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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
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The Committee on Banking and Insurance (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Section 624.085, Florida Statutes, is created to read:

624.085 Other definitions.—As used in the Florida Insurance Code, the term:

(1) "Affiliate" means any entity that exercises control over or is controlled by the insurer, directly or indirectly, through:

(a) Equity ownership of voting securities;



355782

13 (b) Common managerial control; or

14 (c) Collusive participation by the management of the  
15 insurer and affiliate in the management of the insurer or the  
16 affiliate.

17 (2) "Affiliated person" of another person means:

18 (a) The spouse of such other person;

19 (b) The parents of such other person and their lineal  
20 descendants, or the parents of such other person's spouse and  
21 their lineal descendants;

22 (c) Any person who directly or indirectly owns or controls,  
23 or holds with the power to vote, 10 percent or more of the  
24 outstanding voting securities of such other person;

25 (d) Any person 10 percent or more of whose outstanding  
26 voting securities are directly or indirectly owned or  
27 controlled, or held with power to vote, by such other person;

28 (e) Any person or group of persons who directly or  
29 indirectly control, are controlled by, or are under common  
30 control with such other person;

31 (f) Any officer, director, partner, copartner, or employee  
32 of such other person;

33 (g) If such other person is an investment company, any  
34 investment adviser of such company, or any member of an advisory  
35 board of such company;

36 (h) If such other person is an unincorporated investment  
37 company not having a board of directors, the depositor of such  
38 company; or

39 (i) Any person who has entered into an agreement, written  
40 or unwritten, to act in concert with such other person in  
41 acquiring or limiting the disposition of securities of a



355782

42 domestic stock insurer or controlling company.

43 (3) "Control," including the terms "controlling,"  
44 "controlled by," and "under common control with," means the  
45 possession, direct or indirect, of the power to direct or cause  
46 the direction of the management and policies of a person,  
47 whether through the ownership of voting securities, by contract  
48 other than a commercial contract for goods or nonmanagement  
49 services, or otherwise. Control is presumed to exist if any  
50 person, directly or indirectly, owns, controls, holds with the  
51 power to vote, or holds proxies representing 10 percent or more  
52 of the voting securities of any other person.

53 Section 2. Paragraph (g) of subsection (1), paragraph (a)  
54 of subsection (3), and paragraph (b) of subsection (6) of  
55 section 624.4085, Florida Statutes, are amended to read:

56 624.4085 Risk-based capital requirements for insurers.—

57 (1) As used in this section, the term:

58 (g) "Life and health insurer" means any insurer authorized  
59 or eligible under the Florida Insurance Code to underwrite life  
60 or health insurance. The term includes a property and casualty  
61 insurer that writes accident and health insurance only; a health  
62 maintenance organization that is authorized in this state and  
63 one or more other states, jurisdictions, or countries; and a  
64 prepaid health service organization that is authorized in this  
65 state and one or more other states, jurisdictions, or countries.

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

67 1. The filing of a risk-based capital report by an insurer  
68 which indicates that:

69 a. The insurer's total adjusted capital is greater than or  
70 equal to its regulatory action level risk-based capital but less



355782

71 than its company action level risk-based capital; ~~or~~

72 b. If a life and health insurer that reports using the life  
73 and health annual statement instructions, the insurer has total  
74 adjusted capital that is greater than or equal to its company  
75 action level risk-based capital, but is less than the product of  
76 its authorized control level risk-based capital and 3.0 ~~2.5~~, and  
77 has a negative trend;

78 c. If a life and health or property and casualty insurer  
79 that reports using the health annual statement instructions, the  
80 insurer or organization has total adjusted capital that is  
81 greater than or equal to its company action level risk-based  
82 capital, but is less than the product of its authorized control  
83 level risk-based capital and 3.0, and triggers the trend test  
84 determined in accordance with the trend test calculation  
85 included in the Risk-Based Capital Forecasting and Instructions,  
86 Health, updated annually by the National Association of  
87 Insurance Commissioners; or

88 d. If a property and casualty insurer that reports using  
89 the property and casualty annual statement instructions, the  
90 insurer has total adjusted capital that is greater than or equal  
91 to its company action level risk-based capital, but is less than  
92 the product of its authorized control level risk-based capital  
93 and 3.0, and triggers the trend test determined in accordance  
94 with the trend test calculation included in the Risk-Based  
95 Capital Forecasting and Instructions, Property/Casualty, updated  
96 annually by the National Association of Insurance Commissioners;

97 2. The notification by the office to the insurer of an  
98 adjusted risk-based capital report that indicates an event in  
99 subparagraph 1., unless the insurer challenges the adjusted



355782

100 risk-based capital report under subsection (7); or

101 3. If, under subsection (7), an insurer challenges an  
102 adjusted risk-based capital report that indicates an event in  
103 subparagraph 1., the notification by the office to the insurer  
104 that the office has, after a hearing, rejected the insurer's  
105 challenge.

106 (6)

107 (b) If a mandatory control level event occurs:

108 1. With respect to a life and health insurer, the office  
109 shall, after due consideration of s. 624.408, take any action  
110 necessary to place the insurer under regulatory control,  
111 including any remedy available under chapter 631. A mandatory  
112 control level event is sufficient ground for the department to  
113 be appointed as receiver as provided in chapter 631. The office  
114 may forego taking action for up to 90 days after the mandatory  
115 control level event if the office finds there is a reasonable  
116 expectation that the ~~mandatory control level~~ event may be  
117 eliminated within the 90-day period.

118 2. With respect to a property and casualty insurer, the  
119 office shall, after due consideration of s. 624.408, s. 641.225  
120 for a health maintenance organization, or s. 636.045 for a  
121 prepaid limited health service organization, take any action  
122 necessary to place the insurer under regulatory control,  
123 including any remedy available under chapter 631, or, in the  
124 case of an insurer that is not writing new business, may allow  
125 the insurer to continue to operate under the supervision of the  
126 office. In either case, the mandatory control level event is  
127 sufficient ground for the department to be appointed as receiver  
128 as provided in chapter 631. The office may forego taking action



355782

129 for up to 90 days after the mandatory control level event if the  
130 office finds there is a reasonable expectation that the  
131 ~~mandatory control level~~ event may ~~will~~ be eliminated within the  
132 90-day period.

133 Section 3. Subsection (1) and paragraph (e) of subsection  
134 (8) of section 624.424, Florida Statutes, are amended to read:  
135 624.424 Annual statement and other information.-

136 (1) (a) Each authorized insurer shall file with the office  
137 full and true statements of its financial condition,  
138 transactions, and affairs. An annual statement covering the  
139 preceding calendar year shall be filed on or before March 1, and  
140 quarterly statements covering the periods ending on March 31,  
141 June 30, and September 30 shall be filed within 45 days after  
142 each such date. The office may, for good cause, grant an  
143 extension of time for filing ~~of~~ an annual or quarterly  
144 statement. The statements must ~~shall~~ contain information  
145 generally included in insurers' financial statements prepared in  
146 accordance with generally accepted insurance accounting  
147 principles and practices and in a form generally used ~~utilized~~  
148 by insurers for financial statements, sworn to by at least two  
149 executive officers of the insurer or, if a reciprocal insurer,  
150 by ~~the~~ oath of the attorney in fact or its like officer if a  
151 corporation. To facilitate uniformity in financial statements  
152 and to facilitate office analysis, the commission may by rule  
153 adopt the form for financial statements approved by the National  
154 Association of Insurance Commissioners in 2002, and ~~may adopt~~  
155 subsequent amendments thereto if the methodology remains  
156 substantially consistent, and may by rule require each insurer  
157 to submit to the office, or such organization as the office may



355782

158 designate, all or part of the information contained in the  
159 financial statement in a computer-readable form compatible with  
160 the electronic data processing system specified by the office.

161 (b) Each insurer's annual statement must contain:

162 1. A statement of opinion on loss and loss adjustment  
163 expense reserves made by a member of the American Academy of  
164 Actuaries or by a qualified loss reserve specialist, pursuant to  
165 ~~under~~ criteria established by rule of the commission. In  
166 adopting the rule, the commission shall ~~must~~ consider any  
167 criteria established by the National Association of Insurance  
168 Commissioners. The office may require semiannual updates of the  
169 annual statement of opinion for ~~as to~~ a particular insurer if  
170 the office has reasonable cause to believe that such reserves  
171 are understated to the extent of materially misstating the  
172 financial position of the insurer. Workpapers in support of the  
173 statement of opinion must be provided to the office upon  
174 request. This paragraph does not apply to life insurance, health  
175 insurance, or title insurance.

176 2. An actuarial opinion summary written by the insurer's  
177 appointed actuary. The summary must be filed in accordance with  
178 the appropriate National Association of Insurance Commissioners  
179 property and casualty annual statement instructions. Proprietary  
180 business information contained in the summary is confidential  
181 and exempt under s. 624.4212, and the summary and related  
182 information are not subject to subpoena or discovery or  
183 admissible in evidence in any private civil action. Neither the  
184 office nor any person who received documents, materials, or any  
185 other information while acting under the authority of the office  
186 or with whom such information is shared pursuant to s. 624.4212



355782

187 may testify in a private civil action concerning such  
188 confidential information. A waiver of any other applicable claim  
189 of confidentiality or privilege may not occur as a result of a  
190 disclosure to the office under this section or any other section  
191 of the insurance code. This paragraph does not apply to life and  
192 health insurers subject to s. 625.121(3).

193 (c) The commission may by rule require reports or filings  
194 required under the insurance code to be submitted by electronic  
195 means in a computer-readable form compatible with the electronic  
196 data processing equipment specified by the commission.

197 (8)

198 (e) The commission shall adopt rules to administer  
199 ~~implement~~ this subsection, which rules must be in substantial  
200 conformity with the 2006 Annual Financial Reporting Model  
201 Regulation ~~1998 Model Rule requiring annual audited financial~~  
202 ~~reports~~ adopted by the National Association of Insurance  
203 Commissioners or subsequent amendments, except where  
204 inconsistent with the requirements of this subsection. Any  
205 exception to, waiver of, or interpretation of accounting  
206 requirements of the commission must be in writing and signed by  
207 an authorized representative of the office. An ~~No~~ insurer may  
208 not ~~raise as a defense in any action,~~ any exception to, waiver  
209 of, or interpretation of accounting requirements as a defense in  
210 an action, unless previously issued in writing by an authorized  
211 representative of the office.

212 Section 4. Paragraphs (a) and (b) of subsection (3) of  
213 section 625.121, Florida Statutes, are amended to read:

214 625.121 Standard Valuation Law; life insurance.—

215 (3) ACTUARIAL OPINION OF RESERVES.—





355782

216 (a)~~1.~~ Each life insurance company doing business in this  
217 state shall annually submit the opinion of a qualified actuary  
218 as to whether the reserves and related actuarial items held in  
219 support of the policies and contracts specified by the  
220 commission by rule are computed appropriately, are based on  
221 assumptions that ~~which~~ satisfy contractual provisions, are  
222 consistent with prior reported amounts, and comply with  
223 applicable laws of this state. The commission by rule shall  
224 define the specifics of this opinion and add any other items  
225 determined to be necessary to its scope.

226 ~~1.2.~~ The opinion shall be submitted with the annual  
227 statement reflecting the valuation of such reserve liabilities  
228 ~~for each year ending on or after December 31, 1992.~~

229 ~~2.3.~~ The opinion applies ~~shall apply~~ to all business in  
230 force, including individual and group health insurance plans, in  
231 the form and substance acceptable to the office as specified by  
232 rule of the commission.

233 ~~3.4.~~ The commission may adopt rules providing the standards  
234 of the actuarial opinion consistent with standards adopted by  
235 the Actuarial Standards Board on December 31, 2002, and  
236 subsequent revisions thereto, if ~~provided that~~ the standards  
237 remain substantially consistent.

238 ~~4.5.~~ ~~In the case of an opinion required to be submitted by~~  
239 ~~a foreign or alien company,~~ The office may accept an ~~the~~ opinion  
240 filed by a foreign or alien ~~that~~ company with the insurance  
241 supervisory official of another state if the office determines  
242 that the opinion reasonably meets the requirements applicable to  
243 a company domiciled in this state.

244 ~~5.6.~~ As used in ~~For the purposes of~~ this subsection, the



355782

245 term "qualified actuary" means a member in good standing of the  
246 American Academy of Actuaries who also meets the requirements  
247 specified by rule of the commission.

248 ~~6.7.~~ Disciplinary action by the office against the company  
249 or the qualified actuary shall be in accordance with the  
250 insurance code and related rules adopted by the commission.

251 ~~7.8.~~ A memorandum in the form and substance specified by  
252 rule shall be prepared to support each actuarial opinion.

253 ~~8.9.~~ If the insurance company fails to provide a supporting  
254 memorandum at the request of the office within a period  
255 specified by rule of the commission, or if the office determines  
256 that the supporting memorandum provided by the insurance company  
257 fails to meet the standards prescribed by rule of the  
258 commission, the office may engage a qualified actuary at the  
259 expense of the company to review the opinion and the basis for  
260 the opinion and prepare such supporting memorandum as ~~is~~  
261 required by the office.

262 ~~9.10.~~ Except as otherwise provided in this paragraph, any  
263 memorandum or other material in support of the opinion is  
264 confidential and exempt from ~~the provisions of~~ s. 119.07(1) and  
265 is not subject to subpoena or discovery or admissible in  
266 evidence in any private civil action; however, the memorandum or  
267 other material may be released by the office with the written  
268 consent of the company, or to the American Academy of Actuaries  
269 upon request stating that the memorandum or other material is  
270 required for the purpose of professional disciplinary  
271 proceedings and setting forth procedures satisfactory to the  
272 office for preserving the confidentiality of the memorandum or  
273 other material. If any portion of the confidential memorandum is



355782

274 cited by the company in its marketing, ~~or~~ is cited before any  
275 governmental agency other than a state insurance department, or  
276 is released by the company to the news media, no portion of the  
277 memorandum is confidential. Neither the office nor any person  
278 who received documents, materials, or any other information  
279 while acting under the authority of the office or with whom such  
280 information is shared pursuant to this paragraph may testify in  
281 any private civil action concerning the confidential documents,  
282 materials, or information. A waiver of any applicable privilege  
283 or claim of confidentiality in the documents, materials, or  
284 information may not occur as a result of disclosure to the  
285 office under this section or any other section of the insurance  
286 code, or as a result of sharing as authorized under s. 624.4212.

287 (b) In addition to the opinion required by paragraph (a)  
288 ~~subparagraph (a)1.~~, the office may, pursuant to commission rule,  
289 require an opinion of the same qualified actuary as to whether  
290 the reserves and related actuarial items held in support of the  
291 policies and contracts specified by the commission by rule, when  
292 considered in light of the assets held by the company with  
293 respect to the reserves and related actuarial items, including,  
294 but not limited to, the investment earnings on the assets and  
295 considerations anticipated to be received and retained under the  
296 policies and contracts, make adequate provision for the  
297 company's obligations under the policies and contracts,  
298 including, but not limited to, the benefits under, and expenses  
299 associated with, the policies and contracts.

300 Section 5. Subsections (1), (3), (10), (12), and (13) of  
301 section 628.461, Florida Statutes, are amended to read:

302 628.461 Acquisition of controlling stock.—



355782

303 (1) A person may not, individually or in conjunction with  
304 any affiliated person of such person, acquire directly or  
305 indirectly, conclude a tender offer or exchange offer for, enter  
306 into any agreement to exchange securities for, or otherwise  
307 finally acquire 10 ~~5~~ percent or more of the outstanding voting  
308 securities of a domestic stock insurer or of a controlling  
309 company, unless:

310 (a) The person or affiliated person has filed with the  
311 office and sent to the insurer and controlling company a letter  
312 of notification regarding the transaction or proposed  
313 transaction within ~~no later than~~ 5 days after any form of tender  
314 offer or exchange offer is proposed, or within ~~no later than~~ 5  
315 days after the acquisition of the securities if no tender offer  
316 or exchange offer is involved. The notification must be provided  
317 on forms prescribed by the commission containing information  
318 determined necessary to understand the transaction and identify  
319 all purchasers and owners involved;

320 (b) The person or affiliated person has filed with the  
321 office the ~~a~~ statement as specified in subsection (3). The  
322 statement must be completed and filed within 30 days after:

- 323 1. Any definitive acquisition agreement is entered;  
324 2. Any form of tender offer or exchange offer is proposed;

325 or

326 3. The acquisition of the securities, if no definitive  
327 acquisition agreement, tender offer, or exchange offer is  
328 involved; and

329 (c) The office has approved the tender or exchange offer,  
330 or acquisition if no tender offer or exchange offer is involved,  
331 and approval is in effect.



355782

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~~In lieu of a filing as required under this subsection, a party acquiring less than 10 percent of the outstanding voting securities of an insurer may file a disclaimer of affiliation and control. The disclaimer shall fully disclose all material relationships and basis for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation and control. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the office disallows the disclaimer. The office shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance. A filing as required under this subsection must be made for ~~as to~~ any acquisition that equals or exceeds 10 percent of the outstanding voting securities.~~

(3) The statement to be filed with the office under subsection (1) and furnished to the insurer and controlling company must ~~shall~~ contain all the following information and any additional information that ~~as~~ the office deems necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the policyholders and shareholders of the insurer and the public:

(a) The identity of, and the background information specified in subsection (4) on, each natural person by whom, or on whose behalf, the acquisition is to be made; and, if the acquisition is to be made by, or on behalf of, a corporation,



355782

361 association, or trust, as to the corporation, association, or  
362 trust and as to any person who controls, ~~either~~ directly or  
363 indirectly, the corporation, association, or trust, the identity  
364 of, and the background information specified in subsection (4)  
365 on, each director, officer, trustee, or other natural person  
366 performing duties similar to those of a director, officer, or  
367 trustee for the corporation, association, or trust.†

368 (b) The source and amount of the funds or other  
369 consideration used, or to be used, in making the acquisition.†

370 (c) Any plans or proposals that ~~which~~ such persons may have  
371 made to liquidate such insurer, to sell any of its assets or  
372 merge or consolidate it with any person, or to make any other  
373 major change in its business or corporate structure or  
374 management; and any plans or proposals that ~~which~~ such persons  
375 may have made to liquidate any controlling company of such  
376 insurer, to sell any of its assets or merge or consolidate it  
377 with any person, or to make any other major change in its  
378 business or corporate structure or management.†

379 (d) The number of shares or other securities that ~~which~~ the  
380 person or affiliated person of such person proposes to acquire,  
381 the terms of the proposed acquisition, and the manner in which  
382 the securities are to be acquired.†~~and~~

383 (e) Information as to any contract, arrangement, or  
384 understanding with any party with respect to any of the  
385 securities of the insurer or controlling company, including, but  
386 not limited to, information relating to the transfer of any of  
387 the securities, option arrangements, puts or calls, or the  
388 giving or withholding of proxies, which information names the  
389 party with whom the contract, arrangement, or understanding has



355782

390 been entered into and gives the details thereof.

391 (f) An agreement by the person required to file the  
392 statement that the person will provide the annual report  
393 specified in s. 628.801(2) if control exists.

394 (g) An acknowledgement by the person required to file the  
395 statement that the person and all subsidiaries within the  
396 person's control in the insurance holding company system will  
397 provide, as necessary, information to the office upon request to  
398 evaluate enterprise risk to the insurer.

399 (10) Upon notification to the office by the domestic stock  
400 insurer or a controlling company that any person or any  
401 affiliated person of such person has acquired 10 ~~5~~ percent or  
402 more of the outstanding voting securities of the domestic stock  
403 insurer or controlling company without complying with the  
404 provisions of this section, the office shall order that the  
405 person and any affiliated person of such person cease  
406 acquisition of any further securities of the domestic stock  
407 insurer or controlling company; however, the person or any  
408 affiliated person of such person may request a proceeding, which  
409 proceeding shall be convened within 7 days after the rendering  
410 of the order for the sole purpose of determining whether the  
411 person, individually or in connection with any affiliated person  
412 of such person, has acquired 10 ~~5~~ percent or more of the  
413 outstanding voting securities of a domestic stock insurer or  
414 controlling company. Upon the failure of the person or  
415 affiliated person to request a hearing within 7 days, or upon a  
416 determination at a hearing convened pursuant to this subsection  
417 that the person or affiliated person has acquired voting  
418 securities of a domestic stock insurer or controlling company in



355782

419 violation of this section, the office may order the person and  
420 affiliated person to divest themselves of any voting securities  
421 so acquired.

422 (12) (a) A presumption of control may be rebutted by filing  
423 a disclaimer of control. Any person may file a disclaimer of  
424 control with the office. The disclaimer must fully disclose all  
425 material relationships and bases for affiliation between the  
426 person and the insurer as well as the basis for disclaiming the  
427 affiliation. After a disclaimer has been filed, the insurer is  
428 relieved of any duty to register or report under this section  
429 that may arise out of the insurer's relationship with the person  
430 unless the office disallows the disclaimer.

431 (b) Any controlling person of a domestic insurer who seeks  
432 to divest the person's controlling interest in the domestic  
433 insurer in any manner shall file with the office, with a copy to  
434 the insurer, confidential notice, not subject to public  
435 inspection as provided under s. 624.4212, of the person's  
436 proposed divestiture at least 30 days before the cessation of  
437 control. The office shall determine those instances in which the  
438 party seeking to divest or to acquire a controlling interest in  
439 an insurer must file for and obtain approval of the transaction.  
440 The information remains confidential until the conclusion of the  
441 transaction unless the office, in its discretion, determines  
442 that confidential treatment interferes with enforcement of this  
443 section. If the statement referred to in subsection (1) is  
444 otherwise filed, this paragraph does not apply. ~~For the purpose~~  
445 of this section, the term "affiliated person" of another person  
446 means:

447 1. ~~The spouse of such other person;~~





355782

448           ~~2. The parents of such other person and their lineal~~  
449 ~~descendants and the parents of such other person's spouse and~~  
450 ~~their lineal descendants;~~

451           ~~3. Any person who directly or indirectly owns or controls,~~  
452 ~~or holds with power to vote, 5 percent or more of the~~  
453 ~~outstanding voting securities of such other person;~~

454           ~~4. Any person 5 percent or more of the outstanding voting~~  
455 ~~securities of which are directly or indirectly owned or~~  
456 ~~controlled, or held with power to vote, by such other person;~~

457           ~~5. Any person or group of persons who directly or~~  
458 ~~indirectly control, are controlled by, or are under common~~  
459 ~~control with such other person;~~

460           ~~6. Any officer, director, partner, copartner, or employee~~  
461 ~~of such other person;~~

462           ~~7. If such other person is an investment company, any~~  
463 ~~investment adviser of such company or any member of an advisory~~  
464 ~~board of such company;~~

465           ~~8. If such other person is an unincorporated investment~~  
466 ~~company not having a board of directors, the depositor of such~~  
467 ~~company; or~~

468           ~~9. Any person who has entered into an agreement, written or~~  
469 ~~unwritten, to act in concert with such other person in acquiring~~  
470 ~~or limiting the disposition of securities of a domestic stock~~  
471 ~~insurer or controlling company.~~

472           ~~(c)(b)~~ For the purposes of this section, the term  
473 "controlling company" means any corporation, trust, or  
474 association owning, directly or indirectly, 25 percent or more  
475 of the voting securities of one or more domestic stock insurance  
476 companies.



355782

477 (13) The commission may adopt, amend, or repeal rules that  
478 are necessary to administer ~~implement the provisions of this~~  
479 ~~section, pursuant to chapter 120.~~

480 Section 6. Section 628.801, Florida Statutes, is amended to  
481 read:

482 628.801 Insurance holding companies; registration;  
483 regulation.-

484 (1) An ~~Every~~ insurer that is authorized to do business in  
485 this state and that is a member of an insurance holding company  
486 shall, on or before April 1 of each year, register with the  
487 office and file a registration statement and be subject to  
488 regulation with respect to its relationship to the holding  
489 company as provided by law or rule ~~or statute~~. The commission  
490 shall adopt rules establishing the information and statement  
491 form required for registration and the manner in which  
492 registered insurers and their affiliates are regulated. The  
493 rules apply to domestic insurers, foreign insurers, and  
494 commercially domiciled insurers, except for a foreign insurer  
495 domiciled in states that were ~~are~~ accredited by the National  
496 Association of Insurance Commissioners by December 31, 1995.  
497 Except to the extent of any conflict with this code, the rules  
498 must include all requirements and standards of ss. 4 and 5 of  
499 the Insurance Holding Company System Regulatory Act and the  
500 Insurance Holding Company System Model Regulation of the  
501 National Association of Insurance Commissioners, as adopted on  
502 December 2010. The commission may adopt subsequent amendments  
503 thereto if the methodology remains substantially consistent. The  
504 rules ~~Regulatory Act and the Model Regulation existed on~~  
505 ~~November 30, 2001,~~ and may include a prohibition on oral



355782

506 contracts between affiliated entities. Material transactions  
507 between an insurer and its affiliates shall be filed with the  
508 office as provided by rule ~~Upon request, the office may waive~~  
509 ~~filing requirements under this section for a domestic insurer~~  
510 ~~that is the subsidiary of an insurer that is in full compliance~~  
511 ~~with the insurance holding company registration laws of its~~  
512 ~~state of domicile, which state is accredited by the National~~  
513 ~~Association of Insurance Commissioners.~~

514 (2) The ultimate controlling person of every insurer  
515 subject to registration must also file an annual enterprise risk  
516 report on or before April 1. As used in this subsection, the  
517 term "ultimate controlling person" means a person who is not  
518 controlled by any other person. The report, to the best of the  
519 ultimate controlling person's knowledge and belief, must  
520 identify the material risks within the insurance holding company  
521 system that could pose enterprise risk to the insurer. The  
522 report shall be filed with the lead state office of the  
523 insurance holding company system as determined by the procedures  
524 within the Financial Analysis Handbook adopted by the National  
525 Association of Insurance Commissioners and is confidential and  
526 exempt from public disclosure as provided in s. 624.4212.

527 (a) An insurer may satisfy this requirement by providing  
528 the office with the most recently filed parent corporation  
529 reports that have been filed with the Securities and Exchange  
530 Commission which provide the appropriate enterprise risk  
531 information.

532 (b) The term "enterprise risk" means any activity,  
533 circumstance, event, or series of events involving one or more  
534 affiliates of an insurer which, if not remedied promptly, is



355782

535 likely to have a materially adverse effect upon the financial  
536 condition or liquidity of the insurer or its insurance holding  
537 company system as a whole, including anything that would cause  
538 the insurer's risk-based capital to fall into company action  
539 level as set forth in s. 624.4085 or would cause the insurer to  
540 be in hazardous financial condition.

541 (3) Pursuant to chapter 624 relating to the examination of  
542 insurers, the office may examine any insurer registered under  
543 this section and its affiliates to ascertain the financial  
544 condition of the insurer, including the enterprise risk to the  
545 insurer by the ultimate controlling party, or by any entity or  
546 combination of entities within the insurance holding company  
547 system, or by the insurance holding company system on a  
548 consolidated basis.

549 (4) The filings and related documents filed pursuant to  
550 this section are confidential and exempt as provided in s.  
551 624.4212 and are not subject to subpoena or discovery, or  
552 admissible in evidence in any private civil action. A waiver of  
553 any applicable privilege or claim of confidentiality in the  
554 filings and related documents may not occur as a result of any  
555 disclosure to the office under this section or any other section  
556 of the insurance code as authorized under s. 624.4212. Neither  
557 the office nor any person who received the filings and related  
558 documents while acting under the authority of the office or with  
559 whom such information is shared pursuant to s. 624.4212 is  
560 permitted or required to testify in any private civil action  
561 concerning any confidential documents, materials, or information  
562 subject to s. 624.4212.

563 (5) The failure to file a registration statement, or a



355782

564 summary of the registration statement, or the enterprise risk  
565 filing report required by this section within the time specified  
566 for filing is a violation of this section.

567 (6) Upon request, the office may waive the filing  
568 requirements of this section:

569 (a) If the insurer is a domestic insurer that is the  
570 subsidiary of an insurer that is in full compliance with the  
571 insurance holding company registration laws of its state of  
572 domicile, which state is accredited by the National Association  
573 of Insurance Commissioners; or

574 (b) If the insurer is a domestic insurer that writes only  
575 in this state and has annual direct written and assumed premium  
576 of less than \$300 million, excluding premiums reinsured with the  
577 Federal Crop Insurance Corporation and Federal Flood Program,  
578 and demonstrates that compliance with this section would not  
579 provide substantial regulatory or consumer benefit. In  
580 evaluating a waiver request made under this paragraph, the  
581 office may consider various factors including, but not limited  
582 to, the type of business entity, the volume of business written,  
583 the ownership or organizational structure of the entity, or  
584 whether the company is in run-off.

585  
586 A waiver granted pursuant to this subsection is valid for 2  
587 years unless sooner withdrawn due to a change in the  
588 circumstances under which the waiver was granted.

589 Section 7. Subsection (4) of section 628.803, Florida  
590 Statutes, is renumbered as subsection (5), and a new subsection  
591 (4) is added to that section to read:

592 628.803 Sanctions.—



355782

593           (4) If the office determines that any person committed a  
594 violation of s. 628.461 or s. 628.801, the violation may serve  
595 as an independent basis for disapproving dividends or  
596 distributions and for placing the insurer under an order of  
597 supervision in accordance with part VI of chapter 624.

598           Section 8. Section 628.805, Florida Statutes, is created to  
599 read:

600           628.805 Supervisory colleges.—In order to assess the  
601 business strategy, financial position, legal and regulatory  
602 position, risk exposure, risk management, and governance  
603 processes, and as part of the examination of individual insurers  
604 in accordance with ss. 628.801 and 624.316, the office may  
605 participate in a supervisory college with other regulators  
606 charged with supervision of the insurer or its affiliates,  
607 including other state, federal, and international regulatory  
608 agencies. In accordance with s. 624.4212 regarding confidential  
609 information sharing, the office may enter into agreements that  
610 provide the basis for cooperation between the office and the  
611 other regulatory agencies and the activities of the supervisory  
612 college. This section does not delegate to the supervisory  
613 college the office's authority to regulate or supervise the  
614 insurer or its affiliates under its jurisdiction.

615           (1) With respect to participation in a supervisory college,  
616 the office may:

617           (a) Initiate the establishment of a supervisory college.

618           (b) Clarify the membership and participation of other  
619 supervisors in the supervisory college.

620           (c) Clarify the functions of the supervisory college and  
621 the role of other regulators, including the establishment of a



355782

622 group-wide supervisor.

623 (d) Coordinate the ongoing activities of the supervisory  
624 college, including planning meetings, supervisory activities,  
625 and processes for information sharing.

626 (e) Establish a crisis management plan.

627 (2) With respect to an insurer registered under s. 628.801,  
628 and in accordance with this section, the office may participate  
629 in a supervisory college for any domestic insurer that is part  
630 of an insurance holding company system that has international  
631 operations in order to determine the insurer's compliance with  
632 this chapter.

633 (3) Each registered insurer subject to this section is  
634 liable for and shall pay reasonable expenses for the office's  
635 participation in a supervisory college, including reasonable  
636 travel expenses. A supervisory college may be convened as a  
637 temporary or permanent forum for communication and cooperation  
638 between the regulators charged with the supervision of the  
639 insurer or its affiliates, and the office may impose a regular  
640 assessment on the insurer for the payment of these expenses.

641 Section 9. Subsection (3) is added to section 636.045,  
642 Florida Statutes, to read:

643 636.045 Minimum surplus requirements.-

644 (3) A prepaid limited health service organization that is  
645 authorized in this state and one or more other states,  
646 jurisdictions, or countries is subject to ss. 624.4085 and  
647 624.40851.

648 Section 10. Subsection (7) is added to section 641.225,  
649 Florida Statutes, to read:

650 641.225 Surplus requirements.-



355782

651           (7) A health maintenance organization that is authorized in  
652 this state and one or more other states, jurisdictions, or  
653 countries is subject to ss. 624.4085 and 624.40851.

654           Section 11. Subsection (3) is added to section 641.255,  
655 Florida Statutes, to read:

656           641.255 Acquisition, merger, or consolidation.—

657           (3) A health maintenance organization that is a member of a  
658 holding company system is subject to s. 628.461 but not s.  
659 628.4615.

660           Section 12. This act shall take effect October 1, 2013, if  
661 SB 834 or similar legislation is adopted in the same legislative  
662 session or an extension thereof and becomes law.

665 ===== T I T L E   A M E N D M E N T =====

666 And the title is amended as follows:

667           Delete everything before the enacting clause  
668 and insert:

669                               A bill to be entitled  
670           An act relating to insurer solvency; creating s.  
671           624.085, F.S.; providing definitions applicable to the  
672           Florida Insurance Code; amending s. 624.4085, F.S.;  
673           revising a definition; providing additional  
674           calculations for determining whether an insurer has a  
675           company action level event; revising provisions  
676           relating to mandatory control level events; amending  
677           s. 624.424, F.S.; requiring an insurer's annual  
678           statement to include an actuarial opinion summary;  
679           providing criteria for such summary; providing an





355782

680 exception for life and health insurers; updating  
681 provisions; amending s. 625.121, F.S.; protecting  
682 material supporting an insurer's annual actuarial  
683 opinion from subpoena, discovery, or admissibility in  
684 a civil action; amending s. 628.461, F.S.; revising  
685 the amount of outstanding voting securities of a  
686 domestic stock insurer or a controlling company that a  
687 person is prohibited from acquiring unless certain  
688 requirements have been met; deleting a provision  
689 authorizing an insurer to file a disclaimer of  
690 affiliation and control in lieu of a letter notifying  
691 the Office of Insurance Regulation of the Financial  
692 Services Commission of the acquisition of the voting  
693 securities of a domestic stock company under certain  
694 circumstances; requiring the statement notifying the  
695 office to include additional information; conforming a  
696 provision to changes made by the act; providing that  
697 control is presumed to exist under certain conditions;  
698 specifying how control may be rebutted and how a  
699 controlling interest may be divested; deleting  
700 definitions; amending s. 628.801, F.S.; requiring an  
701 insurer to file annually by a specified date a  
702 registration statement; revising the requirements and  
703 standards for the rules establishing the information  
704 and statement form for the registration; requiring an  
705 insurer to file an annual enterprise risk report;  
706 authorizing the office to conduct examinations to  
707 determine the financial condition of registrants;  
708 providing that failure to file a registration or



355782

709 report is a violation of the section; providing  
710 additional grounds, requirements, and conditions with  
711 respect to a waiver from the registration  
712 requirements; amending s. 628.803, F.S.; providing for  
713 sanctions for persons who violate s. 628.461, F.S.,  
714 relating to the acquisition of controlling stock;  
715 creating s. 628.805, F.S.; authorizing the office to  
716 participate in supervisory colleges; authorizing the  
717 office to assess fees on insurers for participation;  
718 amending ss. 636.045 and 641.225, F.S.; applying  
719 certain statutes related to solvency to prepaid  
720 limited health service organizations and health  
721 maintenance organizations; amending s. 641.255, F.S.;  
722 providing for applicability of specified provisions to  
723 a health maintenance organization that is a member of  
724 a holding company; providing a contingent effective  
725 date.