

1 A bill to be entitled
2 An act relating to insurance; amending s. 628.461, F.S.,
3 relating to acquisition of controlling stock with respect
4 to stock and mutual insurers; including prepaid limited
5 health service organizations, health maintenance
6 organizations, prepaid health clinics, continuing care
7 providers, and multiple-employer welfare arrangements
8 within the definition of "insurer"; providing that a
9 person may not acquire a domestic stock insurer or a
10 controlling company unless such person has filed with the
11 commissioner and sent to the insurer a statement
12 containing specified information and the offer, request,
13 invitation, agreement, or acquisition has been approved by
14 the Commissioner of Insurance; requiring a controlling
15 person of a domestic insurer seeking to divest its
16 controlling interest in the domestic insurer to file
17 notice of the proposed divestiture; requiring the filing
18 of a preacquisition notification; providing for contents
19 of statement; providing for alternative filing materials
20 under specified circumstances; providing for approval or
21 disapproval by the commissioner of any merger or
22 acquisition of control after a public hearing; providing
23 procedures and requirements, including notice
24 requirements, with respect to such hearings; providing for
25 hearings on a consolidated basis; authorizing the
26 commissioner to retain attorneys and experts in reviewing
27 the proposed acquisition of control; providing
28 nonapplicability; providing that failure to file any

29 | required statement, amendment, or other material or the
30 | effectuation or attempted effectuation of an acquisition
31 | of control of, divestiture of, or merger with a domestic
32 | insurer without approval of the commissioner constitutes a
33 | violation of the section; providing for jurisdiction of
34 | courts with respect to violations and service of process;
35 | authorizing the commissioner to enter an order under
36 | specified circumstances; defining terms; providing
37 | criteria and establishing formulae for competitive
38 | standards; providing that the burden of showing prima
39 | facie evidence of violation of the competitive standard
40 | rests with the commissioner; authorizing the commissioner
41 | to issue specified orders if an acquisition violates
42 | required standards; requiring hearings; requiring an order
43 | to be accompanied by a written decision of the
44 | commissioner; authorizing penalties for violation of a
45 | cease and desist order of the commissioner; providing a
46 | fine for failure to make required filings and failure to
47 | demonstrate a good faith effort to comply with any filing
48 | requirement; specifying acquisitions and purchase of
49 | securities that are exempt from the section; providing
50 | procedures and requirements with respect to approval or
51 | disapproval of the acquisition of voting securities;
52 | amending s. 628.4615, F.S., relating to specialty
53 | insurers, the acquisition of controlling stock, ownership
54 | interest, assets, or control thereof, and the merger or
55 | consolidation of such insurers; removing prepaid limited
56 | health service organizations, health maintenance

57 organizations, prepaid health clinics, continuing care
58 providers, and multiple-employer welfare arrangements from
59 the definition of specialty insurer; revising procedures
60 and requirements with respect to the acquisition of a
61 specialty insurer; requiring specified background
62 information with respect to new officers, directors,
63 trustees, partners, owners, or managers of a specialty
64 insurer that is the subject of an acquisition; eliminating
65 provisions relating to review of acquisition applications,
66 prohibited material change in the operation of a specialty
67 insurer or controlling company by an acquiring person,
68 acquisition proceedings, approval and disapproval of
69 acquisitions, burden of proof, validity of acquisitions,
70 and unlawful representation of approval by the office,
71 penalties therefor, and statute of limitations thereon;
72 creating s. 628.800, F.S.; providing definitions with
73 respect to pt. IV, ch. 628, F.S., relating to insurance
74 holding companies; amending s. 628.801, F.S.;

75 substantially rewording provisions relating to
76 registration of members of an insurance holding company
77 system; providing procedures and requirements with respect
78 to such registration; requiring reporting of dividends and
79 other distributions to shareholders; providing for
80 termination of registration; providing for filing of
81 consolidated registration statements; authorizing
82 specified insurers to register on behalf of an affiliated
83 insurer; providing inapplicability; providing for filing
84 of a disclaimer of affiliation and procedures and

85 requirements with respect thereto; requiring the filing of
86 an annual enterprise risk report; providing that failure
87 timely to file a registration statement or summary thereof
88 or an enterprise risk filing constitutes a violation of
89 the section; creating s. 628.8011, F.S.; providing
90 procedures and requirements with respect to standards and
91 management of an insurer within an insurance holding
92 company system; establishing standards for transactions
93 within an insurance holding company system; precluding
94 specified transactions involving a domestic insurer and
95 any person in its insurance holding company system;
96 providing exceptions; providing for review of
97 transactions; requiring notice with respect to specified
98 investments; providing procedures and requirements with
99 respect to payment of extraordinary dividends or the
100 making of extraordinary distributions by a domestic
101 insurer; providing requirements with respect to management
102 of domestic insurers; providing factors to be considered
103 in determining adequacy of an insurer's surplus; creating
104 628.8012, F.S.; providing for the establishment of and
105 participation in a supervisory college; specifying powers
106 of the Commissioner of Insurance with respect thereto;
107 providing for payment of expenses of the college; creating
108 s. 628.8013, F.S.; providing rulemaking authority of the
109 commissioner; creating s. 628.8014, providing restrictions
110 on voting of securities; amending s. 628.802, F.S.;

111 providing for injunctions against specified violations;
112 substantially revising provisions relating to the voting

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113 of securities; substantially revising provisions relating
114 to the seizure or sequestration of voting securities;
115 amending s. 628.803, F.S.; providing a penalty for failure
116 to file a registration statement; providing for deposit of
117 funds derived therefrom; providing a penalty for knowing
118 violation, participation in, or assent to specified
119 violative transactions or the making of investments by a
120 director or officer of an insurance holding company
121 system; authorizing the issuance of cease and desist
122 orders with respect to specified transactions or
123 contracts; providing penalties for willful violation of
124 pt. IV of ch. 628, F.S., by an insurer or any director,
125 officer, employee, or agent thereof; providing a penalty
126 for knowingly making false statements, false reports, or
127 false filings with the intent to deceive in the
128 performance duties as an officer, director, or employee of
129 an insurance holding company system; providing that a
130 violation of ch. 628, F.S., which prevents full
131 understanding of an enterprise risk may serve as an
132 independent basis for disapproving dividends or
133 distributions and for placing the insurer under an order
134 of supervision; amending ss. 636.05, 641.255, 641.416, and
135 651.024, F.S.; conforming cross-references; reenacting s.
136 48.151(3), F.S., relating to service of process by the
137 Chief Financial Officer on specified insurers, to
138 incorporate the amendment to s. 628.461, F.S., in a
139 reference thereto; reenacting s. 624.310(1)(a), F.S.,
140 relating to the definitions of "affiliated party," to

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141 incorporate the amendments to ss. 628.461 and 628.4615,
142 F.S., in references thereto; reenacting s. 625.765, F.S.,
143 relating to exemptions from specified provisions of pt.
144 IV, ch. 625, F.S., relating to domestic stock insurers and
145 equity securities, to incorporate the amendment to s.
146 628.461, F.S., in a reference thereto; reenacting s.
147 628.705(2), F.S., relating to prohibition of stock
148 transfers, to incorporate the amendment to s. 628.461,
149 F.S., in a reference thereto; reenacting s. 631.051(7),
150 F.S., relating to grounds for rehabilitation of a domestic
151 insurer or alien insurer, to incorporate the amendments to
152 ss. 628.461 and 628.4615, F.S., in references thereto;
153 reenacting s. 409.912(20), F.S., relating to cost-
154 effective purchasing of health care, to incorporate the
155 amendment to s. 628.4615, F.S., in a reference thereto;
156 reenacting s. 624.80(1)(b), F.S., relating to the
157 definition of "insurer," to incorporate the amendment to
158 s. 628.4615, F.S., in a reference thereto; reenacting s.
159 626.9928, F.S., relating to acquisition of interest in a
160 viatical settlement provider, to incorporate the amendment
161 to s. 628.4615, F.S., in a reference thereto; reenacting
162 s. 634.252, F.S., relating to acquisition requirements
163 with respect to motor vehicle service agreement companies,
164 to incorporate the amendment to s. 628.4615, F.S., in a
165 reference thereto; reenacting s. 634.3073, F.S., relating
166 to acquisition requirements with respect to home warranty
167 associations, to incorporate the amendment to s. 628.4615,
168 F.S., in a reference thereto; reenacting s. 634.4085,

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169 F.S., relating to acquisition requirements with respect to
 170 service warranty associations, to incorporate the
 171 amendment to s. 628.4615, F.S., in a reference thereto;
 172 reenacting s. 636.065, F.S., relating to acquisition
 173 requirements with respect to prepaid limited health
 174 service organizations, to incorporate the amendment to s.
 175 628.4615, F.S., in a reference thereto; reenacting s.
 176 642.032(5), F.S., relating to provisions of general
 177 insurance law applicable to legal expense insurance
 178 corporations, to incorporate the amendment to s. 628.4615,
 179 F.S., in a reference thereto; reenacting s.
 180 626.7492(6)(b), (8)(f), and (9)(f), F.S., relating to
 181 duties of insurers using the services of a reinsurance
 182 intermediary broker or manager, to incorporate the
 183 amendments to s. 628.801, F.S., in references thereto;
 184 reenacting s. 626.918(2)(d), F.S., relating to conditions
 185 of eligibility for surplus lines insurers, to incorporate
 186 the amendment to s. 628.801, F.S., in a reference thereto;
 187 providing an effective date.

188
 189 Be It Enacted by the Legislature of the State of Florida:

190
 191 Section 1. Section 628.461, Florida Statutes, is amended
 192 to read:

193 (Substantial rewording of section. See
 194 s. 628.461, F.S., for present text.)
 195 628.461 Acquisition of controlling stock.—
 196 (1) DEFINITIONS.—As used in this section, the term

197 "insurer" includes any:

198 (a) Multiple-employer welfare arrangements operating
 199 pursuant to chapter 624.

200 (b) Prepaid limited health service organizations operating
 201 under a certificate of authority issued under part I of chapter
 202 636.

203 (c) Health maintenance organizations operating under a
 204 certificate of authority issued under part I of chapter 641.

205 (d) Prepaid health clinics operating under a certificate
 206 of authority issued under part II of chapter 641.

207 (e) Provider of continuing care operating under a
 208 certificate of authority or provisional certificate of authority
 209 issued under chapter 651.

210 (2) FILING REQUIREMENTS.—A person may not, individually or
 211 in conjunction with any affiliated person of such person,
 212 acquire directly or indirectly, conclude a tender offer or
 213 exchange offer for, enter into any agreement to exchange
 214 securities for, or otherwise finally acquire 10 percent or more
 215 of the outstanding voting securities of a domestic stock insurer
 216 or of a controlling company, unless at the time the offer,
 217 request, or invitation is made or the agreement is entered into,
 218 or prior to the acquisition of the securities if no offer or
 219 agreement is involved, such person has filed with the
 220 commissioner and has sent to the insurer, a statement containing
 221 the information required by this section and the offer, request,
 222 invitation, agreement, or acquisition has been approved by the
 223 commissioner in the manner prescribed in this section.

224 (a) For purposes of this section, any controlling person

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225 of a domestic insurer seeking to divest its controlling interest
226 in the domestic insurer in any manner shall file with the
227 commissioner, with a copy provided to the insurer, notice of its
228 proposed divestiture at least 30 days prior to the cessation of
229 control. The commissioner shall determine those instances in
230 which the party or parties seeking to divest a controlling
231 interest in an insurer will be required to file for and obtain
232 approval of the transaction.

233 (b) With respect to a transaction subject to this
234 subsection, the acquiring person must also file a preacquisition
235 notification with the commissioner within 5 days of execution of
236 an agreement, which shall contain the information as prescribed
237 by the National Association of Insurance Commissioners relating
238 to those markets which cause the acquisition not to be exempted
239 from the provisions of this section. The commissioner may
240 require such additional material and information as deemed
241 necessary to determine whether the proposed acquisition, if
242 consummated, would violate the competitive standard set forth in
243 subsection (8). Failure to file the notification may subject the
244 violation to penalties specified in subsection (9). The waiting
245 period required begins on the date of receipt by the
246 commissioner of a preacquisition notification and ends on the
247 earlier of the 30th day after the date of receipt of
248 notification or termination of the waiting period by the
249 commissioner. Prior to the end of the waiting period, the
250 commissioner, on a one-time basis, may require the submission of
251 additional needed information relevant to the proposed
252 acquisition, in which event the waiting period shall end on the

253 earlier of the 30th day after receipt of the additional
 254 information by the commissioner or termination of the waiting
 255 period by the commissioner.

256 (c) For purposes of this section, a "domestic insurer"
 257 includes any person controlling a domestic insurer unless the
 258 person, as determined by the commissioner, is either directly or
 259 through its affiliates primarily engaged in business other than
 260 the business of insurance. For the purposes of this section,
 261 "person" does not include any securities broker that holds, in
 262 the usual and customary broker's function, less than 20 percent
 263 of the voting securities of an insurance company or of any
 264 person who controls an insurance company.

265 (3) CONTENT OF STATEMENT.-

266 (a) The statement to be filed with the office and
 267 furnished to the insurer and controlling company shall be made
 268 under oath and contain the following information and any
 269 additional information as the office deems necessary to
 270 determine the character, experience, ability, and other
 271 qualifications of the person or affiliated person of such person
 272 for the protection of the policyholders and shareholders of the
 273 insurer and the public:

274 1. The name and address of each person by whom or on whose
 275 behalf the merger or other acquisition of control referred to in
 276 subsection (2) is to be effected, hereinafter referred to as the
 277 "acquiring party," the background information on each natural
 278 person by whom, or on whose behalf, the acquisition is to be
 279 made, and, if the acquisition is to be made by or on behalf of a
 280 corporation, association, or trust, the identity of, and the

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281 background information specified in this section on, each
282 director, officer, trustee, or other natural person performing
283 duties similar to those of a director, officer, or trustee for
284 the corporation, association, or trust or any person who
285 controls, either directly or indirectly, the corporation,
286 association, or trust, and:

287 a. If the person is an individual, his or her principal
288 occupation and all offices and positions held during the past 10
289 years, and any conviction of crimes other than minor traffic
290 violations during the past 10 years.

291 b. Whether, during such 10-year period, the person has
292 been the subject of any proceeding for the revocation of any
293 license and, if so, the nature of the proceeding and the
294 disposition of the proceeding.

295 c. Whether, during the 10-year period, the person has been
296 the subject of any proceeding under the Federal Bankruptcy Code
297 or whether, during the 10-year period, any corporation,
298 partnership, firm, trust, or association in which the person was
299 a director, officer, trustee, partner, or other official has
300 been subject to any such proceeding, either during the time in
301 which the person was a director, officer, trustee, partner, or
302 other official or within 12 months thereafter.

303 d. Whether, during the 10-year period, the person has been
304 enjoined, either temporarily or permanently, by a court of
305 competent jurisdiction from violating any federal or state law
306 regulating the business of insurance, securities, or banking, or
307 from carrying out any particular practice or practices in the
308 course of the business of insurance, securities, or banking,

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309 together with details as to any such event.

310 e. If the person is not an individual, a report of the
311 nature of its business operations during the past 5 years or for
312 the period of time that the person and any predecessors have
313 been in existence, whichever is less, an informative description
314 of the business intended to be conducted by the person and the
315 person's subsidiaries, and a list of all individuals who are or
316 who have been selected to become directors, trustees, or
317 executive officers of the person, or who perform or will perform
318 functions appropriate to such positions. The list must include
319 for each individual the information required under subparagraph
320 (a)1.

321 2. The source, nature, and amount of the consideration
322 used or to be used in effecting the merger or other acquisition
323 of control, a description of any transaction where funds were or
324 are to be obtained for any such purpose, including any pledge of
325 the insurer's stock or the stock of any of its subsidiaries or
326 controlling affiliates, and the identity of persons furnishing
327 consideration.

328 3. Fully audited financial information as to the earnings
329 and financial condition of each acquiring party for the
330 preceding 5 fiscal years of each acquiring party, or for the
331 period the acquiring party and any predecessors have been in
332 existence, whichever is less, and similar unaudited information
333 as of a date not earlier than 90 days prior to the filing of the
334 statement.

335 4. Any plans or proposals which each acquiring party may
336 have to liquidate the insurer, to sell its assets or merge or

337 consolidate it with any person, or to make any other material
338 change in its business or corporate structure or management.

339 5. The number and class of shares of any security referred
340 to in subsection (2) that each acquiring party proposes to
341 acquire, the terms of the offer, request, invitation, agreement
342 or acquisition referred to in subsection (2), and a statement as
343 to the method used to determine the fairness of the proposal.

344 6. The amount of each class of any security referred to in
345 subsection (2) which is beneficially owned or concerning which
346 there is a right to acquire beneficial ownership by each
347 acquiring party.

348 7. A full description of any contracts, arrangement, or
349 understandings with respect to any security referred to in
350 subsection (2) in which any acquiring party is involved,
351 including, but not limited to, transfer of any of the
352 securities, joint ventures, loan or option arrangements, puts or
353 calls, guarantees of loans, guarantees against loss or
354 guarantees of profits, division of losses or profits, or the
355 giving or withholding of proxies. The description must identify
356 the persons with whom the contracts, arrangements, or
357 understandings have been entered into.

358 8. A description of the purchase of any security referred
359 to in subsection (2) during the 12 calendar months preceding the
360 filing of the statement by any acquiring party, including the
361 dates of purchase, names of the purchasers, and consideration
362 paid or agreed to be paid.

363 9. A description of any recommendations to purchase any
364 security referred to in subsection (2), made during the 12

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365 calendar months preceding the filing of the statement by any
366 acquiring party or by anyone based upon interviews or at the
367 suggestion of the acquiring party.

368 10. Copies of all tender offers for, requests or
369 invitations for tenders of, exchange offers for, and agreements
370 to acquire or exchange any securities referred to in subsection
371 (2), and, if distributed, copies of additional soliciting
372 material relating to them.

373 11. The term of any agreement, contract, or understanding
374 made with or proposed to be made with any broker-dealer as to
375 solicitation of securities referred to in subsection (2) for
376 tender, and the amount of any fees, commissions, or other
377 compensation to be paid to broker-dealers with regard thereto.

378 12. An agreement by the person required to file the
379 statement referred to in subsection (2) that he or she will
380 provide the annual enterprise risk report, if applicable,
381 specified in s. 628.801, for so long as control exists.

382 13. An acknowledgement by the person required to file the
383 statement referred to in subsection (2) that the person and all
384 subsidiaries within its control in the insurance holding company
385 system will provide information to the commissioner upon request
386 as necessary to evaluate enterprise risk to the insurer.

387 14. Such additional information as the commissioner may by
388 rule or regulation prescribe as necessary or appropriate for the
389 protection of policyholders of the insurer or in the public
390 interest.

391 (b) If the person required to file the statement referred
392 to in subsection (2) is a partnership, limited partnership,

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393 syndicate, or other group, the commissioner may require that the
394 information required by paragraph (a) be given with respect to
395 each partner of the partnership or limited partnership, each
396 member of the syndicate or group, and each person who controls
397 the partner or member. If any partner, member, or person is a
398 corporation or if the person required to file the statement
399 referred to in subsection (2) is a corporation, the commissioner
400 may require that the information required by paragraph (a) be
401 given with respect to the corporation, each officer and director
402 of the corporation, and each person who is directly or
403 indirectly the beneficial owner of more than 10 percent of the
404 outstanding voting securities of the corporation.

405 (c) If any material change occurs in the facts set forth
406 in the statement filed with the commissioner and sent to the
407 insurer pursuant to this section, an amendment setting forth the
408 change, together with copies of all documents and other material
409 relevant to the change, shall be filed with the commissioner and
410 sent to the insurer within 2 business days after the person
411 learns of the change. A material change in the operation of the
412 insurer is a transaction which disposes of or obligates 5
413 percent or more of the capital and surplus of the insurer. A
414 material change in the management of the insurer is any change
415 in management involving officers or directors of the insurer or
416 any person of the insurer or controlling company having
417 authority to dispose of or obligate 5 percent or more of the
418 insurer's capital or surplus.

419 (3) ALTERNATIVE FILING MATERIALS.—If any offer, request,
420 invitation, agreement, or acquisition referred to in subsection

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421 (2) is proposed to be made by means of a registration statement
422 under the Securities Act of 1933, or in circumstances requiring
423 the disclosure of similar information under the Securities
424 Exchange Act of 1934, or under a state law requiring similar
425 registration or disclosure, the person required to file the
426 statement referred to in subsection (2) may utilize the
427 documents in furnishing the information called for by that
428 statement.

429 (4) APPROVAL BY COMMISSIONER; HEARINGS.—

430 (a) The commissioner shall approve any merger or other
431 acquisition of control under subsection (2) unless, after a
432 public hearing, the commissioner finds that:

433 1. After the change of control, the domestic insurer
434 referred to in subsection (2) would not be able to satisfy the
435 requirements for the issuance of a license to write the line or
436 lines of insurance for which it is presently licensed;

437 2. The effect of the merger or other acquisition of
438 control would be substantially to lessen competition in
439 insurance in this state or tend to create a monopoly. In
440 applying the competitive standard in this subparagraph:

441 a. The informational requirements of subsection (2) and
442 the standards of subsection (8) shall apply;

443 b. The merger or other acquisition shall not be
444 disapproved if the commissioner finds that any of the situations
445 meeting the criteria provided by subsection (8) exist; and

446 c. The commissioner may condition the approval of the
447 merger or other acquisition on the removal of the basis of
448 disapproval within a specified period of time;

449 3. The financial condition of any acquiring party is such
450 that it might jeopardize the financial stability of the insurer,
451 or prejudice the interest of its policyholders;

452 4. The plans or proposals which the acquiring party has to
453 liquidate the insurer or controlling company, sell its assets,
454 consolidate or merge it with any person, or make any other
455 material change in its business or corporate structure or
456 management are unfair and unreasonable to policyholders of the
457 insurer and not in the public interest;

458 5. The competence, experience, and integrity of those
459 persons who would control the operation of the insurer are such
460 that it would not be in the interest of policyholders of the
461 insurer and of the public to permit the merger or other
462 acquisition of control;

463 6. The natural persons for whom background information is
464 required to be furnished pursuant to this section have
465 backgrounds which indicate that it is in the best interests of
466 the policyholders of the domestic stock insurer and in the
467 public interest to permit such persons to exercise control over
468 such domestic stock insurer;

469 7. The officers and directors to be employed after the
470 acquisition have sufficient insurance experience and ability to
471 assure reasonable promise of successful operation;

472 8. The management of the insurer after the acquisition
473 will be competent and trustworthy and will possess sufficient
474 managerial experience to make the proposed operation of the
475 insurer not hazardous to the insurance-buying public;

476 9. The management of the insurer after the acquisition

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477 will not include any person who has, directly or indirectly,
478 through ownership, control, reinsurance transactions, or other
479 insurance or business relations, unlawfully manipulated the
480 assets, accounts, finances, or books of any insurer or otherwise
481 acted in bad faith with respect thereto; or

482 10. The acquisition is likely to be hazardous or
483 prejudicial to the insurance-buying public.

484 (b) The public hearing under paragraph (a) shall be held
485 within 30 days after the filing of the statement required by
486 subsection (2), and at least 20 days' notice shall be given by
487 the commissioner to the person filing the statement. Not less
488 than 7 days' notice of the public hearing shall be given by the
489 person filing the statement to the insurer and to such other
490 persons as may be designated by the commissioner. The
491 commissioner shall make a determination within the 60-day period
492 preceding the effective date of the proposed transaction. At the
493 hearing, the person filing the statement, the insurer, any
494 person to whom notice of hearing was sent, and any other person
495 whose interest may be affected shall have the right to present
496 evidence, examine and cross-examine witnesses, and offer oral
497 and written arguments and in connection therewith shall be
498 entitled to conduct discovery proceedings in the same manner as
499 is presently allowed in the circuit courts of this state. All
500 discovery proceedings shall be concluded not later than 3 days
501 prior to the commencement of the public hearing.

502 (c) If the proposed acquisition of control will require
503 the approval of more than one commissioner, the public hearing
504 referred to in paragraph (b) may be held on a consolidated basis

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505 upon request of the person filing the statement referred to in
506 subsection (2). Such person shall file the statement with the
507 National Association of Insurance Commissioners within 5 days of
508 making the request for a public hearing. A commissioner may opt
509 out of a consolidated hearing and shall provide notice to the
510 applicant of the decision to do so within 10 days of the receipt
511 of the statement. A hearing conducted on a consolidated basis
512 shall be public and shall be held within the United States
513 before the commissioners of the states in which the insurers are
514 domiciled. At such hearing the commissioners shall hear and
515 receive evidence. A commissioner may attend such hearing in
516 person or by telecommunication.

517 (d) In connection with a change of control of a domestic
518 insurer, any determination by the commissioner that the person
519 acquiring control of the insurer shall be required to maintain
520 or restore the capital of the insurer to the level required by
521 the laws and regulations of this state must be made not later
522 than 60 days after the date of notification of the change in
523 control submitted pursuant to subsection (2).

524 (e) The commissioner may retain, at the acquiring person's
525 expense, any attorneys, actuaries, accountants, and other
526 experts not otherwise a part of the commissioner's staff as may
527 be reasonably necessary to assist the commissioner in reviewing
528 the proposed acquisition of control.

529 (5) NONAPPLICABILITY.—The provisions of this section do
530 not apply to:

531 (a) Any offer, request, invitation, agreement or
532 acquisition which the commissioner, by order or by letter,

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533 exempts as not having been made or entered into for the purpose
534 of, and not having the effect of, changing or influencing the
535 control of a domestic insurer.

536 (6) VIOLATIONS.—The following constitute violations of
537 this section:

538 (a) The failure to file any statement, amendment, or other
539 material required to be filed pursuant to subsection (2) or
540 subsection (3); or

541 (b) The effectuation or any attempted effectuation of an
542 acquisition of control of, divestiture of, or merger with a
543 domestic insurer unless the commissioner has given approval.

544 (7) JURISDICTION; CONSENT TO SERVICE OF PROCESS.—The
545 courts of this state are hereby vested with jurisdiction over
546 every person not resident, domiciled, or authorized to do
547 business in this state who files a statement with the
548 commissioner under this section, and overall actions involving
549 such person arising out of violations of this section. Each such
550 person shall be deemed to have performed acts equivalent to and
551 constituting an appointment by the person of the commissioner to
552 be his true and lawful attorney upon whom may be served all
553 lawful process in any action, suit, or proceeding arising out of
554 violations of this section. Copies of all lawful process shall
555 be served on the commissioner and transmitted by registered or
556 certified mail by the commissioner to the person at his last
557 known address.

558 (8) COMPETITIVE STANDARD.—

559 (a) As used in this subsection:

560 1. The term "insurer" includes any company or group of

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561 companies under common management, ownership, or control.

562 2. The term "market" means the relevant product and
563 geographical markets. In determining the relevant product and
564 geographical markets, the commissioner shall give due
565 consideration to, among other things, the definitions or
566 guidelines, if any, promulgated by the National Association of
567 Insurance Commissioners and to information, if any, submitted by
568 parties to the acquisition. In the absence of sufficient
569 information to the contrary, the relevant product market is
570 assumed to be the direct written insurance premium for a line of
571 business, such line being that used in the annual statement
572 required to be filed by insurers doing business in this state,
573 and the relevant geographical market is assumed to be this
574 state.

575 (b) The commissioner may enter an order or may send a
576 letter under subsection (9) with respect to an acquisition if
577 there is substantial evidence that the effect of the acquisition
578 may be substantially to lessen competition in any line of
579 insurance in this state or to tend to create a monopoly, or if
580 the insurer fails to file adequate information in compliance
581 with the preacquisition notification required by this section.

582 (c) In determining whether a proposed acquisition would
583 violate the competitive standard, the commissioner shall
584 consider the following:

585 1. Any acquisition covered under subsection (11) involving
586 two or more insurers competing in the same market is prima facie
587 evidence of violation of the competitive standards.

588 a. If the market is highly concentrated and the involved

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589 insurers possess the following shares of the market:

590		
591	<u>Insurer A</u>	<u>Insurer B</u>
592		
593	<u>4%</u>	<u>4% or more</u>
594	<u>10%</u>	<u>2% or more</u>
595	<u>15%</u>	<u>1% or more</u>
596		

597 b. Or, if the market is not highly concentrated and the
 598 involved insurers possess the following shares of the market:

599		
600	<u>Insurer A</u>	<u>Insurer B</u>
601		
602	<u>5%</u>	<u>5% or more</u>
603	<u>10%</u>	<u>4% or more</u>
604	<u>15%</u>	<u>3% or more</u>
605	<u>19%</u>	<u>1% or more</u>
606		

607 A highly concentrated market is one in which the share of the
 608 four largest insurers is 75 percent or more of the market.
 609 Percentages not shown in the tables are interpolated
 610 proportionately to the percentages that are shown. If more than
 611 two insurers are involved, exceeding the total of the two
 612 columns in the table is prima facie evidence of violation of the
 613 competitive standard in this subsection. For the purposes of
 614 this paragraph, the insurer with the largest share of the market
 615 is deemed to be Insurer A.

616 2. There is a significant trend toward increased

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617 concentration when the aggregate market share of any grouping of
618 the largest insurers in the market, from the two largest to the
619 eighth largest, has increased by 7 percent or more of the market
620 over a period of time extending from any base year 5 to 10 years
621 prior to the acquisition up to the time of the acquisition. Any
622 acquisition or merger covered under this section involving two
623 or more insurers competing in the same market is prima facie
624 evidence of violation of the competitive standard in this
625 subsection if:

626 a. There is a significant trend toward increased
627 concentration in the market;

628 b. One of the insurers involved is one of the insurers in
629 a grouping of large insurers showing the requisite increase in
630 the market share; and

631 c. Another involved insurer's market is 2 percent or more.

632 (d)1. The burden of showing prima facie evidence of
633 violation of the competitive standard rests upon the
634 commissioner.

635 2. Even though an acquisition is not prima facie evidence
636 of violation of the competitive standard under this subsection,
637 the commissioner may establish the requisite anticompetitive
638 effect based upon other substantial evidence and a party may
639 establish the absence of the requisite anticompetitive effect
640 based upon other substantial evidence. Relevant factors in
641 making a determination under this subsection include, but are
642 not limited to, the following:

643 a. Market shares.

644 b. Volatility of ranking of market leaders.

645 c. Number of competitors.
 646 d. Concentration.
 647 e. Trend of concentration in the industry.
 648 f. Ease of entry into and exit from the market.
 649 (e) An order denying the acquisition may not be entered
 650 if:
 651 1. The acquisition will yield substantial economies of
 652 scale or economies in resource utilization that cannot be
 653 feasibly achieved in any other way, and the public benefits
 654 which would arise from such economies exceed the public benefits
 655 which would arise from not lessening competition; or
 656 2. The acquisition will substantially increase the
 657 availability of insurance, and the public benefits of the
 658 increase exceed the public benefits which would arise from not
 659 lessening competition.
 660 (9) ORDERS AND PENALTIES.—
 661 (a) If an acquisition violates the standards of this
 662 section, the commissioner may enter an order:
 663 1. Requiring an involved insurer to cease and desist from
 664 doing business in this state with respect to the line or lines
 665 of insurance involved in the violation; or
 666 2. Denying the application of an acquired or acquiring
 667 insurer for a license to do business in this state.
 668 (b) Such an order shall not be entered unless:
 669 1. There is a hearing;
 670 2. Notice of the hearing is issued prior to the end of the
 671 waiting period and not less than 15 days prior to the hearing;
 672 and

673 3. The hearing is concluded and the order is issued no
 674 later than 60 days after the date of the filing of the
 675 preacquisition notification with the commissioner. This deadline
 676 may be waived by the parties.

677
 678 Every order shall be accompanied by a written decision of the
 679 commissioner setting forth findings of fact and conclusions of
 680 law.

681 (c) An order pursuant to this section does not apply if
 682 the acquisition is not consummated.

683 (d) Any person who violates a cease and desist order of
 684 the commissioner under this section while the order is in effect
 685 may, after notice and hearing and upon order of the
 686 commissioner, be subject at the discretion of the commissioner
 687 to one or more of the following:

688 1. A monetary penalty of not more than \$10,000 for every
 689 day of violation; or

690 2. Suspension or revocation of the person's license.

691 (e) Any insurer or other person who fails to make any
 692 filing required by this section and who also fails to
 693 demonstrate a good faith effort to comply with any filing
 694 requirement shall be subject to a fine of not more than \$50,000.

695 (10) EXEMPTIONS.—This section does not apply to the
 696 following:

697 (a) A purchase of securities solely for investment
 698 purposes so long as the securities are not used by voting or
 699 otherwise to cause or attempt to cause the substantial lessening
 700 of competition in any insurance market in this state. If a

701 purchase of securities results in a presumption of control it is
 702 not solely for investment purposes unless the commissioner of
 703 the insurer's state of domicile accepts a disclaimer of control
 704 or affirmatively finds that control does not exist and the
 705 disclaimer action or affirmative finding is communicated by the
 706 domiciliary commissioner to the commissioner of this state.

707 (b) The acquisition of a person by another person when
 708 both persons are neither directly nor through affiliates
 709 primarily engaged in the business of insurance, if
 710 preacquisition notification is filed with the commissioner in
 711 accordance with this section 30 days prior to the proposed
 712 effective date of the acquisition. However, such preacquisition
 713 notification is not required for exclusion from this section if
 714 the acquisition would otherwise be excluded from this section.

715 (c) The acquisition of already affiliated persons.

716 (d) An acquisition if, as an immediate result of the
 717 acquisition:

718 1. In no market would the combined market share of the
 719 involved insurers exceed 5 percent of the total market;

720 2. There would be no increase in any market share; or

721 3. In no market would:

722 a. The combined market share of the involved insurers
 723 exceed 12 percent of the total market; and

724 b. The market share increase by more than 2 percent of the
 725 total market.

726

727 As used in this paragraph, a "market" means direct written
 728 insurance premium in this state for a line of business as

729 contained in the annual statement required to be filed by
 730 insurers licensed to do business in this state.

731 (e) An acquisition for which a preacquisition notification
 732 would be required pursuant to this section due solely to the
 733 resulting effect on the ocean marine insurance line of business.

734 (f) An acquisition of an insurer whose domiciliary
 735 commissioner affirmatively finds that:

736 1. The insurer is in failing condition;

737 2. There is a lack of feasible alternative to improving
 738 such condition;

739 3. The public benefits of improving the insurer's
 740 condition through the acquisition exceed the public benefits
 741 that would arise from not lessening competition; and

742 4. The findings are communicated by the domiciliary
 743 commissioner to the commissioner of this state.

744 (g) Acquisitions subject to s. 628.4615.

745 (11) APPROVAL; CONCLUSION OF ACQUISITION; DISAPPROVAL.—The
 746 acquisition of voting securities shall be deemed approved unless
 747 the office disapproves the proposed acquisition within 90 days
 748 after the statement required by subsection (2) has been filed.

749 The office may on its own initiate or, if requested to do so in
 750 writing by a substantially affected party, shall conduct a
 751 proceeding to consider the appropriateness of the proposed
 752 filing. The 90-day time period shall be tolled during the
 753 pendency of the proceeding. Any written request for a proceeding
 754 must be filed with the office within 10 days of the date on
 755 which notice of the filing is given. During the pendency of the
 756 proceeding or review period by the office, any person or

757 affiliated person complying with the filing requirements of this
 758 section may proceed and take all steps necessary to conclude the
 759 acquisition so long as the acquisition becoming final is
 760 conditioned upon obtaining office approval. The office shall,
 761 however, at any time that it finds an immediate danger to the
 762 public health, safety, and welfare of the domestic policyholders
 763 exists, immediately order, pursuant to s. [120.569](#)(2)(n), the
 764 proposed acquisition temporarily disapproved and any further
 765 steps to conclude the acquisition ceased.

766 Section 2. Section 628.4615, Florida Statutes, is amended
 767 to read:

768 628.4615 Specialty insurers; acquisition of controlling
 769 stock, ownership interest, assets, or control; merger or
 770 consolidation.—

771 (1) For the purposes of this section, the term "specialty
 772 insurer" means any person holding a license or certificate of
 773 authority as:

774 (a) A motor vehicle service agreement company authorized
 775 to issue motor vehicle service agreements as those terms are
 776 defined in s. 634.011;

777 (b) A home warranty association authorized to issue "home
 778 warranties" as those terms are defined in s. 634.301;

779 (c) A service warranty association authorized to issue
 780 "service warranties" as those terms are defined in s.
 781 634.401(13) and (14);

782 ~~(d) A prepaid limited health service organization~~
 783 ~~authorized to issue prepaid limited health service contracts, as~~
 784 ~~those terms are defined in chapter 636;~~

785 ~~(e) An authorized health maintenance organization~~
 786 ~~operating pursuant to s. 641.21;~~
 787 ~~(f) An authorized prepaid health clinic operating pursuant~~
 788 ~~to s. 641.405;~~
 789 (d)(g) A legal expense insurance corporation authorized to
 790 engage in a legal expense insurance business pursuant to s.
 791 642.021;
 792 ~~(h) A provider that is licensed to operate a facility that~~
 793 ~~undertakes to provide continuing care as those terms are defined~~
 794 ~~in s. 651.011;~~
 795 ~~(i) A multiple-employer welfare arrangement operating~~
 796 ~~pursuant to ss. 624.436-624.446;~~
 797 (e)(j) A premium finance company authorized to finance
 798 insurance premiums pursuant to s. 627.828; or
 799 (f)(k) A corporation authorized to accept donor annuity
 800 agreements pursuant to s. 627.481.
 801 (2) A person may not, individually or in conjunction with
 802 any affiliated person of such person, directly or indirectly,
 803 conclude a tender offer or exchange offer for, enter into any
 804 agreement to exchange securities for, or otherwise finally
 805 acquire, 10 percent or more of the outstanding voting securities
 806 of a specialty insurer which is a stock corporation or of a
 807 controlling company of a specialty insurer which is a stock
 808 corporation; or conclude an acquisition of, or otherwise finally
 809 acquire, 10 percent or more of the ownership interest of a
 810 specialty insurer which is not a stock corporation or of a
 811 controlling company of a specialty insurer which is not a stock
 812 corporation, unless:

813 ~~(a)~~ the person or affiliated person has filed with the
 814 office and sent by registered mail to the principal office of
 815 the specialty insurer and controlling company a letter of
 816 notification regarding the transaction or proposed transaction
 817 no later than 5 days after any form of tender offer or exchange
 818 offer is proposed, or no later than 5 days after the acquisition
 819 of the securities or ownership interest if no tender offer or
 820 exchange offer is involved. The notification must be provided on
 821 forms prescribed by the commission containing information
 822 determined necessary to understand the transaction and identify
 823 all purchasers and owners involved.†

824 ~~(b)~~ The person or affiliated person has filed with the
 825 office an application signed under oath and prepared on forms
 826 prescribed by the commission which contains the information
 827 specified in subsection (4). The application must be completed
 828 and filed within 30 days after any form of tender offer or
 829 exchange offer is proposed, or after the acquisition of the
 830 securities if no tender offer or exchange offer is involved; and

831 ~~(c)~~ The office has approved the tender offer or exchange
 832 offer, or acquisition if no tender offer or exchange offer is
 833 involved.

834 ~~(3)~~ This section does not apply to any acquisition of
 835 voting securities or ownership interest of a specialty insurer
 836 or of a controlling company by any person who, on July 9, 1986,
 837 is the owner of a majority of such voting securities or
 838 ownership interest or who, on or after July 9, 1986, becomes the
 839 owner of a majority of such voting securities or ownership
 840 interest with the approval of the office under this section. The

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841 ~~person or affiliated person filing the required notice in~~
842 ~~paragraph (2) (a) may request the office to waive the~~
843 ~~requirements of paragraph (2) (b) if there is no change in the~~
844 ~~ultimate controlling shareholder or ownership percentages of the~~
845 ~~ultimate controlling shareholders and no unaffiliated parties~~
846 ~~acquire any direct or indirect interest in the specialty~~
847 ~~insurer. The office may waive the filing if it determines that~~
848 ~~in fact there is no change in the ultimate controlling~~
849 ~~shareholder or ownership percentages of the ultimate controlling~~
850 ~~shareholders and no unaffiliated parties will acquire any direct~~
851 ~~or indirect interest in the specialty insurer.~~

852 (3) (a) (4) Within 30 days of the tender offer or exchange
853 offer, the party or affiliated party shall provide to the office
854 the background information for any new officers, directors,
855 trustees, partners, owners, managers, or joint venturers, or
856 other persons performing duties similar to those of persons in
857 such positions, of the specialty insurer as a result of the
858 acquisition ~~The application to be filed with the office and~~
859 ~~furnished to the specialty insurer and controlling company shall~~
860 ~~contain the following information and any additional information~~
861 ~~as the office deems necessary to determine the character,~~
862 ~~experience, ability, and other qualifications of the specialty~~
863 ~~insurer's management person or affiliated person of such person~~
864 ~~for the protection of the insureds of the specialty insurer and~~
865 ~~of the public. The information as to the background and identity~~
866 ~~of each such natural person shall include:~~

867 ~~(a)1. The identity of, and the background information~~
868 ~~specified in subsection (5) on, each natural person by whom, or~~

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869 ~~on whose behalf, the acquisition is to be made; and,~~
870 ~~2. If the acquisition is to be made by, or on behalf of, a~~
871 ~~person other than a natural person and as to any person who~~
872 ~~controls, either directly or indirectly, such other person, the~~
873 ~~identity of, and the background information specified in~~
874 ~~subsection (5) on:~~
875 ~~a. Each director, officer, or trustee, if a corporation,~~
876 ~~or~~
877 ~~b. Each partner, owner, manager, or joint venturer, or~~
878 ~~other person performing duties similar to those of persons in~~
879 ~~the aforementioned positions, if not a corporation,~~
880
881 ~~for the person.~~
882 ~~(b) The source and amount of the funds or other~~
883 ~~consideration used, or to be used, in making the acquisition.~~
884 ~~(c) Any plans or proposals which such persons may have~~
885 ~~made to liquidate the specialty insurer, to sell any of its~~
886 ~~assets or merge or consolidate it with any person, or to make~~
887 ~~any other major change in its business or corporate structure or~~
888 ~~management; and any plans or proposals which such persons may~~
889 ~~have made to liquidate any controlling company of the specialty~~
890 ~~insurer, to sell any of its assets or merge or consolidate it~~
891 ~~with any person, or to make any other major change in its~~
892 ~~business or corporate structure or management.~~
893 ~~(d) The nature and the extent of the controlling interest~~
894 ~~which the person or affiliated person of such person proposes to~~
895 ~~acquire, the terms of the proposed acquisition, and the manner~~
896 ~~in which the controlling interest is to be acquired of a~~

897 ~~specialty insurer or controlling company which is not a stock~~
 898 ~~corporation.~~

899 ~~(c) The number of shares or other securities which the~~
 900 ~~person or affiliated person of such person proposes to acquire,~~
 901 ~~the terms of the proposed acquisition, and the manner in which~~
 902 ~~the securities are to be acquired.~~

903 ~~(f) Information as to any contract, arrangement, or~~
 904 ~~understanding with any party with respect to any of the~~
 905 ~~securities of the specialty insurer or controlling company,~~
 906 ~~including, but not limited to, information relating to the~~
 907 ~~transfer of any of the securities, option arrangements, puts or~~
 908 ~~calls, or the giving or withholding of proxies, which~~
 909 ~~information names the party with whom the contract, arrangement,~~
 910 ~~or understanding has been entered into and gives the details~~
 911 ~~thereof.~~

912 ~~(5) (a) The information as to the background and identity~~
 913 ~~of each natural person, which information is required to be~~
 914 ~~furnished pursuant to paragraph (4) (a), shall include:~~

915 1. The natural person's occupations, positions of
 916 employment, and offices held during the past 10 years.

917 2. The principal business and address of any business,
 918 corporation, or organization in which each such office of the
 919 natural person was held, or in which each such occupation or
 920 position of employment was carried on.

921 3. Whether the natural person was, at any time during such
 922 10-year period, convicted of any crime other than a traffic
 923 violation.

924 4. Whether the natural person has been, during such 10-

925 | year period, the subject of any proceeding for the revocation of
 926 | any license and, if so, the nature of the proceeding and the
 927 | disposition of the proceeding.

928 | 5. Whether, during the 10-year period, the natural person
 929 | has been the subject of any proceeding under the federal
 930 | Bankruptcy Act; or whether, during the 10-year period, any
 931 | person or other business or organization in which the natural
 932 | person was a director, officer, trustee, partner, owner,
 933 | manager, or other official has been subject to any such
 934 | proceeding, either during the time in which the natural person
 935 | was a director, officer, or trustee, if a corporation, or a
 936 | partner, owner, manager, joint venturer, or other official, if
 937 | not a corporation, or within 12 months thereafter.

938 | 6. Whether, during the 10-year period, the natural person
 939 | has been enjoined, either temporarily or permanently, by a court
 940 | of competent jurisdiction from violating any federal or state
 941 | law regulating the business of insurance, securities, or
 942 | banking, or from carrying out any particular practice or
 943 | practices in the course of the business of insurance,
 944 | securities, or banking, together with details as to any such
 945 | event.

946 | 7. Fingerprints of each person referred to in this section
 947 | ~~subsection (4)~~.

948 | (b) Any person filing the statement required by this
 949 | section shall give all required information that is within the
 950 | knowledge of:

951 | 1. The directors, officers, or trustees, if a corporation,
 952 | or

953 2. The partners, owners, managers, or joint venturers, or
 954 others performing functions similar to those of a director,
 955 officer, or trustee, if not a corporation,
 956
 957 of the person making the filing and of any person controlling
 958 either directly or indirectly such person. If any material
 959 change occurs in the facts set forth in the application filed
 960 with the office pursuant to this section, an amendment setting
 961 forth such changes shall be filed immediately with the office,
 962 and a copy of the amendment shall be sent by registered mail to
 963 the principal office of the specialty insurer and to the
 964 principal office of the controlling company.

965 ~~(6) (a) The acquisition application shall be reviewed in~~
 966 ~~accordance with chapter 120. The office may on its own initiate,~~
 967 ~~or, if requested to do so in writing by a substantially affected~~
 968 ~~person, shall conduct, a proceeding to consider the~~
 969 ~~appropriateness of the proposed filing. Time periods for~~
 970 ~~purposes of chapter 120 shall be tolled during the pendency of~~
 971 ~~the proceeding. Any written request for a proceeding must be~~
 972 ~~filed with the office within 10 days of the date notice of the~~
 973 ~~filing is given. During the pendency of the proceeding or review~~
 974 ~~period by the office, any person or affiliated person complying~~
 975 ~~with the filing requirements of this section may proceed and~~
 976 ~~take all steps necessary to conclude the acquisition so long as~~
 977 ~~the acquisition becoming final is conditioned upon obtaining~~
 978 ~~office approval. The office shall, however, at any time it finds~~
 979 ~~an immediate danger to the public health, safety, and welfare of~~
 980 ~~the insureds exists, immediately order, pursuant to s.~~

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981 ~~120.569(2)(n), the proposed acquisition disapproved and any~~
982 ~~further steps to conclude the acquisition ceased.~~

983 ~~(b) During the pendency of the office's review of any~~
984 ~~acquisition subject to the provisions of this section, the~~
985 ~~acquiring person shall not make any material change in the~~
986 ~~operation of the specialty insurer or controlling company unless~~
987 ~~the office has specifically approved the change nor shall the~~
988 ~~acquiring person make any material change in the management of~~
989 ~~the specialty insurer unless advance written notice of the~~
990 ~~change in management is furnished to the office. A material~~
991 ~~change in the operation of the specialty insurer is a~~
992 ~~transaction which disposes of or obligates 5 percent or more of~~
993 ~~the capital and surplus of the specialty insurer. A material~~
994 ~~change in the management of the specialty insurer is any change~~
995 ~~in management involving officers or directors of the specialty~~
996 ~~insurer or any person of the specialty insurer or controlling~~
997 ~~company having authority to dispose of or obligate 5 percent or~~
998 ~~more of the specialty insurer's capital or surplus. The office~~
999 ~~shall approve a material change in operations if it finds the~~
1000 ~~applicable provisions of subsection (8) have been met. The~~
1001 ~~office may disapprove a material change in management if it~~
1002 ~~finds that the applicable provisions of subsection (8) have not~~
1003 ~~been met and in such case the specialty insurer shall promptly~~
1004 ~~change management as acceptable to the office.~~

1005 ~~(c) If a request for a proceeding is filed, the proceeding~~
1006 ~~shall be conducted within 60 days after the date the written~~
1007 ~~request for a proceeding is received by the office. A~~
1008 ~~recommended order shall be issued within 20 days of the date of~~

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1009 ~~the close of the proceedings. A final order shall be issued~~
 1010 ~~within 20 days of the date of the recommended order or, if~~
 1011 ~~exceptions to the recommended order are filed, within 20 days of~~
 1012 ~~the date the exceptions are filed.~~

1013 ~~(7) The office may disapprove any acquisition subject to~~
 1014 ~~the provisions of this section by any person or any affiliated~~
 1015 ~~person of such person who:~~

1016 ~~(a) Willfully violates this section;~~

1017 ~~(b) In violation of an order of the office issued pursuant~~
 1018 ~~to subsection (11), fails to divest himself or herself of any~~
 1019 ~~stock or ownership interest obtained in violation of this~~
 1020 ~~section or fails to divest himself or herself of any direct or~~
 1021 ~~indirect control of such stock or ownership interest, within 25~~
 1022 ~~days after such order; or~~

1023 ~~(c) In violation of an order issued by the office pursuant~~
 1024 ~~to subsection (11), acquires an additional stock or ownership~~
 1025 ~~interest in a specialty insurer or controlling company or direct~~
 1026 ~~or indirect control of such stock or ownership interest, without~~
 1027 ~~complying with this section.~~

1028 ~~(8) The person or persons filing the application required~~
 1029 ~~by subsection (2) shall have the burden of proof. The office~~
 1030 ~~shall approve any such acquisition if it finds, on the basis of~~
 1031 ~~the record made during any proceeding or on the basis of the~~
 1032 ~~filed application if no proceeding is conducted, that:~~

1033 ~~(a) Upon completion of the acquisition, the specialty~~
 1034 ~~insurer will be able to satisfy the requirements for the~~
 1035 ~~issuance of a license or certificate to write the line of~~
 1036 ~~insurance for which it is presently licensed or certificated.~~

1037 ~~(b) The financial condition of the acquiring person or~~
 1038 ~~persons will not jeopardize the financial stability of the~~
 1039 ~~specialty insurer or prejudice the interests of its insureds or~~
 1040 ~~the public.~~

1041 ~~(c) Any plan or proposal which the acquiring person has,~~
 1042 ~~or acquiring persons have, made:~~

1043 ~~1. To liquidate the specialty insurer, sell its assets, or~~
 1044 ~~merge or consolidate it with any person, or to make any other~~
 1045 ~~major change in its business or corporate structure or~~
 1046 ~~management, or~~

1047 ~~2. To liquidate any controlling company, sell its assets,~~
 1048 ~~or merge or consolidate it with any person, or to make any major~~
 1049 ~~change in its business or corporate structure or management~~
 1050 ~~which would have an effect upon the specialty insurer,~~

1051
 1052 ~~is fair and free of prejudice to the insureds of the specialty~~
 1053 ~~insurer or to the public.~~

1054 ~~(d) The competence, experience, and integrity of those~~
 1055 ~~persons who will control directly or indirectly the operation of~~
 1056 ~~the specialty insurer indicate that the acquisition is in the~~
 1057 ~~best interest of the insureds of the insurer and in the public~~
 1058 ~~interest.~~

1059 ~~(e) The natural persons for whom background information is~~
 1060 ~~required to be furnished pursuant to this section have such~~
 1061 ~~backgrounds as to indicate that it is in the best interests of~~
 1062 ~~the insureds of the specialty insurer and in the public interest~~
 1063 ~~to permit such persons to exercise control over the specialty~~
 1064 ~~insurer.~~

1065 ~~(f) The directors and officers, if such specialty insurer~~
 1066 ~~or controlling company is a stock corporation, or the trustees,~~
 1067 ~~partners, owners, managers, or joint venturers or other persons~~
 1068 ~~performing duties similar to those of persons in the~~
 1069 ~~aforementioned positions, if such specialty insurer or~~
 1070 ~~controlling company is not a stock corporation, to be employed~~
 1071 ~~after the acquisition have sufficient insurance experience and~~
 1072 ~~ability to assure reasonable promise of successful operation.~~

1073 ~~(g) The management of the specialty insurer after the~~
 1074 ~~acquisition will be competent and trustworthy, and will possess~~
 1075 ~~sufficient managerial experience so as to make the proposed~~
 1076 ~~operation of the specialty insurer not hazardous to the~~
 1077 ~~insurance-buying public.~~

1078 ~~(h) The management of the specialty insurer after the~~
 1079 ~~acquisition shall not include any person who has directly or~~
 1080 ~~indirectly through ownership, control, reinsurance transactions,~~
 1081 ~~or other insurance or business relations unlawfully manipulated~~
 1082 ~~the assets, accounts, finances, or books of any insurer or~~
 1083 ~~otherwise acted in bad faith with respect thereto.~~

1084 ~~(i) The acquisition is not likely to be hazardous or~~
 1085 ~~prejudicial to the insureds of the insurer or to the public.~~

1086 ~~(j) The effect of the acquisition would not substantially~~
 1087 ~~lessen competition in the line of insurance for which the~~
 1088 ~~specialty insurer is licensed or certified in this state or~~
 1089 ~~would not tend to create a monopoly therein.~~

1090 ~~(9) No vote by the stockholder of record, or by any other~~
 1091 ~~person, of any security acquired in contravention of the~~
 1092 ~~provisions of this section is valid. Any acquisition contrary to~~

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1093 | ~~the provisions of this section is void. Upon the petition of the~~
 1094 | ~~specialty insurer or the controlling company, the circuit court~~
 1095 | ~~for the county in which the principal office of the specialty~~
 1096 | ~~insurer is located may, without limiting the generality of its~~
 1097 | ~~authority, order the issuance or entry of an injunction or other~~
 1098 | ~~order to enforce the provisions of this section. There shall be~~
 1099 | ~~a private right of action in favor of the specialty insurer or~~
 1100 | ~~controlling company to enforce the provisions of this section.~~
 1101 | ~~No demand upon the office that it perform its functions shall be~~
 1102 | ~~required as a prerequisite to any suit by the specialty insurer~~
 1103 | ~~or controlling company against any other person, and in no case~~
 1104 | ~~shall the office be deemed a necessary party to any action by~~
 1105 | ~~the specialty insurer or controlling company to enforce the~~
 1106 | ~~provisions of this section. Any person who makes or proposes an~~
 1107 | ~~acquisition requiring the filing of an application pursuant to~~
 1108 | ~~this section, or who files such an application, shall be deemed~~
 1109 | ~~to have thereby designated the Chief Financial Officer, or his~~
 1110 | ~~or her assistant or deputy or another person in charge of his or~~
 1111 | ~~her office, as such person's agent for service of process under~~
 1112 | ~~this section and shall thereby be deemed to have submitted~~
 1113 | ~~himself or herself to the administrative jurisdiction of the~~
 1114 | ~~office and to the jurisdiction of the circuit court.~~
 1115 | ~~(10) Any approval by the office under this section does~~
 1116 | ~~not constitute a recommendation by the office of the tender~~
 1117 | ~~offer or exchange offer, or acquisition, if no tender offer or~~
 1118 | ~~exchange offer is involved. It is unlawful for a person to~~
 1119 | ~~represent that the office's approval constitutes a~~
 1120 | ~~recommendation. A person who violates the provisions of this~~

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1121 ~~subsection commits a felony of the third degree, punishable as~~
 1122 ~~provided in s. 775.082, s. 775.083, or s. 775.084. The statute~~
 1123 ~~of limitations period for the prosecution of an offense~~
 1124 ~~committed under this subsection is 5 years.~~

1125 (4)~~(11)~~ If the office determines that any person or any
 1126 affiliated person of such person has acquired 10 percent or more
 1127 of the outstanding voting securities of a specialty insurer or
 1128 controlling company which is a stock corporation, or 10 percent
 1129 or more of the ownership interest of a specialty insurer or
 1130 controlling company which is not a stock corporation, without
 1131 complying with the provisions of this section, the office may
 1132 order that the person and any affiliated person of such person
 1133 cease acquisition of the specialty insurer or controlling
 1134 company and, if appropriate, divest itself of any stock or
 1135 ownership interest acquired in violation of this section.

1136 (5)~~(12)~~(a) The office shall, if necessary to protect the
 1137 public interest, suspend or revoke the certificate of authority
 1138 of any specialty insurer or controlling company acquired in
 1139 violation of this section.

1140 (b) If any specialty insurer is subject to suspension or
 1141 revocation pursuant to this section ~~paragraph (a)~~, the specialty
 1142 insurer shall be deemed to be in such condition, or to be using
 1143 or to have been subject to such methods or practices in the
 1144 conduct of its business, as to render its further transaction of
 1145 insurance presently or prospectively hazardous to its insureds,
 1146 creditors, or stockholders or to the public.

1147 (6)~~(13)~~(a) For the purpose of this section, the term
 1148 "acquisition" includes:

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- 1149 | 1. A tender offer or exchange offer for securities,
- 1150 | assets, or other ownership interest;
- 1151 | 2. An agreement to exchange securities for other
- 1152 | securities, assets, or other ownership interest;
- 1153 | 3. A merger of a person or affiliated person into a
- 1154 | specialty insurer or a merger of any person with a specialty
- 1155 | insurer;
- 1156 | 4. A consolidation; or
- 1157 | 5. Any other form of change of control

1158 |
 1159 | whereby any person or affiliated person acquires or attempts to
 1160 | acquire, directly or indirectly, 10 percent or more of the
 1161 | ownership interest or assets of a specialty insurer or of a
 1162 | controlling company. ~~However, in the case of a health~~
 1163 | ~~maintenance organization organized as a for-profit corporation,~~
 1164 | ~~the provisions of s. 628.451 shall govern with respect to any~~
 1165 | ~~merger or consolidation, and, in the case of a health~~
 1166 | ~~maintenance organization organized as a not-for-profit~~
 1167 | ~~corporation, the provisions of s. 628.471 shall govern with~~
 1168 | ~~respect to any merger or consolidation.~~

1169 | (b) For the purpose of this section, the term "affiliated
 1170 | person" of another person includes:

- 1171 | 1. The spouse of such other natural person;
- 1172 | 2. The parents of such other natural person and their
- 1173 | lineal descendants and the parents of such other natural
- 1174 | person's spouse and their lineal descendants;
- 1175 | 3. Any person who directly or indirectly owns or controls,
- 1176 | or holds with power to vote, 10 percent or more of the

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1177 outstanding voting securities of such other person;

1178 4. Any person who directly or indirectly owns 10 percent
 1179 or more of the outstanding voting securities which are directly
 1180 or indirectly owned or controlled, or held with power to vote,
 1181 by such other person;

1182 5. Any person or group of persons who directly or
 1183 indirectly control, are controlled by, or are under common
 1184 control with such other person;

1185 6. Any director, officer, trustee, partner, owner,
 1186 manager, joint venturer, or employee, or other person performing
 1187 duties similar to those of persons in the aforementioned
 1188 positions, of such other person;

1189 7. If such other person is an investment company, any
 1190 investment adviser of such company or any member of an advisory
 1191 board of such company;

1192 8. If such other person is an unincorporated investment
 1193 company not having a board of directors, the depositor of such
 1194 company; or

1195 9. Any person who has entered into an agreement, written
 1196 or unwritten, to act in concert with such other person in
 1197 acquiring, or limiting the disposition of, securities of a
 1198 specialty insurer or controlling company which is a stock
 1199 corporation or in acquiring, or limiting the disposition of, an
 1200 ownership interest of a specialty insurer or controlling company
 1201 which is not a stock corporation.

1202 (c) For the purposes of this section, the term
 1203 "controlling company" means any corporation, trust, or
 1204 association owning, directly or indirectly, 25 percent or more

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1205 of the voting securities of one or more specialty insurance
 1206 companies which are stock corporations, or 25 percent or more of
 1207 the ownership interest of one or more specialty insurance
 1208 companies which are not stock corporations.

1209 (d) For the purpose of this section, the term "natural
 1210 person" means an individual.

1211 (e) For the purpose of this section, the term "person"
 1212 includes a natural person, corporation, association, trust,
 1213 general partnership, limited partnership, joint venture, firm,
 1214 proprietorship, or any other entity which may hold a license or
 1215 certificate as a specialty insurer.

1216 ~~(7)~~~~(14)~~ The commission may adopt, amend, or repeal rules
 1217 that are necessary to implement the provisions of this section,
 1218 pursuant to chapter 120.

1219 Section 3. Section 628.800, Florida Statutes, is created
 1220 to read:

1221 628.800 Definitions.-As used in this part, unless the
 1222 context otherwise requires:

1223 (1) "Affiliate" means a person that, directly or
 1224 indirectly, through one or more intermediaries, controls or is
 1225 controlled by, or is under common control with, the person
 1226 specified.

1227 (2) "Control" means the possession, whether direct or
 1228 indirect, of the power to direct or cause the direction of the
 1229 management and policies of a person, whether through the
 1230 ownership of voting securities, by contract other than a
 1231 commercial contract for goods or nonmanagement services, or
 1232 otherwise, unless the power is the result of an official

1233 position with, or corporate office held by, the person. Control
 1234 shall be presumed to exist if any person, directly or
 1235 indirectly, owns, controls, holds with the power to vote, or
 1236 holds proxies representing 10 percent or more of the voting
 1237 securities of any other person. To disclaim control or
 1238 affiliation, any person may file with the commissioner a
 1239 disclaimer of control or affiliation with any authorized
 1240 insurer, or a disclaimer of control or affiliation may be filed
 1241 by the insurer or any member of an insurance holding company
 1242 system. The disclaimer shall fully disclose all material
 1243 relationships and bases for control or affiliation between the
 1244 person and the insurer, as well as the basis for disclaiming the
 1245 control or affiliation. A disclaimer of control or affiliation
 1246 shall be deemed to have been granted unless the commissioner,
 1247 within 30 days following receipt of a complete disclaimer,
 1248 notifies the filing party that the disclaimer is disallowed. In
 1249 the event of disallowance, the disclaiming party may request an
 1250 administrative hearing, which shall be granted. The disclaiming
 1251 party shall be relieved of its duty to register under this
 1252 section if approval of the disclaimer has been granted by the
 1253 commissioner or if the disclaimer is deemed to have been
 1254 approved. The commissioner may determine, after furnishing all
 1255 persons in interest notice and opportunity to be heard and
 1256 making specific findings of fact to support such determination,
 1257 that control exists in fact, notwithstanding the absence of a
 1258 presumption to that effect.

1259 (3) "Insurance holding company system" consists of two or
 1260 more affiliated persons, one or more of which is an insurer.

1261 (4) "Insurer" has the same meaning as set forth in s.
 1262 624.03, except that it shall not include:
 1263 (a) Agencies, authorities, or instrumentalities of the
 1264 United States, its possessions and territories, the Commonwealth
 1265 of Puerto Rico, the District of Columbia, or a state or
 1266 political subdivision of a state;
 1267 (b) Fraternal benefit societies;
 1268 (c) Nonprofit medical and hospital service associations;
 1269 or
 1270 (d) Business trusts.
 1271 (5) "Commissioner" means the Commissioner of Insurance
 1272 Regulation as designated under ss. 20.121 and 624.05, his or her
 1273 deputies and assistants, or the Office of Insurance Regulation,
 1274 as appropriate.
 1275 (6) "Person" means an individual, a corporation, a
 1276 partnership, an association, a business trust, an insurer, a
 1277 company, an organization, Lloyds insurer, a society, a
 1278 reciprocal insurer or interinsurance exchange, a syndicate, an
 1279 agent, a general agent, a broker, a solicitor, a service
 1280 representative, an adjuster, every legal entity, a joint stock
 1281 company, an unincorporated organization, or any similar entity
 1282 or combination acting in concert, but does not include any
 1283 securities broker performing no more than the usual and
 1284 customary broker's function.
 1285 (7) "Securityholder" of a specified person means one who
 1286 owns any security of such person, including common stock,
 1287 preferred stock, debt obligation, and any other security
 1288 convertible into or evidencing the right to acquire any of the

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1289 foregoing.

1290 (8) "Subsidiary" of a specified person means an affiliate
 1291 controlled by such person, directly or indirectly, through one
 1292 or more intermediaries.

1293 (9) "Voting security" means any security convertible into
 1294 or evidencing a right to acquire a voting security.

1295 Section 4. Section 628.801, Florida Statutes, is amended
 1296 to read:

1297 (Substantial rewording of section. See s. 628.801, F.S.,
 1298 for present text.)

1299 628.801 Insurance holding companies; registration;
 1300 regulation.-

1301 (1) REGISTRATION.—Every insurer authorized to do business
 1302 in this state that is a member of an insurance holding company
 1303 system must register with the commissioner, except a foreign
 1304 insurer subject to registration requirements and standards
 1305 adopted by statute or regulation in the jurisdiction of its
 1306 domicile which are substantially similar to those contained
 1307 chapter 624.

1308 (a) Each registered insurer shall keep current the
 1309 information required to be disclosed in its registration
 1310 statement by reporting all material changes or additions within
 1311 15 days after the end of the month in which it learns of each
 1312 change or addition. Any insurer that is subject to registration
 1313 under this section shall register within 15 days after it
 1314 becomes subject to registration, and annually thereafter by June
 1315 1 of each year for the previous calendar year, unless the
 1316 commissioner for good cause shown extends the time for

1317 registration, in which case the insurer shall register within
 1318 the extended registration period. The commissioner may require
 1319 any insurer authorized to do business in the state that is a
 1320 member of an insurance holding company system and that is not
 1321 subject to registration under this section to furnish a copy of
 1322 the registration statement, the report specified in subsection
 1323 (9), or other information filed by the insurance company with
 1324 the insurance regulatory authority of its domiciliary
 1325 jurisdiction.

1326 (b) Every insurer subject to registration shall file the
 1327 registration statement with the commissioner on a form and in a
 1328 format prescribed by the National Association of Insurance
 1329 Commissioners, which shall contain the following current
 1330 information:

1331 1. The capital structure, general financial condition,
 1332 ownership, and management of the insurer and any person
 1333 controlling the insurer.

1334 2. The identity and relationship of every member of the
 1335 insurance holding company system.

1336 3. The following agreements in force and transactions
 1337 currently outstanding or that have occurred during the last
 1338 calendar year between the insurer and its affiliates:

1339 a. Loans, other investments, or purchases, sales, or
 1340 exchanges of securities of the affiliates by the insurer or of
 1341 the insurer by its affiliates.

1342 b. Purchases, sales, or exchange of assets.

1343 c. Transactions not in the ordinary course of business.

1344 d. Guarantees or undertakings for the benefit of an

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1345 affiliate which result in an actual contingent exposure of the
1346 insurer's assets to liability, other than insurance contracts
1347 entered into in the ordinary course of the insurer's business.

1348 e. All management agreements, service contracts, and all
1349 cost-sharing arrangements.

1350 f. Reinsurance agreements.

1351 g. Dividends and other distributions to shareholders.

1352 h. Consolidated tax allocation agreements.

1353 4. Any pledge of the insurer's stock, including stock of
1354 any subsidiary or controlling affiliate, for a loan made to any
1355 member of the insurance holding company system.

1356 5. If requested by the commissioner, financial statements
1357 of or within an insurance holding company system, including all
1358 affiliates. Financial statements may include, but are not
1359 limited to, annual audited financial statements filed with the
1360 United States Securities and Exchange Commission pursuant to the
1361 Securities Act of 1933, as amended, or the Securities Exchange
1362 Act of 1934, as amended. An insurer required to file financial
1363 statements pursuant to this paragraph may satisfy the request by
1364 providing the commissioner with the most recently filed parent
1365 corporation financial statements that have been filed with the
1366 United States Securities and Exchange Commission.

1367 6. Other matters concerning transactions between
1368 registered insurers and any affiliates as may be included from
1369 time to time in any registration forms adopted or approved by
1370 the commissioner.

1371 7. Statements attesting that the insurer's board of
1372 directors oversees corporate governance and internal controls

1373 and that the insurer's officers or senior management have
 1374 approved, implemented, and continue to maintain and monitor
 1375 corporate governance and internal control procedures.

1376 8. Any other information required by the commissioner by
 1377 rule or regulation.

1378 (c) All registration statements must contain a summary
 1379 outlining all items in the current registration statement
 1380 representing changes from the prior registration statement.

1381 (d) Information need not be disclosed on the registration
 1382 statement filed pursuant to this section that is not material
 1383 for the purposes of this section. Unless the commissioner by
 1384 rule, regulation, or order provides otherwise, sales, purchases,
 1385 exchanges, loans, or extensions of credit, investments, or
 1386 guarantees involving .5 percent or less of an insurer's admitted
 1387 assets as of the 31st day of December next preceding shall not
 1388 be deemed material for purposes of this section.

1389 (2) REPORTING OF DIVIDENDS TO SHAREHOLDERS.—Subject to the
 1390 requirements of this section, each registered insurer shall
 1391 report to the commissioner all dividends and other distributions
 1392 to shareholders within 15 business days following the
 1393 declaration thereof.

1394 (3) INFORMATION OF INSURERS.—Any person within an
 1395 insurance holding company system subject to registration shall
 1396 be required to provide complete and accurate information to an
 1397 insurer, where the information is reasonably necessary to enable
 1398 the insurer to comply with the provisions of this section.

1399 (4) TERMINATION OF REGISTRATION.—The commissioner shall
 1400 terminate the registration of any insurer that demonstrates that

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1401 it no longer is a member of an insurance holding company system.

1402 (5) CONSOLIDATED FILING.—The commissioner may require or
 1403 allow two or more affiliated insurers subject to registration to
 1404 file a consolidated registration statement.

1405 (6) ALTERNATIVE REGISTRATION.—The commissioner may allow
 1406 an insurer authorized to do business in this state and that is
 1407 part of an insurance holding company system to register on
 1408 behalf of any affiliated insurer required to register under this
 1409 section and to file all information and material required to be
 1410 filed under this section.

1411 (7) EXEMPTIONS.—This section does not apply to any
 1412 insurer, information, or transaction if, and to the extent that,
 1413 the commissioner by rule, regulation, or order exempts the
 1414 insurer, information, or transaction from the provisions of this
 1415 section.

1416 (8) DISCLAIMER.—Any person may file with the commissioner
 1417 a disclaimer of affiliation with any authorized insurer, or a
 1418 disclaimer may be filed by the insurer or any member of an
 1419 insurance holding company system. The disclaimer shall fully
 1420 disclose all material relationships and bases for affiliation
 1421 between the person and the insurer as well as the basis for
 1422 disclaiming the affiliation. A disclaimer of affiliation shall
 1423 be deemed to have been granted unless the commissioner, within
 1424 30 days following receipt of a complete disclaimer, notifies the
 1425 filing party that the disclaimer is disallowed. In the event of
 1426 disallowance, the disclaiming party may request an
 1427 administrative hearing, which shall be granted. The disclaiming
 1428 party shall be relieved of its duty to register under this

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1429 section if approval of the disclaimer has been granted by the
1430 commissioner or if the disclaimer is deemed to have been
1431 approved.

1432 (9) ENTERPRISE RISK FILING.—The ultimate controlling
1433 person of every insurer subject to registration shall also file
1434 an annual enterprise risk report. The report shall, to the best
1435 of the ultimate controlling person's knowledge and belief,
1436 identify the material risks within the insurance holding company
1437 system that could pose enterprise risk to the insurer. The
1438 report shall be filed with the lead state commissioner of the
1439 insurance holding company system as determined by the procedures
1440 within the Financial Analysis Handbook adopted by the National
1441 Association of Insurance Commissioners.

1442 (10) VIOLATIONS.—Failure to file a registration statement
1443 or any summary of the registration statement or enterprise risk
1444 filing required by this section within the time specified for
1445 filing constitutes a violation of this section.

1446 Section 5. Section 628.8011, Florida Statutes, is created
1447 to read:

1448 628.8011 Standards and management of an insurer within an
1449 insurance holding company system.—

1450 (1) STANDARDS.—Transactions within an insurance holding
1451 company system to which an insurer subject to registration is a
1452 party shall be subject to the following standards:

1453 (a) The terms shall be fair and reasonable.

1454 (b) Agreements for cost-sharing services and management
1455 shall include such provisions as required by rule and regulation
1456 issued by the commissioner.

1457 (c) Charges or fees for services performed shall be
 1458 reasonable.

1459 (d) Contracts or agreements with affiliates for the
 1460 management or servicing of the business written by an insurer
 1461 shall contain provisions providing that, if the combined ratio
 1462 for the insurer exceeds 100 percent, then the fees paid to any
 1463 affiliates for such services shall be decreased to bring the
 1464 combined ratio down to 100 percent.

1465 (e) Expenses incurred and payment received shall be
 1466 allocated to the insurer in conformity with customary insurance
 1467 accounting practices consistently applied.

1468 (f) The books, accounts, and records of each party to all
 1469 such transactions shall be so maintained as to clearly and
 1470 accurately disclose the nature and details of the transactions,
 1471 including such accounting information as is necessary to support
 1472 the reasonableness of the charges or fees to the respective
 1473 parties.

1474 (g) The insurer's surplus as regards policyholders
 1475 following any dividends or distributions to shareholder
 1476 affiliates shall be reasonable in relation to the insurer's
 1477 outstanding liabilities and adequate to meet its financial
 1478 needs.

1479 (2) PRECLUDED TRANSACTIONS.—The following transactions
 1480 involving a domestic insurer and any person in its insurance
 1481 holding company system, including amendments or modifications of
 1482 affiliate agreements previously filed pursuant to this section,
 1483 that are subject to any materiality standards contained in
 1484 subsection (1), may not be entered into unless the insurer has

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1485 notified the commissioner in writing of its intention to enter
1486 into the transaction at least 30 days prior thereto, or such
1487 shorter period as the commissioner may permit, and the
1488 commissioner has not disapproved the transaction within that
1489 period. The notice for amendments or modifications shall include
1490 the reasons for the change and the financial impact on the
1491 domestic insurer. Informal notice shall be reported, within 30
1492 days after a termination of a previously filed agreement, to the
1493 commissioner for determination of the type of filing required,
1494 if any.

1495 (a) Sales, purchases, exchanges, loans, extensions of
1496 credit, or investments, provided the transactions are equal to
1497 or exceed:

1498 1. With respect to nonlife insurers, the lesser of 3
1499 percent of the insurer's admitted assets or 25 percent of
1500 surplus as regards policyholders as of the 31st day of December
1501 next preceding.

1502 2. With respect to life insurers, 3 percent of the
1503 insurer's admitted assets as of the 31st day of December next
1504 preceding.

1505 (b) Loans or extensions of credit to any person who is not
1506 an affiliate, where the insurer makes loans or extensions of
1507 credit with the agreement or understanding that the proceeds of
1508 the transactions, in whole or in substantial part, are to be
1509 used to make loans or extensions of credit to, purchase assets
1510 of, or make investments in any affiliate of the insurer making
1511 the loans or extensions of credit, provided the transactions are
1512 equal to or exceed:

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1513 1. With respect to nonlife insurers, the lesser of 3
1514 percent of the insurer's admitted assets or 25 percent of
1515 surplus as regards policyholders as of the 31st day of December
1516 next preceding; or

1517 2. With respect to life insurers, 3 percent of the
1518 insurer's admitted assets as of the 31st day of December next
1519 preceding.

1520 (c) Reinsurance agreements or modifications thereto,
1521 including:

1522 1. All reinsurance pooling agreements.

1523 2. Agreements in which the reinsurance premium or a change
1524 in the insurer's liabilities, or the projected reinsurance
1525 premium or a change in the insurer's liabilities in any of the
1526 next 3 years, equals or exceeds 5 percent of the insurer's
1527 surplus as regards policyholders, as of the 31st day of December
1528 next preceding, including those agreements which may require as
1529 consideration the transfer of assets from an insurer to a
1530 nonaffiliate, if an agreement or understanding exists between
1531 the insurer and nonaffiliate that any portion of the assets will
1532 be transferred to one or more affiliates of the insurer.

1533 (d) All management agreements, service contracts, tax
1534 allocation agreements, guarantees, and all cost-sharing
1535 arrangements.

1536 (e) Guarantees when made by a domestic insurer. Provided,
1537 however, that a guarantee which is quantifiable as to amount is
1538 not subject to the notice requirements of this paragraph unless
1539 it exceeds the lesser of .5 percent of the insurer's admitted
1540 assets or 10 percent of surplus as regards policyholders as of

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1541 the 31st day of December next preceding. Further, all guarantees
1542 which are not quantifiable as to amount are subject to the
1543 notice requirements of this paragraph.

1544 (f) Direct or indirect acquisitions or investments in a
1545 person that controls the insurer or in an affiliate of the
1546 insurer in an amount which, together with its present holdings
1547 in such investments, exceeds 2.5 percent of the insurer's
1548 surplus to policyholders. Direct or indirect acquisitions or
1549 investments in subsidiaries acquired pursuant to s. 628.461, or
1550 in nonsubsidiary insurance affiliates that are subject to the
1551 provisions of this part, are exempt from this requirement.

1552 (g) Any material transactions, specified by regulation,
1553 which the commissioner determines may adversely affect the
1554 interests of the insurer's policyholders.

1555
1556 Nothing in this subsection shall be deemed to authorize or
1557 permit any transactions which, in the case of an insurer that is
1558 not a member of the same insurance holding company system, would
1559 otherwise be contrary to law.

1560 (3) ADDITIONAL PRECLUDED TRANSACTION.—A domestic insurer
1561 may not enter into transactions that are part of a plan or
1562 series of like transactions with persons within the insurance
1563 holding company system if the purpose of those separate
1564 transactions is to avoid the statutory threshold amount and thus
1565 avoid the review that would occur otherwise. If the commissioner
1566 determines that separate transactions were entered into over any
1567 12-month period for that purpose, the commissioner may exercise
1568 his or her authority under the Insurance Code or s. 628.803.

1569 (4) REVIEW OF TRANSACTIONS.—The commissioner, in reviewing
 1570 transactions pursuant to this section, shall consider whether
 1571 the transactions comply with the standards set forth in this
 1572 section and whether they may adversely affect the interests of
 1573 policyholders.

1574 (5) NOTIFICAITON.—The commissioner shall be notified
 1575 within 30 days of any investment of the domestic insurer in any
 1576 one corporation if the total investment in the corporation by
 1577 the insurance holding company system exceeds 10 percent of the
 1578 corporation's voting securities.

1579 (6) DIVIDENDS AND OTHER DISTRIBUTIONS.—

1580 (a) No domestic insurer shall pay any extraordinary
 1581 dividend or make any other extraordinary distribution to its
 1582 shareholders until 30 days after the commissioner has received
 1583 notice of the declaration thereof and has not within that period
 1584 disapproved the payment, or until the commissioner has approved
 1585 the payment within the 30-day period.

1586 (b) For purposes of this section, an extraordinary
 1587 dividend or distribution includes any dividend or distribution
 1588 of cash or other property, whose fair market value together with
 1589 that of other dividends or distributions made within the
 1590 preceding 12 months exceeds the lesser of:

1591 1. Ten percent of the insurer's surplus as regards
 1592 policyholders as of the 31st day of December next preceding; or

1593 2. The net gain after taxes from operations of the
 1594 insurer, if the insurer is a life insurer, or the net income
 1595 after taxes, if the insurer is not a life insurer, not including
 1596 realized capital gains, for the 12-month period ending the 31st

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1597 day of December next preceding, excluding pro rata distributions
 1598 of any class of the insurer's own securities.

1599 (c) In determining whether a dividend or distribution is
 1600 extraordinary, an insurer other than a life insurer may carry
 1601 forward net income from the previous 2 calendar years that has
 1602 not already been paid out as dividends. This carryforward shall
 1603 be computed by taking the net income from the second and third
 1604 preceding calendar years, not including realized capital gains,
 1605 less dividends paid in the second and immediate preceding
 1606 calendar years.

1607 (d) Notwithstanding any other provision of law, an insurer
 1608 may declare an extraordinary dividend or distribution which is
 1609 conditional upon the commissioner's approval, and the
 1610 declaration shall confer no rights upon shareholders until:

1611 1. The commissioner has approved the payment of the
 1612 dividend or distribution; or

1613 2. The commissioner has not disapproved payment within the
 1614 30-day period provided for in this subsection.

1615 (7) MANAGEMENT OF DOMESTIC INSURERS SUBJECT TO
 1616 REGISTRATION.—

1617 (a) Notwithstanding the control of a domestic insurer by
 1618 any person, the officers and directors of the insurer may not
 1619 thereby be relieved of any obligation or liability to which they
 1620 would otherwise be subject by law, and the insurer shall be
 1621 managed so as to assure its separate operating identity
 1622 consistent with this section.

1623 (b) Nothing in this section shall preclude a domestic
 1624 insurer from having or sharing a common management or

1625 cooperative or joint use of personnel, property, or services
 1626 with one or more other persons under arrangements meeting the
 1627 standards of this section.

1628 (c) Not less than one-third of the directors of a domestic
 1629 insurer and not less than one-third of the members of each
 1630 committee of the board of directors of any domestic insurer
 1631 shall be persons who are not officers or employees of the
 1632 insurer or of any entity controlling, controlled by, or under
 1633 common control with the insurer and who are not beneficial
 1634 owners of a controlling interest in the voting stock of the
 1635 insurer or entity. At least one such person must be included in
 1636 any quorum for the transaction of business at any meeting of the
 1637 board of directors or any committee thereof.

1638 (d) The board of directors of a domestic insurer shall
 1639 establish one or more committees comprised solely of directors
 1640 who are not officers or employees of the insurer or of any
 1641 entity controlling, controlled by, or under common control with
 1642 the insurer and who are not beneficial owners of a controlling
 1643 interest in the voting stock of the insurer or any such entity.
 1644 The committee or committees shall have responsibility for
 1645 nominating candidates for director for election by shareholders
 1646 or policyholders, evaluating the performance of officers deemed
 1647 to be principal officers of the insurer, and recommending to the
 1648 board of directors the selection and compensation of the
 1649 principal officers.

1650 (e) The provisions of paragraphs (c) and (d) do not apply
 1651 to a domestic insurer if the person controlling the insurer,
 1652 such as an insurer, a mutual insurance holding company, or a

1653 publicly held corporation, has a board of directors and
 1654 committees thereof that meet the requirements of paragraphs (c)
 1655 and (d) with respect to such controlling entity.

1656 (f) An insurer may make application to the commissioner
 1657 for a waiver from the requirements of this subsection, if the
 1658 insurer's annual direct written and assumed premium, excluding
 1659 premiums reinsured with the Federal Crop Insurance Corporation
 1660 and the federal flood insurance program, is less than \$300
 1661 million. An insurer may also make application to the
 1662 commissioner for a waiver from the requirements of this
 1663 subsection based on unique circumstances. The commissioner may
 1664 consider various factors including, but not limited to, the type
 1665 of business entity, volume of business written, availability of
 1666 qualified board members, or the ownership or organizational
 1667 structure of the entity.

1668 (8) ADEQUACY OF SURPLUS.—For purposes of this section, in
 1669 determining whether an insurer's surplus as regards
 1670 policyholders is reasonable in relation to the insurer's
 1671 outstanding liabilities and adequate to meet its financial
 1672 needs, the following factors, among others, shall be considered:

1673 (a) The size of the insurer as measured by its assets,
 1674 capital and surplus, reserves, premium writings, insurance in
 1675 force, and other appropriate criteria.

1676 (b) The extent to which the insurer's business is
 1677 diversified among several lines of insurance.

1678 (c) The number and size of risks insured in each line of
 1679 business.

1680 (d) The extent of the geographical dispersion of the

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1681 insurer's insured risks.
 1682 (e) The nature and extent of the insurer's reinsurance
 1683 program.
 1684 (f) The quality, diversification, and liquidity of the
 1685 insurer's investment portfolio.
 1686 (g) The recent past and projected future trend in the size
 1687 of the insurer's investment portfolio.
 1688 (h) The surplus as regards policyholders maintained by
 1689 other comparable insurers.
 1690 (i) The adequacy of the insurer's reserves.
 1691 (j) The quality and liquidity of investments in
 1692 affiliates. The commissioner may treat any such investment as a
 1693 disallowed asset for purposes of determining the adequacy of
 1694 surplus as regards policyholders whenever in the judgment of the
 1695 commissioner the investment so warrants.
 1696 Section 6. Section 628.8012, Florida Statutes, is created
 1697 to read:
 1698 628.8012 Supervisory colleges.-
 1699 (1) POWER OF COMMISSIONER.-With respect to any insurer
 1700 registered under this part and in accordance with subsection
 1701 (3), the commissioner shall have the power to participate in a
 1702 supervisory college for any domestic insurer that is part of an
 1703 insurance holding company system with international operations
 1704 in order to determine compliance by the insurer with this part.
 1705 The powers of the commissioner with respect to supervisory
 1706 colleges include, but are not limited to, the following:
 1707 (a) Initiating the establishment of a supervisory college.
 1708 (b) Clarifying the membership and participation of other

1709 supervisors in the supervisory college.

1710 (c) Clarifying the functions of the supervisory college
 1711 and the role of other regulators, including the establishment of
 1712 a group-wide supervisor.

1713 (d) Coordinating the ongoing activities of the supervisory
 1714 college, including planning meetings, supervisory activities,
 1715 and processes for information sharing.

1716 (e) Establishing a crisis management plan.

1717 (2) EXPENSES.—Each registered insurer subject to this
 1718 section shall be liable for and shall pay the reasonable
 1719 expenses of the commissioner's participation in a supervisory
 1720 college in accordance with subsection (3), including reasonable
 1721 travel expenses. For purposes of this section, a supervisory
 1722 college may be convened as either a temporary or permanent forum
 1723 for communication and cooperation between the regulators charged
 1724 with the supervision of the insurer or its affiliates, and the
 1725 commissioner may establish a regular assessment to the insurer
 1726 for the payment of these expenses.

1727 (3) SUPERVISORY COLLEGE.—In order to assess the business
 1728 strategy, financial position, legal and regulatory position,
 1729 risk exposure, risk management, and governance processes, and as
 1730 part of the examination of individual insurers, the commissioner
 1731 may participate in a supervisory college with other regulators
 1732 charged with supervision of the insurer or its affiliates,
 1733 including other state, federal, and international regulatory
 1734 agencies. The commissioner may enter into agreements in
 1735 accordance with this chapter, providing the basis for
 1736 cooperation between the commissioner, other regulatory agencies,

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1737 and the supervisory college. Nothing in this section shall
 1738 delegate to the supervisory college the authority of the
 1739 commissioner to regulate or supervise the insurer or its
 1740 affiliates within its jurisdiction.

1741 Section 7. Section 628.8013, Florida Statutes, is created
 1742 to read:

1743 628.8013 Rules and regulations.-The commissioner may, upon
 1744 notice and opportunity for all interested persons to be heard,
 1745 issue such rules, regulations, and orders necessary to carry out
 1746 the provisions of this part.

1747 Section 8. Section 628.8014, Florida Statutes, is created
 1748 to read:

1749 628.8014 Voting of securities.-A security which is the
 1750 subject of any agreement or arrangement regarding acquisition,
 1751 or which is acquired or to be acquired, in contravention of any
 1752 statute or rule adopted thereunder, may not be voted at any
 1753 shareholder's meeting or counted for quorum purposes, and any
 1754 action of shareholders requiring the affirmative vote of a
 1755 percentage of shares may be taken as though such securities were
 1756 not issued and outstanding. However, an action taken at any such
 1757 meeting may not be invalidated by the voting of such securities
 1758 unless the action would materially affect the control of the
 1759 insurer or unless a court of competent jurisdiction has so
 1760 ordered. If the office has reason to believe that any security
 1761 of the insurer has been or is about to be acquired in
 1762 contravention of s. 628.461, or this chapter, the office may
 1763 pursue its remedies pursuant to ss. 628.802 and 628.803.

1764 Section 9. Section 628.802, Florida Statutes, is amended

1765 to read:

1766 (Substantial rewording of section. See

1767 s. 628.802, F.S., for present text.)

1768 628.802 Injunctions; prohibitions against voting

1769 securities; sequestration of voting securities.-

1770 (1) INJUNCTIONS.-Whenever it appears to the commissioner

1771 that any insurer or any director, officer, employee, or agent

1772 thereof has committed or is about to commit a violation of this

1773 part or of any rule, regulation, or order issued by the

1774 commissioner thereunder, the commissioner may apply to the

1775 circuit court for the county in which the principal officer of

1776 the insurer is located or, if the insurer has no office in this

1777 state, to the Circuit Court for Leon County for an order

1778 enjoining the insurer or director, officer, employee or agent

1779 thereof from violating or continuing to violate this part or any

1780 rule, regulation or order, and for such other equitable relief

1781 as the nature of the case and the interest of the insurer's

1782 policyholders, creditors, and shareholders or the public may

1783 require.

1784 (2) VOTING OF SECURITIES; WHEN PROHIBITED.-No security

1785 which is the subject of any agreement or arrangement regarding

1786 acquisition, or which is acquired or to be acquired, in

1787 contravention of the provisions of this part or of any rule,

1788 regulation, or order issued by the commissioner thereunder may

1789 be voted at any shareholder's meeting, or may be counted for

1790 quorum purposes, and any action of shareholders requiring the

1791 affirmative vote of a percentage of shares may be taken as

1792 though the securities were not issued and outstanding. However,

1793 no action taken at any such meeting shall be invalidated by the
 1794 voting of the securities, unless the action would materially
 1795 affect control of the insurer or unless the courts of this state
 1796 have so ordered. If an insurer or the commissioner has reason to
 1797 believe that any security of the insurer has been or is about to
 1798 be acquired in contravention of the provisions of this part or
 1799 of any rule, regulation, or order issued by the commissioner
 1800 hereunder, the insurer or the commissioner may apply to the
 1801 circuit court for the county in which the insurer has its
 1802 principal place of business to enjoin any offer, request,
 1803 invitation, agreement, or acquisition made in contravention of
 1804 s. 628.461 or any rule, regulation, or order issued by the
 1805 commissioner thereunder to enjoin the voting of any security so
 1806 acquired, to void any vote of the security already cast at any
 1807 meeting of shareholders, and for such other equitable relief as
 1808 the nature of the case and the interest of the insurer's
 1809 policyholders, creditors, and shareholders or the public may
 1810 require.

1811 (3) SEQUESTRATION OF VOTING SECURITIES.—In any case where
 1812 a person has acquired or is proposing to acquire any voting
 1813 securities in violation of this part or any rule, regulation, or
 1814 order issued by the commissioner hereunder, the circuit court
 1815 for Leon County or the circuit court for the county in which the
 1816 insurer has its principal place of business may, on such notice
 1817 as the court deems appropriate, upon the application of the
 1818 insurer or the commissioner, seize or sequester any voting
 1819 securities of the insurer owned directly or indirectly by the
 1820 person, and issue such order as may be appropriate to effectuate

1821 the provisions of this part.

1822 (4) SITUS OF OWNERSHIP.—Notwithstanding any other
 1823 provisions of law, for the purposes of this part, the situs of
 1824 the ownership of the securities of domestic insurers shall be
 1825 deemed to be in this state.

1826 Section 10. Section 628.803, Florida Statutes, is amended
 1827 to read:

1828 (Substantial rewording of section. See
 1829 s. 628.803, F.S., for present text.)

1830 628.803 Sanctions.—

1831 (1) Any insurer failing, without just cause, to file any
 1832 registration statement as required under this part shall be
 1833 required, after notice and hearing, to pay a penalty of \$1,000
 1834 for each day's delay, to be recovered by the commissioner.
 1835 Penalties so recovered shall be paid into the General Revenue
 1836 Fund. The maximum penalty under this section is \$500,000. The
 1837 commissioner may reduce the penalty if the insurer demonstrates
 1838 to the commissioner that the imposition of the penalty would
 1839 constitute a financial hardship to the insurer.

1840 (2) Every director or officer of an insurance holding
 1841 company system who knowingly violates, participates in, or
 1842 assents to, or who knowingly permits any of the officers or
 1843 agents of the insurer to engage in, transactions or the making
 1844 of investments which have not been properly reported or
 1845 submitted pursuant to the Insurance Code or which violate this
 1846 act, shall, in their individual capacity, pay a civil forfeiture
 1847 of not more than \$1,000 per violation after notice and hearing
 1848 before the commissioner. In determining the amount of the civil

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1849 forfeiture, the commissioner shall take into account the
 1850 appropriateness of the forfeiture with respect to the gravity of
 1851 the violation, the history of previous violations, and such
 1852 other matters as justice may require.

1853 (3) Whenever it appears to the commissioner that any
 1854 insurer subject to this part or any director, officer, employee,
 1855 or agent thereof has engaged in any transaction or entered into
 1856 a contract which is subject to s. 628.8011 and which would not
 1857 have been approved had approval been requested, the commissioner
 1858 may order the insurer to cease and desist immediately from any
 1859 further activity under that transaction or contract. After
 1860 notice and hearing, the commissioner may also order the insurer
 1861 to void any contracts and restore the status quo if the action
 1862 is in the best interests of the policyholders, creditors, or the
 1863 public.

1864 (4) Whenever it appears to the commissioner that any
 1865 insurer or any director, officer, employee, or agent thereof has
 1866 committed a willful violation of this part, the commissioner may
 1867 cause criminal proceedings to be instituted by the circuit court
 1868 for the county in which the principal office of the insurer is
 1869 located or, if the insurer has no office in this state, by the
 1870 circuit court for Leon County against the insurer or the
 1871 responsible director, officer, employee, or agent thereof. Any
 1872 insurer which willfully violates this part may be fined not more
 1873 than \$1 million. Any individual who willfully violates this part
 1874 may be fined in his or her individual capacity not more than
 1875 \$500,000 or be imprisoned for not more than one to 3 years, or
 1876 both.

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1877 (5) Any officer, director, or employee of an insurance
 1878 holding company system who willfully and knowingly subscribes to
 1879 or makes or causes to be made any false statements or false
 1880 reports or false filings with the intent to deceive the
 1881 commissioner in the performance of his or her duties under this
 1882 part, upon conviction shall be imprisoned for not more than 3
 1883 years or fined \$500,000 or both. Any fines imposed shall be paid
 1884 by the officer, director, or employee in his or her individual
 1885 capacity.

1886 (6) Whenever it appears to the commissioner that any
 1887 person has committed a violation of chapter 628, which violation
 1888 prevents the full understanding of the enterprise risk to the
 1889 insurer by affiliates or by the insurance holding company
 1890 system, the violation may serve as an independent basis for
 1891 disapproving dividends or distributions and for placing the
 1892 insurer under an order of supervision in accordance with part VI
 1893 of chapter 624.

1894 Section 11. Section 636.065, Florida Statutes, is amended
 1895 to read:

1896 636.065 Acquisitions.—Each prepaid limited health service
 1897 organization is subject to the provisions of s. 628.461
 1898 ~~628.4615~~.

1899 Section 12. Section 641.255, Florida Statutes, is amended
 1900 to read:

1901 641.255 Acquisition, merger, or consolidation.—

1902 (1) Every acquisition of a health maintenance organization
 1903 shall be subject to the provisions of s. 628.461 ~~628.4615~~.
 1904 However, in the case of a health maintenance organization

1905 organized as a for-profit corporation, the provisions of s.
 1906 628.451 govern with respect to any merger or consolidation; and,
 1907 in the case of a health maintenance organization organized as a
 1908 not-for-profit corporation, the provisions of s. 628.471 govern
 1909 with respect to any merger or consolidation.

1910 (2) In addition to the requirements set forth in ss.
 1911 628.451, 628.461 ~~628.4615~~, and 628.471, each party to any
 1912 transaction involving any licensee which, as indicated in its
 1913 most recent quarterly or annual statement, derives income from
 1914 Medicaid funds shall in the filing made with the office
 1915 identify:

1916 (a) Any person who has received any payment from either
 1917 party or any person on that party's behalf; or

1918 (b) The existence of any agreement entered into by either
 1919 party or by any person on that party's behalf to pay a
 1920 consultant fee, a broker fee, a commission, or other fee or
 1921 charge,

1922
 1923 which in any way relates to the acquisition, merger, or
 1924 consolidation. The commission may adopt a form to be made part
 1925 of the application which is to be sworn to by an officer of the
 1926 entity which made or will make the payment. The form shall
 1927 include the name of the person or entity paying the fee; the
 1928 name of the person or entity receiving the fee; the date of
 1929 payment; and a brief description of the work performed.

1930 Section 13. Section 641.416, Florida Statutes, is amended
 1931 to read:

1932 641.416 Acquisition.—Every prepaid health clinic shall be

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1933 subject to the provisions of s. 628.461 ~~628.4615~~.

1934 Section 14. Section 651.024, Florida Statutes, is amended
1935 to read:

1936 651.024 Acquisition.—A person issued a certificate of
1937 authority to operate a continuing care facility or a provisional
1938 certificate of authority shall be subject to the provisions of
1939 s. 628.461 ~~628.4615~~.

1940 Section 15. For the purpose of incorporating the amendment
1941 made by this act to section 628.461, Florida Statutes, in a
1942 reference thereto, subsection (3) of section 48.151, Florida
1943 Statutes, is reenacted to read:

1944 48.151 Service on statutory agents for certain persons.—

1945 (3) The Chief Financial Officer or his or her assistant or
1946 deputy or another person in charge of the office is the agent
1947 for service of process on all insurers applying for authority to
1948 transact insurance in this state, all licensed nonresident
1949 insurance agents, all nonresident disability insurance agents
1950 licensed pursuant to s. 626.835, any unauthorized insurer under
1951 s. 626.906 or s. 626.937, domestic reciprocal insurers,
1952 fraternal benefit societies under chapter 632, warranty
1953 associations under chapter 634, prepaid limited health service
1954 organizations under chapter 636, and persons required to file
1955 statements under s. 628.461.

1956 Section 16. For the purpose of incorporating the
1957 amendments made by this act to sections 628.461 and 628.4615,
1958 Florida Statutes, in references thereto, paragraph (a) of
1959 subsection (1) of section 624.310, Florida Statutes, is
1960 reenacted to read:

1961 624.310 Enforcement; cease and desist orders; removal of
 1962 certain persons; fines.—

1963 (1) DEFINITIONS.—For the purposes of this section, the
 1964 term:

1965 (a) "Affiliated party" means any person who directs or
 1966 participates in the conduct of the affairs of a licensee and who
 1967 is:

1968 1. A director, officer, employee, trustee, committee
 1969 member, or controlling stockholder of a licensee or a subsidiary
 1970 or service corporation of the licensee, other than a controlling
 1971 stockholder which is a holding company, or an agent of a
 1972 licensee or a subsidiary or service corporation of the licensee;

1973 2. A person who has filed or is required to file a
 1974 statement or any other information required to be filed under s.
 1975 628.461 or s. 628.4615;

1976 3. A stockholder, other than a stockholder that is a
 1977 holding company of the licensee, who participates in the conduct
 1978 of the affairs of the licensee;

1979 4. An independent contractor who:

1980 a. Renders a written opinion required by the laws of this
 1981 state under her or his professional credentials on behalf of the
 1982 licensee, which opinion is reasonably relied on by the
 1983 department or office in the performance of its duties; or

1984 b. Affirmatively and knowingly conceals facts, through a
 1985 written misrepresentation to the department or office, with
 1986 knowledge that such misrepresentation:

1987 (I) Constitutes a violation of the insurance code or a
 1988 lawful rule or order of the department, commission, or office;

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1989 | and
 1990 | (II) Directly and materially endangers the ability of the
 1991 | licensee to meet its obligations to policyholders; or

1992 | 5. A third-party marketer who aids or abets a licensee in
 1993 | a violation of the insurance code relating to the sale of an
 1994 | annuity to a person 65 years of age or older.

1995 |
 1996 | For the purposes of this subparagraph, any representation of
 1997 | fact made by an independent contractor on behalf of a licensee,
 1998 | affirmatively communicated as a representation of the licensee
 1999 | to the independent contractor, shall not be considered a
 2000 | misrepresentation by the independent contractor.

2001 | Section 17. For the purpose of incorporating the amendment
 2002 | made by this act to section 628.461, Florida Statutes, in a
 2003 | reference thereto, section 625.765, Florida Statutes, is
 2004 | reenacted to read:

2005 | 625.765 Exemptions from ss. 625.75 and 625.76.—The
 2006 | commission may adopt by rule exemptions from ss. 625.75 and
 2007 | 625.76 for transactions that are not subject to s. 628.461 and
 2008 | that are the result of proceedings in probate, incompetency, or
 2009 | bankruptcy; sales of securities by odd-lot securities dealers;
 2010 | small transactions by gift which do not exceed \$3,000 over any
 2011 | 6-month period; transactions that are effected in connection
 2012 | with the distribution of a substantial block of securities;
 2013 | acquisitions of shares of stock and stock options under a stock
 2014 | bonus plan, stock option plan, or similar plan; securities
 2015 | acquired by redeeming other securities by an insurer;
 2016 | consolidations or mergers of insurers that hold over 85 percent

2017 | of the companies being merged or consolidated; acquisitions or
 2018 | dispositions of an equity security involved in the deposit of
 2019 | the security under, or the withdrawal of the security from, a
 2020 | voting trust or deposit agreement; and conversions of an
 2021 | insurer's equity securities into another equity security of the
 2022 | same insurer. The commission may limit by rule the scope of
 2023 | exemptions and provide conditions for exemptions as necessary to
 2024 | maintain the purpose and intent of ss. 625.75 and 625.76 and
 2025 | prevent the circumvention of ss. 625.75 and 625.76.

2026 | Section 18. For the purpose of incorporating the amendment
 2027 | made by this act to section 628.461, Florida Statutes, in a
 2028 | reference thereto, subsection (2) of section 628.705, Florida
 2029 | Statutes, is reenacted to read:

2030 | 628.705 Prohibition of stock transfers.—

2031 | (2) Voting shares of the capital stock of a subsidiary
 2032 | insurance company or the intermediate holding company may not be
 2033 | acquired by any affiliated member of the holding company system
 2034 | except where the affiliated member of the mutual holding company
 2035 | system is the majority shareholder. A number of shares equal to
 2036 | 5 percent of the outstanding voting shares of the capital stock
 2037 | of one corporate member of the Mutual Insurance Holding Company
 2038 | System selected by the mutual insurance holding company may be
 2039 | issued or sold to directors and officers as part of a plan of
 2040 | compensation, and such shares shall not be considered part of
 2041 | the majority shares to be owned by the mutual insurance company
 2042 | under subsection (1). A number of shares equal to an additional
 2043 | 5 percent of the outstanding voting shares of the capital stock
 2044 | of one corporate member of the Mutual Insurance Holding Company

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2045 System selected by the mutual insurance holding company may be
 2046 issued or sold to employees, which may not include any officer
 2047 or director, as part of an employee stock dividend or benefit
 2048 plan, and such shares shall not be considered part of the
 2049 majority shares to be owned by the mutual insurance company
 2050 under subsection (1). Prior to issuance of shares in excess of
 2051 the authorized 5 percent to either officers and directors or
 2052 employees, pursuant to this section, a fairness opinion shall be
 2053 rendered by an independent authority acceptable to the office to
 2054 assure that the long term interests of the shareholders and
 2055 policyholders are adequately protected. The office shall approve
 2056 or disapprove the transaction within 30 days after receipt of
 2057 the fairness opinion. Nothing in this section prohibits any
 2058 officer or director from purchasing shares of stock at market
 2059 value which are not part of a plan of compensation, in
 2060 accordance with the requirements of s. 628.461, and, if such
 2061 stock is not regularly traded on a national stock exchange, the
 2062 officer or director purchasing the shares of stock is
 2063 responsible for establishing its market value.

2064 Section 19. For the purpose of incorporating the amendment
 2065 made by this act to sections 628.461 and 628.4615, Florida
 2066 Statutes, in references thereto, subsection (7) of section
 2067 631.051, Florida Statutes, is reenacted to read:

2068 631.051 Grounds for rehabilitation; domestic insurers.—The
 2069 department may petition for an order directing it to
 2070 rehabilitate a domestic insurer or an alien insurer domiciled in
 2071 this state on any one or more of the following grounds, that the
 2072 insurer:

2073 (7) Has transferred or attempted to transfer substantially
 2074 its entire property or business, or has entered into any
 2075 transaction the effect of which is to merge substantially its
 2076 entire property or business into that of any other insurer or
 2077 entity without having first obtained the written approval of the
 2078 office under the provisions of s. 628.451, s. 628.461, or s.
 2079 628.4615, as the case may be;

2080 Section 20. For the purpose of incorporating the amendment
 2081 made by this act to section 628.4615, Florida Statutes, in a
 2082 reference thereto, subsection (20) of section 409.912, Florida
 2083 Statutes, is reenacted to read:

2084 409.912 Cost-effective purchasing of health care.—The
 2085 agency shall purchase goods and services for Medicaid recipients
 2086 in the most cost-effective manner consistent with the delivery
 2087 of quality medical care. To ensure that medical services are
 2088 effectively utilized, the agency may, in any case, require a
 2089 confirmation or second physician's opinion of the correct
 2090 diagnosis for purposes of authorizing future services under the
 2091 Medicaid program. This section does not restrict access to
 2092 emergency services or poststabilization care services as defined
 2093 in 42 C.F.R. part 438.114. Such confirmation or second opinion
 2094 shall be rendered in a manner approved by the agency. The agency
 2095 shall maximize the use of prepaid per capita and prepaid
 2096 aggregate fixed-sum basis services when appropriate and other
 2097 alternative service delivery and reimbursement methodologies,
 2098 including competitive bidding pursuant to s. 287.057, designed
 2099 to facilitate the cost-effective purchase of a case-managed
 2100 continuum of care. The agency shall also require providers to

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2101 minimize the exposure of recipients to the need for acute
2102 inpatient, custodial, and other institutional care and the
2103 inappropriate or unnecessary use of high-cost services. The
2104 agency shall contract with a vendor to monitor and evaluate the
2105 clinical practice patterns of providers in order to identify
2106 trends that are outside the normal practice patterns of a
2107 provider's professional peers or the national guidelines of a
2108 provider's professional association. The vendor must be able to
2109 provide information and counseling to a provider whose practice
2110 patterns are outside the norms, in consultation with the agency,
2111 to improve patient care and reduce inappropriate utilization.
2112 The agency may mandate prior authorization, drug therapy
2113 management, or disease management participation for certain
2114 populations of Medicaid beneficiaries, certain drug classes, or
2115 particular drugs to prevent fraud, abuse, overuse, and possible
2116 dangerous drug interactions. The Pharmaceutical and Therapeutics
2117 Committee shall make recommendations to the agency on drugs for
2118 which prior authorization is required. The agency shall inform
2119 the Pharmaceutical and Therapeutics Committee of its decisions
2120 regarding drugs subject to prior authorization. The agency is
2121 authorized to limit the entities it contracts with or enrolls as
2122 Medicaid providers by developing a provider network through
2123 provider credentialing. The agency may competitively bid single-
2124 source-provider contracts if procurement of goods or services
2125 results in demonstrated cost savings to the state without
2126 limiting access to care. The agency may limit its network based
2127 on the assessment of beneficiary access to care, provider
2128 availability, provider quality standards, time and distance

2129 standards for access to care, the cultural competence of the
 2130 provider network, demographic characteristics of Medicaid
 2131 beneficiaries, practice and provider-to-beneficiary standards,
 2132 appointment wait times, beneficiary use of services, provider
 2133 turnover, provider profiling, provider licensure history,
 2134 previous program integrity investigations and findings, peer
 2135 review, provider Medicaid policy and billing compliance records,
 2136 clinical and medical record audits, and other factors. Providers
 2137 shall not be entitled to enrollment in the Medicaid provider
 2138 network. The agency shall determine instances in which allowing
 2139 Medicaid beneficiaries to purchase durable medical equipment and
 2140 other goods is less expensive to the Medicaid program than long-
 2141 term rental of the equipment or goods. The agency may establish
 2142 rules to facilitate purchases in lieu of long-term rentals in
 2143 order to protect against fraud and abuse in the Medicaid program
 2144 as defined in s. 409.913. The agency may seek federal waivers
 2145 necessary to administer these policies.

2146 (20) When a merger or acquisition of a Medicaid prepaid
 2147 contractor has been approved by the Office of Insurance
 2148 Regulation pursuant to s. 628.4615, the agency shall approve the
 2149 assignment or transfer of the appropriate Medicaid prepaid
 2150 contract upon request of the surviving entity of the merger or
 2151 acquisition if the contractor and the other entity have been in
 2152 good standing with the agency for the most recent 12-month
 2153 period, unless the agency determines that the assignment or
 2154 transfer would be detrimental to the Medicaid recipients or the
 2155 Medicaid program. To be in good standing, an entity must not
 2156 have failed accreditation or committed any material violation of

2157 | the requirements of s. 641.52 and must meet the Medicaid
 2158 | contract requirements. For purposes of this section, a merger or
 2159 | acquisition means a change in controlling interest of an entity,
 2160 | including an asset or stock purchase.

2161 | Section 21. For the purpose of incorporating the amendment
 2162 | made by this act to section 628.4615, Florida Statutes, in a
 2163 | reference thereto, paragraph (b) of subsection (1) of section
 2164 | 624.80, Florida Statutes, is reenacted to read:

2165 | 624.80 Definitions.—As used in this part:

2166 | (1) "Insurer" means and includes every person as defined
 2167 | in s. 624.03 as limited to:

2168 | (b) Any specialty insurer as that term is defined in s.
 2169 | 628.4615.

2170 | Section 22. For the purpose of incorporating the amendment
 2171 | made by this act to section 628.4615, Florida Statutes, in a
 2172 | reference thereto, section 626.9928, Florida Statutes, is
 2173 | reenacted to read:

2174 | 626.9928 Acquisitions.—Acquisition of interest in a
 2175 | viatical settlement provider is subject to s. 628.4615.

2176 | Section 23. For the purpose of incorporating the amendment
 2177 | made by this act to section 628.4615, Florida Statutes, in a
 2178 | reference thereto, section 634.252, Florida Statutes, is
 2179 | reenacted to read:

2180 | 634.252 Acquisition.—Every motor vehicle service agreement
 2181 | company shall be subject to the provisions of s. 628.4615.

2182 | Section 24. For the purpose of incorporating the amendment
 2183 | made by this act to section 628.4615, Florida Statutes, in a

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2184 reference thereto, section 634.3073, Florida Statutes, is
 2185 reenacted to read:

2186 634.3073 Acquisition.—Every home warranty association
 2187 shall be subject to the provisions of s. 628.4615.

2188 Section 25. For the purpose of incorporating the amendment
 2189 made by this act to section 628.4615, Florida Statutes, in a
 2190 reference thereto, section 634.4085, Florida Statutes, is
 2191 reenacted to read:

2192 634.4085 Acquisition.—Except for manufacturers as defined
 2193 in this part, every service warranty association shall be
 2194 subject to the provisions of s. 628.4615.

2195 Section 26. For the purpose of incorporating the amendment
 2196 made by this act to section 628.4615, Florida Statutes, in a
 2197 reference thereto, section 636.065, Florida Statutes, is
 2198 reenacted to read:

2199 636.065 Acquisitions.—Each prepaid limited health service
 2200 organization is subject to the provisions of s. 628.4615.

2201 Section 27. For the purpose of incorporating the amendment
 2202 made by this act to section 628.4615, Florida Statutes, in a
 2203 reference thereto, subsection (5) of section 642.032, Florida
 2204 Statutes, is reenacted to read:

2205 642.032 Provisions of general insurance law applicable to
 2206 legal expense insurance corporations.—The following provisions
 2207 of the Florida Insurance Code shall apply to legal expense
 2208 insurance corporations, to the extent that they are not
 2209 inconsistent with the provisions of ss. 642.011–642.049:

2210 (5) Section 628.4615, specialty insurers; acquisition of
 2211 controlling stock, ownership interest, assets, or control;

2212 merger or consolidation.

2213 Section 28. For the purpose of incorporating the amendment
 2214 made by this act to section 628.801, Florida Statutes, in a
 2215 reference thereto, paragraph (b) of subsection (6), paragraph
 2216 (f) of subsection (8), and paragraph (f) of subsection (9) of
 2217 section 626.7492, Florida Statutes, is reenacted to read:

2218 626.7492 Reinsurance intermediaries.—

2219 (6) DUTIES OF INSURERS USING THE SERVICES OF A REINSURANCE
 2220 INTERMEDIARY BROKER.—

2221 (b) An insurer may not employ an individual who is
 2222 employed by a reinsurance intermediary broker with which it
 2223 transacts business, unless the reinsurance intermediary broker
 2224 is under common control with the insurer and subject to ss.
 2225 628.801, 628.802, and 628.803.

2226 (8) PROHIBITED ACTS.—The reinsurance intermediary manager
 2227 shall not:

2228 (f) Jointly employ an individual who is employed by the
 2229 reinsurer, unless such reinsurance intermediary manager is under
 2230 common control with the reinsurer subject to ss. 628.801,
 2231 628.802, and 628.803.

2232 (9) DUTIES OF REINSURERS USING THE SERVICES OF A
 2233 REINSURANCE INTERMEDIARY MANAGER.—

2234 (f) A reinsurer shall not appoint to its board of
 2235 directors any officer, director, employee, controlling
 2236 shareholder, or subproducer of its reinsurance intermediary
 2237 manager. This paragraph shall not apply to relationships
 2238 governed by ss. 628.801, 628.802, and 628.803 or, if applicable,
 2239 this section.

2240 Section 29. For the purpose of incorporating the amendment
 2241 made by this act to section 628.801, Florida Statutes, in a
 2242 reference thereto, paragraph (d) of subsection (2) of section
 2243 626.918, Florida Statutes, is reenacted to read:

2244 626.918 Eligible surplus lines insurers.—

2245 (2) An unauthorized insurer may not be or become an
 2246 eligible surplus lines insurer unless made eligible by the
 2247 office in accordance with the following conditions:

2248 (d)1.a. The insurer must have and maintain surplus as to
 2249 policyholders of not less than \$15 million; in addition, an
 2250 alien insurer must also have and maintain in the United States a
 2251 trust fund for the protection of all its policyholders in the
 2252 United States under terms deemed by the office to be reasonably
 2253 adequate, in an amount not less than \$5.4 million. Any such
 2254 surplus as to policyholders or trust fund shall be represented
 2255 by investments consisting of eligible investments for like funds
 2256 of like domestic insurers under part II of chapter 625 provided,
 2257 however, that in the case of an alien insurance company, any
 2258 such surplus as to policyholders may be represented by
 2259 investments permitted by the domestic regulator of such alien
 2260 insurance company if such investments are substantially similar
 2261 in terms of quality, liquidity, and security to eligible
 2262 investments for like funds of like domestic insurers under part
 2263 II of chapter 625. Clean, irrevocable, unconditional, and
 2264 evergreen letters of credit issued or confirmed by a qualified
 2265 United States financial institution, as defined in subparagraph
 2266 2., may be used to fund the trust.

2267 b. For those surplus lines insurers that were eligible on

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2268 January 1, 1994, and that maintained their eligibility
 2269 thereafter, the required surplus as to policyholders shall be:
 2270 (I) On December 31, 1994, and until December 30, 1995,
 2271 \$2.5 million.
 2272 (II) On December 31, 1995, and until December 30, 1996,
 2273 \$3.5 million.
 2274 (III) On December 31, 1996, and until December 30, 1997,
 2275 \$4.5 million.
 2276 (IV) On December 31, 1997, and until December 30, 1998,
 2277 \$5.5 million.
 2278 (V) On December 31, 1998, and until December 30, 1999,
 2279 \$6.5 million.
 2280 (VI) On December 31, 1999, and until December 30, 2000, \$8
 2281 million.
 2282 (VII) On December 31, 2000, and until December 30, 2001,
 2283 \$9.5 million.
 2284 (VIII) On December 31, 2001, and until December 30, 2002,
 2285 \$11 million.
 2286 (IX) On December 31, 2002, and until December 30, 2003,
 2287 \$13 million.
 2288 (X) On December 31, 2003, and thereafter, \$15 million.
 2289 c. The capital and surplus requirements as set forth in
 2290 sub-subparagraph b. do not apply in the case of an insurance
 2291 exchange created by the laws of individual states, where the
 2292 exchange maintains capital and surplus pursuant to the
 2293 requirements of that state, or maintains capital and surplus in
 2294 an amount not less than \$50 million in the aggregate. For an
 2295 insurance exchange which maintains funds in the amount of at

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2296 | least \$12 million for the protection of all insurance exchange
 2297 | policyholders, each individual syndicate shall maintain minimum
 2298 | capital and surplus in an amount not less than \$3 million. If
 2299 | the insurance exchange does not maintain funds in the amount of
 2300 | at least \$12 million for the protection of all insurance
 2301 | exchange policyholders, each individual syndicate shall meet the
 2302 | minimum capital and surplus requirements set forth in sub-
 2303 | subparagraph b.

2304 | d. A surplus lines insurer which is a member of an
 2305 | insurance holding company that includes a member which is a
 2306 | Florida domestic insurer as set forth in its holding company
 2307 | registration statement, as set forth in s. 628.801 and rules
 2308 | adopted thereunder, may elect to maintain surplus as to
 2309 | policyholders in an amount equal to the requirements of s.
 2310 | 624.408, subject to the requirement that the surplus lines
 2311 | insurer shall at all times be in compliance with the
 2312 | requirements of chapter 625.

2313 |
 2314 | The election shall be submitted to the office and shall be
 2315 | effective upon the office's being satisfied that the
 2316 | requirements of sub-subparagraph d. have been met. The initial
 2317 | date of election shall be the date of office approval. The
 2318 | election approval application shall be on a form adopted by
 2319 | commission rule. The office may approve an election form
 2320 | submitted pursuant to sub-subparagraph d. only if it was on file
 2321 | with the former Department of Insurance before February 28,
 2322 | 1998.

2323 | 2. For purposes of letters of credit under subparagraph

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2324 1., the term "qualified United States financial institution"
2325 means an institution that:

2326 a. Is organized or, in the case of a United States office
2327 of a foreign banking organization, is licensed under the laws of
2328 the United States or any state.

2329 b. Is regulated, supervised, and examined by authorities
2330 of the United States or any state having regulatory authority
2331 over banks and trust companies.

2332 c. Has been determined by the office or the Securities
2333 Valuation Office of the National Association of Insurance
2334 Commissioners to meet such standards of financial condition and
2335 standing as are considered necessary and appropriate to regulate
2336 the quality of financial institutions whose letters of credit
2337 are acceptable to the office.

2338 Section 30. This act shall take effect July 1, 2011.