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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 the term
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

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29 acquisition of control; providing nonapplicability;
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

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57 | controlling stock, ownership interest, assets, or
58 | control thereof, and the merger or consolidation of
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 specialty insurer; revising procedures
64 | and requirements with respect to the acquisition of a
65 | specialty insurer; requiring specified background
66 | information with respect to new officers, directors,
67 | trustees, partners, owners, or managers of a specialty
68 | insurer that is the subject of an acquisition;
69 | eliminating provisions relating to review of
70 | acquisition applications, prohibited material change
71 | in the operation of a specialty insurer or controlling
72 | company by an acquiring person, acquisition
73 | proceedings, approval and disapproval of acquisitions,
74 | burden of proof, validity of acquisitions, and
75 | unlawful representation of approval by the office,
76 | penalties therefor, and statute of limitations
77 | thereon; creating s. 628.800, F.S.; providing
78 | definitions with respect to pt. IV, ch. 628, F.S.,
79 | relating to insurance holding companies; amending s.
80 | 628.801, F.S.; substantially rewording provisions
81 | relating to registration of members of an insurance
82 | holding company system; providing procedures and
83 | requirements with respect to such registration;
84 | requiring reporting of dividends and other

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85 | distributions to shareholders; providing for
86 | termination of registration; providing for filing of
87 | consolidated registration statements; authorizing
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 timely to 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

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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
117 rulemaking authority of the commissioner; creating s.
118 628.8014, 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 knowing violation,
128 participation in, or assent to specified violative
129 transactions or the making of investments by a
130 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 pt. 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,

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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. 636.065, 641.255, 641.416, and 651.024,
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 definition of the term "affiliated
152 party," to incorporate the amendments to ss. 628.461
153 and 628.4615, F.S., in references thereto; reenacting
154 s. 625.765, F.S., relating to exemptions from
155 specified provisions of pt. IV, ch. 625, F.S.,
156 relating to domestic stock insurers and equity
157 securities, to incorporate the amendment to s.
158 628.461, F.S., in a reference thereto; reenacting s.
159 628.705(2), F.S., relating to prohibition of stock
160 transfers, to incorporate the amendment to s. 628.461,
161 F.S., in a reference thereto; reenacting s.
162 631.051(7), F.S., relating to grounds for
163 rehabilitation of a domestic insurer or alien insurer,
164 to incorporate the amendments to ss. 628.461 and
165 628.4615, F.S., in references thereto; reenacting s.
166 409.912(19), F.S., relating to cost-effective
167 purchasing of health care, to incorporate the
168 amendment to s. 628.4615, F.S., in a reference

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169 thereto; reenacting s. 624.80(1)(b), F.S., relating to
170 the definition of the term "insurer," to incorporate
171 the amendment to s. 628.4615, F.S., in a reference
172 thereto; reenacting s. 626.9928, F.S., relating to
173 acquisition of interest in a viatical settlement
174 provider, to incorporate the amendment to s. 628.4615,
175 F.S., in a reference thereto; reenacting s. 634.252,
176 F.S., relating to acquisition requirements with
177 respect to motor vehicle service agreement companies,
178 to incorporate the amendment to s. 628.4615, F.S., in
179 a reference thereto; reenacting s. 634.3073, F.S.,
180 relating to acquisition requirements with respect to
181 home warranty associations, to incorporate the
182 amendment to s. 628.4615, F.S., in a reference
183 thereto; reenacting s. 634.4085, F.S., relating to
184 acquisition requirements with respect to service
185 warranty associations, to incorporate the amendment to
186 s. 628.4615, F.S., in a reference thereto; reenacting
187 s. 642.032(5), F.S., relating to provisions of general
188 insurance law applicable to legal expense insurance
189 corporations, to incorporate the amendment to s.
190 628.4615, F.S., in a reference thereto; reenacting s.
191 626.7492(6)(b), (8)(f), and (9)(f), F.S., relating to
192 duties of insurers using the services of a reinsurance
193 intermediary broker or manager, to incorporate the
194 amendments to s. 628.801, F.S., in references thereto;
195 reenacting s. 626.918(2)(d), F.S., relating to
196 conditions of eligibility for surplus lines insurers,

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197 to incorporate the amendment to s. 628.801, F.S., in a
 198 reference thereto; providing an effective date.

199

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

201

202 Section 1. Section 628.461, Florida Statutes, is amended
 203 to read:

204 (Substantial rewording of section. See

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

206 628.461 Acquisition of controlling stock.-

207 (1) DEFINITIONS.-As used in this section, the term

208 "insurer" includes any:

209 (a) Multiple-employer welfare arrangements operating
 210 pursuant to chapter 624.

211 (b) Prepaid limited health service organizations operating
 212 under a certificate of authority issued under part I of chapter
 213 636.

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

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

218 (e) Provider of continuing care operating under a
 219 certificate of authority or provisional certificate of authority
 220 issued under chapter 651.

221 (2) FILING REQUIREMENTS.-A person may not, individually or
 222 in conjunction with any affiliated person of such person,
 223 acquire directly or indirectly, conclude a tender offer or
 224 exchange offer for, enter into any agreement to exchange

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225 securities for, or otherwise finally acquire 10 percent or more
226 of the outstanding voting securities of a domestic stock insurer
227 or of a controlling company, unless at the time the offer,
228 request, or invitation is made or the agreement is entered into,
229 or prior to the acquisition of the securities if no offer or
230 agreement is involved, such person has filed with the
231 commissioner and has sent to the insurer, a statement containing
232 the information required by this section and the offer, request,
233 invitation, agreement, or acquisition has been approved by the
234 commissioner in the manner prescribed in this section.

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

244 (b) With respect to a transaction subject to this
245 subsection, the acquiring person must also file a preacquisition
246 notification with the commissioner within 5 days of execution of
247 an agreement, which shall contain the information as prescribed
248 by the National Association of Insurance Commissioners relating
249 to those markets which cause the acquisition not to be exempted
250 from the provisions of this section. The commissioner may
251 require such additional material and information as deemed
252 necessary to determine whether the proposed acquisition, if

253 consummated, would violate the competitive standard set forth in
 254 subsection (8). Failure to file the notification may subject the
 255 violator to penalties specified in subsection (9). The waiting
 256 period required begins on the date of receipt by the
 257 commissioner of a preacquisition notification and ends on the
 258 earlier of the 30th day after the date of receipt of
 259 notification or termination of the waiting period by the
 260 commissioner. Prior to the end of the waiting period, the
 261 commissioner, on a one-time basis, may require the submission of
 262 additional needed information relevant to the proposed
 263 acquisition, in which event the waiting period shall end on the
 264 earlier of the 30th day after receipt of the additional
 265 information by the commissioner or termination of the waiting
 266 period by the commissioner.

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

276 (3) CONTENT OF STATEMENT.—

277 (a) The statement to be filed with the office and
 278 furnished to the insurer and controlling company shall be made
 279 under oath and contain the following information and any
 280 additional information as the office deems necessary to

281 determine the character, experience, ability, and other
 282 qualifications of the person or affiliated person of such person
 283 for the protection of the policyholders and shareholders of the
 284 insurer and the public:

285 1. The name and address of each person by whom or on whose
 286 behalf the merger or other acquisition of control referred to in
 287 subsection (2) is to be effected, hereinafter referred to as the
 288 "acquiring party," the background information on each natural
 289 person by whom, or on whose behalf, the acquisition is to be
 290 made, and, if the acquisition is to be made by or on behalf of a
 291 corporation, association, or trust, the identity of, and the
 292 background information specified in this section on, each
 293 director, officer, trustee, or other natural person performing
 294 duties similar to those of a director, officer, or trustee for
 295 the corporation, association, or trust or any person who
 296 controls, either directly or indirectly, the corporation,
 297 association, or trust, and:

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

302 b. Whether, during such 10-year period, the person has
 303 been the subject of any proceeding for the revocation of any
 304 license and, if so, the nature of the proceeding and the
 305 disposition of the proceeding.

306 c. Whether, during the 10-year period, the person has been
 307 the subject of any proceeding under the Federal Bankruptcy Code
 308 or whether, during the 10-year period, any corporation,

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309 partnership, firm, trust, or association in which the person was
310 a director, officer, trustee, partner, or other official has
311 been subject to any such proceeding, either during the time in
312 which the person was a director, officer, trustee, partner, or
313 other official or within 12 months thereafter.

314 d. Whether, during the 10-year period, the person has been
315 enjoined, either temporarily or permanently, by a court of
316 competent jurisdiction from violating any federal or state law
317 regulating the business of insurance, securities, or banking, or
318 from carrying out any particular practice or practices in the
319 course of the business of insurance, securities, or banking,
320 together with details as to any such event.

321 e. If the person is not an individual, a report of the
322 nature of its business operations during the past 5 years or for
323 the period of time that the person and any predecessors have
324 been in existence, whichever is less, an informative description
325 of the business intended to be conducted by the person and the
326 person's subsidiaries, and a list of all individuals who are or
327 who have been selected to become directors, trustees, or
328 executive officers of the person, or who perform or will perform
329 functions appropriate to such positions. The list must include
330 for each individual the information required under subparagraph
331 (a)1.

332 2. The source, nature, and amount of the consideration
333 used or to be used in effecting the merger or other acquisition
334 of control, a description of any transaction where funds were or
335 are to be obtained for any such purpose, including any pledge of
336 the insurer's stock or the stock of any of its subsidiaries or

337 controlling affiliates, and the identity of persons furnishing
338 consideration.

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

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

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

355 6. The amount of each class of any security referred to in
356 subsection (2) which is beneficially owned or concerning which
357 there is a right to acquire beneficial ownership by each
358 acquiring party.

359 7. A full description of any contracts, arrangement, or
360 understandings with respect to any security referred to in
361 subsection (2) in which any acquiring party is involved,
362 including, but not limited to, transfer of any of the
363 securities, joint ventures, loan or option arrangements, puts or
364 calls, guarantees of loans, guarantees against loss or

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365 guarantees of profits, division of losses or profits, or the
366 giving or withholding of proxies. The description must identify
367 the persons with whom the contracts, arrangements, or
368 understandings have been entered into.

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

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

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

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

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

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

398 14. Such additional information as the commissioner may by
 399 rule or regulation prescribe as necessary or appropriate for the
 400 protection of policyholders of the insurer or in the public
 401 interest.

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

416 (c) If any material change occurs in the facts set forth
 417 in the statement filed with the commissioner and sent to the
 418 insurer pursuant to this section, an amendment setting forth the
 419 change, together with copies of all documents and other material
 420 relevant to the change, shall be filed with the commissioner and

421 sent to the insurer within 2 business days after the person
 422 learns of the change. A material change in the operation of the
 423 insurer is a transaction which disposes of or obligates 5
 424 percent or more of the capital and surplus of the insurer. A
 425 material change in the management of the insurer is any change
 426 in management involving officers or directors of the insurer or
 427 any person of the insurer or controlling company having
 428 authority to dispose of or obligate 5 percent or more of the
 429 insurer's capital or surplus.

430 (3) ALTERNATIVE FILING MATERIALS.—If any offer, request,
 431 invitation, agreement, or acquisition referred to in subsection
 432 (2) is proposed to be made by means of a registration statement
 433 under the Securities Act of 1933, or in circumstances requiring
 434 the disclosure of similar information under the Securities
 435 Exchange Act of 1934, or under a state law requiring similar
 436 registration or disclosure, the person required to file the
 437 statement referred to in subsection (2) may utilize the
 438 documents in furnishing the information called for by that
 439 statement.

440 (4) APPROVAL BY COMMISSIONER; HEARINGS.—

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

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

448 2. The effect of the merger or other acquisition of

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449 control would be substantially to lessen competition in
450 insurance in this state or tend to create a monopoly. In
451 applying the competitive standard in this subparagraph:

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

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

457 c. The commissioner may condition the approval of the
458 merger or other acquisition on the removal of the basis of
459 disapproval within a specified period of time;

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

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

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

474 6. The natural persons for whom background information is
475 required to be furnished pursuant to this section have
476 backgrounds which indicate that it is in the best interests of

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477 the policyholders of the domestic stock insurer and in the
478 public interest to permit such persons to exercise control over
479 such domestic stock insurer;

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

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

487 9. The management of the insurer after the acquisition
488 will not include any person who has, directly or indirectly,
489 through ownership, control, reinsurance transactions, or other
490 insurance or business relations, unlawfully manipulated the
491 assets, accounts, finances, or books of any insurer or otherwise
492 acted in bad faith with respect thereto; or

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

495 (b) The public hearing under paragraph (a) shall be held
496 within 30 days after the filing of the statement required by
497 subsection (2), and at least 20 days' notice shall be given by
498 the commissioner to the person filing the statement. Not less
499 than 7 days' notice of the public hearing shall be given by the
500 person filing the statement to the insurer and to such other
501 persons as may be designated by the commissioner. The
502 commissioner shall make a determination within the 60-day period
503 preceding the effective date of the proposed transaction. At the
504 hearing, the person filing the statement, the insurer, any

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505 person to whom notice of hearing was sent, and any other person
506 whose interest may be affected shall have the right to present
507 evidence, examine and cross-examine witnesses, and offer oral
508 and written arguments and in connection therewith shall be
509 entitled to conduct discovery proceedings in the same manner as
510 is presently allowed in the circuit courts of this state. All
511 discovery proceedings shall be concluded not later than 3 days
512 prior to the commencement of the public hearing.

513 (c) If the proposed acquisition of control will require
514 the approval of more than one commissioner, the public hearing
515 referred to in paragraph (b) may be held on a consolidated basis
516 upon request of the person filing the statement referred to in
517 subsection (2). Such person shall file the statement with the
518 National Association of Insurance Commissioners within 5 days of
519 making the request for a public hearing. A commissioner may opt
520 out of a consolidated hearing and shall provide notice to the
521 applicant of the decision to do so within 10 days of the receipt
522 of the statement. A hearing conducted on a consolidated basis
523 shall be public and shall be held within the United States
524 before the commissioners of the states in which the insurers are
525 domiciled. At such hearing the commissioners shall hear and
526 receive evidence. A commissioner may attend such hearing in
527 person or by telecommunication.

528 (d) In connection with a change of control of a domestic
529 insurer, any determination by the commissioner that the person
530 acquiring control of the insurer shall be required to maintain
531 or restore the capital of the insurer to the level required by
532 the laws and regulations of this state must be made not later

533 than 60 days after the date of notification of the change in
 534 control submitted pursuant to subsection (2).

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

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

546 (6) VIOLATIONS.—The following constitute violations of
 547 this section:

548 (a) The failure to file any statement, amendment, or other
 549 material required to be filed pursuant to subsection (2) or
 550 subsection (3); or

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

554 (7) JURISDICTION; CONSENT TO SERVICE OF PROCESS.—The
 555 courts of this state are hereby vested with jurisdiction over
 556 every person not resident, domiciled, or authorized to do
 557 business in this state who files a statement with the
 558 commissioner under this section, and overall actions involving
 559 such person arising out of violations of this section. Each such
 560 person shall be deemed to have performed acts equivalent to and

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561 constituting an appointment by the person of the commissioner to
562 be his true and lawful attorney upon whom may be served all
563 lawful process in any action, suit, or proceeding arising out of
564 violations of this section. Copies of all lawful process shall
565 be served on the commissioner and transmitted by registered or
566 certified mail by the commissioner to the person at his last
567 known address.

568 (8) COMPETITIVE STANDARD.—

569 (a) As used in this subsection:

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

572 2. The term "market" means the relevant product and
573 geographical markets. In determining the relevant product and
574 geographical markets, the commissioner shall give due
575 consideration to, among other things, the definitions or
576 guidelines, if any, promulgated by the National Association of
577 Insurance Commissioners and to information, if any, submitted by
578 parties to the acquisition. In the absence of sufficient
579 information to the contrary, the relevant product market is
580 assumed to be the direct written insurance premium for a line of
581 business, such line being that used in the annual statement
582 required to be filed by insurers doing business in this state,
583 and the relevant geographical market is assumed to be this
584 state.

585 (b) The commissioner may enter an order or may send a
586 letter under subsection (9) with respect to an acquisition if
587 there is substantial evidence that the effect of the acquisition
588 may be substantially to lessen competition in any line of

589 insurance in this state or to tend to create a monopoly, or if
 590 the insurer fails to file adequate information in compliance
 591 with the preacquisition notification required by this section.

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

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

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

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

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

	<u>Insurer A</u>	<u>Insurer B</u>
612	<u>5%</u>	<u>5% or more</u>
613	<u>10%</u>	<u>4% or more</u>
614	<u>15%</u>	<u>3% or more</u>
615	<u>19%</u>	<u>1% or more</u>

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617 A highly concentrated market is one in which the share of the
618 four largest insurers is 75 percent or more of the market.
619 Percentages not shown in the tables are interpolated
620 proportionately to the percentages that are shown. If more than
621 two insurers are involved, exceeding the total of the two
622 columns in the table is prima facie evidence of violation of the
623 competitive standard in this subsection. For the purposes of
624 this paragraph, the insurer with the largest share of the market
625 is deemed to be Insurer A.

626 2. There is a significant trend toward increased
627 concentration when the aggregate market share of any grouping of
628 the largest insurers in the market, from the two largest to the
629 eighth largest, has increased by 7 percent or more of the market
630 over a period of time extending from any base year 5 to 10 years
631 prior to the acquisition up to the time of the acquisition. Any
632 acquisition or merger covered under this section involving two
633 or more insurers competing in the same market is prima facie
634 evidence of violation of the competitive standard in this
635 subsection if:

636 a. There is a significant trend toward increased
637 concentration in the market;

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

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

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

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

653 a. Market shares.
654 b. Volatility of ranking of market leaders.
655 c. Number of competitors.
656 d. Concentration.
657 e. Trend of concentration in the industry.
658 f. Ease of entry into and exit from the market.
659 (e) An order denying the acquisition may not be entered
660 if:

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

666 2. The acquisition will substantially increase the
667 availability of insurance, and the public benefits of the
668 increase exceed the public benefits which would arise from not
669 lessening competition.

670 (9) ORDERS AND PENALTIES.—

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

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

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

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

679 1. There is a hearing;

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

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

687
 688 Every order shall be accompanied by a written decision of the
 689 commissioner setting forth findings of fact and conclusions of
 690 law.

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

693 (d) Any person who violates a cease and desist order of
 694 the commissioner under this section while the order is in effect
 695 may, after notice and hearing and upon order of the
 696 commissioner, be subject at the discretion of the commissioner
 697 to one or more of the following:

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

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

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

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

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

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

725 (c) The acquisition of already affiliated persons.

726 (d) An acquisition if, as an immediate result of the
727 acquisition:

728 1. In no market would the combined market share of the

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729 involved insurers exceed 5 percent of the total market;
730 2. There would be no increase in any market share; or
731 3. In no market would:
732 a. The combined market share of the involved insurers
733 exceed 12 percent of the total market; and
734 b. The market share increase by more than 2 percent of the
735 total market.

736

737 As used in this paragraph, the term "market" means direct
738 written insurance premium in this state for a line of business
739 as contained in the annual statement required to be filed by
740 insurers licensed to do business in this state.

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

744 (f) An acquisition of an insurer whose domiciliary
745 commissioner affirmatively finds that:

746 1. The insurer is in failing condition;

747 2. There is a lack of feasible alternative to improving
748 such condition;

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

752 4. The findings are communicated by the domiciliary
753 commissioner to the commissioner of this state.

754 (g) Acquisitions subject to s. 628.4615.

755 (11) APPROVAL; CONCLUSION OF ACQUISITION; DISAPPROVAL.—The
756 acquisition of voting securities shall be deemed approved unless

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

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

778 628.4615 Specialty insurers; acquisition of controlling
779 stock, ownership interest, assets, or control; merger or
780 consolidation.—

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

784 (a) A motor vehicle service agreement company authorized

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785 to issue motor vehicle service agreements as those terms are
786 defined in s. 634.011;

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

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

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

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

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

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

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

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

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

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

811 (2) A person may not, individually or in conjunction with
812 any affiliated person of such person, directly or indirectly,

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

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

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

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

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

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

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

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

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

885 ~~a. Each director, officer, or trustee, if a corporation,~~
 886 ~~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~~
 895 ~~made to liquidate the specialty insurer, to sell any of its~~
 896 ~~assets or merge or consolidate it with any person, or to make~~

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897 ~~any other 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~~
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~~
923 ~~of each natural person, which information is required to be~~
924 ~~furnished pursuant to paragraph (4) (a), shall include:~~

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- 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
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-
935 year period, the subject of any proceeding for the revocation of
936 any 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

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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)~~.

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~~

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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~~
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~~
 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~~
 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,~~
 1052 ~~or 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~~
 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 ~~mentioned 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~~

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~~

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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~~
 1126 ~~not constitute a recommendation by the office of the tender~~
 1127 ~~offer or exchange offer, or acquisition, if no tender offer or~~
 1128 ~~exchange offer is involved. It is unlawful for a person to~~
 1129 ~~represent that the office's approval constitutes a~~
 1130 ~~recommendation. A person who violates the provisions of this~~
 1131 ~~subsection commits a felony of the third degree, punishable as~~
 1132 ~~provided in s. 775.082, s. 775.083, or s. 775.084. The statute-~~
 1133 ~~of-limitations period for the prosecution of an offense~~
 1134 ~~committed under this subsection is 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

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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,
 1160 assets, or other ownership interest;

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~~

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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
 1189 or more of the outstanding voting securities which are directly
 1190 or indirectly owned or controlled, or held with power to vote,
 1191 by 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,
 1196 manager, joint venturer, or employee, or other person performing
 1197 duties similar to those of persons in the aforementioned
 1198 positions, of 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

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1205 9. Any person who has entered into an agreement, written
 1206 or 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
 1213 "controlling company" means any corporation, trust, or
 1214 association owning, directly or indirectly, 25 percent or more
 1215 of the voting securities of one or more specialty insurance
 1216 companies which are stock corporations, or 25 percent or more of
 1217 the ownership interest of one or more specialty insurance
 1218 companies which are not stock corporations.

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
 1230 to read:

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

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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
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

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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;

1277 (b) Fraternal benefit societies;

1278 (c) Nonprofit medical and hospital service associations;
 1279 or

1280 (d) Business trusts.

1281 (5) "Commissioner" means the Commissioner of Insurance
 1282 Regulation as designated under ss. 20.121 and 624.05, his or her
 1283 deputies and assistants, or the Office of Insurance Regulation,
 1284 as appropriate.

1285 (6) "Person" means an individual, a corporation, a
 1286 partnership, an association, a business trust, an insurer, a
 1287 company, an organization, Lloyds insurer, a society, a
 1288 reciprocal insurer or interinsurance exchange, a syndicate, an

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1289 agent, a general agent, a broker, a solicitor, a service
 1290 representative, an adjuster, every legal entity, a joint stock
 1291 company, an unincorporated organization, or any similar entity
 1292 or combination acting in concert, but does not include any
 1293 securities broker performing no more than the usual and
 1294 customary broker's function.

1295 (7) "Securityholder" of a specified person means one who
 1296 owns any security of such person, including common stock,
 1297 preferred stock, debt obligation, and any other security
 1298 convertible into or evidencing the right to acquire any of the
 1299 foregoing.

1300 (8) "Subsidiary" of a specified person means an affiliate
 1301 controlled by such person, directly or indirectly, through one
 1302 or more intermediaries.

1303 (9) "Voting security" means any security convertible into
 1304 or evidencing a right to acquire a voting security.

1305 Section 4. Section 628.801, Florida Statutes, is amended
 1306 to read:

1307 (Substantial rewording of section. See
 1308 s. 628.801, F.S., for present text.)

1309 628.801 Insurance holding companies; registration;
 1310 regulation.—

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

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1317 chapter 624.

1318 (a) Each registered insurer shall keep current the
1319 information required to be disclosed in its registration
1320 statement by reporting all material changes or additions within
1321 15 days after the end of the month in which it learns of each
1322 change or addition. Any insurer that is subject to registration
1323 under this section shall register within 15 days after it
1324 becomes subject to registration, and annually thereafter by June
1325 1 of each year for the previous calendar year, unless the
1326 commissioner for good cause shown extends the time for
1327 registration, in which case the insurer shall register within
1328 the extended registration period. The commissioner may require
1329 any insurer authorized to do business in the state that is a
1330 member of an insurance holding company system and that is not
1331 subject to registration under this section to furnish a copy of
1332 the registration statement, the report specified in subsection
1333 (9), or other information filed by the insurance company with
1334 the insurance regulatory authority of its domiciliary
1335 jurisdiction.

1336 (b) Every insurer subject to registration shall file the
1337 registration statement with the commissioner on a form and in a
1338 format prescribed by the National Association of Insurance
1339 Commissioners, which shall contain the following current
1340 information:

1341 1. The capital structure, general financial condition,
1342 ownership, and management of the insurer and any person
1343 controlling the insurer.

1344 2. The identity and relationship of every member of the

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1345 insurance holding company system.

1346 3. The following agreements in force and transactions
1347 currently outstanding or that have occurred during the last
1348 calendar year between the insurer and its affiliates:

1349 a. Loans, other investments, or purchases, sales, or
1350 exchanges of securities of the affiliates by the insurer or of
1351 the insurer by its affiliates.

1352 b. Purchases, sales, or exchange of assets.

1353 c. Transactions not in the ordinary course of business.

1354 d. Guarantees or undertakings for the benefit of an
1355 affiliate which result in an actual contingent exposure of the
1356 insurer's assets to liability, other than insurance contracts
1357 entered into in the ordinary course of the insurer's business.

1358 e. All management agreements, service contracts, and all
1359 cost-sharing arrangements.

1360 f. Reinsurance agreements.

1361 g. Dividends and other distributions to shareholders.

1362 h. Consolidated tax allocation agreements.

1363 4. Any pledge of the insurer's stock, including stock of
1364 any subsidiary or controlling affiliate, for a loan made to any
1365 member of the insurance holding company system.

1366 5. If requested by the commissioner, financial statements
1367 of or within an insurance holding company system, including all
1368 affiliates. Financial statements may include, but are not
1369 limited to, annual audited financial statements filed with the
1370 United States Securities and Exchange Commission pursuant to the
1371 Securities Act of 1933, as amended, or the Securities Exchange
1372 Act of 1934, as amended. An insurer required to file financial

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1373 statements pursuant to this paragraph may satisfy the request by
1374 providing the commissioner with the most recently filed parent
1375 corporation financial statements that have been filed with the
1376 United States Securities and Exchange Commission.

1377 6. Other matters concerning transactions between
1378 registered insurers and any affiliates as may be included from
1379 time to time in any registration forms adopted or approved by
1380 the commissioner.

1381 7. Statements attesting that the insurer's board of
1382 directors oversees corporate governance and internal controls
1383 and that the insurer's officers or senior management have
1384 approved, implemented, and continue to maintain and monitor
1385 corporate governance and internal control procedures.

1386 8. Any other information required by the commissioner by
1387 rule or regulation.

1388 (c) All registration statements must contain a summary
1389 outlining all items in the current registration statement
1390 representing changes from the prior registration statement.

1391 (d) Information need not be disclosed on the registration
1392 statement filed pursuant to this section that is not material
1393 for the purposes of this section. Unless the commissioner by
1394 rule, regulation, or order provides otherwise, sales, purchases,
1395 exchanges, loans, or extensions of credit, investments, or
1396 guarantees involving .5 percent or less of an insurer's admitted
1397 assets as of the 31st day of December next preceding shall not
1398 be deemed material for purposes of this section.

1399 (2) REPORTING OF DIVIDENDS TO SHAREHOLDERS.—Subject to the
1400 requirements of this section, each registered insurer shall

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1401 report to the commissioner all dividends and other distributions
 1402 to shareholders within 15 business days following the
 1403 declaration thereof.

1404 (3) INFORMATION OF INSURERS.—Any person within an
 1405 insurance holding company system subject to registration shall
 1406 be required to provide complete and accurate information to an
 1407 insurer, where the information is reasonably necessary to enable
 1408 the insurer to comply with the provisions of this section.

1409 (4) TERMINATION OF REGISTRATION.—The commissioner shall
 1410 terminate the registration of any insurer that demonstrates that
 1411 it no longer is a member of an insurance holding company system.

1412 (5) CONSOLIDATED FILING.—The commissioner may require or
 1413 allow two or more affiliated insurers subject to registration to
 1414 file a consolidated registration statement.

1415 (6) ALTERNATIVE REGISTRATION.—The commissioner may allow
 1416 an insurer authorized to do business in this state and that is
 1417 part of an insurance holding company system to register on
 1418 behalf of any affiliated insurer required to register under this
 1419 section and to file all information and material required to be
 1420 filed under this section.

1421 (7) EXEMPTIONS.—This section does not apply to any
 1422 insurer, information, or transaction if, and to the extent that,
 1423 the commissioner by rule, regulation, or order exempts the
 1424 insurer, information, or transaction from the provisions of this
 1425 section.

1426 (8) DISCLAIMER.—Any person may file with the commissioner
 1427 a disclaimer of affiliation with any authorized insurer, or a
 1428 disclaimer may be filed by the insurer or any member of an

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1429 insurance holding company system. The disclaimer shall fully
1430 disclose all material relationships and bases for affiliation
1431 between the person and the insurer as well as the basis for
1432 disclaiming the affiliation. A disclaimer of affiliation shall
1433 be deemed to have been granted unless the commissioner, within
1434 30 days following receipt of a complete disclaimer, notifies the
1435 filing party that the disclaimer is disallowed. In the event of
1436 disallowance, the disclaiming party may request an
1437 administrative hearing, which shall be granted. The disclaiming
1438 party shall be relieved of its duty to register under this
1439 section if approval of the disclaimer has been granted by the
1440 commissioner or if the disclaimer is deemed to have been
1441 approved.

1442 (9) ENTERPRISE RISK FILING.—The ultimate controlling
1443 person of every insurer subject to registration shall also file
1444 an annual enterprise risk report. The report shall, to the best
1445 of the ultimate controlling person's knowledge and belief,
1446 identify the material risks within the insurance holding company
1447 system that could pose enterprise risk to the insurer. The
1448 report shall be filed with the lead state commissioner of the
1449 insurance holding company system as determined by the procedures
1450 within the Financial Analysis Handbook adopted by the National
1451 Association of Insurance Commissioners.

1452 (10) VIOLATIONS.—Failure to file a registration statement
1453 or any summary of the registration statement or enterprise risk
1454 filing required by this section within the time specified for
1455 filing constitutes a violation of this section.

1456 Section 5. Section 628.8011, Florida Statutes, is created

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1457 to read:

1458 628.8011 Standards and management of an insurer within an
 1459 insurance holding company system.-

1460 (1) STANDARDS.—Transactions within an insurance holding
 1461 company system to which an insurer subject to registration is a
 1462 party shall be subject to the following standards:

1463 (a) The terms shall be fair and reasonable.

1464 (b) Agreements for cost-sharing services and management
 1465 shall include such provisions as required by rule and regulation
 1466 issued by the commissioner.

1467 (c) Charges or fees for services performed shall be
 1468 reasonable.

1469 (d) Contracts or agreements with affiliates for the
 1470 management or servicing of the business written by an insurer
 1471 shall contain provisions providing that, if the combined ratio
 1472 for the insurer exceeds 100 percent, then the fees paid to any
 1473 affiliates for such services shall be decreased to bring the
 1474 combined ratio down to 100 percent.

1475 (e) Expenses incurred and payment received shall be
 1476 allocated to the insurer in conformity with customary insurance
 1477 accounting practices consistently applied.

1478 (f) The books, accounts, and records of each party to all
 1479 such transactions shall be so maintained as to clearly and
 1480 accurately disclose the nature and details of the transactions,
 1481 including such accounting information as is necessary to support
 1482 the reasonableness of the charges or fees to the respective
 1483 parties.

1484 (g) The insurer's surplus as regards policyholders

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1485 following any dividends or distributions to shareholder
 1486 affiliates shall be reasonable in relation to the insurer's
 1487 outstanding liabilities and adequate to meet its financial
 1488 needs.

1489 (2) PRECLUDED TRANSACTIONS.—The following transactions
 1490 involving a domestic insurer and any person in its insurance
 1491 holding company system, including amendments or modifications of
 1492 affiliate agreements previously filed pursuant to this section,
 1493 that are subject to any materiality standards contained in
 1494 subsection (1), may not be entered into unless the insurer has
 1495 notified the commissioner in writing of its intention to enter
 1496 into the transaction at least 30 days prior thereto, or such
 1497 shorter period as the commissioner may permit, and the
 1498 commissioner has not disapproved the transaction within that
 1499 period. The notice for amendments or modifications shall include
 1500 the reasons for the change and the financial impact on the
 1501 domestic insurer. Informal notice shall be reported, within 30
 1502 days after a termination of a previously filed agreement, to the
 1503 commissioner for determination of the type of filing required,
 1504 if any.

1505 (a) Sales, purchases, exchanges, loans, extensions of
 1506 credit, or investments, provided the transactions are equal to
 1507 or exceed:

1508 1. With respect to nonlife insurers, the lesser of 3
 1509 percent of the insurer's admitted assets or 25 percent of
 1510 surplus as regards policyholders as of the 31st day of December
 1511 next preceding.

1512 2. With respect to life insurers, 3 percent of the

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1513 insurer's admitted assets as of the 31st day of December next
 1514 preceding.

1515 (b) Loans or extensions of credit to any person who is not
 1516 an affiliate, where the insurer makes loans or extensions of
 1517 credit with the agreement or understanding that the proceeds of
 1518 the transactions, in whole or in substantial part, are to be
 1519 used to make loans or extensions of credit to, purchase assets
 1520 of, or make investments in any affiliate of the insurer making
 1521 the loans or extensions of credit, provided the transactions are
 1522 equal to or exceed:

1523 1. With respect to nonlife insurers, the lesser of 3
 1524 percent of the insurer's admitted assets or 25 percent of
 1525 surplus as regards policyholders as of the 31st day of December
 1526 next preceding; or

1527 2. With respect to life insurers, 3 percent of the
 1528 insurer's admitted assets as of the 31st day of December next
 1529 preceding.

1530 (c) Reinsurance agreements or modifications thereto,
 1531 including:

1532 1. All reinsurance pooling agreements.

1533 2. Agreements in which the reinsurance premium or a change
 1534 in the insurer's liabilities, or the projected reinsurance
 1535 premium or a change in the insurer's liabilities in any of the
 1536 next 3 years, equals or exceeds 5 percent of the insurer's
 1537 surplus as regards policyholders, as of the 31st day of December
 1538 next preceding, including those agreements which may require as
 1539 consideration the transfer of assets from an insurer to a
 1540 nonaffiliate, if an agreement or understanding exists between

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1541 the insurer and nonaffiliate that any portion of the assets will
1542 be transferred to one or more affiliates of the insurer.

1543 (d) All management agreements, service contracts, tax
1544 allocation agreements, guarantees, and all cost-sharing
1545 arrangements.

1546 (e) Guarantees when made by a domestic insurer. Provided,
1547 however, that a guarantee which is quantifiable as to amount is
1548 not subject to the notice requirements of this paragraph unless
1549 it exceeds the lesser of .5 percent of the insurer's admitted
1550 assets or 10 percent of surplus as regards policyholders as of
1551 the 31st day of December next preceding. Further, all guarantees
1552 which are not quantifiable as to amount are subject to the
1553 notice requirements of this paragraph.

1554 (f) Direct or indirect acquisitions or investments in a
1555 person that controls the insurer or in an affiliate of the
1556 insurer in an amount which, together with its present holdings
1557 in such investments, exceeds 2.5 percent of the insurer's
1558 surplus to policyholders. Direct or indirect acquisitions or
1559 investments in subsidiaries acquired pursuant to s. 628.461, or
1560 in nonsubsidiary insurance affiliates that are subject to the
1561 provisions of this part, are exempt from this requirement.

1562 (g) Any material transactions, specified by regulation,
1563 which the commissioner determines may adversely affect the
1564 interests of the insurer's policyholders.

1565
1566 Nothing in this subsection shall be deemed to authorize or
1567 permit any transactions which, in the case of an insurer that is
1568 not a member of the same insurance holding company system, would

1569 otherwise be contrary to law.

1570 (3) ADDITIONAL PRECLUDED TRANSACTION.—A domestic insurer
 1571 may not enter into transactions that are part of a plan or
 1572 series of like transactions with persons within the insurance
 1573 holding company system if the purpose of those separate
 1574 transactions is to avoid the statutory threshold amount and thus
 1575 avoid the review that would occur otherwise. If the commissioner
 1576 determines that separate transactions were entered into over any
 1577 12-month period for that purpose, the commissioner may exercise
 1578 his or her authority under the Insurance Code or s. 628.803.

1579 (4) REVIEW OF TRANSACTIONS.—The commissioner, in reviewing
 1580 transactions pursuant to this section, shall consider whether
 1581 the transactions comply with the standards set forth in this
 1582 section and whether they may adversely affect the interests of
 1583 policyholders.

1584 (5) NOTIFICATION.—The commissioner shall be notified
 1585 within 30 days of any investment of the domestic insurer in any
 1586 one corporation if the total investment in the corporation by
 1587 the insurance holding company system exceeds 10 percent of the
 1588 corporation's voting securities.

1589 (6) DIVIDENDS AND OTHER DISTRIBUTIONS.—

1590 (a) No domestic insurer shall pay any extraordinary
 1591 dividend or make any other extraordinary distribution to its
 1592 shareholders until 30 days after the commissioner has received
 1593 notice of the declaration thereof and has not within that period
 1594 disapproved the payment, or until the commissioner has approved
 1595 the payment within the 30-day period.

1596 (b) For purposes of this section, an extraordinary

1597 dividend or distribution includes any dividend or distribution
 1598 of cash or other property, whose fair market value together with
 1599 that of other dividends or distributions made within the
 1600 preceding 12 months exceeds the lesser of:

1601 1. Ten percent of the insurer's surplus as regards
 1602 policyholders as of the 31st day of December next preceding; or

1603 2. The net gain after taxes from operations of the
 1604 insurer, if the insurer is a life insurer, or the net income
 1605 after taxes, if the insurer is not a life insurer, not including
 1606 realized capital gains, for the 12-month period ending the 31st
 1607 day of December next preceding, excluding pro rata distributions
 1608 of any class of the insurer's own securities.

1609 (c) In determining whether a dividend or distribution is
 1610 extraordinary, an insurer other than a life insurer may carry
 1611 forward net income from the previous 2 calendar years that has
 1612 not already been paid out as dividends. This carryforward shall
 1613 be computed by taking the net income from the second and third
 1614 preceding calendar years, not including realized capital gains,
 1615 less dividends paid in the second and immediate preceding
 1616 calendar years.

1617 (d) Notwithstanding any other provision of law, an insurer
 1618 may declare an extraordinary dividend or distribution which is
 1619 conditional upon the commissioner's approval, and the
 1620 declaration shall confer no rights upon shareholders until:

1621 1. The commissioner has approved the payment of the
 1622 dividend or distribution; or

1623 2. The commissioner has not disapproved payment within the
 1624 30-day period provided for in this subsection.

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1625 (7) MANAGEMENT OF DOMESTIC INSURERS SUBJECT TO
1626 REGISTRATION.—

1627 (a) Notwithstanding the control of a domestic insurer by
1628 any person, the officers and directors of the insurer may not
1629 thereby be relieved of any obligation or liability to which they
1630 would otherwise be subject by law, and the insurer shall be
1631 managed so as to assure its separate operating identity
1632 consistent with this section.

1633 (b) Nothing in this section shall preclude a domestic
1634 insurer from having or sharing a common management or
1635 cooperative or joint use of personnel, property, or services
1636 with one or more other persons under arrangements meeting the
1637 standards of this section.

1638 (c) Not less than one-third of the directors of a domestic
1639 insurer and not less than one-third of the members of each
1640 committee of the board of directors of any domestic insurer
1641 shall be persons who are not officers or employees of the
1642 insurer or of any entity controlling, controlled by, or under
1643 common control with the insurer and who are not beneficial
1644 owners of a controlling interest in the voting stock of the
1645 insurer or entity. At least one such person must be included in
1646 any quorum for the transaction of business at any meeting of the
1647 board of directors or any committee thereof.

1648 (d) The board of directors of a domestic insurer shall
1649 establish one or more committees comprised solely of directors
1650 who are not officers or employees of the insurer or of any
1651 entity controlling, controlled by, or under common control with
1652 the insurer and who are not beneficial owners of a controlling

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1653 interest in the voting stock of the insurer or any such entity.
1654 The committee or committees shall have responsibility for
1655 nominating candidates for director for election by shareholders
1656 or policyholders, evaluating the performance of officers deemed
1657 to be principal officers of the insurer, and recommending to the
1658 board of directors the selection and compensation of the
1659 principal officers.

1660 (e) The provisions of paragraphs (c) and (d) do not apply
1661 to a domestic insurer if the person controlling the insurer,
1662 such as an insurer, a mutual insurance holding company, or a
1663 publicly held corporation, has a board of directors and
1664 committees thereof that meet the requirements of paragraphs (c)
1665 and (d) with respect to such controlling entity.

1666 (f) An insurer may make application to the commissioner
1667 for a waiver from the requirements of this subsection, if the
1668 insurer's annual direct written and assumed premium, excluding
1669 premiums reinsured with the Federal Crop Insurance Corporation
1670 and the federal flood insurance program, is less than \$300
1671 million. An insurer may also make application to the
1672 commissioner for a waiver from the requirements of this
1673 subsection based on unique circumstances. The commissioner may
1674 consider various factors including, but not limited to, the type
1675 of business entity, volume of business written, availability of
1676 qualified board members, or the ownership or organizational
1677 structure of the entity.

1678 (8) ADEQUACY OF SURPLUS.—For purposes of this section, in
1679 determining whether an insurer's surplus as regards
1680 policyholders is reasonable in relation to the insurer's

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1681 outstanding liabilities and adequate to meet its financial
1682 needs, the following factors, among others, shall be considered:

1683 (a) The size of the insurer as measured by its assets,
1684 capital and surplus, reserves, premium writings, insurance in
1685 force, and other appropriate criteria.

1686 (b) The extent to which the insurer's business is
1687 diversified among several lines of insurance.

1688 (c) The number and size of risks insured in each line of
1689 business.

1690 (d) The extent of the geographical dispersion of the
1691 insurer's insured risks.

1692 (e) The nature and extent of the insurer's reinsurance
1693 program.

1694 (f) The quality, diversification, and liquidity of the
1695 insurer's investment portfolio.

1696 (g) The recent past and projected future trend in the size
1697 of the insurer's investment portfolio.

1698 (h) The surplus as regards policyholders maintained by
1699 other comparable insurers.

1700 (i) The adequacy of the insurer's reserves.

1701 (j) The quality and liquidity of investments in
1702 affiliates. The commissioner may treat any such investment as a
1703 disallowed asset for purposes of determining the adequacy of
1704 surplus as regards policyholders whenever in the judgment of the
1705 commissioner the investment so warrants.

1706 Section 6. Section 628.8012, Florida Statutes, is created
1707 to read:

1708 628.8012 Supervisory colleges.-

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1709 (1) POWER OF COMMISSIONER.—With respect to any insurer
1710 registered under this part and in accordance with subsection
1711 (3), the commissioner shall have the power to participate in a
1712 supervisory college for any domestic insurer that is part of an
1713 insurance holding company system with international operations
1714 in order to determine compliance by the insurer with this part.
1715 The powers of the commissioner with respect to supervisory
1716 colleges include, but are not limited to, the following:

1717 (a) Initiating the establishment of a supervisory college.
1718 (b) Clarifying the membership and participation of other
1719 supervisors in the supervisory college.

1720 (c) Clarifying the functions of the supervisory college
1721 and the role of other regulators, including the establishment of
1722 a group-wide supervisor.

1723 (d) Coordinating the ongoing activities of the supervisory
1724 college, including planning meetings, supervisory activities,
1725 and processes for information sharing.

1726 (e) Establishing a crisis management plan.

1727 (2) EXPENSES.—Each registered insurer subject to this
1728 section shall be liable for and shall pay the reasonable
1729 expenses of the commissioner's participation in a supervisory
1730 college in accordance with subsection (3), including reasonable
1731 travel expenses. For purposes of this section, a supervisory
1732 college may be convened as either a temporary or permanent forum
1733 for communication and cooperation between the regulators charged
1734 with the supervision of the insurer or its affiliates, and the
1735 commissioner may establish a regular assessment to the insurer
1736 for the payment of these expenses.

1737 (3) SUPERVISORY COLLEGE.—In order to assess the business
 1738 strategy, financial position, legal and regulatory position,
 1739 risk exposure, risk management, and governance processes, and as
 1740 part of the examination of individual insurers, the commissioner
 1741 may participate in a supervisory college with other regulators
 1742 charged with supervision of the insurer or its affiliates,
 1743 including other state, federal, and international regulatory
 1744 agencies. The commissioner may enter into agreements in
 1745 accordance with this chapter, providing the basis for
 1746 cooperation between the commissioner, other regulatory agencies,
 1747 and the supervisory college. Nothing in this section shall
 1748 delegate to the supervisory college the authority of the
 1749 commissioner to regulate or supervise the insurer or its
 1750 affiliates within its jurisdiction.

1751 Section 7. Section 628.8013, Florida Statutes, is created
 1752 to read:

1753 628.8013 Rules and regulations.—The commissioner may, upon
 1754 notice and opportunity for all interested persons to be heard,
 1755 issue such rules, regulations, and orders necessary to carry out
 1756 the provisions of this part.

1757 Section 8. Section 628.8014, Florida Statutes, is created
 1758 to read:

1759 628.8014 Voting of securities.—A security which is the
 1760 subject of any agreement or arrangement regarding acquisition,
 1761 or which is acquired or to be acquired, in contravention of any
 1762 statute or rule adopted thereunder, may not be voted at any
 1763 shareholder's meeting or counted for quorum purposes, and any
 1764 action of shareholders requiring the affirmative vote of a

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1765 percentage of shares may be taken as though such securities were
1766 not issued and outstanding. However, an action taken at any such
1767 meeting may not be invalidated by the voting of such securities
1768 unless the action would materially affect the control of the
1769 insurer or unless a court of competent jurisdiction has so
1770 ordered. If the office has reason to believe that any security
1771 of the insurer has been or is about to be acquired in
1772 contravention of s. 628.461, or this chapter, the office may
1773 pursue its remedies pursuant to ss. 628.802 and 628.803.

1774 Section 9. Section 628.802, Florida Statutes, is amended
1775 to read:

1776 (Substantial rewording of section. See

1777 s. 628.802, F.S., for present text.)

1778 628.802 Injunctions; prohibitions against voting
1779 securities; sequestration of voting securities.-

1780 (1) INJUNCTIONS.-Whenever it appears to the commissioner
1781 that any insurer or any director, officer, employee, or agent
1782 thereof has committed or is about to commit a violation of this
1783 part or of any rule, regulation, or order issued by the
1784 commissioner thereunder, the commissioner may apply to the
1785 circuit court for the county in which the principal officer of
1786 the insurer is located or, if the insurer has no office in this
1787 state, to the Circuit Court for Leon County for an order
1788 enjoining the insurer or director, officer, employee or agent
1789 thereof from violating or continuing to violate this part or any
1790 rule, regulation or order, and for such other equitable relief
1791 as the nature of the case and the interest of the insurer's
1792 policyholders, creditors, and shareholders or the public may

1793 require.

1794 (2) VOTING OF SECURITIES; WHEN PROHIBITED.—No security

1795 which is the subject of any agreement or arrangement regarding

1796 acquisition, or which is acquired or to be acquired, in

1797 contravention of the provisions of this part or of any rule,

1798 regulation, or order issued by the commissioner thereunder may

1799 be voted at any shareholder's meeting, or may be counted for

1800 quorum purposes, and any action of shareholders requiring the

1801 affirmative vote of a percentage of shares may be taken as

1802 though the securities were not issued and outstanding. However,

1803 no action taken at any such meeting shall be invalidated by the

1804 voting of the securities, unless the action would materially

1805 affect control of the insurer or unless the courts of this state

1806 have so ordered. If an insurer or the commissioner has reason to

1807 believe that any security of the insurer has been or is about to

1808 be acquired in contravention of the provisions of this part or

1809 of any rule, regulation, or order issued by the commissioner

1810 hereunder, the insurer or the commissioner may apply to the

1811 circuit court for the county in which the insurer has its

1812 principal place of business to enjoin any offer, request,

1813 invitation, agreement, or acquisition made in contravention of

1814 s. 628.461 or any rule, regulation, or order issued by the

1815 commissioner thereunder to enjoin the voting of any security so

1816 acquired, to void any vote of the security already cast at any

1817 meeting of shareholders, and for such other equitable relief as

1818 the nature of the case and the interest of the insurer's

1819 policyholders, creditors, and shareholders or the public may

1820 require.

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1821 (3) SEQUESTRATION OF VOTING SECURITIES.—In any case where
 1822 a person has acquired or is proposing to acquire any voting
 1823 securities in violation of this part or any rule, regulation, or
 1824 order issued by the commissioner hereunder, the circuit court
 1825 for Leon County or the circuit court for the county in which the
 1826 insurer has its principal place of business may, on such notice
 1827 as the court deems appropriate, upon the application of the
 1828 insurer or the commissioner, seize or sequester any voting
 1829 securities of the insurer owned directly or indirectly by the
 1830 person, and issue such order as may be appropriate to effectuate
 1831 the provisions of this part.

1832 (4) SITUS OF OWNERSHIP.—Notwithstanding any other
 1833 provisions of law, for the purposes of this part, the situs of
 1834 the ownership of the securities of domestic insurers shall be
 1835 deemed to be in this state.

1836 Section 10. Section 628.803, Florida Statutes, is amended
 1837 to read:

1838 (Substantial rewording of section. See
 1839 s. 628.803, F.S., for present text.)
 1840 628.803 Sanctions.—

1841 (1) Any insurer failing, without just cause, to file any
 1842 registration statement as required under this part shall be
 1843 required, after notice and hearing, to pay a penalty of \$1,000
 1844 for each day's delay, to be recovered by the commissioner.
 1845 Penalties so recovered shall be paid into the General Revenue
 1846 Fund. The maximum penalty under this section is \$500,000. The
 1847 commissioner may reduce the penalty if the insurer demonstrates
 1848 to the commissioner that the imposition of the penalty would

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1849 constitute a financial hardship to the insurer.

1850 (2) Every director or officer of an insurance holding
1851 company system who knowingly violates, participates in, or
1852 assents to, or who knowingly permits any of the officers or
1853 agents of the insurer to engage in, transactions or the making
1854 of investments which have not been properly reported or
1855 submitted pursuant to the Insurance Code or which violate this
1856 act, shall, in their individual capacity, pay a civil forfeiture
1857 of not more than \$1,000 per violation after notice and hearing
1858 before the commissioner. In determining the amount of the civil
1859 forfeiture, the commissioner shall take into account the
1860 appropriateness of the forfeiture with respect to the gravity of
1861 the violation, the history of previous violations, and such
1862 other matters as justice may require.

1863 (3) Whenever it appears to the commissioner that any
1864 insurer subject to this part or any director, officer, employee,
1865 or agent thereof has engaged in any transaction or entered into
1866 a contract which is subject to s. 628.8011 and which would not
1867 have been approved had approval been requested, the commissioner
1868 may order the insurer to cease and desist immediately from any
1869 further activity under that transaction or contract. After
1870 notice and hearing, the commissioner may also order the insurer
1871 to void any contracts and restore the status quo if the action
1872 is in the best interests of the policyholders, creditors, or the
1873 public.

1874 (4) Whenever it appears to the commissioner that any
1875 insurer or any director, officer, employee, or agent thereof has
1876 committed a willful violation of this part, the commissioner may

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1877 cause criminal proceedings to be instituted by the circuit court
1878 for the county in which the principal office of the insurer is
1879 located or, if the insurer has no office in this state, by the
1880 circuit court for Leon County against the insurer or the
1881 responsible director, officer, employee, or agent thereof. Any
1882 insurer which willfully violates this part may be fined not more
1883 than \$1 million. Any individual who willfully violates this part
1884 may be fined in his or her individual capacity not more than
1885 \$500,000 or be imprisoned for not more than one to 3 years, or
1886 both.

1887 (5) Any officer, director, or employee of an insurance
1888 holding company system who willfully and knowingly subscribes to
1889 or makes or causes to be made any false statements or false
1890 reports or false filings with the intent to deceive the
1891 commissioner in the performance of his or her duties under this
1892 part, upon conviction shall be imprisoned for not more than 3
1893 years or fined \$500,000 or both. Any fines imposed shall be paid
1894 by the officer, director, or employee in his or her individual
1895 capacity.

1896 (6) Whenever it appears to the commissioner that any
1897 person has committed a violation of chapter 628, which violation
1898 prevents the full understanding of the enterprise risk to the
1899 insurer by affiliates or by the insurance holding company
1900 system, the violation may serve as an independent basis for
1901 disapproving dividends or distributions and for placing the
1902 insurer under an order of supervision in accordance with part VI
1903 of chapter 624.

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1904 Section 11. Section 636.065, Florida Statutes, is amended
 1905 to read:

1906 636.065 Acquisitions.—Each prepaid limited health service
 1907 organization is subject to the provisions of s. 628.461
 1908 ~~628.4615~~.

1909 Section 12. Section 641.255, Florida Statutes, is amended
 1910 to read:

1911 641.255 Acquisition, merger, or consolidation.—

1912 (1) Every acquisition of a health maintenance organization
 1913 shall be subject to the provisions of s. 628.461 ~~628.4615~~.

1914 However, in the case of a health maintenance organization
 1915 organized as a for-profit corporation, the provisions of s.
 1916 628.451 govern with respect to any merger or consolidation; and,
 1917 in the case of a health maintenance organization organized as a
 1918 not-for-profit corporation, the provisions of s. 628.471 govern
 1919 with respect to any merger or consolidation.

1920 (2) In addition to the requirements set forth in ss.
 1921 628.451, 628.461 ~~628.4615~~, and 628.471, each party to any
 1922 transaction involving any licensee which, as indicated in its
 1923 most recent quarterly or annual statement, derives income from
 1924 Medicaid funds shall in the filing made with the office
 1925 identify:

1926 (a) Any person who has received any payment from either
 1927 party or any person on that party's behalf; or

1928 (b) The existence of any agreement entered into by either
 1929 party or by any person on that party's behalf to pay a
 1930 consultant fee, a broker fee, a commission, or other fee or
 1931 charge,

1932
 1933 which in any way relates to the acquisition, merger, or
 1934 consolidation. The commission may adopt a form to be made part
 1935 of the application which is to be sworn to by an officer of the
 1936 entity which made or will make the payment. The form shall
 1937 include the name of the person or entity paying the fee; the
 1938 name of the person or entity receiving the fee; the date of
 1939 payment; and a brief description of the work performed.

1940 Section 13. Section 641.416, Florida Statutes, is amended
 1941 to read:

1942 641.416 Acquisition.—Every prepaid health clinic shall be
 1943 subject to the provisions of s. 628.461 ~~628.4615~~.

1944 Section 14. Section 651.024, Florida Statutes, is amended
 1945 to read:

1946 651.024 Acquisition.—A person issued a certificate of
 1947 authority to operate a continuing care facility or a provisional
 1948 certificate of authority shall be subject to the provisions of
 1949 s. 628.461 ~~628.4615~~.

1950 Section 15. For the purpose of incorporating the amendment
 1951 made by this act to section 628.461, Florida Statutes, in a
 1952 reference thereto, subsection (3) of section 48.151, Florida
 1953 Statutes, is reenacted to read:

1954 48.151 Service on statutory agents for certain persons.—

1955 (3) The Chief Financial Officer or his or her assistant or
 1956 deputy or another person in charge of the office is the agent
 1957 for service of process on all insurers applying for authority to
 1958 transact insurance in this state, all licensed nonresident
 1959 insurance agents, all nonresident disability insurance agents

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1960 licensed pursuant to s. 626.835, any unauthorized insurer under
 1961 s. 626.906 or s. 626.937, domestic reciprocal insurers,
 1962 fraternal benefit societies under chapter 632, warranty
 1963 associations under chapter 634, prepaid limited health service
 1964 organizations under chapter 636, and persons required to file
 1965 statements under s. 628.461.

1966 Section 16. For the purpose of incorporating the
 1967 amendments made by this act to sections 628.461 and 628.4615,
 1968 Florida Statutes, in references thereto, paragraph (a) of
 1969 subsection (1) of section 624.310, Florida Statutes, is
 1970 reenacted to read:

1971 624.310 Enforcement; cease and desist orders; removal of
 1972 certain persons; fines.—

1973 (1) DEFINITIONS.—For the purposes of this section, the
 1974 term:

1975 (a) "Affiliated party" means any person who directs or
 1976 participates in the conduct of the affairs of a licensee and who
 1977 is:

1978 1. A director, officer, employee, trustee, committee
 1979 member, or controlling stockholder of a licensee or a subsidiary
 1980 or service corporation of the licensee, other than a controlling
 1981 stockholder which is a holding company, or an agent of a
 1982 licensee or a subsidiary or service corporation of the licensee;

1983 2. A person who has filed or is required to file a
 1984 statement or any other information required to be filed under s.
 1985 628.461 or s. 628.4615;

1986 3. A stockholder, other than a stockholder that is a
 1987 holding company of the licensee, who participates in the conduct

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1988 of the affairs of the licensee;
 1989 4. An independent contractor who:
 1990 a. Renders a written opinion required by the laws of this
 1991 state under her or his professional credentials on behalf of the
 1992 licensee, which opinion is reasonably relied on by the
 1993 department or office in the performance of its duties; or
 1994 b. Affirmatively and knowingly conceals facts, through a
 1995 written misrepresentation to the department or office, with
 1996 knowledge that such misrepresentation:
 1997 (I) Constitutes a violation of the insurance code or a
 1998 lawful rule or order of the department, commission, or office;
 1999 and
 2000 (II) Directly and materially endangers the ability of the
 2001 licensee to meet its obligations to policyholders.

2002
 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; or

2008 5. A third-party marketer who aids or abets a licensee in
 2009 a violation of the insurance code relating to the sale of an
 2010 annuity to a person 65 years of age or older.

2011 Section 17. For the purpose of incorporating the amendment
 2012 made by this act to section 628.461, Florida Statutes, in a
 2013 reference thereto, section 625.765, Florida Statutes, is
 2014 reenacted to read:

2015 625.765 Exemptions from ss. 625.75 and 625.76.—The

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2016 | commission may adopt by rule exemptions from ss. 625.75 and
 2017 | 625.76 for transactions that are not subject to s. 628.461 and
 2018 | that are the result of proceedings in probate, incompetency, or
 2019 | bankruptcy; sales of securities by odd-lot securities dealers;
 2020 | small transactions by gift which do not exceed \$3,000 over any
 2021 | 6-month period; transactions that are effected in connection
 2022 | with the distribution of a substantial block of securities;
 2023 | acquisitions of shares of stock and stock options under a stock
 2024 | bonus plan, stock option plan, or similar plan; securities
 2025 | acquired by redeeming other securities by an insurer;
 2026 | consolidations or mergers of insurers that hold over 85 percent
 2027 | of the companies being merged or consolidated; acquisitions or
 2028 | dispositions of an equity security involved in the deposit of
 2029 | the security under, or the withdrawal of the security from, a
 2030 | voting trust or deposit agreement; and conversions of an
 2031 | insurer's equity securities into another equity security of the
 2032 | same insurer. The commission may limit by rule the scope of
 2033 | exemptions and provide conditions for exemptions as necessary to
 2034 | maintain the purpose and intent of ss. 625.75 and 625.76 and
 2035 | prevent the circumvention of ss. 625.75 and 625.76.

2036 | Section 18. For the purpose of incorporating the amendment
 2037 | made by this act to section 628.461, Florida Statutes, in a
 2038 | reference thereto, subsection (2) of section 628.705, Florida
 2039 | Statutes, is reenacted to read:

2040 | 628.705 Prohibition of stock transfers.—

2041 | (2) Voting shares of the capital stock of a subsidiary
 2042 | insurance company or the intermediate holding company may not be
 2043 | acquired by any affiliated member of the holding company system

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2044 | except where the affiliated member of the mutual holding company
2045 | system is the majority shareholder. A number of shares equal to
2046 | 5 percent of the outstanding voting shares of the capital stock
2047 | of one corporate member of the Mutual Insurance Holding Company
2048 | System selected by the mutual insurance holding company may be
2049 | issued or sold to directors and officers as part of a plan of
2050 | compensation, and such shares shall not be considered part of
2051 | the majority shares to be owned by the mutual insurance company
2052 | under subsection (1). A number of shares equal to an additional
2053 | 5 percent of the outstanding voting shares of the capital stock
2054 | of one corporate member of the Mutual Insurance Holding Company
2055 | System selected by the mutual insurance holding company may be
2056 | issued or sold to employees, which may not include any officer
2057 | or director, as part of an employee stock dividend or benefit
2058 | plan, and such shares shall not be considered part of the
2059 | majority shares to be owned by the mutual insurance company
2060 | under subsection (1). Prior to issuance of shares in excess of
2061 | the authorized 5 percent to either officers and directors or
2062 | employees, pursuant to this section, a fairness opinion shall be
2063 | rendered by an independent authority acceptable to the office to
2064 | assure that the long term interests of the shareholders and
2065 | policyholders are adequately protected. The office shall approve
2066 | or disapprove the transaction within 30 days after receipt of
2067 | the fairness opinion. Nothing in this section prohibits any
2068 | officer or director from purchasing shares of stock at market
2069 | value which are not part of a plan of compensation, in
2070 | accordance with the requirements of s. 628.461, and, if such
2071 | stock is not regularly traded on a national stock exchange, the

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2072 officer or director purchasing the shares of stock is
 2073 responsible for establishing its market value.

2074 Section 19. For the purpose of incorporating the
 2075 amendments made by this act to sections 628.461 and 628.4615,
 2076 Florida Statutes, in references thereto, subsection (7) of
 2077 section 631.051, Florida Statutes, is reenacted to read:

2078 631.051 Grounds for rehabilitation; domestic insurers.—The
 2079 department may petition for an order directing it to
 2080 rehabilitate a domestic insurer or an alien insurer domiciled in
 2081 this state on any one or more of the following grounds, that the
 2082 insurer:

2083 (7) Has transferred or attempted to transfer substantially
 2084 its entire property or business, or has entered into any
 2085 transaction the effect of which is to merge substantially its
 2086 entire property or business into that of any other insurer or
 2087 entity without having first obtained the written approval of the
 2088 office under the provisions of s. 628.451, s. 628.461, or s.
 2089 628.4615, as the case may be;

2090 Section 20. For the purpose of incorporating the amendment
 2091 made by this act to section 628.4615, Florida Statutes, in a
 2092 reference thereto, subsection (19) of section 409.912, Florida
 2093 Statutes, is reenacted to read:

2094 409.912 Cost-effective purchasing of health care.—The
 2095 agency shall purchase goods and services for Medicaid recipients
 2096 in the most cost-effective manner consistent with the delivery
 2097 of quality medical care. To ensure that medical services are
 2098 effectively utilized, the agency may, in any case, require a
 2099 confirmation or second physician's opinion of the correct

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2100 diagnosis for purposes of authorizing future services under the
2101 Medicaid program. This section does not restrict access to
2102 emergency services or poststabilization care services as defined
2103 in 42 C.F.R. part 438.114. Such confirmation or second opinion
2104 shall be rendered in a manner approved by the agency. The agency
2105 shall maximize the use of prepaid per capita and prepaid
2106 aggregate fixed-sum basis services when appropriate and other
2107 alternative service delivery and reimbursement methodologies,
2108 including competitive bidding pursuant to s. 287.057, designed
2109 to facilitate the cost-effective purchase of a case-managed
2110 continuum of care. The agency shall also require providers to
2111 minimize the exposure of recipients to the need for acute
2112 inpatient, custodial, and other institutional care and the
2113 inappropriate or unnecessary use of high-cost services. The
2114 agency shall contract with a vendor to monitor and evaluate the
2115 clinical practice patterns of providers in order to identify
2116 trends that are outside the normal practice patterns of a
2117 provider's professional peers or the national guidelines of a
2118 provider's professional association. The vendor must be able to
2119 provide information and counseling to a provider whose practice
2120 patterns are outside the norms, in consultation with the agency,
2121 to improve patient care and reduce inappropriate utilization.
2122 The agency may mandate prior authorization, drug therapy
2123 management, or disease management participation for certain
2124 populations of Medicaid beneficiaries, certain drug classes, or
2125 particular drugs to prevent fraud, abuse, overuse, and possible
2126 dangerous drug interactions. The Pharmaceutical and Therapeutics
2127 Committee shall make recommendations to the agency on drugs for

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2128 | which prior authorization is required. The agency shall inform
2129 | the Pharmaceutical and Therapeutics Committee of its decisions
2130 | regarding drugs subject to prior authorization. The agency is
2131 | authorized to limit the entities it contracts with or enrolls as
2132 | Medicaid providers by developing a provider network through
2133 | provider credentialing. The agency may competitively bid single-
2134 | source-provider contracts if procurement of goods or services
2135 | results in demonstrated cost savings to the state without
2136 | limiting access to care. The agency may limit its network based
2137 | on the assessment of beneficiary access to care, provider
2138 | availability, provider quality standards, time and distance
2139 | standards for access to care, the cultural competence of the
2140 | provider network, demographic characteristics of Medicaid
2141 | beneficiaries, practice and provider-to-beneficiary standards,
2142 | appointment wait times, beneficiary use of services, provider
2143 | turnover, provider profiling, provider licensure history,
2144 | previous program integrity investigations and findings, peer
2145 | review, provider Medicaid policy and billing compliance records,
2146 | clinical and medical record audits, and other factors. Providers
2147 | are not entitled to enrollment in the Medicaid provider network.
2148 | The agency shall determine instances in which allowing Medicaid
2149 | beneficiaries to purchase durable medical equipment and other
2150 | goods is less expensive to the Medicaid program than long-term
2151 | rental of the equipment or goods. The agency may establish rules
2152 | to facilitate purchases in lieu of long-term rentals in order to
2153 | protect against fraud and abuse in the Medicaid program as
2154 | defined in s. 409.913. The agency may seek federal waivers
2155 | necessary to administer these policies.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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2156 (19) When a merger or acquisition of a Medicaid prepaid
 2157 contractor has been approved by the Office of Insurance
 2158 Regulation pursuant to s. 628.4615, the agency shall approve the
 2159 assignment or transfer of the appropriate Medicaid prepaid
 2160 contract upon request of the surviving entity of the merger or
 2161 acquisition if the contractor and the other entity have been in
 2162 good standing with the agency for the most recent 12-month
 2163 period, unless the agency determines that the assignment or
 2164 transfer would be detrimental to the Medicaid recipients or the
 2165 Medicaid program. To be in good standing, an entity must not
 2166 have failed accreditation or committed any material violation of
 2167 the requirements of s. 641.52 and must meet the Medicaid
 2168 contract requirements. For purposes of this section, a merger or
 2169 acquisition means a change in controlling interest of an entity,
 2170 including an asset or stock purchase. This subsection expires
 2171 October 1, 2014.

2172 Section 21. For the purpose of incorporating the amendment
 2173 made by this act to section 628.4615, Florida Statutes, in a
 2174 reference thereto, paragraph (b) of subsection (1) of section
 2175 624.80, Florida Statutes, is reenacted to read:

2176 624.80 Definitions.—As used in this part:

2177 (1) "Insurer" means and includes every person as defined
 2178 in s. 624.03 as limited to:

2179 (b) Any specialty insurer as that term is defined in s.
 2180 628.4615.

2181 Section 22. For the purpose of incorporating the amendment
 2182 made by this act to section 628.4615, Florida Statutes, in a

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2183 reference thereto, section 626.9928, Florida Statutes, is
 2184 reenacted to read:

2185 626.9928 Acquisitions.—Acquisition of interest in a
 2186 viatical settlement provider is subject to s. 628.4615.

2187 Section 23. For the purpose of incorporating the amendment
 2188 made by this act to section 628.4615, Florida Statutes, in a
 2189 reference thereto, section 634.252, Florida Statutes, is
 2190 reenacted to read:

2191 634.252 Acquisition.—Every motor vehicle service agreement
 2192 company shall be subject to the provisions of s. 628.4615.

2193 Section 24. For the purpose of incorporating the amendment
 2194 made by this act to section 628.4615, Florida Statutes, in a
 2195 reference thereto, section 634.3073, Florida Statutes, is
 2196 reenacted to read:

2197 634.3073 Acquisition.—Every home warranty association
 2198 shall be subject to the provisions of s. 628.4615.

2199 Section 25. For the purpose of incorporating the amendment
 2200 made by this act to section 628.4615, Florida Statutes, in a
 2201 reference thereto, section 634.4085, Florida Statutes, is
 2202 reenacted to read:

2203 634.4085 Acquisition.—Except for manufacturers as defined
 2204 in this part, every service warranty association shall be
 2205 subject to the provisions of s. 628.4615.

2206 Section 26. For the purpose of incorporating the amendment
 2207 made by this act to section 628.4615, Florida Statutes, in a
 2208 reference thereto, subsection (5) of section 642.032, Florida
 2209 Statutes, is reenacted to read:

2210 642.032 Provisions of general insurance law applicable to

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2211 | legal expense insurance corporations.—The following provisions
 2212 | of the Florida Insurance Code shall apply to legal expense
 2213 | insurance corporations, to the extent that they are not
 2214 | inconsistent with the provisions of ss. 642.011-642.049:

2215 | (5) Section 628.4615, specialty insurers; acquisition of
 2216 | controlling stock, ownership interest, assets, or control;
 2217 | merger or consolidation.

2218 | Section 27. For the purpose of incorporating the amendment
 2219 | made by this act to section 628.801, Florida Statutes, in a
 2220 | reference thereto, paragraph (b) of subsection (6), paragraph
 2221 | (f) of subsection (8), and paragraph (f) of subsection (9) of
 2222 | section 626.7492, Florida Statutes, are reenacted to read:

2223 | 626.7492 Reinsurance intermediaries.—

2224 | (6) DUTIES OF INSURERS USING THE SERVICES OF A REINSURANCE
 2225 | INTERMEDIARY BROKER.—

2226 | (b) An insurer may not employ an individual who is
 2227 | employed by a reinsurance intermediary broker with which it
 2228 | transacts business, unless the reinsurance intermediary broker
 2229 | is under common control with the insurer and subject to ss.
 2230 | 628.801, 628.802, and 628.803.

2231 | (8) PROHIBITED ACTS.—The reinsurance intermediary manager
 2232 | shall not:

2233 | (f) Jointly employ an individual who is employed by the
 2234 | reinsurer, unless such reinsurance intermediary manager is under
 2235 | common control with the reinsurer subject to ss. 628.801,
 2236 | 628.802, and 628.803.

2237 | (9) DUTIES OF REINSURERS USING THE SERVICES OF A
 2238 | REINSURANCE INTERMEDIARY MANAGER.—

2239 (f) A reinsurer shall not appoint to its board of
 2240 directors any officer, director, employee, controlling
 2241 shareholder, or subproducer of its reinsurance intermediary
 2242 manager. This paragraph shall not apply to relationships
 2243 governed by ss. 628.801, 628.802, and 628.803 or, if applicable,
 2244 this section.

2245 Section 28. For the purpose of incorporating the amendment
 2246 made by this act to section 628.801, Florida Statutes, in a
 2247 reference thereto, paragraph (d) of subsection (2) of section
 2248 626.918, Florida Statutes, is reenacted to read:

2249 626.918 Eligible surplus lines insurers.—

2250 (2) An unauthorized insurer may not be or become an
 2251 eligible surplus lines insurer unless made eligible by the
 2252 office in accordance with the following conditions:

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

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2267 investments for like funds of like domestic insurers under part
 2268 II of chapter 625. Clean, irrevocable, unconditional, and
 2269 evergreen letters of credit issued or confirmed by a qualified
 2270 United States financial institution, as defined in subparagraph
 2271 2., may be used to fund the trust.

2272 b. For those surplus lines insurers that were eligible on
 2273 January 1, 1994, and that maintained their eligibility
 2274 thereafter, the required surplus as to policyholders shall be:

2275 (I) On December 31, 1994, and until December 30, 1995,
 2276 \$2.5 million.

2277 (II) On December 31, 1995, and until December 30, 1996,
 2278 \$3.5 million.

2279 (III) On December 31, 1996, and until December 30, 1997,
 2280 \$4.5 million.

2281 (IV) On December 31, 1997, and until December 30, 1998,
 2282 \$5.5 million.

2283 (V) On December 31, 1998, and until December 30, 1999,
 2284 \$6.5 million.

2285 (VI) On December 31, 1999, and until December 30, 2000, \$8
 2286 million.

2287 (VII) On December 31, 2000, and until December 30, 2001,
 2288 \$9.5 million.

2289 (VIII) On December 31, 2001, and until December 30, 2002,
 2290 \$11 million.

2291 (IX) On December 31, 2002, and until December 30, 2003,
 2292 \$13 million.

2293 (X) On December 31, 2003, and thereafter, \$15 million.

2294 c. The capital and surplus requirements as set forth in

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

2309 d. A surplus lines insurer which is a member of an
2310 insurance holding company that includes a member which is a
2311 Florida domestic insurer as set forth in its holding company
2312 registration statement, as set forth in s. 628.801 and rules
2313 adopted thereunder, may elect to maintain surplus as to
2314 policyholders in an amount equal to the requirements of s.
2315 624.408, subject to the requirement that the surplus lines
2316 insurer shall at all times be in compliance with the
2317 requirements of chapter 625.

2318
2319 The election shall be submitted to the office and shall be
2320 effective upon the office's being satisfied that the
2321 requirements of sub-subparagraph d. have been met. The initial
2322 date of election shall be the date of office approval. The

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2323 election approval application shall be on a form adopted by
2324 commission rule. The office may approve an election form
2325 submitted pursuant to sub-subparagraph d. only if it was on file
2326 with the former Department of Insurance before February 28,
2327 1998.

2328 2. For purposes of letters of credit under subparagraph
2329 1., the term "qualified United States financial institution"
2330 means an institution that:

2331 a. Is organized or, in the case of a United States office
2332 of a foreign banking organization, is licensed under the laws of
2333 the United States or any state.

2334 b. Is regulated, supervised, and examined by authorities
2335 of the United States or any state having regulatory authority
2336 over banks and trust companies.

2337 c. Has been determined by the office or the Securities
2338 Valuation Office of the National Association of Insurance
2339 Commissioners to meet such standards of financial condition and
2340 standing as are considered necessary and appropriate to regulate
2341 the quality of financial institutions whose letters of credit
2342 are acceptable to the office.

2343 Section 29. This act shall take effect July 1, 2012.