

## Committee Substitute for Senate Bill No. 2192

An act relating to solvency of insurers and health maintenance organizations; amending s. 624.404, F.S.; revising a definition; amending s. 624.80, F.S.; revising a definition; amending s. 624.81, F.S.; providing for effect of certain department orders; specifying that certain requests stay certain actions; specifying authority of the Department of Insurance relating to certain notice requirements; authorizing the department to adopt certain rules; amending s. 624.84, F.S.; specifying that certain requests do not stay certain actions; amending s. 625.041, F.S.; revising the liabilities that a workers' compensation insurer must include on its financial statements; amending s. 627.481, F.S.; revising the requirements for minimum assets, reserves, and investments for entities authorized to enter into donor annuity agreements; amending s. 641.26, F.S.; revising certain annual report requirements; amending s. 641.35, F.S.; specifying inclusion of certain losses and claims under liabilities of a health maintenance organization under certain circumstances; providing an exception; providing for the investment of funds of a health maintenance organization in excess of certain reserves and surplus under certain circumstances; providing a limitation; amending s. 641.365, F.S.; revising limitations on certain dividend payments or distributions to stockholders by a health maintenance organization; specifying criteria for making payments, declaring dividends, or making distributions; specifying criteria for department approval of certain dividends or distributions; amending s. 641.19, F.S.; defining the term "health care risk contract"; providing an effective date.

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

Section 1. Paragraph (b) of subsection (4) of section 624.404, Florida Statutes, is amended to read:

624.404 General eligibility of insurers for certificate of authority.—To qualify for and hold authority to transact insurance in this state, an insurer must be otherwise in compliance with this code and with its charter powers and must be an incorporated stock insurer, an incorporated mutual insurer, or a reciprocal insurer, of the same general type as may be formed as a domestic insurer under this code; except that:

(4)

(b) A "fronting company" is an authorized insurer which by reinsurance or otherwise generally transfers more than 50 percent to one unauthorized insurer which does not meet the requirements of s. 624.610(3)(a), (b), or (c) ~~is not an approved reinsurer~~, or more than 75 percent to two or more unauthorized insurers which do not meet the requirements of s. 624.610(3)(a), (b), or (c) ~~are not approved reinsurers~~, of the entire risk of loss on all of the insurance written by it in this state, or on one or more lines of insurance, on all of the business produced through one or more agents or agencies, or

on all of the business from a designated geographical territory, without obtaining the prior approval of the department.

Section 2. Subsection (2) of section 624.80, Florida Statutes, is amended to read:

624.80 Definitions.—As used in this part:

(2) “Unsound condition” means that the department has determined that one or more any of the following conditions exist with respect to an insurer:

(a) The insurer’s required surplus, capital, or capital stock is impaired to an extent prohibited by law;

(b) The insurer continues to write new business when it has not maintained the required surplus or capital; ~~or~~

(c) The insurer attempts to dissolve or liquidate without first having made provisions, satisfactory to the department, for liabilities arising from insurance policies issued by the insurer; or

(d) The insurer meets one or more of the grounds in s. 631.051 for the appointment of the department as receiver.

Section 3. Subsections (1) and (6) of section 624.81, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

624.81 Notice to comply with written requirements of department; non-compliance.—

(1) If the department determines that the conditions set forth in subsection (2) exist, the department shall issue an order placing ~~notify~~ the insurer in administrative supervision ~~writing of its determination~~, setting forth the reasons giving rise to the determination, and specifying that the department is applying and effectuating the provisions of this part. An order issued by the department pursuant to this subsection entitles the insurer to request a proceeding under ss. 120.569 and 120.57 and such a request shall stay the action pending such proceeding.

(6) If the department and the insurer are unable to agree on the provisions of the plan, the department may require the insurer to take such corrective action as may be reasonably necessary to remove the causes and conditions giving rise to the need for administrative supervision ~~proceed under applicable provisions of this code other than the provisions of this part.~~

(10) The department may adopt rules to define standards of hazardous financial condition and corrective action substantially similar to that indicated in the National Association of Insurance Commissioners’ 1997 “Model Regulation to Define Standards and Commissioner’s Authority for Companies Deemed to be Hazardous Financial Condition,” which are necessary to implement the provisions of this part.

Section 4. Section 624.84, Florida Statutes, is amended to read:

624.84 ~~Review and stay of action.~~—During the period of supervision, the insurer may contest an action taken or proposed to be taken by the supervisor, specifying the manner wherein the action complained of would not result in improving the condition of the insurer. ~~Such, and the request shall not stay the action specified pending reconsideration of the action by the department. If upon reconsideration the action of the department is upheld, the stay shall be lifted.~~ Denial of the insurer's request upon reconsideration entitles the insurer to request a proceeding under ss. 120.569 and 120.57.

Section 5. Effective retroactively to January 1, 2002, subsection (5) is added to section 625.041, Florida Statutes, to read:

625.041 Liabilities, in general.—In any determination of the financial condition of an insurer, liabilities to be charged against its assets shall include:

(5) Any insurer in this state that writes workers' compensation insurance shall accrue a liability on its financial statements for all Special Disability Trust Fund assessments that are due within the current calendar year. In addition, those insurers shall also disclose in the notes to the financial statements required to be filed under s. 624.424 an estimate of future Special Disability Trust Fund assessments, if the assessments are likely to occur and can be estimated with reasonable certainty.

Section 6. Subsection (2) of section 627.481, Florida Statutes, is amended to read:

627.481 Requirements for certain annuity agreements.—

(2)(a) Every such domestic corporation or such domestic or foreign trust shall have and maintain admitted assets at least equal to the sum of the reserves on its outstanding annuity agreements, calculated in accordance with the United States Internal Revenue Code as set forth in s. 220.03(1)(n), and a surplus of 10 25 percent of such reserves, calculated using:-

1.a. The present value of future guaranteed benefits for individual annuities that have either commenced paying benefits or have fixed a future date of the first benefit payment.

b. The commissioner's annuity reserve method, as set forth in s. 625.121(7)(c), for individual deferred annuities that have not fixed a date for the first benefit payment.

2. The mortality tables used to value individual annuities, as defined in s. 625.121(5).

a. For annuities issued prior to July 1, 1998:

(I) The mortality tables described in s. 625.121(5)(h), for individual annuities;

(II) At the option of the corporation or trust, the 1983 Individual Annuity Mortality Table; or

(III) At the option of the corporation or trust, the 2000 Individual Annuity Mortality Table for annuities issued between January 1, 1998, and June 30, 1998, inclusive.

b. For annuities issued on or after July 1, 1998:

(I) The mortality tables set forth in s. 625.121(5)(i)3.:

(II) Any other mortality tables required to be used by insurers in accordance with s. 625.121; or

(III) At the option of the corporation or trust, any other mortality tables authorized to be used by insurers in accordance with s. 625.121.

3. An interest rate not greater than the maximum interest rate permitted for the valuation of individual annuities issued during the same calendar year as the charitable gift annuity for individual annuities as set forth in s. 625.121(6)(b)-(f).

a. The maximum statutory valuation interest rates for single-premium immediate annuities for 1992 may be used for annuities issued in 1992 or any prior year. The maximum statutory valuation interest rates for single-premium immediate annuities issued in 1992 through 2001 are as follows:

<u>Year of Issue</u>	<u>Single Premium Immediate Annuity Interest Rate</u>
<u>1992</u>	<u>7.75 percent</u>
<u>1993</u>	<u>7.00 percent</u>
<u>1994</u>	<u>6.50 percent</u>
<u>1995</u>	<u>7.25 percent</u>
<u>1996</u>	<u>6.75 percent</u>
<u>1997</u>	<u>6.75 percent</u>
<u>1998</u>	<u>6.25 percent</u>
<u>1999</u>	<u>6.25 percent</u>
<u>2000</u>	<u>7.00 percent</u>
<u>2001</u>	<u>6.75 percent</u>

b. For 2002 and subsequent years, until an interest rate for a specified year can be determined in accordance with s. 625.121(6), the prior year's rate shall be used unless the department requires use of a lower rate.

(b) In determining the reserves of any such corporation or trust, a deduction shall be made for all or any portion of an annuity risk which is reinsured by a life insurance company authorized to do business in this state.

(c)1. The assets of such corporation or trust in an amount at least equal to the sum of such reserves and surplus shall be invested only in mutual funds or investments securities permitted under part II of chapter 625 for the investment of the reserves of authorized life insurance companies.

2. For purposes of this section, the provisions of s. 625.305(2)(a) shall not apply. In lieu thereof, the fair market value of investments made by such

corporation or trust in stock authorized by s. 625.324 may not exceed 50 percent of such corporation's or trust's required reserves and surplus. The fair market value in stock of any one corporation or mutual fund may not exceed 10 percent of such corporation's or trust's required reserves and surplus. All other provisions of s. 625.305 shall apply. ; and Such assets shall be segregated as separate and distinct funds, independent of all other funds of such corporation or trust, and shall not be applied for the payment of the debts and obligations of the corporation or trust or for any purpose other than the annuity benefits specified in this section.

Section 7. Paragraph (f) of subsection (1) and subsections (3) and (8) of section 641.26, Florida Statutes, are amended to read:

641.26 Annual report.—

(1) Every health maintenance organization shall, annually within 3 months after the end of its fiscal year, or within an extension of time therefor as the department, for good cause, may grant, in a form prescribed by the department, file a report with the department, verified by the oath of two officers of the organization or, if not a corporation, of two persons who are principal managing directors of the affairs of the organization, properly notarized, showing its condition on the last day of the immediately preceding reporting period. Such report shall include:

(f) An actuarial certification that:

1. The health maintenance organization is actuarially sound, which certification shall consider the rates, benefits, and expenses of, and any other funds available for the payment of obligations of, the organization.

2. The rates being charged or to be charged are actuarially adequate to the end of the period for which rates have been guaranteed.

3. Incurred but not reported claims and claims reported but not fully paid have been adequately provided for.

4. The health maintenance organization has adequately provided for all obligations required by s. 641.35(3)(a).

(3) Every health maintenance organization shall file quarterly, for the first three calendar quarters of each year within 45 days after each of its quarterly reporting periods, an unaudited financial statement of the organization as described in paragraphs (1)(a) and (b). The statement for the quarter ending March 31 shall be filed on or before May 15, the statement for the quarter ending June 30 shall be filed on or before August 15, and the statement for the quarter ending September 30 shall be filed on or before November 15. The quarterly report shall be verified by the oath of two officers of the organization, properly notarized.

(8) Each health maintenance organization shall file one copy of its annual statement convention blank in electronic form, along with such additional filings as prescribed by the department for the preceding calendar year or quarter, with the National Association of Insurance Commissioners.

Each health maintenance organization shall pay fees assessed by the National Association of Insurance Commissioners to the department a reasonable fee to cover costs associated with the filing and analysis of the documents by the National Association of Insurance Commissioners.

Section 8. Paragraph (a) of subsection (3) and subsection (15) of section 641.35, Florida Statutes, are amended to read:

641.35 Assets, liabilities, and investments.—

(3) LIABILITIES.—In any determination of the financial condition of a health maintenance organization, liabilities to be charged against its assets shall include:

(a) The amount, estimated consistently with the provisions of this part, necessary to pay all of its unpaid losses and claims incurred for or on behalf of a subscriber, on or prior to the end of the reporting period, whether reported or unreported, including contract and premium deficiency reserves. If a health maintenance organization, through a health care risk contract, transfers to any entity the obligation to pay any provider for any claim arising from services provided to or for the benefit of any subscriber, the liabilities of the health maintenance organization under this section shall include the amount of those losses and claims to the extent that the provider has not received payment. No liability need be established if the entity has provided to the health maintenance organization a financial instrument acceptable to the department securing the obligations under the contract or if the health maintenance organization has in place an escrow or withhold agreement approved by the department which assures full payment of those claims. Financial instruments may include irrevocable, clean, and evergreen letters of credit. As used in this paragraph, the term “entity” does not include this state, the United States, or an agency thereof or an insurer or health maintenance organization authorized in this state.

The department, upon determining that a health maintenance organization has failed to report liabilities that should have been reported, shall require a corrected report which reflects the proper liabilities to be submitted by the organization to the department within 10 working days of receipt of written notification.

(15) SPECIAL CONSENT INVESTMENT OF EXCESS FUNDS.—

(a) After satisfying the requirements of this part, any funds of a health maintenance organization in excess of its statutorily required reserves and surplus may be invested:

1. Without limitation in any investments otherwise authorized by this part; or

2. In such other investments not specifically authorized by this part provided such investments do not exceed the lesser 5 percent of the health maintenance organization’s admitted assets or 25 percent of the amount by which a health maintenance organization’s surplus exceeds its statutorily required minimum surplus. A health maintenance organization may exceed

the limitations of this subparagraph only with the prior written approval of the department.

(b) Nothing in this section authorizes a health maintenance organization to:

1. Invest any funds in excess of the amount by which its actual surplus exceeds its statutorily required minimum surplus; or

2. Make any investment prohibited by this code Any investment of the health maintenance organization's funds not enumerated in this part requires the prior approval of the department.

Section 9. Subsections (1) and (2) of section 641.365, Florida Statutes, are amended to read:

641.365 Dividends.—

~~(1)(a) A health maintenance organization shall not pay any dividend or distribute cash or other property to stockholders except out of that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and net realized capital gains. Dividend payments or distributions to stockholders shall not exceed 10 percent of such surplus in any one year unless otherwise approved by the department. In addition to such limited payments, a health maintenance organization may make dividend payments or distributions out of the health maintenance organization's entire net operating profits and realized net capital gains derived during the immediately preceding calendar or fiscal year, as applicable.~~

(b) Unless prior written approval is obtained from the department, a health maintenance organization may not pay or declare any dividend or distribute cash or other property to or on behalf of any stockholder if, immediately before or after such distribution, the health maintenance organization's available and accumulated surplus funds, which are derived from realized net operating profits on its business and net realized gains, are or would be less than zero.

(c) A health maintenance organization may make dividend payments or distributions to stockholders without the prior written approval of the department when:

1. The dividend is equal to or less than the greater of:

a. Ten percent of the health maintenance organization's accumulated surplus funds which are derived from realized net operating profits on its business and net realized capital gains as of the immediate preceding calendar year; or

b. The health maintenance organization's entire net operating profit and realized net capital gains derived during the immediately preceding calendar year.

2. The health maintenance organization will have surplus equal to or exceeding 115 percent of the minimum required statutory surplus after the dividend or distribution is made.

3. The health maintenance organization has filed a notice with the department at least 30 days prior to the dividend payment or distribution, or such shorter period of time as approved by the department on a case-by-case basis.

4. The notice includes a certification by an officer of the health maintenance organization attesting that after payment of the dividend or distribution the health maintenance organization will have at least 115 percent of required statutory surplus.

5. The health maintenance organization has negative retained earnings, statutory surplus in excess of \$50 million, and statutory surplus greater than or equal to 150 percent of its required statutory surplus before and after the dividend distribution is made based upon the health maintenance organization's most recently filed annual financial statement.

(2) The department shall not approve a dividend or distribution in excess of the maximum amount allowed in subsection (1) unless it determines that the distribution or dividend would not jeopardize the financial condition of the health maintenance organization, considering:

(a) The liquidity, quality, and diversification of the health maintenance organization's assets and the effect on its ability to meet its obligations.

(b) Any reduction of investment portfolio and investment income.

(c) History of capital contributions.

(d) Prior dividend distributions of the health maintenance organization.

(e) Whether the dividend is only a pass-through dividend from a subsidiary of the health maintenance organization.

Section 10. Subsection (21) is added to section 641.19, Florida Statutes, to read:

641.19 Definitions.—As used in this part, the term:

(21) "Health care risk contract" means a contract under which an individual or entity receives consideration or other compensation in an amount greater than 1 percent of the health maintenance organization's annual gross written premium in exchange for providing to the health maintenance organization a provider network or other services, which may include administrative services. The 1-percent threshold shall be calculated on a contract-by-contract basis for each such individual or entity and not in the aggregate for all health care risk contracts.

Section 11. Except as otherwise expressly provided in this act, this act shall take effect October 1, 2002.

Approved by the Governor May 13, 2002.

Filed in Office Secretary of State May 13, 2002.