine shall accrue until
 354 after the person has been notified in writing of the nature of
 355 the violation and has been afforded a reasonable period of time,
 356 as set forth in the notice, to correct the violation and has
 357 failed to do so.



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

360 (c) The office ~~department~~ may, in addition to the
361 imposition of an administrative fine under this subsection, also
362 suspend or revoke the license or certificate of authority of the
363 licensee fined under this subsection.

364 (d) Any administrative fine levied by the office
365 ~~department~~ under this subsection may be enforced by the office
366 ~~department~~ by appropriate proceedings in the circuit court of
367 the county in which the person resides or in which the principal
368 office of a licensee is located, or, in the case of a foreign
369 insurer or person not residing in this state, in Leon County. In
370 any administrative or judicial proceeding arising under this
371 section, a party may elect to correct the violation asserted by
372 the office ~~department~~, and, upon doing so, any fine shall cease
373 to accrue; however, the election to correct the violation does
374 not render any administrative or judicial proceeding moot. All
375 fines collected under this section shall be paid to the
376 Insurance Commissioner's Regulatory Trust Fund.

377 (e) In imposing any administrative penalty or remedy
378 provided for under this section, the office ~~department~~ shall
379 take into account the appropriateness of the penalty with
380 respect to the size of the financial resources and the good
381 faith of the person charged, the gravity of the violation, the
382 history of previous violations, and other matters as justice may
383 require.

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



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387 (7)~~(6)~~ ADMINISTRATIVE PROCEDURES.--All administrative
388 proceedings brought under this section ~~subsections (3), (4), and~~
389 ~~(5)~~ shall be conducted in accordance with chapter 120. Any
390 service required or authorized to be made by the office
391 ~~department~~ under this code shall be made by certified mail,
392 return receipt requested, delivered to the addressee only; by
393 personal delivery; or in accordance with chapter 48. The service
394 provided for herein shall be effective from the date of
395 delivery.

396 (8)~~(7)~~ OTHER LAWS NOT SUPERSEDED.--The provisions of this
397 section are in addition to other provisions of this code, and
398 shall not be construed to curtail, impede, replace, or delete
399 any other similar provision or power of the office ~~department~~
400 under the insurance code as defined in s. 624.01 or any power of
401 the office ~~department~~ which may exist under the common law of
402 this state. The procedures set forth in s. 626.9581 do not apply
403 to regulatory action taken pursuant to the provisions of this
404 section.

405 Section 2. Section 624.4095, Florida Statutes, is amended
406 to read:

407 624.4095 Premiums written; restrictions.--

408 (1) Whenever an insurer's ratio of actual or projected
409 annual written premiums as adjusted in accordance with
410 subsection (5)~~(4)~~ to current or projected surplus as to
411 policyholders as adjusted in accordance with subsection (6)~~(5)~~
412 exceeds 10 to 1 for gross written premiums or exceeds 4 to 1 for
413 net written premiums, the office ~~department~~ shall suspend the
414 insurer's certificate of authority or establish by order maximum
415 gross or net annual premiums to be written by the insurer
416 consistent with maintaining the ratios specified herein unless



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417 the insurer demonstrates to the office's ~~department's~~
418 satisfaction that exceeding the ratios of this section does not
419 endanger the financial condition of the insurer or endanger the
420 interests of the insurer's policyholders.

421 (2) Projected annual net or gross premiums shall be based
422 on the actual writings to date for the insurer's current
423 calendar year or the insurer's writings for the previous
424 calendar year or both. Ratios shall be computed on an annualized
425 basis.

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

428 (4) For the purposes of this section, surplus as to
429 policyholders for property and casualty insurers shall be
430 calculated as follows: (actual surplus as to policyholders)
431 minus (surplus as to policyholders of all subsidiary insurers as
432 allowed pursuant to s. 625.325).

433 ~~(5)~~(4) For the purposes of this section, for the calendar
434 year ending December 31, 1990, and each subsequent year,
435 premiums shall be calculated as the product of the actual or
436 projected premiums and the following:

- 437 (a) For property insurance, 0.90.
- 438 (b) For casualty insurance, 1.25.
- 439 (c) For health insurance, 0.80.
- 440 (d) For all other kinds of insurance, 1.00.

441 ~~(6)~~(5) This section shall not apply to:

442 (a) Life insurance written by life or life and health
443 insurers; or

444 (b) Life and health insurers which have a surplus as to
445 policyholders greater than \$40 million and which have written



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446 health insurance during each of the immediately preceding five
447 calendar years.

448 ~~(7)(6)~~ For the purposes of this section, surplus as to
449 policyholders for life and health insurers shall be calculated
450 as follows: (actual or projected surplus as to policyholders)
451 minus (surplus as to policyholders required to be maintained
452 under s. 624.408 for liabilities relating to life insurance) and
453 minus (surplus as to policyholders of all subsidiary insurers as
454 allowed pursuant to s. 625.325).

455 Note.--Subsection ~~(7)(6)~~ relates to calculation of surplus
456 as to policyholders.

457 Section 3. Paragraph (c) of subsection (3) of section
458 624.610, Florida Statutes, is amended to read:

459 624.610 Reinsurance.--

460 (3)

461 (c)1. Credit must be allowed when the reinsurance is ceded
462 to an assuming insurer that maintains a trust fund in a
463 qualified United States financial institution, as defined in
464 paragraph (5)(b), for the payment of the valid claims of its
465 United States ceding insurers and their assigns and successors
466 in interest. To enable the office department to determine the
467 sufficiency of the trust fund, the assuming insurer shall report
468 annually to the office department information substantially the
469 same as that required to be reported on the NAIC Annual
470 Statement form by authorized insurers. The assuming insurer
471 shall submit to examination of its books and records by the
472 office department and bear the expense of examination.

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



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476 (I) The commissioner of the state in which the trust is
477 domiciled; or

478 (II) The commissioner of another state who, pursuant to
479 the terms of the trust instrument, has accepted principal
480 regulatory oversight of the trust.

481 b. The form of the trust and any trust amendments must be
482 filed with the commissioner of every state in which the ceding
483 insurer beneficiaries of the trust are domiciled. The trust
484 instrument must provide that contested claims are valid and
485 enforceable upon the final order of any court of competent
486 jurisdiction in the United States. The trust must vest legal
487 title to its assets in its trustees for the benefit of the
488 assuming insurer's United States ceding insurers and their
489 assigns and successors in interest. The trust and the assuming
490 insurer are subject to examination as determined by the
491 commissioner.

492 c. The trust remains in effect for as long as the assuming
493 insurer has outstanding obligations due under the reinsurance
494 agreements subject to the trust. No later than February 28 of
495 each year, the trustee of the trust shall report to the
496 commissioner in writing the balance of the trust and list the
497 trust's investments at the preceding year end, and shall certify
498 that the trust will not expire prior to the following December
499 31.

500 3. The following requirements apply to the following
501 categories of assuming insurer:

502 a. The trust fund for a single assuming insurer consists
503 of funds in trust in an amount not less than the assuming
504 insurer's liabilities attributable to reinsurance ceded by
505 United States ceding insurers, and, in addition, the assuming



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506 insurer shall maintain a trusteed surplus of not less than \$20
507 million. Not less than 50 percent of the funds in the trust
508 covering the assuming insurer's liabilities attributable to
509 reinsurance ceded by United States ceding insurers and trusteed
510 surplus shall consist of assets of a quality substantially
511 similar to that required in part II of chapter 625. Clean,
512 irrevocable, unconditional, and evergreen letters of credit,
513 issued or confirmed by a qualified United States financial
514 institution, as defined in paragraph (5)(a), effective no later
515 than December 31 of the year for which the filing is made, and
516 in the possession of the trust on or before the filing date of
517 its annual statement, may be used to fund the remainder of the
518 trust fund and trusteed surplus.

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

521 (A) For reinsurance ceded under reinsurance agreements
522 with an inception, amendment, or renewal date on or after August
523 1, 1995, the trust consists of a trusteed account in an amount
524 not less than the group's several liabilities attributable to
525 business ceded by United States domiciled ceding insurers to any
526 member of the group;

527 (B) For reinsurance ceded under reinsurance agreements
528 with an inception date on or before July 31, 1995, and not
529 amended or renewed after that date, notwithstanding the other
530 provisions of this section, the trust consists of a trusteed
531 account in an amount not less than the group's several insurance
532 and reinsurance liabilities attributable to business written in
533 the United States; and

534 (C) In addition to these trusts, the group shall maintain
535 in trust a trusteed surplus of which \$100 million must be held



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536 jointly for the benefit of the United States domiciled ceding
537 insurers of any member of the group for all years of account.

538 (II) The incorporated members of the group must not be
539 engaged in any business other than underwriting of a member of
540 the group, and are subject to the same level of regulation and
541 solvency control by the group's domiciliary regulator as the
542 unincorporated members.

543 (III) Within 90 days after its financial statements are
544 due to be filed with the group's domiciliary regulator, the
545 group shall provide to the commissioner an annual certification
546 by the group's domiciliary regulator of the solvency of each
547 underwriter member or, if a certification is unavailable,
548 financial statements, prepared by independent public
549 accountants, of each underwriter member of the group.

550 Section 4. Section 627.8401, Florida Statutes, is created
551 to read:

552 627.8401 Prohibited investments and loans.--A premium
553 finance company shall not directly or indirectly invest in or
554 lend its funds upon the security of any note or other evidence
555 of indebtedness of any director, officer, or controlling
556 stockholder of the premium finance company.

557 Section 5. Subsection (2) of section 628.461, Florida
558 Statutes, is amended to read:

559 628.461 Acquisition of controlling stock.--

560 (2) This section does not apply to any acquisition of
561 voting securities of a domestic stock insurer or of a
562 controlling company by any person who, on July 1, 1976, is the
563 owner of a majority of such voting securities or who, on or
564 after July 1, 1976, becomes the owner of a majority of such
565 voting securities with the approval of the department pursuant



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566 to this section. Further, the provisions of this section shall
 567 not apply to a change of ownership of a domestic insurer
 568 resulting from changes within an insurance holding company of
 569 which the insurer is a member, provided the insurer establishes
 570 that no new person or entity will have the ability to influence
 571 or control the activities of the insurer and that the
 572 reorganization will not result in any changes in the officers,
 573 directors, or business plan of the domestic insurer.

574 Section 6. Subsection (3) of section 628.4615, Florida
 575 Statutes, is amended to read:

576 628.4615 Specialty insurers; acquisition of controlling
 577 stock, ownership interest, assets, or control; merger or
 578 consolidation.--

579 (3) This section does not apply to any acquisition of
 580 voting securities or ownership interest of a specialty insurer
 581 or of a controlling company by any person who, on July 9, 1986,
 582 is the owner of a majority of such voting securities or
 583 ownership interest or who, on or after July 9, 1986, becomes the
 584 owner of a majority of such voting securities or ownership
 585 interest with the approval of the department pursuant to this
 586 section. Further, the provisions of this section shall not apply
 587 to a change of ownership of a specialty insurer resulting from
 588 changes within a holding company of which the specialty insurer
 589 is a member, provided the specialty insurer establishes that no
 590 new person or entity will have the ability to influence or
 591 control the activities of the specialty insurer and that the
 592 reorganization will not result in any changes in the officers,
 593 directors, or business plan of the specialty insurer.

594 Section 7. Section 634.042, Florida Statutes, is created
 595 to read:



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596 634.042 Prohibited investments and loans.--A motor vehicle
597 service agreement company shall not directly or indirectly
598 invest in or lend its funds upon the security of any note or
599 other evidence of indebtedness of any director, officer, or
600 controlling stockholder of the motor vehicle service agreement
601 company. Section 8. Section 634.3076, Florida Statutes, is
602 created to read:

603 634.3076 Prohibited investments and loans.--A home
604 warranty association shall not directly or indirectly invest in
605 or lend its funds upon the security of any note or other
606 evidence of indebtedness of any director, officer, or
607 controlling stockholder of the home warranty association.

608 Section 9. Section 634.4062, Florida Statutes, is created
609 to read:

610 634.4062 Prohibited investments and loans.--A service
611 warranty association shall not directly or indirectly invest in
612 or lend its funds upon the security of any note or other
613 evidence of indebtedness of any director, officer, or
614 controlling stockholder of the service warranty association.

615 Section 10. Section 641.263, Florida Statutes, is created
616 to read:

617 641.263 Risk-based capital.--

618 (1) For purposes of this section:

619 (a) "Adjusted risk-based capital report" means a risk-
620 based capital report which has been adjusted by the office in
621 accordance with paragraph (2)(b).

622 (b) "Association" means the National Association of
623 Insurance Commissioners.

624 (c) "Corrective order" means an order issued by the office
625 specifying corrective actions which the office has determined



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626 are required.

627 (d) "Risk-based capital instructions" means the risk-based
628 capital report including risk-based capital instructions adopted
629 by the association, as these risk-based capital instructions may
630 be amended by the association from time to time in accordance
631 with the procedures adopted by the association.

632 (e) "Risk-based capital level" means a health maintenance
633 organization's company action level risk-based capital,
634 regulatory action level risk-based capital, authorized control
635 level risk-based capital, or mandatory control level risk-based
636 capital. For purposes of this paragraph:

637 1. "Company action level risk-based capital" means the
638 product of 2.0 and the health maintenance organization's
639 authorized control level risk-based capital.

640 2. "Regulatory action level risk-based capital" means the
641 product of 1.5 and the health maintenance organization's
642 authorized control level risk-based capital.

643 3. "Authorized control level risk-based capital" means the
644 number determined under the risk-based capital formula in
645 accordance with the risk-based capital instructions.

646 4. "Mandatory control level risk-based capital" means the
647 product of .70 and the authorized control level risk-based
648 capital.

649 (f) "Risk-based capital plan" means a comprehensive
650 financial plan containing the elements specified in paragraph
651 (3)(b). If the office rejects the risk-based capital plan and
652 the plan is revised by the health maintenance organization, with
653 or without the office's recommendation, the plan shall be called
654 the "revised risk-based capital plan."

655 (g) "Risk-based capital report" means the report required



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656 in subsection (2).

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

658 1. A health maintenance organization's net worth,
 659 consisting of its statutory capital and surplus, as determined
 660 in accordance with the statutory accounting applicable to the
 661 annual financial statements required to be filed under s.
 662 641.26.

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

665 (2)(a) A health maintenance organization shall, on or
 666 prior to April 1 of each year, prepare and submit to the office
 667 a report of its risk-based capital levels as of the end of the
 668 calendar year, in a form and containing such information as is
 669 required by the risk-based capital instructions. In addition, a
 670 health maintenance organization shall file its risk-based
 671 capital report:

672 1. With the association in accordance with the risk-based
 673 capital instructions.

674 2. With the chief insurance regulatory official in any
 675 state in which the health maintenance organization is authorized
 676 to do business. If such official has notified the health
 677 maintenance organization of his or her request in writing, the
 678 health maintenance organization shall file its risk-based
 679 capital report no later than the later of 15 days after the
 680 receipt of notice to file its risk-based capital report with
 681 that state or April 1.

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



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- 686 1. Asset risks.
687 2. Credit risks.
688 3. Underwriting risks.
689 4. All other business risks and such other relevant risks
690 as are set forth in the risk-based capital instructions,
691 determined in each case by applying the factors in the manner
692 set forth in the risk-based capital instructions.

693 (c) The Legislature finds that an excess of capital over
694 the amount produced by the risk-based capital requirements
695 contained in this section and the formulas, schedules, and
696 instructions referenced in this section is desirable in the
697 health maintenance organization business. Accordingly, health
698 maintenance organizations should seek to maintain capital above
699 the risk-based capital levels required by this section. Further,
700 the Legislature finds that additional capital is used and useful
701 in the health maintenance organization business and helps to
702 secure a health maintenance organization against various risks
703 inherent in, or affecting, such business and not accounted for
704 or only partially measured by the risk-based capital
705 requirements contained in this section.

706 (d) If a health maintenance organization files a risk-
707 based capital report that in the judgment of the office is
708 inaccurate, the office shall adjust the risk-based capital
709 report to correct the inaccuracy and shall notify the health
710 maintenance organization of the adjustment. The notice shall
711 contain a statement of the reason for the adjustment. A risk-
712 based capital report as so adjusted is referred to as an
713 "adjusted risk-based capital report."

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

- 715 1. The filing of a risk-based capital report by a health



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716 maintenance organization that indicates that the health
717 maintenance organization's total adjusted capital is greater
718 than or equal to its regulatory action level risk-based capital
719 but less than its company action level risk-based capital;

720 2. Notification by the office to the health maintenance
721 organization of an adjusted risk-based capital report that
722 indicates the event described in subparagraph 1., provided the
723 health maintenance organization does not challenge the adjusted
724 risk-based capital report under subsection (7); or

725 3. If, pursuant to the provisions of subsection (7), a
726 health maintenance organization challenges an adjusted risk-
727 based capital report that indicates the event described in
728 subparagraph 1., the notification by the office to the health
729 maintenance organization that the office has, after a hearing,
730 rejected the health maintenance organization's challenge.

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

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

736 2. Contain proposals of corrective actions that the health
737 maintenance organization intends to take and that would be
738 expected to result in the elimination of the company action
739 level event.

740 3. Provide projections of the health maintenance
741 organization's financial results in the current year and at
742 least the 2 succeeding years, both in the absence of proposed
743 corrective actions and giving effect to the proposed corrective
744 actions, including projections of statutory balance sheets,
745 operating income, net income, capital and surplus, and risk-



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746 based capital levels. The projections for both new and renewal
747 businesses might include separate projections for each major
748 line of business and might separately identify each significant
749 income, expense, and benefit component.

750 4. Identify the key assumptions impacting the health
751 maintenance organization's projections and the sensitivity of
752 the projections to the assumptions.

753 5. Identify the quality of, and problems associated with,
754 the health maintenance organization's business, including, but
755 not limited to, its assets, anticipated business growth and
756 associated surplus strain, extraordinary exposure to risk, mix
757 of business, and use of reinsurance, if any, in each case.

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

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

760 2. If the health maintenance organization challenges an
761 adjusted risk-based capital report pursuant to the provisions of
762 subsection (7), within 45 days after notification to the health
763 maintenance organization that the office has, after a hearing,
764 rejected the health maintenance organization's challenge.

765 (d) Within 60 days after the submission by a health
766 maintenance organization of a risk-based capital plan to the
767 office, the office shall notify the health maintenance
768 organization whether the risk-based capital plan shall be
769 implemented or is, in the judgment of the office,
770 unsatisfactory. If the office determines the risk-based capital
771 plan is unsatisfactory, the notification to the health
772 maintenance organization shall set forth the reasons for the
773 determination and may set forth proposed revisions which will
774 render the risk-based capital plan satisfactory in the judgment
775 of the office. Upon notification from the office, the health



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776 maintenance organization shall prepare a revised risk-based
777 capital plan, which may incorporate by reference any revisions
778 proposed by the office, and shall submit the revised risk-based
779 capital plan to the office:

780 1. Within 45 days after the notification from the office;
781 or

782 2. If the health maintenance organization challenges the
783 notification from the office under the provisions of subsection
784 (7), within 45 days after a notification to the health
785 maintenance organization that the office has, after a hearing,
786 rejected the health maintenance organization's challenge.

787 (e) If the office notifies a health maintenance
788 organization that the health maintenance organization's risk-
789 based capital plan or revised risk-based capital plan is
790 unsatisfactory, the office may, at its discretion, subject to
791 the health maintenance organization's right to a hearing under
792 the provisions of subsection (7), specify in the notification
793 that the notification constitutes a regulatory action level
794 event.

795 (f) Each domestic health maintenance organization that
796 files a risk-based capital plan or revised risk-based capital
797 plan with the office shall file a copy of the risk-based capital
798 plan or revised risk-based capital plan with the insurance
799 office in any state in which the health maintenance organization
800 is authorized to do business if:

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

803 2. The insurance office of that state has notified the
804 health maintenance organization of its request for the filing in
805 writing, in which case the health maintenance organization shall



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806 file a copy of the risk-based capital plan or revised risk-based
807 capital plan in that state no later than the later of:

808 a. Fifteen days after the receipt of notice to file a copy
809 of its risk-based capital plan or revised risk-based capital
810 plan with the state; or

811 b. The date on which the risk-based capital plan or
812 revised risk-based capital plan is filed under paragraph (c) or
813 paragraph (d).

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

816 1. The filing of a risk-based capital report by the health
817 maintenance organization that indicates that the health
818 maintenance organization's total adjusted capital is greater
819 than or equal to its authorized control level risk-based capital
820 but less than its regulatory action level risk-based capital;

821 2. Notification by the office to a health maintenance
822 organization of an adjusted risk-based capital report that
823 indicates the event described in subparagraph 1., provided the
824 health maintenance organization does not challenge the adjusted
825 risk-based capital report under the provisions of subsection
826 (7);

827 3. If, pursuant to the provisions of subsection (7), the
828 health maintenance organization challenges an adjusted risk-
829 based capital report that indicates the event described in
830 subparagraph 1., the notification by the office to the health
831 maintenance organization that the office has, after a hearing,
832 rejected the health maintenance organization's challenge;

833 4. The failure of the health maintenance organization to
834 file a risk-based capital report by April 1, unless the health
835 maintenance organization has provided an explanation for the



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836 failure that is satisfactory to the office and has cured the
837 failure within 10 days after April 1;

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

841 6. Notification by the office to the health maintenance
842 organization that:

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

846 b. Notification constitutes a regulatory action level
847 event with respect to the health maintenance organization,
848 provided the health maintenance organization has not challenged
849 the determination under subsection (7);

850 7. If, pursuant to subsection (7), the health maintenance
851 organization challenges a determination by the office under
852 subparagraph 6., the notification by the office to the health
853 maintenance organization that the office has, after a hearing,
854 rejected the health maintenance organization's challenge;

855 8. Notification by the office to the health maintenance
856 organization that the health maintenance organization has failed
857 to adhere to its risk-based capital plan or revised risk-based
858 capital plan, but only if the failure has a substantial adverse
859 effect on the ability of the health maintenance organization to
860 eliminate the company action level event in accordance with its
861 risk-based capital plan or revised risk-based capital plan and
862 the office has so stated in the notification, provided the
863 health maintenance organization has not challenged the
864 determination under subsection (7); or

865 9. If, pursuant to subsection (7), the health maintenance



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866 organization challenges a determination by the office under
867 subparagraph 8., the notification by the office to the health
868 maintenance organization that the office has, after a hearing,
869 rejected the health maintenance organization's challenge.

870 (b) If a regulatory action level event occurs, the office
871 shall:

872 1. Require the health maintenance organization to prepare
873 and submit a risk-based capital plan or, if applicable, a
874 revised risk-based capital plan.

875 2. Perform such examination or analysis as the office
876 deems necessary of the assets, liabilities, and operations of
877 the health maintenance organization, including a review of its
878 risk-based capital plan or revised risk-based capital plan.

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

882 (c) In determining corrective actions, the office may take
883 into account factors the office deems relevant with respect to
884 the health maintenance organization based upon the office's
885 examination or analysis of the assets, liabilities, and
886 operations of the health maintenance organization, including,
887 but not limited to, the results of any sensitivity tests
888 undertaken pursuant to the risk-based capital instructions. The
889 risk-based capital plan or revised risk-based capital plan shall
890 be submitted:

891 1. Within 45 days after the occurrence of the regulatory
892 action level event;

893 2. If the health maintenance organization challenges an
894 adjusted risk-based capital report pursuant to subsection (7)
895 and the challenge is not frivolous in the judgment of the



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896 office, within 45 days after the notification to the health
897 maintenance organization that the office has, after a hearing,
898 rejected the health maintenance organization's challenge; or

899 3. If the health maintenance organization challenges a
900 revised risk-based capital plan pursuant to subsection (7) and
901 the challenge is not frivolous in the judgment of the office,
902 within 45 days after the notification to the health maintenance
903 organization that the office has, after a hearing, rejected the
904 health maintenance organization's challenge.

905 (d) The office may retain actuaries, investment experts,
906 and other consultants as may be necessary in the judgment of the
907 office to review the health maintenance organization's risk-
908 based capital plan or revised risk-based capital plan; examine
909 or analyze the assets, liabilities, and operations, including
910 contractual relationships, of the health maintenance
911 organization; and formulate the corrective order with respect to
912 the health maintenance organization. The fees, costs, and
913 expenses relating to consultants shall be borne by the affected
914 health maintenance organization or such other party as directed
915 by the office.

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

917 1. The filing of a risk-based capital report by the health
918 maintenance organization that indicates that the health
919 maintenance organization's total adjusted capital is greater
920 than or equal to its mandatory control level risk-based capital
921 but less than its authorized control level risk-based capital;

922 2. Notification by the office to the health maintenance
923 organization of an adjusted risk-based capital report that
924 indicates the event described in subparagraph 1., provided the
925 health maintenance organization does not challenge the adjusted



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926 risk-based capital report under subsection (7);

927 3. If, pursuant to subsection (7), the health maintenance
928 organization challenges an adjusted risk-based capital report
929 that indicates the event described in subparagraph 1.,
930 notification by the office to the health maintenance
931 organization that the office has, after a hearing, rejected the
932 health maintenance organization's challenge;

933 4. The failure of the health maintenance organization to
934 respond, in a manner satisfactory to the office, to a corrective
935 order, provided the health maintenance organization has not
936 challenged the corrective order under subsection (7); or

937 5. If the health maintenance organization has challenged a
938 corrective order under subsection (7) and the office has, after
939 a hearing, rejected the challenge or modified the corrective
940 order, the failure of the health maintenance organization to
941 respond, in a manner satisfactory to the office, to the
942 corrective order subsequent to rejection or modification by the
943 office.

944 (b) If an authorized control level event occurs, with
945 respect to a health maintenance organization, the office shall:

946 1. Take such actions as are required under paragraph
947 (4)(b) regarding a health maintenance organization with respect
948 to which regulatory action level event has occurred; or

949 2. If the office deems it to be in the best interests of
950 the subscribers and creditors of the health maintenance
951 organization and of the public, take such actions as are
952 necessary to cause the health maintenance organization to be
953 placed under regulatory control under chapter 631. If the office
954 takes such actions, the authorized control level event shall be
955 deemed sufficient grounds for the office to take action under



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956 chapter 631 and the office shall have the rights, powers, and
957 duties with respect to the health maintenance organization as
958 are set forth in such chapter. If the office takes actions under
959 this subparagraph pursuant to an adjusted risk-based capital
960 report, the health maintenance organization shall be entitled to
961 such protections as are afforded to health maintenance
962 organizations under the summary proceedings provisions of s.
963 120.574.

964 (6)(a) A mandatory control level event includes:

965 1. The filing of a risk-based capital report by the health
966 maintenance organization that indicates that the health
967 maintenance organization's total adjusted capital is less than
968 its mandatory control level risk-based capital;

969 2. Notification by the office to the health maintenance
970 organization of an adjusted risk-based capital report that
971 indicates the event described in subparagraph 1., provided the
972 health maintenance organization does not challenge the adjusted
973 risk-based capital report under subsection (7); or

974 3. If, pursuant to subsection (7), the health maintenance
975 organization challenges an adjusted risk-based capital report
976 that indicates the event described in subparagraph 1.,
977 notification by the office to the health maintenance
978 organization that the office has, after a hearing, rejected the
979 health maintenance organization's challenge.

980 (b) If a mandatory control level event occurs, the office
981 shall take such actions as are necessary to place the health
982 maintenance organization under regulatory control under chapter
983 631. If the office takes such actions, the mandatory control
984 level event shall be deemed sufficient grounds for the office to
985 take action under chapter 631 and the office shall have the



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986 rights, powers, and duties with respect to the health
987 maintenance organization as are set forth in such chapter. If
988 the office takes actions under this paragraph pursuant to an
989 adjusted risk-based capital report, the health maintenance
990 organization shall be entitled to the summary proceedings
991 protections of s. 120.574. However, the office may forego action
992 for up to 90 days after the mandatory control level event if the
993 office finds there is a reasonable expectation that the
994 mandatory control level event may be eliminated within the 90-
995 day period.

996 (7) Upon the occurrence of any of the following events,
997 the health maintenance organization shall have the right to a
998 confidential official hearing, on record, at which the health
999 maintenance organization may challenge any determination or
1000 action by the office. The health maintenance organization shall
1001 notify the office of its request for a hearing within 5 days
1002 after the notification by the office under this subsection. Upon
1003 receipt of the health maintenance organization's request for a
1004 hearing, the office shall set a date for the hearing, which
1005 shall be no less than 10 nor more than 30 days after the date of
1006 the health maintenance organization's request. Such events are:

1007 (a) Notification to a health maintenance organization by
1008 the office of an adjusted risk-based capital report.

1009 (b) Notification to a health maintenance organization by
1010 the office that:

1011 1. The health maintenance organization's risk-based
1012 capital plan or revised risk-based capital plan is
1013 unsatisfactory.

1014 2. Notification constitutes a regulatory action level
1015 event with respect to the health maintenance organization.



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1016 (c) Notification to a health maintenance organization by
1017 the office that the health maintenance organization has failed
1018 to adhere to its risk-based capital plan or revised risk-based
1019 capital plan and that the failure has a substantial adverse
1020 effect on the ability of the health maintenance organization to
1021 eliminate the company action level event with respect to the
1022 health maintenance organization in accordance with its risk-
1023 based capital plan or revised risk-based capital plan.

1024 (d) Notification to a health maintenance organization by
1025 the office of a corrective order with respect to the health
1026 maintenance organization.

1027 (8)(a) This section is supplemental to any other
1028 provisions of this part and shall not preclude or limit any
1029 other powers or duties of the office as provided in the
1030 insurance code.

1031 (b) The office may adopt reasonable rules necessary to
1032 implement this section.

1033 (c) The office may exempt from the application of this
1034 section a health maintenance organization that:

- 1035 1. Writes direct business only in this state;
1036 2. Assumes no reinsurance in excess of 5 percent of direct
1037 premium written, and writes direct annual premiums for
1038 comprehensive medical business of \$2 million or less; or
1039 3. Is a limited health service organization that covers
1040 less than 2,000 lives.

1041 (9) There shall be no liability on the part of, and no
1042 cause of action shall arise against, the commissioner or the
1043 office or its employees or agents for any action taken by them
1044 in the performance of their powers and duties under this
1045 section.



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1046 (10) All notices by the office to a health maintenance
1047 organization that may result in regulatory action under this
1048 section shall be effective upon dispatch if transmitted by
1049 registered or certified mail or, in the case of any other
1050 transmission, shall be effective upon the health maintenance
1051 organization's receipt of notice.

1052 (11) For risk-based capital reports required to be filed
1053 in 2004, 2005, and 2006 by health maintenance organizations with
1054 respect to their 2003, 2004, and 2005 annual statement data, the
1055 following requirements shall apply in lieu of the provisions of
1056 subsections (3), (4), (5), and (6):

1057 (a) If a company action level event occurs with respect to
1058 a health maintenance organization, the office shall take no
1059 regulatory action under this section.

1060 (b) If a regulatory action level event as provided in
1061 subparagraphs (4)(a)1., 2., or 3. occurs, the office shall take
1062 the actions required under subsection (3).

1063 (c) If a regulatory action level event as provided in
1064 subparagraphs (4)(a)4., 5., 6., 7., 8., or 9. occurs or an
1065 authorized control level event occurs, the office shall take the
1066 actions required under subsection (4) with respect to the health
1067 maintenance organization.

1068 (d) If a mandatory control level event occurs with respect
1069 to a health maintenance organization, the office shall take the
1070 actions required under subsection (5) with respect to the health
1071 maintenance organization.

1072
1073 Nothing in this subsection restricts or otherwise limits the
1074 office's authority under other provisions of the insurance code.



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1075 (12) It is the intent of the Legislature that the risk-
 1076 based capital instructions, risk-based capital reports, adjusted
 1077 risk-based capital reports, risk-based capital plans, revised
 1078 risk-based capital plans, and related documents, materials, or
 1079 information are intended solely for use by the office in
 1080 monitoring the solvency of health maintenance organizations and
 1081 the need for possible corrective action with respect to health
 1082 maintenance organizations and shall not be used by the office
 1083 for ratemaking, considered or introduced as evidence in any rate
 1084 proceeding, or used by the office to calculate or derive any
 1085 elements of an appropriate premium level or rate of return for
 1086 any line of insurance that a health maintenance organization or
 1087 any affiliate is authorized to write.

1088 Section 11. Section 651.029, Florida Statutes, is created
 1089 to read:

1090 651.029 Prohibited investments and loans.--A provider
 1091 shall not directly or indirectly invest in or lend its funds
 1092 upon the security of any note or other evidence of indebtedness
 1093 of any director, officer, or controlling stockholder of the
 1094 provider.

1095 Section 12. Paragraph (a) of subsection (15) of section
 1096 440.20, Florida Statutes, is amended to read:

1097 440.20 Time for payment of compensation; penalties for
 1098 late payment.--

1099 (15)(a) The department shall examine on an ongoing basis
 1100 claims files in accordance with s. 624.3161 and may impose fines
 1101 pursuant to s. 624.310(6)~~(5)~~ and this chapter in order to
 1102 identify questionable claims-handling techniques, questionable
 1103 patterns or practices of claims, or a pattern of repeated
 1104 unreasonably controverted claims by carriers, as defined in s.



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1105 440.02, providing services to employees pursuant to this
1106 chapter. If the department finds such questionable techniques,
1107 patterns, or repeated unreasonably controverted claims as
1108 constitute a general business practice of a carrier, as defined
1109 in s. 440.02, the department shall take appropriate action so as
1110 to bring such general business practices to a halt pursuant to
1111 s. 440.38(3) or may impose penalties pursuant to s. 624.4211.
1112 The department may initiate investigations of questionable
1113 techniques, patterns, practices, or repeated unreasonably
1114 controverted claims. The department may by rule establish forms
1115 and procedures for corrective action plans and for auditing
1116 carriers.

1117 Section 13. This act shall take effect October 1, 2003.