

By Senator Ring

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

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

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59 such insurers; removing prepaid limited health service
60 organizations, health maintenance organizations,
61 prepaid health clinics, continuing care providers, and
62 multiple-employer welfare arrangements from the
63 definition of the term "specialty insurer"; revising
64 procedures and requirements with respect to the
65 acquisition of a specialty insurer; requiring
66 specified background information with respect to new
67 officers, directors, trustees, partners, owners, or
68 managers of a specialty insurer that is the subject of
69 an acquisition; eliminating provisions relating to
70 review of acquisition applications, prohibited
71 material change in the operation of a specialty
72 insurer or controlling company by an acquiring person,
73 acquisition proceedings, approval and disapproval of
74 acquisitions, burden of proof, validity of
75 acquisitions, and unlawful representation of approval
76 by the office, penalties therefor, and statute of
77 limitations thereon; creating s. 628.800, F.S.;
78 providing definitions with respect to part IV of ch.
79 628, F.S., relating to insurance holding companies;
80 amending s. 628.801, F.S.; substantially rewording
81 provisions relating to registration of members of an
82 insurance holding company system; providing procedures
83 and requirements with respect to such registration;
84 requiring reporting of dividends and other
85 distributions to shareholders; providing for
86 termination of registration; providing for filing of
87 consolidated registration statements; authorizing

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88 specified insurers to register on behalf of an
89 affiliated insurer; providing inapplicability;
90 providing for filing of a disclaimer of affiliation
91 and procedures and requirements with respect thereto;
92 requiring the filing of an annual enterprise risk
93 report; providing that failure to timely file a
94 registration statement or summary thereof or an
95 enterprise risk filing constitutes a violation of the
96 section; creating s. 628.8011, F.S.; providing
97 procedures and requirements with respect to standards
98 and management of an insurer within an insurance
99 holding company system; establishing standards for
100 transactions within an insurance holding company
101 system; precluding specified transactions involving a
102 domestic insurer and any person in its insurance
103 holding company system; providing exceptions;
104 providing for review of transactions; requiring notice
105 with respect to specified investments; providing
106 procedures and requirements with respect to payment of
107 extraordinary dividends or the making of extraordinary
108 distributions by a domestic insurer; providing
109 requirements with respect to management of domestic
110 insurers; providing factors to be considered in
111 determining adequacy of an insurer's surplus; creating
112 628.8012, F.S.; providing for the establishment of and
113 participation in a supervisory college; specifying
114 powers of the Commissioner of Insurance with respect
115 thereto; providing for payment of expenses of the
116 college; creating s. 628.8013, F.S.; providing

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117 rulemaking authority of the commissioner; creating s.
118 628.8014, F.S.; providing restrictions on voting of
119 securities; amending s. 628.802, F.S.; providing for
120 injunctions against specified violations;
121 substantially revising provisions relating to the
122 voting of securities; substantially revising
123 provisions relating to the seizure or sequestration of
124 voting securities; amending s. 628.803, F.S.;

125 providing a penalty for failure to file a registration
126 statement; providing for deposit of funds derived
127 therefrom; providing a penalty for a knowing
128 violation, participation in, or assent to specified
129 violative transactions or the making of investments by
130 a director or officer of an insurance holding company
131 system; authorizing the issuance of cease and desist
132 orders with respect to specified transactions or
133 contracts; providing penalties for willful violation
134 of part IV of ch. 628, F.S., by an insurer or any
135 director, officer, employee, or agent thereof;

136 providing a penalty for knowingly making false
137 statements, false reports, or false filings with the
138 intent to deceive in the performance duties as an
139 officer, director, or employee of an insurance holding
140 company system; providing that a violation of ch. 628,
141 F.S., which prevents full understanding of an
142 enterprise risk may serve as an independent basis for
143 disapproving dividends or distributions and for
144 placing the insurer under an order of supervision;
145 amending ss. 636.05, 641.255, 641.416, and 651.024,

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146 F.S.; conforming cross-references; reenacting s.
147 48.151(3), F.S., relating to service of process by the
148 Chief Financial Officer on specified insurers, to
149 incorporate the amendment to s. 628.461, F.S., in a
150 reference thereto; reenacting s. 624.310(1)(a), F.S.,
151 relating to the definitions of "affiliated party," to
152 incorporate the amendments to ss. 628.461 and
153 628.4615, F.S., in references thereto; reenacting s.
154 625.765, F.S., relating to exemptions from specified
155 provisions of part IV of ch. 625, F.S., relating to
156 domestic stock insurers and equity securities, to
157 incorporate the amendment to s. 628.461, F.S., in a
158 reference thereto; reenacting s. 628.705(2), F.S.,
159 relating to prohibition of stock transfers, to
160 incorporate the amendment to s. 628.461, F.S., in a
161 reference thereto; reenacting s. 631.051(7), F.S.,
162 relating to grounds for rehabilitation of a domestic
163 insurer or alien insurer, to incorporate the
164 amendments to ss. 628.461 and 628.4615, F.S., in
165 references thereto; reenacting s. 409.912(20), F.S.,
166 relating to cost-effective purchasing of health care,
167 to incorporate the amendment to s. 628.4615, F.S., in
168 a reference thereto; reenacting s. 624.80(1)(b), F.S.,
169 relating to the definition of "insurer," to
170 incorporate the amendment to s. 628.4615, F.S., in a
171 reference thereto; reenacting s. 626.9928, F.S.,
172 relating to acquisition of interest in a viatical
173 settlement provider, to incorporate the amendment to
174 s. 628.4615, F.S., in a reference thereto; reenacting

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175 s. 634.252, F.S., relating to acquisition requirements
176 with respect to motor vehicle service agreement
177 companies, to incorporate the amendment to s.
178 628.4615, F.S., in a reference thereto; reenacting s.
179 634.3073, F.S., relating to acquisition requirements
180 with respect to home warranty associations, to
181 incorporate the amendment to s. 628.4615, F.S., in a
182 reference thereto; reenacting s. 634.4085, F.S.,
183 relating to acquisition requirements with respect to
184 service warranty associations, to incorporate the
185 amendment to s. 628.4615, F.S., in a reference
186 thereto; reenacting s. 636.065, F.S., relating to
187 acquisition requirements with respect to prepaid
188 limited health service organizations, to incorporate
189 the amendment to s. 628.4615, F.S., in a reference
190 thereto; reenacting s. 642.032(5), F.S., relating to
191 provisions of general insurance law applicable to
192 legal expense insurance corporations, to incorporate
193 the amendment to s. 628.4615, F.S., in a reference
194 thereto; reenacting s. 626.7492(6)(b), (8)(f), and
195 (9)(f), F.S., relating to duties of insurers using the
196 services of a reinsurance intermediary broker or
197 manager, to incorporate the amendments to s. 628.801,
198 F.S., in references thereto; reenacting s.
199 626.918(2)(d), F.S., relating to conditions of
200 eligibility for surplus lines insurers, to incorporate
201 the amendment to s. 628.801, F.S., in a reference
202 thereto; providing an effective date.
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204 Be It Enacted by the Legislature of the State of Florida:

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206 Section 1. Section 628.461, Florida Statutes, is amended to
207 read:

208 (Substantial rewording of section. See

209 s. 628.461, F.S., for present text.)

210 628.461 Acquisition of controlling stock.-

211 (1) DEFINITIONS.-As used in this section, the term
212 "insurer" includes any:

213 (a) Multiple-employer welfare arrangements operating
214 pursuant to chapter 624.

215 (b) Prepaid limited health service organizations operating
216 under a certificate of authority issued under part I of chapter
217 636.

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

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

222 (e) Provider of continuing care operating under a
223 certificate of authority or provisional certificate of authority
224 issued under chapter 651.

225 (2) FILING REQUIREMENTS.-A person may not, individually or
226 in conjunction with any affiliated person of such person,
227 acquire directly or indirectly, conclude a tender offer or
228 exchange offer for, enter into any agreement to exchange
229 securities for, or otherwise finally acquire 10 percent or more
230 of the outstanding voting securities of a domestic stock insurer
231 or of a controlling company, unless at the time the offer,
232 request, or invitation is made or the agreement is entered into,

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233 or prior to the acquisition of the securities if no offer or
234 agreement is involved, such person has filed with the
235 commissioner and has sent to the insurer, a statement containing
236 the information required by this section and the offer, request,
237 invitation, agreement, or acquisition has been approved by the
238 commissioner in the manner prescribed in this section.

239 (a) For purposes of this section, any controlling person of
240 a domestic insurer seeking to divest its controlling interest in
241 the domestic insurer in any manner shall file with the
242 commissioner, with a copy provided to the insurer, notice of its
243 proposed divestiture at least 30 days prior to the cessation of
244 control. The commissioner shall determine those instances in
245 which the party or parties seeking to divest a controlling
246 interest in an insurer will be required to file for and obtain
247 approval of the transaction.

248 (b) With respect to a transaction subject to this
249 subsection, the acquiring person must also file a preacquisition
250 notification with the commissioner within 5 days of execution of
251 an agreement, which shall contain the information as prescribed
252 by the National Association of Insurance Commissioners relating
253 to those markets which cause the acquisition not to be exempted
254 from the provisions of this section. The commissioner may
255 require such additional material and information as deemed
256 necessary to determine whether the proposed acquisition, if
257 consummated, would violate the competitive standard set forth in
258 subsection (8). Failure to file the notification may subject the
259 violation to penalties specified in subsection (9). The waiting
260 period required begins on the date of receipt by the
261 commissioner of a preacquisition notification and ends on the

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262 earlier of the 30th day after the date of receipt of
263 notification or termination of the waiting period by the
264 commissioner. Prior to the end of the waiting period, the
265 commissioner, on a one-time basis, may require the submission of
266 additional needed information relevant to the proposed
267 acquisition, in which event the waiting period shall end on the
268 earlier of the 30th day after receipt of the additional
269 information by the commissioner or termination of the waiting
270 period by the commissioner.

271 (c) For purposes of this section, a "domestic insurer"
272 includes any person controlling a domestic insurer unless the
273 person, as determined by the commissioner, is either directly or
274 through its affiliates primarily engaged in business other than
275 the business of insurance. For the purposes of this section,
276 "person" does not include any securities broker that holds, in
277 the usual and customary broker's function, less than 20 percent
278 of the voting securities of an insurance company or of any
279 person who controls an insurance company.

280 (3) CONTENT OF STATEMENT.—

281 (a) The statement to be filed with the office and furnished
282 to the insurer and controlling company shall be made under oath
283 and contain the following information and any additional
284 information as the office deems necessary to determine the
285 character, experience, ability, and other qualifications of the
286 person or affiliated person of such person for the protection of
287 the policyholders and shareholders of the insurer and the
288 public:

289 1. The name and address of each person by whom or on whose
290 behalf the merger or other acquisition of control referred to in

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291 subsection (2) is to be effected, hereinafter referred to as the
292 "acquiring party," the background information on each natural
293 person by whom, or on whose behalf, the acquisition is to be
294 made, and, if the acquisition is to be made by or on behalf of a
295 corporation, association, or trust, the identity of, and the
296 background information specified in this section on, each
297 director, officer, trustee, or other natural person performing
298 duties similar to those of a director, officer, or trustee for
299 the corporation, association, or trust or any person who
300 controls, either directly or indirectly, the corporation,
301 association, or trust, and:

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

306 b. Whether, during such 10-year period, the person has been
307 the subject of any proceeding for the revocation of any license
308 and, if so, the nature of the proceeding and the disposition of
309 the proceeding.

310 c. Whether, during the 10-year period, the person has been
311 the subject of any proceeding under the Federal Bankruptcy Code
312 or whether, during the 10-year period, any corporation,
313 partnership, firm, trust, or association in which the person was
314 a director, officer, trustee, partner, or other official has
315 been subject to any such proceeding, either during the time in
316 which the person was a director, officer, trustee, partner, or
317 other official or within 12 months thereafter.

318 d. Whether, during the 10-year period, the person has been
319 enjoined, either temporarily or permanently, by a court of

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320 competent jurisdiction from violating any federal or state law
321 regulating the business of insurance, securities, or banking, or
322 from carrying out any particular practice or practices in the
323 course of the business of insurance, securities, or banking,
324 together with details as to any such event.

325 e. If the person is not an individual, a report of the
326 nature of its business operations during the past 5 years or for
327 the period of time that the person and any predecessors have
328 been in existence, whichever is less, an informative description
329 of the business intended to be conducted by the person and the
330 person's subsidiaries, and a list of all individuals who are or
331 who have been selected to become directors, trustees, or
332 executive officers of the person, or who perform or will perform
333 functions appropriate to such positions. The list must include
334 for each individual the information required under this
335 subparagraph.

336 2. The source, nature, and amount of the consideration used
337 or to be used in effecting the merger or other acquisition of
338 control, a description of any transaction where funds were or
339 are to be obtained for any such purpose, including any pledge of
340 the insurer's stock or the stock of any of its subsidiaries or
341 controlling affiliates, and the identity of persons furnishing
342 consideration.

343 3. Fully audited financial information as to the earnings
344 and financial condition of each acquiring party for the
345 preceding 5 fiscal years of each acquiring party, or for the
346 period the acquiring party and any predecessors have been in
347 existence, whichever is less, and similar unaudited information
348 as of a date not earlier than 90 days prior to the filing of the

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349 statement.

350 4. Any plans or proposals which each acquiring party may
351 have to liquidate the insurer, to sell its assets or merge or
352 consolidate it with any person, or to make any other material
353 change in its business or corporate structure or management.

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

359 6. The amount of each class of any security referred to in
360 subsection (2) which is beneficially owned or concerning which
361 there is a right to acquire beneficial ownership by each
362 acquiring party.

363 7. A full description of any contracts, arrangement, or
364 understandings with respect to any security referred to in
365 subsection (2) in which any acquiring party is involved,
366 including, but not limited to, transfer of any of the
367 securities, joint ventures, loan or option arrangements, puts or
368 calls, guarantees of loans, guarantees against loss or
369 guarantees of profits, division of losses or profits, or the
370 giving or withholding of proxies. The description must identify
371 the persons with whom the contracts, arrangements, or
372 understandings have been entered into.

373 8. A description of the purchase of any security referred
374 to in subsection (2) during the 12 calendar months preceding the
375 filing of the statement by any acquiring party, including the
376 dates of purchase, names of the purchasers, and consideration
377 paid or agreed to be paid.

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378 9. A description of any recommendations to purchase any
379 security referred to in subsection (2), made during the 12
380 calendar months preceding the filing of the statement by any
381 acquiring party or by anyone based upon interviews or at the
382 suggestion of the acquiring party.

383 10. Copies of all tender offers for, requests or
384 invitations for tenders of, exchange offers for, and agreements
385 to acquire or exchange any securities referred to in subsection
386 (2), and, if distributed, copies of additional soliciting
387 material relating to them.

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

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

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

402 14. Such additional information as the commissioner may by
403 rule or regulation prescribe as necessary or appropriate for the
404 protection of policyholders of the insurer or in the public
405 interest.

406 (b) If the person required to file the statement referred

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407 to in subsection (2) is a partnership, limited partnership,
408 syndicate, or other group, the commissioner may require that the
409 information required by paragraph (a) be given with respect to
410 each partner of the partnership or limited partnership, each
411 member of the syndicate or group, and each person who controls
412 the partner or member. If any partner, member, or person is a
413 corporation or if the person required to file the statement
414 referred to in subsection (2) is a corporation, the commissioner
415 may require that the information required by paragraph (a) be
416 given with respect to the corporation, each officer and director
417 of the corporation, and each person who is directly or
418 indirectly the beneficial owner of more than 10 percent of the
419 outstanding voting securities of the corporation.

420 (c) If any material change occurs in the facts set forth in
421 the statement filed with the commissioner and sent to the
422 insurer pursuant to this section, an amendment setting forth the
423 change, together with copies of all documents and other material
424 relevant to the change, shall be filed with the commissioner and
425 sent to the insurer within 2 business days after the person
426 learns of the change. A material change in the operation of the
427 insurer is a transaction which disposes of or obligates 5
428 percent or more of the capital and surplus of the insurer. A
429 material change in the management of the insurer is any change
430 in management involving officers or directors of the insurer or
431 any person of the insurer or controlling company having
432 authority to dispose of or obligate 5 percent or more of the
433 insurer's capital or surplus.

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

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436 (2) is proposed to be made by means of a registration statement
437 under the Securities Act of 1933, in circumstances requiring the
438 disclosure of similar information under the Securities Exchange
439 Act of 1934, or under a state law requiring similar registration
440 or disclosure, the person required to file the statement
441 referred to in subsection (2) may utilize the documents in
442 furnishing the information called for by that statement.

443 (4) APPROVAL BY COMMISSIONER; HEARINGS.—

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

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

451 2. The effect of the merger or other acquisition of control
452 would be substantially to lessen competition in insurance in
453 this state or tend to create a monopoly. In applying the
454 competitive standard in this subparagraph:

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

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

460 c. The commissioner may condition the approval of the
461 merger or other acquisition on the removal of the basis of
462 disapproval within a specified period of time;

463 3. The financial condition of any acquiring party is such
464 that it might jeopardize the financial stability of the insurer,

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465 or prejudice the interest of its policyholders;

466 4. The plans or proposals which the acquiring party has to
467 liquidate the insurer or controlling company, sell its assets,
468 consolidate or merge it with any person, or make any other
469 material change in its business or corporate structure or
470 management are unfair and unreasonable to policyholders of the
471 insurer and not in the public interest;

472 5. The competence, experience, and integrity of those
473 persons who would control the operation of the insurer are such
474 that it would not be in the interest of policyholders of the
475 insurer and of the public to permit the merger or other
476 acquisition of control;

477 6. The natural persons for whom background information is
478 required to be furnished pursuant to this section have
479 backgrounds that indicate that it is in the best interests of
480 the policyholders of the domestic stock insurer and in the
481 public interest to permit such persons to exercise control over
482 such domestic stock insurer;

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

486 8. The management of the insurer after the acquisition will
487 be competent and trustworthy and will possess sufficient
488 managerial experience to make the proposed operation of the
489 insurer not hazardous to the insurance-buying public;

490 9. The management of the insurer after the acquisition will
491 not include any person who has, directly or indirectly, through
492 ownership, control, reinsurance transactions, or other insurance
493 or business relations, unlawfully manipulated the assets,

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494 accounts, finances, or books of any insurer or otherwise acted
495 in bad faith with respect thereto; or

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

498 (b) The public hearing under paragraph (a) shall be held
499 within 30 days after the filing of the statement required by
500 subsection (2), and at least 20 days' notice shall be given by
501 the commissioner to the person filing the statement. Not less
502 than 7 days' notice of the public hearing shall be given by the
503 person filing the statement to the insurer and to such other
504 persons as may be designated by the commissioner. The
505 commissioner shall make a determination within the 60-day period
506 preceding the effective date of the proposed transaction. At the
507 hearing, the person filing the statement, the insurer, any
508 person to whom notice of hearing was sent, and any other person
509 whose interest may be affected shall have the right to present
510 evidence, examine and cross-examine witnesses, and offer oral
511 and written arguments and in connection therewith shall be
512 entitled to conduct discovery proceedings in the same manner as
513 is presently allowed in the circuit courts of this state. All
514 discovery proceedings shall be concluded not later than 3 days
515 prior to the commencement of the public hearing.

516 (c) If the proposed acquisition of control will require the
517 approval of more than one commissioner, the public hearing
518 referred to in paragraph (b) may be held on a consolidated basis
519 upon request of the person filing the statement referred to in
520 subsection (2). Such person shall file the statement with the
521 National Association of Insurance Commissioners within 5 days of
522 making the request for a public hearing. A commissioner may opt

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523 out of a consolidated hearing and shall provide notice to the
524 applicant of the decision to do so within 10 days of the receipt
525 of the statement. A hearing conducted on a consolidated basis
526 shall be public and shall be held within the United States
527 before the commissioners of the states in which the insurers are
528 domiciled. At such hearing the commissioners shall hear and
529 receive evidence. A commissioner may attend such hearing in
530 person or by telecommunication.

531 (d) In connection with a change of control of a domestic
532 insurer, any determination by the commissioner that the person
533 acquiring control of the insurer shall be required to maintain
534 or restore the capital of the insurer to the level required by
535 the laws and regulations of this state must be made not later
536 than 60 days after the date of notification of the change in
537 control submitted pursuant to subsection (2).

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

543 (5) NONAPPLICABILITY.—The provisions of this section do not
544 apply to any offer, request, invitation, agreement, or
545 acquisition that the commissioner, by order or by letter,
546 exempts as not having been made or entered into for the purpose
547 of, and not having the effect of, changing or influencing the
548 control of a domestic insurer.

549 (6) VIOLATIONS.—The following constitute violations of this
550 section:

551 (a) The failure to file any statement, amendment, or other

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552 material required to be filed pursuant to subsection (2) or
553 subsection (3); or

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

557 (7) JURISDICTION; CONSENT TO SERVICE OF PROCESS.—The courts
558 of this state are hereby vested with jurisdiction over every
559 person not resident, domiciled, or authorized to do business in
560 this state who files a statement with the commissioner under
561 this section, and overall actions involving such person arising
562 out of violations of this section. Each such person shall be
563 deemed to have performed acts equivalent to and constituting an
564 appointment by the person of the commissioner to be his true and
565 lawful attorney upon whom may be served all lawful process in
566 any action, suit, or proceeding arising out of violations of
567 this section. Copies of all lawful process shall be served on
568 the commissioner and transmitted by registered or certified mail
569 by the commissioner to the person at his last known address.

570 (8) COMPETITIVE STANDARD.—

571 (a) As used in this subsection:

572 1. The term "insurer" includes any company or group of
573 companies under common management, ownership, or control.

574 2. The term "market" means the relevant product and
575 geographical markets. In determining the relevant product and
576 geographical markets, the commissioner shall give due
577 consideration to, among other things, the definitions or
578 guidelines, if any, promulgated by the National Association of
579 Insurance Commissioners and to information, if any, submitted by
580 parties to the acquisition. In the absence of sufficient

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581 information to the contrary, the relevant product market is
 582 assumed to be the direct written insurance premium for a line of
 583 business, such line being that used in the annual statement
 584 required to be filed by insurers doing business in this state,
 585 and the relevant geographical market is assumed to be this
 586 state.

587 (b) The commissioner may enter an order or may send a
 588 letter under subsection (9) with respect to an acquisition if
 589 there is substantial evidence that the effect of the acquisition
 590 may be substantially to lessen competition in any line of
 591 insurance in this state or to tend to create a monopoly, or if
 592 the insurer fails to file adequate information in compliance
 593 with the preacquisition notification required by this section.

594 (c) In determining whether a proposed acquisition would
 595 violate the competitive standard, the commissioner shall
 596 consider the following:

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

600 a. If the market is highly concentrated and the involved
 601 insurers possess the following shares of the market:

602		
603	<u>Insurer A</u>	<u>Insurer B</u>
604		
605	<u>4%</u>	<u>4% or more</u>
606	<u>10%</u>	<u>2% or more</u>
607	<u>15%</u>	<u>1% or more</u>
608		

609 b. Or, if the market is not highly concentrated and the

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610 involved insurers possess the following shares of the market:

611

612 Insurer A Insurer B

613

614 5% 5% or more

615 10% 4% or more

616 15% 3% or more

617 19% 1% or more

618

619 A highly concentrated market is one in which the share of the
 620 four largest insurers is 75 percent or more of the market.

621 Percentages not shown in the tables are interpolated

622 proportionately to the percentages that are shown. If more than

623 two insurers are involved, exceeding the total of the two

624 columns in the table is prima facie evidence of violation of the

625 competitive standard in this subsection. For the purposes of

626 this paragraph, the insurer with the largest share of the market

627 is deemed to be Insurer A.

628 2. There is a significant trend toward increased

629 concentration when the aggregate market share of any grouping of

630 the largest insurers in the market, from the two largest to the

631 eighth largest, has increased by 7 percent or more of the market

632 over a period of time extending from any base year 5 to 10 years

633 prior to the acquisition up to the time of the acquisition. Any

634 acquisition or merger covered under this section involving two

635 or more insurers competing in the same market is prima facie

636 evidence of violation of the competitive standard in this

637 subsection if:

638 a. There is a significant trend toward increased

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639 concentration in the market;

640 b. One of the insurers involved is one of the insurers in a
641 grouping of large insurers showing the requisite increase in the
642 market share; and

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

644 (d)1. The burden of showing prima facie evidence of
645 violation of the competitive standard rests upon the
646 commissioner.

647 2. Even though an acquisition is not prima facie evidence
648 of violation of the competitive standard under this subsection,
649 the commissioner may establish the requisite anticompetitive
650 effect based upon other substantial evidence and a party may
651 establish the absence of the requisite anticompetitive effect
652 based upon other substantial evidence. Relevant factors in
653 making a determination under this subsection include, but are
654 not limited to, the following:

655 a. Market shares.

656 b. Volatility of ranking of market leaders.

657 c. Number of competitors.

658 d. Concentration.

659 e. Trend of concentration in the industry.

660 f. Ease of entry into and exit from the market.

661 (e) An order denying the acquisition may not be entered if:

662 1. The acquisition will yield substantial economies of
663 scale or economies in resource utilization that cannot be
664 feasibly achieved in any other way, and the public benefits
665 which would arise from such economies exceed the public benefits
666 which would arise from not lessening competition; or

667 2. The acquisition will substantially increase the

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668 availability of insurance, and the public benefits of the
669 increase exceed the public benefits which would arise from not
670 lessening competition.

671 (9) ORDERS AND PENALTIES.—

672 (a) If an acquisition violates the standards of this
673 section, the commissioner may enter an order:

674 1. Requiring an involved insurer to cease and desist from
675 doing business in this state with respect to the line or lines
676 of insurance involved in the violation; or

677 2. Denying the application of an acquired or acquiring
678 insurer for a license to do business in this state.

679 (b) Such an order shall not be entered unless:

680 1. There is a hearing;

681 2. Notice of the hearing is issued prior to the end of the
682 waiting period and not less than 15 days prior to the hearing;
683 and

684 3. The hearing is concluded and the order is issued no
685 later than 60 days after the date of the filing of the
686 preacquisition notification with the commissioner. This deadline
687 may be waived by the parties.

688
689 Every order shall be accompanied by a written decision of the
690 commissioner setting forth findings of fact and conclusions of
691 law.

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

694 (d) Any person who violates a cease and desist order of the
695 commissioner under this section while the order is in effect
696 may, after notice and hearing and upon order of the

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697 commissioner, be subject at the discretion of the commissioner
698 to one or more of the following:

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

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

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

706 (10) EXEMPTIONS.—This section does not apply to the
707 following:

708 (a) A purchase of securities solely for investment purposes
709 so long as the securities are not used by voting or otherwise to
710 cause or attempt to cause the substantial lessening of
711 competition in any insurance market in this state. If a purchase
712 of securities results in a presumption of control it is not
713 solely for investment purposes unless the commissioner of the
714 insurer's state of domicile accepts a disclaimer of control or
715 affirmatively finds that control does not exist and the
716 disclaimer action or affirmative finding is communicated by the
717 domiciliary commissioner to the commissioner of this state.

718 (b) The acquisition of a person by another person when both
719 persons are neither directly nor through affiliates primarily
720 engaged in the business of insurance, if preacquisition
721 notification is filed with the commissioner in accordance with
722 this section 30 days prior to the proposed effective date of the
723 acquisition. However, such preacquisition notification is not
724 required for exclusion from this section if the acquisition
725 would otherwise be excluded from this section.

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- 726 (c) The acquisition of already affiliated persons.
- 727 (d) An acquisition if, as an immediate result of the
728 acquisition:
- 729 1. In no market would the combined market share of the
730 involved insurers exceed 5 percent of the total market;
- 731 2. There would be no increase in any market share; or
- 732 3. In no market would:
- 733 a. The combined market share of the involved insurers
734 exceed 12 percent of the total market; and
- 735 b. The market share increase by more than 2 percent of the
736 total market.
- 737
- 738 As used in this paragraph, a "market" means direct written
739 insurance premium in this state for a line of business as
740 contained in the annual statement required to be filed by
741 insurers licensed to do business in this state.
- 742 (e) An acquisition for which a preacquisition notification
743 would be required pursuant to this section due solely to the
744 resulting effect on the ocean marine insurance line of business.
- 745 (f) An acquisition of an insurer whose domiciliary
746 commissioner affirmatively finds that:
- 747 1. The insurer is in failing condition;
- 748 2. There is a lack of feasible alternative to improving
749 such condition;
- 750 3. The public benefits of improving the insurer's condition
751 through the acquisition exceed the public benefits that would
752 arise from not lessening competition; and
- 753 4. The findings are communicated by the domiciliary
754 commissioner to the commissioner of this state.

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755 (g) Acquisitions subject to s. 628.4615.

756 (11) APPROVAL; CONCLUSION OF ACQUISITION; DISAPPROVAL.—The
 757 acquisition of voting securities shall be deemed approved unless
 758 the office disapproves the proposed acquisition within 90 days
 759 after the statement required by subsection (2) has been filed.
 760 The office may on its own initiate or, if requested to do so in
 761 writing by a substantially affected party, shall conduct a
 762 proceeding to consider the appropriateness of the proposed
 763 filing. The 90-day time period shall be tolled during the
 764 pendency of the proceeding. Any written request for a proceeding
 765 must be filed with the office within 10 days of the date on
 766 which notice of the filing is given. During the pendency of the
 767 proceeding or review period by the office, any person or
 768 affiliated person complying with the filing requirements of this
 769 section may proceed and take all steps necessary to conclude the
 770 acquisition so long as the acquisition becoming final is
 771 conditioned upon obtaining office approval. The office shall,
 772 however, at any time that it finds an immediate danger to the
 773 public health, safety, and welfare of the domestic policyholders
 774 exists, immediately order, pursuant to s. 120.569(2)(n), the
 775 proposed acquisition temporarily disapproved and any further
 776 steps to conclude the acquisition ceased.

777 Section 2. Section 628.4615, Florida Statutes, is amended
 778 to read:

779 628.4615 Specialty insurers; acquisition of controlling
 780 stock, ownership interest, assets, or control; merger or
 781 consolidation.—

782 (1) For the purposes of this section, the term "specialty
 783 insurer" means any person holding a license or certificate of

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784 authority as:

785 (a) A motor vehicle service agreement company authorized to
786 issue motor vehicle service agreements as those terms are
787 defined in s. 634.011;

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

790 (c) A service warranty association authorized to issue
791 "service warranties" as those terms are defined in s.
792 634.401(13) and (14);

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

796 ~~(e) An authorized health maintenance organization operating~~
797 ~~pursuant to s. 641.21;~~

798 ~~(f) An authorized prepaid health clinic operating pursuant~~
799 ~~to s. 641.405;~~

800 (d)~~(g)~~ A legal expense insurance corporation authorized to
801 engage in a legal expense insurance business pursuant to s.
802 642.021;

803 ~~(h) A provider that is licensed to operate a facility that~~
804 ~~undertakes to provide continuing care as those terms are defined~~
805 ~~in s. 651.011;~~

806 ~~(i) A multiple employer welfare arrangement operating~~
807 ~~pursuant to ss. 624.436-624.446;~~

808 (e)~~(j)~~ A premium finance company authorized to finance
809 insurance premiums pursuant to s. 627.828; or

810 (f)~~(k)~~ A corporation authorized to accept donor annuity
811 agreements pursuant to s. 627.481.

812 (2) A person may not, individually or in conjunction with

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813 any affiliated person of such person, directly or indirectly,
814 conclude a tender offer or exchange offer for, enter into any
815 agreement to exchange securities for, or otherwise finally
816 acquire, 10 percent or more of the outstanding voting securities
817 of a specialty insurer which is a stock corporation or of a
818 controlling company of a specialty insurer which is a stock
819 corporation; or conclude an acquisition of, or otherwise finally
820 acquire, 10 percent or more of the ownership interest of a
821 specialty insurer which is not a stock corporation or of a
822 controlling company of a specialty insurer which is not a stock
823 corporation, unless:

824 ~~(a)~~ the person or affiliated person has filed with the
825 office and sent by registered mail to the principal office of
826 the specialty insurer and controlling company a letter of
827 notification regarding the transaction or proposed transaction
828 no later than 5 days after any form of tender offer or exchange
829 offer is proposed, or no later than 5 days after the acquisition
830 of the securities or ownership interest if no tender offer or
831 exchange offer is involved. The notification must be provided on
832 forms prescribed by the commission containing information
833 determined necessary to understand the transaction and identify
834 all purchasers and owners involved.†

835 ~~(b) The person or affiliated person has filed with the~~
836 ~~office an application signed under oath and prepared on forms~~
837 ~~prescribed by the commission which contains the information~~
838 ~~specified in subsection (4). The application must be completed~~
839 ~~and filed within 30 days after any form of tender offer or~~
840 ~~exchange offer is proposed, or after the acquisition of the~~
841 ~~securities if no tender offer or exchange offer is involved; and~~

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842 ~~(c) The office has approved the tender offer or exchange~~
843 ~~offer, or acquisition if no tender offer or exchange offer is~~
844 ~~involved.~~

845 ~~(3) This section does not apply to any acquisition of~~
846 ~~voting securities or ownership interest of a specialty insurer~~
847 ~~or of a controlling company by any person who, on July 9, 1986,~~
848 ~~is the owner of a majority of such voting securities or~~
849 ~~ownership interest or who, on or after July 9, 1986, becomes the~~
850 ~~owner of a majority of such voting securities or ownership~~
851 ~~interest with the approval of the office under this section. The~~
852 ~~person or affiliated person filing the required notice in~~
853 ~~paragraph (2) (a) may request the office to waive the~~
854 ~~requirements of paragraph (2) (b) if there is no change in the~~
855 ~~ultimate controlling shareholder or ownership percentages of the~~
856 ~~ultimate controlling shareholders and no unaffiliated parties~~
857 ~~acquire any direct or indirect interest in the specialty~~
858 ~~insurer. The office may waive the filing if it determines that~~
859 ~~in fact there is no change in the ultimate controlling~~
860 ~~shareholder or ownership percentages of the ultimate controlling~~
861 ~~shareholders and no unaffiliated parties will acquire any direct~~
862 ~~or indirect interest in the specialty insurer.~~

863 ~~(3) (a) (4)~~ Within 30 days of the tender offer or exchange
864 offer, the party or affiliated party shall provide to the office
865 the background information for any new officers, directors,
866 trustees, partners, owners, managers, or joint venturers, or
867 other persons performing duties similar to those of persons in
868 such positions, of the specialty insurer as a result of the
869 acquisition ~~The application to be filed with the office and~~
870 ~~furnished to the specialty insurer and controlling company shall~~

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871 ~~contain the following information~~ and any additional information
872 as the office deems necessary to determine the character,
873 experience, ability, and other qualifications of the specialty
874 insurer's management person or affiliated person of such person
875 for the protection of the insureds of the specialty insurer and
876 of the public. The information as to the background and identity
877 of each such natural person shall include:

878 ~~(a)1. The identity of, and the background information~~
879 ~~specified in subsection (5) on, each natural person by whom, or~~
880 ~~on whose behalf, the acquisition is to be made; and,~~

881 ~~2. If the acquisition is to be made by, or on behalf of, a~~
882 ~~person other than a natural person and as to any person who~~
883 ~~controls, either directly or indirectly, such other person, the~~
884 ~~identity of, and the background information specified in~~
885 ~~subsection (5) on:~~

886 ~~a. Each director, officer, or trustee, if a corporation, or~~

887 ~~b. Each partner, owner, manager, or joint venturer, or~~
888 ~~other person performing duties similar to those of persons in~~
889 ~~the aforementioned positions, if not a corporation,~~

890
891 ~~for the person.~~

892 ~~(b) The source and amount of the funds or other~~
893 ~~consideration used, or to be used, in making the acquisition.~~

894 ~~(c) Any plans or proposals which such persons may have made~~
895 ~~to liquidate the specialty insurer, to sell any of its assets or~~
896 ~~merge or consolidate it with any person, or to make any other~~
897 ~~major change in its business or corporate structure or~~
898 ~~management; and any plans or proposals which such persons may~~
899 ~~have made to liquidate any controlling company of the specialty~~

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900 ~~insurer, to sell any of its assets or merge or consolidate it~~
901 ~~with any person, or to make any other major change in its~~
902 ~~business or corporate structure or management.~~

903 ~~(d) The nature and the extent of the controlling interest~~
904 ~~which the person or affiliated person of such person proposes to~~
905 ~~acquire, the terms of the proposed acquisition, and the manner~~
906 ~~in which the controlling interest is to be acquired of a~~
907 ~~specialty insurer or controlling company which is not a stock~~
908 ~~corporation.~~

909 ~~(e) The number of shares or other securities which the~~
910 ~~person or affiliated person of such person proposes to acquire,~~
911 ~~the terms of the proposed acquisition, and the manner in which~~
912 ~~the securities are to be acquired.~~

913 ~~(f) Information as to any contract, arrangement, or~~
914 ~~understanding with any party with respect to any of the~~
915 ~~securities of the specialty insurer or controlling company,~~
916 ~~including, but not limited to, information relating to the~~
917 ~~transfer of any of the securities, option arrangements, puts or~~
918 ~~calls, or the giving or withholding of proxies, which~~
919 ~~information names the party with whom the contract, arrangement,~~
920 ~~or understanding has been entered into and gives the details~~
921 ~~thereof.~~

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

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

927 2. The principal business and address of any business,
928 corporation, or organization in which each such office of the

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929 natural person was held, or in which each such occupation or
930 position of employment was carried on.

931 3. Whether the natural person was, at any time during such
932 10-year period, convicted of any crime other than a traffic
933 violation.

934 4. Whether the natural person has been, during such 10-year
935 period, the subject of any proceeding for the revocation of any
936 license and, if so, the nature of the proceeding and the
937 disposition of the proceeding.

938 5. Whether, during the 10-year period, the natural person
939 has been the subject of any proceeding under the federal
940 Bankruptcy Act; or whether, during the 10-year period, any
941 person or other business or organization in which the natural
942 person was a director, officer, trustee, partner, owner,
943 manager, or other official has been subject to any such
944 proceeding, either during the time in which the natural person
945 was a director, officer, or trustee, if a corporation, or a
946 partner, owner, manager, joint venturer, or other official, if
947 not a corporation, or within 12 months thereafter.

948 6. Whether, during the 10-year period, the natural person
949 has been enjoined, either temporarily or permanently, by a court
950 of competent jurisdiction from violating any federal or state
951 law regulating the business of insurance, securities, or
952 banking, or from carrying out any particular practice or
953 practices in the course of the business of insurance,
954 securities, or banking, together with details as to any such
955 event.

956 7. Fingerprints of each person referred to in this section
957 ~~subsection (4)~~.

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958 (b) Any person filing the statement required by this
959 section shall give all required information that is within the
960 knowledge of:

961 1. The directors, officers, or trustees, if a corporation,
962 or

963 2. The partners, owners, managers, or joint venturers, or
964 others performing functions similar to those of a director,
965 officer, or trustee, if not a corporation,

966
967 of the person making the filing and of any person controlling
968 either directly or indirectly such person. If any material
969 change occurs in the facts set forth in the application filed
970 with the office pursuant to this section, an amendment setting
971 forth such changes shall be filed immediately with the office,
972 and a copy of the amendment shall be sent by registered mail to
973 the principal office of the specialty insurer and to the
974 principal office of the controlling company.

975 ~~(6) (a) The acquisition application shall be reviewed in~~
976 ~~accordance with chapter 120. The office may on its own initiate,~~
977 ~~or, if requested to do so in writing by a substantially affected~~
978 ~~person, shall conduct, a proceeding to consider the~~
979 ~~appropriateness of the proposed filing. Time periods for~~
980 ~~purposes of chapter 120 shall be tolled during the pendency of~~
981 ~~the proceeding. Any written request for a proceeding must be~~
982 ~~filed with the office within 10 days of the date notice of the~~
983 ~~filing is given. During the pendency of the proceeding or review~~
984 ~~period by the office, any person or affiliated person complying~~
985 ~~with the filing requirements of this section may proceed and~~
986 ~~take all steps necessary to conclude the acquisition so long as~~

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987 ~~the acquisition becoming final is conditioned upon obtaining~~
988 ~~office approval. The office shall, however, at any time it finds~~
989 ~~an immediate danger to the public health, safety, and welfare of~~
990 ~~the insureds exists, immediately order, pursuant to s.~~
991 ~~120.569(2)(n), the proposed acquisition disapproved and any~~
992 ~~further steps to conclude the acquisition ceased.~~

993 ~~(b) During the pendency of the office's review of any~~
994 ~~acquisition subject to the provisions of this section, the~~
995 ~~acquiring person shall not make any material change in the~~
996 ~~operation of the specialty insurer or controlling company unless~~
997 ~~the office has specifically approved the change nor shall the~~
998 ~~acquiring person make any material change in the management of~~
999 ~~the specialty insurer unless advance written notice of the~~
1000 ~~change in management is furnished to the office. A material~~
1001 ~~change in the operation of the specialty insurer is a~~
1002 ~~transaction which disposes of or obligates 5 percent or more of~~
1003 ~~the capital and surplus of the specialty insurer. A material~~
1004 ~~change in the management of the specialty insurer is any change~~
1005 ~~in management involving officers or directors of the specialty~~
1006 ~~insurer or any person of the specialty insurer or controlling~~
1007 ~~company having authority to dispose of or obligate 5 percent or~~
1008 ~~more of the specialty insurer's capital or surplus. The office~~
1009 ~~shall approve a material change in operations if it finds the~~
1010 ~~applicable provisions of subsection (8) have been met. The~~
1011 ~~office may disapprove a material change in management if it~~
1012 ~~finds that the applicable provisions of subsection (8) have not~~
1013 ~~been met and in such case the specialty insurer shall promptly~~
1014 ~~change management as acceptable to the office.~~

1015 ~~(c) If a request for a proceeding is filed, the proceeding~~

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1016 shall be conducted within 60 days after the date the written
1017 request for a proceeding is received by the office. A
1018 recommended order shall be issued within 20 days of the date of
1019 the close of the proceedings. A final order shall be issued
1020 within 20 days of the date of the recommended order or, if
1021 exceptions to the recommended order are filed, within 20 days of
1022 the date the exceptions are filed.

1023 (7) The office may disapprove any acquisition subject to
1024 the provisions of this section by any person or any affiliated
1025 person of such person who:

1026 (a) Willfully violates this section;

1027 (b) In violation of an order of the office issued pursuant
1028 to subsection (11), fails to divest himself or herself of any
1029 stock or ownership interest obtained in violation of this
1030 section or fails to divest himself or herself of any direct or
1031 indirect control of such stock or ownership interest, within 25
1032 days after such order; or

1033 (c) In violation of an order issued by the office pursuant
1034 to subsection (11), acquires an additional stock or ownership
1035 interest in a specialty insurer or controlling company or direct
1036 or indirect control of such stock or ownership interest, without
1037 complying with this section.

1038 (8) The person or persons filing the application required
1039 by subsection (2) shall have the burden of proof. The office
1040 shall approve any such acquisition if it finds, on the basis of
1041 the record made during any proceeding or on the basis of the
1042 filed application if no proceeding is conducted, that:

1043 (a) Upon completion of the acquisition, the specialty
1044 insurer will be able to satisfy the requirements for the

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1045 ~~issuance of a license or certificate to write the line of~~
1046 ~~insurance for which it is presently licensed or certificated.~~

1047 ~~(b) The financial condition of the acquiring person or~~
1048 ~~persons will not jeopardize the financial stability of the~~
1049 ~~specialty insurer or prejudice the interests of its insureds or~~
1050 ~~the public.~~

1051 ~~(c) Any plan or proposal which the acquiring person has, or~~
1052 ~~acquiring persons have, made:~~

1053 ~~1. To liquidate the specialty insurer, sell its assets, or~~
1054 ~~merge or consolidate it with any person, or to make any other~~
1055 ~~major change in its business or corporate structure or~~
1056 ~~management, or~~

1057 ~~2. To liquidate any controlling company, sell its assets,~~
1058 ~~or merge or consolidate it with any person, or to make any major~~
1059 ~~change in its business or corporate structure or management~~
1060 ~~which would have an effect upon the specialty insurer,~~

1061
1062 ~~is fair and free of prejudice to the insureds of the specialty~~
1063 ~~insurer or to the public.~~

1064 ~~(d) The competence, experience, and integrity of those~~
1065 ~~persons who will control directly or indirectly the operation of~~
1066 ~~the specialty insurer indicate that the acquisition is in the~~
1067 ~~best interest of the insureds of the insurer and in the public~~
1068 ~~interest.~~

1069 ~~(e) The natural persons for whom background information is~~
1070 ~~required to be furnished pursuant to this section have such~~
1071 ~~backgrounds as to indicate that it is in the best interests of~~
1072 ~~the insureds of the specialty insurer and in the public interest~~
1073 ~~to permit such persons to exercise control over the specialty~~

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1074 insurer.

1075 ~~(f) The directors and officers, if such specialty insurer~~
1076 ~~or controlling company is a stock corporation, or the trustees,~~
1077 ~~partners, owners, managers, or joint venturers or other persons~~
1078 ~~performing duties similar to those of persons in the~~
1079 ~~forementioned positions, if such specialty insurer or~~
1080 ~~controlling company is not a stock corporation, to be employed~~
1081 ~~after the acquisition have sufficient insurance experience and~~
1082 ~~ability to assure reasonable promise of successful operation.~~

1083 ~~(g) The management of the specialty insurer after the~~
1084 ~~acquisition will be competent and trustworthy, and will possess~~
1085 ~~sufficient managerial experience so as to make the proposed~~
1086 ~~operation of the specialty insurer not hazardous to the~~
1087 ~~insurance buying public.~~

1088 ~~(h) The management of the specialty insurer after the~~
1089 ~~acquisition shall not include any person who has directly or~~
1090 ~~indirectly through ownership, control, reinsurance transactions,~~
1091 ~~or other insurance or business relations unlawfully manipulated~~
1092 ~~the assets, accounts, finances, or books of any insurer or~~
1093 ~~otherwise acted in bad faith with respect thereto.~~

1094 ~~(i) The acquisition is not likely to be hazardous or~~
1095 ~~prejudicial to the insureds of the insurer or to the public.~~

1096 ~~(j) The effect of the acquisition would not substantially~~
1097 ~~lessen competition in the line of insurance for which the~~
1098 ~~specialty insurer is licensed or certified in this state or~~
1099 ~~would not tend to create a monopoly therein.~~

1100 ~~(9) No vote by the stockholder of record, or by any other~~
1101 ~~person, of any security acquired in contravention of the~~
1102 ~~provisions of this section is valid. Any acquisition contrary to~~

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1103 ~~the provisions of this section is void. Upon the petition of the~~
1104 ~~specialty insurer or the controlling company, the circuit court~~
1105 ~~for the county in which the principal office of the specialty~~
1106 ~~insurer is located may, without limiting the generality of its~~
1107 ~~authority, order the issuance or entry of an injunction or other~~
1108 ~~order to enforce the provisions of this section. There shall be~~
1109 ~~a private right of action in favor of the specialty insurer or~~
1110 ~~controlling company to enforce the provisions of this section.~~
1111 ~~No demand upon the office that it perform its functions shall be~~
1112 ~~required as a prerequisite to any suit by the specialty insurer~~
1113 ~~or controlling company against any other person, and in no case~~
1114 ~~shall the office be deemed a necessary party to any action by~~
1115 ~~the specialty insurer or controlling company to enforce the~~
1116 ~~provisions of this section. Any person who makes or proposes an~~
1117 ~~acquisition requiring the filing of an application pursuant to~~
1118 ~~this section, or who files such an application, shall be deemed~~
1119 ~~to have thereby designated the Chief Financial Officer, or his~~
1120 ~~or her assistant or deputy or another person in charge of his or~~
1121 ~~her office, as such person's agent for service of process under~~
1122 ~~this section and shall thereby be deemed to have submitted~~
1123 ~~himself or herself to the administrative jurisdiction of the~~
1124 ~~office and to the jurisdiction of the circuit court.~~

1125 ~~(10) Any approval by the office under this section does not~~
1126 ~~constitute a recommendation by the office of the tender offer or~~
1127 ~~exchange offer, or acquisition, if no tender offer or exchange~~
1128 ~~offer is involved. It is unlawful for a person to represent that~~
1129 ~~the office's approval constitutes a recommendation. A person who~~
1130 ~~violates the provisions of this subsection commits a felony of~~
1131 ~~the third degree, punishable as provided in s. 775.082, s.~~

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1132 ~~775.083, or s. 775.084. The statute of limitations period for~~
1133 ~~the prosecution of an offense committed under this subsection is~~
1134 ~~5 years.~~

1135 (4)~~(11)~~ If the office determines that any person or any
1136 affiliated person of such person has acquired 10 percent or more
1137 of the outstanding voting securities of a specialty insurer or
1138 controlling company which is a stock corporation, or 10 percent
1139 or more of the ownership interest of a specialty insurer or
1140 controlling company which is not a stock corporation, without
1141 complying with the provisions of this section, the office may
1142 order that the person and any affiliated person of such person
1143 cease acquisition of the specialty insurer or controlling
1144 company and, if appropriate, divest itself of any stock or
1145 ownership interest acquired in violation of this section.

1146 (5)~~(12)~~(a) The office shall, if necessary to protect the
1147 public interest, suspend or revoke the certificate of authority
1148 of any specialty insurer or controlling company acquired in
1149 violation of this section.

1150 (b) If any specialty insurer is subject to suspension or
1151 revocation pursuant to this section ~~paragraph (a)~~, the specialty
1152 insurer shall be deemed to be in such condition, or to be using
1153 or to have been subject to such methods or practices in the
1154 conduct of its business, as to render its further transaction of
1155 insurance presently or prospectively hazardous to its insureds,
1156 creditors, or stockholders or to the public.

1157 (6)~~(13)~~(a) For the purpose of this section, the term
1158 "acquisition" includes:

1159 1. A tender offer or exchange offer for securities, assets,
1160 or other ownership interest;

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1161 2. An agreement to exchange securities for other
1162 securities, assets, or other ownership interest;

1163 3. A merger of a person or affiliated person into a
1164 specialty insurer or a merger of any person with a specialty
1165 insurer;

1166 4. A consolidation; or

1167 5. Any other form of change of control
1168

1169 whereby any person or affiliated person acquires or attempts to
1170 acquire, directly or indirectly, 10 percent or more of the
1171 ownership interest or assets of a specialty insurer or of a
1172 controlling company. ~~However, in the case of a health
1173 maintenance organization organized as a for-profit corporation,
1174 the provisions of s. 628.451 shall govern with respect to any
1175 merger or consolidation, and, in the case of a health
1176 maintenance organization organized as a not-for-profit
1177 corporation, the provisions of s. 628.471 shall govern with
1178 respect to any merger or consolidation.~~

1179 (b) For the purpose of this section, the term "affiliated
1180 person" of another person includes:

1181 1. The spouse of such other natural person;

1182 2. The parents of such other natural person and their
1183 lineal descendants and the parents of such other natural
1184 person's spouse and their lineal descendants;

1185 3. Any person who directly or indirectly owns or controls,
1186 or holds with power to vote, 10 percent or more of the
1187 outstanding voting securities of such other person;

1188 4. Any person who directly or indirectly owns 10 percent or
1189 more of the outstanding voting securities which are directly or

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1190 indirectly owned or controlled, or held with power to vote, by
1191 such other person;

1192 5. Any person or group of persons who directly or
1193 indirectly control, are controlled by, or are under common
1194 control with such other person;

1195 6. Any director, officer, trustee, partner, owner, manager,
1196 joint venturer, or employee, or other person performing duties
1197 similar to those of persons in the aforementioned positions, of
1198 such other person;

1199 7. If such other person is an investment company, any
1200 investment adviser of such company or any member of an advisory
1201 board of such company;

1202 8. If such other person is an unincorporated investment
1203 company not having a board of directors, the depositor of such
1204 company; or

1205 9. Any person who has entered into an agreement, written or
1206 unwritten, to act in concert with such other person in
1207 acquiring, or limiting the disposition of, securities of a
1208 specialty insurer or controlling company which is a stock
1209 corporation or in acquiring, or limiting the disposition of, an
1210 ownership interest of a specialty insurer or controlling company
1211 which is not a stock corporation.

1212 (c) For the purposes of this section, the term "controlling
1213 company" means any corporation, trust, or association owning,
1214 directly or indirectly, 25 percent or more of the voting
1215 securities of one or more specialty insurance companies which
1216 are stock corporations, or 25 percent or more of the ownership
1217 interest of one or more specialty insurance companies which are
1218 not stock corporations.

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1219 (d) For the purpose of this section, the term "natural
1220 person" means an individual.

1221 (e) For the purpose of this section, the term "person"
1222 includes a natural person, corporation, association, trust,
1223 general partnership, limited partnership, joint venture, firm,
1224 proprietorship, or any other entity which may hold a license or
1225 certificate as a specialty insurer.

1226 ~~(7)-(14)~~ The commission may adopt, amend, or repeal rules
1227 that are necessary to implement the provisions of this section,
1228 pursuant to chapter 120.

1229 Section 3. Section 628.800, Florida Statutes, is created to
1230 read:

1231 628.800 Definitions.-As used in this part, unless the
1232 context otherwise requires:

1233 (1) "Affiliate" means a person that, directly or
1234 indirectly, through one or more intermediaries, controls or is
1235 controlled by, or is under common control with, the person
1236 specified.

1237 (2) "Control" means the possession, whether direct or
1238 indirect, of the power to direct or cause the direction of the
1239 management and policies of a person, whether through the
1240 ownership of voting securities, by contract other than a
1241 commercial contract for goods or nonmanagement services, or
1242 otherwise, unless the power is the result of an official
1243 position with, or corporate office held by, the person. Control
1244 shall be presumed to exist if any person, directly or
1245 indirectly, owns, controls, holds with the power to vote, or
1246 holds proxies representing 10 percent or more of the voting
1247 securities of any other person. To disclaim control or

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1248 affiliation, any person may file with the commissioner a
1249 disclaimer of control or affiliation with any authorized
1250 insurer, or a disclaimer of control or affiliation may be filed
1251 by the insurer or any member of an insurance holding company
1252 system. The disclaimer shall fully disclose all material
1253 relationships and bases for control or affiliation between the
1254 person and the insurer, as well as the basis for disclaiming the
1255 control or affiliation. A disclaimer of control or affiliation
1256 shall be deemed to have been granted unless the commissioner,
1257 within 30 days following receipt of a complete disclaimer,
1258 notifies the filing party that the disclaimer is disallowed. In
1259 the event of disallowance, the disclaiming party may request an
1260 administrative hearing, which shall be granted. The disclaiming
1261 party shall be relieved of its duty to register under this
1262 section if approval of the disclaimer has been granted by the
1263 commissioner or if the disclaimer is deemed to have been
1264 approved. The commissioner may determine, after furnishing all
1265 persons in interest notice and opportunity to be heard and
1266 making specific findings of fact to support such determination,
1267 that control exists in fact, notwithstanding the absence of a
1268 presumption to that effect.

1269 (3) "Insurance holding company system" consists of two or
1270 more affiliated persons, one or more of which is an insurer.

1271 (4) "Insurer" has the same meaning as set forth in s.
1272 624.03, except that it shall not include:

1273 (a) Agencies, authorities, or instrumentalities of the
1274 United States, its possessions and territories, the Commonwealth
1275 of Puerto Rico, the District of Columbia, or a state or
1276 political subdivision of a state;

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1277 (b) Fraternal benefit societies;
1278 (c) Nonprofit medical and hospital service associations; or
1279 (d) Business trusts.

1280 (5) "Commissioner" means the Commissioner of Insurance
1281 Regulation as designated under ss. 20.121 and 624.05, his or her
1282 deputies and assistants, or the Office of Insurance Regulation,
1283 as appropriate.

1284 (6) "Person" means an individual, a corporation, a
1285 partnership, an association, a business trust, an insurer, a
1286 company, an organization, Lloyds insurer, a society, a
1287 reciprocal insurer or interinsurance exchange, a syndicate, an
1288 agent, a general agent, a broker, a solicitor, a service
1289 representative, an adjuster, every legal entity, a joint stock
1290 company, an unincorporated organization, or any similar entity
1291 or combination acting in concert, but does not include any
1292 securities broker performing no more than the usual and
1293 customary broker's function.

1294 (7) "Securityholder" of a specified person means one who
1295 owns any security of such person, including common stock,
1296 preferred stock, debt obligation, and any other security
1297 convertible into or evidencing the right to acquire any of the
1298 foregoing.

1299 (8) "Subsidiary" of a specified person means an affiliate
1300 controlled by such person, directly or indirectly, through one
1301 or more intermediaries.

1302 (9) "Voting security" means any security convertible into
1303 or evidencing a right to acquire a voting security.

1304 Section 4. Section 628.801, Florida Statutes, is amended to
1305 read:

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1306 (Substantial rewording of section. See
1307 s. 628.801, F.S., for present text.)
1308 628.801 Insurance holding companies; registration;
1309 regulation.-

1310 (1) REGISTRATION.-Every insurer authorized to do business
1311 in this state that is a member of an insurance holding company
1312 system must register with the commissioner, except a foreign
1313 insurer subject to registration requirements and standards
1314 adopted by statute or regulation in the jurisdiction of its
1315 domicile which are substantially similar to those contained
1316 chapter 624.

1317 (a) Each registered insurer shall keep current the
1318 information required to be disclosed in its registration
1319 statement by reporting all material changes or additions within
1320 15 days after the end of the month in which it learns of each
1321 change or addition. Any insurer that is subject to registration
1322 under this section shall register within 15 days after it
1323 becomes subject to registration, and annually thereafter by June
1324 1 of each year for the previous calendar year, unless the
1325 commissioner for good cause shown extends the time for
1326 registration, in which case the insurer shall register within
1327 the extended registration period. The commissioner may require
1328 any insurer authorized to do business in the state that is a
1329 member of an insurance holding company system and that is not
1330 subject to registration under this section to furnish a copy of
1331 the registration statement, the report specified in subsection
1332 (9), or other information filed by the insurance company with
1333 the insurance regulatory authority of its domiciliary
1334 jurisdiction.

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1335 (b) Every insurer subject to registration shall file the
1336 registration statement with the commissioner on a form and in a
1337 format prescribed by the National Association of Insurance
1338 Commissioners, which shall contain the following current
1339 information:

1340 1. The capital structure, general financial condition,
1341 ownership, and management of the insurer and any person
1342 controlling the insurer.

1343 2. The identity and relationship of every member of the
1344 insurance holding company system.

1345 3. The following agreements in force and transactions
1346 currently outstanding or that have occurred during the last
1347 calendar year between the insurer and its affiliates:

1348 a. Loans, other investments, or purchases, sales, or
1349 exchanges of securities of the affiliates by the insurer or of
1350 the insurer by its affiliates.

1351 b. Purchases, sales, or exchange of assets.

1352 c. Transactions not in the ordinary course of business.

1353 d. Guarantees or undertakings for the benefit of an
1354 affiliate which result in an actual contingent exposure of the
1355 insurer's assets to liability, other than insurance contracts
1356 entered into in the ordinary course of the insurer's business.

1357 e. All management agreements, service contracts, and all
1358 cost-sharing arrangements.

1359 f. Reinsurance agreements.

1360 g. Dividends and other distributions to shareholders.

1361 h. Consolidated tax allocation agreements.

1362 4. Any pledge of the insurer's stock, including stock of
1363 any subsidiary or controlling affiliate, for a loan made to any

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1364 member of the insurance holding company system.

1365 5. If requested by the commissioner, financial statements
1366 of or within an insurance holding company system, including all
1367 affiliates. Financial statements may include, but are not
1368 limited to, annual audited financial statements filed with the
1369 United States Securities and Exchange Commission pursuant to the
1370 Securities Act of 1933, as amended, or the Securities Exchange
1371 Act of 1934, as amended. An insurer required to file financial
1372 statements pursuant to this paragraph may satisfy the request by
1373 providing the commissioner with the most recently filed parent
1374 corporation financial statements that have been filed with the
1375 United States Securities and Exchange Commission.

1376 6. Other matters concerning transactions between registered
1377 insurers and any affiliates as may be included from time to time
1378 in any registration forms adopted or approved by the
1379 commissioner.

1380 7. Statements attesting that the insurer's board of
1381 directors oversees corporate governance and internal controls
1382 and that the insurer's officers or senior management have
1383 approved, implemented, and continue to maintain and monitor
1384 corporate governance and internal control procedures.

1385 8. Any other information required by the commissioner by
1386 rule or regulation.

1387 (c) All registration statements must contain a summary
1388 outlining all items in the current registration statement
1389 representing changes from the prior registration statement.

1390 (d) Information need not be disclosed on the registration
1391 statement filed pursuant to this section that is not material
1392 for the purposes of this section. Unless the commissioner by

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1393 rule, regulation, or order provides otherwise, sales, purchases,
1394 exchanges, loans, or extensions of credit, investments, or
1395 guarantees involving .5 percent or less of an insurer's admitted
1396 assets as of the 31st day of December next preceding shall not
1397 be deemed material for purposes of this section.

1398 (2) REPORTING OF DIVIDENDS TO SHAREHOLDERS.—Subject to the
1399 requirements of this section, each registered insurer shall
1400 report to the commissioner all dividends and other distributions
1401 to shareholders within 15 business days following the
1402 declaration thereof.

1403 (3) INFORMATION OF INSURERS.—Any person within an insurance
1404 holding company system subject to registration shall be required
1405 to provide complete and accurate information to an insurer,
1406 where the information is reasonably necessary to enable the
1407 insurer to comply with the provisions of this section.

1408 (4) TERMINATION OF REGISTRATION.—The commissioner shall
1409 terminate the registration of any insurer that demonstrates that
1410 it no longer is a member of an insurance holding company system.

1411 (5) CONSOLIDATED FILING.—The commissioner may require or
1412 allow two or more affiliated insurers subject to registration to
1413 file a consolidated registration statement.

1414 (6) ALTERNATIVE REGISTRATION.—The commissioner may allow an
1415 insurer authorized to do business in this state and that is part
1416 of an insurance holding company system to register on behalf of
1417 any affiliated insurer required to register under this section
1418 and to file all information and material required to be filed
1419 under this section.

1420 (7) EXEMPTIONS.—This section does not apply to any insurer,
1421 information, or transaction if, and to the extent that, the

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1422 commissioner by rule, regulation, or order exempts the insurer,
1423 information, or transaction from the provisions of this section.

1424 (8) DISCLAIMER.—Any person may file with the commissioner a
1425 disclaimer of affiliation with any authorized insurer, or a
1426 disclaimer may be filed by the insurer or any member of an
1427 insurance holding company system. The disclaimer shall fully
1428 disclose all material relationships and bases for affiliation
1429 between the person and the insurer as well as the basis for
1430 disclaiming the affiliation. A disclaimer of affiliation shall
1431 be deemed to have been granted unless the commissioner, within
1432 30 days following receipt of a complete disclaimer, notifies the
1433 filing party that the disclaimer is disallowed. In the event of
1434 disallowance, the disclaiming party may request an
1435 administrative hearing, which shall be granted. The disclaiming
1436 party shall be relieved of its duty to register under this
1437 section if approval of the disclaimer has been granted by the
1438 commissioner or if the disclaimer is deemed to have been
1439 approved.

1440 (9) ENTERPRISE RISK FILING.—The ultimate controlling person
1441 of every insurer subject to registration shall also file an
1442 annual enterprise risk report. The report shall, to the best of
1443 the ultimate controlling person's knowledge and belief, identify
1444 the material risks within the insurance holding company system
1445 that could pose enterprise risk to the insurer. The report shall
1446 be filed with the lead state commissioner of the insurance
1447 holding company system as determined by the procedures within
1448 the Financial Analysis Handbook adopted by the National
1449 Association of Insurance Commissioners.

1450 (10) VIOLATIONS.—Failure to file a registration statement

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1451 or any summary of the registration statement or enterprise risk
1452 filing required by this section within the time specified for
1453 filing constitutes a violation of this section.

1454 Section 5. Section 628.8011, Florida Statutes, is created to
1455 read:

1456 628.8011 Standards and management of an insurer within an
1457 insurance holding company system.-

1458 (1) STANDARDS.-Transactions within an insurance holding
1459 company system to which an insurer subject to registration is a
1460 party shall be subject to the following standards:

1461 (a) The terms shall be fair and reasonable.

1462 (b) Agreements for cost-sharing services and management
1463 shall include such provisions as required by rule and regulation
1464 issued by the commissioner.

1465 (c) Charges or fees for services performed shall be
1466 reasonable.

1467 (d) Contracts or agreements with affiliates for the
1468 management or servicing of the business written by an insurer
1469 shall contain provisions providing that, if the combined ratio
1470 for the insurer exceeds 100 percent, then the fees paid to any
1471 affiliates for such services shall be decreased to bring the
1472 combined ratio down to 100 percent.

1473 (e) Expenses incurred and payment received shall be
1474 allocated to the insurer in conformity with customary insurance
1475 accounting practices consistently applied.

1476 (f) The books, accounts, and records of each party to all
1477 such transactions shall be so maintained as to clearly and
1478 accurately disclose the nature and details of the transactions,
1479 including such accounting information as is necessary to support

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1480 the reasonableness of the charges or fees to the respective
1481 parties.

1482 (g) The insurer's surplus as regards policyholders
1483 following any dividends or distributions to shareholder
1484 affiliates shall be reasonable in relation to the insurer's
1485 outstanding liabilities and adequate to meet its financial
1486 needs.

1487 (2) PRECLUDED TRANSACTIONS.—The following transactions
1488 involving a domestic insurer and any person in its insurance
1489 holding company system, including amendments or modifications of
1490 affiliate agreements previously filed pursuant to this section,
1491 that are subject to any materiality standards contained in
1492 subsection (1), may not be entered into unless the insurer has
1493 notified the commissioner in writing of its intention to enter
1494 into the transaction at least 30 days prior thereto, or such
1495 shorter period as the commissioner may permit, and the
1496 commissioner has not disapproved the transaction within that
1497 period. The notice for amendments or modifications shall include
1498 the reasons for the change and the financial impact on the
1499 domestic insurer. Informal notice shall be reported, within 30
1500 days after a termination of a previously filed agreement, to the
1501 commissioner for determination of the type of filing required,
1502 if any.

1503 (a) Sales, purchases, exchanges, loans, extensions of
1504 credit, or investments, provided the transactions are equal to
1505 or exceed:

1506 1. With respect to nonlife insurers, the lesser of 3
1507 percent of the insurer's admitted assets or 25 percent of
1508 surplus as regards policyholders as of the 31st day of December

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1509 next preceding.

1510 2. With respect to life insurers, 3 percent of the
1511 insurer's admitted assets as of the 31st day of December next
1512 preceding.

1513 (b) Loans or extensions of credit to any person who is not
1514 an affiliate, where the insurer makes loans or extensions of
1515 credit with the agreement or understanding that the proceeds of
1516 the transactions, in whole or in substantial part, are to be
1517 used to make loans or extensions of credit to, purchase assets
1518 of, or make investments in any affiliate of the insurer making
1519 the loans or extensions of credit, provided the transactions are
1520 equal to or exceed:

1521 1. With respect to nonlife insurers, the lesser of 3
1522 percent of the insurer's admitted assets or 25 percent of
1523 surplus as regards policyholders as of the 31st day of December
1524 next preceding; or

1525 2. With respect to life insurers, 3 percent of the
1526 insurer's admitted assets as of the 31st day of December next
1527 preceding.

1528 (c) Reinsurance agreements or modifications thereto,
1529 including:

1530 1. All reinsurance pooling agreements.

1531 2. Agreements in which the reinsurance premium or a change
1532 in the insurer's liabilities, or the projected reinsurance
1533 premium or a change in the insurer's liabilities in any of the
1534 next 3 years, equals or exceeds 5 percent of the insurer's
1535 surplus as regards policyholders, as of the 31st day of December
1536 next preceding, including those agreements which may require as
1537 consideration the transfer of assets from an insurer to a

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1538 nonaffiliate, if an agreement or understanding exists between
1539 the insurer and nonaffiliate that any portion of the assets will
1540 be transferred to one or more affiliates of the insurer.

1541 (d) All management agreements, service contracts, tax
1542 allocation agreements, guarantees, and all cost-sharing
1543 arrangements.

1544 (e) Guarantees when made by a domestic insurer. Provided,
1545 however, that a guarantee which is quantifiable as to amount is
1546 not subject to the notice requirements of this paragraph unless
1547 it exceeds the lesser of .5 percent of the insurer's admitted
1548 assets or 10 percent of surplus as regards policyholders as of
1549 the 31st day of December next preceding. Further, all guarantees
1550 which are not quantifiable as to amount are subject to the
1551 notice requirements of this paragraph.

1552 (f) Direct or indirect acquisitions or investments in a
1553 person that controls the insurer or in an affiliate of the
1554 insurer in an amount which, together with its present holdings
1555 in such investments, exceeds 2.5 percent of the insurer's
1556 surplus to policyholders. Direct or indirect acquisitions or
1557 investments in subsidiaries acquired pursuant to s. 628.461, or
1558 in nonsubsidiary insurance affiliates that are subject to the
1559 provisions of this part, are exempt from this requirement.

1560 (g) Any material transactions, specified by regulation,
1561 which the commissioner determines may adversely affect the
1562 interests of the insurer's policyholders.

1563
1564 Nothing in this subsection shall be deemed to authorize or
1565 permit any transactions which, in the case of an insurer that is
1566 not a member of the same insurance holding company system, would

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1567 otherwise be contrary to law.

1568 (3) ADDITIONAL PRECLUDED TRANSACTION.—A domestic insurer
1569 may not enter into transactions that are part of a plan or
1570 series of like transactions with persons within the insurance
1571 holding company system if the purpose of those separate
1572 transactions is to avoid the statutory threshold amount and thus
1573 avoid the review that would occur otherwise. If the commissioner
1574 determines that separate transactions were entered into over any
1575 12-month period for that purpose, the commissioner may exercise
1576 his or her authority under the Insurance Code or s. 628.803.

1577 (4) REVIEW OF TRANSACTIONS.—The commissioner, in reviewing
1578 transactions pursuant to this section, shall consider whether
1579 the transactions comply with the standards set forth in this
1580 section and whether they may adversely affect the interests of
1581 policyholders.

1582 (5) NOTIFICATION.—The commissioner shall be notified within
1583 30 days of any investment of the domestic insurer in any one
1584 corporation if the total investment in the corporation by the
1585 insurance holding company system exceeds 10 percent of the
1586 corporation's voting securities.

1587 (6) DIVIDENDS AND OTHER DISTRIBUTIONS.—

1588 (a) No domestic insurer shall pay any extraordinary
1589 dividend or make any other extraordinary distribution to its
1590 shareholders until 30 days after the commissioner has received
1591 notice of the declaration thereof and has not within that period
1592 disapproved the payment, or until the commissioner has approved
1593 the payment within the 30-day period.

1594 (b) For purposes of this section, an extraordinary dividend
1595 or distribution includes any dividend or distribution of cash or

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1596 other property, whose fair market value together with that of
1597 other dividends or distributions made within the preceding 12
1598 months exceeds the lesser of:

- 1599 1. Ten percent of the insurer's surplus as regards
1600 policyholders as of the 31st day of December next preceding; or
1601 2. The net gain after taxes from operations of the insurer,
1602 if the insurer is a life insurer, or the net income after taxes,
1603 if the insurer is not a life insurer, not including realized
1604 capital gains, for the 12-month period ending the 31st day of
1605 December next preceding, excluding pro rata distributions of any
1606 class of the insurer's own securities.

1607 (c) In determining whether a dividend or distribution is
1608 extraordinary, an insurer other than a life insurer may carry
1609 forward net income from the previous 2 calendar years that has
1610 not already been paid out as dividends. This carryforward shall
1611 be computed by taking the net income from the second and third
1612 preceding calendar years, not including realized capital gains,
1613 less dividends paid in the second and immediate preceding
1614 calendar years.

1615 (d) Notwithstanding any other provision of law, an insurer
1616 may declare an extraordinary dividend or distribution which is
1617 conditional upon the commissioner's approval, and the
1618 declaration shall confer no rights upon shareholders until:

- 1619 1. The commissioner has approved the payment of the
1620 dividend or distribution; or
1621 2. The commissioner has not disapproved payment within the
1622 30-day period provided for in this subsection.

1623 (7) MANAGEMENT OF DOMESTIC INSURERS SUBJECT TO
1624 REGISTRATION.—

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1625 (a) Notwithstanding the control of a domestic insurer by
1626 any person, the officers and directors of the insurer may not
1627 thereby be relieved of any obligation or liability to which they
1628 would otherwise be subject by law, and the insurer shall be
1629 managed so as to assure its separate operating identity
1630 consistent with this section.

1631 (b) Nothing in this section shall preclude a domestic
1632 insurer from having or sharing a common management or
1633 cooperative or joint use of personnel, property, or services
1634 with one or more other persons under arrangements meeting the
1635 standards of this section.

1636 (c) Not less than one-third of the directors of a domestic
1637 insurer and not less than one-third of the members of each
1638 committee of the board of directors of any domestic insurer
1639 shall be persons who are not officers or employees of the
1640 insurer or of any entity controlling, controlled by, or under
1641 common control with the insurer and who are not beneficial
1642 owners of a controlling interest in the voting stock of the
1643 insurer or entity. At least one such person must be included in
1644 any quorum for the transaction of business at any meeting of the
1645 board of directors or any committee thereof.

1646 (d) The board of directors of a domestic insurer shall
1647 establish one or more committees comprised solely of directors
1648 who are not officers or employees of the insurer or of any
1649 entity controlling, controlled by, or under common control with
1650 the insurer and who are not beneficial owners of a controlling
1651 interest in the voting stock of the insurer or any such entity.
1652 The committee or committees shall have responsibility for
1653 nominating candidates for director for election by shareholders

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1654 or policyholders, evaluating the performance of officers deemed
1655 to be principal officers of the insurer, and recommending to the
1656 board of directors the selection and compensation of the
1657 principal officers.

1658 (e) The provisions of paragraphs (c) and (d) do not apply
1659 to a domestic insurer if the person controlling the insurer,
1660 such as an insurer, a mutual insurance holding company, or a
1661 publicly held corporation, has a board of directors and
1662 committees thereof that meet the requirements of paragraphs (c)
1663 and (d) with respect to such controlling entity.

1664 (f) An insurer may make application to the commissioner for
1665 a waiver from the requirements of this subsection, if the
1666 insurer's annual direct written and assumed premium, excluding
1667 premiums reinsured with the Federal Crop Insurance Corporation
1668 and the federal flood insurance program, is less than \$300
1669 million. An insurer may also make application to the
1670 commissioner for a waiver from the requirements of this
1671 subsection based on unique circumstances. The commissioner may
1672 consider various factors including, but not limited to, the type
1673 of business entity, volume of business written, availability of
1674 qualified board members, or the ownership or organizational
1675 structure of the entity.

1676 (8) ADEQUACY OF SURPLUS.—For purposes of this section, in
1677 determining whether an insurer's surplus as regards
1678 policyholders is reasonable in relation to the insurer's
1679 outstanding liabilities and adequate to meet its financial
1680 needs, the following factors, among others, shall be considered:

1681 (a) The size of the insurer as measured by its assets,
1682 capital and surplus, reserves, premium writings, insurance in

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- 1683 force, and other appropriate criteria.
- 1684 (b) The extent to which the insurer's business is
- 1685 diversified among several lines of insurance.
- 1686 (c) The number and size of risks insured in each line of
- 1687 business.
- 1688 (d) The extent of the geographical dispersion of the
- 1689 insurer's insured risks.
- 1690 (e) The nature and extent of the insurer's reinsurance
- 1691 program.
- 1692 (f) The quality, diversification, and liquidity of the
- 1693 insurer's investment portfolio.
- 1694 (g) The recent past and projected future trend in the size
- 1695 of the insurer's investment portfolio.
- 1696 (h) The surplus as regards policyholders maintained by
- 1697 other comparable insurers.
- 1698 (i) The adequacy of the insurer's reserves.
- 1699 (j) The quality and liquidity of investments in affiliates.
- 1700 The commissioner may treat any such investment as a disallowed
- 1701 asset for purposes of determining the adequacy of surplus as
- 1702 regards policyholders whenever in the judgment of the
- 1703 commissioner the investment so warrants.

1704 Section 6. Section 628.8012, Florida Statutes, is created
 1705 to read:

1706 628.8012 Supervisory colleges.-

1707 (1) POWER OF COMMISSIONER.-With respect to any insurer
 1708 registered under this part and in accordance with subsection
 1709 (3), the commissioner shall have the power to participate in a
 1710 supervisory college for any domestic insurer that is part of an
 1711 insurance holding company system with international operations

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1712 in order to determine compliance by the insurer with this part.
1713 The powers of the commissioner with respect to supervisory
1714 colleges include, but are not limited to, the following:
1715 (a) Initiating the establishment of a supervisory college.
1716 (b) Clarifying the membership and participation of other
1717 supervisors in the supervisory college.
1718 (c) Clarifying the functions of the supervisory college and
1719 the role of other regulators, including the establishment of a
1720 group-wide supervisor.
1721 (d) Coordinating the ongoing activities of the supervisory
1722 college, including planning meetings, supervisory activities,
1723 and processes for information sharing.
1724 (e) Establishing a crisis management plan.
1725 (2) EXPENSES.—Each registered insurer subject to this
1726 section shall be liable for and shall pay the reasonable
1727 expenses of the commissioner's participation in a supervisory
1728 college in accordance with subsection (3), including reasonable
1729 travel expenses. For purposes of this section, a supervisory
1730 college may be convened as either a temporary or permanent forum
1731 for communication and cooperation between the regulators charged
1732 with the supervision of the insurer or its affiliates, and the
1733 commissioner may establish a regular assessment to the insurer
1734 for the payment of these expenses.
1735 (3) SUPERVISORY COLLEGE.—In order to assess the business
1736 strategy, financial position, legal and regulatory position,
1737 risk exposure, risk management, and governance processes, and as
1738 part of the examination of individual insurers, the commissioner
1739 may participate in a supervisory college with other regulators
1740 charged with supervision of the insurer or its affiliates,

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1741 including other state, federal, and international regulatory
1742 agencies. The commissioner may enter into agreements in
1743 accordance with this chapter, providing the basis for
1744 cooperation between the commissioner, other regulatory agencies,
1745 and the supervisory college. Nothing in this section shall
1746 delegate to the supervisory college the authority of the
1747 commissioner to regulate or supervise the insurer or its
1748 affiliates within its jurisdiction.

1749 Section 7. Section 628.8013, Florida Statutes, is created
1750 to read:

1751 628.8013 Rules and regulations.—The commissioner may, upon
1752 notice and opportunity for all interested persons to be heard,
1753 issue such rules, regulations, and orders necessary to carry out
1754 the provisions of this part.

1755 Section 8. Section 628.8014, Florida Statutes, is created
1756 to read:

1757 628.8014 Voting of securities.—A security which is the
1758 subject of any agreement or arrangement regarding acquisition,
1759 or which is acquired or to be acquired, in contravention of any
1760 statute or rule adopted thereunder, may not be voted at any
1761 shareholder's meeting or counted for quorum purposes, and any
1762 action of shareholders requiring the affirmative vote of a
1763 percentage of shares may be taken as though such securities were
1764 not issued and outstanding. However, an action taken at any such
1765 meeting may not be invalidated by the voting of such securities
1766 unless the action would materially affect the control of the
1767 insurer or unless a court of competent jurisdiction has so
1768 ordered. If the office has reason to believe that any security
1769 of the insurer has been or is about to be acquired in

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1770 contravention of s. 628.461, or this chapter, the office may
1771 pursue its remedies pursuant to ss. 628.802 and 628.803.

1772 Section 9. Section 628.802, Florida Statutes, is amended to
1773 read:

1774 (Substantial rewording of section. See
1775 s. 628.802, F.S., for present text.)

1776 628.802 Injunctions; prohibitions against voting
1777 securities; sequestration of voting securities.-

1778 (1) INJUNCTIONS.-Whenever it appears to the commissioner
1779 that any insurer or any director, officer, employee, or agent
1780 thereof has committed or is about to commit a violation of this
1781 part or of any rule, regulation, or order issued by the
1782 commissioner thereunder, the commissioner may apply to the
1783 circuit court for the county in which the principal officer of
1784 the insurer is located or, if the insurer has no office in this
1785 state, to the Circuit Court for Leon County for an order
1786 enjoining the insurer or director, officer, employee or agent
1787 thereof from violating or continuing to violate this part or any
1788 rule, regulation or order, and for such other equitable relief
1789 as the nature of the case and the interest of the insurer's
1790 policyholders, creditors, and shareholders or the public may
1791 require.

1792 (2) VOTING OF SECURITIES; WHEN PROHIBITED.-No security
1793 which is the subject of any agreement or arrangement regarding
1794 acquisition, or which is acquired or to be acquired, in
1795 contravention of the provisions of this part or of any rule,
1796 regulation, or order issued by the commissioner thereunder may
1797 be voted at any shareholder's meeting, or may be counted for
1798 quorum purposes, and any action of shareholders requiring the

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1799 affirmative vote of a percentage of shares may be taken as
1800 though the securities were not issued and outstanding. However,
1801 no action taken at any such meeting shall be invalidated by the
1802 voting of the securities, unless the action would materially
1803 affect control of the insurer or unless the courts of this state
1804 have so ordered. If an insurer or the commissioner has reason to
1805 believe that any security of the insurer has been or is about to
1806 be acquired in contravention of the provisions of this part or
1807 of any rule, regulation, or order issued by the commissioner
1808 hereunder, the insurer or the commissioner may apply to the
1809 circuit court for the county in which the insurer has its
1810 principal place of business to enjoin any offer, request,
1811 invitation, agreement, or acquisition made in contravention of
1812 s. 628.461 or any rule, regulation, or order issued by the
1813 commissioner thereunder to enjoin the voting of any security so
1814 acquired, to void any vote of the security already cast at any
1815 meeting of shareholders, and for such other equitable relief as
1816 the nature of the case and the interest of the insurer's
1817 policyholders, creditors, and shareholders or the public may
1818 require.

1819 (3) SEQUESTRATION OF VOTING SECURITIES.—In any case where a
1820 person has acquired or is proposing to acquire any voting
1821 securities in violation of this part or any rule, regulation, or
1822 order issued by the commissioner hereunder, the circuit court
1823 for Leon County or the circuit court for the county in which the
1824 insurer has its principal place of business may, on such notice
1825 as the court deems appropriate, upon the application of the
1826 insurer or the commissioner, seize or sequester any voting
1827 securities of the insurer owned directly or indirectly by the

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1828 person, and issue such order as may be appropriate to effectuate
1829 the provisions of this part.

1830 (4) SITUS OF OWNERSHIP.—Notwithstanding any other
1831 provisions of law, for the purposes of this part, the situs of
1832 the ownership of the securities of domestic insurers shall be
1833 deemed to be in this state.

1834 Section 10. Section 628.803, Florida Statutes, is amended
1835 to read:

1836 (Substantial rewording of section. See
1837 s. 628.803, F.S., for present text.)
1838 628.803 Sanctions.—

1839 (1) Any insurer failing, without just cause, to file any
1840 registration statement as required under this part shall be
1841 required, after notice and hearing, to pay a penalty of \$1,000
1842 for each day's delay, to be recovered by the commissioner.
1843 Penalties so recovered shall be paid into the General Revenue
1844 Fund. The maximum penalty under this section is \$500,000. The
1845 commissioner may reduce the penalty if the insurer demonstrates
1846 to the commissioner that the imposition of the penalty would
1847 constitute a financial hardship to the insurer.

1848 (2) Every director or officer of an insurance holding
1849 company system who knowingly violates, participates in, or
1850 assents to, or who knowingly permits any of the officers or
1851 agents of the insurer to engage in, transactions or the making
1852 of investments which have not been properly reported or
1853 submitted pursuant to the Insurance Code or which violate this
1854 act, shall, in their individual capacity, pay a civil forfeiture
1855 of not more than \$1,000 per violation after notice and hearing
1856 before the commissioner. In determining the amount of the civil

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1857 forfeiture, the commissioner shall take into account the
1858 appropriateness of the forfeiture with respect to the gravity of
1859 the violation, the history of previous violations, and such
1860 other matters as justice may require.

1861 (3) Whenever it appears to the commissioner that any
1862 insurer subject to this part or any director, officer, employee,
1863 or agent thereof has engaged in any transaction or entered into
1864 a contract which is subject to s. 628.8011 and which would not
1865 have been approved had approval been requested, the commissioner
1866 may order the insurer to cease and desist immediately from any
1867 further activity under that transaction or contract. After
1868 notice and hearing, the commissioner may also order the insurer
1869 to void any contracts and restore the status quo if the action
1870 is in the best interests of the policyholders, creditors, or the
1871 public.

1872 (4) Whenever it appears to the commissioner that any
1873 insurer or any director, officer, employee, or agent thereof has
1874 committed a willful violation of this part, the commissioner may
1875 cause criminal proceedings to be instituted by the circuit court
1876 for the county in which the principal office of the insurer is
1877 located or, if the insurer has no office in this state, by the
1878 circuit court for Leon County against the insurer or the
1879 responsible director, officer, employee, or agent thereof. Any
1880 insurer which willfully violates this part may be fined not more
1881 than \$1 million. Any individual who willfully violates this part
1882 may be fined in his or her individual capacity not more than
1883 \$500,000 or be imprisoned for not more than one to 3 years, or
1884 both.

1885 (5) Any officer, director, or employee of an insurance

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1886 holding company system who willfully and knowingly subscribes to
 1887 or makes or causes to be made any false statements or false
 1888 reports or false filings with the intent to deceive the
 1889 commissioner in the performance of his or her duties under this
 1890 part, upon conviction shall be imprisoned for not more than 3
 1891 years or fined \$500,000 or both. Any fines imposed shall be paid
 1892 by the officer, director, or employee in his or her individual
 1893 capacity.

1894 (6) Whenever it appears to the commissioner that any person
 1895 has committed a violation of chapter 628, which violation
 1896 prevents the full understanding of the enterprise risk to the
 1897 insurer by affiliates or by the insurance holding company
 1898 system, the violation may serve as an independent basis for
 1899 disapproving dividends or distributions and for placing the
 1900 insurer under an order of supervision in accordance with part VI
 1901 of chapter 624.

1902 Section 11. Section 636.065, Florida Statutes, is amended
 1903 to read:

1904 636.065 Acquisitions.—Each prepaid limited health service
 1905 organization is subject to the provisions of s. 628.461
 1906 ~~628.4615~~.

1907 Section 12. Section 641.255, Florida Statutes, is amended
 1908 to read:

1909 641.255 Acquisition, merger, or consolidation.—

1910 (1) Every acquisition of a health maintenance organization
 1911 shall be subject to the provisions of s. 628.461 ~~628.4615~~.
 1912 However, in the case of a health maintenance organization
 1913 organized as a for-profit corporation, the provisions of s.
 1914 628.451 govern with respect to any merger or consolidation; and,

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1915 in the case of a health maintenance organization organized as a
1916 not-for-profit corporation, the provisions of s. 628.471 govern
1917 with respect to any merger or consolidation.

1918 (2) In addition to the requirements set forth in ss.
1919 628.451, 628.461 ~~628.4615~~, and 628.471, each party to any
1920 transaction involving any licensee which, as indicated in its
1921 most recent quarterly or annual statement, derives income from
1922 Medicaid funds shall in the filing made with the office
1923 identify:

1924 (a) Any person who has received any payment from either
1925 party or any person on that party's behalf; or

1926 (b) The existence of any agreement entered into by either
1927 party or by any person on that party's behalf to pay a
1928 consultant fee, a broker fee, a commission, or other fee or
1929 charge,

1930
1931 which in any way relates to the acquisition, merger, or
1932 consolidation. The commission may adopt a form to be made part
1933 of the application which is to be sworn to by an officer of the
1934 entity which made or will make the payment. The form shall
1935 include the name of the person or entity paying the fee; the
1936 name of the person or entity receiving the fee; the date of
1937 payment; and a brief description of the work performed.

1938 Section 13. Section 641.416, Florida Statutes, is amended
1939 to read:

1940 641.416 Acquisition.—Every prepaid health clinic shall be
1941 subject to the provisions of s. 628.461 ~~628.4615~~.

1942 Section 14. Section 651.024, Florida Statutes, is amended
1943 to read:

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1944 651.024 Acquisition.—A person issued a certificate of
1945 authority to operate a continuing care facility or a provisional
1946 certificate of authority shall be subject to the provisions of
1947 s. 628.461 ~~628.4615~~.

1948 Section 15. For the purpose of incorporating the amendment
1949 made by this act to section 628.461, Florida Statutes, in a
1950 reference thereto, subsection (3) of section 48.151, Florida
1951 Statutes, is reenacted to read:

1952 48.151 Service on statutory agents for certain persons.—

1953 (3) The Chief Financial Officer or his or her assistant or
1954 deputy or another person in charge of the office is the agent
1955 for service of process on all insurers applying for authority to
1956 transact insurance in this state, all licensed nonresident
1957 insurance agents, all nonresident disability insurance agents
1958 licensed pursuant to s. 626.835, any unauthorized insurer under
1959 s. 626.906 or s. 626.937, domestic reciprocal insurers,
1960 fraternal benefit societies under chapter 632, warranty
1961 associations under chapter 634, prepaid limited health service
1962 organizations under chapter 636, and persons required to file
1963 statements under s. 628.461.

1964 Section 16. For the purpose of incorporating the amendments
1965 made by this act to sections 628.461 and 628.4615, Florida
1966 Statutes, in references thereto, paragraph (a) of subsection (1)
1967 of section 624.310, Florida Statutes, is reenacted to read:

1968 624.310 Enforcement; cease and desist orders; removal of
1969 certain persons; fines.—

1970 (1) DEFINITIONS.—For the purposes of this section, the
1971 term:

1972 (a) "Affiliated party" means any person who directs or

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1973 participates in the conduct of the affairs of a licensee and who
 1974 is:

1975 1. A director, officer, employee, trustee, committee
 1976 member, or controlling stockholder of a licensee or a subsidiary
 1977 or service corporation of the licensee, other than a controlling
 1978 stockholder which is a holding company, or an agent of a
 1979 licensee or a subsidiary or service corporation of the licensee;

1980 2. A person who has filed or is required to file a
 1981 statement or any other information required to be filed under s.
 1982 628.461 or s. 628.4615;

1983 3. A stockholder, other than a stockholder that is a
 1984 holding company of the licensee, who participates in the conduct
 1985 of the affairs of the licensee;

1986 4. An independent contractor who:

1987 a. Renders a written opinion required by the laws of this
 1988 state under her or his professional credentials on behalf of the
 1989 licensee, which opinion is reasonably relied on by the
 1990 department or office in the performance of its duties; or

1991 b. Affirmatively and knowingly conceals facts, through a
 1992 written misrepresentation to the department or office, with
 1993 knowledge that such misrepresentation:

1994 (I) Constitutes a violation of the insurance code or a
 1995 lawful rule or order of the department, commission, or office;
 1996 and

1997 (II) Directly and materially endangers the ability of the
 1998 licensee to meet its obligations to policyholders; or

1999 5. A third-party marketer who aids or abets a licensee in a
 2000 violation of the insurance code relating to the sale of an
 2001 annuity to a person 65 years of age or older.

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2003 For the purposes of this subparagraph, any representation of
2004 fact made by an independent contractor on behalf of a licensee,
2005 affirmatively communicated as a representation of the licensee
2006 to the independent contractor, shall not be considered a
2007 misrepresentation by the independent contractor.

2008 Section 17. For the purpose of incorporating the amendment
2009 made by this act to section 628.461, Florida Statutes, in a
2010 reference thereto, section 625.765, Florida Statutes, is
2011 reenacted to read:

2012 625.765 Exemptions from ss. 625.75 and 625.76.—The
2013 commission may adopt by rule exemptions from ss. 625.75 and
2014 625.76 for transactions that are not subject to s. 628.461 and
2015 that are the result of proceedings in probate, incompetency, or
2016 bankruptcy; sales of securities by odd-lot securities dealers;
2017 small transactions by gift which do not exceed \$3,000 over any
2018 6-month period; transactions that are effected in connection
2019 with the distribution of a substantial block of securities;
2020 acquisitions of shares of stock and stock options under a stock
2021 bonus plan, stock option plan, or similar plan; securities
2022 acquired by redeeming other securities by an insurer;
2023 consolidations or mergers of insurers that hold over 85 percent
2024 of the companies being merged or consolidated; acquisitions or
2025 dispositions of an equity security involved in the deposit of
2026 the security under, or the withdrawal of the security from, a
2027 voting trust or deposit agreement; and conversions of an
2028 insurer's equity securities into another equity security of the
2029 same insurer. The commission may limit by rule the scope of
2030 exemptions and provide conditions for exemptions as necessary to

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2031 maintain the purpose and intent of ss. 625.75 and 625.76 and
2032 prevent the circumvention of ss. 625.75 and 625.76.

2033 Section 18. For the purpose of incorporating the amendment
2034 made by this act to section 628.461, Florida Statutes, in a
2035 reference thereto, subsection (2) of section 628.705, Florida
2036 Statutes, is reenacted to read:

2037 628.705 Prohibition of stock transfers.—

2038 (2) Voting shares of the capital stock of a subsidiary
2039 insurance company or the intermediate holding company may not be
2040 acquired by any affiliated member of the holding company system
2041 except where the affiliated member of the mutual holding company
2042 system is the majority shareholder. A number of shares equal to
2043 5 percent of the outstanding voting shares of the capital stock
2044 of one corporate member of the Mutual Insurance Holding Company
2045 System selected by the mutual insurance holding company may be
2046 issued or sold to directors and officers as part of a plan of
2047 compensation, and such shares shall not be considered part of
2048 the majority shares to be owned by the mutual insurance company
2049 under subsection (1). A number of shares equal to an additional
2050 5 percent of the outstanding voting shares of the capital stock
2051 of one corporate member of the Mutual Insurance Holding Company
2052 System selected by the mutual insurance holding company may be
2053 issued or sold to employees, which may not include any officer
2054 or director, as part of an employee stock dividend or benefit
2055 plan, and such shares shall not be considered part of the
2056 majority shares to be owned by the mutual insurance company
2057 under subsection (1). Prior to issuance of shares in excess of
2058 the authorized 5 percent to either officers and directors or
2059 employees, pursuant to this section, a fairness opinion shall be

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2060 rendered by an independent authority acceptable to the office to
2061 assure that the long term interests of the shareholders and
2062 policyholders are adequately protected. The office shall approve
2063 or disapprove the transaction within 30 days after receipt of
2064 the fairness opinion. Nothing in this section prohibits any
2065 officer or director from purchasing shares of stock at market
2066 value which are not part of a plan of compensation, in
2067 accordance with the requirements of s. 628.461, and, if such
2068 stock is not regularly traded on a national stock exchange, the
2069 officer or director purchasing the shares of stock is
2070 responsible for establishing its market value.

2071 Section 19. For the purpose of incorporating the amendment
2072 made by this act to sections 628.461 and 628.4615, Florida
2073 Statutes, in references thereto, subsection (7) of section
2074 631.051, Florida Statutes, is reenacted to read:

2075 631.051 Grounds for rehabilitation; domestic insurers.—The
2076 department may petition for an order directing it to
2077 rehabilitate a domestic insurer or an alien insurer domiciled in
2078 this state on any one or more of the following grounds, that the
2079 insurer:

2080 (7) Has transferred or attempted to transfer substantially
2081 its entire property or business, or has entered into any
2082 transaction the effect of which is to merge substantially its
2083 entire property or business into that of any other insurer or
2084 entity without having first obtained the written approval of the
2085 office under the provisions of s. 628.451, s. 628.461, or s.
2086 628.4615, as the case may be;

2087 Section 20. For the purpose of incorporating the amendment
2088 made by this act to section 628.4615, Florida Statutes, in a

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2089 reference thereto, subsection (20) of section 409.912, Florida
2090 Statutes, is reenacted to read:

2091 409.912 Cost-effective purchasing of health care.—The
2092 agency shall purchase goods and services for Medicaid recipients
2093 in the most cost-effective manner consistent with the delivery
2094 of quality medical care. To ensure that medical services are
2095 effectively utilized, the agency may, in any case, require a
2096 confirmation or second physician's opinion of the correct
2097 diagnosis for purposes of authorizing future services under the
2098 Medicaid program. This section does not restrict access to
2099 emergency services or poststabilization care services as defined
2100 in 42 C.F.R. part 438.114. Such confirmation or second opinion
2101 shall be rendered in a manner approved by the agency. The agency
2102 shall maximize the use of prepaid per capita and prepaid
2103 aggregate fixed-sum basis services when appropriate and other
2104 alternative service delivery and reimbursement methodologies,
2105 including competitive bidding pursuant to s. 287.057, designed
2106 to facilitate the cost-effective purchase of a case-managed
2107 continuum of care. The agency shall also require providers to
2108 minimize the exposure of recipients to the need for acute
2109 inpatient, custodial, and other institutional care and the
2110 inappropriate or unnecessary use of high-cost services. The
2111 agency shall contract with a vendor to monitor and evaluate the
2112 clinical practice patterns of providers in order to identify
2113 trends that are outside the normal practice patterns of a
2114 provider's professional peers or the national guidelines of a
2115 provider's professional association. The vendor must be able to
2116 provide information and counseling to a provider whose practice
2117 patterns are outside the norms, in consultation with the agency,

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2118 to improve patient care and reduce inappropriate utilization.
2119 The agency may mandate prior authorization, drug therapy
2120 management, or disease management participation for certain
2121 populations of Medicaid beneficiaries, certain drug classes, or
2122 particular drugs to prevent fraud, abuse, overuse, and possible
2123 dangerous drug interactions. The Pharmaceutical and Therapeutics
2124 Committee shall make recommendations to the agency on drugs for
2125 which prior authorization is required. The agency shall inform
2126 the Pharmaceutical and Therapeutics Committee of its decisions
2127 regarding drugs subject to prior authorization. The agency is
2128 authorized to limit the entities it contracts with or enrolls as
2129 Medicaid providers by developing a provider network through
2130 provider credentialing. The agency may competitively bid single-
2131 source-provider contracts if procurement of goods or services
2132 results in demonstrated cost savings to the state without
2133 limiting access to care. The agency may limit its network based
2134 on the assessment of beneficiary access to care, provider
2135 availability, provider quality standards, time and distance
2136 standards for access to care, the cultural competence of the
2137 provider network, demographic characteristics of Medicaid
2138 beneficiaries, practice and provider-to-beneficiary standards,
2139 appointment wait times, beneficiary use of services, provider
2140 turnover, provider profiling, provider licensure history,
2141 previous program integrity investigations and findings, peer
2142 review, provider Medicaid policy and billing compliance records,
2143 clinical and medical record audits, and other factors. Providers
2144 shall not be entitled to enrollment in the Medicaid provider
2145 network. The agency shall determine instances in which allowing
2146 Medicaid beneficiaries to purchase durable medical equipment and

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2147 other goods is less expensive to the Medicaid program than long-
2148 term rental of the equipment or goods. The agency may establish
2149 rules to facilitate purchases in lieu of long-term rentals in
2150 order to protect against fraud and abuse in the Medicaid program
2151 as defined in s. 409.913. The agency may seek federal waivers
2152 necessary to administer these policies.

2153 (20) When a merger or acquisition of a Medicaid prepaid
2154 contractor has been approved by the Office of Insurance
2155 Regulation pursuant to s. 628.4615, the agency shall approve the
2156 assignment or transfer of the appropriate Medicaid prepaid
2157 contract upon request of the surviving entity of the merger or
2158 acquisition if the contractor and the other entity have been in
2159 good standing with the agency for the most recent 12-month
2160 period, unless the agency determines that the assignment or
2161 transfer would be detrimental to the Medicaid recipients or the
2162 Medicaid program. To be in good standing, an entity must not
2163 have failed accreditation or committed any material violation of
2164 the requirements of s. 641.52 and must meet the Medicaid
2165 contract requirements. For purposes of this section, a merger or
2166 acquisition means a change in controlling interest of an entity,
2167 including an asset or stock purchase.

2168 Section 21. For the purpose of incorporating the amendment
2169 made by this act to section 628.4615, Florida Statutes, in a
2170 reference thereto, paragraph (b) of subsection (1) of section
2171 624.80, Florida Statutes, is reenacted to read:

2172 624.80 Definitions.—As used in this part:

2173 (1) "Insurer" means and includes every person as defined in
2174 s. 624.03 as limited to:

2175 (b) Any specialty insurer as that term is defined in s.

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2176 628.4615.

2177 Section 22. For the purpose of incorporating the amendment
2178 made by this act to section 628.4615, Florida Statutes, in a
2179 reference thereto, section 626.9928, Florida Statutes, is
2180 reenacted to read:

2181 626.9928 Acquisitions.—Acquisition of interest in a
2182 viatical settlement provider is subject to s. 628.4615.

2183 Section 23. For the purpose of incorporating the amendment
2184 made by this act to section 628.4615, Florida Statutes, in a
2185 reference thereto, section 634.252, Florida Statutes, is
2186 reenacted to read:

2187 634.252 Acquisition.—Every motor vehicle service agreement
2188 company shall be subject to the provisions of s. 628.4615.

2189 Section 24. For the purpose of incorporating the amendment
2190 made by this act to section 628.4615, Florida Statutes, in a
2191 reference thereto, section 634.3073, Florida Statutes, is
2192 reenacted to read:

2193 634.3073 Acquisition.—Every home warranty association shall
2194 be subject to the provisions of s. 628.4615.

2195 Section 25. For the purpose of incorporating the amendment
2196 made by this act to section 628.4615, Florida Statutes, in a
2197 reference thereto, section 634.4085, Florida Statutes, is
2198 reenacted to read:

2199 634.4085 Acquisition.—Except for manufacturers as defined
2200 in this part, every service warranty association shall be
2201 subject to the provisions of s. 628.4615.

2202 Section 26. For the purpose of incorporating the amendment
2203 made by this act to section 628.4615, Florida Statutes, in a
2204 reference thereto, section 636.065, Florida Statutes, is

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2205 reenacted to read:

2206 636.065 Acquisitions.—Each prepaid limited health service
2207 organization is subject to the provisions of s. 628.4615.

2208 Section 27. For the purpose of incorporating the amendment
2209 made by this act to section 628.4615, Florida Statutes, in a
2210 reference thereto, subsection (5) of section 642.032, Florida
2211 Statutes, is reenacted to read:

2212 642.032 Provisions of general insurance law applicable to
2213 legal expense insurance corporations.—The following provisions
2214 of the Florida Insurance Code shall apply to legal expense
2215 insurance corporations, to the extent that they are not
2216 inconsistent with the provisions of ss. 642.011-642.049:

2217 (5) Section 628.4615, specialty insurers; acquisition of
2218 controlling stock, ownership interest, assets, or control;
2219 merger or consolidation.

2220 Section 28. For the purpose of incorporating the amendment
2221 made by this act to section 628.801, Florida Statutes, in a
2222 reference thereto, paragraph (b) of subsection (6), paragraph
2223 (f) of subsection (8), and paragraph (f) of subsection (9) of
2224 section 626.7492, Florida Statutes, is reenacted to read:

2225 626.7492 Reinsurance intermediaries.—

2226 (6) DUTIES OF INSURERS USING THE SERVICES OF A REINSURANCE
2227 INTERMEDIARY BROKER.—

2228 (b) An insurer may not employ an individual who is employed
2229 by a reinsurance intermediary broker with which it transacts
2230 business, unless the reinsurance intermediary broker is under
2231 common control with the insurer and subject to ss. 628.801,
2232 628.802, and 628.803.

2233 (8) PROHIBITED ACTS.—The reinsurance intermediary manager

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2234 shall not:

2235 (f) Jointly employ an individual who is employed by the
2236 reinsurer, unless such reinsurance intermediary manager is under
2237 common control with the reinsurer subject to ss. 628.801,
2238 628.802, and 628.803.

2239 (9) DUTIES OF REINSURERS USING THE SERVICES OF A
2240 REINSURANCE INTERMEDIARY MANAGER.—

2241 (f) A reinsurer shall not appoint to its board of directors
2242 any officer, director, employee, controlling shareholder, or
2243 subproducer of its reinsurance intermediary manager. This
2244 paragraph shall not apply to relationships governed by ss.
2245 628.801, 628.802, and 628.803 or, if applicable, this section.

2246 Section 29. For the purpose of incorporating the amendment
2247 made by this act to section 628.801, Florida Statutes, in a
2248 reference thereto, paragraph (d) of subsection (2) of section
2249 626.918, Florida Statutes, is reenacted to read:

2250 626.918 Eligible surplus lines insurers.—

2251 (2) An unauthorized insurer may not be or become an
2252 eligible surplus lines insurer unless made eligible by the
2253 office in accordance with the following conditions:

2254 (d)1.a. The insurer must have and maintain surplus as to
2255 policyholders of not less than \$15 million; in addition, an
2256 alien insurer must also have and maintain in the United States a
2257 trust fund for the protection of all its policyholders in the
2258 United States under terms deemed by the office to be reasonably
2259 adequate, in an amount not less than \$5.4 million. Any such
2260 surplus as to policyholders or trust fund shall be represented
2261 by investments consisting of eligible investments for like funds
2262 of like domestic insurers under part II of chapter 625 provided,

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2263 however, that in the case of an alien insurance company, any
2264 such surplus as to policyholders may be represented by
2265 investments permitted by the domestic regulator of such alien
2266 insurance company if such investments are substantially similar
2267 in terms of quality, liquidity, and security to eligible
2268 investments for like funds of like domestic insurers under part
2269 II of chapter 625. Clean, irrevocable, unconditional, and
2270 evergreen letters of credit issued or confirmed by a qualified
2271 United States financial institution, as defined in subparagraph
2272 2., may be used to fund the trust.

2273 b. For those surplus lines insurers that were eligible on
2274 January 1, 1994, and that maintained their eligibility
2275 thereafter, the required surplus as to policyholders shall be:

2276 (I) On December 31, 1994, and until December 30, 1995, \$2.5
2277 million.

2278 (II) On December 31, 1995, and until December 30, 1996,
2279 \$3.5 million.

2280 (III) On December 31, 1996, and until December 30, 1997,
2281 \$4.5 million.

2282 (IV) On December 31, 1997, and until December 30, 1998,
2283 \$5.5 million.

2284 (V) On December 31, 1998, and until December 30, 1999, \$6.5
2285 million.

2286 (VI) On December 31, 1999, and until December 30, 2000, \$8
2287 million.

2288 (VII) On December 31, 2000, and until December 30, 2001,
2289 \$9.5 million.

2290 (VIII) On December 31, 2001, and until December 30, 2002,
2291 \$11 million.

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2292 (IX) On December 31, 2002, and until December 30, 2003, \$13
2293 million.

2294 (X) On December 31, 2003, and thereafter, \$15 million.

2295 c. The capital and surplus requirements as set forth in
2296 sub-subparagraph b. do not apply in the case of an insurance
2297 exchange created by the laws of individual states, where the
2298 exchange maintains capital and surplus pursuant to the
2299 requirements of that state, or maintains capital and surplus in
2300 an amount not less than \$50 million in the aggregate. For an
2301 insurance exchange which maintains funds in the amount of at
2302 least \$12 million for the protection of all insurance exchange
2303 policyholders, each individual syndicate shall maintain minimum
2304 capital and surplus in an amount not less than \$3 million. If
2305 the insurance exchange does not maintain funds in the amount of
2306 at least \$12 million for the protection of all insurance
2307 exchange policyholders, each individual syndicate shall meet the
2308 minimum capital and surplus requirements set forth in sub-
2309 subparagraph b.

2310 d. A surplus lines insurer which is a member of an
2311 insurance holding company that includes a member which is a
2312 Florida domestic insurer as set forth in its holding company
2313 registration statement, as set forth in s. 628.801 and rules
2314 adopted thereunder, may elect to maintain surplus as to
2315 policyholders in an amount equal to the requirements of s.
2316 624.408, subject to the requirement that the surplus lines
2317 insurer shall at all times be in compliance with the
2318 requirements of chapter 625.

2319

2320 The election shall be submitted to the office and shall be

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2321 effective upon the office's being satisfied that the
2322 requirements of sub-subparagraph d. have been met. The initial
2323 date of election shall be the date of office approval. The
2324 election approval application shall be on a form adopted by
2325 commission rule. The office may approve an election form
2326 submitted pursuant to sub-subparagraph d. only if it was on file
2327 with the former Department of Insurance before February 28,
2328 1998.

2329 2. For purposes of letters of credit under subparagraph 1.,
2330 the term "qualified United States financial institution" means
2331 an institution that:

2332 a. Is organized or, in the case of a United States office
2333 of a foreign banking organization, is licensed under the laws of
2334 the United States or any state.

2335 b. Is regulated, supervised, and examined by authorities of
2336 the United States or any state having regulatory authority over
2337 banks and trust companies.

2338 c. Has been determined by the office or the Securities
2339 Valuation Office of the National Association of Insurance
2340 Commissioners to meet such standards of financial condition and
2341 standing as are considered necessary and appropriate to regulate
2342 the quality of financial institutions whose letters of credit
2343 are acceptable to the office.

2344 Section 30. Section 626.7452, Florida Statutes, is amended
2345 to read:

2346 626.7452 Managing general agents; examination authority.—
2347 The acts of the managing general agent are considered to be the
2348 acts of the insurer on whose behalf it is acting. A managing
2349 general agent may be examined as if it were the insurer ~~except~~

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2350 ~~in the case where the managing general agent solely represents a~~
2351 ~~single domestic insurer.~~

2352 Section 31. Section 628.252, Florida Statutes, is created
2353 to read:

2354 628.252 Domestic property insurers; agreements, contracts,
2355 and arrangements with affiliates.-

2356 (1) Every domestic property insurer shall notify the office
2357 of its intention to enter into with affiliates all management
2358 agreements, service contracts, and cost-sharing arrangements. A
2359 domestic property insurer may enter into the agreement,
2360 contract, or arrangement only if:

2361 (a) The insurer has provided the office with at least 30
2362 days' prior written notification, or such shorter period of
2363 notification as the office, in its discretion, may permit, of
2364 its intention to enter into the agreement, contract, or
2365 arrangement.

2366 (b) The office has not disapproved the agreement, contract,
2367 or arrangement before the expiration of the applicable
2368 notification period.

2369 (2) This section does not limit any existing authority of
2370 the office.

2371 Section 32. This act shall take effect July 1, 2011.