

By the Committee on Banking and Insurance; and 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           Florida Insurance Code; amending s. 624.4085, F.S.;  
5           revising a definition; providing additional  
6           calculations for determining whether an insurer has a  
7           company action level event; revising provisions  
8           relating to mandatory control level events; amending  
9           s. 624.424, F.S.; requiring an insurer's annual  
10          statement to include an actuarial opinion summary;  
11          providing criteria for such summary; providing an  
12          exception for life and health insurers; updating  
13          provisions; amending s. 625.121, F.S.; protecting  
14          material supporting an insurer's annual actuarial  
15          opinion from subpoena, discovery, or admissibility in  
16          a civil action; amending s. 628.461, F.S.; revising  
17          the amount of outstanding voting securities of a  
18          domestic stock insurer or a controlling company that a  
19          person is prohibited from acquiring unless certain  
20          requirements have been met; deleting a provision  
21          authorizing an insurer to file a disclaimer of  
22          affiliation and control in lieu of a letter notifying  
23          the Office of Insurance Regulation of the Financial  
24          Services Commission of the acquisition of the voting  
25          securities of a domestic stock company under certain  
26          circumstances; requiring the statement notifying the  
27          office to include additional information; conforming a  
28          provision to changes made by the act; providing that  
29          control is presumed to exist under certain conditions;

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30 specifying how control may be rebutted and how a  
31 controlling interest may be divested; deleting  
32 definitions; amending s. 628.801, F.S.; requiring an  
33 insurer to file annually by a specified date a  
34 registration statement; revising the requirements and  
35 standards for the rules establishing the information  
36 and statement form for the registration; requiring an  
37 insurer to file an annual enterprise risk report;  
38 authorizing the office to conduct examinations to  
39 determine the financial condition of registrants;  
40 providing that failure to file a registration or  
41 report is a violation of the section; providing  
42 additional grounds, requirements, and conditions with  
43 respect to a waiver from the registration  
44 requirements; amending s. 628.803, F.S.; providing for  
45 sanctions for persons who violate s. 628.461, F.S.,  
46 relating to the acquisition of controlling stock;  
47 creating s. 628.805, F.S.; authorizing the office to  
48 participate in supervisory colleges; authorizing the  
49 office to assess fees on insurers for participation;  
50 amending ss. 636.045 and 641.225, F.S.; applying  
51 certain statutes related to solvency to prepaid  
52 limited health service organizations and health  
53 maintenance organizations; amending s. 641.255, F.S.;  
54 providing for applicability of specified provisions to  
55 a health maintenance organization that is a member of  
56 a holding company; providing a contingent effective  
57 date.

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

60  
61 Section 1. Section 624.085, Florida Statutes, is created to  
62 read:

63 624.085 Other definitions.—As used in the Florida Insurance  
64 Code, the term:

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

68 (a) Equity ownership of voting securities;

69 (b) Common managerial control; or

70 (c) Collusive participation by the management of the  
71 insurer and affiliate in the management of the insurer or the  
72 affiliate.

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

74 (a) The spouse of such other person;

75 (b) The parents of such other person and their lineal  
76 descendants, or the parents of such other person's spouse and  
77 their lineal descendants;

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

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

84 (e) Any person or group of persons who directly or  
85 indirectly control, are controlled by, or are under common  
86 control with such other person;

87 (f) Any officer, director, partner, copartner, or employee

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88 of such other person;

89 (g) If such other person is an investment company, any  
90 investment adviser of such company, or any member of an advisory  
91 board of such company;

92 (h) If such other person is an unincorporated investment  
93 company not having a board of directors, the depositor of such  
94 company; or

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

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

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

112 624.4085 Risk-based capital requirements for insurers.—

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

114 (g) "Life and health insurer" means any insurer authorized  
115 or eligible under the Florida Insurance Code to underwrite life  
116 or health insurance. The term includes a property and casualty

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117 insurer that writes accident and health insurance only; a health  
118 maintenance organization that is authorized in this state and  
119 one or more other states, jurisdictions, or countries; and a  
120 prepaid health service organization that is authorized in this  
121 state and one or more other states, jurisdictions, or countries.

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

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

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

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

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

144 d. If a property and casualty insurer that reports using  
145 the property and casualty annual statement instructions, the

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146 insurer has total adjusted capital that is greater than or equal  
147 to its company action level risk-based capital, but is less than  
148 the product of its authorized control level risk-based capital  
149 and 3.0, and triggers the trend test determined in accordance  
150 with the trend test calculation included in the Risk-Based  
151 Capital Forecasting and Instructions, Property/Casualty, updated  
152 annually by the National Association of Insurance Commissioners;

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

157 3. If, under subsection (7), an insurer challenges an  
158 adjusted risk-based capital report that indicates an event in  
159 subparagraph 1., the notification by the office to the insurer  
160 that the office has, after a hearing, rejected the insurer's  
161 challenge.

162 (6)

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

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

174 2. With respect to a property and casualty insurer, the

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175 office shall, after due consideration of s. 624.408, s. 641.225  
176 for a health maintenance organization, or s. 636.045 for a  
177 prepaid limited health service organization, take any action  
178 necessary to place the insurer under regulatory control,  
179 including any remedy available under chapter 631, or, in the  
180 case of an insurer that is not writing new business, may allow  
181 the insurer to continue to operate under the supervision of the  
182 office. In either case, the mandatory control level event is  
183 sufficient ground for the department to be appointed as receiver  
184 as provided in chapter 631. The office may forego taking action  
185 for up to 90 days after the mandatory control level event if the  
186 office finds there is a reasonable expectation that the  
187 ~~mandatory control level~~ event may ~~will~~ be eliminated within the  
188 90-day period.

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

191 624.424 Annual statement and other information.—

192 (1)(a) Each authorized insurer shall file with the office  
193 full and true statements of its financial condition,  
194 transactions, and affairs. An annual statement covering the  
195 preceding calendar year shall be filed on or before March 1, and  
196 quarterly statements covering the periods ending on March 31,  
197 June 30, and September 30 shall be filed within 45 days after  
198 each such date. The office may, for good cause, grant an  
199 extension of time for filing ~~of~~ an annual or quarterly  
200 statement. The statements must ~~shall~~ contain information  
201 generally included in insurers' financial statements prepared in  
202 accordance with generally accepted insurance accounting  
203 principles and practices and in a form generally used ~~utilized~~

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204 by insurers for financial statements, sworn to by at least two  
205 executive officers of the insurer or, if a reciprocal insurer,  
206 by ~~the~~ oath of the attorney in fact or its like officer if a  
207 corporation. To facilitate uniformity in financial statements  
208 and to facilitate office analysis, the commission may by rule  
209 adopt the form for financial statements approved by the National  
210 Association of Insurance Commissioners in 2002, and ~~may adopt~~  
211 subsequent amendments thereto if the methodology remains  
212 substantially consistent, and may by rule require each insurer  
213 to submit to the office, or such organization as the office may  
214 designate, all or part of the information contained in the  
215 financial statement in a computer-readable form compatible with  
216 the electronic data processing system specified by the office.

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

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

232 2. An actuarial opinion summary written by the insurer's



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233 appointed actuary. The summary must be filed in accordance with  
234 the appropriate National Association of Insurance Commissioners  
235 property and casualty annual statement instructions. Proprietary  
236 business information contained in the summary is confidential  
237 and exempt under s. 624.4212, and the summary and related  
238 information are not subject to subpoena or discovery or  
239 admissible in evidence in any private civil action. Neither the  
240 office nor any person who received documents, materials, or any  
241 other information while acting under the authority of the office  
242 or with whom such information is shared pursuant to s. 624.4212  
243 may testify in a private civil action concerning such  
244 confidential information. A waiver of any other applicable claim  
245 of confidentiality or privilege may not occur as a result of a  
246 disclosure to the office under this section or any other section  
247 of the insurance code. This paragraph does not apply to life and  
248 health insurers subject to s. 625.121(3).

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

253 (8)

254 (e) The commission shall adopt rules to administer  
255 ~~implement~~ this subsection, which rules must be in substantial  
256 conformity with the 2006 Annual Financial Reporting Model  
257 Regulation 1998 Model Rule requiring annual audited financial  
258 ~~reports~~ adopted by the National Association of Insurance  
259 Commissioners or subsequent amendments, except where  
260 inconsistent with the requirements of this subsection. Any  
261 exception to, waiver of, or interpretation of accounting

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262 requirements of the commission must be in writing and signed by  
263 an authorized representative of the office. An ~~No~~ insurer may  
264 not raise as a defense in any action, any exception to, waiver  
265 of, or interpretation of accounting requirements as a defense in  
266 an action, unless previously issued in writing by an authorized  
267 representative of the office.

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

270 625.121 Standard Valuation Law; life insurance.—

271 (3) ACTUARIAL OPINION OF RESERVES.—

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

282 ~~1.2.~~ The opinion shall be submitted with the annual  
283 statement reflecting the valuation of such reserve liabilities  
284 ~~for each year ending on or after December 31, 1992.~~

285 ~~2.3.~~ The opinion applies ~~shall apply~~ to all business in  
286 force, including individual and group health insurance plans, in  
287 the form and substance acceptable to the office as specified by  
288 rule of the commission.

289 ~~3.4.~~ The commission may adopt rules providing the standards  
290 of the actuarial opinion consistent with standards adopted by

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291 the Actuarial Standards Board on December 31, 2002, and  
292 subsequent revisions thereto, ~~if provided that~~ the standards  
293 remain substantially consistent.

294 ~~4.5. In the case of an opinion required to be submitted by~~  
295 ~~a foreign or alien company,~~ The office may accept an the opinion  
296 filed by a foreign or alien ~~that~~ company with the insurance  
297 supervisory official of another state if the office determines  
298 that the opinion reasonably meets the requirements applicable to  
299 a company domiciled in this state.

300 ~~5.6. As used in~~ For the purposes of this subsection, the  
301 term "qualified actuary" means a member in good standing of the  
302 American Academy of Actuaries who also meets the requirements  
303 specified by rule of the commission.

304 ~~6.7.~~ Disciplinary action by the office against the company  
305 or the qualified actuary shall be in accordance with the  
306 insurance code and related rules adopted by the commission.

307 ~~7.8.~~ A memorandum in the form and substance specified by  
308 rule shall be prepared to support each actuarial opinion.

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

318 ~~9.10.~~ Except as otherwise provided in this paragraph, any  
319 memorandum or other material in support of the opinion is

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320 confidential and exempt from ~~the provisions of~~ s. 119.07(1) and  
321 is not subject to subpoena or discovery or admissible in  
322 evidence in any private civil action; however, the memorandum or  
323 other material may be released by the office with the written  
324 consent of the company, or to the American Academy of Actuaries  
325 upon request stating that the memorandum or other material is  
326 required for the purpose of professional disciplinary  
327 proceedings and setting forth procedures satisfactory to the  
328 office for preserving the confidentiality of the memorandum or  
329 other material. If any portion of the confidential memorandum is  
330 cited by the company in its marketing, ~~or~~ is cited before any  
331 governmental agency other than a state insurance department, or  
332 is released by the company to the news media, no portion of the  
333 memorandum is confidential. Neither the office nor any person  
334 who received documents, materials, or any other information  
335 while acting under the authority of the office or with whom such  
336 information is shared pursuant to this paragraph may testify in  
337 any private civil action concerning the confidential documents,  
338 materials, or information. A waiver of any applicable privilege  
339 or claim of confidentiality in the documents, materials, or  
340 information may not occur as a result of disclosure to the  
341 office under this section or any other section of the insurance  
342 code, or as a result of sharing as authorized under s. 624.4212.

343 (b) In addition to the opinion required by paragraph (a)  
344 ~~subparagraph (a)1.~~, the office may, pursuant to commission rule,  
345 require an opinion of the same qualified actuary as to whether  
346 the reserves and related actuarial items held in support of the  
347 policies and contracts specified by the commission by rule, when  
348 considered in light of the assets held by the company with

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349 respect to the reserves and related actuarial items, including,  
350 but not limited to, the investment earnings on the assets and  
351 considerations anticipated to be received and retained under the  
352 policies and contracts, make adequate provision for the  
353 company's obligations under the policies and contracts,  
354 including, but not limited to, the benefits under, and expenses  
355 associated with, the policies and contracts.

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

358 628.461 Acquisition of controlling stock.—

359 (1) A person may not, individually or in conjunction with  
360 any affiliated person of such person, acquire directly or  
361 indirectly, conclude a tender offer or exchange offer for, enter  
362 into any agreement to exchange securities for, or otherwise  
363 finally acquire 10 ~~5~~ percent or more of the outstanding voting  
364 securities of a domestic stock insurer or of a controlling  
365 company, unless:

366 (a) The person or affiliated person has filed with the  
367 office and sent to the insurer and controlling company a letter  
368 of notification regarding the transaction or proposed  
369 transaction within ~~no later than~~ 5 days after any form of tender  
370 offer or exchange offer is proposed, or within ~~no later than~~ 5  
371 days after the acquisition of the securities if no tender offer  
372 or exchange offer is involved. The notification must be provided  
373 on forms prescribed by the commission containing information  
374 determined necessary to understand the transaction and identify  
375 all purchasers and owners involved;

376 (b) The person or affiliated person has filed with the  
377 office the ~~a~~ statement as specified in subsection (3). The

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378 statement must be completed and filed within 30 days after:

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

381 or

382 3. The acquisition of the securities, if no definitive  
383 acquisition agreement, tender offer, or exchange offer is  
384 involved; and

385 (c) The office has approved the tender or exchange offer,  
386 or acquisition if no tender offer or exchange offer is involved,  
387 and approval is in effect.

388

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

405 (3) The statement to be filed with the office under  
406 subsection (1) and furnished to the insurer and controlling

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407 company must ~~shall~~ contain all the following information and any  
408 additional information that ~~as~~ the office deems necessary to  
409 determine the character, experience, ability, and other  
410 qualifications of the person or affiliated person of such person  
411 for the protection of the policyholders and shareholders of the  
412 insurer and the public:

413 (a) The identity of, and the background information  
414 specified in subsection (4) on, each natural person by whom, or  
415 on whose behalf, the acquisition is to be made; and, if the  
416 acquisition is to be made by, or on behalf of, a corporation,  
417 association, or trust, as to the corporation, association, or  
418 trust and as to any person who controls, either ~~either~~ directly or  
419 indirectly, the corporation, association, or trust, the identity  
420 of, and the background information specified in subsection (4)  
421 on, each director, officer, trustee, or other natural person  
422 performing duties similar to those of a director, officer, or  
423 trustee for the corporation, association, or trust.†

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

426 (c) Any plans or proposals that ~~which~~ such persons may have  
427 made to liquidate such insurer, to sell any of its assets or  
428 merge or consolidate it with any person, or to make any other  
429 major change in its business or corporate structure or  
430 management; and any plans or proposals that ~~which~~ such persons  
431 may have made to liquidate any controlling company of such  
432 insurer, to sell any of its assets or merge or consolidate it  
433 with any person, or to make any other major change in its  
434 business or corporate structure or management.†

435 (d) The number of shares or other securities that ~~which~~ the

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436 person or affiliated person of such person proposes to acquire,  
437 the terms of the proposed acquisition, and the manner in which  
438 the securities are to be acquired.~~;~~ ~~and~~

439 (e) Information as to any contract, arrangement, or  
440 understanding with any party with respect to any of the  
441 securities of the insurer or controlling company, including, but  
442 not limited to, information relating to the transfer of any of  
443 the securities, option arrangements, puts or calls, or the  
444 giving or withholding of proxies, which information names the  
445 party with whom the contract, arrangement, or understanding has  
446 been entered into and gives the details thereof.

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

450 (g) An acknowledgement by the person required to file the  
451 statement that the person and all subsidiaries within the  
452 person's control in the insurance holding company system will  
453 provide, as necessary, information to the office upon request to  
454 evaluate enterprise risk to the insurer.

455 (10) Upon notification to the office by the domestic stock  
456 insurer or a controlling company that any person or any  
457 affiliated person of such person has acquired 10 ~~5~~ percent or  
458 more of the outstanding voting securities of the domestic stock  
459 insurer or controlling company without complying with the  
460 provisions of this section, the office shall order that the  
461 person and any affiliated person of such person cease  
462 acquisition of any further securities of the domestic stock  
463 insurer or controlling company; however, the person or any  
464 affiliated person of such person may request a proceeding, which



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465 proceeding shall be convened within 7 days after the rendering  
466 of the order for the sole purpose of determining whether the  
467 person, individually or in connection with any affiliated person  
468 of such person, has acquired 10 ~~5~~ percent or more of the  
469 outstanding voting securities of a domestic stock insurer or  
470 controlling company. Upon the failure of the person or  
471 affiliated person to request a hearing within 7 days, or upon a  
472 determination at a hearing convened pursuant to this subsection  
473 that the person or affiliated person has acquired voting  
474 securities of a domestic stock insurer or controlling company in  
475 violation of this section, the office may order the person and  
476 affiliated person to divest themselves of any voting securities  
477 so acquired.

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

487 (b) Any controlling person of a domestic insurer who seeks  
488 to divest the person's controlling interest in the domestic  
489 insurer in any manner shall file with the office, with a copy to  
490 the insurer, confidential notice, not subject to public  
491 inspection as provided under s. 624.4212, of the person's  
492 proposed divestiture at least 30 days before the cessation of  
493 control. The office shall determine those instances in which the

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494 party seeking to divest or to acquire a controlling interest in  
495 an insurer must file for and obtain approval of the transaction.  
496 The information remains confidential until the conclusion of the  
497 transaction unless the office, in its discretion, determines  
498 that confidential treatment interferes with enforcement of this  
499 section. If the statement referred to in subsection (1) is  
500 otherwise filed, this paragraph does not apply. For the purpose  
501 of this section, the term "affiliated person" of another person  
502 means:

- 503 1. The spouse of such other person;
- 504 2. The parents of such other person and their lineal  
505 descendants and the parents of such other person's spouse and  
506 their lineal descendants;
- 507 3. Any person who directly or indirectly owns or controls,  
508 or holds with power to vote, 5 percent or more of the  
509 outstanding voting securities of such other person;
- 510 4. Any person 5 percent or more of the outstanding voting  
511 securities of which are directly or indirectly owned or  
512 controlled, or held with power to vote, by such other person;
- 513 5. Any person or group of persons who directly or  
514 indirectly control, are controlled by, or are under common  
515 control with such other person;
- 516 6. Any officer, director, partner, copartner, or employee  
517 of such other person;
- 518 7. If such other person is an investment company, any  
519 investment adviser of such company or any member of an advisory  
520 board of such company;
- 521 8. If such other person is an unincorporated investment  
522 company not having a board of directors, the depositor of such

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523 ~~company; or~~

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

528 ~~(c) (b)~~ For the purposes of this section, the term  
529 "controlling company" means any corporation, trust, or  
530 association owning, directly or indirectly, 25 percent or more  
531 of the voting securities of one or more domestic stock insurance  
532 companies.

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

536 Section 6. Section 628.801, Florida Statutes, is amended to  
537 read:

538 628.801 Insurance holding companies; registration;  
539 regulation.—

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

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

570 (2) The ultimate controlling person of every insurer  
571 subject to registration must also file an annual enterprise risk  
572 report on or before April 1. As used in this subsection, the  
573 term "ultimate controlling person" means a person who is not  
574 controlled by any other person. The report, to the best of the  
575 ultimate controlling person's knowledge and belief, must  
576 identify the material risks within the insurance holding company  
577 system that could pose enterprise risk to the insurer. The  
578 report shall be filed with the lead state office of the  
579 insurance holding company system as determined by the procedures  
580 within the Financial Analysis Handbook adopted by the National

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581 Association of Insurance Commissioners and is confidential and  
582 exempt from public disclosure as provided in s. 624.4212.

583 (a) An insurer may satisfy this requirement by providing  
584 the office with the most recently filed parent corporation  
585 reports that have been filed with the Securities and Exchange  
586 Commission which provide the appropriate enterprise risk  
587 information.

588 (b) The term "enterprise risk" means any activity,  
589 circumstance, event, or series of events involving one or more  
590 affiliates of an insurer which, if not remedied promptly, is  
591 likely to have a materially adverse effect upon the financial  
592 condition or liquidity of the insurer or its insurance holding  
593 company system as a whole, including anything that would cause  
594 the insurer's risk-based capital to fall into company action  
595 level as set forth in s. 624.4085 or would cause the insurer to  
596 be in hazardous financial condition.

597 (3) Pursuant to chapter 624 relating to the examination of  
598 insurers, the office may examine any insurer registered under  
599 this section and its affiliates to ascertain the financial  
600 condition of the insurer, including the enterprise risk to the  
601 insurer by the ultimate controlling party, or by any entity or  
602 combination of entities within the insurance holding company  
603 system, or by the insurance holding company system on a  
604 consolidated basis.

605 (4) The filings and related documents filed pursuant to  
606 this section are confidential and exempt as provided in s.  
607 624.4212 and are not subject to subpoena or discovery, or  
608 admissible in evidence in any private civil action. A waiver of  
609 any applicable privilege or claim of confidentiality in the

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610 filings and related documents may not occur as a result of any  
611 disclosure to the office under this section or any other section  
612 of the insurance code as authorized under s. 624.4212. Neither  
613 the office nor any person who received the filings and related  
614 documents while acting under the authority of the office or with  
615 whom such information is shared pursuant to s. 624.4212 is  
616 permitted or required to testify in any private civil action  
617 concerning any confidential documents, materials, or information  
618 subject to s. 624.4212.

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

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

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

630 (b) If the insurer is a domestic insurer that writes only  
631 in this state and has annual direct written and assumed premium  
632 of less than \$300 million, excluding premiums reinsured with the  
633 Federal Crop Insurance Corporation and Federal Flood Program,  
634 and demonstrates that compliance with this section would not  
635 provide substantial regulatory or consumer benefit. In  
636 evaluating a waiver request made under this paragraph, the  
637 office may consider various factors including, but not limited  
638 to, the type of business entity, the volume of business written,

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639 the ownership or organizational structure of the entity, or  
640 whether the company is in run-off.

641  
642 A waiver granted pursuant to this subsection is valid for 2  
643 years unless sooner withdrawn due to a change in the  
644 circumstances under which the waiver was granted.

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

648 628.803 Sanctions.—

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

654 Section 8. Section 628.805, Florida Statutes, is created to  
655 read:

656 628.805 Supervisory colleges.—In order to assess the  
657 business strategy, financial position, legal and regulatory  
658 position, risk exposure, risk management, and governance  
659 processes, and as part of the examination of individual insurers  
660 in accordance with ss. 628.801 and 624.316, the office may  
661 participate in a supervisory college with other regulators  
662 charged with supervision of the insurer or its affiliates,  
663 including other state, federal, and international regulatory  
664 agencies. In accordance with s. 624.4212 regarding confidential  
665 information sharing, the office may enter into agreements that  
666 provide the basis for cooperation between the office and the  
667 other regulatory agencies and the activities of the supervisory

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668 college. This section does not delegate to the supervisory  
669 college the office's authority to regulate or supervise the  
670 insurer or its affiliates under its jurisdiction.

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

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

674 (b) Clarify the membership and participation of other  
675 supervisors in the supervisory college.

676 (c) Clarify the functions of the supervisory college and  
677 the role of other regulators, including the establishment of a  
678 group-wide supervisor.

679 (d) Coordinate the ongoing activities of the supervisory  
680 college, including planning meetings, supervisory activities,  
681 and processes for information sharing.

682 (e) Establish a crisis management plan.

683 (2) With respect to an insurer registered under s. 628.801,  
684 and in accordance with this section, the office may participate  
685 in a supervisory college for any domestic insurer that is part  
686 of an insurance holding company system that has international  
687 operations in order to determine the insurer's compliance with  
688 this chapter.

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



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

699 636.045 Minimum surplus requirements.—

700 (3) A prepaid limited health service organization that is  
701 authorized in this state and one or more other states,  
702 jurisdictions, or countries is subject to ss. 624.4085 and  
703 624.40851.

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

706 641.225 Surplus requirements.—

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

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

712 641.255 Acquisition, merger, or consolidation.—

713 (3) A health maintenance organization that is a member of a  
714 holding company system is subject to s. 628.461 but not s.  
715 628.4615.

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