

By Senator Simmons

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1 A bill to be entitled
2 An act relating to insurer solvency; creating s.
3 624.085, F.S.; providing definitions applicable to the
4 insurance code; amending s. 624.4085, F.S.; revising
5 definitions; providing additional calculations for
6 determining whether an insurer has a company action
7 level event; revising provisions relating to mandatory
8 control level events; amending s. 642.424, F.S.;
9 requiring an insurer's annual statement to include an
10 actuarial opinion summary and providing criteria for
11 such summary; providing an exception for life and
12 health insurers; updating provisions; amending s.
13 625.121, F.S.; protecting a memorandum supporting an
14 insurer's annual actuarial opinion from subpoena,
15 discovery, or admissibility in a civil action;
16 amending s. 628.461, F.S.; deleting a provision
17 authorizing an insurer to file a disclaimer of
18 affiliation and control in lieu of a letter notifying
19 the Office of Insurance Regulation of the Financial
20 Services Commission of the acquisition of the voting
21 securities of a domestic stock company under certain
22 circumstances; requiring the statement notifying the
23 office to include additional information; providing
24 for consideration of enterprise risk in an acquisition
25 application; providing that control is presumed to
26 exist under certain conditions; specifying how control
27 may be rebutted and how a controlling interest may be
28 divested; deleting definitions; amending s. 628.801,
29 F.S.; requiring an insurer to file annually by a

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30 specified date a registration statement; revising the
31 requirements and standards for the rules establishing
32 the information and statement form for the
33 registration; requiring an insurer to file an annual
34 enterprise risk report; providing that failure to file
35 a registration or report is a violation of the
36 section; authorizing the office to conduct
37 examinations to determine the financial condition of
38 registrants; providing additional grounds for a waiver
39 from the registration requirements; amending s.
40 628.803, F.S.; providing for sanctions for persons who
41 violate the provisions of s. 628.461, F.S., relating
42 to the acquisition of controlling stock; creating s.
43 628.805, F.S.; authorizing the office to participate
44 in supervisory colleges; authorizing the office to
45 assess fees on insurers for participation; amending
46 ss. 636.045 and 641.255, F.S.; applying certain
47 statutes related to solvency to prepaid limited health
48 service organizations and health maintenance
49 organizations; applying provisions relating to
50 acquisition of controlling stock to a health
51 maintenance organization that is a member of a holding
52 company; providing a contingent effective date.

53
54 Be It Enacted by the Legislature of the State of Florida:

55
56 Section 1. Section 624.085, Florida Statutes, is created to
57 read:

58 624.085 Other definitions.—As used in the Florida Insurance

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59 Code, the term:

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

63 (a) Equity ownership of voting securities;

64 (b) Common managerial control; or

65 (c) Collusive participation by the management of the
66 insurer and affiliate in the management of the insurer or the
67 affiliate.

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

69 (a) The spouse of such other person;

70 (b) The parents of such other person and their lineal
71 descendants, or the parents of such other person's spouse and
72 their lineal descendants;

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

76 (d) Any person 10 percent or more of the outstanding voting
77 securities of which are directly or indirectly owned or
78 controlled, or held with power to vote, by such other person;

79 (e) Any person or group of persons who directly or
80 indirectly control, are controlled by, or are under common
81 control with such other person;

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

84 (g) If such other person is an investment company, any
85 investment adviser of such company, or any member of an advisory
86 board of such company;

87 (h) If such other person is an unincorporated investment

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88 company not having a board of directors, the depositor of such
89 company; or

90 (i) Any person who has entered into an agreement, written
91 or unwritten, to act in concert with such other person in
92 acquiring or limiting the disposition of securities of a
93 domestic stock insurer or controlling company.

94 (3) "Control," including the terms "controlling,"
95 "controlled by," and "under common control with" means the
96 possession, direct or indirect, of the power to direct or cause
97 the direction of the management and policies of a person,
98 whether through the ownership of voting securities, by contract
99 other than a commercial contract for goods or nonmanagement
100 services, or otherwise. Control is presumed to exist if any
101 person, directly or indirectly, owns, controls, holds with the
102 power to vote, or holds proxies representing 10 percent or more
103 of the voting securities of any other person.

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

107 624.4085 Risk-based capital requirements for insurers.—

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

109 (g) "Life and health insurer" means any insurer authorized
110 or eligible under the Florida Insurance Code to underwrite life
111 or health insurance. The term includes a property and casualty
112 insurer that writes accident and health insurance only; a health
113 maintenance organization that is authorized in this state and
114 one or more other states, jurisdictions, or countries; and a
115 prepaid health service organization that is authorized in this
116 state and one or more other states, jurisdictions, or countries.

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

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

120 a. The insurer's total adjusted capital is greater than or
121 equal to its regulatory action level risk-based capital but less
122 than its company action level risk-based capital; ~~or~~

123 b. If a life and health insurer that reports using the life
124 and health annual statement instructions, the insurer has total
125 adjusted capital that is greater than or equal to its company
126 action level risk-based capital, but is less than the product of
127 its authorized control level risk-based capital and 3.0 ~~2.5~~, and
128 has a negative trend;

129 c. If a life and health or property and casualty insurer
130 that reports using the health annual statement instructions, the
131 insurer or organization has total adjusted capital that is
132 greater than or equal to its company action level risk-based
133 capital, but is less than the product of its authorized control
134 level risk-based capital and 3.0, and triggers the trend test
135 determined in accordance with the trend test calculation
136 included in the Risk-Based Capital Forecasting and Instructions,
137 Health, updated annually by the National Association of
138 Insurance Commissioners; or

139 d. If a property and casualty insurer that reports using
140 the property and casualty annual statement instructions, the
141 insurer has total adjusted capital that is greater than or equal
142 to its company action level risk-based capital, but is less than
143 the product of its authorized control level risk-based capital
144 and 3.0, and triggers the trend test determined in accordance
145 with the trend test calculation included in the Risk-Based

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146 Capital Forecasting and Instructions, Property/Casualty, updated
147 annually by the National Association of Insurance Commissioners;

148 2. The notification by the office to the insurer of an
149 adjusted risk-based capital report that indicates an event in
150 subparagraph 1., unless the insurer challenges the adjusted
151 risk-based capital report under subsection (7); or

152 3. If, under subsection (7), an insurer challenges an
153 adjusted risk-based capital report that indicates an event in
154 subparagraph 1., the notification by the office to the insurer
155 that the office has, after a hearing, rejected the insurer's
156 challenge.

157 (6)

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

159 1. With respect to a life and health insurer, the office
160 shall, after due consideration of s. 624.408, take any action
161 necessary to place the insurer under regulatory control,
162 including any remedy available under chapter 631. A mandatory
163 control level event is sufficient ground for the department to
164 be appointed as receiver as provided in chapter 631. The office
165 may forego taking action for up to 90 days after the mandatory
166 control level event if the office finds there is a reasonable
167 expectation that the ~~mandatory control level~~ event may be
168 eliminated within the 90-day period.

169 2. With respect to a property and casualty insurer, the
170 office shall, after due consideration of s. 624.408, s. 641.225
171 for a health maintenance association, or s. 636.045 for a
172 prepaid limited health service organization, take any action
173 necessary to place the insurer under regulatory control,
174 including any remedy available under chapter 631, or, in the

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175 case of an insurer that is not writing new business, may allow
176 the insurer to continue to operate under the supervision of the
177 office. In either case, the mandatory control level event is
178 sufficient ground for the department to be appointed as receiver
179 as provided in chapter 631. The office may forego taking action
180 for up to 90 days after the mandatory control level event if the
181 office finds there is a reasonable expectation that the
182 ~~mandatory control level~~ event may ~~will~~ be eliminated within the
183 90-day period.

184 Section 3. Subsection (1) and paragraph (e) of subsection
185 (8) of section 624.424, Florida Statutes, are amended to read:

186 624.424 Annual statement and other information.—

187 (1) (a) Each authorized insurer shall file with the office
188 full and true statements of its financial condition,
189 transactions, and affairs. An annual statement covering the
190 preceding calendar year shall be filed on or before March 1, and
191 quarterly statements covering the periods ending on March 31,
192 June 30, and September 30 shall be filed within 45 days after
193 each such date. The office may, for good cause, grant an
194 extension of time for filing ~~of~~ an annual or quarterly
195 statement. The statements must ~~shall~~ contain information
196 generally included in insurers' financial statements prepared in
197 accordance with generally accepted insurance accounting
198 principles and practices and in a form generally used ~~utilized~~
199 by insurers for financial statements, sworn to by at least two
200 executive officers of the insurer or, if a reciprocal insurer,
201 by ~~the~~ oath of the attorney in fact or its like officer if a
202 corporation. To facilitate uniformity in financial statements
203 and to facilitate office analysis, the commission may by rule

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204 adopt the form for financial statements approved by the National
205 Association of Insurance Commissioners in 2002, and ~~may adopt~~
206 subsequent amendments thereto if the methodology remains
207 substantially consistent, and may by rule require each insurer
208 to submit to the office, or such organization as the office may
209 designate, all or part of the information contained in the
210 financial statement in a computer-readable form compatible with
211 the electronic data processing system specified by the office.

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

213 1. A statement of opinion on loss and loss adjustment
214 expense reserves made by a member of the American Academy of
215 Actuaries or by a qualified loss reserve specialist, pursuant to
216 ~~under~~ criteria established by rule of the commission. In
217 adopting the rule, the commission shall ~~must~~ consider any
218 criteria established by the National Association of Insurance
219 Commissioners. The office may require semiannual updates of the
220 annual statement of opinion for ~~as to~~ a particular insurer if
221 the office has reasonable cause to believe that such reserves
222 are understated to the extent of materially misstating the
223 financial position of the insurer. Workpapers in support of the
224 statement of opinion must be provided to the office upon
225 request. This paragraph does not apply to life insurance, health
226 insurance, or title insurance.

227 2. An actuarial opinion summary written by the insurer's
228 appointed actuary. The summary must be filed in accordance with
229 the appropriate National Association of Insurance Commissioners
230 property and casualty annual statement instructions. Proprietary
231 business information contained in the summary is confidential
232 and exempt under s. 624.4212, and the summary and related

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233 information is not subject to subpoena or discovery, or
234 admissible in evidence in any private civil action. Neither the
235 office nor any person who received documents, materials, or any
236 other information while acting under the authority of the office
237 or with whom such information is shared pursuant to s. 624.4212
238 may testify in a private civil action concerning such
239 confidential information. No waiver of any other applicable
240 claim of confidentiality or privilege may occur as a result of a
241 disclosure to the office under this section or any other section
242 of the insurance code. This paragraph does not apply to life and
243 health insurers subject to s. 625.121(3).

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

248 (8)

249 (e) The commission shall adopt rules to administer
250 ~~implement~~ this subsection, which rules must be in substantial
251 conformity with the 2006 Annual Financial Reporting Model
252 Regulation ~~1998 Model Rule requiring annual audited financial~~
253 ~~reports~~ adopted by the National Association of Insurance
254 Commissioners or subsequent amendments, except where
255 inconsistent with the requirements of this subsection. Any
256 exception to, waiver of, or interpretation of accounting
257 requirements of the commission must be in writing and signed by
258 an authorized representative of the office. An ~~No~~ insurer may
259 not raise as a defense in any action, any exception to, waiver
260 of, or interpretation of accounting requirements as a defense in
261 an action, unless previously issued in writing by an authorized

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262 representative of the office.

263 Section 4. Paragraph (a) of subsection (3) of section
264 625.121, Florida Statutes, is amended to read:

265 625.121 Standard Valuation Law; life insurance.—

266 (3) ACTUARIAL OPINION OF RESERVES.—

267 (a)~~1.~~ Each life insurance company doing business in this
268 state shall annually submit the opinion of a qualified actuary
269 as to whether the reserves and related actuarial items held in
270 support of the policies and contracts specified by the
271 commission by rule are computed appropriately, are based on
272 assumptions that ~~which~~ satisfy contractual provisions, are
273 consistent with prior reported amounts, and comply with
274 applicable laws of this state. The commission by rule shall
275 define the specifics of this opinion and add any other items
276 determined to be necessary to its scope.

277 ~~1.2.~~ The opinion shall be submitted with the annual
278 statement reflecting the valuation of such reserve liabilities
279 ~~for each year ending on or after December 31, 1992.~~

280 ~~2.3.~~ The opinion applies ~~shall apply~~ to all business in
281 force, including individual and group health insurance plans, in
282 the form and substance acceptable to the office as specified by
283 rule of the commission.

284 ~~3.4.~~ The commission may adopt rules providing the standards
285 of the actuarial opinion consistent with standards adopted by
286 the Actuarial Standards Board on December 31, 2002, and
287 subsequent revisions thereto, if ~~provided that~~ the standards
288 remain substantially consistent.

289 ~~4.5.~~ ~~In the case of an opinion required to be submitted by~~
290 ~~a foreign or alien company,~~ The office may accept an ~~the~~ opinion

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291 filed by a foreign or alien ~~that~~ company with the insurance
292 supervisory official of another state if the office determines
293 that the opinion reasonably meets the requirements applicable to
294 a company domiciled in this state.

295 ~~5.6.~~ As used in ~~For the purposes of~~ this subsection, the
296 term "qualified actuary" means a member in good standing of the
297 American Academy of Actuaries who also meets the requirements
298 specified by rule of the commission.

299 ~~6.7.~~ Disciplinary action by the office against the company
300 or the qualified actuary shall be in accordance with the
301 insurance code and related rules adopted by the commission.

302 ~~7.8.~~ A memorandum in the form and substance specified by
303 rule shall be prepared to support each actuarial opinion.

304 ~~8.9.~~ If the insurance company fails to provide a supporting
305 memorandum at the request of the office within a period
306 specified by rule of the commission, or if the office determines
307 that the supporting memorandum provided by the insurance company
308 fails to meet the standards prescribed by rule of the
309 commission, the office may engage a qualified actuary at the
310 expense of the company to review the opinion and the basis for
311 the opinion and prepare such supporting memorandum as ~~is~~
312 required by the office.

313 ~~9.10.~~ Except as otherwise provided in this paragraph, any
314 memorandum or other material in support of the opinion is
315 confidential and exempt from ~~the provisions of~~ s. 119.07(1) and
316 is not subject to subpoena or discovery, or admissible in
317 evidence in any private civil action; however, the memorandum or
318 other material may be released by the office with the written
319 consent of the company, or to the American Academy of Actuaries

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320 upon request stating that the memorandum or other material is
321 required for the purpose of professional disciplinary
322 proceedings and setting forth procedures satisfactory to the
323 office for preserving the confidentiality of the memorandum or
324 other material. If any portion of the confidential memorandum is
325 cited by the company in its marketing, ~~or~~ is cited before any
326 governmental agency other than a state insurance department, or
327 is released by the company to the news media, no portion of the
328 memorandum is confidential. Neither the office nor any person
329 who received documents, materials, or any other information
330 while acting under the authority of the office or with whom such
331 information is shared pursuant to this paragraph may testify in
332 any private civil action concerning the confidential documents,
333 materials, or information.

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

336 628.461 Acquisition of controlling stock.—

337 (1) A person may not, individually or in conjunction with
338 any affiliated person of such person, acquire directly or
339 indirectly, conclude a tender offer or exchange offer for, enter
340 into any agreement to exchange securities for, or otherwise
341 finally acquire 5 percent or more of the outstanding voting
342 securities of a domestic stock insurer or of a controlling
343 company, unless:

344 (a) The person or affiliated person has filed with the
345 office and sent to the insurer and controlling company a letter
346 of notification regarding the transaction or proposed
347 transaction within ~~no later than~~ 5 days after any form of tender
348 offer or exchange offer is proposed, or within ~~no later than~~ 5

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349 days after the acquisition of the securities if no tender offer
350 or exchange offer is involved. The notification must be provided
351 on forms prescribed by the commission containing information
352 determined necessary to understand the transaction and identify
353 all purchasers and owners involved;

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

357 1. Any definitive acquisition agreement is entered;
358 2. Any form of tender offer or exchange offer is proposed;
359 or

360 3. The acquisition of the securities, if no definitive
361 acquisition agreement, tender offer, or exchange offer is
362 involved; and

363 (c) The office has approved the tender or exchange offer,
364 or acquisition if no tender offer or exchange offer is involved,
365 and approval is in effect.

366
367 ~~In lieu of a filing as required under this subsection, a party~~
368 ~~acquiring less than 10 percent of the outstanding voting~~
369 ~~securities of an insurer may file a disclaimer of affiliation~~
370 ~~and control. The disclaimer shall fully disclose all material~~
371 ~~relationships and basis for affiliation between the person and~~
372 ~~the insurer as well as the basis for disclaiming the affiliation~~
373 ~~and control. After a disclaimer has been filed, the insurer~~
374 ~~shall be relieved of any duty to register or report under this~~
375 ~~section which may arise out of the insurer's relationship with~~
376 ~~the person unless and until the office disallows the disclaimer.~~
377 ~~The office shall disallow a disclaimer only after furnishing all~~

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378 ~~parties in interest with notice and opportunity to be heard and~~
379 ~~after making specific findings of fact to support the~~
380 ~~disallowance.~~ A filing ~~as~~ required under this subsection must be
381 made for ~~as to~~ any acquisition that equals or exceeds 10 percent
382 of the outstanding voting securities.

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

391 (a) The identity of, and the background information
392 specified in subsection (4) on, each natural person by whom, or
393 on whose behalf, the acquisition is to be made; and, if the
394 acquisition is to be made by, or on behalf of, a corporation,
395 association, or trust, as to the corporation, association, or
396 trust and as to any person who controls, either ~~either~~ directly or
397 indirectly, the corporation, association, or trust, the identity
398 of, and the background information specified in subsection (4)
399 on, each director, officer, trustee, or other natural person
400 performing duties similar to those of a director, officer, or
401 trustee for the corporation, association, or trust.†

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

404 (c) Any plans or proposals that ~~which~~ such persons may have
405 made to liquidate such insurer, to sell any of its assets or
406 merge or consolidate it with any person, or to make any other

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407 major change in its business or corporate structure or
408 management; and any plans or proposals that ~~which~~ such persons
409 may have made to liquidate any controlling company of such
410 insurer, to sell any of its assets or merge or consolidate it
411 with any person, or to make any other major change in its
412 business or corporate structure or management.~~;~~

413 (d) The number of shares or other securities which the
414 person or affiliated person of such person proposes to acquire,
415 the terms of the proposed acquisition, and the manner in which
416 the securities are to be acquired.~~;~~~~and~~

417 (e) Information as to any contract, arrangement, or
418 understanding with any party with respect to any of the
419 securities of the insurer or controlling company, including, but
420 not limited to, information relating to the transfer of any of
421 the securities, option arrangements, puts or calls, or the
422 giving or withholding of proxies, which information names the
423 party with whom the contract, arrangement, or understanding has
424 been entered into and gives the details thereof.

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

428 (g) An acknowledgement by the person required to file the
429 statement that the person and all subsidiaries within its
430 control in the insurance holding company system will provide, as
431 necessary, information to the office upon request to evaluate
432 enterprise risk to the insurer.

433 (5) ~~(a)~~ The acquisition of voting securities shall be deemed
434 approved unless the office disapproves the proposed acquisition
435 within 90 days after the statement required by subsection (1)

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436 has been filed. The office may on its own initiate, or if
437 requested to do so in writing by a substantially affected party
438 shall conduct, a proceeding to consider the appropriateness of
439 the proposed filing. The 90-day time period shall be tolled
440 during the pendency of the proceeding. Any written request for a
441 proceeding must be filed with the office within 10 days after ~~of~~
442 the date notice of the filing is given.

443 (a) During the pendency of the proceeding or review period
444 by the office, any person or affiliated person complying with
445 the filing requirements of this section may proceed and take all
446 steps necessary to conclude the acquisition if ~~so long as~~ the
447 acquisition becoming final is conditioned upon obtaining office
448 approval. ~~The office shall,~~ However, if at any time the office
449 ~~that it~~ finds that an immediate danger to the public health,
450 safety, and welfare of the domestic policyholders exists, it
451 shall immediately order, pursuant to s. 120.569(2)(n), the
452 proposed acquisition temporarily disapproved and any further
453 steps to conclude the acquisition ceased.

454 (b) During the pendency of the office's review of any
455 acquisition subject to ~~the provisions of~~ this section, the
456 acquiring person may ~~shall~~ not make any material change in the
457 operation of the insurer or controlling company unless the
458 office has specifically approved the change nor may ~~shall~~ the
459 acquiring person make any material change in the management of
460 the insurer unless advance written notice of the change in
461 management is furnished to the office. A material change in the
462 operation of the insurer is a transaction that ~~which~~ disposes of
463 or obligates 10 ~~5~~ percent or more of the capital and surplus of
464 the insurer. A material change in the management of the insurer

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465 is any change in management involving officers or directors of
466 the insurer or any person of the insurer or controlling company
467 having authority to dispose of or obligate 10 ~~5~~ percent or more
468 of the insurer's capital or surplus. The office shall approve a
469 material change in operation if it finds the applicable
470 provisions of subsection (7) have been met. The office may
471 disapprove a material change in management if it finds that the
472 applicable provisions of subsection (7) have not been met and in
473 such case the insurer shall promptly change management as
474 acceptable to the office.

475 (c) If a request for a proceeding is filed, the proceeding
476 shall be conducted within 60 days after the date the written
477 request for a proceeding is received by the office. A
478 recommended order shall be issued within 20 days after ~~of~~ the
479 date of the close of the proceedings. A final order shall be
480 issued within 20 days after ~~of~~ the date of the recommended order
481 or, if exceptions to the recommended order are filed, within 20
482 days after ~~of~~ the date the exceptions are filed.

483 (12) (a) A presumption of control may be rebutted by filing
484 a disclaimer of control. Any person may file a disclaimer of
485 control with the office. The disclaimer must fully disclose all
486 material relationships and bases for affiliation between the
487 person and the insurer as well as the basis for disclaiming the
488 affiliation. After a disclaimer has been filed, the insurer is
489 relieved of any duty to register or report under this section
490 which may arise out of the insurer's relationship with the
491 person unless the office disallows the disclaimer.

492 (b) Any controlling person of a domestic insurer that seeks
493 to divest its controlling interest in the domestic insurer in

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494 any manner, shall file with the office, with a copy to the
495 insurer, confidential notice, not subject to public inspection
496 as provided under s. 624.4212, of its proposed divestiture at
497 least 30 days before the cessation of control. The office shall
498 determine those instances in which the party seeking to divest
499 or to acquire a controlling interest in an insurer must file for
500 and obtain approval of the transaction. The information remains
501 confidential until the conclusion of the transaction unless the
502 office, in its discretion, determines that confidential
503 treatment interferes with enforcement of this section. If the
504 statement referred to in subsection (1) is otherwise filed, this
505 paragraph does not apply. For the purpose of this section, the
506 term "affiliated person" of another person means:

- 507 1. The spouse of such other person;
- 508 2. The parents of such other person and their lineal
509 descendants and the parents of such other person's spouse and
510 their lineal descendants;
- 511 3. Any person who directly or indirectly owns or controls,
512 or holds with power to vote, 5 percent or more of the
513 outstanding voting securities of such other person;
- 514 4. Any person 5 percent or more of the outstanding voting
515 securities of which are directly or indirectly owned or
516 controlled, or held with power to vote, by such other person;
- 517 5. Any person or group of persons who directly or
518 indirectly control, are controlled by, or are under common
519 control with such other person;
- 520 6. Any officer, director, partner, copartner, or employee
521 of such other person;
- 522 7. If such other person is an investment company, any

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523 ~~investment adviser of such company or any member of an advisory~~
524 ~~board of such company;~~

525 ~~8. If such other person is an unincorporated investment~~
526 ~~company not having a board of directors, the depositor of such~~
527 ~~company; or~~

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

532 ~~(b) For the purposes of this section, the term "Controlling~~
533 ~~company" means any corporation, trust, or association owning,~~
534 ~~directly or indirectly, 25 percent or more of the voting~~
535 ~~securities of one or more domestic stock insurance companies.~~

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

539 Section 6. Section 628.801, Florida Statutes, is amended to
540 read:

541 628.801 Insurance holding companies; registration;
542 regulation.—

543 (1) An Every insurer that is authorized to do business in
544 this state and that is a member of an insurance holding company
545 shall, on or before April 1 of each year, register with the
546 office and file a registration statement and be subject to
547 regulation with respect to its relationship to the holding
548 company as provided by law or rule ~~or statute~~. The commission
549 shall adopt rules establishing the information and statement
550 form required for registration and the manner in which
551 registered insurers and their affiliates are regulated. The

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552 rules apply to domestic insurers, foreign insurers, and
553 commercially domiciled insurers, except for a foreign insurer
554 domiciled in states that were ~~are~~ accredited by the National
555 Association of Insurance Commissioners by December 31, 1995.
556 Except to the extent of any conflict with this code, the rules
557 must include all requirements and standards of ss. 4 and 5 of
558 the Insurance Holding Company System Regulatory Act and the
559 Insurance Holding Company System Model Regulation of the
560 National Association of Insurance Commissioners, as adopted on
561 December 2010, and may adopt subsequent amendments thereto if
562 the methodology remains substantially consistent ~~the Regulatory~~
563 ~~Act and the Model Regulation existed on November 30, 2001, and~~
564 may include a prohibition on oral contracts between affiliated
565 entities. Material transactions between an insurer and its
566 affiliates shall be filed with the office as provided by rule.
567 Upon request, the office may waive the filing requirements ~~under~~
568 ~~this section~~ for a domestic insurer that is the subsidiary of an
569 insurer that is in full compliance with the insurance holding
570 company registration laws of its state of domicile, which state
571 is accredited by the National Association of Insurance
572 Commissioners.

573 (2) The ultimate controlling person of every insurer
574 subject to registration must also file an annual enterprise risk
575 report, on or before April 1. As used in this subsection, the
576 term "ultimate controlling person" means a person that is not
577 controlled by any other person. The report, to the best of the
578 ultimate controlling person's knowledge and belief, must
579 identify the material risks within the insurance holding company
580 system which could pose enterprise risk to the insurer. The

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581 report shall be filed with the lead state office of the
582 insurance holding company system as determined by the procedures
583 within the Financial Analysis Handbook adopted by the National
584 Association of Insurance Commissioners and is confidential and
585 exempt from public disclosure as provided in s. 624.4212.

586 (a) No waiver of any applicable privilege or claim of
587 confidentiality in the annual enterprise risk report and related
588 documents may occur as a result of any disclosure to the office
589 under this section or any other section of the insurance code as
590 authorized under s. 624.4212. Neither the office nor any person
591 who received the report and related documents while acting under
592 the authority of the office or with whom such information is
593 shared pursuant to s. 624.4212 is permitted or required to
594 testify in any private civil action concerning any confidential
595 documents, materials, or information subject to s. 624.4212. An
596 insurer may satisfy this requirement by providing the office
597 with the most recently filed parent corporation reports that
598 have been filed with the Securities and Exchange Commission
599 which provide the appropriate enterprise risk information.

600 (b) The term "enterprise risk" means any activity,
601 circumstance, event, or series of events involving one or more
602 affiliates of an insurer which, if not remedied promptly, is
603 likely to have a materially adverse effect upon the financial
604 condition or liquidity of the insurer or its insurance holding
605 company system as a whole, including anything that would cause
606 the insurer's risk-based capital to fall into company action
607 level as set forth in s. 624.4085 or would cause the insurer to
608 be in hazardous financial condition.

609 (3) Pursuant to chapter 624 relating to the examination of

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610 insurers, the office may examine any insurer registered under
611 this section and its affiliates to ascertain the financial
612 condition of the insurer, including the enterprise risk to the
613 insurer by the ultimate controlling party, or by any entity or
614 combination of entities within the insurance holding company
615 system, or by the insurance holding company system on a
616 consolidated basis.

617 (4) The failure to file a registration statement, or a
618 summary of the registration statement, or the enterprise risk
619 filing report required by this section within the time specified
620 for filing is a violation of this section.

621 (5) An insurer may apply to the office for a waiver from
622 the requirements of this section:

623 (a) If the insurer is a domestic insurer that is the
624 subsidiary of an insurer that is in full compliance with the
625 insurance holding company registration laws of its state of
626 domicile, which state is accredited by the National Association
627 of Insurance Commissioners;

628 (b) If the insurer's annual direct written and assumed
629 premium, excluding premiums reinsured with the Federal Crop
630 Insurance Corporation and Federal Flood Program, is less than
631 \$300,000,000; or

632 (c) Based upon unique circumstances. The office may
633 consider various factors including, but not limited to, the type
634 of business entity, volume of business written, availability of
635 qualified board members, or the ownership or organizational
636 structure of the entity.

637 Section 7. Present subsection (4) of section 628.803,
638 Florida Statutes, is renumbered as subsection (5), and a new

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639 subsection (4) is added to that section, to read:

640 628.803 Sanctions.-

641 (4) If it appears to the office that any person has
642 committed a violation of s. 628.461 which prevents the full
643 understanding of the enterprise risk to the insurer by
644 affiliates or by the insurance holding company system, the
645 violation may serve as an independent basis for disapproving
646 dividends or distributions and for placing the insurer under an
647 order of supervision in accordance with part VI of chapter 624.

648 Section 8. Section 628.805, Florida Statutes, is created to
649 read:

650 628.805 Supervisory colleges.-In order to assess the
651 business strategy, financial position, legal and regulatory
652 position, risk exposure, risk management and governance
653 processes, and as part of the examination of individual insurers
654 in accordance with ss. 628.801 and 624.316, the office may
655 participate in a supervisory college with other regulators
656 charged with supervision of the insurer or its affiliates,
657 including other state, federal, and international regulatory
658 agencies. In accordance with s. 624.4212 regarding confidential
659 information sharing, the office may enter into agreements that
660 provide the basis for cooperation between the office and the
661 other regulatory agencies, and the activities of the supervisory
662 college. This section does not delegate to the supervisory
663 college the office's authority to regulate or supervise the
664 insurer or its affiliates under its jurisdiction.

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

667 (a) Initiate the establishment of a supervisory college;

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668 (b) Clarify the membership and participation of other
669 supervisors in the supervisory college;

670 (c) Clarify the functions of the supervisory college and
671 the role of other regulators, including the establishment of a
672 group-wide supervisor;

673 (d) Coordinate the ongoing activities of the supervisory
674 college, including planning meetings, supervisory activities,
675 and processes for information sharing; and

676 (e) Establish a crisis management plan.

677 (2) With respect to an insurer registered under s. 628.801,
678 and in accordance with this section, the office may participate
679 in a supervisory college for any domestic insurer that is part
680 of an insurance holding company system in order to determine the
681 insurer's compliance with this chapter.

682 (3) Each registered insurer subject to this section is
683 liable for and shall pay reasonable expenses for the office's
684 participation in a supervisory college, including reasonable
685 travel expenses. A supervisory college may be convened as a
686 temporary or permanent forum for communication and cooperation
687 between the regulators charged with the supervision of the
688 insurer or its affiliates, and the office may impose a regular
689 assessment on the insurer for the payment of these expenses.

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

692 636.045 Minimum surplus requirements.—

693 (3) A prepaid limited health service organization that is
694 authorized in this state and one or more other states,
695 jurisdictions, or countries is subject to ss. 624.4085 and
696 624.40851.

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697 Section 10. Present subsections (3), (4), (5), and (6) of
698 section 641.225, Florida Statutes, are renumbered as subsections
699 (4), (5), (6), and (7), respectively, and new subsections (3)
700 and (8) are added to that section, to read:

701 641.225 Surplus requirements.—

702 (3) A health maintenance organization that is a member of a
703 holding company system is subject to s. 628.461 but not s.
704 628.4615.

705 (8) A health maintenance organization that is authorized in
706 this state and one or more other states, jurisdictions, or
707 countries is subject to ss. 624.4085 and 624.40851.

708 Section 11. This act shall take effect October 1, 2013, if
709 SB _____ or similar legislation is adopted in the same
710 legislative session or an extension thereof and becomes a law.