

By the Committees on Rules; and Banking and Insurance; and
Senator Simmons

595-04844-13

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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 contingent effective
57 dates.

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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.
118 Effective January 1, 2015, the term also includes a health
119 maintenance organization that is authorized in this state and
120 one or more other states, jurisdictions, or countries; and a
121 prepaid limited health service organization that is authorized
122 in this state and one or more other states, jurisdictions, or
123 countries.

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

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

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

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

136 c. Effective January, 1, 2015, if a life and health or
137 property and casualty insurer that reports using the health
138 annual statement instructions, the insurer or organization has
139 total adjusted capital that is greater than or equal to its
140 company action level risk-based capital, but is less than the
141 product of its authorized control level risk-based capital and
142 3.0, and triggers the trend test determined in accordance with
143 the trend test calculation included in the Risk-Based Capital
144 Forecasting and Instructions, Health, updated annually by the
145 National Association of Insurance Commissioners; or

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

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

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

164 (6)

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

166 1. With respect to a life and health insurer, the office
167 shall, after due consideration of s. 624.408, and effective
168 January 1, 2015, ss. 641.225 and 636.045, take any action
169 necessary to place the insurer under regulatory control,
170 including any remedy available under chapter 631. A mandatory
171 control level event is sufficient ground for the department to
172 be appointed as receiver as provided in chapter 631. The office
173 may forego taking action for up to 90 days after the mandatory
174 control level event if the office finds there is a reasonable

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175 expectation that the ~~mandatory control level~~ event may be
176 eliminated within the 90-day period.

177 2. With respect to a property and casualty insurer, the
178 office shall, after due consideration of s. 624.408, take any
179 action necessary to place the insurer under regulatory control,
180 including any remedy available under chapter 631, or, in the
181 case of an insurer that is not writing new business, may allow
182 the insurer to continue to operate under the supervision of the
183 office. In either case, the mandatory control level event is
184 sufficient ground for the department to be appointed as receiver
185 as provided in chapter 631. The office may forego taking action
186 for up to 90 days after the mandatory control level event if the
187 office finds there is a reasonable expectation that the
188 ~~mandatory control level~~ event may ~~will~~ be eliminated within the
189 90-day period.

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

192 624.424 Annual statement and other information.—

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

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

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

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

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

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

254 (8)

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

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

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

271 625.121 Standard Valuation Law; life insurance.-

272 (3) ACTUARIAL OPINION OF RESERVES.-

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

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

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

290 3.4. The commission may adopt rules providing the standards

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291 of the actuarial opinion consistent with standards adopted by
292 the Actuarial Standards Board on December 31, 2002, and
293 subsequent revisions thereto, ~~if provided that~~ the standards
294 remain substantially consistent.

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

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

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

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

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

319 ~~9.10.~~ Except as otherwise provided in this paragraph, any

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

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

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

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

359 628.461 Acquisition of controlling stock.—

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

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

377 (b) The person or affiliated person has filed with the

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378 office the ~~a~~ statement as specified in subsection (3). The
379 statement must be completed and filed within 30 days after:

- 380 1. Any definitive acquisition agreement is entered;
381 2. Any form of tender offer or exchange offer is proposed;
382 or
383 3. The acquisition of the securities, if no definitive
384 acquisition agreement, tender offer, or exchange offer is
385 involved; and

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

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

406 (3) The statement to be filed with the office under

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407 subsection (1) and furnished to the insurer and controlling
408 company must ~~shall~~ contain all the following information and any
409 additional information that ~~as~~ the office deems necessary to
410 determine the character, experience, ability, and other
411 qualifications of the person or affiliated person of such person
412 for the protection of the policyholders and shareholders of the
413 insurer and the public:

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

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

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

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436 (d) The number of shares or other securities that ~~which~~ the
437 person or affiliated person of such person proposes to acquire,
438 the terms of the proposed acquisition, and the manner in which
439 the securities are to be acquired. ~~;~~ ~~and~~

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

448 (f) Effective January 1, 2015, an agreement by the person
449 required to file the statement that the person will provide the
450 annual report specified in s. 628.801(2) if control exists.

451 (g) Effective January 1, 2015, an acknowledgement by the
452 person required to file the statement that the person and all
453 subsidiaries within the person's control in the insurance
454 holding company system will provide, as necessary, information
455 to the office upon request to evaluate enterprise risk to the
456 insurer.

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

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

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

489 (b) Any controlling person of a domestic insurer who seeks
490 to divest the person's controlling interest in the domestic
491 insurer in any manner shall file with the office, with a copy to
492 the insurer, confidential notice, not subject to public
493 inspection as provided under s. 624.4212, of the person's

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

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

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

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

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

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

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

540 628.801 Insurance holding companies; registration;
541 regulation.—

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

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

572 (2) Effective January 1, 2015, the ultimate controlling
573 person of every insurer subject to registration must also file
574 an annual enterprise risk report on or before April 1. As used
575 in this subsection, the term "ultimate controlling person" means
576 a person who is not controlled by any other person. The report,
577 to the best of the ultimate controlling person's knowledge and
578 belief, must identify the material risks within the insurance
579 holding company system that could pose enterprise risk to the
580 insurer. The report shall be filed with the lead state office of

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

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

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

600 (3) Effective January 1, 2015, pursuant to chapter 624
601 relating to the examination of insurers, the office may examine
602 any insurer registered under this section and its affiliates to
603 ascertain the financial condition of the insurer, including the
604 enterprise risk to the insurer by the ultimate controlling
605 party, or by any entity or combination of entities within the
606 insurance holding company system, or by the insurance holding
607 company system on a consolidated basis.

608 (4) The filings and related documents filed pursuant to
609 this section are confidential and exempt as provided in s.

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

622 (5) Effective January 1, 2015, the failure to file a
623 registration statement, or a summary of the registration
624 statement, or the enterprise risk filing report required by this
625 section within the time specified for filing is a violation of
626 this section.

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

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

634 (b) If the insurer is a domestic insurer that writes only
635 in this state and has annual direct written and assumed premium
636 of less than \$300 million, excluding premiums reinsured with the
637 Federal Crop Insurance Corporation and Federal Flood Program,
638 and demonstrates that compliance with this section would not

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639 provide substantial regulatory or consumer benefit. In
640 evaluating a waiver request made under this paragraph, the
641 office may consider various factors including, but not limited
642 to, the type of business entity, the volume of business written,
643 the ownership or organizational structure of the entity, or
644 whether the company is in run-off.

645
646 A waiver granted pursuant to this subsection is valid for 2
647 years unless sooner withdrawn due to a change in the
648 circumstances under which the waiver was granted.

649 Section 7. Effective January 1, 2015, subsection (4) of
650 section 628.803, Florida Statutes, is renumbered as subsection
651 (5), and a new subsection (4) is added to that section to read:

652 628.803 Sanctions.—

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

658 Section 8. Effective January 1, 2015, section 628.805,
659 Florida Statutes, is created to read:

660 628.805 Supervisory colleges.—In order to assess the
661 business strategy, financial position, legal and regulatory
662 position, risk exposure, risk management, and governance
663 processes, and as part of the examination of individual insurers
664 in accordance with ss. 628.801 and 624.316, the office may
665 participate in a supervisory college with other regulators
666 charged with supervision of the insurer or its affiliates,
667 including other state, federal, and international regulatory

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668 agencies. In accordance with s. 624.4212 regarding confidential
669 information sharing, the office may enter into agreements that
670 provide the basis for cooperation between the office and the
671 other regulatory agencies and the activities of the supervisory
672 college. This section does not delegate to the supervisory
673 college the office's authority to regulate or supervise the
674 insurer or its affiliates under its jurisdiction.

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

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

678 (b) Clarify the membership and participation of other
679 supervisors in the supervisory college.

680 (c) Clarify the functions of the supervisory college and
681 the role of other regulators, including the establishment of a
682 group-wide supervisor.

683 (d) Coordinate the ongoing activities of the supervisory
684 college, including planning meetings, supervisory activities,
685 and processes for information sharing.

686 (e) Establish a crisis management plan.

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

693 (3) Each registered insurer subject to this section is
694 liable for and shall pay reasonable expenses for the office's
695 participation in a supervisory college, including reasonable
696 travel expenses. A supervisory college may be convened as a

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697 temporary or permanent forum for communication and cooperation
698 between the regulators charged with the supervision of the
699 insurer or its affiliates, and the office may impose a regular
700 assessment on the insurer for the payment of these expenses.

701 Section 9. Effective January 1, 2015, subsection (3) is
702 added to section 636.045, Florida Statutes, to read:

703 636.045 Minimum surplus requirements.—

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

708 Section 10. Effective January 1, 2015, subsection (7) is
709 added to section 641.225, Florida Statutes, to read:

710 641.225 Surplus requirements.—

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

714 Section 11. Effective January 1, 2015, subsection (3) is
715 added to section 641.255, Florida Statutes, to read:

716 641.255 Acquisition, merger, or consolidation.—

717 (3) A health maintenance organization that is a member of a
718 holding company system is subject to s. 628.461 but not s.
719 628.4615.

720 Section 12. Except as otherwise expressly provided in this
721 act, this act shall take effect October 1, 2013, if SB 834 or
722 similar legislation is adopted in the same legislative session
723 or an extension thereof and becomes law.