

By the Committee on Banking and Insurance

311-106B-03

1                                   A bill to be entitled  
2           An act relating to governmental reorganization;  
3           conforming the Florida Statutes to the  
4           amendment of Article IV, Section 4 of the State  
5           Constitution, in which the functions of the  
6           former positions of Comptroller and Treasurer  
7           were combined into the office of Chief  
8           Financial Officer, and chapter 2002-404, Laws  
9           of Florida, which reorganized certain  
10          executive-branch duties and functions to  
11          implement such constitutional amendment;  
12          amending ss. 11.12, 11.13, 11.147, 11.151,  
13          11.40, 11.42, 14.057, 14.058, 14.203, 15.09,  
14          16.10, 17.001, 17.002, 17.011, 17.02, 17.03,  
15          17.031, 17.04, 17.0401, 17.041, 17.0415, 17.05,  
16          17.075, 17.076, 17.08, 17.09, 17.10, 17.11,  
17          17.12, 17.13, 17.14, 17.16, 17.17, 17.20,  
18          17.21, 17.22, 17.25, 17.26, 17.27, 17.28,  
19          17.29, 17.30, 17.32, 17.325, 17.41, 17.43,  
20          F.S.; transferring and amending ss. 18.01,  
21          18.02, 18.021, 18.05, 18.06, 18.07, 18.08,  
22          18.091, 18.10, 18.101, 18.103, 18.104, 18.125,  
23          18.15, 18.17, 18.20, 18.23, 18.24, F.S.;  
24          amending ss. 20.04, 20.055, 20.121, 20.195,  
25          20.425, 20.435, 24.105, 24.111, 24.112, 24.120,  
26          25.241, 26.39, 27.08, 27.10, 27.11, 27.12,  
27          27.13, 27.34, 27.3455, 27.703, 27.710, 27.711,  
28          28.235, 28.24, 30.49, 30.52, 40.30, 40.31,  
29          40.33, 40.34, 40.35, 43.16, 43.19, 48.151,  
30          55.03, 57.091, 68.083, 68.084, 68.087, 68.092,  
31          77.0305, 92.39, 99.097, 107.11, 110.1127,

1 110.113, 110.114, 110.116, 110.1227, 110.1228,  
2 110.123, 110.125, 110.181, 110.2037, 110.205,  
3 112.061, 112.08, 112.191, 112.215, 112.3144,  
4 112.3145, 112.3189, 112.31895, 112.3215,  
5 112.63, 116.03, 116.04, 116.05, 116.06, 116.14,  
6 120.52, 120.80, 121.051, 121.061, 121.133,  
7 122.35, 125.0104, 129.201, 131.05, 137.09,  
8 145.141, 154.02, 154.03, 154.05, 154.06,  
9 154.209, 154.314, 163.01, 163.055, 163.3167,  
10 166.111, 175.032, 175.101, 175.121, 175.151,  
11 185.08, 185.10, 185.13, 189.4035, 189.412,  
12 189.427, 190.007, 191.006, 192.091, 192.102,  
13 193.092, 195.101, 198.29, 199.232, 203.01,  
14 206.46, 210.16, 210.20, 210.50, 211.06, 211.31,  
15 211.32, 212.08, 212.12, 212.20, 213.053,  
16 213.054, 213.255, 213.67, 213.75, 215.02,  
17 215.03, 215.04, 215.05, 215.11, 215.20, 215.22,  
18 215.23, 215.24, 215.25, 215.26, 215.29, 215.31,  
19 215.32, 215.3206, 215.3208, 215.322, 215.34,  
20 215.35, 215.405, 215.42, 215.422, 215.50,  
21 215.551, 215.552, 215.555, 215.559, 215.56005,  
22 215.5601, 215.58, 215.684, 215.70, 215.91,  
23 215.92, 215.93, 215.94, 215.96, 215.965,  
24 215.97, 216.0442, 216.102, 216.141, 216.177,  
25 216.181, 216.183, 216.192, 216.212, 216.221,  
26 216.222, 216.235, 216.237, 216.251, 216.271,  
27 216.275, 216.292, 216.301, 217.07, 218.06,  
28 218.23, 218.31, 218.321, 218.325, 220.151,  
29 220.187, 220.62, 220.723, 238.11, 238.15,  
30 238.172, 238.173, 250.22, 250.24, 250.25,  
31 250.26, 250.34, 252.62, 252.87, 253.025,

1 255.03, 255.052, 255.258, 255.503, 255.521,  
2 257.22, 258.014, 259.032, 259.041, 265.53,  
3 265.55, 267.075, 272.18, 280.02, 280.04,  
4 280.041, 280.05, 280.051, 280.052, 280.053,  
5 280.054, 280.055, 280.06, 280.07, 280.071,  
6 280.08, 280.085, 280.09, 280.10, 280.11,  
7 280.13, 280.16, 280.17, 280.18, 280.19,  
8 282.1095, 284.02, 284.04, 284.05, 284.06,  
9 284.08, 284.14, 284.17, 284.30, 284.31, 284.32,  
10 284.33, 284.34, 284.35, 284.37, 284.385,  
11 280.39, 284.40, 284.41, 284.42, 284.44, 284.50,  
12 287.042, 287.057, 287.058, 287.063, 287.064,  
13 287.09451, 287.115, 287.131, 287.175, 288.1045,  
14 288.106, 288.109, 288.1253, 288.709, 288.712,  
15 288.776, 288.778, 288.99, 289.051, 289.081,  
16 289.121, 292.085, 313.02, 314.02, 316.3025,  
17 316.545, 320.02, 320.081, 320.20, 320.71,  
18 320.781, 322.21, 324.032, 324.171, 326.006,  
19 331.303, 331.309, 331.3101, 331.348, 331.419,  
20 336.022, 337.25, 339.035, 339.081, 344.17,  
21 350.06, 354.03, 365.173, 370.06, 370.16,  
22 370.19, 370.20, 373.503, 373.59, 373.6065,  
23 374.983, 374.986, 376.11, 376.123, 376.307,  
24 376.3071, 376.3072, 376.3075, 376.3078,  
25 376.3079, 376.40, 377.23, 377.2425, 377.705,  
26 378.035, 378.037, 378.208, 381.765, 381.90,  
27 385.207, 388.201, 388.301, 391.025, 391.221,  
28 392.69, 393.002, 393.075, 394.482, 400.0238,  
29 400.063, 400.071, 400.4174, 400.4298, 400.471,  
30 400.962, 401.245, 401.25, 402.04, 402.17,  
31 402.33, 403.1835, 403.1837, 403.706, 403.724,

1 403.8532, 404.111, 406.58, 408.040, 408.05,  
2 408.08, 408.18, 408.50, 408.7056, 408.902,  
3 408.909, 409.175, 409.25656, 409.25658,  
4 409.2673, 409.8132, 409.817, 409.818, 409.910,  
5 409.912, 409.9124, 409.915, 411.01, 413.32,  
6 414.27, 414.28, 420.0005, 420.0006, 420.101,  
7 420.123, 420.131, 420.141, 420.5092, 430.42,  
8 430.703, 440.015, 440.02, 440.05, 440.09,  
9 440.10, 440.1025, 440.103, 440.105, 440.1051,  
10 440.106, 440.107, 440.13, 440.134, 440.14,  
11 440.17, 440.20, 440.24, 440.38, 440.381,  
12 440.385, 440.386, 440.40, 440.44, 440.49,  
13 440.50, 440.51, 440.515, 440.52, 440.525,  
14 440.591, 443.131, 443.191, 443.211, 445.0325,  
15 447.12, 450.155, 468.392, 468.529, 473.3065,  
16 475.045, 475.484, 475.485, 489.114, 489.144,  
17 489.145, 489.510, 489.533, 494.001, 494.0011,  
18 494.0012, 494.00125, 494.0013, 494.0014,  
19 494.0016, 494.00165, 494.0017, 494.0021,  
20 494.0025, 494.0028, 494.0029, 494.00295,  
21 494.0031, 494.0032, 494.0033, 494.0034,  
22 494.0035, 494.0036, 494.0038, 494.004,  
23 494.0041, 494.00421, 494.0061, 494.0062,  
24 494.0064, 494.0065, 494.0066, 494.0067,  
25 494.0069, 494.0072, 494.00721, 494.0076,  
26 494.0079, 494.00795, 494.00797, 497.005,  
27 497.101, 497.105, 497.107, 497.109, 497.115,  
28 497.117, 497.131, 497.201, 497.253, 497.313,  
29 497.403, 498.025, 498.049, 499.057, 501.212,  
30 507.03, 509.215, 513.055, 516.01, 516.02,  
31 516.03, 516.031, 516.05, 516.07, 516.11,

1 516.12, 516.22, 516.221, 516.23, 516.32,  
2 516.33, 516.35, 517.021, 517.03, 517.051,  
3 517.061, 517.07, 517.075, 517.081, 517.082,  
4 517.101, 517.111, 517.12, 517.1201, 517.1203,  
5 517.1204, 517.121, 517.131, 517.141, 517.151,  
6 517.161, 517.181, 517.191, 517.201, 517.2015,  
7 517.221, 517.241, 517.301, 517.302, 517.313,  
8 517.315, 517.32, 518.115, 518.116, 518.15,  
9 518.151, 518.152, 519.101, 520.02, 520.03,  
10 520.07, 520.31, 520.32, 520.34, 520.52, 520.61,  
11 520.63, 520.73, 520.76, 520.81, 520.83, 520.90,  
12 520.994, 520.995, 520.996, 520.9965, 520.997,  
13 520.998, 526.141, 537.003, 537.004, 537.005,  
14 537.006, 537.008, 537.009, 537.011, 537.013,  
15 537.016, 537.017, 548.066, 548.077, 550.0251,  
16 550.054, 550.0951, 550.125, 550.135, 550.1645,  
17 552.081, 552.161, 552.21, 552.26, 553.72,  
18 553.73, 553.74, 553.79, 553.88, 554.1021,  
19 554.105, 554.111, 559.10, 559.543, 559.544,  
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21 559.555, 559.563, 559.725, 559.730, 559.785,  
22 559.928, 559.9232, 560.102, 560.103, 560.105,  
23 560.106, 560.107, 560.1073, 560.108, 560.109,  
24 560.111, 560.112, 560.113, 560.114, 560.115,  
25 560.116, 560.117, 560.118, 560.119, 560.121,  
26 560.123, 560.125, 560.126, 560.127, 560.128,  
27 560.129, 560.202, 560.205, 560.206, 560.207,  
28 560.208, 560.209, 560.210, 560.211, 560.302,  
29 560.305, 560.306, 560.307, 560.308, 560.309,  
30 560.310, 560.402, 560.403, 560.404, 560.4041,  
31 560.407, 560.408, 561.051, 562.44, 567.08,

1 569.205, 569.215, 570.13, 570.195, 570.20,  
2 574.03, 589.06, 597.010, 601.10, 601.15,  
3 601.28, 607.0501, 607.14401, 609.05, 617.0501,  
4 617.1440, 624.01, 624.05, 624.07, 624.09,  
5 624.11, 624.124, 624.129, 624.155, 624.19,  
6 624.302, 624.303, 624.305, 624.307, 624.308,  
7 624.310, 624.3102, 624.311, 624.312, 624.313,  
8 624.314, 624.315, 624.316, 624.3161, 624.317,  
9 624.318, 624.319, 624.320, 624.321, 624.322,  
10 624.324, 624.33, 624.34, 624.401, 624.4031,  
11 624.404, 624.4072, 624.4085, 624.40851,  
12 624.4094, 624.4095, 624.410, 624.411, 624.412,  
13 624.413, 624.4135, 624.414, 624.415, 624.416,  
14 624.418, 624.420, 624.421, 624.4211, 624.422,  
15 624.423, 624.424, 624.4241, 624.4243, 624.4245,  
16 624.430, 624.4361, 624.437, 624.438, 624.439,  
17 624.4392, 624.44, 624.441, 624.4411, 624.4412,  
18 624.442, 624.443, 624.4431, 624.444, 624.445,  
19 F.S.; amending and renumbering s. 624.4435,  
20 F.S.; amending ss. 624.45, 624.4621, 624.4622,  
21 624.464, 624.466, 624.468, 624.470, 624.473,  
22 624.4741, 624.476, 624.477, 624.480, 624.482,  
23 624.484, 624.486, 624.487, 624.501, 624.5015,  
24 624.502, 624.506, 624.509, 624.5091, 624.5092,  
25 624.516, 624.517, 624.519, 624.521, 624.523,  
26 624.6012, 624.605, 624.607, 624.609, 624.610,  
27 624.80, 624.81, 624.82, 624.83, 624.84, 624.85,  
28 624.86, 624.87, 625.01115, 625.012, 625.041,  
29 625.051, 625.061, 625.071, 625.081, 625.091,  
30 625.101, 625.121, 625.131, 625.141, 625.151,  
31 625.161, 625.172, 625.181, 625.303, 625.305,

1 625.317, 625.322, 625.324, 625.325, 625.326,  
2 625.330, 625.331, 625.332, 625.333, 625.338,  
3 625.52, 625.53, 625.55, 625.56, 625.57, 625.58,  
4 625.62, 625.63, 625.75, 625.765, 625.78,  
5 625.79, 625.80, 625.82, 625.83, 626.015, F.S.;  
6 creating s. 626.016, F.S.; prescribing powers  
7 and duties of the Department of Financial  
8 Services, Financial Services Commission, and  
9 Office of Insurance Regulation; amending ss.  
10 626.025, 626.112, 626.161, 626.171, 626.181,  
11 626.191, 626.201, 626.202, 626.211, 626.221,  
12 626.231, 626.241, 626.251, 626.261, 626.266,  
13 626.271, 626.281, 626.2815, 626.2817, 626.291,  
14 626.292, 626.301, 626.322, 626.361, 626.371,  
15 626.381, 626.431, 626.451, 626.461, 626.471,  
16 626.511, 626.521, 626.541, 626.551, 626.561,  
17 626.591, 626.592, 626.601, 626.611, 626.621,  
18 626.631, 626.641, 626.661, 626.681, 626.691,  
19 626.692, 626.7315, 626.732, 626.742, 626.7451,  
20 626.7454, 626.7491, 626.7492, 626.752,  
21 626.7845, 626.7851, 626.8305, 626.8311,  
22 626.8427, 626.8463, 626.8467, 626.847,  
23 626.8473, 626.8582, 626.8584, 626.859, 626.861,  
24 626.863, 626.865, 626.866, 626.867, 626.869,  
25 626.8695, 626.8696, 626.8697, 626.8698,  
26 626.870, 626.871, 626.872, 626.873, 626.8732,  
27 626.8734, 626.8736, 626.8738, 626.874, 626.878,  
28 626.88, 626.8805, 626.8809, 626.8814, 626.884,  
29 626.89, 626.891, 626.892, 626.894, 626.895,  
30 626.896, 626.897, 626.898, 626.899, 626.901,  
31 626.906, 626.907, 626.909, 626.910, 626.912,

1 626.914, 626.916, 626.917, 626.918, 626.919,  
2 626.921, 626.931, 626.932, 626.936, 626.9361,  
3 626.937, 626.938, 626.9511, 626.9541, 626.9543,  
4 626.9545, 626.9551, 626.9561, 626.9571,  
5 626.9581, 626.9591, 626.9601, 626.9611,  
6 626.9621, 626.9631, 626.9641, 626.9651,  
7 626.989, 626.9892, 626.99, 626.9911, 626.9912,  
8 626.9913, 626.9914, 626.9915, 626.9916,  
9 626.9919, 626.9921, 626.9922, 626.99235,  
10 626.99245, 626.9925, 626.9926, 626.9927,  
11 626.99272, 626.99285, 626.99295, 627.031,  
12 627.0612, 627.0613, 627.062, 627.0625,  
13 627.0628, 627.0629, 627.0645, 627.06501,  
14 627.0651, 627.0652, 627.0653, 627.06535,  
15 627.066, 627.072, 627.091, 627.0915, 627.0916,  
16 627.092, 627.096, 627.101, 627.111, 627.141,  
17 627.151, 627.171, 627.192, 627.211, 627.212,  
18 627.215, 627.221, 627.231, 627.241, 627.281,  
19 627.291, 627.301, 627.311, 627.3111, 627.314,  
20 627.318, 627.331, 627.351, 627.3511, 627.3512,  
21 627.3513, 627.3515, 627.3517, 627.357, 627.361,  
22 627.371, 627.381, 627.4035, 627.410, 627.4101,  
23 627.4105, 627.411, 627.412, 627.413, 627.4145,  
24 627.417, 627.418, 627.4234, 627.4236, 627.4238,  
25 627.427, 627.429, 627.452, 627.458, 627.462,  
26 627.464, 627.476, 627.479, 627.480, 627.481,  
27 627.482, 627.502, 627.503, 627.510, 627.5515,  
28 627.5565, 627.558, 627.602, 627.604, 627.605,  
29 627.6131, 627.618, 627.622, 627.623, 627.624,  
30 627.625, 627.640, 627.6425, 627.643, 627.647,  
31 627.6472, 627.6475, 627.6482, 627.6484,

1 627.6487, 627.6488, 627.649, 627.6494,  
2 627.6498, 627.6499, 627.6515, 627.6561,  
3 627.6571, 627.6675, 627.6685, 627.6692,  
4 627.6699, 627.673, 627.6735, 627.674, 627.6741,  
5 627.6742, 627.6744, 627.6745, 627.678,  
6 627.6785, 627.682, 627.6844, 627.6845, 627.701,  
7 627.7011, 627.7012, 627.7015, 627.7017,  
8 627.702, 627.706, 627.727, 627.7275, 627.728,  
9 627.7282, 627.7295, 627.736, 627.739, 627.7401,  
10 627.744, 627.745, 627.758, 627.7711, 627.777,  
11 627.7773, 627.780, 627.782, 627.783, 627.7843,  
12 627.7845, 627.786, 627.7865, 627.791, 627.793,  
13 627.798, 627.805, 627.8055, 627.828, 627.829,  
14 627.832, 627.833, 627.834, 627.836, 627.838,  
15 627.840, 627.8405, 627.848, 627.849, 627.912,  
16 627.9122, 627.9126, 627.913, 627.914, 627.915,  
17 627.917, 627.9175, 627.918, 627.919, 627.9403,  
18 627.9404, 627.9405, 627.9406, 627.9407,  
19 627.94072, 627.94074, 627.9408, 627.942,  
20 627.943, 627.944, 627.948, 627.950, 627.951,  
21 627.952, 627.954, 627.971, 627.972, 627.973,  
22 627.974, 627.986, 627.987, 628.051, 628.061,  
23 62.071, 628.091, 628.101, 628.111, 628.152,  
24 628.161, 628.171, 628.221, 628.251, 628.255,  
25 628.261, 628.271, 628.281, 628.341, 628.351,  
26 628.371, 628.391, 628.401, 628.411, 628.421,  
27 628.431, 628.441, 628.451, 628.461, 628.4615,  
28 628.471, 628.481, 628.491, 628.501, 628.511,  
29 628.520, 628.525, 628.530, 628.535, 628.6013,  
30 628.6014, 628.6017, 628.705, 628.707, 628.711,  
31 628.713, 628.715, 628.717, 628.719, 628.721,

1 628.725, 628.729, 628.730, 628.733, 628.801,  
2 628.802, 628.803, 628.905, 628.911, 628.913,  
3 628.917, 629.081, 629.101, 629.121, 629.131,  
4 629.161, 629.171, 629.181, 629.231, 629.241,  
5 629.261, 629.281, 629.291, 629.301, 629.401,  
6 629.520, 630.021, 630.031, 630.051, 630.071,  
7 630.081, 630.091, 630.101, 630.131, 630.151,  
8 630.161, 631.021, 631.025, 631.031, 631.041,  
9 631.042, 631.051, 631.0515, 631.061, 631.071,  
10 631.081, 631.091, 631.111, 631.152, 631.154,  
11 631.221, 631.231, 631.361, 631.371, 631.391,  
12 631.392, 631.398, 631.54, 631.55, 631.56,  
13 631.57, 631.59, 631.62, 631.66, 631.714,  
14 631.72, 631.722, 631.723, 631.727, 631.813,  
15 631.814, 631.821, 631.825, 631.904, 631.911,  
16 631.912, 631.917, 631.918, 631.931, 632.611,  
17 632.612, 632.614, 632.615, 632.616, 632.621,  
18 632.622, 632.627, 632.628, 632.629, 632.631,  
19 632.632, 632.633, 632.637, 633.01, 633.022,  
20 633.025, 633.052, 633.061, 633.081, 633.111,  
21 633.161, 633.162, 633.30, 633.31, 633.353,  
22 633.382, 633.43, 633.445, 633.45, 633.46,  
23 633.461, 633.47, 633.50, 633.524, 633.802,  
24 633.811, 633.814, 634.011, 634.021, 634.031,  
25 634.041, 634.044, 634.045, 634.052, 634.053,  
26 634.061, 634.081, 634.095, 634.101, 634.111,  
27 634.121, 634.1213, 634.1216, 634.137, 634.141,  
28 634.151, 634.161, 634.181, 634.191, 634.211,  
29 634.221, 634.231, 634.242, 634.253, 634.261,  
30 634.282, 634.283, 634.284, 634.285, 634.286,  
31 634.287, 634.288, 634.289, 634.301, 634.302,

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9 1009.77, 1009.971, 1009.972, 1010.56, 1010.74,  
10 1010.75, 1011.10, 1011.17, 1011.18, 1011.4105,  
11 1011.57, 1011.94, 1012.59, 1012.79, 1013.79,  
12 F.S.; repealing s. 17.06, F.S., relating to  
13 items and accounts disallowed by the  
14 Comptroller; s. 18.03, F.S., relating to  
15 residence and office of the Treasurer; s.  
16 18.09, F.S., relating to delivery to the  
17 Legislature of the annual report of the  
18 Treasurer; s. 18.22, F.S., relating to  
19 rulemaking authority of the Department of  
20 Banking and Finance; s. 20.12, F.S., relating  
21 to the Department of Banking and Finance; s.  
22 20.13, F.S., relating to the Department of  
23 Insurance; s. 440.135, F.S., relating to pilot  
24 programs for medical and remedial care in  
25 workers' compensation; s. 624.4071, F.S.,  
26 relating to special purpose homeowner insurance  
27 companies; s. 624.463, F.S., relating to  
28 conversion of self-insurance funds; s.  
29 627.0623, F.S., relating to restrictions on  
30 expenditures and solicitations of insurers and  
31 affiliates; s. 627.3516, F.S., relating to

1 residential property insurance market  
2 coordinating council; s. 627.7825, F.S.,  
3 relating to alternative rate adoption; s.  
4 655.019, F.S., relating to campaign  
5 contribution limitations; s. 657.067, F.S.,  
6 relating to conversion from federal to state  
7 charter and to requirements for application  
8 approval; and ss. 657.25-657.269, relating to  
9 the Florida Credit Union Guaranty Corporation,  
10 Inc.; providing for retroactive applicability;  
11 providing an effective date.

12  
13 Be It Enacted by the Legislature of the State of Florida:

14  
15 Section 1. Section 11.12, Florida Statutes, is amended  
16 to read:

17 11.12 Salary, subsistence, and mileage of members and  
18 employees; expenses authorized by resolution; appropriation;  
19 preaudit ~~by Comptroller~~.--

20 (1) The Chief Financial Officer ~~Treasurer~~ is  
21 authorized to pay the salary, subsistence, and mileage of the  
22 members of the Legislature, as the same shall be authorized  
23 ~~from time to time by law, upon receipt of a warrant therefor~~  
24 ~~of the Comptroller for the stated amount~~. The Chief Financial  
25 Officer may ~~Treasurer is authorized to~~ pay the compensation of  
26 employees of the Legislature, together with reimbursement for  
27 their authorized travel as provided in s. 112.061, and such  
28 expense of the Legislature as shall be authorized by law, a  
29 concurrent resolution, a resolution of either house, or rules  
30 adopted by the respective houses, provided the total amount  
31 appropriated to the legislative branch shall not be altered,

1 upon receipt of such warrant therefor. The number, duties, and  
2 compensation of the employees of the respective houses and of  
3 their committees shall be determined as provided by the rules  
4 of the respective house or in this chapter. Each legislator  
5 may designate no more than two employees to attend sessions of  
6 the Legislature, and those employees who change their places  
7 of residence in order to attend the session shall be paid  
8 subsistence at a rate to be established by the President of  
9 the Senate for Senate employees and the Speaker of the House  
10 of Representatives for House employees. Such employees, in  
11 addition to subsistence, shall be paid transportation expenses  
12 in accordance with s. 112.061(7) and (8) for actual  
13 transportation between their homes and the seat of government  
14 in order to attend the legislative session and return home, as  
15 well as for two round trips during the course of any regular  
16 session of the Legislature.

17 (2) All vouchers covering legislative expenses shall  
18 be preaudited by the Chief Financial Officer ~~Comptroller~~, and,  
19 if found to be correct, state warrants shall be issued  
20 therefor.

21 Section 2. Paragraph (c) of subsection (5) of section  
22 11.13, Florida Statutes, is amended to read:

23 11.13 Compensation of members.--

24 (5)

25 (c) The Office of Legislative Services shall submit on  
26 forms prescribed by the Chief Financial Officer ~~Comptroller~~  
27 requested allotments of appropriations for the fiscal year. It  
28 shall be the duty of the Chief Financial Officer ~~Comptroller~~  
29 to release the funds and authorize the expenditures for the  
30 legislative branch to be made from the appropriations on the  
31 basis of the requested allotments. However, the aggregate of

1 such allotments shall not exceed the total appropriations  
2 available for the fiscal year.

3 Section 3. Subsection (4) of section 11.147, Florida  
4 Statutes, is amended to read:

5 11.147 Office of Legislative Services.--

6 (4) The Office of Legislative Services shall deliver  
7 such vouchers covering legislative expenses as required to the  
8 Chief Financial Officer ~~Comptroller~~ and, if found to be  
9 correct, state warrants shall be issued therefor.

10 Section 4. Section 11.151, Florida Statutes, is  
11 amended to read:

12 11.151 Annual legislative appropriation to contingency  
13 fund for use of Senate President and House Speaker.--There is  
14 established a legislative contingency fund consisting of  
15 \$10,000 for the President of the Senate and \$10,000 for the  
16 Speaker of the House of Representatives, which amounts shall  
17 be set aside annually from moneys appropriated for legislative  
18 expense. These funds shall be disbursed by the Chief  
19 Financial Officer ~~Comptroller~~ upon receipt of vouchers  
20 authorized by the President of the Senate or the Speaker of  
21 the House of Representatives. Such ~~said~~ funds may be expended  
22 at the unrestricted discretion of the President of the Senate  
23 or the Speaker of the House of Representatives in carrying out  
24 their official duties during the entire period between the  
25 date of their election as such officers at the organizational  
26 meeting held pursuant to s. 3(a), Art. III of the State  
27 Constitution and the next general election.

28 Section 5. Subsection (5) of section 11.40, Florida  
29 Statutes, is amended to read:

30 11.40 Legislative Auditing Committee.--

31

1           (5) Following notification by the Auditor General, the  
2 Department of Financial Services ~~Banking and Finance~~, or the  
3 Division of Bond Finance of the State Board of Administration  
4 of the failure of a local governmental entity, district school  
5 board, charter school, or charter technical career center to  
6 comply with the applicable provisions within s. 11.45(5)-(7),  
7 s. 218.32(1), or s. 218.38, the Legislative Auditing Committee  
8 may schedule a hearing. If a hearing is scheduled, the  
9 committee shall determine if the entity should be subject to  
10 further state action. If the committee determines that the  
11 entity should be subject to further state action, the  
12 committee shall:

13           (a) In the case of a local governmental entity or  
14 district school board, request the Department of Revenue and  
15 the Department of Financial Services ~~Banking and Finance~~ to  
16 withhold any funds not pledged for bond debt service  
17 satisfaction which are payable to such entity until the entity  
18 complies with the law. The committee, in its request, shall  
19 specify the date such action shall begin, and the request must  
20 be received by the Department of Revenue and the Department of  
21 Financial Services ~~Banking and Finance~~ 30 days before the date  
22 of the distribution mandated by law. The Department of Revenue  
23 and the Department of Financial Services may ~~Banking and~~  
24 ~~Finance~~ are authorized to implement the provisions of this  
25 paragraph.

26           (b) In the case of a special district, notify the  
27 Department of Community Affairs that the special district has  
28 failed to comply with the law. Upon receipt of notification,  
29 the Department of Community Affairs shall proceed pursuant to  
30 the provisions specified in ss. 189.421 and 189.422.

31

1           (c) In the case of a charter school or charter  
2 technical career center, notify the appropriate sponsoring  
3 entity, which may terminate the charter pursuant to ss.  
4 228.056 and 228.505.

5           Section 6. Paragraph (b) of subsection (6) of section  
6 11.42, Florida Statutes, is amended to read:

7           11.42 The Auditor General.--

8           (6)

9           (b) All payrolls and vouchers for the operations of  
10 the Auditor General's office shall be submitted to the Chief  
11 Financial Officer ~~Comptroller~~ and, if found to be correct,  
12 payments shall be issued therefor.

13           Section 7. Subsection (1) of section 14.057, Florida  
14 Statutes, is amended to read:

15           14.057 Governor-elect; establishment of operating  
16 fund.--

17           (1) There is established an operating fund for the use  
18 of the Governor-elect during the period dating from the  
19 certification of his or her election by the Elections  
20 Canvassing Commission to his or her inauguration as Governor.  
21 The Governor-elect during this period may allocate the fund to  
22 travel, expenses, his or her salary, and the salaries of the  
23 Governor-elect's staff as he or she determines. Such staff may  
24 include, but not be limited to, a chief administrative  
25 assistant, a legal adviser, a fiscal expert, and a public  
26 relations and information adviser. The salary of the  
27 Governor-elect and each member of the Governor-elect's staff  
28 during this period shall be determined by the Governor-elect,  
29 except that the total expenditures chargeable to the state  
30 under this section, including salaries, shall not exceed the  
31 amount appropriated to the operating fund. The Executive

1 Office of the Governor shall supply to the Governor-elect  
2 suitable forms to provide for the expenditure of the fund and  
3 suitable forms to provide for the reporting of all  
4 expenditures therefrom. The Chief Financial Officer  
5 ~~Comptroller~~ shall release moneys from this fund upon the  
6 request of the Governor-elect properly filed.

7 Section 8. Section 14.058, Florida Statutes, is  
8 amended to read:

9 14.058 Inauguration expense fund.--There is  
10 established an inauguration expense fund for the use of the  
11 Governor-elect in planning and conducting the inauguration  
12 ceremonies. The Governor-elect shall appoint an inauguration  
13 coordinator and such staff as necessary to plan and conduct  
14 the inauguration. Salaries for the inauguration coordinator  
15 and the inauguration coordinator's staff shall be determined  
16 by the Governor-elect and shall be paid from the inauguration  
17 expense fund. The Executive Office of the Governor shall  
18 supply to the inauguration coordinator suitable forms to  
19 provide for the expenditure of the fund and suitable forms to  
20 provide for the reporting of all expenditures therefrom. The  
21 Chief Financial Officer ~~Comptroller~~ shall release moneys from  
22 this fund upon the request of the inauguration coordinator  
23 properly filed.

24 Section 9. Paragraph (f) of subsection (3) of section  
25 14.203, Florida Statutes, is amended to read:

26 14.203 State Council on Competitive Government.--It is  
27 the policy of this state that all state services be performed  
28 in the most effective and efficient manner in order to provide  
29 the best value to the citizens of the state. The state also  
30 recognizes that competition among service providers may  
31 improve the quality of services provided, and that

1 competition, innovation, and creativity among service  
2 providers should be encouraged.

3 (3) In performing its duties under this section, the  
4 council may:

5 (f) Require that an identified state service be  
6 submitted to competitive bidding or another process that  
7 creates competition with private sources or other governmental  
8 entities. In determining whether an identified state service  
9 should be submitted to competitive bidding, the council shall  
10 consider, at a minimum:

11 1. Any constitutional and legal implications which may  
12 arise as a result of such action.

13 2. The cost of supervising the work of any private  
14 contractor.

15 3. The total cost to the state agency of such state  
16 agency's performance of a service, including all indirect  
17 costs related to that state agency and costs of such agencies  
18 as the Chief Financial Officer ~~Comptroller, the Treasurer,~~ the  
19 Attorney General, and other such support agencies to the  
20 extent such costs would not be incurred if a contract is  
21 awarded. Costs for the current provision of the service shall  
22 be considered only when such costs would actually be saved if  
23 the contract were awarded to another entity.

24 Section 10. Subsection (3) of section 15.09, Florida  
25 Statutes, is amended to read:

26 15.09 Fees.--

27 (3) All fees arising from certificates of election or  
28 appointment to office and from commissions to officers shall  
29 be paid to the Chief Financial Officer ~~Treasurer~~ for deposit  
30 in the General Revenue Fund.

31

1           Section 11. Section 16.10, Florida Statutes, is  
2 amended to read:

3           16.10 Receipt of Supreme Court reports for  
4 office.--The Clerk of the Supreme Court shall deliver to the  
5 Attorney General a copy of each volume, or part of volume, of  
6 the decisions of the Supreme Court, which may be in the care  
7 or custody of said clerk, and which the Attorney General's  
8 office may be without, and take the Attorney General's receipt  
9 for the same. The Attorney General shall keep the same in her  
10 or his office at the capitol, and each retiring Attorney  
11 General shall take the receipt of her or his successor for the  
12 same and file such receipt in the Chief Financial Officer's  
13 ~~Treasurer's~~ office; provided that this shall not authorize the  
14 taking away of any book belonging to the Supreme Court  
15 library, kept for the use of said court.

16           Section 12. Section 17.001, Florida Statutes, is  
17 created to read:

18           17.001 Chief Financial Officer.--As provided in s.  
19 4(c), Art. IV of the State Constitution, the Chief Financial  
20 Officer is the chief fiscal officer of the state and is  
21 responsible for settling and approving accounts against the  
22 state and keeping all state funds and securities.

23           Section 13. Section 17.002, Florida Statutes, is  
24 created to read:

25           17.002 Definition.--For the purposes of this chapter,  
26 the term "department" means the Department of Financial  
27 Services.

28           Section 14. Section 17.011, Florida Statutes, is  
29 amended to read:

30           17.011 Assistant Chief Financial Officer  
31 ~~comptroller~~.--The Chief Financial Officer ~~Comptroller~~ of the

1 state may appoint an Assistant Chief Financial Officer  
2 ~~comptroller~~ to hold office during the pleasure of the Chief  
3 Financial Officer ~~Comptroller~~.

4 Section 15. Section 17.02, Florida Statutes, is  
5 amended to read:

6 17.02 Place of residence and office.--The Chief  
7 Financial Officer ~~Comptroller~~ shall reside at the seat of  
8 government of this state, and shall hold office in a room in  
9 the capitol.

10 Section 16. Section 17.03, Florida Statutes, is  
11 amended to read:

12 17.03 To audit claims against the state.--

13 (1) The Chief Financial Officer ~~Comptroller~~ of this  
14 state, using generally accepted auditing procedures for  
15 testing or sampling, shall examine, audit, and settle all  
16 accounts, claims, and demands, whatsoever, against the state,  
17 arising under any law or resolution of the Legislature, and  
18 issue a warrant ~~to the Treasurer~~ directing the payment  
19 ~~Treasurer to pay~~ out of the State Treasury of such amount as  
20 he or she allows ~~shall be allowed by the Comptroller~~ thereon.

21 (2) The Chief Financial Officer ~~Comptroller~~ may  
22 establish dollar thresholds applicable to each invoice amount  
23 and other criteria for testing or sampling invoices on a  
24 preaudit and postaudit basis. The Chief Financial Officer  
25 ~~Comptroller~~ may revise such thresholds and other criteria for  
26 an agency or the unit of any agency as he or she deems  
27 appropriate.

28 (3) The Chief Financial Officer ~~Comptroller~~ may adopt  
29 and disseminate to the agencies procedural and documentation  
30 standards for payment requests and may provide training and  
31 technical assistance to the agencies for these standards.

1           (4) The Chief Financial Officer ~~Comptroller~~ shall have  
2 the legal duty of delivering all state warrants and shall be  
3 charged with the official responsibility of the protection and  
4 security of the state warrants while in his or her custody.  
5 The Chief Financial Officer ~~Comptroller~~ may delegate this  
6 authority to other state agencies or officers.

7           Section 17. Section 17.031, Florida Statutes, is  
8 amended to read:

9           17.031 Security of Chief Financial Officer's  
10 ~~Comptroller's~~ office.--The Chief Financial Officer may  
11 ~~Comptroller is authorized to~~ engage the full-time services of  
12 two law enforcement officers, with power of arrest, to prevent  
13 all acts of a criminal nature directed at the property in the  
14 custody or control of the Chief Financial Officer ~~Comptroller~~.  
15 While so assigned, such ~~said~~ officers shall be under the  
16 direction and supervision of the Chief Financial Officer  
17 ~~Comptroller~~, and their salaries and expenses shall be paid  
18 from the general fund of the office of Chief Financial Officer  
19 ~~Comptroller~~.

20           Section 18. Section 17.04, Florida Statutes, is  
21 amended to read:

22           17.04 To audit and adjust accounts of officers and  
23 those indebted to the state.--The Chief Financial Officer  
24 ~~Department of Banking and Finance of this state~~, using  
25 generally accepted auditing procedures for testing or  
26 sampling, shall examine, audit, adjust, and settle the  
27 accounts of all the officers of this state, and any other  
28 person in anywise entrusted with, or who may have received any  
29 property, funds, or moneys of this state, or who may be in  
30 anywise indebted or accountable to this state for any  
31 property, funds, or moneys, and require such officer or

1 persons to render full accounts thereof, and to yield up such  
2 property or funds according to law, or pay such moneys into  
3 the treasury of this state, or to such officer or agent of the  
4 state as may be appointed to receive the same, and on failure  
5 so to do, to cause to be instituted and prosecuted  
6 proceedings, criminal or civil, at law or in equity, against  
7 such persons, according to law. The Division of Accounting  
8 and Auditing ~~Financial Investigations~~ may conduct  
9 investigations within or outside of this state as it deems  
10 necessary to aid in the enforcement of this section. If  
11 during an investigation the division has reason to believe  
12 that any criminal statute of this state has or may have been  
13 violated, the division shall refer any records tending to show  
14 such violation to state or federal law enforcement or  
15 prosecutorial agencies and shall provide investigative  
16 assistance to those agencies as required.

17 Section 19. Section 17.0401, Florida Statutes, is  
18 amended to read:

19 17.0401 Confidentiality of information relating to  
20 financial investigations.--Except as otherwise provided by  
21 this section, information relative to an investigation  
22 conducted by the Division of Accounting and Auditing ~~Financial~~  
23 ~~Investigations~~ pursuant to s. 17.04, including any consumer  
24 complaint, is confidential and exempt from the provisions of  
25 s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
26 until the investigation is completed or ceases to be active.  
27 Any information relating to an investigation conducted by the  
28 division pursuant to s. 17.04 shall remain confidential and  
29 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.  
30 I of the State Constitution after the division's investigation  
31 is completed or ceases to be active if the division submits

1 the information to any law enforcement or prosecutorial agency  
2 for further investigation. Such information shall remain  
3 confidential and exempt from the provisions of s. 119.07(1)  
4 and s. 24(a), Art. I of the State Constitution until that  
5 agency's investigation is completed or ceases to be active.  
6 For purposes of this section, an investigation shall be  
7 considered "active" so long as the division or any law  
8 enforcement or prosecutorial agency is proceeding with  
9 reasonable dispatch and has a reasonable good faith belief  
10 that the investigation may lead to the filing of an  
11 administrative, civil, or criminal proceeding. This section  
12 shall not be construed to prohibit disclosure of information  
13 that ~~which~~ is required by law to be filed with the Department  
14 of Financial Services or the Office of Financial Institutions  
15 and Securities Regulation ~~Banking and Finance~~ and that ~~which~~,  
16 but for the investigation, would otherwise be subject to  
17 public disclosure. Nothing in this section shall be construed  
18 to prohibit the division from providing information to any law  
19 enforcement or prosecutorial agency. Any law enforcement or  
20 prosecutorial agency receiving confidential information from  
21 the division in connection with its official duties shall  
22 maintain the confidentiality of the information as provided  
23 for in this section.

24 Section 20. Section 17.041, Florida Statutes, is  
25 amended to read:

26 17.041 County and district accounts and claims.--

27 (1) It shall be the duty of the Chief Financial  
28 Officer ~~Department of Banking and Finance of this state~~ to  
29 adjust and settle, or cause to be adjusted and settled, all  
30 accounts and claims heretofore or hereafter reported to it by  
31 the Auditor General, the appropriate county or district

1 official, or any person against all county and district  
2 officers and employees, and against all other persons  
3 entrusted with, or who may have received, any property, funds,  
4 or moneys of a county or district or who may be in anywise  
5 indebted to or accountable to a county or district for any  
6 property, funds, moneys, or other thing of value, and to  
7 require such officer, employee, or person to render full  
8 accounts thereof and to yield up such property, funds, moneys,  
9 or other thing of value according to law to the officer or  
10 authority entitled by law to receive the same.

11 (2) On the failure of such officer, employee, or  
12 person to adjust and settle such account, or to yield up such  
13 property, funds, moneys, or other thing of value, the Chief  
14 Financial Officer ~~department~~ shall direct the attorney for the  
15 board of county commissioners, the district school board, or  
16 the district, as the case may be, entitled to such account,  
17 property, funds, moneys, or other thing of value to represent  
18 such county or district in enforcing settlement, payment or  
19 delivery of such account, property, funds, moneys, or other  
20 thing of value. The Chief Financial Officer ~~department~~ may  
21 enforce such settlement, payment, or delivery pursuant to s.  
22 17.20.

23 (3) Should the attorney for the county or district  
24 aforesaid be disqualified or unable to act, and no other  
25 attorney be furnished by the county or district, or should the  
26 Chief Financial Officer ~~department~~ otherwise deem it  
27 advisable, such account or claim may be certified to the  
28 Department of Legal Affairs by the Chief Financial Officer  
29 ~~department~~, to be prosecuted by the Department of Legal  
30 Affairs at county or district expense, as the case may be,  
31 including necessary per diem and travel expense in accordance

1 with s. 112.061, as now or hereafter amended. Such expenses,  
2 when approved by the Chief Financial Officer department, shall  
3 be paid forthwith by such county or district.

4 (4) ~~If~~ Should it appears ~~appear~~ to the Chief Financial  
5 Officer department that any criminal statute of this state has  
6 or may have been violated by such defaulting officer,  
7 employee, or person, such information, evidence, documents,  
8 and other things tending to show such a violation, whether in  
9 the hands of the Chief Financial Officer Comptroller, the  
10 Auditor General, the county, or the district, shall be  
11 forthwith turned over to the proper state attorney for  
12 inspection, study, and such action as may be deemed proper, or  
13 the same may be brought to the attention of the proper grand  
14 jury.

15 (5) No such account or claim, after it has been  
16 certified to the Chief Financial Officer department, may be  
17 settled for less than the amount due according to law without  
18 the written consent of the Chief Financial Officer department,  
19 and any attempt to make settlement in violation of this  
20 subsection shall be deemed null and void. A county or  
21 district board desiring to make such a settlement shall  
22 incorporate the proposed settlement into a resolution, stating  
23 that the proposed settlement is contingent upon the Chief  
24 Financial Officer's Comptroller's approval, and shall submit  
25 two copies of the resolution to the department. The Chief  
26 Financial Officer department shall return one copy with his or  
27 her the Comptroller's action endorsed thereon.

28 (6) No settlement of account of any such officer,  
29 employee, or person, with the county or district, or any of  
30 their officers or agents, made in an amount or manner other  
31 than as authorized by law or for other than a lawful county or

1 district purpose, shall be binding upon such county or  
2 district unless and until approved by the Chief Financial  
3 Officer ~~department~~, or unless more than 4 years shall have  
4 elapsed from the date of such settlement.

5 (7) Nothing in this section shall supersede the  
6 continuing duty of the proper county and district officers to  
7 require any officer, employee, or person to render full  
8 accounts of and to yield up according to law to the officer or  
9 authority entitled by law to receive the same, any property,  
10 funds, moneys, or other thing of value as to which such  
11 officer, employee, or person is in anywise indebted to or  
12 accountable to such county or district. The provisions of  
13 this section provide for collections and recoveries which the  
14 proper county or district officers have failed to make, and  
15 for correction of settlements made in an amount or manner  
16 other than as authorized by law.

17 Section 21. Section 17.0415, Florida Statutes, is  
18 amended to read:

19 17.0415 Transfer and assignment of claims.--In order  
20 to facilitate their collection from third parties, the Chief  
21 Financial Officer ~~Comptroller~~ may authorize the assignment of  
22 claims among the state, its agencies, and its subdivisions,  
23 whether arising from criminal, civil, or other judgments in  
24 state or federal court. The state, its agencies, and its  
25 subdivisions, may assign claims under such terms as are  
26 mutually acceptable to the Chief Financial Officer ~~Comptroller~~  
27 and the assignee and assignor. The assigned claim may be  
28 enforced as a setoff to any claim against the state, its  
29 agencies, or its subdivisions, by garnishment or in the same  
30 manner as a judgment in a civil action. Claims against the  
31 state, its agencies, and its subdivisions resulting from the

1 condemnation of property protected by the provisions of s. 4,  
2 Art. X of the State Constitution are not subject to setoff  
3 pursuant to this section.

4 Section 22. Section 17.05, Florida Statutes, is  
5 amended to read:

6 17.05 Subpoenas; sworn statements; enforcement  
7 proceedings.--

8 (1) The Chief Financial Officer ~~Comptroller~~ may demand  
9 and require full answers on oath from any and every person,  
10 party or privy to any account, claim, or demand against or by  
11 the state, such as it may be the Chief Financial Officer's  
12 ~~Comptroller's~~ official duty to examine into, and which answers  
13 the Chief Financial Officer ~~Comptroller~~ may require to be in  
14 writing and to be sworn to before the Chief Financial Officer  
15 ~~Comptroller~~ or the department or before any judicial officer  
16 or clerk of any court of the state so as to enable the Chief  
17 Financial Officer ~~Comptroller~~ to determine the justice or  
18 legality of such account, claim, or demand.

19 (2) In exercising authority under this chapter, the  
20 Chief Financial Officer ~~Comptroller~~ or his or her designee  
21 may:

22 (a) Issue subpoenas, administer oaths, and examine  
23 witnesses.

24 (b) Require or permit a person to file a statement in  
25 writing, under oath or otherwise as the Chief Financial  
26 Officer ~~Comptroller~~ or his or her designee requires, as to all  
27 the facts and circumstances concerning the matter to be  
28 audited, examined, or investigated.

29 (3) Subpoenas shall be issued by the Chief Financial  
30 Officer ~~Comptroller~~ or his or her designee under seal  
31 commanding such witnesses to appear before the Chief Financial

1 Officer Comptroller or his or her ~~the Comptroller's~~  
2 representative or the department at a specified time and place  
3 and to bring books, records, and documents as specified or to  
4 submit books, records, and documents for inspection. Such  
5 subpoenas may be served by an authorized representative of the  
6 Chief Financial Officer Comptroller or the department.

7 (4) In the event of noncompliance with a subpoena  
8 issued pursuant to this section, the Chief Financial Officer  
9 ~~Comptroller~~ or the department may petition the circuit court  
10 of the county in which the person subpoenaed resides or has  
11 his or her principal place of business for an order requiring  
12 the subpoenaed person to appear and testify and to produce  
13 books, records, and documents as specified in the subpoena.  
14 The court may grant legal, equitable, or injunctive relief,  
15 including, but not limited to, issuance of a writ of ne exeat  
16 or the restraint by injunction or appointment of a receiver of  
17 any transfer, pledge, assignment, or other disposition of such  
18 person's assets or any concealment, alteration, destruction,  
19 or other disposition of subpoenaed books, records, or  
20 documents, as the court deems appropriate, until such person  
21 has fully complied with such subpoena and the Chief Financial  
22 Officer Comptroller or the department has completed the audit,  
23 examination, or investigation. The Chief Financial Officer  
24 ~~Comptroller~~ or the department is entitled to the summary  
25 procedure provided in s. 51.011, and the court shall advance  
26 the cause on its calendar. Costs incurred by the Chief  
27 Financial Officer Comptroller or the department to obtain an  
28 order granting, in whole or in part, such petition for  
29 enforcement of a subpoena shall be charged against the  
30 subpoenaed person, and failure to comply with such order shall  
31 be a contempt of court.

1           Section 23. Section 17.075, Florida Statutes, is  
2 amended to read:

3           17.075 Form of state warrants and other payment  
4 orders; rules.--

5           (1) The Chief Financial Officer ~~Department of Banking~~  
6 ~~and Finance~~ is authorized to establish the form or forms of  
7 state warrants which are to be drawn by him or her ~~it~~ and of  
8 other orders for payment or disbursement of moneys out of the  
9 State Treasury and to change the form thereof from time to  
10 time as the Chief Financial Officer ~~department~~ may consider  
11 necessary or appropriate. Such orders for payment may be in  
12 any form, but, regardless of form, each order shall be subject  
13 to the accounting and recordkeeping requirements applicable to  
14 state warrants.

15           (2) The Chief Financial Officer ~~department~~ shall adopt  
16 rules establishing accounting and recordkeeping procedures for  
17 all payments made by electronic transfer of funds or by any  
18 other means. Such procedures shall be consistent with the  
19 statutory requirements applicable to payments by state  
20 warrant.

21           Section 24. Section 17.076, Florida Statutes, is  
22 amended to read:

23           17.076 Direct deposit of funds.--

24           (1) As used in this section, the term+

25           ~~(a)~~ "beneficiary" means any person who is drawing  
26 salary or retirement benefits from the state or who is the  
27 recipient of any lawful payment from state funds.

28           ~~(b)~~ "Department" ~~means the Department of Banking and~~  
29 ~~Finance.~~

30           (2) The Chief Financial Officer ~~department~~ shall  
31 establish a program for the direct deposit of funds to the

1 account of the beneficiary of such a payment or disbursement  
2 in any financial institution equipped for electronic fund  
3 transfers, which institution is designated in writing by such  
4 beneficiary and has lawful authority to accept such deposits.  
5 Direct deposit of funds shall be by any electronic or other  
6 transfer medium approved by the Chief Financial Officer  
7 ~~department~~ for such purpose.

8 (3) The Chief Financial Officer ~~department~~ may  
9 contract with an authorized financial institution for the  
10 services necessary to operate the program. In order to  
11 implement the provisions of this section, the Chief Financial  
12 Officer may ~~Comptroller is authorized to~~ deposit with that  
13 financial institution the funds payable to the beneficiaries,  
14 in lump sum, by Chief Financial Officer's ~~Comptroller's~~  
15 warrant to make the authorized direct deposits.

16 (4) The written authorization of a beneficiary shall  
17 be filed with the department or its designee. Such  
18 authorization shall remain in effect until withdrawn in  
19 writing by the beneficiary or dishonored by the designated  
20 financial institution.

21 (5) All direct deposit records made prior to October  
22 1, 1986, are exempt from the provisions of s. 119.07(1). With  
23 respect to direct deposit records made on or after October 1,  
24 1986, the names of the authorized financial institutions and  
25 the account numbers of the beneficiaries are confidential and  
26 exempt from the provisions of s. 119.07(1).

27 ~~(6) The department shall implement local option direct~~  
28 ~~deposit of funds for local governmental entities by January 1,~~  
29 ~~1996.~~

30 (6)(7) To cover the department's actual costs for  
31 processing the direct deposit of funds other than salary or

1 retirement benefits, the department may charge the beneficiary  
2 of the direct deposit a reasonable fee. The department may  
3 collect the fee by direct receipt from the beneficiary or by  
4 subtracting the amount of the fee from the funds due the  
5 beneficiary. Such fees collected by the department shall be  
6 deposited into the Department of Financial Services ~~Banking~~  
7 ~~and Finance~~ Administrative Trust Fund.

8 ~~(7)(8)~~ Effective July 1, 2000, all new recipients of  
9 retirement benefits from this state shall be paid by direct  
10 deposit of funds. A retiree may request from the department an  
11 exemption from the provisions of this subsection when such  
12 retiree can demonstrate a hardship. The department may pay  
13 retirement benefits by state warrant when deemed  
14 administratively necessary.

15 Section 25. Section 17.08, Florida Statutes, is  
16 amended to read:

17 17.08 Accounts, etc., on which warrants drawn, to be  
18 filed.--All accounts, vouchers, and evidence, upon which  
19 warrants have heretofore been, or shall hereafter be, drawn  
20 upon the treasury by the Chief Financial Officer ~~Comptroller~~  
21 shall be filed and deposited in the office of Chief Financial  
22 Officer ~~Comptroller~~ or the office of the Chief Financial  
23 Officer's ~~Comptroller's~~ designee, in accordance with  
24 requirements established by the Secretary of State.

25 Section 26. Section 17.09, Florida Statutes, is  
26 amended to read:

27 17.09 Application for warrants for salaries.--All  
28 public officers who are entitled to salaries in this state,  
29 shall make their application for warrants in writing, stating  
30 for what terms and the amount they claim, which written  
31

1 application shall be filed by the Chief Financial Officer  
2 ~~Comptroller~~ as vouchers for the warrants issued thereupon.

3 Section 27. Section 17.10, Florida Statutes, is  
4 amended to read:

5 17.10 Record of warrants and of state funds and  
6 securities issued.--The Chief Financial Officer ~~Comptroller~~  
7 shall cause to be entered in the warrant register a record of  
8 the warrants issued during the previous month, and shall make  
9 such entry in the record so required to be kept as shall show  
10 the number of each warrant issued, in whose favor drawn, and  
11 the date it was issued. He or she shall account for all state  
12 funds and securities.

13 Section 28. Section 17.11, Florida Statutes, is  
14 amended to read:

15 17.11 To report disbursements made.--

16 (1) The Chief Financial Officer ~~Comptroller~~ shall make  
17 in all his or her future annual reports an exhibit stated from  
18 the record of disbursements made during the fiscal year, and  
19 the several heads of expenditures under which such  
20 disbursements were made.

21 (2) The Chief Financial Officer ~~Comptroller~~ shall also  
22 cause to have reported from the Florida Accounting Information  
23 Resource Subsystem no less than quarterly the disbursements  
24 which agencies made to small businesses, as defined in the  
25 Florida Small and Minority Business Assistance Act of 1985; to  
26 certified minority business enterprises in the aggregate; and  
27 to certified minority business enterprises broken down into  
28 categories of minority persons, as well as gender and  
29 nationality subgroups. This information shall be made  
30 available to the agencies, the Office of Supplier Diversity,  
31 the Governor, the President of the Senate, and the Speaker of

1 the House of Representatives. Each agency shall be responsible  
2 for the accuracy of information entered into the Florida  
3 Accounting Information Resource Subsystem for use in this  
4 reporting.

5 Section 29. Section 17.12, Florida Statutes, is  
6 amended to read:

7 17.12 Authorized to issue warrants to tax collector or  
8 sheriff for payment.--Whenever it shall appear to the  
9 satisfaction of the Chief Financial Officer ~~Comptroller~~ of  
10 ~~this state~~ from examination of the books of his or her office  
11 that the tax collector or the sheriff for any county in this  
12 state has paid into the State Treasury, through mistake or  
13 otherwise, a larger or greater sum than is actually due from  
14 such said collector or sheriff, then the Chief Financial  
15 Officer ~~Comptroller~~ may issue a warrant to such said collector  
16 or sheriff for the sum so found to be overpaid.

17 Section 30. Section 17.13, Florida Statutes, is  
18 amended to read:

19 17.13 To duplicate warrants lost or destroyed.--

20 (1) The Chief Financial Officer ~~Comptroller~~ is  
21 required to duplicate any Chief Financial Officer's  
22 ~~Comptroller's~~ warrants that may have been lost or destroyed,  
23 or may hereafter be lost or destroyed, upon the owner thereof  
24 or the owner's agent or attorney presenting the Chief  
25 Financial Officer ~~Comptroller~~ the statement, under oath,  
26 reciting the number, date, and amount of any warrant or the  
27 best and most definite description in his or her knowledge and  
28 the circumstances of its loss; if the Chief Financial Officer  
29 ~~Comptroller~~ deems it necessary, the owner or the owner's agent  
30 or attorney shall file in the office of the Chief Financial  
31 Officer ~~Comptroller~~ a surety bond, or a bond with securities,

1 to be approved by one of the judges of the circuit court or  
2 one of the justices of the Supreme Court, in a penalty of not  
3 less than twice the amount of any warrants so duplicated,  
4 conditioned to indemnify the state and any innocent holders  
5 thereof from any damages that may accrue from such  
6 duplication.

7       (2) The Chief Financial Officer ~~Comptroller~~ is  
8 required to duplicate any Chief Financial Officer's  
9 ~~Comptroller's~~ warrant that may have been lost or destroyed, or  
10 may hereafter be lost or destroyed, when sent to any payee via  
11 any state agency when such warrant is lost or destroyed prior  
12 to being received by the payee and provided the director of  
13 the state agency to whom the warrant was sent presents to the  
14 Chief Financial Officer ~~Comptroller~~ a statement, under oath,  
15 reciting the number, date, and amount of the warrant lost or  
16 destroyed, the circumstances surrounding the loss or  
17 destruction of such warrant, and any additional information  
18 that the Chief Financial Officer ~~Comptroller~~ shall request in  
19 regard to such warrant.

20       (3) Any duplicate Chief Financial Officer's  
21 ~~Comptroller's~~ warrant issued in pursuance of the above  
22 provisions shall be of the same validity as the original was  
23 before its loss.

24       Section 31. Section 17.14, Florida Statutes, is  
25 amended to read:

26       17.14 To prescribe forms.--The Chief Financial Officer  
27 ~~Department of Banking and Finance~~ may prescribe the forms of  
28 all papers, vouchers, reports and returns and the manner of  
29 keeping the accounts and papers to be used by the officers of  
30 this state or other persons having accounts, claims, or  
31 demands against the state or entrusted with the collection of

1 any of the revenue thereof or any demand due the same, which  
2 form shall be pursued by such officer or other persons.

3 Section 32. Section 17.16, Florida Statutes, is  
4 amended to read:

5 17.16 Seal.--The seal of office of the Chief Financial  
6 Officer ~~Comptroller of the state~~ shall be the same as the seal  
7 heretofore used for that purpose.

8 Section 33. Section 17.17, Florida Statutes, is  
9 amended to read:

10 17.17 Examination by Governor and report.--The office  
11 of Chief Financial Officer ~~Comptroller of the state~~, and the  
12 books, files, documents, records, and papers shall always be  
13 subject to the examination of the Governor of this state, or  
14 any person the Governor may authorize to examine the same; and  
15 on the first day of January of each and every year, or oftener  
16 if called for by the Governor, the Chief Financial Officer  
17 ~~Comptroller~~ shall make a full report of all his or her  
18 official acts and proceedings for the last fiscal year to the  
19 Governor, to be laid before the Legislature with the  
20 Governor's message, and shall make such further report as the  
21 constitution may require.

22 Section 34. Section 17.20, Florida Statutes, is  
23 amended to read:

24 17.20 Assignment of claims for collection.--

25 (1) The Chief Financial Officer ~~Department of Banking~~  
26 ~~and Finance~~ shall charge the state attorneys with the  
27 collection of all claims that are placed in their hands for  
28 collection of money or property for the state or any county or  
29 special district, or that it otherwise requires them to  
30 collect. The charges are evidence of indebtedness of a state  
31 attorney against whom any charge is made for the full amount

1 of the claim, until the charges have been collected and paid  
2 into the treasury of the state or of the county or special  
3 district or the legal remedies of the state have been  
4 exhausted, or until the state attorney demonstrates to the  
5 Chief Financial Officer ~~department~~ that the failure to collect  
6 the charges is not due to negligence and the Chief Financial  
7 Officer ~~department~~ has made a proper entry of satisfaction of  
8 the charge against the state attorney.

9 (2) The Chief Financial Officer ~~department~~ may assign  
10 the collection of any claim to a collection agent who is  
11 registered and in good standing pursuant to chapter 559, if  
12 the Chief Financial Officer ~~department~~ determines the  
13 assignation to be cost-effective. The Chief Financial Officer  
14 ~~department~~ may pay an agent from any amount collected under  
15 the claim a fee that the Chief Financial Officer ~~department~~  
16 and the agent have agreed upon; may authorize the agent to  
17 deduct the fee from the amount collected; may require the  
18 appropriate state agency, county, or special district to pay  
19 the agent the fee from any amount collected by the agent on  
20 its behalf; or may authorize the agent to add the fee to the  
21 amount to be collected.

22 (3) Notwithstanding any other provision of law, in any  
23 contract providing for the location or collection of unclaimed  
24 property, the Chief Financial Officer ~~department~~ may authorize  
25 the contractor to deduct its fees and expenses for services  
26 provided under the contract from the unclaimed property that  
27 the contractor has recovered or collected under the contract.  
28 The Chief Financial Officer ~~department~~ shall annually report  
29 to the Governor, President of the Senate, and the Speaker of  
30 the House of Representatives the total amount collected or  
31

1 recovered by each contractor during the previous fiscal year  
2 and the total fees and expenses deducted by each contractor.

3 Section 35. Section 17.21, Florida Statutes, is  
4 amended to read:

5 17.21 Not to allow any claim of state attorney against  
6 state until report made.--The Chief Financial Officer  
7 ~~Comptroller~~ shall not audit or allow any claim which any state  
8 attorney may have against the state for services who shall  
9 fail to make any report which by law the state attorney is  
10 required to make to the Chief Financial Officer ~~Comptroller~~ of  
11 claims of the state which it is his or her duty to collect.

12 Section 36. Section 17.22, Florida Statutes, is  
13 amended to read:

14 17.22 Notice to Department of Legal Affairs.--Whenever  
15 the Chief Financial Officer ~~Department of Banking and Finance~~  
16 forwards any bond or account or claim for suit to any state  
17 attorney, he or she ~~it~~ shall advise the Department of Legal  
18 Affairs of the fact, giving it the amount of the claim and  
19 other necessary particulars for its full information upon the  
20 subject.

21 Section 37. Section 17.25, Florida Statutes, is  
22 amended to read:

23 17.25 May certify copies.--The Chief Financial Officer  
24 ~~Comptroller of this state~~ may certify, under his or her seal  
25 of office, copies of any record, paper, or document, by law  
26 placed in the Chief Financial Officer's ~~Comptroller's~~ custody,  
27 keeping, and care; and such certified copy shall have the same  
28 force and effect as evidence as the original would have.

29 Section 38. Sections (1) and (3) of section 17.26,  
30 Florida Statutes, are amended to read:

31

1           17.26 Cancellation of state warrants not presented  
2 within 1 year.--

3           (1) If any state warrant issued by the Chief Financial  
4 Officer or ~~Comptroller~~ against any fund in the State Treasury  
5 is not presented for payment within 1 year after the last day  
6 of the month in which it was originally issued, the Chief  
7 Financial Officer ~~Comptroller~~ may cancel the warrant and  
8 credit the amount of the warrant to the fund upon which it is  
9 drawn. If the warrant so canceled was issued against a fund  
10 that is no longer operative, the amount of the warrant shall  
11 be credited to the General Revenue Fund. The Chief Financial  
12 Officer ~~Treasurer~~ shall not honor any state warrant after it  
13 has been canceled.

14           (3) When a warrant canceled under subsection (1)  
15 represents funds that are in whole or in part derived from  
16 federal contributions and disposition of the funds under  
17 chapter 717 would cause a loss of the federal contributions,  
18 the Governor shall certify to the Chief Financial Officer  
19 ~~Comptroller~~ that funds represented by such warrants are for  
20 that reason exempt from treatment as unclaimed property.  
21 Obligations represented by warrants are unenforceable after 1  
22 year from the last day of the month in which the warrant was  
23 originally issued. An action may not be commenced thereafter  
24 on the obligation unless authorized by the federal program  
25 from which the original warrant was funded and unless payment  
26 of the obligation is authorized to be made from the current  
27 federal funding. When a payee or person entitled to a warrant  
28 subject to this paragraph requests payment, and payment from  
29 current federal funding is authorized by the federal program  
30 from which the original warrant was funded, the Chief  
31 Financial Officer ~~Comptroller~~ may, upon investigation, issue a

1 new warrant to be paid out of the proper fund in the State  
2 Treasury, provided the payee or other person executes under  
3 oath the statement required by s. 17.13 or surrenders the  
4 canceled warrant.

5 Section 39. Subsections (1), (2), and (3) of section  
6 17.27, Florida Statutes, are amended to read:

7 17.27 Microfilming and destroying records and  
8 correspondence.--

9 (1) The Department of Financial Services ~~Banking and~~  
10 ~~Finance~~ may destroy general correspondence files and also any  
11 other records which the department may deem no longer  
12 necessary to preserve in accordance with retention schedules  
13 and destruction notices established under rules of the  
14 Division of Library and Information Services, records and  
15 information management program, of the Department of State.  
16 Such schedules and notices relating to financial records of  
17 the department shall be subject to the approval of the Auditor  
18 General.

19 (2) The Department of Financial Services ~~Banking and~~  
20 ~~Finance~~ may photograph, microphotograph, or reproduce on film  
21 such documents and records as it may select, in such manner  
22 that each page will be exposed in exact conformity with the  
23 original.

24 (3) The Department of Financial Services ~~Banking and~~  
25 ~~Finance~~ may destroy any of such ~~said~~ documents after they have  
26 been photographed and filed in accordance with the provisions  
27 of subsection (1).

28 Section 40. Section 17.28, Florida Statutes, is  
29 amended to read:

30 17.28 Chief Financial Officer ~~Comptroller~~ may  
31 authorize biweekly salary payments.--The Chief Financial

1 ~~Officer Comptroller is authorized and~~ may permit biweekly  
2 salary payments to personnel upon written request by a  
3 specific state agency. The Chief Financial Officer  
4 ~~Comptroller~~ shall adopt ~~promulgate~~ reasonable rules and  
5 ~~regulations~~ to carry out the intent of this section.

6 Section 41. Section 17.29, Florida Statutes, is  
7 amended to read:

8 17.29 Authority to prescribe rules.--The Chief  
9 Financial Officer ~~Comptroller has authority to~~ adopt rules  
10 pursuant to ss. 120.54 and 120.536(1) to implement this  
11 chapter and duties assigned by statute or the State  
12 Constitution. Such rules may include, but are not limited to,  
13 the following:

14 (1) Procedures or policies relating to the processing  
15 of payments from salaries, other personal services, or any  
16 other applicable appropriation.

17 (2) Procedures for processing interagency and  
18 intraagency payments which do not require the issuance of a  
19 state warrant.

20 Section 42. Section 17.30, Florida Statutes, is  
21 amended to read:

22 17.30 Dissemination of information.--The Chief  
23 Financial Officer ~~Comptroller~~ may disseminate, in any form or  
24 manner he or she considers appropriate, information regarding  
25 the Chief Financial Officer's ~~Comptroller's~~ official duties.

26 Section 43. Section 17.32, Florida Statutes, is  
27 amended to read:

28 17.32 Annual report of trust funds; duties of Chief  
29 Financial Officer ~~Comptroller~~.--

30 (1) On February 1 of each year, the Chief Financial  
31 Officer ~~Comptroller~~ shall present to the President of the

1 Senate and the Speaker of the House of Representatives a  
2 report listing all trust funds as defined in s. 215.32. The  
3 report shall contain the following data elements for each fund  
4 for the preceding fiscal year:

- 5 (a) The fund code.
- 6 (b) The title.
- 7 (c) The fund type according to generally accepted  
8 accounting principles.
- 9 (d) The statutory authority.
- 10 (e) The beginning cash balance.
- 11 (f) Direct revenues.
- 12 (g) Nonoperating revenues.
- 13 (h) Operating disbursements.
- 14 (i) Nonoperating disbursements.
- 15 (j) The ending cash balance.
- 16 (k) The department and budget entity in which the fund  
17 is located.

18 (2) The report shall separately list all funds that  
19 received no revenues other than interest earnings or transfers  
20 from the General Revenue Fund or from other trust funds during  
21 the preceding fiscal year.

22 (3) The report shall separately list all funds that  
23 had unencumbered balances in excess of \$2 million in each of  
24 the 2 preceding fiscal years.

25 Section 44. Section 17.325, Florida Statutes, is  
26 amended to read:

27 17.325 Governmental efficiency hotline; duties of  
28 Chief Financial Officer ~~Comptroller~~.--

29 (1) ~~By September 1, 1992,~~ The Chief Financial Officer  
30 ~~Comptroller~~ shall establish and operate a statewide toll-free  
31 telephone hotline to receive information or suggestions from

1 the citizens of this state on how to improve the operation of  
2 government, increase governmental efficiency, and eliminate  
3 waste in government. The Chief Financial Officer ~~Comptroller~~  
4 shall report each month to the Appropriations Committee of the  
5 House of Representatives and of the Senate the information or  
6 suggestions received through the hotline and the evaluations  
7 and determinations made by the affected agency, as provided in  
8 subsection (3), with respect to such information or  
9 suggestions.

10 (2) The Chief Financial Officer ~~Comptroller~~ shall  
11 operate the hotline 24 hours a day. The Chief Financial  
12 Officer ~~Comptroller~~ shall advertise the availability of the  
13 hotline in newspapers of general circulation in this state and  
14 shall provide for the posting of notices in conspicuous places  
15 in state agency offices, city halls, county courthouses, and  
16 places in which there is exposure to significant numbers of  
17 the general public, including, but not limited to, local  
18 convenience stores, shopping malls, shopping centers, gasoline  
19 stations, or restaurants. The Chief Financial Officer  
20 ~~Comptroller~~ shall use the slogan "Tell us where we can 'Get  
21 Lean'" for the hotline and in advertisements for the hotline.

22 (3) Each telephone call on the hotline shall be  
23 received by the office of the Chief Financial Officer  
24 ~~Comptroller~~, and the office of the Chief Financial Officer  
25 ~~Comptroller~~ shall conduct an evaluation to determine if it is  
26 appropriate for the telephone call to be processed as a "Get  
27 Lean" telephone call. If it is determined that the telephone  
28 call should be processed as a "Get Lean" telephone call, a  
29 record of each suggestion or item of information received  
30 shall be entered into a log kept by the Chief Financial  
31 Officer ~~Comptroller~~. A caller on the hotline may remain

1 anonymous, and, if the caller provides his or her name, the  
2 name shall be confidential. If a caller discloses that he or  
3 she is a state employee, the Chief Financial Officer  
4 ~~Comptroller~~, in addition to maintaining a record as required  
5 by this section, may refer any information or suggestion from  
6 the caller to an existing state awards program administered by  
7 the affected agency. The affected agency shall conduct a  
8 preliminary evaluation of the efficacy of any suggestion or  
9 item of information received through the hotline and shall  
10 provide the Chief Financial Officer ~~Comptroller~~ with a  
11 preliminary determination of the amount of revenues the state  
12 might save by implementing the suggestion or making use of the  
13 information.

14 (4) Any person who provides any information through  
15 the hotline shall be immune from liability for any use of such  
16 information and shall not be subject to any retaliation by any  
17 employee of the state for providing such information or making  
18 such suggestion.

19 (5) The Chief Financial Officer ~~Comptroller~~ shall  
20 adopt any rule necessary to implement the establishment,  
21 operation, and advertisement of the hotline.

22 Section 45. Section 17.41, Florida Statutes, is  
23 amended to read:

24 17.41 Department of Financial Services ~~Banking and~~  
25 ~~Finance~~ Tobacco Settlement Clearing Trust Fund.--

26 (1) The Department of Financial Services ~~Banking and~~  
27 ~~Finance~~ Tobacco Settlement Clearing Trust Fund is created  
28 within that department.

29 (2) Funds to be credited to the Tobacco Settlement  
30 Clearing Trust Fund shall consist of payments received by the  
31 state from settlement of State of Florida v. American Tobacco

1 Co., No. 95-1466AH (Fla. 15th Cir. Ct. 1996). Moneys received  
2 from the settlement and deposited into the trust fund are  
3 exempt from the service charges imposed under s. 215.20.

4 (3)(a) Subject to approval of the Legislature, all or  
5 any portion of the state's right, title, and interest in and  
6 to the tobacco settlement agreement may be sold to the Tobacco  
7 Settlement Financing Corporation created pursuant to s.  
8 215.56005. Any such sale shall be a true sale and not a  
9 borrowing.

10 (b) Any moneys received by the state pursuant to any  
11 residual interest retained in the tobacco settlement agreement  
12 or the payments to be made under the tobacco settlement  
13 agreement shall be deposited into the Tobacco Settlement  
14 Clearing Trust Fund.

15 (4) Net proceeds of the sale of the tobacco settlement  
16 agreement received by the state shall be immediately deposited  
17 into the Lawton Chiles Endowment Fund, created in s. 215.5601,  
18 without deposit to the Tobacco Settlement Clearing Trust Fund.

19 (5) The department shall disburse funds, by  
20 nonoperating transfer, from the Tobacco Settlement Clearing  
21 Trust Fund to the tobacco settlement trust funds of the  
22 various agencies in amounts equal to the annual appropriations  
23 made from those agencies' trust funds in the General  
24 Appropriations Act.

25 (6) Pursuant to the provisions of s. 19(f)(3), Art.  
26 III of the State Constitution, the Tobacco Settlement Clearing  
27 Trust Fund is exempt from the termination provisions of s.  
28 19(f)(2), Art. III of the State Constitution.

29 Section 46. Section 17.43, Florida Statutes, is  
30 amended to read:

31

1           17.43 Chief Financial Officer's ~~Comptroller's~~ Federal  
2 Equitable Sharing Trust Fund.--

3           (1) The Chief Financial Officer's ~~Comptroller's~~  
4 Federal Equitable Sharing Trust Fund is created within the  
5 Department of Financial Services ~~Banking and Finance~~. The  
6 department may deposit into the trust fund receipts and  
7 revenues received as a result of federal criminal,  
8 administrative, or civil forfeiture proceedings and receipts  
9 and revenues received from federal asset-sharing programs. The  
10 trust fund is exempt from the service charges imposed by s.  
11 215.20.

12           (2) Notwithstanding the provisions of s. 216.301 and  
13 pursuant to s. 216.351, any balance in the trust fund at the  
14 end of any fiscal year shall remain in the trust fund at the  
15 end of the year and shall be available for carrying out the  
16 purposes of the trust fund.

17           Section 47. Section 18.01, Florida Statutes, is  
18 transferred, renumbered as section 17.51, Florida Statutes,  
19 and amended to read:

20           17.51 ~~18.01~~ Oath and certificate of Chief Financial  
21 Officer ~~Treasurer~~.--The Chief Financial Officer ~~Treasurer~~  
22 shall, within 10 days before he or she enters upon the duties  
23 of office, take and subscribe an oath or affirmation  
24 faithfully to discharge the duties of office, which oath or  
25 affirmation must be deposited with the Department of State.  
26 The Chief Financial Officer ~~Treasurer~~ shall also file with the  
27 Department of State a certificate ~~from the Comptroller~~  
28 attesting that the retiring Treasurer or Chief Financial  
29 Officer ~~has turned over vouchers for all payments made as~~  
30 ~~required by law, and that the Treasurer's account has been~~  
31 ~~truly credited with the same, and that he or she has filed~~

1 receipts from his or her successor for ~~all vouchers paid since~~  
2 ~~the end of last quarter, and for~~ balance of cash, and for all  
3 bonds and other securities held by the Treasurer or Chief  
4 Financial Officer as such, and a certificate from each board  
5 of which he or she is made by law ex officio treasurer, that  
6 he or she has satisfactorily accounted to such board as its  
7 treasurer.

8 Section 48. Section 18.02, Florida Statutes, is  
9 transferred, renumbered as section 17.52, Florida Statutes,  
10 and amended to read:

11 17.52 ~~18.02~~ Moneys paid on warrants.--The Division of  
12 Treasury ~~Treasurer~~ shall pay all warrants on the treasury  
13 drawn by the Chief Financial Officer or Comptroller and other  
14 orders by the Chief Financial Officer or Comptroller for the  
15 disbursement of state funds by electronic means or by means of  
16 a magnetic tape or any other transfer medium. No moneys shall  
17 be paid out of the treasury except on such warrants or other  
18 orders of the Chief Financial Officer or Comptroller.

19 Section 49. Section 18.021, Florida Statutes, is  
20 transferred, renumbered as section 17.53, Florida Statutes,  
21 and amended to read:

22 17.53 ~~18.021~~ Chief Financial Officer ~~Treasurer~~ to  
23 operate personal check-cashing service.--

24 (1) The Chief Financial Officer ~~Treasurer~~ is  
25 authorized to operate a personal check-cashing service or a  
26 remote financial service unit at the capitol for the benefit  
27 of state employees or other responsible persons who properly  
28 identify themselves.

29 (2) If a personal check is dishonored or a state  
30 warrant is forged and the Chief Financial Officer ~~Treasurer~~  
31 has made diligent but unsuccessful effort to collect and has

1 forwarded the returned check for prosecution by the  
2 appropriate state attorney, then he or she may include such  
3 amount in his or her budget request to be considered during  
4 the next legislative session.

5 Section 50. Section 18.05, Florida Statutes, is  
6 transferred, renumbered as section 17.54, Florida Statutes,  
7 and amended to read:

8 17.54 ~~18.05~~ Annual report to Governor.--The Chief  
9 Financial Officer ~~Treasurer~~ shall make a report in detail to  
10 the Governor, with a copy to the President of the Senate and  
11 the Speaker of the House of Representatives as soon after the  
12 1st day of July of each year as it is practicable to prepare  
13 same of the transactions of the Division of Treasury ~~his or~~  
14 ~~her office~~ for the preceding fiscal year, embracing a  
15 statement of the receipts and payments on account of each of  
16 the several funds of which he or she has the care and custody.

17 Section 51. Section 18.06, Florida Statutes, is  
18 transferred, renumbered as section 17.55, Florida Statutes,  
19 and amended to read:

20 17.55 ~~18.06~~ Examination by and monthly statements to  
21 the Governor.--The office of the Chief Financial Officer  
22 ~~Treasurer of this state~~, and the books, files, documents,  
23 records, and papers thereof, shall always be subject to the  
24 examination of the Governor of the state, or any person he or  
25 she may authorize to examine same. The Chief Financial Officer  
26 ~~Treasurer~~ shall exhibit to the Governor monthly a trial  
27 balance sheet from the Division of Treasury ~~his or her books~~  
28 and a statement of all the credits, moneys, or effects on hand  
29 on the day for which such ~~said~~ trial balance sheet is made,  
30 and such ~~said~~ statement accompanying such ~~said~~ trial balance  
31 sheet shall particularly describe the exact character of

1 funds, credits, and securities, and shall state in detail the  
2 amount which he or she may have representing cash, including  
3 any not yet entered upon the books of his or her office, and  
4 such statement shall be certified and signed by the Chief  
5 Financial Officer ~~Treasurer~~ officially.

6 Section 52. Section 18.07, Florida Statutes, is  
7 transferred, renumbered as section 17.555, Florida Statutes,  
8 and amended to read:

9 17.555 ~~18.07~~ Division of Treasury ~~Treasurer~~ to keep  
10 record of warrants and of state funds and securities.--The  
11 Division of Treasury ~~Treasurer~~ shall keep a record of the  
12 warrants or other orders of the Chief Financial Officer  
13 ~~Comptroller~~ which the Division of Treasury ~~Treasurer~~ pays and  
14 shall account for all state funds and securities.

15 Section 53. Section 18.091, Florida Statutes, is  
16 transferred, renumbered as section 17.556, Florida Statutes,  
17 and amended to read:

18 17.556 ~~18.091~~ Legislative sessions; additional  
19 employees.--

20 (1) Hereafter during any period of time the  
21 Legislature of Florida may be in actual session, the Chief  
22 Financial Officer ~~Treasurer~~ is empowered to employ additional  
23 persons to assist in performing the services required of the  
24 Chief Financial Officer ~~Treasurer~~ in connection with s.  
25 17.53(1) ~~s. 18.021(1)~~. The salaries to be paid such employees  
26 of the Chief Financial Officer ~~Treasurer~~ shall not be in  
27 excess of the highest salary paid by the House of  
28 Representatives or the state Senate for secretarial services;  
29 and the salaries for said employees shall begin with the  
30 convening of the Legislature in session and shall continue for  
31 not more than 7 days after the close of the legislative

1 session; provided, that recesses of the Legislature not in  
2 excess of 3 days shall be considered as time during which the  
3 Legislature is actually in session.

4 (2) In addition to the regular annual appropriations  
5 for the Chief Financial Officer ~~Treasurer~~, there is hereby  
6 appropriated for use of the Chief Financial Officer ~~Treasurer~~  
7 from the General Revenue Fund, from time to time as necessary,  
8 sufficient sums to pay the salaries of the above-described  
9 employees ~~of the Treasurer~~.

10 Section 54. Section 18.08, Florida Statutes, is  
11 transferred, renumbered as section 17.56, Florida Statutes,  
12 and amended to read:

13 17.56 ~~18.08~~ Division of Treasury ~~Treasurer~~ to turn  
14 over to the Division of Accounting and Auditing ~~Comptroller~~  
15 all warrants paid.--The Division of Treasury ~~Treasurer~~ shall  
16 turn over to the Division of Accounting and Auditing  
17 ~~Comptroller~~, through the data service center, all warrants  
18 drawn by the Chief Financial Officer or the ~~Comptroller~~ and  
19 paid by the Division of Treasury ~~Treasurer~~. The ~~Said~~ warrants  
20 shall be turned over as soon as the Division of Treasury  
21 ~~Treasurer~~ shall have recorded such warrants and charged the  
22 same against the accounts upon which such warrants are drawn.

23 Section 55. Section 18.10, Florida Statutes, is  
24 transferred, renumbered as section 17.57, Florida Statutes,  
25 and amended to read:

26 17.57 ~~18.10~~ Deposits and investments of state money.--

27 (1) The Chief Financial Officer ~~Treasurer~~, or other  
28 parties with the permission of the Chief Financial Officer  
29 ~~Treasurer~~, shall deposit the money of the state or any money  
30 in the State Treasury in such qualified public depositories of  
31 the state as will offer satisfactory collateral security for

1 such deposits, pursuant to chapter 280. It is the duty of the  
2 Chief Financial Officer ~~Treasurer~~, consistent with the cash  
3 requirements of the state, to keep such money fully invested  
4 or deposited as provided herein in order that the state may  
5 realize maximum earnings and benefits.

6 (2) The Chief Financial Officer ~~Treasurer~~ shall make  
7 funds available to meet the disbursement needs of the state.  
8 Funds which are not needed for this purpose shall be placed in  
9 qualified public depositories that will pay rates established  
10 by the Chief Financial Officer ~~Treasurer~~ at levels not less  
11 than the prevailing rate for United States Treasury securities  
12 with a corresponding maturity. In the event money is available  
13 for interest-bearing time deposits or savings accounts as  
14 provided herein and qualified public depositories are  
15 unwilling to accept such money and pay thereon the rates  
16 established above, then such money which qualified public  
17 depositories are unwilling to accept shall be invested in:

18 (a) Direct United States Treasury obligations.

19 (b) Obligations of the Federal Farm Credit Banks.

20 (c) Obligations of the Federal Home Loan Bank and its  
21 district banks.

22 (d) Obligations of the Federal Home Loan Mortgage  
23 Corporation, including participation certificates.

24 (e) Obligations guaranteed by the Government National  
25 Mortgage Association.

26 (f) Obligations of the Federal National Mortgage  
27 Association.

28 (g) Commercial paper of prime quality of the highest  
29 letter and numerical rating as provided for by at least one  
30 nationally recognized rating service.

31

1           (h) Time drafts or bills of exchange drawn on and  
2 accepted by a commercial bank, otherwise known as "bankers  
3 acceptances," which are accepted by a member bank of the  
4 Federal Reserve System having total deposits of not less than  
5 \$400 million or which are accepted by a commercial bank which  
6 is not a member of the Federal Reserve System with deposits of  
7 not less than \$400 million and which is licensed by a state  
8 government or the Federal Government, and whose senior debt  
9 issues are rated in one of the two highest rating categories  
10 by a nationally recognized rating service and which are held  
11 in custody by a domestic bank which is a member of the Federal  
12 Reserve System.

13           (i) Corporate obligations or corporate master notes of  
14 any corporation within the United States, if the long-term  
15 obligations of such corporation are rated by at least two  
16 nationally recognized rating services in any one of the four  
17 highest classifications. However, if such obligations are  
18 rated by only one nationally recognized rating service, then  
19 the obligations shall be rated in any one of the two highest  
20 classifications.

21           (j) Obligations of the Student Loan Marketing  
22 Association.

23           (k) Obligations of the Resolution Funding Corporation.

24           (l) Asset-backed or mortgage-backed securities of the  
25 highest credit quality.

26           (m) Any obligations not previously listed which are  
27 guaranteed as to principal and interest by the full faith and  
28 credit of the United States Government or are obligations of  
29 United States agencies or instrumentalities which are rated in  
30 the highest category by a nationally recognized rating  
31 service.

1           (n) Commingled no-load investment funds or no-load  
2 mutual funds in which all securities held by the funds are  
3 authorized in this subsection.

4           (o) Money market mutual funds as defined and regulated  
5 by the Securities and Exchange Commission.

6           (p) Obligations of state and local governments rated  
7 in any of the four highest classifications by at least two  
8 nationally recognized rating services. However, if such  
9 obligations are rated by only one nationally recognized rating  
10 service, then the obligations shall be rated in any one of the  
11 two highest classifications.

12           (q) Derivatives of investment instruments authorized  
13 in paragraphs (a)-(m).

14           (r) Covered put and call options on investment  
15 instruments authorized in this subsection for the purpose of  
16 hedging transactions by investment managers to mitigate risk  
17 or to facilitate portfolio management.

18           (s) Negotiable certificates of deposit issued by  
19 financial institutions whose long-term debt is rated in one of  
20 the three highest categories by at least two nationally  
21 recognized rating services, the investment in which shall not  
22 be prohibited by any provision of chapter 280.

23           (t) Foreign bonds denominated in United States dollars  
24 and registered with the Securities and Exchange Commission for  
25 sale in the United States, if the long-term obligations of  
26 such issuers are rated by at least two nationally recognized  
27 rating services in any one of the four highest  
28 classifications. However, if such obligations are rated by  
29 only one nationally recognized rating service, the obligations  
30 shall be rated in any one of the two highest classifications.

31

1           (u) Convertible debt obligations of any corporation  
2 domiciled within the United States, if the convertible debt  
3 issue is rated by at least two nationally recognized rating  
4 services in any one of the four highest classifications.  
5 However, if such obligations are rated by only one nationally  
6 recognized rating service, then the obligations shall be rated  
7 in any one of the two highest classifications.

8           (v) Securities not otherwise described in this  
9 subsection. However, not more than 3 percent of the funds  
10 under the control of the Chief Financial Officer ~~Treasurer~~  
11 shall be invested in securities described in this paragraph.

12  
13 These investments may be in varying maturities and may be in  
14 book-entry form. Investments made pursuant to this subsection  
15 may be under repurchase agreement. The Chief Financial Officer  
16 ~~may~~ ~~Treasurer is authorized to~~ hire registered investment  
17 advisers and other consultants to assist in investment  
18 management and to pay fees directly from investment earnings.  
19 Investment securities, proprietary investment services related  
20 to contracts, performance evaluation services,  
21 investment-related equipment or software used directly to  
22 assist investment trading or investment accounting operations  
23 including bond calculators, telerates, Bloombergs, special  
24 program calculators, intercom systems, and software used in  
25 accounting, communications, and trading, and advisory and  
26 consulting contracts made under this section are exempt from  
27 the provisions of chapter 287.

28           (3) In the event the financial institutions in the  
29 state do not make sufficient loan funds available for a  
30 residential conservation program pursuant to any plan approved  
31 by the Florida Public Service Commission under the Florida

1 Energy Efficiency and Conservation Act, the board may  
2 authorize the investment of state funds, except retirement  
3 trust funds, in such a loan program at rates not less than  
4 prevailing United States Treasury bill rates. However, prior  
5 to investment of such funds, the Florida Public Service  
6 Commission shall develop a plan which must be approved by the  
7 Legislature before implementation.

8 (4) All earnings on any investments made pursuant to  
9 this section are hereby appropriated to the General Revenue  
10 Fund, except that earnings attributable to moneys made  
11 available pursuant to s. 17.61(3)~~s. 18.125(3)(a) and (b)~~  
12 shall be credited pro rata to the funds from which such moneys  
13 were made available.

14 (5) The fact that a municipal officer or a state  
15 officer, including an officer of any municipal or state  
16 agency, board, bureau, commission, institution, or department,  
17 is a stockholder or an officer or director of a bank or  
18 savings and loan association will not bar such bank or savings  
19 and loan association from being a depository of funds coming  
20 under the jurisdiction of any such municipal officer or state  
21 officer if it shall appear in the records of the municipal or  
22 state office that the governing body of such municipality or  
23 state agency has investigated and determined that such  
24 municipal or state officer is not favoring such banks or  
25 savings and loan associations over other qualified banks or  
26 savings and loan associations.

27 (6) The Chief Financial Officer ~~Treasurer~~ is  
28 designated the cash management officer for the state and is  
29 charged with the coordination and supervision of procedures  
30 providing for the efficient handling of financial assets under  
31 the control of the State Treasury and each of the various

1 state agencies, and of the judicial branch, as defined in s.  
2 216.011. This responsibility shall include the supervision  
3 and approval of all banking relationships. Pursuant to this  
4 responsibility, the Chief Financial Officer may ~~Treasurer is~~  
5 ~~authorized to~~ obtain information from financial institutions  
6 regarding depository accounts maintained by any agency or  
7 institution of the State of Florida.

8 Section 56. Effective July 1, 2003, subsection (4) of  
9 section 17.57, Florida Statutes, as amended by this act, is  
10 amended to read:

11 17.57 Deposits and investments of state money.--

12 (4) All earnings on any investments made pursuant to  
13 this section shall be credited to the General Revenue Fund,  
14 except that earnings attributable to moneys made available  
15 pursuant to s. 17.61(3)~~s. 18.125(3)~~ shall be credited pro  
16 rata to the funds from which such moneys were made available.

17 Section 57. Section 18.101, Florida Statutes, is  
18 transferred, renumbered as section 17.58, Florida Statutes,  
19 and amended to read:

20 17.58 ~~18.101~~ Deposits of public money outside the  
21 State Treasury; revolving funds.--

22 (1) All moneys collected by state agencies, boards,  
23 bureaus, commissions, institutions, and departments shall,  
24 except as otherwise provided by law, be deposited in the State  
25 Treasury. However, when the volume and complexity of  
26 collections so justify, the Chief Financial Officer ~~Treasurer~~  
27 may give written approval for such moneys to be deposited in  
28 clearing accounts outside the State Treasury in qualified  
29 public depositories pursuant to chapter 280. Such deposits  
30 shall only be made in depositories designated by the Chief  
31 Financial Officer ~~Treasurer~~. No money may be maintained in

1 such clearing accounts for a period longer than approved by  
2 the Chief Financial Officer ~~Treasurer~~ or 40 days, whichever is  
3 shorter, prior to its being transmitted to the Chief Financial  
4 Officer ~~Treasurer~~ or to an account designated by him or her,  
5 distributed to a statutorily authorized account outside the  
6 State Treasury, refunded, or transmitted to the Department of  
7 Revenue. All depositories so designated shall pledge  
8 sufficient collateral to be security for such funds as  
9 provided in chapter 280.

10 (2) Revolving funds authorized by the Chief Financial  
11 Officer ~~Comptroller~~ for all state agencies, boards, bureaus,  
12 commissions, institutions, and departments may be deposited by  
13 such agencies, boards, bureaus, commissions, institutions, and  
14 departments in qualified public depositories designated by the  
15 Chief Financial Officer ~~Treasurer~~ for such revolving fund  
16 deposits; and the depositories in which such deposits are made  
17 shall pledge collateral security as provided in chapter 280.

18 (3) Notwithstanding the foregoing provisions, clearing  
19 and revolving accounts may be established outside the state  
20 when necessary to facilitate the authorized operations of any  
21 agency, board, bureau, commission, institution, or department.  
22 Any of such accounts established in the United States shall be  
23 subject to the collateral security requirements of chapter  
24 280. Accounts established outside the United States may be  
25 exempted from the requirements of chapter 280 as provided in  
26 chapter 280; but before any unsecured account is established,  
27 the agency requesting or maintaining the account shall  
28 recommend a financial institution to the Chief Financial  
29 Officer ~~Treasurer~~ for designation to hold the account and  
30 shall submit evidence of the financial condition, size,  
31 reputation, and relative prominence of the institution from

1 which the Chief Financial Officer ~~Treasurer~~ can reasonably  
2 conclude that the institution is financially sound before  
3 designating it to hold the account.

4 (4) Each department shall furnish a statement to the  
5 Chief Financial Officer ~~Treasurer~~, on or before the 20th of  
6 the month following the end of each calendar quarter, listing  
7 each clearing account and revolving fund within that  
8 department's jurisdiction. Such statement shall report, as of  
9 the last day of the calendar quarter, the cash balance in each  
10 revolving fund and that portion of the cash balance in each  
11 clearing account that will eventually be deposited to the  
12 State Treasury as provided by law. The Chief Financial Officer  
13 ~~Treasurer~~ shall show the sum total of state funds in clearing  
14 accounts and revolving funds, as most recently reported to the  
15 Chief Financial Officer ~~Treasurer~~ by various departments, in  
16 his or her monthly statement to the Governor, pursuant to s.  
17 17.55 ~~s. 18.06~~.

18 Section 58. Section 18.103, Florida Statutes, is  
19 transferred, renumbered as section 17.59, Florida Statutes,  
20 and amended to read:

21 17.59 ~~18.103~~ Safekeeping services of ~~Treasurer~~.--

22 (1) The Chief Financial Officer ~~Treasurer~~ may accept  
23 for safekeeping purposes, deposits of cash, securities, and  
24 other documents or articles of value from any state agency as  
25 defined in s. 216.011, or any county, city, or political  
26 subdivision thereof, or other public authority.

27 (2) The Chief Financial Officer ~~Treasurer~~ may, in his  
28 or her discretion, establish a fee for processing, servicing,  
29 and safekeeping deposits and other documents or articles of  
30 value held in the Chief Financial Officer's ~~Treasurer's~~ vaults  
31 as requested by the various entities or as provided for by

1 law. Such fee shall be equivalent to the fee charged by  
2 financial institutions for processing, servicing, and  
3 safekeeping the same types of deposits and other documents or  
4 articles of value.

5 (3) The Chief Financial Officer ~~Treasurer~~ shall  
6 collect in advance, and persons so served shall pay to the  
7 Chief Financial Officer ~~Treasurer~~ in advance, the  
8 miscellaneous charges as follows:

9 (a) For copies of documents or records on file with  
10 the Chief Financial Officer ~~Treasurer~~, per page.....\$.50.

11 (b) For each certificate of the Chief Financial  
12 Officer ~~Treasurer~~, certified or under the Chief Financial  
13 Officer's ~~Treasurer's~~ seal, authenticating any document or  
14 other instrument.....\$5.00.

15 (4) All fees collected for the services described in  
16 this section shall be deposited in the Treasury ~~Treasurer's~~  
17 Administrative and Investment Trust Fund.

18 Section 59. Section 18.104, Florida Statutes, is  
19 transferred, renumbered as section 17.60, Florida Statutes,  
20 and amended to read:

21 17.60 ~~18.104~~ Treasury Cash Deposit Trust Fund.--

22 (1) There is ~~hereby~~ created in the State Treasury the  
23 Treasury Cash Deposit Trust Fund. Cash deposits made pursuant  
24 to s. 17.59 ~~s. 18.103~~ shall be deposited into this fund.

25 (2) Interest earned on cash deposited into this fund  
26 shall be prorated and paid to the depositing entities.

27 Section 60. Section 18.125, Florida Statutes, is  
28 transferred, renumbered as section 17.61, Florida Statutes,  
29 and amended to read:

30 17.61 ~~18.125~~ Chief Financial Officer ~~Treasurer~~; powers  
31 and duties in the investment of certain funds.--

1           (1) The Chief Financial Officer ~~Treasurer~~, acting with  
2 ~~the approval of a majority of the State Board of~~  
3 ~~Administration~~, shall invest all general revenue funds and all  
4 the trust funds and all agency funds of each state agency, and  
5 of the judicial branch, as defined in s. 216.011, and may,  
6 upon request, invest funds of any statutorily created board,  
7 association, or entity, except for the funds required to be  
8 invested pursuant to ss. 215.44-215.53, by the procedure and  
9 in the authorized securities prescribed in s. 17.57 ~~s. 18.10~~;  
10 for this purpose, the Chief Financial Officer ~~may Treasurer~~  
11 ~~shall be authorized to~~ open and maintain one or more demand  
12 and safekeeping accounts in any bank or savings association  
13 for the investment and reinvestment and the purchase, sale,  
14 and exchange of funds and securities in the accounts. Funds  
15 in such accounts used solely for investments and reinvestments  
16 shall be considered investment funds and not funds on deposit,  
17 and such funds shall be exempt from the provisions of chapter  
18 280. In addition, the securities or investments purchased or  
19 held under the provisions of this section and s. 17.57 ~~s.~~  
20 ~~18.10~~ may be loaned to securities dealers and banks and may be  
21 registered by the Chief Financial Officer ~~Treasurer~~ in the  
22 name of a third-party nominee in order to facilitate such  
23 loans, provided the loan is collateralized by cash or United  
24 States government securities having a market value of at least  
25 100 percent of the market value of the securities loaned. The  
26 Chief Financial Officer ~~Treasurer~~ shall keep a separate  
27 account, designated by name and number, of each fund.  
28 Individual transactions and totals of all investments, or the  
29 share belonging to each fund, shall be recorded in the  
30 accounts.  
31

1           (2) By and with the consent and approval of any  
2 constitutional board, the judicial branch, or agency now  
3 having the constitutional power to make investments and in  
4 accordance with this section, the Chief Financial Officer may  
5 ~~Treasurer shall have the power to~~ make purchases, sales,  
6 exchanges, investments, and reinvestments for and on behalf of  
7 any such board.

8           (3)(a) Except as otherwise provided in this  
9 subsection, it is the duty of each state agency, and of the  
10 judicial branch, now or hereafter charged with the  
11 administration of the funds referred to in subsection (1) to  
12 make such moneys available for investment as fully as is  
13 consistent with the cash requirements of the particular fund  
14 and to authorize investment of such moneys by the Chief  
15 Financial Officer ~~Treasurer~~.

16           (b) Monthly, and more often as circumstances require,  
17 such agency or judicial branch shall notify the Chief  
18 Financial Officer ~~Treasurer~~ of the amount available for  
19 investment; and the moneys shall be invested by the Chief  
20 Financial Officer ~~Treasurer~~. Such notification shall include  
21 the name and number of the fund for which the investments are  
22 to be made and the life of the investment if the principal sum  
23 is to be required for meeting obligations. This subsection,  
24 however, shall not be construed to make available for  
25 investment any funds other than those referred to in  
26 subsection (1).

27           (c) Except as provided in this paragraph and except  
28 for moneys described in paragraph (d), the following agencies  
29 shall not invest trust fund moneys as provided in this  
30 section, but shall retain such moneys in their respective  
31

1 trust funds for investment, with interest appropriated to the  
2 General Revenue Fund, pursuant to s. 17.57 ~~s. 18.10~~:

3 1. The Agency for Health Care Administration, except  
4 for the Tobacco Settlement Trust Fund.

5 2. The Department of Children and Family Services,  
6 except for:

7 a. The Alcohol, Drug Abuse, and Mental Health Trust  
8 Fund.

9 b. The Community Resources Development Trust Fund.  
10 c. The Refugee Assistance Trust Fund.  
11 d. The Social Services Block Grant Trust Fund.  
12 e. The Tobacco Settlement Trust Fund.  
13 f. The Working Capital Trust Fund.

14 3. The Department of Community Affairs, only for the  
15 Operating Trust Fund.

16 4. The Department of Corrections.

17 5. The Department of Elderly Affairs, except for:

18 a. The Federal Grants Trust Fund.  
19 b. The Tobacco Settlement Trust Fund.

20 6. The Department of Health, except for:

21 a. The Federal Grants Trust Fund.  
22 b. The Grants and Donations Trust Fund.  
23 c. The Maternal and Child Health Block Grant Trust  
24 Fund.

25 d. The Tobacco Settlement Trust Fund.

26 7. The Department of Highway Safety and Motor  
27 Vehicles, only for:

28 a. The DUI Programs Coordination Trust Fund.  
29 b. The Security Deposits Trust Fund.  
30 8. The Department of Juvenile Justice.  
31

- 1           9. The Department of Labor and Employment Security,  
2 only for the Administrative Trust Fund.
- 3           10. The Department of Law Enforcement.
- 4           11. The Department of Legal Affairs.
- 5           12. The Department of State, only for:
- 6           a. The Grants and Donations Trust Fund.
- 7           b. The Records Management Trust Fund.
- 8           13. The Executive Office of the Governor, only for:
- 9           a. The Economic Development Transportation Trust Fund.
- 10           b. The Economic Development Trust Fund.
- 11           14. The Florida Public Service Commission, only for  
12 the Florida Public Service Regulatory Trust Fund.
- 13           15. The Justice Administrative Commission.
- 14           16. The state courts system.
- 15           (d) Moneys in any trust funds of the agencies in  
16 paragraph (c) may be invested pursuant to the provisions of  
17 this section if:
- 18           1. Investment of such moneys and the retention of  
19 interest is required by federal programs or mandates;
- 20           2. Investment of such moneys and the retention of  
21 interest is required by bond covenants, indentures, or  
22 resolutions;
- 23           3. Such moneys are held by the state in a trustee  
24 capacity as an agent or fiduciary for individuals, private  
25 organizations, or other governmental units; or
- 26           4. The Executive Office of the Governor determines,  
27 after consultation with the Legislature pursuant to the  
28 procedures of s. 216.177, that federal matching funds or  
29 contributions or private grants to any trust fund would be  
30 lost to the state.
- 31

1           (4)(a) There is hereby created in the State Treasury  
2 the Treasury ~~Treasurer's~~ Administrative and Investment Trust  
3 Fund.

4           (b) The Chief Financial Officer ~~Treasurer~~ shall make  
5 an annual assessment of 0.12 percent against the average daily  
6 balance of those moneys made available pursuant to this  
7 section and 0.2 percent against the average daily balance of  
8 those funds requiring investment in a separate account. The  
9 proceeds of this assessment shall be deposited in the Treasury  
10 ~~Treasurer's~~ Administrative and Investment Trust Fund.

11           (c) The moneys so received and deposited in the fund  
12 shall be used by the Chief Financial Officer ~~Treasurer~~ to  
13 defray the expense of his or her office in the discharge of  
14 the administrative and investment powers and duties prescribed  
15 by this section and this chapter, including the maintaining of  
16 an office and necessary supplies therefor, essential equipment  
17 and other materials, salaries and expenses of required  
18 personnel, and all other legitimate expenses relating to the  
19 administrative and investment powers and duties imposed upon  
20 and charged to the Chief Financial Officer ~~Treasurer~~ under  
21 this section and this chapter. The unencumbered balance in the  
22 trust fund at the close of each quarter shall not exceed  
23 \$750,000. Any funds in excess of this amount shall be  
24 transferred unallocated to the General Revenue Fund. However,  
25 fees received from deferred compensation participants pursuant  
26 to s. 112.215 shall not be transferred to the General Revenue  
27 Fund and shall be used to operate the deferred compensation  
28 program.

29           (5) The transfer of the powers, duties, and  
30 responsibilities of existing state agencies and of the  
31 judicial branch made by this section to the Chief Financial

1 Officer ~~Treasurer~~ shall include only the particular powers,  
2 duties, and responsibilities hereby transferred, and all other  
3 existing powers shall in no way be affected by this section.

4 Section 61. Effective July 1, 2003, subsection (3) of  
5 section 17.61, Florida Statutes, as amended by this act, is  
6 amended to read:

7 17.61 Chief Financial Officer; powers and duties in  
8 the investment of certain funds.--

9 (3)(a) It is the duty of each state agency, and of the  
10 judicial branch, now or hereafter charged with the  
11 administration of the funds referred to in subsection (1) to  
12 make such moneys available for investment as fully as is  
13 consistent with the cash requirements of the particular fund  
14 and to authorize investment of such moneys by the Chief  
15 Financial Officer ~~Treasurer~~.

16 (b) Monthly, and more often as circumstances require,  
17 such agency or judicial branch shall notify the Chief  
18 Financial Officer ~~Treasurer~~ of the amount available for  
19 investment; and the moneys shall be invested by the Chief  
20 Financial Officer ~~Treasurer~~. Such notification shall include  
21 the name and number of the fund for which the investments are  
22 to be made and the life of the investment if the principal sum  
23 is to be required for meeting obligations. This subsection,  
24 however, shall not be construed to make available for  
25 investment any funds other than those referred to in  
26 subsection (1).

27 Section 62. Section 18.15, Florida Statutes, is  
28 transferred, renumbered as section 17.62, Florida Statutes,  
29 and amended to read:

30 17.62 ~~18.15~~ Interest on state moneys deposited; when  
31 paid.--Interest on state moneys deposited in qualified public

1 depositories under s. 17.57 ~~s. 18.10~~ shall be payable to the  
2 Chief Financial Officer ~~Treasurer~~ quarterly ~~or semiannually~~.

3 Section 63. Section 18.17, Florida Statutes, is  
4 transferred, renumbered as section 17.63, Florida Statutes,  
5 and amended to read:

6 17.63 ~~18.17~~ Chief Financial Officer ~~Treasurer~~ not to  
7 issue evidences of indebtedness.--It is not lawful for the  
8 Chief Financial Officer ~~Treasurer~~ of this state to issue any  
9 treasury certificates, or any other evidences of indebtedness,  
10 for any purpose whatever, and the Chief Financial Officer  
11 ~~Treasurer~~ is prohibited from issuing the same.

12 Section 64. Section 18.20, Florida Statutes, is  
13 transferred, renumbered as section 17.64, Florida Statutes,  
14 and amended to read:

15 17.64 ~~18.20~~ Division of Treasury ~~Treasurer~~ to make  
16 reproductions of certain warrants, records, and documents.--

17 ~~(1) All vouchers or checks heretofore or hereafter~~  
18 ~~drawn by appropriate court officials of the several counties~~  
19 ~~of the state against money deposited with the Treasurer under~~  
20 ~~the provisions of s. 43.17, and paid by the Treasurer, may be~~  
21 ~~photographed, microphotographed, or reproduced on film by the~~  
22 ~~Treasurer. Such photographic film shall be durable material~~  
23 ~~and the device used to so reproduce such warrants, vouchers,~~  
24 ~~or checks shall be one which accurately reproduces the~~  
25 ~~originals thereof in all detail; and such photographs,~~  
26 ~~microphotographs, or reproductions on film shall be placed in~~  
27 ~~conveniently accessible and identified files and shall be~~  
28 ~~preserved by the Treasurer as a part of the permanent records~~  
29 ~~of office. When any such warrants, vouchers, or checks have~~  
30 ~~been so photographed, microphotographed, or reproduced on~~  
31 ~~film, and the photographs, microphotographs, or reproductions~~

1 ~~on film thereof have been placed in files as a part of the~~  
2 ~~permanent records of the office of the Treasurer as aforesaid,~~  
3 ~~the Treasurer is authorized to return such warrants, vouchers,~~  
4 ~~or checks to the offices of the respective county officials~~  
5 ~~who drew the same and such warrants, vouchers, or checks shall~~  
6 ~~be retained and preserved in such offices to which returned as~~  
7 ~~a part of the permanent records of such offices.~~

8       (1)(2) Such Photographs, microphotographs, or  
9 reproductions on film of ~~said~~ warrants, vouchers, or checks  
10 shall be deemed to be original records for all purposes; and  
11 any copy or reproduction thereof made from such original film,  
12 duly certified by the Division of Treasury ~~Treasurer~~ as a true  
13 and correct copy or reproduction made from such film, shall be  
14 deemed to be a transcript, exemplification or certified copy  
15 of the original warrant, voucher, or check such copy  
16 represents, and shall in all cases and in all courts and  
17 places be admitted and received in evidence with the like  
18 force and effect as the original thereof might be.

19       (2)(3) The Division of Treasury ~~may~~ ~~Treasurer is also~~  
20 ~~hereby authorized to~~ photograph, microphotograph, or reproduce  
21 on film, all records and documents of the division ~~said~~  
22 ~~office,~~ as the Chief Financial Officer ~~Treasurer may,~~ in his  
23 or her discretion, selects ~~select;~~ and the division may ~~said~~  
24 ~~Treasurer is hereby authorized to~~ destroy any such ~~of the said~~  
25 documents or records after they have been photographed and  
26 filed and after audit of the division ~~Treasurer's office~~ has  
27 been completed for the period embracing the dates of such ~~said~~  
28 documents and records.

29       (3)(4) Photographs or microphotographs in the form of  
30 film or prints of any records made in compliance with the  
31 provisions of this section shall have the same force and

1 effect as the originals thereof would have, and shall be  
2 treated as originals for the purpose of their admissibility in  
3 evidence. Duly certified or authenticated reproductions of  
4 such photographs or microphotographs shall be admitted in  
5 evidence equally with the original photographs or  
6 microphotographs.

7 Section 65. Section 18.23, Florida Statutes, is  
8 transferred, renumbered as section 17.65, Florida Statutes,  
9 and amended to read:

10 17.65 ~~18.23~~ Chief Financial Officer ~~Treasurer~~ to  
11 prescribe forms.--The Chief Financial Officer ~~Treasurer~~ may  
12 prescribe the forms, and the manner of keeping the same, for  
13 all receipts, credit advices, abstracts, reports, and other  
14 papers furnished the Chief Financial Officer ~~Treasurer~~ by the  
15 officers of this state or other persons or entities as a  
16 result of their having, or depositing, state moneys.

17 Section 66. Section 18.24, Florida Statutes, is  
18 transferred, renumbered as section 17.66, Florida Statutes,  
19 and amended to read:

20 17.66 ~~18.24~~ Securities in book-entry form.--Any  
21 security that ~~which~~:

22 (1)(a) Is eligible to be held in book-entry form on  
23 the books of the Federal Reserve Book-Entry System; or

24 (b) Is eligible for deposit in a depository trust  
25 clearing system established to hold and transfer securities by  
26 computerized book-entry systems; and which

27 (2)(a) Is held in the name of the Chief Financial  
28 Officer, ~~in the name of the State Treasurer,~~ or in the name of  
29 the State Insurance Commissioner; or

30 (b) Is pledged to the Chief Financial Officer, to the  
31 State Treasurer, or to the State Insurance Commissioner;

1  
2 under any state law for any purpose whatsoever, may be held in  
3 book-entry form on the books of the Federal Reserve Book-Entry  
4 System or on deposit in a depository trust clearing system.

5 Section 67. Subsection (3) of section 20.04, Florida  
6 Statutes, is amended to read:

7 20.04 Structure of executive branch.--The executive  
8 branch of state government is structured as follows:

9 (3) For their internal structure, all departments,  
10 except for the Department of Financial Services ~~Banking and~~  
11 ~~Finance~~, the Department of Children and Family Services, the  
12 Department of Corrections, the Department of Management  
13 Services, the Department of Revenue, and the Department of  
14 Transportation, must adhere to the following standard terms:

15 (a) The principal unit of the department is the  
16 "division." Each division is headed by a "director."

17 (b) The principal unit of the division is the  
18 "bureau." Each bureau is headed by a "chief."

19 (c) The principal unit of the bureau is the "section."  
20 Each section is headed by an "administrator."

21 (d) If further subdivision is necessary, sections may  
22 be divided into "subsections," which are headed by  
23 "supervisors."

24 Section 68. Paragraph (h) of subsection (5) of section  
25 20.055, Florida Statutes, is amended to read:

26 20.055 Agency inspectors general.--

27 (5) In carrying out the auditing duties and  
28 responsibilities of this act, each inspector general shall  
29 review and evaluate internal controls necessary to ensure the  
30 fiscal accountability of the state agency. The inspector  
31 general shall conduct financial, compliance, electronic data

1 processing, and performance audits of the agency and prepare  
2 audit reports of his or her findings. The scope and assignment  
3 of the audits shall be determined by the inspector general;  
4 however, the agency head may at any time direct the inspector  
5 general to perform an audit of a special program, function, or  
6 organizational unit. The performance of the audit shall be  
7 under the direction of the inspector general, except that if  
8 the inspector general does not possess the qualifications  
9 specified in subsection (4), the director of auditing shall  
10 perform the functions listed in this subsection.

11 (h) The inspector general shall develop long-term and  
12 annual audit plans based on the findings of periodic risk  
13 assessments. The plan, where appropriate, should include  
14 postaudit samplings of payments and accounts. The plan shall  
15 show the individual audits to be conducted during each year  
16 and related resources to be devoted to the respective audits.  
17 The Chief Financial Officer ~~Comptroller~~, to assist in  
18 fulfilling the responsibilities for examining, auditing, and  
19 settling accounts, claims, and demands pursuant to s.  
20 17.03(1), and examining, auditing, adjusting, and settling  
21 accounts pursuant to s. 17.04, may utilize audits performed by  
22 the inspectors general and internal auditors. For state  
23 agencies under the Governor, the audit plans shall be  
24 submitted to the Governor's Chief Inspector General. The plan  
25 shall be submitted to the agency head for approval. A copy of  
26 the approved plan shall be submitted to the Auditor General.

27 Section 69. Section 20.121, Florida Statutes, is  
28 amended to read:

29 20.121 Department of Financial Services.--There is  
30 created a Department of Financial Services.

31

1           (1) DEPARTMENT HEAD.--The head of the Department of  
2 Financial Services is the Chief Financial Officer.

3           (2) DIVISIONS.--The Department of Financial Services  
4 shall consist of the following divisions:

5           (a) The Division of Accounting and Auditing, which  
6 shall include the following bureau and office:

7                 1. The Bureau of Unclaimed Property.

8                 2. The Office of Fiscal Integrity which shall function  
9 as a criminal justice agency for purposes of ss.

10                 943.045-943.08 and shall have a separate budget. The office  
11 may conduct investigations within or outside this state as the  
12 bureau deems necessary to aid in the enforcement of this  
13 section. If during an investigation the office has reason to  
14 believe that any criminal law of this state has or may have  
15 been violated, the office shall refer any records tending to  
16 show such violation to state or federal law enforcement or  
17 prosecutorial agencies and shall provide investigative  
18 assistance to those agencies as required.

19           (b) The Division of State Fire Marshal.

20           (c) The Division of Risk Management.

21           (d) The Division of Treasury, which shall include a  
22 Bureau of Deferred Compensation responsible for administering  
23 the Government Employees Deferred Compensation Plan  
24 established under s. 112.215 for state employees.

25           (e) The Division of Insurance Fraud.

26           (f) The Division of Rehabilitation and Liquidation.

27           (g) The Division of Insurance Agents and Agency  
28 Services.

29           (h) The Division of Consumer Services, which shall  
30 include a Bureau of Funeral and Cemetery Services.

31

1           1. The Division of Consumer Services shall perform the  
2 following functions concerning products or services regulated  
3 by the Department of Financial Services or by either office of  
4 the Financial Services Commission:

5           a. Receive inquiries and complaints from consumers;

6           b. Prepare and disseminate such information as the  
7 department deems appropriate to inform or assist consumers;

8           c. Provide direct assistance and advocacy for  
9 consumers who request such assistance or advocacy;

10           d. With respect to apparent or potential violations of  
11 law or applicable rules by a person or entity licensed by the  
12 department or by either office of the commission, report such  
13 apparent or potential violation to the appropriate division of  
14 the department or office of the commission, which may take  
15 such further action as it deems appropriate.

16           2. Any person licensed or issued a certificate of  
17 authority by the department or by either office of the  
18 commission shall respond, in writing, to the Division of  
19 Consumer Services within 15 days after receipt of a written  
20 request from the division to do so concerning a consumer  
21 complaint. Failure to timely respond is subject to an  
22 administrative fine by the department or office that issued  
23 the license or certificate of authority, as may be imposed for  
24 a violation of law.

25           (i) The Division of Workers' Compensation.

26           (j) The Division of Administration.

27           (k) The Division of Legal Services.

28           (l) The Division of Information Systems.

29           (m) The Office of Insurance Consumer Advocate.

30           (3) FINANCIAL SERVICES COMMISSION.--Effective January  
31 7, 2003, there is created within the Department of Financial

1 Services the Financial Services Commission, composed of the  
2 Governor, the Attorney General, the Chief Financial Officer,  
3 and the Commissioner of Agriculture, which shall for purposes  
4 of this section be referred to as the commission. Commission  
5 members shall serve as agency head of the Financial Services  
6 Commission. The commission shall be a separate budget entity  
7 and shall be exempt from the provisions of s. 20.052.  
8 Commission action shall be by majority vote consisting of at  
9 least three affirmative votes. The commission shall not be  
10 subject to control, supervision, or direction by the  
11 Department of Financial Services in any manner, including  
12 purchasing, transactions involving real or personal property,  
13 personnel, or budgetary matters.

14 (a) Structure.--The major structural unit of the  
15 commission is the office. Each office shall be headed by a  
16 director. The following offices are established:

17 1. The Office of Insurance Regulation, which shall be  
18 responsible for all activities concerning insurers and other  
19 risk bearing entities, including licensing, rates, policy  
20 forms, market conduct, claims, adjusters, issuance of  
21 certificates of authority, solvency, viatical settlements,  
22 premium financing, and administrative supervision, as provided  
23 under the insurance code or chapter 636. The head of the  
24 Office of Insurance Regulation is the Director of the Office  
25 of Insurance Regulation.

26 2. The Office of Financial Institutions and Securities  
27 Regulation, which shall be responsible for all activities of  
28 the Financial Services Commission relating to the regulation  
29 of banks, credit unions, other financial institutions, finance  
30 companies, and the securities industry. The head of the  
31 office is the Director of the Office of Financial Institutions

1 and Securities Regulation. The Office of Financial  
2 Institutions and Securities Regulation shall include a Bureau  
3 of Financial Investigations, which shall function as a  
4 criminal justice agency for purposes of ss. 943.045-943.08 and  
5 shall have a separate budget. The bureau may conduct  
6 investigations within or outside this state as the bureau  
7 deems necessary to aid in the enforcement of this section. If,  
8 during an investigation, the office has reason to believe that  
9 any criminal law of this state has or may have been violated,  
10 the office shall refer any records tending to show such  
11 violation to state or federal law enforcement or prosecutorial  
12 agencies and shall provide investigative assistance to those  
13 agencies as required.

14 (b) Organization.--The commission shall establish by  
15 rule any additional organizational structure of the offices.  
16 It is the intent of the Legislature to provide the commission  
17 with the flexibility to organize the offices in any manner  
18 they determine appropriate to promote both efficiency and  
19 accountability.

20 (c) Powers.--Commission members shall serve as the  
21 agency head for purposes of rulemaking under ss.  
22 120.536-120.565 by the commission and all subunits of the  
23 commission. Each director is agency head for purposes of  
24 final agency action under chapter 120 for all areas within the  
25 regulatory authority delegated to the director's office.

26 (d) Appointment and qualifications of directors.--The  
27 commission shall appoint or remove each director by a majority  
28 vote consisting of at least three affirmative votes, with both  
29 the Governor and the Chief Financial Officer on the prevailing  
30 side. The minimum qualifications of the directors are as  
31 follows:

1           1. Prior to appointment as director, the Director of  
2 the Office of Insurance Regulation must have had, within the  
3 previous 10 years, at least 5 years of responsible private  
4 sector experience working full time in areas within the scope  
5 of the subject matter jurisdiction of the Office of Insurance  
6 Regulation or at least 5 years of experience as a senior  
7 examiner or other senior employee of a state or federal agency  
8 having regulatory responsibility over insurers or insurance  
9 agencies.

10           2. Prior to appointment as director, the Director of  
11 the Office of Financial Institutions and Securities Regulation  
12 must have had, within the previous 10 years, at least 5 years  
13 of responsible private sector experience working full time in  
14 areas within the subject matter jurisdiction of the Office of  
15 Financial Institutions and Securities Regulation or at least 5  
16 years of experience as a senior examiner or other senior  
17 employee of a state or federal agency having regulatory  
18 responsibility over financial institutions, finance companies,  
19 or securities companies.

20           (e) Administrative support.--The offices shall have a  
21 sufficient number of attorneys, examiners, investigators,  
22 other professional personnel to carry out their  
23 responsibilities and administrative personnel as determined  
24 annually in the appropriations process. The Department of  
25 Financial Services shall provide administrative and  
26 information systems support to the offices.

27           Section 70. Section 20.195, Florida Statutes, is  
28 amended to read:

29           20.195 Department of Children and Family Services  
30 Tobacco Settlement Trust Fund.--

31

1           (1) The Department of Children and Family Services  
2 Tobacco Settlement Trust Fund is created within that  
3 department. Funds to be credited to the trust fund shall  
4 consist of funds disbursed, by nonoperating transfer, from the  
5 Department of Financial Services ~~Banking and Finance~~ Tobacco  
6 Settlement Clearing Trust Fund in amounts equal to the annual  
7 appropriations made from this trust fund.

8           (2) Notwithstanding the provisions of s. 216.301 and  
9 pursuant to s. 216.351, any unencumbered balance in the trust  
10 fund at the end of any fiscal year and any encumbered balance  
11 remaining undisbursed on December 31 of the same calendar year  
12 shall revert to the Department of Financial Services ~~Banking  
13 and Finance~~ Tobacco Settlement Clearing Trust Fund.

14           Section 71. Section 20.425, Florida Statutes, is  
15 amended to read:

16           20.425 Agency for Health Care Administration Tobacco  
17 Settlement Trust Fund.--

18           (1) The Agency for Health Care Administration Tobacco  
19 Settlement Trust Fund is created within the agency. Funds to  
20 be credited to the trust fund shall consist of funds  
21 disbursed, by nonoperating transfer, from the Department of  
22 Financial Services ~~Banking and Finance~~ Tobacco Settlement  
23 Clearing Trust Fund in amounts equal to the annual  
24 appropriations made from this trust fund.

25           (2) Notwithstanding the provisions of s. 216.301 and  
26 pursuant to s. 216.351, any unencumbered balance in the trust  
27 fund at the end of any fiscal year and any encumbered balance  
28 remaining undisbursed on December 31 of the same calendar year  
29 shall revert to the Department of Financial Services ~~Banking  
30 and Finance~~ Tobacco Settlement Clearing Trust Fund.

31

1           Section 72. Paragraph (g) of subsection (1) of section  
2 20.435, Florida Statutes, is amended to read:

3           20.435 Department of Health; trust funds.--

4           (1) The following trust funds are hereby created, to  
5 be administered by the Department of Health:

6           (g) Department of Health Tobacco Settlement Trust  
7 Fund.

8           1. Funds to be credited to the trust fund shall  
9 consist of funds disbursed, by nonoperating transfer, from the  
10 Department of Financial Services ~~Banking and Finance~~ Tobacco  
11 Settlement Clearing Trust Fund in amounts equal to the annual  
12 appropriations made from this trust fund.

13           2. Notwithstanding the provisions of s. 216.301 and  
14 pursuant to s. 216.351, any unencumbered balance in the trust  
15 fund at the end of any fiscal year and any encumbered balance  
16 remaining undisbursed on December 31 of the same calendar year  
17 shall revert to the Department of Financial Services ~~Banking  
18 and Finance~~ Tobacco Settlement Clearing Trust Fund.

19           Section 73. Subsection (4) of section 24.105, Florida  
20 Statutes, is amended to read:

21           24.105 Powers and duties of department.--The  
22 department shall:

23           (4) Submit monthly and annual reports to the Governor,  
24 the Chief Financial Officer ~~Treasurer~~, the President of the  
25 Senate, and the Speaker of the House of Representatives  
26 disclosing the total lottery revenues, prize disbursements,  
27 and other expenses of the department during the preceding  
28 month. The annual report shall additionally describe the  
29 organizational structure of the department, including its  
30 hierarchical structure, and shall identify the divisions and  
31

1 | bureaus created by the secretary and summarize the  
2 | departmental functions performed by each.

3 |       Section 74. Subsection (5) of section 24.111, Florida  
4 | Statutes, is amended to read:

5 |           24.111 Vendors; disclosure and contract  
6 | requirements.--

7 |           (5) Each vendor in a major procurement in excess of  
8 | \$25,000, and any other vendor if the department deems it  
9 | necessary to protect the state's financial interest, shall, at  
10 | the time of executing the contract with the department, post  
11 | an appropriate bond with the department in an amount  
12 | determined by the department to be adequate to protect the  
13 | state's interests, but not higher than the full amount  
14 | estimated to be paid annually to the vendor under the  
15 | contract. In lieu of the bond, a vendor may, to assure the  
16 | faithful performance of its obligations, file with the  
17 | department an irrevocable letter of credit acceptable to the  
18 | department in an amount determined by the department to be  
19 | adequate to protect the state's interests or deposit and  
20 | maintain with the Chief Financial Officer ~~Treasurer~~ securities  
21 | that are interest bearing or accruing and that, with the  
22 | exception of those specified in paragraphs (a) and (b), are  
23 | rated in one of the four highest classifications by an  
24 | established nationally recognized investment rating service.  
25 | Securities eligible under this subsection shall be limited to:

26 |           (a) Certificates of deposit issued by solvent banks or  
27 | savings associations organized and existing under the laws of  
28 | this state or under the laws of the United States and having  
29 | their principal place of business in this state.

30 |  
31 |

1 (b) United States bonds, notes, and bills for which  
2 the full faith and credit of the government of the United  
3 States is pledged for the payment of principal and interest.

4 (c) General obligation bonds and notes of any  
5 political subdivision of the state.

6 (d) Corporate bonds of any corporation that is not an  
7 affiliate or subsidiary of the depositor.

8  
9 Such securities shall be held in trust and shall have at all  
10 times a market value at least equal to an amount determined by  
11 the department to be adequate to protect the state's  
12 interests, which amount shall not be set higher than the full  
13 amount estimated to be paid annually to the vendor under  
14 contract.

15 Section 75. Paragraph (b) of subsection (9) of section  
16 24.112, Florida Statutes, is amended to read:

17 24.112 Retailers of lottery tickets.--

18 (9)

19 (b) In lieu of such bond, the department may purchase  
20 blanket bonds covering all or selected retailers or may allow  
21 a retailer to deposit and maintain with the Chief Financial  
22 Officer ~~Treasurer~~ securities that are interest bearing or  
23 accruing and that, with the exception of those specified in  
24 subparagraphs 1. and 2., are rated in one of the four highest  
25 classifications by an established nationally recognized  
26 investment rating service. Securities eligible under this  
27 paragraph shall be limited to:

28 1. Certificates of deposit issued by solvent banks or  
29 savings associations organized and existing under the laws of  
30 this state or under the laws of the United States and having  
31 their principal place of business in this state.

1           2. United States bonds, notes, and bills for which the  
2 full faith and credit of the government of the United States  
3 is pledged for the payment of principal and interest.

4           3. General obligation bonds and notes of any political  
5 subdivision of the state.

6           4. Corporate bonds of any corporation that is not an  
7 affiliate or subsidiary of the depositor.

8  
9 Such securities shall be held in trust and shall have at all  
10 times a market value at least equal to an amount required by  
11 the department.

12           Section 76. Subsections (3) and (4) of section 24.120,  
13 Florida Statutes, are amended to read:

14           24.120 Financial matters; Administrative Trust Fund;  
15 interagency cooperation.--

16           (3) Any action required by law to be taken by the  
17 Chief Financial Officer ~~State Treasurer or the Comptroller~~  
18 shall be taken within 2 business days after the department's  
19 request therefor. If the request for such action is not  
20 approved or rejected within such period, the request shall be  
21 deemed to be approved. The department shall reimburse the  
22 Chief Financial Officer ~~State Treasurer or the Comptroller~~ for  
23 any additional costs involved in providing the level of  
24 service required by this subsection.

25           (4) The department shall cooperate with the Chief  
26 Financial Officer ~~State Treasurer, the Comptroller~~, the  
27 Auditor General, and the Office of Program Policy Analysis and  
28 Government Accountability by giving employees designated by  
29 any of them access to facilities of the department for the  
30 purpose of efficient compliance with their respective  
31 responsibilities.

1           Section 77. Subsection (5) of section 25.241, Florida  
2 Statutes, is amended to read:

3           25.241 Clerk of Supreme Court; compensation;  
4 assistants; filing fees, etc.--

5           (5) The Clerk of the Supreme Court is hereby required  
6 to prepare a statement of all fees collected in duplicate each  
7 month and remit one copy of such ~~said~~ statement, together with  
8 all fees collected by him or her, to the Chief Financial  
9 Officer ~~State Treasurer~~, who shall place the same to the  
10 credit of the General Revenue Fund.

11           Section 78. Section 26.39, Florida Statutes, is  
12 amended to read:

13           26.39 Penalty for nonattendance of judge.--Whenever  
14 such default shall occur, the clerk of the court (unless such  
15 judge shall file his or her reasons for such default as  
16 hereinbefore provided) shall certify the fact, under his or  
17 her official signature and seal, to the Chief Financial  
18 Officer ~~Comptroller~~ of the state, who shall deduct from the  
19 warrants ~~on the Treasurer~~, thereafter to be issued in favor of  
20 the judge making such default, the sum of \$100 as aforesaid  
21 for every such default.

22           Section 79. Section 27.08, Florida Statutes, is  
23 amended to read:

24           27.08 State claims; surrender of papers to  
25 successor.--Upon the qualification of the successor of any  
26 state attorney, the state attorney going out of office shall  
27 deliver to his or her successor a statement of all cases for  
28 the collection of money in favor of the state under his or her  
29 control and the papers connected with the same, and take his  
30 or her receipt for the same, which receipt, when filed with  
31 the Department of Financial Services ~~Banking and Finance~~,

1 shall release such state attorney from any further liability  
2 to the state upon the claims receipted for; and the state  
3 attorney receiving the claims shall be liable in all respects  
4 for the same, as provided against state attorneys in s. 17.20.

5 Section 80. Section 27.10, Florida Statutes, is  
6 amended to read:

7 27.10 Obligation as to claims; how discharged.--The  
8 charges mentioned in s. 17.20 shall be evidence of  
9 indebtedness on the part of any state attorney against whom  
10 any charge is made for the full amount of such claim to the  
11 state until the same shall be collected and paid into the  
12 treasury or sued to insolvency, which fact of insolvency shall  
13 be certified by the circuit judge of his or her circuit,  
14 unless the ~~said~~ state attorney makes ~~shall make~~ it fully  
15 appear to the Department of Financial Services ~~Banking and~~  
16 ~~Finance~~ that the failure to collect the same did not result  
17 from his or her neglect.

18 Section 81. Section 27.11, Florida Statutes, is  
19 amended to read:

20 27.11 Report upon claims committed to state  
21 attorney.--The state attorney shall make a report to the Chief  
22 Financial Officer ~~Comptroller~~ on the first Monday in January  
23 and July in each and every year of the condition of all claims  
24 placed in his or her hands or which the state attorney may  
25 have been required to prosecute and collect, whether the same  
26 is in suit or in judgment, or collected, and the probable  
27 solvency or insolvency of claims not collected, and shall at  
28 the same time pay over all moneys which he or she may have  
29 collected belonging to the state; and the Chief Financial  
30 Officer ~~Comptroller~~ shall not audit or allow any claim which  
31

1 any state attorney may have against the state for services  
2 until he or she makes the report herein required.

3 Section 82. Subsection (1) of section 27.12, Florida  
4 Statutes, is amended to read:

5 27.12 Power to compromise.--

6 (1) The state attorney may, with the approval of the  
7 Department of Financial Services ~~Banking and Finance~~,  
8 compromise and settle all judgments, claims, and demands in  
9 favor of the state in his or her circuit against defaulting  
10 collectors of revenue, sheriffs and other officers, and the  
11 sureties on their bonds, on such terms as the state attorney  
12 may deem equitable and proper.

13 Section 83. Section 27.13, Florida Statutes, is  
14 amended to read:

15 27.13 Completion of compromise.--The state attorney  
16 shall, on agreeing to any compromise or settlement, report the  
17 same to the Department of Financial Services ~~Banking and~~  
18 ~~Finance~~ for its approval; and, on its approving such  
19 compromise or settlement, the ~~said~~ state attorney, on a  
20 compliance with the terms of such compromise or settlement  
21 shall give a receipt to the collector of revenue, sheriff or  
22 other officer, or the sureties on their bonds, or to the legal  
23 representatives, which receipt shall be a discharge from all  
24 judgments, claims or demands of the state against such  
25 collector of revenue or other officer, or the sureties on  
26 their bonds.

27 Section 84. Subsection (4) of section 27.34, Florida  
28 Statutes, is amended to read:

29 27.34 Salaries and other related costs of state  
30 attorneys' offices; limitations.--

31

1           (4) Notwithstanding s. 27.25, the Chief Financial  
2 Officer ~~Insurance Commissioner~~ may contract with the state  
3 attorney of any judicial circuit of the state for the  
4 prosecution of criminal violations of the Workers'  
5 Compensation Law and related crimes and may contribute funds  
6 for such purposes. Such contracts may provide for the  
7 training, salary, and expenses of one or more assistant state  
8 attorneys used in the prosecution of such crimes.

9           Section 85. Section 27.3455, Florida Statutes, is  
10 amended to read:

11           27.3455 Annual statement of certain revenues and  
12 expenditures.--

13           (1) Each county shall submit annually to the Chief  
14 Financial Officer ~~Comptroller~~ a statement of revenues and  
15 expenditures as set forth in this section in the form and  
16 manner prescribed by the Chief Financial Officer ~~Comptroller~~  
17 in consultation with the Legislative Committee on  
18 Intergovernmental Relations, provided that such statement  
19 identify total county expenditures on:

20           (a) Medical examiner services.

21           (b) County victim witness programs.

22           (c) Each of the services outlined in ss. 27.34(2) and  
23 27.54(3).

24           (d) Appellate filing fees in criminal cases in which  
25 an indigent defendant appeals a judgment of a county or  
26 circuit court to a district court of appeal or the Florida  
27 Supreme Court.

28           (e) Other court-related costs of the state attorney  
29 and public defender that were paid by the county where such  
30 costs were included in a judgment or order rendered by the  
31 trial court against the county.

1  
2 Such statement also shall identify the revenues provided by s.  
3 938.05(1) that were used to meet or reimburse the county for  
4 such expenditures.

5 (2)(a) Within 6 months of the close of the local  
6 government fiscal year, each county shall submit to the Chief  
7 Financial Officer ~~Comptroller~~ a statement of compliance from  
8 its independent certified public accountant, engaged pursuant  
9 to s. 218.39, that the certified statement of expenditures was  
10 in accordance with ss. 27.34(2), 27.54(3), and this section.  
11 All discrepancies noted by the independent certified public  
12 accountant shall be included in the statement furnished by the  
13 county to the Chief Financial Officer ~~Comptroller~~.

14 (b) ~~If Should~~ the Chief Financial Officer determines  
15 ~~Comptroller determine~~ that additional auditing procedures are  
16 appropriate because:

17 1. The county failed to submit timely its annual  
18 statement;

19 2. Discrepancies were noted by the independent  
20 certified public accountant; or

21 3. The county failed to file before March 31 of each  
22 year the certified public accountant statement of compliance,  
23 the Chief Financial Officer may ~~Comptroller is hereby~~  
24 ~~authorized to~~ send his or her personnel or to contract for  
25 services to bring the county into compliance. The costs  
26 incurred by the Chief Financial Officer ~~Comptroller~~ shall be  
27 paid promptly by the county upon certification by the Chief  
28 Financial Officer ~~Comptroller~~.

29 (c) Where the Chief Financial Officer ~~Comptroller~~  
30 elects to utilize the services of an independent contractor,  
31 such certification by the Chief Financial Officer ~~Comptroller~~

1 may require the county to make direct payment to a contractor.  
2 Any funds owed by a county in such matters shall be recovered  
3 pursuant to s. 17.04 or s. 17.041.

4 (3) The priority for the allocation of funds collected  
5 pursuant to s. 938.05(1) shall be as follows:

6 (a) Reimbursement to the county for actual county  
7 expenditures incurred in providing the state attorney and  
8 public defender the services outlined in ss. 27.34(2) and  
9 27.54(3), with the exception of office space, utilities, and  
10 custodial services.

11 (b) At the close of the local government fiscal year,  
12 funds remaining on deposit in the special trust fund of the  
13 county after reimbursements have been made pursuant to  
14 paragraph (a) shall be reimbursed to the county for actual  
15 county expenditures made in support of the operations and  
16 services of medical examiners, including the costs associated  
17 with the investigation of state prison inmate deaths. Special  
18 county trust fund revenues used to reimburse the county for  
19 medical examiner expenditures in any year shall not exceed \$1  
20 per county resident.

21 (c) At the close of the local government fiscal year,  
22 counties establishing or having in existence a comprehensive  
23 victim-witness program which meets the standards set by the  
24 Crime Victims' Services Office shall be eligible to receive 50  
25 percent matching moneys from the balance remaining in the  
26 special trust fund after reimbursements have been made  
27 pursuant to paragraphs (a) and (b). Special trust fund moneys  
28 used in any year to supplement such programs shall not exceed  
29 25 cents per county resident.

30 (d) At the close of the local government fiscal year,  
31 funds remaining in the special trust fund after reimbursements

1 have been made pursuant to paragraphs (a), (b), and (c) shall  
2 be used to reimburse the county for county costs incurred in  
3 the provision of office space, utilities, and custodial  
4 services to the state attorney and public defender, for county  
5 expenditures on appellate filing fees in criminal cases in  
6 which an indigent defendant appeals a judgment of a county or  
7 circuit court to a district court of appeal or the Florida  
8 Supreme Court, and for county expenditures on court-related  
9 costs of the state attorney and public defender that were paid  
10 by the county, provided that such court-related costs were  
11 included in a judgment or order rendered by the trial court  
12 against the county. Where a state attorney or a public  
13 defender is provided space in a county-owned facility,  
14 responsibility for calculating county costs associated with  
15 the provision of such office space, utilities, and custodial  
16 services is hereby vested in the Chief Financial Officer  
17 ~~Comptroller~~ in consultation with the Legislative Committee on  
18 Intergovernmental Relations.

19 (4) At the end of the local government fiscal year,  
20 all funds remaining on deposit in the special trust fund after  
21 all reimbursements have been made as provided for in  
22 subsection (3) shall be forwarded to the Chief Financial  
23 Officer ~~Treasurer~~ for deposit in the General Revenue Fund of  
24 the state.

25 (5) The Chief Financial Officer ~~Comptroller~~ shall  
26 adopt any rules necessary to implement his or her  
27 responsibilities pursuant to this section.

28 Section 86. Subsection (2) of section 27.703, Florida  
29 Statutes, is amended to read:

30 27.703 Conflict of interest and substitute counsel.--  
31

1           (2) Appointed counsel shall be paid from funds  
2 appropriated to the Chief Financial Officer ~~Comptroller~~. The  
3 hourly rate may not exceed \$100. However, ~~effective July 1,~~  
4 ~~1999~~, all appointments of private counsel under this section  
5 shall be in accordance with ss. 27.710 and 27.711.

6           Section 87. Subsection (4) of section 27.710, Florida  
7 Statutes, is amended to read:

8           27.710 Registry of attorneys applying to represent  
9 persons in postconviction capital collateral proceedings;  
10 certification of minimum requirements; appointment by trial  
11 court.--

12           (4) Each private attorney who is appointed by the  
13 court to represent a capital defendant must enter into a  
14 contract with the Chief Financial Officer ~~Comptroller~~. If the  
15 appointed attorney fails to execute the contract within 30  
16 days after the date the contract is mailed to the attorney,  
17 the executive director of the Commission on Capital Cases  
18 shall notify the trial court. The Chief Financial Officer  
19 ~~Comptroller~~ shall develop the form of the contract, function  
20 as contract manager, and enforce performance of the terms and  
21 conditions of the contract. By signing such contract, the  
22 attorney certifies that he or she intends to continue the  
23 representation under the terms and conditions set forth in the  
24 contract until the sentence is reversed, reduced, or carried  
25 out or until released by order of the trial court.

26           Section 88. Subsections (3), (4), (5), (6), (7), (12),  
27 and (13) of section 27.711, Florida Statutes, are amended to  
28 read:

29           27.711 Terms and conditions of appointment of  
30 attorneys as counsel in postconviction capital collateral  
31 proceedings.--

1           (3) An attorney appointed to represent a capital  
2 defendant is entitled to payment of the fees set forth in this  
3 section only upon full performance by the attorney of the  
4 duties specified in this section and approval of payment by  
5 the trial court, and the submission of a payment request by  
6 the attorney, subject to the availability of sufficient  
7 funding specifically appropriated for this purpose. The Chief  
8 Financial Officer ~~Comptroller~~ shall notify the executive  
9 director and the court if it appears that sufficient funding  
10 has not been specifically appropriated for this purpose to pay  
11 any fees which may be incurred. The attorney shall maintain  
12 appropriate documentation, including a current and detailed  
13 hourly accounting of time spent representing the capital  
14 defendant. The fee and payment schedule in this section is the  
15 exclusive means of compensating a court-appointed attorney who  
16 represents a capital defendant. When appropriate, a  
17 court-appointed attorney must seek further compensation from  
18 the Federal Government, as provided in 18 U.S.C. s. 3006A or  
19 other federal law, in habeas corpus litigation in the federal  
20 courts.

21           (4) Upon approval by the trial court, an attorney  
22 appointed to represent a capital defendant under s. 27.710 is  
23 entitled to payment of the following fees by the Chief  
24 Financial Officer ~~Comptroller~~:

25           (a) Regardless of the stage of postconviction capital  
26 collateral proceedings, the attorney is entitled to \$100 per  
27 hour, up to a maximum of \$2,500, after accepting appointment  
28 and filing a notice of appearance.

29           (b) The attorney is entitled to \$100 per hour, up to a  
30 maximum of \$20,000, after timely filing in the trial court the  
31 capital defendant's complete original motion for

1 postconviction relief under the Florida Rules of Criminal  
2 Procedure. The motion must raise all issues to be addressed by  
3 the trial court. However, an attorney is entitled to fees  
4 under this paragraph if the court schedules a hearing on a  
5 matter that makes the filing of the original motion for  
6 postconviction relief unnecessary or if the court otherwise  
7 disposes of the case.

8 (c) The attorney is entitled to \$100 per hour, up to a  
9 maximum of \$20,000, after the trial court issues a final order  
10 granting or denying the capital defendant's motion for  
11 postconviction relief.

12 (d) The attorney is entitled to \$100 per hour, up to a  
13 maximum of \$20,000, after timely filing in the Supreme Court  
14 the capital defendant's brief or briefs that address the trial  
15 court's final order granting or denying the capital  
16 defendant's motion for postconviction relief and the state  
17 petition for writ of habeas corpus.

18 (e) The attorney is entitled to \$100 per hour, up to a  
19 maximum of \$10,000, after the trial court issues an order,  
20 pursuant to a remand from the Supreme Court, which directs the  
21 trial court to hold further proceedings on the capital  
22 defendant's motion for postconviction relief.

23 (f) The attorney is entitled to \$100 per hour, up to a  
24 maximum of \$4,000, after the appeal of the trial court's  
25 denial of the capital defendant's motion for postconviction  
26 relief and the capital defendant's state petition for writ of  
27 habeas corpus become final in the Supreme Court.

28 (g) At the conclusion of the capital defendant's  
29 postconviction capital collateral proceedings in state court,  
30 the attorney is entitled to \$100 per hour, up to a maximum of  
31

1 \$2,500, after filing a petition for writ of certiorari in the  
2 Supreme Court of the United States.

3 (h) If, at any time, a death warrant is issued, the  
4 attorney is entitled to \$100 per hour, up to a maximum of  
5 \$5,000. This payment shall be full compensation for attorney's  
6 fees and costs for representing the capital defendant  
7 throughout the proceedings before the state courts of Florida.

8  
9 The hours billed by a contracting attorney under this  
10 subsection may include time devoted to representation of the  
11 defendant by another attorney who is qualified under s. 27.710  
12 and who has been designated by the contracting attorney to  
13 assist him or her.

14 (5) An attorney who represents a capital defendant may  
15 use the services of one or more investigators to assist in  
16 representing a capital defendant. Upon approval by the trial  
17 court, the attorney is entitled to payment from the Chief  
18 Financial Officer ~~Comptroller~~ of \$40 per hour, up to a maximum  
19 of \$15,000, for the purpose of paying for investigative  
20 services.

21 (6) An attorney who represents a capital defendant is  
22 entitled to a maximum of \$15,000 for miscellaneous expenses,  
23 such as the costs of preparing transcripts, compensating  
24 expert witnesses, and copying documents. Upon approval by the  
25 trial court, the attorney is entitled to payment by the Chief  
26 Financial Officer ~~Comptroller~~ of up to \$15,000 for  
27 miscellaneous expenses, except that, if the trial court finds  
28 that extraordinary circumstances exist, the attorney is  
29 entitled to payment in excess of \$15,000.

30 (7) An attorney who is actively representing a capital  
31 defendant is entitled to a maximum of \$500 per fiscal year for

1 tuition and expenses for continuing legal education that  
2 pertains to the representation of capital defendants. Upon  
3 approval by the trial court, the attorney is entitled to  
4 payment by the Chief Financial Officer ~~Comptroller~~ for  
5 expenses for such tuition and continuing legal education.

6 (12) The court shall monitor the performance of  
7 assigned counsel to ensure that the capital defendant is  
8 receiving quality representation. The court shall also receive  
9 and evaluate allegations that are made regarding the  
10 performance of assigned counsel. The Chief Financial Officer  
11 ~~Comptroller~~, the Department of Legal Affairs, the executive  
12 director, or any interested person may advise the court of any  
13 circumstance that could affect the quality of representation,  
14 including, but not limited to, false or fraudulent billing,  
15 misconduct, failure to meet continuing legal education  
16 requirements, solicitation to receive compensation from the  
17 capital defendant, or failure to file appropriate motions in a  
18 timely manner.

19 (13) Prior to the filing of a motion for order  
20 approving payment of attorney's fees, costs, or related  
21 expenses, the assigned counsel shall deliver a copy of his  
22 intended billing, together with supporting affidavits and all  
23 other necessary documentation, to the Chief Financial  
24 Officer's ~~Comptroller's~~ named contract manager. The contract  
25 manager shall have 10 business days from receipt to review the  
26 billings, affidavit, and documentation for completeness and  
27 compliance with contractual and statutory requirements. If the  
28 contract manager objects to any portion of the proposed  
29 billing, the objection and reasons therefor shall be  
30 communicated to the assigned counsel. The assigned counsel may  
31 thereafter file his or her motion for order approving payment

1 of attorney's fees, costs, or related expenses together with  
2 supporting affidavits and all other necessary documentation.  
3 The motion must specify whether the Chief Financial Officer's  
4 ~~Comptroller's~~ contract manager objects to any portion of the  
5 billing or the sufficiency of documentation and, if so, the  
6 reason therefor. A copy of the motion and attachments shall be  
7 served on the Chief Financial Officer's ~~Comptroller's~~ contract  
8 manager, who shall have standing to file pleadings and appear  
9 before the court to contest any motion for order approving  
10 payment. The fact that the Chief Financial Officer's  
11 ~~Comptroller's~~ contract manager has not objected to any portion  
12 of the billing or to the sufficiency of the documentation is  
13 not binding on the court, which retains primary authority and  
14 responsibility for determining the reasonableness of all  
15 billings for fees, costs, and related expenses, subject to  
16 statutory limitations.

17 Section 89. Section 28.235, Florida Statutes, is  
18 amended to read:

19 28.235 Advance payments by clerk of circuit  
20 court.--The clerk of the circuit court is authorized to make  
21 advance payments on behalf of the county for goods and  
22 services, including, but not limited to, maintenance  
23 agreements and subscriptions, pursuant to rules or procedures  
24 adopted by the Chief Financial Officer ~~Comptroller~~ for advance  
25 payments of invoices submitted to agencies of the state.

26 Section 90. Subsections (7) and (23) of section 28.24,  
27 Florida Statutes, are amended to read:

28 28.24 Service charges by clerk of the circuit  
29 court.--The clerk of the circuit court shall make the  
30 following charges for services rendered by the clerk's office  
31 in recording documents and instruments and in performing the

1 duties enumerated. However, in those counties where the  
2 clerk's office operates as a fiscal unit of the county  
3 pursuant to s. 145.022(1), the clerk shall not charge the  
4 county for such services.

5  
6 Charges

7  
8 (7) For making and reporting payrolls of jurors to  
9 Chief Financial Officer ~~State Comptroller~~, per page, per copy  
10 .....5.00

11 (23) For paying of witnesses and making and reporting  
12 payroll to Chief Financial Officer ~~State Comptroller~~, per  
13 copy, per page.....5.00

14 Section 91. Paragraph (b) of subsection (2) of section  
15 30.49, Florida Statutes, is amended to read:

16 30.49 Budgets.--

17 (2)

18 (b) Within the appropriate fund and functional  
19 category, expenditures shall be itemized in accordance with  
20 the uniform chart of accounts prescribed by the Department of  
21 Financial Services ~~Banking and Finance~~, as follows:

- 22 1. Personal services.  
23 2. Operating expenses.  
24 3. Capital outlay.  
25 4. Debt service.  
26 5. Nonoperating disbursements and contingency  
27 reserves.

28 Section 92. Section 30.52, Florida Statutes, is  
29 amended to read:

30 30.52 Handling of public funds.--The sheriff shall  
31 keep public funds in his or her custody, either in his or her

1 office in an amount not in excess of the burglary, theft, and  
2 robbery insurance provided, the cost of which is hereby  
3 authorized as an expense of the office, or in a depository in  
4 an amount not in excess of the security provided pursuant to  
5 s. 658.60 and the regulations of the Department of Financial  
6 Services ~~Banking and Finance~~. The title of the depository  
7 accounts shall include the word "sheriff" and the name of the  
8 county, and withdrawals from the accounts shall be made by  
9 checks signed by the duly qualified and acting sheriff of the  
10 county, or his or her designated deputy or agent.

11 Section 93. Section 40.30, Florida Statutes, is  
12 amended to read:

13 40.30 Requisition endorsed by State Courts  
14 Administrator or designee.--Upon receipt of such estimate and  
15 the requisition from the clerk of the court, the State Courts  
16 Administrator or designee shall endorse the amount that he or  
17 she may deem necessary for the pay of jurors and witnesses  
18 during the quarterly fiscal period and shall submit a request  
19 for payment to the Chief Financial Officer ~~Comptroller~~.

20 Section 94. Section 40.31, Florida Statutes, is  
21 amended to read:

22 40.31 State Courts Administrator may apportion  
23 appropriation.--If the State Courts Administrator shall have  
24 reason to believe that the amount appropriated by the  
25 Legislature is insufficient to meet the expenses of jurors and  
26 witnesses during the remaining part of the state fiscal year,  
27 he or she may apportion the money in the treasury for that  
28 purpose among the several counties, basing such apportionment  
29 upon the amount expended for the payment of jurors and  
30 witnesses in each county during the prior fiscal year. In such  
31 case, each county shall be paid by warrant, issued by the

1 Chief Financial Officer ~~Comptroller~~, only the amount so  
2 apportioned to each county, and, when the amount so  
3 apportioned is insufficient to pay in full all the jurors and  
4 witnesses during a quarterly fiscal period, the clerk of the  
5 court shall apportion the money received pro rata among the  
6 jurors and witnesses entitled to pay and shall give to each  
7 juror or witness a certificate of the amount of compensation  
8 still due, which certificate shall be held by the State Courts  
9 Administrator as other demands against the state.

10 Section 95. Section 40.33, Florida Statutes, is  
11 amended to read:

12 40.33 Deficiency.--If the compensation of jurors and  
13 witnesses during a quarterly fiscal period exceeds the amount  
14 estimated by the clerk of the court and therefore is  
15 insufficient to pay in full the jurors and witnesses, the  
16 clerk of the court shall make a further requisition upon the  
17 State Courts Administrator for the amount necessary to pay  
18 such default, and the amount required shall be transmitted to  
19 the clerk of the court by warrant issued by the Chief  
20 Financial Officer ~~Comptroller~~ in the same manner as the  
21 original requisition or order.

22 Section 96. Subsection (2) of section 40.34, Florida  
23 Statutes, is amended to read:

24 40.34 Clerks to make triplicate payroll.--

25 (2) The form of such payroll shall be prescribed by  
26 the Chief Financial Officer ~~Comptroller~~.

27 Section 97. Section 40.35, Florida Statutes, is  
28 amended to read:

29 40.35 Accounting and payment to the State Courts  
30 Administrator.--

31

1           (1) The clerk of the court shall, within 2 weeks after  
2 the last day of the quarterly fiscal period, render to the  
3 State Courts Administrator a full statement of accounts for  
4 moneys received and disbursed under the provisions of this  
5 chapter and refund to the State Courts Administrator any  
6 balance in the clerk's hands. If upon audit the State Courts  
7 Administrator shall determine a balance due the clerk of the  
8 court, the State Courts Administrator shall submit a request  
9 for payment to the Chief Financial Officer ~~Comptroller~~.

10           (2) If a clerk of the court fails to account for and  
11 pay over promptly the balance of all moneys paid him or her,  
12 the sureties, if any, on a clerk's official bond are liable  
13 and responsible for same; and the State Courts Administrator  
14 shall report to the Governor and the Chief Financial Officer  
15 ~~Comptroller~~ any failure on the part of the clerk of the court  
16 to report and faithfully account for any such moneys.

17           Section 98. Paragraph (b) of subsection (5) of section  
18 43.16, Florida Statutes, is amended to read:

19           43.16 Justice Administrative Commission; membership,  
20 powers and duties.--

21           (5) The duties of the commission shall include, but  
22 not be limited to, the following:

23           (b) Each state attorney and public defender and the  
24 Judicial Qualifications Commission shall continue to prepare  
25 necessary budgets, vouchers which represent valid claims for  
26 reimbursement by the state for authorized expenses, and other  
27 things incidental to the proper administrative operation of  
28 the office, such as revenue transmittals to the Chief  
29 Financial Officer ~~treasurer~~, automated systems plans, etc.,  
30 but will forward same to the commission for recording and  
31 submission to the proper state officer. However, when

1 requested by a state attorney or a public defender or the  
2 Judicial Qualifications Commission, the commission will either  
3 assist in the preparation of budget requests, voucher  
4 schedules, and other forms and reports or accomplish the  
5 entire project involved.

6 Section 99. Subsections (1), (3), and (4) of section  
7 43.19, Florida Statutes, are amended to read:

8 43.19 Money paid into court; unclaimed funds.--

9 (1) In every case in which the right to withdraw money  
10 deposited as hereinbefore provided has been adjudicated or is  
11 not in dispute and the money has remained so deposited for 5  
12 years or more unclaimed by the person, firm, or corporation  
13 entitled thereto, on or before December 1 of each year the  
14 judge, or one of the judges, of the court shall direct that  
15 the money be deposited with the Chief Financial Officer  
16 ~~Treasurer~~ to the credit of the State School Fund, to become a  
17 part of that fund, subject to the right of the person, firm,  
18 or corporation entitled thereto to receive the money as  
19 provided in subsection (3).

20 (3) Any person, firm or corporation entitled to any of  
21 the money may obtain an order directing the payment of the  
22 money to the claimant on written petition to the court from  
23 which the money was deposited or its successor, and written  
24 notice to the state attorney of the circuit wherein the court  
25 is situate, whether or not the court is a circuit court, and  
26 proof of right thereto, and the money deposited shall  
27 constitute and be a permanent appropriation for payments by  
28 the Chief Financial Officer ~~Treasurer~~ of the state in  
29 obedience of such orders.

30  
31

1           (4) All interest and income that accrue from the money  
2 while on deposit with the Chief Financial Officer ~~Treasurer~~ to  
3 the credit of the State School Fund belong to that fund.

4           Section 100. Subsections (3) and (4) of section  
5 48.151, Florida Statutes, are amended to read:

6           48.151 Service on statutory agents for certain  
7 persons.--

8           (3) The Chief Financial Officer ~~Insurance Commissioner~~  
9 ~~and Treasurer~~ or his or her assistant or deputy or another  
10 person in charge of the office is the agent for service of  
11 process on all insurers applying for authority to transact  
12 insurance in this state, all licensed nonresident insurance  
13 agents, all nonresident disability insurance agents licensed  
14 ~~by the Department of Insurance~~ pursuant to s. 626.835, any  
15 unauthorized insurer under s. 626.906 or s. 626.937, domestic  
16 reciprocal insurers, fraternal benefit societies under chapter  
17 632, ~~automobile inspection and~~ warranty associations under  
18 chapter 634, prepaid limited health service organizations  
19 under chapter 636 ambulance service associations, and persons  
20 required to file statements under s. 628.461.

21           (4) The Director of the Office of Financial  
22 Institutions and Securities Regulation of the Financial  
23 Services Commission ~~Comptroller~~ is the agent for service of  
24 process for any issuer as defined in s. 517.021, or any  
25 dealer, investment adviser, or associated person registered  
26 with that office ~~the Department of Banking and Finance~~, for  
27 any violation of any provision of chapter 517.

28           Section 101. Subsection (1) of section 55.03, Florida  
29 Statutes, is amended to read:

30           55.03 Judgments; rate of interest, generally.--

31

1           (1) On December 1 of each year ~~beginning December 1,~~  
2 ~~1994,~~ the Chief Financial Officer ~~Comptroller of the State of~~  
3 ~~Florida~~ shall set the rate of interest that shall be payable  
4 on judgments or decrees for the year beginning January 1 by  
5 averaging the discount rate of the Federal Reserve Bank of New  
6 York for the preceding year, then adding 500 basis points to  
7 the averaged federal discount rate. The Chief Financial  
8 Officer ~~Comptroller~~ shall inform the clerk of the courts and  
9 chief judge for each judicial circuit of the rate that has  
10 been established for the upcoming year. The ~~initial interest~~  
11 ~~rate established by the Comptroller shall take effect on~~  
12 ~~January 1, 1995,~~ and the interest rate established by the  
13 Chief Financial Officer ~~Comptroller in subsequent years~~ shall  
14 take effect on January 1 of each following year. Judgments  
15 obtained on or after January 1, 1995, shall use the previous  
16 statutory rate for time periods before January 1, 1995, for  
17 which interest is due and shall apply the rate set by the  
18 Chief Financial Officer ~~Comptroller~~ for time periods after  
19 January 1, 1995, for which interest is due. Nothing contained  
20 herein shall affect a rate of interest established by written  
21 contract or obligation.

22           Section 102. Section 57.091, Florida Statutes, is  
23 amended to read:

24           57.091 Costs; refunded to counties in certain  
25 proceedings relating to state prisoners.--All lawful fees,  
26 costs, and expenses hereafter adjudged against, and paid by,  
27 any county in all competency proceedings and all criminal  
28 prosecutions against state prisoners imprisoned in a state  
29 correctional institution, and in all habeas corpus cases  
30 brought to test the legality of the imprisonment of state  
31 prisoners of such correctional institutions, shall be refunded

1 to the county paying the sum from the General Revenue Fund in  
2 the State Treasury in the manner and to the extent herein  
3 provided, to wit: between the 1st and 15th of the month next  
4 succeeding the month in which the fees, costs, and expenses  
5 have been allowed and paid by the county, the clerk of the  
6 court shall make requisition on the Department of Corrections  
7 for the fees, costs, and expenses so allowed and paid during  
8 the preceding month, giving the style of the cases in which  
9 fees, costs, and expenses were incurred and the amount and  
10 items of cost in each case; providing a certified copy of the  
11 judgment adjudging the fees, costs, and expenses against the  
12 county and showing that the amount represented thereby has  
13 been approved by the presiding judge, paid by the county, and  
14 verified by the clerk; and attaching a certified copy of the  
15 bill as approved and allowed by the board of county  
16 commissioners of the county. If the Department of Corrections  
17 finds the bills legal and adjudged against and paid by the  
18 county, the department shall submit a request to the Chief  
19 Financial Officer ~~Comptroller~~ to draw a warrant in the amount  
20 thereof, or in the amount the department finds legal and  
21 adjudged against and paid by the county, in favor of the  
22 county paying the fees, costs, and expenses, which shall be  
23 paid by the Chief Financial Officer ~~State Treasurer~~ from the  
24 general revenue funds of the state.

25 Section 103. Subsections (1), (3), and (4) of section  
26 68.083, Florida Statutes, are amended to read:

27 68.083 Civil actions for false claims.--

28 (1) The department may diligently investigate a  
29 violation under s. 68.082. If the department finds that a  
30 person has violated or is violating s. 68.082, the department  
31 may bring a civil action under the Florida False Claims Act

1 against the person. The Department of Financial Services  
2 ~~Banking and Finance~~ may bring a civil action under this  
3 section if the action arises from an investigation by that  
4 department and the Department of Legal Affairs has not filed  
5 an action under this act.

6 (3) The complaint shall be identified on its face as a  
7 qui tam action and shall be filed in the circuit court of the  
8 Second Judicial Circuit, in and for Leon County. Immediately  
9 upon the filing of the complaint, a copy of the complaint and  
10 written disclosure of substantially all material evidence and  
11 information the person possesses shall be served on the  
12 Attorney General, as head of the department, and on the Chief  
13 Financial Officer ~~Comptroller~~, as head of the Department of  
14 Financial Services ~~Banking and Finance~~, by registered mail,  
15 return receipt requested. The department, or the Department of  
16 Financial Services ~~Banking and Finance~~ under the circumstances  
17 specified in subsection (4), may elect to intervene and  
18 proceed with the action, on behalf of the state, within 90  
19 days after it receives both the complaint and the material  
20 evidence and information.

21 (4) If a person brings an action under subsection (2)  
22 and the action is based upon the facts underlying a pending  
23 investigation by the Department of Financial Services ~~Banking~~  
24 ~~and Finance~~, the Department of Financial Services ~~Banking and~~  
25 ~~Finance~~, instead of the department, may take over the action  
26 on behalf of the state. In order to take over the action, the  
27 Department of Financial Services ~~Banking and Finance~~ must give  
28 the department written notification within 20 days after the  
29 action is filed that the Department of Financial Services  
30 ~~Banking and Finance~~ is conducting an investigation of the  
31 facts of the action and that the Department of Financial

1 Services ~~Banking and Finance~~, instead of the department, will  
2 take over the action filed under subsection (2). If the  
3 Department of Financial Services ~~Banking and Finance~~ takes  
4 over the action under this subsection, the word "department"  
5 as used in this act means the Department of Financial Services  
6 ~~Banking and Finance~~, and that department, for purposes of that  
7 action, shall have all rights and standing granted the  
8 department under this act.

9           Section 104. Subsections (3) and (6) of section  
10 68.084, Florida Statutes, are amended to read:

11           68.084 Rights of the parties in civil actions.--

12           (3) If the department elects not to proceed with the  
13 action, the person who initiated the action has the right to  
14 conduct the action. If the Attorney General, as head of the  
15 department, or the Chief Financial Officer ~~Comptroller~~, as  
16 head of the Department of Financial Services ~~Banking and~~  
17 ~~Finance~~, so requests, it shall be served, at the requesting  
18 department's expense, with copies of all pleadings and motions  
19 filed in the action and copies of all deposition transcripts.  
20 When a person proceeds with the action, the court, without  
21 limiting the rights of the person initiating the action, may  
22 nevertheless permit the department to intervene and take over  
23 the action on behalf of the state at a later date upon showing  
24 of good cause.

25           (6) The Department of Financial Services ~~Banking and~~  
26 ~~Finance~~, or the department, may intervene on its own behalf as  
27 a matter of right.

28           Section 105. Subsection (3) of section 68.087, Florida  
29 Statutes, is amended to read:

30           68.087 Exemptions to civil actions.--

31

1           (3) No court shall have jurisdiction over an action  
2 brought under this act based upon the public disclosure of  
3 allegations or transactions in a criminal, civil, or  
4 administrative hearing; in a legislative, administrative,  
5 inspector general, or Auditor General, Chief Financial Officer  
6 ~~Comptroller~~, or Department of Financial Services ~~Banking and~~  
7 ~~Finance~~ report, hearing, audit, or investigation; or from the  
8 news media, unless the action is brought by the department, or  
9 unless the person bringing the action is an original source of  
10 the information. For purposes of this subsection, the term  
11 "original source" means an individual who has direct and  
12 independent knowledge of the information on which the  
13 allegations are based and has voluntarily provided the  
14 information to the department before filing an action under  
15 this act based on the information.

16           Section 106. Section 68.092, Florida Statutes, is  
17 amended to read:

18           68.092 Deposit of recovered moneys.--All moneys  
19 recovered by the Chief Financial Officer ~~Comptroller~~, as head  
20 of the Department of Financial Services ~~Banking and Finance~~,  
21 under s. 68.086(1) in any civil action for violation of the  
22 Florida False Claims Act shall be deposited in the  
23 Administrative Trust Fund of the Department of Financial  
24 Services ~~Banking and Finance~~.

25           Section 107. Section 77.0305, Florida Statutes, is  
26 amended to read:

27           77.0305 Continuing writ of garnishment against salary  
28 or wages.--Notwithstanding any other provision of this  
29 chapter, if salary or wages are to be garnished to satisfy a  
30 judgment, the court shall issue a continuing writ of  
31 garnishment to the judgment debtor's employer which provides

1 for the periodic payment of a portion of the salary or wages  
2 of the judgment debtor as the salary or wages become due until  
3 the judgment is satisfied or until otherwise provided by court  
4 order. A debtor's status as an employee of the state or its  
5 agencies or political subdivisions does not preclude a  
6 judgment creditor's right to garnish the debtor's wages. For  
7 the purposes of this section, the state includes the judicial  
8 branch and the legislative branch as defined in s. 216.011.  
9 The state, for itself and for its agencies and subdivisions,  
10 waives sovereign immunity for the express and limited purpose  
11 necessary to carry out this section. The court shall allow  
12 the judgment debtor's employer to collect up to \$5 against the  
13 salary or wages of the judgment debtor to reimburse the  
14 employer for administrative costs for the first deduction from  
15 the judgment debtor's salary or wages and up to \$2 for each  
16 deduction thereafter. The funds collected by the state under  
17 this section must be deposited in the Department of Financial  
18 Services ~~Banking and Finance~~ Administrative Trust Fund for  
19 purposes of carrying out this section.

20 Section 108. Section 92.39, Florida Statutes, is  
21 amended to read:

22 92.39 Evidence of individual's claim against the state  
23 in suits between them.--In suits between the state and  
24 individuals, no claim for a credit shall be allowed upon  
25 trial, but such as shall appear to have been presented to the  
26 Chief Financial Officer ~~Comptroller~~ for his or her ~~the~~  
27 ~~Comptroller's~~ examination, and by him or her disallowed in  
28 whole or in part, unless it shall be proved to the  
29 satisfaction of the court that the defendant is, at the time  
30 of the trial, in possession of vouchers not before in the  
31 defendant's power to procure, and that the defendant was

1 prevented from exhibiting a claim for such credit at the Chief  
2 Financial Officer's ~~Comptroller's~~ office by unavoidable  
3 accident.

4 Section 109. Subsection (4) of section 99.097, Florida  
5 Statutes, is amended to read:

6 99.097 Verification of signatures on petitions.--

7 (4) The supervisor shall be paid in advance the sum of  
8 10 cents for each signature checked or the actual cost of  
9 checking such signature, whichever is less, by the candidate  
10 or, in the case of a petition to have an issue placed on the  
11 ballot, by the person or organization submitting the petition.  
12 However, if a candidate, person, or organization seeking to  
13 have an issue placed upon the ballot cannot pay such charges  
14 without imposing an undue burden on personal resources or upon  
15 the resources otherwise available to such candidate, person,  
16 or organization, such candidate, person, or organization  
17 shall, upon written certification of such inability given  
18 under oath to the supervisor, be entitled to have the  
19 signatures verified at no charge. In the event a candidate,  
20 person, or organization submitting a petition to have an issue  
21 placed upon the ballot is entitled to have the signatures  
22 verified at no charge, the supervisor of elections of each  
23 county in which the signatures are verified at no charge shall  
24 submit the total number of such signatures checked in the  
25 county to the Chief Financial Officer ~~Comptroller~~ no later  
26 than December 1 of the general election year, and the Chief  
27 Financial Officer ~~Comptroller~~ shall cause such supervisor of  
28 elections to be reimbursed from the General Revenue Fund in an  
29 amount equal to 10 cents for each name checked or the actual  
30 cost of checking such signatures, whichever is less. In no  
31 event shall such reimbursement of costs be deemed or applied

1 as extra compensation for the supervisor. Petitions shall be  
2 retained by the supervisors for a period of 1 year following  
3 the election for which the petitions were circulated.

4 Section 110. Section 107.11, Florida Statutes, is  
5 amended to read:

6 107.11 Appropriation for expenses.--For the purpose of  
7 defraying the expenses of preparing for, conducting, holding  
8 and declaring the result of the election provided for by this  
9 chapter and also for the purpose of defraying the expenses  
10 allowed by this chapter for the holding of sessions of the  
11 convention as herein provided, to be audited by the Chief  
12 Financial Officer ~~Comptroller~~, there is appropriated out of  
13 the General Revenue Fund of the State of Florida a sufficient  
14 sum of money for the payment of all amounts necessary to be  
15 expended under the terms of this chapter, which sums of money  
16 shall be disbursed by the State of Florida pursuant to  
17 warrants drawn by the Chief Financial Officer ~~Comptroller~~ ~~upon~~  
18 ~~the Treasurer~~ for the payment of same.

19 Section 111. Paragraph (a) of subsection (2) of  
20 section 110.1127, Florida Statutes, is amended to read:

21 110.1127 Employee security checks.--

22 (2)(a) All positions within the Division of Treasury  
23 of the Department of Financial Services ~~Insurance~~ are deemed  
24 to be positions of special trust or responsibility, and a  
25 person may be disqualified for employment in any such position  
26 by reason of:

27 1. The conviction or prior conviction of a crime which  
28 is reasonably related to the nature of the position sought or  
29 held by the individual; or

30 2. The entering of a plea of nolo contendere or, when  
31 a jury verdict of guilty is rendered but adjudication of guilt

1 is withheld, with respect to a crime which is reasonably  
2 related to the nature of the position sought or held by the  
3 individual.

4 Section 112. Subsection (1) of section 110.113,  
5 Florida Statutes, is amended to read:

6 110.113 Pay periods for state officers and employees;  
7 salary payments by direct deposit.--

8 (1) The normal pay period for salaries of state  
9 officers and employees shall be 1 month. The Department of  
10 Financial Services ~~Banking and Finance~~ shall issue either  
11 monthly or biweekly salary payments by state warrants or by  
12 direct deposit pursuant to s. 17.076 or make semimonthly  
13 salary payments by direct deposit pursuant to s. 17.076, as  
14 requested by the head of each state agency and approved by the  
15 Executive Office of the Governor and the Department of  
16 Financial Services ~~Banking and Finance~~.

17 Section 113. Subsection (1) of section 110.114,  
18 Florida Statutes, is amended to read:

19 110.114 Employee wage deductions.--

20 (1) The state or any of its departments, bureaus,  
21 commissions, and officers are authorized and permitted, with  
22 the concurrence of the Department of Financial Services  
23 ~~Banking and Finance~~, to make deductions from the salary or  
24 wage of any employee or employees in such amount as shall be  
25 authorized and requested by such employee or employees and for  
26 such purpose as shall be authorized and requested by such  
27 employee or employees and shall pay such sums so deducted as  
28 directed by such employee or employees. The concurrence of  
29 the Department of Financial Services ~~Banking and Finance~~ shall  
30 not be required for the deduction of a certified bargaining  
31 agent's membership dues deductions pursuant to s. 447.303 or

1 any deductions authorized by a collective bargaining  
2 agreement.

3 Section 114. Subsection (1) of section 110.116,  
4 Florida Statutes, is amended to read:

5 110.116 Personnel information system; payroll  
6 procedures.--

7 (1) The Department of Management Services shall  
8 establish and maintain, in coordination with the payroll  
9 system of the Department of Financial Services ~~Banking and~~  
10 ~~Finance~~, a complete personnel information system for all  
11 authorized and established positions in the state service,  
12 with the exception of employees of the Legislature. The  
13 specifications shall be developed in conjunction with the  
14 payroll system of the Department of Financial Services ~~Banking~~  
15 ~~and Finance~~ and in coordination with the Auditor General. The  
16 Department of Financial Services ~~Banking and Finance~~ shall  
17 determine that the position occupied by each employee has been  
18 authorized and established in accordance with the provisions  
19 of s. 216.251. The Department of Management Services shall  
20 develop and maintain a position numbering system that will  
21 identify each established position, and such information shall  
22 be a part of the payroll system of the Department of Financial  
23 Services ~~Banking and Finance~~. With the exception of employees  
24 of the Legislature, this system shall include all career  
25 service positions and those positions exempted from career  
26 service provisions, notwithstanding the funding source of the  
27 salary payments, and information regarding persons receiving  
28 payments from other sources. Necessary revisions shall be made  
29 in the personnel and payroll procedures of the state to avoid  
30 duplication insofar as is feasible. A list shall be organized  
31 by budget entity to show the employees or vacant positions

1 within each budget entity. This list shall be available to  
2 the Speaker of the House of Representatives and the President  
3 of the Senate upon request.

4 Section 115. Paragraph (a) of subsection (3) and  
5 paragraph (b) of subsection (6) of section 110.1227, Florida  
6 Statutes, are amended to read:

7 110.1227 Florida Employee Long-Term-Care Plan Act.--

8 (3) The Department of Management Services and the  
9 department shall, in consultation with public employers and  
10 employees and representatives from unions and associations  
11 representing state, university, local government, and other  
12 public employees, establish and supervise the implementation  
13 and administration of a self-funded or fully insured  
14 long-term-care plan entitled "Florida Employee Long-Term-Care  
15 Plan."

16 (a) The Department of Management Services and the  
17 department shall, in consultation with the Office of Insurance  
18 Regulation of the Financial Services Commission ~~Department of~~  
19 ~~Insurance~~, contract for actuarial, professional-administrator,  
20 and other services for the Florida Employee Long-Term-Care  
21 Plan.

22 (6) A Florida Employee Long-Term-Care Plan Board of  
23 Directors is created, composed of nine members who shall serve  
24 2-year terms, to be appointed after May 1, 1999, as follows:

25 (b) The Chief Financial Officer ~~Insurance Commissioner~~  
26 shall appoint an actuary.

27 Section 116. Paragraph (f) of subsection (5) of  
28 section 110.1228, Florida Statutes, is amended to read:

29 110.1228 Participation by small counties, small  
30 municipalities, and district school boards located in small  
31 counties.--

1           (5) If the department determines that a small county,  
2 small municipality, or district school board is eligible to  
3 enroll, the small county, small municipality, or district  
4 school board must agree to the following terms and conditions:

5           (f) If a small county, small municipality, or district  
6 school board employer fails to make the payments required by  
7 this section to fully reimburse the state, the Department of  
8 Revenue or the Department of Financial Services ~~Banking and~~  
9 ~~Finance~~ shall, upon the request of the Department of  
10 Management Services, deduct the amount owed by the employer  
11 from any funds not pledged to bond debt service satisfaction  
12 that are to be distributed by it to the small county, small  
13 municipality, or district school board. The amounts so  
14 deducted shall be transferred to the Department of Management  
15 Services for further distribution to the trust funds in  
16 accordance with this chapter.

17           Section 117. Paragraph (f) of subsection (4) and  
18 paragraphs (b) and (c) of subsection (5) of section 110.123,  
19 Florida Statutes, are amended to read:

20           110.123 State group insurance program.--

21           (4) PAYMENT OF PREMIUMS; CONTRIBUTION BY STATE;  
22 LIMITATION ON ACTIONS TO PAY AND COLLECT PREMIUMS.--

23           (f) Pursuant to the request of each state officer,  
24 full-time or part-time state employee, or retiree  
25 participating in the state group insurance program, and upon  
26 certification of the employing agency approved by the  
27 department, the Chief Financial Officer ~~Comptroller~~ shall  
28 deduct from the salary or retirement warrant payable to each  
29 participant the amount so certified and shall handle such  
30 deductions in accordance with rules established by the  
31 department.

1           (5) DEPARTMENT POWERS AND DUTIES.--The department is  
2 responsible for the administration of the state group  
3 insurance program. The department shall initiate and  
4 supervise the program as established by this section and shall  
5 adopt such rules as are necessary to perform its  
6 responsibilities. To implement this program, the department  
7 shall, with prior approval by the Legislature:

8           (b) Prepare, in cooperation with the Office of  
9 Insurance Regulation of the Financial Services Commission  
10 ~~Department of Insurance~~, the specifications necessary to  
11 implement the program.

12           (c) Contract on a competitive proposal basis with an  
13 insurance carrier or carriers, or professional administrator,  
14 determined by the Office of Insurance Regulation of the  
15 Financial Services Commission ~~Department of Insurance~~ to be  
16 fully qualified, financially sound, and capable of meeting all  
17 servicing requirements. Alternatively, the department may  
18 self-insure any plan or plans contained in the state group  
19 insurance program subject to approval based on actuarial  
20 soundness by the Office of Insurance Regulation ~~Department of~~  
21 ~~Insurance~~. The department may contract with an insurance  
22 company or professional administrator qualified and approved  
23 by the Office of Insurance Regulation ~~Department of Insurance~~  
24 to administer such plan. Before entering into any contract,  
25 the department shall advertise for competitive proposals, and  
26 such contract shall be let upon the consideration of the  
27 benefits provided in relationship to the cost of such  
28 benefits. In determining which entity to contract with, the  
29 department shall, at a minimum, consider: the entity's  
30 previous experience and expertise in administering group  
31 insurance programs of the type it proposes to administer; the

1 entity's ability to specifically perform its contractual  
2 obligations in this state and other governmental  
3 jurisdictions; the entity's anticipated administrative costs  
4 and claims experience; the entity's capability to adequately  
5 provide service coverage and sufficient number of experienced  
6 and qualified personnel in the areas of claims processing,  
7 recordkeeping, and underwriting, as determined by the  
8 department; the entity's accessibility to state employees and  
9 providers; the financial solvency of the entity, using  
10 accepted business sector measures of financial performance.  
11 The department may contract for medical services which will  
12 improve the health or reduce medical costs for employees who  
13 participate in the state group insurance plan.

14  
15 Final decisions concerning enrollment, the existence of  
16 coverage, or covered benefits under the state group insurance  
17 program shall not be delegated or deemed to have been  
18 delegated by the department.

19 Section 118. Section 110.125, Florida Statutes, is  
20 amended to read:

21 110.125 Administrative costs.--The administrative  
22 expenses and costs of operating the personnel program  
23 established by this chapter shall be paid by the various  
24 agencies of the state government, and each such agency shall  
25 include in its budget estimates its pro rata share of such  
26 cost as determined by the Department of Management Services.  
27 To establish an equitable division of the costs, the amount to  
28 be paid by each agency shall be determined in such proportion  
29 as the service rendered to each agency bears to the total  
30 service rendered under the provisions of this chapter. The  
31 amounts paid to the Department of Management Services which

1 are attributable to positions within the Senior Management  
2 Service and the Selected Professional Service shall be used  
3 for the administration of such services, training activities  
4 for positions within those services, and the development and  
5 implementation of a database of pertinent historical  
6 information on exempt positions. Should any state agency  
7 become more than 90 days delinquent in payment of this  
8 obligation, the department shall certify to the Chief  
9 Financial Officer ~~Comptroller~~ the amount due and the Chief  
10 Financial Officer ~~Comptroller~~ shall transfer the amount due to  
11 the department from any debtor agency funds available.

12 Section 119. Paragraph (a) of subsection (1) of  
13 section 110.181, Florida Statutes, is amended to read:

14 110.181 Florida State Employees' Charitable  
15 Campaign.--

16 (1) CREATION AND ORGANIZATION OF CAMPAIGN.--

17 (a) The Department of Management Services shall  
18 establish and maintain, in coordination with the payroll  
19 system of the Department of Financial Services ~~Banking and~~  
20 ~~Finance~~, an annual Florida State Employees' Charitable  
21 Campaign. Except as provided in subsection (5), this annual  
22 fundraising drive is the only authorized charitable  
23 fundraising drive directed toward state employees within work  
24 areas during work hours, and for which the state will provide  
25 payroll deduction.

26 Section 120. Subsection (1) of section 110.2037,  
27 Florida Statutes, is amended to read:

28 110.2037 Alternative benefits; tax-sheltered annual  
29 leave and sick leave payments and special compensation  
30 payments.--

31

1           (1) The Department of Management Services has  
2 authority to adopt tax-sheltered plans under s. 401(a) of the  
3 Internal Revenue Code for state employees who are eligible for  
4 payment for accumulated leave. The department, upon adoption  
5 of the plans, shall contract for a private vendor or vendors  
6 to administer the plans. These plans shall be limited to state  
7 employees who are over age 55 and who are: eligible for  
8 accumulated leave and special compensation payments and  
9 separating from employment with 10 years of service in  
10 accordance with the Internal Revenue Code, or who are  
11 participating in the Deferred Retirement Option Program on or  
12 after July 1, 2001. The plans must provide benefits in a  
13 manner that minimizes the tax liability of the state and  
14 participants. The plans must be funded by employer  
15 contributions of payments for accumulated leave or special  
16 compensation payments, or both, as specified by the  
17 department. The plans must have received all necessary federal  
18 and state approval as required by law, must not adversely  
19 impact the qualified status of the Florida Retirement System  
20 defined benefit or defined contribution plans or the pretax  
21 benefits program, and must comply with the provisions of s.  
22 112.65. Adoption of any plan is contingent on: the department  
23 receiving appropriate favorable rulings from the Internal  
24 Revenue Service; the department negotiating under the  
25 provisions of chapter 447, where applicable; and the Chief  
26 Financial Officer ~~Comptroller~~ making appropriate changes to  
27 the state payroll system. The department's request for  
28 proposals by vendors for such plans may require that the  
29 vendors provide market-risk or volatility ratings from  
30 recognized rating agencies for each of their investment  
31 products. The department shall provide for a system of

1 continuous quality assurance oversight to ensure that the  
2 program objectives are achieved and that the program is  
3 prudently managed.

4 Section 121. Subsection (6) of section 110.205,  
5 Florida Statutes, is amended to read:

6 110.205 Career service; exemptions.--

7 (6) EXEMPTION OF CHIEF INSPECTOR OF BOILER SAFETY  
8 PROGRAM, DEPARTMENT OF FINANCIAL SERVICES ~~INSURANCE~~.--In  
9 addition to those positions exempted from this part, there is  
10 hereby exempted from the Career Service System the chief  
11 inspector of the boiler inspection program of the Department  
12 of Financial Services ~~Insurance~~. The salary range of this  
13 position shall be established by the Department of Management  
14 Services in accordance with the classification and pay plan  
15 established for the Selected Exempt Service.

16 Section 122. Paragraph (b) of subsection (5),  
17 paragraph (b) of subsection (7), paragraph (b) of subsection  
18 (8), and subsections (9), (11), and (13) of section 112.061,  
19 Florida Statutes, are amended to read:

20 112.061 Per diem and travel expenses of public  
21 officers, employees, and authorized persons.--

22 (5) COMPUTATION OF TRAVEL TIME FOR REIMBURSEMENT.--For  
23 purposes of reimbursement and methods of calculating  
24 fractional days of travel, the following principles are  
25 prescribed:

26 (b) A traveler shall not be reimbursed on a per diem  
27 basis for Class C travel, but shall receive subsistence as  
28 provided in this section, which allowance for meals shall be  
29 based on the following schedule:

30 1. Breakfast--When travel begins before 6 a.m. and  
31 extends beyond 8 a.m.

1           2. Lunch--When travel begins before 12 noon and  
2 extends beyond 2 p.m.

3           3. Dinner--When travel begins before 6 p.m. and  
4 extends beyond 8 p.m., or when travel occurs during nighttime  
5 hours due to special assignment.

6  
7 No allowance shall be made for meals when travel is confined  
8 to the city or town of the official headquarters or immediate  
9 vicinity; except assignments of official business outside the  
10 traveler's regular place of employment if travel expenses are  
11 approved. The Chief Financial Officer ~~Comptroller~~ shall  
12 establish a schedule for processing Class C travel subsistence  
13 payments at least on a monthly basis.

14           (7) TRANSPORTATION.--

15           (b) The Department of Financial Services ~~Banking and~~  
16 ~~Finance~~ may provide any form it deems necessary to cover  
17 travel requests for traveling on official business and when  
18 paid by the state.

19           (8) OTHER EXPENSES.--

20           (b) Other expenses which are not specifically  
21 authorized by this section may be approved by the Department  
22 of Financial Services ~~Banking and Finance~~ pursuant to rules  
23 adopted by it. Expenses approved pursuant to this paragraph  
24 shall be reported by the Department of Financial Services  
25 ~~Banking and Finance~~ to the Auditor General annually.

26           (9) RULES ~~AND REGULATIONS~~.--

27           (a) The Department of Financial Services ~~Banking and~~  
28 ~~Finance~~ shall adopt ~~promulgate~~ such rules ~~and regulations~~,  
29 including, but not limited to, the general criteria to be used  
30 by a state agency to predetermine justification for attendance  
31 by state officers and employees and authorized persons at

1 conventions and conferences, and prescribe such forms as are  
2 ~~may be~~ necessary to effectuate the purposes of this section.  
3 The department may also adopt rules prescribing the proper  
4 disposition and use of promotional items and rebates offered  
5 by common carriers and other entities in connection with  
6 travel at public expense; however, before adopting such rules,  
7 the department shall consult with the appropriation committees  
8 of the Legislature.

9 (b) Each state agency shall adopt ~~promulgate~~ such  
10 additional specific rules ~~and regulations~~ and specific  
11 criteria to be used by it to predetermine justification for  
12 attendance by state officers and employees and authorized  
13 persons at conventions and conferences, not in conflict with  
14 the rules ~~and regulations~~ of the Department of Financial  
15 Services ~~Banking and Finance~~ or with the general criteria to  
16 be used by a state agency to predetermine justification for  
17 attendance by state officers and employees and authorized  
18 persons at conventions, as may be necessary to effectuate the  
19 purposes of this section.

20 (11) TRAVEL AUTHORIZATION AND VOUCHER FORMS.--

21 (a) Authorization forms.--The Department of Financial  
22 Services ~~Banking and Finance~~ shall furnish a uniform travel  
23 authorization request form which shall be used by all state  
24 officers and employees and authorized persons when requesting  
25 approval for the performance of travel to a convention or  
26 conference. The form shall include, but not be limited to,  
27 provision for the name of each traveler, purpose of travel,  
28 period of travel, estimated cost to the state, and a statement  
29 of benefits accruing to the state by virtue of such travel. A  
30 copy of the program or agenda of the convention or conference,  
31 itemizing registration fees and any meals or lodging included

1 in the registration fee, shall be attached to, and filed with,  
2 the copy of the travel authorization request form on file with  
3 the agency. The form shall be signed by the traveler and by  
4 the traveler's supervisor stating that the travel is to be  
5 incurred in connection with official business of the state.  
6 The head of the agency or his or her designated representative  
7 shall not authorize or approve such request in the absence of  
8 the appropriate signatures. A copy of the travel authorization  
9 form shall be attached to, and become a part of, the support  
10 of the agency's copy of the travel voucher.

11 (b) Voucher forms.--

12 1. The Department of Financial Services ~~Banking and~~  
13 ~~Finance~~ shall furnish a uniform travel voucher form which  
14 shall be used by all state officers and employees and  
15 authorized persons when submitting travel expense statements  
16 for approval and payment. No travel expense statement shall  
17 be approved for payment by the Chief Financial Officer  
18 ~~Comptroller~~ unless made on the form prescribed and furnished  
19 by the department. The travel voucher form shall provide for,  
20 among other things, the purpose of the official travel and a  
21 certification or affirmation, to be signed by the traveler,  
22 indicating the truth and correctness of the claim in every  
23 material matter, that the travel expenses were actually  
24 incurred by the traveler as necessary in the performance of  
25 official duties, that per diem claimed has been appropriately  
26 reduced for any meals or lodging included in the convention or  
27 conference registration fees claimed by the traveler, and that  
28 the voucher conforms in every respect with the requirements of  
29 this section. The original copy of the executed uniform  
30 travel authorization request form shall be attached to the  
31 uniform travel voucher on file with the respective agency.

1           2. Statements for travel expenses incidental to the  
2 rendering of medical services for and on behalf of clients of  
3 the Department of Health shall be on forms approved by the  
4 Department of Financial Services ~~Banking and Finance~~.

5           (13) DIRECT PAYMENT OF EXPENSES BY AGENCY.--Whenever  
6 an agency requires an employee to incur either Class A or  
7 Class B travel on emergency notice to the traveler, such  
8 traveler may request the agency to pay his or her expenses for  
9 meals and lodging directly to the vendor, and the agency may  
10 pay the vendor the actual expenses for meals and lodging  
11 during the travel period, limited to an amount not to exceed  
12 that authorized pursuant to this section. In emergency  
13 situations, the agency head or his or her designee may  
14 authorize an increase in the amount paid for a specific meal,  
15 provided that the total daily cost of meals does not exceed  
16 the total amount authorized for meals each day. The agency  
17 head or his or her designee may also grant prior approval for  
18 a state agency to make direct payments of travel expenses in  
19 other situations that result in cost savings to the state, and  
20 such cost savings shall be documented in the voucher submitted  
21 to the Chief Financial Officer ~~Comptroller~~ for the direct  
22 payment of travel expenses. The provisions of this subsection  
23 shall not be deemed to apply to any legislator or to any  
24 employee of the Legislature.

25           Section 123. Subsections (2), (5), and (6) of section  
26 112.08, Florida Statutes, are amended to read:

27           112.08 Group insurance for public officers, employees,  
28 and certain volunteers; physical examinations.--

29           (2)(a) Every local governmental unit is authorized to  
30 provide and pay out of its available funds for all or part of  
31 the premium for life, health, accident, hospitalization, legal

1 expense, or annuity insurance, or all or any kinds of such  
2 insurance, for the officers and employees of the local  
3 governmental unit and for health, accident, hospitalization,  
4 and legal expense insurance for the dependents of such  
5 officers and employees upon a group insurance plan and, to  
6 that end, to enter into contracts with insurance companies or  
7 professional administrators to provide such insurance. Before  
8 entering any contract for insurance, the local governmental  
9 unit shall advertise for competitive bids; and such contract  
10 shall be let upon the basis of such bids. If a contracting  
11 health insurance provider becomes financially impaired as  
12 determined by the Office of Insurance Regulation of the  
13 Financial Services Commission ~~Department of Insurance~~ or  
14 otherwise fails or refuses to provide the contracted-for  
15 coverage or coverages, the local government may purchase  
16 insurance, enter into risk management programs, or contract  
17 with third-party administrators and may make such acquisitions  
18 by advertising for competitive bids or by direct negotiations  
19 and contract. The local governmental unit may undertake  
20 simultaneous negotiations with those companies which have  
21 submitted reasonable and timely bids and are found by the  
22 local governmental unit to be fully qualified and capable of  
23 meeting all servicing requirements. Each local governmental  
24 unit may self-insure any plan for health, accident, and  
25 hospitalization coverage or enter into a risk management  
26 consortium to provide such coverage, subject to approval based  
27 on actuarial soundness by the Office of Insurance Regulation  
28 ~~Department of Insurance~~; and each shall contract with an  
29 insurance company or professional administrator qualified and  
30 approved by the office ~~Department of Insurance~~ to administer  
31 such a plan.

1           (b) In order to obtain approval from the Office of  
2 Insurance Regulation ~~Department of Insurance~~ of any  
3 self-insured plan for health, accident, and hospitalization  
4 coverage, each local governmental unit or consortium shall  
5 submit its plan along with a certification as to the actuarial  
6 soundness of the plan, which certification is prepared by an  
7 actuary who is a member of the Society of Actuaries or the  
8 American Academy of Actuaries. The Office of Insurance  
9 Regulation ~~Department of Insurance~~ shall not approve the plan  
10 unless it determines that the plan is designed to provide  
11 sufficient revenues to pay current and future liabilities, as  
12 determined according to generally accepted actuarial  
13 principles. After implementation of an approved plan, each  
14 local governmental unit or consortium shall annually submit to  
15 the Office of Insurance Regulation ~~Department of Insurance~~ a  
16 report which includes a statement prepared by an actuary who  
17 is a member of the Society of Actuaries or the American  
18 Academy of Actuaries as to the actuarial soundness of the  
19 plan. The report is due 90 days after the close of the fiscal  
20 year of the plan. The report shall consist of, but is not  
21 limited to:

22           1. The adequacy of contribution rates in meeting the  
23 level of benefits provided and the changes, if any, needed in  
24 the contribution rates to achieve or preserve a level of  
25 funding deemed adequate to enable payment of the benefit  
26 amounts provided under the plan and a valuation of present  
27 assets, based on statement value, and prospective assets and  
28 liabilities of the plan and the extent of any unfunded accrued  
29 liabilities.

30           2. A plan to amortize any unfunded liabilities and a  
31 description of actions taken to reduce unfunded liabilities.

1           3. A description and explanation of actuarial  
2 assumptions.

3           4. A schedule illustrating the amortization of any  
4 unfunded liabilities.

5           5. A comparative review illustrating the level of  
6 funds available to the plan from rates, investment income, and  
7 other sources realized over the period covered by the report  
8 with the assumptions used.

9           6. A statement by the actuary that the report is  
10 complete and accurate and that in the actuary's opinion the  
11 techniques and assumptions used are reasonable and meet the  
12 requirements and intent of this subsection.

13           7. Other factors or statements as required by the  
14 Department of Insurance in order to determine the actuarial  
15 soundness of the plan.

16  
17 All assumptions used in the report shall be based on  
18 recognized actuarial principles acceptable to the Office of  
19 Insurance Regulation ~~Department of Insurance~~. The office  
20 ~~Department of Insurance~~ shall review the report and shall  
21 notify the administrator of the plan and each entity  
22 participating in the plan, as identified by the administrator,  
23 of any actuarial deficiencies. Each local governmental unit  
24 is responsible for payment of valid claims of its employees  
25 that are not paid within 60 days after receipt by the plan  
26 administrator or consortium.

27           (c) Every local governmental unit is authorized to  
28 expend funds for preemployment physical examinations and  
29 postemployment physical examinations.

30           (5) The Department of Management Services shall  
31 initiate and supervise a group insurance program providing

1 death and disability benefits for active members of the  
2 Florida Highway Patrol Auxiliary, with coverage beginning July  
3 1, 1978, and purchased from state funds appropriated for that  
4 purpose. The Department of Management Services, in  
5 cooperation with the Office of Insurance Regulation ~~Department~~  
6 ~~of Insurance~~, shall prepare specifications necessary to  
7 implement the program, and the Department of Management  
8 Services shall receive bids and award the contract in  
9 accordance with general law.

10 (6) The Financial Services Commission ~~Department of~~  
11 ~~Insurance~~ is authorized to adopt rules to carry out the  
12 provisions of this section as they pertain to its duties.

13 Section 124. Paragraph (h) of subsection (2) of  
14 section 112.191, Florida Statutes, is amended to read:

15 112.191 Firefighters; death benefits.--

16 (2)

17 (h) The Division of the State Fire Marshal within the  
18 Department of Financial Services ~~Insurance~~ shall adopt rules  
19 necessary to implement this section.

20 Section 125. Subsection (4), paragraph (a) of  
21 subsection (6), paragraphs (a), (d), (f), and (h) of  
22 subsection (8), paragraph (b) of subsection (10), and  
23 subsections (11) and (12) of section 112.215, Florida  
24 Statutes, are amended to read:

25 112.215 Government employees; deferred compensation  
26 program.--

27 (4)(a) The Chief Financial Officer ~~Treasurer~~, with the  
28 approval of the State Board of Administration, shall establish  
29 such plan or plans of deferred compensation for state  
30 employees, including all such investment vehicles or products  
31 incident thereto, as may be available through, or offered by,

1 qualified companies or persons, and may approve one or more  
2 such plans for implementation by and on behalf of the state  
3 and its agencies and employees.

4 (b) If the Chief Financial Officer ~~Treasurer~~ deems it  
5 advisable, he or she shall have the power, with the approval  
6 of the State Board of Administration, to create a trust or  
7 other special funds for the segregation of funds or assets  
8 resulting from compensation deferred at the request of  
9 employees of the state or its agencies and for the  
10 administration of such program.

11 (c) The Chief Financial Officer ~~Treasurer~~, with the  
12 approval of the State Board of Administration, may delegate  
13 responsibility for administration of the plan to a person the  
14 Chief Financial Officer ~~Treasurer~~ determines to be qualified,  
15 compensate such person, and, directly or through such person  
16 or pursuant to a collective bargaining agreement, contract  
17 with a private corporation or institution to provide such  
18 services as may be part of any such plan or as may be deemed  
19 necessary or proper by the Chief Financial Officer ~~Treasurer~~  
20 or such person, including, but not limited to, providing  
21 consolidated billing, individual and collective recordkeeping  
22 and accountings, asset purchase, control, and safekeeping, and  
23 direct disbursement of funds to employees or other  
24 beneficiaries. The Chief Financial Officer ~~Treasurer~~ may  
25 authorize a person, private corporation, or institution to  
26 make direct disbursement of funds under the plan to an  
27 employee or other beneficiary ~~only upon the order of the~~  
28 ~~Comptroller to the Treasurer.~~

29 (d) In accordance with such approved plan, and upon  
30 contract or agreement with an eligible employee, deferrals of  
31 compensation may be accomplished by payroll deductions made by

1 the appropriate officer or officers of the state, with such  
2 funds being thereafter held and administered in accordance  
3 with the plan.

4 (6)(a) No deferred compensation plan of the state  
5 shall become effective until approved by the State Board of  
6 Administration and the Chief Financial Officer ~~Treasurer~~ is  
7 satisfied by opinion from such federal agency or agencies as  
8 may be deemed necessary that the compensation deferred  
9 thereunder and/or the investment products purchased pursuant  
10 to the plan will not be included in the employee's taxable  
11 income under federal or state law until it is actually  
12 received by such employee under the terms of the plan, and  
13 that such compensation will nonetheless be deemed compensation  
14 at the time of deferral for the purposes of social security  
15 coverage, for the purposes of the state retirement system, and  
16 for any other retirement, pension, or benefit program  
17 established by law.

18 (8)(a) There is ~~hereby~~ created a Deferred Compensation  
19 Advisory Council composed of seven members.

20 1. One member shall be appointed by the Speaker of the  
21 House of Representatives and the President of the Senate  
22 jointly and shall be an employee of the legislative branch.

23 2. One member shall be appointed by the Chief Justice  
24 of the Supreme Court and shall be an employee of the judicial  
25 branch.

26 3. One member shall be appointed by the chair of the  
27 Public Employees Relations Commission and shall be a nonexempt  
28 public employee.

29 4. The remaining four members shall be employed by the  
30 executive branch and shall be appointed as follows:

31

1           a. One member shall be appointed by the Chancellor of  
2 the State University System and shall be an employee of the  
3 university system.

4           b. One member shall be appointed by the Chief  
5 Financial Officer ~~Treasurer~~ and shall be an employee of the  
6 Chief Financial Officer ~~Treasurer~~.

7           c. One member shall be appointed by the Governor and  
8 shall be an employee of the executive branch.

9           d. One member shall be appointed by the Attorney  
10 General ~~Comptroller~~ and shall be an employee of the Attorney  
11 General ~~Comptroller~~.

12           (d) The council shall meet at the call of its chair,  
13 at the request of a majority of its membership, or at the  
14 request of the Chief Financial Officer ~~Treasurer~~, but not less  
15 than twice a year. The business of the council shall be  
16 presented to the council in the form of an agenda. The agenda  
17 shall be set by the Chief Financial Officer ~~Treasurer~~ and  
18 shall include items of business requested by the council  
19 members.

20           (f) The council shall make a report of each meeting to  
21 the Chief Financial Officer ~~Treasurer~~, which shall show the  
22 names of the members present and shall include a record of its  
23 discussions, recommendations, and actions taken. The Chief  
24 Financial Officer ~~Treasurer~~ shall keep the records of the  
25 proceedings of each meeting on file and shall make the records  
26 available to any interested person or group.

27           (h) The advisory council shall provide assistance and  
28 recommendations to the Chief Financial Officer ~~Treasurer~~  
29 relating to the provisions of the plan, the insurance or  
30 investment options to be offered under the plan, and any other  
31 contracts or appointments deemed necessary by the council and

1 the Chief Financial Officer ~~Treasurer~~ to carry out the  
2 provisions of this act. The Chief Financial Officer ~~Treasurer~~  
3 shall inform the council of the manner in which each council  
4 recommendation is being addressed. The Chief Financial  
5 Officer ~~Treasurer~~ shall provide the council, at least  
6 annually, a report on the status of the deferred compensation  
7 program, including, but not limited to, information on  
8 participant enrollment, amount of compensation deferred, total  
9 plan assets, product provider performance, and participant  
10 satisfaction with the program.

11 (10)

12 (b)1. There is created in the State Treasury the  
13 Deferred Compensation Trust Fund, through which the Chief  
14 Financial Officer ~~Treasurer~~ as trustee shall hold moneys,  
15 pensions, annuities, or other benefits accrued or accruing  
16 under and pursuant to 26 U.S.C. s. 457 and the deferred  
17 compensation plan provided for therein and adopted by this  
18 state; and

19 a. All amounts of compensation deferred thereunder;

20 b. All property and rights purchased with such  
21 amounts; and

22 c. All income attributable to such amounts, property,  
23 or rights.

24 2. Notwithstanding the mandates of 26 U.S.C. s.  
25 457(b)(6), all of the assets specified in subparagraph 1.  
26 shall be held in trust for the exclusive benefit of  
27 participants and their beneficiaries as mandated by 26 U.S.C.  
28 s. 457(g)(1).

29 (11) With respect to any funds held pursuant to a  
30 deferred compensation plan, any plan provider which is a bank  
31 or savings association and which provides time deposit

1 accounts and certificates of deposit as an investment product  
2 to the plan participants may, with the approval of the State  
3 Board of Administration for providers in the state plan, or  
4 with the approval of the appropriate official or body  
5 designated under subsection (5) for a plan of a county,  
6 municipality, other political subdivision, or constitutional  
7 county officer, be exempt from the provisions of chapter 280  
8 requiring it to be a qualified public depository, provided:

9 (a) The bank or savings association shall, to the  
10 extent that the time deposit accounts or certificates of  
11 deposit are not insured by the Federal Deposit Insurance  
12 Corporation or the Federal Savings and Loan Insurance  
13 Corporation, pledge collateral with the Chief Financial  
14 Officer ~~Treasurer~~ for all state funds held by it under a  
15 deferred compensation plan, or with such other appropriate  
16 official for all public funds held by it under a deferred  
17 compensation plan of a county, municipality, other political  
18 subdivision, or constitutional county officer, in an amount  
19 which equals at least 150 percent of all uninsured deferred  
20 compensation funds then held.

21 (b) Said collateral shall be of the kind permitted by  
22 s. 280.13 and shall be pledged in the manner provided for by  
23 the applicable provisions of chapter 280.

24  
25 The Chief Financial Officer ~~Treasurer~~ shall have all the  
26 applicable powers provided in ss. 280.04, 280.05, and 280.08  
27 relating to the sale or other disposition of the pledged  
28 collateral.

29 (12) The Chief Financial Officer ~~Treasurer~~ may adopt  
30 any rule necessary to administer and implement this act with  
31 respect to deferred compensation plans for state employees.

1           Section 126. Paragraph (h) of subsection (4) of  
2 section 112.3144, Florida Statutes, is amended to read:

3           112.3144 Full and public disclosure of financial  
4 interests.--

5           (4) Forms for compliance with the full and public  
6 disclosure requirements of s. 8, Art. II of the State  
7 Constitution shall be created by the Commission on Ethics. The  
8 commission shall give notice of disclosure deadlines and  
9 delinquencies and distribute forms in the following manner:

10           (h) Notwithstanding any provision of chapter 120, any  
11 fine imposed under this subsection which is not waived by  
12 final order of the commission and which remains unpaid more  
13 than 60 days after the notice of payment due or more than 60  
14 days after the commission renders a final order on the appeal  
15 must be submitted to the Department of Financial Services  
16 ~~Banking and Finance~~ as a claim, debt, or other obligation owed  
17 to the state, and the department shall assign the collection  
18 of such fine to a collection agent as provided in s. 17.20.

19           Section 127. Paragraph (i) of subsection (6) of  
20 section 112.3145, Florida Statutes, is amended to read:

21           112.3145 Disclosure of financial interests and clients  
22 represented before agencies.--

23           (6) Forms for compliance with the disclosure  
24 requirements of this section and a current list of persons  
25 subject to disclosure shall be created by the commission and  
26 provided to each supervisor of elections. The commission and  
27 each supervisor of elections shall give notice of disclosure  
28 deadlines and delinquencies and distribute forms in the  
29 following manner:

30           (i) Notwithstanding any provision of chapter 120, any  
31 fine imposed under this subsection which is not waived by

1 final order of the commission and which remains unpaid more  
2 than 60 days after the notice of payment due or more than 60  
3 days after the commission renders a final order on the appeal  
4 must be submitted to the Department of Financial Services  
5 ~~Banking and Finance~~ as a claim, debt, or other obligation owed  
6 to the state, and the department shall assign the collection  
7 of such a fine to a collection agent as provided in s. 17.20.

8 Section 128. Paragraph (c) of subsection (9) of  
9 section 112.3189, Florida Statutes, is amended to read:

10 112.3189 Investigative procedures upon receipt of  
11 whistle-blower information from certain state employees.--

12 (9)

13 (c) The Chief Inspector General shall transmit any  
14 final report under this section, any comments provided by the  
15 complainant, and any appropriate comments or recommendations  
16 by the Chief Inspector General to the Governor, to the Joint  
17 Legislative Auditing Committee, to the investigating agency,  
18 and to the Chief Financial Officer ~~Comptroller~~.

19 Section 129. Paragraph (e) of subsection (3) of  
20 section 112.31895, Florida Statutes, is amended to read:

21 112.31895 Investigative procedures in response to  
22 prohibited personnel actions.--

23 (3) CORRECTIVE ACTION AND TERMINATION OF  
24 INVESTIGATION.--

25 (e)1. The Florida Commission on Human Relations may  
26 request an agency or circuit court to order a stay, on such  
27 terms as the court requires, of any personnel action for 45  
28 days if the Florida Commission on Human Relations determines  
29 that reasonable grounds exist to believe that a prohibited  
30 personnel action has occurred, is occurring, or is to be  
31

1 taken. The Florida Commission on Human Relations may request  
2 that such stay be extended for appropriate periods of time.

3 2. If, in connection with any investigation, the  
4 Florida Commission on Human Relations determines that  
5 reasonable grounds exist to believe that a prohibited action  
6 has occurred, is occurring, or is to be taken which requires  
7 corrective action, the Florida Commission on Human Relations  
8 shall report the determination together with any findings or  
9 recommendations to the agency head and may report that  
10 determination and those findings and recommendations to the  
11 Governor and the Chief Financial Officer ~~Comptroller~~. The  
12 Florida Commission on Human Relations may include in the  
13 report recommendations for corrective action to be taken.

14 3. If, after 20 days, the agency does not implement  
15 the recommended action, the Florida Commission on Human  
16 Relations shall terminate the investigation and notify the  
17 complainant of the right to appeal under subsection (4), or  
18 may petition the agency for corrective action under this  
19 subsection.

20 4. If the Florida Commission on Human Relations finds,  
21 in consultation with the individual subject to the prohibited  
22 action, that the agency has implemented the corrective action,  
23 the commission shall file such finding with the agency head,  
24 together with any written comments that the individual  
25 provides, and terminate the investigation.

26 Section 130. Paragraph (f) of subsection (5) of  
27 section 112.3215, Florida Statutes, is amended to read:

28 112.3215 Lobbyists before the executive branch or the  
29 Constitution Revision Commission; registration and reporting;  
30 investigation by commission.--

31 (5)

1 (f) The commission shall provide by rule a procedure  
2 by which a lobbyist who fails to timely file a report shall be  
3 notified and assessed fines. The rule shall provide for the  
4 following:

5 1. Upon determining that the report is late, the  
6 person designated to review the timeliness of reports shall  
7 immediately notify the lobbyist as to the failure to timely  
8 file the report and that a fine is being assessed for each  
9 late day. The fine shall be \$50 per day per report for each  
10 late day up to a maximum of \$5,000 per late report.

11 2. Upon receipt of the report, the person designated  
12 to review the timeliness of reports shall determine the amount  
13 of the fine due based upon the earliest of the following:

14 a. When a report is actually received by the lobbyist  
15 registration and reporting office.

16 b. When the report is postmarked.

17 c. When the certificate of mailing is dated.

18 d. When the receipt from an established courier  
19 company is dated.

20 3. Such fine shall be paid within 30 days after the  
21 notice of payment due is transmitted by the Lobbyist  
22 Registration Office, unless appeal is made to the commission.  
23 The moneys shall be deposited into the Executive Branch Lobby  
24 Registration Trust Fund.

25 4. A fine shall not be assessed against a lobbyist the  
26 first time any reports for which the lobbyist is responsible  
27 are not timely filed. However, to receive the one-time fine  
28 waiver, all reports for which the lobbyist is responsible must  
29 be filed within 30 days after the notice that any reports have  
30 not been timely filed is transmitted by the Lobbyist

31

1 Registration Office. A fine shall be assessed for any  
2 subsequent late-filed reports.

3           5. Any lobbyist may appeal or dispute a fine, based  
4 upon unusual circumstances surrounding the failure to file on  
5 the designated due date, and may request and shall be entitled  
6 to a hearing before the commission, which shall have the  
7 authority to waive the fine in whole or in part for good cause  
8 shown. Any such request shall be made within 30 days after  
9 the notice of payment due is transmitted by the Lobbyist  
10 Registration Office. In such case, the lobbyist shall, within  
11 the 30-day period, notify the person designated to review the  
12 timeliness of reports in writing of his or her intention to  
13 bring the matter before the commission.

14           6. The person designated to review the timeliness of  
15 reports shall notify the commission of the failure of a  
16 lobbyist to file a report after notice or of the failure of a  
17 lobbyist to pay the fine imposed.

18           7. Notwithstanding any provision of chapter 120, any  
19 fine imposed under this subsection that is not waived by final  
20 order of the commission and that remains unpaid more than 60  
21 days after the notice of payment due or more than 60 days  
22 after the commission renders a final order on the lobbyist's  
23 appeal shall be collected by the Department of Financial  
24 Services ~~Banking and Finance~~ as a claim, debt, or other  
25 obligation owed to the state, and the department may assign  
26 the collection of such fine to a collection agent as provided  
27 in s. 17.20.

28           Section 131. Subsection (4) of section 112.63, Florida  
29 Statutes, is amended to read:

30           112.63 Actuarial reports and statements of actuarial  
31 impact; review.--

1           (4) Upon receipt, pursuant to subsection (2), of an  
2 actuarial report, or upon receipt, pursuant to subsection (3),  
3 of a statement of actuarial impact, the Department of  
4 Management Services shall acknowledge such receipt, but shall  
5 only review and comment on each retirement system's or plan's  
6 actuarial valuations at least on a triennial basis. If the  
7 department finds that the actuarial valuation is not complete,  
8 accurate, or based on reasonable assumptions, or if the  
9 department does not receive the actuarial report or statement  
10 of actuarial impact, the department shall notify the local  
11 government and request appropriate adjustment. If, after a  
12 reasonable period of time, a satisfactory adjustment is not  
13 made, the affected local government or the department may  
14 petition for a hearing under the provisions of ss. 120.569 and  
15 120.57. If the administrative law judge recommends in favor of  
16 the department, the department shall perform an actuarial  
17 review or prepare the statement of actuarial impact. The cost  
18 to the department of performing such actuarial review or  
19 preparing such statement shall be charged to the governmental  
20 entity of which the employees are covered by the retirement  
21 system or plan. If payment of such costs is not received by  
22 the department within 60 days after receipt by the  
23 governmental entity of the request for payment, the department  
24 shall certify to the Chief Financial Officer ~~Comptroller~~ the  
25 amount due, and the Chief Financial Officer ~~Comptroller~~ shall  
26 pay such amount to the department from any funds payable to  
27 the governmental entity of which the employees are covered by  
28 the retirement system or plan. If the administrative law  
29 judge recommends in favor of the local retirement system and  
30 the department performs an actuarial review, the cost to the  
31

1 department of performing the actuarial review shall be paid by  
2 the department.

3 Section 132. Section 116.03, Florida Statutes, is  
4 amended to read:

5 116.03 Officers to report fees collected.--Each state  
6 and county officer who receives all or any part of his or her  
7 compensation in fees or commissions, or other remuneration,  
8 shall keep a complete report of all fees and commissions, or  
9 other remuneration collected, and shall make a report to the  
10 Department of Financial Services ~~Banking and Finance~~ of all  
11 such fees and commissions, or other remuneration, annually on  
12 December 31 of each and every year. Such report shall be made  
13 upon forms to be prescribed from time to time by the  
14 department, and shall show in detail the source, character and  
15 amount of all his or her official expenses and the net amount  
16 that the office has paid up to the time of making such report.  
17 All officers shall make out, fill in and subscribe and  
18 properly forward to the department such reports, and swear to  
19 the accuracy and competency of such reports.

20 Section 133. Section 116.04, Florida Statutes, is  
21 amended to read:

22 116.04 Failure of officer to make sworn report of  
23 fees.--Any officer who shall fail or refuse to make,  
24 subscribe, and swear, or to file with the Department of  
25 Financial Services ~~Banking and Finance~~ a report of all fees,  
26 commissions, or other remuneration collected, as required by  
27 law, or if any officer shall knowingly or willfully make false  
28 or incomplete reports, or in any report violate any of the  
29 provisions of s. 116.03 he or she shall be guilty of a  
30 misdemeanor of the first degree, punishable as provided in s.  
31 775.082 or s. 775.083.

1           Section 134. Section 116.05, Florida Statutes, is  
2 amended to read:

3           116.05 Examination and publication by Department of  
4 Financial Services ~~Banking and Finance~~.--The Department of  
5 Financial Services ~~Banking and Finance~~ shall have examined and  
6 verified any of the reports received under s. 116.03 whenever  
7 in its judgment the same may be necessary, and the department  
8 shall cause the matter and things in each of said reports to  
9 be published one time in a newspaper published in the county  
10 in which such report originated, in such form as it shall  
11 direct, and the expense of such publication shall be paid by  
12 the county commissioners of such county.

13           Section 135. Section 116.06, Florida Statutes, is  
14 amended to read:

15           116.06 Summary of reports; certain officers not  
16 required to report fees.--A summary of all such reports shall  
17 be included by the Department of Financial Services ~~Banking~~  
18 ~~and Finance~~ in its annual report to the Governor, except that  
19 jurors and notaries public shall not be required to make such  
20 reports as provided for in s. 116.03.

21           Section 136. Section 116.14, Florida Statutes, is  
22 amended to read:

23           116.14 Receipts required from purchasers of state  
24 property.--Upon the sale of any state property by the  
25 superintendent and presidents of state institutions as  
26 provided by law, they shall take receipt for the same from the  
27 purchaser, which receipt shall be forwarded, together with the  
28 proceeds of the sale, to the Chief Financial Officer ~~State~~  
29 ~~Treasurer~~.

30           Section 137. Paragraph (c) of subsection (15) of  
31 section 120.52, Florida Statutes, is amended to read:

1           120.52 Definitions.--As used in this act:  
2           (15) "Rule" means each agency statement of general  
3 applicability that implements, interprets, or prescribes law  
4 or policy or describes the procedure or practice requirements  
5 of an agency and includes any form which imposes any  
6 requirement or solicits any information not specifically  
7 required by statute or by an existing rule. The term also  
8 includes the amendment or repeal of a rule. The term does not  
9 include:  
10           (c) The preparation or modification of:  
11           1. Agency budgets.  
12           2. Statements, memoranda, or instructions to state  
13 agencies issued by the Chief Financial Officer or Comptroller  
14 as chief fiscal officer of the state and relating or  
15 pertaining to claims for payment submitted by state agencies  
16 to the Chief Financial Officer or Comptroller.  
17           3. Contractual provisions reached as a result of  
18 collective bargaining.  
19           4. Memoranda issued by the Executive Office of the  
20 Governor relating to information resources management.  
21           Section 138. Subsections (3) and (9) of section  
22 120.80, Florida Statutes, are amended to read:  
23           120.80 Exceptions and special requirements;  
24 agencies.--  
25           (3) OFFICE OF FINANCIAL INSTITUTIONS AND SECURITIES  
26 REGULATION ~~DEPARTMENT OF BANKING AND FINANCE~~.--  
27           (a) Notwithstanding s. 120.60(1), in proceedings for  
28 the issuance, denial, renewal, or amendment of a license or  
29 approval of a merger pursuant to title XXXVIII:  
30           1.a. The Office of Financial Institutions and  
31 Securities Regulation of the Financial Services Commission

1 ~~Department of Banking and Finance~~ shall have published in the  
2 Florida Administrative Weekly notice of the application within  
3 21 days after receipt.

4           b. Within 21 days after publication of notice, any  
5 person may request a hearing. Failure to request a hearing  
6 within 21 days after notice constitutes a waiver of any right  
7 to a hearing. The Office of Financial Institutions and  
8 Securities Regulation ~~Department of Banking and Finance~~ or an  
9 applicant may request a hearing at any time prior to the  
10 issuance of a final order. Hearings shall be conducted  
11 pursuant to ss. 120.569 and 120.57, except that the Financial  
12 Services Commission ~~Department of Banking and Finance~~ shall by  
13 rule provide for participation by the general public.

14           2. Should a hearing be requested as provided by  
15 sub-subparagraph 1.b., the applicant or licensee shall publish  
16 at its own cost a notice of the hearing in a newspaper of  
17 general circulation in the area affected by the application.  
18 The Financial Services Commission ~~Department of Banking and~~  
19 ~~Finance~~ may by rule specify the format and size of the notice.

20           3. Notwithstanding s. 120.60(1), and except as  
21 provided in subparagraph 4., every application for license for  
22 a new bank, new trust company, new credit union, or new  
23 savings and loan association shall be approved or denied  
24 within 180 days after receipt of the original application or  
25 receipt of the timely requested additional information or  
26 correction of errors or omissions. Any application for such a  
27 license or for acquisition of such control which is not  
28 approved or denied within the 180-day period or within 30 days  
29 after conclusion of a public hearing on the application,  
30 whichever is later, shall be deemed approved subject to the  
31 satisfactory completion of conditions required by statute as a

1 prerequisite to license and approval of insurance of accounts  
2 for a new bank, a new savings and loan association, or a new  
3 credit union by the appropriate insurer.

4           4. In the case of every application for license to  
5 establish a new bank, trust company, or capital stock savings  
6 association in which a foreign national proposes to own or  
7 control 10 percent or more of any class of voting securities,  
8 and in the case of every application by a foreign national for  
9 approval to acquire control of a bank, trust company, or  
10 capital stock savings association, the Office of Financial  
11 Institutions and Securities Regulation ~~Department of Banking~~  
12 ~~and Finance~~ shall request that a public hearing be conducted  
13 pursuant to ss. 120.569 and 120.57. Notice of such hearing  
14 shall be published by the applicant as provided in  
15 subparagraph 2. The failure of any such foreign national to  
16 appear personally at the hearing shall be grounds for denial  
17 of the application. Notwithstanding the provisions of s.  
18 120.60(1) and subparagraph 3., every application involving a  
19 foreign national shall be approved or denied within 1 year  
20 after receipt of the original application or any timely  
21 requested additional information or the correction of any  
22 errors or omissions, or within 30 days after the conclusion of  
23 the public hearing on the application, whichever is later.

24           (b) In any application for a license or merger  
25 pursuant to title XXXVIII which is referred by the agency to  
26 the division for hearing, the administrative law judge shall  
27 complete and submit to the agency and to all parties a written  
28 report consisting of findings of fact and rulings on  
29 evidentiary matters. The agency shall allow each party at  
30 least 10 days in which to submit written exceptions to the  
31 report.

1           (9) OFFICE OF INSURANCE REGULATION ~~DEPARTMENT OF~~  
2 ~~INSURANCE~~.--Notwithstanding s. 120.60(1), every application  
3 for a certificate of authority as required by s. 624.401 shall  
4 be approved or denied within 180 days after receipt of the  
5 original application. Any application for a certificate of  
6 authority which is not approved or denied within the 180-day  
7 period, or within 30 days after conclusion of a public hearing  
8 held on the application, shall be deemed approved, subject to  
9 the satisfactory completion of conditions required by statute  
10 as a prerequisite to licensure.

11           Section 139. Subsection (8) of section 121.051,  
12 Florida Statutes, is amended to read:

13           121.051 Participation in the system.--

14           (8) DIVISION OF REHABILITATION AND LIQUIDATION  
15 EMPLOYEES MEMBERSHIP.--Effective July 1, 1994, the regular  
16 receivership employees of the Division of Rehabilitation and  
17 Liquidation of the Department of Financial Services who are  
18 assigned to established positions and are subject to  
19 established rules and regulations regarding discipline, pay,  
20 classification, and time and attendance are hereby declared to  
21 be state employees within the meaning of this chapter and  
22 shall be compulsory members in compliance with this chapter,  
23 the provisions of s. 216.011(1)(dd)2., notwithstanding.  
24 Employment performed before July 1, 1994, as such a  
25 receivership employee may be claimed as creditable retirement  
26 service upon payment by the employee or employer of  
27 contributions required in s. 121.081(1), as applicable for the  
28 period claimed.

29           Section 140. Paragraph (e) of subsection (1) of  
30 section 121.055, Florida Statutes, is amended to read:

31

1           121.055 Senior Management Service Class.--There is  
2 hereby established a separate class of membership within the  
3 Florida Retirement System to be known as the "Senior  
4 Management Service Class," which shall become effective  
5 February 1, 1987.

6           (1)

7           (e) Effective January 1, 1991, participation in the  
8 Senior Management Service Class shall be compulsory for the  
9 number of senior managers who have policymaking authority with  
10 the State Board of Administration, as determined by the  
11 Governor, Chief Financial Officer ~~Treasurer~~, and Attorney  
12 General ~~Comptroller~~ acting as the State Board of  
13 Administration, unless such member elects to participate in  
14 the Senior Management Service Optional Annuity Program as  
15 established in subsection (6) in lieu of participation in the  
16 Senior Management Service Class. Such election shall be made  
17 in writing and filed with the division and the personnel  
18 officer of the State Board of Administration within 90 days  
19 after becoming eligible for membership in the Senior  
20 Management Service Class.

21           Section 141. Paragraph (a) of subsection (2) of  
22 section 121.061, Florida Statutes, is amended to read:

23           121.061 Funding.--

24           (2)(a) Should any employer other than a state employer  
25 fail to make the retirement and social security contributions,  
26 both member and employer contributions, required by this  
27 chapter, then, upon request by the administrator, the  
28 Department of Revenue or the Department of Financial Services  
29 ~~Banking and Finance~~, as the case may be, shall deduct the  
30 amount owed by the employer from any funds to be distributed  
31 by it to the county, city, special district, or consolidated

1 form of government. The amounts so deducted shall be  
2 transferred to the administrator for further distribution to  
3 the trust funds in accordance with this chapter.

4 Section 142. Section 121.133, Florida Statutes, is  
5 amended to read:

6 121.133 Cancellation of uncashed  
7 warrants.--Notwithstanding the provisions of s. 17.26 or s.  
8 717.123 to the contrary, ~~effective July 1, 1998~~, if any state  
9 warrant issued by the Chief Financial Officer ~~Comptroller~~ for  
10 the payment of retirement benefits from the Florida Retirement  
11 System Trust Fund, or any other pension trust fund  
12 administered by the department, is not presented for payment  
13 within 1 year after the last day of the month in which it was  
14 originally issued, the Chief Financial Officer ~~Comptroller~~  
15 shall cancel the benefit warrant and credit the amount of the  
16 warrant to the Florida Retirement System Trust Fund or other  
17 pension trust fund administered by the department, as  
18 appropriate. The department may provide for issuance of a  
19 replacement warrant when deemed appropriate.

20 Section 143. Paragraph (b) of subsection (4) of  
21 section 122.35, Florida Statutes, is amended to read:

22 122.35 Funding.--

23 (4) Effective October 1, 1967, the proceeds of the  
24 intangible tax collections of the state remaining after the  
25 payment of administrative expenses, commissions which are  
26 applicable, and other costs incident to its collection shall  
27 be set aside into an account designated as account B of the  
28 Intangible Tax Trust Fund, which account shall also receive  
29 all of the matching payments for retirement and social  
30 security remitted by each officer or board as provided in  
31 subsection (1). The amounts received and deposited into

1 account B of the Intangible Tax Trust Fund are appropriated  
2 and shall be used for the following purposes and paid out on  
3 the priority basis as shown below:

4 (b) After the retirement and social security  
5 contributions of all members have been matched as provided in  
6 paragraph (a), the balance remaining in account B of the  
7 Intangible Tax Trust Fund shall be distributed as follows:

8 1. Each county shall receive each fiscal year ending  
9 June 30 an allocation in an amount equal to 55 percent of the  
10 total net intangible taxes collected and remitted to the  
11 Department of Revenue by the tax collector of the county  
12 during the prior fiscal year.

13 a. Commencing October 1, 1967, and every October 1  
14 thereafter and continuing on the first day of each subsequent  
15 month through June 30 of each fiscal year each board of county  
16 commissions of the several counties of the state shall receive  
17 an allocation from account B of the Intangible Tax Trust Fund.  
18 This allocation shall not include the school boards of the  
19 several counties of the state. The amount of said monthly  
20 allocation shall be equal to the average amount required to be  
21 matched by the Intangible Tax Trust Fund for the corresponding  
22 months during the 1966-1967 fiscal year as computed by the  
23 Chief Financial Officer ~~Comptroller~~, or one-twelfth of the  
24 Chief Financial Officer's ~~Comptroller's~~ estimate of the  
25 county's allocation, whichever is smaller, and an adjustment  
26 to reconcile the monthly allocations with the actual amount to  
27 be received pursuant to this subparagraph, shall be made not  
28 later than 60 days after the end of the fiscal year.

29 b. Each county, county agency and school board shall  
30 pay all matching cost for retirement and social security as  
31

1 required by this act and s. 238.11(1), notwithstanding the  
2 provisions of any other law.

3           2. The balance remaining in account B of the  
4 Intangible Tax Trust Fund after the retirement and social  
5 security contributions have been matched and the allocations  
6 to each county have been paid as provided in this act, shall  
7 be paid over to the General Revenue Fund of the state.

8           Section 144. Paragraphs (a) and (b) of subsection (11)  
9 of section 125.0104, Florida Statutes, are amended to read:

10           125.0104 Tourist development tax; procedure for  
11 levying; authorized uses; referendum; enforcement.--

12           (11) INTEREST PAID ON DISTRIBUTIONS.--

13           (a) Interest shall be paid on undistributed taxes  
14 collected and remitted to the Department of Revenue under this  
15 section. Such interest shall be included along with the tax  
16 proceeds distributed to the counties and shall be paid from  
17 moneys transferred from the General Revenue Fund. The  
18 department shall calculate the interest for net tax  
19 distributions using the average daily rate that was earned by  
20 the State Treasury for the preceding calendar quarter and paid  
21 to the General Revenue Fund. This rate shall be certified by  
22 the Chief Financial Officer ~~Treasurer~~ to the department by the  
23 20th day following the close of each quarter.

24           (b) The interest applicable to taxes collected under  
25 this section shall be calculated by multiplying the tax  
26 amounts to be distributed times the daily rate times the  
27 number of days after the third working day following the date  
28 the tax is due and payable pursuant to s. 212.11 until the  
29 date the department issues a voucher to request the Chief  
30 Financial Officer ~~Comptroller~~ to issue the payment warrant.  
31 The warrant shall be issued within 7 days after the request.

1           Section 145. Paragraph (b) of subsection (2) of  
2 section 129.201, Florida Statutes, is amended to read:

3           129.201 Budget of supervisor of elections; manner and  
4 time of preparation and presentation.--

5           (2)

6           (b) To the extent appropriate, the budget shall be  
7 further itemized in conformance with the Uniform Accounting  
8 System for Local Units of Government in Florida adopted  
9 ~~promulgated~~ by rule of the Chief Financial Officer ~~Comptroller~~  
10 ~~of the state.~~

11           Section 146. Section 131.05, Florida Statutes, is  
12 amended to read:

13           131.05 Disposition of proceeds of sale.--In the event  
14 refunding bonds are issued under the provisions of this  
15 chapter prior to the date of maturity or option date of the  
16 obligations proposed to be refunded, the proceeds of said  
17 refunding bonds shall be deposited in a bank or trust company  
18 within the state, which depository shall give a surety bond,  
19 or other such bonds as are authorized by law to be accepted  
20 for securing county and city funds, satisfactory to the  
21 Department of Financial Services ~~Banking and Finance~~ for the  
22 full amount of money so deposited, and the funds so deposited  
23 shall only be withdrawn with the approval of the department,  
24 for the purpose of paying the obligations to refund which said  
25 bonds were issued.

26           Section 147. Section 137.09, Florida Statutes, is  
27 amended to read:

28           137.09 Justification and approval of bonds.--Each  
29 surety upon every bond of any county officer shall make  
30 affidavit that he or she is a resident of the county for which  
31 the officer is to be commissioned, and that he or she has

1 sufficient visible property therein unencumbered and not  
2 exempt from sale under legal process to make good his or her  
3 bond. Every such bond shall be approved by the board of  
4 county commissioners and by the Department of Financial  
5 Services ~~Banking and Finance~~ when they and it are satisfied in  
6 their judgment that the same is legal, sufficient, and proper  
7 to be approved.

8 Section 148. Section 145.141, Florida Statutes, is  
9 amended to read:

10 145.141 Deficiency to be paid by board of county  
11 commissioners.--Should any county officer have insufficient  
12 revenue from the income of his or her office, after paying  
13 office personnel and expenses, to pay his or her total annual  
14 salary, the board of county commissioners shall pay any  
15 deficiency in salary from the general revenue fund and notify  
16 the Department of Financial Services ~~Banking and Finance~~. The  
17 deficiency shall be listed in the comptroller's annual report  
18 of county finances and county fee officers.

19 Section 149. Subsections (1) and (2) of section  
20 154.02, Florida Statutes, are amended to read:

21 154.02 County Health Department Trust Fund.--

22 (1) To enable counties to provide public health  
23 services and maintain public health equipment and facilities,  
24 each county in the state with a population exceeding 100,000,  
25 according to the last state census, may levy an annual tax not  
26 exceeding 0.5 mill; each county in the state with a population  
27 exceeding 40,000 and not exceeding 100,000, according to the  
28 last state census, may levy an annual tax not exceeding 1  
29 mill; and each county in the state with a population not  
30 exceeding 40,000, according to the last state census, may levy  
31 an annual tax not exceeding 2 mills, on the dollar on all

1 taxable property in such county, the proceeds of which tax, if  
2 so contracted with the state, shall be paid to the Chief  
3 Financial Officer ~~Treasurer~~. However, the board of county  
4 commissioners may elect to pay in 12 equal monthly  
5 installments. Such funds in the hands of the Chief Financial  
6 Officer ~~Treasurer~~ shall be placed in the county health  
7 department trust funds of the county by which such funds were  
8 raised, and such funds shall be expended by the Department of  
9 Health solely for the purpose of carrying out the intent and  
10 object of the public health contract.

11 (2) The Chief Financial Officer ~~Treasurer~~ shall  
12 maintain a full-time County Health Department Trust Fund which  
13 shall contain all state and local funds to be expended by  
14 county health departments. Such funds shall be expended by  
15 the Department of Health solely for the purposes of carrying  
16 out the intent and purpose of this part. Federal funds may be  
17 deposited in the trust fund.

18 Section 150. Subsection (1) of section 154.03, Florida  
19 Statutes, is amended to read:

20 154.03 Cooperation with Department of Health and  
21 United States Government.--

22 (1) The county commissioners of any county may agree  
23 with the Department of Health upon the expenditure by the  
24 department in such county of any funds allotted for that  
25 purpose by the department or received by it for such purposes  
26 from private contributions or other sources, and such funds  
27 shall be paid to the Chief Financial Officer ~~Treasurer~~ and  
28 shall form a part of the full-time county health department  
29 trust fund of such county; and such funds shall be expended by  
30 the department solely for the purposes of this chapter. The  
31 department is further authorized to arrange and agree with the

1 United States Government, through its duly authorized  
2 officials, for the allocation and expenditure by the United  
3 States of funds of the United States in the study of causes of  
4 disease and prevention thereof in such full-time county health  
5 departments when and where established by the department under  
6 this part.

7 Section 151. Section 154.05, Florida Statutes, is  
8 amended to read:

9 154.05 Cooperation and agreements between  
10 counties.--Two or more counties may combine in the  
11 establishment and maintenance of a single full-time county  
12 health department for the counties which combine for that  
13 purpose; and, pursuant to such combination or agreement, such  
14 counties may cooperate with one another and the Department of  
15 Health and contribute to a joint fund in carrying out the  
16 purpose and intent of this chapter. The duration and nature  
17 of such agreement shall be evidenced by resolutions of the  
18 boards of county commissioners of such counties and shall be  
19 submitted to and approved by the department. In the event of  
20 any such agreement, a full-time county health department shall  
21 be established and maintained by the department in and for the  
22 benefit of the counties which have entered into such an  
23 agreement; and, in such case, the funds raised by taxation  
24 pursuant to this chapter by each such county shall be paid to  
25 the Chief Financial Officer ~~Treasurer~~ for the account of the  
26 department and shall be known as the full-time county health  
27 department trust fund of the counties so cooperating. Such  
28 trust funds shall be used and expended by the department for  
29 the purposes specified in this chapter in each county which  
30 has entered into such agreement. In case such an agreement is  
31 entered into between two or more counties, the work

1 contemplated by this chapter shall be done by a single  
2 full-time county health department in the counties so  
3 cooperating; and the nature, extent, and location of such work  
4 shall be under the control and direction of the department.

5 Section 152. Subsection (2) of section 154.06, Florida  
6 Statutes, is amended to read:

7 154.06 Fees and services rendered; authority.--

8 (2) All funds collected under this section shall be  
9 expended solely for the purpose of providing health services  
10 and facilities within the county served by the county health  
11 department. Fees collected by county health departments  
12 pursuant to department rules shall be deposited with the Chief  
13 Financial Officer ~~Treasurer~~ and credited to the County Health  
14 Department Trust Fund. Fees collected by the county health  
15 department for public health services or personal health  
16 services shall be allocated to the state and the county based  
17 upon the pro rata share of funding for each such service. The  
18 board of county commissioners, if it has so contracted, shall  
19 provide for the transmittal of funds collected for its pro  
20 rata share of personal health services or primary care  
21 services rendered under the provisions of this section to the  
22 State Treasury for credit to the County Health Department  
23 Trust Fund, but in any event the proceeds from such fees may  
24 only be used to fund county health department services.

25 Section 153. Paragraphs (d) and (e) of subsection (17)  
26 of section 154.209, Florida Statutes, are amended to read:

27 154.209 Powers of authority.--The purpose of the  
28 authority shall be to assist health facilities in the  
29 acquisition, construction, financing, and refinancing of  
30 projects in any incorporated or unincorporated area within the  
31

1 geographical limits of the local agency. For this purpose,  
2 the authority is authorized and empowered:

3 (17) To issue special obligation revenue bonds for the  
4 purpose of establishing and maintaining the self-insurance  
5 pool and to provide reserve funds in connection therewith,  
6 such bonds to be payable from funds available in the pool from  
7 time to time or from assessments against participating health  
8 facilities for the purpose of providing required contributions  
9 to the fund. With respect to the issuance of such bonds or  
10 notes the following provisions shall apply:

11 (d) Any self-insurance pool funded pursuant to this  
12 section shall maintain excess insurance which provides  
13 specific and aggregate limits and a retention level determined  
14 in accordance with sound actuarial principles. The Office of  
15 Insurance Regulation of the Financial Services Commission  
16 ~~Department of Insurance~~ may waive this requirement if the fund  
17 demonstrates that its operation is and will be actuarially  
18 sound without obtaining excess insurance.

19 (e) Prior to the issuance of any bonds pursuant to  
20 this section for the purpose of acquiring liability coverage  
21 contracts from the self-insurance pool, the Office of  
22 Insurance Regulation ~~Department of Insurance~~ shall certify  
23 that excess liability coverage for the health facility is  
24 reasonably unobtainable in the amounts provided by such pool  
25 or that the liability coverage obtained through acquiring  
26 contracts from the self-insurance pool, after taking into  
27 account costs of issuance of bonds and any other  
28 administrative fees, is less expensive to the health facility  
29 than similar commercial coverage then reasonably available.

30 Section 154. Section 154.314, Florida Statutes, is  
31 amended to read:

1           154.314 Certification of the State of Florida.--

2           (1) In the event payment for the costs of services  
3 rendered by a participating hospital or a regional referral  
4 hospital is not received from the responsible county within 90  
5 days of receipt of a statement for services rendered to a  
6 qualified indigent who is a certified resident of the county,  
7 or if the payment is disputed and said payment is not received  
8 from the county determined to be responsible within 60 days of  
9 the date of exhaustion of all administrative and legal  
10 remedies, the hospital shall certify to the Chief Financial  
11 Officer ~~Comptroller~~ the amount owed by the county.

12           (2) The Chief Financial Officer ~~Comptroller~~ shall have  
13 no longer than 45 days from the date of receiving the  
14 hospital's certified notice to forward the amount delinquent  
15 to the appropriate hospital from any funds due to the county  
16 under any revenue-sharing or tax-sharing fund established by  
17 the state, except as otherwise provided by the State  
18 Constitution. The Chief Financial Officer ~~Comptroller~~ shall  
19 provide the Governor and the fiscal committees in the House of  
20 Representatives and the Senate with a quarterly accounting of  
21 the amounts certified by hospitals as owed by counties and the  
22 amount paid to hospitals out of any revenue or tax sharing  
23 funds due to the county.

24           Section 155. Paragraph (e) of subsection (7) of  
25 section 163.01, Florida Statutes, is amended to read:

26           163.01 Florida Interlocal Cooperation Act of 1969.--

27           (7)

28           (e)1. Notwithstanding the provisions of paragraph (c),  
29 any separate legal entity, created pursuant to the provisions  
30 of this section and controlled by counties or municipalities  
31 of this state, the membership of which consists or is to

1 consist only of public agencies of this state, may, for the  
2 purpose of financing acquisition of liability coverage  
3 contracts from one or more local government liability pools to  
4 provide liability coverage for counties, municipalities, or  
5 other public agencies of this state, exercise all powers in  
6 connection with the authorization, issuance, and sale of  
7 bonds. All of the privileges, benefits, powers, and terms of  
8 s. 125.01 relating to counties and s. 166.021 relating to  
9 municipalities shall be fully applicable to such entity and  
10 such entity shall be considered a unit of local government for  
11 all of the privileges, benefits, powers, and terms of part I  
12 of chapter 159. Bonds issued by such entity shall be deemed  
13 issued on behalf of counties, municipalities, or public  
14 agencies which enter into loan agreements with such entity as  
15 provided in this paragraph. Proceeds of bonds issued by such  
16 entity may be loaned to counties, municipalities, or other  
17 public agencies of this state, whether or not such counties,  
18 municipalities, or other public agencies are also members of  
19 the entity issuing the bonds, and such counties,  
20 municipalities, or other public agencies may in turn deposit  
21 such loan proceeds with a separate local government liability  
22 pool for purposes of acquiring liability coverage contracts.

23         2. Counties or municipalities of this state are  
24 authorized pursuant to this section, in addition to the  
25 authority provided by s. 125.01, part II of chapter 166, and  
26 other applicable law, to issue bonds for the purpose of  
27 acquiring liability coverage contracts from a local government  
28 liability pool. Any individual county or municipality may, by  
29 entering into interlocal agreements with other counties,  
30 municipalities, or public agencies of this state, issue bonds  
31 on behalf of itself and other counties, municipalities, or

1 other public agencies, for purposes of acquiring a liability  
2 coverage contract or contracts from a local government  
3 liability pool. Counties, municipalities, or other public  
4 agencies are also authorized to enter into loan agreements  
5 with any entity created pursuant to subparagraph 1., or with  
6 any county or municipality issuing bonds pursuant to this  
7 subparagraph, for the purpose of obtaining bond proceeds with  
8 which to acquire liability coverage contracts from a local  
9 government liability pool. No county, municipality, or other  
10 public agency shall at any time have more than one loan  
11 agreement outstanding for the purpose of obtaining bond  
12 proceeds with which to acquire liability coverage contracts  
13 from a local government liability pool. Obligations of any  
14 county, municipality, or other public agency of this state  
15 pursuant to a loan agreement as described above may be  
16 validated as provided in chapter 75. Prior to the issuance of  
17 any bonds pursuant to subparagraph 1. or this subparagraph for  
18 the purpose of acquiring liability coverage contracts from a  
19 local government liability pool, the reciprocal insurer or the  
20 manager of any self-insurance program shall demonstrate to the  
21 satisfaction of the Office of Insurance Regulation of the  
22 Financial Services Commission ~~Department of Insurance~~ that  
23 excess liability coverage for counties, municipalities, or  
24 other public agencies is reasonably unobtainable in the  
25 amounts provided by such pool or that the liability coverage  
26 obtained through acquiring contracts from a local government  
27 liability pool, after taking into account costs of issuance of  
28 bonds and any other administrative fees, is less expensive to  
29 counties, municipalities, or special districts than similar  
30 commercial coverage then reasonably available.

31

1           3. Any entity created pursuant to this section or any  
2 county or municipality may also issue bond anticipation notes,  
3 as provided by s. 215.431, in connection with the  
4 authorization, issuance, and sale of such bonds. In addition,  
5 the governing body of such legal entity or the governing body  
6 of such county or municipality may also authorize bonds to be  
7 issued and sold from time to time and may delegate, to such  
8 officer, official, or agent of such legal entity as the  
9 governing body of such legal entity may select, the power to  
10 determine the time; manner of sale, public or private;  
11 maturities; rate or rates of interest, which may be fixed or  
12 may vary at such time or times and in accordance with a  
13 specified formula or method of determination; and other terms  
14 and conditions as may be deemed appropriate by the officer,  
15 official, or agent so designated by the governing body of such  
16 legal entity. However, the amounts and maturities of such  
17 bonds and the interest rate or rates of such bonds shall be  
18 within the limits prescribed by the governing body of such  
19 legal entity and its resolution delegating to such officer,  
20 official, or agent the power to authorize the issuance and  
21 sale of such bonds. Any series of bonds issued pursuant to  
22 this paragraph shall mature no later than 7 years following  
23 the date of issuance thereof.

24           4. Bonds issued pursuant to subparagraph 1. may be  
25 validated as provided in chapter 75. The complaint in any  
26 action to validate such bonds shall be filed only in the  
27 Circuit Court for Leon County. The notice required to be  
28 published by s. 75.06 shall be published in Leon County and in  
29 each county which is an owner of the entity issuing the bonds,  
30 or in which a member of the entity is located, and the  
31 complaint and order of the circuit court shall be served only

1 on the State Attorney of the Second Judicial Circuit and on  
2 the state attorney of each circuit in each county or  
3 municipality which is an owner of the entity issuing the bonds  
4 or in which a member of the entity is located.

5           5. Bonds issued pursuant to subparagraph 2. may be  
6 validated as provided in chapter 75. The complaint in any  
7 action to validate such bonds shall be filed in the circuit  
8 court of the county or municipality which will issue the  
9 bonds. The notice required to be published by s. 75.06 shall  
10 be published only in the county where the complaint is filed,  
11 and the complaint and order of the circuit court shall be  
12 served only on the state attorney of the circuit in the county  
13 or municipality which will issue the bonds.

14           6. The participation by any county, municipality, or  
15 other public agency of this state in a local government  
16 liability pool shall not be deemed a waiver of immunity to the  
17 extent of liability coverage, nor shall any contract entered  
18 regarding such a local government liability pool be required  
19 to contain any provision for waiver.

20           Section 156. Subsections (4), (5), (6), (7), (8), and  
21 (9) of section 163.055, Florida Statutes, are amended to read:

22           163.055 Local Government Financial Technical  
23 Assistance Program.--

24           (4) The Chief Financial Officer ~~Comptroller~~ shall  
25 enter into contracts with program providers who shall:

26           (a) Be a public agency or private, nonprofit  
27 corporation, association, or entity.

28           (b) Use existing resources, services, and information  
29 that are available from state or local agencies, universities,  
30 or the private sector.

31

1 (c) Seek and accept funding from any public or private  
2 source.

3 (d) Annually submit information to assist the  
4 Legislative Committee on Intergovernmental Relations in  
5 preparing a performance review that will include an analysis  
6 of the effectiveness of the program.

7 (e) Assist municipalities and independent special  
8 districts in developing alternative revenue sources.

9 (f) Provide for an annual independent financial audit  
10 of the program, if the program receives funding.

11 (g) Provide assistance to municipalities and special  
12 districts in the areas of financial management, accounting,  
13 investing, budgeting, and debt issuance.

14 (h) Develop a needs assessment to determine where  
15 assistance should be targeted, and to establish a priority  
16 system to deliver assistance to those jurisdictions most in  
17 need through the most economical means available.

18 (i) Provide financial emergency assistance upon  
19 direction from the Executive Office of the Governor pursuant  
20 to s. 218.503.

21 (5)(a) The Chief Financial Officer ~~Comptroller~~ shall  
22 issue a request for proposals to provide assistance to  
23 municipalities and special districts. At the request of the  
24 Chief Financial Officer ~~Comptroller~~, the Legislative Committee  
25 on Intergovernmental Relations shall assist in the preparation  
26 of the request for proposals.

27 (b) The Chief Financial Officer ~~Comptroller~~ shall  
28 review each contract proposal submitted.

29 (c) The Legislative Committee on Intergovernmental  
30 Relations shall review each contract proposal and submit to  
31 the Chief Financial Officer ~~Comptroller~~, in writing, advisory

1 comments and recommendations, citing with specificity the  
2 reasons for its recommendations.

3 (d) The Chief Financial Officer ~~Comptroller~~ and the  
4 Legislative Committee on Intergovernmental Relations shall  
5 consider the following factors in reviewing contract  
6 proposals:

7 1. The demonstrated capacity of the provider to  
8 conduct needs assessments and implement the program as  
9 proposed.

10 2. The number of municipalities and special districts  
11 to be served under the proposal.

12 3. The cost of the program as specified in a proposed  
13 budget.

14 4. The short-term and long-term benefits of the  
15 assistance to municipalities and special districts.

16 5. The form and extent to which existing resources,  
17 services, and information that are available from state and  
18 local agencies, universities, and the private sector will be  
19 used by the provider under the contract.

20 (6) A decision of the Chief Financial Officer  
21 ~~Comptroller~~ to award a contract under this section is final  
22 and shall be in writing with a copy provided to the  
23 Legislative Committee on Intergovernmental Relations.

24 (7) The Chief Financial Officer ~~Comptroller~~ may enter  
25 into contracts and agreements with other state and local  
26 agencies and with any person, association, corporation, or  
27 entity other than the program providers, for the purpose of  
28 administering this section.

29 (8) The Chief Financial Officer ~~Comptroller~~ shall  
30 provide fiscal oversight to ensure that funds expended for the  
31

1 program are used in accordance with the contracts entered into  
2 pursuant to subsection (4).

3 (9) The Legislative Committee on Intergovernmental  
4 Relations shall annually conduct a performance review of the  
5 program. The findings of the review shall be presented in a  
6 report submitted to the Governor, the President of the Senate,  
7 the Speaker of the House of Representatives, and the Chief  
8 Financial Officer ~~Comptroller~~ by January 15 of each year.

9 Section 157. Subsection (6) of section 163.3167,  
10 Florida Statutes, is amended to read:

11 163.3167 Scope of act.--

12 (6) When a regional planning agency is required to  
13 prepare or amend a comprehensive plan, or element or portion  
14 thereof, pursuant to subsections (3) and (4), the regional  
15 planning agency and the local government may agree to a method  
16 of compensating the regional planning agency for any  
17 verifiable, direct costs incurred. If an agreement is not  
18 reached within 6 months after the date the regional planning  
19 agency assumes planning responsibilities for the local  
20 government pursuant to subsections (3) and (4) or by the time  
21 the plan or element, or portion thereof, is completed,  
22 whichever is earlier, the regional planning agency shall file  
23 invoices for verifiable, direct costs involved with the  
24 governing body. Upon the failure of the local government to  
25 pay such invoices within 90 days, the regional planning agency  
26 may, upon filing proper vouchers with the Chief Financial  
27 Officer ~~State Comptroller~~, request payment by the Chief  
28 Financial Officer ~~State Comptroller~~ from unencumbered revenue  
29 or other tax sharing funds due such local government from the  
30 state for work actually performed, and the Chief Financial  
31 Officer ~~State Comptroller~~ shall pay such vouchers; however,

1 the amount of such payment shall not exceed 50 percent of such  
2 funds due such local government in any one year.

3 Section 158. Section 166.111, Florida Statutes, is  
4 amended to read:

5 166.111 Authority to borrow.--

6 ~~(1)~~ The governing body of every municipality may  
7 borrow money, contract loans, and issue bonds as defined in s.  
8 166.101 from time to time to finance the undertaking of any  
9 capital or other project for the purposes permitted by the  
10 State Constitution and may pledge the funds, credit, property,  
11 and taxing power of the municipality for the payment of such  
12 debts and bonds.

13 ~~(2)(a) The Legislature finds:~~

14 ~~1. The widespread and massive damage to persons and~~  
15 ~~property caused by the August 24, 1992, storm known as~~  
16 ~~Hurricane Andrew has generated insurance claims of such a~~  
17 ~~nature as to render numerous insurers operating within this~~  
18 ~~state insolvent, and therefore unable to satisfy covered~~  
19 ~~claims.~~

20 ~~2. The inability of insureds within this state to~~  
21 ~~receive payment of covered claims or to receive such payment~~  
22 ~~on a timely basis creates financial and other hardships for~~  
23 ~~such insureds and places undue burdens on the state, the~~  
24 ~~affected units of local government, and the community at~~  
25 ~~large.~~

26 ~~3. In addition, the failure of insurers to pay covered~~  
27 ~~claims or to pay such claims on a timely basis due to the~~  
28 ~~insolvency of such insurers can undermine the public's~~  
29 ~~confidence in insurers operating within this state, thereby~~  
30 ~~adversely affecting the stability of the insurance industry in~~  
31 ~~this state.~~

1           ~~4. The state has previously taken action to address~~  
2 ~~these problems by adopting the Florida Insurance Guaranty~~  
3 ~~Association Act, which, among other things, provides a~~  
4 ~~mechanism for the payment of covered claims under certain~~  
5 ~~insurance policies to avoid excessive delay in payment and to~~  
6 ~~avoid financial loss to claimants or policyholders because of~~  
7 ~~the insolvency of an insurer.~~

8           ~~5. In the wake of the unprecedented destruction caused~~  
9 ~~by Hurricane Andrew, the resultant covered claims, and the~~  
10 ~~number of insurers rendered insolvent thereby, it is evident~~  
11 ~~that alternative programs must be developed to allow the~~  
12 ~~Florida Insurance Guaranty Association to more expeditiously~~  
13 ~~and effectively provide for the payment of covered claims.~~

14           ~~6. It is therefore determined to be in the best~~  
15 ~~interests of, and necessary for, the protection of the public~~  
16 ~~health, safety, and general welfare of the residents of this~~  
17 ~~state, and for the protection and preservation of the economic~~  
18 ~~stability of insurers operating in this state, and it is~~  
19 ~~hereby declared to be an essential public purpose, to permit~~  
20 ~~certain municipalities to take such actions as will provide~~  
21 ~~relief to claimants and policyholders having covered claims~~  
22 ~~against insolvent insurers operating in this state, by~~  
23 ~~expediting the handling and payment of covered claims.~~

24           ~~7. To achieve the foregoing purposes, it is proper to~~  
25 ~~authorize municipalities of this state substantially affected~~  
26 ~~by Hurricane Andrew to issue bonds to assist the Florida~~  
27 ~~Insurance Guaranty Association in expediting the handling and~~  
28 ~~payment of covered claims against insolvent insurers operating~~  
29 ~~in this state.~~

30           ~~8. In order to avoid the needless and indiscriminate~~  
31 ~~proliferation, duplication, and fragmentation of such~~

1 ~~assistance programs, it is proper to authorize a municipality~~  
2 ~~severely affected by Hurricane Andrew to provide for the~~  
3 ~~payment of covered claims beyond its territorial limits in the~~  
4 ~~implementation of such programs.~~

5 ~~(b) The governing body of any municipality the~~  
6 ~~residents of which have been substantially affected by the~~  
7 ~~August 24, 1992, storm known as Hurricane Andrew, or any~~  
8 ~~county as defined in s. 125.011(1), may issue no more than~~  
9 ~~\$500 million, in aggregate principal amount, of bonds as~~  
10 ~~defined in s. 166.101 from time to time to fund an assistance~~  
11 ~~program, in conjunction with the Florida Insurance Guaranty~~  
12 ~~Association, for the purpose of paying to claimants or~~  
13 ~~policyholders covered claims, as such term is defined in s.~~  
14 ~~631.54(3), arising through the insolvency of an insurer~~  
15 ~~occurring on or before March 31, 1993, which insolvency is~~  
16 ~~determined by the Florida Insurance Guaranty Association to~~  
17 ~~have been a result of Hurricane Andrew, regardless of whether~~  
18 ~~such claimants or policyholders are residents of such~~  
19 ~~municipality or the property to which such claim relates is~~  
20 ~~located within or outside of the territorial jurisdiction of~~  
21 ~~such municipality. A municipality issuing bonds for this~~  
22 ~~purpose shall enter into such contracts with the Florida~~  
23 ~~Insurance Guaranty Association or any entity acting on behalf~~  
24 ~~of the Florida Insurance Guaranty Association as are necessary~~  
25 ~~to implement the assistance program. Any bonds issued by a~~  
26 ~~municipality under this subsection shall be payable from and~~  
27 ~~secured by moneys received by or on behalf of the municipality~~  
28 ~~from assessments levied under s. 631.57(3)(e), and assigned~~  
29 ~~and pledged under s. 631.57(3)(e) to or on behalf of the~~  
30 ~~municipality for the benefit of the holders of such bonds in~~  
31 ~~connection with such assistance program. The funds, credit,~~

1 ~~property, and taxing power of the municipality shall not be~~  
2 ~~pledged for the payment of such bonds.~~

3 ~~(c) The governing body of the municipality issuing~~  
4 ~~bonds authorized by paragraph (b) shall require all firms,~~  
5 ~~including, but not limited to, the financial advisers, legal~~  
6 ~~counsel, and underwriters, providing professional services in~~  
7 ~~the issuance of such bonds to include minority firms in the~~  
8 ~~provision of such services. To meet such participation~~  
9 ~~requirement, the minority firm must have full-time employees~~  
10 ~~located in this state and a permanent place of business~~  
11 ~~located in this state, and must be a firm which is at least 51~~  
12 ~~percent owned by minority persons as defined by s. 288.703(3),~~  
13 ~~or any combination thereof, and whose management and daily~~  
14 ~~operations are controlled by such persons. Minority firms must~~  
15 ~~be offered participation in not less than 20 percent of the~~  
16 ~~respective contracts for professional services.~~

17 Section 159. Paragraph (a) of subsection (8) of  
18 section 175.032, Florida Statutes, is amended to read:

19 175.032 Definitions.--For any municipality, special  
20 fire control district, chapter plan, local law municipality,  
21 local law special fire control district, or local law plan  
22 under this chapter, the following words and phrases have the  
23 following meanings:

24 (8)(a) "Firefighter" means any person employed solely  
25 by a constituted fire department of any municipality or  
26 special fire control district who is certified as a  
27 firefighter as a condition of employment in accordance with  
28 the provisions of s. 633.35 and whose duty it is to extinguish  
29 fires, to protect life, or to protect property. However, for  
30 purposes of this chapter only, "firefighter" also includes  
31 public safety officers who are responsible for performing both

1 police and fire services, who are certified as police officers  
2 or firefighters, and who are certified by their employers to  
3 the Chief Financial Officer ~~Insurance Commissioner and~~  
4 ~~Treasurer~~ as participating in this chapter prior to October 1,  
5 1979. Effective October 1, 1979, public safety officers who  
6 have not been certified as participating in this chapter shall  
7 be considered police officers for retirement purposes and  
8 shall be eligible to participate in chapter 185. Any plan may  
9 provide that the fire chief shall have an option to  
10 participate, or not, in that plan.

11 Section 160. Subsection (1) of section 175.101,  
12 Florida Statutes, is amended to read:

13 175.101 State excise tax on property insurance  
14 premiums authorized; procedure.--For any municipality, special  
15 fire control district, chapter plan, local law municipality,  
16 local law special fire control district, or local law plan  
17 under this chapter:

18 (1) Each municipality or special fire control district  
19 in this state described and classified in s. 175.041, having a  
20 lawfully established firefighters' pension trust fund or  
21 municipal fund or special fire control district fund, by  
22 whatever name known, providing pension benefits to  
23 firefighters as provided under this chapter, may assess and  
24 impose on every insurance company, corporation, or other  
25 insurer now engaged in or carrying on, or who shall  
26 hereinafter engage in or carry on, the business of property  
27 insurance as shown by the records of the Office of Insurance  
28 Regulation of the Financial Services Commission ~~Department of~~  
29 ~~Insurance~~ an excise tax in addition to any lawful license or  
30 excise tax now levied by each of the municipalities or special  
31 fire control districts, respectively, amounting to 1.85

1 percent of the gross amount of receipts of premiums from  
2 policyholders on all premiums collected on property insurance  
3 policies covering property within the corporate limits of such  
4 municipalities or within the legally defined boundaries of  
5 special fire control districts, respectively. Whenever the  
6 boundaries of a special fire control district that has  
7 lawfully established a firefighters' pension trust fund  
8 encompass a portion of the corporate territory of a  
9 municipality that has also lawfully established a  
10 firefighters' pension trust fund, that portion of the tax  
11 receipts attributable to insurance policies covering property  
12 situated both within the municipality and the special fire  
13 control district shall be given to the fire service provider.  
14 The agent shall identify the fire service provider on the  
15 property owner's application for insurance. Remaining  
16 revenues collected pursuant to this chapter shall be  
17 distributed to the municipality or special fire control  
18 district according to the location of the insured property.

19  
20 This section also applies to any municipality consisting of a  
21 single consolidated government which is made up of a former  
22 county and one or more municipalities, consolidated pursuant  
23 to the authority in s. 3 or s. 6(e), Art. VIII of the State  
24 Constitution, and to property insurance policies covering  
25 property within the boundaries of the consolidated government,  
26 regardless of whether the properties are located within one or  
27 more separately incorporated areas within the consolidated  
28 government, provided the properties are being provided fire  
29 protection services by the consolidated government.

30 Section 161. Subsection (2) of section 175.121,  
31 Florida Statutes, is amended to read:

1           175.121 Department of Revenue and Division of  
2 Retirement to keep accounts of deposits; disbursements.--For  
3 any municipality or special fire control district having a  
4 chapter or local law plan established pursuant to this  
5 chapter:

6           (2) The Chief Financial Officer ~~Comptroller~~ shall, on  
7 or before July 1 of each year, and at such other times as  
8 authorized by the division, draw his or her warrants on the  
9 full net amount of money then on deposit in the Police and  
10 Firefighters' Premium Tax Trust Fund pursuant to this chapter,  
11 specifying the municipalities and special fire control  
12 districts to which the moneys must be paid and the net amount  
13 collected for and to be paid to each municipality or special  
14 fire control district, respectively, subject to the limitation  
15 on disbursement under s. 175.122. The sum payable to each  
16 municipality or special fire control district is appropriated  
17 annually out of the Police and Firefighters' Premium Tax Trust  
18 Fund. The warrants of the Chief Financial Officer ~~Comptroller~~  
19 shall be payable to the respective municipalities and special  
20 fire control districts entitled to receive them and shall be  
21 remitted annually by the division to the respective  
22 municipalities and special fire control districts. In lieu  
23 thereof, the municipality or special fire control district may  
24 provide authorization to the division for the direct payment  
25 of the premium tax to the board of trustees. In order for a  
26 municipality or special fire control district and its pension  
27 fund to participate in the distribution of premium tax moneys  
28 under this chapter, all the provisions shall be complied with  
29 annually, including state acceptance pursuant to part VII of  
30 chapter 112.

31

1           Section 162. Section 175.151, Florida Statutes, is  
2 amended to read:

3           175.151 Penalty for failure of insurers to comply with  
4 this act.--If ~~Should~~ any insurance company, corporation or  
5 other insurer fails ~~fail~~ to comply with the provisions of this  
6 act, on or before March 1 of each year as herein provided, the  
7 certificate of authority issued to said insurance company,  
8 corporation or other insurer to transact business in this  
9 state may be canceled and revoked by the Office of Insurance  
10 Regulation of the Financial Services Commission ~~Department of~~  
11 ~~Insurance~~, and it is unlawful for any such insurance company,  
12 corporation, or other insurer to transact business thereafter  
13 in this state unless such insurance company, corporation, or  
14 other insurer shall be granted a new certificate of authority  
15 to transact any business in this state, in compliance with  
16 provisions of law authorizing such certificate of authority to  
17 be issued. The division is responsible for notifying the  
18 Office of Insurance Regulation ~~Department of Insurance~~  
19 regarding any such failure to comply.

20           Section 163. Subsection (1) of section 185.08, Florida  
21 Statutes, is amended to read:

22           185.08 State excise tax on casualty insurance premiums  
23 authorized; procedure.--For any municipality, chapter plan,  
24 local law municipality, or local law plan under this chapter:

25           (1) Each incorporated municipality in this state  
26 described and classified in s. 185.03, as well as each other  
27 city or town of this state which on July 31, 1953, had a  
28 lawfully established municipal police officers' retirement  
29 trust fund or city fund, by whatever name known, providing  
30 pension or relief benefits to police officers as provided  
31 under this chapter, may assess and impose on every insurance

1 company, corporation, or other insurer now engaged in or  
2 carrying on, or who shall hereafter engage in or carry on, the  
3 business of casualty insurance as shown by records of the  
4 Office of Insurance Regulation of the Financial Services  
5 Commission ~~Department of Insurance~~, an excise tax in addition  
6 to any lawful license or excise tax now levied by each of the  
7 said municipalities, respectively, amounting to .85 percent of  
8 the gross amount of receipts of premiums from policyholders on  
9 all premiums collected on casualty insurance policies covering  
10 property within the corporate limits of such municipalities,  
11 respectively.

12 Section 164. Subsection (2) of section 185.10, Florida  
13 Statutes, is amended to read:

14 185.10 Department of Revenue and Division of  
15 Retirement to keep accounts of deposits; disbursements.--For  
16 any municipality having a chapter plan or local law plan under  
17 this chapter:

18 (2) The Chief Financial Officer ~~Comptroller~~ shall, on  
19 or before July 1 of each year, and at such other times as  
20 authorized by the division, draw his or her warrants on the  
21 full net amount of money then on deposit pursuant to this  
22 chapter in the Police and Firefighters' Premium Tax Trust  
23 Fund, specifying the municipalities to which the moneys must  
24 be paid and the net amount collected for and to be paid to  
25 each municipality, respectively. The sum payable to each  
26 municipality is appropriated annually out of the Police and  
27 Firefighters' Premium Tax Trust Fund. The warrants of the  
28 Chief Financial Officer ~~Comptroller~~ shall be payable to the  
29 respective municipalities entitled to receive them and shall  
30 be remitted annually by the division to the respective  
31 municipalities. In lieu thereof, the municipality may provide

1 authorization to the division for the direct payment of the  
2 premium tax to the board of trustees. In order for a  
3 municipality and its retirement fund to participate in the  
4 distribution of premium tax moneys under this chapter, all the  
5 provisions shall be complied with annually, including state  
6 acceptance pursuant to part VII of chapter 112.

7 Section 165. Section 185.13, Florida Statutes, is  
8 amended to read:

9 185.13 Failure of insurer to comply with chapter;  
10 penalty.--~~If should~~ any insurance company, corporation or  
11 other insurer fails fail to comply with the provisions of this  
12 chapter, on or before March 1 in each year as herein provided,  
13 the certificate of authority issued to said insurance company,  
14 corporation or other insurer to transact business in this  
15 state may be canceled and revoked by the Office of Insurance  
16 Regulation of the Financial Services Commission ~~Department of~~  
17 ~~Insurance~~, and it is unlawful for any such insurance company,  
18 corporation or other insurer to transact any business  
19 thereafter in this state unless such insurance company,  
20 corporation or other insurer shall be granted a new  
21 certificate of authority to transact business in this state,  
22 in compliance with provisions of law authorizing such  
23 certificate of authority to be issued. The division shall be  
24 responsible for notifying the Office of Insurance Regulation  
25 ~~Department of Insurance~~ regarding any such failure to comply.

26 Section 166. Subsections (2), (3), and (5) of section  
27 189.4035, Florida Statutes, are amended to read:

28 189.4035 Preparation of official list of special  
29 districts.--

30 (2) The official list shall be produced by the  
31 department after the department has notified each special

1 district that is currently reporting to the department, the  
2 Department of Financial Services ~~Banking and Finance~~ pursuant  
3 to s. 218.32, or the Auditor General pursuant to s. 218.39.  
4 Upon notification, each special district shall submit, within  
5 60 days, its determination of its status. The determination  
6 submitted by a special district shall be consistent with the  
7 status reported in the most recent local government audit of  
8 district activities submitted to the Auditor General pursuant  
9 to s. 218.39.

10 (3) The Department of Financial Services ~~Banking and~~  
11 ~~Finance~~ shall provide the department with a list of dependent  
12 special districts reporting pursuant to s. 218.32 for  
13 inclusion on the official list of special districts.

14 (5) The official list of special districts shall be  
15 distributed by the department on October 1 of each year to the  
16 President of the Senate, the Speaker of the House of  
17 Representatives, the Auditor General, the Department of  
18 Revenue, the Department of Financial Services ~~Banking and~~  
19 ~~Finance~~, the Department of Management Services, the State  
20 Board of Administration, counties, municipalities, county  
21 property appraisers, tax collectors, and supervisors of  
22 elections and to all interested parties who request the list.

23 Section 167. Subsection (1) of section 189.412,  
24 Florida Statutes, is amended to read:

25 189.412 Special District Information Program; duties  
26 and responsibilities.--The Special District Information  
27 Program of the Department of Community Affairs is created and  
28 has the following special duties:

29 (1) The collection and maintenance of special district  
30 compliance status reports from the Auditor General, the  
31 Department of Financial Services ~~Banking and Finance~~, the

1 Division of Bond Finance of the State Board of Administration,  
2 the Department of Management Services, the Department of  
3 Revenue, and the Commission on Ethics for the reporting  
4 required in ss. 112.3144, 112.3145, 112.3148, 112.3149,  
5 112.63, 200.068, 218.32, 218.38, 218.39, and 280.17 and  
6 chapter 121 and from state agencies administering programs  
7 that distribute money to special districts. The special  
8 district compliance status reports must consist of a list of  
9 special districts used in that state agency and a list of  
10 which special districts did not comply with the reporting  
11 statutorily required by that agency.

12 Section 168. Section 189.427, Florida Statutes, is  
13 amended to read:

14 189.427 Fee schedule; Operating Trust Fund.--The  
15 Department of Community Affairs, by rule, shall establish a  
16 schedule of fees to pay one-half of the costs incurred by the  
17 department in administering this act, except that the fee may  
18 not exceed \$175 per district per year. The fees collected  
19 under this section shall be deposited in the Operating Trust  
20 Fund, which shall be administered by the Department of  
21 Community Affairs. Any fee rule must consider factors such as  
22 the dependent and independent status of the district and  
23 district revenues for the most recent fiscal year as reported  
24 to the Department of Financial Services ~~Banking and Finance~~.  
25 The department may assess fines of not more than \$25, with an  
26 aggregate total not to exceed \$50, as penalties against  
27 special districts that fail to remit required fees to the  
28 department. It is the intent of the Legislature that general  
29 revenue funds will be made available to the department to pay  
30 one-half of the cost of administering this act.

31

1           Section 169. Subsection (3) of section 190.007,  
2 Florida Statutes, is amended to read:

3           190.007 Board of supervisors; general duties.--

4           (3) The board is authorized to select as a depository  
5 for its funds any qualified public depository as defined in s.  
6 280.02 which meets all the requirements of chapter 280 and has  
7 been designated by the Chief Financial Officer ~~Treasurer~~ as a  
8 qualified public depository, upon such terms and conditions as  
9 to the payment of interest by such depository upon the funds  
10 so deposited as the board may deem just and reasonable.

11           Section 170. Subsection (16) of section 191.006,  
12 Florida Statutes, is amended to read:

13           191.006 General powers.--The district shall have, and  
14 the board may exercise by majority vote, the following powers:

15           (16) To select as a depository for its funds any  
16 qualified public depository as defined in s. 280.02 which  
17 meets all the requirements of chapter 280 and has been  
18 designated by the Chief Financial Officer ~~State Treasurer~~ as a  
19 qualified public depository, upon such terms and conditions as  
20 to the payment of interest upon the funds deposited as the  
21 board deems just and reasonable.

22           Section 171. Subsection (4) of section 192.091,  
23 Florida Statutes, is amended to read:

24           192.091 Commissions of property appraisers and tax  
25 collectors.--

26           (4) The commissions for collecting taxes assessed for  
27 or levied by the state shall be audited, and allowed, ~~by the~~  
28 ~~Comptroller~~ and ~~shall be paid by the~~ Chief Financial Officer  
29 ~~Treasurer~~ as other ~~Comptroller's~~ warrants are paid; and  
30 commissions for collecting the county taxes shall be audited  
31 and paid by the boards of county commissioners of the several

1 counties of this state. The commissions for collecting all  
2 special school district taxes shall be audited by the school  
3 board of each respective district and taken out of the funds  
4 of the respective special school district under its control  
5 and allowed and paid to the tax collectors for collecting such  
6 taxes; and the commissions for collecting all other district  
7 taxes, whether special or not, shall be audited and paid by  
8 the governing board or commission having charge of the  
9 financial obligations of such district. All commissions for  
10 collecting special tax district taxes shall be paid at the  
11 time and in the manner now, or as may hereafter be, provided  
12 for the payment of the commissions for the collection of  
13 county taxes. All amounts paid as compensation to any tax  
14 collector under the provisions of this or any other law shall  
15 be a part of the general income or compensation of such  
16 officer for the year in which received, and nothing contained  
17 in this section shall be held or construed to affect or  
18 increase the maximum salary as now provided by law for any  
19 such officer.

20 Section 172. Subsection (3) of section 192.102,  
21 Florida Statutes, is amended to read:

22 192.102 Payment of property appraisers' and  
23 collectors' commissions.--

24 (3) The Chief Financial Officer ~~Comptroller of the~~  
25 ~~state~~ shall issue to each of the county property appraisers  
26 and collectors of taxes, on the first Monday of January,  
27 April, July, and October, on demand of such county property  
28 appraisers and collectors of taxes after approval by the  
29 Department of Revenue, and shall pay, his or her warrant,  
30 ~~which shall be paid by the Treasurer of the state,~~ for an  
31 amount equal to one-fourth of four-fifths of the total amount

1 of commissions received by such county property appraisers and  
2 collectors of taxes or their predecessors in office from the  
3 state during and for the preceding year, and the balance of  
4 the commissions earned by such county property appraiser and  
5 collector of taxes, respectively, during each year, over and  
6 above the amount of such installment payments herein provided  
7 for, shall be payable when a report of errors and double  
8 assessments is approved by the county commissioners and a copy  
9 thereof filed with the Department of Revenue.

10 Section 173. Subsection (1) of section 193.092,  
11 Florida Statutes, is amended to read:

12 193.092 Assessment of property for back taxes.--

13 (1) When it shall appear that any ad valorem tax might  
14 have been lawfully assessed or collected upon any property in  
15 the state, but that such tax was not lawfully assessed or  
16 levied, and has not been collected for any year within a  
17 period of 3 years next preceding the year in which it is  
18 ascertained that such tax has not been assessed, or levied, or  
19 collected, then the officers authorized shall make the  
20 assessment of taxes upon such property in addition to the  
21 assessment of such property for the current year, and shall  
22 assess the same separately for such property as may have  
23 escaped taxation at and upon the basis of valuation applied to  
24 such property for the year or years in which it escaped  
25 taxation, noting distinctly the year when such property  
26 escaped taxation and such assessment shall have the same force  
27 and effect as it would have had if it had been made in the  
28 year in which the property shall have escaped taxation, and  
29 taxes shall be levied and collected thereon in like manner and  
30 together with taxes for the current year in which the  
31 assessment is made. But no property shall be assessed for

1 more than 3 years' arrears of taxation, and all property so  
2 escaping taxation shall be subject to such taxation to be  
3 assessed in whomsoever's hands or possession the same may be  
4 found, except that property acquired by a bona fide purchaser  
5 who was without knowledge of the escaped taxation shall not be  
6 subject to assessment for taxes for any time prior to the time  
7 of such purchase, but it is the duty of the property appraiser  
8 making such assessment to serve upon the previous owner a  
9 notice of intent to record in the public records of the county  
10 a notice of tax lien against any property owned by that person  
11 in the county. Any property owned by such previous owner which  
12 is situated in this state is subject to the lien of such  
13 assessment in the same manner as a recorded judgment. Before  
14 any such lien may be recorded, the owner so notified must be  
15 given 30 days to pay the taxes, penalties, and interest. Once  
16 recorded, such lien may be recorded in any county in this  
17 state and shall constitute a lien on any property of such  
18 person in such county in the same manner as a recorded  
19 judgment, and may be enforced by the tax collector using all  
20 remedies pertaining to same; provided, that the county  
21 property appraiser shall not assess any lot or parcel of land  
22 certified or sold to the state for any previous years unless  
23 such lot or parcel of lands so certified or sold shall be  
24 included in the list furnished by the Chief Financial Officer  
25 ~~Comptroller~~ to the county property appraiser as provided by  
26 law; provided, if real or personal property be assessed for  
27 taxes, and because of litigation delay ensues and the  
28 assessment be held invalid the taxing authorities, may  
29 reassess such property within the time herein provided after  
30 the termination of such litigation; provided further, that  
31 personal property acquired in good faith by purchase shall not

1 be subject to assessment for taxes for any time prior to the  
2 time of such purchase, but the individual or corporation  
3 liable for any such assessment shall continue personally  
4 liable for same. As used in this subsection, the term "bona  
5 fide purchaser" means a purchaser for value, in good faith,  
6 before certification of such assessment of back taxes to the  
7 tax collector for collection.

8 Section 174. Section 195.101, Florida Statutes, is  
9 amended to read:

10 195.101 Withholding of state funds.--

11 (1) The Department of Revenue is hereby directed to  
12 determine each year whether the several counties of this state  
13 are assessing the real and tangible personal property within  
14 their jurisdiction in accordance with law. If the Department  
15 of Revenue determines that any county is assessing property at  
16 less than that prescribed by law, the Chief Financial Officer  
17 ~~Comptroller~~ shall withhold from such county a portion of any  
18 state funds to which the county may be entitled equal to the  
19 difference of the amount assessed and the amount required to  
20 be assessed by law.

21 (2) The Department of Revenue is hereby directed to  
22 determine each year whether the several municipalities of this  
23 state are assessing the real and tangible personal property  
24 within their jurisdiction in accordance with law. If the  
25 Department of Revenue determines that any municipality is  
26 assessing property at less than that prescribed by law, the  
27 Chief Financial Officer ~~Comptroller~~ shall withhold from such  
28 municipality a portion of any state funds to which that  
29 municipality may be entitled equal to the difference of the  
30 amount assessed and the amount required to be assessed by law.

31

1           Section 175. Subsection (1) of section 198.29, Florida  
2 Statutes, is amended to read:

3           198.29 Refunds of excess tax paid.--

4           (1) Whenever it appears, upon the examination of any  
5 return made under this chapter or upon proof submitted to the  
6 department by the personal representative, that an amount of  
7 estate tax has been paid in excess of the tax legally due  
8 under this chapter, the amount of such overpayment, together  
9 with any overpayment of interest thereon shall be refunded to  
10 the personal representative and paid by ~~upon the warrant of~~  
11 the Chief Financial Officer Comptroller, ~~drawn upon the~~  
12 ~~Treasurer who shall honor and pay the same~~; such refund shall  
13 be made by the department as a matter of course regardless of  
14 whether or not the personal representative has filed a written  
15 claim therefor, except that upon request of the department,  
16 the personal representative shall file with the department a  
17 conformed copy of any written claim for refund of federal  
18 estate tax which has theretofore been filed with the United  
19 States.

20           Section 176. Paragraph (a) of subsection (7) of  
21 section 199.232, Florida Statutes, is amended to read:

22           199.232 Powers of department.--

23           (7)(a) If it appears, upon examination of an  
24 intangible tax return made under this chapter or upon proof  
25 submitted to the department by the taxpayer, that an amount of  
26 intangible personal property tax has been paid in excess of  
27 the amount due, the department shall refund the amount of the  
28 overpayment to the taxpayer by a warrant of the Chief  
29 Financial Officer Comptroller, ~~drawn upon the Treasurer~~. The  
30 department shall refund the overpayment without regard to  
31 whether the taxpayer has filed a written claim for a refund;

1 | however, the department may request that the taxpayer file a  
2 | statement affirming that the taxpayer made the overpayment.

3 |         Section 177. Paragraph (a) of subsection (1) of  
4 | section 203.01, Florida Statutes, is amended to read:

5 |             203.01 Tax on gross receipts for utility and  
6 | communications services.--

7 |             (1)(a)1. Every person that receives payment for any  
8 | utility service shall report by the last day of each month to  
9 | the Department of Revenue, under oath of the secretary or some  
10 | other officer of such person, the total amount of gross  
11 | receipts derived from business done within this state, or  
12 | between points within this state, for the preceding month and,  
13 | at the same time, shall pay into the State Treasury an amount  
14 | equal to a percentage of such gross receipts at the rate set  
15 | forth in paragraph (b). Such collections shall be certified  
16 | by the Chief Financial Officer ~~Comptroller~~ upon the request of  
17 | the State Board of Education.

18 |             2. A tax is levied on communications services as  
19 | defined in s. 202.11(3). Such tax shall be applied to the same  
20 | services and transactions as are subject to taxation under  
21 | chapter 202, and to communications services that are subject  
22 | to the exemption provided in s. 202.125(1). Such tax shall be  
23 | applied to the sales price of communications services when  
24 | sold at retail and to the actual cost of operating substitute  
25 | communications systems, as such terms are defined in s.  
26 | 202.11, shall be due and payable at the same time as the taxes  
27 | imposed pursuant to chapter 202, and shall be administered and  
28 | collected pursuant to the provisions of chapter 202.

29 |         Section 178. Subsection (1) of section 206.46, Florida  
30 | Statutes, is amended to read:

31 |             206.46 State Transportation Trust Fund.--

1           (1) All moneys in the State Transportation Trust Fund,  
2 which is hereby created, shall be used for transportation  
3 purposes, as provided by law, under the direction of the  
4 Department of Transportation, which department may from time  
5 to time make requisition on the Chief Financial Officer  
6 ~~Comptroller~~ for such funds. Moneys from such fund shall be  
7 drawn by the Chief Financial Officer ~~Comptroller~~ by warrant  
8 upon the State Treasury pursuant to vouchers and shall be paid  
9 in like manner as other state warrants are paid out of the  
10 appropriated fund against which the warrants are drawn. All  
11 sums of money necessary to provide for the payment of the  
12 warrants by the Chief Financial Officer ~~Comptroller~~ drawn upon  
13 such fund are appropriated annually out of the fund for the  
14 purpose of making such payments from time to time.

15           Section 179. Subsection (4) of section 210.16, Florida  
16 Statutes, is amended to read:

17           210.16 Revocation or suspension of permit.--

18           (4) In lieu of the suspension or revocation of  
19 permits, the division may impose civil penalties against  
20 holders of permits for violations of this part or rules and  
21 regulations relating thereto. No civil penalty so imposed  
22 shall exceed \$1,000 for each offense, and all amounts  
23 collected shall be deposited with the Chief Financial Officer  
24 ~~State Treasurer~~ to the credit of the General Revenue Fund. If  
25 the holder of the permit fails to pay the civil penalty, his  
26 or her permit shall be suspended for such period of time as  
27 the division may specify.

28           Section 180. Subsection (2) of section 210.20, Florida  
29 Statutes, is amended to read:

30           210.20 Employees and assistants; distribution of  
31 funds.--

1           (2) As collections are received by the division from  
2 such cigarette taxes, it shall pay the same into a trust fund  
3 in the State Treasury designated "Cigarette Tax Collection  
4 Trust Fund" which shall be paid and distributed as follows:

5           (a) The division shall from month to month certify to  
6 the Chief Financial Officer ~~Comptroller~~ the amount derived  
7 from the cigarette tax imposed by s. 210.02, less the service  
8 charges provided for in s. 215.20 and less 0.9 percent of the  
9 amount derived from the cigarette tax imposed by s. 210.02,  
10 which shall be deposited into the Alcoholic Beverage and  
11 Tobacco Trust Fund, specifying the amounts to be transferred  
12 from the Cigarette Tax Collection Trust Fund and credited on  
13 the basis of 2.9 percent of the net collections to the Revenue  
14 Sharing Trust Fund for Counties and 29.3 percent of the net  
15 collections for the funding of indigent health care to the  
16 Public Medical Assistance Trust Fund.

17           (b)1. Beginning January 1, 1999, and continuing for 10  
18 years thereafter, the division shall from month to month  
19 certify to the Chief Financial Officer ~~Comptroller~~ the amount  
20 derived from the cigarette tax imposed by s. 210.02, less the  
21 service charges provided for in s. 215.20 and less 0.9 percent  
22 of the amount derived from the cigarette tax imposed by s.  
23 210.02, which shall be deposited into the Alcoholic Beverage  
24 and Tobacco Trust Fund, specifying an amount equal to 2.59  
25 percent of the net collections, and that amount shall be paid  
26 to the Board of Directors of the H. Lee Moffitt Cancer Center  
27 and Research Institute, established under s. 1004.43, by  
28 warrant drawn by the Chief Financial Officer ~~Comptroller~~ upon  
29 the State Treasury. These funds are hereby appropriated  
30 monthly out of the Cigarette Tax Collection Trust Fund, to be  
31 used for the purpose of constructing, furnishing, and

1 equipping a cancer research facility at the University of  
2 South Florida adjacent to the H. Lee Moffitt Cancer Center and  
3 Research Institute. In fiscal years 1999-2000 and thereafter  
4 with the exception of fiscal year 2008-2009, the appropriation  
5 to the H. Lee Moffitt Cancer Center and Research Institute  
6 authorized by this subparagraph shall not be less than the  
7 amount that would have been paid to the H. Lee Moffitt Cancer  
8 Center and Research Institute for fiscal year 1998-1999 had  
9 payments been made for the entire fiscal year rather than for  
10 a 6-month period thereof.

11           2. Beginning July 1, 2002, and continuing through June  
12 30, 2004, the division shall, in addition to the distribution  
13 authorized in subparagraph 1., from month to month certify to  
14 the Chief Financial Officer ~~Comptroller~~ the amount derived  
15 from the cigarette tax imposed by s. 210.02, less the service  
16 charges provided for in s. 215.20 and less 0.9 percent of the  
17 amount derived from the cigarette tax imposed by s. 210.02,  
18 which shall be deposited into the Alcoholic Beverage and  
19 Tobacco Trust Fund, specifying an amount equal to 0.2632  
20 percent of the net collections, and that amount shall be paid  
21 to the Board of Directors of the H. Lee Moffitt Cancer Center  
22 and Research Institute, established under s. 1004.43, by  
23 warrant drawn by the Chief Financial Officer ~~Comptroller~~.

24 Beginning July 1, 2004, and continuing through June 30, 2016,  
25 the division shall, in addition to the distribution authorized  
26 in subparagraph 1., from month to month certify to the Chief  
27 Financial Officer ~~Comptroller~~ the amount derived from the  
28 cigarette tax imposed by s. 210.02, less the service charges  
29 provided for in s. 215.20 and less 0.9 percent of the amount  
30 derived from the cigarette tax imposed by s. 210.02, which  
31 shall be deposited into the Alcoholic Beverage and Tobacco

1 Trust Fund, specifying an amount equal to 1.47 percent of the  
2 net collections, and that amount shall be paid to the Board of  
3 Directors of the H. Lee Moffitt Cancer Center and Research  
4 Institute, established under s. 1004.43, by warrant drawn by  
5 the Chief Financial Officer ~~Comptroller~~. These funds are  
6 appropriated monthly out of the Cigarette Tax Collection Trust  
7 Fund, to be used for the purpose of constructing, furnishing,  
8 and equipping a cancer research facility at the University of  
9 South Florida adjacent to the H. Lee Moffitt Cancer Center and  
10 Research Institute. In fiscal years 2004-2005 and thereafter,  
11 the appropriation to the H. Lee Moffitt Cancer Center and  
12 Research Institute authorized by this subparagraph shall not  
13 be less than the amount that would have been paid to the H.  
14 Lee Moffitt Cancer Center and Research Institute in fiscal  
15 year 2001-2002, had this subparagraph been in effect.

16 Section 181. Subsection (4) of section 210.50, Florida  
17 Statutes, is amended to read:

18 210.50 Revocation or suspension of license.--

19 (4) In lieu of the suspension or revocation of  
20 licenses, the division may impose civil penalties against  
21 holders of licenses for violations of this part or rules  
22 relating thereto. No civil penalty so imposed shall exceed  
23 \$1,000 for each offense, and all amounts collected shall be  
24 deposited with the Chief Financial Officer ~~State Treasurer~~ to  
25 the credit of the General Revenue Fund. If the holder of the  
26 license fails to pay the civil penalty, his or her license  
27 shall be suspended for such period of time as the division may  
28 specify.

29 Section 182. Subsection (1) of section 211.06, Florida  
30 Statutes, is amended to read:

31

1           211.06 Oil and Gas Tax Trust Fund; distribution of tax  
2 proceeds.--All taxes, interest, and penalties imposed under  
3 this part shall be collected by the department and placed in a  
4 special fund designated the "Oil and Gas Tax Trust Fund."

5           (1) There is hereby annually appropriated a sufficient  
6 amount from the Oil and Gas Tax Trust Fund for the Chief  
7 Financial Officer ~~Comptroller~~ to refund any overpayments that  
8 ~~which~~ have been properly approved.

9           Section 183. Subsection (3) of section 211.31, Florida  
10 Statutes, is amended to read:

11           211.31 Levy of tax on severance of certain solid  
12 minerals; rate, basis, and distribution of tax.--

13           (3) Interest earned on funds within any trust fund  
14 created under this part shall be invested and reinvested to  
15 the credit of such trust fund in accordance with s. 17.61 ~~s.~~  
16 ~~18.125~~.

17           Section 184. Paragraph (d) of subsection (1) of  
18 section 211.32, Florida Statutes, is amended to read:

19           211.32 Tax on solid minerals; Land Reclamation Trust  
20 Fund; refund for restoration and reclamation.--

21           (1)

22           (d) The Chief Financial Officer ~~Comptroller~~ shall,  
23 upon written verification of compliance with paragraph (a),  
24 paragraph (b), or paragraph (c) by the Department of  
25 Environmental Protection, and upon verification of the cost of  
26 the restoration and reclamation program or, if paragraph (c)  
27 is elected, the fair market value of the land, grant refunds,  
28 to be paid from the Land Reclamation Trust Fund, of the taxes  
29 paid under this part, in an amount equal to 100 percent of the  
30 costs incurred in complying with paragraph (a) or paragraph  
31 (b), or 100 percent of the fair market value of the land

1 transferred in complying with paragraph (c), subject to the  
2 following limitations:

3 1. A taxpayer shall not be entitled to refunds in  
4 excess of the amount of taxes paid by the taxpayer under this  
5 part which are deposited in the Land Reclamation Trust Fund.

6 2. A taxpayer shall not be entitled to the payment of  
7 a refund for costs incurred in connection with a particular  
8 restoration and reclamation program unless and until the  
9 taxpayer is accomplishing the program in reasonable compliance  
10 with the criteria established by the Department of  
11 Environmental Protection.

12 Section 185. Paragraph (m) of subsection (5) of  
13 section 212.08, Florida Statutes, is amended to read:

14 212.08 Sales, rental, use, consumption, distribution,  
15 and storage tax; specified exemptions.--The sale at retail,  
16 the rental, the use, the consumption, the distribution, and  
17 the storage to be used or consumed in this state of the  
18 following are hereby specifically exempt from the tax imposed  
19 by this chapter.

20 (5) EXEMPTIONS; ACCOUNT OF USE.--

21 (m) Educational materials purchased by certain child  
22 care facilities.--Educational materials, such as glue, paper,  
23 paints, crayons, unique craft items, scissors, books, and  
24 educational toys, purchased by a child care facility that  
25 meets the standards delineated in s. 402.305, is licensed  
26 under s. 402.308, holds a current Gold Seal Quality Care  
27 designation pursuant to s. 402.281, and provides basic health  
28 insurance to all employees are exempt from the taxes imposed  
29 by this chapter. For purposes of this paragraph, the term  
30 "basic health insurance" shall be defined and promulgated in  
31 rules developed jointly by the Department of Children and

1 Family Services, the Agency for Health Care Administration,  
2 and the Financial Services Commission ~~Department of Insurance~~.

3 Section 186. Paragraph (c) of subsection (6) of  
4 section 212.12, Florida Statutes, is amended to read:

5 212.12 Dealer's credit for collecting tax; penalties  
6 for noncompliance; powers of Department of Revenue in dealing  
7 with delinquents; brackets applicable to taxable transactions;  
8 records required.--

9 (6)

10 (c)1. If the records of a dealer are adequate but  
11 voluminous in nature and substance, the department may sample  
12 such records, except for fixed assets, and project the audit  
13 findings derived therefrom over the entire audit period to  
14 determine the proportion that taxable retail sales bear to  
15 total retail sales or the proportion that taxable purchases  
16 bear to total purchases. In order to conduct such a sample,  
17 the department must first make a good faith effort to reach an  
18 agreement with the dealer, which agreement provides for the  
19 means and methods to be used in the sampling process. In the  
20 event that no agreement is reached, the dealer is entitled to  
21 a review by the executive director.

22 2. For the purposes of sampling pursuant to  
23 subparagraph 1., the department shall project any deficiencies  
24 and overpayments derived therefrom over the entire audit  
25 period. In determining the dealer's compliance, the department  
26 shall reduce any tax deficiency as derived from the sample by  
27 the amount of any overpayment derived from the sample. In the  
28 event the department determines from the sample results that  
29 the dealer has a net tax overpayment, the department shall  
30 provide the findings of this overpayment to the Chief

31

1 Financial Officer ~~Comptroller~~ for repayment of funds paid into  
2 the State Treasury through error pursuant to s. 215.26.

3         3.a. A taxpayer is entitled, both in connection with  
4 an audit and in connection with an application for refund  
5 filed independently of any audit, to establish the amount of  
6 any refund or deficiency through statistical sampling when the  
7 taxpayer's records, other than those regarding fixed assets,  
8 are adequate but voluminous. Alternatively, a taxpayer is  
9 entitled to establish any refund or deficiency through any  
10 other sampling method agreed upon by the taxpayer and the  
11 department when the taxpayer's records, other than those  
12 regarding fixed assets, are adequate but voluminous. Whether  
13 done through statistical sampling or any other sampling method  
14 agreed upon by the taxpayer and the department, the completed  
15 sample must reflect both overpayments and underpayments of  
16 taxes due. The sample shall be conducted through:

17         (I) A taxpayer request to perform the sampling through  
18 the certified audit program pursuant to s. 213.285;

19         (II) Attestation by a certified public accountant as  
20 to the adequacy of the sampling method utilized and the  
21 results reached using such sampling method; or

22         (III) A sampling method that has been submitted by the  
23 taxpayer and approved by the department before a refund claim  
24 is submitted. This sub-sub-subparagraph does not prohibit a  
25 taxpayer from filing a refund claim prior to approval by the  
26 department of the sampling method; however, a refund claim  
27 submitted before the sampling method has been approved by the  
28 department cannot be a complete refund application pursuant to  
29 s. 213.255 until the sampling method has been approved by the  
30 department.

31

1           b. The department shall prescribe by rule the  
2 procedures to be followed under each method of sampling. Such  
3 procedures shall follow generally accepted auditing procedures  
4 for sampling. The rule shall also set forth other criteria  
5 regarding the use of sampling, including, but not limited to,  
6 training requirements that must be met before a sampling  
7 method may be utilized and the steps necessary for the  
8 department and the taxpayer to reach agreement on a sampling  
9 method submitted by the taxpayer for approval by the  
10 department.

11           Section 187. Subsection (1) of section 212.20, Florida  
12 Statutes, is amended to read:

13           212.20 Funds collected, disposition; additional powers  
14 of department; operational expense; refund of taxes  
15 adjudicated unconstitutionally collected.--

16           (1) The department shall pay over to the Chief  
17 Financial Officer ~~Treasurer~~ of the state all funds received  
18 and collected by it under the provisions of this chapter, to  
19 be credited to the account of the General Revenue Fund of the  
20 state.

21           Section 188. Subsections (4) and (6), paragraph (e) of  
22 subsection (7) and subsection (13) of section 213.053, Florida  
23 Statutes, are amended to read:

24           213.053 Confidentiality and information sharing.--

25           (4) Nothing contained in this section shall prevent  
26 the department from publishing statistics so classified as to  
27 prevent the identification of particular accounts, reports,  
28 declarations, or returns or prevent the department from  
29 disclosing to the Chief Financial Officer ~~Comptroller~~ the  
30 names and addresses of those taxpayers who have claimed an  
31

1 exemption pursuant to s. 199.185(1)(i) or a deduction pursuant  
2 to s. 220.63(5).

3 (6) Any information received by the Department of  
4 Revenue in connection with the administration of taxes,  
5 including, but not limited to, information contained in  
6 returns, reports, accounts, or declarations filed by persons  
7 subject to tax, shall be made available by the department to  
8 the Auditor General or his or her authorized agent, the  
9 director of the Office of Program Policy Analysis and  
10 Government Accountability or his or her authorized agent, the  
11 Chief Financial Officer ~~Comptroller~~ or his or her authorized  
12 agent, the Director of the Office of Insurance Regulation of  
13 the Financial Services Commission ~~Insurance Commissioner~~ or  
14 his or her authorized agent, ~~the Treasurer or his or her~~  
15 ~~authorized agent~~, or a property appraiser or tax collector or  
16 their authorized agents pursuant to s. 195.084(1), in the  
17 performance of their official duties, or to designated  
18 employees of the Department of Education solely for  
19 determination of each school district's price level index  
20 pursuant to s. 1011.62(2); however, no information shall be  
21 disclosed to the Auditor General or his or her authorized  
22 agent, the director of the Office of Program Policy Analysis  
23 and Government Accountability or his or her authorized agent,  
24 the Chief Financial Officer ~~Comptroller~~ or his or her  
25 authorized agent, the Director of the Office of Insurance  
26 Regulation ~~Insurance Commissioner~~ or his or her authorized  
27 agent, ~~the Treasurer or his or her authorized agent~~, or to a  
28 property appraiser or tax collector or their authorized  
29 agents, or to designated employees of the Department of  
30 Education if such disclosure is prohibited by federal law. The  
31 Auditor General or his or her authorized agent, the director

1 of the Office of Program Policy Analysis and Government  
2 Accountability or his or her authorized agent, the Chief  
3 Financial Officer ~~Comptroller~~ or his or her authorized agent,  
4 the Director of the Office of Insurance Regulation ~~Treasurer~~  
5 or his or her authorized agent, and the property appraiser or  
6 tax collector and their authorized agents, or designated  
7 employees of the Department of Education shall be subject to  
8 the same requirements of confidentiality and the same  
9 penalties for violation of the requirements as the department.  
10 For the purpose of this subsection, "designated employees of  
11 the Department of Education" means only those employees  
12 directly responsible for calculation of price level indices  
13 pursuant to s. 1011.62(2). It does not include the supervisors  
14 of such employees or any other employees or elected officials  
15 within the Department of Education.

16 (7) Notwithstanding any other provision of this  
17 section, the department may provide:

18 (e) Names, addresses, taxpayer identification numbers,  
19 and outstanding tax liabilities to the Department of the  
20 Lottery and the Office of Financial Institutions and  
21 Securities Regulation of the Financial Services Commission  
22 ~~Department of Banking and Finance~~ in the conduct of their  
23 official duties.

24  
25 Disclosure of information under this subsection shall be  
26 pursuant to a written agreement between the executive director  
27 and the agency. Such agencies, governmental or  
28 nongovernmental, shall be bound by the same requirements of  
29 confidentiality as the Department of Revenue. Breach of  
30 confidentiality is a misdemeanor of the first degree,  
31 punishable as provided by s. 775.082 or s. 775.083.

1           (13) Notwithstanding the provisions of s. 896.102(2),  
2 the department may allow full access to the information and  
3 documents required to be filed with it under s. 896.102(1) to  
4 federal, state, and local law enforcement and prosecutorial  
5 agencies, and to the Office of Financial Institutions and  
6 Securities Regulation of the Financial Services Commission  
7 ~~Department of Banking and Finance~~, and any of those agencies  
8 may use the information and documents in any civil or criminal  
9 investigation and in any court proceedings.

10           Section 189. Section 213.054, Florida Statutes, is  
11 amended to read:

12           213.054 Persons claiming tax exemptions or deductions;  
13 annual report.--The Department of Revenue shall be responsible  
14 for monitoring the utilization of tax exemptions and tax  
15 deductions authorized pursuant to chapter 81-179, Laws of  
16 Florida. On or before September 1 of each year, the  
17 department shall report to the Chief Financial Officer  
18 ~~Comptroller~~ the names and addresses of all persons who have  
19 claimed an exemption pursuant to s. 199.185(1)(i) or a  
20 deduction pursuant to s. 220.63(5).

21           Section 190. Subsection (6) of section 213.255,  
22 Florida Statutes, is amended to read:

23           213.255 Interest.--Interest shall be paid on  
24 overpayments of taxes, payment of taxes not due, or taxes paid  
25 in error, subject to the following conditions:

26           (6) Interest shall be paid until a date determined by  
27 the department which shall be no more than 7 days prior to the  
28 date of the issuance of the refund warrant by the Chief  
29 Financial Officer ~~Comptroller~~.

30           Section 191. Subsection (9) of section 213.67, Florida  
31 Statutes, is amended to read:

1           213.67 Garnishment.--

2           (9) The department shall provide notice to the Chief  
3 Financial Officer ~~Comptroller~~, in electronic or other form  
4 specified by the Chief Financial Officer ~~Comptroller~~, listing  
5 the taxpayers for which tax warrants are outstanding. Pursuant  
6 to subsection (1), the Chief Financial Officer ~~Comptroller~~  
7 shall, upon notice from the department, withhold all payments  
8 to any person or business, as defined in s. 212.02, which  
9 provides commodities or services to the state, leases real  
10 property to the state, or constructs a public building or  
11 public work for the state. The department may levy upon the  
12 withheld payments in accordance with subsection (3). The  
13 provisions of s. 215.422 do not apply from the date the notice  
14 is filed with the Chief Financial Officer ~~Comptroller~~ until  
15 the date the department notifies the Chief Financial Officer  
16 ~~Comptroller~~ of its consent to make payment to the person or 60  
17 days after receipt of the department's notice in accordance  
18 with subsection (1), whichever occurs earlier.

19           Section 192. Subsection (4) of section 213.75, Florida  
20 Statutes, is amended to read:

21           213.75 Application of payments.--

22           (4) Any surplus proceeds remaining after the  
23 application of subsection (3) shall, upon application and  
24 satisfactory proof thereof, be refunded by the Chief Financial  
25 Officer ~~Comptroller~~ to the person or persons legally entitled  
26 thereto pursuant to s. 215.26.

27           Section 193. Section 215.02, Florida Statutes, is  
28 amended to read:

29           215.02 Manner of paying money into the  
30 Treasury.--Whenever any officer of this state or other person  
31 desires to pay any money into the Treasury of the state on

1 account of his or her indebtedness to the state, the person  
2 shall first go ~~to~~ into the Department of Financial Services  
3 ~~Banking and Finance~~, and there ascertain from the department's  
4 books the amount of his or her indebtedness to the state, and  
5 thereupon ~~the department shall give that person a memorandum~~  
6 ~~or certificate of the amount of such indebtedness, and on what~~  
7 ~~account. Second, the person shall take said certificate with~~  
8 ~~him or her to the Department of Insurance and deliver the same~~  
9 ~~and pay over to the Chief Financial Officer Insurance~~  
10 ~~Commissioner and Treasurer the amount ascertained called for~~  
11 ~~in said certificate. Third, The Chief Financial Officer~~  
12 ~~Insurance Commissioner and Treasurer shall receive the money,~~  
13 ~~make a proper entry thereof, ~~file the certificate of the~~~~  
14 ~~Department of Banking and Finance, and give a certificate to~~  
15 ~~the party paying over the money, ~~acknowledging the receipt of~~~~  
16 ~~the money, and on what account; which certificate thus~~  
17 ~~received, the party shall return to the Department of Banking~~  
18 ~~and Finance, on receipt of which the department shall give the~~  
19 ~~party a receipt for the amount, and enter a credit on the~~  
20 ~~party's account in his or her books for the amount thus paid~~  
21 ~~by him or her to the Insurance Commissioner and Treasurer, and~~  
22 ~~file the certificate received from the Insurance Commissioner~~  
23 ~~and Treasurer.~~

24 Section 194. Section 215.03, Florida Statutes, is  
25 amended to read:

26 215.03 Party to be reimbursed on reversal of judgment  
27 for state.--Whenever upon appeal in civil cases, any judgment  
28 in favor of the state has been or shall be reversed and set  
29 aside, which may have been paid in part by the appellant, the  
30 Chief Financial Officer Comptroller shall issue his or her  
31 warrant ~~upon the Treasurer~~ to reimburse the appellant for all

1 sums paid in discharge of such judgment and cost, provided the  
2 appellant shall adduce satisfactory evidence to the Chief  
3 Financial Officer ~~Comptroller~~ of the sums paid as aforesaid.

4 Section 195. Section 215.04, Florida Statutes, is  
5 amended to read:

6 215.04 Department of Financial Services ~~Banking and~~  
7 ~~Finance~~ to report delinquents.--The Department of Financial  
8 Services ~~Banking and Finance~~ shall report to the state  
9 attorney of the proper circuit the name of any delinquent  
10 officer whose delinquency concerns the department, so soon as  
11 such delinquency shall occur; and the state attorney shall  
12 proceed forthwith against such delinquent.

13 Section 196. Section 215.05, Florida Statutes, is  
14 amended to read:

15 215.05 Department of Financial Services ~~Banking and~~  
16 ~~Finance~~ to certify accounts of delinquents.--When any revenue  
17 officer or other person accountable for public money shall  
18 neglect or refuse to pay into the treasury the sum or balance  
19 reported to be due to the state, upon the adjustment of that  
20 person's account, the Department of Financial Services ~~Banking~~  
21 ~~and Finance~~ shall immediately hand over to the state attorney  
22 of the proper circuit the statement of the sum or balance  
23 certified under its seal of office, so due; and the state  
24 attorney shall institute suit for the recovery of the same,  
25 adding to the sum or balance stated to be due on such account  
26 the commissions of the delinquent, which shall be forfeited in  
27 every instance where suit is commenced and judgment is  
28 obtained thereon, and an interest of 8 percent per annum from  
29 the time of the delinquent's receiving the money until it  
30 shall be paid into the State Treasury.

31

1           Section 197. Section 215.11, Florida Statutes, is  
2 amended to read:

3           215.11 Defaulting officers; Department of Financial  
4 Services ~~Banking and Finance~~ to report to clerk.--The  
5 Department of Financial Services ~~Banking and Finance~~ shall,  
6 within 90 days after the expiration of the term of office of  
7 any tax collector, sheriff, clerk of the circuit or county  
8 court, treasurer, or any other officer of any county who has  
9 the collection, custody, and control of any state funds, who  
10 shall be in arrears in his or her accounts with the state,  
11 make up and forward to the clerk of the circuit court of such  
12 county a statement of his or her accounts with the state.

13           Section 198. Paragraphs (d), (n), and (o) of  
14 subsection (4) of section 215.20, Florida Statutes, are  
15 amended, and paragraphs (p) through (y) of that subsection are  
16 renumbered as paragraphs (o) through (x), respectively, to  
17 read:

18           215.20 Certain income and certain trust funds to  
19 contribute to the General Revenue Fund.--

20           (4) The income of a revenue nature deposited in the  
21 following described trust funds, by whatever name designated,  
22 is that from which the appropriations authorized by subsection  
23 (3) shall be made:

24           (d) Within the Office of Financial Institutions and  
25 Securities Regulation of the Financial Services Commission  
26 ~~Department of Banking and Finance~~:

- 27           1. The Administrative Trust Fund.
- 28           2. The Anti-Fraud Trust Fund.
- 29           3. The Financial Institutions' Regulatory Trust Fund.
- 30           4. The Mortgage Brokerage Guaranty Fund.
- 31           5. The Regulatory Trust Fund.

- 1           (n) Within the Department of Financial Services  
2 Insurance:
- 3           1. The Agents and Solicitors County Tax Trust Fund.
  - 4           2. The Insurance ~~Commissioner's~~ Regulatory Trust Fund.
- 5           ~~(o) Within the Department of Labor and Employment~~  
6 ~~Security or, if such department is terminated, within the~~  
7 ~~agency or department to which the named trust fund has been~~  
8 ~~transferred:~~
- 9           3.1. The Special Disability Trust Fund.
  - 10          4.2. The Special Employment Security Administration  
11 Trust Fund.
  - 12          5.3. The Workers' Compensation Administration Trust  
13 Fund.
- 14          ~~(o)~~(p) Within the Department of Legal Affairs, the  
15 Crimes Compensation Trust Fund.
- 16          ~~(p)~~(q) Within the Department of Management Services:
- 17          1. The Administrative Trust Fund.
  - 18          2. The Architects Incidental Trust Fund.
  - 19          3. The Bureau of Aircraft Trust Fund.
  - 20          4. The Florida Facilities Pool Working Capital Trust  
21 Fund.
  - 22          5. The Grants and Donations Trust Fund.
  - 23          6. The Motor Vehicle Operating Trust Fund.
  - 24          7. The Police and Firefighters' Premium Tax Trust  
25 Fund.
  - 26          8. The Public Employees Relations Commission Trust  
27 Fund.
  - 28          9. The State Personnel System Trust Fund.
  - 29          10. The Supervision Trust Fund.
  - 30          11. The Working Capital Trust Fund.
- 31          ~~(q)~~(r) Within the Department of Revenue:

- 1           1. The Additional Court Cost Clearing Trust Fund.
- 2           2. The Administrative Trust Fund.
- 3           3. The Apalachicola Bay Oyster Surcharge Clearing
- 4 Trust Fund.
- 5           4. The Certification Program Trust Fund.
- 6           5. The Fuel Tax Collection Trust Fund.
- 7           6. The Land Reclamation Trust Fund.
- 8           7. The Local Alternative Fuel User Fee Clearing Trust
- 9 Fund.
- 10          8. The Local Option Fuel Tax Trust Fund.
- 11          9. The Motor Vehicle Rental Surcharge Clearing Trust
- 12 Fund.
- 13          10. The Motor Vehicle Warranty Trust Fund.
- 14          11. The Oil and Gas Tax Trust Fund.
- 15          12. The Secondhand Dealer and Secondary Metals
- 16 Recycler Clearing Trust Fund.
- 17          13. The Severance Tax Solid Mineral Trust Fund.
- 18          14. The State Alternative Fuel User Fee Clearing Trust
- 19 Fund.
- 20          15. All taxes levied on motor fuels other than
- 21 gasoline levied pursuant to the provisions of s. 206.87(1)(a).
- 22          (r)~~(s)~~ Within the Department of State:
- 23            1. The Division of Licensing Trust Fund.
- 24            2. The Records Management Trust Fund.
- 25            3. The trust funds administered by the Division of
- 26 Historical Resources.
- 27          (s)~~(t)~~ Within the Department of Transportation, all
- 28 income derived from outdoor advertising and overweight
- 29 violations which is deposited in the State Transportation
- 30 Trust Fund.
- 31          (t)~~(u)~~ Within the Department of Veterans' Affairs:

1           1. The Grants and Donations Trust Fund.  
2           2. The Operations and Maintenance Trust Fund.  
3           3. The State Homes for Veterans Trust Fund.  
4           (u)~~(v)~~ Within the Division of Administrative Hearings,  
5 the Administrative Trust Fund.  
6           (v)~~(w)~~ Within the Fish and Wildlife Conservation  
7 Commission:  
8           1. The Conservation and Recreation Lands Program Trust  
9 Fund.  
10          2. The Florida Panther Research and Management Trust  
11 Fund.  
12          3. The Land Acquisition Trust Fund.  
13          4. The Marine Resources Conservation Trust Fund, with  
14 the exception of those fees collected for recreational  
15 saltwater fishing licenses as provided in s. 372.57.  
16          (w)~~(x)~~ Within the Florida Public Service Commission,  
17 the Florida Public Service Regulatory Trust Fund.  
18          (x)~~(y)~~ Within the Justice Administrative Commission,  
19 the Indigent Criminal Defense Trust Fund.  
20  
21 The enumeration of the foregoing moneys or trust funds shall  
22 not prohibit the applicability thereto of s. 215.24 should the  
23 Governor determine that for the reasons mentioned in s. 215.24  
24 the money or trust funds should be exempt herefrom, as it is  
25 the purpose of this law to exempt income from its force and  
26 effect when, by the operation of this law, federal matching  
27 funds or contributions or private grants to any trust fund  
28 would be lost to the state.  
29          Section 199. Effective July 1, 2003, paragraph (cc) of  
30 subsection (4) of section 215.20, Florida Statutes, is amended  
31 to read:

1           215.20 Certain income and certain trust funds to  
2 contribute to the General Revenue Fund.--

3           (4) The income of a revenue nature deposited in the  
4 following described trust funds, by whatever name designated,  
5 is that from which the deductions authorized by subsection (3)  
6 shall be made:

7           (a) The Fuel Tax Collection Trust Fund created by s.  
8 206.875.

9           (b) All income derived from outdoor advertising and  
10 overweight violations which is deposited in the State  
11 Transportation Trust Fund created by s. 206.46.

12           (c) All taxes levied on motor fuels other than  
13 gasoline levied pursuant to the provisions of s. 206.87(1)(a).

14           (d) The State Alternative Fuel User Fee Clearing Trust  
15 Fund established pursuant to s. 206.879(1).

16           (e) The Local Alternative Fuel User Fee Clearing Trust  
17 Fund established pursuant to s. 206.879(2).

18           (f) The Cigarette Tax Collection Trust Fund created by  
19 s. 210.20.

20           (g) The Nonmandatory Land Reclamation Trust Fund  
21 established pursuant to s. 211.3103.

22           (h) The Phosphate Research Trust Fund established  
23 pursuant to s. 211.3103.

24           (i) The Land Reclamation Trust Fund established  
25 pursuant to s. 211.32(1)(f).

26           (j) The Educational Certification and Service Trust  
27 Fund created by s. 1012.59.

28           (k) The trust funds administered by the Division of  
29 Historical Resources of the Department of State.

30           (l) The Marine Resources Conservation Trust Fund  
31 created by s. 370.0603, with the exception of those fees

1 collected for recreational saltwater fishing licenses as  
2 provided in s. 372.57.  
3 (m) The Local Option Fuel Tax Trust Fund created  
4 pursuant to s. 336.025.  
5 (n) The Florida Public Service Regulatory Trust Fund  
6 established pursuant to s. 350.113.  
7 (o) The State Game Trust Fund established by s.  
8 372.09.  
9 (p) The Special Disability Trust Fund created by s.  
10 440.49.  
11 (q) The Workers' Compensation Administration Trust  
12 Fund created by s. 440.50(1)(a).  
13 (r) The Employment Security Administration Trust Fund  
14 created by s. 443.211(1).  
15 (s) The Special Employment Security Administration  
16 Trust Fund created by s. 443.211(2).  
17 (t) The Professional Regulation Trust Fund established  
18 pursuant to s. 455.219.  
19 (u) The Speech-Language Pathology and Audiology Trust  
20 Fund.  
21 (v) The Division of Licensing Trust Fund established  
22 pursuant to s. 493.6117.  
23 (w) The Division of Florida Land Sales, Condominiums,  
24 and Mobile Homes Trust Fund established pursuant to s.  
25 498.019.  
26 (x) The trust fund of the Division of Hotels and  
27 Restaurants, as defined in s. 509.072, with the exception of  
28 those fees collected for the purpose of funding of the  
29 hospitality education program as stated in s. 509.302.  
30  
31

1           (y) The trust funds administered by the Division of  
2 Pari-mutuel Wagering and the Florida Quarter Horse Racing  
3 Promotion Trust Fund.

4           (z) The General Inspection Trust Fund and subsidiary  
5 accounts thereof, unless a different percentage is authorized  
6 by s. 570.20.

7           (aa) The Florida Citrus Advertising Trust Fund created  
8 by s. 601.15(7), including transfers from any subsidiary  
9 accounts thereof, unless a different percentage is authorized  
10 in that section.

11           (bb) The Agents and Solicitors County Tax Trust Fund  
12 created by s. 624.506.

13           (cc) The Insurance ~~Commissioner's~~ Regulatory Trust  
14 Fund created by s. 624.523.

15           (dd) The Financial Institutions' Regulatory Trust Fund  
16 established pursuant to s. 655.049.

17           (ee) The Crimes Compensation Trust Fund established  
18 pursuant to s. 960.21.

19           (ff) The Records Management Trust Fund established  
20 pursuant to s. 257.375.

21           (gg) The Alcoholic Beverage and Tobacco Trust Fund  
22 established pursuant to s. 561.025.

23           (hh) The Health Care Trust Fund established pursuant  
24 to s. 408.16.

25           (ii) The Police and Firefighters' Premium Tax Trust  
26 Fund established within the Department of Management Services.

27  
28 The enumeration of the foregoing moneys or trust funds shall  
29 not prohibit the applicability thereto of s. 215.24 should the  
30 Governor determine that for the reasons mentioned in s. 215.24  
31 the money or trust funds should be exempt herefrom, as it is

1 the purpose of this law to exempt income from its force and  
2 effect when, by the operation of this law, federal matching  
3 funds or contributions or private grants to any trust fund  
4 would be lost to the state.

5 Section 200. Paragraphs (e) and (g) of subsection (1)  
6 of section 215.22, Florida Statutes, are amended to read:

7 215.22 Certain income and certain trust funds  
8 exempt.--

9 (1) The following income of a revenue nature or the  
10 following trust funds shall be exempt from the appropriation  
11 required by s. 215.20(1):

12 (e) State, agency, or political subdivision  
13 investments by the Chief Financial Officer ~~Treasurer~~.

14 (g) Self-insurance programs administered by the Chief  
15 Financial Officer ~~Treasurer~~.

16 Section 201. Effective July 1, 2003, paragraphs (e)  
17 and (g) of subsection (1) of section 215.22, Florida Statutes,  
18 are amended to read:

19 215.22 Certain income and certain trust funds  
20 exempt.--

21 (1) The following income of a revenue nature or the  
22 following trust funds shall be exempt from the deduction  
23 required by s. 215.20(1):

24 (e) State, agency, or political subdivision  
25 investments by the Chief Financial Officer ~~Treasurer~~.

26 (g) Self-insurance programs administered by the Chief  
27 Financial Officer ~~Treasurer~~.

28 Section 202. Section 215.23, Florida Statutes, is  
29 amended to read:

30 215.23 When contributions to be made.--The deductions  
31 required by s. 215.20 shall be paid into the appropriate fund

1 ~~by the Department of Banking and Finance or by the Chief~~  
2 ~~Financial Officer State Treasurer, as the case may be, for~~  
3 quarterly periods ending March 31, June 30, September 30, and  
4 December 31 of each year, and when so paid shall thereupon  
5 become a part of that fund to be accounted for and disbursed  
6 as provided by law.

7 Section 203. Section 215.24, Florida Statutes, is  
8 amended to read:

9 215.24 Exemptions where federal contributions or  
10 private grants.--

11 (1) Should any state fund be the recipient of federal  
12 contributions or private grants, either by the matching of  
13 state funds or by a general donation to state funds, and the  
14 payment of moneys into the General Revenue Fund under s.  
15 215.20 should cause such fund to lose federal or private  
16 assistance, the Governor shall certify to the Chief Financial  
17 Officer ~~Department of Banking and Finance and to the State~~  
18 ~~Treasurer~~ that said income is for that reason exempt from the  
19 force and effect of s. 215.20.

20 (2) Should it be determined by the Governor that by  
21 reason of payments already made into the General Revenue Fund  
22 by any fund under this law, such fund is subject to the loss  
23 of federal or private assistance, then the Governor shall  
24 certify to the Chief Financial Officer ~~Department of Banking~~  
25 ~~and Finance and to the State Treasurer~~ that the income from  
26 such assistance is exempt from the provisions of this law, and  
27 the Chief Financial Officer ~~Department of Banking and Finance~~  
28 ~~or the State Treasurer, as the case may be, shall thereupon~~  
29 refund and pay over to such fund any amount previously paid  
30 into the General Revenue Fund from such income.

31

1           Section 204. Section 215.25, Florida Statutes, is  
2 amended to read:

3           215.25 Manner of contributions; rules and  
4 regulations.--The Chief Financial Officer is ~~Department of~~  
5 ~~Banking and Finance and the State Treasurer are hereby~~  
6 authorized to ascertain and determine the manner in which the  
7 required amounts shall be deducted and paid and to adopt and  
8 effectuate such rules and procedure as may be necessary for  
9 carrying out the provisions of this law. Such rules and  
10 procedure shall be approved by the Executive Office of the  
11 Governor.

12           Section 205. Subsections (1), (2), and (5) of section  
13 215.26, Florida Statutes, are amended to read:

14           215.26 Repayment of funds paid into State Treasury  
15 through error.--

16           (1) The Chief Financial Officer ~~Comptroller of the~~  
17 ~~state~~ may refund to the person who paid same, or his or her  
18 heirs, personal representatives, or assigns, any moneys paid  
19 into the State Treasury which constitute:

20           (a) An overpayment of any tax, license, or account  
21 due;

22           (b) A payment where no tax, license, or account is  
23 due; and

24           (c) Any payment made into the State Treasury in error;

25  
26 and if any such payment has been credited to an appropriation,  
27 such appropriation shall at the time of making any such  
28 refund, be charged therewith. There are appropriated from the  
29 proper respective funds from time to time such sums as may be  
30 necessary for such refunds.

31

1           (2) Application for refunds as provided by this  
2 section must be filed with the Chief Financial Officer  
3 ~~Comptroller~~, except as otherwise provided in this subsection,  
4 within 3 years after the right to the refund has accrued or  
5 else the right is barred. Except as provided in chapter 198  
6 and s. 220.23, an application for a refund of a tax enumerated  
7 in s. 72.011, which tax was paid after September 30, 1994, and  
8 before July 1, 1999, must be filed with the Chief Financial  
9 Officer ~~Comptroller~~ within 5 years after the date the tax is  
10 paid, and within 3 years after the date the tax was paid for  
11 taxes paid on or after July 1, 1999. The Chief Financial  
12 Officer ~~Comptroller~~ may delegate the authority to accept an  
13 application for refund to any state agency, or the judicial  
14 branch, vested by law with the responsibility for the  
15 collection of any tax, license, or account due. The  
16 application for refund must be on a form approved by the Chief  
17 Financial Officer ~~Comptroller~~ and must be supplemented with  
18 additional proof the Chief Financial Officer ~~Comptroller~~ deems  
19 necessary to establish the claim; provided, the claim is not  
20 otherwise barred under the laws of this state. Upon receipt of  
21 an application for refund, the judicial branch or the state  
22 agency to which the funds were paid shall make a determination  
23 of the amount due. If an application for refund is denied, in  
24 whole or in part, the judicial branch or such state agency  
25 shall notify the applicant stating the reasons therefor. Upon  
26 approval of an application for refund, the judicial branch or  
27 such state agency shall furnish the Chief Financial Officer  
28 ~~Comptroller~~ with a properly executed voucher authorizing  
29 payment.

30           (5) When a taxpayer has pursued administrative  
31 remedies before the Department of Revenue pursuant to s.

1 213.21 and has failed to comply with the time limitations and  
2 conditions provided in ss. 72.011 and 120.80(14)(b), a claim  
3 of refund under subsection (1) shall be denied by the Chief  
4 Financial Officer ~~Comptroller~~. However, the Chief Financial  
5 Officer ~~Comptroller~~ may entertain a claim for refund under  
6 this subsection when the taxpayer demonstrates that his or her  
7 failure to pursue remedies under chapter 72 was not due to  
8 neglect or for the purpose of delaying payment of lawfully  
9 imposed taxes and can demonstrate reasonable cause for such  
10 failure.

11 Section 206. Section 215.29, Florida Statutes, is  
12 amended to read:

13 215.29 Classification of Chief Financial Officer's  
14 ~~Comptroller's~~ warrants; report.--All disbursements made by the  
15 state upon Chief Financial Officer's ~~Comptroller's~~ warrants  
16 shall be classified according to officers, offices, bureaus,  
17 divisions, boards, commissions, institutions, other agencies  
18 and undertakings, or the judicial branch, and shall be further  
19 classified according to personal services, contractual  
20 services, commodities, current charges, current obligations,  
21 capital outlays, debt payments, or investments or such  
22 additional classifications as may be prescribed or authorized  
23 by law. Such detail classifications shall be printed in the  
24 Chief Financial Officer's ~~Comptroller's~~ annual reports.

25 Section 207. Section 215.31, Florida Statutes, is  
26 amended to read:

27 215.31 State funds; deposit in State  
28 Treasury.--Revenue, including licenses, fees, imposts, or  
29 exactions collected or received under the authority of the  
30 laws of the state by each and every state official, office,  
31 employee, bureau, division, board, commission, institution,

1 agency, or undertaking of the state or the judicial branch  
2 shall be promptly deposited in the State Treasury, and  
3 immediately credited to the appropriate fund as herein  
4 provided, properly accounted for by the Department of  
5 Financial Services ~~Banking and Finance~~ as to source and no  
6 money shall be paid from the State Treasury except as  
7 appropriated and provided by the annual General Appropriations  
8 Act, or as otherwise provided by law.

9 Section 208. Section 215.32, Florida Statutes, is  
10 amended to read:

11 215.32 State funds; segregation.--

12 (1) All moneys received by the state shall be  
13 deposited in the State Treasury unless specifically provided  
14 otherwise by law and shall be deposited in and accounted for  
15 by the Chief Financial Officer ~~Treasurer and the Department of~~  
16 ~~Banking and Finance~~ within the following funds, which funds  
17 are hereby created and established:

18 (a) General Revenue Fund.

19 (b) Trust funds.

20 (c) Working Capital Fund.

21 (d) Budget Stabilization Fund.

22 (2) The source and use of each of these funds shall be  
23 as follows:

24 (a) The General Revenue Fund shall consist of all  
25 moneys received by the state from every source whatsoever,  
26 except as provided in paragraphs (b) and (c). Such moneys  
27 shall be expended pursuant to General Revenue Fund  
28 appropriations acts or transferred as provided in paragraph  
29 (c). Annually, at least 5 percent of the estimated increase  
30 in General Revenue Fund receipts for the upcoming fiscal year  
31 over the current year General Revenue Fund effective

1 appropriations shall be appropriated for state-level capital  
2 outlay, including infrastructure improvement and general  
3 renovation, maintenance, and repairs.

4 (b)1. The trust funds shall consist of moneys received  
5 by the state which under law or under trust agreement are  
6 segregated for a purpose authorized by law. The state agency  
7 or branch of state government receiving or collecting such  
8 moneys shall be responsible for their proper expenditure as  
9 provided by law. Upon the request of the state agency or  
10 branch of state government responsible for the administration  
11 of the trust fund, the Chief Financial Officer ~~Comptroller~~ may  
12 establish accounts within the trust fund at a level considered  
13 necessary for proper accountability. Once an account is  
14 established within a trust fund, the Chief Financial Officer  
15 ~~Comptroller~~ may authorize payment from that account only upon  
16 determining that there is sufficient cash and releases at the  
17 level of the account.

18 2. In order to maintain a minimum number of trust  
19 funds in the State Treasury, each state agency or the judicial  
20 branch may consolidate, if permitted under the terms and  
21 conditions of their receipt, the trust funds administered by  
22 it; provided, however, the agency or judicial branch employs  
23 effectively a uniform system of accounts sufficient to  
24 preserve the integrity of such trust funds; and provided,  
25 further, that consolidation of trust funds is approved by the  
26 Governor or the Chief Justice.

27 3. All such moneys are hereby appropriated to be  
28 expended in accordance with the law or trust agreement under  
29 which they were received, subject always to the provisions of  
30 chapter 216 relating to the appropriation of funds and to the  
31

1 applicable laws relating to the deposit or expenditure of  
2 moneys in the State Treasury.

3 4.a. Notwithstanding any provision of law restricting  
4 the use of trust funds to specific purposes, unappropriated  
5 cash balances from selected trust funds may be authorized by  
6 the Legislature for transfer to the Budget Stabilization Fund  
7 and Working Capital Fund in the General Appropriations Act.

8 b. This subparagraph does not apply to trust funds  
9 required by federal programs or mandates; trust funds  
10 established for bond covenants, indentures, or resolutions  
11 whose revenues are legally pledged by the state or public body  
12 to meet debt service or other financial requirements of any  
13 debt obligations of the state or any public body; the State  
14 Transportation Trust Fund; the trust fund containing the net  
15 annual proceeds from the Florida Education Lotteries; the  
16 Florida Retirement System Trust Fund; trust funds under the  
17 management of the Board of Regents, where such trust funds are  
18 for auxiliary enterprises, self-insurance, and contracts,  
19 grants, and donations, as those terms are defined by general  
20 law; trust funds that serve as clearing funds or accounts for  
21 the Chief Financial Officer ~~Comptroller~~ or state agencies;  
22 trust funds that account for assets held by the state in a  
23 trustee capacity as an agent or fiduciary for individuals,  
24 private organizations, or other governmental units; and other  
25 trust funds authorized by the State Constitution.

26 (c)1. The Budget Stabilization Fund shall consist of  
27 amounts equal to at least 5 percent of net revenue collections  
28 for the General Revenue Fund during the last completed fiscal  
29 year. The Budget Stabilization Fund's principal balance shall  
30 not exceed an amount equal to 10 percent of the last completed  
31 fiscal year's net revenue collections for the General Revenue

1 Fund. As used in this paragraph, the term "last completed  
2 fiscal year" means the most recently completed fiscal year  
3 prior to the regular legislative session at which the  
4 Legislature considers the General Appropriations Act for the  
5 year in which the transfer to the Budget Stabilization Fund  
6 must be made under this paragraph.

7         2. By September 15 of each year, the Governor shall  
8 authorize the Chief Financial Officer ~~Comptroller~~ to transfer,  
9 and the Chief Financial Officer ~~Comptroller~~ shall transfer  
10 pursuant to appropriations made by law, to the Budget  
11 Stabilization Fund the amount of money needed for the balance  
12 of that fund to equal the amount specified in subparagraph 1.,  
13 less any amounts expended and not restored. The moneys needed  
14 for this transfer may be appropriated by the Legislature from  
15 any funds.

16         3. Unless otherwise provided in this subparagraph, an  
17 expenditure from the Budget Stabilization Fund must be  
18 restored pursuant to a restoration schedule that provides for  
19 making five equal annual transfers from the General Revenue  
20 Fund, beginning in the fiscal year following that in which the  
21 expenditure was made. For any Budget Stabilization Fund  
22 expenditure, the Legislature may establish by law a different  
23 restoration schedule and such change may be made at any time  
24 during the restoration period. Moneys are hereby appropriated  
25 for transfers pursuant to this subparagraph.

26         4. The Budget Stabilization Fund and the Working  
27 Capital Fund may be used as revolving funds for transfers as  
28 provided in s. 17.61 ~~s. 18.125~~; however, any interest earned  
29 must be deposited in the General Revenue Fund.

30         5. The Chief Financial Officer ~~Comptroller~~ and the  
31 Department of Management Services shall transfer funds to

1 water management districts to pay eligible water management  
2 district employees for all benefits due under s. 373.6065, as  
3 long as funds remain available for the program described under  
4 s. 100.152.

5 (d) The Working Capital Fund shall consist of moneys  
6 in the General Revenue Fund which are in excess of the amount  
7 needed to meet General Revenue Fund appropriations for the  
8 current fiscal year. Each year, no later than the publishing  
9 date of the annual financial statements for the state by the  
10 Chief Financial Officer ~~Comptroller~~ under s. 216.102, funds  
11 shall be transferred between the Working Capital Fund and the  
12 General Revenue Fund to establish the balance of the Working  
13 Capital Fund for that fiscal year at the amount determined  
14 pursuant to this paragraph.

15 Section 209. Subsections (2) and (3) of section  
16 215.3206, Florida Statutes, are amended to read:

17 215.3206 Trust funds; termination or re-creation.--

18 (2) If the trust fund is terminated and not  
19 immediately re-created, all cash balances and income of the  
20 trust fund shall be deposited into the General Revenue Fund.  
21 The agency or Chief Justice shall pay any outstanding debts of  
22 the trust fund as soon as practicable, and the Chief Financial  
23 Officer ~~Comptroller~~ shall close out and remove the trust fund  
24 from the various state accounting systems, using generally  
25 accepted accounting practices concerning warrants outstanding,  
26 assets, and liabilities. No appropriation or budget amendment  
27 shall be construed to authorize any encumbrance of funds from  
28 a trust fund after the date on which the trust fund is  
29 terminated or is judicially determined to be invalid.

30 (3) On or before September 1 of each year, the Chief  
31 Financial Officer ~~Comptroller~~ shall submit to the Executive

1 Office of the Governor, the President of the Senate, and the  
2 Speaker of the House of Representatives a list of trust funds  
3 that are scheduled to terminate within 12 months after that  
4 date and also, beginning September 1, 1996, a list of all  
5 trust funds that are exempt from automatic termination  
6 pursuant to the provisions of s. 19(f)(3), Art. III of the  
7 State Constitution, listing revenues of the trust funds by  
8 major revenue category for each of the last 4 fiscal years.

9 Section 210. Paragraph (a) of subsection (2) of  
10 section 215.3208, Florida Statutes, is amended to read:

11 215.3208 Trust funds; legislative review.--

12 (2)(a) When the Legislature terminates a trust fund,  
13 the agency or branch of state government that administers the  
14 trust fund shall pay any outstanding debts or obligations of  
15 the trust fund as soon as practicable, and the Chief Financial  
16 Officer ~~Comptroller~~ shall close out and remove the trust fund  
17 from the various state accounting systems, using generally  
18 accepted accounting principles concerning assets, liabilities,  
19 and warrants outstanding.

20 Section 211. Subsections (2), (3), and (4) of section  
21 215.322, Florida Statutes, are amended to read:

22 215.322 Acceptance of credit cards, charge cards, or  
23 debit cards by state agencies, units of local government, and  
24 the judicial branch.--

25 (2) A state agency as defined in s. 216.011, or the  
26 judicial branch, may accept credit cards, charge cards, or  
27 debit cards in payment for goods and services with the prior  
28 approval of the Chief Financial Officer ~~Treasurer~~. When the  
29 Internet or other related electronic methods are to be used as  
30 the collection medium, the State Technology Office shall  
31 review and recommend to the Chief Financial Officer ~~Treasurer~~

1 whether to approve the request with regard to the process or  
2 procedure to be used.

3 (3) The Chief Financial Officer ~~Treasurer~~ shall adopt  
4 rules governing the establishment and acceptance of credit  
5 cards, charge cards, or debit cards by state agencies or the  
6 judicial branch, including, but not limited to, the following:

7 (a) Utilization of a standardized contract between the  
8 financial institution or other appropriate intermediaries and  
9 the agency or judicial branch which shall be developed by the  
10 Chief Financial Officer ~~Treasurer~~ or approval by the Chief  
11 Financial Officer ~~Treasurer~~ of a substitute agreement.

12 (b) Procedures which permit an agency or officer  
13 accepting payment by credit card, charge card, or debit card  
14 to impose a convenience fee upon the person making the  
15 payment. However, the total amount of such convenience fees  
16 shall not exceed the total cost to the state agency. A  
17 convenience fee is not refundable to the payor.  
18 Notwithstanding the foregoing, this section shall not be  
19 construed to permit surcharges on any other credit card  
20 purchase in violation of s. 501.0117.

21 (c) All service fees payable pursuant to this section  
22 when practicable shall be invoiced and paid by state warrant  
23 or such other manner that is satisfactory to the Chief  
24 Financial Officer ~~Comptroller~~ in accordance with the time  
25 periods specified in s. 215.422.

26 (d) Submission of information to the Chief Financial  
27 Officer ~~Treasurer~~ concerning the acceptance of credit cards,  
28 charge cards, or debit cards by all state agencies or the  
29 judicial branch.

30 (e) A methodology for agencies to use when completing  
31 the cost-benefit analysis referred to in subsection (1). The

1 methodology must consider all quantifiable cost reductions,  
2 other benefits to the agency, and potential impact on general  
3 revenue. The methodology must also consider nonquantifiable  
4 benefits such as the convenience to individuals and businesses  
5 that would benefit from the ability to pay for state goods and  
6 services through the use of credit cards, charge cards, and  
7 debit cards.

8           (4) The Chief Financial Officer ~~may Treasurer is~~  
9 ~~authorized to~~ establish contracts with one or more financial  
10 institutions, credit card companies, or other entities which  
11 may lawfully provide such services, in a manner consistent  
12 with chapter 287, for processing credit card, charge card, or  
13 debit card collections for deposit into the State Treasury or  
14 another qualified public depository. Any state agency, or the  
15 judicial branch, which accepts payment by credit card, charge  
16 card, or debit card shall use at least one of the contractors  
17 established by the Chief Financial Officer ~~Treasurer~~ unless  
18 the state agency or judicial branch obtains authorization from  
19 the Chief Financial Officer ~~Treasurer~~ to use another  
20 contractor which is more advantageous to such state agency or  
21 the judicial branch. Such contracts may authorize a unit of  
22 local government to use the services upon the same terms and  
23 conditions for deposit of credit card, charge card, or debit  
24 card transactions into its qualified public depositories.

25           Section 212. Subsections (1) and (2) of section  
26 215.34, Florida Statutes, are amended to read:

27           215.34 State funds; noncollectible items; procedure.--

28           (1) Any check, draft, or other order for the payment  
29 of money in payment of any licenses, fees, taxes, commissions,  
30 or charges of any sort authorized to be made under the laws of  
31 the state and deposited in the State Treasury as provided

1 herein, which may be returned for any reason by the bank or  
2 other payor upon which same shall have been drawn shall be  
3 forthwith returned by the Chief Financial Officer State  
4 ~~Treasurer~~ for collection to the state officer, the state  
5 agency, or the entity of the judicial branch making the  
6 deposit. In such case, the Chief Financial Officer may  
7 ~~Treasurer is hereby authorized to~~ issue a debit memorandum  
8 charging an account of the agency, officer, or entity of the  
9 judicial branch which originally received the payment. The  
10 original of the debit memorandum shall state the reason for  
11 the return of the check, draft, or other order and shall  
12 accompany the item being returned to the officer, agency, or  
13 entity of the judicial branch being charged, ~~and a copy of the~~  
14 ~~debit memorandum shall be sent to the Comptroller.~~ The  
15 officer, agency, or entity of the judicial branch receiving  
16 the charged-back item shall prepare a journal transfer which  
17 shall debit the charge against the fund or account to which  
18 the same shall have been originally credited. Such procedure  
19 for handling noncollectible items shall not be construed as  
20 paying funds out of the State Treasury without an  
21 appropriation, but shall be considered as an administrative  
22 procedure for the efficient handling of state records and  
23 accounts.

24 (2) Whenever a check, draft, or other order for the  
25 payment of money is returned by the Chief Financial Officer  
26 ~~State Treasurer~~, or by a qualified public depository as  
27 defined in s. 280.02, to a state officer, a state agency, or  
28 the judicial branch for collection, the officer, agency, or  
29 judicial branch shall add to the amount due a service fee of  
30 \$15 or 5 percent of the face amount of the check, draft, or  
31 order, whichever is greater. An agency or the judicial branch

1 may adopt a rule which prescribes a lesser maximum service  
2 fee, which shall be added to the amount due for the dishonored  
3 check, draft, or other order tendered for a particular  
4 service, license, tax, fee, or other charge, but in no event  
5 shall the fee be less than \$15. The service fee shall be in  
6 addition to all other penalties imposed by law, except that  
7 when other charges or penalties are imposed by an agency  
8 related to a noncollectible item, the amount of the service  
9 fee shall not exceed \$150. Proceeds from this fee shall be  
10 deposited in the same fund as the collected item. Nothing in  
11 this section shall be construed as authorization to deposit  
12 moneys outside the State Treasury unless specifically  
13 authorized by law.

14 Section 213. Section 215.35, Florida Statutes, is  
15 amended to read:

16 215.35 State funds; warrants and their issuance.--All  
17 warrants issued by the Chief Financial Officer ~~Comptroller~~  
18 shall be numbered in chronological order commencing with  
19 number one in each fiscal year and each warrant shall refer to  
20 the Chief Financial Officer's ~~Comptroller's~~ voucher by the  
21 number thereof, which voucher shall also be numbered as above  
22 set forth. Each warrant shall state the name of the payee  
23 thereof and the amount allowed, and said warrant shall be  
24 stated in words at length. No warrant shall issue until same  
25 has been authorized by an appropriation made by law but such  
26 warrant need not state or set forth such authorization. The  
27 Chief Financial Officer ~~Comptroller~~ shall register and  
28 maintain a record of each warrant in his or her office. The  
29 record shall show the funds, accounts, purposes, and  
30 departments involved in the issuance of each warrant. In  
31 those instances where the expenditure of funds of regulatory

1 boards or commissions has been provided for by laws other than  
2 the annual appropriations bill, warrants shall be issued upon  
3 requisition to the Chief Financial Officer ~~State Comptroller~~  
4 by the governing body of such board or commission.

5 Section 214. Section 215.405, Florida Statutes, is  
6 amended to read:

7 215.405 State agencies and the judicial branch  
8 authorized to collect costs of fingerprinting.--Any state  
9 agency, or the judicial branch, exercising regulatory  
10 authority and authorized to take fingerprints of persons  
11 within or seeking to come within such agency's or the judicial  
12 branch's regulatory power may collect from the person or  
13 entity on whose behalf the fingerprints were submitted the  
14 actual costs of processing such fingerprints including, but  
15 not limited to, any charges imposed by the Department of Law  
16 Enforcement or any agency or branch of the United States  
17 Government. This provision shall constitute express authority  
18 for state agencies and the judicial branch to collect the  
19 actual costs of processing the fingerprints either prior to or  
20 subsequent to the actual processing and shall supersede any  
21 other law to the contrary. To administer the provisions of  
22 this section, a state agency, or the judicial branch, electing  
23 to collect the cost of fingerprinting is empowered to  
24 promulgate and adopt rules to establish the amounts and the  
25 methods of payment needed to collect such costs. Collections  
26 made under these provisions shall be deposited with the Chief  
27 Financial Officer ~~Treasurer~~ to an appropriate trust fund  
28 account to be designated by the Executive Office of the  
29 Governor.

30 Section 215. Section 215.42, Florida Statutes, is  
31 amended to read:

1           215.42 Purchases from appropriations, proof of  
2 delivery.--The Chief Financial Officer ~~State Comptroller~~ may  
3 require proof, as he or she deems necessary, of delivery and  
4 receipt of purchases before honoring any voucher for payment  
5 from appropriations made in the General Appropriations Act or  
6 otherwise provided by law.

7           Section 216. Section 215.422, Florida Statutes, is  
8 amended to read:

9           215.422 Warrants, vouchers, and invoices; processing  
10 time limits; dispute resolution; agency or judicial branch  
11 compliance.--

12           (1) The voucher authorizing payment of an invoice  
13 submitted to an agency of the state or the judicial branch,  
14 required by law to be filed with the Chief Financial Officer  
15 ~~Comptroller~~, shall be filed with the Chief Financial Officer  
16 ~~Comptroller~~ not later than 20 days after receipt of the  
17 invoice and receipt, inspection, and approval of the goods or  
18 services, except that in the case of a bona fide dispute the  
19 voucher shall contain a statement of the dispute and authorize  
20 payment only in the amount not disputed. The Chief Financial  
21 Officer ~~Comptroller~~ may establish dollar thresholds and other  
22 criteria for all invoices and may delegate to a state agency  
23 or the judicial branch responsibility for maintaining the  
24 official vouchers and documents for invoices which do not  
25 exceed the thresholds or which meet the established criteria.  
26 Such records shall be maintained in accordance with the  
27 requirements established by the Secretary of State. The  
28 electronic payment request transmission to the Chief Financial  
29 Officer ~~Comptroller~~ shall constitute filing of a voucher for  
30 payment of invoices for which the Chief Financial Officer  
31 ~~Comptroller~~ has delegated to an agency custody of official

1 records. Approval and inspection of goods or services shall  
2 take no longer than 5 working days unless the bid  
3 specifications, purchase order, or contract specifies  
4 otherwise. If a voucher filed within the 20-day period is  
5 returned by the Department of Financial Services ~~Banking and~~  
6 ~~Finance~~ because of an error, it shall nevertheless be deemed  
7 timely filed. The 20-day filing requirement may be waived in  
8 whole or in part by the Department of Financial Services  
9 ~~Banking and Finance~~ on a showing of exceptional circumstances  
10 in accordance with rules and regulations of the department.  
11 For the purposes of determining the receipt of invoice date,  
12 the agency or the judicial branch is deemed to receive an  
13 invoice on the date on which a proper invoice is first  
14 received at the place designated by the agency or the judicial  
15 branch. The agency or the judicial branch is deemed to  
16 receive an invoice on the date of the invoice if the agency or  
17 the judicial branch has failed to annotate the invoice with  
18 the date of receipt at the time the agency or the judicial  
19 branch actually received the invoice or failed at the time the  
20 order is placed or contract made to designate a specific  
21 location to which the invoice must be delivered.

22 (2) The warrant in payment of an invoice submitted to  
23 an agency of the state or the judicial branch shall be issued  
24 not later than 10 days after filing of the voucher authorizing  
25 payment. However, this requirement may be waived in whole or  
26 in part by the Department of Financial Services ~~Banking and~~  
27 ~~Finance~~ on a showing of exceptional circumstances in  
28 accordance with rules and regulations of the department. If  
29 the 10-day period contains fewer than 6 working days, the  
30 Department of Financial Services ~~Banking and Finance~~ shall be  
31 deemed in compliance with this subsection if the warrant is

1 issued within 6 working days without regard to the actual  
2 number of calendar days. For purposes of this section, a  
3 payment is deemed to be issued on the first working day that  
4 payment is available for delivery or mailing to the vendor.

5 (3)(a) Each agency of the state or the judicial branch  
6 which is required by law to file vouchers with the Chief  
7 Financial Officer ~~Comptroller~~ shall keep a record of the date  
8 of receipt of the invoice; dates of receipt, inspection, and  
9 approval of the goods or services; date of filing of the  
10 voucher; and date of issuance of the warrant in payment  
11 thereof. If the voucher is not filed or the warrant is not  
12 issued within the time required, an explanation in writing by  
13 the agency head or the Chief Justice shall be submitted to the  
14 Department of Financial Services ~~Banking and Finance~~ in a  
15 manner prescribed by it. Agencies and the judicial branch  
16 shall continue to deliver or mail state payments promptly.

17 (b) If a warrant in payment of an invoice is not  
18 issued within 40 days after receipt of the invoice and  
19 receipt, inspection, and approval of the goods and services,  
20 the agency or judicial branch shall pay to the vendor, in  
21 addition to the amount of the invoice, interest at a rate as  
22 established pursuant to s. 55.03(1) on the unpaid balance from  
23 the expiration of such 40-day period until such time as the  
24 warrant is issued to the vendor. Such interest shall be added  
25 to the invoice at the time of submission to the Chief  
26 Financial Officer ~~Comptroller~~ for payment whenever possible.  
27 If addition of the interest penalty is not possible, the  
28 agency or judicial branch shall pay the interest penalty  
29 payment within 15 days after issuing the warrant. The  
30 provisions of this paragraph apply only to undisputed amounts  
31 for which payment has been authorized. Disputes shall be

1 resolved in accordance with rules developed and adopted by the  
2 Chief Justice for the judicial branch, and rules adopted by  
3 the Department of Financial Services ~~Banking and Finance~~ or in  
4 a formal administrative proceeding before an administrative  
5 law judge of the Division of Administrative Hearings for state  
6 agencies, provided that, for the purposes of ss. 120.569 and  
7 120.57(1), no party to a dispute involving less than \$1,000 in  
8 interest penalties shall be deemed to be substantially  
9 affected by the dispute or to have a substantial interest in  
10 the decision resolving the dispute. In the case of an error on  
11 the part of the vendor, the 40-day period shall begin to run  
12 upon receipt by the agency or the judicial branch of a  
13 corrected invoice or other remedy of the error. The provisions  
14 of this paragraph do not apply when the filing requirement  
15 under subsection (1) or subsection (2) has been waived in  
16 whole by the Department of Financial Services ~~Banking and~~  
17 ~~Finance~~. The various state agencies and the judicial branch  
18 shall be responsible for initiating the penalty payments  
19 required by this subsection and shall use this subsection as  
20 authority to make such payments. The budget request submitted  
21 to the Legislature shall specifically disclose the amount of  
22 any interest paid by any agency or the judicial branch  
23 pursuant to this subsection. The temporary unavailability of  
24 funds to make a timely payment due for goods or services does  
25 not relieve an agency or the judicial branch from the  
26 obligation to pay interest penalties under this section.

27 (c) An agency or the judicial branch may make partial  
28 payments to a contractor upon partial delivery of goods or  
29 services or upon partial completion of construction when a  
30 request for such partial payment is made by the contractor and  
31 approved by the agency. Provisions of this section and rules

1 of the Department of Financial Services ~~Banking and Finance~~  
2 shall apply to partial payments in the same manner as they  
3 apply to full payments.

4 (4) If the terms of the invoice provide a discount for  
5 payment in less than 30 days, agencies of the state and the  
6 judicial branch shall preferentially process it and use all  
7 diligence to obtain the saving by compliance with the invoice  
8 terms.

9 (5) All purchasing agreements between a state agency  
10 or the judicial branch and a vendor, applicable to this  
11 section, shall include a statement of the vendor's rights and  
12 the state's responsibilities under this section. The vendor's  
13 rights shall include being provided with the telephone number  
14 of the vendor ombudsman within the Department of Financial  
15 Services ~~Banking and Finance~~, which information shall also be  
16 placed on all agency or judicial branch purchase orders.

17 (6) The Department of Financial Services ~~Banking and~~  
18 ~~Finance~~ shall monitor each agency's and the judicial branch's  
19 compliance with the time limits and interest penalty  
20 provisions of this section. The department shall provide a  
21 report to an agency or to the judicial branch if the  
22 department determines that the agency or the judicial branch  
23 has failed to maintain an acceptable rate of compliance with  
24 the time limits and interest penalty provisions of this  
25 section. The department shall establish criteria for  
26 determining acceptable rates of compliance. The report shall  
27 also include a list of late vouchers or payments, the amount  
28 of interest owed or paid, and any corrective actions  
29 recommended. The department shall perform monitoring  
30 responsibilities, pursuant to this section, using the  
31 Management Services and Purchasing Subsystem or the Florida

1 Accounting Information Resource Subsystem provided in s.  
2 215.94. Each agency and the judicial branch shall be  
3 responsible for the accuracy of information entered into the  
4 Management Services and Purchasing Subsystem and the Florida  
5 Accounting Information Resource Subsystem for use in this  
6 monitoring.

7 (7) There is created a vendor ombudsman within the  
8 Department of Financial Services ~~Banking and Finance~~ who shall  
9 be responsible for the following functions:

10 (a) Performing the duties of the department pursuant  
11 to subsection (6).

12 (b) Reviewing requests for waivers due to exceptional  
13 circumstances.

14 (c) Disseminating information relative to the prompt  
15 payment policies of this state and assisting vendors in  
16 receiving their payments in a timely manner.

17 (d) Performing such other duties as determined by the  
18 department.

19 (8) The Department of Financial Services ~~Banking and~~  
20 ~~Finance~~ is authorized and directed to adopt and promulgate  
21 rules and regulations to implement this section and for  
22 resolution of disputes involving amounts of less than \$1,000  
23 in interest penalties for state agencies. No agency or the  
24 judicial branch shall adopt any rule or policy that is  
25 inconsistent with this section or the Department of Financial  
26 Services ~~Banking and Finance's~~ rules or policies.

27 (9) Each agency and the judicial branch shall include  
28 in the official position description of every officer or  
29 employee who is responsible for the approval or processing of  
30 vendors' invoices or distribution of warrants to vendors that  
31 the requirements of this section are mandatory.

1           (10) Persistent failure to comply with this section by  
2 any agency of the state or the judicial branch shall  
3 constitute good cause for discharge of employees duly found  
4 responsible, or predominantly responsible, for failure to  
5 comply.

6           (11) Travel and other reimbursements to state officers  
7 and employees must be the same as payments to vendors under  
8 this section, except payment of Class C travel subsistence.  
9 Class C travel subsistence shall be paid in accordance with  
10 the schedule established by the Chief Financial Officer  
11 ~~Comptroller~~ pursuant to s. 112.061(5)(b). This section does  
12 not apply to payments made to state agencies, the judicial  
13 branch, or the legislative branch.

14           (12) In the event that a state agency or the judicial  
15 branch contracts with a third party, uses a revolving fund, or  
16 pays from a local bank account to process and pay invoices for  
17 goods or services, all requirements for financial obligations  
18 and time processing set forth in this section shall be  
19 applicable and the state agency or the judicial branch shall  
20 be responsible for paying vendors the interest assessed for  
21 untimely payment. The state agency or the judicial branch may,  
22 through its contract with a third party, require the third  
23 party to pay interest from the third party's funds.

24           (13) Notwithstanding the provisions of subsections (3)  
25 and (12), in order to alleviate any hardship that may be  
26 caused to a health care provider as a result of delay in  
27 receiving reimbursement for services, any payment or payments  
28 for hospital, medical, or other health care services which are  
29 to be reimbursed by a state agency or the judicial branch,  
30 either directly or indirectly, shall be made to the health  
31 care provider not more than 35 days from the date eligibility

1 for payment of such claim is determined. If payment is not  
2 issued to a health care provider within 35 days after the date  
3 eligibility for payment of the claim is determined, the state  
4 agency or the judicial branch shall pay the health care  
5 provider interest at a rate of 1 percent per month calculated  
6 on a calendar day basis on the unpaid balance from the  
7 expiration of such 35-day period until such time as payment is  
8 made to the health care provider, unless a waiver in whole has  
9 been granted by the Department of Financial Services Banking  
10 ~~and Finance~~ pursuant to subsection (1) or subsection (2).

11 (14) The Chief Financial Officer ~~Comptroller~~ may adopt  
12 rules to authorize advance payments for goods and services,  
13 including, but not limited to, maintenance agreements and  
14 subscriptions. Such rules shall provide objective criteria  
15 for determining when it is in the best interest of the state  
16 to make payments in advance and shall also provide for  
17 adequate protection to ensure that such goods or services will  
18 be provided.

19 (15) Nothing contained in this section shall be  
20 construed to be an appropriation. Any interest which becomes  
21 due and owing pursuant to this section shall only be payable  
22 from the appropriation charged for such goods or services.

23 (16) Notwithstanding the provisions of s. 24.120(3),  
24 applicable to warrants issued for payment of invoices  
25 submitted by the Department of the Lottery, the Chief  
26 Financial Officer ~~Comptroller~~ may, by written agreement with  
27 the Department of the Lottery, establish a shorter time  
28 requirement than the 10 days provided in subsection (2) for  
29 warrants issued for payment. Pursuant to such written  
30 agreement, the Department of the Lottery shall reimburse the  
31

1 Chief Financial Officer ~~Comptroller~~ for costs associated with  
2 processing invoices under the agreement.

3 Section 217. Section 215.50, Florida Statutes, is  
4 amended to read:

5 215.50 Custody of securities purchased; income.--

6 (1) All securities purchased or held may, with the  
7 approval of the board, be in the custody of the Chief  
8 Financial Officer ~~Treasurer~~ or the Chief Financial Officer  
9 ~~Treasurer~~ as treasurer ex officio of the board, or be  
10 deposited with a bank or trust company to be held in  
11 safekeeping by such bank or trust company for the collection  
12 of principal and interest or of the proceeds of the sale  
13 thereof.

14 (2) It shall be the duty of the board or of the Chief  
15 Financial Officer ~~Treasurer~~, as custodian of the securities of  
16 the board, to collect the interest or other income on, and the  
17 principal of, such securities in their custody as the sums  
18 become due and payable and to pay the same, when so collected,  
19 into the investment account of the fund to which the  
20 investments belong.

21 (3) The Chief Financial Officer ~~Treasurer~~, as  
22 custodian of securities owned by the Florida Retirement System  
23 Trust Fund and the Florida Survivor Benefit Trust Fund, shall  
24 collect the interest, dividends, prepayments, maturities,  
25 proceeds from sales, and other income accruing from such  
26 assets. As such income is collected by the Chief Financial  
27 Officer ~~Treasurer~~, it shall be deposited directly into a  
28 commercial bank to the credit of the State Board of  
29 Administration. Such bank accounts as may be required for  
30 this purpose shall offer satisfactory collateral security as  
31 provided by chapter 280. In the event funds so deposited

1 according to the provisions of this section are required for  
2 the purpose of paying benefits or other operational needs, the  
3 State Board of Administration shall remit to the Florida  
4 Retirement System Trust Fund in the State Treasury such  
5 amounts as may be requested by the Department of Management  
6 Services.

7 (4) Securities that the board selects to use for  
8 options operations under s. 215.45 or for lending under s.  
9 215.47(16) shall be registered by the Chief Financial Officer  
10 ~~Treasurer~~ in the name of a third-party nominee in order to  
11 facilitate such operations.

12 Section 218. Section 215.551, Florida Statutes, is  
13 amended to read:

14 215.551 Federal Use of State Lands Trust Fund; county  
15 distribution.--

16 (1) The Chief Financial Officer ~~Comptroller~~ may make  
17 distribution of the Federal Use of State Lands Trust Fund,  
18 when so requested by the counties in interest, of such amounts  
19 as may be accumulated in that fund.

20 (2) The Chief Financial Officer ~~Comptroller~~ shall  
21 ascertain, from the records of the General Land Office or  
22 other departments in Washington, D.C., the number of acres of  
23 land situated in the several counties in which the  
24 Apalachicola, Choctawhatchee, Ocala, and Osceola Forest  
25 Reserves are located, the number of acres of land of such  
26 forest reserve embraced in each of the counties in each of the  
27 reserves, and, also, the amount of money received by the  
28 United States Government from each of the reserves,  
29 respectively. The Chief Financial Officer ~~Comptroller~~ shall  
30 apportion the money on hand to each county in each reserve,  
31 respectively and separately; such distribution shall be based

1 upon the number of acres of land embraced in the Apalachicola  
2 Forest, Choctawhatchee Forest, Ocala Forest, and Osceola  
3 Forest, respectively, in each county and shall be further  
4 based upon the amount collected by the United States from each  
5 of such forests, so that such distribution, when made, will  
6 include for each county the amount due each county, based upon  
7 the receipts for the particular forest and the acreage in the  
8 particular county in which such forest is located. The Chief  
9 Financial Officer ~~Comptroller~~ shall issue two warrants ~~on the~~  
10 ~~Treasurer~~ in each case, the sum of which shall be the amount  
11 due each of such counties from the fund. One warrant shall be  
12 payable to the county for the county general road fund, and  
13 one warrant, of equal amount, shall be payable to such  
14 county's district school board for the district school fund.

15 (3) In the event that actual figures of receipts from  
16 different reserves cannot be obtained by counties, so as to  
17 fully comply with subsections (1) and (2), the Chief Financial  
18 Officer ~~Comptroller~~ may adjust the matter according to the  
19 United States statutes, or as may appear to him or her to be  
20 just and fair, and with the approval of all counties in  
21 interest.

22 (4) The moneys that may be received and credited to  
23 the Federal Use of State Lands Trust Fund are appropriated for  
24 the payment of the warrants of the Chief Financial Officer  
25 ~~Comptroller drawn on the Treasurer~~ in pursuance of this  
26 section.

27 Section 219. Section 215.552, Florida Statutes, is  
28 amended to read:

29 215.552 Federal Use of State Lands Trust Fund; land  
30 within military installations; county distribution.--The Chief  
31 Financial Officer ~~Comptroller~~ shall distribute moneys from the

1 Federal Use of State Lands Trust Fund when so requested by the  
2 counties so affected. The Chief Financial Officer ~~Comptroller~~  
3 shall apportion the money on hand equal to the percentage of  
4 land in each county within each military installation, and the  
5 amount so apportioned to each county shall be applied by such  
6 counties equally divided between the district school fund and  
7 the general road fund of such counties.

8 Section 220. Paragraph (c) of subsection (2),  
9 paragraph (d) of subsection (4), and paragraphs (a), (b), and  
10 (c) of subsection (6) of section 215.555, Florida Statutes,  
11 are amended to read:

12 215.555 Florida Hurricane Catastrophe Fund.--

13 (2) DEFINITIONS.--As used in this section:

14 (c) "Covered policy" means any insurance policy  
15 covering residential property in this state, including, but  
16 not limited to, any homeowner's, mobile home owner's, farm  
17 owner's, condominium association, condominium unit owner's,  
18 tenant's, or apartment building policy, or any other policy  
19 covering a residential structure or its contents issued by any  
20 authorized insurer, including any joint underwriting  
21 association or similar entity created pursuant to law. The  
22 term "covered policy" includes any collateral protection  
23 insurance policy covering personal residences which protects  
24 both the borrower's and the lender's financial interests, in  
25 an amount at least equal to the coverage for the dwelling in  
26 place under the lapsed homeowner's policy, if such policy can  
27 be accurately reported as required in subsection (5).

28 Additionally, covered policies include policies covering the  
29 peril of wind removed from the Florida Residential Property  
30 and Casualty Joint Underwriting Association or from the  
31 Citizens Property Insurance Corporation, created pursuant to

1 s. 627.351(6), or from the Florida Windstorm Underwriting  
2 Association, created pursuant to s. 627.351(2), by an  
3 authorized insurer under the terms and conditions of an  
4 executed assumption agreement between the authorized insurer  
5 and ~~either~~ such association. Each assumption agreement between  
6 ~~the either~~ association and such authorized insurer must be  
7 approved by the Florida Department of Insurance or the Office  
8 of Insurance Regulation prior to the effective date of the  
9 assumption, and the Department of Insurance or the Office of  
10 Insurance Regulation must provide written notification to the  
11 board within 15 working days after such approval. "Covered  
12 policy" does not include any policy that excludes wind  
13 coverage or hurricane coverage or any reinsurance agreement  
14 and does not include any policy otherwise meeting this  
15 definition which is issued by a surplus lines insurer or a  
16 reinsurer.

17 (4) REIMBURSEMENT CONTRACTS.--

18 (d)1. For purposes of determining potential liability  
19 and to aid in the sound administration of the fund, the  
20 contract shall require each insurer to report such insurer's  
21 losses from each covered event on an interim basis, as  
22 directed by the board. The contract shall require the insurer  
23 to report to the board no later than December 31 of each year,  
24 and quarterly thereafter, its reimbursable losses from covered  
25 events for the year. The contract shall require the board to  
26 determine and pay, as soon as practicable after receiving  
27 these reports of reimbursable losses, the initial amount of  
28 reimbursement due and adjustments to this amount based on  
29 later loss information. The adjustments to reimbursement  
30 amounts shall require the board to pay, or the insurer to  
31

1 return, amounts reflecting the most recent calculation of  
2 losses.

3 2. In determining reimbursements pursuant to this  
4 subsection, the contract shall provide that the board shall:

5 a. First reimburse insurers writing covered policies,  
6 which insurers are in full compliance with this section and  
7 have petitioned the Office of Insurance Regulation ~~Department~~  
8 ~~of Insurance~~ and qualified as limited apportionment companies  
9 under s. 627.351(2)(b)3. The amount of such reimbursement  
10 shall be the lesser of \$10 million or an amount equal to 10  
11 times the insurer's reimbursement premium for the current  
12 year. The amount of reimbursement paid under this  
13 sub-subparagraph may not exceed the full amount of  
14 reimbursement promised in the reimbursement contract. This  
15 sub-subparagraph does not apply with respect to any contract  
16 year in which the year-end projected cash balance of the fund,  
17 exclusive of any bonding capacity of the fund, exceeds \$2  
18 billion. Only one member of any insurer group may receive  
19 reimbursement under this sub-subparagraph.

20 b. Next pay to each insurer such insurer's projected  
21 payout, which is the amount of reimbursement it is owed, up to  
22 an amount equal to the insurer's share of the actual premium  
23 paid for that contract year, multiplied by the actual  
24 claims-paying capacity available for that contract year;  
25 provided, entities created pursuant to s. 627.351 shall be  
26 further reimbursed in accordance with sub-subparagraph c.

27 c. Thereafter, establish, based on reimbursable  
28 losses, the prorated reimbursement level at the highest level  
29 for which any remaining fund balance or bond proceeds are  
30 sufficient to reimburse entities created pursuant to s.

31

1 627.351 for losses exceeding the amounts payable pursuant to  
2 sub-subparagraph b. for the current contract year.

3 (6) REVENUE BONDS.--

4 (a) General provisions.--

5 1. Upon the occurrence of a hurricane and a  
6 determination that the moneys in the fund are or will be  
7 insufficient to pay reimbursement at the levels promised in  
8 the reimbursement contracts, the board may take the necessary  
9 steps under paragraph (b) or paragraph (c) for the issuance of  
10 revenue bonds for the benefit of the fund. The proceeds of  
11 such revenue bonds may be used to make reimbursement payments  
12 under reimbursement contracts; to refinance or replace  
13 previously existing borrowings or financial arrangements; to  
14 pay interest on bonds; to fund reserves for the bonds; to pay  
15 expenses incident to the issuance or sale of any bond issued  
16 under this section, including costs of validating, printing,  
17 and delivering the bonds, costs of printing the official  
18 statement, costs of publishing notices of sale of the bonds,  
19 and related administrative expenses; or for such other  
20 purposes related to the financial obligations of the fund as  
21 the board may determine. The term of the bonds may not exceed  
22 30 years. The board may pledge or authorize the corporation to  
23 pledge all or a portion of all revenues under subsection (5)  
24 and under subparagraph 3. to secure such revenue bonds and the  
25 board may execute such agreements between the board and the  
26 issuer of any revenue bonds and providers of other financing  
27 arrangements under paragraph (7)(b) as the board deems  
28 necessary to evidence, secure, preserve, and protect such  
29 pledge. If reimbursement premiums received under subsection  
30 (5) or earnings on such premiums are used to pay debt service  
31 on revenue bonds, such premiums and earnings shall be used

1 only after the use of the moneys derived from assessments  
2 under subparagraph 3. The funds, credit, property, or taxing  
3 power of the state or political subdivisions of the state  
4 shall not be pledged for the payment of such bonds. The board  
5 may also enter into agreements under paragraph (b) or  
6 paragraph (c) for the purpose of issuing revenue bonds in the  
7 absence of a hurricane upon a determination that such action  
8 would maximize the ability of the fund to meet future  
9 obligations.

10           2. The Legislature finds and declares that the  
11 issuance of bonds under this subsection is for the public  
12 purpose of paying the proceeds of the bonds to insurers,  
13 thereby enabling insurers to pay the claims of policyholders  
14 to assure that policyholders are able to pay the cost of  
15 construction, reconstruction, repair, restoration, and other  
16 costs associated with damage to property of policyholders of  
17 covered policies after the occurrence of a hurricane. Revenue  
18 bonds may not be issued under this subsection until validated  
19 under chapter 75. The validation of at least the first  
20 obligations incurred pursuant to this subsection shall be  
21 appealed to the Supreme Court, to be handled on an expedited  
22 basis.

23           3. If the board determines that the amount of revenue  
24 produced under subsection (5) is insufficient to fund the  
25 obligations, costs, and expenses of the fund and the  
26 corporation, including repayment of revenue bonds, the board  
27 shall direct the Office of Insurance Regulation ~~Department of~~  
28 ~~Insurance~~ to levy an emergency assessment on each insurer  
29 writing property and casualty business in this state. Pursuant  
30 to the emergency assessment, each such insurer shall pay to  
31 the corporation by July 1 of each year an amount set by the

1 board not exceeding 2 percent of its gross direct written  
2 premium for the prior year from all property and casualty  
3 business in this state except for workers' compensation,  
4 except that, if the Governor has declared a state of emergency  
5 under s. 252.36 due to the occurrence of a covered event, the  
6 amount of the assessment for the contract year may be  
7 increased to an amount not exceeding 4 percent of such  
8 premium. Any assessment authority not used for the contract  
9 year may be used for a subsequent contract year. If, for a  
10 subsequent contract year, the board determines that the amount  
11 of revenue produced under subsection (5) is insufficient to  
12 fund the obligations, costs, and expenses of the fund and the  
13 corporation, including repayment of revenue bonds for that  
14 contract year, the board shall direct the Office of Insurance  
15 Regulation ~~Department of Insurance~~ to levy an emergency  
16 assessment up to an amount not exceeding the amount of unused  
17 assessment authority from a previous contract year or years,  
18 plus an additional 2 percent if the Governor has declared a  
19 state of emergency under s. 252.36 due to the occurrence of a  
20 covered event. Any assessment authority not used for the  
21 contract year may be used for a subsequent contract year. As  
22 used in this subsection, the term "property and casualty  
23 business" includes all lines of business identified on Form 2,  
24 Exhibit of Premiums and Losses, in the annual statement  
25 required by s. 624.424 and any rules adopted under such  
26 section, except for those lines identified as accident and  
27 health insurance. The annual assessments under this  
28 subparagraph shall continue as long as the revenue bonds  
29 issued with respect to which the assessment was imposed are  
30 outstanding, unless adequate provision has been made for the  
31 payment of such bonds pursuant to the documents authorizing

1 issuance of the bonds. An insurer shall not at any time be  
2 subject to aggregate annual assessments under this  
3 subparagraph of more than 2 percent of premium, except that in  
4 the case of a declared emergency, an insurer shall not at any  
5 time be subject to aggregate annual assessments under this  
6 subparagraph of more than 6 percent of premium; provided, no  
7 more than 4 percent may be assessed for any one contract year.  
8 Any rate filing or portion of a rate filing reflecting a rate  
9 change attributable entirely to the assessment levied under  
10 this subparagraph shall be deemed approved when made, subject  
11 to the authority of the Office of Insurance Regulation  
12 ~~Department of Insurance~~ to require actuarial justification as  
13 to the adequacy of any rate at any time. If the rate filing  
14 reflects only a rate change attributable to the assessment  
15 under this paragraph, the filing may consist of a  
16 certification so stating. The assessments otherwise payable to  
17 the corporation pursuant to this subparagraph shall be paid  
18 instead to the fund unless and until the Office of Insurance  
19 Regulation ~~Department of Insurance~~ has received from the  
20 corporation and the fund a notice, which shall be conclusive  
21 and upon which the Office of Insurance Regulation ~~Department~~  
22 ~~of Insurance~~ may rely without further inquiry, that the  
23 corporation has issued bonds and the fund has no agreements in  
24 effect with local governments pursuant to paragraph (b). On  
25 or after the date of such notice and until such date as the  
26 corporation has no bonds outstanding, the fund shall have no  
27 right, title, or interest in or to the assessments, except as  
28 provided in the fund's agreements with the corporation.  
29 (b) Revenue bond issuance through counties or  
30 municipalities.--

31

1           1. If the board elects to enter into agreements with  
2 local governments for the issuance of revenue bonds for the  
3 benefit of the fund, the board shall enter into such contracts  
4 with one or more local governments, including agreements  
5 providing for the pledge of revenues, as are necessary to  
6 effect such issuance. The governing body of a county or  
7 municipality is authorized to issue bonds as defined in s.  
8 125.013 or s. 166.101 from time to time to fund an assistance  
9 program, in conjunction with the Florida Hurricane Catastrophe  
10 Fund, for the purposes set forth in this section or for the  
11 purpose of paying the costs of construction, reconstruction,  
12 repair, restoration, and other costs associated with damage to  
13 properties of policyholders of covered policies due to the  
14 occurrence of a hurricane by assuring that policyholders  
15 located in this state are able to recover claims under  
16 property insurance policies after a covered event.

17           2. In order to avoid needless and indiscriminate  
18 proliferation, duplication, and fragmentation of such  
19 assistance programs, any local government may provide for the  
20 payment of fund reimbursements, regardless of whether or not  
21 the losses for which reimbursement is made occurred within or  
22 outside of the territorial jurisdiction of the local  
23 government.

24           3. The state hereby covenants with holders of bonds  
25 issued under this paragraph that the state will not repeal or  
26 abrogate the power of the board to direct the Office of  
27 Insurance Regulation ~~Department of Insurance~~ to levy the  
28 assessments and to collect the proceeds of the revenues  
29 pledged to the payment of such bonds as long as any such bonds  
30 remain outstanding unless adequate provision has been made for  
31

1 the payment of such bonds pursuant to the documents  
2 authorizing the issuance of such bonds.

3 4. There shall be no liability on the part of, and no  
4 cause of action shall arise against any members or employees  
5 of the governing body of a local government for any actions  
6 taken by them in the performance of their duties under this  
7 paragraph.

8 (c) Florida Hurricane Catastrophe Fund Finance  
9 Corporation.--

10 1. In addition to the findings and declarations in  
11 subsection (1), the Legislature also finds and declares that:

12 a. The public benefits corporation created under this  
13 paragraph will provide a mechanism necessary for the  
14 cost-effective and efficient issuance of bonds. This mechanism  
15 will eliminate unnecessary costs in the bond issuance process,  
16 thereby increasing the amounts available to pay reimbursement  
17 for losses to property sustained as a result of hurricane  
18 damage.

19 b. The purpose of such bonds is to fund reimbursements  
20 through the Florida Hurricane Catastrophe Fund to pay for the  
21 costs of construction, reconstruction, repair, restoration,  
22 and other costs associated with damage to properties of  
23 policyholders of covered policies due to the occurrence of a  
24 hurricane.

25 c. The efficacy of the financing mechanism will be  
26 enhanced by the corporation's ownership of the assessments, by  
27 the insulation of the assessments from possible bankruptcy  
28 proceedings, and by covenants of the state with the  
29 corporation's bondholders.

30  
31

1           2.a. There is created a public benefits corporation,  
2 which is an instrumentality of the state, to be known as the  
3 Florida Hurricane Catastrophe Fund Finance Corporation.

4           b. The corporation shall operate under a five-member  
5 board of directors consisting of the Governor or a designee,  
6 the Chief Financial Officer ~~Comptroller~~ or a designee, the  
7 Attorney General ~~Treasurer~~ or a designee, the director of the  
8 Division of Bond Finance of the State Board of Administration,  
9 and the senior employee of the State Board of Administration  
10 responsible for operations ~~chief operating officer~~ of the  
11 Florida Hurricane Catastrophe Fund.

12           c. The corporation has all of the powers of  
13 corporations under chapter 607 and under chapter 617, subject  
14 only to the provisions of this subsection.

15           d. The corporation may issue bonds and engage in such  
16 other financial transactions as are necessary to provide  
17 sufficient funds to achieve the purposes of this section.

18           e. The corporation may invest in any of the  
19 investments authorized under s. 215.47.

20           f. There shall be no liability on the part of, and no  
21 cause of action shall arise against, any board members or  
22 employees of the corporation for any actions taken by them in  
23 the performance of their duties under this paragraph.

24           3.a. In actions under chapter 75 to validate any bonds  
25 issued by the corporation, the notice required by s. 75.06  
26 shall be published only in Leon County and in two newspapers  
27 of general circulation in the state, and the complaint and  
28 order of the court shall be served only on the State Attorney  
29 of the Second Judicial Circuit.

30           b. The state hereby covenants with holders of bonds of  
31 the corporation that the state will not repeal or abrogate the

1 power of the board to direct the Office of Insurance  
2 Regulation Department of Insurance to levy the assessments and  
3 to collect the proceeds of the revenues pledged to the payment  
4 of such bonds as long as any such bonds remain outstanding  
5 unless adequate provision has been made for the payment of  
6 such bonds pursuant to the documents authorizing the issuance  
7 of such bonds.

8 4. The bonds of the corporation are not a debt of the  
9 state or of any political subdivision, and neither the state  
10 nor any political subdivision is liable on such bonds. The  
11 corporation does not have the power to pledge the credit, the  
12 revenues, or the taxing power of the state or of any political  
13 subdivision. The credit, revenues, or taxing power of the  
14 state or of any political subdivision shall not be deemed to  
15 be pledged to the payment of any bonds of the corporation.

16 5.a. The property, revenues, and other assets of the  
17 corporation; the transactions and operations of the  
18 corporation and the income from such transactions and  
19 operations; and all bonds issued under this paragraph and  
20 interest on such bonds are exempt from taxation by the state  
21 and any political subdivision, including the intangibles tax  
22 under chapter 199 and the income tax under chapter 220. This  
23 exemption does not apply to any tax imposed by chapter 220 on  
24 interest, income, or profits on debt obligations owned by  
25 corporations other than the Florida Hurricane Catastrophe Fund  
26 Finance Corporation.

27 b. All bonds of the corporation shall be and  
28 constitute legal investments without limitation for all public  
29 bodies of this state; for all banks, trust companies, savings  
30 banks, savings associations, savings and loan associations,  
31 and investment companies; for all administrators, executors,

1 trustees, and other fiduciaries; for all insurance companies  
2 and associations and other persons carrying on an insurance  
3 business; and for all other persons who are now or may  
4 hereafter be authorized to invest in bonds or other  
5 obligations of the state and shall be and constitute eligible  
6 securities to be deposited as collateral for the security of  
7 any state, county, municipal, or other public funds. This  
8 sub-subparagraph shall be considered as additional and  
9 supplemental authority and shall not be limited without  
10 specific reference to this sub-subparagraph.

11           6. The corporation and its corporate existence shall  
12 continue until terminated by law; however, no such law shall  
13 take effect as long as the corporation has bonds outstanding  
14 unless adequate provision has been made for the payment of  
15 such bonds pursuant to the documents authorizing the issuance  
16 of such bonds. Upon termination of the existence of the  
17 corporation, all of its rights and properties in excess of its  
18 obligations shall pass to and be vested in the state.

19           Section 221. Subsection (5) of section 215.559,  
20 Florida Statutes, is amended to read:

21           215.559 Hurricane Loss Mitigation Program.--

22           (5) Except for the program set forth in subsection  
23 (3), the Department of Community Affairs shall develop the  
24 programs set forth in this section in consultation with an  
25 advisory council consisting of a representative designated by  
26 the Chief Financial Officer ~~Department of Insurance~~, a  
27 representative designated by the Florida Home Builders  
28 Association, a representative designated by the Florida  
29 Insurance Council, a representative designated by the  
30 Federation of Manufactured Home Owners, a representative  
31 designated by the Florida Association of Counties, and a

1 representative designated by the Florida Manufactured Housing  
2 Association.

3 Section 222. Paragraph (c) of subsection (1),  
4 paragraph (b) of subsection (2), and paragraph (a) of  
5 subsection (3) of section 215.56005, Florida Statutes, are  
6 amended to read:

7 215.56005 Tobacco Settlement Financing Corporation.--

8 (1) DEFINITIONS.--As used in this section:

9 (c) "Department" means the Department of Financial  
10 Services ~~Banking and Finance~~ or its successor.

11 (2) CORPORATION CREATION AND AUTHORITY.--

12 (b) The corporation shall be governed by a board of  
13 directors consisting of the Governor, the Chief Financial  
14 Officer or the Chief Financial Officer's designee ~~Treasurer,~~  
15 ~~the Comptroller~~, the Attorney General, two directors appointed  
16 from the membership of the Senate by the President of the  
17 Senate, and two directors appointed from the membership of the  
18 House of Representatives by the Speaker of the House of  
19 Representatives. ~~On January 7, 2003, the board shall include~~  
20 ~~the Chief Financial Officer or the Chief Financial Officer's~~  
21 ~~designee, in place of the Treasurer and the Comptroller or~~  
22 ~~their designees.~~The executive director of the State Board of  
23 Administration shall be the chief executive officer of the  
24 corporation and shall direct and supervise the administrative  
25 affairs and operation of the corporation. The corporation  
26 shall also have such other officers as may be determined by  
27 the board of directors.

28 (3) POWERS OF THE DEPARTMENT.--

29 (a) The department is authorized, on behalf of the  
30 state, to do all things necessary or desirable to assist the  
31 corporation in the execution of the corporation's

1 responsibilities, including, but not limited to, processing  
2 budget amendments against the Department of Financial Services  
3 ~~Banking and Finance~~ Tobacco Settlement Clearing Trust Fund,  
4 subject to the requirements of s. 216.177, for the costs and  
5 expenses of administration of the corporation in an amount not  
6 to exceed \$500,000; entering into one or more purchase  
7 agreements to sell to the corporation any or all of the  
8 state's right, title, and interest in and to the tobacco  
9 settlement agreement; executing any administrative agreements  
10 with the corporation to fund the administration, operation,  
11 and expenses of the corporation from moneys appropriated for  
12 such purpose; and executing and delivering any and all other  
13 documents and agreements necessary or desirable in connection  
14 with the sale of any or all of the state's right, title, and  
15 interest in and to the tobacco settlement agreement to the  
16 corporation or the issuance of the bonds by the corporation.  
17 The department's authority to sell any or all of the state's  
18 right, title, and interest in and to the tobacco settlement  
19 agreement is subject to approval by the Legislature in a  
20 regular, extended, or special session.

21 Section 223. Subsection (3) and paragraph (a) of  
22 subsection (5) of section 215.5601, Florida Statutes, are  
23 amended to read:

24 215.5601 Lawton Chiles Endowment Fund.--

25 (3) LAWTON CHILES ENDOWMENT FUND; CREATION;  
26 PRINCIPAL.--

27 (a) There is created the Lawton Chiles Endowment Fund,  
28 to be administered by the State Board of Administration. The  
29 endowment shall serve as a clearing trust fund, not subject to  
30 termination under s. 19(f), Art. III of the State

31

1 Constitution. The endowment fund shall be exempt from the  
2 service charges imposed by s. 215.20.

3 (b) The endowment shall receive moneys from the sale  
4 of the state's right, title, and interest in and to the  
5 tobacco settlement agreement as defined in s. 215.56005,  
6 including the right to receive payments under such agreement,  
7 and from accounts transferred from the Department of Financial  
8 Services ~~Banking and Finance~~ Tobacco Settlement Clearing Trust  
9 Fund established under s. 17.41. Amounts to be transferred  
10 from the Department of Financial Services ~~Banking and Finance~~  
11 Tobacco Settlement Clearing Trust Fund to the endowment shall  
12 be in the following amounts for the following fiscal years:

- 13 1. For fiscal year 1999-2000, \$1.1 billion;
- 14 2. For fiscal year 2000-2001, \$200 million;
- 15 3. For fiscal year 2001-2002, \$200 million;
- 16 4. For fiscal year 2002-2003, \$200 million; and

17 (c) Amounts to be transferred under subparagraphs  
18 (b)2., 3., and 4. may be reduced by an amount equal to the  
19 lesser of \$200 million or the amount the endowment receives in  
20 that fiscal year from the sale of the state's right, title,  
21 and interest in and to the tobacco settlement agreement.

22 (d) For fiscal year 2001-2002, \$150 million of the  
23 existing principal in the endowment shall be reserved and  
24 accounted for within the endowment, the income from which  
25 shall be used solely for the funding for biomedical research  
26 activities as provided in s. 215.5602. The income from the  
27 remaining principal shall be used solely as the source of  
28 funding for health and human services programs for children  
29 and elders as provided in subsection (5). The separate account  
30 for biomedical research shall be dissolved and the entire  
31 principal in the endowment shall be used exclusively for

1 health and human services programs when cures have been found  
2 for tobacco-related cancer, heart, and lung disease.

3 (5) AVAILABILITY OF FUNDS; USES.--

4 (a) Funds from the endowment which are available for  
5 legislative appropriation shall be transferred by the board to  
6 the Department of Financial Services ~~Banking and Finance~~  
7 Tobacco Settlement Clearing Trust Fund, created in s. 17.41,  
8 and disbursed in accordance with the legislative  
9 appropriation.

10 1. Appropriations by the Legislature to the Department  
11 of Health from endowment earnings from the principal set aside  
12 for biomedical research shall be from a category called the  
13 Florida Biomedical Research Program and shall be deposited  
14 into the Biomedical Research Trust Fund in the Department of  
15 Health established in s. 20.435.

16 2. Appropriations by the Legislature to the Department  
17 of Children and Family Services, the Department of Health, or  
18 the Department of Elderly Affairs for health and human  
19 services programs shall be from a category called the Lawton  
20 Chiles Endowment Fund Programs and shall be deposited into  
21 each department's respective Tobacco Settlement Trust Fund as  
22 appropriated.

23 Section 224. Section 215.58, Florida Statutes, is  
24 amended to read:

25 215.58 Definitions relating to State Bond Act.--The  
26 following words or terms when used in this act shall have the  
27 following meanings:

28 (1) "Governor" means ~~shall mean~~ the Governor of the  
29 state or any Acting Governor or other person then exercising  
30 the duties of the office of Governor.

31

1           ~~(2) "Treasurer" shall mean the Insurance Commissioner~~  
2 ~~and Treasurer.~~

3           ~~(3) "Comptroller" shall mean the State Comptroller.~~

4           (2)(4) "State" means ~~shall mean~~ the State of Florida.

5           (3)(5) "Division" means ~~shall mean~~ the Division of  
6 Bond Finance.

7           (4)(6) "Board" means ~~shall mean~~ the governing board of  
8 the said division, which shall be composed of the Governor and  
9 Cabinet.

10           (5)(7) "Director" means ~~shall mean~~ the chief  
11 administrator of the division, who shall act on behalf of the  
12 division when authorized by the board, as provided by this  
13 act.

14           (6)(8) "State agency" means ~~shall mean~~ any board,  
15 commission, authority, or other state agency heretofore or  
16 hereafter created by the constitution or statutes of the  
17 state.

18           (7)(9) "Bonds" means ~~shall mean~~ state bonds, or any  
19 revenue bonds, certificates or other obligations heretofore or  
20 hereafter authorized to be issued by said division or by any  
21 state agency.

22           (8)(10) "State bonds" means ~~shall mean~~ bonds pledging  
23 the full faith and credit of the State of Florida.

24           (9)(11) "Legislature" means ~~shall mean~~ the State  
25 Legislature.

26           (10)(12) "Constitution" means ~~shall mean~~ the existing  
27 constitution of the state, or any constitution hereafter  
28 adopted by the people of the state, together with all  
29 amendments thereof.

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1           (11)~~(13)~~ "Original issue discount" means the amount by  
2 which the par value of a bond exceeds its public offering  
3 price at the time it is originally offered to an investor.

4           (12)~~(14)~~ "Governmental agency" means ~~shall mean~~:

5           (a) The state or any department, commission, agency,  
6 or other instrumentality thereof.

7           (b) Any county or municipality or any department,  
8 commission, agency, or other instrumentality thereof.

9           (c) Any school board or special district, authority,  
10 or governmental entity.

11           Section 225. Subsections (2), (3), (4), (5), and (8)  
12 of section 215.684, Florida Statutes, are amended to read:

13           215.684 Limitation on engaging services of securities  
14 broker or bond underwriter convicted of fraud.--

15           (2) Upon notification under chapter 517 that a person  
16 or firm has been convicted or has pleaded as provided in  
17 subsection (1), the Chief Financial Officer ~~Comptroller~~ shall  
18 issue a notice of intent to take action to disqualify such  
19 person or firm, which notice must state that:

20           (a) Such person or firm is considered a disqualified  
21 securities broker or bond underwriter;

22           (b) A state agency may not enter into a contract with  
23 such person or firm as a securities broker or bond underwriter  
24 for any new business for a period of 2 years;

25           (c) The substantial rights of such person or firm as a  
26 securities broker or bond underwriter are being affected and  
27 the person or firm has the rights accorded pursuant to ss.  
28 120.569 and 120.57; and

29           (d) Such person or firm may petition to mitigate the  
30 duration of his or her disqualification, based on the criteria  
31 established in subsection (3) and may request that such

1 mitigation be considered as part of any hearing under ss.  
2 120.569 and 120.57.

3 (3) The Chief Financial Officer ~~Comptroller~~ shall  
4 decide, based on the following criteria, whether or not to  
5 mitigate the duration of the disqualification:

6 (a) The nature and details of the crime;

7 (b) The degree of culpability of the person or firm  
8 proposed to be requalified;

9 (c) Prompt or voluntary payment of any damages or  
10 penalty as a result of the conviction and disassociation from  
11 any other person or firm involved in the crimes of fraud;

12 (d) Cooperation with state or federal investigation or  
13 prosecution of the crime of fraud;

14 (e) Prior or future self-policing by the person or  
15 firm to prevent crimes of fraud; and

16 (f) Reinstatement or clemency in any jurisdiction in  
17 relation to the crime at issue in the proceeding.

18 (4) If the Chief Financial Officer ~~Comptroller~~ in his  
19 or her sole discretion decides to mitigate the duration of the  
20 disqualification based on the foregoing, the duration of  
21 disqualification shall be for any period the Chief Financial  
22 Officer ~~Comptroller~~ specifies up to 2 years from the date of  
23 the person's or firm's conviction or plea. If the Chief  
24 Financial Officer ~~Comptroller~~ refuses to mitigate the duration  
25 of the disqualification, such person or firm may again file  
26 for mitigation no sooner than 9 months after denial by the  
27 Chief Financial Officer ~~Comptroller~~.

28 (5) Notwithstanding subsection (4), a firm or person  
29 at any time may petition the Chief Financial Officer  
30 ~~Comptroller~~ for termination of the disqualification based upon  
31

1 a reversal of the conviction of the firm or person by an  
2 appellate court or a pardon.

3 (8) Except when otherwise provided by law for crimes  
4 of fraud with respect to the transaction of business with any  
5 public entity or with an agency or political subdivision of  
6 any other state or with the United States, this act  
7 constitutes the sole authorization for determining when a  
8 person or firm convicted or having pleaded guilty or nolo  
9 contendere to the crime of fraud may not be engaged to provide  
10 services as a securities broker or bond underwriter with the  
11 state. Nothing in this act shall be construed to affect the  
12 authority granted the Chief Financial Officer ~~Comptroller~~  
13 under chapter 517 to revoke or suspend the license of such  
14 securities dealer or bond underwriter.

15 Section 226. Subsection (4) of section 215.70, Florida  
16 Statutes, is amended to read:

17 215.70 State Board of Administration to act in case of  
18 defaults.--

19 (4) Whenever it becomes necessary for state funds to  
20 be appropriated for the payment of principal or interest on  
21 bonds which have been issued by the Division of Bond Finance  
22 on behalf of any local government or authority and for which  
23 the full faith and credit of the state has been pledged, any  
24 state shared revenues otherwise earmarked for the local  
25 government or authority shall be used by the Chief Financial  
26 Officer ~~Comptroller~~ to reimburse the state, until the local  
27 government or authority has reimbursed the state in full.

28 Section 227. Subsection (4) of section 215.91, Florida  
29 Statutes, is amended to read:

30 215.91 Florida Financial Management Information  
31 System; board; council.--

1           (4) The council shall provide ongoing counsel to the  
2 board and act to resolve problems among or between the  
3 functional owner subsystems. The board, through the  
4 coordinating council, shall direct and manage the development,  
5 implementation, and operation of the information subsystems  
6 that together are the Florida Financial Management Information  
7 System. The coordinating council shall approve the  
8 information subsystems' designs prior to the development,  
9 implementation, and operation of the subsystems and shall  
10 approve subsequent proposed design modifications to the  
11 information subsystems subject to the guidelines issued by the  
12 council. The coordinating council shall ensure that the  
13 information subsystems' operations support the exchange of  
14 unified and coordinated data between information subsystems.  
15 The coordinating council shall establish the common data codes  
16 for financial management, and it shall require and ensure the  
17 use of common data codes by the information subsystems that  
18 together constitute the Florida Financial Management  
19 Information System. The Chief Financial Officer ~~Comptroller~~  
20 shall adopt a chart of accounts consistent with the common  
21 financial management data codes established by the  
22 coordinating council. The board, through the coordinating  
23 council, shall establish the financial management policies and  
24 procedures for the executive branch of state government. The  
25 coordinating council shall notify in writing the chairs of the  
26 legislative fiscal committees and the Chief Justice of the  
27 Supreme Court regarding the adoption of, or modification to, a  
28 proposed financial management policy or procedure. The notice  
29 shall solicit comments from the chairs of the legislative  
30 fiscal committees and the Chief Justice of the Supreme Court  
31

1 at least 14 consecutive days before the final action by the  
2 coordinating council.

3 Section 228. Subsection (5) of section 215.92, Florida  
4 Statutes, is amended to read:

5 215.92 Definitions relating to Florida Financial  
6 Management Information System Act.--For the purposes of ss.  
7 215.90-215.96:

8 (5) "Design and coordination staff" means the  
9 personnel responsible for providing administrative and  
10 clerical support to the board, coordinating council, and  
11 secretary to the board. The design and coordination staff  
12 shall function as the agency clerk for the board and the  
13 coordinating council. For administrative purposes, the design  
14 and coordination staff are assigned to the Department of  
15 Financial Services ~~Banking and Finance~~ but they are  
16 functionally assigned to the board.

17 Section 229. Subsection (3) of section 215.93, Florida  
18 Statutes, is amended to read:

19 215.93 Florida Financial Management Information  
20 System.--

21 (3) The Florida Financial Management Information  
22 System shall include financial management data and utilize the  
23 chart of accounts approved by the Chief Financial Officer  
24 ~~Comptroller~~. Common financial management data shall include,  
25 but not be limited to, data codes, titles, and definitions  
26 used by one or more of the functional owner subsystems. The  
27 Florida Financial Management Information System shall utilize  
28 common financial management data codes. The council shall  
29 recommend and the board shall adopt policies regarding the  
30 approval and publication of the financial management data.  
31 The Chief Financial Officer ~~Comptroller~~ shall adopt policies

1 regarding the approval and publication of the chart of  
2 accounts. The Chief Financial Officer's ~~Comptroller's~~ chart  
3 of accounts shall be consistent with the common financial  
4 management data codes established by the coordinating council.  
5 Further, all systems not a part of the Florida Financial  
6 Management Information System which provide information to the  
7 system shall use the common data codes from the Florida  
8 Financial Management Information System and the Chief  
9 Financial Officer's ~~Comptroller's~~ chart of accounts. Data  
10 codes that cannot be supplied by the Florida Financial  
11 Management Information System and the Chief Financial  
12 Officer's ~~Comptroller's~~ chart of accounts and that are  
13 required for use by the information subsystems shall be  
14 approved by the board upon recommendation of the coordinating  
15 council. However, board approval shall not be required for  
16 those data codes specified by the Auditor General under the  
17 provisions of s. 215.94(6)(c).

18 Section 230. Subsections (2) and (3) and paragraph (a)  
19 of subsection (5) of section 215.94, Florida Statutes, are  
20 amended to read:

21 215.94 Designation, duties, and responsibilities of  
22 functional owners.--

23 (2) The Department of Financial Services ~~Banking and~~  
24 ~~Finance~~ shall be the functional owner of the Florida  
25 Accounting Information Resource Subsystem established pursuant  
26 to ss. 17.03, 215.86, 216.141, and 216.151 and further  
27 developed in accordance with the provisions of ss.

28 215.90-215.96. The subsystem shall include, but shall not be  
29 limited to, the following functions:

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1           (a) Accounting and reporting so as to provide timely  
2 data for producing financial statements for the state in  
3 accordance with generally accepted accounting principles.

4           (b) Auditing and settling claims against the state.

5           (3) The Chief Financial Officer ~~Treasurer~~ shall be the  
6 functional owner of the Cash Management Subsystem. The Chief  
7 Financial Officer ~~Treasurer~~ shall design, implement, and  
8 operate the subsystem in accordance with the provisions of ss.  
9 215.90-215.96. The subsystem shall include, but shall not be  
10 limited to, functions for:

11           (a) Recording and reconciling credits and debits to  
12 treasury fund accounts.

13           (b) Monitoring cash levels and activities in state  
14 bank accounts.

15           (c) Monitoring short-term investments of idle cash.

16           (d) Administering the provisions of the Federal Cash  
17 Management Improvement Act of 1990.

18           (5) The Department of Management Services shall be the  
19 functional owner of the Cooperative Personnel Employment  
20 Subsystem. The department shall design, implement, and  
21 operate the subsystem in accordance with the provisions of ss.  
22 110.116 and 215.90-215.96. The subsystem shall include, but  
23 shall not be limited to, functions for:

24           (a) Maintenance of employee and position data,  
25 including funding sources and percentages and salary lapse.  
26 The employee data shall include, but not be limited to,  
27 information to meet the payroll system requirements of the  
28 Department of Financial Services ~~Banking and Finance~~ and to  
29 meet the employee benefit system requirements of the  
30 Department of Management Services.

31

1           Section 231. Subsections (1) and (2) of section  
2 215.96, Florida Statutes, are amended to read:

3           215.96 Coordinating council and design and  
4 coordination staff.--

5           (1) The Chief Financial Officer ~~Comptroller~~, as chief  
6 fiscal officer of the state, shall establish a coordinating  
7 council to function on a continuing basis. The coordinating  
8 council shall review and recommend to the board solutions and  
9 policy alternatives to ensure coordination between functional  
10 owners of the various information subsystems described in ss.  
11 215.90-215.96 to the extent necessary to unify all the  
12 subsystems into a financial management information system.

13           (2) The coordinating council shall consist of the  
14 Chief Financial Officer ~~Comptroller~~; ~~the Treasurer~~; the  
15 secretary of the Department of Management Services; the  
16 Attorney General; and the Director of Planning and Budgeting,  
17 Executive Office of the Governor, or their designees. The  
18 Chief Financial Officer ~~Comptroller~~, or his or her designee,  
19 shall be chair of the coordinating council, and the design and  
20 coordination staff shall provide administrative and clerical  
21 support to the council and the board. The design and  
22 coordination staff shall maintain the minutes of each meeting  
23 and shall make such minutes available to any interested  
24 person. The Auditor General, the State Courts Administrator,  
25 an executive officer of the Florida Association of State  
26 Agency Administrative Services Directors, and an executive  
27 officer of the Florida Association of State Budget Officers,  
28 or their designees, shall serve without voting rights as ex  
29 officio members on the coordinating council. The chair may  
30 call meetings of the coordinating council as often as  
31 necessary to transact business; however, the coordinating

1 council shall meet at least once a year. Action of the  
2 coordinating council shall be by motion, duly made, seconded  
3 and passed by a majority of the coordinating council voting in  
4 the affirmative for approval of items that are to be  
5 recommended for approval to the Financial Management  
6 Information Board.

7 Section 232. Section 215.965, Florida Statutes, is  
8 amended to read:

9 215.965 Disbursement of state moneys.--Except as  
10 provided in s. 17.076, s. 253.025(14), s. 259.041(18), s.  
11 717.124(5), s. 732.107(5), or s. 733.816(5), all moneys in the  
12 State Treasury shall be disbursed by state warrant, drawn by  
13 the Chief Financial Officer ~~Comptroller~~ upon the State  
14 Treasury and payable to the ultimate beneficiary. This  
15 authorization shall include electronic disbursement.

16 Section 233. Paragraphs (a), (c), (j), (n), (p), and  
17 (s) of subsection (2), subsections (3) and (4), paragraphs (a)  
18 and (b) of subsection (5), paragraphs (a) and (d) of  
19 subsection (6), paragraphs (a) and (c) of subsection (7),  
20 paragraphs (e) and (g) of subsection (8), paragraph (e) of  
21 subsection (9), and paragraphs (d) and (f) of subsection (10)  
22 of section 215.97, Florida Statutes, are amended to read:

23 215.97 Florida Single Audit Act.--

24 (2) Definitions; as used in this section, the term:

25 (a) "Audit threshold" means the amount to use in  
26 determining when a state single audit of a nonstate entity  
27 shall be conducted in accordance with this section. Each  
28 nonstate entity that expends a total amount of state financial  
29 assistance equal to or in excess of \$300,000 in any fiscal  
30 year of such nonstate entity shall be required to have a state  
31 single audit for such fiscal year in accordance with the

1 requirements of this section. Every 2 years the Auditor  
2 General, after consulting with the Executive Office of the  
3 Governor, the Chief Financial Officer ~~Comptroller~~, and all  
4 state agencies that provide state financial assistance to  
5 nonstate entities, shall review the amount for requiring  
6 audits under this section and may adjust such dollar amount  
7 consistent with the purpose of this section.

8 (c) "Catalog of State Financial Assistance" means a  
9 comprehensive listing of state projects. The Catalog of State  
10 Financial Assistance shall be issued by the Executive Office  
11 of the Governor after conferring with the Chief Financial  
12 Officer ~~Comptroller~~ and all state agencies that provide state  
13 financial assistance to nonstate entities. The Catalog of  
14 State Financial Assistance shall include for each listed state  
15 project: the responsible state agency; standard state project  
16 number identifier; official title; legal authorization; and  
17 description of the state project, including objectives,  
18 restrictions, application and awarding procedures, and other  
19 relevant information determined necessary.

20 (j) "Major state project" means any state project  
21 meeting the criteria as stated in the rules of the Executive  
22 Office of the Governor. Such criteria shall be established  
23 after consultation with the Chief Financial Officer  
24 ~~Comptroller~~ and appropriate state agencies that provide state  
25 financial assistance and shall consider the amount of state  
26 project expenditures or expenses or inherent risks. Each major  
27 state project shall be audited in accordance with the  
28 requirements of this section.

29 (n) "Schedule of State Financial Assistance" means a  
30 document prepared in accordance with the rules of the Chief

31

1 Financial Officer ~~Comptroller~~ and included in each financial  
2 reporting package required by this section.

3 (p) "State financial assistance" means financial  
4 assistance from state resources, not including federal  
5 financial assistance and state matching, provided to nonstate  
6 entities to carry out a state project. "State financial  
7 assistance" includes all types of state assistance as stated  
8 in the rules of the Executive Office of the Governor  
9 established in consultation with the Chief Financial Officer  
10 ~~Comptroller~~ and appropriate state agencies that provide state  
11 financial assistance. It includes state financial assistance  
12 provided directly by state awarding agencies or indirectly by  
13 recipients of state awards or subrecipients. It does not  
14 include procurement contracts used to buy goods or services  
15 from vendors. Audits of such procurement contracts with  
16 vendors are outside of the scope of this section. Also, audits  
17 of contracts to operate state-government-owned and  
18 contractor-operated facilities are excluded from the audit  
19 requirements of this section.

20 (s) "State Projects Compliance Supplement" means a  
21 document issued by the Executive Office of the Governor, in  
22 consultation with the Chief Financial Officer ~~Comptroller~~ and  
23 all state agencies that provide state financial assistance.  
24 The State Projects Compliance Supplement shall identify state  
25 projects, the significant compliance requirements, eligibility  
26 requirements, matching requirements, suggested audit  
27 procedures, and other relevant information determined  
28 necessary.

29 (3) The Executive Office of the Governor shall:

30 (a) Upon conferring with the Chief Financial Officer  
31 ~~Comptroller~~ and all state awarding agencies, adopt rules

1 necessary to provide appropriate guidance to state awarding  
2 agencies, recipients and subrecipients, and independent  
3 auditors of state financial assistance relating to the  
4 requirements of this section, including:

5       1. The types or classes of financial assistance  
6 considered to be state financial assistance which would be  
7 subject to the requirements of this section. This would  
8 include guidance to assist in identifying when the state  
9 agency or recipient has contracted with a vendor rather than  
10 with a recipient or subrecipient.

11       2. The criteria for identifying a major state project.

12       3. The criteria for selecting state projects for  
13 audits based on inherent risk.

14       (b) Be responsible for coordinating the initial  
15 preparation and subsequent revisions of the Catalog of State  
16 Financial Assistance after consultation with the Chief  
17 Financial Officer ~~Comptroller~~ and all state awarding agencies.

18       (c) Be responsible for coordinating the initial  
19 preparation and subsequent revisions of the State Projects  
20 Compliance Supplement, after consultation with the Chief  
21 Financial Officer ~~Comptroller~~ and all state awarding agencies.

22       (4) The Chief Financial Officer ~~Comptroller~~ shall:

23       (a) Make enhancements to the state's accounting system  
24 to provide for the:

25       1. Recording of state financial assistance and federal  
26 financial assistance appropriations and expenditures within  
27 the state awarding agencies' operating funds.

28       2. Recording of state project number identifiers, as  
29 provided in the Catalog of State Financial Assistance, for  
30 state financial assistance.

31

1           3. Establishment and recording of an identification  
2 code for each financial transaction, including state agencies'  
3 disbursements of state financial assistance and federal  
4 financial assistance, as to the corresponding type or  
5 organization that is party to the transaction (e.g., other  
6 governmental agencies, nonprofit organizations, and for-profit  
7 organizations), and disbursements of federal financial  
8 assistance, as to whether the party to the transaction is or  
9 is not a recipient or subrecipient.

10           (b) Upon conferring with the Executive Office of the  
11 Governor and all state awarding agencies, adopt rules  
12 necessary to provide appropriate guidance to state awarding  
13 agencies, recipients and subrecipients, and independent  
14 auditors of state financial assistance relating to the format  
15 for the Schedule of State Financial Assistance.

16           (c) Perform any inspections, reviews, investigations,  
17 or audits of state financial assistance considered necessary  
18 in carrying out the Chief Financial Officer's ~~Comptroller's~~  
19 legal responsibilities for state financial assistance or to  
20 comply with the requirements of this section.

21           (5) Each state awarding agency shall:

22           (a) Provide to a recipient information needed by the  
23 recipient to comply with the requirements of this section,  
24 including:

25           1. The audit and accountability requirements for state  
26 projects as stated in this section and applicable rules of the  
27 Executive Office of the Governor, rules of the Chief Financial  
28 Officer ~~Comptroller~~, and rules of the Auditor General.

29           2. Information from the Catalog of State Financial  
30 Assistance, including the standard state project number  
31 identifier; official title; legal authorization; and

1 description of the state project including objectives,  
2 restrictions, and other relevant information determined  
3 necessary.

4           3. Information from the State Projects Compliance  
5 Supplement, including the significant compliance requirements,  
6 eligibility requirements, matching requirements, suggested  
7 audit procedures, and other relevant information determined  
8 necessary.

9           (b) Require the recipient, as a condition of receiving  
10 state financial assistance, to allow the state awarding  
11 agency, the Chief Financial Officer ~~Comptroller~~, and the  
12 Auditor General access to the recipient's records and the  
13 recipient's independent auditor's working papers as necessary  
14 for complying with the requirements of this section.

15           (6) As a condition of receiving state financial  
16 assistance, each recipient that provides state financial  
17 assistance to a subrecipient shall:

18           (a) Provide to a subrecipient information needed by  
19 the subrecipient to comply with the requirements of this  
20 section, including:

21           1. Identification of the state awarding agency.

22           2. The audit and accountability requirements for state  
23 projects as stated in this section and applicable rules of the  
24 Executive Office of the Governor, rules of the Chief Financial  
25 Officer ~~Comptroller~~, and rules of the Auditor General.

26           3. Information from the Catalog of State Financial  
27 Assistance, including the standard state project number  
28 identifier; official title; legal authorization; and  
29 description of the state project, including objectives,  
30 restrictions, and other relevant information.

31

1           4. Information from the State Projects Compliance  
2 Supplement including the significant compliance requirements,  
3 eligibility requirements, matching requirements, and suggested  
4 audit procedures, and other relevant information determined  
5 necessary.

6           (d) Require subrecipients, as a condition of receiving  
7 state financial assistance, to permit the independent auditor  
8 of the recipient, the state awarding agency, the Chief  
9 Financial Officer ~~Comptroller~~, and the Auditor General access  
10 to the subrecipient's records and the subrecipient's  
11 independent auditor's working papers as necessary to comply  
12 with the requirements of this section.

13           (7) Each recipient or subrecipient of state financial  
14 assistance shall comply with the following:

15           (a) Each nonstate entity that receives state financial  
16 assistance and meets audit threshold requirements, in any  
17 fiscal year of the nonstate entity, as stated in the rules of  
18 the Auditor General, shall have a state single audit conducted  
19 for such fiscal year in accordance with the requirements of  
20 this act and with additional requirements established in rules  
21 of the Executive Office of the Governor, rules of the Chief  
22 Financial Officer ~~Comptroller~~, and rules of the Auditor  
23 General. If only one state project is involved in a nonstate  
24 entity's fiscal year, the nonstate entity may elect to have  
25 only a state project-specific audit of the state project for  
26 that fiscal year.

27           (c) Regardless of the amount of the state financial  
28 assistance, the provisions of this section do not exempt a  
29 nonstate entity from compliance with provisions of law  
30 relating to maintaining records concerning state financial  
31 assistance to such nonstate entity or allowing access and

1 examination of those records by the state awarding agency, the  
2 Chief Financial Officer ~~Comptroller~~, or the Auditor General.

3 (8) The independent auditor when conducting a state  
4 single audit of recipients or subrecipients shall:

5 (e) Report on the results of any audit conducted  
6 pursuant to this section in accordance with the rules of the  
7 Executive Office of the Governor, rules of the Chief Financial  
8 Officer ~~Comptroller~~, and rules of the Auditor General. Audit  
9 reports shall include summaries of the auditor's results  
10 regarding the nonstate entity's financial statements; Schedule  
11 of State Financial Assistance; internal controls; and  
12 compliance with laws, rules, and guidelines.

13 (g) Upon notification by the nonstate entity, make  
14 available the working papers relating to the audit conducted  
15 pursuant to the requirements of this section to the state  
16 awarding agency, the Chief Financial Officer ~~Comptroller~~, or  
17 the Auditor General for review or copying.

18 (9) The independent auditor, when conducting a state  
19 project-specific audit of recipients or subrecipients, shall:

20 (e) Upon notification by the nonstate entity, make  
21 available the working papers relating to the audit conducted  
22 pursuant to the requirements of this section to the state  
23 awarding agency, the Chief Financial Officer ~~Comptroller~~, or  
24 the Auditor General for review or copying.

25 (10) The Auditor General shall:

26 (d) Provide technical advice upon request of the Chief  
27 Financial Officer ~~Comptroller~~, Executive Office of the  
28 Governor, and state agencies relating to financial reporting  
29 and audit responsibilities contained in this section.

30 (f) Perform ongoing reviews of a sample of financial  
31 reporting packages filed pursuant to the requirements of this

1 section to determine compliance with the reporting  
2 requirements of this section and applicable rules of the  
3 Executive Office of the Governor, rules of the Chief Financial  
4 Officer ~~Comptroller~~, and rules of the Auditor General.

5 Section 234. Paragraph (a) of subsection (2) of  
6 section 216.0442, Florida Statutes, is amended to read:

7 216.0442 Truth in bonding; definitions; summary of  
8 state debt; statement of proposed financing; truth-in-bonding  
9 statement.--

10 (2) When required by statute to support the proposed  
11 debt financing of fixed capital outlay projects or operating  
12 capital outlay requests or to explain the issuance of a debt  
13 or obligation, one or more of the following documents shall be  
14 developed:

15 (a) A summary of outstanding state debt as furnished  
16 by the Chief Financial Officer ~~Comptroller~~ pursuant to s.  
17 216.102.

18 Section 235. Section 216.102, Florida Statutes, is  
19 amended to read:

20 216.102 Filing of financial information; handling by  
21 Chief Financial Officer ~~Comptroller~~; penalty for  
22 noncompliance.--

23 (1) By September 30 of each year, each agency  
24 supported by any form of taxation, licenses, fees, imposts, or  
25 exactions, the judicial branch, and, for financial reporting  
26 purposes, each component unit of the state as determined by  
27 the Chief Financial Officer ~~Comptroller~~ shall prepare, using  
28 generally accepted accounting principles, and file with the  
29 Chief Financial Officer ~~Comptroller~~ the financial and other  
30 information necessary for the preparation of annual financial  
31 statements for the State of Florida as of June 30. In

1 addition, each such agency and the judicial branch shall  
2 prepare financial statements showing the financial position  
3 and results of agency or branch operations as of June 30 for  
4 internal management purposes.

5 (a) Each state agency and the judicial branch shall  
6 record the receipt and disbursement of funds from federal  
7 sources in a form and format prescribed by the Chief Financial  
8 Officer ~~Comptroller~~. The access to federal funds by the  
9 administering agencies or the judicial branch may not be  
10 authorized until:

11 1. The deposit has been recorded in the Florida  
12 Accounting Information Resource Subsystem using proper,  
13 consistent codes that designate deposits as federal funds.

14 2. The deposit and appropriate recording required by  
15 this paragraph have been verified by the Office of the Chief  
16 Financial Officer ~~Treasurer~~.

17 (b) The Chief Financial Officer ~~Comptroller~~ shall  
18 publish a statewide policy detailing the requirements for  
19 recording receipt and disbursement of federal funds into the  
20 Florida Accounting Information Resource Subsystem and provide  
21 technical assistance to the agencies and the judicial branch  
22 to implement the policy.

23 (2) Financial information must be contained within the  
24 Florida Accounting Information Resource Subsystem. Other  
25 information must be submitted in the form and format  
26 prescribed by the Chief Financial Officer ~~Comptroller~~.

27 (a) Each component unit shall file financial  
28 information and other information necessary for the  
29 preparation of annual financial statements with the agency or  
30 branch designated by the Chief Financial Officer ~~Comptroller~~

31

1 by the date specified by the Chief Financial Officer  
2 ~~Comptroller~~.

3 (b) The state agency or branch designated by the Chief  
4 Financial Officer ~~Comptroller~~ to receive financial information  
5 and other information from component units shall include the  
6 financial information in the Florida Accounting Information  
7 Resource Subsystem and shall include the component units'  
8 other information in its submission to the Chief Financial  
9 Officer ~~Comptroller~~.

10 (3) The Chief Financial Officer ~~Comptroller~~ shall:

11 (a) Prepare and furnish to the Auditor General annual  
12 financial statements for the state on or before December 31 of  
13 each year, using generally accepted accounting principles.

14 (b) Prepare and publish a comprehensive annual  
15 financial report for the state in accordance with generally  
16 accepted accounting principles on or before February 28 of  
17 each year.

18 (c) Furnish the Governor, the President of the Senate,  
19 and the Speaker of the House of Representatives with a copy of  
20 the comprehensive annual financial report prepared pursuant to  
21 paragraph (b).

22 (d) Notify each agency and the judicial branch of the  
23 data that is required to be recorded to enhance accountability  
24 for tracking federal financial assistance.

25 (e) Provide reports, as requested, to executive or  
26 judicial branch entities, the President of the Senate, the  
27 Speaker of the House of Representatives, and the members of  
28 the Florida Congressional Delegation, detailing the federal  
29 financial assistance received and disbursed by state agencies  
30 and the judicial branch.

31

1           (f) Consult with and elicit comments from the  
2 Executive Office of the Governor on changes to the Florida  
3 Accounting Information Resource Subsystem which clearly affect  
4 the accounting of federal funds, so as to ensure consistency  
5 of information entered into the Federal Aid Tracking System by  
6 state executive and judicial branch entities. While efforts  
7 shall be made to ensure the compatibility of the Florida  
8 Accounting Information Resource Subsystem and the Federal Aid  
9 Tracking System, any successive systems serving identical or  
10 similar functions shall preserve such compatibility.

11  
12 The Chief Financial Officer ~~Comptroller~~ may furnish and  
13 publish in electronic form the financial statements and the  
14 comprehensive annual financial report required under  
15 paragraphs (a), (b), and (c).

16           (4) If any agency or the judicial branch fails to  
17 comply with subsection (1) or subsection (2), the Chief  
18 Financial Officer ~~Comptroller~~ may refuse to honor salary  
19 claims for agency or branch fiscal and executive staff until  
20 the agency or branch corrects its deficiency.

21           (5) The Chief Financial Officer ~~Comptroller~~ may  
22 withhold any funds payable to a component unit that does not  
23 comply with subsection (1) or subsection (2) until the  
24 component unit corrects its deficiency.

25           (6) The Chief Financial Officer ~~Comptroller~~ may adopt  
26 rules to administer this section.

27           Section 236. Subsections (1) and (3) of section  
28 216.141, Florida Statutes, are amended to read:

29           216.141 Budget system procedures; planning and  
30 programming by state agencies.--

31

1           (1) The Executive Office of the Governor, in  
2 consultation with the appropriations committees of the Senate  
3 and House of Representatives, and by utilizing the Florida  
4 Financial Management Information System management data and  
5 the Chief Financial Officer's ~~Comptroller's~~ chart of accounts,  
6 shall prescribe a planning and budgeting system, pursuant to  
7 s. 215.94(1), to provide for continuous planning and  
8 programming and for effective management practices for the  
9 efficient operations of all state agencies and the judicial  
10 branch. The Legislature may contract with the Executive Office  
11 of the Governor to develop the planning and budgeting system  
12 and to provide services to the Legislature for the support and  
13 use of the legislative appropriations system. The contract  
14 shall include the policies and procedures for combining the  
15 legislative appropriations system with the planning and  
16 budgeting information system established pursuant to s.  
17 215.94(1). At a minimum, the contract shall require the use of  
18 common data codes. The combined legislative appropriations and  
19 planning and budgeting information subsystem shall support the  
20 legislative appropriations and legislative oversight functions  
21 without data code conversion or modification.

22           (3) The Chief Financial Officer ~~Comptroller~~, as chief  
23 fiscal officer, shall use the Florida Accounting Information  
24 Resource Subsystem developed pursuant to s. 215.94(2) for  
25 account purposes in the performance of and accounting for all  
26 of his or her constitutional and statutory duties and  
27 responsibilities. However, state agencies and the judicial  
28 branch continue to be responsible for maintaining accounting  
29 records necessary for effective management of their programs  
30 and functions.

31

1           Section 237. Subsection (1) of section 216.177,  
2 Florida Statutes, is amended to read:

3           216.177 Appropriations acts, statement of intent,  
4 violation, notice, review and objection procedures.--

5           (1) When an appropriations act is delivered to the  
6 Governor after the Legislature has adjourned sine die, as soon  
7 as practicable, but no later than the 10th day before the end  
8 of the period allowed by law for veto consideration in any  
9 year in which an appropriation is made, the chairs of the  
10 legislative appropriations committees shall jointly transmit:

11           (a) The official list of General Revenue Fund  
12 appropriations determined in consultation with the Executive  
13 Office of the Governor to be nonrecurring; and

14           (b) The documents set forth in s. 216.0442(2)(a) and  
15 (c),

16  
17 to the Executive Office of the Governor, the Chief Financial  
18 Officer ~~Comptroller~~, the Auditor General, the director of the  
19 Office of Program Policy Analysis and Government  
20 Accountability, the Chief Justice of the Supreme Court, and  
21 each state agency. A request for additional explanation and  
22 direction regarding the legislative intent of the General  
23 Appropriations Act during the fiscal year may be made to the  
24 chair and vice chair of the Legislative Budget Commission or  
25 the President of the Senate and the Speaker of the House of  
26 Representatives only by and through the Executive Office of  
27 the Governor for state agencies, and by and through the Chief  
28 Justice of the Supreme Court for the judicial branch, as is  
29 deemed necessary. However, the Chief Financial Officer  
30 ~~Comptroller~~ may also request further clarification of  
31 legislative intent pursuant to the Chief Financial Officer's

1 ~~Comptroller's~~ responsibilities related to his or her preaudit  
2 function of expenditures.

3           Section 238. Subsections (6), (12), and (14) and  
4 paragraph (b) of subsection (16) of section 216.181, Florida  
5 Statutes, are amended to read:

6           216.181 Approved budgets for operations and fixed  
7 capital outlay.--

8           (6)(a) The Executive Office of the Governor or the  
9 Chief Justice of the Supreme Court may require the submission  
10 of a detailed plan from the agency or entity of the judicial  
11 branch affected, consistent with the General Appropriations  
12 Act, special appropriations acts, and the statement of intent  
13 before transferring and releasing the balance of a lump-sum  
14 appropriation. The provisions of this paragraph are subject to  
15 the notice and review procedures set forth in s. 216.177.

16           (b) The Executive Office of the Governor and the Chief  
17 Justice of the Supreme Court may amend, without approval of  
18 the Legislative Budget Commission, state agency and judicial  
19 branch entity budgets, respectively, to reflect the  
20 transferred funds based on the approved plans for lump-sum  
21 appropriations.

22  
23 The Executive Office of the Governor shall transmit to each  
24 state agency and the Chief Financial Officer ~~Comptroller~~, and  
25 the Chief Justice shall transmit to each judicial branch  
26 component and the Chief Financial Officer ~~Comptroller~~, any  
27 approved amendments to the approved operating budgets.

28           (12) There is appropriated nonoperating budget for  
29 refunds, payments to the United States Treasury, payments of  
30 the service charge to the General Revenue Fund, and transfers  
31 of funds specifically required by law. Such authorized budget,

1 together with related releases, shall be transmitted by the  
2 state agency or by the judicial branch to the Chief Financial  
3 Officer ~~Comptroller~~ for entry in his or her ~~the Comptroller's~~  
4 records in the manner and format prescribed by the Executive  
5 Office of the Governor in consultation with the Chief  
6 Financial Officer ~~Comptroller~~. A copy of such authorized  
7 budgets shall be furnished to the Executive Office of the  
8 Governor or the Chief Justice, the chairs of the legislative  
9 committees responsible for developing the general  
10 appropriations acts, and the Auditor General. The Governor may  
11 withhold approval of nonoperating investment authority for  
12 certain trust funds when deemed in the best interest of the  
13 state. The Governor for the executive branch, and the Chief  
14 Justice for the judicial branch, may establish nonoperating  
15 budgets for transfers, purchase of investments, special  
16 expenses, distributions, and any other nonoperating budget  
17 categories they deem necessary and in the best interest of the  
18 state and consistent with legislative intent and policy. The  
19 provisions of this subsection are subject to the notice,  
20 review, and objection procedures set forth in s. 216.177. For  
21 purposes of this section, the term "nonoperating budgets"  
22 means nonoperating disbursement authority for purchase of  
23 investments, refunds, payments to the United States Treasury,  
24 transfers of funds specifically required by law, distributions  
25 of assets held by the state in a trustee capacity as an agent  
26 of fiduciary, special expenses, and other nonoperating budget  
27 categories as determined necessary by the Executive Office of  
28 the Governor, not otherwise appropriated in the General  
29 Appropriations Act.

30 (14) The Executive Office of the Governor and the  
31 Chief Justice of the Supreme Court shall certify the amounts

1 approved for operations and fixed capital outlay, together  
2 with any relevant supplementary materials or information, to  
3 the Chief Financial Officer ~~Comptroller~~; and such  
4 certification shall be the Chief Financial Officer's  
5 ~~Comptroller's~~ guide with reference to the expenditures of each  
6 state agency pursuant to s. 216.192.

7 (16)

8 (b) Any agency, or the judicial branch, that has been  
9 authorized by the General Appropriations Act or expressly  
10 authorized by other law to make advances for program startup  
11 or advances for contracted services, in total or periodically,  
12 shall limit such disbursements to other governmental entities  
13 and not-for-profit corporations. The amount which may be  
14 advanced shall not exceed the expected cash needs of the  
15 contractor or recipient within the initial 3 months.  
16 Thereafter, disbursements shall only be made on a  
17 reimbursement basis. Any agreement that provides for  
18 advancements may contain a clause that permits the contractor  
19 or recipient to temporarily invest the proceeds, provided that  
20 any interest income shall either be returned to the agency or  
21 be applied against the agency's obligation to pay the contract  
22 amount. This paragraph does not constitute lawful authority  
23 to make any advance payment not otherwise authorized by laws  
24 relating to a particular agency or general laws relating to  
25 the expenditure or disbursement of public funds. The Chief  
26 Financial Officer ~~Comptroller~~ may, after consultation with the  
27 legislative appropriations committees, advance funds beyond a  
28 3-month requirement if it is determined to be consistent with  
29 the intent of the approved operating budget.

30 Section 239. Section 216.183, Florida Statutes, is  
31 amended to read:

1           216.183 Entities using performance-based program  
2 budgets; chart of accounts.--State agencies and the judicial  
3 branch for which a performance-based program budget has been  
4 appropriated shall utilize the chart of accounts used by the  
5 Florida Accounting Information Resource Subsystem in the  
6 manner described in s. 215.93(3). The chart of accounts for  
7 state agencies and the judicial branch for which a  
8 performance-based program budget has been appropriated shall  
9 be developed and amended, if necessary, in consultation with  
10 the Department of Financial Services ~~Banking and Finance~~, the  
11 Executive Office of the Governor, and the chairs of the  
12 Legislative Budget Commission.

13           Section 240. Subsections (1) and (4) of section  
14 216.192, Florida Statutes, are amended to read:

15           216.192 Release of appropriations; revision of  
16 budgets.--

17           (1) Unless otherwise provided in the General  
18 Appropriations Act, on July 1 of each fiscal year, up to 25  
19 percent of the original approved operating budget of each  
20 agency and of the judicial branch may be released until such  
21 time as annual plans for quarterly releases for all  
22 appropriations have been developed, approved, and furnished to  
23 the Chief Financial Officer ~~Comptroller~~ by the Executive  
24 Office of the Governor for state agencies and by the Chief  
25 Justice of the Supreme Court for the judicial branch. The  
26 plans, including appropriate plans of releases for fixed  
27 capital outlay projects that correspond with each project  
28 schedule, shall attempt to maximize the use of trust funds and  
29 shall be transmitted to the Chief Financial Officer  
30 ~~Comptroller~~ by August 1 of each fiscal year. Such releases  
31 shall at no time exceed the total appropriations available to

1 a state agency or to the judicial branch, or the approved  
2 budget for such agency or the judicial branch if less. The  
3 Chief Financial Officer ~~Comptroller~~ shall enter such releases  
4 in his or her records in accordance with the release plans  
5 prescribed by the Executive Office of the Governor and the  
6 Chief Justice, unless otherwise amended as provided by law.  
7 The Executive Office of the Governor and the Chief Justice  
8 shall transmit a copy of the approved annual releases to the  
9 head of the state agency, the chair and vice chair of the  
10 Legislative Budget Commission, and the Auditor General. The  
11 Chief Financial Officer ~~Comptroller~~ shall authorize all  
12 expenditures to be made from the appropriations on the basis  
13 of such releases and in accordance with the approved budget,  
14 and not otherwise. Expenditures shall be authorized only in  
15 accordance with legislative authorizations. Nothing herein  
16 precludes periodic reexamination and revision by the Executive  
17 Office of the Governor or by the Chief Justice of the annual  
18 plans for release of appropriations and the notifications of  
19 the parties of all such revisions.

20 (4) The legislative appropriations committees may  
21 advise the Chief Financial Officer ~~Comptroller~~, the Executive  
22 Office of the Governor, or the Chief Justice relative to the  
23 release of any funds under this section.

24 Section 241. Subsection (1) of section 216.212,  
25 Florida Statutes, is amended to read:

26 216.212 Budgets for federal funds; restrictions on  
27 expenditure of federal funds.--

28 (1) The Executive Office of the Governor and the  
29 office of the Chief Financial Officer ~~Comptroller~~, ~~and the~~  
30 ~~office of the Treasurer~~ shall develop and implement procedures  
31 for accelerating the drawdown of, and minimizing the payment

1 of interest on, federal funds. The Executive Office of the  
2 Governor shall establish a clearinghouse for federal programs  
3 and activities. The clearinghouse shall develop the capacity  
4 to respond to federal grant opportunities and to coordinate  
5 the use of federal funds in the state.

6 (a) Every state agency, when making a request or  
7 preparing a budget to be submitted to the Federal Government  
8 for funds, equipment, material, or services, shall submit such  
9 request or budget to the Executive Office of the Governor for  
10 review before submitting it to the proper federal authority.  
11 However, the Executive Office of the Governor may specifically  
12 authorize any agency to submit specific types of grant  
13 proposals directly to the Federal Government.

14 (b) Every office or court of the judicial branch, when  
15 making a request or preparing a budget to be submitted to the  
16 Federal Government for funds, equipment, material, or  
17 services, shall submit such request or budget to the Chief  
18 Justice of the Supreme Court for approval before submitting it  
19 to the proper federal authority. However, the Chief Justice  
20 may specifically authorize any court to submit specific types  
21 of grant proposals directly to the Federal Government.

22 Section 242. Subsections (8), (9), and (10) of section  
23 216.221, Florida Statutes, are amended to read:

24 216.221 Appropriations as maximum appropriations;  
25 adjustment of budgets to avoid or eliminate deficits.--

26 (8) The Chief Financial Officer ~~Comptroller~~ also has  
27 the duty to ensure that revenues being collected will be  
28 sufficient to meet the appropriations and that no deficit  
29 occurs in any fund of the state.

30 (9) If, in the opinion of the Chief Financial Officer  
31 ~~Comptroller~~, after consultation with the Revenue Estimating

1 Conference, a deficit will occur, he or she ~~the Comptroller~~  
2 shall report his or her opinion to the Governor in writing. In  
3 the event the Governor does not certify a deficit within 10  
4 days after the Chief Financial Officer's ~~Comptroller's~~ report,  
5 the Chief Financial Officer ~~Comptroller~~ shall report his or  
6 her findings and opinion to the commission and the Chief  
7 Justice of the Supreme Court.

8 (10) When advised by the Revenue Estimating  
9 Conference, the Chief Financial Officer ~~Comptroller~~, or any  
10 agency responsible for a trust fund that a deficit will occur  
11 with respect to the appropriations from a specific trust fund  
12 in the current fiscal year, the Governor for the executive  
13 branch, or the Chief Justice for the judicial branch, shall  
14 develop a plan of action to eliminate the deficit. Before  
15 implementing the plan of action, the Governor or the Chief  
16 Justice must comply with the provisions of s. 216.177(2). In  
17 developing the plan of action, the Governor or the Chief  
18 Justice shall, to the extent possible, preserve legislative  
19 policy and intent, and, absent any specific directions to the  
20 contrary in the General Appropriations Act, any reductions in  
21 appropriations from the trust fund for the fiscal year shall  
22 be prorated among the specific appropriations made from the  
23 trust fund for the current fiscal year.

24 Section 243. Subsection (1) of section 216.222,  
25 Florida Statutes, is amended to read:

26 216.222 Budget Stabilization Fund; criteria for  
27 withdrawing moneys.--Moneys in the Budget Stabilization Fund  
28 may be transferred to the General Revenue Fund for:

29 (1)(a) Offsetting a deficit in the General Revenue  
30 Fund. A deficit is deemed to occur when the official estimate  
31 of funds available in the General Revenue Fund for a fiscal

1 year falls below the total amount appropriated from the  
2 General Revenue Fund for that fiscal year. Such a transfer  
3 must be made pursuant to s. 216.221, or pursuant to an  
4 appropriation by law.

5 (b) Notwithstanding the requirements of s. 216.221,  
6 if, after consultation with the Revenue Estimating Conference,  
7 the Chief Financial Officer ~~Comptroller~~ believes that a  
8 deficit will occur in the General Revenue Fund and if:

9 1. Fewer than 30 but more than 4 days are left in the  
10 fiscal year, the Legislature is not in session, and neither  
11 the Legislature nor the Legislative Budget Commission is  
12 scheduled to meet before the end of the fiscal year, or

13 2. Fewer than 5 days are left in the fiscal year and  
14 the Governor and the Chief Justice, the Legislature, or the  
15 Legislative Budget Commission have not implemented measures to  
16 resolve the deficit,

17  
18 the Chief Financial Officer ~~Comptroller~~ shall certify the  
19 deficit to the Governor, the Chief Justice, the President of  
20 the Senate, and the Speaker of the House of Representatives,  
21 and may thereafter withdraw funds from the Budget  
22 Stabilization Fund to offset the projected deficit in the  
23 General Revenue Fund. The Chief Financial Officer ~~Comptroller~~  
24 shall consult with the Governor and the chair and vice chair  
25 of the Legislative Budget Commission before any funds may be  
26 withdrawn from the Budget Stabilization Fund. At the  
27 beginning of the next fiscal year, the Chief Financial Officer  
28 ~~Comptroller~~ shall promptly determine the General Revenue Fund  
29 balance to be carried forward. The Chief Financial Officer  
30 ~~Comptroller~~ shall immediately repay the Budget Stabilization  
31 Fund for the withdrawn amount, up to the amount of the

1 balance. If the General Revenue Fund balance carried forward  
2 is not sufficient to fully repay the Budget Stabilization  
3 Fund, the repayment of the remainder of the withdrawn funds  
4 shall be as provided in s. 215.32(2)(c)3.

5 Section 244. Paragraph (d) of subsection (4) of  
6 section 216.235, Florida Statutes, is amended to read:

7 216.235 Innovation Investment Program.--

8 (4) There is hereby created the State Innovation  
9 Committee, which shall have final approval authority as to  
10 which innovative investment projects submitted under this  
11 section shall be funded. Such committee shall be comprised of  
12 seven members. Appointed members shall serve terms of 1 year  
13 and may be reappointed. The committee shall include:

14 (d) The Chief Financial Officer ~~Comptroller~~.

15 Section 245. Section 216.237, Florida Statutes, is  
16 amended to read:

17 216.237 Availability of any remaining funds; agency  
18 maintenance of accounting records.--Any remaining funds from  
19 the General Revenue Fund and trust fund spending authority not  
20 awarded to agencies pursuant to s. 216.236 shall be available  
21 to agencies for innovative projects which generate a cost  
22 savings, increase revenue, or improve service delivery.  
23 Innovative projects which generate a cost savings shall  
24 receive greater consideration when awarding innovation  
25 investment funds. Any trust fund authority granted under this  
26 program shall be utilized in a manner consistent with the  
27 statutory authority for the use of said trust fund. Any  
28 savings realized as a result of implementing the innovative  
29 project shall be used by the agency to establish an internal  
30 innovations fund. State agencies which are awarded funds for  
31 innovative projects shall utilize the chart of accounts used

1 by the Florida Accounting Information Resource Subsystem in  
2 the manner described in s. 215.93(3). Such chart of accounts  
3 shall be developed and amended in consultation with the  
4 Department of Financial Services ~~Banking and Finance~~ and the  
5 Executive Office of the Governor to separate and account for  
6 the savings that result from the implementation of the  
7 innovative projects and to keep track of how the innovative  
8 funds are reinvested by the state agency to fund additional  
9 innovative projects, which may include, but not be limited to,  
10 expenditures for training and information technology  
11 resources. Guidelines for the establishment of such internal  
12 innovations fund shall be provided by the Department of  
13 Management Services. Any agency awarded funds under this  
14 section shall maintain detailed accounting records showing all  
15 expenses, loan transfers, savings, or other financial actions  
16 concerning the project. Any savings realized as a result of  
17 implementing the innovative project shall be quantified,  
18 validated, and verified by the agency. A final report of the  
19 results of the implementation of each innovative project shall  
20 be submitted by each participating agency to the Governor's  
21 Office of Planning and Budgeting and the legislative  
22 appropriations committees by June 30 of the fiscal year in  
23 which the funds were received and ensuing fiscal years for the  
24 life of the project.

25 Section 246. Paragraph (b) of subsection (2) of  
26 section 216.251, Florida Statutes, is amended to read:

27 216.251 Salary appropriations; limitations.--

28 (2)

29 (b) Salary payments shall be made only to employees  
30 filling established positions included in the agency's or in  
31

1 the judicial branch's approved budgets and amendments thereto  
2 as may be provided by law; provided, however:

3 1. Reclassification of established positions may be  
4 accomplished when justified in accordance with the established  
5 procedures for reclassifying positions; or

6 2. When the Division of Risk Management of the  
7 Department of Financial Services ~~Insurance~~ has determined that  
8 an employee is entitled to receive a temporary partial  
9 disability benefit or a temporary total disability benefit  
10 pursuant to the provisions of s. 440.15 and there is medical  
11 certification that the employee cannot perform the duties of  
12 the employee's regular position, but the employee can perform  
13 some type of work beneficial to the agency, the agency may  
14 return the employee to the payroll, at his or her regular rate  
15 of pay, to perform such duties as the employee is capable of  
16 performing, even if there is not an established position in  
17 which the employee can be placed. Nothing in this  
18 subparagraph shall abrogate an employee's rights under chapter  
19 440 or chapter 447, nor shall it adversely affect the  
20 retirement credit of a member of the Florida Retirement System  
21 in the membership class he or she was in at the time of, and  
22 during, the member's disability.

23 Section 247. Section 216.271, Florida Statutes, is  
24 amended to read:

25 216.271 Revolving funds.--

26 (1) No revolving fund may be established or increased  
27 in amount pursuant to s. 17.58(2)~~s. 18.101(2)~~, unless  
28 approved by the Chief Financial Officer ~~Comptroller~~. The  
29 purpose and uses of a revolving fund may not be changed  
30 without the prior approval of the Chief Financial Officer  
31 ~~Comptroller~~. As used in this section, the term "revolving

1 fund" means a cash fund maintained within or outside the State  
2 Treasury and established from an appropriation, to be used by  
3 an agency or the judicial branch in making authorized  
4 expenditures.

5 (2) When the Chief Financial Officer ~~Comptroller~~  
6 approves a revolving or petty cash fund for making refunds or  
7 other payments, such fund shall be established from an account  
8 within the appropriate fund to be known as "payments for  
9 revolving funds from funds not otherwise appropriated."

10 Reimbursements made from revolving or petty cash funds shall  
11 be made in strict accordance with the provisions of s.  
12 215.26(2). The Chief Financial Officer ~~Comptroller~~ may  
13 restrict the types of uses of any revolving fund established  
14 pursuant to this section.

15 (3) Vouchers for reimbursement of expenditures from  
16 revolving funds established under this section shall be  
17 presented in a routine manner to the Chief Financial Officer  
18 ~~Comptroller~~ for approval and payment, the proceeds of which  
19 shall be returned to the revolving or petty cash fund  
20 involved.

21 (4) The revolving or petty cash fund authorized herein  
22 shall be properly maintained and accounted for by the agency  
23 or by the judicial branch requesting the fund and, upon the  
24 expiration of the need therefor, shall be returned in the  
25 amount originally established to the appropriate fund for  
26 credit to the payments for revolving funds account therein.

27 (5) Reimbursement to the revolving fund for uninsured  
28 losses and theft may be made from the fund in which the  
29 responsible operating department is budgeted. Such  
30 reimbursement shall be submitted consistent with procedures  
31 specified by the Chief Financial Officer ~~Comptroller~~.

1           Section 248. Section 216.275, Florida Statutes, is  
2 amended to read:

3           216.275 Clearing accounts.--No clearing account may be  
4 established outside the State Treasury pursuant to s. 17.58(2)  
5 ~~s. 18.101(1)~~unless approved by the Chief Financial Officer  
6 ~~Treasurer~~ during the fiscal year. Each agency, or the judicial  
7 branch, desiring to maintain a clearing account outside the  
8 State Treasury shall submit a written request to do so to the  
9 Chief Financial Officer ~~Treasurer~~ in accordance with the  
10 format and manner prescribed by the Chief Financial Officer  
11 ~~Treasurer~~. The Chief Financial Officer ~~Treasurer~~ shall  
12 maintain a listing of all clearing accounts approved during  
13 the fiscal year.

14           Section 249. Subsections (2), (3), (6), (8), (9), and  
15 (10) of section 216.292, Florida Statutes, are amended to  
16 read:

17           216.292 Appropriations nontransferable; exceptions.--

18           (2) A lump sum appropriated for a performance-based  
19 program must be distributed by the Governor for state agencies  
20 or the Chief Justice for the judicial branch into the  
21 traditional expenditure categories in accordance with s.  
22 216.181(6)(b). At any time during the year, the agency head  
23 or Chief Justice may transfer funds between those categories  
24 with no limit on the amount of the transfer. Authorized  
25 revisions of the original approved operating budget, together  
26 with related changes, if any, must be transmitted by the state  
27 agency or by the judicial branch to the Executive Office of  
28 the Governor or the Chief Justice, the chair and vice chair of  
29 the Legislative Budget Commission, the Office of Program  
30 Policy Analysis and Government Accountability, and the Auditor  
31 General. Such authorized revisions shall be consistent with

1 the intent of the approved operating budget, shall be  
2 consistent with legislative policy and intent, and shall not  
3 conflict with specific spending policies specified in the  
4 General Appropriations Act. The Executive Office of the  
5 Governor shall forward a copy of the revisions within 7  
6 working days to the Chief Financial Officer ~~Comptroller~~ for  
7 entry in his or her records in the manner and format  
8 prescribed by the Executive Office of the Governor in  
9 consultation with the Chief Financial Officer ~~Comptroller~~.  
10 Such authorized revisions shall be consistent with the intent  
11 of the approved operating budget, shall be consistent with  
12 legislative policy and intent, and shall not conflict with  
13 specific spending policies specified in the General  
14 Appropriations Act.

15 (3) The head of each department or the Chief Justice  
16 of the Supreme Court, whenever it is deemed necessary by  
17 reason of changed conditions, may transfer appropriations  
18 funded from identical funding sources, except appropriations  
19 for fixed capital outlay, and transfer the amounts included  
20 within the total original approved budget and releases as  
21 furnished pursuant to ss. 216.181 and 216.192, as follows:

22 (a) Between categories of appropriations within a  
23 budget entity, if no category of appropriation is increased or  
24 decreased by more than 5 percent of the original approved  
25 budget or \$150,000, whichever is greater, by all action taken  
26 under this subsection.

27 (b) Additionally, between budget entities within  
28 identical categories of appropriations, if no category of  
29 appropriation is increased or decreased by more than 5 percent  
30 of the original approved budget or \$150,000, whichever is  
31 greater, by all action taken under this subsection.

1           (c) Such authorized revisions must be consistent with  
2 the intent of the approved operating budget, must be  
3 consistent with legislative policy and intent, and must not  
4 conflict with specific spending policies specified in the  
5 General Appropriations Act.

6  
7 Such authorized revisions, together with related changes, if  
8 any, in the plan for release of appropriations, shall be  
9 transmitted by the state agency or by the judicial branch to  
10 the Chief Financial Officer ~~Comptroller~~ for entry in the Chief  
11 Financial Officer's ~~Comptroller's~~ records in the manner and  
12 format prescribed by the Executive Office of the Governor in  
13 consultation with the Chief Financial Officer ~~Comptroller~~. A  
14 copy of such revision shall be furnished to the Executive  
15 Office of the Governor or the Chief Justice, the chair and  
16 vice chair of the Legislative Budget Commission, the Auditor  
17 General, and the director of the Office of Program Policy  
18 Analysis and Government Accountability.

19           (6) Upon request of a department to, and approval by,  
20 the Chief Financial officer ~~Comptroller~~, funds appropriated  
21 may be transferred to accounts established for disbursement  
22 purposes upon release of such appropriation. Such transfer  
23 may only be made to the same appropriation category and the  
24 same funding source from which the funds are transferred.

25           (8)(a) Should any state agency or the judicial branch  
26 become more than 90 days delinquent on reimbursements due to  
27 the Unemployment Compensation Trust Fund, the Department of  
28 Labor and Employment Security shall certify to the Chief  
29 Financial Officer ~~Comptroller~~ the amount due; and the Chief  
30 Financial Officer ~~Comptroller~~ shall transfer the amount due to  
31

1 the Unemployment Compensation Trust Fund from any funds of the  
2 agency available.

3 (b) Should any state agency or the judicial branch  
4 become more than 90 days delinquent in paying the Division of  
5 Risk Management of the Department of Financial Services  
6 ~~Insurance~~ for insurance coverage, the division ~~Department of~~  
7 ~~Insurance~~ may certify to the Chief Financial Officer  
8 ~~Comptroller~~ the amount due; and the Chief Financial Officer  
9 ~~Comptroller~~ shall transfer the amount due to the Division of  
10 Risk Management from any funds of the agency or the judicial  
11 branch available.

12 (9) Moneys appropriated in the General Appropriations  
13 Act for the purpose of paying for services provided by the  
14 state communications system in the Department of Management  
15 Services shall be paid by the user agencies, or the judicial  
16 branch, within 45 days after the billing date. Billed amounts  
17 not paid by the user agencies, or by the judicial branch,  
18 shall be transferred by the Chief Financial Officer  
19 ~~Comptroller~~ from the user agencies to the Communications  
20 Working Capital Trust Fund.

21 (10) The Chief Financial Officer ~~Comptroller~~ shall  
22 report all such transfers and the reasons for such transfers  
23 to the legislative appropriations committees and the Executive  
24 Office of the Governor.

25 Section 250. Paragraph (a) of subsection (1),  
26 paragraph (a) of subsection (2), and subsection (3) of section  
27 216.301, Florida Statutes, are amended to read:

28 216.301 Appropriations; undisbursed balances.--

29 (1)(a) Any balance of any appropriation, except an  
30 appropriation for fixed capital outlay, which is not disbursed  
31 but which is expended or contracted to be expended shall, at

1 the end of each fiscal year, be certified by the head of the  
2 affected state agency or the judicial or legislative branches,  
3 on or before August 1 of each year, to the Executive Office of  
4 the Governor, showing in detail the obligees to whom obligated  
5 and the amounts of such obligations. On or before September 1  
6 of each year, the Executive Office of the Governor shall  
7 review and approve or disapprove, consistent with legislative  
8 policy and intent, any or all of the items and amounts  
9 certified by the head of the affected state agency and shall  
10 approve all items and amounts certified by the Chief Justice  
11 of the Supreme Court for the judicial branch and by the  
12 legislative branch and shall furnish the Chief Financial  
13 Officer ~~Comptroller~~, the legislative appropriations  
14 committees, and the Auditor General a detailed listing of the  
15 items and amounts approved as legal encumbrances against the  
16 undisbursed balance of such appropriation. The review shall  
17 assure that trust funds have been fully maximized. Any such  
18 encumbered balance remaining undisbursed on December 31 of the  
19 same calendar year in which such certification was made shall  
20 revert to the fund from which appropriated and shall be  
21 available for reappropriation by the Legislature. In the  
22 event such certification is not made and an obligation is  
23 proven to be legal, due, and unpaid, then the obligation shall  
24 be paid and charged to the appropriation for the current  
25 fiscal year of the state agency or the legislative or judicial  
26 branch affected.

27 (2)(a) Any balance of any appropriation for fixed  
28 capital outlay not disbursed but expended or contracted or  
29 committed to be expended shall, at the end of each fiscal  
30 year, be certified by the head of the affected state agency or  
31 the legislative or judicial branch, on or before August 1 of

1 each year, to the Executive Office of the Governor, showing in  
2 detail the commitment or to whom obligated and the amount of  
3 such commitment or obligation. On or before September 1 of  
4 each year, the Executive Office of the Governor shall review  
5 and approve or disapprove, consistent with legislative policy  
6 and intent, any or all of the items and amounts certified by  
7 the head of the affected state agency and shall approve all  
8 items and amounts certified by the Chief Justice of the  
9 Supreme Court and by the legislative branch and shall furnish  
10 the Chief Financial Officer ~~Comptroller~~, the legislative  
11 appropriations committees, and the Auditor General a detailed  
12 listing of the items and amounts approved as legal  
13 encumbrances against the undisbursed balances of such  
14 appropriations. In the event such certification is not made  
15 and the balance of the appropriation has reverted and the  
16 obligation is proven to be legal, due, and unpaid, then the  
17 same shall be presented to the Legislature for its  
18 consideration.

19 (3) Notwithstanding the provisions of subsection (2),  
20 the unexpended balance of any appropriation for fixed capital  
21 outlay subject to but not under the terms of a binding  
22 contract or a general construction contract prior to February  
23 1 of the second fiscal year, or the third fiscal year if it is  
24 for an educational facility as defined in chapter 1013 or a  
25 construction project of a state university, of the  
26 appropriation shall revert on February 1 of such year to the  
27 fund from which appropriated and shall be available for  
28 reappropriation. The Executive Office of the Governor shall,  
29 not later than February 20 of each year, furnish the Chief  
30 Financial Officer ~~Comptroller~~, the legislative appropriations  
31 committees, and the Auditor General a report listing in detail

1 the items and amounts reverting under the authority of this  
2 subsection, including the fund to which reverted and the  
3 agency affected.

4 Section 251. Section 217.07, Florida Statutes, is  
5 amended to read:

6 217.07 Transfer of surplus property assets to  
7 department.--The Chief Financial Officer ~~State Treasurer~~ is  
8 authorized to transfer to the department any funds unexpended  
9 in the Surplus Property Revolving Trust Fund account in the  
10 State Treasury. This revolving fund shall remain in existence  
11 as a separate trust fund as long as the surplus property  
12 program exists. Upon termination of the program any remaining  
13 funds shall be disposed of as provided by federal law.

14 Section 252. Section 218.06, Florida Statutes, is  
15 amended to read:

16 218.06 Transfer of funds by county commissioners with  
17 relation to public works grants.--

18 (1) Boards of county commissioners of the several  
19 counties of the state, whenever it may be necessary to meet  
20 the requirements of the United States Government with  
21 reference to obtaining grants of federal funds in connection  
22 with the program of the Public Works Administration, may by  
23 resolution of such board, transfer and expend such sums of  
24 money as may be necessary to obtain said grant, from any fund  
25 to such other fund as may be necessary to meet said  
26 requirements and carry out the intent and purposes of the said  
27 transfer; provided, however, that no such transfer may be made  
28 by any county of the state without first having obtained the  
29 approval of the Department of Financial Services ~~Banking and~~  
30 ~~Finance~~ thereto, and in the counties of the state where there  
31 is provision for a budget commission, without first having

1 also obtained the approval of said budget commission to said  
2 transfer.

3 (2) The Department of Financial Services ~~Banking and~~  
4 ~~Finance~~ and the budget commissions of the several counties of  
5 the state in which there are provisions for such budget  
6 commissions, may approve such transfers whenever in their  
7 opinion such transfers are necessary and proper.

8 Section 253. Paragraph (a) of subsection (1) of  
9 section 218.23, Florida Statutes, is amended to read:

10 218.23 Revenue sharing with units of local  
11 government.--

12 (1) To be eligible to participate in revenue sharing  
13 beyond the minimum entitlement in any fiscal year, a unit of  
14 local government is required to have:

15 (a) Reported its finances for its most recently  
16 completed fiscal year to the Department of Financial Services  
17 ~~Banking and Finance~~, pursuant to s. 218.32.

18  
19 Additionally, to receive its share of revenue sharing funds, a  
20 unit of local government shall certify to the Department of  
21 Revenue that the requirements of s. 200.065, if applicable,  
22 were met. The certification shall be made annually within 30  
23 days of adoption of an ordinance or resolution establishing a  
24 final property tax levy or, if no property tax is levied, not  
25 later than November 1. The portion of revenue sharing funds  
26 which, pursuant to this part, would otherwise be distributed  
27 to a unit of local government which has not certified  
28 compliance or has otherwise failed to meet the requirements of  
29 s. 200.065 shall be deposited in the General Revenue Fund for  
30 the 12 months following a determination of noncompliance by  
31 the department.

1           Section 254. Subsection (4) of section 218.31, Florida  
2 Statutes, is amended to read:

3           218.31 Definitions.--As used in this part, except  
4 where the context clearly indicates a different meaning:

5           (4) "Department" means the Department of Financial  
6 Services ~~Banking and Finance~~.

7           Section 255. Subsections (1) and (4) of section  
8 218.321, Florida Statutes, are amended to read:

9           218.321 Annual financial statements; local  
10 governmental entities.--

11           (1) Each local governmental entity shall complete its  
12 financial statements for the previous fiscal year in  
13 compliance with generally accepted accounting principles and  
14 the uniform chart of accounts prescribed by the department ~~of~~  
15 ~~Banking and Finance~~.

16           (4) The failure by any local governmental entity to  
17 complete its annual financial statements shall, in addition to  
18 any other penalties provided by law, authorize the department  
19 to employ personnel or send department personnel to such local  
20 governmental entity in order to complete such annual financial  
21 statements. The expenses related to the completion of the  
22 annual financial statements shall be charged to the local  
23 governmental entity. Upon failure by the local governmental  
24 entity to pay the charge within 15 days after billing, the  
25 department shall so certify to the Chief Financial Officer  
26 ~~Comptroller~~, who shall forward the amount so certified to the  
27 department from any funds due to the local governmental entity  
28 under any revenue-sharing or tax-sharing fund established by  
29 the state, except as otherwise provided by the State  
30 Constitution.

31

1           Section 256. Section 218.325, Florida Statutes, is  
2 amended to read:

3           218.325 Uniform chart of accounts and financial  
4 reporting for court and justice system costs and revenues.--

5           (1)(a) The Uniform Chart of Accounts Development  
6 Committee is hereby created to develop and implement a uniform  
7 chart of accounts. The committee shall work with the  
8 representatives of the designated end-user groups identified  
9 in subsection (3) in order to determine the specific financial  
10 data related to the operations of the circuit and county  
11 courts and justice-related agencies of the executive branch  
12 which must be accounted for and reported. The committee shall  
13 then work with the department of ~~Banking and Finance~~ to  
14 develop the necessary rules required to implement the uniform  
15 chart of accounts. The committee shall include:

16           1. The Chief Financial Officer ~~Comptroller~~ or his or  
17 her ~~the Comptroller's~~ designee.

18           2. Three clerks of the circuit court or deputy clerks,  
19 appointed by the president of the Florida Association of Court  
20 Clerks.

21           3. Three elected county commissioners or county  
22 finance staff, appointed by the Florida Association of  
23 Counties.

24           4. Three elected sheriffs or their designees,  
25 appointed by the president of the Florida Sheriffs  
26 Association.

27           (b) The Chief Financial Officer ~~Comptroller~~ or his or  
28 her ~~the Comptroller's~~ designee shall serve as chairperson of  
29 the committee. The committee shall use the staff of the  
30 Department of Financial Services ~~Banking and Finance~~ for staff  
31 support and may also appoint technical support staff as

1 designated by the Florida Association of Court Clerks, the  
2 Florida Association of Counties, and the Florida Sheriffs  
3 Association as needed for technical assistance and support.  
4 ~~Members of the committee must be appointed within 30 days~~  
5 ~~after June 18, 1995. Within 60 days after the appointment of~~  
6 ~~the membership, the committee shall meet to establish~~  
7 ~~procedures for the conduct of its business.~~

8 (c) Members of the committee shall serve without  
9 compensation.

10 (2) The Uniform Chart of Accounts Development  
11 Committee shall make an analysis of the requirements for  
12 implementing a detailed, uniform chart of accounts and  
13 financial reporting system for court and justice-related  
14 agency expenditures and revenues. The Chief Financial Officer  
15 ~~Comptroller~~ shall make a report to the Chief Justice of the  
16 Florida Supreme Court, the Governor, the Speaker of the House  
17 of Representatives, and the President of the Senate on such  
18 requirements, including a timetable for implementation and an  
19 assessment of fiscal impact, by January 1, 1996. The proposed  
20 uniform chart of accounts and financial reporting system must  
21 provide that all revenues received and expenditures incurred  
22 by county governments, clerks of court, the courts or other  
23 judicial entities that are related to the operations of the  
24 circuit courts and county courts, and other components of the  
25 justice system can be accounted for in sufficient detail to  
26 permit reporting for both discrete functions and  
27 organizational units.

28 (3) For purposes of this section, the collection of  
29 representatives of end-user groups, which shall assist the  
30 Uniform Chart of Accounts Development Committee on the process  
31 and procedures for implementing new accounting and reporting

1 requirements and provide oversight and guidance for  
2 implementing activities, shall be formed by one representative  
3 each from the Office of the Governor, the Speaker of the House  
4 of Representatives, the President of the Senate, the Office of  
5 the Chief Financial Officer ~~Comptroller~~, the Office of the  
6 State Courts Administrator, the Florida Prosecuting Attorneys  
7 Association, the Florida Public Defenders Association, the  
8 Legislative Committee on Intergovernmental Relations, the  
9 Information Resource Committee, and The Florida Bar.

10 Section 257. Paragraph (a) of subsection (1) of  
11 section 220.151, Florida Statutes, is amended to read:

12 220.151 Apportionment; methods for special  
13 industries.--

14 (1)(a) Except as provided in paragraph (b), the tax  
15 base of an insurance company for a taxable year or period  
16 shall be apportioned to this state by multiplying such base by  
17 a fraction the numerator of which is the direct premiums  
18 written for insurance upon properties and risks in this state  
19 and the denominator of which is the direct premiums written  
20 for insurance upon properties and risks everywhere. For  
21 purposes of this paragraph, the term "direct premiums written"  
22 means the total amount of direct premiums written,  
23 assessments, and annuity considerations, as reported for the  
24 taxable year or period on the annual statement filed by the  
25 company with the Office of Insurance Regulation of the  
26 Financial Services Commission ~~commissioner of insurance~~ in the  
27 form approved by the National Convention of Insurance  
28 Commissioners or such other form as may be prescribed in lieu  
29 thereof.

30 Section 258. Subsection (7) of section 220.187,  
31 Florida Statutes, is amended to read:

1           220.187 Credits for contributions to nonprofit  
2 scholarship-funding organizations.--

3           (7) DEPOSITS OF ELIGIBLE CONTRIBUTIONS.--All eligible  
4 contributions received by an eligible nonprofit  
5 scholarship-funding organization shall be deposited in a  
6 manner consistent with s. 17.57(2)~~s. 18.10(2)~~.

7           Section 259. Subsection (3) of section 220.62, Florida  
8 Statutes, is amended to read:

9           220.62 Definitions.--For purposes of this part:

10          (3) The term "international banking facility" means a  
11 set of asset and liability accounts segregated on the books  
12 and records of a banking organization that includes only  
13 international banking facility deposits, borrowings, and  
14 extensions of credit, as those terms are defined by the  
15 Financial Services Commission ~~Department of Banking and~~  
16 ~~Finance~~, taking into account all transactions in which  
17 international banking facilities are permitted to engage by  
18 regulations of the Board of Governors of the Federal Reserve  
19 System, as from time to time amended. When providing such  
20 definitions, the Financial Services Commission ~~Department of~~  
21 ~~Banking and Finance~~ shall also consider the public interest,  
22 including the need to maintain a sound and competitive banking  
23 system, as well as the purpose of this act, which is to create  
24 an environment conducive to the conduct of an international  
25 banking business in the state.

26          Section 260. Subsection (2) of section 220.723,  
27 Florida Statutes, is amended to read:

28          220.723 Overpayments; interest.--

29          (2) Interest shall accrue from the date upon which the  
30 taxpayer files a written notice advising the department of the  
31 overpayment. Interest shall be paid until such date as

1 determined by the department, which shall be no more than 7  
2 days prior to the date of the issuance by the Chief Financial  
3 Officer ~~Comptroller~~ of the refund warrant.

4 Section 261. Paragraph (b) of subsection (1) and  
5 paragraph (b) of subsection (2) of section 238.11, Florida  
6 Statutes, are amended to read:

7 238.11 Collection of contributions.--

8 (1) The collection of contributions shall be as  
9 follows:

10 (b) Each employer shall transmit monthly to the  
11 Department of Management Services a warrant for the total  
12 amount of such deductions. Each employer shall also transmit  
13 monthly to the department a warrant for such employer  
14 contribution set aside as provided for in paragraph (a) of  
15 this subsection. The department, after making records of all  
16 such warrants, shall transmit them to the Department of  
17 Financial Services ~~Banking and Finance~~ for delivery to the  
18 Chief Financial Officer, ~~Treasurer of the state~~ who shall  
19 collect them.

20 (2) The collection of the state contribution shall be  
21 made as follows:

22 (b) The Department of Management Services shall  
23 certify one-fourth of the amount so ascertained for each year  
24 to the Chief Financial Officer ~~Comptroller~~ on or before the  
25 last day of July, October, January, and April of each year.  
26 The Chief Financial Officer ~~Comptroller~~ shall, on or before  
27 the first day of August, November, February, and May of each  
28 year, ~~draw his or her warrant or warrants on the Treasurer for~~  
29 ~~the respective amounts due the several funds of the retirement~~  
30 ~~system. On the receipt of the warrant or warrants of the~~

31

1 ~~Comptroller, the Treasurer shall~~ immediately transfer to the  
2 several funds of the retirement system the amounts due.

3 Section 262. Section 238.15, Florida Statutes, is  
4 amended to read:

5 238.15 Exemption of funds from taxation, execution,  
6 and assignment.--The pensions, annuities or any other benefits  
7 accrued or accruing to any person under the provisions of this  
8 chapter and the accumulated contributions and cash securities  
9 in the funds created under this chapter are exempted from any  
10 state, county or municipal tax of the state, and shall not be  
11 subject to execution or attachment or to any legal process  
12 whatsoever, and shall be unassignable, except:

13 (1) That any teacher who has retired shall have the  
14 right and power to authorize in writing the Department of  
15 Management Services to deduct from his or her monthly  
16 retirement allowance money for the payment of the premiums on  
17 group insurance for hospital, medical and surgical benefits,  
18 under a plan or plans for such benefits approved in writing by  
19 the Chief Financial Officer ~~Insurance Commissioner and~~  
20 ~~Treasurer of the state~~, and upon receipt of such request the  
21 department shall make the monthly payments as directed; and

22 (2) As may be otherwise specifically provided for in  
23 this chapter.

24 Section 263. Section 238.172, Florida Statutes, is  
25 amended to read:

26 238.172 Proof required.--For any person to obtain the  
27 allowance as set forth in s. 238.171 the ~~said~~ person shall  
28 make such proof of the facts and conditions entitling him or  
29 her to the ~~said~~ allowance as shall reasonably be required by  
30 the state board, and when such proof has been submitted to the  
31 satisfaction of the state board, the Chief Financial Officer

1 ~~State Treasurer~~ shall pay to such person the monthly allowance  
2 herein provided for ~~on warrants drawn by the Comptroller.~~

3 Section 264. Section 238.173, Florida Statutes, is  
4 amended to read:

5 238.173 Monthly allowance to widows or widowers of  
6 pensioners.--When any teacher, drawing pension under s.  
7 238.171, shall die leaving surviving a widow or widower to  
8 whom such pensioner has been married for a continuous period  
9 of at least 10 years immediately prior to his or her death,  
10 and from whom no dissolution of marriage is obtained, such  
11 widow or widower, upon proof of marriage to and continuation  
12 of marriage for the minimum period with, and death of, said  
13 pensioner, shall be granted a pension payable from the date of  
14 the death of said pensioner, and at the same time and rate as  
15 other pensions paid under s. 238.171. The Chief Financial  
16 Officer ~~Comptroller~~ is hereby authorized and directed to draw  
17 his or her warrants in payment of such pensions so long as  
18 such widow or widower shall remain unmarried and continue to  
19 be a resident of the state; provided, however, that nothing  
20 herein contained shall be so construed as to allow such  
21 pension to be paid to any widow or widower where such widow or  
22 widower of a deceased pensioner under this section receives a  
23 like pension in his or her own right as a retired school  
24 teacher.

25 Section 265. Subsection (3) of section 250.22, Florida  
26 Statutes, is amended to read:

27 250.22 Retirement.--

28 (3) Sufficient money to meet the requirements of this  
29 section is hereby appropriated out of any moneys in the State  
30 Treasury not otherwise appropriated, and payments under this  
31 section will be made to those eligible to receive the same on

1 the first day of each calendar month from the General Revenue  
2 Fund by the Chief Financial Officer ~~Comptroller~~ upon  
3 prescribed pay vouchers certified to by the Adjutant General  
4 of the state.

5 Section 266. Subsections (3), (4), and (5) of section  
6 250.24, Florida Statutes, are amended to read:

7 250.24 Pay and expenses; appropriation; procedures.--

8 (3) Notwithstanding the provision of s. 216.271,  
9 moneys for pay and allowances of the troops ordered out in  
10 active service of the state shall be deposited in a separate  
11 revolving fund, which shall be approved by the Chief Financial  
12 Officer ~~Comptroller~~ and shall be subject to the provisions of  
13 s. 17.58(2)~~s. 18.101(2)~~. The Department of Military Affairs  
14 shall administer the fund. Frequency of payments to such  
15 troops shall be at the discretion of the Adjutant General. The  
16 Department of Military Affairs shall present to the Chief  
17 Financial Officer ~~Comptroller~~ audit documentation of such  
18 payments. The Department of Military Affairs shall maintain  
19 all employee records relating to payments made pursuant to  
20 this subsection and shall furnish to the Chief Financial  
21 Officer ~~Comptroller~~ the information necessary to update the  
22 payroll master record of each employee.

23 (4) The fund balance remaining in this separate  
24 revolving fund after a final accounting of all expenditures  
25 for pay and allowances of the troops shall be returned for  
26 deposit to the State Treasury within 45 days after the  
27 termination of active duty of the troops, except that an  
28 operating balance in an amount mutually agreed upon by the  
29 Chief Financial Officer ~~Comptroller~~ and the Department of  
30 Military Affairs shall be retained in the fund.

31

1           (5) Vouchers for expenditures other than such pay and  
2 allowances shall be presented to the Chief Financial Officer  
3 ~~Comptroller~~ for approval and payment as prescribed by law.

4           Section 267. Section 250.25, Florida Statutes, is  
5 amended to read:

6           250.25 Governor and Chief Financial Officer  
7 ~~Comptroller~~ authorized to borrow money.--When there is no  
8 state appropriation available for the pay and expenses of  
9 troops called out in active service to preserve the peace or  
10 in aid of civil authorities, and funds are not immediately  
11 available for this purpose, the Governor and Chief Financial  
12 Officer ~~Comptroller~~ may borrow money to make such payments, in  
13 such sum or sums as may from time to time be required, and any  
14 such loans, so obtained, shall be promptly repaid out of the  
15 first funds that become available for such use.

16           Section 268. Section 250.26, Florida Statutes, is  
17 amended to read:

18           250.26 Transfer of funds.--Where the available funds  
19 are not sufficient for the purposes specified in ss. 250.23,  
20 250.24, and 250.34, the Governor and Chief Financial Officer  
21 ~~Comptroller~~ may transfer from any available fund in the State  
22 Treasury, such sum as may be necessary to meet such emergency,  
23 and the said moneys, so transferred, shall be repaid to the  
24 fund from which transferred when moneys become available for  
25 that purpose by legislative appropriation or otherwise.

26           Section 269. Subsection (3) of section 250.34, Florida  
27 Statutes, is amended to read:

28           250.34 Injury or death in active service.--

29           (3) After the expiration of 1 year from the date of  
30 injury or disability, such individual shall be provided  
31 hospitalization, medical services and supplies, and

1 compensation for wages and compensation for disability based  
2 on the average weekly wages of such injured individual on pay  
3 status in the active service of the state or in his or her  
4 civilian occupation or employment, whichever is greater, in  
5 amounts provided under chapter 440 [F. S. 1973], as if such  
6 individual were covered under the Workers' Compensation Law,  
7 except that payments made during the first year after such  
8 injury shall not be duplicated after the expiration of that  
9 year. The Division of Risk Management of the Department of  
10 Financial Services Insurance is responsible for processing all  
11 claims for benefits under this subsection.

12 Section 270. Section 252.62, Florida Statutes, is  
13 amended to read:

14 252.62 Director of Office of Financial Institutions  
15 and Securities Regulation ~~Comptroller's~~ powers in a state of  
16 emergency.--

17 (1) It is the purpose and intent of this section to  
18 provide the Director of the Office of Financial Institutions  
19 and Securities Regulation of the Financial Services Commission  
20 ~~Comptroller, as head of the Department of Banking and Finance,~~  
21 the authority to make temporary modifications to or  
22 suspensions of the financial institutions codes in order to  
23 expedite the recovery of communities affected by a disaster or  
24 other emergency and in order to encourage financial  
25 institutions to meet the credit, deposit, and other financial  
26 needs of such communities.

27 (2)(a) When the Governor declares a state of emergency  
28 pursuant to s. 252.36, the Director of the Office of Financial  
29 Institutions and Securities Regulation ~~Comptroller~~ may issue:

30 1. One or more general orders applicable to all  
31 financial institutions that are subject to the financial

1 institutions codes and that serve any portion of the area of  
2 the state under the state of emergency; or

3         2. One or more specific orders to particular financial  
4 institutions that are subject to the financial institution  
5 codes and that normally derive more than 60 percent of their  
6 deposits from persons in the area of the state under the state  
7 of emergency,

8  
9 which orders may modify or suspend, as to those institutions,  
10 all or any part of the financial institutions codes, as  
11 defined in s. 655.005, or any applicable rule, consistent with  
12 the stated purposes of the financial institutions codes and  
13 with maintaining the safety and soundness of the financial  
14 institutions system in this state.

15         (b) An order issued by the director ~~Comptroller~~ under  
16 this section becomes effective upon issuance and continues for  
17 120 days unless it is terminated by the director ~~Comptroller~~.  
18 The director ~~Comptroller~~ may extend an order for one  
19 additional period of 120 days if he or she ~~the Comptroller~~  
20 determines that the emergency conditions that gave rise to the  
21 ~~Comptroller's~~ initial order still exist. The Legislature, by  
22 concurrent resolution, may terminate any order issued under  
23 this section.

24         (3) The director ~~Comptroller~~ shall publish, in the  
25 next available publication of the Florida Administrative  
26 Weekly, a copy of the text of any order issued under this  
27 section, together with a statement describing the modification  
28 or suspension and explaining how the modification or  
29 suspension will facilitate recovery from the emergency and  
30 maintain the safety and soundness of financial institutions in  
31 this state.

1           Section 271. Subsection (7) of section 252.87, Florida  
2 Statutes, is amended to read:

3           252.87 Supplemental state reporting requirements.--

4           (7) The department shall avoid duplicative reporting  
5 requirements by utilizing the reporting requirements of other  
6 state agencies that regulate hazardous materials to the extent  
7 feasible and shall request the information authorized under  
8 EPCRA. With the advice and consent of the State Emergency  
9 Response Commission for Hazardous Materials, the department  
10 may require by rule that the maximum daily amount entry on the  
11 chemical inventory report required under s. 312 of EPCRA  
12 provide for reporting in estimated actual amounts. The  
13 department may also require by rule an entry for the Federal  
14 Employer Identification Number on this report. To the extent  
15 feasible, the department shall encourage and accept required  
16 information in a form initiated through electronic data  
17 interchange and shall describe by rule the format, manner of  
18 execution, and method of electronic transmission necessary for  
19 using such form. To the extent feasible, the Department of  
20 Financial Services ~~Insurance~~, the Department of Agriculture  
21 and Consumer Services, the Department of Environmental  
22 Protection, the Public Service Commission, the Department of  
23 Revenue, the Department of Labor and Employment Security, and  
24 other state agencies which regulate hazardous materials shall  
25 coordinate with the department in order to avoid duplicative  
26 requirements contained in each agency's respective reporting  
27 or registration forms. The other state agencies that inspect  
28 facilities storing hazardous materials and suppliers and  
29 distributors of covered substances shall assist the department  
30 in informing the facility owner or operator of the  
31 requirements of this part. The department shall provide the

1 other state agencies with the necessary information and  
2 materials to inform the owners and operators of the  
3 requirements of this part to ensure that the budgets of these  
4 agencies are not adversely affected.

5 Section 272. Subsection (14) of section 253.025,  
6 Florida Statutes, is amended to read:

7 253.025 Acquisition of state lands for purposes other  
8 than preservation, conservation, and recreation.--

9 (14) Any agency that acquires land on behalf of the  
10 board of trustees is authorized to request disbursement of  
11 payments for real estate closings in accordance with a written  
12 authorization from an ultimate beneficiary to allow a third  
13 party authorized by law to receive such payment provided the  
14 Chief Financial Officer ~~Comptroller~~ determines that such  
15 disbursement is consistent with good business practices and  
16 can be completed in a manner minimizing costs and risks to the  
17 state.

18 Section 273. Subsection (1) of section 255.03, Florida  
19 Statutes, is amended to read:

20 255.03 Proceeds of insurance to be paid into State  
21 Treasury; disbursement of funds.--

22 (1) The proceeds from the insurance of any state  
23 building or state property covered by insurance which may be  
24 destroyed in whole or in part by fire, or other damage, shall  
25 be paid into the State Treasury and constitute a fund for the  
26 rebuilding or replacing of such property, and the Chief  
27 Financial Officer ~~Comptroller~~ may draw his or her warrant ~~on~~  
28 ~~the State Treasurer~~ for such amounts, not to exceed the  
29 proceeds so paid in, as may be approved by the board or  
30 persons having the direct supervision and control of such  
31

1 buildings or property for the purpose of rebuilding or  
2 replacing the same.

3 Section 274. Subsections (1) and (2) of section  
4 255.052, Florida Statutes, are amended to read:

5 255.052 Substitution of securities for amounts  
6 retained on public contracts.--

7 (1) Under any contract made or awarded by the state or  
8 any county, city, or political subdivision thereof, or other  
9 public authority, the contractor may, from time to time,  
10 withdraw the whole or any portion of the amount retained for  
11 payments to the contractor pursuant to the terms of the  
12 contract, upon depositing with the Chief Financial Officer  
13 ~~State Treasurer~~:

14 (a) United States Treasury bonds, United States  
15 Treasury notes, United States Treasury certificates of  
16 indebtedness, or United States Treasury bills;

17 (b) Bonds or notes of the State of Florida; or

18 (c) Bonds of any political subdivision in the state;

19 or

20 (d) Cash delivered to the State Treasury for the  
21 Treasury Cash Deposit Trust Fund; or

22 (e) Certificates of deposit from state or national  
23 banks or state or federal savings and loan associations in the  
24 state. Certificates of deposit shall possess the eligibility  
25 characteristics defined in s. 625.52.

26

27 No amount shall be withdrawn in excess of the market value of  
28 the securities listed in paragraphs (a), (b), and (c) at the  
29 time of withdrawal or of the par value of such securities,  
30 whichever is lower.

31

1           (2) The Chief Financial Officer ~~Treasurer~~ shall  
2 regularly, ~~on a regular basis~~, collect all interest or income  
3 on the obligations so deposited, and shall pay the same, when  
4 and as collected, to the contractor who deposited the  
5 obligations. If the deposit is in the form of coupon bonds,  
6 the Chief Financial Officer ~~Treasurer~~ shall deliver each  
7 coupon as it matures to the contractor.

8  
9 Nothing in this section shall be construed to require the  
10 state or any county, city, or political subdivision thereof,  
11 or other public authority, to allow the contractor to withdraw  
12 the whole or any portion of the amount retained for payments  
13 to the contractor except pursuant to the terms of the  
14 contract.

15           Section 275. Subsection (2) of section 255.258,  
16 Florida Statutes, is amended to read:

17           255.258 Shared savings financing of energy  
18 conservation in state-owned buildings.--

19           (2) Except as noted in subsection (4), state agency  
20 shared savings contracts shall be developed in accordance with  
21 a model contract to be developed by the department in  
22 cooperation with the Attorney General, the Chief Financial  
23 Officer ~~Comptroller~~, and the Department of Community Affairs.  
24 The model contract shall include the methodology for  
25 calculating base line energy costs, a procedure for revising  
26 these costs should the state institute additional energy  
27 conservation features or building use change, a requirement  
28 for a performance bond guaranteeing that the facility will be  
29 restored to the original condition in the event of default, a  
30 provision for early buy-out, a clause specifying who will be  
31 responsible for maintaining the equipment, and a provision

1 allowing the disposal of equipment at the end of the contract.  
2 No agency shall substantially alter the provisions described  
3 in the model without the permission of the department.

4 Section 276. Subsection (8) of section 255.503,  
5 Florida Statutes, is amended to read:

6 255.503 Powers of the Department of Management  
7 Services.--The Department of Management Services shall have  
8 all the authority necessary to carry out and effectuate the  
9 purposes and provisions of this act, including, but not  
10 limited to, the authority to:

11 (8) Create and establish funds and accounts for the  
12 purpose of debt service reserves, for the matching of the  
13 timing and the amount of available funds and debt service  
14 charges, for sinking funds, for capital depreciation reserves,  
15 for operating reserves, for capitalized interest and moneys  
16 not required for immediate disbursement to acquire all or a  
17 portion of any facility, and for any other reserves, funds, or  
18 accounts reasonably necessary to carry out the provisions of  
19 this act and to invest in authorized investments any moneys  
20 held in such funds and accounts, provided such investments  
21 will be made on behalf of the Department of Management  
22 Services by the State Board of Administration or the Chief  
23 Financial Officer ~~Treasurer~~, as appropriate.

24 Section 277. Section 255.521, Florida Statutes, is  
25 amended to read:

26 255.521 Failure of payment.--Should an agency fail to  
27 make a timely payment of the pool pledged rentals or charges  
28 as required by this act, the Chief Financial Officer  
29 ~~Comptroller~~ shall withhold general revenues of the agency in  
30 an amount sufficient to pay the rentals and charges due and  
31 unpaid from such agency. The Chief Financial Officer

1 ~~Comptroller~~ shall forward such ~~said~~ general revenue amounts to  
2 the Department of Management Services in payment of such  
3 rents.

4 Section 278. Section 257.22, Florida Statutes, is  
5 amended to read:

6 257.22 Division of Library and Information Services;  
7 allocation of funds.--Any moneys that may be appropriated for  
8 use by a county, a municipality, a special district, or a  
9 special tax district for the maintenance of a library or  
10 library service shall be administered and allocated by the  
11 Division of Library and Information Services in the manner  
12 prescribed by law. On or before December 1 of each year, the  
13 division shall certify to the Chief Financial Officer  
14 ~~Comptroller~~ the amount to be paid to each county,  
15 municipality, special district, or special tax district, and  
16 the Chief Financial Officer ~~Comptroller~~ shall issue warrants  
17 to the respective boards of county commissioners or chief  
18 municipal executive authorities for the amount so allocated.

19 Section 279. Subsection (2) of section 258.014,  
20 Florida Statutes, is amended to read:

21 258.014 Fees for use of state parks.--

22 (2) Any moneys received in trust by the division by  
23 gift, devise, appropriation, or otherwise shall, subject to  
24 the terms of such trust, be deposited with the Chief Financial  
25 Officer ~~State Treasurer~~ in a fund to be known as the "State  
26 Park Trust Fund," and shall be subject to withdrawal upon  
27 application of such ~~said~~ division for expenditure or  
28 investment in accordance with the terms of the ~~said~~ trust.  
29 Unless prohibited by the terms of the trust by which the ~~said~~  
30 moneys are derived, all of such moneys may be invested as  
31 provided by law.

1           Section 280. Subsection (6) and paragraph (e) of  
2 subsection (12) of section 259.032, Florida Statutes, are  
3 amended to read:

4           259.032 Conservation and Recreation Lands Trust Fund;  
5 purpose.--

6           (6) Moneys in the fund not needed to meet obligations  
7 incurred under this section shall be deposited with the Chief  
8 Financial Officer ~~Treasurer~~ to the credit of the fund and may  
9 be invested in the manner provided by law. Interest received  
10 on such investments shall be credited to the Conservation and  
11 Recreation Lands Trust Fund.

12           (12)

13           (e) Payment in lieu of taxes pursuant to this  
14 subsection shall be made annually to qualifying counties and  
15 local governments after certification by the Department of  
16 Revenue that the amounts applied for are reasonably  
17 appropriate, based on the amount of actual taxes paid on the  
18 eligible property, and after the Department of Environmental  
19 Protection has provided supporting documents to the Chief  
20 Financial Officer ~~Comptroller~~ and has requested that payment  
21 be made in accordance with the requirements of this section.

22  
23 For the purposes of this subsection, "local government"  
24 includes municipalities, the county school board, mosquito  
25 control districts, and any other local government entity which  
26 levies ad valorem taxes, with the exception of a water  
27 management district.

28           Section 281. Subsection (18) of section 259.041,  
29 Florida Statutes, is amended to read:

30           259.041 Acquisition of state-owned lands for  
31 preservation, conservation, and recreation purposes.--

1           (18) Any agency authorized to acquire lands on behalf  
2 of the board of trustees is authorized to request disbursement  
3 of payments for real estate closings in accordance with a  
4 written authorization from an ultimate beneficiary to allow a  
5 third party authorized by law to receive such payment provided  
6 the Chief Financial Officer ~~Comptroller~~ determines that such  
7 disbursement is consistent with good business practices and  
8 can be completed in a manner minimizing costs and risks to the  
9 state.

10           Section 282. Subsection (2) of section 265.53, Florida  
11 Statutes, is amended to read:

12           265.53 Application for indemnity agreement.--

13           (2) The Department of Financial Services ~~Insurance~~  
14 shall determine whether applicants qualify for indemnity  
15 coverage under ss. 265.51-265.56. Qualification criteria,  
16 which shall be set by rule, shall include factors such as:

17           (a) Physical security of an applicant's exhibition  
18 facilities and of the means of transportation of the eligible  
19 items from the borrower to the lender.

20           (b) Experience and qualifications of an applicant's  
21 director, curator, registrar, or other staff.

22           (c) Eligibility of an applicant's exhibition  
23 facilities for commercial insurance coverage of works of art  
24 displayed there.

25           (d) Availability of proper equipment to protect works  
26 of art from damage from extremes of temperature or humidity or  
27 exposure to glare, dust, or corrosion.

28  
29 The department may consult with such private insurance and art  
30 experts as reasonably necessary to carry out the intent of  
31 this subsection.

1           Section 283. Subsections (1) and (3) of section  
2 265.55, Florida Statutes, are amended to read:

3           265.55 Claims.--

4           (1) The Division of Risk Management of the Department  
5 of Financial Services Insurance may prescribe rules providing  
6 for prompt adjustment of valid claims for losses which are  
7 covered by an indemnity agreement made pursuant to the  
8 provisions of ss. 265.51-265.56, including rules providing for  
9 the employment of consultants and for the arbitration of  
10 issues relating to the dollar value of damages involving less  
11 than total loss or destruction of such covered objects.

12           (3) The authorization for payment delineated in  
13 subsection (2) shall be forwarded to the Chief Financial  
14 Officer Comptroller. The Chief Financial Officer Comptroller  
15 shall take appropriate action to execute authorized payment of  
16 the claim from the Working Capital Fund, as defined in s.  
17 215.32.

18           Section 284. Paragraph (d) of subsection (3) of  
19 section 267.075, Florida Statutes, is amended to read:

20           267.075 The Grove Advisory Council; creation;  
21 membership; purposes.--

22           (3)

23           (d) Members of the council shall serve without  
24 compensation or honorarium but shall be entitled to receive  
25 reimbursement for per diem and travel expenses as provided in  
26 s. 112.061. All expenses of the council shall be paid from  
27 appropriations to be made by the Legislature to the Department  
28 of State. All vouchers shall be approved by the Division of  
29 Historical Resources before being submitted to the Chief  
30 Financial Officer Comptroller for payment.

31

1           Section 285. Paragraph (c) of subsection (2) of  
2 section 272.18, Florida Statutes, is amended to read:

3           272.18 Governor's Mansion Commission.--

4           (2)

5           (c) Members of the commission shall serve without  
6 compensation or honorarium but shall be entitled to receive  
7 reimbursement for per diem and travel expenses as provided in  
8 s. 112.061. All expenses of the commission shall be paid from  
9 appropriations to be made by the Legislature to the Department  
10 of Management Services for that purpose. The commission shall  
11 submit its budgetary requests to the Department of Management  
12 Services for approval and inclusion in the legislative budget  
13 request of the department. All vouchers shall be approved by  
14 the secretary of the Department of Management Services before  
15 being submitted to the Chief Financial Officer ~~Comptroller~~ for  
16 payment.

17           Section 286. Subsections (9), (11), (17), (18), (19),  
18 and (24), paragraph (f) of subsection (26), and subsections  
19 (29), (30), and (31) of section 280.02, Florida Statutes, are  
20 amended to read:

21           280.02 Definitions.--As used in this chapter, the  
22 term:

23           (9) "Custodian" means the Chief Financial Officer  
24 ~~Treasurer~~ or any bank, savings association, or trust company  
25 that:

26           (a) Is organized and existing under the laws of this  
27 state, any other state, or the United States;

28           (b) Has executed all forms required under this chapter  
29 or any rule adopted hereunder;

30           (c) Agrees to be subject to the jurisdiction of the  
31 courts of this state, or of courts of the United States which

1 are located within this state, for the purpose of any  
2 litigation arising out of this chapter; and

3 (d) Has been approved by the Chief Financial Officer  
4 ~~Treasurer~~ to act as a custodian.

5 (11) "Effective date of notice of withdrawal or order  
6 of discontinuance" pursuant to s. 280.11(3) means that date  
7 which is set out as such in any notice of withdrawal or order  
8 of discontinuance from the Chief Financial Officer ~~Treasurer~~.

9 (17) "Operating subsidiary" means the qualified public  
10 depository's 100-percent owned corporation that has ownership  
11 of pledged collateral. The operating subsidiary may have no  
12 powers beyond those that its parent qualified public  
13 depository may itself exercise. The use of an operating  
14 subsidiary is at the discretion of the qualified public  
15 depository and must meet the Chief Financial Officer's  
16 ~~Treasurer's~~ requirements.

17 (18) "Oversight board" means the qualified public  
18 depository oversight board created in s. 280.071 for the  
19 purpose of safeguarding the integrity of the public deposits  
20 program and preventing the realization of loss assessments  
21 through standards, policies, and recommendations for actions  
22 to the Chief Financial Officer ~~Treasurer~~.

23 (19) "Pledged collateral" means securities or cash  
24 held separately and distinctly by an eligible custodian for  
25 the benefit of the Chief Financial Officer ~~Treasurer~~ to be  
26 used as security for Florida public deposits. This includes  
27 maturity and call proceeds.

28 (24) "Public depositor" means the official custodian  
29 of funds for a governmental unit who is ~~Treasurer or other~~  
30 ~~Chief Financial Officer or designee~~ responsible for handling  
31 public deposits.

1           (26) "Qualified public depository" means any bank,  
2 savings bank, or savings association that:

3           (f) Has been designated by the Chief Financial Officer  
4 ~~Treasurer~~ as a qualified public depository.

5           ~~(29) "Treasurer" means the Treasurer of the State of~~  
6 ~~Florida.~~

7           (29)~~(30)~~ "Chief Financial Officer's"~~Treasurer's~~  
8 custody" is a collateral arrangement governed by a contract  
9 between a designated Chief Financial Officer's ~~Treasurer's~~  
10 custodian and the Chief Financial Officer ~~Treasurer~~. This  
11 arrangement requires collateral to be in the Chief Financial  
12 Officer's ~~Treasurer's~~ name in order to perfect the security  
13 interest.

14           (30)~~(31)~~ "Triggering events" are events set out in s.  
15 280.041 which give the Chief Financial Officer ~~Treasurer~~ the  
16 right to:

17           (a) Instruct the custodian to transfer securities  
18 pledged, interest payments, and other proceeds of pledged  
19 collateral not previously credited to the pledgor.

20           (b) Demand payment under letters of credit.

21           Section 287. Subsections (1), (2), (5), (6), (7), and  
22 (9) of section 280.04, Florida Statutes, are amended to read:

23           280.04 Collateral for public deposits; general  
24 provisions.--

25           (1) The Chief Financial Officer ~~Treasurer~~ shall  
26 determine the collateral requirements and collateral pledging  
27 level for each qualified public depository following  
28 procedures established by rule. These procedures shall include  
29 numerical parameters for 25-percent, 50-percent, 125-percent,  
30 and 200-percent pledge levels based on nationally recognized  
31

1 financial rating services information and established  
2 financial performance guidelines.

3 (2) A qualified public depository may not accept or  
4 retain any public deposit which is required to be secured  
5 unless it has deposited with the Chief Financial Officer  
6 ~~Treasurer~~ eligible collateral at least equal to the greater  
7 of:

8 (a) The average daily balance of public deposits that  
9 does not exceed the lesser of its capital account or 20  
10 percent of the pool figure multiplied by the depository's  
11 collateral-pledging level, plus the greater of:

12 1. One hundred twenty-five percent of the average  
13 daily balance of public deposits in excess of capital  
14 accounts; or

15 2. One hundred twenty-five percent of the average  
16 daily balance of public deposits in excess of 20 percent of  
17 the pool figure.

18 (b) Twenty-five percent of the average monthly balance  
19 of public deposits.

20 (c) One hundred twenty-five percent of the average  
21 daily balance of public deposits if the qualified public  
22 depository:

23 1. Has been established for less than 3 years;

24 2. Has experienced material decreases in its capital  
25 accounts; or

26 3. Has an overall financial condition that is  
27 materially deteriorating.

28 (d) Two hundred percent of an established maximum  
29 amount of public deposits that has been mutually agreed upon  
30 by and between the Chief Financial Officer ~~Treasurer~~ and the  
31 qualified public depository.

- 1 (e) Minimum required collateral of \$100,000.
- 2 (f) An amount as required in special instructions from  
3 the Chief Financial Officer ~~Treasurer~~ to protect the integrity  
4 of the public deposits program.
- 5 (5) Additional collateral of 20 percent of required  
6 collateral is necessary if a valuation date other than the  
7 close of business as described below has been approved for the  
8 qualified public depository and the required collateral is  
9 found to be insufficient based on the Chief Financial  
10 Officer's ~~Treasurer's~~ valuation.
- 11 (6) Each qualified public depository shall value its  
12 collateral in the following manner; it must:
- 13 (a) Use a nationally recognized source.
- 14 (b) Use market price, quality ratings, and pay-down  
15 factors as of the close of business on the last banking day in  
16 the reported month, or as of a date approved by the Chief  
17 Financial Officer ~~Treasurer~~.
- 18 (c) Report any material decline in value that occurs  
19 before the date of mailing the monthly report, required in s.  
20 280.16, to the Chief Financial Officer ~~Treasurer~~.
- 21 (d) Use 100 percent of the maximum amount available  
22 under Federal Home Loan Bank letters of credit as market  
23 value.
- 24 (7) A qualified public depository shall pledge,  
25 deposit, or issue additional eligible collateral between  
26 filing periods of the monthly report required in s. 280.16  
27 when notified by the Chief Financial Officer ~~Treasurer~~ that  
28 current market value of collateral does not meet required  
29 collateral. The pledge, deposit, or issuance of such  
30 additional collateral shall be made within 2 business days  
31 after the Chief Financial Officer's ~~Treasurer's~~ notification.

1           (9) The Chief Financial Officer ~~Treasurer~~ shall adopt  
2 rules for the establishment of collateral requirements,  
3 collateral pledging levels, required collateral calculations,  
4 and market value and clarifying terms.

5           Section 288. Section 280.041, Florida Statutes, is  
6 amended to read:

7           280.041 Collateral arrangements; agreements,  
8 provisions, and triggering events.--

9           (1) Eligible collateral listed in s. 280.13 may be  
10 pledged, deposited, or issued using the following collateral  
11 arrangements as approved by the Chief Financial Officer  
12 ~~Treasurer~~ for a qualified public depository or operating  
13 subsidiary, if one is used, to meet required collateral:

14           (a) Regular custody arrangement for collateral pledged  
15 to the Chief Financial Officer ~~Treasurer~~ pursuant to  
16 subsection (2).

17           (b) Federal Reserve Bank custody arrangement for  
18 collateral pledged to the Chief Financial Officer ~~Treasurer~~  
19 pursuant to subsection (3).

20           (c) Chief Financial Officer's ~~Treasurer's~~ custody  
21 arrangement for collateral deposited in the Chief Financial  
22 Officer's ~~Treasurer's~~ name pursuant to subsection (4).

23           (d) Federal Home Loan Bank letter of credit  
24 arrangement for collateral issued with the Chief Financial  
25 Officer ~~Treasurer~~ as beneficiary pursuant to subsection (5).

26           (e) Cash arrangement for collateral held by the Chief  
27 Financial Officer ~~Treasurer~~ or a custodian.

28           (2) With the approval of the Chief Financial Officer  
29 ~~Treasurer~~, a qualified public depository or operating  
30 subsidiary, as pledgor, may deposit eligible collateral with a  
31 custodian. A qualified public depository shall not act as its

1 own custodian. Except in the case of using a Federal Reserve  
2 Bank as custodian, the following are necessary for the Chief  
3 Financial Officer's ~~Treasurer's~~ approval:

4 (a) A completed collateral agreement in a form  
5 prescribed by the Chief Financial Officer ~~Treasurer~~ in which  
6 the pledgor agrees to the following provisions:

7 1. The pledgor shall own the pledged collateral and  
8 acknowledge that the Chief Financial Officer ~~Treasurer~~ has a  
9 perfected security interest. The pledged collateral shall be  
10 eligible collateral and shall be at least equal to the amount  
11 of required collateral.

12 2. The pledgor shall grant to the Chief Financial  
13 Officer ~~Treasurer~~ an interest in pledged collateral for the  
14 purposes of this section. The pledgor shall not enter into or  
15 execute any other agreement related to the pledged collateral  
16 that would create an interest in or lien on that collateral in  
17 any manner in favor of any third party without the written  
18 consent of the Chief Financial Officer ~~Treasurer~~.

19 3. The pledgor shall not grant the custodian any lien  
20 that attaches to the collateral in favor of the custodian that  
21 is superior or equal to the security interest of the Chief  
22 Financial Officer ~~Treasurer~~.

23 4. The pledgor shall agree that the Chief Financial  
24 Officer ~~Treasurer~~ may, without notice to or consent by the  
25 pledgor, require the custodian to comply with and perform any  
26 and all requests and orders directly from the Chief Financial  
27 Officer ~~Treasurer~~. These include, but are not limited to,  
28 liquidating all collateral and submitting the proceeds  
29 directly to the Chief Financial Officer ~~Treasurer~~ in the name  
30 of the Chief Financial Officer ~~Treasurer~~ only or transferring  
31

1 all collateral into an account designated solely by the Chief  
2 Financial Officer ~~Treasurer~~.

3 5. The pledgor shall acknowledge that the Chief  
4 Financial Officer ~~Treasurer~~ may, without notice to or consent  
5 by the pledgor, require the custodian to hold principal  
6 payments and income for the benefit of the Chief Financial  
7 Officer ~~Treasurer~~.

8 6. The pledgor shall initiate collateral transactions  
9 on forms prescribed by the Chief Financial Officer ~~Treasurer~~  
10 in the following manner:

11 a. A deposit transaction of eligible collateral may be  
12 made without prior approval from the Chief Financial Officer  
13 ~~Treasurer~~ provided: security types that have restrictions have  
14 been approved in advance of the transaction by the Chief  
15 Financial Officer ~~Treasurer~~ and simultaneous notification is  
16 given to the Chief Financial Officer ~~Treasurer~~; and the  
17 custodian has not received notice from the Chief Financial  
18 Officer ~~Treasurer~~ prohibiting deposits without prior approval.

19 b. A substitution transaction of eligible collateral  
20 may be made without prior approval from the Chief Financial  
21 Officer ~~Treasurer~~ provided: security types that have  
22 restrictions have been approved in advance of the transaction  
23 by the Chief Financial Officer ~~Treasurer~~; the market value of  
24 the securities to be substituted is at least equal to the  
25 amount withdrawn; simultaneous notification is given to the  
26 Chief Financial Officer ~~Treasurer~~; and the custodian has not  
27 received notice from the Chief Financial Officer ~~Treasurer~~  
28 prohibiting substitution.

29 c. A transfer of collateral between accounts at a  
30 custodian requires the Chief Financial Officer's ~~Treasurer's~~  
31 prior approval. The collateral shall be released subject to

1 redeposit in the new account with a pledge to the Chief  
2 Financial Officer ~~Treasurer~~ intact.

3 d. A transfer of collateral from a custodian to  
4 another custodian requires the Chief Financial Officer's  
5 ~~Treasurer's~~ prior approval and a valid collateral agreement  
6 with the new custodian. The collateral shall be released  
7 subject to redeposit at the new custodian with a pledge to the  
8 Chief Financial Officer ~~Treasurer~~ intact.

9 e. A withdrawal transaction requires the Chief  
10 Financial Officer's ~~Treasurer's~~ prior approval. The market  
11 value of eligible collateral remaining after the withdrawal  
12 shall be at least equal to the amount of required collateral.  
13 A withdrawal transaction shall be executed for any release of  
14 collateral including maturity or call proceeds.

15 f. Written notice shall be sent to the Chief Financial  
16 Officer ~~Treasurer~~ to remove from the inventory of pledged  
17 collateral a pay-down security that has paid out with zero  
18 principal remaining.

19 7. If pledged collateral includes definitive  
20 (physical) securities in registered form which are in the name  
21 of the pledgor or a nominee, the pledgor shall deliver the  
22 following documents when requested by the Chief Financial  
23 Officer ~~Treasurer~~:

24 a. A separate certified power of attorney in a form  
25 prescribed by the Chief Financial Officer ~~Treasurer~~ for each  
26 issue of securities.

27 b. Separate bond assignment forms as required by the  
28 bond agent or trustee.

29 c. Certified copies of resolutions adopted by the  
30 pledgor's governing body authorizing execution of these  
31 documents.

1           8. The pledgor shall be responsible for all costs  
2 necessary to the functioning of the collateral agreement or  
3 associated with confirmation of pledged collateral to the  
4 Chief Financial Officer ~~Treasurer~~ and acknowledges that these  
5 costs shall not be a charge against the Chief Financial  
6 Officer ~~Treasurer~~ or his or her interests in the pledged  
7 collateral.

8           9. The pledgor, if notified by the Chief Financial  
9 Officer ~~Treasurer~~, shall not be allowed to use a custodian if  
10 that custodian fails to complete the collateral agreement,  
11 releases pledged collateral without the Chief Financial  
12 Officer's ~~Treasurer's~~ approval, fails to properly complete  
13 confirmations of pledged collateral, fails to honor a request  
14 for examination of definitive pledged collateral and records  
15 of book-entry securities, or fails to provide requested  
16 documents on definitive securities. The period for disallowing  
17 the use of a custodian shall be 1 year.

18           10. The pledgor shall be subject to the jurisdiction  
19 of the courts of the State of Florida, or of courts of the  
20 United States located within the State of Florida, for the  
21 purpose of any litigation arising out of the act.

22           11. The pledgor is responsible and liable to the Chief  
23 Financial Officer ~~Treasurer~~ for any action of agents the  
24 pledgor uses to execute collateral transactions or submit  
25 reports to the Chief Financial Officer ~~Treasurer~~.

26           12. The pledgor shall agree that any information,  
27 forms, or reports electronically transmitted to the Chief  
28 Financial Officer ~~Treasurer~~ shall have the same enforceability  
29 as a signed writing.

30  
31

1           13. The pledgor shall submit proof that authorized  
2 individuals executed the collateral agreement on behalf of the  
3 pledgor.

4           14. The pledgor shall agree by resolution of the board  
5 of directors that collateral agreements entered into for  
6 purposes of this section have been formally accepted and  
7 constitute official records of the pledgor.

8           15. The pledgor shall be bound by any other provisions  
9 found necessary for a perfected security interest in  
10 collateral under the Uniform Commercial Code.

11           (b) A completed collateral agreement in a form  
12 prescribed by the Chief Financial Officer ~~Treasurer~~ in which  
13 the custodian agrees to the following provisions:

14           1. The custodian shall have no responsibility to  
15 ascertain whether the pledged securities are at least equal to  
16 the amount of required collateral nor whether the pledged  
17 securities are eligible collateral.

18           2. The custodian shall hold pledged collateral in a  
19 custody account for the Chief Financial Officer ~~Treasurer~~ for  
20 purposes of this section. The custodian shall not enter into  
21 or execute any other agreement related to the collateral that  
22 would create an interest in or lien on that collateral in any  
23 manner in favor of any third party without the written consent  
24 of the Chief Financial Officer ~~Treasurer~~.

25           3. The custodian shall agree that any lien that  
26 attaches to the collateral in favor of the custodian shall not  
27 be superior or equal to the security interest of the Chief  
28 Financial Officer ~~Treasurer~~.

29           4. The custodian shall, without notice to or consent  
30 by the pledgor, comply with and perform any and all requests  
31 and orders directly from the Chief Financial Officer

1 ~~Treasurer~~. These include, but are not limited to, liquidating  
2 all collateral and submitting the proceeds directly to the  
3 Chief Financial Officer ~~Treasurer~~ in the name of the Chief  
4 Financial Officer ~~Treasurer~~ only or transferring all  
5 collateral into an account designated solely by the Chief  
6 Financial Officer ~~Treasurer~~.

7           5. The custodian shall consider principal payments on  
8 pay-down securities and income paid on pledged collateral as  
9 the property of the pledgor and shall pay thereto provided the  
10 custodian has not received written notice from the Chief  
11 Financial Officer ~~Treasurer~~ to hold such principal payments  
12 and income for the benefit of the Chief Financial Officer  
13 ~~Treasurer~~.

14           6. The custodian shall process collateral transactions  
15 on forms prescribed by the Chief Financial Officer ~~Treasurer~~  
16 in the following manner:

17           a. A deposit transaction of eligible collateral may be  
18 made without prior approval from the Chief Financial Officer  
19 ~~Treasurer~~ unless the custodian has received notice from the  
20 Chief Financial Officer ~~Treasurer~~ requiring the Chief  
21 Financial Officer's ~~Treasurer's~~ prior approval.

22           b. A substitution transaction of eligible collateral  
23 may be made without prior approval from the Chief Financial  
24 Officer ~~Treasurer~~ provided the pledgor certifies the market  
25 value of the securities to be substituted is at least equal to  
26 the market value amount of the securities to be withdrawn and  
27 the custodian has not received notice from the Chief Financial  
28 Officer ~~Treasurer~~ prohibiting substitution.

29           c. A transfer of collateral between accounts at a  
30 custodian requires the Chief Financial Officer's ~~Treasurer's~~  
31 prior approval. The collateral shall be released subject to

1 redeposit in the new account with a pledge to the Chief  
2 Financial Officer ~~Treasurer~~ intact. Confirmation from the  
3 custodian to the Chief Financial Officer ~~Treasurer~~ must be  
4 received within 5 business days of the redeposit.

5 d. A transfer of collateral from a custodian to  
6 another custodian requires the Chief Financial Officer's  
7 ~~Treasurer's~~ prior approval. The collateral shall be released  
8 subject to redeposit at the new custodian with a pledge to the  
9 Chief Financial Officer ~~Treasurer~~ intact. Confirmation from  
10 the new custodian to the Chief Financial Officer ~~Treasurer~~  
11 must be received within 5 business days of the redeposit.

12 e. A withdrawal transaction requires the Chief  
13 Financial Officer's ~~Treasurer's~~ prior approval. A withdrawal  
14 transaction shall be executed for the release of any pledged  
15 collateral including maturity or call proceeds.

16 7. If pledged collateral includes definitive  
17 (physical) securities in registered form, which are in the  
18 name of the custodian or a nominee, the custodian shall  
19 deliver the following documents when requested by the Chief  
20 Financial Officer ~~Treasurer~~:

21 a. A separate certified power of attorney in a form  
22 prescribed by the Chief Financial Officer ~~Treasurer~~ for each  
23 issue of securities.

24 b. Separate bond assignment forms as required by the  
25 bond agent or trustee.

26 c. Certified copies of resolutions adopted by the  
27 custodian's governing body authorizing execution of these  
28 documents.

29 8. The custodian shall acknowledge that the pledgor is  
30 responsible for all costs necessary to the functioning of the  
31 collateral agreement or associated with confirmation of

1 securities pledged to the Chief Financial Officer ~~Treasurer~~  
2 and that these costs shall not be a charge against the Chief  
3 Financial Officer ~~Treasurer~~ or his or her interests in the  
4 pledged collateral.

5 9. The custodian shall agree to provide confirmation  
6 of pledged collateral upon request from the Chief Financial  
7 Officer ~~Treasurer~~. This confirmation shall be provided within  
8 15 working days after the request, in a format prescribed by  
9 the Chief Financial Officer ~~Treasurer~~, and shall require no  
10 identification other than the pledgor name and location,  
11 unless the special identification is provided in the  
12 collateral agreement.

13 10. The custodian shall be subject to the jurisdiction  
14 of the courts of the State of Florida, or of courts of the  
15 United States located within the State of Florida, for the  
16 purpose of any litigation arising out of the act.

17 11. The custodian shall be responsible and liable to  
18 the Chief Financial Officer ~~Treasurer~~ for any action of agents  
19 the custodian uses to hold and service collateral pledged to  
20 the Chief Financial Officer ~~Treasurer~~.

21 12. The custodian shall agree that any information,  
22 forms, or reports electronically transmitted to the Chief  
23 Financial Officer ~~Treasurer~~ shall have the same enforceability  
24 as a signed writing.

25 13. The Chief Financial Officer ~~Treasurer~~ shall have  
26 the right to examine definitive pledged collateral and records  
27 of book-entry securities during the regular business hours of  
28 the custodian without cost to the Chief Financial Officer  
29 ~~Treasurer~~.

30 14. The responsibilities of the custodian for the  
31 safekeeping of the pledged collateral shall be limited to the

1 diligence and care usually exercised by a banking or trust  
2 institution toward its own property.

3         15. If there is any change in the Uniform Commercial  
4 Code, as adopted by law in this state, which affects the  
5 requirements for a perfected security interest in collateral,  
6 the Chief Financial Officer ~~Treasurer~~ shall notify the  
7 custodian of such change. The custodian shall have a period of  
8 180 calendar days after such notice to withdraw as custodian  
9 if the custodian cannot provide the required custodial  
10 services.

11         (3) With the approval of the Chief Financial Officer  
12 ~~Treasurer~~, a pledgor may deposit eligible collateral pursuant  
13 to an agreement with a Federal Reserve Bank. The Federal  
14 Reserve Bank agreement may require terms not consistent with  
15 subsection (2) but may not subject the Chief Financial Officer  
16 ~~Treasurer~~ to any costs or indemnification requirements.

17         (4) The Chief Financial Officer ~~Treasurer~~ may require  
18 deposit or transfer of collateral into a custodial account  
19 established in the Chief Financial Officer's ~~Treasurer's~~ name  
20 at a designated custodian. This requirement for Chief  
21 Financial Officer's ~~Treasurer's~~ custody shall have the  
22 following characteristics:

23         (a) One or more triggering events must have occurred.

24         (b) The custodian used must be a Chief Financial  
25 Officer's ~~Treasurer's~~ approved custodian that must:

26             1. Meet the definition of custodian.

27             2. Not be an affiliate of the qualified public  
28 depository.

29             3. Be bound under a distinct Chief Financial Officer's  
30 ~~Treasurer's~~ custodial contract.

31

1           (c) All deposit transactions require the approval of  
2 the Chief Financial Officer ~~Treasurer~~.

3           (d) All collateral must be in book-entry form.

4           (e) The qualified public depository shall be  
5 responsible for all costs necessary to the functioning of the  
6 contract or associated with the confirmation of securities in  
7 the name of the Chief Financial Officer ~~Treasurer~~ and  
8 acknowledges that these costs shall not be a charge against  
9 the Chief Financial Officer ~~Treasurer~~ and may be deducted from  
10 the collateral or income earned if unpaid.

11           (5) With the approval of the Chief Financial Officer  
12 ~~Treasurer~~, a qualified public depository may use Federal Home  
13 Loan Bank letters of credit to meet collateral requirements.  
14 A completed agreement that includes the following provisions  
15 is necessary for the Chief Financial Officer's ~~Treasurer's~~  
16 approval:

17           (a) The letter of credit shall meet the definition of  
18 eligible collateral.

19           (b) The qualified public depository shall agree that  
20 the Chief Financial Officer ~~Treasurer~~, as beneficiary, may,  
21 without notice to or consent by the qualified public  
22 depository, demand payment under the letter of credit if any  
23 of the triggering events listed in this section occur.

24           (c) The qualified public depository shall agree that  
25 funds received by the Chief Financial Officer ~~Treasurer~~ due to  
26 the occurrence of one or more triggering events may be  
27 deposited in the Treasury Cash Deposit Trust Fund for purposes  
28 of eligible collateral.

29           (d) The qualified public depository shall arrange for  
30 the issue of letters of credit which meet the requirements of  
31 s. 280.13 and delivery to the Chief Financial Officer

1 ~~Treasurer~~. All transactions involving letters of credit  
2 require the Chief Financial Officer's ~~Treasurer's~~ approval.

3 (e) The qualified public depository shall be  
4 responsible for all costs necessary in the use or confirmation  
5 of letters of credit issued on behalf of the Chief Financial  
6 Officer ~~Treasurer~~ and acknowledges that these costs shall not  
7 be a charge against the Chief Financial Officer ~~Treasurer~~.

8 (f) The qualified public depository shall be subject  
9 to the jurisdiction of the courts of this state, or of courts  
10 of the United States which are located within this state, for  
11 the purpose of any litigation arising out of the act.

12 (g) The qualified public depository shall agree that  
13 any information, form, or report electronically transmitted to  
14 the Chief Financial Officer ~~Treasurer~~ shall have the same  
15 enforceability as a signed writing.

16 (h) The qualified public depository shall submit proof  
17 that authorized individuals executed the letters of credit  
18 agreement on its behalf.

19 (i) The qualified public depository shall agree by  
20 resolution of the board of directors that the letters of  
21 credit agreements entered into for purposes of this section  
22 have been formally accepted and constitute official records of  
23 the qualified public depository.

24 (6) The Chief Financial Officer ~~Treasurer~~ may demand  
25 payment under a letter of credit or direct a custodian to  
26 deposit or transfer collateral and proceeds of securities not  
27 previously credited upon the occurrence of one or more  
28 triggering events provided that, to the extent not  
29 incompatible with the protection of public deposits, as  
30 determined in the Chief Financial Officer's ~~Treasurer's~~ sole  
31 and absolute discretion, the Chief Financial Officer ~~Treasurer~~

1 shall provide a custodian and the qualified public depository  
2 with 48 hours' advance notice before directing such deposit or  
3 transfer. These events include:

4 (a) The Chief Financial Officer ~~Treasurer~~ determines  
5 that an immediate danger to the public health, safety, or  
6 welfare exists.

7 (b) The qualified public depository fails to have  
8 adequate procedures and practices for the accurate  
9 identification, classification, reporting, and  
10 collateralization of public deposits.

11 (c) The custodian fails to provide or allow inspection  
12 and verification of documents, reports, records, or other  
13 information dealing with the pledged collateral or financial  
14 information.

15 (d) The qualified public depository or its operating  
16 subsidiary fails to provide or allow inspection and  
17 verification of documents, reports, records, or other  
18 information dealing with Florida public deposits, pledged  
19 collateral, or financial information.

20 (e) The custodian fails to hold income and principal  
21 payments made on securities held as collateral or fails to  
22 deposit or transfer such payments pursuant to the Chief  
23 Financial Officer's ~~Treasurer's~~ instructions.

24 (f) The qualified public depository defaults or  
25 becomes insolvent.

26 (g) The qualified public depository fails to pay an  
27 assessment.

28 (h) The qualified public depository fails to pay an  
29 administrative penalty.

30 (i) The qualified public depository fails to meet  
31 financial condition standards.

1           (j) The qualified public depository charges a  
2 withdrawal penalty to public depositors when the qualified  
3 public depository is suspended, disqualified, or withdrawn  
4 from the public deposits program.

5           (k) The qualified public depository does not provide,  
6 as required, the public depositor with annual confirmation  
7 information on all open Florida public deposit accounts.

8           (l) The qualified public depository pledges, deposits,  
9 or has issued insufficient or unacceptable collateral to meet  
10 required collateral within the required time.

11           (m) Collateral, other than a proper substitution, is  
12 released without the prior approval of the Chief Financial  
13 Officer ~~Treasurer~~.

14           (n) The qualified public depository, custodian,  
15 operating subsidiary, or agent violates any provision of the  
16 act and the Chief Financial Officer ~~Treasurer~~ determines that  
17 such violation may be remedied by a move of collateral.

18           (o) The qualified public depository, custodian,  
19 operating subsidiary, or agent fails to timely cooperate in  
20 resolving problems by the date established in written  
21 communication from the Chief Financial Officer ~~Treasurer~~.

22           (p) The custodian fails to provide sufficient  
23 confirmation information.

24           (q) The Federal Home Loan Bank or the qualified public  
25 depository gives notification that a letter of credit will not  
26 be extended or renewed and other eligible collateral equal to  
27 required collateral has not been deposited within 30 days  
28 after the notice or 30 days before expiration of the letter of  
29 credit.

30           (r) The qualified public depository, if involved in a  
31 merger, acquisition, consolidation, or other organizational

1 change, fails to notify the Chief Financial Officer ~~Treasurer~~  
2 or ensure that required collateral is properly maintained by  
3 the depository holding the Florida public deposits.

4 (s) Events that would bring about an administrative or  
5 legal action by the Chief Financial Officer ~~Treasurer~~.

6 (7) The Chief Financial Officer ~~Treasurer~~ shall adopt  
7 rules to identify forms and establish procedures for  
8 collateral agreements and transactions, furnish confirmation  
9 requirements, establish procedures for using an operating  
10 subsidiary and agents, and clarify terms.

11 Section 289. Section 280.05, Florida Statutes, is  
12 amended to read:

13 280.05 Powers and duties of the Chief Financial  
14 Officer ~~Treasurer~~.--In fulfilling the requirements of this  
15 act, the Chief Financial Officer ~~Treasurer~~ has the power to  
16 take the following actions he or she deems necessary to  
17 protect the integrity of the public deposits program:

18 (1) Identify representative qualified public  
19 depositories and furnish notification for the qualified public  
20 depository oversight board selection pursuant to s. 280.071.

21 (2) Provide data for the qualified public depository  
22 oversight board duties pursuant to s. 280.071 regarding:

23 (a) Establishing standards for qualified public  
24 depositories and custodians.

25 (b) Evaluating requests for exceptions to standards  
26 and alternative participation agreements.

27 (c) Reviewing and recommending action for qualified  
28 public depository or custodian violations.

29 (3) Review, implement, monitor, evaluate, and modify  
30 all or any part of the standards, policies, or recommendations  
31 of the qualified public depository oversight board.

1           (4) Perform financial analysis of any qualified public  
2 depositories.

3           (5) Require collateral, or increase the  
4 collateral-pledging level, of any qualified public depository.

5           (6) Decline to accept, or reduce the reported value  
6 of, collateral in order to ensure the pledging or depositing  
7 of sufficient marketable collateral and acceptable letters of  
8 credit.

9           (7) Maintain perpetual inventory of collateral and  
10 perform monthly market valuations and quality ratings.

11           (8) Monitor and confirm collateral with custodians and  
12 letter of credit issuers.

13           (9) Move collateral into an account established in the  
14 Chief Financial Officer's ~~Treasurer's~~ name upon the occurrence  
15 of one or more triggering events.

16           (10) Issue notice to a qualified public depository  
17 that use of a custodian will be disallowed when the custodian  
18 has failed to follow collateral agreement terms.

19           (11) Furnish written notice to custodians of  
20 collateral to hold interest and principal payments made on  
21 securities held as collateral and to deposit or transfer such  
22 payments pursuant to the Chief Financial Officer's ~~Treasurer's~~  
23 instructions.

24           (12) Release collateral held in the Chief Financial  
25 Officer's ~~Treasurer's~~ name, subject to sale and transfer of  
26 funds directly from the custodian to public depositors of a  
27 withdrawing depository.

28           (13) Demand payment under letters of credit for any of  
29 the triggering events listed in s. 280.041 and deposit the  
30 funds in:

31

1 (a) The Public Deposits Trust Fund for purposes of  
2 paying losses to public depositors.

3 (b) The Treasury ~~Treasurer's~~ Administrative and  
4 Investment Trust Fund for receiving payment of administrative  
5 penalties.

6 (c) The Treasury Cash Deposit Trust Fund for purposes  
7 of eligible collateral.

8 (14) Sell securities for the purpose of paying losses  
9 to public depositors not covered by deposit insurance.

10 (15) Transfer funds directly from the custodian to  
11 public depositors or the receiver in order to facilitate  
12 prompt payment of claims.

13 (16) Require the filing of the following reports which  
14 the Chief Financial Officer ~~Treasurer~~ shall process as  
15 provided:

16 (a) Qualified public depository monthly reports and  
17 schedules. The Chief Financial Officer ~~Treasurer~~ shall review  
18 the reports of each qualified public depository for material  
19 changes in capital accounts or changes in name, address, or  
20 type of institution; record the average daily balances of  
21 public deposits held; and monitor the collateral-pledging  
22 levels and required collateral.

23 (b) Quarterly regulatory reports from qualified public  
24 depositories. The Chief Financial Officer ~~Treasurer~~ shall  
25 analyze qualified public depositories ranked in the lowest  
26 category based on established financial condition criteria.

27 (c) Qualified public depository annual reports and  
28 public depositor annual reports. The Chief Financial Officer  
29 ~~Treasurer~~ shall compare public deposit information reported by  
30 qualified public depositories and public depositors. Such  
31 comparison shall be conducted for qualified public

1 depositories which are ranked in the lowest category based on  
2 established financial condition criteria of record on  
3 September 30. Additional comparison processes may be performed  
4 as public deposits program resources permit.

5 (d) Any related documents, reports, records, or other  
6 information deemed necessary by the Chief Financial Officer  
7 ~~Treasurer~~ in order to ascertain compliance with this chapter.

8 (17) Verify the reports of any qualified public  
9 depository relating to public deposits it holds when necessary  
10 to protect the integrity of the public deposits program.

11 (18) Confirm public deposits, to the extent possible  
12 under current law, when needed.

13 (19) Require at his or her discretion the filing of  
14 any information or forms required under this chapter to be by  
15 electronic data transmission. Such filings of information or  
16 forms shall have the same enforceability as a signed writing.

17 (20) Suspend or disqualify or disqualify after  
18 suspension any qualified public depository that has violated  
19 any of the provisions of this chapter or of rules adopted  
20 hereunder.

21 (a) Any qualified public depository that is suspended  
22 or disqualified pursuant to this subsection is subject to the  
23 provisions of s. 280.11(2) governing withdrawal from the  
24 public deposits program and return of pledged collateral. Any  
25 suspension shall not exceed a period of 6 months. Any  
26 qualified public depository which has been disqualified may  
27 not reapply for qualification until after the expiration of 1  
28 year from the date of the final order of disqualification or  
29 the final disposition of any appeal taken therefrom.

30  
31

1 (b) In lieu of suspension or disqualification, impose  
2 an administrative penalty upon the qualified public depository  
3 as provided in s. 280.054.

4 (c) If the Chief Financial Officer ~~Treasurer~~ has  
5 reason to believe that any qualified public depository or any  
6 other financial institution holding public deposits is or has  
7 been violating any of the provisions of this chapter or of  
8 rules adopted hereunder, he or she may issue to the qualified  
9 public depository or other financial institution an order to  
10 cease and desist from the violation or to correct the  
11 condition giving rise to or resulting from the violation. If  
12 any qualified public depository or other financial institution  
13 violates a cease-and-desist or corrective order, the Chief  
14 Financial Officer ~~Treasurer~~ may impose an administrative  
15 penalty upon the qualified public depository or other  
16 financial institution as provided in s. 280.054 or s. 280.055.  
17 In addition to the administrative penalty, the Chief Financial  
18 Officer ~~Treasurer~~ may suspend or disqualify any qualified  
19 public depository for violation of any order issued pursuant  
20 to this paragraph.

21 Section 290. Section 280.051, Florida Statutes, is  
22 amended to read:

23 280.051 Grounds for suspension or disqualification of  
24 a qualified public depository.--A qualified public depository  
25 may be suspended or disqualified or both if the Chief  
26 Financial Officer ~~Treasurer~~ determines that the qualified  
27 public depository has:

28 (1) Violated any of the provisions of this chapter or  
29 any rule adopted by the Chief Financial Officer ~~Treasurer~~  
30 pursuant to this chapter.

31

- 1           (2) Submitted reports containing inaccurate or  
2 incomplete information regarding public deposits or collateral  
3 for such deposits, capital accounts, or the calculation of  
4 required collateral.
- 5           (3) Failed to maintain required collateral.
- 6           (4) Grossly misstated the market value of the  
7 securities pledged as collateral.
- 8           (5) Failed to pay any administrative penalty.
- 9           (6) Failed to furnish the Chief Financial Officer  
10 ~~Treasurer~~ with prompt and accurate information, or failed to  
11 allow inspection and verification of any information, dealing  
12 with public deposits or dealing with the exact status of its  
13 capital accounts, or any other financial information that the  
14 Chief Financial Officer ~~Treasurer~~ determines necessary to  
15 verify compliance with this chapter or any rule adopted  
16 pursuant to this chapter.
- 17           (7) Failed to furnish the Chief Financial Officer  
18 ~~Treasurer~~, when the Chief Financial Officer ~~Treasurer~~  
19 requested, with a power of attorney or bond power or other  
20 bond assignment form required by the bond agent, bond trustee,  
21 or other transferor for each issue of registered certificated  
22 securities pledged.
- 23           (8) Failed to furnish any agreement, report, form, or  
24 other information required to be filed pursuant to s. 280.16,  
25 or when requested by the Chief Financial Officer ~~Treasurer~~.
- 26           (9) Submitted reports signed by an unauthorized  
27 individual.
- 28           (10) Submitted reports without a certified or verified  
29 signature, or both, if required by law.
- 30           (11) Released a security without notice or approval.
- 31

1 (12) Failed to execute or have the custodian execute a  
2 public depository pledge agreement prior to using a custodian.

3 (13) Failed to give notification as required by s.  
4 280.10.

5 Section 291. Section 280.052, Florida Statutes, is  
6 amended to read:

7 280.052 Order of suspension or disqualification;  
8 procedure.--

9 (1) The suspension or disqualification of a bank or  
10 savings association as a qualified public depository must be  
11 by order of the Chief Financial Officer ~~Treasurer~~ and must be  
12 mailed to the qualified public depository by registered or  
13 certified mail.

14 (2) The Chief Financial Officer ~~Treasurer~~ shall  
15 notify, by first-class mail, all public depositors that have  
16 complied with s. 280.17 of any such disqualification or  
17 suspension.

18 (3) The procedures for suspension or disqualification  
19 shall be as set forth in chapter 120 and in the rules of the  
20 Chief Financial Officer ~~Treasurer~~ adopted pursuant to this  
21 section.

22 (4) Whenever the Chief Financial Officer ~~Treasurer~~  
23 determines that an immediate danger to the public health,  
24 safety, or welfare exists, the Chief Financial Officer  
25 ~~Treasurer~~ may take any appropriate action available to her or  
26 him under the provisions of chapter 120.

27 Section 292. Paragraphs (a) and (c) of subsection (1)  
28 and paragraph (c) of subsection (2) of section 280.053,  
29 Florida Statutes, is amended to read:

30 280.053 Period of suspension or disqualification;  
31 obligations during period; reinstatement.--

1           (1)(a) The Chief Financial Officer ~~Treasurer~~ may  
2 suspend a qualified public depository for any period that is  
3 fixed in the order of suspension, not exceeding 6 months. For  
4 the purposes of this section and ss. 280.051 and 280.052, the  
5 effective date of suspension or disqualification is that date  
6 which is set out as such in any order of suspension or  
7 disqualification.

8           (c) Upon expiration of the suspension period, the bank  
9 or savings association may, by order of the Chief Financial  
10 Officer ~~Treasurer~~, be reinstated as a qualified public  
11 depository, unless the cause of the suspension has not been  
12 corrected or the bank or savings association is otherwise not  
13 in compliance with this chapter or any rule adopted pursuant  
14 to this chapter.

15           (2)

16           (c) Upon expiration of the disqualification period,  
17 the bank or savings association may reapply for qualification  
18 as a qualified public depository. If a disqualified bank or  
19 savings association is purchased or otherwise acquired by new  
20 owners, it may reapply to the Chief Financial Officer  
21 ~~Treasurer~~ to be a qualified public depository prior to the  
22 expiration date of the disqualification period. Redesignation  
23 as a qualified public depository may occur only after the  
24 Chief Financial Officer ~~Treasurer~~ has determined that all  
25 requirements for holding public deposits under the law have  
26 been met.

27           Section 293. Section 280.054, Florida Statutes, is  
28 amended to read:

29           280.054 Administrative penalty in lieu of suspension  
30 or disqualification.--

31

1           (1) If the Chief Financial Officer ~~Treasurer~~ finds  
2 that one or more grounds exist for the suspension or  
3 disqualification of a qualified public depository, the Chief  
4 Financial Officer ~~Treasurer~~ may, in lieu of suspension or  
5 disqualification, impose an administrative penalty upon the  
6 qualified public depository.

7           (a) With respect to any nonwillful violation, such  
8 penalty may not exceed \$250 for each violation, exclusive of  
9 any restitution found to be due. If a qualified public  
10 depository discovers a nonwillful violation, the qualified  
11 public depository shall correct the violation; and, if  
12 restitution is due, the qualified public depository shall make  
13 restitution upon the order of the Chief Financial Officer  
14 ~~Treasurer~~ and shall pay interest on such amount at the legal  
15 rate from the date of the violation. Each day a violation  
16 continues constitutes a separate violation.

17           (b) With respect to any knowing and willful violation  
18 of a lawful order or rule, the Chief Financial Officer  
19 ~~Treasurer~~ may impose a penalty upon the qualified public  
20 depository in an amount not exceeding \$1,000 for each  
21 violation. If restitution is due, the qualified public  
22 depository shall make restitution upon the order of the Chief  
23 Financial Officer ~~Treasurer~~ and shall pay interest on such  
24 amount at the legal rate. Each day a violation continues  
25 constitutes a separate violation.

26           (2) The failure of a qualified public depository to  
27 make restitution when due as required under this section  
28 constitutes a willful violation of this chapter. However, if  
29 a qualified public depository in good faith is uncertain  
30 whether any restitution is due or as to the amount of  
31 restitution due, it shall promptly notify the Chief Financial

1 ~~Officer Treasurer~~ of the circumstances. The failure to make  
2 restitution pending a determination of whether restitution is  
3 due or the amount of restitution due does not constitute a  
4 violation of this chapter.

5 (3) A qualified public depository is subject to an  
6 administrative penalty in an amount not exceeding the greater  
7 of \$1,000 or 10 percent of the amount of withdrawal, not  
8 exceeding \$10,000, if the depository fails to provide required  
9 collateral using eligible collateral and prescribed collateral  
10 agreements or withdraws collateral without the Chief Financial  
11 Officer's Treasurer's approval.

12 Section 294. Section 280.055, Florida Statutes, is  
13 amended to read:

14 280.055 Cease and desist order; corrective order;  
15 administrative penalty.--

16 (1) The Chief Financial Officer ~~Treasurer~~ may issue a  
17 cease and desist order and a corrective order upon determining  
18 that:

19 (a) A qualified public depository has requested and  
20 obtained a release of pledged collateral without approval of  
21 the Chief Financial Officer ~~Treasurer~~;

22 (b) A bank, savings association, or other financial  
23 institution is holding public deposits without a certificate  
24 of qualification issued by the Chief Financial Officer  
25 ~~Treasurer~~;

26 (c) A qualified public depository pledges, deposits,  
27 or arranges for the issuance of unacceptable collateral;

28 (d) A custodian has released pledged collateral  
29 without approval of the Chief Financial Officer ~~Treasurer~~;

30 (e) A qualified public depository or a custodian has  
31 not furnished to the Chief Financial Officer ~~Treasurer~~, when

1 the Chief Financial Officer ~~Treasurer~~ requested, a power of  
2 attorney or bond power or bond assignment form required by the  
3 bond agent or bond trustee for each issue of registered  
4 certificated securities pledged and registered in the name, or  
5 nominee name, of the qualified public depository or custodian;  
6 or

7 (f) A qualified public depository; a bank, savings  
8 association, or other financial institution; or a custodian  
9 has committed any other violation of this chapter or any rule  
10 adopted pursuant to this chapter that the Chief Financial  
11 Officer ~~Treasurer~~ determines may be remedied by a cease and  
12 desist order or corrective order.

13 (2) Any qualified public depository or other bank,  
14 savings association, or financial institution or custodian  
15 that violates a cease and desist order or corrective order of  
16 the Chief Financial Officer ~~Treasurer~~ is subject to an  
17 administrative penalty not exceeding \$1,000 for each violation  
18 of the order. Each day the violation of the order continues  
19 constitutes a separate violation.

20 Section 295. Subsections (1) and (2) of section  
21 280.06, Florida Statutes, are amended to read:

22 280.06 Penalty for violation of law, rule, or order to  
23 cease and desist or other lawful order.--

24 (1) The violation of any provision of this chapter, or  
25 any order or rule of the Chief Financial Officer ~~Treasurer~~, or  
26 any order to cease and desist or other lawful order is a  
27 misdemeanor of the second degree, punishable as provided in s.  
28 775.082 or s. 775.083.

29 (2) It is a felony of the third degree, punishable as  
30 provided in s. 775.082 or s. 775.083, to knowingly and  
31 willfully give false information on any form made under oath

1 and filed pursuant to this chapter with the intent to mislead  
2 the Chief Financial Officer ~~Treasurer~~ in the administration or  
3 enforcement of this chapter.

4 Section 296. Section 280.07, Florida Statutes, is  
5 amended to read:

6 280.07 Mutual responsibility and contingent  
7 liability.--Any bank or savings association that is designated  
8 as a qualified public depository and that is not insolvent  
9 shall guarantee public depositors against loss caused by the  
10 default or insolvency of other qualified public depositories.  
11 Each qualified public depository shall execute a form  
12 prescribed by the Chief Financial Officer ~~Treasurer~~ for such  
13 guarantee which shall be approved by the board of directors  
14 and shall become an official record of the institution.

15 Section 297. Subsections (1), (2), (3), and (5),  
16 paragraph (e) of subsection (9), paragraphs (b), (c), (d), and  
17 (e) of subsection (10), paragraphs (a) and (b) of subsection  
18 (11), and subsection (12) of section 280.071, Florida  
19 Statutes, are amended to read:

20 280.071 Qualified Public Depository Oversight Board;  
21 purpose; identifying representative qualified public  
22 depositories; member selection; responsibilities.--A Qualified  
23 Public Depository Oversight Board is created comprised of six  
24 members and six alternate members who represent the interests  
25 of all qualified public depositories in safeguarding the  
26 integrity of the public deposits program and preventing the  
27 realization of loss assessments.

28 (1) On July 31 of each year and as vacancies occur,  
29 the Chief Financial Officer ~~Treasurer~~ shall initiate the  
30 selection of oversight board representation in the following  
31 manner:

1 (a) Categorize eligible qualified public depositories  
2 into three groups according to average asset size. Eligible  
3 qualified public depositories must be in compliance with all  
4 requirements and shall not be suspended, disqualified,  
5 withdrawn, or under an alternative participation agreement in  
6 the public deposits program.

7 (b) Identify the two qualified public depositories in  
8 each of the three groups that have the greatest shares of  
9 contingent liability based on the average monthly balances of  
10 public deposits reported pursuant to s. 280.16.

11 (c) Send notification to the six qualified public  
12 depositories that have been identified.

13 (2) Each of the six representative qualified public  
14 depositories shall select a member and alternate member for  
15 the oversight board and give the Chief Financial Officer  
16 ~~Treasurer~~ written information on the selections within 30  
17 calendar days of the Chief Financial Officer's ~~Treasurer's~~  
18 notice.

19 (3) If an identified qualified public depository  
20 declines to select a member, does not respond within 30  
21 calendar days, or becomes ineligible, the Chief Financial  
22 Officer ~~Treasurer~~ shall furnish notice to the Florida Bankers  
23 Association which shall select a member and alternate member  
24 to represent that average asset category within 30 calendar  
25 days.

26 (5) The oversight board members and alternate members  
27 shall be subject to the Chief Financial Officer's ~~Treasurer's~~  
28 approval.

29 (9) The oversight board shall organize, communicate,  
30 and conduct meetings as follows:

31

1 (e) Take no official action in the absence of a  
2 quorum.

3 1. A quorum shall consist of the majority of voting  
4 members of the oversight board.

5 2. Each member shall have one vote.

6 3. A member shall not vote on issues directly related  
7 to the qualified public depository he or she represents.

8 4. The Chief Financial Officer ~~Treasurer~~ or his or her  
9 representative shall vote as a member of the oversight board  
10 in the absence of a quorum.

11 (10) The oversight board has the power and  
12 responsibility to safeguard the integrity of the public  
13 deposits program and prevent the realization of loss  
14 assessments by:

15 (b) Recommending approval or rejection to the Chief  
16 Financial Officer ~~Treasurer~~ for exceptions that do not meet  
17 established standards. These requests for exceptions may be:

18 1. Referred by the Chief Financial Officer ~~Treasurer~~;  
19 or

20 2. Submitted directly by the qualified public  
21 depository seeking exception.

22 (c) Issuing approvals or rejections for alternative  
23 participation agreements referred by the Chief Financial  
24 Officer ~~Treasurer~~.

25 (d) Reviewing program violations and recommending that  
26 the Chief Financial Officer ~~Treasurer~~ impose penalties and  
27 fines or issue corrective actions and administrative orders.

28 (e) Studying public deposit program areas referred by  
29 the Chief Financial Officer ~~Treasurer~~.

30 (11) Official actions of the oversight board regarding  
31 the establishment of standards, exception and alternate

1 participation agreement decisions, and recommendations  
2 concerning violations shall be:

3 (a) Communicated to the Chief Financial Officer  
4 ~~Treasurer~~ in writing.

5 (b) Subject to approval of the Chief Financial Officer  
6 ~~Treasurer~~.

7 (12) The Chief Financial Officer ~~Treasurer~~ may adopt  
8 rules to establish procedures and forms for oversight board  
9 member and alternate member selection and oversight board  
10 functions.

11 Section 298. Section 280.08, Florida Statutes, is  
12 amended to read:

13 280.08 Procedure for payment of losses.--When the  
14 Chief Financial Officer ~~Treasurer~~ determines that a default or  
15 insolvency has occurred, he or she shall provide notice as  
16 required in s. 280.085 and implement the following procedures:

17 (1) The Division of Treasury ~~Treasurer~~, in cooperation  
18 with the Office of Financial Institutions and Securities  
19 Regulation of the Financial Services Commission ~~Department of~~  
20 ~~Banking and Finance~~ or the receiver of the qualified public  
21 depository in default, shall ascertain the amount of funds of  
22 each public depositor on deposit at such depository and the  
23 amount of deposit insurance applicable to such deposits.

24 (2) The potential loss to public depositors shall be  
25 calculated by compiling claims received from such depositors.  
26 The Chief Financial Officer ~~Treasurer~~ shall validate claims on  
27 public deposit accounts which meet the requirements of s.  
28 280.17 and are confirmed as provided in subsection (1).

29 (3)(a) The loss to public depositors shall be  
30 satisfied, insofar as possible, first through any applicable  
31 deposit insurance and then through demanding payment under

1 letters of credit or the sale of collateral pledged or  
2 deposited by the defaulting depository. The Chief Financial  
3 Officer ~~Treasurer~~ may assess qualified public depositories as  
4 provided in paragraph (b) for the total loss if the demand for  
5 payment or sale of collateral cannot be accomplished within 7  
6 business days.

7 (b) The Chief Financial Officer ~~Treasurer~~ shall  
8 provide coverage of any remaining loss by assessment against  
9 the other qualified public depositories. The Chief Financial  
10 Officer ~~Treasurer~~ shall determine such assessment for each  
11 qualified public depository by multiplying the total amount of  
12 any remaining loss to all public depositors by a percentage  
13 which represents the average monthly balance of public  
14 deposits held by each qualified public depository during the  
15 previous 12 months divided by the total average monthly  
16 balances of public deposits held by all qualified public  
17 depositories, excluding the defaulting depository, during the  
18 same period. The assessment calculation shall be computed to  
19 six decimal places.

20 (4) Each qualified public depository shall pay its  
21 assessment to the Chief Financial Officer ~~Treasurer~~ within 7  
22 business days after it receives notice of the assessment. If a  
23 depository fails to pay its assessment when due, the Chief  
24 Financial Officer ~~Treasurer~~ shall satisfy the assessment by  
25 demanding payment under letters of credit or selling  
26 collateral pledged or deposited by that depository.

27 (5) The Chief Financial Officer ~~Treasurer~~ shall  
28 distribute the funds to the public depositors of the qualified  
29 public depository in default according to their validated  
30 claims. The Chief Financial Officer ~~Treasurer~~, at his or her  
31 discretion, may make partial payments to public depositors

1 that have experienced a loss of public funds which payments  
2 are critical to the immediate operations of the public entity.  
3 The public depositor requesting partial payment of a claim  
4 shall provide the Chief Financial Officer ~~Treasurer~~ with  
5 written documentation justifying the need for partial payment.

6 (6) Public depositors receiving payment under the  
7 provisions of this section shall assign to the Chief Financial  
8 Officer ~~Treasurer~~ any interest they may have in funds that may  
9 subsequently be made available to the qualified public  
10 depository in default. If the qualified public depository in  
11 default or its receiver provides the funds to the Chief  
12 Financial Officer ~~Treasurer~~, the Chief Financial Officer  
13 ~~Treasurer~~ shall distribute the funds, plus all accrued  
14 interest which has accumulated from the investment of the  
15 funds, if any, to the depositories which paid assessments on  
16 the same pro rata basis as the assessments were paid.

17 (7) Expenses incurred by the Chief Financial Officer  
18 ~~Treasurer~~ in connection with a default or insolvency which are  
19 not normally incurred by the Chief Financial Officer ~~Treasurer~~  
20 in the administration of this act must be paid out of the  
21 amount paid under letters of credit or proceeds from the sale  
22 of collateral.

23 Section 299. Subsection (1) of section 280.085,  
24 Florida Statutes, is amended to read:

25 280.085 Notice to claimants.--

26 (1) Upon determining the default or insolvency of a  
27 qualified public depository, the Chief Financial Officer  
28 ~~Treasurer~~ shall notify, by first-class mail, all public  
29 depositors that have complied with s. 280.17 of such default  
30 or insolvency. The notice shall direct all public depositors  
31 having claims or demands against the Public Deposits Trust

1 Fund occasioned by the default or insolvency to file their  
2 claims with the Chief Financial Officer ~~Treasurer~~ within 30  
3 days after the date of the notice.

4 Section 300. Section 280.09, Florida Statutes, is  
5 amended to read:

6 280.09 Public Deposits Trust Fund.--

7 (1) In order to facilitate the administration of this  
8 chapter, there is created the Public Deposits Trust Fund,  
9 hereafter in this section designated "the fund." The proceeds  
10 from the sale of securities or draw on letters of credit held  
11 as collateral or from any assessment pursuant to s. 280.08  
12 shall be deposited into the fund. Any administrative penalty  
13 collected pursuant to this chapter shall be deposited into the  
14 Treasury ~~Treasurer's~~ Administrative and Investment Trust Fund.

15 (2) The Chief Financial Officer ~~Treasurer~~ is  
16 authorized to pay any losses to public depositors from the  
17 fund, and there are hereby appropriated from the fund such  
18 sums as may be necessary from time to time to pay the losses.  
19 The term "losses," for purposes of this chapter, shall also  
20 include losses of interest or other accumulations to the  
21 public depositor as a result of penalties for early withdrawal  
22 required by Depository Institution Deregulatory Commission  
23 Regulations or applicable successor federal laws or  
24 regulations because of suspension or disqualification of a  
25 qualified public depository by the Chief Financial Officer  
26 ~~Treasurer~~ pursuant to s. 280.05 or because of withdrawal from  
27 the public deposits program pursuant to s. 280.11. In that  
28 event, the Chief Financial Officer ~~Treasurer~~ is authorized to  
29 assess against the suspended, disqualified, or withdrawing  
30 public depository, in addition to any amount authorized by any  
31 other provision of this chapter, an administrative penalty

1 equal to the amount of the early withdrawal penalty and to pay  
2 that amount over to the public depositor as reimbursement for  
3 such loss. Any money in the fund estimated not to be needed  
4 for immediate cash requirements shall be invested pursuant to  
5 s. 17.61 ~~s. 18.125~~.

6 Section 301. Paragraphs (d) and (e) of subsection (1)  
7 and subsections (2), (3), (4), (5), and (6) of section 280.10,  
8 Florida Statutes, are amended to read:

9 280.10 Effect of merger, acquisition, or  
10 consolidation; change of name or address.--

11 (1) When a qualified public depository is merged into,  
12 acquired by, or consolidated with a bank, savings bank, or  
13 savings association that is not a qualified public depository:

14 (d) The resulting institution shall, within 90  
15 calendar days after the effective date of the merger,  
16 acquisition, or consolidation, deliver to the Chief Financial  
17 Officer ~~Treasurer~~:

18 1. Documentation in its name as required for  
19 participation in the public deposits program; or

20 2. Written notice of intent to withdraw from the  
21 program as provided in s. 280.11 and a proposed effective date  
22 of withdrawal which shall be within 180 days after the  
23 effective date of the acquisition, merger, or consolidation of  
24 the former institution.

25 (e) If the resulting institution does not meet  
26 qualifications to become a qualified public depository or does  
27 not submit required documentation within 90 calendar days  
28 after the effective date of the merger, acquisition, or  
29 consolidation, the Chief Financial Officer ~~Treasurer~~ shall  
30 initiate mandatory withdrawal actions as provided in s. 280.11  
31 and shall set an effective date of withdrawal that is within

1 180 days after the effective date of the acquisition, merger,  
2 or consolidation of the former institution.

3 (2) When a qualified public depository disposes of any  
4 of its Florida public deposits or collateral securing such  
5 deposits in a manner not covered by subsection (1), the  
6 qualified public depository originally holding the public  
7 deposits shall be responsible for:

8 (a) Ensuring the institution receiving such public  
9 deposits becomes a qualified public depository and meets  
10 collateral requirements with the Chief Financial Officer  
11 ~~Treasurer~~ as part of the transaction.

12 (b) Notifying the Chief Financial Officer ~~Treasurer~~  
13 within 30 calendar days after the final approval by the  
14 appropriate regulator.

15  
16 A qualified public depository that fails to meet such  
17 responsibilities shall continue to collateralize and report  
18 such public deposits until the receiving institution becomes a  
19 qualified public depository and collateralizes the deposits or  
20 the deposits are returned to the governmental unit.

21 (3) The qualified public depository shall notify the  
22 Chief Financial Officer ~~Treasurer~~ of any acquisition or merger  
23 within 30 calendar days after the final approval of the  
24 acquisition or merger by its appropriate regulator.

25 (4) Collateral subject to a collateral agreement may  
26 not be released by the Chief Financial Officer ~~Treasurer~~ or  
27 the custodian until the assumed liability is evidenced by the  
28 deposit of collateral pursuant to the collateral agreement of  
29 the successor entity. The reporting requirement and pledge of  
30 collateral will remain in force until the Chief Financial  
31 Officer ~~Treasurer~~ determines that the liability no longer

1 exists. The surviving or new qualified public depository  
2 shall be responsible and liable for all of the liabilities and  
3 obligations of each qualified public depository merged with or  
4 acquired by it.

5 (5) Each qualified public depository shall report any  
6 change of name and address to the Chief Financial Officer  
7 ~~Treasurer~~ on a form provided by the Chief Financial Officer  
8 ~~Treasurer~~ regardless of whether the name change is a result of  
9 an acquisition, merger, or consolidation. Notification of such  
10 change must be made within 30 calendar days after the  
11 effective date of the change.

12 (6) The Chief Financial Officer ~~Treasurer~~ shall adopt  
13 rules establishing procedures for mergers, acquisitions,  
14 consolidations, and changes in name and address, providing  
15 forms, and clarifying terms.

16 Section 302. Section 280.11, Florida Statutes, is  
17 amended to read:

18 280.11 Withdrawal from public deposits program; return  
19 of pledged collateral.--

20 (1) A qualified public depository may withdraw from  
21 the public deposits program by giving written notice to the  
22 Chief Financial Officer ~~Treasurer~~. The contingent liability,  
23 required collateral, and reporting requirements of the  
24 depository withdrawing from the program shall continue for a  
25 period of 12 months after the effective date of the  
26 withdrawal, except that the filing of reports may no longer be  
27 required when the average monthly balance of public deposits  
28 is equal to zero. Notice of withdrawal shall be mailed or  
29 delivered in sufficient time to be received by the Chief  
30 Financial Officer ~~Treasurer~~ at least 30 days before the  
31 effective date of withdrawal. The Chief Financial Officer

1 ~~Treasurer~~ shall timely publish the withdrawal notice in the  
2 Florida Administrative Weekly which shall constitute notice to  
3 all depositors. The withdrawing depository shall not receive  
4 or retain public deposits after the effective date of the  
5 withdrawal until such time as it again becomes a qualified  
6 public depository. The Chief Financial Officer ~~Treasurer~~  
7 shall, upon request, return to the depository that portion of  
8 the collateral pledged that is in excess of the required  
9 collateral as reported on the current public depository  
10 monthly report. Losses of interest or other accumulations, if  
11 any, because of withdrawal under this section shall be  
12 assessed and paid as provided in s. 280.09.

13 (2) A qualified public depository which has been  
14 disqualified pursuant to s. 280.051 shall not receive or  
15 retain public deposits after the effective date of the  
16 disqualification. Notice of and procedures for  
17 disqualification shall be made in accordance with ss. 280.052  
18 and 280.053. The Chief Financial Officer ~~Treasurer~~ shall, upon  
19 request, return to the depository that portion of the  
20 collateral pledged that is in excess of the required  
21 collateral as reported on the current public depository  
22 monthly report. Losses of interest or other accumulation, if  
23 any, because of disqualification shall be paid as provided in  
24 s. 280.09(2).

25 (3) A qualified public depository which is required to  
26 withdraw from the public deposits program pursuant to s.  
27 280.05(1)(b) shall not receive or retain public deposits after  
28 the effective date of withdrawal. The contingent liability,  
29 required collateral, and reporting requirements of the  
30 withdrawing depository shall continue until the effective date  
31 of withdrawal. Notice of withdrawal (order of discontinuance)

1 from the Chief Financial Officer ~~Treasurer~~ shall be mailed to  
2 the qualified public depository by registered or certified  
3 mail. Penalties incurred because of withdrawal from the public  
4 deposits program shall be the responsibility of the  
5 withdrawing depository.

6 Section 303. Subsection (2), paragraphs (a), (b), (d),  
7 and (f) of subsection (5), and subsections (6), (7), and (8)  
8 of section 280.13, Florida Statutes, are amended to read:

9 280.13 Eligible collateral.--

10 (2) In addition to the securities listed in subsection  
11 (1), the Chief Financial Officer ~~Treasurer~~ may, in his or her  
12 discretion, allow the pledge of the following types of  
13 securities. The Chief Financial Officer ~~Treasurer~~ shall, by  
14 rule, define any restrictions, specific criteria, or  
15 circumstances for which these instruments will be acceptable.

16 (a) Securities of, or other interests in, any open-end  
17 management investment company registered under the Investment  
18 Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended  
19 from time to time, provided the portfolio of such investment  
20 company is limited to direct obligations of the United States  
21 Government and to repurchase agreements fully collateralized  
22 by such direct obligations of the United States Government and  
23 provided such investment company takes delivery of such  
24 collateral either directly or through an authorized custodian.

25 (b) Collateralized Mortgage Obligations.

26 (c) Real Estate Mortgage Investment Conduits.

27 (5) Letters of credit issued by a Federal Home Loan  
28 Bank are eligible as collateral under this section provided  
29 that:

30  
31

1           (a) The letter of credit has been delivered to the  
2 Chief Financial Officer ~~Treasurer~~ in the standard format  
3 approved by the Chief Financial Officer ~~Treasurer~~.

4           (b) The letter of credit meets required conditions of:

5           1. Being irrevocable.

6           2. Being clean and unconditional and containing a  
7 statement that it is not subject to any agreement, condition,  
8 or qualification outside of the letter of credit and providing  
9 that a beneficiary need only present the original letter of  
10 credit with any amendments and the demand form to promptly  
11 obtain funds, and that no other document need be presented.

12           3. Being issued, presentable, and payable at a Federal  
13 Home Loan Bank in United States dollars. Presentation may be  
14 made by the beneficiary submitting the original letter of  
15 credit, including any amendments, and the demand in writing,  
16 by overnight delivery.

17           4. Containing a statement that identifies and defines  
18 the Chief Financial Officer ~~Treasurer~~ as beneficiary.

19           5. Containing an issue date and a date of expiration.

20           6. Containing a term of at least 1 year and an  
21 evergreen clause that provides at least 60 days written notice  
22 to the beneficiary prior to expiration date for nonrenewal.

23           7. Containing a statement that it is subject to and  
24 governed by the laws of the State of Florida and that, in the  
25 event of any conflict with other laws, the laws of the State  
26 of Florida will control.

27           8. Containing a statement that the letter of credit is  
28 an obligation of the Federal Home Loan Bank and is in no way  
29 contingent upon reimbursement.

30           9. Any other provision found necessary under the  
31 Uniform Commercial Code--Letters of Credit.

1           (d) The Federal Home Loan Bank issuing the letter of  
2 credit agrees to provide confirmation upon request from the  
3 Chief Financial Officer ~~Treasurer~~. Such confirmation shall be  
4 provided within 15 working days after the request, in a format  
5 prescribed by the Chief Financial Officer ~~Treasurer~~, and shall  
6 require no identification other than the qualified public  
7 depository's name and location.

8           (f) The qualified public depository, if notified by  
9 the Chief Financial Officer ~~Treasurer~~, shall not be allowed to  
10 use letters of credit if the Federal Home Loan Bank fails to  
11 pay a draw request as provided for in the letters of credit or  
12 fails to properly complete a confirmation of such letters of  
13 credit.

14           (6) Cash held by the Chief Financial Officer ~~Treasurer~~  
15 in the Treasury Cash Deposit Trust Fund or by a custodian is  
16 eligible as collateral under this section. Interest earned on  
17 cash deposits that is in excess of required collateral shall  
18 be paid to the qualified public depository upon request.

19           (7) The Chief Financial Officer ~~Treasurer~~ may  
20 disapprove any security or letter of credit that does not meet  
21 the requirements of this section or any rule adopted pursuant  
22 to this section or any security for which no current market  
23 price can be obtained from a nationally recognized source  
24 deemed acceptable to the Chief Financial Officer ~~Treasurer~~ or  
25 cannot be converted to cash.

26           (8) The Chief Financial Officer ~~Treasurer~~ shall adopt  
27 rules defining restrictions and special requirements for  
28 eligible collateral and clarifying terms.

29           Section 304. Paragraphs (a), (b), (d), and (e) of  
30 subsection (1) and subsection (3) of section 280.16, Florida  
31 Statutes, are amended to read:

1           280.16 Requirements of qualified public depositories;  
2 confidentiality.--

3           (1) In addition to any other requirements specified in  
4 this chapter, qualified public depositories shall:

5           (a) Take the following actions for each public deposit  
6 account:

7           1. Identify the account as a "Florida public deposit"  
8 on the deposit account record with the name of the public  
9 depositor or provide a unique code for the account for such  
10 designation.

11           2. When the form prescribed by the Chief Financial  
12 Officer ~~Treasurer~~ for acknowledgment of receipt of each public  
13 deposit account is presented to the qualified public  
14 depository by the public depositor opening an account, the  
15 qualified public depository shall execute and return the  
16 completed form to the public depositor.

17           3. When the acknowledgment of receipt form is  
18 presented to the qualified public depository by the public  
19 depositor due to a change of account name, account number, or  
20 qualified public depository name on an existing public deposit  
21 account, the qualified public depository shall execute and  
22 return the completed form to the public depositor within 45  
23 calendar days after such presentation.

24           4. When the acknowledgment of receipt form is  
25 presented to the qualified public depository by the public  
26 depositor on an account existing before July 1, 1998, the  
27 qualified public depository shall execute and return the  
28 completed form to the public depositor within 45 calendar days  
29 after such presentation.

30           (b) Within 15 days after the end of each calendar  
31 month, or when requested by the Chief Financial Officer

1 ~~Treasurer~~, submit to the Chief Financial Officer ~~Treasurer~~ a  
2 written report, under oath, indicating the average daily  
3 balance of all public deposits held by it during the reported  
4 month, required collateral, a detailed schedule of all  
5 securities pledged as collateral, selected financial  
6 information, and any other information that the Chief  
7 Financial Officer's ~~Treasurer~~ determines necessary to  
8 administer this chapter.

9 (d) Submit to the Chief Financial Officer ~~Treasurer~~  
10 annually, not later than November 30, a report of all public  
11 deposits held for the credit of all public depositors at the  
12 close of business on September 30. Such annual report shall  
13 consist of public deposit information in a report format  
14 prescribed by the Chief Financial Officer ~~Treasurer~~. The  
15 manner of required filing may be as a signed writing or  
16 electronic data transmission, at the discretion of the  
17 Treasurer.

18 (e) Submit to the Chief Financial Officer ~~Treasurer~~  
19 not later than the date required to be filed with the federal  
20 agency:

21 1. A copy of the quarterly Consolidated Reports of  
22 Condition and Income, and any amended reports, required by the  
23 Federal Deposit Insurance Act, 12 U.S.C. ss. 1811 et seq., if  
24 such depository is a bank; or

25 2. A copy of the Thrift Financial Report, and any  
26 amended reports, required to be filed with the Office of  
27 Thrift Supervision if such depository is a savings and loan  
28 association.

29 (3) Any information contained in a report of a  
30 qualified public depository required under this chapter or any  
31 rule adopted under this chapter, together with any information

1 required of a financial institution that is not a qualified  
2 public depository, shall, if made confidential by any law of  
3 the United States or of this state, be considered confidential  
4 and exempt from the provisions of s. 119.07(1) and not subject  
5 to dissemination to anyone other than the Chief Financial  
6 Officer ~~Treasurer~~ under the provisions of this chapter;  
7 however, it is the responsibility of each qualified public  
8 depository and each financial institution from which  
9 information is required to inform the Chief Financial Officer  
10 ~~Treasurer~~ of information that is confidential and the law  
11 providing for the confidentiality of that information, and the  
12 Chief Financial Officer ~~Treasurer~~ does not have a duty to  
13 inquire into whether information is confidential.

14 Section 305. Paragraphs (b) and (c) of subsection (2),  
15 subsections (3), (4), and (6), and paragraph (c) of subsection  
16 (7) of section 280.17, Florida Statutes, are amended to read:

17 280.17 Requirements for public depositories; notice to  
18 public depositories and governmental units; loss of  
19 protection.--In addition to any other requirement specified in  
20 this chapter, public depositories shall comply with the  
21 following:

22 (2) Beginning July 1, 1998, each public depositor  
23 shall take the following actions for each public deposit  
24 account:

25 (b) Execute a form prescribed by the Chief Financial  
26 Officer ~~Treasurer~~ for identification of each public deposit  
27 account and obtain acknowledgment of receipt on the form from  
28 the qualified public depository at the time of opening the  
29 account. Such public deposit identification and acknowledgment  
30 form shall be replaced with a current form as required in  
31

1 subsection (3). A public deposit account existing before July  
2 1, 1998, must have a form completed before September 30, 1998.

3 (c) Maintain the current public deposit identification  
4 and acknowledgment form as a valuable record. Such form is  
5 mandatory for filing a claim with the Chief Financial Officer  
6 ~~Treasurer~~ upon default or insolvency of a qualified public  
7 depository.

8 (3) Each public depositor shall review the Chief  
9 Financial Officer's ~~Treasurer's~~ published list of qualified  
10 public depositories and ascertain the status of depositories  
11 used. A public depositor shall, for status changes of  
12 depositories:

13 (a) Execute a replacement public deposit  
14 identification and acknowledgment form, as described in  
15 subsection (2), for each public deposit account when there is  
16 a merger, acquisition, name change, or other event which  
17 changes the account name, account number, or name of the  
18 qualified public depository.

19 (b) Move and close public deposit accounts when an  
20 institution is not included in the authorized list of  
21 qualified public depositories or is shown as withdrawing.

22 (4) Whenever public deposits are in a qualified public  
23 depository that has been declared to be in default or  
24 insolvent, each public depositor shall:

25 (a) Notify the Chief Financial Officer ~~Treasurer~~  
26 immediately by telecommunication after receiving notice of the  
27 default or insolvency from the receiver of the depository with  
28 subsequent written confirmation and a copy of the notice.

29 (b) Submit to the Chief Financial Officer ~~Treasurer~~  
30 for each public deposit, within 30 days after the date of  
31

1 official notification from the Chief Financial Officer  
2 ~~Treasurer~~, the following:  
3       1. A claim form and agreement, as prescribed by the  
4 Chief Financial Officer ~~Treasurer~~, executed under oath,  
5 accompanied by proof of authority to execute the form on  
6 behalf of the public depositor.  
7       2. A completed public deposit identification and  
8 acknowledgment form, as described in subsection (2).  
9       3. Evidence of the insurance afforded the deposit  
10 pursuant to the Federal Deposit Insurance Act.  
11       (6) Each public depositor shall submit, not later than  
12 November 30, an annual report to the Chief Financial Officer  
13 ~~Treasurer~~ which shall include:  
14       (a) The official name, mailing address, and federal  
15 employer identification number of the public depositor.  
16       (b) Verification that confirmation of public deposit  
17 information as of September 30, as described in subsection  
18 (5), has been completed.  
19       (c) Public deposit information in a report format  
20 prescribed by the Chief Financial Officer ~~Treasurer~~. The  
21 manner of required filing may be as a signed writing or  
22 electronic data transmission, at the discretion of the Chief  
23 Financial Officer ~~Treasurer~~.  
24       (d) Confirmation that a current public deposit  
25 identification and acknowledgment form, as described in  
26 subsection (2), has been completed for each public deposit  
27 account and is in the possession of the public depositor.  
28       (7) Notices relating to the public deposits program  
29 shall be mailed to public depositors and governmental units  
30 from a list developed annually from:  
31

1           (c) Governmental units established during the year  
2 that filed an annual report as a new governmental unit or  
3 otherwise furnished in writing to the Chief Financial Officer  
4 ~~Treasurer~~ its official name, address, and federal employer  
5 identification number.

6           Section 306. Subsection (2) of section 280.18, Florida  
7 Statutes, is amended to read:

8           280.18 Protection of public depositors; liability of  
9 the state.--

10           (2) The liability of the state, the Chief Financial  
11 Officer ~~Treasurer~~, or any state agency, or any employee or  
12 agent of the state, the Chief Financial Officer ~~Treasurer~~, or  
13 a state agency, for any action taken in the performance of  
14 their powers and duties under this chapter shall be limited to  
15 that as a public depositor.

16           Section 307. Section 280.19, Florida Statutes, is  
17 amended to read:

18           280.19 Rules.--The Chief Financial Officer ~~Treasurer~~  
19 shall adopt rules pursuant to ss. 120.536(1) and 120.54 to  
20 administer the provisions of this chapter.

21           Section 308. Paragraph (a) of subsection (2) of  
22 section 282.1095, Florida Statutes, is amended to read:

23           282.1095 State agency law enforcement radio system.--

24           (2)(a) The Joint Task Force on State Agency Law  
25 Enforcement Communications shall consist of eight members, as  
26 follows:

27           1. A representative of the Division of Alcoholic  
28 Beverages and Tobacco of the Department of Business and  
29 Professional Regulation who shall be appointed by the  
30 secretary of the department.

31

1           2. A representative of the Division of Florida Highway  
2 Patrol of the Department of Highway Safety and Motor Vehicles  
3 who shall be appointed by the executive director of the  
4 department.

5           3. A representative of the Department of Law  
6 Enforcement who shall be appointed by the executive director  
7 of the department.

8           4. A representative of the Fish and Wildlife  
9 Conservation Commission who shall be appointed by the  
10 executive director of the commission.

11           5. A representative of the Division of Law Enforcement  
12 of the Department of Environmental Protection who shall be  
13 appointed by the secretary of the department.

14           6. A representative of the Department of Corrections  
15 who shall be appointed by the secretary of the department.

16           7. A representative of the Division of State Fire  
17 Marshal of the Department of Financial Services ~~Insurance~~ who  
18 shall be appointed by the State Fire Marshal.

19           8. A representative of the Department of  
20 Transportation who shall be appointed by the secretary of the  
21 department.

22           Section 309. Subsections (2) and (3) of section  
23 284.02, Florida Statutes, are amended to read:

24           284.02 Payment of premiums by each agency; handling of  
25 funds; payment of losses and expenses.--

26           (2) All premiums paid into the fund and all moneys  
27 received by the fund from investment or any other source  
28 pursuant to said program shall be held by the Department of  
29 Financial Services ~~Insurance~~ and used for the purpose of  
30 paying losses, expenses incurred in adjustment of losses,  
31 premiums for reinsurance, and operating expenses.

1           (3) The Department of Financial Services ~~Insurance~~ is  
2 authorized to employ a director of the fund and necessary  
3 administrative and clerical personnel, actuaries, consultants,  
4 and adjusters to maintain, operate, and administer the fund  
5 and to underwrite all certificates of insurance issued by the  
6 fund. All salaries and expenses of administration and  
7 operation shall be paid from the fund.

8           Section 310. Section 284.04, Florida Statutes, is  
9 amended to read:

10           284.04 Notice and information required by Department  
11 of Financial Services ~~Insurance~~ of all newly erected or  
12 acquired state property subject to insurance.--The Department  
13 of Management Services and all agencies in charge of state  
14 property shall notify the Department of Financial Services  
15 ~~Insurance~~ of all newly erected or acquired property subject to  
16 coverage as soon as erected or acquired, giving its value,  
17 type of construction, location, whether inside or outside of  
18 corporate limits, occupancy, and any other information the  
19 Department of Financial Services ~~Insurance~~ may require in  
20 connection with such property. Such department or agency  
21 shall also notify the Department of Financial Services  
22 ~~Insurance~~ immediately of any change in value or occupancy of  
23 any property covered by the fund. Unless the above data is  
24 submitted in writing within a reasonable time following such  
25 erection, acquisition, or change, the Department of Financial  
26 Services ~~Insurance~~ shall provide insurance coverage to the  
27 extent shown by the last notification in writing to the fund  
28 or in accordance with the last valuation shown by fund  
29 records. In case of disagreement between the Department of  
30 Financial Services ~~Insurance~~ and the agency or person in  
31 charge of any covered state property as to its true value, the

1 amount of the insurance to be carried thereon, the proper  
2 premium rate or rates, or amount of loss settlement, the  
3 matter in disagreement shall be determined by the Department  
4 of Management Services.

5 Section 311. Section 284.05, Florida Statutes, is  
6 amended to read:

7 284.05 Inspection of insured state property.--The  
8 Department of Financial Services ~~Insurance~~ shall inspect all  
9 permanent buildings insured by the State Risk Management Trust  
10 Fund, and whenever conditions are found to exist which, in the  
11 opinion of the Department of Financial Services ~~Insurance~~, are  
12 hazardous from the standpoint of destruction by fire or other  
13 loss, the Department of Financial Services ~~Insurance~~ may order  
14 the same repaired or remedied, and the agency, board, or  
15 person in charge of such property is required to have such  
16 dangerous conditions immediately repaired or remedied upon  
17 written notice from the Department of Financial Services  
18 ~~Insurance~~ of such hazardous conditions. Such amounts as may  
19 be necessary to comply with such notice or notices shall be  
20 paid by the Department of Management Services or by the  
21 agency, board, or person in charge of such property out of any  
22 moneys appropriated for the maintenance of the respective  
23 agency or for the repairs or permanent improvement of such  
24 properties or from any incidental or contingent funds they may  
25 have on hand. In the event of a disagreement between the  
26 Department of Financial Services ~~Insurance~~ and the agency,  
27 board, or person having charge of such property as to the  
28 necessity of the repairs or remedies ordered, the matter in  
29 disagreement shall be determined by the Department of  
30 Management Services.

31

1           Section 312. Section 284.06, Florida Statutes, is  
2 amended to read:

3           284.06 Annual report to Governor.--The Department of  
4 Financial Services Insurance shall report annually to the  
5 Governor the investigations which have been made and the  
6 actions which have been taken to decrease the fire hazard of  
7 the various insurable properties of the state, together with  
8 its recommendations as to further safeguards and improvements.

9           Section 313. Section 284.08, Florida Statutes, is  
10 amended to read:

11           284.08 Reinsurance on excess coverage and approval by  
12 Department of Management Services.--The Department of  
13 Financial Services Insurance shall determine what excess  
14 coverage is necessary and may purchase reinsurance thereon  
15 upon approval by the Department of Management Services.

16           Section 314. Section 284.14, Florida Statutes, is  
17 amended to read:

18           284.14 State Risk Management Trust Fund; leasehold  
19 interest.--In the event the state or any department or agency  
20 thereof has acquired or hereafter acquires a leasehold  
21 interest in any improved real property and by the terms and  
22 provisions of said lease it is obligated to insure such  
23 premises against loss by fire or other hazard to such  
24 premises, it shall insure such premises in the State Risk  
25 Management Trust Fund as required by the terms of said lease  
26 or as required by the provisions of this chapter. No state  
27 agency shall enter into or acquire any such leasehold interest  
28 until the coverages required to be maintained by the  
29 provisions of the lease are approved in writing by the  
30 Department of Financial Services Insurance.

31

1           Section 315. Section 284.17, Florida Statutes, is  
2 amended to read:

3           284.17 Rules.--The Department of Financial Services  
4 ~~Insurance~~ has authority to adopt rules pursuant to ss.  
5 120.536(1) and 120.54 to implement the provisions of this  
6 chapter.

7           Section 316. Section 284.30, Florida Statutes, is  
8 amended to read:

9           284.30 State Risk Management Trust Fund; coverages to  
10 be provided.--A state self-insurance fund, designated as the  
11 "State Risk Management Trust Fund," is created to be set up by  
12 the Department of Financial Services ~~Insurance~~ and  
13 administered with a program of risk management, which fund is  
14 to provide insurance, as authorized by s. 284.33, for workers'  
15 compensation, general liability, fleet automotive liability,  
16 federal civil rights actions under 42 U.S.C. s. 1983 or  
17 similar federal statutes, and court-awarded attorney's fees in  
18 other proceedings against the state except for such awards in  
19 eminent domain or for inverse condemnation or for awards by  
20 the Public Employees Relations Commission. A party to a suit  
21 in any court, to be entitled to have his or her attorney's  
22 fees paid by the state or any of its agencies, must serve a  
23 copy of the pleading claiming the fees on the Department of  
24 Financial Services ~~Insurance~~; and thereafter the department  
25 shall be entitled to participate with the agency in the  
26 defense of the suit and any appeal thereof with respect to  
27 such fees.

28           Section 317. Section 284.31, Florida Statutes, is  
29 amended to read:

30           284.31 Scope and types of coverages; separate  
31 accounts.--The Insurance Risk Management Trust Fund shall,

1 unless specifically excluded by the Department of Financial  
2 Services Insurance, cover all departments of the State of  
3 Florida and their employees, agents, and volunteers and shall  
4 provide separate accounts for workers' compensation, general  
5 liability, fleet automotive liability, federal civil rights  
6 actions under 42 U.S.C. s. 1983 or similar federal statutes,  
7 and court-awarded attorney's fees in other proceedings against  
8 the state except for such awards in eminent domain or for  
9 inverse condemnation or for awards by the Public Employees  
10 Relations Commission. Unless specifically excluded by the  
11 Department of Financial Services Insurance, the insurance risk  
12 management trust fund shall provide fleet automotive liability  
13 coverage to motor vehicles titled to the state, or to any  
14 department of the state, when such motor vehicles are used by  
15 community transportation coordinators performing, under  
16 contract to the appropriate department of the state, services  
17 for the transportation disadvantaged under part I of chapter  
18 427. Such fleet automotive liability coverage shall be primary  
19 and shall be subject to the provisions of s. 768.28 and parts  
20 II and III of chapter 284, and applicable rules adopted  
21 thereunder, and the terms and conditions of the certificate of  
22 coverage issued by the Department of Financial Services  
23 Insurance.

24 Section 318. Section 284.32, Florida Statutes, is  
25 amended to read:

26 284.32 Department of Financial Services Insurance to  
27 implement and consolidate.--The Department of Financial  
28 Services Insurance is hereby authorized to effect a  
29 consolidation and combination of all insurance coverages  
30 provided herein into one insurance program in accordance with  
31 the provisions of part I of chapter 287.

1           Section 319. Subsection (1) of section 284.33, Florida  
2 Statutes, is amended to read:

3           284.33 Purchase of insurance, reinsurance, and  
4 services.--

5           (1) The Department of Financial Services ~~Insurance~~ is  
6 authorized to provide insurance, specific excess insurance,  
7 and aggregate excess insurance through the Department of  
8 Management Services, pursuant to the provisions of part I of  
9 chapter 287, as necessary to provide insurance coverages  
10 authorized by this part, consistent with market availability.  
11 However, the Department of Financial Services ~~Insurance~~ may  
12 directly purchase annuities by using a structured settlement  
13 insurance consulting firm selected by the department to assist  
14 in the settlement of claims being handled by the Division of  
15 Risk Management. The selection of the structured settlement  
16 insurance services consultant shall be made by using  
17 competitive sealed proposals. The consulting firm shall act as  
18 an agent of record for the department in procuring the best  
19 annuity products available to facilitate structured settlement  
20 of claims, considering price, insurer financial strength, and  
21 the best interests of the state risk management program.  
22 Purchase of annuities by the department using a structured  
23 settlement method is excepted from competitive sealed bidding  
24 or proposal requirements. The Department of Financial Services  
25 ~~Insurance~~ is further authorized to purchase such risk  
26 management services, including, but not limited to, risk and  
27 claims control; safety management; and legal, investigative,  
28 and adjustment services, as may be required and pay claims.  
29 The department may contract with a service organization for  
30 such services and advance money to such service organization  
31 for deposit in a special checking account for paying claims

1 made against the state under the provisions of this part. The  
2 special checking account shall be maintained in this state in  
3 a bank or savings association organized under the laws of this  
4 state or of the United States. The department may replenish  
5 such account as often as necessary upon the presentation by  
6 the service organization of documentation for payments of  
7 claims equal to the amount of the requested reimbursement.

8 Section 320. Section 284.34, Florida Statutes, is  
9 amended to read:

10 284.34 Professional medical liability of the  
11 university boards of trustees and nuclear energy liability  
12 excluded.--Unless specifically authorized by the Department of  
13 Financial Services Insurance, no coverages shall be provided  
14 by this fund for professional medical liability insurance for  
15 the university boards of trustees or the physicians, officers,  
16 employees, or agents of any board or for liability related to  
17 nuclear energy which is ordinarily subject to the standard  
18 nuclear energy liability exclusion of conventional liability  
19 insurance policies. This section does not affect the  
20 self-insurance programs of the university boards of trustees  
21 established pursuant to s. 1004.24.

22 Section 321. Section 284.35, Florida Statutes, is  
23 amended to read:

24 284.35 Administrative personnel; expenses to be paid  
25 from fund.--The Department of Financial Services Insurance is  
26 ~~hereby~~ authorized, in accordance with current budget and  
27 personnel requirements, to employ necessary administrative and  
28 clerical personnel and actuarial consultants, as necessary to  
29 maintain, operate, and administer the fund. All salaries and  
30 expenses of administration and operation shall be paid from  
31 the fund.

1           Section 322. Section 284.37, Florida Statutes, is  
2 amended to read:

3           284.37 Premium and investment accruals used for fund  
4 purposes.--All premiums paid into the fund and all moneys from  
5 investments or any other source pursuant to said program shall  
6 be held by the Department of Financial Services ~~Insurance~~ and  
7 used for the purpose of paying losses, premiums for insurance,  
8 risk and claims management services, and operating expenses.

9           Section 323. Section 284.385, Florida Statutes, is  
10 amended to read:

11           284.385 Reporting and handling of claims.--All  
12 departments covered by the State Risk Management Trust Fund  
13 under this part shall immediately report all known or  
14 potential claims to the Department of Financial Services  
15 ~~Insurance~~ for handling, except employment complaints which  
16 have not been filed with the Florida Human Relations  
17 Commission, Equal Employment Opportunity Commission, or any  
18 similar agency. When deemed necessary, the Department of  
19 Financial Services ~~Insurance~~ shall assign or reassign the  
20 claim to counsel. The assigned counsel shall report regularly  
21 to the Department of Financial Services ~~Insurance~~ or to the  
22 covered department on the status of any such claims or  
23 litigation as required by the Department of Financial Services  
24 ~~Insurance~~. No such claim shall be compromised or settled for  
25 monetary compensation without the prior approval of the  
26 Department of Financial Services ~~Insurance~~ and prior  
27 notification to the covered department. All departments shall  
28 cooperate with the Department of Financial Services ~~Insurance~~  
29 in its handling of claims. The Department of Financial  
30 Services and Insurance, the Department of Management Services,  
31 ~~and the Department of Banking and Finance~~, with the

1 cooperation of the state attorneys and the clerks of the  
2 courts, shall develop a system to coordinate the exchange of  
3 information concerning claims for and against the state, its  
4 agencies, and its subdivisions, to assist in collection of  
5 amounts due to them. The covered department shall have the  
6 responsibility for the settlement of any claim for injunctive  
7 or affirmative relief under 42 U.S.C. s. 1983 or similar  
8 federal or state statutes. The payment of a settlement or  
9 judgment for any claim covered and reported under this part  
10 shall be made only from the State Risk Management Trust Fund.

11 Section 324. Section 284.39, Florida Statutes, is  
12 amended to read:

13 284.39 Adoption ~~Promulgation~~ of rules.--The Department  
14 of Financial Services may adopt ~~Insurance is authorized to~~  
15 ~~promulgate~~ rules and regulations for the proper management and  
16 maintenance of the fund.

17 Section 325. Subsections (1) and (2) of section  
18 284.40, Florida Statutes, are amended to read:

19 284.40 Division of Risk Management.--

20 (1) It shall be the responsibility of the Division of  
21 Risk Management of the Department of Financial Services  
22 ~~Insurance~~ to administer this part and the provisions of s.  
23 287.131.

24 (2) The claim files maintained by the Division of Risk  
25 Management shall be confidential, shall be only for the usage  
26 by the Department of Financial Services ~~Insurance~~ in  
27 fulfilling its duties and responsibilities under this part,  
28 and shall be exempt from the provisions of s. 119.07(1).

29 Section 326. Subsection (1) of section 284.41, Florida  
30 Statutes, is amended to read:

31

1           284.41 Transfer of personnel and funds to the Division  
2 of Risk Management.--

3           (1) All personnel and funds otherwise allocated to the  
4 Department of Financial Services Insurance for this purpose  
5 are transferred to the Division of Risk Management.

6           Section 327. Subsection (1) of section 284.42, Florida  
7 Statutes, is amended to read:

8           284.42 Reports on state insurance program.--

9           (1) The Department of Financial Services Insurance,  
10 with the Department of Management Services, shall make an  
11 analysis of the state insurance program annually, which shall  
12 include:

13           (a) Complete underwriting information as to the nature  
14 of the risks accepted for self-insurance and those risks that  
15 are transferred to the insurance market.

16           (b) The funds allocated to the Florida Casualty Risk  
17 Management Trust Fund and premiums paid for insurance through  
18 the market.

19           (c) The method of handling legal matters and the cost  
20 allocated.

21           (d) The method and cost of handling inspection and  
22 engineering of risks.

23           (e) The cost of risk management service purchased.

24           (f) The cost of managing the State Insurance Program  
25 by the Department of Financial Services Insurance and the  
26 Department of Management Services.

27           Section 328. Subsections (4) and (7) of section  
28 284.44, Florida Statutes, are amended to read:

29           284.44 Salary indemnification costs of state  
30 agencies.--

31

1           (4) For the purpose of administering this section, the  
2 Division of Risk Management of the Department of Financial  
3 Services Insurance shall continue to pay all claims, but shall  
4 be periodically reimbursed from funds of state agencies for  
5 initial salary indemnification costs for which they are  
6 responsible.

7           (7) If a state agency fails to pay casualty increase  
8 premiums or salary indemnification reimbursements within 30  
9 days after being billed, the Division of Risk Management shall  
10 advise the Chief Financial Officer ~~Comptroller~~. After  
11 verifying the accuracy of the billing, the Chief Financial  
12 Officer ~~Comptroller~~ shall transfer the appropriate amount from  
13 any available funds of the delinquent state agency to the  
14 State Risk Management Trust Fund.

15           Section 329. Subsection (1) of section 284.50, Florida  
16 Statutes, is amended to read:

17           284.50 Loss prevention program; safety coordinators;  
18 Interagency Advisory Council on Loss Prevention; employee  
19 recognition program.--

20           (1) The head of each department of state government,  
21 except the Legislature, shall designate a safety coordinator.  
22 Such safety coordinator must be an employee of the department  
23 and must hold a position which has responsibilities comparable  
24 to those of an employee in the Senior Management System. The  
25 Department of Financial Services Insurance shall provide  
26 appropriate training to the safety coordinators to permit them  
27 to effectively perform their duties within their respective  
28 departments. Each safety coordinator shall, at the direction  
29 of his or her department head:

30  
31

1 (a) Develop and implement the loss prevention program,  
2 a comprehensive departmental safety program which shall  
3 include a statement of safety policy and responsibility.

4 (b) Provide for regular and periodic facility and  
5 equipment inspections.

6 (c) Investigate job-related employee accidents of his  
7 or her department.

8 (d) Establish a program to promote increased safety  
9 awareness among employees.

10 Section 330. Subsection (8) and paragraph (c) of  
11 subsection (15) of section 287.042, Florida Statutes, are  
12 amended to read:

13 287.042 Powers, duties, and functions.--The department  
14 shall have the following powers, duties, and functions:

15 (8) To provide any commodity and contractual service  
16 purchasing rules to the Chief Financial Officer ~~Comptroller~~  
17 and all agencies through an electronic medium or other means.  
18 Agencies may not approve any account or request any payment of  
19 any account for the purchase of any commodity or the  
20 procurement of any contractual service covered by a purchasing  
21 or contractual service rule except as authorized therein. The  
22 department shall furnish copies of rules adopted by the  
23 department to any county, municipality, or other local public  
24 agency requesting them.

25 (15)

26 (c) Agencies that sign such joint agreements are  
27 financially obligated for their portion of the agreed-upon  
28 funds. If any agency becomes more than 90 days delinquent in  
29 paying such funds, the department shall certify to the Chief  
30 Financial Officer ~~Comptroller~~ the amount due, and the Chief  
31 Financial Officer ~~Comptroller~~ shall transfer the amount due to

1 the Grants and Donations Trust Fund of the department from any  
2 of the agency's available funds. The Chief Financial Officer  
3 ~~Comptroller~~ shall report all such transfers and the reasons  
4 for such transfers to the Executive Office of the Governor and  
5 the legislative appropriations committees.

6 Section 331. Paragraph (a) of subsection (5) of  
7 section 287.057, Florida Statutes, is amended to read:

8 287.057 Procurement of commodities or contractual  
9 services.--

10 (5) When the purchase price of commodities or  
11 contractual services exceeds the threshold amount provided in  
12 s. 287.017 for CATEGORY TWO, no purchase of commodities or  
13 contractual services may be made without receiving competitive  
14 sealed bids, competitive sealed proposals, or competitive  
15 sealed replies unless:

16 (a) The agency head determines in writing that an  
17 immediate danger to the public health, safety, or welfare or  
18 other substantial loss to the state requires emergency action.  
19 After the agency head makes such a written determination, the  
20 agency may proceed with the procurement of commodities or  
21 contractual services necessitated by the immediate danger,  
22 without receiving competitive sealed bids, competitive sealed  
23 proposals, or competitive sealed replies. However, such  
24 emergency procurement shall be made by obtaining pricing  
25 information from at least two prospective vendors, which must  
26 be retained in the contract file, unless the agency determines  
27 in writing that the time required to obtain pricing  
28 information will increase the immediate danger to the public  
29 health, safety, or welfare or other substantial loss to the  
30 state. The agency shall furnish copies of all written  
31 determinations certified under oath and any other documents

1 relating to the emergency action to the department. A copy of  
2 the statement shall be furnished to the Chief Financial  
3 Officer ~~Comptroller~~ with the voucher authorizing payment. The  
4 individual purchase of personal clothing, shelter, or supplies  
5 which are needed on an emergency basis to avoid  
6 institutionalization or placement in a more restrictive  
7 setting is an emergency for the purposes of this paragraph,  
8 and the filing with the department of such statement is not  
9 required in such circumstances. In the case of the emergency  
10 purchase of insurance, the period of coverage of such  
11 insurance shall not exceed a period of 30 days, and all such  
12 emergency purchases shall be reported to the department.

13 Section 332. Subsections (2) and (5) of section  
14 287.058, Florida Statutes, are amended to read:

15 287.058 Contract document.--

16 (2) The written agreement shall be signed by the  
17 agency head and the contractor prior to the rendering of any  
18 contractual service the value of which is in excess of the  
19 threshold amount provided in s. 287.017 for CATEGORY TWO,  
20 except in the case of a valid emergency as certified by the  
21 agency head. The certification of an emergency shall be  
22 prepared within 30 days after the contractor begins rendering  
23 the service and shall state the particular facts and  
24 circumstances which precluded the execution of the written  
25 agreement prior to the rendering of the service. If the  
26 agency fails to have the contract signed by the agency head  
27 and the contractor prior to rendering the contractual service,  
28 and if an emergency does not exist, the agency head shall, no  
29 later than 30 days after the contractor begins rendering the  
30 service, certify the specific conditions and circumstances to  
31 the department as well as describe actions taken to prevent

1 recurrence of such noncompliance. The agency head may delegate  
2 the certification only to other senior management agency  
3 personnel. A copy of the certification shall be furnished to  
4 the Chief Financial Officer ~~Comptroller~~ with the voucher  
5 authorizing payment. The department shall report repeated  
6 instances of noncompliance by an agency to the Auditor  
7 General. Nothing in this subsection shall be deemed to  
8 authorize additional compensation prohibited by s. 215.425.  
9 The procurement of contractual services shall not be divided  
10 so as to avoid the provisions of this section.

11 (5) Unless otherwise provided in the General  
12 Appropriations Act or the substantive bill implementing the  
13 General Appropriations Act, the Chief Financial Officer  
14 ~~Comptroller~~ may waive the requirements of this section for  
15 services which are included in s. 287.057(5)(f).

16 Section 333. Subsections (1) and (2) of section  
17 287.063, Florida Statutes, are amended to read:

18 287.063 Deferred-payment commodity contracts; preaudit  
19 review.--

20 (1)(a) When any commodity contract requires deferred  
21 payments and the payment of interest, such contract shall be  
22 submitted to the Chief Financial Officer ~~Comptroller~~ for the  
23 purpose of preaudit review and approval prior to acceptance by  
24 the state.

25 (b) Contracts executed pursuant to this subsection may  
26 bear interest at a rate not to exceed an average net interest  
27 cost rate which shall be computed by adding 150 basis points  
28 to the 20 "bond buyer" average yield index published  
29 immediately preceding the first day of the calendar month in  
30 which the contract is submitted to the Chief Financial Officer  
31 ~~Comptroller~~ for preaudit review and approval.

1           (2)(a) No funds appropriated shall be used to acquire  
2 equipment through a lease or deferred-payment purchase  
3 arrangement unless approved by the Chief Financial Officer  
4 ~~Comptroller~~ as economically prudent and cost-effective.

5           (b) The Chief Financial Officer ~~Comptroller~~ shall  
6 establish, by rule, criteria for approving purchases made  
7 under deferred-payment contracts which require the payment of  
8 interest. Criteria shall include, but not be limited to, the  
9 following provisions:

10           1. No contract shall be approved in which interest  
11 exceeds the statutory ceiling contained in this section.  
12 However, the interest component of any master equipment  
13 financing agreement entered into for the purpose of  
14 consolidated financing of a deferred-payment, installment  
15 sale, or lease-purchase shall be deemed to comply with the  
16 interest rate limitation of this section so long as the  
17 interest component of every interagency agreement under such  
18 master equipment financing agreement complies with the  
19 interest rate limitation of this section.

20           2. No deferred-payment purchase for less than \$30,000  
21 shall be approved, unless it can be satisfactorily  
22 demonstrated and documented to the Chief Financial Officer  
23 ~~Comptroller~~ that failure to make such deferred-payment  
24 purchase would adversely affect an agency in the performance  
25 of its duties. However, the Chief Financial Officer  
26 ~~Comptroller~~ may approve any deferred-payment purchase if the  
27 Chief Financial Officer ~~Comptroller~~ determines that such  
28 purchase is economically beneficial to the state.

29           3. No agency shall obligate an annualized amount of  
30 payments for deferred-payment purchases in excess of current  
31 operating capital outlay appropriations, unless specifically

1 authorized by law or unless it can be satisfactorily  
2 demonstrated and documented to the Chief Financial Officer  
3 ~~Comptroller~~ that failure to make such deferred-payment  
4 purchase would adversely affect an agency in the performance  
5 of its duties.

6 4. No contract shall be approved which extends payment  
7 beyond 5 years, unless it can be satisfactorily demonstrated  
8 and documented to the Chief Financial Officer ~~Comptroller~~ that  
9 failure to make such deferred-payment purchase would adversely  
10 affect an agency in the performance of its duties.

11 (c) The Chief Financial Officer ~~Comptroller~~ shall  
12 require written justification based on need, usage, size of  
13 the purchase, and financial benefit to the state for  
14 deferred-payment purchases made pursuant to this subsection.

15 Section 334. Section 287.064, Florida Statutes, is  
16 amended to read:

17 287.064 Consolidated financing of deferred-payment  
18 purchases.--

19 (1) The Division of Bond Finance of the State Board of  
20 Administration and the Chief Financial Officer ~~Comptroller~~  
21 shall plan and coordinate deferred-payment purchases made by  
22 or on behalf of the state or its agencies or by or on behalf  
23 of state community colleges participating under this section  
24 pursuant to s. 1001.64(26). The Division of Bond Finance shall  
25 negotiate and the Chief Financial Officer ~~Comptroller~~ shall  
26 execute agreements and contracts to establish master equipment  
27 financing agreements for consolidated financing of  
28 deferred-payment, installment sale, or lease purchases with a  
29 financial institution or a consortium of financial  
30 institutions. As used in this act, the term "deferred-payment"  
31 includes installment sale and lease-purchase.

1           (a) The period during which equipment may be acquired  
2 under any one master equipment financing agreement shall be  
3 limited to not more than 3 years.

4           (b) Repayment of the whole or a part of the funds  
5 drawn pursuant to the master equipment financing agreement may  
6 continue beyond the period established pursuant to paragraph  
7 (a).

8           (c) The interest rate component of any master  
9 equipment financing agreement shall be deemed to comply with  
10 the interest rate limitation imposed in s. 287.063 so long as  
11 the interest rate component of every interagency or community  
12 college agreement entered into under such master equipment  
13 financing agreement complies with the interest rate limitation  
14 imposed in s. 287.063. Such interest rate limitation does not  
15 apply when the payment obligation under the master equipment  
16 financing agreement is rated by a nationally recognized rating  
17 service in any one of the three highest classifications, which  
18 rating services and classifications are determined pursuant to  
19 rules adopted by the Chief Financial Officer ~~Comptroller~~.

20           (2) Unless specifically exempted by the Chief  
21 Financial Officer ~~Comptroller~~, all deferred-payment purchases,  
22 including those made by a community college that is  
23 participating under this section, shall be acquired by funding  
24 through master equipment financing agreements. The Chief  
25 Financial Officer ~~Comptroller~~ is authorized to exempt any  
26 purchases from consolidated financing when, in his or her  
27 judgment, alternative financing would be cost-effective or  
28 otherwise beneficial to the state.

29           (3) The Chief Financial Officer ~~Comptroller~~ may  
30 require agencies to enter into interagency agreements and may  
31 require participating community colleges to enter into

1 systemwide agreements for the purpose of carrying out the  
2 provisions of this act.

3 (a) The term of any interagency or systemwide  
4 agreement shall expire on June 30 of each fiscal year but  
5 shall automatically be renewed annually subject to  
6 appropriations and deferred-payment schedules. The period of  
7 any interagency or systemwide agreement shall not exceed the  
8 useful life of the equipment for which the agreement was made  
9 as determined by the Chief Financial Officer ~~Comptroller~~.

10 (b) The interagency or systemwide agreements may  
11 include, but are not limited to, equipment costs, terms, and a  
12 pro rata share of program and issuance expenses.

13 (4) Each community college may choose to have its  
14 purchasing agreements involving administrative and  
15 instructional materials consolidated under this section.

16 (5) The Chief Financial Officer ~~Comptroller~~ is  
17 authorized to automatically debit each agency's funds and each  
18 community college's portion of the Community College Program  
19 Fund consistently with the deferred-payment schedules.

20 (6) There is created the Consolidated Payment Trust  
21 Fund in the Chief Financial Officer's ~~Comptroller's~~ office for  
22 the purpose of implementing the provisions of this act. All  
23 funds debited from each agency and each community college may  
24 be deposited in the trust fund and shall be used to meet the  
25 financial obligations incurred pursuant to this act. Any  
26 income from the investment of funds may be used to fund  
27 administrative costs associated with this program.

28 (7) The Chief Financial Officer ~~Comptroller~~ may borrow  
29 sufficient amounts from trust funds to pay issuance expenses  
30 for the purposes of administering this section. Such amounts  
31 shall be subject to approval of the Executive Office of the

1 Governor and subject to the notice, review, and objection  
2 procedures of s. 216.177. The amounts approved pursuant to  
3 this subsection are hereby appropriated for transfer to the  
4 Consolidated Payment Trust Fund and appropriated from the  
5 Consolidated Payment Trust Fund to pay issuance expenses.  
6 Amounts loaned shall be repaid as soon as practicable not to  
7 exceed the length of time obligations are issued to establish  
8 the master equipment financing agreement.

9 (8) The State Board of Administration and the Chief  
10 Financial Officer ~~Comptroller~~, individually, shall adopt rules  
11 to implement their respective responsibilities under this  
12 section.

13 (9) For purposes of this section, deferred-payment  
14 commodity contracts for replacing the state accounting and  
15 cash management systems may include equipment, accounting  
16 software, and implementation and project management services.

17 Section 335. Paragraph (d) of subsection (4) of  
18 section 287.09451, Florida Statutes, is amended to read:

19 287.09451 Office of Supplier Diversity; powers,  
20 duties, and functions.--

21 (4) The Office of Supplier Diversity shall have the  
22 following powers, duties, and functions:

23 (d) To monitor the degree to which agencies procure  
24 services, commodities, and construction from minority business  
25 enterprises in conjunction with the Department of Financial  
26 Services ~~Banking and Finance~~ as specified in s. 17.11.

27 Section 336. Section 287.115, Florida Statutes, is  
28 amended to read:

29 287.115 Chief Financial Officer ~~Comptroller~~; annual  
30 report.--The Chief Financial Officer ~~Comptroller~~ shall submit  
31 to the office of the Auditor General an annual report on those

1 contractual service contracts disallowed by the Chief  
2 Financial Officer Comptroller, which report shall include, but  
3 is not limited to, the name of the user agency, the name of  
4 the firm or individual from which the contractual service was  
5 to be acquired, a description of the contractual service, the  
6 financial terms of the contract, and the reason for rejection.

7 Section 337. Section 287.131, Florida Statutes, is  
8 amended to read:

9 287.131 Assistance of Department of Financial Services  
10 ~~Insurance~~.--The Department of Financial Services Insurance  
11 shall provide the Department of Management Services with  
12 technical assistance in all matters pertaining to the purchase  
13 of insurance for all agencies, and shall make surveys of the  
14 insurance needs of the state and all departments thereof,  
15 including the benefits, if any, of self-insurance.

16 Section 338. Section 287.175, Florida Statutes, is  
17 amended to read:

18 287.175 Penalties.--A violation of this part or a rule  
19 adopted hereunder, pursuant to applicable constitutional and  
20 statutory procedures, constitutes misuse of public position as  
21 defined in s. 112.313(6), and is punishable as provided in s.  
22 112.317. The Chief Financial Officer Comptroller shall report  
23 incidents of suspected misuse to the Commission on Ethics, and  
24 the commission shall investigate possible violations of this  
25 part or rules adopted hereunder when reported by the Chief  
26 Financial Officer Comptroller, notwithstanding the provisions  
27 of s. 112.324. Any violation of this part or a rule adopted  
28 hereunder shall be presumed to have been committed with  
29 wrongful intent, but such presumption is rebuttable. Nothing  
30 in this section is intended to deny rights provided to career  
31 service employees by s. 110.227.

1           Section 339. Paragraph (f) of subsection (5) of  
2 section 288.1045, Florida Statutes, is amended to read:

3           288.1045 Qualified defense contractor tax refund  
4 program.--

5           (5) ANNUAL CLAIM FOR REFUND FROM A QUALIFIED DEFENSE  
6 CONTRACTOR.--

7           (f) Upon approval of the tax refund pursuant to  
8 paragraphs (c) and (d), the Chief Financial Officer  
9 ~~Comptroller~~ shall issue a warrant for the amount included in  
10 the written order. In the event of any appeal of the written  
11 order, the Comptroller may not issue a warrant for a refund to  
12 the qualified applicant until the conclusion of all appeals of  
13 the written order.

14           Section 340. Paragraph (h) of subsection (5) of  
15 section 288.106, Florida Statutes, is amended to read:

16           288.106 Tax refund program for qualified target  
17 industry businesses.--

18           (5) ANNUAL CLAIM FOR REFUND.--

19           (h) Upon approval of the tax refund under paragraphs  
20 (c), (d), and (e), the Chief Financial Officer ~~Comptroller~~  
21 shall issue a warrant for the amount specified in the written  
22 order. If the written order is appealed, the Chief Financial  
23 Officer ~~Comptroller~~ may not issue a warrant for a refund to  
24 the qualified target industry business until the conclusion of  
25 all appeals of that order.

26           Section 341. Subsection (5) of section 288.109,  
27 Florida Statutes, is amended to read:

28           288.109 One-Stop Permitting System.--

29           (5) By January 1, 2001, the following state agencies,  
30 and the programs within such agencies which require the  
31

1 issuance of licenses, permits, and approvals to businesses,  
2 must also be integrated into the One-Stop Permitting System:

3 (a) The Department of Agriculture and Consumer  
4 Services.

5 (b) The Department of Business and Professional  
6 Regulation.

7 (c) The Department of Health.

8 (d) The Department of Financial Services Insurance.

9 (e) The Office of Insurance Regulation of the  
10 Financial Services Commission.

11 (f)~~(e)~~ The Department of Labor.

12 (g)~~(f)~~ The Department of Revenue.

13 (h)~~(g)~~ The Department of State.

14 (i)~~(h)~~ The Fish and Wildlife Conservation Commission.

15 (j)~~(i)~~ Other state agencies.

16 Section 342. Paragraphs (b) and (d) of subsection (1)  
17 and subsection (2) of section 288.1253, Florida Statutes, are  
18 amended to read:

19 288.1253 Travel and entertainment expenses.--

20 (1) As used in this section:

21 (b) "Entertainment expenses" means the actual,  
22 necessary, and reasonable costs of providing hospitality for  
23 business clients or guests, which costs are defined and  
24 prescribed by rules adopted by the Office of Tourism, Trade,  
25 and Economic Development, subject to approval by the Chief  
26 Financial Officer ~~Comptroller~~.

27 (d) "Travel expenses" means the actual, necessary, and  
28 reasonable costs of transportation, meals, lodging, and  
29 incidental expenses normally incurred by a traveler, which  
30 costs are defined and prescribed by rules adopted by the  
31

1 Office of Tourism, Trade, and Economic Development, subject to  
2 approval by the Chief Financial Officer ~~Comptroller~~.

3 (2) Notwithstanding the provisions of s. 112.061, the  
4 Office of Tourism, Trade, and Economic Development shall adopt  
5 rules by which it may make expenditures by advancement or  
6 reimbursement, or a combination thereof, to:

7 (a) The Governor, the Lieutenant Governor, security  
8 staff of the Governor or Lieutenant Governor, the Commissioner  
9 of Film and Entertainment, or staff of the Office of Film and  
10 Entertainment for travel expenses or entertainment expenses  
11 incurred by such individuals solely and exclusively in  
12 connection with the performance of the statutory duties of the  
13 Office of Film and Entertainment.

14 (b) The Governor, the Lieutenant Governor, security  
15 staff of the Governor or Lieutenant Governor, the Commissioner  
16 of Film and Entertainment, or staff of the Office of Film and  
17 Entertainment for travel expenses or entertainment expenses  
18 incurred by such individuals on behalf of guests, business  
19 clients, or authorized persons as defined in s. 112.061(2)(e)  
20 solely and exclusively in connection with the performance of  
21 the statutory duties of the Office of Film and Entertainment.

22 (c) Third-party vendors for the travel or  
23 entertainment expenses of guests, business clients, or  
24 authorized persons as defined in s. 112.061(2)(e) incurred  
25 solely and exclusively while such persons are participating in  
26 activities or events carried out by the Office of Film and  
27 Entertainment in connection with that office's statutory  
28 duties.

29  
30 The rules shall be subject to approval by the Chief Financial  
31 Officer ~~Comptroller~~ prior to promulgation. The rules shall

1 require the submission of paid receipts, or other proof of  
2 expenditure prescribed by the Chief Financial Officer  
3 ~~Comptroller~~, with any claim for reimbursement and shall  
4 require, as a condition for any advancement of funds, an  
5 agreement to submit paid receipts or other proof of  
6 expenditure and to refund any unused portion of the  
7 advancement within 15 days after the expense is incurred or,  
8 if the advancement is made in connection with travel, within  
9 10 working days after the traveler's return to headquarters.  
10 However, with respect to an advancement of funds made solely  
11 for travel expenses, the rules may allow paid receipts or  
12 other proof of expenditure to be submitted, and any unused  
13 portion of the advancement to be refunded, within 10 working  
14 days after the traveler's return to headquarters. Operational  
15 or promotional advancements, as defined in s. 288.35(4),  
16 obtained pursuant to this section shall not be commingled with  
17 any other state funds.

18 Section 343. Subsection (9) of section 288.709,  
19 Florida Statutes, is amended to read:

20 288.709 Powers of the Florida Black Business  
21 Investment Board, Inc.--The board shall have all the powers  
22 necessary or convenient to carry out and effectuate the  
23 purposes and provisions of ss. 288.707-288.714, including, but  
24 not limited to, the power to:

25 (9) Invest any funds held in reserves or sinking  
26 funds, or any funds not required for immediate disbursement,  
27 in such investments as may be authorized for trust funds under  
28 s. 215.47; however, such investments will be made on behalf of  
29 the board by the Chief Financial Officer ~~Office of State~~  
30 ~~Treasurer~~ or by another trustee appointed for that purpose.

31

1           Section 344. Paragraph (b) of subsection (4) of  
2 section 288.712, Florida Statutes, is amended to read:

3           288.712 Florida guarantor funds.--

4           (4)

5           (b) If the board of the corporation chooses to  
6 establish a loan guaranty program, it shall use the Black  
7 Business Loan Guaranty Trust Fund in the State Treasury,  
8 consisting of moneys deposited or credited to the Black  
9 Business Loan Guaranty Trust Fund pursuant to appropriation  
10 made by law; any grants, gifts, and contributions received  
11 pursuant to ss. 288.707-288.714; all moneys recovered  
12 following defaults; and any other moneys obtained by the  
13 corporation for this purpose. The Black Business Loan  
14 Guaranty Trust Fund shall be administered by the corporation  
15 in trust for the purposes of this section and shall at no time  
16 be part of general public funds under the following  
17 procedures:

18           1. The corporation shall utilize the Black Business  
19 Loan Guaranty Program Administrative and Loss Reserve Fund in  
20 the State Treasury, consisting of all premiums charged and  
21 collected in accordance with this section and any income  
22 earned from the moneys in the account. All expenses of the  
23 corporation in carrying out the purposes of this subsection  
24 shall be paid from the Black Business Loan Guaranty Program  
25 Administrative and Loss Reserve Fund. Any moneys to the  
26 credit of the Black Business Loan Guaranty Program  
27 Administrative and Loss Reserve Fund in excess of the amount  
28 necessary to fund the corporation's activity shall be held as  
29 a loss reserve to pay claims arising from defaults on loans  
30 underwritten in accordance with this section.

31

1           2. Any claims against the state arising from defaults  
2 shall be payable initially from the Black Business Loan  
3 Guaranty Program Administrative and Loss Reserve Fund and,  
4 secondarily, from the Black Business Loan Guaranty Trust Fund.

5           3. The corporation as loan guarantor may exercise all  
6 rights and powers of a company authorized by the Office of  
7 Insurance Regulation of the Financial Services Commission  
8 ~~Department of Insurance~~ to guarantee loans but shall not be  
9 subject to any requirements of an insurance company under the  
10 Florida Insurance Code, nor to any rules of the Financial  
11 Services Commission ~~Department of Insurance~~; however, the  
12 corporation shall refer to the insurance code and rules  
13 thereunder when designing and administering such program. The  
14 corporation shall follow sound actuarial principles when  
15 administering this program. The corporation shall establish a  
16 premium for the loan guaranty and such rules as may be  
17 necessary to carry out the purposes of this section.

18           4. The corporation may guarantee no more than 20  
19 percent of the principal of a loan to a black business  
20 enterprise.

21           Section 345. Paragraph (a) of subsection (1) of  
22 section 288.776, Florida Statutes, is amended to read:

23           288.776 Board of directors; powers and duties.--

24           (1)(a) The corporation shall have a board of directors  
25 consisting of 15 members representing all geographic areas of  
26 the state. Minority and gender representation must be  
27 considered when making appointments to the board. The board  
28 membership must include:

29           1. A representative of the following businesses, all  
30 of which must be registered to do business in this state: a  
31 foreign bank, a state bank, a federal bank, an insurance

1 company involved in covering trade financing risks, and a  
2 small or medium-sized exporter.

3 2. The following persons or their designee: the  
4 President of Enterprise Florida, Inc., the Chief Financial  
5 Officer ~~Comptroller~~, the Secretary of State, a senior official  
6 of the United States Department of Commerce, and the chair of  
7 the Florida Black Business Investment Board.

8 Section 346. Section 288.778, Florida Statutes, is  
9 amended to read:

10 288.778 Office of Financial Institutions and  
11 Securities Regulation ~~Department of Banking and Finance~~.--The  
12 Office of Financial Institutions and Securities Regulation  
13 ~~Department of Banking and Finance~~ shall review the  
14 corporation's activities once every 24 months to determine  
15 compliance with this part and other related laws and rules and  
16 to evaluate the corporation's operations. The office  
17 ~~department~~ shall prepare a report based on its review and  
18 evaluation with recommendation for any corrective action. The  
19 president shall submit to the office ~~department~~ regular  
20 reports on the corporation's activities. The content and  
21 frequency of such reports shall be determined by the office  
22 ~~department~~. The office ~~department~~ shall charge a fee for  
23 conducting the review and evaluation and preparing the related  
24 report, which fee shall not be in excess of the examination  
25 fee paid by financial institutions chartered or licensed under  
26 the financial institutions code of this state.

27 Section 347. Paragraphs (c) and (e) through (p) of  
28 subsection (3), paragraphs (a), (b), (c), (d), (g), and (h) of  
29 subsection (4), paragraph (b) of subsection (5), subsection  
30 (7), paragraphs (a) and (c) of subsection (8), paragraph (b)  
31 of subsection (9), paragraphs (a) through (e), (h), and (j) of

1 subsection (10), subsections (12), (13), and (14), paragraphs  
2 (a), (c), (d), (e), and (g) of subsection (15), and subsection  
3 (17) of section 288.99, Florida Statutes, are amended to read:

4 288.99 Certified Capital Company Act.--

5 (3) DEFINITIONS.--As used in this section, the term:

6 (c) "Certified capital company" means a corporation,  
7 partnership, or limited liability company which:

8 1. Is certified by the office ~~department~~ in accordance  
9 with this act.

10 2. Receives investments of certified capital from two  
11 or more unaffiliated certified investors.

12 3. Makes qualified investments as its primary  
13 activity.

14 (e) "Commission" means the Financial Services  
15 Commission ~~"Department" means the Department of Banking and~~  
16 ~~Finance.~~

17 ~~(f) "Director" means the director of the Office of~~  
18 ~~Tourism, Trade, and Economic Development.~~

19 ~~(f)~~(g) "Early stage technology business" means a  
20 qualified business that is:

21 1. Involved, at the time of the certified capital  
22 company's initial investment in such business, in activities  
23 related to developing initial product or service offerings,  
24 such as prototype development or the establishment of initial  
25 production or service processes;

26 2. Less than 2 years old and has, together with its  
27 affiliates, less than \$3 million in annual revenues for the  
28 fiscal year immediately preceding the initial investment by  
29 the certified capital company on a consolidated basis, as  
30 determined in accordance with generally accepted accounting  
31 principles;

1           3. The Florida Black Business Investment Board;  
2           4. Any entity that is majority owned by the Florida  
3 Black Business Investment Board; or

4           5. Any entity in which the Florida Black Business  
5 Investment Board holds a majority voting interest on the board  
6 of directors.

7           ~~(g)(h)~~ "Office" means the Office of Financial  
8 Institutions and Securities Regulation of the commission  
9 ~~Fourism, Trade, and Economic Development.~~

10          ~~(h)(i)~~ "Premium tax liability" means any liability  
11 incurred by an insurance company under the provisions of ss.  
12 624.509 and 624.5091.

13          ~~(i)(j)~~ "Principal" means an executive officer of a  
14 corporation, partner of a partnership, manager of a limited  
15 liability company, or any other person with equivalent  
16 executive functions.

17          ~~(j)(k)~~ "Qualified business" means the Digital Divide  
18 Trust Fund established under the State of Florida Technology  
19 Office or a business that meets the following conditions as  
20 evidenced by documentation required by commission ~~department~~  
21 rule:

22           1. The business is headquartered in this state and its  
23 principal business operations are located in this state or at  
24 least 75 percent of the employees are employed in the state.

25           2. At the time a certified capital company makes an  
26 initial investment in a business, the business would qualify  
27 for investment under 13 C.F.R. s. 121.301(c), which is  
28 involved in manufacturing, processing or assembling products,  
29 conducting research and development, or providing services.

30  
31

1           3. At the time a certified capital company makes an  
2 initial investment in a business, the business certifies in an  
3 affidavit that:

4           a. The business is unable to obtain conventional  
5 financing, which means that the business has failed in an  
6 attempt to obtain funding for a loan from a bank or other  
7 commercial lender or that the business cannot reasonably be  
8 expected to qualify for such financing under the standards of  
9 commercial lending;

10           b. The business plan for the business projects that  
11 the business is reasonably expected to achieve in excess of  
12 \$25 million in sales revenue within 5 years after the initial  
13 investment, or the business is located in a designated Front  
14 Porch community, enterprise zone, urban high crime area, rural  
15 job tax credit county, or nationally recognized historic  
16 district;

17           c. The business will maintain its headquarters in this  
18 state for the next 10 years and any new manufacturing facility  
19 financed by a qualified investment will remain in this state  
20 for the next 10 years, or the business is located in a  
21 designated Front Porch community, enterprise zone, urban high  
22 crime area, rural job tax credit county, or nationally  
23 recognized historic district; and

24           d. The business has fewer than 200 employees and at  
25 least 75 percent of the employees are employed in this state.  
26 For purposes of this subsection, the term also includes the  
27 Florida Black Business Investment Board, any entity majority  
28 owned by the Florida Black Business Investment Board, or any  
29 entity in which the Florida Black Business Investment Board  
30 holds a majority voting interest on the board of directors.

31           4. The term does not include:

1           a. Any business predominantly engaged in retail sales,  
2 real estate development, insurance, banking, lending, or oil  
3 and gas exploration.

4           b. Any business predominantly engaged in professional  
5 services provided by accountants, lawyers, or physicians.

6           c. Any company that has no historical revenues and  
7 either has no specific business plan or purpose or has  
8 indicated that its business plan is solely to engage in a  
9 merger or acquisition with any unidentified company or other  
10 entity.

11           d. Any company that has a strategic plan to grow  
12 through the acquisition of firms with substantially similar  
13 business which would result in the planned net loss of  
14 Florida-based jobs over a 12-month period after the  
15 acquisition as determined by the office ~~department~~.

16           (k)~~(i)~~ "Qualified debt instrument" means a debt  
17 instrument, or a hybrid of a debt instrument, issued by a  
18 certified capital company, at par value or a premium, with an  
19 original maturity date of at least 5 years after the date of  
20 issuance, a repayment schedule which is no faster than a level  
21 principal amortization over a 5-year period, and interest,  
22 distribution, or payment features which are not related to the  
23 profitability of the certified capital company or the  
24 performance of the certified capital company's investment  
25 portfolio.

26           (l)~~(m)~~ "Qualified distribution" means any distribution  
27 or payment by a certified capital company for:

28           1. Reasonable costs and expenses, including, but not  
29 limited to, professional fees, of forming and syndicating the  
30 certified capital company, if no such costs or expenses are  
31 paid to a certified investor, except as provided in

1 subparagraph (4)(f)2., and the total cash, cash equivalents,  
2 and other current assets permitted by sub-subparagraph  
3 (5)(b)3.g. that can be converted into cash within 5 business  
4 days available to the certified capital company at the time of  
5 receipt of certified capital from certified investors, after  
6 deducting the costs and expenses of forming and syndicating  
7 the certified capital company, including any payments made  
8 over time for obligations incurred at the time of receipt of  
9 certified capital but excluding other future qualified  
10 distributions and payments made under paragraph (9)(a), are an  
11 amount equal to or greater than 50 percent of the total  
12 certified capital allocated to the certified capital pursuant  
13 to subsection (7);

14           2. Reasonable costs of managing and operating the  
15 certified capital company, not exceeding 5 percent of the  
16 certified capital in any single year, including an annual  
17 management fee in an amount that does not exceed 2.5 percent  
18 of the certified capital of the certified capital company;

19           3. Reasonable and necessary fees in accordance with  
20 industry custom for professional services, including, but not  
21 limited to, legal and accounting services, related to the  
22 operation of the certified capital company; or

23           4. Any projected increase in federal or state taxes,  
24 including penalties and interest related to state and federal  
25 income taxes, of the equity owners of a certified capital  
26 company resulting from the earnings or other tax liability of  
27 the certified capital company to the extent that the increase  
28 is related to the ownership, management, or operation of a  
29 certified capital company.

30           (m)~~(n)~~1. "Qualified investment" means the investment  
31 of cash by a certified capital company in a qualified business

1 for the purchase of any debt, equity, or hybrid security,  
2 including a debt instrument or security that has the  
3 characteristics of debt but which provides for conversion into  
4 equity or equity participation instruments such as options or  
5 warrants.

6 2. The term does not include:

7 a. Any investment made after the effective date of  
8 this act the contractual terms of which require the repayment  
9 of any portion of the principal in instances, other than  
10 default as determined by commission ~~department~~ rule, within 12  
11 months following the initial investment by the certified  
12 capital company unless such investment has a repayment  
13 schedule no faster than a level principal amortization of at  
14 least 2 years;

15 b. Any "follow-on" or "add-on" investment except for  
16 the amount by which the new investment is in addition to the  
17 amount of the certified capital company's initial investment  
18 returned to it other than in the form of interest, dividends,  
19 or other types of profit participation or distributions; or

20 c. Any investment in a qualified business or affiliate  
21 of a qualified business that exceeds 15 percent of certified  
22 capital.

23 (n)~~(o)~~ "Program One" means the \$150 million in premium  
24 tax credits issued under this section in 1999, the allocation  
25 of such credits under this section, and the regulation of  
26 certified capital companies and investments made by them  
27 hereunder.

28 (o)~~(p)~~ "Program Two" means the \$150 million in premium  
29 tax credits to be issued under subsection (17), the allocation  
30 of such credits under this section, and the regulation of  
31

1 certified capital companies and investments made by them  
2 hereunder.

3 (4) CERTIFICATION; GROUNDS FOR DENIAL OR  
4 DECERTIFICATION.--

5 (a) To operate as a certified capital company, a  
6 corporation, partnership, or limited liability company must be  
7 certified by the Department of Banking and Finance or the  
8 office pursuant to this act.

9 (b) An applicant for certification as a certified  
10 capital company must file a verified application with the  
11 Department of Banking and Finance on or before December 1,  
12 1998, a date determined in rules adopted pursuant to  
13 subsection (17) in the case of applicants for Program Two, in  
14 a form which the commission ~~department~~ may prescribe by rule.  
15 The applicant shall submit a nonrefundable application fee of  
16 \$7,500 to the office ~~department~~. The applicant shall provide:

17 1. The name of the applicant and the address of its  
18 principal office and each office in this state.

19 2. The applicant's form and place of organization and  
20 the relevant organizational documents, bylaws, and amendments  
21 or restatements of such documents, bylaws, or amendments.

22 3. Evidence from the Department of State that the  
23 applicant is registered with the Department of State as  
24 required by law, maintains an active status with the  
25 Department of State, and has not been dissolved or had its  
26 registration revoked, canceled, or withdrawn.

27 4. The applicant's proposed method of doing business.

28 5. The applicant's financial condition and history,  
29 including an audit report on the financial statements prepared  
30 in accordance with generally accepted accounting principles.

31 The applicant must have, at the time of application for

1 certification, an equity capitalization of at least \$500,000  
2 in the form of cash or cash equivalents. The applicant must  
3 maintain this equity capitalization until the applicant  
4 receives an allocation of certified capital pursuant to this  
5 act. If the date of the application is more than 90 days after  
6 preparation of the applicant's fiscal year-end financial  
7 statements, the applicant may file financial statements  
8 reviewed by an independent certified public accountant for the  
9 period subsequent to the audit report, together with the  
10 audited financial statement for the most recent fiscal year.  
11 If the applicant has been in business less than 12 months, and  
12 has not prepared an audited financial statement, the applicant  
13 may file a financial statement reviewed by an independent  
14 certified public accountant.

15           6. Copies of any offering materials used or proposed  
16 to be used by the applicant in soliciting investments of  
17 certified capital from certified investors.

18           (c) Within 60 days after receipt of a verified  
19 application, the office ~~department~~ shall grant or deny  
20 certification as a certified capital company. If the office  
21 ~~department~~ denies certification within the time period  
22 specified, the office ~~department~~ shall inform the applicant of  
23 the grounds for the denial. If the office ~~department~~ has not  
24 granted or denied certification within the time specified, the  
25 application shall be deemed approved. The office ~~department~~  
26 shall approve the application if the office ~~department~~ finds  
27 that:

28           1. The applicant satisfies the requirements of  
29 paragraph (b).

30           2. No evidence exists that the applicant has committed  
31 any act specified in paragraph (d).

1           3. At least two of the principals have a minimum of 5  
2 years of experience making venture capital investments out of  
3 private equity funds, with not less than \$20 million being  
4 provided by third-party investors for investment in the early  
5 stage of operating businesses. At least one full-time manager  
6 or principal of the certified capital company who has such  
7 experience must be primarily located in an office of the  
8 certified capital company which is based in this state.

9           4. The applicant's proposed method of doing business  
10 and raising certified capital as described in its offering  
11 materials and other materials submitted to the office  
12 ~~department~~ conforms with the requirements of this section.

13           (d) The office ~~department~~ may deny certification or  
14 decertify a certified capital company if the grounds for  
15 decertification are not removed or corrected within 90 days  
16 after the notice of such grounds is received by the certified  
17 capital company. The office ~~department~~ may deny certification  
18 or decertify a certified capital company if the certified  
19 capital company fails to maintain common stock or paid-in  
20 capital of at least \$500,000, or if the office ~~department~~  
21 determines that the applicant, or any principal or director of  
22 the certified capital company, has:

23           1. Violated any provision of this section;

24           2. Made a material misrepresentation or false  
25 statement or concealed any essential or material fact from any  
26 person during the application process or with respect to  
27 information and reports required of certified capital  
28 companies under this section;

29           3. Been convicted of, or entered a plea of guilty or  
30 nolo contendere to, a crime against the laws of this state or  
31 any other state or of the United States or any other country

1 or government, including a fraudulent act in connection with  
2 the operation of a certified capital company, or in connection  
3 with the performance of fiduciary duties in another capacity;

4 4. Been adjudicated liable in a civil action on  
5 grounds of fraud, embezzlement, misrepresentation, or deceit;  
6 or

7 5.a. Been the subject of any decision, finding,  
8 injunction, suspension, prohibition, revocation, denial,  
9 judgment, or administrative order by any court of competent  
10 jurisdiction, administrative law judge, or any state or  
11 federal agency, national securities, commodities, or option  
12 exchange, or national securities, commodities, or option  
13 association, involving a material violation of any federal or  
14 state securities or commodities law or any rule or regulation  
15 adopted under such law, or any rule or regulation of any  
16 national securities, commodities, or options exchange, or  
17 national securities, commodities, or options association; or

18 b. Been the subject of any injunction or adverse  
19 administrative order by a state or federal agency regulating  
20 banking, insurance, finance or small loan companies, real  
21 estate, mortgage brokers, or other related or similar  
22 industries.

23 (g) On or before December 31 of each year, each  
24 certified capital company shall pay to the office ~~department~~  
25 an annual, nonrefundable renewal certification fee of \$5,000.  
26 If a certified capital company fails to pay its renewal fee by  
27 the specified deadline, the company must pay a late fee of  
28 \$5,000 in addition to the renewal fee on or by January 31 of  
29 each year in order to continue its certification in the  
30 program. On or before April 30 of each year, each certified  
31 capital company shall file audited financial statements with

1 the office ~~department~~. No renewal fees shall be required  
2 within 6 months after the date of initial certification.

3 (h) The commission and office ~~department~~ shall  
4 administer and provide for the enforcement of certification  
5 requirements for certified capital companies as provided in  
6 this act. The commission ~~department~~ may adopt any rules  
7 necessary to carry out its duties, obligations, and powers  
8 related to certification, renewal of certification, or  
9 decertification of certified capital companies and the  
10 commission and office may perform any other acts necessary for  
11 the proper administration and enforcement of such duties,  
12 obligations, and powers.

13 (5) INVESTMENTS BY CERTIFIED CAPITAL COMPANIES.--

14 (b) All capital not invested in qualified investments  
15 by the certified capital company:

16 1. Must be held in a financial institution as defined  
17 by s. 655.005(1)(h) or held by a broker-dealer registered  
18 under s. 517.12, except as set forth in sub-subparagraph 3.g.

19 2. Must not be invested in a certified investor of the  
20 certified capital company or any affiliate of the certified  
21 investor of the certified capital company, except for an  
22 investment permitted by sub-subparagraph 3.g., provided  
23 repayment terms do not permit the obligor to directly or  
24 indirectly manage or control the investment decisions of the  
25 certified capital company.

26 3. Must be invested only in:

27 a. Any United States Treasury obligations;

28 b. Certificates of deposit or other obligations,  
29 maturing within 3 years after acquisition of such certificates  
30 or obligations, issued by any financial institution or trust  
31 company incorporated under the laws of the United States;

1 c. Marketable obligations, maturing within 10 years or  
2 less after the acquisition of such obligations, which are  
3 rated "A" or better by any nationally recognized credit rating  
4 agency;

5 d. Mortgage-backed securities, with an average life of  
6 5 years or less, after the acquisition of such securities,  
7 which are rated "A" or better by any nationally recognized  
8 credit rating agency;

9 e. Collateralized mortgage obligations and real estate  
10 mortgage investment conduits that are direct obligations of an  
11 agency of the United States Government; are not private-label  
12 issues; are in book-entry form; and do not include the classes  
13 of interest only, principal only, residual, or zero;

14 f. Interests in money market funds, the portfolio of  
15 which is limited to cash and obligations described in  
16 sub-subparagraphs a.-d.; or

17 g. Obligations that are issued by an insurance company  
18 that is not a certified investor of the certified capital  
19 company making the investment, that has provided a guarantee  
20 indemnity bond, insurance policy, or other payment undertaking  
21 in favor of the certified capital company's certified  
22 investors as permitted by subparagraph (3)(1)1.(3)(m)1 or an  
23 affiliate of such insurance company as defined by subparagraph  
24 (3)(a)3. that is not a certified investor of the certified  
25 capital company making the investment, provided that such  
26 obligations are:

27 (I) Issued or guaranteed as to principal by an entity  
28 whose senior debt is rated "AA" or better by Standard & Poor's  
29 Ratings Group or such other nationally recognized credit  
30 rating agency as the commission ~~department~~ may by rule  
31 determine.

1 (II) Not subordinated to other unsecured indebtedness  
2 of the issuer or the guarantor.

3 (III) Invested by such issuing entity in accordance  
4 with sub-subparagraphs 3.a.-f.

5 (IV) Readily convertible into cash within 5 business  
6 days for the purpose of making a qualified investment unless  
7 such obligations are held to provide a guarantee, indemnity  
8 bond, insurance policy, or other payment undertaking in favor  
9 of the certified capital company's certified investors as  
10 permitted by subparagraph (3)(1)1.~~(3)(m)1.~~

11 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION  
12 PROCESS.--

13 (a) The total amount of tax credits which may be  
14 allocated by the Office of Tourism, Trade, and Economic  
15 Development shall not exceed \$150 million with respect to  
16 Program One and \$150 million with respect to Program Two. The  
17 total amount of tax credits which may be used by certified  
18 investors under this act shall not exceed \$15 million annually  
19 with respect to credits earned under Program One and \$15  
20 million annually with respect to credits earned under Program  
21 Two.

22 (b) The Office of Tourism, Trade, and Economic  
23 Development shall be responsible for allocating premium tax  
24 credits as provided for in this act to certified capital  
25 companies.

26 (c) Each certified capital company must apply to the  
27 Office of Tourism, Trade, and Economic Development for an  
28 allocation of premium tax credits for potential certified  
29 investors on a form developed by the Office of Tourism, Trade,  
30 and Economic Development with the cooperation of the  
31 Department of Revenue. The form shall be accompanied by an

1 affidavit from each potential certified investor confirming  
2 that the potential certified investor has agreed to make an  
3 investment of certified capital in a certified capital company  
4 up to a specified amount, subject only to the receipt of a  
5 premium tax credit allocation pursuant to this subsection. No  
6 certified capital company shall submit premium tax allocation  
7 claims on behalf of certified investors that in the aggregate  
8 would exceed the total dollar amount appropriated by the  
9 Legislature for the specific program. No allocation shall be  
10 made to the potential investors of a certified capital company  
11 under Program Two unless such certified capital company has  
12 filed premium tax allocation claims of not less than \$15  
13 million in the aggregate.

14 (d) The Office of Tourism, Trade, and Economic  
15 Development shall inform each certified capital company of its  
16 share of total premium tax credits available for allocation to  
17 each of its potential investors.

18 (e) If a certified capital company does not receive  
19 certified capital equaling the amount of premium tax credits  
20 allocated to a potential certified investor for which the  
21 investor filed a premium tax allocation claim within 10  
22 business days after the investor received a notice of  
23 allocation, the certified capital company shall notify the  
24 Office of Tourism, Trade, and Economic Development by  
25 overnight common carrier delivery service of the company's  
26 failure to receive the capital. That portion of the premium  
27 tax credits allocated to the certified capital company shall  
28 be forfeited. If the Office of Tourism, Trade, and Economic  
29 Development must make a pro rata allocation under paragraph  
30 (f), that ~~the~~ office shall reallocate such available credits  
31

1 among the other certified capital companies on the same pro  
2 rata basis as the initial allocation.

3 (f) If the total amount of capital committed by all  
4 certified investors to certified capital companies in premium  
5 tax allocation claims under Program Two exceeds the aggregate  
6 cap on the amount of credits that may be awarded under Program  
7 Two, the premium tax credits that may be allowed to any one  
8 certified investor under Program Two shall be allocated using  
9 the following ratio:

10

11

$$A/B = X / > \$150,000,000$$

12

13 where the letter "A" represents the total amount of certified  
14 capital certified investors have agreed to invest in any one  
15 certified capital company under Program Two, the letter "B"  
16 represents the aggregate amount of certified capital that all  
17 certified investors have agreed to invest in all certified  
18 capital companies under Program Two, the letter "X" is the  
19 numerator and represents the total amount of premium tax  
20 credits and certified capital that may be allocated to a  
21 certified capital company on a date determined by rule adopted  
22 by the commission ~~department~~ pursuant to subsection (17), and  
23 \$150 million is the denominator and represents the total  
24 amount of premium tax credits and certified capital that may  
25 be allocated to all certified investors under Program Two. Any  
26 such premium tax credits are not first available for  
27 utilization until annual filings are made in 2001 for calendar  
28 year 2000 in the case of Program One, and the tax credits may  
29 be used at a rate not to exceed 10 percent annually per  
30 program.

31

1 (g) The maximum amount of certified capital for which  
2 premium tax allocation claims may be filed on behalf of any  
3 certified investor and its affiliates by one or more certified  
4 capital companies may not exceed \$15 million for Program One  
5 and \$22.5 million for Program Two.

6 (h) To the extent that less than \$150 million in  
7 certified capital is raised in connection with the procedure  
8 set forth in paragraphs (c)-(g), the commission ~~department~~ may  
9 adopt rules to allow a subsequent allocation of the remaining  
10 premium tax credits authorized under this section.

11 (i) The Office of Tourism, Trade, and Economic  
12 Development shall issue a certification letter for each  
13 certified investor, showing the amount invested in the  
14 certified capital company under each program. The applicable  
15 certified capital company shall attest to the validity of the  
16 certification letter.

17 (8) ANNUAL TAX CREDIT; CLAIM PROCESS.--

18 (a) On an annual basis, on or before January 31, each  
19 certified capital company shall file with the office  
20 ~~department~~ and the Office of Tourism, Trade, and Economic  
21 Development, in consultation with the office ~~department~~, on a  
22 form prescribed by the Office of Tourism, Trade, and Economic  
23 Development, for each calendar year:

24 1. The total dollar amount the certified capital  
25 company received from certified investors, the identity of the  
26 certified investors, and the amount received from each  
27 certified investor during the immediately preceding calendar  
28 year.

29 2. The total dollar amount the certified capital  
30 company invested and the amount invested in qualified  
31 businesses, together with the identity and location of those

1 businesses and the amount invested in each qualified business  
2 during the immediately preceding calendar year.

3 3. For informational purposes only, the total number  
4 of permanent, full-time jobs either created or retained by the  
5 qualified business during the immediately preceding calendar  
6 year, the average wage of the jobs created or retained, the  
7 industry sectors in which the qualified businesses operate,  
8 and any additional capital invested in qualified businesses  
9 from sources other than certified capital companies.

10 (c) The Office of Tourism, Trade, and Economic  
11 Development shall review the form, and any supplemental  
12 documentation, submitted by each certified capital company for  
13 the purpose of verifying:

14 1. That the businesses in which certified capital has  
15 been invested by the certified capital company are in fact  
16 qualified businesses, and that the amount of certified capital  
17 invested by the certified capital company is as represented in  
18 the form.

19 2. The amount of certified capital invested in the  
20 certified capital company by the certified investors.

21 3. The amount of premium tax credit available to  
22 certified investors.

23 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE  
24 PARTICIPATION.--

25 (b) Cumulative distributions from a certified capital  
26 company from funds related to a particular program to its  
27 certified investors and equity holders under such program,  
28 other than qualified distributions, in excess of the certified  
29 capital company's original certified capital raised under such  
30 program and any additional capital contributions to the  
31 certified capital company with respect to such program may be

1 audited by a nationally recognized certified public accounting  
2 firm acceptable to the office department, at the expense of  
3 the certified capital company, if the office department  
4 directs such audit be conducted. The audit shall determine  
5 whether aggregate cumulative distributions from the funds  
6 related to a particular program made by the certified capital  
7 company to all certified investors and equity holders under  
8 such program, other than qualified distributions, have equaled  
9 the sum of the certified capital company's original certified  
10 capital raised under such program and any additional capital  
11 contributions to the certified capital company with respect to  
12 such program. If at the time of any such distribution made by  
13 the certified capital company, such distribution taken  
14 together with all other such distributions from the funds  
15 related to such program made by the certified capital company,  
16 other than qualified distributions, exceeds in the aggregate  
17 the sum of the certified capital company's original certified  
18 capital raised under such program and any additional capital  
19 contributions to the certified capital company with respect to  
20 such program, as determined by the audit, the certified  
21 capital company shall pay to the Department of Revenue 10  
22 percent of the portion of such distribution in excess of such  
23 amount. Payments to the Department of Revenue by a certified  
24 capital company pursuant to this paragraph shall not exceed  
25 the aggregate amount of tax credits used by all certified  
26 investors in such certified capital company for such program.

27 (10) DECERTIFICATION.--

28 (a) The office department shall conduct an annual  
29 review of each certified capital company to determine if the  
30 certified capital company is abiding by the requirements of  
31 certification, to advise the certified capital company as to

1 the eligibility status of its qualified investments, and to  
2 ensure that no investment has been made in violation of this  
3 act. The cost of the annual review shall be paid by each  
4 certified capital company.

5 (b) Nothing contained in this subsection shall be  
6 construed to limit the Chief Financial Officer's or the  
7 office's ~~Comptroller's~~ authority to conduct audits of  
8 certified capital companies as deemed appropriate and  
9 necessary.

10 (c) Any material violation of this section, or a  
11 finding that the certified capital company or any principal or  
12 director thereof has committed any act specified in paragraph  
13 (4)(d), shall be grounds for decertification of the certified  
14 capital company. If the office ~~department~~ determines that a  
15 certified capital company is no longer in compliance with the  
16 certification requirements of this act, the office ~~department~~  
17 shall, by written notice, inform the officers of such company  
18 that the company may be subject to decertification 90 days  
19 after the date of mailing of the notice, unless the  
20 deficiencies are corrected and such company is again found to  
21 be in compliance with all certification requirements.

22 (d) At the end of the 90-day grace period, if the  
23 certified capital company is still not in compliance with the  
24 certification requirements, the office ~~department~~ may issue a  
25 notice to revoke or suspend the certification or to impose an  
26 administrative fine. The office ~~department~~ shall advise each  
27 respondent of the right to an administrative hearing under  
28 chapter 120 prior to final action by the office ~~department~~.

29 (e) If the office ~~department~~ revokes a certification,  
30 such revocation shall also deny, suspend, or revoke the  
31

1 certifications of all affiliates of the certified capital  
2 company.

3 (h) The Office of Tourism, Trade, and Economic  
4 Development shall send written notice to the address of each  
5 certified investor whose premium tax credit has been subject  
6 to recapture or forfeiture, using the address last shown on  
7 the last premium tax filing.

8 (j) The certified investor shall file with the  
9 Department of Revenue an amended return or such other report  
10 as the commission ~~department~~ may prescribe by rule ~~regulation~~  
11 and pay any required tax, not later than 60 days after such  
12 decertification has been agreed to or finally determined,  
13 whichever shall first occur.

14 (12) REPORTING REQUIREMENTS.--The Office of Tourism,  
15 Trade, and Economic Development shall report on an annual  
16 basis to the Governor, the President of the Senate, and the  
17 Speaker of the House of Representatives on or before April 1:

18 (a) The total dollar amount each certified capital  
19 company received from all certified investors and any other  
20 investor, the identity of the certified investors, and the  
21 total amount of premium tax credit used by each certified  
22 investor for the previous calendar year.

23 (b) The total dollar amount invested by each certified  
24 capital company and that portion invested in qualified  
25 businesses, the identity and location of those businesses, the  
26 amount invested in each qualified business, and the total  
27 number of permanent, full-time jobs created or retained by  
28 each qualified business.

29 (c) The return for the state as a result of the  
30 certified capital company investments, including the extent to  
31 which:

1           1. Certified capital company investments have  
2 contributed to employment growth.

3           2. The wage level of businesses in which certified  
4 capital companies have invested exceed the average wage for  
5 the county in which the jobs are located.

6           3. The investments of the certified capital companies  
7 in qualified businesses have contributed to expanding or  
8 diversifying the economic base of the state.

9           (13) FEES.--All fees and charges of any nature  
10 collected by the office ~~department~~ pursuant to this act shall  
11 be paid into the State Treasury and credited to the General  
12 Revenue Fund.

13           (14) RULEMAKING AUTHORITY.--

14           (a) The Department of Revenue may by rule prescribe  
15 forms and procedures for the tax credit filings, audits, and  
16 forfeiture of premium tax credits described in this section,  
17 and for certified capital company payments under paragraph  
18 (9)(b).

19           (b) The commission and the Office of Tourism, Trade,  
20 and Economic Development may adopt any rules necessary to  
21 carry out their respective ~~its~~ duties, obligations, and powers  
22 related to the administration, review, and reporting  
23 provisions of this section and may perform any other acts  
24 necessary for the proper administration and enforcement of  
25 such duties, obligations, and powers.

26           (15)(a) CONFIDENTIALITY OF INVESTIGATION AND REVIEW  
27 INFORMATION.--Except as otherwise provided by this section,  
28 any information relating to an investigation or office  
29 ~~department~~ review of a certified capital company, including  
30 any consumer complaint, is confidential and exempt from the  
31 provisions of s. 119.07(1) and s. 24(a), Art. I of the State

1 Constitution until the investigation or review is complete or  
2 ceases to be active. Such information shall remain  
3 confidential and exempt from the provisions of s. 119.07(1)  
4 and s. 24(a), Art. I of the State Constitution after the  
5 investigation or review is complete or ceases to be active if  
6 the information is submitted to any law enforcement or  
7 administrative agency for further investigation, and shall  
8 remain confidential and exempt from the provisions of s.  
9 119.07(1) and s. 24(a), Art. I of the State Constitution until  
10 that agency's investigation is complete or ceases to be  
11 active. For purposes of this subsection, an investigation or  
12 review shall be considered "active" so long as the office  
13 ~~department~~, a law enforcement agency, or an administrative  
14 agency is proceeding with reasonable dispatch and has a  
15 reasonable good faith belief that the investigation may lead  
16 to the filing of an administrative, civil, or criminal  
17 proceeding. This section shall not be construed to prohibit  
18 disclosure of information which is required by law to be filed  
19 with the office ~~department~~ and which, but for the  
20 investigation, would otherwise be subject to s. 119.07(1).

21 (c) Nothing in this section shall be construed to  
22 prohibit the office ~~department~~ from providing information to  
23 any law enforcement or administrative agency. Any law  
24 enforcement or administrative agency receiving confidential  
25 information in connection with its official duties shall  
26 maintain the confidentiality of the information so long as it  
27 would otherwise be confidential.

28 (d) In the event office ~~department~~ personnel are or  
29 have been involved in an investigation or review of such  
30 nature as to endanger their lives or physical safety or that  
31 of their families, the home addresses, telephone numbers,

1 places of employment, and photographs of such personnel,  
2 together with the home addresses, telephone numbers,  
3 photographs, and places of employment of spouses and children  
4 of such personnel and the names and locations of schools and  
5 day care facilities attended by the children of such personnel  
6 are confidential and exempt from s. 119.07(1).

7 (e) All information obtained by the office ~~department~~  
8 from any person which is only made available to the office  
9 ~~department~~ on a confidential or similarly restricted basis  
10 shall be confidential and exempt from s. 119.07(1). This  
11 exemption shall not be construed to prohibit disclosure of  
12 information which is specifically required by law to be filed  
13 with the office ~~department~~ or which is otherwise subject to s.  
14 119.07(1).

15 (g) A privilege against civil liability is granted to  
16 a person with regard to information or evidence furnished to  
17 the office ~~department~~, unless such person acts in bad faith or  
18 with malice in providing such information or evidence.

19 (17) Notwithstanding the limitations set forth in  
20 paragraph (7)(a), in the first fiscal year in which the total  
21 insurance premium tax collections as determined by the Revenue  
22 Estimating Conference exceed collections for fiscal year  
23 2000-2001 by more than the total amount of tax credits issued  
24 pursuant to this section which were used by certified  
25 investors in that year, the Office of Tourism, Trade, and  
26 Economic Development may allocate to certified investors in  
27 accordance with paragraph (7)(a) tax credits for Program Two.  
28 The commission ~~department~~ shall establish, by rule, a date and  
29 procedures by which certified capital companies must file  
30 applications for allocations of such additional premium tax  
31 credits, which date shall be no later than 180 days from the

1 date of determination by the Revenue Estimating Conference.  
2 With respect to new certified capital invested and premium tax  
3 credits earned pursuant to this subsection, the schedule  
4 specified in subparagraphs (5)(a)1.-4. is satisfied by  
5 investments by December 31 of the 2nd, 3rd, 4th, and 5th  
6 calendar year, respectively, after the date established by the  
7 commission ~~department~~ for applications of additional premium  
8 tax credits. The commission ~~department~~ shall adopt rules by  
9 which an entity not already certified as a certified capital  
10 company may apply for certification as a certified capital  
11 company for participation in this additional allocation. The  
12 insurance premium tax credit authorized by Program Two may not  
13 be used by certified investors until the annual return due  
14 March 1, 2004, and may be used on all subsequent returns and  
15 estimated payments; however, notwithstanding the provisions of  
16 s. 624.5092(2)(b), the installments of taxes due and payable  
17 on April 15, 2004, and June 15, 2004, shall be based on the  
18 net tax due in 2003 not taking into account credits granted  
19 pursuant to this section for Program Two.

20 Section 348. Paragraph (c) of subsection (1) of  
21 section 289.051, Florida Statutes, is amended to read:

22 289.051 Membership of financial institutions; loans to  
23 corporation, limitations.--

24 (1) Any financial institution may request membership  
25 in the corporation by making application to the board of  
26 directors on such form and in such manner as said board of  
27 directors may require, and membership shall become effective  
28 upon acceptance of such application by said board. Each  
29 member of the corporation shall make loans to the corporation  
30 as and when called upon by it to do so, on such terms and  
31

1 other conditions as shall be approved from time to time by the  
2 board of directors, subject to the following conditions:

3 (c) The total amount outstanding on loans to the  
4 corporation made by any member at any one time, when added to  
5 the amount of the investment in the capital stock of the  
6 corporation then held by such member, shall not exceed:

7 1. Twenty percent of the total amount then outstanding  
8 on loans to the corporation by all members, including, in said  
9 total amount outstanding, amounts validly called for loan but  
10 not yet loaned.

11 2. The following limit, to be determined as of the  
12 time such member becomes a member on the basis of the audited  
13 balance sheet of such member at the close of its fiscal year  
14 immediately preceding its application for membership, or, in  
15 the case of an insurance company, its last annual statement to  
16 the Office of Insurance Regulation of the Financial Services  
17 Commission ~~Department of Insurance~~: 2.5 percent of the capital  
18 and surplus of commercial banks and trust companies; 0.5  
19 percent of the total outstanding loans made by savings and  
20 loan associations and building and loan associations; 2.5  
21 percent of the capital and unassigned surplus of stock  
22 insurance companies, except fire insurance companies; 2.5  
23 percent of the unassigned surplus of mutual insurance  
24 companies, except fire insurance companies; 0.1 percent of the  
25 assets of fire insurance companies; and such limits as may be  
26 approved by the board of directors of the corporation for  
27 other financial institutions.

28 Section 349. Subsection (1) of section 289.081,  
29 Florida Statutes, is amended to read:

30 289.081 Amendments to articles of incorporation.--

31

1           (1) The articles of incorporation may be amended by  
2 the votes of the stockholders and the members of the  
3 corporation, voting separately by classes, and such amendments  
4 shall require approval by the affirmative vote of two-thirds  
5 of the votes to which the stockholders shall be entitled and  
6 two-thirds of the votes to which the members shall be  
7 entitled. No amendment of the articles of incorporation which  
8 is inconsistent with the general purposes expressed herein, or  
9 which authorizes any additional class of capital stock to be  
10 issued, or which eliminates or curtails the right of the  
11 Office of Financial Institutions and Securities Regulation of  
12 the Financial Services Commission ~~Department of Banking and~~  
13 ~~Finance~~ to examine the corporation or the obligation of the  
14 corporation to make reports as provided in s. 289.121, shall  
15 be made. No amendment of the articles of incorporation which  
16 increases the obligation of a member to make loans to the  
17 corporation, or makes any change in the principal amount,  
18 interest rate, maturity date, or in the security or credit  
19 position of any outstanding loan of a member to the  
20 corporation, or affects a member's right to withdraw from  
21 membership as provided herein, or affects a member's voting  
22 rights as provided herein, shall be made without the consent  
23 of each member affected by such amendment.

24           Section 350. Section 289.121, Florida Statutes, is  
25 amended to read:

26           289.121 Periodic examinations; reports.--The  
27 corporation shall be examined at least once annually by the  
28 Office of Financial Institutions and Securities Regulation of  
29 the Financial Services Commission ~~Department of Banking and~~  
30 ~~Finance~~ and shall make reports of its condition not less than  
31 annually to that office ~~said department~~ and more frequently

1 upon call of the office ~~department~~, which in turn shall make  
2 copies of such reports available to the Office of Insurance  
3 Regulation of the Financial Services Commission ~~Department of~~  
4 ~~Insurance~~ and the Governor; and the corporation shall also  
5 furnish such other information as may from time to time be  
6 required by the Office of Financial Institutions and  
7 Securities Regulation ~~Department of Banking and Finance~~ and  
8 Department of State. The corporation shall pay the actual cost  
9 of ~~said~~ examinations. The office ~~Department of Banking and~~  
10 ~~Finance~~ shall exercise the same power and authority over  
11 corporations organized under this act as is exercised over  
12 financial institutions under the provisions of the financial  
13 institutions codes, when such codes are not in conflict with  
14 this act.

15 Section 351. Section 292.085, Florida Statutes, is  
16 amended to read:

17 292.085 Department of Veterans' Affairs Tobacco  
18 Settlement Trust Fund.--

19 (1) The Department of Veterans' Affairs Tobacco  
20 Settlement Trust Fund is created within that department. Funds  
21 to be credited to the trust fund shall consist of funds  
22 disbursed, by nonoperating transfer, from the Department of  
23 Financial Services ~~Banking and Finance~~ Tobacco Settlement  
24 Clearing Trust Fund in amounts equal to the annual  
25 appropriations made from this trust fund.

26 (2) Notwithstanding the provisions of s. 216.301 and  
27 pursuant to s. 216.351, any unencumbered balance in the trust  
28 fund at the end of any fiscal year and any encumbered balance  
29 remaining undisbursed on December 31 of the same calendar year  
30 shall revert to the Department of Financial Services ~~Banking~~  
31 ~~and Finance~~ Tobacco Settlement Clearing Trust Fund.

1           Section 352. Section 313.02, Florida Statutes, is  
2 amended to read:

3           313.02 Bond.--Every harbormaster appointed for any  
4 port shall give an approved bond in the sum of \$500, payable  
5 to the Governor of the state, for the faithful performance of  
6 the harbormaster's duty, such bond to be approved by the  
7 county commissioners of the county in which the port is  
8 situated, and by the Department of Financial Services ~~Banking~~  
9 ~~and Finance~~, and to be filed with the Department of State.

10           Section 353. Section 314.02, Florida Statutes, is  
11 amended to read:

12           314.02 Bond.--Each harbormaster so appointed shall  
13 enter into a bond in the penal sum of \$2,000, with two or more  
14 sureties, payable to the Governor of the state and the  
15 Governor's successors in office, conditioned for the faithful  
16 discharge of the duties of the harbormaster's office, by the  
17 harbormaster and his or her deputies, and for the payment of  
18 any damage any person may sustain in consequence of any  
19 wrongful act of such officer or deputy under color of the  
20 harbormaster's office; such bond to be approved by the county  
21 commissioners of the county in which is situated said port and  
22 by the Department of Financial Services ~~Banking and Finance~~,  
23 and to be filed with the Department of State.

24           Section 354. Paragraph (b) of subsection (5) of  
25 section 316.3025, Florida Statutes, is amended to read:

26           316.3025 Penalties.--

27           (5)

28           (b) All penalties imposed and collected under this  
29 section by any state agency having jurisdiction shall be paid  
30 to the Chief Financial Officer ~~Treasurer~~, who shall credit the  
31

1 total amount collected to the State Transportation Trust Fund  
2 for use in repairing and maintaining the roads of this state.

3 Section 355. Subsection (6) of section 316.545,  
4 Florida Statutes, is amended to read:

5 316.545 Weight and load unlawful; special fuel and  
6 motor fuel tax enforcement; inspection; penalty; review.--

7 (6) Any officer or agent collecting the penalties  
8 herein imposed shall give to the owner or driver of the  
9 vehicle an official receipt for all penalties collected. Such  
10 officers or agents of the state departments shall cooperate  
11 with the owners or drivers of motor vehicles so as not to  
12 delay unduly the vehicles. All penalties imposed and collected  
13 under this section by any state agency having jurisdiction  
14 shall be paid to the Chief Financial Officer ~~Treasurer~~, who  
15 shall credit the total amount thereof to the State  
16 Transportation Trust Fund, which shall be used to repair and  
17 maintain the roads of this state and to enforce this section.

18 Section 356. Paragraph (c) of subsection (5) of  
19 section 320.02, Florida Statutes, is amended to read:

20 320.02 Registration required; application for  
21 registration; forms.--

22 (5)

23 (c) For purposes of providing proof of purchase of  
24 required insurance coverage under this subsection, the Office  
25 of Insurance Regulation of the Financial Services Commission  
26 ~~Department of Insurance~~ shall require that uniform  
27 proof-of-purchase cards specified by the Department of Highway  
28 Safety and Motor Vehicles be furnished by insurers writing  
29 motor vehicle liability insurance in this state. Any person  
30 altering or counterfeiting such a card or making a false  
31 affidavit in order to furnish false proof or to knowingly

1 permit another person to furnish false proof is guilty of a  
2 misdemeanor of the first degree, punishable as provided in s.  
3 775.082 or s. 775.083.

4 Section 357. Subsection (5) of section 320.081,  
5 Florida Statutes, is amended to read:

6 320.081 Collection and distribution of annual license  
7 tax imposed on the following type units.--

8 (5) The department shall keep records showing the  
9 total number of stickers issued to each type unit governed by  
10 this section, the total amount of license taxes collected, and  
11 the county or city wherein each such unit is located and shall  
12 from month to month certify to the Chief Financial Officer  
13 ~~Comptroller~~ the amount derived from license taxes in each  
14 county and each city within the county. Such amount, less the  
15 amount of \$1.50 collected on each license, shall be paid to  
16 the counties and cities within the counties wherein the unit  
17 or units are located as follows: one-half to the district  
18 school board and the remainder either to the board of county  
19 commissioners, for units which are located within the  
20 unincorporated areas of the county, or to any city within such  
21 county, for units which are located within its corporate  
22 limits. Payment shall be by warrant drawn by the Chief  
23 Financial Officer ~~Comptroller~~ upon the treasury, which amount  
24 is hereby appropriated monthly out of the License Tax  
25 Collection Trust Fund.

26 Section 358. Paragraphs (b) and (c) of subsection (5)  
27 of section 320.20, Florida Statutes, are amended to read:

28 320.20 Disposition of license tax moneys.--The revenue  
29 derived from the registration of motor vehicles, including any  
30 delinquent fees and excluding those revenues collected and  
31

1 distributed under the provisions of s. 320.081, must be  
2 distributed monthly, as collected, as follows:

3 (5)

4 (b) The Chief Financial Officer ~~State Comptroller~~ each  
5 month shall deposit in the State Transportation Trust Fund an  
6 amount, drawn from other funds in the State Treasury which are  
7 not immediately needed or are otherwise in excess of the  
8 amount necessary to meet the requirements of the State  
9 Treasury, which when added to such remaining revenues each  
10 month will equal one-twelfth of the amount of the anticipated  
11 annual revenues to be deposited in the State Transportation  
12 Trust Fund under paragraph (a) as estimated by the most recent  
13 revenue estimating conference held pursuant to s. 216.136(3).  
14 The transfers required hereunder may be suspended by action of  
15 the Legislative Budget Commission in the event of a  
16 significant shortfall of state revenues.

17 (c) In any month in which the remaining revenues  
18 derived from the registration of motor vehicles exceed  
19 one-twelfth of those anticipated annual remaining revenues as  
20 determined by the revenue estimating conference, the excess  
21 shall be credited to those state funds in the State Treasury  
22 from which the amount was originally drawn, up to the amount  
23 which was deposited in the State Transportation Trust Fund  
24 under paragraph (b). A final adjustment must be made in the  
25 last months of a fiscal year so that the total revenue  
26 deposited in the State Transportation Trust Fund each year  
27 equals the amount derived from the registration of motor  
28 vehicles, less the amount distributed under subsection (1).  
29 For the purposes of this paragraph and paragraph (b), the term  
30 "remaining revenues" means all revenues deposited into the  
31 State Transportation Trust Fund under paragraph (a) and

1 subsections (2) and (3). In order that interest earnings  
2 continue to accrue to the General Revenue Fund, the Department  
3 of Transportation may not invest an amount equal to the  
4 cumulative amount of funds deposited in the State  
5 Transportation Trust Fund under paragraph (b) less funds  
6 credited under this paragraph as computed on a monthly basis.  
7 The amounts to be credited under this and the preceding  
8 paragraph must be calculated and certified to the Chief  
9 Financial Officer ~~Comptroller~~ by the Executive Office of the  
10 Governor.

11 Section 359. Subsection (1) of section 320.71, Florida  
12 Statutes, is amended to read:

13 320.71 Nonresident motor vehicle, mobile home, or  
14 recreational vehicle dealer's license.--

15 (1) Any person who is a nonresident of the state, who  
16 does not have a dealer's contract from the manufacturer or  
17 manufacturer's distributor of motor vehicles, mobile homes, or  
18 recreational vehicles authorizing the sale thereof in definite  
19 Florida territory, and who sells or engages in the business of  
20 selling said vehicles at retail within the state shall  
21 register with the Department of Revenue for a sales tax dealer  
22 registration number and comply with chapter 212, and pay a  
23 license tax of \$2,000 per annum in each county where such  
24 sales are made; \$1,250 of said tax shall be transmitted to the  
25 Department of Financial Services ~~Banking and Finance~~ to be  
26 deposited in the General Revenue Fund of the state, and \$750  
27 thereof shall be returned to the county. The license tax  
28 shall cover the period from January 1 to the following  
29 December 31, and no such license shall be issued for any  
30 fractional part of a year.

31

1           Section 360. Subsection (2) of section 320.781,  
2 Florida Statutes, is amended to read:

3           320.781 Mobile Home and Recreational Vehicle  
4 Protection Trust Fund.--

5           (2) Beginning October 1, 1990, the department shall  
6 charge and collect an additional fee of \$1 for each new mobile  
7 home and new recreational vehicle title transaction for which  
8 it charges a fee. This additional fee shall be deposited into  
9 the trust fund. The Department of Highway Safety and Motor  
10 Vehicles shall charge a fee of \$40 per annual dealer and  
11 manufacturer license and license renewal, which shall be  
12 deposited into the trust fund. The sums deposited in the trust  
13 fund shall be used exclusively for carrying out the purposes  
14 of this section. These sums may be invested and reinvested by  
15 the Chief Financial Officer ~~Treasurer~~ under the same  
16 limitations as apply to investment of other state funds, with  
17 all interest from these investments deposited to the credit of  
18 the trust fund.

19           Section 361. Subsection (5) of section 322.21, Florida  
20 Statutes, is amended to read:

21           322.21 License fees; procedure for handling and  
22 collecting fees.--

23           (5) The department shall collect and transmit all fees  
24 received by it under this section to the Chief Financial  
25 Officer ~~Treasurer~~ to be placed in the General Revenue Fund of  
26 the state, and sufficient funds for the necessary expenses of  
27 the department shall be included in the appropriations act.  
28 The fees shall be used for the maintenance and operation of  
29 the department.

30           Section 362. Paragraph (b) of subsection (1) of  
31 section 324.032, Florida Statutes, is amended to read:

1           324.032 Manner of proving financial responsibility;  
2 for-hire passenger transportation vehicles.--

3           (1) Notwithstanding the provisions of s. 324.031, a  
4 person who is either the owner or a lessee required to  
5 maintain insurance under s. 324.021(9)(b) and who operates at  
6 least 300 taxicabs, limousines, jitneys, or any other for-hire  
7 passenger transportation vehicles may prove financial  
8 responsibility by satisfying the following:

9           (b) Complying with the provisions of s. 324.171, such  
10 compliance to be demonstrated by maintaining at its principal  
11 place of business an audited financial statement, prepared in  
12 accordance with generally accepted accounting principles, and  
13 providing to the department a certification issued by a  
14 certified public accountant that the applicant's net worth is  
15 at least equal to the requirements of s. 324.171 as determined  
16 by the Office of Insurance Regulation of the Financial  
17 Services Commission ~~Department of Insurance~~, including claims  
18 liabilities in an amount certified as adequate by a Fellow of  
19 the Casualty Actuarial Society.

20  
21 Upon request by the department, the applicant must provide the  
22 department at the applicant's principal place of business in  
23 this state access to the applicant's underlying financial  
24 information and financial statements that provide the basis of  
25 the certified public accountant's certification. The  
26 applicant shall reimburse the requesting department for all  
27 reasonable costs incurred by it in reviewing the supporting  
28 information. The maximum amount of self-insurance permissible  
29 under this subsection is \$300,000 and must be stated on a  
30 per-occurrence basis, and the applicant shall maintain  
31 adequate excess insurance issued by an authorized or eligible

1 insurer licensed or approved by the Office of Insurance  
2 Regulation Department of Insurance. All risks self-insured  
3 shall remain with the owner or lessee providing it, and the  
4 risks are not transferable to any other person, unless a  
5 policy complying with paragraph (a) is obtained.

6 Section 363. Paragraph (b) of subsection (1) of  
7 section 324.171, Florida Statutes, is amended to read:

8 324.171 Self-insurer.--

9 (1) Any person may qualify as a self-insurer by  
10 obtaining a certificate of self-insurance from the department  
11 which may, in its discretion and upon application of such a  
12 person, issue said certificate of self-insurance when such  
13 person has satisfied the requirements of this section to  
14 qualify as a self-insurer under this section:

15 (b) A person, including any firm, partnership,  
16 association, corporation, or other person, other than a  
17 natural person, shall:

18 1. Possess a net unencumbered worth of at least  
19 \$40,000 for the first motor vehicle and \$20,000 for each  
20 additional motor vehicle; or

21 2. Maintain sufficient net worth, as determined  
22 annually by the department, pursuant to rules promulgated by  
23 the department, with the assistance of the Office of Insurance  
24 Regulation of the Financial Services Commission ~~Department of~~  
25 ~~Insurance~~, to be financially responsible for potential losses.  
26 The rules shall take into consideration excess insurance  
27 carried by the applicant. The department's determination  
28 shall be based upon reasonable actuarial principles  
29 considering the frequency, severity, and loss development of  
30 claims incurred by casualty insurers writing coverage on the  
31

1 type of motor vehicles for which a certificate of  
2 self-insurance is desired.

3 Section 364. Paragraph (d) of subsection (2) of  
4 section 326.006, Florida Statutes, is amended to read:

5 326.006 Powers and duties of division.--

6 (2) The division has the power to enforce and ensure  
7 compliance with the provisions of this chapter and rules  
8 adopted under this chapter relating to the sale and ownership  
9 of yachts and ships. In performing its duties, the division  
10 has the following powers and duties:

11 (d) Notwithstanding any remedies available to a yacht  
12 or ship purchaser, if the division has reasonable cause to  
13 believe that a violation of any provision of this chapter or  
14 rule adopted under this chapter has occurred, the division may  
15 institute enforcement proceedings in its own name against any  
16 broker or salesperson or any of his or her assignees or  
17 agents, or against any unlicensed person or any of his or her  
18 assignees or agents, as follows:

19 1. The division may permit a person whose conduct or  
20 actions are under investigation to waive formal proceedings  
21 and enter into a consent proceeding whereby orders, rules, or  
22 letters of censure or warning, whether formal or informal, may  
23 be entered against the person.

24 2. The division may issue an order requiring the  
25 broker or salesperson or any of his or her assignees or  
26 agents, or requiring any unlicensed person or any of his or  
27 her assignees or agents, to cease and desist from the unlawful  
28 practice and take such affirmative action as in the judgment  
29 of the division will carry out the purposes of this chapter.

30  
31

1           3. The division may bring an action in circuit court  
2 on behalf of a class of yacht or ship purchasers for  
3 declaratory relief, injunctive relief, or restitution.

4           4. The division may impose a civil penalty against a  
5 broker or salesperson or any of his or her assignees or  
6 agents, or against an unlicensed person or any of his or her  
7 assignees or agents, for any violation of this chapter or a  
8 rule adopted under this chapter. A penalty may be imposed for  
9 each day of continuing violation, but in no event may the  
10 penalty for any offense exceed \$10,000. All amounts collected  
11 must be deposited with the Chief Financial Officer ~~Treasurer~~  
12 to the credit of the Division of Florida Land Sales,  
13 Condominiums, and Mobile Homes Trust Fund. If a broker,  
14 salesperson, or unlicensed person working for a broker, fails  
15 to pay the civil penalty, the division shall thereupon issue  
16 an order suspending the broker's license until such time as  
17 the civil penalty is paid or may pursue enforcement of the  
18 penalty in a court of competent jurisdiction. The order  
19 imposing the civil penalty or the order of suspension may not  
20 become effective until 20 days after the date of such order.  
21 Any action commenced by the division must be brought in the  
22 county in which the division has its executive offices or in  
23 the county where the violation occurred.

24           Section 365. Subsections (8) and (25) of section  
25 331.303, Florida Statutes, are amended to read:

26           331.303 Definitions.--

27           (8) "Entertainment expenses" means the actual,  
28 necessary, and reasonable costs of providing hospitality for  
29 business clients or guests, which costs are defined and  
30 prescribed by rules adopted by the authority, subject to  
31 approval by the Chief Financial Officer ~~Comptroller~~.

1           (25) "Travel expenses" means the actual, necessary,  
2 and reasonable costs of transportation, meals, lodging, and  
3 incidental expenses normally incurred by a traveler, which  
4 costs are defined and prescribed by rules adopted by the  
5 authority, subject to approval by the Chief Financial Officer  
6 ~~Comptroller~~.

7           Section 366. Subsection (2) of section 331.309,  
8 Florida Statutes, is amended to read:

9           331.309 Treasurer; depositories; fiscal agent.--

10           (2) The board is authorized to select as depositories  
11 in which the funds of the board and of the authority shall be  
12 deposited any qualified public depository as defined in s.  
13 280.02, upon such terms and conditions as to the payment of  
14 interest by such depository upon the funds so deposited as the  
15 board may deem just and reasonable. Funds of the authority may  
16 also be deposited with the Florida Commercial Space Financing  
17 Corporation created by s. 331.407. The funds of the authority  
18 may be kept in or removed from the State Treasury upon written  
19 notification from the chair of the board to the Chief  
20 Financial Officer ~~State Comptroller~~.

21           Section 367. Subsection (2) of section 331.3101,  
22 Florida Statutes, is amended to read:

23           331.3101 Florida Space Authority; travel and  
24 entertainment expenses.--

25           (2) The rules shall be subject to approval by the  
26 Chief Financial Officer ~~Comptroller~~ prior to promulgation.  
27 The rules shall require the submission of paid receipts, or  
28 other proof prescribed by the Chief Financial Officer  
29 ~~Comptroller~~, with any claim for reimbursement, and shall  
30 require, as a condition for any advancement, an agreement to  
31 submit paid receipts or other proof and to refund any unused

1 portion of the advancement within 15 days after the expense is  
2 incurred or, if the advancement is made in connection with  
3 travel, within 15 days after completion of the travel.

4 However, with respect to an advancement made solely for travel  
5 expenses, the rules may allow paid receipts or other proof to  
6 be submitted, and any unused portion of the advancement to be  
7 refunded, within 30 days after completion of the travel.

8 Section 368. Section 331.348, Florida Statutes, is  
9 amended to read:

10 331.348 Investment of funds.--The board may in its  
11 discretion invest funds of the authority through the Chief  
12 Financial Officer ~~Treasurer~~ or in:

13 (1) Direct obligations of or obligations guaranteed by  
14 the United States or for the payment of the principal and  
15 interest of which the faith and credit of the United States is  
16 pledged;

17 (2) Bonds or notes issued by any of the following  
18 federal agencies: Bank for Cooperatives; federal intermediate  
19 credit banks; federal home loan bank system; federal land  
20 banks; or the Federal National Mortgage Association (including  
21 debentures or participating certificates issued by such  
22 association);

23 (3) Public housing bonds issued by public housing  
24 authorities and secured by a pledge or annual contributions  
25 under an annual contribution contract or contracts with the  
26 United States;

27 (4) Bonds or other interest-bearing obligations of any  
28 county, district, city, or town located in the state for which  
29 the full faith and credit of such political subdivision is  
30 pledged;

31

1           (5) Any investment authorized for insurers by ss.  
2 625.306-625.316 and amendments thereto; or

3           (6) Any investment authorized under s. 17.57 ~~s. 18.10~~  
4 and amendments thereto.

5           Section 369. Subsection (3) of section 331.419,  
6 Florida Statutes, is amended to read:

7           331.419 Reports and audits.--

8           (3) The Office of Financial Institutions and  
9 Securities Regulation of the Financial Services Commission  
10 ~~Division of Banking of the Department of Banking and Finance~~  
11 shall review the corporation's activities once every 24 months  
12 to determine compliance with this part and related laws and  
13 rules and to evaluate the corporation's operations. The office  
14 ~~division~~ shall prepare a report based on its review and  
15 evaluation with recommendation for any corrective action. The  
16 president shall submit to the office ~~division~~ regular reports  
17 on the corporation's activities. The content and frequency of  
18 such reports shall be determined by the office ~~division~~. The  
19 office ~~division~~ may charge a fee for conducting the review and  
20 evaluation and preparing the related report, which fee shall  
21 not be in excess of the examination fee paid by chartered or  
22 licensed financial institutions.

23           Section 370. Subsection (1) of section 336.022,  
24 Florida Statutes, is amended to read:

25           336.022 County transportation trust fund; controls and  
26 administrative remedies.--

27           (1) Each county shall establish and maintain a  
28 transportation trust fund for all transportation-related  
29 revenues and expenditures. All funds received by a county for  
30 transportation shall be deposited into this fund. No  
31 expenditures other than transportation expenditures authorized

1 by law shall be made from such fund. Each county shall use a  
2 uniform accounts classification system approved by the Chief  
3 Financial Officer ~~Comptroller~~.

4 Section 371. Subsection (9) of section 337.25, Florida  
5 Statutes, is amended to read:

6 337.25 Acquisition, lease, and disposal of real and  
7 personal property.--

8 (9) The department, with the approval of the Chief  
9 Financial Officer ~~State Comptroller~~, is authorized to disburse  
10 state funds for real estate closings in a manner consistent  
11 with good business practices and in a manner minimizing costs  
12 and risks to the state.

13 Section 372. Section 339.035, Florida Statutes, is  
14 amended to read:

15 339.035 Expenditures.--All expenditures by the  
16 department shall be made upon vouchers issued and certified by  
17 the department in such manner as the department may, by rule  
18 or internal management memorandum as required by chapter 120,  
19 provide and shall be paid by warrants issued by the Chief  
20 Financial Officer ~~Comptroller upon the Treasurer~~.

21 Section 373. Section 339.081, Florida Statutes, is  
22 amended to read:

23 339.081 Department trust funds.--The Chief Financial  
24 Officer ~~Comptroller~~ shall maintain within the State Treasury  
25 the following trust funds for the department:

26 (1) The State Transportation Trust Fund, to which  
27 shall be credited the proceeds of the gas tax as authorized by  
28 chapter 83-3, Laws of Florida, and such other funds which  
29 accrue to the department which are not required to be  
30 maintained in separate trust funds.

31

1           (2) Such other funds as may be authorized by bond  
2 resolutions or agreements with any other public bodies or  
3 agencies.

4           Section 374. Section 344.17, Florida Statutes, is  
5 amended to read:

6           344.17 Depositories and investments.--All moneys  
7 received by the Chief Financial Officer as treasurer of the  
8 State Board of Administration, a body corporate under s. 9,  
9 Art. XII of the State Constitution, shall be deposited by the  
10 treasurer in a solvent bank or banks, to be approved and  
11 accepted for such purposes by the board. In making such  
12 deposits, he or she shall follow the method for the deposit of  
13 state funds. Each bank receiving any portion of such funds  
14 shall be required to deposit with such treasurer satisfactory  
15 bonds or treasury certificates of the United States; bonds of  
16 the several states; special tax school district bonds; bonds  
17 of any municipality eligible to secure state deposits as  
18 provided by law; bonds of any county or special road and  
19 bridge district of this state entitled to participate under  
20 the provisions of s. 16, Art. IX of the State Constitution of  
21 1885, as adopted by the 1968 revised constitution, and of s.  
22 9, Art. XII of that revision; bonds issued under the  
23 provisions of s. 18, Art. XII of the State Constitution of  
24 1885, as adopted by s. 9, Art. XII of the 1968 revised  
25 constitution; or bonds, notes, or certificates issued by the  
26 Florida State Improvement Commission or its successors, the  
27 Florida Development Commission and the Division of Bond  
28 Finance of the State Board of Administration, which contain a  
29 pledge of the 80-percent surplus 2-cent constitutional  
30 gasoline tax accruing under s. 16, Art. IX of the State  
31 Constitution of 1885, as adopted by the 1968 revised

1 constitution, and under s. 9, Art. XII of that revision, which  
2 shall be equal to the amount deposited with such bank. Such  
3 security shall be in the possession of such treasurer; or the  
4 treasurer is authorized to accept, in lieu of the actual  
5 depositing with him or her of such security, trust or  
6 safekeeping receipts issued by any Federal Reserve Bank, or  
7 member bank thereof, or by any bank incorporated under the  
8 laws of the United States; provided the member bank or bank  
9 incorporated under the laws of the United States has been  
10 previously approved and accepted for such purposes by the  
11 State Board of Administration and the trust or safekeeping  
12 receipts are in substantially the same form as that which the  
13 Chief Financial Officer ~~State Treasurer~~ is authorized to  
14 accept in lieu of securities given to cover deposits of state  
15 funds.

16 Section 375. Subsections (2) and (9) of section  
17 350.06, Florida Statutes, are amended to read:

18 350.06 Place of meeting; expenditures; employment of  
19 personnel; records availability and fees.--

20 (2) All sums of money authorized to be paid on account  
21 of said commissioners shall be paid out of the State Treasury  
22 only on the order of the Chief Financial Officer ~~Comptroller~~.

23 (9) The commission shall keep a book in which all fees  
24 collected by it as provided for herein shall be recorded,  
25 together with the amount and purpose for which collected.  
26 This book shall be a public record. The commission shall  
27 prepare a statement of these fees in duplicate each month and  
28 remit one copy of the statement, together with all fees  
29 collected by it, to the Chief Financial Officer ~~Treasurer~~.  
30 All moneys collected pursuant to this section by the  
31

1 commission shall be deposited in the State Treasury to the  
2 credit of the Florida Public Service Regulatory Trust Fund.

3 Section 376. Section 354.03, Florida Statutes, is  
4 amended to read:

5 354.03 Bond.--Before entering into the performance of  
6 his or her duties every such special officer shall enter into  
7 a good and sufficient bond payable to the Governor of Florida,  
8 and the Governor's successors, in the penal sum of \$5,000,  
9 with some surety company authorized to do business in this  
10 state as surety thereon, conditioned for the faithful  
11 performance of his or her duties, and to pay any and all  
12 damage done by any illegal act committed by him or her, to be  
13 approved by the Department of Financial Services ~~Banking and~~  
14 ~~Finance~~.

15 Section 377. Subsection (1) of section 365.173,  
16 Florida Statutes, is amended to read:

17 365.173 Wireless Emergency Telephone System Fund.--

18 (1) All revenues derived from the E911 fee levied on  
19 subscribers under s. 365.172 must be paid into the State  
20 Treasury on or before the 15th day of each month. Such moneys  
21 must be accounted for in a special fund to be designated as  
22 the Wireless Emergency Telephone System Fund, a fund created  
23 in the State Technology Office and must be invested by the  
24 Chief Financial Officer ~~State Treasurer~~ pursuant to s. 17.61  
25 ~~s. 18.125~~. All moneys in such fund are to be expended by the  
26 State Technology Office for the purposes provided in this  
27 section and s. 365.172. These funds are not subject to s.  
28 215.20.

29 Section 378. Subsection (8) of section 370.06, Florida  
30 Statutes, is amended to read:

31 370.06 Licenses.--

1           (8) COLLECTION OF LICENSES, FEES.--Unless otherwise  
2 provided by law, all license taxes or fees provided for in  
3 this chapter shall be collected by the commission or its duly  
4 authorized agents or deputies to be deposited by the Chief  
5 Financial Officer ~~Comptroller~~ in the Marine Resources  
6 Conservation Trust Fund. The commission may by rule establish  
7 a reasonable processing fee for any free license or permit  
8 required under this chapter. The commission is authorized to  
9 accept payment by credit card for fees, fines, and civil  
10 penalties levied pursuant to this chapter.

11           Section 379. Subsection (6) of section 370.16, Florida  
12 Statutes, is amended to read:

13           370.16 Noncultured shellfish harvesting.--

14           (6) SEIZURE OF VESSELS AND CARGOES VIOLATING OYSTER  
15 AND CLAM LAWS, ETC.--Vessels, with their cargoes, violating  
16 the provisions of the laws relating to oysters and clams may  
17 be seized by anyone duly and lawfully authorized to make  
18 arrests under this section or by any sheriff or the sheriff's  
19 deputies, and taken into custody, and when not arrested by the  
20 sheriff or the sheriff's deputies, delivered to the sheriff of  
21 the county in which the seizure is made, and shall be liable  
22 to forfeiture, on appropriate proceedings being instituted by  
23 the Fish and Wildlife Conservation Commission, before the  
24 courts of that county. In such case the cargo shall at once  
25 be disposed of by the sheriff, for account of whom it may  
26 concern. Should the master or any of the crew of said vessel  
27 be found guilty of using dredges or other instruments in  
28 fishing oysters on natural reefs contrary to law, or fishing  
29 on the natural oyster or clam reefs out of season, or  
30 unlawfully taking oysters or clams belonging to a lessee, such  
31 vessel shall be declared forfeited by the court, and ordered

1 sold and the proceeds of the sale shall be deposited with the  
2 Chief Financial Officer ~~Treasurer~~ to the credit of the General  
3 Revenue Fund; any person guilty of such violations shall not  
4 be permitted to have any license provided for in this chapter  
5 within a period of 1 year from the date of conviction.

6 Pending proceedings such vessel may be released upon the owner  
7 furnishing bond, with good and solvent security in double the  
8 value of the vessel, conditioned upon its being returned in  
9 good condition to the sheriff to abide the judgment of the  
10 court.

11 Section 380. Paragraph (b) of subsection (5) and  
12 subsection (6) of section 370.19, Florida Statutes, are  
13 amended to read:

14 370.19 Atlantic States Marine Fisheries Compact;  
15 implementing legislation.--

16 (5) ACCOUNTS TO BE KEPT BY COMMISSION; EXAMINATION.--

17 (b) The Department of Financial Services ~~Banking and~~  
18 ~~Finance~~ is hereby authorized and empowered from time to time  
19 to examine the accounts and books of the commission, including  
20 its receipts, disbursements and such other items referring to  
21 its financial standing as such department deems ~~may deem~~  
22 proper and to report the results of such examination to the  
23 governor of such state.

24 (6) APPROPRIATION FOR EXPENSES OF COMMISSION.--The sum  
25 of \$600, annually, or so much thereof as may be necessary, is  
26 hereby appropriated out of any moneys in the State Treasury  
27 not otherwise appropriated, for the expenses of the commission  
28 created by the compact authorized by this law. The moneys  
29 hereby appropriated shall be paid out of the State Treasury on  
30 the audit and warrant of the Chief Financial Officer

31

1 ~~Comptroller~~ upon vouchers certified by the chair of the  
2 commission in the manner prescribed by law.

3 Section 381. Subsection (5) of section 370.20, Florida  
4 Statutes, is amended to read:

5 370.20 Gulf States Marine Fisheries Compact;  
6 implementing legislation.--

7 (5) ACCOUNTS TO BE KEPT BY COMMISSION;  
8 EXAMINATION.--The commission shall keep accurate accounts of  
9 all receipts and disbursements and shall report to the  
10 Governor and the Legislature of the State of Florida on or  
11 before the 10th day of December in each year, setting forth in  
12 detail the transactions conducted by it during the 12 months  
13 preceding December 1 of that year and shall make  
14 recommendations for any legislative action deemed by it  
15 advisable, including amendments to the statutes of the State  
16 of Florida which may be necessary to carry out the intent and  
17 purposes of the compact between the signatory states.

18 The Department of Financial Services ~~Banking and~~  
19 ~~Finance~~ is hereby authorized and empowered from time to time  
20 to examine the accounts and books of the commission, including  
21 its receipts, disbursements and such other items referring to  
22 its financial standing as such department deems ~~may deem~~  
23 proper and to report the results of such examination to the  
24 governor of such state.

25 Section 382. Subsection (5) of section 373.503,  
26 Florida Statutes, is amended to read:

27 373.503 Manner of taxation.--

28 (5) Each water management district created under this  
29 chapter which does not receive state shared revenues under  
30 part II of chapter 218 shall, before January 1 of each year,  
31 certify compliance or noncompliance with s. 200.065 to the

1 Department of Financial Services ~~Banking and Finance~~.  
2 Specific grounds for noncompliance shall be stated in the  
3 certification. In its annual report required by s. 218.32(2),  
4 the Department of Financial Services ~~Banking and Finance~~ shall  
5 report to the Governor and the Legislature those water  
6 management districts certifying noncompliance or not  
7 reporting.

8 Section 383. Paragraph (e) of subsection (10) of  
9 section 373.59, Florida Statutes, is amended to read:

10 373.59 Water Management Lands Trust Fund.--

11 (10)

12 (e) Payment in lieu of taxes pursuant to this  
13 subsection shall be made annually to qualifying counties and  
14 local governments after certification by the Department of  
15 Revenue that the amounts applied for are reasonably  
16 appropriate, based on the amount of actual taxes paid on the  
17 eligible property, and after the water management districts  
18 have provided supporting documents to the Chief Financial  
19 Officer ~~Comptroller~~ and have requested that payment be made in  
20 accordance with the requirements of this section.

21 Section 384. Subsection (2) of section 373.6065,  
22 Florida Statutes, is amended to read:

23 373.6065 Adoption benefits for water management  
24 district employees.--

25 (2) The Chief Financial Officer ~~Comptroller~~ and the  
26 Department of Management Services shall transfer funds to  
27 water management districts to pay eligible water management  
28 district employees for these child adoption monetary benefits  
29 in accordance with s. 215.32(1)(c)5., as long as funds remain  
30 available for the program described under s. 110.152.

31

1           Section 385. Subsection (2) of section 374.983,  
2 Florida Statutes, is amended to read:

3           374.983 Governing body.--

4           (2) The present board of commissioners of the district  
5 shall continue to hold office until their respective terms  
6 shall expire. Thereafter the members of the board shall  
7 continue to be appointed by the Governor for a term of 4 years  
8 and until their successors shall be duly appointed.

9 Specifically, commencing on January 10, 1997, the Governor  
10 shall appoint the commissioners from Broward, Indian River,

11 Martin, St. Johns, and Volusia Counties and on January 10,

12 1999, the Governor shall appoint the commissioners from

13 Brevard, Dade, Duval, Flagler, Palm Beach, and St. Lucie

14 Counties. Each new appointee must be confirmed by the Senate.

15 Whenever a vacancy occurs among the commissioners, the person  
16 appointed to fill such vacancy shall hold office for the

17 unexpired portion of the term of the commissioner whose place

18 he or she is selected to fill. Each commissioner under this

19 act before he or she assumes office shall be required to give

20 a good and sufficient surety bond in the sum of \$10,000

21 payable to the Governor and his or her successors in office,

22 conditioned upon the faithful performance of the duties of his

23 or her office, such ~~said~~ bond to be approved by and filed with

24 the Chief Financial Officer ~~Comptroller~~. Any and all premiums

25 upon such ~~said~~ surety bonds shall be paid by the board of

26 commissioners of such ~~said~~ district as a necessary expense of

27 the district.

28           Section 386. Subsection (2) of section 374.986,  
29 Florida Statutes, is amended to read:

30           374.986 Taxing authority.--

31

1           (2) The board may annually assess and levy against the  
2 taxable property in the district a tax not to exceed one-tenth  
3 mill on the dollar for each year, and the proceeds from such  
4 tax shall be used by the district for all expenses of the  
5 district including the purchase price of right-of-way and  
6 other property. The board shall, on or before the 31st day of  
7 July of each year, prepare a tentative annual written budget  
8 of the district's expected income and expenditures. In  
9 addition, the board shall compute a proposed millage rate to  
10 be levied as taxes for that year upon the taxable property in  
11 the district for the purposes of said district. The proposed  
12 budget shall be submitted to the Department of Environmental  
13 Protection for its approval. Prior to adopting a final budget,  
14 the district shall comply with the provisions of s. 200.065,  
15 relating to the method of fixing millage, and shall fix the  
16 final millage rate by resolution of the district and shall  
17 also, by resolution, adopt a final budget pursuant to chapter  
18 200. Copies of such resolutions executed in the name of the  
19 board by its chair, and attested by its secretary, shall be  
20 made and delivered to the county officials specified in s.  
21 200.065 of each and every county in the district, to the  
22 Department of Revenue, and to the Chief Financial Officer  
23 ~~Comptroller~~. Thereupon, it shall be the duty of the property  
24 assessor of each of said counties to assess, and the tax  
25 collector of each of said counties to collect, a tax at the  
26 rate fixed by said resolution of the board upon all of the  
27 real and personal taxable property in said counties for said  
28 year (and such officers shall perform such duty) and said levy  
29 shall be included in the warrant of the tax assessors of each  
30 of said counties and attached to the assessment roll of taxes  
31 for each of said counties. The tax collectors of each of said

1 counties shall collect such taxes so levied by the board in  
2 the same manner as other taxes are collected, and shall pay  
3 the same within the time and in the manner prescribed by law,  
4 to the treasurer of the board. It shall be the duty of the  
5 Chief Financial Officer ~~Comptroller~~ to assess and levy on all  
6 railroad lines and railroad property and telegraph lines and  
7 telegraph property in the district a tax at the rate  
8 prescribed by resolution of the board, and to collect the tax  
9 thereon in the same manner as he or she is required by law to  
10 assess and collect taxes for state and county purposes and to  
11 remit the same to the treasurer of the board. All such taxes  
12 shall be held by the treasurer of the district for the credit  
13 of the district and paid out by him or her as provided herein.  
14 The tax assessor and property appraiser of each of said  
15 counties shall be entitled to payment as provided for by  
16 general laws.

17 Section 387. Subsection (3) of section 376.11, Florida  
18 Statutes, is amended to read:

19 376.11 Florida Coastal Protection Trust Fund.--

20 (3) Moneys in the fund that are not needed currently  
21 to meet the obligations of the department in the exercise of  
22 its responsibilities under ss. 376.011-376.21 shall be  
23 deposited with the Chief Financial Officer ~~Treasurer~~ to the  
24 credit of the fund and may be invested in such manner as is  
25 provided for by statute. Interest received on such investment  
26 shall be credited to the fund, except as otherwise specified  
27 herein.

28 Section 388. Subsection (5) of section 376.123,  
29 Florida Statutes, is amended to read:

30 376.123 Claims against the Florida Coastal Protection  
31 Trust Fund.--

1           (5) The secretary shall establish the amount to be  
2 awarded and shall certify the amount of the award and the name  
3 of the claimant to the Chief Financial Officer ~~State~~  
4 ~~Treasurer~~, who shall pay the award from the fund, subject to  
5 the provisions of subsection (12). If the claimant agrees  
6 with the established amount of award, the settlement shall be  
7 binding upon both parties as to all issues and cannot be  
8 further attacked, collaterally or by separate action, in the  
9 future.

10           Section 389. Subsection (6) of section 376.307,  
11 Florida Statutes, is amended to read:

12           376.307 Water Quality Assurance Trust Fund.--

13           (6) Moneys in the fund which are not needed currently  
14 to meet the obligations of the department in the exercise of  
15 its responsibilities under this section shall be deposited  
16 with the Chief Financial Officer ~~Treasurer~~ to the credit of  
17 the fund and may be invested in such manner as is provided for  
18 by statute. The interest received on such investment shall be  
19 credited to the fund. Any provisions of law to the contrary  
20 notwithstanding, such interest may be freely transferred  
21 between this trust fund and the Inland Protection Trust Fund,  
22 in the discretion of the department.

23           Section 390. Subsection (8) and paragraph (k) of  
24 subsection (12) of section 376.3071, Florida Statutes, are  
25 amended to read:

26           376.3071 Inland Protection Trust Fund; creation;  
27 purposes; funding.--

28           (8) INVESTMENTS; INTEREST.--Moneys in the fund which  
29 are not needed currently to meet the obligations of the  
30 department in the exercise of its responsibilities under this  
31 section and s. 376.3073 shall be deposited with the Chief

1 Financial Officer ~~Treasurer~~ to the credit of the fund and may  
2 be invested in such manner as is provided for by statute. The  
3 interest received on such investment shall be credited to the  
4 fund. Any provisions of law to the contrary notwithstanding,  
5 such interest may be freely transferred between this trust  
6 fund and the Water Quality Assurance Trust Fund, in the  
7 discretion of the department.

8 (12) REIMBURSEMENT FOR CLEANUP EXPENSES.--Except as  
9 provided in s. 2(3), chapter 95-2, Laws of Florida, this  
10 subsection shall not apply to any site rehabilitation program  
11 task initiated after March 29, 1995. Effective August 1, 1996,  
12 no further site rehabilitation work on sites eligible for  
13 state-funded cleanup from the Inland Protection Trust Fund  
14 shall be eligible for reimbursement pursuant to this  
15 subsection. The person responsible for conducting site  
16 rehabilitation may seek reimbursement for site rehabilitation  
17 program task work conducted after March 28, 1995, in  
18 accordance with s. 2(2) and (3), chapter 95-2, Laws of  
19 Florida, regardless of whether the site rehabilitation program  
20 task is completed. A site rehabilitation program task shall  
21 be considered to be initiated when actual onsite work or  
22 engineering design, pursuant to chapter 62-770, Florida  
23 Administrative Code, which is integral to performing a site  
24 rehabilitation program task has begun and shall not include  
25 contract negotiation and execution, site research, or project  
26 planning. All reimbursement applications pursuant to this  
27 subsection must be submitted to the department by January 3,  
28 1997. The department shall not accept any applications for  
29 reimbursement or pay any claims on applications for  
30 reimbursement received after that date; provided, however if  
31 an application filed on or prior to January 3, 1997, was

1 returned by the department on the grounds of untimely filing,  
2 it shall be refiled within 30 days after the effective date of  
3 this act in order to be processed.

4 (k) Audits.--

5 1. The department is authorized to perform financial  
6 and technical audits in order to certify site restoration  
7 costs and ensure compliance with this chapter. The department  
8 shall seek recovery of any overpayments based on the findings  
9 of these audits. The department must commence any audit within  
10 5 years after the date of reimbursement, except in cases where  
11 the department alleges specific facts indicating fraud.

12 2. Upon determination by the department that any  
13 portion of costs which have been reimbursed are disallowed,  
14 the department shall give written notice to the applicant  
15 setting forth with specificity the allegations of fact which  
16 justify the department's proposed action and ordering  
17 repayment of disallowed costs within 60 days of notification  
18 of the applicant.

19 3. In the event the applicant does not make payment to  
20 the department within 60 days of receipt of such notice, the  
21 department shall seek recovery in a court of competent  
22 jurisdiction to recover reimbursement overpayments made to the  
23 person responsible for conducting site rehabilitation, unless  
24 the department finds the amount involved too small or the  
25 likelihood of recovery too uncertain.

26 4. In addition to the amount of any overpayment, the  
27 applicant shall be liable to the department for interest of 1  
28 percent per month or the prime rate, whichever is less, on the  
29 amount of overpayment, from the date of overpayment by the  
30 department until the applicant satisfies the department's  
31 request for repayment pursuant to this paragraph. The

1 calculation of interest shall be tolled during the pendency of  
2 any litigation.

3           5. Financial and technical audits frequently are  
4 conducted under this section many years after the site  
5 rehabilitation activities were performed and the costs  
6 examined in the course of the audit were incurred by the  
7 person responsible for site rehabilitation. During the  
8 intervening span of years, the department's rule requirements  
9 and its related guidance and other nonrule policy directives  
10 may have changed significantly. The Legislature finds that it  
11 may be appropriate for the department to provide relief to  
12 persons subject to such requirements in financial and  
13 technical audits conducted pursuant to this section.

14           a. The department is authorized to grant variances and  
15 waivers from the documentation requirements of subparagraph  
16 (e)2. and from the requirements of rules applicable in  
17 technical and financial audits conducted under this section.  
18 Variances and waivers shall be granted when the person  
19 responsible for site rehabilitation demonstrates to the  
20 department that application of a financial or technical  
21 auditing requirement would create a substantial hardship or  
22 would violate principles of fairness. For purposes of this  
23 subsection, "substantial hardship" means a demonstrated  
24 economic, technological, legal, or other type of hardship to  
25 the person requesting the variance or waiver. For purposes of  
26 this subsection, "principles of fairness" are violated when  
27 the application of a requirement affects a particular person  
28 in a manner significantly different from the way it affects  
29 other similarly situated persons who are affected by the  
30 requirement or when the requirement is being applied  
31 retroactively without due notice to the affected parties.

1           b. A person whose reimbursed costs are subject to a  
2 financial and technical audit under this section may file a  
3 written request to the department for grant of a variance or  
4 waiver. The request shall specify:

5           (I) The requirement from which a variance or waiver is  
6 requested.

7           (II) The type of action requested.

8           (III) The specific facts which would justify a waiver  
9 or variance.

10           (IV) The reason or reasons why the requested variance  
11 or waiver would serve the purposes of this section.

12           c. Within 90 days after receipt of a written request  
13 for variance or waiver under this subsection, the department  
14 shall grant or deny the request. If the request is not granted  
15 or denied within 90 days of receipt, the request shall be  
16 deemed approved. An order granting or denying the request  
17 shall be in writing and shall contain a statement of the  
18 relevant facts and reasons supporting the department's action.  
19 The department's decision to grant or deny the petition shall  
20 be supported by competent substantial evidence and is subject  
21 to ss. 120.569 and 120.57. Once adopted, model rules  
22 promulgated by the Administration Commission under s. 120.542  
23 shall govern the processing of requests under this provision.

24           6. The Chief Financial Officer ~~Comptroller~~ may audit  
25 the records of persons who receive or who have received  
26 payments pursuant to this chapter in order to verify site  
27 restoration costs, ensure compliance with this chapter, and  
28 verify the accuracy and completeness of audits performed by  
29 the department pursuant to this paragraph. The Chief  
30 Financial Officer ~~Comptroller~~ may contract with entities or  
31 persons to perform audits pursuant to this subparagraph. The

1 Chief Financial Officer ~~Comptroller~~ shall commence any audit  
2 within 1 year after the department's completion of an audit  
3 conducted pursuant to this paragraph, except in cases where  
4 the department or the Chief Financial Officer ~~Comptroller~~  
5 alleges specific facts indicating fraud.

6 Section 391. Paragraphs (b) and (c) of subsection (5)  
7 of section 376.3072, Florida Statutes, are amended to read:

8 376.3072 Florida Petroleum Liability and Restoration  
9 Insurance Program.--

10 (5)

11 (b) The Office of Insurance Regulation of the  
12 Financial Services Commission ~~Department of Insurance~~ shall  
13 offer assistance as requested by the department to implement  
14 the program.

15 (c) Any insurance company, reinsurance company, or  
16 other entity contracted with by the department shall be  
17 subject to the same rules and regulations of the Office of  
18 Insurance Regulation ~~Department of Insurance~~ applicable to  
19 other insurers, reinsurers, and other entities.

20 Section 392. Subsection (2) of section 376.3075,  
21 Florida Statutes, is amended to read:

22 376.3075 Inland Protection Financing Corporation.--

23 (2) The corporation shall be governed by a board of  
24 directors consisting of the Governor or the Governor's  
25 designee, the Chief Financial Officer ~~Comptroller~~ or the Chief  
26 Financial Officer's ~~Comptroller's~~ designee, ~~the Treasurer or~~  
27 ~~the Treasurer's designee,~~ the chair of the Florida Black  
28 Business Investment Board, and the secretary of the Department  
29 of Environmental Protection. The executive director of the  
30 State Board of Administration shall be the chief executive  
31 officer of the corporation and shall direct and supervise the

1 administrative affairs of the corporation and shall control,  
2 direct, and supervise the operation of the corporation. The  
3 corporation shall also have such other officers as may be  
4 determined by the board of directors.

5 Section 393. Subsection (10) of section 376.3078,  
6 Florida Statutes, is amended to read:

7 376.3078 Drycleaning facility restoration; funds;  
8 uses; liability; recovery of expenditures.--

9 (10) INSURANCE REQUIREMENTS.--The owner or operator of  
10 an operating drycleaning facility or wholesale supply facility  
11 shall, by January 1, 1999, have purchased third-party  
12 liability insurance for \$1 million of coverage for each  
13 operating facility. The owner or operator shall maintain such  
14 insurance while operating as a drycleaning facility or  
15 wholesale supply facility and provide proof of such insurance  
16 to the department upon registration renewal each year  
17 thereafter. Such requirement applies only if such insurance  
18 becomes available to the owner or operator at a reasonable  
19 rate and covers liability for contamination subsequent to the  
20 effective date of the policy and prior to the effective date,  
21 retroactive to the commencement of operations at the  
22 drycleaning facility or wholesale supply facility. Such  
23 insurance may be offered in group coverage policies with a  
24 minimum coverage of \$1 million for each member of the group  
25 per year. For the purposes of this subsection, reasonable rate  
26 means the rate developed based on exposure to loss and  
27 underwriting and administrative costs as determined by the  
28 Office of Insurance Regulation of the Financial Services  
29 Commission ~~Department of Insurance~~, in consultation with  
30 representatives of the drycleaning industry.

31

1           Section 394. Paragraphs (b) and (c) of subsection (4)  
2 of section 376.3079, Florida Statutes, are amended to read:

3           376.3079 Third-party liability insurance.--

4           (4)

5           (b) The Office of Insurance Regulation of the  
6 Financial Services Commission ~~Department of Insurance~~ shall  
7 offer assistance as requested by the department to implement  
8 the program.

9           (c) Any insurance company, reinsurance company, or  
10 other entity contracted with by the department shall be  
11 subject to the same rules of the Office of Insurance  
12 Regulation ~~Department of Insurance~~ applicable to other  
13 insurers, reinsurers, and other entities.

14           Section 395. Subsection (6) of section 376.40, Florida  
15 Statutes, is amended to read:

16           376.40 Petroleum exploration and production; purposes;  
17 funding.--

18           (6) INVESTMENTS; INTEREST.--Moneys in the trust fund  
19 which are not needed currently to meet the obligations of the  
20 department in the exercise of its responsibilities under this  
21 section shall be deposited with the Chief Financial Officer  
22 ~~Treasurer~~ to the credit of the trust fund and may be invested  
23 as provided by law.

24           Section 396. Section 377.23, Florida Statutes, is  
25 amended to read:

26           377.23 Monthly reports to division.--Every producer of  
27 oil or gas in the state shall submit to the division, on forms  
28 prescribed by the division, a monthly report of the actual  
29 production from each and every oil and gas well operated by  
30 him or her. Such ~~said~~ producer shall submit a duplicate copy  
31 of such ~~said~~ report at the same time to the Department of

1 Financial Services ~~Banking and Finance~~; and such ~~said~~ reports  
2 shall be submitted through the medium of the United States  
3 mails, and it shall be unlawful for the same to be transmitted  
4 or received in any other way.

5 Section 397. Paragraph (a) of subsection (1) of  
6 section 377.2425, Florida Statutes, is amended to read:

7 377.2425 Manner of providing security for geophysical  
8 exploration, drilling, and production.--

9 (1) Prior to granting a permit to conduct geophysical  
10 operations; drilling of exploratory, injection, or production  
11 wells; producing oil and gas from a wellhead; or transporting  
12 oil and gas through a field-gathering system, the department  
13 shall require the applicant or operator to provide surety that  
14 these operations will be conducted in a safe and  
15 environmentally compatible manner.

16 (a) The applicant for a drilling, production, or  
17 injection well permit or a geophysical permit may provide the  
18 following types of surety to the department for this purpose:

19 1. A deposit of cash or other securities made payable  
20 to the Minerals Trust Fund. Such cash or securities so  
21 deposited shall be held at interest by the Chief Financial  
22 Officer ~~Comptroller~~ to satisfy safety and environmental  
23 performance provisions of this chapter. The interest shall be  
24 credited to the Minerals Trust Fund. Such cash or other  
25 securities shall be released by the Chief Financial Officer  
26 ~~Comptroller~~ upon request of the applicant and certification by  
27 the department that all safety and environmental performance  
28 provisions established by the department for permitted  
29 activities have been fulfilled.

30 2. A bond of a surety company authorized to do  
31 business in the state in an amount as provided by rule.

1           3. A surety in the form of an irrevocable letter of  
2 credit in an amount as provided by rule guaranteed by an  
3 acceptable financial institution.

4           Section 398. Paragraph (c) of subsection (4) of  
5 section 377.705, Florida Statutes, is amended to read:

6           377.705 Solar Energy Center; development of solar  
7 energy standards.--

8           (4) FLORIDA SOLAR ENERGY CENTER TO SET STANDARDS,  
9 REQUIRE DISCLOSURE, SET TESTING FEES.--

10          (c) The center shall be entitled to receive a testing  
11 fee sufficient to cover the costs of such testing. All  
12 testing fees shall be transmitted by the center to the Chief  
13 Financial Officer ~~State Treasurer~~ to be deposited in the Solar  
14 Energy Center Testing Trust Fund, which is hereby created in  
15 the State Treasury, and disbursed for the payment of expenses  
16 incurred in testing solar energy systems.

17          Section 399. Paragraph (a) of subsection (2) of  
18 section 378.035, Florida Statutes, is amended to read:

19          378.035 Department responsibilities and duties with  
20 respect to Nonmandatory Land Reclamation Trust Fund.--

21          (2)(a) The department shall verify that reclamation  
22 activities or portions thereof have been accomplished in  
23 accordance with the reclamation contract and shall certify the  
24 cost of such reclamation activities to the Chief Financial  
25 Officer ~~Comptroller~~ for reimbursement.

26          Section 400. Section 378.037, Florida Statutes, is  
27 amended to read:

28          378.037 Chief Financial Officer ~~Comptroller~~;  
29 responsibilities and duties with respect to reimbursement of  
30 reclamation costs.--

31

1           (1) The Chief Financial Officer ~~Comptroller~~ shall  
2 reimburse approved reclamation costs, less any amount  
3 reasonably retained to ensure completion of the approved  
4 reclamation program, subject to the following limitations:

5           (a) A landowner shall not be entitled to payments in  
6 excess of the funds available in the Nonmandatory Land  
7 Reclamation Trust Fund.

8           (b) Cost reimbursement shall not exceed the least of:

9           1. The amount actually expended and reasonably  
10 necessary to effect the reclamation consistent with the  
11 standards of the approved master reclamation plan;

12           2. The reclamation contract amount; or

13           3. The amount allowed based on prereclamation land  
14 form, to include mined-out areas at \$4,000 per reclaimed acre  
15 and clay settling areas and other land forms at \$2,500 per  
16 reclaimed acre adjusted annually by the appropriate  
17 inflationary index for construction.

18           (2) The Chief Financial Officer ~~Comptroller~~ shall  
19 adopt rules to implement the payment provisions of the master  
20 reclamation plan and this section, including, but not limited  
21 to, periodic reimbursements and competitive procurement of  
22 services and commodities to the extent practicable, unless a  
23 landowner elects to utilize his or her own personnel and  
24 equipment. The landowner may select a method of reimbursement  
25 from the alternatives adopted by the Chief Financial Officer  
26 ~~Comptroller~~.

27           Section 401. Subsection (3) of section 378.208,  
28 Florida Statutes, is amended to read:

29           378.208 Financial responsibility.--

30           (3) The amount of financial responsibility shall be  
31 established by the secretary and shall not exceed \$4,000 per

1 acre for each reclamation program, adjusted annually by the  
2 appropriate inflationary index for construction. The Office of  
3 Insurance Regulation of the Financial Services Commission  
4 ~~Department of Insurance~~ shall be available to assist the  
5 secretary in making this determination. In establishing the  
6 amount of financial responsibility, the secretary shall  
7 consider:

- 8 (a) The amount and type of reclamation involved.  
9 (b) The probable cost of proper reclamation.  
10 (c) Inflation rates.  
11 (d) Changes in mining operations.

12 Section 402. Subsection (2) of section 381.765,  
13 Florida Statutes, is amended to read:

14 381.765 Retention of title to and disposal of  
15 equipment.--

16 (2) The department may offer for sale any surplus  
17 items acquired in operating the brain and spinal cord injury  
18 program when they are no longer necessary or exchange them for  
19 necessary items that may be used to greater advantage. When  
20 any such surplus equipment is sold or exchanged, a receipt for  
21 the equipment shall be taken from the purchaser showing the  
22 consideration given for such equipment and forwarded to the  
23 Chief Financial Officer ~~Treasurer~~, and any funds received by  
24 the brain and spinal cord injury program pursuant to any such  
25 transaction shall be deposited in the Brain and Spinal Cord  
26 Injury Rehabilitation Trust Fund and shall be available for  
27 expenditure for any purpose consistent with this part.

28 Section 403. Subsection (3) of section 381.90, Florida  
29 Statutes, is amended to read:

30 381.90 Health Information Systems Council; legislative  
31 intent; creation, appointment, duties.--

1           (3) The council shall be composed of the following  
2 members or their senior executive-level designees:  
3           (a) The secretary of the Department of Health;  
4           (b) The secretary of the Department of Business and  
5 Professional Regulation;  
6           (c) The secretary of the Department of Children and  
7 Family Services;  
8           (d) The Secretary of Health Care Administration;  
9           (e) The secretary of the Department of Corrections;  
10          (f) The Attorney General;  
11          (g) The executive director of the Correctional Medical  
12 Authority;  
13          (h) Two members representing county health  
14 departments, one from a small county and one from a large  
15 county, appointed by the Governor;  
16          (i) A representative from the Florida Association of  
17 Counties;  
18          (j) The Chief Financial Officer ~~State Treasurer and~~  
19 ~~Insurance Commissioner~~;  
20          (k) A representative from the Florida Healthy Kids  
21 Corporation;  
22          (l) A representative from a school of public health  
23 chosen by the Board of Regents;  
24          (m) The Commissioner of Education;  
25          (n) The secretary of the Department of Elderly  
26 Affairs; and  
27          (o) The secretary of the Department of Juvenile  
28 Justice.  
29  
30 Representatives of the Federal Government may serve without  
31 voting rights.

1           Section 404. Effective July 1, 2003, subsection (3) of  
2 section 385.207, Florida Statutes, is amended to read:

3           385.207 Care and assistance of persons with epilepsy;  
4 establishment of programs in epilepsy control.--

5           (3) Revenue for statewide implementation of programs  
6 for epilepsy prevention and education pursuant to this section  
7 shall be derived pursuant to the provisions of s. 318.21(6)  
8 and shall be deposited in the Epilepsy Services Trust Fund,  
9 which is hereby established to be administered by the  
10 Department of Health. All funds deposited into the trust fund  
11 shall be invested pursuant to the provisions of s. 17.61 ~~s.~~  
12 ~~18.125~~. Interest income accruing to such invested funds shall  
13 increase the total funds available under this subsection.

14           Section 405. Subsection (5) of section 388.201,  
15 Florida Statutes, is amended to read:

16           388.201 District budgets; hearing.--

17           (5) County commissioners' mosquito and arthropod  
18 control budgets shall be made and adopted as prescribed by  
19 subsections (1) and (2); summary figures shall be incorporated  
20 into the county budgets as prescribed by the Department of  
21 Financial Services ~~Banking and Finance~~.

22           Section 406. Section 388.301, Florida Statutes, is  
23 amended to read:

24           388.301 Payment of state funds; supplies and  
25 services.--State funds shall be payable quarterly, in  
26 accordance with the rules of the department, upon requisition  
27 by the department to the Chief Financial Officer ~~Comptroller~~.  
28 The department is authorized to furnish insecticides,  
29 chemicals, materials, equipment, vehicles, and personnel in  
30 lieu of state funds where mass purchasing may save funds for  
31 the state, or where it would be more practical and economical

1 to use equipment, supplies, and services between two or more  
2 counties or districts.

3 Section 407. Subsection (3) of section 391.025,  
4 Florida Statutes, is amended to read:

5 391.025 Applicability and scope.--

6 (3) The Children's Medical Services program shall not  
7 be deemed an insurer and is not subject to the licensing  
8 requirements of the Florida Insurance Code or the rules  
9 adopted thereunder ~~of the Department of Insurance~~, when  
10 providing services to children who receive Medicaid benefits,  
11 other Medicaid-eligible children with special health care  
12 needs, and children participating in the Florida Kidcare  
13 program.

14 Section 408. Subsection (2) of section 391.221,  
15 Florida Statutes, is amended to read:

16 391.221 Statewide Children's Medical Services Network  
17 Advisory Council.--

18 (2) The council shall be composed of 12 members  
19 representing the private health care provider sector, families  
20 with children who have special health care needs, the Agency  
21 for Health Care Administration, the Office of Insurance  
22 Regulation of the Financial Services Commission ~~Department of~~  
23 ~~Insurance~~, the Florida Chapter of the American Academy of  
24 Pediatrics, an academic health center pediatric program, and  
25 the health insurance industry. Members shall be appointed for  
26 4-year, staggered terms. In no case shall an employee of the  
27 Department of Health serve as a member or as an ex officio  
28 member of the advisory council. A vacancy shall be filled for  
29 the remainder of the unexpired term in the same manner as the  
30 original appointment. A member may not be appointed to more  
31

1 than two consecutive terms. However, a member may be  
2 reappointed after being off the council for at least 2 years.

3 Section 409. Subsection (2) of section 392.69, Florida  
4 Statutes, is amended to read:

5 392.69 Appropriation, sinking, and maintenance trust  
6 funds; additional powers of the department.--

7 (2) All moneys required to be paid by the several  
8 counties and patients for the care and maintenance of patients  
9 hospitalized by the department for tuberculosis shall be paid  
10 to the department, and the department shall immediately  
11 transmit these moneys to the Chief Financial Officer  
12 ~~Treasurer~~, who shall deposit the moneys in the Operations and  
13 Maintenance Trust Fund, which shall contain all moneys  
14 appropriated by the Legislature or received from patients or  
15 other third parties and shall be expended for the operation  
16 and maintenance of the state-operated tuberculosis hospital.

17 Section 410. Subsection (5) of section 393.002,  
18 Florida Statutes, is amended to read:

19 393.002 Transfer of Florida Developmental Disabilities  
20 Council as formerly created in this chapter to private  
21 nonprofit corporation.--

22 (5) Pursuant to the applicable provisions of chapter  
23 284, the Division of Risk Management of the Department of  
24 Financial Services ~~Insurance~~ is authorized to insure this  
25 nonprofit corporation under the same general terms and  
26 conditions as the Florida Developmental Disabilities Council  
27 was insured in the Department of Children and Family Services  
28 by the division prior to the transfer of its functions  
29 authorized by this section.

30 Section 411. Subsection (2) of section 393.075,  
31 Florida Statutes, is amended to read:

1           393.075 General liability coverage.--

2           (2) The Division of Risk Management of the Department  
3 of Financial Services Insurance shall provide coverage through  
4 the Department of Children and Family Services to any person  
5 who owns or operates a foster care facility or group home  
6 facility solely for the Department of Children and Family  
7 Services, who cares for children placed by developmental  
8 services staff of the department, and who is licensed pursuant  
9 to s. 393.067 to provide such supervision and care in his or  
10 her place of residence. The coverage shall be provided from  
11 the general liability account of the State Risk Management  
12 Trust Fund. The coverage is limited to general liability  
13 claims arising from the provision of supervision and care of  
14 children in a foster care facility or group home facility  
15 pursuant to an agreement with the department and pursuant to  
16 guidelines established through policy, rule, or statute.  
17 Coverage shall be subject to the limits provided in ss. 284.38  
18 and 284.385, and the exclusions set forth therein, together  
19 with other exclusions as may be set forth in the certificate  
20 of coverage issued by the trust fund. A person covered under  
21 the general liability account pursuant to this subsection  
22 shall immediately notify the Division of Risk Management of  
23 the Department of Financial Services Insurance of any  
24 potential or actual claim.

25           Section 412. Section 394.482, Florida Statutes, is  
26 amended to read:

27           394.482 Payment of financial obligations imposed by  
28 compact.--The compact administrator, subject to the approval  
29 of the Chief Financial Officer ~~Comptroller~~, may make or  
30 arrange for any payments necessary to discharge any financial  
31

1 obligations imposed upon this state by the compact or by any  
2 supplementary agreement entered into thereunder.

3 Section 413. Paragraphs (a) and (c) of subsection (4)  
4 of section 400.0238, Florida Statutes, are amended to read:

5 400.0238 Punitive damages; limitation.--

6 (4) Notwithstanding any other law to the contrary, the  
7 amount of punitive damages awarded pursuant to this section  
8 shall be equally divided between the claimant and the Quality  
9 of Long-Term Care Facility Improvement Trust Fund, in  
10 accordance with the following provisions:

11 (a) The clerk of the court shall transmit a copy of  
12 the jury verdict to the Chief Financial Officer ~~State~~  
13 ~~Treasurer~~ by certified mail. In the final judgment, the court  
14 shall order the percentages of the award, payable as provided  
15 herein.

16 (c) The Department of Financial Services ~~Banking and~~  
17 ~~Finance~~ shall collect or cause to be collected all payments  
18 due the state under this section. Such payments are made to  
19 the Chief Financial Officer ~~Comptroller~~ and deposited in the  
20 appropriate fund specified in this subsection.

21 Section 414. Subsection (2) of section 400.063,  
22 Florida Statutes, is amended to read:

23 400.063 Resident Protection Trust Fund.--

24 (2) The agency is authorized to establish for each  
25 facility, subject to intervention by the agency, a separate  
26 bank account for the deposit to the credit of the agency of  
27 any moneys received from the Resident Protection Trust Fund or  
28 any other moneys received for the maintenance and care of  
29 residents in the facility, and the agency is authorized to  
30 disburse moneys from such account to pay obligations incurred  
31 for the purposes of this section. The agency is authorized to

1 requisition moneys from the Resident Protection Trust Fund in  
2 advance of an actual need for cash on the basis of an estimate  
3 by the agency of moneys to be spent under the authority of  
4 this section. Any bank account established under this section  
5 need not be approved in advance of its creation as required by  
6 s. 17.58 ~~s. 18.101~~, but shall be secured by depository  
7 insurance equal to or greater than the balance of such account  
8 or by the pledge of collateral security in conformance with  
9 criteria established in s. 18.11. The agency shall notify the  
10 Chief Financial Officer ~~Treasurer and the Comptroller~~ of any  
11 such account so established and shall make a quarterly  
12 accounting to the Chief Financial Officer ~~Comptroller~~ for all  
13 moneys deposited in such account.

14 Section 415. Paragraph (c) of subsection (4) of  
15 section 400.071, Florida Statutes, is amended to read:

16 400.071 Application for license.--

17 (4) Each applicant for licensure must comply with the  
18 following requirements:

19 (c) Proof of compliance with the level 2 background  
20 screening requirements of chapter 435 which has been submitted  
21 within the previous 5 years in compliance with any other  
22 health care or assisted living licensure requirements of this  
23 state is acceptable in fulfillment of paragraph (a). Proof of  
24 compliance with background screening which has been submitted  
25 within the previous 5 years to fulfill the requirements of the  
26 Financial Services Commission and the Office of Insurance  
27 Regulation ~~Department of Insurance~~ pursuant to chapter 651 as  
28 part of an application for a certificate of authority to  
29 operate a continuing care retirement community is acceptable  
30 in fulfillment of the Department of Law Enforcement and  
31 Federal Bureau of Investigation background check.

1           Section 416. Paragraph (b) of subsection (1) of  
2 section 400.4174, Florida Statutes, is amended to read:

3           400.4174 Background screening; exemptions.--

4           (1)

5           (b) Proof of compliance with level 2 screening  
6 standards which has been submitted within the previous 5 years  
7 to meet any facility or professional licensure requirements of  
8 the agency or the Department of Health satisfies the  
9 requirements of this subsection, provided that such proof is  
10 accompanied, under penalty of perjury, by an affidavit of  
11 compliance with the provisions of chapter 435. Proof of  
12 compliance with the background screening requirements of the  
13 Financial Services Commission and the Office of Insurance  
14 Regulation ~~Department of Insurance~~ for applicants for a  
15 certificate of authority to operate a continuing care  
16 retirement community under chapter 651, submitted within the  
17 last 5 years, satisfies the Department of Law Enforcement and  
18 Federal Bureau of Investigation portions of a level 2  
19 background check.

20           Section 417. Paragraphs (a) and (c) of subsection (4)  
21 of section 400.4298, Florida Statutes, are amended to read:

22           400.4298 Punitive damages; limitation.--

23           (4) Notwithstanding any other law to the contrary, the  
24 amount of punitive damages awarded pursuant to this section  
25 shall be equally divided between the claimant and the Quality  
26 of Long-Term Care Facility Improvement Trust Fund, in  
27 accordance with the following provisions:

28           (a) The clerk of the court shall transmit a copy of  
29 the jury verdict to the Chief Financial Officer ~~State~~  
30 ~~Treasurer~~ by certified mail. In the final judgment, the court

31

1 shall order the percentages of the award, payable as provided  
2 herein.

3 (c) The Department of Financial Services ~~Banking and~~  
4 ~~Finance~~ shall collect or cause to be collected all payments  
5 due the state under this section. Such payments are made to  
6 the Chief Financial Officer ~~Comptroller~~ and deposited in the  
7 appropriate fund specified in this subsection.

8 Section 418. Paragraph (c) of subsection (4) of  
9 section 400.471, Florida Statutes, is amended to read:

10 400.471 Application for license; fee; provisional  
11 license; temporary permit.--

12 (4) Each applicant for licensure must comply with the  
13 following requirements:

14 (c) Proof of compliance with the level 2 background  
15 screening requirements of chapter 435 which has been submitted  
16 within the previous 5 years in compliance with any other  
17 health care or assisted living licensure requirements of this  
18 state is acceptable in fulfillment of paragraph (a). Proof of  
19 compliance with background screening which has been submitted  
20 within the previous 5 years to fulfill the requirements of the  
21 Financial Services Commission and the Office of Insurance  
22 Regulation ~~Department of Insurance~~ pursuant to chapter 651 as  
23 part of an application for a certificate of authority to  
24 operate a continuing care retirement community is acceptable  
25 in fulfillment of the Department of Law Enforcement and  
26 Federal Bureau of Investigation background check.

27 Section 419. Paragraph (c) of subsection (10) of  
28 section 400.962, Florida Statutes, is amended to read:

29 400.962 License required; license application.--

30 (10)

31

1           (c) Proof of compliance with the level 2 background  
2 screening requirements of chapter 435 which has been submitted  
3 within the previous 5 years in compliance with any other  
4 licensure requirements under this chapter satisfies the  
5 requirements of paragraph (a). Proof of compliance with  
6 background screening which has been submitted within the  
7 previous 5 years to fulfill the requirements of the Financial  
8 Services Commission and the Office of Insurance Regulation  
9 ~~Department of Insurance~~ under chapter 651 as part of an  
10 application for a certificate of authority to operate a  
11 continuing care retirement community satisfies the  
12 requirements for the Department of Law Enforcement and Federal  
13 Bureau of Investigation background checks.

14           Section 420. Paragraph (b) of subsection (2) of  
15 section 401.245, Florida Statutes, is amended to read:

16           401.245 Emergency Medical Services Advisory Council.--

17           (2)

18           (b) Representation on the Emergency Medical Services  
19 Advisory Council shall include: two licensed physicians who  
20 are "medical directors" as defined in s. 401.23(15) or whose  
21 medical practice is closely related to emergency medical  
22 services; two emergency medical service administrators, one of  
23 whom is employed by a fire service; two certified paramedics,  
24 one of whom is employed by a fire service; two certified  
25 emergency medical technicians, one of whom is employed by a  
26 fire service; one emergency medical services educator; one  
27 emergency nurse; one hospital administrator; one  
28 representative of air ambulance services; one representative  
29 of a commercial ambulance operator; and two laypersons who are  
30 in no way connected with emergency medical services, one of  
31 whom is a representative of the elderly. Ex officio members of

1 the advisory council from state agencies shall include, but  
2 shall not be limited to, representatives from the Department  
3 of Education, the Department of Management Services, the  
4 Office of Insurance Regulation of the Financial Services  
5 Commission ~~Department of Insurance~~, the Department of Highway  
6 Safety and Motor Vehicles, the Department of Transportation,  
7 and the Department of Community Affairs.

8 Section 421. Paragraph (c) of subsection (2) of  
9 section 401.25, Florida Statutes, is amended to read:

10 401.25 Licensure as a basic life support or an  
11 advanced life support service.--

12 (2) The department shall issue a license for operation  
13 to any applicant who complies with the following requirements:

14 (c) The applicant has furnished evidence of adequate  
15 insurance coverage for claims arising out of injury to or  
16 death of persons and damage to the property of others  
17 resulting from any cause for which the owner of such business  
18 or service would be liable. The applicant must provide  
19 insurance in such sums and under such terms as required by the  
20 department. In lieu of such insurance, the applicant may  
21 furnish a certificate of self-insurance evidencing that the  
22 applicant has established an adequate self-insurance plan to  
23 cover such risks and that the plan has been approved by the  
24 Office of Insurance Regulation of the Financial Services  
25 Commission ~~Department of Insurance~~.

26 Section 422. Section 402.04, Florida Statutes, is  
27 amended to read:

28 402.04 Award of scholarships and stipends;  
29 disbursement of funds; administration.--The award of  
30 scholarships or stipends provided for herein shall be made by  
31 the Department of Children and Family Services, hereinafter

1 referred to as the department. The department shall handle the  
2 administration of the scholarship or stipend and the  
3 Department of Education shall, for and on behalf of the  
4 department, handle the notes issued for the payment of the  
5 scholarships or stipends provided for herein and the  
6 collection of same. The department shall prescribe  
7 regulations governing the payment of scholarships or stipends  
8 to the school, college, or university for the benefit of the  
9 scholarship or stipend holders. All scholarship awards,  
10 expenses and costs of administration shall be paid from moneys  
11 appropriated by the Legislature and shall be paid upon  
12 vouchers approved by the department and properly certified by  
13 the Chief Financial Officer ~~Comptroller~~.

14 Section 423. Paragraph (b) of subsection (1) and  
15 subsection (4) of section 402.17, Florida Statutes, are  
16 amended to read:

17 402.17 Claims for care and maintenance; trust  
18 property.--The Department of Children and Family Services  
19 shall protect the financial interest of the state with respect  
20 to claims which the state may have for the care and  
21 maintenance of clients of the department. The department  
22 shall, as trustee, hold in trust and administer money of  
23 clients and property designated for the personal benefit of  
24 clients. The department shall act as trustee of clients' money  
25 and property entrusted to it in accordance with the usual  
26 fiduciary standards applicable generally to trustees, and  
27 shall act to protect both the short-term and long-term  
28 interests of the clients for whose benefit it is holding such  
29 money and property.

30 (1) CLAIMS FOR CARE AND MAINTENANCE.--

31

1           (b) The Department of Children and Family Services may  
2 charge off accounts if it certifies that the accounts are  
3 uncollectible after diligent efforts have been made to collect  
4 them. If the department certifies an account to the  
5 Department of Financial Services ~~Banking and Finance~~, setting  
6 forth the circumstances upon which it predicates the  
7 uncollectibility, and if, pursuant to s. 17.04, the Department  
8 of Financial Services ~~Banking and Finance~~ concurs, the account  
9 shall be charged off.

10           (4) DISPOSITION OF UNCLAIMED TRUST FUNDS.--Upon the  
11 death of any client affected by the provisions of this  
12 section, any unclaimed money held in trust by the department  
13 or by the Chief Financial Officer ~~Treasurer~~ for him or her  
14 shall be applied first to the payment of any unpaid claim of  
15 the state against the client, and any balance remaining  
16 unclaimed for a period of 1 year shall escheat to the state as  
17 unclaimed funds held by fiduciaries.

18           Section 424. Paragraph (a) of subsection (8) of  
19 section 402.33, Florida Statutes, is amended to read:

20           402.33 Department authority to charge fees for  
21 services provided.--

22           (8)(a) Unpaid fees for services provided by the  
23 department to a client constitute a lien on any property owned  
24 by the client or the client's responsible party which property  
25 is not exempt by s. 4, Art. X of the State Constitution. If  
26 fees are not paid within 6 months after they are billed, the  
27 department shall charge interest on the unpaid balance at a  
28 rate equal to the average rate of interest earned by the State  
29 Treasury on state funds deposited in commercial banks as  
30 reported by the Chief Financial Officer ~~Treasurer~~ for the  
31 previous year. The department is authorized to negotiate and

1 settle any delinquent account, and to charge off any  
2 delinquent account even though the claim of the department may  
3 be against the client, a responsible party, or a payor of  
4 third-party benefits, either directly for the department or as  
5 a fiduciary for the client or responsible party.

6 Section 425. Paragraph (a) of subsection (8) of  
7 section 403.1835, Florida Statutes, is amended to read:

8 403.1835 Water pollution control financial  
9 assistance.--

10 (8)(a) If a local governmental agency becomes  
11 delinquent on its loan, the department shall so certify to the  
12 Chief Financial Officer ~~Comptroller~~, who shall forward the  
13 amount delinquent to the department from any unobligated funds  
14 due to the local governmental agency under any revenue-sharing  
15 or tax-sharing fund established by the state, except as  
16 otherwise provided by the State Constitution. Certification of  
17 delinquency shall not limit the department from pursuing other  
18 remedies available for default on a loan. The department may  
19 impose a penalty for delinquent loan payments in an amount not  
20 to exceed an interest rate of 18 percent per annum on the  
21 amount due in addition to charging the cost to handle and  
22 process the debt. Penalty interest shall accrue on any amount  
23 due and payable beginning on the 30th day following the date  
24 upon which payment is due.

25 Section 426. Subsection (2) of section 403.1837,  
26 Florida Statutes, is amended to read:

27 403.1837 Florida Water Pollution Control Financing  
28 Corporation.--

29 (2) The corporation shall be governed by a board of  
30 directors consisting of the Governor's Budget Director or the  
31 budget director's designee, the Chief Financial Officer

1 ~~Comptroller~~ or the Chief Financial Officer's ~~Comptroller's~~  
2 designee, ~~the Treasurer or the Treasurer's designee,~~ and the  
3 Secretary of Environmental Protection or the secretary's  
4 designee, ~~until January 7, 2003, at which time the board shall~~  
5 ~~include the Chief Financial Officer or the Chief Financial~~  
6 ~~Officer's designee in place of the Treasurer and Comptroller.~~  
7 The executive director of the State Board of Administration  
8 shall be the chief executive officer of the corporation; shall  
9 direct and supervise the administrative affairs of the  
10 corporation; and shall control, direct, and supervise  
11 operation of the corporation. The corporation shall have such  
12 other officers as may be determined by the board of directors.

13 Section 427. Subsection (20) of section 403.706,  
14 Florida Statutes, is amended to read:

15 403.706 Local government solid waste  
16 responsibilities.--

17 (20) In addition to any other penalties provided by  
18 law, a local government that does not comply with the  
19 requirements of subsections (2) and (4) shall not be eligible  
20 for grants from the Solid Waste Management Trust Fund, and the  
21 department may notify the Chief Financial Officer ~~State~~  
22 ~~Treasurer~~ to withhold payment of all or a portion of funds  
23 payable to the local government by the department from the  
24 General Revenue Fund or by the department from any other state  
25 fund, to the extent not pledged to retire bonded indebtedness,  
26 unless the local government demonstrates that good faith  
27 efforts to meet the requirements of subsections (2) and (4)  
28 have been made or that the funds are being or will be used to  
29 finance the correction of a pollution control problem that  
30 spans jurisdictional boundaries.

31

1           Section 428. Subsection (3) of section 403.724,  
2 Florida Statutes, is amended to read:

3           403.724 Financial responsibility.--

4           (3) The amount of financial responsibility required  
5 shall be approved by the department upon each issuance,  
6 renewal, or modification of a hazardous waste facility permit.  
7 Such factors as inflation rates and changes in operation may  
8 be considered when approving financial responsibility for the  
9 duration of the permit. The Office of Insurance Regulation of  
10 the Financial Services Commission ~~Department of Insurance~~  
11 shall be available to assist the department in making this  
12 determination. In approving or modifying the amount of  
13 financial responsibility, the department shall consider:

14           (a) The amount and type of hazardous waste involved;

15           (b) The probable damage to human health and the  
16 environment;

17           (c) The danger and probable damage to private and  
18 public property near the facility;

19           (d) The probable time that the hazardous waste and  
20 facility involved will endanger the public health, safety, and  
21 welfare or the environment; and

22           (e) The probable costs of properly closing the  
23 facility.

24           Section 429. Paragraph (a) of subsection (15) of  
25 section 403.8532, Florida Statutes, is amended to read:

26           403.8532 Drinking water state revolving loan fund;  
27 use; rules.--

28           (15)(a) If a local governmental agency defaults under  
29 the terms of its loan agreement, the department shall so  
30 certify to the Chief Financial Officer ~~Comptroller~~, who shall  
31 forward the amount delinquent to the department from any

1 unobligated funds due to the local governmental agency under  
2 any revenue-sharing or tax-sharing fund established by the  
3 state, except as otherwise provided by the State Constitution.  
4 Certification of delinquency shall not limit the department  
5 from pursuing other remedies available for default on a loan,  
6 including accelerating loan repayments, eliminating all or  
7 part of the interest rate subsidy on the loan, and court  
8 appointment of a receiver to manage the public water system.

9 Section 430. Paragraphs (a), (b), (c), and (e) of  
10 subsection (2) of section 404.111, Florida Statutes, are  
11 amended to read:

12 404.111 Surety requirements.--

13 (2) In lieu of posting a bond as required under  
14 subsection (1), a licensee may:

15 (a) Deposit with the Chief Financial Officer ~~Treasurer~~  
16 securities of the type eligible for deposit by insurers under  
17 s. 625.52, which securities must have at all times a market  
18 value of not less than the amount of the bond required under  
19 subsection (1).

20 (b) Whenever the market value of the securities  
21 deposited with the Chief Financial Officer ~~Treasurer~~ is less  
22 than 95 percent of the amount required by the department, the  
23 licensee shall deposit additional securities or otherwise  
24 increase the deposit to the amount required.

25 (c) The state is responsible for the safekeeping of  
26 all securities deposited with the Chief Financial Officer  
27 ~~Treasurer~~ under this section. Such securities are not, on  
28 account of being in this state, subject to taxation but shall  
29 be held exclusively and solely to guarantee the faithful  
30 performance by the licensee of its obligations.

31

1           (e) Such deposit shall be maintained unimpaired so  
2 long as the licensee continues in business in this state.  
3 Whenever the licensee ceases to do business in this state and  
4 furnishes the department satisfactory proof that it has  
5 discharged or otherwise adequately provided for all its  
6 obligations in this state, the Chief Financial Officer  
7 ~~Treasurer~~ shall release the deposit securities to the parties  
8 entitled thereto, on the receipt of authorization from the  
9 department.

10           Section 431. Subsection (2) of section 406.58, Florida  
11 Statutes, is amended to read:

12           406.58 Fees; authority to accept additional funds;  
13 annual audit.--

14           (2) The anatomical board is hereby empowered to  
15 receive money from public or private sources in addition to  
16 the fees collected from the institution or association to  
17 which the bodies are distributed to be used to defray the  
18 costs of embalming, handling, shipping, storage, cremation,  
19 and other costs relating to the obtaining and use of such  
20 bodies as described in this chapter; the anatomical board is  
21 empowered to pay the reasonable expenses incurred by any  
22 person delivering the bodies as described in this chapter to  
23 the anatomical board and is further empowered to enter into  
24 contracts and perform such other acts as are necessary to the  
25 proper performance of its duties; a complete record of all  
26 fees and other financial transactions of said anatomical board  
27 shall be kept and audited annually by the Department of  
28 Financial Services ~~Banking and Finance~~, and a report of such  
29 audit shall be made annually to the University of Florida.

30           Section 432. Paragraph (b) of subsection (2) of  
31 section 408.040, Florida Statutes, is amended to read:

1           408.040 Conditions and monitoring.--

2           (2)

3           (b) A certificate of need issued to an applicant  
4 holding a provisional certificate of authority under chapter  
5 651 shall terminate 1 year after the applicant receives a  
6 valid certificate of authority from the Office of Insurance  
7 Regulation of the Financial Services Commission ~~Department of~~  
8 ~~Insurance.~~

9           Section 433. Paragraph (a) of subsection (8) of  
10 section 408.05, Florida Statutes, is amended to read:

11           408.05 State Center for Health Statistics.--

12           (8) STATE COMPREHENSIVE HEALTH INFORMATION SYSTEM  
13 ADVISORY COUNCIL.--

14           (a) There is established in the agency the State  
15 Comprehensive Health Information System Advisory Council to  
16 assist the center in reviewing the comprehensive health  
17 information system and to recommend improvements for such  
18 system. The council shall consist of the following members:

19           1. An employee of the Executive Office of the  
20 Governor, to be appointed by the Governor.

21           2. An employee of the Department of Financial Services  
22 ~~Department of Insurance~~, to be appointed by the Chief  
23 Financial Officer ~~Insurance Commissioner.~~

24           3. An employee of the Department of Education, to be  
25 appointed by the Commissioner of Education.

26           4. Ten persons, to be appointed by the Secretary of  
27 Health Care Administration, representing other state and local  
28 agencies, state universities, the Florida Association of  
29 Business/Health Coalitions, local health councils,  
30 professional health-care-related associations, consumers, and  
31 purchasers.

1           Section 434. Subsection (4) of section 408.08, Florida  
2 Statutes, is amended to read:

3           408.08 Inspections and audits; violations; penalties;  
4 fines; enforcement.--

5           (4) If a health insurer does not comply with the  
6 requirements of s. 408.061, the agency shall report a health  
7 insurer's failure to comply to the Office of Insurance  
8 Regulation of the Financial Services Commission ~~Department of~~  
9 ~~Insurance~~, which shall take into account the failure by the  
10 health insurer to comply in conjunction with its approval  
11 authority under s. 627.410. The agency shall adopt any rules  
12 necessary to carry out its responsibilities required by this  
13 subsection.

14           Section 435. Paragraph (a) of subsection (4) and  
15 subsection (9) of section 408.18, Florida Statutes, are  
16 amended to read:

17           408.18 Health Care Community Antitrust Guidance Act;  
18 antitrust no-action letter; market-information collection and  
19 education.--

20           (4)(a) Members of the health care community who seek  
21 antitrust guidance may request a review of their proposed  
22 business activity by the Attorney General's office. In  
23 conducting its review, the Attorney General's office may seek  
24 whatever documentation, data, or other material it deems  
25 necessary from the Agency for Health Care Administration, the  
26 State Center for Health Statistics, and the Office of  
27 Insurance Regulation of the Financial Services Commission  
28 ~~Department of Insurance~~.

29           (9) When the member of the health care community  
30 seeking the no-action letter is regulated by the Office of  
31 Insurance Regulation ~~Department of Insurance~~, the office

1 ~~Department of Insurance~~ shall make available to the Attorney  
2 General's office, as needed, any information it maintains in  
3 its regulatory capacity.

4 Section 436. Subsection (1) of section 408.50, Florida  
5 Statutes, is amended to read:

6 408.50 Prospective payment arrangements.--

7 (1) Hospitals as defined in s. 395.002, and health  
8 insurers regulated pursuant to parts VI and VII of chapter  
9 627, shall establish prospective payment arrangements that  
10 provide hospitals with financial incentives to contain costs.  
11 Each hospital shall enter into a rate agreement with each  
12 health insurer which represents 10 percent or more of the  
13 private-pay patients of the hospital to establish a  
14 prospective payment arrangement. Hospitals and health insurers  
15 regulated pursuant to this section shall report annually the  
16 results of each specific prospective payment arrangement  
17 adopted by each hospital and health insurer to the board. The  
18 agency shall report a health insurer's failure to comply to  
19 the Office of Insurance Regulation of the Financial Services  
20 Commission ~~Department of Insurance~~, which shall take into  
21 account the failure by the health insurer to comply in  
22 conjunction with its approval authority under s. 627.410. The  
23 agency shall adopt any rules necessary to carry out its  
24 responsibilities required by this section.

25 Section 437. Section 408.7056, Florida Statutes, is  
26 amended to read:

27 408.7056 Statewide Provider and Subscriber Assistance  
28 Program.--

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

30 (a) "Agency" means the Agency for Health Care  
31 Administration.

1           ~~(b)~~ "~~Department~~" ~~means the Department of Insurance.~~

2           **(b)**~~(c)~~ "Grievance procedure" means an established set  
3 of rules that specify a process for appeal of an  
4 organizational decision.

5           **(c)**~~(d)~~ "Health care provider" or "provider" means a  
6 state-licensed or state-authorized facility, a facility  
7 principally supported by a local government or by funds from a  
8 charitable organization that holds a current exemption from  
9 federal income tax under s. 501(c)(3) of the Internal Revenue  
10 Code, a licensed practitioner, a county health department  
11 established under part I of chapter 154, a prescribed  
12 pediatric extended care center defined in s. 400.902, a  
13 federally supported primary care program such as a migrant  
14 health center or a community health center authorized under s.  
15 329 or s. 330 of the United States Public Health Services Act  
16 that delivers health care services to individuals, or a  
17 community facility that receives funds from the state under  
18 the Community Alcohol, Drug Abuse, and Mental Health Services  
19 Act and provides mental health services to individuals.

20           **(d)**~~(e)~~ "Managed care entity" means a health  
21 maintenance organization or a prepaid health clinic certified  
22 under chapter 641, a prepaid health plan authorized under s.  
23 409.912, or an exclusive provider organization certified under  
24 s. 627.6472.

25           **(e)** "Office" means the Office of Insurance Regulation  
26 of the Financial Services Commission.

27           **(f)** "Panel" means a statewide provider and subscriber  
28 assistance panel selected as provided in subsection (11).

29           **(2)** The agency shall adopt and implement a program to  
30 provide assistance to subscribers and providers, including  
31 those whose grievances are not resolved by the managed care

1 entity to the satisfaction of the subscriber or provider. The  
2 program shall consist of one or more panels that meet as often  
3 as necessary to timely review, consider, and hear grievances  
4 and recommend to the agency or the office ~~department~~ any  
5 actions that should be taken concerning individual cases heard  
6 by the panel. The panel shall hear every grievance filed by  
7 subscribers and providers on behalf of subscribers, unless the  
8 grievance:

9 (a) Relates to a managed care entity's refusal to  
10 accept a provider into its network of providers;

11 (b) Is part of an internal grievance in a Medicare  
12 managed care entity or a reconsideration appeal through the  
13 Medicare appeals process which does not involve a quality of  
14 care issue;

15 (c) Is related to a health plan not regulated by the  
16 state such as an administrative services organization,  
17 third-party administrator, or federal employee health benefit  
18 program;

19 (d) Is related to appeals by in-plan suppliers and  
20 providers, unless related to quality of care provided by the  
21 plan;

22 (e) Is part of a Medicaid fair hearing pursued under  
23 42 C.F.R. ss. 431.220 et seq.;

24 (f) Is the basis for an action pending in state or  
25 federal court;

26 (g) Is related to an appeal by nonparticipating  
27 providers, unless related to the quality of care provided to a  
28 subscriber by the managed care entity and the provider is  
29 involved in the care provided to the subscriber;

30 (h) Was filed before the subscriber or provider  
31 completed the entire internal grievance procedure of the

1 managed care entity, the managed care entity has complied with  
2 its timeframes for completing the internal grievance  
3 procedure, and the circumstances described in subsection (6)  
4 do not apply;

5 (i) Has been resolved to the satisfaction of the  
6 subscriber or provider who filed the grievance, unless the  
7 managed care entity's initial action is egregious or may be  
8 indicative of a pattern of inappropriate behavior;

9 (j) Is limited to seeking damages for pain and  
10 suffering, lost wages, or other incidental expenses, including  
11 accrued interest on unpaid balances, court costs, and  
12 transportation costs associated with a grievance procedure;

13 (k) Is limited to issues involving conduct of a health  
14 care provider or facility, staff member, or employee of a  
15 managed care entity which constitute grounds for disciplinary  
16 action by the appropriate professional licensing board and is  
17 not indicative of a pattern of inappropriate behavior, and the  
18 agency or office ~~department~~ has reported these grievances to  
19 the appropriate professional licensing board or to the health  
20 facility regulation section of the agency for possible  
21 investigation; or

22 (l) Is withdrawn by the subscriber or provider.  
23 Failure of the subscriber or the provider to attend the  
24 hearing shall be considered a withdrawal of the grievance.

25 (3) The agency shall review all grievances within 60  
26 days after receipt and make a determination whether the  
27 grievance shall be heard. Once the agency notifies the panel,  
28 the subscriber or provider, and the managed care entity that a  
29 grievance will be heard by the panel, the panel shall hear the  
30 grievance either in the network area or by teleconference no  
31 later than 120 days after the date the grievance was filed.

1 The agency shall notify the parties, in writing, by facsimile  
2 transmission, or by phone, of the time and place of the  
3 hearing. The panel may take testimony under oath, request  
4 certified copies of documents, and take similar actions to  
5 collect information and documentation that will assist the  
6 panel in making findings of fact and a recommendation. The  
7 panel shall issue a written recommendation, supported by  
8 findings of fact, to the provider or subscriber, to the  
9 managed care entity, and to the agency or the office  
10 ~~department~~ no later than 15 working days after hearing the  
11 grievance. If at the hearing the panel requests additional  
12 documentation or additional records, the time for issuing a  
13 recommendation is tolled until the information or  
14 documentation requested has been provided to the panel. The  
15 proceedings of the panel are not subject to chapter 120.

16 (4) If, upon receiving a proper patient authorization  
17 along with a properly filed grievance, the agency requests  
18 medical records from a health care provider or managed care  
19 entity, the health care provider or managed care entity that  
20 has custody of the records has 10 days to provide the records  
21 to the agency. Failure to provide requested medical records  
22 may result in the imposition of a fine of up to \$500. Each  
23 day that records are not produced is considered a separate  
24 violation.

25 (5) Grievances that the agency determines pose an  
26 immediate and serious threat to a subscriber's health must be  
27 given priority over other grievances. The panel may meet at  
28 the call of the chair to hear the grievances as quickly as  
29 possible but no later than 45 days after the date the  
30 grievance is filed, unless the panel receives a waiver of the  
31 time requirement from the subscriber. The panel shall issue a

1 written recommendation, supported by findings of fact, to the  
2 office ~~department~~ or the agency within 10 days after hearing  
3 the expedited grievance.

4 (6) When the agency determines that the life of a  
5 subscriber is in imminent and emergent jeopardy, the chair of  
6 the panel may convene an emergency hearing, within 24 hours  
7 after notification to the managed care entity and to the  
8 subscriber, to hear the grievance. The grievance must be  
9 heard notwithstanding that the subscriber has not completed  
10 the internal grievance procedure of the managed care entity.  
11 The panel shall, upon hearing the grievance, issue a written  
12 emergency recommendation, supported by findings of fact, to  
13 the managed care entity, to the subscriber, and to the agency  
14 or the office ~~department~~ for the purpose of deferring the  
15 imminent and emergent jeopardy to the subscriber's life.  
16 Within 24 hours after receipt of the panel's emergency  
17 recommendation, the agency or office ~~department~~ may issue an  
18 emergency order to the managed care entity. An emergency order  
19 remains in force until:

20 (a) The grievance has been resolved by the managed  
21 care entity;

22 (b) Medical intervention is no longer necessary; or

23 (c) The panel has conducted a full hearing under  
24 subsection (3) and issued a recommendation to the agency or  
25 the office ~~department~~, and the agency or office ~~department~~ has  
26 issued a final order.

27 (7) After hearing a grievance, the panel shall make a  
28 recommendation to the agency or the office ~~department~~ which  
29 may include specific actions the managed care entity must take  
30 to comply with state laws or rules regulating managed care  
31 entities.

1           (8) A managed care entity, subscriber, or provider  
2 that is affected by a panel recommendation may within 10 days  
3 after receipt of the panel's recommendation, or 72 hours after  
4 receipt of a recommendation in an expedited grievance, furnish  
5 to the agency or office ~~department~~ written evidence in  
6 opposition to the recommendation or findings of fact of the  
7 panel.

8           (9) No later than 30 days after the issuance of the  
9 panel's recommendation and, for an expedited grievance, no  
10 later than 10 days after the issuance of the panel's  
11 recommendation, the agency or the office ~~department~~ may adopt  
12 the panel's recommendation or findings of fact in a proposed  
13 order or an emergency order, as provided in chapter 120, which  
14 it shall issue to the managed care entity. The agency or  
15 office ~~department~~ may issue a proposed order or an emergency  
16 order, as provided in chapter 120, imposing fines or  
17 sanctions, including those contained in ss. 641.25 and 641.52.  
18 The agency or the office ~~department~~ may reject all or part of  
19 the panel's recommendation. All fines collected under this  
20 subsection must be deposited into the Health Care Trust Fund.

21           (10) In determining any fine or sanction to be  
22 imposed, the agency and the office ~~department~~ may consider the  
23 following factors:

24           (a) The severity of the noncompliance, including the  
25 probability that death or serious harm to the health or safety  
26 of the subscriber will result or has resulted, the severity of  
27 the actual or potential harm, and the extent to which  
28 provisions of chapter 641 were violated.

29           (b) Actions taken by the managed care entity to  
30 resolve or remedy any quality-of-care grievance.

31

1 (c) Any previous incidents of noncompliance by the  
2 managed care entity.

3 (d) Any other relevant factors the agency or office  
4 ~~department~~ considers appropriate in a particular grievance.

5 (11) The panel shall consist of members employed by  
6 the agency, ~~and~~ members employed by the office department, and  
7 members employed by the Department of Financial Services,  
8 chosen by their respective agencies; a consumer appointed by  
9 the Governor; a physician appointed by the Governor, as a  
10 standing member; and physicians who have expertise relevant to  
11 the case to be heard, on a rotating basis. The agency may  
12 contract with a medical director and a primary care physician  
13 who shall provide additional technical expertise to the panel.  
14 The medical director shall be selected from a health  
15 maintenance organization with a current certificate of  
16 authority to operate in Florida.

17 (12) Every managed care entity shall submit a  
18 quarterly report to the agency and the office department  
19 listing the number and the nature of all subscribers' and  
20 providers' grievances which have not been resolved to the  
21 satisfaction of the subscriber or provider after the  
22 subscriber or provider follows the entire internal grievance  
23 procedure of the managed care entity. The agency shall notify  
24 all subscribers and providers included in the quarterly  
25 reports of their right to file an unresolved grievance with  
26 the panel.

27 (13) Any information which would identify a subscriber  
28 or the spouse, relative, or guardian of a subscriber and which  
29 is contained in a report obtained by the office ~~Department of~~  
30 ~~Insurance~~ pursuant to this section is confidential and exempt  
31

1 from the provisions of s. 119.07(1) and s. 24(a), Art. I of  
2 the State Constitution.

3 (14) A proposed order issued by the agency or office  
4 ~~department~~ which only requires the managed care entity to take  
5 a specific action under subsection (7) is subject to a summary  
6 hearing in accordance with s. 120.574, unless all of the  
7 parties agree otherwise. If the managed care entity does not  
8 prevail at the hearing, the managed care entity must pay  
9 reasonable costs and attorney's fees of the agency or the  
10 office ~~department~~ incurred in that proceeding.

11 (15)(a) Any information which would identify a  
12 subscriber or the spouse, relative, or guardian of a  
13 subscriber which is contained in a document, report, or record  
14 prepared or reviewed by the panel or obtained by the agency  
15 pursuant to this section is confidential and exempt from the  
16 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
17 Constitution.

18 (b) Meetings of the panel shall be open to the public  
19 unless the provider or subscriber whose grievance will be  
20 heard requests a closed meeting or the agency or the office  
21 ~~Department of Insurance~~ determines that information of a  
22 sensitive personal nature which discloses the subscriber's  
23 medical treatment or history; or information which constitutes  
24 a trade secret as defined by s. 812.081; or information  
25 relating to internal risk management programs as defined in s.  
26 641.55(5)(c), (6), and (8) may be revealed at the panel  
27 meeting, in which case that portion of the meeting during  
28 which such sensitive personal information, trade secret  
29 information, or internal risk management program information  
30 is discussed shall be exempt from the provisions of s. 286.011

31

1 and s. 24(b), Art. I of the State Constitution. All closed  
2 meetings shall be recorded by a certified court reporter.

3

4 This subsection is subject to the Open Government Sunset  
5 Review Act of 1995 in accordance with s. 119.15, and shall  
6 stand repealed on October 2, 2003, unless reviewed and saved  
7 from repeal through reenactment by the Legislature.

8 Section 438. Subsection (1) of section 408.902,  
9 Florida Statutes, is amended to read:

10 408.902 MedAccess program; creation; program title.--

11 (1) Effective July 1, 1994, there is hereby created  
12 the MedAccess program to be administered by the Agency for  
13 Health Care Administration. The MedAccess program shall not  
14 be subject to the requirements of the Office of Insurance  
15 Regulation of the Financial Services Commission ~~Department of~~  
16 ~~Insurance~~ or chapter 627. The secretary of the agency shall  
17 appoint an administrator of the MedAccess program.

18 Section 439. Paragraph (b) of subsection (2) and  
19 subsections (3), (6), and (9) of section 408.909, Florida  
20 Statutes, are amended to read:

21 408.909 Health flex plans.--

22 (2) DEFINITIONS.--As used in this section, the term:

23 (b) "Office" means the Office of Insurance Regulation  
24 of the Financial Services Commission ~~"Department"~~ ~~means the~~  
25 ~~Department of Insurance~~.

26 (3) PILOT PROGRAM.--The agency and the office  
27 ~~department~~ shall each approve or disapprove health flex plans  
28 that provide health care coverage for eligible participants  
29 who reside in the three areas of the state that have the  
30 highest number of uninsured persons, as identified in the  
31 Florida Health Insurance Study conducted by the agency and in

1 Indian River County. A health flex plan may limit or exclude  
2 benefits otherwise required by law for insurers offering  
3 coverage in this state, may cap the total amount of claims  
4 paid per year per enrollee, may limit the number of enrollees,  
5 or may take any combination of those actions.

6 (a) The agency shall develop guidelines for the review  
7 of applications for health flex plans and shall disapprove or  
8 withdraw approval of plans that do not meet or no longer meet  
9 minimum standards for quality of care and access to care.

10 (b) The office ~~department~~ shall develop guidelines for  
11 the review of health flex plan applications and shall  
12 disapprove or shall withdraw approval of plans that:

13 1. Contain any ambiguous, inconsistent, or misleading  
14 provisions or any exceptions or conditions that deceptively  
15 affect or limit the benefits purported to be assumed in the  
16 general coverage provided by the health flex plan;

17 2. Provide benefits that are unreasonable in relation  
18 to the premium charged or contain provisions that are unfair  
19 or inequitable or contrary to the public policy of this state,  
20 that encourage misrepresentation, or that result in unfair  
21 discrimination in sales practices; or

22 3. Cannot demonstrate that the health flex plan is  
23 financially sound and that the applicant is able to underwrite  
24 or finance the health care coverage provided.

25 (c) The agency and the Financial Services Commission  
26 ~~department~~ may adopt rules as needed to administer this  
27 section.

28 (6) RECORDS.--Each health flex plan shall maintain  
29 enrollment data and reasonable records of its losses,  
30 expenses, and claims experience and shall make those records  
31 reasonably available to enable the office ~~department~~ to

1 monitor and determine the financial viability of the health  
2 flex plan, as necessary. Provider networks and total  
3 enrollment by area shall be reported to the agency biannually  
4 to enable the agency to monitor access to care.

5 (9) PROGRAM EVALUATION.--The agency and the office  
6 ~~department~~ shall evaluate the pilot program and its effect on  
7 the entities that seek approval as health flex plans, on the  
8 number of enrollees, and on the scope of the health care  
9 coverage offered under a health flex plan; shall provide an  
10 assessment of the health flex plans and their potential  
11 applicability in other settings; and shall, by January 1,  
12 2004, jointly submit a report to the Governor, the President  
13 of the Senate, and the Speaker of the House of  
14 Representatives.

15 Section 440. Paragraph (f) of subsection (6) and  
16 paragraph (a) of subsection (15) of section 409.175, Florida  
17 Statutes, are amended to read:

18 409.175 Licensure of family foster homes, residential  
19 child-caring agencies, and child-placing agencies.--

20 (6)

21 (f) All residential child-caring agencies must meet  
22 firesafety standards for such agencies adopted by the Division  
23 of State Fire Marshal of the Department of Financial Services  
24 ~~Insurance~~ and must be inspected annually. At the request of  
25 the department, firesafety inspections shall be conducted by  
26 the Division of State Fire Marshal or a local fire department  
27 official who has been certified by the division as having  
28 completed the training requirements for persons inspecting  
29 such agencies. Inspection reports shall be furnished to the  
30 department within 30 days of a request.

31

1           (15)(a) The Division of Risk Management of the  
2 Department of Financial Services ~~Insurance~~ shall provide  
3 coverage through the Department of Children and Family  
4 Services to any person who owns or operates a family foster  
5 home solely for the Department of Children and Family Services  
6 and who is licensed to provide family foster home care in her  
7 or his place of residence. The coverage shall be provided  
8 from the general liability account of the State Risk  
9 Management Trust Fund, and the coverage shall be primary. The  
10 coverage is limited to general liability claims arising from  
11 the provision of family foster home care pursuant to an  
12 agreement with the department and pursuant to guidelines  
13 established through policy, rule, or statute. Coverage shall  
14 be limited as provided in ss. 284.38 and 284.385, and the  
15 exclusions set forth therein, together with other exclusions  
16 as may be set forth in the certificate of coverage issued by  
17 the trust fund, shall apply. A person covered under the  
18 general liability account pursuant to this subsection shall  
19 immediately notify the Division of Risk Management of the  
20 Department of Financial Services ~~Insurance~~ of any potential or  
21 actual claim.

22           Section 441. Subsection (10) of section 409.25656,  
23 Florida Statutes, is amended to read:

24           409.25656 Garnishment.--

25           (10) The department shall provide notice to the Chief  
26 Financial Officer ~~Comptroller~~, in electronic or other form  
27 specified by the Chief Financial Officer ~~Comptroller~~, listing  
28 the obligors for whom warrants are outstanding. Pursuant to  
29 subsection (1), the Chief Financial Officer ~~Comptroller~~ shall,  
30 upon notice from the department, withhold all payments to any  
31 obligor who provides commodities or services to the state,

1 leases real property to the state, or constructs a public  
2 building or public work for the state. The department may levy  
3 upon the withheld payments in accordance with subsection (3).  
4 Section 215.422 does not apply from the date the notice is  
5 filed with the Chief Financial Officer ~~Comptroller~~ until the  
6 date the department notifies the Chief Financial Officer  
7 ~~Comptroller~~ of its consent to make payment to the person or 60  
8 days after receipt of the department's notice in accordance  
9 with subsection (1), whichever occurs earlier.

10 Section 442. Subsections (1), (2), (3), and (4) of  
11 section 409.25658, Florida Statutes, are amended to read:

12 409.25658 Use of unclaimed property for past due  
13 support.--

14 (1) In a joint effort to facilitate the collection and  
15 payment of past due support, the Department of Revenue, in  
16 cooperation with the Department of Financial Services ~~Banking~~  
17 ~~and Finance~~, shall identify persons owing support collected  
18 through a court who are presumed to have unclaimed property  
19 held by the Department of Financial Services ~~Banking and~~  
20 ~~Finance~~.

21 (2) The department shall periodically provide the  
22 Department of Financial Services ~~Banking and Finance~~ with an  
23 electronic file of support obligors who owe past due support.  
24 The Department of Financial Services ~~Banking and Finance~~ shall  
25 conduct a data match of the file against all apparent owners  
26 of unclaimed property under chapter 717 and provide the  
27 resulting match list to the department.

28 (3) Upon receipt of the data match list, the  
29 department shall provide to the Department of Financial  
30 Services ~~Banking and Finance~~ the obligor's last known address.

31

1 The Department of Financial Services ~~Banking and Finance~~ shall  
2 follow the notification procedures under s. 717.118.

3 (4) Prior to paying an obligor's approved claim, the  
4 Department of Financial Services ~~Banking and Finance~~ shall  
5 notify the department that such claim has been approved. Upon  
6 confirmation that the Department of Financial Services ~~Banking~~  
7 ~~and Finance~~ has approved the claim, the department shall  
8 immediately send a notice by certified mail to the obligor,  
9 with a copy to the Department of Financial Services ~~Banking~~  
10 ~~and Finance~~, advising the obligor of the department's intent  
11 to intercept the approved claim up to the amount of the past  
12 due support, and informing the obligor of the obligor's right  
13 to request a hearing under chapter 120. The Department of  
14 Financial Services ~~Banking and Finance~~ shall retain custody of  
15 the property until a final order has been entered and any  
16 appeals thereon have been concluded. If the obligor fails to  
17 request a hearing, the department shall enter a final order  
18 instructing the Department of Financial Services ~~Banking and~~  
19 ~~Finance~~ to transfer to the department the property in the  
20 amount stated in the final order. Upon such transfer, the  
21 Department of Financial Services ~~Banking and Finance~~ shall be  
22 released from further liability related to the transferred  
23 property.

24 Section 443. Subsections (4) and (7) of section  
25 409.2673, Florida Statutes, are amended to read:

26 409.2673 Shared county and state health care program  
27 for low-income persons.--

28 (4) The levels of financial participation by counties  
29 and the state for this program shall be determined as follows:

30 (a) If on July 1, 1988, a county funded inpatient  
31 hospital services for those who would have been eligible for

1 the program, the county shall fund 35 percent of the cost of  
2 this program and the state shall provide the remaining 65  
3 percent of the funding required for this program. A county  
4 participating at this level shall use that portion of its  
5 budget that previously would have funded these inpatient  
6 hospital services and that, under this program, has been  
7 offset by state funding for funding other health programs.

8 (b) If a county has not reached its maximum ad valorem  
9 millage rate as authorized by law and certified to the  
10 Department of Revenue and the county does not currently fund  
11 inpatient hospital services for those who would be eligible  
12 for this program, the county:

13 1. Shall provide 35 percent of the cost for this  
14 program from within the county's existing budget, and the  
15 state shall provide the remaining 65 percent of the funding  
16 required for this program; however, under no circumstances  
17 will county funding which had been used for funding the county  
18 health department under chapter 154 be utilized for funding  
19 the county's portion of this program; or

20 2. Shall levy an additional ad valorem millage to fund  
21 the county's portion of this program. The state shall provide  
22 the remaining portion of program funding if:

23 a. A county levies additional ad valorem millage up to  
24 the maximum authorized by law and certified to the Department  
25 of Revenue and still does not have sufficient funds to meet  
26 its 35 percent of the funding of this program; and

27 b. A county has exhausted all revenue sources which  
28 can statutorily be used as possible funding sources for this  
29 program.

30 (c) A county will be eligible for 100-percent state  
31 funding of this program if:

1           1. On July 1, 1988, the county did not fund inpatient  
2 hospital services for those who would have been eligible for  
3 this program;

4           2. The county has reached its maximum ad valorem  
5 millage as authorized by law and certified to the Department  
6 of Revenue; and

7           3. The county has exhausted all revenue sources which  
8 can statutorily be used as possible funding sources for this  
9 program.

10

11 Reporting forms specifically designed to capture the  
12 information necessary to determine the above levels of  
13 participation will be developed as part of the joint  
14 rulemaking required for the shared county and state program.  
15 For purposes of this program, the counties will be required to  
16 report necessary information to the Department of Financial  
17 Services ~~Banking and Finance~~.

18           (7) A county that participates in the program at any  
19 level may not reduce its total per capita expenditures being  
20 devoted to health care if any of these funds were previously  
21 utilized for the provision of inpatient hospital services to  
22 those persons made eligible for the shared county and state  
23 program. It is the intent of the Legislature that, as a  
24 result of the shared county and state program, local funds  
25 which were previously used for the provision of inpatient  
26 hospital services to persons made eligible by the program be  
27 used by counties for funding other health care programs which,  
28 for purposes of this section, are health expenditures as  
29 reported annually to the Department of Financial Services  
30 ~~Banking and Finance~~ pursuant to s. 218.32, provided that this  
31 subsection does not apply to reductions in county funding

1 resulting from the expiration of special sales taxes levied  
2 pursuant to chapter 84-373, Laws of Florida.

3 Section 444. Subsection (3) of section 409.8132,  
4 Florida Statutes, is amended to read:

5 409.8132 Medikids program component.--

6 (3) INSURANCE LICENSURE NOT REQUIRED.--The Medikids  
7 program component shall not be subject to the licensing  
8 requirements of the Florida Insurance Code or rules adopted  
9 thereunder ~~of the Department of Insurance~~.

10 Section 445. Section 409.817, Florida Statutes, is  
11 amended to read:

12 409.817 Approval of health benefits coverage;  
13 financial assistance.--In order for health insurance coverage  
14 to qualify for premium assistance payments for an eligible  
15 child under ss. 409.810-409.820, the health benefits coverage  
16 must:

17 (1) Be certified by the Office of Insurance Regulation  
18 of the Financial Services Commission ~~Department of Insurance~~  
19 under s. 409.818 as meeting, exceeding, or being actuarially  
20 equivalent to the benchmark benefit plan;

21 (2) Be guarantee issued;

22 (3) Be community rated;

23 (4) Not impose any preexisting condition exclusion for  
24 covered benefits; however, group health insurance plans may  
25 permit the imposition of a preexisting condition exclusion,  
26 but only insofar as it is permitted under s. 627.6561;

27 (5) Comply with the applicable limitations on premiums  
28 and cost-sharing in s. 409.816;

29 (6) Comply with the quality assurance and access  
30 standards developed under s. 409.820; and

31

1           (7) Establish periodic open enrollment periods, which  
2 may not occur more frequently than quarterly.

3           Section 446. Paragraph (c) of subsection (2),  
4 paragraphs (a) and (f) of subsection (3), and subsections (4)  
5 and (6) of section 409.818, Florida Statutes, are amended to  
6 read:

7           409.818 Administration.--In order to implement ss.  
8 409.810-409.820, the following agencies shall have the  
9 following duties:

10           (2) The Department of Health shall:

11           (c) Chair a state-level coordinating council to review  
12 and make recommendations concerning the implementation and  
13 operation of the program. The coordinating council shall  
14 include representatives from the department, the Department of  
15 Children and Family Services, the agency, the Florida Healthy  
16 Kids Corporation, the Office of Insurance Regulation of the  
17 Financial Services Commission ~~Department of Insurance~~, local  
18 government, health insurers, health maintenance organizations,  
19 health care providers, families participating in the program,  
20 and organizations representing low-income families.

21           (3) The Agency for Health Care Administration, under  
22 the authority granted in s. 409.914(1), shall:

23           (a) Calculate the premium assistance payment necessary  
24 to comply with the premium and cost-sharing limitations  
25 specified in s. 409.816. The premium assistance payment for  
26 each enrollee in a health insurance plan participating in the  
27 Florida Healthy Kids Corporation shall equal the premium  
28 approved by the Florida Healthy Kids Corporation and the  
29 Office of Insurance Regulation of the Financial Services  
30 Commission ~~Department of Insurance~~ pursuant to ss. 627.410 and  
31 641.31, less any enrollee's share of the premium established

1 within the limitations specified in s. 409.816. The premium  
2 assistance payment for each enrollee in an employer-sponsored  
3 health insurance plan approved under ss. 409.810-409.820 shall  
4 equal the premium for the plan adjusted for any benchmark  
5 benefit plan actuarial equivalent benefit rider approved by  
6 the Office of Insurance Regulation ~~Department of Insurance~~  
7 pursuant to ss. 627.410 and 641.31, less any enrollee's share  
8 of the premium established within the limitations specified  
9 in s. 409.816. In calculating the premium assistance payment  
10 levels for children with family coverage, the agency shall set  
11 the premium assistance payment levels for each child  
12 proportionately to the total cost of family coverage.

13 (f) Approve health benefits coverage for participation  
14 in the program, following certification by the Office of  
15 Insurance Regulation ~~Department of Insurance~~ under subsection  
16 (4).

17

18 The agency is designated the lead state agency for Title XXI  
19 of the Social Security Act for purposes of receipt of federal  
20 funds, for reporting purposes, and for ensuring compliance  
21 with federal and state regulations and rules.

22 (4) The Office of Insurance Regulation ~~Department of~~  
23 ~~Insurance~~ shall certify that health benefits coverage plans  
24 that seek to provide services under the Florida Kidcare  
25 program, except those offered through the Florida Healthy Kids  
26 Corporation or the Children's Medical Services network, meet,  
27 exceed, or are actuarially equivalent to the benchmark benefit  
28 plan and that health insurance plans will be offered at an  
29 approved rate. In determining actuarial equivalence of  
30 benefits coverage, the Office of Insurance Regulation  
31 ~~Department of Insurance~~ and health insurance plans must comply

1 with the requirements of s. 2103 of Title XXI of the Social  
2 Security Act. The department shall adopt rules necessary for  
3 certifying health benefits coverage plans.

4 (6) The agency, the Department of Health, the  
5 Department of Children and Family Services, the Florida  
6 Healthy Kids Corporation, and the Office of Insurance  
7 Regulation ~~Department of Insurance~~, after consultation with  
8 and approval of the Speaker of the House of Representatives  
9 and the President of the Senate, are authorized to make  
10 program modifications that are necessary to overcome any  
11 objections of the United States Department of Health and Human  
12 Services to obtain approval of the state's child health  
13 insurance plan under Title XXI of the Social Security Act.

14 Section 447. Subsection (20) of section 409.910,  
15 Florida Statutes, is amended to read:

16 409.910 Responsibility for payments on behalf of  
17 Medicaid-eligible persons when other parties are liable.--

18 (20) Entities providing health insurance as defined in  
19 s. 624.603, and health maintenance organizations and prepaid  
20 health clinics as defined in chapter 641, shall provide such  
21 records and information as are necessary to accomplish the  
22 purpose of this section, unless such requirement results in an  
23 unreasonable burden.

24 (a) The director of the agency and the director of the  
25 Office of Insurance Regulation of the Financial Services  
26 Commission ~~Insurance Commissioner~~ shall enter into a  
27 cooperative agreement for requesting and obtaining information  
28 necessary to effect the purpose and objective of this section.

29 1. The agency shall request only that information  
30 necessary to determine whether health insurance as defined  
31 pursuant to s. 624.603, or those health services provided

1 pursuant to chapter 641, could be, should be, or have been  
2 claimed and paid with respect to items of medical care and  
3 services furnished to any person eligible for services under  
4 this section.

5         2. All information obtained pursuant to subparagraph  
6 1. is confidential and exempt from s. 119.07(1).

7         3. The cooperative agreement or rules adopted under  
8 this subsection may include financial arrangements to  
9 reimburse the reporting entities for reasonable costs or a  
10 portion thereof incurred in furnishing the requested  
11 information. Neither the cooperative agreement nor the rules  
12 shall require the automation of manual processes to provide  
13 the requested information.

14         (b) The agency and the Financial Services Commission  
15 ~~Department of Insurance~~ jointly shall adopt rules for the  
16 development and administration of the cooperative agreement.  
17 The rules shall include the following:

18         1. A method for identifying those entities subject to  
19 furnishing information under the cooperative agreement.

20         2. A method for furnishing requested information.

21         3. Procedures for requesting exemption from the  
22 cooperative agreement based on an unreasonable burden to the  
23 reporting entity.

24         Section 448. Paragraphs (a) and (h) of subsection (3),  
25 subsections (5), (15), and (18), and paragraph (a) of  
26 subsection (36) of section 409.912, Florida Statutes, as  
27 amended by sections 8 and 9 of chapter 2001-377, Laws of  
28 Florida, are amended to read:

29         409.912 Cost-effective purchasing of health care.--The  
30 agency shall purchase goods and services for Medicaid  
31 recipients in the most cost-effective manner consistent with

1 the delivery of quality medical care. The agency shall  
2 maximize the use of prepaid per capita and prepaid aggregate  
3 fixed-sum basis services when appropriate and other  
4 alternative service delivery and reimbursement methodologies,  
5 including competitive bidding pursuant to s. 287.057, designed  
6 to facilitate the cost-effective purchase of a case-managed  
7 continuum of care. The agency shall also require providers to  
8 minimize the exposure of recipients to the need for acute  
9 inpatient, custodial, and other institutional care and the  
10 inappropriate or unnecessary use of high-cost services. The  
11 agency may establish prior authorization requirements for  
12 certain populations of Medicaid beneficiaries, certain drug  
13 classes, or particular drugs to prevent fraud, abuse, overuse,  
14 and possible dangerous drug interactions. The Pharmaceutical  
15 and Therapeutics Committee shall make recommendations to the  
16 agency on drugs for which prior authorization is required. The  
17 agency shall inform the Pharmaceutical and Therapeutics  
18 Committee of its decisions regarding drugs subject to prior  
19 authorization.

20 (3) The agency may contract with:

21 (a) An entity that provides no prepaid health care  
22 services other than Medicaid services under contract with the  
23 agency and which is owned and operated by a county, county  
24 health department, or county-owned and operated hospital to  
25 provide health care services on a prepaid or fixed-sum basis  
26 to recipients, which entity may provide such prepaid services  
27 either directly or through arrangements with other providers.  
28 Such prepaid health care services entities must be licensed  
29 under parts I and III by January 1, 1998, and until then are  
30 exempt from the provisions of part I of chapter 641. An entity  
31 recognized under this paragraph which demonstrates to the

1 satisfaction of the Office of Insurance Regulation of the  
2 Financial Services Commission ~~Department of Insurance~~ that it  
3 is backed by the full faith and credit of the county in which  
4 it is located may be exempted from s. 641.225.

5 (h) An entity authorized in s. 430.205 to contract  
6 with the agency and the Department of Elderly Affairs to  
7 provide health care and social services on a prepaid or  
8 fixed-sum basis to elderly recipients. Such prepaid health  
9 care services entities are exempt from the provisions of part  
10 I of chapter 641 for the first 3 years of operation. An entity  
11 recognized under this paragraph that demonstrates to the  
12 satisfaction of the Office of Insurance Regulation ~~Department~~  
13 ~~of Insurance~~ that it is backed by the full faith and credit of  
14 one or more counties in which it operates may be exempted from  
15 s. 641.225.

16 (5) The agency may contract on a prepaid or fixed-sum  
17 basis with any health insurer that:

18 (a) Pays for health care services provided to enrolled  
19 Medicaid recipients in exchange for a premium payment paid by  
20 the agency;

21 (b) Assumes the underwriting risk; and

22 (c) Is organized and licensed under applicable  
23 provisions of the Florida Insurance Code and is currently in  
24 good standing with the Office of Insurance Regulation  
25 ~~Department of Insurance~~.

26 (15) An entity contracting on a prepaid or fixed-sum  
27 basis shall, in addition to meeting any applicable statutory  
28 surplus requirements, also maintain at all times in the form  
29 of cash, investments that mature in less than 180 days  
30 allowable as admitted assets by the Office of Insurance  
31 Regulation ~~Department of Insurance~~, and restricted funds or

1 deposits controlled by the agency or the Office of Insurance  
2 Regulation Department of Insurance, a surplus amount equal to  
3 one-and-one-half times the entity's monthly Medicaid prepaid  
4 revenues. As used in this subsection, the term "surplus" means  
5 the entity's total assets minus total liabilities. If an  
6 entity's surplus falls below an amount equal to  
7 one-and-one-half times the entity's monthly Medicaid prepaid  
8 revenues, the agency shall prohibit the entity from engaging  
9 in marketing and preenrollment activities, shall cease to  
10 process new enrollments, and shall not renew the entity's  
11 contract until the required balance is achieved. The  
12 requirements of this subsection do not apply:

13 (a) Where a public entity agrees to fund any deficit  
14 incurred by the contracting entity; or

15 (b) Where the entity's performance and obligations are  
16 guaranteed in writing by a guaranteeing organization which:

17 1. Has been in operation for at least 5 years and has  
18 assets in excess of \$50 million; or

19 2. Submits a written guarantee acceptable to the  
20 agency which is irrevocable during the term of the contracting  
21 entity's contract with the agency and, upon termination of the  
22 contract, until the agency receives proof of satisfaction of  
23 all outstanding obligations incurred under the contract.

24 (18) When a merger or acquisition of a Medicaid  
25 prepaid contractor has been approved by the Office of  
26 Insurance Regulation Department of Insurance pursuant to s.  
27 628.4615, the agency shall approve the assignment or transfer  
28 of the appropriate Medicaid prepaid contract upon request of  
29 the surviving entity of the merger or acquisition if the  
30 contractor and the other entity have been in good standing  
31 with the agency for the most recent 12-month period, unless

1 the agency determines that the assignment or transfer would be  
2 detrimental to the Medicaid recipients or the Medicaid  
3 program. To be in good standing, an entity must not have  
4 failed accreditation or committed any material violation of  
5 the requirements of s. 641.52 and must meet the Medicaid  
6 contract requirements. For purposes of this section, a merger  
7 or acquisition means a change in controlling interest of an  
8 entity, including an asset or stock purchase.

9 (36) The Agency for Health Care Administration is  
10 directed to issue a request for proposal or intent to  
11 negotiate to implement on a demonstration basis an outpatient  
12 specialty services pilot project in a rural and urban county  
13 in the state. As used in this subsection, the term  
14 "outpatient specialty services" means clinical laboratory,  
15 diagnostic imaging, and specified home medical services to  
16 include durable medical equipment, prosthetics and orthotics,  
17 and infusion therapy.

18 (a) The entity that is awarded the contract to provide  
19 Medicaid managed care outpatient specialty services must, at a  
20 minimum, meet the following criteria:

21 1. The entity must be licensed by the Office of  
22 Insurance Regulation ~~Department of Insurance~~ under part II of  
23 chapter 641.

24 2. The entity must be experienced in providing  
25 outpatient specialty services.

26 3. The entity must demonstrate to the satisfaction of  
27 the agency that it provides high-quality services to its  
28 patients.

29 4. The entity must demonstrate that it has in place a  
30 complaints and grievance process to assist Medicaid recipients

31

1 enrolled in the pilot managed care program to resolve  
2 complaints and grievances.

3 Section 449. Subsections (2) and (3) of section  
4 409.9124, Florida Statutes, are amended to read:

5 409.9124 Managed care reimbursement.--

6 (2) The agency shall by rule prescribe those items of  
7 financial information which each managed care plan shall  
8 report to the agency, in the time periods prescribed by rule.  
9 In prescribing items for reporting and definitions of terms,  
10 the agency shall consult with the Office of Insurance  
11 Regulation of the Financial Services Commission ~~Department of~~  
12 ~~insurance~~ wherever possible.

13 (3) The agency shall quarterly examine the financial  
14 condition of each managed care plan, and its performance in  
15 serving Medicaid patients, and shall utilize examinations  
16 performed by the Office of Insurance Regulation ~~Department of~~  
17 ~~insurance~~ wherever possible.

18 Section 450. Subsections (5) and (6) of section  
19 409.915, Florida Statutes, are amended to read:

20 409.915 County contributions to Medicaid.--Although  
21 the state is responsible for the full portion of the state  
22 share of the matching funds required for the Medicaid program,  
23 in order to acquire a certain portion of these funds, the  
24 state shall charge the counties for certain items of care and  
25 service as provided in this section.

26 (5) The Department of Financial Services ~~Banking and~~  
27 ~~Finance~~ shall withhold from the cigarette tax receipts or any  
28 other funds to be distributed to the counties the individual  
29 county share that has not been remitted within 60 days after  
30 billing.

31

1           (6) In any county in which a special taxing district  
2 or authority is located which will benefit from the medical  
3 assistance programs covered by this section, the board of  
4 county commissioners may divide the county's financial  
5 responsibility for this purpose proportionately, and each such  
6 district or authority must furnish its share to the board of  
7 county commissioners in time for the board to comply with the  
8 provisions of subsection (3). Any appeal of the proration made  
9 by the board of county commissioners must be made to the  
10 Department of Financial Services ~~Banking and Finance~~, which  
11 shall then set the proportionate share of each party.

12           Section 451. Paragraph (c) of subsection (7) of  
13 section 411.01, Florida Statutes, is amended to read:

14           411.01 Florida Partnership for School Readiness;  
15 school readiness coalitions.--

16           (7) PARENTAL CHOICE.--

17           (c) The Office of the Chief Financial Officer  
18 ~~Comptroller~~ shall establish an electronic transfer system for  
19 the disbursement of funds in accordance with this subsection.  
20 School readiness coalitions shall fully implement the  
21 electronic funds transfer system within 2 years after plan  
22 approval unless a waiver is obtained from the partnership.

23           Section 452. Subsection (2) of section 413.32, Florida  
24 Statutes, is amended to read:

25           413.32 Retention of title to and disposal of  
26 equipment.--

27           (2) The division is authorized to offer for sale any  
28 surplus items acquired in the operation of the program when  
29 they are no longer necessary or to exchange them for necessary  
30 items which may be used to greater advantage. When any such  
31 surplus equipment is sold or exchanged a receipt for same

1 shall be taken from the purchaser showing the consideration  
2 given for such equipment and forwarded to the Chief Financial  
3 Officer ~~treasurer~~, and any funds received by the division  
4 pursuant to any such transactions shall be deposited in the  
5 State Treasury in the appropriate federal or state  
6 rehabilitation funds and shall be available for expenditure  
7 for any purpose consistent with this part.

8 Section 453. Section 414.27, Florida Statutes, is  
9 amended to read:

10 414.27 Temporary cash assistance; payment on death.--

11 (1) Upon the death of any person receiving temporary  
12 cash assistance through the Department of Children and Family  
13 Services, all temporary cash accrued to such person from the  
14 date of last payment to the date of death shall be paid to the  
15 person who shall have been designated by her or him on a form  
16 prescribed by the department and filed with the department  
17 during the lifetime of the person making such designation. If  
18 no designation is made, or the person so designated is no  
19 longer living or cannot be found, then payment shall be made  
20 to such person as may be designated by the circuit judge of  
21 the county where the recipient of temporary cash assistance  
22 resided. Designation by the circuit judge may be made on a  
23 form provided by the department or by letter or memorandum to  
24 the Chief Financial Officer ~~Comptroller~~. No filing or  
25 recording of the designation shall be required, and the  
26 circuit judge shall receive no compensation for such service.  
27 If a warrant has not been issued and forwarded prior to notice  
28 by the department of the recipient's death, upon notice  
29 thereof, the department shall promptly requisition the Chief  
30 Financial Officer ~~Comptroller~~ to issue a warrant in the amount  
31 of the accrued temporary cash assistance payable to the person

1 designated to receive it and shall attach to the requisition  
2 the original designation of the deceased recipient, or if  
3 none, the designation made by the circuit judge, as well as a  
4 notice of death. The Chief Financial Officer ~~Comptroller~~ shall  
5 issue a warrant in the amount payable.

6 (2) If a warrant has been issued and not cashed by the  
7 recipient payee prior to her or his death, such warrant shall  
8 be promptly returned to the department, together with notice  
9 of the death of the recipient. The original warrant shall be  
10 endorsed on the back by an authorized employee of the  
11 department. The endorsement must be on a form prescribed by  
12 the department and approved by the Chief Financial Officer  
13 ~~Comptroller~~ which must contain the name of the deceased  
14 recipient, a statement of the recipient's death, and the date  
15 thereof and state that it is payable to the order of the  
16 designated beneficiary, without recourse. The form shall be  
17 signed by the authorized employee or employees of the  
18 department, and thereupon such warrant shall be payable to the  
19 designated beneficiary as fully and completely as if made  
20 payable to her or him when issued. The department shall  
21 furnish to the Chief Financial Officer ~~Comptroller~~ each month  
22 a list of such deceased recipients, the designated  
23 beneficiaries or persons to whom such warrants are endorsed,  
24 and a description of such warrants as herein provided. The  
25 department shall cause all persons receiving temporary cash  
26 assistance to make the designations as soon as conveniently  
27 may be, and shall preserve such designations in a safe place  
28 for use.

29 Section 454. Subsection (8) of section 414.28, Florida  
30 Statutes, is amended to read:

1           414.28 Public assistance payments to constitute debt  
2 of recipient.--

3           (8) DISPOSITION OF FUNDS RECOVERED.--All funds  
4 collected under this section shall be deposited with the  
5 Department of Financial Services ~~Banking and Finance~~ and a  
6 report of such deposit made to the department. After payment  
7 of costs the sums so collected shall be credited to the  
8 department and used by it.

9           Section 455. Section 420.0005, Florida Statutes, is  
10 amended to read:

11           420.0005 State Housing Trust Fund; State Housing  
12 Fund.--There is hereby established in the State Treasury a  
13 separate trust fund to be named the "State Housing Trust  
14 Fund." There shall be deposited in the fund all moneys  
15 appropriated by the Legislature, or moneys received from any  
16 other source, for the purpose of this chapter, and all  
17 proceeds derived from the use of such moneys. The fund shall  
18 be administered by the Florida Housing Finance Corporation on  
19 behalf of the department, as specified in this chapter. Money  
20 deposited to the fund and appropriated by the Legislature  
21 must, notwithstanding the provisions of chapter 216 or s.  
22 420.504(3), be transferred quarterly in advance, to the extent  
23 available, or, if not so available, as soon as received into  
24 the State Housing Trust Fund, and subject to the provisions of  
25 s. 420.5092(6)(a) and (b) by the Chief Financial Officer  
26 ~~Comptroller~~ to the corporation upon certification by the  
27 Secretary of Community Affairs that the corporation is in  
28 compliance with the requirements of s. 420.0006. The  
29 certification made by the secretary shall also include the  
30 split of funds among programs administered by the corporation  
31 and the department as specified in chapter 92-317, Laws of

1 Florida, as amended. Moneys advanced by the Chief Financial  
2 Officer Comptroller must be deposited by the corporation into  
3 a separate fund established with a qualified public depository  
4 meeting the requirements of chapter 280 to be named the "State  
5 Housing Fund" and used for the purposes of this chapter.  
6 Administrative and personnel costs incurred in implementing  
7 this chapter may be paid from the State Housing Fund, but such  
8 costs may not exceed 5 percent of the moneys deposited into  
9 such fund. To the State Housing Fund shall be credited all  
10 loan repayments, penalties, and other fees and charges  
11 accruing to such fund under this chapter. It is the intent of  
12 this chapter that all loan repayments, penalties, and other  
13 fees and charges collected be credited in full to the program  
14 account from which the loan originated. Moneys in the State  
15 Housing Fund which are not currently needed for the purposes  
16 of this chapter shall be invested in such manner as is  
17 provided for by statute. The interest received on any such  
18 investment shall be credited to the State Housing Fund.

19 Section 456. Section 420.0006, Florida Statutes, is  
20 amended to read:

21 420.0006 Authority to contract with corporation;  
22 contract requirements; nonperformance.--The secretary of the  
23 department shall contract, notwithstanding the provisions of  
24 part I of chapter 287, with the Florida Housing Finance  
25 Corporation on a multiyear basis to stimulate, provide, and  
26 foster affordable housing in the state. The contract must  
27 incorporate the performance measures required by s. 420.511  
28 and must be consistent with the provisions of the  
29 corporation's strategic plan prepared in accordance with s.  
30 420.511 and compatible with s. 216.0166. The contract must  
31 provide that, in the event the corporation fails to comply

1 with any of the performance measures required by s. 420.511,  
2 the secretary shall notify the Governor and shall refer the  
3 nonperformance to the department's inspector general for  
4 review and determination as to whether such failure is due to  
5 forces beyond the corporation's control or whether such  
6 failure is due to inadequate management of the corporation's  
7 resources. Advances shall continue to be made pursuant to s.  
8 420.0005 during the pendency of the review by the department's  
9 inspector general. If such failure is due to outside forces,  
10 it shall not be deemed a violation of the contract. If such  
11 failure is due to inadequate management, the department's  
12 inspector general shall provide recommendations regarding  
13 solutions. The Governor is authorized to resolve any  
14 differences of opinion with respect to performance under the  
15 contract and may request that advances continue in the event  
16 of a failure under the contract due to inadequate management.  
17 The Chief Financial Officer ~~Comptroller~~ shall approve the  
18 request absent a finding by the Chief Financial Officer  
19 ~~Comptroller~~ that continuing such advances would adversely  
20 impact the state; however, in any event the Chief Financial  
21 Officer ~~Comptroller~~ shall provide advances sufficient to meet  
22 the debt service requirements of the corporation and  
23 sufficient to fund contracts committing funds from the State  
24 Housing Trust Fund so long as such contracts are in accordance  
25 with the laws of this state. The department inspector general  
26 shall perform for the corporation the functions set forth in  
27 s. 20.055 and report to the secretary of the department. The  
28 corporation shall be deemed an agency for the purposes of s.  
29 20.055.

30           Section 457. Paragraph (d) of subsection (1) of  
31 section 420.101, Florida Statutes, is amended to read:

1           420.101 Housing Development Corporation of Florida;  
2 creation, membership, and purposes.--

3           (1) Twenty-five or more persons, a majority of whom  
4 shall be residents of this state, who may desire to create a  
5 housing development corporation under the provisions of this  
6 part for the purpose of promoting and developing housing and  
7 advancing the prosperity and economic welfare of the state  
8 and, to that end, to exercise the powers and privileges  
9 hereinafter provided, may be incorporated by filing in the  
10 Department of State, as hereinafter provided, articles of  
11 incorporation. The articles of incorporation shall contain:

12           (d) The names and post office addresses of the members  
13 of the first board of directors. The first board of directors  
14 shall be elected by and from the stockholders of the  
15 corporation and shall consist of 21 members. However, four  
16 ~~five~~ of such members shall consist of the following persons,  
17 who shall be nonvoting members: the secretary of the  
18 Department of Community Affairs or her or his designee; the  
19 head of the Department of Financial Services ~~Banking and~~  
20 ~~Finance~~ or her or his designee; ~~the head of the Department of~~  
21 ~~Insurance or her or his designee;~~ one state senator appointed  
22 by the President of the Senate; and one representative  
23 appointed by the Speaker of the House of Representatives.

24           Section 458. Subsection (1) of section 420.123,  
25 Florida Statutes, is amended to read:

26           420.123 Stockholders; loan requirement.--

27           (1) Any financial institution may request membership  
28 in the corporation by making application to the board of  
29 directors on such form and in such manner as the board of  
30 directors may require, and membership shall become effective  
31 upon acceptance of the application in the manner designated by

1 the board. Each member stockholder of the corporation shall  
2 make loans to the corporation as and when called upon by it to  
3 do so on such terms and other conditions as shall be approved  
4 from time to time by the board of directors, except that the  
5 total amount outstanding on loans to the corporation made by  
6 any member at any one time, when added to the amount of the  
7 investment in the capital stock of the corporation then held  
8 by such member, shall not exceed the following limit, to be  
9 determined as of the time such member becomes a member on the  
10 basis of the audited balance sheet of such member at the close  
11 of its fiscal year immediately preceding its application for  
12 membership or, in the case of an insurance company, its last  
13 annual statement to the Office of Insurance Regulation of the  
14 Financial Services Commission ~~Department of Insurance~~: 5  
15 percent of the capital and surplus of commercial banks and  
16 trust companies; 5 percent of the total outstanding loans made  
17 by savings and loan associations and building and loan  
18 associations; 5 percent of the capital and unassigned surplus  
19 of stock insurance companies, except fire insurance companies;  
20 5 percent of the unassigned surplus of mutual insurance  
21 companies, except fire insurance companies; 0.2 percent of the  
22 assets of fire insurance companies; and such limits as may be  
23 approved by the board of directors of the corporation for  
24 other financial institutions.

25 Section 459. Subsection (1) of section 420.131,  
26 Florida Statutes, is amended to read:

27 420.131 Articles of incorporation; method of  
28 amending.--

29 (1) The articles of incorporation may be amended by  
30 the vote of the stockholders of the corporation, and such  
31 amendments shall require approval by the affirmative vote of

1 two-thirds of the votes to which the stockholders shall be  
2 entitled. However, no amendment of the articles of  
3 incorporation which is inconsistent with the general purposes  
4 expressed herein or which eliminates or curtails the right of  
5 the Department of Financial Services ~~Banking and Finance~~ to  
6 examine the corporation or the obligation of the corporation  
7 to make reports as provided in s. 420.141(2) shall be made.

8 Section 460. Subsection (2) of section 420.141,  
9 Florida Statutes, is amended to read:

10 420.141 Housing Development Corporation of Florida;  
11 deposits and examination.--

12 (2) The corporation shall be examined at least once  
13 annually by the Office of Financial Institutions and  
14 Securities Regulation of the Financial Services Commission  
15 ~~Department of Banking and Finance~~ and shall make reports of  
16 its condition not less than annually to the office ~~said~~  
17 ~~department~~, and more frequently upon call of the office  
18 ~~department~~, which in turn shall make copies of such reports  
19 available to the Office of Insurance Regulation of the  
20 Financial Services Commission ~~Department of Insurance~~ and the  
21 Governor; and the corporation shall also furnish such other  
22 information as may from time to time be required by the Office  
23 of Financial Institutions and Securities Regulation ~~Department~~  
24 ~~of Banking and Finance~~ and the Department of State. The Office  
25 of Financial Institutions and Securities Regulation ~~Department~~  
26 ~~of Banking and Finance~~ shall exercise the same power and  
27 authority over the corporation organized pursuant to this part  
28 as is exercised over financial institutions under the  
29 provisions of the financial institutions codes, when such  
30 codes are not in conflict with this chapter.

31

1           Section 461. Subsection (6) of section 420.5092,  
2 Florida Statutes, is amended to read:

3           420.5092 Florida Affordable Housing Guarantee  
4 Program.--

5           (6)(a) If the primary revenue sources to be used for  
6 repayment of revenue bonds used to establish the guarantee  
7 fund are insufficient for such repayment, the annual principal  
8 and interest due on each series of revenue bonds shall be  
9 payable from funds in the annual debt service reserve. The  
10 corporation shall, before June 1 of each year, perform a  
11 financial audit to determine whether at the end of the state  
12 fiscal year there will be on deposit in the guarantee fund an  
13 annual debt service reserve from interest earned pursuant to  
14 the investment of the guarantee fund, fees, charges, and  
15 reimbursements received from issued affordable housing  
16 guarantees and other revenue sources available to the  
17 corporation. Based upon the findings in such guarantee fund  
18 financial audit, the corporation shall certify to the Chief  
19 Financial Officer ~~Comptroller~~ the amount of any projected  
20 deficiency in the annual debt service reserve for any series  
21 of outstanding bonds as of the end of the state fiscal year  
22 and the amount necessary to maintain such annual debt service  
23 reserve. Upon receipt of such certification, the Chief  
24 Financial Officer ~~Comptroller~~ shall transfer to the annual  
25 debt service reserve, from the first available taxes  
26 distributed to the State Housing Trust Fund pursuant to s.  
27 201.15(9)(a) and (10)(a) during the ensuing state fiscal year,  
28 the amount certified as necessary to maintain the annual debt  
29 service reserve.

30           (b) If the claims payment obligations under affordable  
31 housing guarantees from amounts on deposit in the guarantee

1 fund would cause the claims paying rating assigned to the  
2 guarantee fund to be less than the third-highest rating  
3 classification of any nationally recognized rating service,  
4 which classifications being consistent with s. 215.84(3) and  
5 rules adopted thereto by the State Board of Administration,  
6 the corporation shall certify to the Chief Financial Officer  
7 ~~Comptroller~~ the amount of such claims payment obligations.  
8 Upon receipt of such certification, the Chief Financial  
9 Officer ~~Comptroller~~ shall transfer to the guarantee fund, from  
10 the first available taxes distributed to the State Housing  
11 Trust Fund pursuant to s. 201.15(9)(a) and (10)(a) during the  
12 ensuing state fiscal year, the amount certified as necessary  
13 to meet such obligations, such transfer to be subordinate to  
14 any transfer referenced in paragraph (a) and not to exceed 50  
15 percent of the amounts distributed to the State Housing Trust  
16 Fund pursuant to s. 201.15(9)(a) and (10)(a) during the  
17 preceding state fiscal year.

18 Section 462. Section 430.42, Florida Statutes, is  
19 amended to read:

20 430.42 Department of Elderly Affairs Tobacco  
21 Settlement Trust Fund.--

22 (1) The Department of Elderly Affairs Tobacco  
23 Settlement Trust Fund is created within that department. Funds  
24 to be credited to the trust fund shall consist of funds  
25 disbursed, by nonoperating transfer, from the Department of  
26 Financial Services ~~Banking and Finance~~ Tobacco Settlement  
27 Clearing Trust Fund in amounts equal to the annual  
28 appropriations made from this trust fund.

29 (2) Notwithstanding the provisions of s. 216.301 and  
30 pursuant to s. 216.351, any unencumbered balance in the trust  
31 fund at the end of any fiscal year and any encumbered balance

1 remaining undisbursed on December 31 of the same calendar year  
2 shall revert to the Department of Financial Services ~~Banking~~  
3 ~~and Finance~~ Tobacco Settlement Clearing Trust Fund.

4 Section 463. Subsection (6) of section 430.703,  
5 Florida Statutes, is amended to read:

6 430.703 Definitions.--As used in this act, the term:

7 (6) "Managed care organization" means an entity that  
8 meets the requirements of the Department of Financial Services  
9 ~~Insurance~~ for operation as a health maintenance organization  
10 and meets the qualifications for participation as a managed  
11 care organization established by the agency and the  
12 department.

13 Section 464. Section 440.015, Florida Statutes, is  
14 amended to read:

15 440.015 Legislative intent.--It is the intent of the  
16 Legislature that the Workers' Compensation Law be interpreted  
17 so as to assure the quick and efficient delivery of disability  
18 and medical benefits to an injured worker and to facilitate  
19 the worker's return to gainful reemployment at a reasonable  
20 cost to the employer. It is the specific intent of the  
21 Legislature that workers' compensation cases shall be decided  
22 on their merits. The workers' compensation system in Florida  
23 is based on a mutual renunciation of common-law rights and  
24 defenses by employers and employees alike. In addition, it is  
25 the intent of the Legislature that the facts in a workers'  
26 compensation case are not to be interpreted liberally in favor  
27 of either the rights of the injured worker or the rights of  
28 the employer. Additionally, the Legislature hereby declares  
29 that disputes concerning the facts in workers' compensation  
30 cases are not to be given a broad liberal construction in  
31 favor of the employee on the one hand or of the employer on

1 the other hand, and the laws pertaining to workers'  
2 compensation are to be construed in accordance with the basic  
3 principles of statutory construction and not liberally in  
4 favor of either employee or employer. It is the intent of the  
5 Legislature to ensure the prompt delivery of benefits to the  
6 injured worker. Therefore, an efficient and self-executing  
7 system must be created which is not an economic or  
8 administrative burden. The department, agency, the Office of  
9 Insurance Regulation, the Department of Education, and the  
10 Division of Administrative Hearings shall administer the  
11 Workers' Compensation Law in a manner which facilitates the  
12 self-execution of the system and the process of ensuring a  
13 prompt and cost-effective delivery of payments.

14 Section 465. Subsections (12) and (14) of section  
15 440.02, Florida Statutes, are amended, and subsection (43) is  
16 added to that section, to read:

17 440.02 Definitions.--When used in this chapter, unless  
18 the context clearly requires otherwise, the following terms  
19 shall have the following meanings:

20 (12) "Department" means the Department of Financial  
21 Services; the term does not include the Financial Services  
22 Commission or any office of the commission ~~Insurance~~.

23 (14) "Division" means the Division of Workers'  
24 Compensation of the Department of Financial Services  
25 ~~Insurance~~.

26 (43) "Office of Insurance Regulation" means the Office  
27 of Insurance Regulation of the Financial Services Commission.

28 Section 466. Subsections (6), (10), (11), (12), and  
29 (13) of section 440.05, Florida Statutes, are amended to read:

30 440.05 Election of exemption; revocation of election;  
31 notice; certification.--

1           (6) A construction industry certificate of election to  
2 be exempt which is issued in accordance with this section  
3 shall be valid for 2 years after the effective date stated  
4 thereon. Both the effective date and the expiration date must  
5 be listed on the face of the certificate by the department.  
6 The construction industry certificate must expire at midnight,  
7 2 years from its issue date, as noted on the face of the  
8 exemption certificate. Any person who has received from the  
9 department ~~division~~ a construction industry certificate of  
10 election to be exempt which is in effect on December 31, 1998,  
11 shall file a new notice of election to be exempt by the last  
12 day in his or her birth month following December 1, 1998. A  
13 construction industry certificate of election to be exempt may  
14 be revoked before its expiration by the sole proprietor,  
15 partner, or officer for whom it was issued or by the  
16 department for the reasons stated in this section. At least  
17 60 days prior to the expiration date of a construction  
18 industry certificate of exemption issued after December 1,  
19 1998, the department shall send notice of the expiration date  
20 and an application for renewal to the certificateholder at the  
21 address on the certificate.

22           (10) Each sole proprietor, partner, or officer of a  
23 corporation who is actively engaged in the construction  
24 industry and who elects an exemption from this chapter shall  
25 maintain business records as specified by the department  
26 ~~division~~ by rule, which rules must include the provision that  
27 any corporation with exempt officers and any partnership  
28 actively engaged in the construction industry with exempt  
29 partners must maintain written statements of those exempted  
30 persons affirmatively acknowledging each such individual's  
31 exempt status.

1           (11) Any sole proprietor or partner actively engaged  
2 in the construction industry claiming an exemption under this  
3 section shall maintain a copy of his or her federal income tax  
4 records for each of the immediately previous 3 years in which  
5 he or she claims an exemption. Such federal income tax records  
6 must include a complete copy of the following for each year in  
7 which an exemption is claimed:

8           (a) For sole proprietors, a copy of Federal Income Tax  
9 Form 1040 and its accompanying Schedule C;

10           (b) For partners, a copy of the partner's Federal  
11 Income Tax Schedule K-1 (Form 1065) and Federal Income Tax  
12 Form 1040 and its accompanying Schedule E.

13  
14 A sole proprietor or partner shall produce, upon request by  
15 the department division, a copy of those documents together  
16 with a statement by the sole proprietor or partner that the  
17 tax records provided are true and accurate copies of what the  
18 sole proprietor or partner has filed with the federal Internal  
19 Revenue Service. The statement must be signed under oath by  
20 the sole proprietor or partner and must be notarized. The  
21 department division shall issue a stop-work order under s.  
22 440.107(5) to any sole proprietor or partner who fails or  
23 refuses to produce a copy of the tax records and affidavit  
24 required under this paragraph to the department division  
25 within 3 business days after the request is made.

26           (12) For those sole proprietors or partners that have  
27 not been in business long enough to provide the information  
28 required of an established business, the department division  
29 shall require such sole proprietor or partner to provide  
30 copies of the most recently filed Federal Income Tax Form  
31 1040. The department division shall establish by rule such

1 other criteria to show that the sole proprietor or partner  
2 intends to engage in a legitimate enterprise within the  
3 construction industry and is not otherwise attempting to evade  
4 the requirements of this section. The department ~~division~~  
5 shall establish by rule the form and format of financial  
6 information required to be submitted by such employers.

7 (13) Any corporate officer claiming an exemption under  
8 this section must be listed on the records of this state's  
9 Secretary of State, Division of Corporations, as a corporate  
10 officer. If the person who claims an exemption as a corporate  
11 officer is not so listed on the records of the Secretary of  
12 State, the individual must provide to the department ~~division~~,  
13 upon request by the department ~~division~~, a notarized affidavit  
14 stating that the individual is a bona fide officer of the  
15 corporation and stating the date his or her appointment or  
16 election as a corporate officer became or will become  
17 effective. The statement must be signed under oath by both the  
18 officer and the president or chief operating officer of the  
19 corporation and must be notarized. The department ~~division~~  
20 shall issue a stop-work order under s. 440.107(1) to any  
21 corporation who employs a person who claims to be exempt as a  
22 corporate officer but who fails or refuses to produce the  
23 documents required under this subsection to the department  
24 ~~division~~ within 3 business days after the request is made.

25 Section 467. Subsection (5) of section 440.09, Florida  
26 Statutes, is amended to read:

27 440.09 Coverage.--

28 (5) If injury is caused by the knowing refusal of the  
29 employee to use a safety appliance or observe a safety rule  
30 required by statute or lawfully adopted by the department  
31 ~~division~~, and brought prior to the accident to the employee's

1 knowledge, or if injury is caused by the knowing refusal of  
2 the employee to use a safety appliance provided by the  
3 employer, the compensation as provided in this chapter shall  
4 be reduced 25 percent.

5 Section 468. Paragraph (f) of subsection (1) of  
6 section 440.10, Florida Statutes, is amended to read:

7 440.10 Liability for compensation.--

8 (1)

9 (f) If an employer fails to secure compensation as  
10 required by this chapter, the department may assess against  
11 the employer a penalty not to exceed \$5,000 for each employee  
12 of that employer who is classified by the employer as an  
13 independent contractor but who is found by the department to  
14 not meet the criteria for an independent contractor that are  
15 set forth in s. 440.02. The department ~~division~~ shall adopt  
16 rules to administer the provisions of this paragraph.

17 Section 469. Section 440.1025, Florida Statutes, is  
18 amended to read:

19 440.1025 Consideration of public employer workplace  
20 safety program in rate-setting; program requirements;  
21 rulemaking.--For a public employer to be eligible for receipt  
22 of specific identifiable consideration under s. 627.0915 for a  
23 workplace safety program in the setting of rates, the public  
24 employer must have a workplace safety program. At a minimum,  
25 the program must include a written safety policy and safety  
26 rules, and make provision for safety inspections, preventative  
27 maintenance, safety training, first-aid, accident  
28 investigation, and necessary recordkeeping. For purposes of  
29 this section, "public employer" means any agency within state,  
30 county, or municipal government employing individuals for  
31 salary, wages, or other remuneration. The department ~~division~~

1 may adopt ~~promulgate~~ rules for insurers to utilize in  
2 determining public employer compliance with the requirements  
3 of this section.

4 Section 470. Section 440.103, Florida Statutes, is  
5 amended to read:

6 440.103 Building permits; identification of minimum  
7 premium policy.--Except as otherwise provided in this chapter,  
8 every employer shall, as a condition to receiving a building  
9 permit, show proof that it has secured compensation for its  
10 employees under this chapter as provided in ss. 440.10 and  
11 440.38. Such proof of compensation must be evidenced by a  
12 certificate of coverage issued by the carrier, a valid  
13 exemption certificate approved by the department or the former  
14 Division of Workers' Compensation of the Department of Labor  
15 and Employment Security, or a copy of the employer's authority  
16 to self-insure and shall be presented each time the employer  
17 applies for a building permit. As provided in s. 627.413(5),  
18 each certificate of coverage must show, on its face, whether  
19 or not coverage is secured under the minimum premium  
20 provisions of rules adopted by rating organizations licensed  
21 pursuant to s. 627.221 ~~by the department~~. The words "minimum  
22 premium policy" or equivalent language shall be typed,  
23 printed, stamped, or legibly handwritten.

24 Section 471. Paragraph (a) of subsection (3) of  
25 section 440.105, Florida Statutes, is amended to read:

26 440.105 Prohibited activities; reports; penalties;  
27 limitations.--

28 (3) Whoever violates any provision of this subsection  
29 commits a misdemeanor of the first degree, punishable as  
30 provided in s. 775.082 or s. 775.083.

31

1 (a) It shall be unlawful for any employer to knowingly  
2 fail to update applications for coverage as required by s.  
3 440.381(1) and the Financial Services Commission ~~Department of~~  
4 ~~insurance~~ rules, or to post notice of coverage pursuant to s.  
5 440.40.

6 Section 472. Subsections (1) and (2) of section  
7 440.1051, Florida Statutes, are amended to read:

8 440.1051 Fraud reports; civil immunity; criminal  
9 penalties.--

10 (1) The Bureau of Workers' Compensation Insurance  
11 Fraud of the Division of Insurance Fraud of the department ~~of~~  
12 ~~insurance~~ shall establish a toll-free telephone number to  
13 receive reports of workers' compensation fraud committed by an  
14 employee, employer, insurance provider, physician, attorney,  
15 or other person.

16 (2) Any person who reports workers' compensation fraud  
17 to the Division of Insurance Fraud under subsection (1) is  
18 immune from civil liability for doing so, and the person or  
19 entity alleged to have committed the fraud may not retaliate  
20 against him or her for providing such report, unless the  
21 person making the report knows it to be false.

22 Section 473. Subsections (3) and (4) of section  
23 440.106, Florida Statutes, are amended to read:

24 440.106 Civil remedies; administrative penalties.--

25 (3) Whenever any group or individual self-insurer,  
26 carrier, rating bureau, or agent or other representative of  
27 any carrier or rating bureau is determined to have violated s.  
28 440.105, the agency responsible for licensure or certification  
29 ~~department~~ may revoke or suspend the authority or  
30 certification of the any group or individual self-insurer,  
31 carrier, agent, or broker.

1           (4) The department or the Office of Insurance  
2 Regulation shall report any contractor determined in violation  
3 of requirements of this chapter to the appropriate state  
4 licensing board for disciplinary action.

5           Section 474. Subsections (5), (7), and (12) of section  
6 440.107, Florida Statutes, are amended to read:

7           440.107 Department powers to enforce employer  
8 compliance with coverage requirements.--

9           (5) Whenever the department determines that an  
10 employer who is required to secure the payment to his or her  
11 employees of the compensation provided for by this chapter has  
12 failed to do so, such failure shall be deemed an immediate  
13 serious danger to public health, safety, or welfare sufficient  
14 to justify service by the department of a stop-work order on  
15 the employer, requiring the cessation of all business  
16 operations at the place of employment or job site. If the  
17 department ~~division~~ makes such a determination, the department  
18 ~~division~~ shall issue a stop-work order within 72 hours. The  
19 order shall take effect upon the date of service upon the  
20 employer, unless the employer provides evidence satisfactory  
21 to the department of having secured any necessary insurance or  
22 self-insurance and pays a civil penalty to the department, to  
23 be deposited by the department into the Workers' Compensation  
24 Administration Trust Fund, in the amount of \$100 per day for  
25 each day the employer was not in compliance with this chapter.

26           (7) In addition to any penalty, stop-work order, or  
27 injunction, the department shall assess against any employer,  
28 who has failed to secure the payment of compensation as  
29 required by this chapter, a penalty in the following amount:

30           (a) An amount equal to at least the amount that the  
31 employer would have paid or up to twice the amount the

1 employer would have paid during periods it illegally failed to  
2 secure payment of compensation in the preceding 3-year period  
3 based on the employer's payroll during the preceding 3-year  
4 period; or

5 (b) One thousand dollars, whichever is greater.

6  
7 Any penalty assessed under this subsection is due within 30  
8 days after the date on which the employer is notified, except  
9 that, if the department has posted a stop-work order or  
10 obtained injunctive relief against the employer, payment is  
11 due, in addition to those conditions set forth in this  
12 section, as a condition to relief from a stop-work order or an  
13 injunction. Interest shall accrue on amounts not paid when due  
14 at the rate of 1 percent per month. The department ~~division~~  
15 shall adopt rules to administer this section.

16 (12) If the department ~~division~~ finds that an employer  
17 who is certified or registered under part I or part II of  
18 chapter 489 and who is required to secure payment of the  
19 compensation provided for by this chapter to his or her  
20 employees has failed to do so, the department ~~division~~ shall  
21 immediately notify the Department of Business and Professional  
22 Regulation.

23 Section 475. Subsections (11) and (12) of section  
24 440.13, Florida Statutes, are amended to read:

25 440.13 Medical services and supplies; penalty for  
26 violations; limitations.--

27 (11) ~~AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION~~  
28 ~~AND THE DEPARTMENT OF INSURANCE; JURISDICTION.--~~

29 (a) The Agency for Health Care Administration may  
30 investigate health care providers to determine whether  
31 providers are complying with this chapter and with rules

1 adopted by the agency, whether the providers are engaging in  
2 overutilization, and whether providers are engaging in  
3 improper billing practices. If the agency finds that a health  
4 care provider has improperly billed, overutilized, or failed  
5 to comply with agency rules or the requirements of this  
6 chapter it must notify the provider of its findings and may  
7 determine that the health care provider may not receive  
8 payment from the carrier or may impose penalties as set forth  
9 in subsection (8) or other sections of this chapter. If the  
10 health care provider has received payment from a carrier for  
11 services that were improperly billed or for overutilization,  
12 it must return those payments to the carrier. The agency may  
13 assess a penalty not to exceed \$500 for each overpayment that  
14 is not refunded within 30 days after notification of  
15 overpayment by the agency or carrier.

16 (b) The department shall monitor carriers as provided  
17 in this chapter and the Office of Insurance Regulation shall  
18 and audit insurers and group self-insurance funds ~~carriers~~ as  
19 provided in s. 624.3161, to determine if medical bills are  
20 paid in accordance with this section and ~~department~~ rules of  
21 the department and Financial Services Commission,  
22 respectively. Any employer, if self-insured, or carrier found  
23 by the department or Office of Insurance Regulation ~~division~~  
24 not to be within 90 percent compliance as to the payment of  
25 medical bills after July 1, 1994, must be assessed a fine not  
26 to exceed 1 percent of the prior year's assessment levied  
27 against such entity under s. 440.51 for every quarter in which  
28 the entity fails to attain 90-percent compliance. The  
29 department shall fine or otherwise discipline an employer or  
30 carrier, pursuant to this chapter, ~~the insurance code, or~~  
31 rules adopted by the department, and the Office of Insurance

1 Regulation shall fine or otherwise discipline an insurer or  
2 group self-insurance fund pursuant to the insurance code or  
3 rules adopted by the Financial Services Commission,for each  
4 late payment of compensation that is below the minimum  
5 90-percent performance standard. Any carrier that is found to  
6 be not in compliance in subsequent consecutive quarters must  
7 implement a medical-bill review program approved by the  
8 department or office ~~division~~, and an insurer or group  
9 self-insurance fund ~~the carrier~~ is subject to disciplinary  
10 action by the Office of Insurance Regulation ~~Department of~~  
11 ~~Insurance~~.

12 (c) The agency has exclusive jurisdiction to decide  
13 any matters concerning reimbursement, to resolve any  
14 overutilization dispute under subsection (7), and to decide  
15 any question concerning overutilization under subsection (8),  
16 which question or dispute arises after January 1, 1994.

17 (d) The following agency actions do not constitute  
18 agency action subject to review under ss. 120.569 and 120.57  
19 and do not constitute actions subject to s. 120.56: referral  
20 by the entity responsible for utilization review; a decision  
21 by the agency to refer a matter to a peer review committee;  
22 establishment by a health care provider or entity of  
23 procedures by which a peer review committee reviews the  
24 rendering of health care services; and the review proceedings,  
25 report, and recommendation of the peer review committee.

26 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM  
27 REIMBURSEMENT ALLOWANCES.--

28 (a) A three-member panel is created, consisting of the  
29 Chief Financial Officer ~~Insurance Commissioner~~, or the Chief  
30 Financial Officer's ~~Insurance Commissioner's~~ designee, and two  
31 members to be appointed by the Governor, subject to

1 confirmation by the Senate, one member who, on account of  
2 present or previous vocation, employment, or affiliation,  
3 shall be classified as a representative of employers, the  
4 other member who, on account of previous vocation, employment,  
5 or affiliation, shall be classified as a representative of  
6 employees. The panel shall determine statewide schedules of  
7 maximum reimbursement allowances for medically necessary  
8 treatment, care, and attendance provided by physicians,  
9 hospitals, ambulatory surgical centers, work-hardening  
10 programs, pain programs, and durable medical equipment. The  
11 maximum reimbursement allowances for inpatient hospital care  
12 shall be based on a schedule of per diem rates, to be approved  
13 by the three-member panel no later than March 1, 1994, to be  
14 used in conjunction with a precertification manual as  
15 determined by the agency. All compensable charges for hospital  
16 outpatient care shall be reimbursed at 75 percent of usual and  
17 customary charges. Until the three-member panel approves a  
18 schedule of per diem rates for inpatient hospital care and it  
19 becomes effective, all compensable charges for hospital  
20 inpatient care must be reimbursed at 75 percent of their usual  
21 and customary charges. Annually, the three-member panel shall  
22 adopt schedules of maximum reimbursement allowances for  
23 physicians, hospital inpatient care, hospital outpatient care,  
24 ambulatory surgical centers, work-hardening programs, and pain  
25 programs. However, the maximum percentage of increase in the  
26 individual reimbursement allowance may not exceed the  
27 percentage of increase in the Consumer Price Index for the  
28 previous year. An individual physician, hospital, ambulatory  
29 surgical center, pain program, or work-hardening program shall  
30 be reimbursed either the usual and customary charge for  
31 treatment, care, and attendance, the agreed-upon contract

1 price, or the maximum reimbursement allowance in the  
2 appropriate schedule, whichever is less.

3 (b) As to reimbursement for a prescription medication,  
4 the reimbursement amount for a prescription shall be the  
5 average wholesale price times 1.2 plus \$4.18 for the  
6 dispensing fee, except where the carrier has contracted for a  
7 lower amount. Fees for pharmaceuticals and pharmaceutical  
8 services shall be reimbursable at the applicable fee schedule  
9 amount. Where the employer or carrier has contracted for such  
10 services and the employee elects to obtain them through a  
11 provider not a party to the contract, the carrier shall  
12 reimburse at the schedule, negotiated, or contract price,  
13 whichever is lower.

14 (c) Reimbursement for all fees and other charges for  
15 such treatment, care, and attendance, including treatment,  
16 care, and attendance provided by any hospital or other health  
17 care provider, ambulatory surgical center, work-hardening  
18 program, or pain program, must not exceed the amounts provided  
19 by the uniform schedule of maximum reimbursement allowances as  
20 determined by the panel or as otherwise provided in this  
21 section. This subsection also applies to independent medical  
22 examinations performed by health care providers under this  
23 chapter. Until the three-member panel approves a uniform  
24 schedule of maximum reimbursement allowances and it becomes  
25 effective, all compensable charges for treatment, care, and  
26 attendance provided by physicians, ambulatory surgical  
27 centers, work-hardening programs, or pain programs shall be  
28 reimbursed at the lowest maximum reimbursement allowance  
29 across all 1992 schedules of maximum reimbursement allowances  
30 for the services provided regardless of the place of service.  
31 In determining the uniform schedule, the panel shall first

1 approve the data which it finds representative of prevailing  
2 charges in the state for similar treatment, care, and  
3 attendance of injured persons. Each health care provider,  
4 health care facility, ambulatory surgical center,  
5 work-hardening program, or pain program receiving workers'  
6 compensation payments shall maintain records verifying their  
7 usual charges. In establishing the uniform schedule of maximum  
8 reimbursement allowances, the panel must consider:

9       1. The levels of reimbursement for similar treatment,  
10 care, and attendance made by other health care programs or  
11 third-party providers;

12       2. The impact upon cost to employers for providing a  
13 level of reimbursement for treatment, care, and attendance  
14 which will ensure the availability of treatment, care, and  
15 attendance required by injured workers;

16       3. The financial impact of the reimbursement  
17 allowances upon health care providers and health care  
18 facilities, including trauma centers as defined in s.  
19 395.4001, and its effect upon their ability to make available  
20 to injured workers such medically necessary remedial  
21 treatment, care, and attendance. The uniform schedule of  
22 maximum reimbursement allowances must be reasonable, must  
23 promote health care cost containment and efficiency with  
24 respect to the workers' compensation health care delivery  
25 system, and must be sufficient to ensure availability of such  
26 medically necessary remedial treatment, care, and attendance  
27 to injured workers; and

28       4. The most recent average maximum allowable rate of  
29 increase for hospitals determined by the Health Care Board  
30 under chapter 408.

31

1 (d) In addition to establishing the uniform schedule  
2 of maximum reimbursement allowances, the panel shall:

3 1. Take testimony, receive records, and collect data  
4 to evaluate the adequacy of the workers' compensation fee  
5 schedule, nationally recognized fee schedules and alternative  
6 methods of reimbursement to certified health care providers  
7 and health care facilities for inpatient and outpatient  
8 treatment and care.

9 2. Survey certified health care providers and health  
10 care facilities to determine the availability and  
11 accessibility of workers' compensation health care delivery  
12 systems for injured workers.

13 3. Survey carriers to determine the estimated impact  
14 on carrier costs and workers' compensation premium rates by  
15 implementing changes to the carrier reimbursement schedule or  
16 implementing alternative reimbursement methods.

17 4. Submit recommendations on or before January 1,  
18 2003, and biennially thereafter, to the President of the  
19 Senate and the Speaker of the House of Representatives on  
20 methods to improve the workers' compensation health care  
21 delivery system.

22

23 The agency and the department, as requested,~~division~~ shall  
24 provide data to the panel, including but not limited to,  
25 utilization trends in the workers' compensation health care  
26 delivery system. The agency ~~division~~ shall provide the panel  
27 with an annual report regarding the resolution of medical  
28 reimbursement disputes and any actions pursuant to s.  
29 440.13(8). The department ~~division~~ shall provide  
30 administrative support and service to the panel to the extent  
31 requested by the panel.

1           Section 476. Subsections (21), (23), and (24) of  
2 section 440.134, Florida Statutes, are amended to read:

3           440.134 Workers' compensation managed care  
4 arrangement.--

5           (21) Upon expiration of the suspension period, the  
6 insurer's authorization shall automatically be reinstated  
7 unless the agency finds that the causes of the suspension have  
8 not been rectified or that the insurer is otherwise not in  
9 compliance with the requirements of this chapter part. If not  
10 so automatically reinstated, the authorization shall be deemed  
11 to have expired as of the end of the suspension period.

12           (23) The agency shall immediately notify the office  
13 ~~department~~ whenever it issues an administrative complaint or  
14 an order or otherwise initiates legal proceedings resulting  
15 in, or which may result in, suspension or revocation of an  
16 insurer's authorization.

17           (24) Nothing in this chapter part shall be deemed to  
18 authorize any entity to transact any insurance business,  
19 assume risk, or otherwise engage in any other type of  
20 insurance unless it is authorized as an insurer or a health  
21 maintenance organization under a certificate of authority  
22 issued ~~by the Department of Insurance~~ under the provisions of  
23 the Florida Insurance Code.

24           Section 477. Paragraph (b) of subsection (5) of  
25 section 440.14, Florida Statutes, is amended to read:

26           440.14 Determination of pay.--

27           (5)

28           (b) The employee waives any entitlement to interest,  
29 penalties, and attorney's fees during the period in which the  
30 employee has not provided information concerning the loss of  
31 earnings from concurrent employment. Carriers are not subject

1 to penalties ~~by the division~~ under s. 440.20(8)(b) and (c) for  
2 unpaid compensation related to concurrent employment during  
3 the period in which the employee has not provided information  
4 concerning the loss of earnings from concurrent employment.

5 Section 478. Section 440.17, Florida Statutes, is  
6 amended to read:

7 440.17 Guardian for minor or incompetent.--Prior to  
8 the filing of a claim, the department ~~division~~, and after the  
9 filing of a claim, a judge of compensation claims, may require  
10 the appointment by a court of competent jurisdiction, for any  
11 person who is mentally incompetent or a minor, of a guardian  
12 or other representative to receive compensation payable to  
13 such person under this chapter and to exercise the powers  
14 granted to or to perform the duties required of such person  
15 under this chapter; however, the judge of compensation claims,  
16 in the judge of compensation claims' discretion, may designate  
17 in the compensation award a person to whom payment of  
18 compensation may be paid for a minor or incompetent, in which  
19 event payment to such designated person shall discharge all  
20 liability for such compensation.

21 Section 479. Paragraph (c) of subsection (8) and  
22 subsections (10), (15), (16), and (17) of section 440.20,  
23 Florida Statutes, are amended to read:

24 440.20 Time for payment of compensation; penalties for  
25 late payment.--

26 (8) In addition to any other penalties provided by  
27 this chapter for late payment, if any installment of  
28 compensation is not paid when it becomes due, the employer,  
29 carrier, or servicing agent shall pay interest thereon at the  
30 rate of 12 percent per year from the date the installment  
31 becomes due until it is paid, whether such installment is

1 payable without an order or under the terms of an order. The  
2 interest payment shall be the greater of the amount of  
3 interest due or \$5.

4 (c) In order to ensure carrier compliance under this  
5 chapter and provisions of the Florida Insurance Code, the  
6 office ~~department~~ shall monitor the performance of carriers by  
7 conducting market conduct examinations, as provided in s.  
8 624.3161, and conducting investigations, as provided in s.  
9 624.317. The department shall establish by rule minimum  
10 performance standards for carriers to ensure that a minimum of  
11 90 percent of all compensation benefits are timely paid. The  
12 department shall fine a carrier as provided in s.  
13 440.13(11)(b) up to \$50 for each late payment of compensation  
14 that is below the minimum 90 percent performance standard.  
15 This paragraph does not affect the imposition of any penalties  
16 or interest due to the claimant. If a carrier contracts with a  
17 servicing agent to fulfill its administrative responsibilities  
18 under this chapter, the payment practices of the servicing  
19 agent are deemed the payment practices of the carrier for the  
20 purpose of assessing penalties against the carrier.

21 (10) Whenever the department deems it advisable, it  
22 may require any employer to make a deposit with the Chief  
23 Financial Officer ~~Treasurer~~ to secure the prompt and  
24 convenient payments of such compensation; and payments  
25 therefrom upon any awards shall be made upon order of the  
26 department or judge of compensation claims.

27 (15)(a) The office ~~department~~ shall examine on an  
28 ongoing basis claims files in accordance with s. 624.3161 and  
29 may impose fines pursuant to s. 624.310(5) and this chapter in  
30 order to identify questionable claims-handling techniques,  
31 questionable patterns or practices of claims, or a pattern of

1 repeated unreasonably controverted claims by carriers, as  
2 defined in s. 440.02, providing services to employees pursuant  
3 to this chapter. If the office ~~department~~ finds such  
4 questionable techniques, patterns, or repeated unreasonably  
5 controverted claims as constitute a general business practice  
6 of a carrier, as defined in s. 440.02, the office ~~department~~  
7 shall take appropriate action so as to bring such general  
8 business practices to a halt pursuant to s. 440.38(3) or may  
9 impose penalties pursuant to s. 624.4211. The department and  
10 office may initiate investigations of questionable techniques,  
11 patterns, practices, or repeated unreasonably controverted  
12 claims. The Financial Services Commission ~~department~~ may by  
13 rule establish forms and procedures for corrective action  
14 plans and for auditing carriers.

15 (b) As to any examination, investigation, or hearing  
16 being conducted under this chapter, the department and office  
17 ~~Insurance Commissioner or his or her designee:~~

- 18 1. May administer oaths, examine and cross-examine  
19 witnesses, receive oral and documentary evidence; and  
20 2. Shall have the power to subpoena witnesses, compel  
21 their attendance and testimony, and require by subpoena the  
22 production of books, papers, records, files, correspondence,  
23 documents, or other evidence which is relevant to the inquiry.

24 (c) If any person refuses to comply with any such  
25 subpoena or to testify as to any matter concerning which she  
26 or he may be lawfully interrogated, the Circuit Court of Leon  
27 County or of the county wherein such examination,  
28 investigation, or hearing is being conducted, or of the county  
29 wherein such person resides, may, on the application of the  
30 department or the office, issue an order requiring such person  
31 to comply with the subpoena and to testify.

1 (d) Subpoenas shall be served, and proof of such  
2 service made, in the same manner as if issued by a circuit  
3 court. Witness fees, costs, and reasonable travel expenses, if  
4 claimed, shall be allowed the same as for testimony in a  
5 circuit court.

6 (e) The department shall publish annually a report  
7 which indicates the promptness of first payment of  
8 compensation records of each carrier or self-insurer so as to  
9 focus attention on those carriers or self-insurers with poor  
10 payment records for the preceding year. The department and the  
11 office shall take appropriate steps so as to cause such poor  
12 carrier payment practices to halt pursuant to s. 440.38(3). In  
13 addition, the department shall take appropriate action so as  
14 to halt such poor payment practices of self-insurers. "Poor  
15 payment practice" means a practice of late payment sufficient  
16 to constitute a general business practice.

17 (f) The Financial Services Commission, in consultation  
18 with the department, shall adopt promulgate rules providing  
19 guidelines to carriers, as defined in s. 440.02,  
20 self-insurers, and employers to indicate behavior that may be  
21 construed as questionable claims-handling techniques,  
22 questionable patterns of claims, repeated unreasonably  
23 controverted claims, or poor payment practices.

24 (16) No penalty assessed under this section may be  
25 recouped by any carrier or self-insurer in the rate base, the  
26 premium, or any rate filing. The office ~~Department of~~  
27 ~~Insurance~~ shall enforce this subsection.

28 (17) The Financial Services Commission ~~department~~ may  
29 by rule establish audit procedures and set standards for the  
30 Automated Carrier Performance System.

31

1           Section 480. Subsections (2) and (3) of section  
2 440.24, Florida Statutes, is amended to read:

3           440.24 Enforcement of compensation orders;  
4 penalties.--

5           (2) In any case where the employer is insured and the  
6 carrier fails to comply with any compensation order of a judge  
7 of compensation claims or court within 10 days after such  
8 order becomes final, the department shall notify the office of  
9 such failure and the office shall thereupon suspend the  
10 license of such carrier to do an insurance business in this  
11 state, until such carrier has complied with such order.

12           (3) In any case where the employer is a self-insurer  
13 and fails to comply with any compensation order of a judge of  
14 compensation claims or court within 10 days after such order  
15 becomes final, the department ~~of Insurance~~ may suspend or  
16 revoke any authorization previously given to the employer to  
17 be a self-insurer, and the Florida Self-Insurers Guaranty  
18 Association, Incorporated, may call or sue upon the surety  
19 bond or exercise its rights under the letter of credit  
20 deposited by the self-insurer with the association as a  
21 qualifying security deposit as may be necessary to satisfy the  
22 order.

23           Section 481. Subsections (1), (2), (3), and (4) of  
24 section 440.38, Florida Statutes, are amended to read:

25           440.38 Security for compensation; insurance carriers  
26 and self-insurers.--

27           (1) Every employer shall secure the payment of  
28 compensation under this chapter:

29           (a) By insuring and keeping insured the payment of  
30 such compensation with any stock company or mutual company or  
31

1 association or exchange, authorized to do business in the  
2 state;

3 (b) By furnishing satisfactory proof to the Florida  
4 Self-Insurers Guaranty Association, Incorporated, created in  
5 s. 440.385, that it has the financial strength necessary to  
6 ensure timely payment of all current and future claims  
7 individually and on behalf of its subsidiary and affiliated  
8 companies with employees in this state and receiving an  
9 authorization from the department ~~of Insurance~~ to pay such  
10 compensation directly. The association shall review the  
11 financial strength of applicants for membership, current  
12 members, and former members and make recommendations to the  
13 department ~~of Insurance~~ regarding their qualifications to  
14 self-insure in accordance with this section and ss. 440.385  
15 and 440.386. The department shall act in accordance with the  
16 recommendations unless it finds by clear and convincing  
17 evidence that the recommendations are erroneous.

18 1. As a condition of authorization under paragraph  
19 (a), the association may recommend that the department ~~of~~  
20 ~~Insurance~~ require an employer to deposit with the association  
21 a qualifying security deposit. The association shall recommend  
22 the type and amount of the qualifying security deposit and  
23 shall prescribe conditions for the qualifying security  
24 deposit, which shall include authorization for the association  
25 to call the qualifying security deposit in the case of default  
26 to pay compensation awards and related expenses of the  
27 association. As a condition to authorization to self-insure,  
28 the employer shall provide proof that the employer has  
29 provided for competent personnel with whom to deliver benefits  
30 and to provide a safe working environment. The employer shall  
31 also provide evidence that it carries reinsurance at levels

1 that will ensure the financial strength and actuarial  
2 soundness of such employer in accordance with rules adopted by  
3 the department ~~of Insurance~~. The department ~~of Insurance~~ may  
4 by rule require that, in the event of an individual  
5 self-insurer's insolvency, such qualifying security deposits  
6 and reinsurance policies are payable to the association. Any  
7 employer securing compensation in accordance with the  
8 provisions of this paragraph shall be known as a self-insurer  
9 and shall be classed as a carrier of her or his own insurance.  
10 The employer shall, if requested, provide the association an  
11 actuarial report signed by a member of the American Academy of  
12 Actuaries providing an opinion of the appropriate present  
13 value of the reserves, using a 4-percent discount rate, for  
14 current and future compensation claims. If any member or  
15 former member of the association refuses to timely provide  
16 such a report, the association may obtain an order from a  
17 circuit court requiring the member to produce such a report  
18 and ordering any other relief that the court determines is  
19 appropriate. The association may recover all reasonable costs  
20 and attorney's fees in such proceedings.

21         2. If the employer fails to maintain the foregoing  
22 requirements, the association shall recommend to the  
23 department ~~of Insurance~~ that the department revoke the  
24 employer's authority to self-insure, unless the employer  
25 provides to the association the certified opinion of an  
26 independent actuary who is a member of the American Academy of  
27 Actuaries as to the actuarial present value of the employer's  
28 determined and estimated future compensation payments based on  
29 cash reserves, using a 4-percent discount rate, and a  
30 qualifying security deposit equal to 1.5 times the value so  
31 certified. The employer shall thereafter annually provide such

1 a certified opinion until such time as the employer meets the  
2 requirements of subparagraph 1. The qualifying security  
3 deposit shall be adjusted at the time of each such annual  
4 report. Upon the failure of the employer to timely provide  
5 such opinion or to timely provide a security deposit in an  
6 amount equal to 1.5 times the value certified in the latest  
7 opinion, the association shall provide that information to the  
8 department ~~of Insurance~~ along with a recommendation, and the  
9 department ~~of Insurance~~ shall then revoke such employer's  
10 authorization to self-insure. Failure to comply with this  
11 subparagraph constitutes an immediate serious danger to the  
12 public health, safety, or welfare sufficient to justify the  
13 summary suspension of the employer's authorization to  
14 self-insure pursuant to s. 120.68.

15           3. Upon the suspension or revocation of the employer's  
16 authorization to self-insure, the employer shall provide to  
17 the association the certified opinion of an independent  
18 actuary who is a member of the American Academy of Actuaries  
19 of the actuarial present value of the determined and estimated  
20 future compensation payments of the employer for claims  
21 incurred while the member exercised the privilege of  
22 self-insurance, using a discount rate of 4 percent. The  
23 employer shall provide such an opinion at 6-month intervals  
24 thereafter until such time as the latest opinion shows no  
25 remaining value of claims. With each such opinion, the  
26 employer shall deposit with the association a qualifying  
27 security deposit in an amount equal to the value certified by  
28 the actuary. The association has a cause of action against an  
29 employer, and against any successor of the employer, who fails  
30 to timely provide such opinion or who fails to timely maintain  
31 the required security deposit with the association. The

1 association shall recover a judgment in the amount of the  
2 actuarial present value of the determined and estimated future  
3 compensation payments of the employer for claims incurred  
4 while the employer exercised the privilege of self-insurance,  
5 together with attorney's fees. For purposes of this section,  
6 the successor of an employer means any person, business  
7 entity, or group of persons or business entities, which holds  
8 or acquires legal or beneficial title to the majority of the  
9 assets or the majority of the shares of the employer.

10 4. A qualifying security deposit shall consist, at the  
11 option of the employer, of:

12 a. Surety bonds, in a form and containing such terms  
13 as prescribed by the association, issued by a corporation  
14 surety authorized to transact surety business by the  
15 department ~~of insurance~~, and whose policyholders' and  
16 financial ratings, as reported in A.M. Best's Insurance  
17 Reports, Property-Liability, are not less than "A" and "V",  
18 respectively.

19 b. Irrevocable letters of credit in favor of the  
20 association issued by financial institutions located within  
21 this state, the deposits of which are insured through the  
22 Federal Deposit Insurance Corporation.

23 5. The qualifying security deposit shall be held by  
24 the association exclusively for the benefit of workers'  
25 compensation claimants. The security shall not be subject to  
26 assignment, execution, attachment, or any legal process  
27 whatsoever, except as necessary to guarantee the payment of  
28 compensation under this chapter. No surety bond may be  
29 terminated, and no letter of credit may be allowed to expire,  
30 without 90 days' prior written notice to the association and  
31 deposit by the self-insuring employer of some other qualifying

1 security deposit of equal value within 10 business days after  
2 such notice. Failure to provide such written notice or failure  
3 to timely provide qualifying replacement security after such  
4 notice shall constitute grounds for the association to call or  
5 sue upon the surety bond or to exercise its rights under a  
6 letter of credit. Current self-insured employers must comply  
7 with this section on or before December 31, 2001, or upon the  
8 maturity of existing security deposits, whichever occurs  
9 later. The department ~~of Insurance~~ may specify by rule the  
10 amount of the qualifying security deposit required prior to  
11 authorizing an employer to self-insure and the amount of net  
12 worth required for an employer to qualify for authorization to  
13 self-insure;

14 (c) By entering into a contract with a public utility  
15 under an approved utility-provided self-insurance program as  
16 set forth in s. 624.46225 in effect as of July 1, 1983. The  
17 department ~~division~~ shall adopt rules to implement this  
18 paragraph;

19 (d) By entering into an interlocal agreement with  
20 other local governmental entities to create a local government  
21 pool pursuant to s. 624.4622; or

22 ~~(e) In accordance with s. 440.135, an employer, other~~  
23 ~~than a local government unit, may elect coverage under the~~  
24 ~~Workers' Compensation Law and retain the benefit of the~~  
25 ~~exclusiveness of liability provided in s. 440.11 by obtaining~~  
26 ~~a 24-hour health insurance policy from an authorized property~~  
27 ~~and casualty insurance carrier or an authorized life and~~  
28 ~~health insurance carrier, or by participating in a fully or~~  
29 ~~partially self-insured 24-hour health plan that is established~~  
30 ~~or maintained by or for two or more employers, so long as the~~  
31 ~~law of this state is not preempted by the Employee Retirement~~

1 ~~Income Security Act of 1974, Pub. L. No. 93-406, or any~~  
2 ~~amendment to that law, which policy or plan must provide, for~~  
3 ~~at least occupational injuries and illnesses, medical benefits~~  
4 ~~that are comparable to those required by this chapter. A local~~  
5 ~~government unit, as a single employer, in accordance with s.~~  
6 ~~440.135, may participate in the 24-hour health insurance~~  
7 ~~coverage plan referenced in this paragraph. Disputes and~~  
8 ~~remedies arising under policies issued under this section are~~  
9 ~~governed by the terms and conditions of the policies and under~~  
10 ~~the applicable provisions of the Florida Insurance Code and~~  
11 ~~rules adopted under the insurance code and other applicable~~  
12 ~~laws of this state. The 24-hour health insurance policy may~~  
13 ~~provide for health care by a health maintenance organization~~  
14 ~~or a preferred provider organization. The premium for such~~  
15 ~~24-hour health insurance policy shall be paid entirely by the~~  
16 ~~employer. The 24-hour health insurance policy may use~~  
17 ~~deductibles and coinsurance provisions that require the~~  
18 ~~employee to pay a portion of the actual medical care received~~  
19 ~~by the employee. If an employer obtains a 24-hour health~~  
20 ~~insurance policy or self-insured plan to secure payment of~~  
21 ~~compensation as to medical benefits, the employer must also~~  
22 ~~obtain an insurance policy or policies that provide indemnity~~  
23 ~~benefits as follows:~~

24       1. ~~If indemnity benefits are provided only for~~  
25 ~~occupational-related disability, such benefits must be~~  
26 ~~comparable to those required by this chapter.~~

27       2. ~~If indemnity benefits are provided for both~~  
28 ~~occupational-related and nonoccupational-related disability,~~  
29 ~~such benefits must be comparable to those required by this~~  
30 ~~chapter, except that they must be based on 60 percent of the~~  
31 ~~average weekly wages.~~

1           ~~3. The employer shall provide for each of its~~  
2 ~~employees life insurance with a death benefit of \$100,000.~~

3           ~~4. Policies providing coverage under this subsection~~  
4 ~~must use prescribed and acceptable underwriting standards,~~  
5 ~~forms, and policies approved by the Department of Insurance.~~  
6 ~~If any insurance policy that provides coverage under this~~  
7 ~~section is canceled, terminated, or nonrenewed for any reason,~~  
8 ~~the cancellation, termination, or nonrenewal is ineffective~~  
9 ~~until the self-insured employer or insurance carrier or~~  
10 ~~carriers notify the division and the Department of Insurance~~  
11 ~~of the cancellation, termination, or nonrenewal, and until the~~  
12 ~~division has actually received the notification. The division~~  
13 ~~must be notified of replacement coverage under a workers'~~  
14 ~~compensation and employer's liability insurance policy or plan~~  
15 ~~by the employer prior to the effective date of the~~  
16 ~~cancellation, termination, or nonrenewal; or~~

17           ~~(e)~~(f) By entering into a contract with an individual  
18 self-insurer under an approved individual  
19 self-insurer-provided self-insurance program as set forth in  
20 s. 624.46225. The department ~~division~~ may adopt rules to  
21 administer this subsection.

22           (2)(a) The department ~~of Insurance~~ shall adopt rules  
23 by which businesses may become qualified to provide  
24 underwriting claims-adjusting, loss control, and safety  
25 engineering services to self-insurers.

26           (b) The department ~~of Insurance~~ shall adopt rules  
27 requiring self-insurers to file any reports necessary to  
28 fulfill the requirements of this chapter. Any self-insurer  
29 who fails to file any report as prescribed by the rules  
30 adopted by the department ~~of Insurance~~ shall be subject to a  
31 civil penalty.

1           (3)(a) The license of any stock company or mutual  
2 company or association or exchange authorized to do insurance  
3 business in the state shall for good cause, upon  
4 recommendation of the department ~~division~~, be suspended or  
5 revoked by the office ~~Department of Insurance~~. No suspension  
6 or revocation shall affect the liability of any carrier  
7 already incurred.

8           (b) The department ~~of Insurance~~ shall suspend or  
9 revoke any authorization to a self-insurer for failure to  
10 comply with this section or for good cause, as defined by rule  
11 of the department ~~of Insurance~~. No suspension or revocation  
12 shall affect the liability of any self-insurer already  
13 incurred.

14           (c) Violation of s. 440.381 by a self-insurance fund  
15 shall result in the imposition of a fine not to exceed \$1,000  
16 per audit if the self-insurance fund fails to act on said  
17 audits by correcting errors in employee classification or  
18 accepted applications for coverage where it knew employee  
19 classifications were incorrect. Such fines shall be levied by  
20 the department ~~division~~ and deposited into the Workers'  
21 Compensation Administration Trust Fund.

22           (4)(a) A carrier of insurance, including the parties  
23 to any mutual, reciprocal, or other association, may not write  
24 any compensation insurance under this chapter without a  
25 certificate of authority ~~permit~~ from the office ~~Department of~~  
26 ~~Insurance~~. Such certificate of authority ~~permit~~ shall be  
27 given, upon application therefor, to any insurance or mutual  
28 or reciprocal insurance association upon the office's  
29 ~~department's~~ being satisfied of the solvency of such  
30 corporation or association and its ability to perform all its  
31 undertakings. The office ~~Department of Insurance~~ may revoke

1 any certificate of authority ~~permit~~ so issued for violation of  
2 any provision of this chapter.

3 (b) A carrier of insurance, including the parties to  
4 any mutual, reciprocal, or other association, may not write  
5 any compensation insurance under this chapter unless such  
6 carrier has a claims adjuster, either in-house or under  
7 contract, situated within this state. Self-insurers whose  
8 compensation payments are administered through a third party  
9 and carriers of insurance shall maintain a claims adjuster  
10 within this state during any period for which there are any  
11 open claims against such self-insurer or carrier arising under  
12 the compensation insurance written by the self-insurer or  
13 carrier. Individual self-insurers whose compensation payments  
14 are administered by employees of the self-insurer shall not be  
15 required to have their claims adjuster situated within this  
16 state. Individual self-insurers shall not be required to have  
17 their claims adjusters situated within this state.

18 Section 482. Subsections (1) and (3) of section  
19 440.381, Florida Statutes, are amended to read:

20 440.381 Application for coverage; reporting payroll;  
21 payroll audit procedures; penalties.--

22 (1) Applications by an employer to a carrier for  
23 coverage required by s. 440.38 must be made on a form  
24 prescribed by the Financial Services Commission ~~Department of~~  
25 ~~Insurance~~. The Financial Services Commission ~~Department of~~  
26 ~~Insurance~~ shall adopt rules for applications for coverage  
27 required by s. 440.38. The rules must provide that an  
28 application include information on the employer, the type of  
29 business, past and prospective payroll, estimated revenue,  
30 previous workers' compensation experience, employee  
31 classification, employee names, and any other information

1 necessary to enable a carrier to accurately underwrite the  
2 applicant. The rules must include a provision that a carrier  
3 or self-insurance fund may require that an employer update an  
4 application monthly to reflect any change in the required  
5 application information.

6           (3) The Financial Services Commission, in consultation  
7 with the department, shall establish by rule minimum  
8 requirements for audits of payroll and classifications in  
9 order to ensure that the appropriate premium is charged for  
10 workers' compensation coverage. The rules shall ensure that  
11 audits performed by both carriers and employers are adequate  
12 to provide that all sources of payments to employees,  
13 subcontractors, and independent contractors have been reviewed  
14 and that the accuracy of classification of employees has been  
15 verified. The rules shall provide that employers in all  
16 classes other than the construction class be audited not less  
17 frequently than biennially and may provide for more frequent  
18 audits of employers in specified classifications based on  
19 factors such as amount of premium, type of business, loss  
20 ratios, or other relevant factors. In no event shall employers  
21 in the construction class, generating more than the amount of  
22 premium required to be experience rated, be audited less than  
23 annually. The annual audits required for construction classes  
24 shall consist of physical onsite audits. Payroll verification  
25 audit rules must include, but need not be limited to, the use  
26 of state and federal reports of employee income, payroll and  
27 other accounting records, certificates of insurance maintained  
28 by subcontractors, and duties of employees. At the completion  
29 of an audit, the employer or officer of the corporation and  
30 the auditor must print and sign their names on the audit

31

1 document and attach proof of identification to the audit  
2 document.

3 Section 483. Section 440.385, Florida Statutes, is  
4 amended to read:

5 440.385 Florida Self-Insurers Guaranty Association,  
6 Incorporated.--

7 (1) CREATION OF ASSOCIATION.--

8 (a) There is created a nonprofit corporation to be  
9 known as the "Florida Self-Insurers Guaranty Association,  
10 Incorporated," hereinafter referred to as "the association."  
11 Upon incorporation of the association, all individual  
12 self-insurers as defined in ss. 440.02(23)(a) and  
13 440.38(1)(b), other than individual self-insurers which are  
14 public utilities or governmental entities, shall be members of  
15 the association as a condition of their authority to  
16 individually self-insure in this state. The association shall  
17 perform its functions under a plan of operation as established  
18 and approved under subsection (5) and shall exercise its  
19 powers and duties through a board of directors as established  
20 under subsection (2). The association shall have those powers  
21 granted or permitted corporations not for profit, as provided  
22 in chapter 617. The activities of the association shall be  
23 subject to review by the department ~~of Insurance~~. The  
24 department ~~of Insurance~~ shall have oversight responsibility as  
25 set forth in this section. The association is specifically  
26 authorized to enter into agreements with this state to perform  
27 specified services.

28 (b) A member may voluntarily withdraw from the  
29 association when the member voluntarily terminates the  
30 self-insurance privilege and pays all assessments due to the  
31 date of such termination. However, the withdrawing member

1 shall continue to be bound by the provisions of this section  
2 relating to the period of his or her membership and any claims  
3 charged pursuant thereto. The withdrawing member who is a  
4 member on or after January 1, 1991, shall also be required to  
5 provide to the association upon withdrawal, and at 12-month  
6 intervals thereafter, satisfactory proof, including, if  
7 requested by the association, a report of known and potential  
8 claims certified by a member of the American Academy of  
9 Actuaries, that it continues to meet the standards of s.  
10 440.38(1)(b)1. in relation to claims incurred while the  
11 withdrawing member exercised the privilege of self-insurance.  
12 Such reporting shall continue until the withdrawing member  
13 demonstrates to the association that there is no remaining  
14 value to claims incurred while the withdrawing member was  
15 self-insured. If a withdrawing member fails or refuses to  
16 timely provide an actuarial report to the association, the  
17 association may obtain an order from a circuit court requiring  
18 the member to produce such a report and ordering any other  
19 relief that the court determines appropriate. The association  
20 is entitled to recover all reasonable costs and attorney's  
21 fees expended in such proceedings. If during this reporting  
22 period the withdrawing member fails to meet the standards of  
23 s. 440.38(1)(b)1., the withdrawing member who is a member on  
24 or after January 1, 1991, shall thereupon, and at 6-month  
25 intervals thereafter, provide to the association the certified  
26 opinion of an independent actuary who is a member of the  
27 American Academy of Actuaries of the actuarial present value  
28 of the determined and estimated future compensation payments  
29 of the member for claims incurred while the member was a  
30 self-insurer, using a discount rate of 4 percent. With each  
31 such opinion, the withdrawing member shall deposit with the

1 association security in an amount equal to the value certified  
2 by the actuary and of a type that is acceptable for qualifying  
3 security deposits under s. 440.38(1)(b). The withdrawing  
4 member shall continue to provide such opinions and to provide  
5 such security until such time as the latest opinion shows no  
6 remaining value of claims. The association has a cause of  
7 action against a withdrawing member, and against any successor  
8 of a withdrawing member, who fails to timely provide the  
9 required opinion or who fails to maintain the required deposit  
10 with the association. The association shall be entitled to  
11 recover a judgment in the amount of the actuarial present  
12 value of the determined and estimated future compensation  
13 payments of the withdrawing member for claims incurred during  
14 the time that the withdrawing member exercised the privilege  
15 of self-insurance, together with reasonable attorney's fees.  
16 The association is also entitled to recover reasonable  
17 attorney's fees in any action to compel production of any  
18 actuarial report required by this section. For purposes of  
19 this section, the successor of a withdrawing member means any  
20 person, business entity, or group of persons or business  
21 entities, which holds or acquires legal or beneficial title to  
22 the majority of the assets or the majority of the shares of  
23 the withdrawing member.

24 (2) BOARD OF DIRECTORS.--The board of directors of the  
25 association shall consist of nine persons and shall be  
26 organized as established in the plan of operation. All board  
27 members shall be experienced in self-insurance in this state.  
28 Each director shall serve for a 4-year term and may be  
29 reappointed. Appointments after January 1, 2002, shall be  
30 made by the department ~~of Insurance~~ upon recommendation of  
31 members of the association. Any vacancy on the board shall be

1 filled for the remaining period of the term in the same manner  
2 as appointments other than initial appointments are made. Each  
3 director shall be reimbursed for expenses incurred in carrying  
4 out the duties of the board on behalf of the association.

5 (3) POWERS AND DUTIES.--

6 (a) Upon creation of the Insolvency Fund pursuant to  
7 the provisions of subsection (4), the association is obligated  
8 for payment of compensation under this chapter to insolvent  
9 members' employees resulting from incidents and injuries  
10 existing prior to the member becoming an insolvent member and  
11 from incidents and injuries occurring within 30 days after the  
12 member has become an insolvent member, provided the incidents  
13 giving rise to claims for compensation under this chapter  
14 occur during the year in which such insolvent member is a  
15 member of the guaranty fund and was assessable pursuant to the  
16 plan of operation, and provided the employee makes timely  
17 claim for such payments according to procedures set forth by a  
18 court of competent jurisdiction over the delinquency or  
19 bankruptcy proceedings of the insolvent member. Such  
20 obligation includes only that amount due the injured worker or  
21 workers of the insolvent member under this chapter. In no  
22 event is the association obligated to a claimant in an amount  
23 in excess of the obligation of the insolvent member. The  
24 association shall be deemed the insolvent employer for  
25 purposes of this chapter to the extent of its obligation on  
26 the covered claims and, to such extent, shall have all rights,  
27 duties, and obligations of the insolvent employer as if the  
28 employer had not become insolvent. However, in no event shall  
29 the association be liable for any penalties or interest.

30 (b) The association may:  
31

1           1. Employ or retain such persons as are necessary to  
2 handle claims and perform other duties of the association.

3           2. Borrow funds necessary to effect the purposes of  
4 this section in accord with the plan of operation.

5           3. Sue or be sued.

6           4. Negotiate and become a party to such contracts as  
7 are necessary to carry out the purposes of this section.

8           5. Purchase such reinsurance as is determined  
9 necessary pursuant to the plan of operation.

10          6. Review all applicants for membership in the  
11 association to determine whether the applicant is qualified  
12 for membership under the law. The association shall recommend  
13 to the department ~~of Insurance~~ that the application be  
14 accepted or rejected based on the criteria set forth in s.  
15 440.38(1)(b). The department ~~of Insurance~~ shall approve or  
16 disapprove the application as provided in paragraph (6)(a).

17          7. Collect and review financial information from  
18 employers and make recommendations to the department ~~of~~  
19 ~~Insurance~~ regarding the appropriate security deposit and  
20 reinsurance amounts necessary for an employer to demonstrate  
21 that it has the financial strength necessary to ensure the  
22 timely payment of all current and future claims. The  
23 association may audit and examine an employer to verify the  
24 financial strength of its current and former members. If the  
25 association determines that a current or former self-insured  
26 employer does not have the financial strength necessary to  
27 ensure the timely payment of all current and estimated future  
28 claims, the association may recommend to the department ~~of~~  
29 ~~Insurance~~ that the department:

30           a. Revoke the employer's self-insurance privilege.

31

1           b. Require the employer to provide a certified opinion  
2 of an independent actuary who is a member of the American  
3 Academy of Actuaries as to the actuarial present value of the  
4 employer's estimated current and future compensation payments,  
5 using a 4-percent discount rate.

6           c. Require an increase in the employer's security  
7 deposit in an amount determined by the association to be  
8 necessary to ensure payment of compensation claims. The  
9 department ~~of Insurance~~ shall act on such recommendations as  
10 provided in paragraph (6)(a). The association has a cause of  
11 action against an employer, and against any successor of an  
12 employer, who fails to provide an additional security deposit  
13 required by the department ~~of Insurance~~. The association  
14 shall file an action in circuit court to recover a judgment in  
15 the amount of the requested additional security deposit  
16 together with reasonable attorney's fees. For the purposes of  
17 this section, the successor of an employer is any person,  
18 business entity, or group of persons or business entities  
19 which holds or acquires legal or beneficial title to the  
20 majority of the assets or the majority of the shares of the  
21 employer.

22           8. Charge fees to any member of the association to  
23 cover the actual costs of examining the financial and safety  
24 conditions of that member.

25           9. Charge an applicant for membership in the  
26 association a fee sufficient to cover the actual costs of  
27 examining the financial condition of the applicant.

28           10. Implement any procedures necessary to ensure  
29 compliance with regulatory actions taken by the department ~~of~~  
30 ~~Insurance~~.

31

1           (c)1. To the extent necessary to secure funds for the  
2 payment of covered claims and also to pay the reasonable costs  
3 to administer them, the association, subject to approval by  
4 the department ~~of insurance~~, shall levy assessments based on  
5 the annual written premium each employer would have paid had  
6 the employer not been self-insured. Every assessment shall be  
7 made as a uniform percentage of the figure applicable to all  
8 individual self-insurers, provided that the assessment levied  
9 against any self-insurer in any one year shall not exceed 1  
10 percent of the annual written premium during the calendar year  
11 preceding the date of the assessment. Assessments shall be  
12 remitted to and administered by the board of directors in the  
13 manner specified by the approved plan. Each employer so  
14 assessed shall have at least 30 days' written notice as to the  
15 date the assessment is due and payable. The association shall  
16 levy assessments against any newly admitted member of the  
17 association so that the basis of contribution of any newly  
18 admitted member is the same as previously admitted members,  
19 provision for which shall be contained in the plan of  
20 operation.

21           2. If, in any one year, funds available from such  
22 assessments, together with funds previously raised, are not  
23 sufficient to make all the payments or reimbursements then  
24 owing, the funds available shall be prorated, and the unpaid  
25 portion shall be paid as soon thereafter as sufficient  
26 additional funds become available.

27           3. Funds may be allocated or paid from the Workers'  
28 Compensation Administration Trust Fund to contract with the  
29 association to perform services required by law. However, no  
30 state funds of any kind shall be allocated or paid to the  
31 association or any of its accounts for payment of covered

1 claims or related expenses except those state funds accruing  
2 to the association by and through the assignment of rights of  
3 an insolvent employer. The department ~~of Insurance~~ may not  
4 levy any assessment on the association.

5 (4) INSOLVENCY FUND.--Upon the adoption of a plan of  
6 operation, there shall be created an Insolvency Fund to be  
7 managed by the association.

8 (a) The Insolvency Fund is created for purposes of  
9 meeting the obligations of insolvent members incurred while  
10 members of the association and after the exhaustion of any  
11 security deposit, as required under this chapter. However, if  
12 such security deposit or reinsurance policy is payable to the  
13 association, the association shall commence to provide  
14 benefits out of the Insolvency Fund and be reimbursed from the  
15 security deposit or reinsurance policy. The method of  
16 operation of the Insolvency Fund shall be defined in the plan  
17 of operation as provided in subsection (5).

18 (b) The department ~~of Insurance~~ shall have the  
19 authority to audit the financial soundness of the Insolvency  
20 Fund annually.

21 (c) The department ~~of Insurance~~ may offer certain  
22 amendments to the plan of operation to the board of directors  
23 of the association for purposes of assuring the ongoing  
24 financial soundness of the Insolvency Fund and its ability to  
25 meet the obligations of this section.

26 (5) PLAN OF OPERATION.--The association shall operate  
27 pursuant to a plan of operation approved by the board of  
28 directors. The plan of operation in effect on January 1,  
29 2002, and approved by the Department of Labor and Employment  
30 Security shall remain in effect. However, any amendments to  
31

1 the plan shall not become effective until approved by the  
2 Department of Financial Services ~~Insurance~~.

3 (a) The purpose of the plan of operation shall be to  
4 provide the association and the board of directors with the  
5 authority and responsibility to establish the necessary  
6 programs and to take the necessary actions to protect against  
7 the insolvency of a member of the association. In addition,  
8 the plan shall provide that the members of the association  
9 shall be responsible for maintaining an adequate Insolvency  
10 Fund to meet the obligations of insolvent members provided for  
11 under this act and shall authorize the board of directors to  
12 contract and employ those persons with the necessary expertise  
13 to carry out this stated purpose. By January 1, 2003, the  
14 board of directors shall submit to the department ~~of Insurance~~  
15 a proposed plan of operation for the administration of the  
16 association. The department ~~of Insurance~~ shall approve the  
17 plan by order, consistent with this section. The department ~~of~~  
18 ~~Insurance~~ shall approve any amendments to the plan, consistent  
19 with this section, which are determined appropriate to carry  
20 out the duties and responsibilities of the association.

21 (b) All member employers shall comply with the plan of  
22 operation.

23 (c) The plan of operation shall:

24 1. Establish the procedures whereby all the powers and  
25 duties of the association under subsection (3) will be  
26 performed.

27 2. Establish procedures for handling assets of the  
28 association.

29 3. Establish the amount and method of reimbursing  
30 members of the board of directors under subsection (2).

31

1           4. Establish procedures by which claims may be filed  
2 with the association and establish acceptable forms of proof  
3 of covered claims. Notice of claims to the receiver or  
4 liquidator of the insolvent employer shall be deemed notice to  
5 the association or its agent, and a list of such claims shall  
6 be submitted periodically to the association or similar  
7 organization in another state by the receiver or liquidator.

8           5. Establish regular places and times for meetings of  
9 the board of directors.

10          6. Establish procedures for records to be kept of all  
11 financial transactions of the association and its agents and  
12 the board of directors.

13          7. Provide that any member employer aggrieved by any  
14 final action or decision of the association may appeal to the  
15 department ~~of Insurance~~ within 30 days after the action or  
16 decision.

17          8. Establish the procedures whereby recommendations of  
18 candidates for the board of directors shall be submitted to  
19 the department ~~of Insurance~~.

20          9. Contain additional provisions necessary or proper  
21 for the execution of the powers and duties of the association.

22          (d) The plan of operation may provide that any or all  
23 of the powers and duties of the association, except those  
24 specified under subparagraphs (c)1. and 2., be delegated to a  
25 corporation, association, or other organization which performs  
26 or will perform functions similar to those of this association  
27 or its equivalent in two or more states. Such a corporation,  
28 association, or organization shall be reimbursed as a  
29 servicing facility would be reimbursed and shall be paid for  
30 its performance of any other functions of the association. A  
31 delegation of powers or duties under this subsection shall

1 take effect only with the approval of both the board of  
2 directors and the department ~~of Insurance~~ and may be made only  
3 to a corporation, association, or organization which extends  
4 protection which is not substantially less favorable and  
5 effective than the protection provided by this section.

6 (6) POWERS AND DUTIES OF DEPARTMENT ~~OF INSURANCE~~.--The  
7 department ~~of Insurance~~ shall:

8 (a) Review recommendations of the association  
9 concerning whether current or former self-insured employers or  
10 members of the association have the financial strength  
11 necessary to ensure the timely payment of all current and  
12 estimated future claims. If the association determines an  
13 employer does not have the financial strength necessary to  
14 ensure the timely payment of all current and future claims and  
15 recommends action pursuant to paragraph (3)(b), the department  
16 shall take such action as necessary to order the employer to  
17 comply with the recommendation, unless the department finds by  
18 clear and convincing evidence that the recommendation is  
19 erroneous.

20 (b) Contract with the association for services, which  
21 may include, but are not limited to:

22 1. Processing applications for self-insurance.

23 2. Collecting and reviewing financial statements and  
24 loss reserve information from individual self-insurers.

25 3. Collecting and maintaining files for original  
26 security deposit documents and reinsurance policies from  
27 individual self-insurers and, if necessary, perfecting  
28 security interests in security deposits.

29 4. Processing compliance documentation for individual  
30 self-insurers and providing copies of such documentation to  
31 the department.

1           5. Collecting all data necessary to calculate annual  
2 premium for all individual self-insurers, including individual  
3 self-insurers that are public utilities or governmental  
4 entities, and providing such calculated annual premium to the  
5 department ~~division~~ for assessment purposes.

6           6. Inspecting and auditing annually, if necessary, the  
7 payroll and other records of each individual self-insurer,  
8 including individual self-insurers that are public utilities  
9 or governmental entities, in order to determine the wages paid  
10 by each individual self-insurer, the premium such individual  
11 self-insurer would have to pay if insured, and all payments of  
12 compensation made by such individual self-insurer during each  
13 prior period with the results of such audit provided to the  
14 department ~~division~~. For purposes of this section, the payroll  
15 records of each individual self-insurer shall be open to  
16 inspection and audit by the association and the department, or  
17 their authorized representatives, during regular business  
18 hours.

19           7. Processing applications and making recommendations  
20 with respect to the qualification of a business to be approved  
21 to provide or continue to provide services to individual  
22 self-insurers in the areas of underwriting, claims adjusting,  
23 loss control, and safety engineering.

24           8. Providing legal representation to implement the  
25 administration and audit of individual self-insurers and  
26 making recommendations regarding prosecution of any  
27 administrative or legal proceedings necessitated by the  
28 regulation of the individual self-insurers by the department.

29           (c) Contract with an attorney or attorneys recommended  
30 by the association for representation of the department in any  
31

1 administrative or legal proceedings necessitated by the  
2 recommended regulation of the individual self-insurers.  
3 (d) Direct the association to require from each  
4 individual self-insurer, at such time and in accordance with  
5 such regulations as the department prescribes, reports  
6 relating to wages paid, the amount of premiums such individual  
7 self-insurer would have to pay if insured, and all payments of  
8 compensation made by such individual self-insurer during each  
9 prior period and to determine the amounts paid by each  
10 individual self-insurer and the amounts paid by all individual  
11 self-insurers during such period. For purposes of this  
12 section, the payroll records of each individual self-insurer  
13 shall be open to annual inspection and audit by the  
14 association and the department, or their authorized  
15 representative, during regular business hours, and if any  
16 audit of such records of an individual self-insurer discloses  
17 a deficiency in the amount reported to the association or in  
18 the amounts paid to the department ~~division~~ by an individual  
19 self-insurer for its assessment for the Workers' Compensation  
20 Administration Trust Fund, the department or the association  
21 may assess the cost of such audit against the individual  
22 self-insurer.  
23 (e) Require that the association notify the member  
24 employers and any other interested parties of the  
25 determination of insolvency and of their rights under this  
26 section. Such notification shall be by mail at the last known  
27 address thereof when available; but, if sufficient information  
28 for notification by mail is not available, notice by  
29 publication in a newspaper of general circulation shall be  
30 sufficient.  
31

1           (f) Suspend or revoke the authority of any member  
2 employer failing to pay an assessment when due or failing to  
3 comply with the plan of operation to self-insure in this  
4 state. As an alternative, the department may levy a fine on  
5 any member employer failing to pay an assessment when due.  
6 Such fine shall not exceed 5 percent of the unpaid assessment  
7 per month, except that no fine shall be less than \$100 per  
8 month.

9           (g) Revoke the designation of any servicing facility  
10 if the department finds that claims are being handled  
11 unsatisfactorily.

12           (7) EFFECT OF PAID CLAIMS.--

13           (a) Any person who recovers from the association under  
14 this section shall be deemed to have assigned his or her  
15 rights to the association to the extent of such recovery.  
16 Every claimant seeking the protection of this section shall  
17 cooperate with the association to the same extent as such  
18 person would have been required to cooperate with the  
19 insolvent member. The association shall have no cause of  
20 action against the employee of the insolvent member for any  
21 sums the association has paid out, except such causes of  
22 action as the insolvent member would have had if such sums had  
23 been paid by the insolvent member. In the case of an  
24 insolvent member operating on a plan with assessment  
25 liability, payments of claims by the association shall not  
26 operate to reduce the liability of the insolvent member to the  
27 receiver, liquidator, or statutory successor for unpaid  
28 assessments.

29           (b) The receiver, liquidator, or statutory successor  
30 of an insolvent member shall be bound by settlements of  
31 covered claims by the association or a similar organization in

1 another state. The court having jurisdiction shall grant such  
2 claims priority against the assets of the insolvent member  
3 equal to that to which the claimant would have been entitled  
4 in the absence of this section. The expense of the association  
5 or similar organization in handling claims shall be accorded  
6 the same priority as the expenses of the liquidator.

7 (c) The association shall file periodically with the  
8 receiver or liquidator of the insolvent member statements of  
9 the covered claims paid by the association and estimates of  
10 anticipated claims on the association, which shall preserve  
11 the rights of the association against the assets of the  
12 insolvent member.

13 (8) NOTIFICATION OF INSOLVENCIES.--To aid in the  
14 detection and prevention of employer insolvencies: Upon  
15 determination by majority vote that any member employer may be  
16 insolvent or in a financial condition hazardous to the  
17 employees thereof or to the public, it shall be the duty of  
18 the board of directors to notify the department ~~of Insurance~~  
19 of any information indicating such condition.

20 (9) EXAMINATION OF THE ASSOCIATION.--The association  
21 shall be subject to examination and regulation by the  
22 department ~~of Insurance~~. No later than March 30 of each year,  
23 the board of directors shall submit an audited financial  
24 statement for the preceding calendar year in a form approved  
25 by the department.

26 (10) IMMUNITY.--There shall be no liability on the  
27 part of, and no cause of action of any nature shall arise  
28 against, any member employer, the association or its agents or  
29 employees, the board of directors, or the department ~~of~~  
30 ~~Insurance~~ or its representatives for any action taken by them  
31

1 in the performance of their powers and duties under this  
2 section.

3 (11) STAY OF PROCEEDINGS; REOPENING OF DEFAULT  
4 JUDGMENTS.--All proceedings in which an insolvent employer is  
5 a party, or is obligated to defend a party, in any court or  
6 before any quasi-judicial body or administrative board in this  
7 state shall be stayed for up to 6 months, or for such  
8 additional period from the date the employer becomes an  
9 insolvent member, as is deemed necessary by a court of  
10 competent jurisdiction to permit proper defense by the  
11 association of all pending causes of action as to any covered  
12 claims arising from a judgment under any decision, verdict, or  
13 finding based on the default of the insolvent member. The  
14 association, either on its own behalf or on behalf of the  
15 insolvent member, may apply to have such judgment, order,  
16 decision, verdict, or finding set aside by the same court or  
17 administrator that made such judgment, order, decision,  
18 verdict, or finding and shall be permitted to defend against  
19 such claim on the merits. If requested by the association,  
20 the stay of proceedings may be shortened or waived.

21 (12) LIMITATION ON CERTAIN ACTIONS.--Notwithstanding  
22 any other provision of this chapter, a covered claim, as  
23 defined herein, with respect to which settlement is not  
24 effected and pursuant to which suit is not instituted against  
25 the insured of an insolvent member or the association within 1  
26 year after the deadline for filing claims with the receiver of  
27 the insolvent member, or any extension of the deadline, shall  
28 thenceforth be barred as a claim against the association.

29 (13) CORPORATE INCOME TAX CREDIT.--Any sums acquired  
30 by a member by refund, dividend, or otherwise from the  
31 association shall be payable within 30 days of receipt to the

1 Department of Revenue for deposit with the Chief Financial  
2 Officer Treasurer to the credit of the General Revenue Fund.  
3 All provisions of chapter 220 relating to penalties and  
4 interest on delinquent corporate income tax payments apply to  
5 payments due under this subsection.

6 Section 484. Subsections (2), (3), and (4) of section  
7 440.386, Florida Statutes, are amended to read:

8 440.386 Individual self-insurers' insolvency;  
9 conservation; liquidation.--

10 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The  
11 department ~~of Insurance~~ or the Florida Self-Insurers Guaranty  
12 Association, Incorporated, may commence a delinquency  
13 proceeding by application to the court for an order directing  
14 the individual self-insurer to show cause why the department  
15 or association should not have the relief sought. On the  
16 return of such order to show cause, and after a full hearing,  
17 the court shall either deny the application or grant the  
18 application, together with such other relief as the nature of  
19 the case and the interests of the claimants, creditors,  
20 stockholders, members, subscribers, or public may require. The  
21 department and the association shall give reasonable written  
22 notice to each other of all hearings which pertain to an  
23 adjudication of insolvency of a member individual  
24 self-insurer.

25 (3) GROUNDS FOR LIQUIDATION.--The department ~~of~~  
26 ~~Insurance~~ or the association may apply to the court for an  
27 order appointing a receiver and directing the receiver to  
28 liquidate the business of a domestic individual self-insurer  
29 if such individual self-insurer is insolvent.

30 (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL  
31 SELF-INSURERS.--

1           (a) The department ~~of Insurance~~ or the association may  
2 apply to the court for an order appointing a receiver or  
3 ancillary receiver, and directing the receiver to conserve the  
4 assets within this state, of a foreign individual self-insurer  
5 if such individual self-insurer is insolvent.

6           (b) An order to conserve the assets of an individual  
7 self-insurer shall require the receiver forthwith to take  
8 possession of the property of the receiver within the state  
9 and to conserve it, subject to the further direction of the  
10 court.

11           Section 485. Subsection (2) of section 440.40, Florida  
12 Statutes, is amended to read:

13           440.40 Compensation notice.--Every employer who has  
14 secured compensation under the provisions of this chapter  
15 shall keep posted in a conspicuous place or places in and  
16 about her or his place or places of business typewritten or  
17 printed notices, in accordance with a form prescribed by the  
18 department, the following:

19           (2) A notice stating: "Anti-Fraud Reward  
20 Program.--Rewards of up to \$25,000 may be paid to persons  
21 providing information to the Department of Financial Services  
22 ~~Insurance~~ leading to the arrest and conviction of persons  
23 committing insurance fraud, including employers who illegally  
24 fail to obtain workers' compensation coverage. Persons may  
25 report suspected fraud to the department at ...(Phone No.)....  
26 A person is not subject to civil liability for furnishing such  
27 information, if such person acts without malice, fraud, or bad  
28 faith."

29           Section 486. Subsections (3), (4), and (6) of section  
30 440.44, Florida Statutes, are amended to read:

31           440.44 Workers' compensation; staff organization.--

1           (3) EXPENDITURES.--The department, the agency, the  
2 office,the Department of Education, and the director of the  
3 Division of Administrative Hearings shall make such  
4 expenditures, including expenditures for personal services and  
5 rent at the seat of government and elsewhere, for law books;  
6 for telephone services and WATS lines; for books of reference,  
7 periodicals, equipment, and supplies; and for printing and  
8 binding as may be necessary in the administration of this  
9 chapter. All expenditures in the administration of this  
10 chapter shall be allowed and paid as provided in s. 440.50  
11 upon the presentation of itemized vouchers therefor approved  
12 by the department, the agency, the office,the Department of  
13 Education, or the director of the Division of Administrative  
14 Hearings.

15           (4) PERSONNEL ADMINISTRATION.--Subject to the other  
16 provisions of this chapter, the department, the agency, the  
17 office,the Department of Education, and the Division of  
18 Administrative Hearings may appoint, and prescribe the duties  
19 and powers of, bureau chiefs, attorneys, accountants, medical  
20 advisers, technical assistants, inspectors, claims examiners,  
21 and such other employees as may be necessary in the  
22 performance of their duties under this chapter.

23           (6) SEAL.--The department and the judges of  
24 compensation claims shall have a seal upon which shall be  
25 inscribed the words "State of Florida Department of Financial  
26 Services Insurance--Seal" and "Division of Administrative  
27 Hearings--Seal," respectively.

28           Section 487. Subsections (8) and (9) of section  
29 440.49, Florida Statutes, are amended to read:

30           440.49 Limitation of liability for subsequent injury  
31 through Special Disability Trust Fund.--

1           (8) PREFERRED WORKER PROGRAM.--The Department of  
2 Education or administrator shall issue identity cards to  
3 preferred workers upon request by qualified employees and the  
4 Department of Financial Services ~~insurance~~ shall reimburse an  
5 employer, from the Special Disability Trust Fund, for the cost  
6 of workers' compensation premium related to the preferred  
7 workers payroll for up to 3 years of continuous employment  
8 upon satisfactory evidence of placement and issuance of  
9 payroll and classification records and upon the employee's  
10 certification of employment. The Department of Financial  
11 Services and the Department of Education may by rule prescribe  
12 definitions, forms, and procedures for the administration of  
13 the preferred worker program. The Department of Education may  
14 by rule prescribe the schedule for submission of forms for  
15 participation in the program.

16           (9) SPECIAL DISABILITY TRUST FUND.--

17           (a) There is established in the State Treasury a  
18 special fund to be known as the "Special Disability Trust  
19 Fund," which shall be available only for the purposes stated  
20 in this section; and the assets thereof may not at any time be  
21 appropriated or diverted to any other use or purpose. The  
22 Chief Financial Officer ~~Treasurer~~ shall be the custodian of  
23 such fund, and all moneys and securities in such fund shall be  
24 held in trust by such Chief Financial Officer ~~Treasurer~~ and  
25 shall not be the money or property of the state. The Chief  
26 Financial Officer ~~Treasurer~~ is authorized to disburse moneys  
27 from such fund only when approved by the department or  
28 corporation ~~and upon the order of the Comptroller~~. The Chief  
29 Financial Officer ~~Treasurer~~ shall deposit any moneys paid into  
30 such fund into such depository banks as the department may  
31 designate and is authorized to invest any portion of the fund

1 which, in the opinion of the department, is not needed for  
2 current requirements, in the same manner and subject to all  
3 the provisions of the law with respect to the deposits of  
4 state funds by such Chief Financial Officer ~~Treasurer~~. All  
5 interest earned by such portion of the fund as may be invested  
6 by the Chief Financial Officer ~~Treasurer~~ shall be collected by  
7 her or him and placed to the credit of such fund.

8 (b)1. The Special Disability Trust Fund shall be  
9 maintained by annual assessments upon the insurance companies  
10 writing compensation insurance in the state, the commercial  
11 self-insurers under ss. 624.462 and 624.4621, the assessable  
12 mutuals as defined in s. 628.6011 ~~under s. 628.601~~, and the  
13 self-insurers under this chapter, which assessments shall  
14 become due and be paid quarterly at the same time and in  
15 addition to the assessments provided in s. 440.51. The  
16 department shall estimate annually in advance the amount  
17 necessary for the administration of this subsection and the  
18 maintenance of this fund and shall make such assessment in the  
19 manner hereinafter provided.

20 2. The annual assessment shall be calculated to  
21 produce during the ensuing fiscal year an amount which, when  
22 combined with that part of the balance in the fund on June 30  
23 of the current fiscal year which is in excess of \$100,000, is  
24 equal to the average of:

25 a. The sum of disbursements from the fund during the  
26 immediate past 3 calendar years, and

27 b. Two times the disbursements of the most recent  
28 calendar year.

29  
30 Such amount shall be prorated among the insurance companies  
31 writing compensation insurance in the state and the

1 self-insurers. Provided however, for those carriers that have  
2 excluded ceded reinsurance premiums from their assessments on  
3 or before January 1, 2000, no assessments on ceded reinsurance  
4 premiums shall be paid by those carriers until such time as  
5 the former Division of Workers' Compensation of the Department  
6 of Labor and Employment Security or the department advises  
7 each of those carriers of the impact that the inclusion of  
8 ceded reinsurance premiums has on their assessment. The  
9 department may not recover any past underpayments of  
10 assessments levied against any carrier that on or before  
11 January 1, 2000, excluded ceded reinsurance premiums from  
12 their assessment prior to the point that the former Division  
13 of Workers' Compensation of the Department of Labor and  
14 Employment Security or the department advises of the  
15 appropriate assessment that should have been paid.

16 3. The net premiums written by the companies for  
17 workers' compensation in this state and the net premium  
18 written applicable to the self-insurers in this state are the  
19 basis for computing the amount to be assessed as a percentage  
20 of net premiums. Such payments shall be made by each carrier  
21 and self-insurer to the department for the Special Disability  
22 Trust Fund in accordance with such regulations as the  
23 department prescribes.

24 4. The Chief Financial Officer ~~Treasurer~~ is authorized  
25 to receive and credit to such Special Disability Trust Fund  
26 any sum or sums that may at any time be contributed to the  
27 state by the United States under any Act of Congress, or  
28 otherwise, to which the state may be or become entitled by  
29 reason of any payments made out of such fund.

30  
31

1           (c) Notwithstanding the Special Disability Trust Fund  
2 assessment rate calculated pursuant to this section, the rate  
3 assessed shall not exceed 4.52 percent.

4           (d) The Special Disability Trust Fund shall be  
5 supplemented by a \$250 notification fee on each notice of  
6 claim filed or refiled after July 1, 1997, and a \$500 fee on  
7 each proof of claim filed in accordance with subsection (7).  
8 Revenues from the fee shall be deposited into the Special  
9 Disability Trust Fund and are exempt from the deduction  
10 required by s. 215.20. The fees provided in this paragraph  
11 shall not be imposed upon any insurer which is in receivership  
12 with the department ~~of Insurance~~.

13           (e) The department or administrator shall report  
14 annually on the status of the Special Disability Trust Fund.  
15 The report shall update the estimated undiscounted and  
16 discounted fund liability, as determined by an independent  
17 actuary, change in the total number of notices of claim on  
18 file with the fund in addition to the number of newly filed  
19 notices of claim, change in the number of proofs of claim  
20 processed by the fund, the fee revenues refunded and revenues  
21 applied to pay down the liability of the fund, the average  
22 time required to reimburse accepted claims, and the average  
23 administrative costs per claim. The department or  
24 administrator shall submit its report to the Governor, the  
25 President of the Senate, and the Speaker of the House of  
26 Representatives by December 1 of each year.

27           Section 488. Subsections (1), (2), and (3) of section  
28 440.50, Florida Statutes, are amended to read:

29           440.50 Workers' Compensation Administration Trust  
30 Fund.--

31

1           (1)(a) There is established in the State Treasury a  
2 special fund to be known as the "Workers' Compensation  
3 Administration Trust Fund" for the purpose of providing for  
4 the payment of all expenses in respect to the administration  
5 of this chapter, including the vocational rehabilitation of  
6 injured employees as provided in s. 440.49 and the payments  
7 due under s. 440.15(1)(f), the funding of the fixed  
8 administrative expenses of the plan, and the funding of the  
9 Bureau of Workers' Compensation Fraud within the Department of  
10 Financial Services ~~Insurance~~. Such fund shall be administered  
11 by the department.

12           (b) The department is authorized to transfer as a loan  
13 an amount not in excess of \$250,000 from such special fund to  
14 the Special Disability Trust Fund established by s. 440.49(9),  
15 which amount shall be repaid to said special fund in annual  
16 payments equal to not less than 10 percent of moneys received  
17 for such Special Disability Trust Fund.

18           (2) The Chief Financial Officer ~~Treasurer~~ is  
19 authorized to disburse moneys from such fund only when  
20 approved by the department ~~and upon the order of the~~  
21 ~~Comptroller~~.

22           (3) The Chief Financial Officer ~~Treasurer~~ shall  
23 deposit any moneys paid into such fund into such depository  
24 banks as the department may designate and is authorized to  
25 invest any portion of the fund which, in the opinion of the  
26 department, is not needed for current requirements, in the  
27 same manner and subject to all the provisions of the law with  
28 respect to the deposit of state funds by such Chief Financial  
29 Officer ~~Treasurer~~. All interest earned by such portion of the  
30 fund as may be invested by the Chief Financial Officer  
31

1 ~~Treasurer~~ shall be collected by him or her and placed to the  
2 credit of such fund.

3 Section 489. Paragraph (a) of subsection (1) and  
4 subsection (3) of section 440.51, Florida Statutes, are  
5 amended to read:

6 440.51 Expenses of administration.--

7 (1) The department shall estimate annually in advance  
8 the amounts necessary for the administration of this chapter,  
9 in the following manner.

10 (a) The department shall, by July 1 of each year,  
11 notify carriers and self-insurers of the assessment rate,  
12 which shall be based on the anticipated expenses of the  
13 administration of this chapter for the next calendar year.  
14 Such assessment rate shall take effect January 1 of the next  
15 calendar year and shall be included in workers' compensation  
16 rate filings approved by the office ~~Department of Insurance~~  
17 which become effective on or after January 1 of the next  
18 calendar year. Assessments shall become due and be paid  
19 quarterly.

20 (3) If any carrier fails to pay the amounts assessed  
21 against him or her under the provisions of this section within  
22 60 days from the time such notice is served upon him or her,  
23 the office, upon being notified by the department, may suspend  
24 or revoke the authorization to insure compensation in  
25 accordance with the procedure in s. 440.38(3)(a). The  
26 department may permit a carrier to remit any underpayment of  
27 assessments for assessments levied after January 1, 2001.

28 Section 490. Section 440.515, Florida Statutes, is  
29 amended to read:

30 440.515 Reports from self-insurers;  
31 confidentiality.--The department ~~of Insurance~~ shall maintain

1 the reports filed in accordance with s. 440.51(6)(b) as  
2 confidential and exempt from the provisions of s. 119.07(1),  
3 and such reports shall be released only for bona fide research  
4 or educational purposes or after receipt of consent from the  
5 employer.

6 Section 491. Subsections (3) and (4) of section  
7 440.52, Florida Statutes, are amended to read:

8 440.52 Registration of insurance carriers; notice of  
9 cancellation or expiration of policy; suspension or revocation  
10 of authority.--

11 (3) If the department finds, after due notice and a  
12 hearing at which the insurance carrier is entitled to be heard  
13 in person or by counsel and present evidence, that the  
14 insurance carrier has repeatedly failed to comply with its  
15 obligations under this chapter, the department may request the  
16 office to suspend or revoke the authorization of such  
17 insurance carrier to write workers' compensation insurance  
18 under this chapter. Such suspension or revocation shall not  
19 affect the liability of any such insurance carrier under  
20 policies in force prior to the suspension or revocation.

21 (4) In addition to the penalties prescribed in  
22 subsection (3), violation of s. 440.381 by an insurance  
23 carrier shall result in the imposition of a fine not to exceed  
24 \$1,000 per audit, if the insurance carrier fails to act on  
25 said audits by correcting errors in employee classification or  
26 accepted applications for coverage where it knew employee  
27 classifications were incorrect. Such fines shall be levied by  
28 the office ~~Department of Insurance~~ and deposited into the  
29 Insurance ~~Commissioner's~~ Regulatory Trust Fund.

30 Section 492. Section 440.525, Florida Statutes, is  
31 amended to read:

1           440.525 Examination of carriers.--The department and  
2 office may examine each carrier as often as is warranted to  
3 ensure that carriers are fulfilling their obligations under  
4 this chapter ~~the law~~. The examination may cover any period of  
5 the carrier's operations since the last previous examination.

6           Section 493. Section 440.591, Florida Statutes, is  
7 amended to read:

8           440.591 Administrative procedure; rulemaking  
9 authority.--The department, the Financial Services Commission,  
10 the agency, and the Department of Education may adopt rules  
11 pursuant to ss. 120.536(1) and 120.54 to implement the  
12 provisions of this chapter conferring duties upon it.

13           Section 494. Paragraph (a) of subsection (5) of  
14 section 443.131, Florida Statutes, is amended to read:

15           443.131 Contributions.--

16           (5) FINANCING BENEFITS PAID TO EMPLOYEES OF THE STATE  
17 AND POLITICAL SUBDIVISIONS OF THE STATE.--Benefits paid to  
18 employees of this state or any instrumentality of this state,  
19 or to employees of any political subdivision of this state or  
20 any instrumentality thereof, based upon service defined in s.  
21 443.036(21)(b), shall be financed in accordance with this  
22 subsection.

23           (a)1. Unless an election is made as provided in  
24 paragraph (c), the state or any political subdivision of the  
25 state shall pay into the Unemployment Compensation Trust Fund  
26 an amount equivalent to the amount of regular benefits,  
27 short-time compensation benefits, and extended benefits paid  
28 to individuals, based on wages paid by the state or the  
29 political subdivision for service defined in s.  
30 443.036(21)(b).

31

1           2. ~~If should~~ any state agency becomes ~~become~~ more than  
2 120 days delinquent on reimbursements due to the Unemployment  
3 Compensation Trust Fund, the division shall certify to the  
4 Chief Financial Officer ~~Comptroller~~ the amount due and the  
5 Chief Financial Officer ~~Comptroller~~ shall transfer the amount  
6 due to the Unemployment Compensation Trust Fund from the funds  
7 of such agency that may legally be used for such purpose. In  
8 the event any political subdivision of the state or any  
9 instrumentality thereof becomes more than 120 days delinquent  
10 on reimbursements due to the Unemployment Compensation Trust  
11 Fund, then, upon request by the division after a hearing, the  
12 Department of Revenue or the Department of Financial Services  
13 ~~Banking and Finance~~, as the case may be, shall deduct the  
14 amount owed by the political subdivision or instrumentality  
15 from any funds to be distributed by it to the county, city,  
16 special district, or consolidated form of government for  
17 further distribution to the trust fund in accordance with this  
18 chapter. Should any employer for whom the city or county tax  
19 collector collects taxes fail to make the reimbursements to  
20 the Unemployment Compensation Trust Fund required by this  
21 chapter, the tax collector after a hearing, at the request of  
22 the division and upon receipt of a certificate showing the  
23 amount owed by the employer, shall deduct the amount so  
24 certified from any taxes collected for the employer and remit  
25 same to the Department of Labor and Employment Security for  
26 further distribution to the trust fund in accordance with this  
27 chapter. This subparagraph does not apply to those amounts due  
28 for benefits paid prior to October 1, 1979. This subparagraph  
29 does not apply to amounts owed by a political subdivision for  
30 benefits erroneously paid where the claimant is required to  
31

1 repay to the division under s. 443.151(6)(a) or (b) any sum as  
2 benefits received.

3 Section 495. Subsections (2), (3), and (4) of section  
4 443.191, Florida Statutes, are amended to read:

5 443.191 Unemployment Compensation Trust Fund;  
6 establishment and control.--

7 (2) The Chief Financial Officer ~~Treasurer~~ is the ex  
8 officio treasurer and custodian of the fund and shall  
9 administer the fund in accordance with the directions of the  
10 division. All payments from the fund must be approved by the  
11 division or by a duly authorized agent ~~and must be made by the~~  
12 ~~Treasurer upon warrants issued by the Comptroller, except as~~  
13 ~~hereinafter provided.~~ The Chief Financial Officer ~~Treasurer~~  
14 shall maintain within the fund three separate accounts:

15 (a) A clearing account;

16 (b) An Unemployment Compensation Trust Fund account;

17 and

18 (c) A benefit account.

19

20 All moneys payable to the fund, including moneys received from  
21 the United States as reimbursement for extended benefits paid  
22 by the division, upon receipt thereof by the division, must be  
23 forwarded to the Chief Financial Officer ~~Treasurer~~, who shall  
24 immediately deposit them in the clearing account. Refunds  
25 payable under s. 443.141 may be paid from the clearing account  
26 ~~upon warrants issued by the Comptroller.~~ After clearance, all  
27 other moneys in the clearing account must be immediately  
28 deposited with the Secretary of the Treasury of the United  
29 States to the credit of the account of this state in the  
30 Unemployment Compensation Trust Fund established and  
31 maintained under s. 904 of the Social Security Act, as

1 amended, any provisions of the law in this state relating to  
2 the deposit, administration, release, or disbursement of  
3 moneys in the possession or custody of this state to the  
4 contrary notwithstanding. The benefit account shall consist  
5 of all moneys requisitioned from this state's account in the  
6 Unemployment Compensation Trust Fund. Except as otherwise  
7 provided, moneys in the clearing and benefit accounts may be  
8 deposited by the Chief Financial Officer ~~Treasurer~~, under the  
9 direction of the division, in any bank or public depository in  
10 which general funds of the state may be deposited, but no  
11 public deposit insurance charge or premium may be paid out of  
12 the fund. If any warrant issued against the clearing account  
13 or the benefit account is not presented for payment within 1  
14 year after issuance thereof, the Chief Financial Officer  
15 ~~Comptroller~~ must cancel the same and credit without  
16 restriction the amount of such warrant to the account upon  
17 which it is drawn. When the payee or person entitled to any  
18 warrant so canceled requests payment thereof, the Chief  
19 Financial Officer ~~Comptroller~~, upon direction of the division,  
20 must issue a new warrant therefor, to be paid out of the  
21 account against which the canceled warrant had been drawn.

22 (3) Moneys shall be requisitioned from the state's  
23 account in the Unemployment Compensation Trust Fund solely for  
24 the payment of benefits and extended benefits and in  
25 accordance with rules prescribed by the division, except that  
26 money credited to this state's account pursuant to s. 903 of  
27 the Social Security Act, as amended, shall be used exclusively  
28 as provided in subsection (5). The division, through the  
29 Chief Financial Officer ~~Treasurer~~, shall from time to time  
30 requisition from the Unemployment Compensation Trust Fund such  
31 amounts, not exceeding the amounts standing to this state's

1 account therein, as it deems necessary for the payment of  
2 benefits and extended benefits for a reasonable future period.  
3 Upon receipt thereof, the Chief Financial Officer ~~Treasurer~~  
4 shall deposit such moneys in the benefit account in the State  
5 Treasury and warrants for the payment of benefits and extended  
6 benefits shall be drawn ~~by the Comptroller~~ upon the order of  
7 the division against such benefit account. All warrants for  
8 benefits and extended benefits shall be payable directly to  
9 the ultimate beneficiary. Expenditures of such moneys in the  
10 benefit account and refunds from the clearing account shall  
11 not be subject to any provisions of law requiring specific  
12 appropriations or other formal release by state officers of  
13 money in their custody. All warrants issued for the payment of  
14 benefits and refunds shall bear the signature of the Chief  
15 Financial Officer ~~Comptroller~~ as above set forth. Any balance  
16 of moneys requisitioned from the Unemployment Compensation  
17 Trust Fund which remains unclaimed or unpaid in the benefit  
18 account after the expiration of the period for which such sums  
19 were requisitioned shall either be deducted from estimates  
20 for, and may be utilized for the payment of, benefits and  
21 extended benefits during succeeding periods, or, in the  
22 discretion of the division, shall be redeposited with the  
23 Secretary of the Treasury of the United States, to the credit  
24 of this state's account in the Unemployment Compensation Trust  
25 Fund, as provided in subsection (2).

26 (4) The provisions of subsections (1), (2), and (3),  
27 to the extent that they relate to the Unemployment  
28 Compensation Trust Fund, shall be operative only so long as  
29 such unemployment trust fund continues to exist and so long as  
30 the Secretary of the Treasury of the United States continues  
31 to maintain for this state a separate book account of all

1 funds deposited therein by this state for benefit purposes,  
2 together with this state's proportionate share of the earnings  
3 of such Unemployment Compensation Trust Fund, from which no  
4 other state is permitted to make withdrawals. If and when  
5 such Unemployment Compensation Trust Fund ceases to exist, or  
6 such separate book account is no longer maintained, all  
7 moneys, properties, or securities therein belonging to the  
8 Unemployment Compensation Trust Fund of this state shall be  
9 transferred to the treasurer of the Unemployment Compensation  
10 Trust Fund, who shall hold, invest, transfer, sell, deposit,  
11 and release such moneys, properties, or securities in a manner  
12 approved by the division in accordance with the provisions of  
13 this chapter; however, such moneys shall be invested in the  
14 following readily marketable classes of securities: bonds or  
15 other interest-bearing obligations of the United States or of  
16 the state. Further, such investment shall at all times be so  
17 made that all the assets of the fund shall always be readily  
18 convertible into cash when needed for the payment of benefits.  
19 The treasurer shall dispose of securities or other properties  
20 belonging to the Unemployment Compensation Trust Fund only  
21 under the direction of the division.

22 Section 496. Subsections (1) and (2) of section  
23 443.211, Florida Statutes, are amended to read:

24 443.211 Employment Security Administration Trust Fund;  
25 appropriation; reimbursement.--

26 (1) EMPLOYMENT SECURITY ADMINISTRATION TRUST  
27 FUND.--There is created in the State Treasury a special fund  
28 to be known as the "Employment Security Administration Trust  
29 Fund." All moneys that are deposited into this fund remain  
30 continuously available to the division for expenditure in  
31 accordance with the provisions of this chapter and do not

1 lapse at any time and may not be transferred to any other  
2 fund. All moneys in this fund which are received from the  
3 Federal Government or any agency thereof or which are  
4 appropriated by this state for the purposes described in ss.  
5 443.171 and 443.181, except money received under s.  
6 443.191(5)(c), must be expended solely for the purposes and in  
7 the amounts found necessary by the authorized cooperating  
8 federal agencies for the proper and efficient administration  
9 of this chapter. The fund shall consist of all moneys  
10 appropriated by this state; all moneys received from the  
11 United States or any agency thereof; all moneys received from  
12 any other source for such purpose; any moneys received from  
13 any agency of the United States or any other state as  
14 compensation for services or facilities supplied to such  
15 agency; any amounts received pursuant to any surety bond or  
16 insurance policy or from other sources for losses sustained by  
17 the Employment Security Administration Trust Fund or by reason  
18 of damage to equipment or supplies purchased from moneys in  
19 such fund; and any proceeds realized from the sale or  
20 disposition of any such equipment or supplies which may no  
21 longer be necessary for the proper administration of this  
22 chapter. Notwithstanding any provision of this section, all  
23 money requisitioned and deposited in this fund under s.  
24 443.191(5)(c) remains part of the Unemployment Compensation  
25 Trust Fund and must be used only in accordance with the  
26 conditions specified in s. 443.191(5). All moneys in this  
27 fund must be deposited, administered, and disbursed in the  
28 same manner and under the same conditions and requirements as  
29 is provided by law for other special funds in the State  
30 Treasury. Such moneys must be secured by the depositary in  
31 which they are held to the same extent and in the same manner

1 as required by the general depository law of the state, and  
2 collateral pledged must be maintained in a separate custody  
3 account. All payments from the Employment Security  
4 Administration Trust Fund must be approved by the division or  
5 by a duly authorized agent and must be made by the Chief  
6 Financial Officer ~~Treasurer~~ upon warrants issued by the  
7 ~~Comptroller~~. Any balances in this fund do not lapse at any  
8 time and must remain continuously available to the division  
9 for expenditure consistent with this chapter.

10 (2) SPECIAL EMPLOYMENT SECURITY ADMINISTRATION TRUST  
11 FUND.--There is created in the State Treasury a special fund,  
12 to be known as the "Special Employment Security Administration  
13 Trust Fund," into which shall be deposited or transferred all  
14 interest on contributions, penalties, and fines or fees  
15 collected under this chapter. Interest on contributions,  
16 penalties, and fines or fees deposited during any calendar  
17 quarter in the clearing account in the Unemployment  
18 Compensation Trust Fund shall, as soon as practicable after  
19 the close of such calendar quarter and upon certification of  
20 the division, be transferred to the Special Employment  
21 Security Administration Trust Fund. However, there shall be  
22 withheld from any such transfer the amount certified by the  
23 division to be required under this chapter to pay refunds of  
24 interest on contributions, penalties, and fines or fees  
25 collected and erroneously deposited into the clearing account  
26 in the Unemployment Compensation Trust Fund. Such amounts of  
27 interest and penalties so certified for transfer shall be  
28 deemed to have been erroneously deposited in the clearing  
29 account, and the transfer thereof to the Special Employment  
30 Security Administration Trust Fund shall be deemed to be a  
31 refund of such erroneous deposits. All moneys in this fund

1 shall be deposited, administered, and disbursed in the same  
2 manner and under the same conditions and requirements as are  
3 provided by law for other special funds in the State Treasury.  
4 These moneys shall not be expended or be available for  
5 expenditure in any manner which would permit their  
6 substitution for, or permit a corresponding reduction in,  
7 federal funds which would, in the absence of these moneys, be  
8 available to finance expenditures for the administration of  
9 the Unemployment Compensation Law. But nothing in this  
10 section shall prevent these moneys from being used as a  
11 revolving fund to cover expenditures, necessary and proper  
12 under the law, for which federal funds have been duly  
13 requested but not yet received, subject to the charging of  
14 such expenditures against such funds when received. The  
15 moneys in this fund, with the approval of the Executive Office  
16 of the Governor, shall be used by the Division of Unemployment  
17 Compensation and the Agency for Workforce Innovation for the  
18 payment of costs of administration which are found not to have  
19 been properly and validly chargeable against funds obtained  
20 from federal sources. All moneys in the Special Employment  
21 Security Administration Trust Fund shall be continuously  
22 available to the division for expenditure in accordance with  
23 the provisions of this chapter and shall not lapse at any  
24 time. All payments from the Special Employment Security  
25 Administration Trust Fund shall be approved by the division or  
26 by a duly authorized agent thereof and shall be made by the  
27 Chief Financial Officer ~~Treasurer upon warrants issued by the~~  
28 ~~Comptroller~~. The moneys in this fund are hereby specifically  
29 made available to replace, as contemplated by subsection (3),  
30 expenditures from the Employment Security Administration Trust  
31 Fund, established by subsection (1), which have been found by

1 the Bureau of Employment Security, or other authorized federal  
2 agency or authority, because of any action or contingency, to  
3 have been lost or improperly expended. The Chief Financial  
4 Officer ~~Treasurer~~ shall be liable on her or his official bond  
5 for the faithful performance of her or his duties in  
6 connection with the Special Employment Security Administration  
7 Trust Fund.

8 Section 497. Subsection (4) of section 445.0325,  
9 Florida Statutes, is amended to read:

10 445.0325 Welfare Transition Trust Fund.--

11 (4) All funds transferred to and retained in the trust  
12 fund shall be invested pursuant to s. 17.61 ~~s. 18.125~~. Any  
13 interest accruing to the trust fund shall be for the benefit  
14 of the welfare transition program. Notwithstanding s. 216.301  
15 and pursuant to s. 216.351, any undisbursed balance remaining  
16 in the trust fund and interest accruing to the trust fund not  
17 distributed at the end of the fiscal year shall remain in the  
18 trust fund and shall increase the total funds available to  
19 implement the welfare transition program.

20 Section 498. Section 447.12, Florida Statutes, is  
21 amended to read:

22 447.12 Fees for registration.--All fees collected by  
23 the department under this part shall be paid to the Chief  
24 Financial Officer ~~Treasurer~~ and credited to the General  
25 Revenue Fund.

26 Section 499. Subsection (1) of section 450.155,  
27 Florida Statutes, is amended to read:

28 450.155 Child Labor Law Trust Fund.--

29 (1) There is created in the State Treasury an account  
30 to be known as the Child Labor Law Trust Fund. Subject to such  
31 appropriations as the Legislature may make therefor from time

1 to time, disbursements from this account may be made by the  
2 division, subject to the approval of the department, in order  
3 to carry out the proper responsibilities of administering the  
4 Child Labor Law, to protect the working youth of the state,  
5 and to provide education about the Child Labor Law to  
6 employers, public school employees, the general public, and  
7 working youth. The Child Labor Law Trust Fund and the moneys  
8 deposited therein shall be under the direct supervision and  
9 control of the department, and such moneys may be disbursed by  
10 the Chief Financial Officer ~~Treasurer~~ from time to time as  
11 determined by the department.

12 Section 500. Subsections (1) and (2) of section  
13 468.392, Florida Statutes, are amended to read:

14 468.392 Auctioneer Recovery Fund.--There is created  
15 the Auctioneer Recovery Fund as a separate account in the  
16 Professional Regulation Trust Fund. The fund shall be  
17 administered by the Florida Board of Auctioneers.

18 (1) The Chief Financial Officer ~~Treasurer~~ shall invest  
19 the money not currently needed to meet the obligations of the  
20 fund in the same manner as other public funds may be invested.  
21 Interest that accrues from these investments shall be  
22 deposited to the credit of the Auctioneer Recovery Fund and  
23 shall be available for the same purposes as other moneys  
24 deposited in the Auctioneer Recovery Fund.

25 (2) All payments and disbursements from the Auctioneer  
26 Recovery Fund shall be made by the Chief Financial Officer  
27 ~~Treasurer~~ upon a voucher signed by the Secretary of Business  
28 and Professional Regulation or the secretary's designee.  
29 Amounts transferred to the Auctioneer Recovery Fund shall not  
30 be subject to any limitation imposed by an appropriation act  
31 of the Legislature.

1           Section 501. Subsection (3) of section 468.529,  
2 Florida Statutes, is amended to read:

3           468.529 Licensee's insurance; employment tax; benefit  
4 plans.--

5           (3) A licensed employee leasing company shall within  
6 30 days of initiation or termination notify its workers'  
7 compensation insurance carrier, the Division of Workers'  
8 Compensation of the Department of Financial Services, and the  
9 Division of Unemployment Compensation of the Department of  
10 Labor and Employment Security of both the initiation or the  
11 termination of the company's relationship with any client  
12 company.

13           Section 502. Subsection (2) of section 473.3065,  
14 Florida Statutes, is amended to read:

15           473.3065 Certified Public Accountant Education  
16 Minority Assistance Program; advisory council.--

17           (2) All moneys used to provide scholarships under the  
18 program shall be funded by a portion of existing license fees,  
19 as set by the board, not to exceed \$10 per license. Such  
20 moneys shall be deposited into the Professional Regulation  
21 Trust Fund in a separate account maintained for that purpose.  
22 The department is authorized to spend up to \$100,000 per year  
23 for the program from this program account, but may not  
24 allocate overhead charges to it. Moneys for scholarships  
25 shall be disbursed annually upon recommendation of the  
26 advisory council and approval by the board, based on the  
27 adopted eligibility criteria and comparative evaluation of all  
28 applicants. Funds in the program account may be invested by  
29 the Chief Financial Officer ~~Treasurer~~ under the same  
30 limitations as apply to investment of other state funds, and  
31

1 all interest earned thereon shall be credited to the program  
2 account.

3 Section 503. Subsection (7) of section 475.045,  
4 Florida Statutes, is amended to read:

5 475.045 Florida Real Estate Commission Education and  
6 Research Foundation.--

7 (7) The Chief Financial Officer ~~Treasurer~~ shall invest  
8 \$3 million from the portion of the Professional Regulation  
9 Trust Fund credited to the real estate profession, under the  
10 same limitations as applied to investments of other state  
11 funds, and the income earned thereon shall be available to the  
12 foundation to fund the activities and projects authorized  
13 under this section. However, any balance of such interest in  
14 excess of \$1 million shall revert to the portion of the  
15 Professional Regulation Trust Fund credited to the real estate  
16 profession. In the event the foundation is abolished, the  
17 funds in the trust fund shall revert to such portion of the  
18 Professional Regulation Trust Fund.

19 Section 504. Subsection (6) of section 475.484,  
20 Florida Statutes, is amended to read:

21 475.484 Payment from the fund.--

22 (6) All payments and disbursements from the Real  
23 Estate Recovery Fund shall be made by the Chief Financial  
24 Officer ~~Treasurer~~ upon a voucher signed by the secretary of  
25 the department. Amounts transferred to the Real Estate  
26 Recovery Fund shall not be subject to any limitation imposed  
27 by an appropriation act of the Legislature.

28 Section 505. Section 475.485, Florida Statutes, is  
29 amended to read:

30 475.485 Investment of the fund.--The funds in the Real  
31 Estate Recovery Fund may be invested by the Chief Financial

1 ~~Officer Treasurer~~ under the same limitations as apply to  
2 investment of other state funds, and the interest earned  
3 thereon shall be deposited to the credit of the Real Estate  
4 Recovery Fund and shall be available for the same purposes as  
5 other moneys deposited in the Real Estate Recovery Fund.

6 Section 506. Section 489.114, Florida Statutes, is  
7 amended to read:

8 489.114 Evidence of workers' compensation  
9 coverage.--Except as provided in s. 489.115(5)(d), any person,  
10 business organization, or qualifying agent engaged in the  
11 business of contracting in this state and certified or  
12 registered under this part shall, as a condition precedent to  
13 the issuance or renewal of a certificate, registration, or  
14 certificate of authority of the contractor, provide to the  
15 Construction Industry Licensing Board, as provided by board  
16 rule, evidence of workers' compensation coverage pursuant to  
17 chapter 440. In the event that the Division of Workers'  
18 Compensation of the Department of Financial Services ~~Labor and~~  
19 ~~Employment Security~~ receives notice of the cancellation of a  
20 policy of workers' compensation insurance insuring a person or  
21 entity governed by this section, the Division of Workers'  
22 Compensation shall certify and identify all persons or  
23 entities by certification or registration license number to  
24 the department after verification is made by the Division of  
25 Workers' Compensation that persons or entities governed by  
26 this section are no longer covered by workers' compensation  
27 insurance. Such certification and verification by the  
28 Division of Workers' Compensation may result from records  
29 furnished to the Division of Workers' Compensation by the  
30 persons or entities governed by this section or an  
31 investigation completed by the Division of Workers'

1 Compensation. The department shall notify the persons or  
2 entities governed by this section who have been determined to  
3 be in noncompliance with chapter 440, and the persons or  
4 entities notified shall provide certification of compliance  
5 with chapter 440 to the department and pay an administrative  
6 fine in the amount of \$500. The failure to maintain workers'  
7 compensation coverage as required by law shall be grounds for  
8 the board to revoke, suspend, or deny the issuance or renewal  
9 of a certificate, registration, or certificate of authority of  
10 the contractor under the provisions of s. 489.129.

11 Section 507. Section 489.144, Florida Statutes, is  
12 amended to read:

13 489.144 Investment of the fund.--The funds in the  
14 Construction Industries Recovery Fund may be invested by the  
15 Chief Financial Officer ~~Treasurer~~ under the same limitations  
16 as apply to the investment of other state funds, and the  
17 interest earned thereon shall be deposited to the credit of  
18 the Construction Industries Recovery Fund and shall be  
19 available for the same purposes as other moneys deposited in  
20 the Construction Industries Recovery Fund.

21 Section 508. Subsection (6) of section 489.145,  
22 Florida Statutes, is amended to read:

23 489.145 Guaranteed energy performance savings  
24 contracting.--

25 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The  
26 Department of Management Services, with the assistance of the  
27 Office of the Chief Financial Officer ~~Comptroller~~, may, within  
28 available resources, provide technical assistance to state  
29 agencies contracting for energy conservation measures and  
30 engage in other activities considered appropriate by the  
31 department for promoting and facilitating guaranteed energy

1 performance contracting by state agencies. The Office of the  
2 Chief Financial Officer ~~Comptroller~~, with the assistance of  
3 the Department of Management Services, may, within available  
4 resources, develop model contractual and related documents for  
5 use by state agencies. Prior to entering into a guaranteed  
6 energy performance savings contract, any contract or lease for  
7 third-party financing, or any combination of such contracts, a  
8 state agency shall submit such proposed contract or lease to  
9 the Office of the Chief Financial Officer ~~Comptroller~~ for  
10 review and approval.

11 Section 509. Section 489.510, Florida Statutes, is  
12 amended to read:

13 489.510 Evidence of workers' compensation  
14 coverage.--Except as provided in s. 489.515(3)(b), any person,  
15 business organization, or qualifying agent engaged in the  
16 business of contracting in this state and certified or  
17 registered under this part shall, as a condition precedent to  
18 the issuance or renewal of a certificate or registration of  
19 the contractor, provide to the Electrical Contractors'  
20 Licensing Board, as provided by board rule, evidence of  
21 workers' compensation coverage pursuant to chapter 440. In  
22 the event that the Division of Workers' Compensation of the  
23 Department of Financial Services ~~Labor and Employment Security~~  
24 receives notice of the cancellation of a policy of workers'  
25 compensation insurance insuring a person or entity governed by  
26 this section, the Division of Workers' Compensation shall  
27 certify and identify all persons or entities by certification  
28 or registration license number to the department after  
29 verification is made by the Division of Workers' Compensation  
30 that persons or entities governed by this section are no  
31 longer covered by workers' compensation insurance. Such

1 certification and verification by the Division of Workers'  
2 Compensation may result from records furnished to the Division  
3 of Workers' Compensation by the persons or entities governed  
4 by this section or an investigation completed by the Division  
5 of Workers' Compensation. The department shall notify the  
6 persons or entities governed by this section who have been  
7 determined to be in noncompliance with chapter 440, and the  
8 persons or entities notified shall provide certification of  
9 compliance with chapter 440 to the department and pay an  
10 administrative fine in the amount of \$500. The failure to  
11 maintain workers' compensation coverage as required by law  
12 shall be grounds for the board to revoke, suspend, or deny the  
13 issuance or renewal of a certificate or registration of the  
14 contractor under the provisions of s. 489.533.

15 Section 510. Subsection (5) of section 489.533,  
16 Florida Statutes, is amended to read:

17 489.533 Disciplinary proceedings.--

18 (5) When the board imposes administrative fines  
19 pursuant to subsection (2) resulting from violation of chapter  
20 633 or violation of the rules of the State Fire Marshal, 50  
21 percent of the fine shall be paid into the Insurance  
22 ~~Commissioner's~~ Regulatory Trust Fund to help defray the costs  
23 of investigating the violations and obtaining the corrective  
24 action. The State Fire Marshal may participate at its  
25 discretion, but not as a party, in any proceedings before the  
26 board relating to violation of chapter 633 or the rules of the  
27 State Fire Marshal, in order to make recommendations as to the  
28 appropriate penalty in such case. However, the State Fire  
29 Marshal shall not have standing to bring disciplinary  
30 proceedings regarding certification.

31

1           Section 511. Subsection (8) of section 494.001,  
2 Florida Statutes, is amended, present subsections (9) through  
3 (29) of that section are renumbered as (10) through (30),  
4 respectively, and a new subsection (9) is added to that  
5 subsection to read:

6           494.001 Definitions.--As used in ss. 494.001-494.0077,  
7 the term:

8           (8) "Commission" means the Financial Services  
9 Commission~~"Department"~~ means the Department of Banking and  
10 ~~Finance~~.

11           (9) "Office" means the Office of Financial  
12 Institutions and Securities Regulation of the commission.

13           Section 512. Section 494.0011, Florida Statutes, is  
14 amended to read:

15           494.0011 Powers and duties of the commission and  
16 office department.--

17           (1) The office department shall be responsible for the  
18 administration and enforcement of ss. 494.001-494.0077.

19           (2) The commission department has authority to adopt  
20 rules pursuant to ss. 120.536(1) and 120.54 to implement ss.  
21 494.001-494.0077. The commission department may adopt rules  
22 to allow electronic submission of any forms, documents, or  
23 fees required by this act. The commission department may also  
24 adopt rules to accept certification of compliance with  
25 requirements of this act in lieu of requiring submission of  
26 documents.

27           (3) All fees, charges, and fines collected ~~by the~~  
28 ~~department~~ pursuant to ss. 494.001-494.0077 shall be deposited  
29 in the State Treasury to the credit of the Regulatory Trust  
30 Fund under the office department.

31

1           (4)(a) The office ~~department~~ has the power to issue  
2 and to serve subpoenas and subpoenas duces tecum to compel the  
3 attendance of witnesses and the production of all books,  
4 accounts, records, and other documents and materials relevant  
5 to an examination or investigation. The office ~~department~~, or  
6 its duly authorized representative, has the power to  
7 administer oaths and affirmations to any person.

8           (b) The office ~~department~~ may, in its discretion, seek  
9 subpoenas or subpoenas duces tecum from any court of competent  
10 jurisdiction commanding the appearance of witnesses and the  
11 production of books, accounts, records, and other documents or  
12 materials at a time and place named in the subpoenas; and any  
13 authorized representative of the office ~~department~~ may serve  
14 any subpoena.

15           (5)(a) In the event of substantial noncompliance with  
16 a subpoena or subpoena duces tecum issued or caused to be  
17 issued by the office ~~department~~, the office ~~department~~ may  
18 petition the circuit court or any other court of competent  
19 jurisdiction of the county in which the person subpoenaed  
20 resides or has its principal place of business for an order  
21 requiring the subpoenaed person to appear and testify and to  
22 produce such books, accounts, records, and other documents as  
23 are specified in the subpoena duces tecum. The court may  
24 grant injunctive relief restraining the person from  
25 advertising, promoting, soliciting, entering into, offering to  
26 enter into, continuing, or completing any mortgage loan  
27 transaction or mortgage loan servicing transaction. The court  
28 may grant such other relief, including, but not limited to,  
29 the restraint, by injunction or appointment of a receiver, of  
30 any transfer, pledge, assignment, or other disposition of the  
31 person's assets or any concealment, alteration, destruction,

1 or other disposition of books, accounts, records, or other  
2 documents and materials as the court deems appropriate, until  
3 the person has fully complied with the subpoena duces tecum  
4 and the office ~~department~~ has completed its investigation or  
5 examination. In addition, the court may order the refund of  
6 any fees collected in a mortgage loan transaction whenever  
7 books and documents substantiating the transaction are not  
8 produced or cannot be produced. The office ~~department~~ is  
9 entitled to the summary procedure provided in s. 51.011, and  
10 the court shall advance such cause on its calendar.  
11 Attorney's fees and any other costs incurred by the office  
12 ~~department~~ to obtain an order granting, in whole or part, a  
13 petition for enforcement of a subpoena or subpoena duces tecum  
14 shall be taxed against the subpoenaed person, and failure to  
15 comply with such order is a contempt of court.

16 (b) When it appears to the office ~~department~~ that the  
17 compliance with a subpoena or subpoena duces tecum issued or  
18 caused to be issued by the office ~~department~~ pursuant to this  
19 section is essential and otherwise unavailable to an  
20 investigation or examination, the office ~~department~~, in  
21 addition to the other remedies provided for in this section,  
22 may apply to the circuit court or any other court of competent  
23 jurisdiction of the county in which the subpoenaed person  
24 resides or has its principal place of business for a writ of  
25 ne exeat. The court shall thereupon direct the issuance of the  
26 writ against the subpoenaed person requiring sufficient bond  
27 conditioned on compliance with the subpoena or subpoena duces  
28 tecum. The court shall cause to be endorsed on the writ a  
29 suitable amount of bond upon the payment of which the person  
30 named in the writ shall be freed, having a due regard to the  
31 nature of the case.

1           (c) Alternatively, the office ~~department~~ may seek a  
2 writ of attachment from the court having jurisdiction over the  
3 person who has refused to obey a subpoena, who has refused to  
4 give testimony, or who has refused to produce the matters  
5 described in the subpoena duces tecum.

6           Section 513. Section 494.0012, Florida Statutes, is  
7 amended to read:

8           494.0012 Investigations; complaints; examinations.--

9           (1) The office ~~department~~ may conduct an investigation  
10 of any person whenever the office ~~department~~ has reason to  
11 believe, either upon complaint or otherwise, that any  
12 violation of ss. 494.001-494.0077 has been committed or is  
13 about to be committed.

14           (2) Any person having reason to believe that a  
15 provision of this act has been violated may file a written  
16 complaint with the office ~~department~~ setting forth details of  
17 the alleged violation.

18           (3)(a) The office ~~department~~ may, at intermittent  
19 periods, conduct examinations of any licensee or other person  
20 under the provisions of ss. 494.001-494.0077.

21           (b) The office ~~department~~ shall conduct all  
22 examinations at a convenient location in this state unless the  
23 office ~~department~~ determines that it is more effective or  
24 cost-efficient to perform an examination at the licensee's  
25 out-of-state location. For an examination performed at the  
26 licensee's out-of-state location, the licensee shall pay the  
27 travel expense and per diem subsistence at the rate provided  
28 by law for up to thirty 8-hour days per year for each office  
29 ~~department~~ examiner who participates in such an examination.  
30 However, if the examination involves or reveals fraudulent  
31 conduct by the licensee, the licensee shall pay the travel

1 expense and per diem subsistence provided by law, without  
2 limitation, for each participating examiner.

3 Section 514. Section 494.00125, Florida Statutes, is  
4 amended to read:

5 494.00125 Confidentiality of information relating to  
6 investigations and examinations.--

7 (1)(a) Except as otherwise provided by this section,  
8 information relative to an investigation or examination by the  
9 office ~~department~~ pursuant to this chapter, including any  
10 consumer complaint received by the office or the Department of  
11 Financial Services, is confidential and exempt from s.  
12 119.07(1) until the investigation or examination is completed  
13 or ceases to be active. The information compiled by the office  
14 ~~department~~ in such an investigation or examination shall  
15 remain confidential and exempt from s. 119.07(1) after the  
16 office's ~~department's~~ investigation or examination is  
17 completed or ceases to be active if the office ~~department~~  
18 submits the information to any law enforcement or  
19 administrative agency for further investigation. Such  
20 information shall remain confidential and exempt from s.  
21 119.07(1) until that agency's investigation is completed or  
22 ceases to be active. For purposes of this section, an  
23 investigation or examination shall be considered "active" so  
24 long as the office ~~department~~ or any law enforcement or  
25 administrative agency is proceeding with reasonable dispatch  
26 and has a reasonable good faith belief that the investigation  
27 or examination may lead to the filing of an administrative,  
28 civil, or criminal proceeding or to the denial or conditional  
29 grant of a license. This section shall not be construed to  
30 prohibit disclosure of information which is required by law to  
31 be filed with the office ~~department~~ and which, but for the

1 investigation or examination, would be subject to s.  
2 119.07(1).

3 (b) Except as necessary for the office ~~department~~ to  
4 enforce the provisions of this chapter, a consumer complaint  
5 and other information relative to an investigation or  
6 examination shall remain confidential and exempt from s.  
7 119.07(1) after the investigation or examination is completed  
8 or ceases to be active to the extent disclosure would:

9 1. Jeopardize the integrity of another active  
10 investigation or examination.

11 2. Reveal the name, address, telephone number, social  
12 security number, or any other identifying number or  
13 information of any complainant, customer, or account holder.

14 3. Disclose the identity of a confidential source.

15 4. Disclose investigative techniques or procedures.

16 5. Reveal a trade secret as defined in s. 688.002.

17 (c) In the event that office ~~department~~ personnel are  
18 or have been involved in an investigation or examination of  
19 such nature as to endanger their lives or physical safety or  
20 that of their families, then the home addresses, telephone  
21 numbers, places of employment, and photographs of such  
22 personnel, together with the home addresses, telephone  
23 numbers, photographs, and places of employment of spouses and  
24 children of such personnel and the names and locations of  
25 schools and day care facilities attended by the children of  
26 such personnel are confidential and exempt from s. 119.07(1).

27 (d) Nothing in this section shall be construed to  
28 prohibit the office ~~department~~ from providing information to  
29 any law enforcement or administrative agency. Any law  
30 enforcement or administrative agency receiving confidential  
31 information in connection with its official duties shall

1 maintain the confidentiality of the information so long as it  
2 would otherwise be confidential.

3 (e) All information obtained by the office ~~department~~  
4 from any person which is only made available to the office  
5 ~~department~~ on a confidential or similarly restricted basis  
6 shall be confidential and exempt from s. 119.07(1). This  
7 exemption shall not be construed to prohibit disclosure of  
8 information which is required by law to be filed with the  
9 office ~~department~~ or which is otherwise subject to s.  
10 119.07(1).

11 (2) If information subject to subsection (1) is  
12 offered in evidence in any administrative, civil, or criminal  
13 proceeding, the presiding officer may, in her or his  
14 discretion, prevent the disclosure of information which would  
15 be confidential pursuant to paragraph (1)(b).

16 (3) A privilege against civil liability is granted to  
17 a person who furnishes information or evidence to the office  
18 ~~department~~, unless such person acts in bad faith or with  
19 malice in providing such information or evidence.

20 Section 515. Section 494.0013, Florida Statutes, is  
21 amended to read:

22 494.0013 Injunction to restrain violations.--

23 (1) The office ~~department~~ may bring action through its  
24 own counsel in the name and on behalf of the state against any  
25 person who has violated or is about to violate any provision  
26 of ss. 494.001-494.0077 or any rule of the commission or order  
27 of the office ~~department~~ issued under ss. 494.001-494.0077 to  
28 enjoin the person from continuing in or engaging in any act in  
29 furtherance of the violation.

30 (2) In any injunctive proceeding, the court may, on  
31 due showing by the office ~~department~~, issue a subpoena or

1 subpoena duces tecum requiring the attendance of any witness  
2 and requiring the production of any books, accounts, records,  
3 or other documents and materials that appear necessary to the  
4 expeditious resolution of the application for injunction.

5 (3) In addition to all other means provided by law for  
6 the enforcement of any temporary restraining order, temporary  
7 injunction, or permanent injunction issued in any such court  
8 proceeding, the court has the power and jurisdiction, upon  
9 application of the office ~~department~~, to impound, and to  
10 appoint a receiver or administrator for, the property, assets,  
11 and business of the defendant, including, but not limited to,  
12 the books, records, documents, and papers appertaining  
13 thereto. Such receiver or administrator, when appointed and  
14 qualified, has all powers and duties as to custody,  
15 collection, administration, winding up, and liquidation of the  
16 property and business as are from time to time conferred upon  
17 him or her by the court. In any such action, the court may  
18 issue an order staying all pending suits and enjoining any  
19 further suits affecting the receiver's or administrator's  
20 custody or possession of the property, assets, and business,  
21 or the court, in its discretion and with the consent of the  
22 chief judge of the circuit, may require that all such suits be  
23 assigned to the circuit court judge who appoints the receiver  
24 or administrator.

25 Section 516. Section 494.0014, Florida Statutes, is  
26 amended to read:

27 494.0014 Cease and desist orders; refund orders.--

28 (1) The office ~~department~~ has the power to issue and  
29 serve upon any person an order to cease and desist and to take  
30 corrective action whenever it has reason to believe the person  
31 is violating, has violated, or is about to violate any

1 provision of ss. 494.001-494.0077, any rule or order ~~of the~~  
2 ~~department~~ issued under ss. 494.001-494.0077, or any written  
3 agreement between the person and the office ~~department~~. All  
4 procedural matters relating to issuance and enforcement of  
5 such a cease and desist order are governed by the  
6 Administrative Procedure Act.

7 (2) The office ~~department~~ has the power to order the  
8 refund of any fee directly or indirectly assessed and charged  
9 on a mortgage loan transaction which is unauthorized or  
10 exceeds the maximum fee specifically authorized in ss.  
11 494.001-494.0077.

12 (3) The office ~~department~~ may prohibit the association  
13 by a mortgage broker business, or the employment by a mortgage  
14 lender or correspondent mortgage lender, of any person who has  
15 engaged in a pattern of misconduct while an associate of a  
16 mortgage brokerage business or an employee of a mortgage  
17 lender or correspondent mortgage lender. For the purpose of  
18 this subsection, the term "pattern of misconduct" means the  
19 commission of three or more violations of ss. 494.001-494.0077  
20 or the provisions of chapter 494 in effect prior to October 1,  
21 1991, during any 1-year period or any criminal conviction for  
22 violating ss. 494.001-494.0077 or the provisions of chapter  
23 494 in effect prior to October 1, 1991.

24 Section 517. Section 494.0016, Florida Statutes, is  
25 amended to read:

26 494.0016 Books, accounts, and records; maintenance;  
27 examinations by the office ~~department~~.--

28 (1) Each licensee shall maintain, at the principal  
29 place of business designated on the license, all books,  
30 accounts, records, and documents necessary to determine the  
31 licensee's compliance with ss. 494.001-494.0077.

1           (2) The office ~~department~~ may authorize maintenance of  
2 records at a location other than a principal place of  
3 business. The office ~~department~~ may require books, accounts,  
4 and records to be produced and available at a reasonable and  
5 convenient location in this state.

6           (3) All books, accounts, records, documents, and  
7 receipts for expenses paid by the licensee on behalf of the  
8 borrower, including each closing statement signed by a  
9 borrower, shall be preserved and kept available for  
10 examination by the office ~~department~~ for at least 3 years  
11 after the date of original entry.

12           (4) The commission ~~department~~ may prescribe by rule  
13 the minimum information to be shown in the books, accounts,  
14 records, and documents of licensees so that such records will  
15 enable the office ~~department~~ to determine the licensee's  
16 compliance with ss. 494.001-494.0077.

17           Section 518. Subsection (2) of section 494.00165,  
18 Florida Statutes, is amended to read:

19           494.00165 Prohibited advertising; record  
20 requirements.--

21           (2) Each person required to be licensed under this  
22 chapter shall maintain a record of samples of each of its  
23 advertisements, including commercial scripts of each radio or  
24 television broadcast, for examination by the office ~~department~~  
25 for a period of 2 years after the date of publication or  
26 broadcast.

27           Section 519. Section 494.0017, Florida Statutes, is  
28 amended to read:

29           494.0017 Mortgage Brokerage Guaranty Fund.--

30           (1) The office ~~department~~ shall make transfers from  
31 the Regulatory Trust Fund to the Mortgage Brokerage Guaranty

1 Fund to pay valid claims arising under former ss. 494.042,  
2 494.043, and 494.044, as provided in former s. 494.00171.

3 (2) Any money paid to the Mortgage Brokerage Guaranty  
4 Fund in excess of any liability to claimants against the  
5 Mortgage Brokerage Guaranty Fund shall be transferred to the  
6 Regulatory Trust Fund.

7 (3) The Mortgage Brokerage Guaranty Fund shall be  
8 disbursed as provided in former s. 494.044, upon approval by  
9 the office ~~department~~, to any party to a mortgage financing  
10 transaction who:

11 (a) Is adjudged by a court of competent jurisdiction  
12 of this state to have suffered monetary damages as a result of  
13 any violation of chapter 494 in effect prior to October 1,  
14 1991, committed by a licensee or registrant;

15 (b) Has filed a claim for recovery prior to January 1,  
16 1992; and

17 (c) Has suffered monetary damages as a result of an  
18 act occurring prior to October 1, 1991.

19 (4) Notwithstanding s. 215.965, the office ~~department~~  
20 may disburse funds to a court or court-appointed person for  
21 distribution, if the conditions precedent for recovery exist  
22 and the distribution would be the fairest and most equitable  
23 manner of distributing the funds.

24 Section 520. Section 494.0021, Florida Statutes, is  
25 amended to read:

26 494.0021 Public records.--All audited financial  
27 statements submitted pursuant to ss. 494.001-494.0077 are  
28 confidential and exempt from the requirements of s. 119.07(1),  
29 except that office ~~department~~ employees may have access to  
30 such information in the administration and enforcement of ss.  
31 494.001-494.0077 and such information may be used by office

1 ~~department~~ personnel in the prosecution of violations under  
2 ss. 494.001-494.0077.

3 Section 521. Subsections (1), (2), (3), (5), and (7)  
4 of section 494.0025, Florida Statutes, are amended to read:

5 494.0025 Prohibited practices.--It is unlawful for any  
6 person:

7 (1) To act as a mortgage lender in this state without  
8 a current, active license issued by the office ~~department~~  
9 pursuant to ss. 494.006-494.0077.

10 (2) To act as a correspondent mortgage lender in this  
11 state without a current, active license issued by the office  
12 ~~department~~ pursuant to ss. 494.006-494.0077.

13 (3) To act as a mortgage broker in this state without  
14 a current, active license issued by the office ~~department~~  
15 pursuant to ss. 494.003-494.0043.

16 (5) In any matter within the jurisdiction of the  
17 office ~~department~~, to knowingly and willfully falsify,  
18 conceal, or cover up by a trick, scheme, or device a material  
19 fact, make any false or fraudulent statement or  
20 representation, or make or use any false writing or document,  
21 knowing the same to contain any false or fraudulent statement  
22 or entry.

23 (7) Who is required to be licensed under ss.  
24 494.006-494.0077, to fail to report to the office ~~department~~  
25 the failure to meet the net worth requirements of s. 494.0061,  
26 s. 494.0062, or s. 494.0065 within 48 hours after the person's  
27 knowledge of such failure or within 48 hours after the person  
28 should have known of such failure.

29 Section 522. Subsection (3) of section 494.0028,  
30 Florida Statutes, is amended to read:

31 494.0028 Arbitration.--

1           (3) All agreements subject to this section shall  
2 provide the noninstitutional investor or borrower with the  
3 option to elect arbitration before the American Arbitration  
4 Association or other independent nonindustry arbitration  
5 forum. Any other nonindustry arbitration forum may apply to  
6 the office ~~department~~ to allow such forum to provide  
7 arbitration services. The office ~~department~~ shall grant the  
8 application if the applicant's fees, practices, and procedures  
9 do not materially differ from those of the American  
10 Arbitration Association.

11           Section 523. Section 494.0029, Florida Statutes, is  
12 amended to read:

13           494.0029 Mortgage business schools.--

14           (1) Each person, school, or institution, except  
15 accredited colleges, universities, community colleges, and  
16 area technical centers in this state, which offers or conducts  
17 mortgage business training as a condition precedent to  
18 licensure as a mortgage broker or lender or a correspondent  
19 mortgage lender shall obtain a permit from the office  
20 ~~department~~ and abide by the regulations imposed upon such  
21 person, school, or institution by this chapter and rules  
22 adopted pursuant to this chapter. The commission ~~department~~  
23 shall, by rule, recertify the permits annually with initial  
24 and renewal permit fees that do not exceed \$500 plus the cost  
25 of accreditation.

26           (2) All such schools shall maintain curriculum and  
27 training materials necessary to determine the school's  
28 compliance with this chapter and rules adopted pursuant to  
29 this chapter. Any school that offers or conducts mortgage  
30 business training shall at all times maintain an operation of  
31 training, materials, and curriculum which is open to review by

1 the office ~~department~~ to determine compliance and competency  
2 as a mortgage business school.

3 (3)(a) It is unlawful for any such person, school, or  
4 institution to offer or conduct mortgage business courses,  
5 regardless of the number of pupils, without first procuring a  
6 permit or to guarantee that the pupils will pass any mortgage  
7 business examination given on behalf of the office ~~department~~  
8 or to represent that the issuance of a permit is any  
9 recommendation or endorsement of the person, school, or  
10 institution to which it is issued or of any course of  
11 instruction given thereunder. Any person who violates this  
12 paragraph commits a misdemeanor of the second degree,  
13 punishable as provided in s. 775.082 or s. 775.083.

14 (b) The location of classes and the frequency of class  
15 meetings shall be in the discretion of the school offering the  
16 courses, if such courses conform to this chapter and related  
17 rules adopted by the commission ~~department~~.

18 (c) A mortgage business school may not use advertising  
19 of any nature which is false, inaccurate, misleading, or  
20 exaggerated. Publicity and advertising of a mortgage business  
21 school, or of its representative, shall be based upon relevant  
22 facts and supported by evidence establishing their truth.

23 (d) A representative of a mortgage business school  
24 subject to the provisions of this chapter may not promise or  
25 guarantee employment or placement of any pupil or prospective  
26 pupil, using information, training, or skill purported to be  
27 provided or otherwise enhanced by a course or school as  
28 inducement to enroll in the school, unless such person offers  
29 the pupil or prospective pupil a bona fide contract of  
30 employment.

31

1           (e) A school shall advertise only as a school and  
2 under the permitted name of such school as recognized by the  
3 office ~~department~~.

4           (f) Reference may not be made in any publication or  
5 communication medium as to a pass/fail ratio on mortgage  
6 business examinations by any school permitted by the office  
7 ~~department~~.

8           Section 524. Subsections (1) and (3) of section  
9 494.00295, Florida Statutes, are amended to read:

10           494.00295 Professional education.--

11           (1) Each mortgage broker, mortgage lender, and  
12 correspondent mortgage lender must certify to the office  
13 ~~department~~ at the time of renewal that during the 2 years  
14 prior to an application for license renewal, all mortgage  
15 brokers and the principal representative, loan originators,  
16 and associates of a mortgage lender or correspondent mortgage  
17 lender have successfully completed at least 14 hours of  
18 professional education programs covering primary and  
19 subordinate mortgage financing transactions and the provisions  
20 of this chapter. Licensees shall maintain records documenting  
21 compliance with this subsection for a period of 4 years.

22           (3) The commission ~~department~~ shall adopt rules  
23 necessary to administer this section, including rules  
24 governing qualifying hours for professional education programs  
25 and standards for electronically transmitted or distance  
26 education courses, including course completion requirements.

27           Section 525. Subsections (1), (2), (4), and (5) of  
28 section 494.0031, Florida Statutes, are amended to read:

29           494.0031 Licensure as a mortgage brokerage business.--

30           (1) The office ~~department~~ shall issue a mortgage  
31 brokerage business license to each person who:

1 (a) Has submitted a completed application form and a  
2 nonrefundable application fee of \$425; and

3 (b) Has a qualified principal broker pursuant to s.  
4 494.0035.

5 (2) The commission ~~department~~ may require that each  
6 officer, director, and ultimate equitable owner of a  
7 10-percent or greater interest in the mortgage brokerage  
8 business submit a complete set of fingerprints taken by an  
9 authorized law enforcement officer.

10 (4) A mortgage brokerage business or branch office  
11 license may be canceled if it was issued through mistake or  
12 inadvertence of the office ~~department~~. A notice of  
13 cancellation must be issued by the office ~~department~~ within 90  
14 days after the issuance of the license. A notice of  
15 cancellation shall be effective upon receipt. The notice of  
16 cancellation shall provide the applicant with notification of  
17 the right to request a hearing within 21 days after the  
18 applicant's receipt of the notice of cancellation. A license  
19 shall be reinstated if the applicant can demonstrate that the  
20 requirements for obtaining the license pursuant to this  
21 chapter have been satisfied.

22 (5) If an initial mortgage brokerage business or  
23 branch office license has been issued but the check upon which  
24 the license is based is returned due to insufficient funds,  
25 the license shall be deemed canceled. A license deemed  
26 canceled pursuant to this subsection shall be reinstated if  
27 the office ~~department~~ receives a certified check for the  
28 appropriate amount within 30 days after the date the check was  
29 returned due to insufficient funds.

30 Section 526. Section 494.0032, Florida Statutes, is  
31 amended to read:

1           494.0032 Renewal of mortgage brokerage business  
2 license or branch office license.--

3           (1) The office ~~department~~ shall renew a mortgage  
4 brokerage business license upon receipt of a completed renewal  
5 form and payment of a nonrefundable renewal fee of \$375. Each  
6 licensee shall pay at the time of renewal a nonrefundable  
7 renewal fee of \$225 for the renewal of each branch office  
8 license.

9           (2) The commission ~~department~~ shall adopt rules  
10 establishing a procedure for the biennial renewal of mortgage  
11 brokerage business licenses and branch office licenses. The  
12 commission ~~department~~ may prescribe the form for renewal and  
13 may require an update of all information provided in the  
14 licensee's initial application.

15           (3) A mortgage brokerage business or branch office  
16 license that is not renewed by the end of the biennium  
17 established by the commission ~~department~~ shall revert from  
18 active to inactive status. An inactive license may be  
19 reactivated within 6 months after becoming inactive by filing  
20 a completed reactivation form with the office ~~department~~,  
21 payment of the renewal fee, and payment of a nonrefundable  
22 reactivation fee of \$100. A license that is not renewed within  
23 6 months after the end of the biennial period automatically  
24 expires.

25           Section 527. Subsections (2), (3), (6), and (7) of  
26 section 494.0033, Florida Statutes, are amended to read:

27           494.0033 Mortgage broker's license.--

28           (2) Each initial application for a mortgage broker's  
29 license must be in the form prescribed by rule of the  
30 commission ~~department~~. The commission ~~department~~ may require  
31 each applicant to provide any information reasonably necessary

1 to make a determination of the applicant's eligibility for  
2 licensure. The office ~~department~~ shall issue an initial  
3 license to any natural person who:  
4 (a) Is at least 18 years of age;  
5 (b) Has passed a written test adopted by the office  
6 ~~department~~ which is designed to determine competency in  
7 primary and subordinate mortgage financing transactions as  
8 well as to test knowledge of ss. 494.001-494.0077 and the  
9 rules adopted pursuant thereto;  
10 (c) Has submitted a completed application and a  
11 nonrefundable application fee of \$200. The commission  
12 ~~department~~ may set by rule an additional fee for a retake of  
13 the examination; and  
14 (d) Has filed a complete set of fingerprints, taken by  
15 an authorized law enforcement officer, for submission by the  
16 office ~~department~~ to the Department of Law Enforcement or the  
17 Federal Bureau of Investigation for processing.  
18 (3) Any person applying after July 1, 1992, must have  
19 completed 24 hours of classroom education on primary and  
20 subordinate financing transactions and the laws and rules of  
21 ss. 494.001-494.0077 to be eligible for licensure. The  
22 commission ~~department~~ may adopt rules regarding qualifying  
23 hours.  
24 (6) A mortgage broker license may be canceled if it  
25 was issued through mistake or inadvertence of the office  
26 ~~department~~. A notice of cancellation must be issued by the  
27 office ~~department~~ within 90 days after the issuance of the  
28 license. A notice of cancellation shall be effective upon  
29 receipt. The notice of cancellation shall provide the  
30 applicant with notification of the right to request a hearing  
31 within 21 days after the applicant's receipt of the notice of

1 cancellation. A license shall be reinstated if the applicant  
2 can demonstrate that the requirements for obtaining the  
3 license pursuant to this chapter have been satisfied.

4 (7) If an initial mortgage broker license has been  
5 issued but the check upon which the license is based is  
6 returned due to insufficient funds, the license shall be  
7 deemed canceled. A license deemed canceled pursuant to this  
8 subsection shall be reinstated if the office ~~department~~  
9 receives a certified check for the appropriate amount within  
10 30 days after the date the check was returned due to  
11 insufficient funds.

12 Section 528. Section 494.0034, Florida Statutes, is  
13 amended to read:

14 494.0034 Renewal of mortgage broker's license.--

15 (1) The office ~~department~~ shall renew a mortgage  
16 broker license upon receipt of the completed renewal form,  
17 certification of compliance with continuing education  
18 requirements of s. 494.00295, and payment of a nonrefundable  
19 renewal fee of \$150.

20 (2) The commission ~~department~~ shall adopt rules  
21 establishing a procedure for the biennial renewal of mortgage  
22 broker's licenses. The commission ~~department~~ may prescribe the  
23 form of the renewal application and may require an update of  
24 information since the licensee's last renewal.

25 (3) A license that is not renewed by the end of the  
26 biennium prescribed by the commission ~~department~~ shall revert  
27 from active to inactive status. An inactive license may be  
28 reactivated within 2 years after becoming inactive by filing a  
29 completed reactivation form with the office ~~department~~,  
30 payment of the renewal fee, and payment of a nonrefundable  
31

1 reactivation fee of \$100. A license that is not renewed within  
2 2 years after becoming inactive automatically expires.

3 Section 529. Section 494.0035, Florida Statutes, is  
4 amended to read:

5 494.0035 Principal broker and branch broker  
6 requirements.--

7 (1) Each mortgage brokerage business must have a  
8 principal broker who shall operate the business under such  
9 broker's full charge, control, and supervision. The principal  
10 broker must have been a licensed mortgage broker pursuant to  
11 s. 494.0033 for at least 1 year prior to being designated as a  
12 principal broker, or shall demonstrate to the satisfaction of  
13 the office ~~department~~ that such principal broker has been  
14 actively engaged in a mortgage-related business for at least 1  
15 year prior to being designated as a principal broker. Each  
16 mortgage brokerage business shall maintain a form as  
17 prescribed by the commission ~~department~~ indicating the  
18 business's designation of principal broker and the  
19 individual's acceptance of such responsibility. If the form is  
20 unavailable, inaccurate, or incomplete, it is deemed that the  
21 business was operated in the full charge, control, and  
22 supervision by each officer, director, or ultimate equitable  
23 owner of a 10-percent or greater interest in the mortgage  
24 brokerage business, or any other person in a similar capacity.

25 (2) Each branch office of a mortgage brokerage  
26 business must have a designated branch broker who shall  
27 operate the business under such broker's full charge, control,  
28 and supervision. The designated branch broker must be a  
29 licensed mortgage broker pursuant to s. 494.0033. Each branch  
30 office shall maintain a form as prescribed by the commission  
31 ~~department~~ logging the branch's designation of a branch broker

1 and the individual's acceptance of such responsibility. If  
2 the form is unavailable, inaccurate, or incomplete, it is  
3 deemed that the branch was operated in the full charge,  
4 control, and supervision by each officer, director, or  
5 ultimate equitable owner of a 10-percent or greater interest  
6 in the mortgage brokerage business, or any other person in a  
7 similar capacity.

8 Section 530. Subsection (2) of section 494.0036,  
9 Florida Statutes, is amended to read:

10 494.0036 Mortgage brokerage business branch offices.--

11 (2) The office ~~department~~ shall issue a mortgage  
12 brokerage business branch office license upon receipt of a  
13 completed application in a form as prescribed by commission  
14 ~~department~~ rule and payment of an initial nonrefundable branch  
15 office license fee of \$225. Branch office licenses must be  
16 renewed in conjunction with the renewal of the mortgage  
17 brokerage business license. The branch office license shall be  
18 issued in the name of the mortgage brokerage business that  
19 maintains the branch office.

20 Section 531. Paragraph (c) of subsection (1) of  
21 section 494.0038, Florida Statutes, is amended to read:

22 494.0038 Mortgage broker disclosures.--

23 (1)

24 (c) The commission ~~department~~ may prescribe by rule  
25 the form of disclosure of brokerage fees.

26 Section 532. Subsections (2), (3), (4), and (6) of  
27 section 494.004, Florida Statutes, are amended to read:

28 494.004 Requirements of licensees.--

29 (2) Each licensee under ss. 494.003-494.0043 shall  
30 report, in a form prescribed by rule of the commission  
31 ~~department~~, any conviction of, or plea of nolo contendere to,

1 regardless of whether adjudication is withheld, any felony  
2 committed by the licensee or any natural person named in s.  
3 494.0031(3), not later than 30 days after the date of  
4 conviction or the date the plea of nolo contendere is entered.

5 (3) Each licensee under ss. 494.003-494.0043 shall  
6 report any action in bankruptcy, voluntary or involuntary, to  
7 the office ~~department~~ not later than 7 business days after the  
8 action is instituted.

9 (4) Each licensee under ss. 494.003-494.0043 shall  
10 report any change in the form of business organization or any  
11 change of a person named, pursuant to s. 494.0031(3), to the  
12 office ~~department~~ in writing not later than 30 days after the  
13 change is effective.

14 (6) On or before April 30, 2000, each mortgage  
15 brokerage business shall file an initial report stating the  
16 name, social security number, date of birth, mortgage broker  
17 license number, date of hire and, if applicable, date of  
18 termination for each person who was an associate of the  
19 mortgage brokerage business during the immediate preceding  
20 quarter. Thereafter, a mortgage brokerage business shall file  
21 a quarterly report only if a person became an associate or  
22 ceased to be an associate of the mortgage brokerage business  
23 during the immediate preceding quarter. Such report shall be  
24 filed within 30 days after the last day of each calendar  
25 quarter and shall contain the name, social security number,  
26 date of birth, mortgage broker license number, date of hire  
27 and, if applicable, the date of termination of each person who  
28 became or ceased to be an associate of the mortgage brokerage  
29 business during the immediate preceding quarter. The  
30 commission ~~department~~ shall prescribe, by rule, the procedures  
31 for filing reports required by this subsection.

1           Section 533. Subsection (1) and paragraphs (j), (m),  
2 and (n) of subsection (2) of section 494.0041, Florida  
3 Statutes, are amended to read:

4           494.0041 Administrative penalties and fines; license  
5 violations.--

6           (1) Whenever the office ~~department~~ finds a person in  
7 violation of an act specified in subsection (2), it may enter  
8 an order imposing one or more of the following penalties  
9 against the person:

10           (a) Revocation of a license or registration.

11           (b) Suspension of a license or registration subject to  
12 reinstatement upon satisfying all reasonable conditions that  
13 the office ~~department~~ specifies.

14           (c) Placement of the licensee, registrant, or  
15 applicant on probation for a period of time and subject to all  
16 reasonable conditions that the office ~~department~~ specifies.

17           (d) Issuance of a reprimand.

18           (e) Imposition of a fine in an amount not exceeding  
19 \$5,000 for each count or separate offense.

20           (f) Denial of a license or registration.

21           (2) Each of the following acts constitutes a ground  
22 for which the disciplinary actions specified in subsection (1)  
23 may be taken:

24           (j) Failure to comply with any ~~department~~ order or  
25 rule made or issued under ss. 494.001-494.0077.

26           (m) Failure to maintain, preserve, and keep available  
27 for examination all books, accounts, or other documents  
28 required by ss. 494.001-494.0077 and the rules of the  
29 commission ~~department~~.

30  
31

1 (n) Refusal to permit an investigation or examination  
2 of books and records, or refusal to comply with an office a  
3 ~~department~~ subpoena or subpoena duces tecum.

4 Section 534. Subsection (7) of section 494.00421,  
5 Florida Statutes, is amended to read:

6 494.00421 Fees earned upon obtaining a bona fide  
7 commitment.--Notwithstanding the provisions of ss.  
8 494.001-494.0077, any mortgage brokerage business which  
9 contracts to receive from a borrower a mortgage brokerage fee  
10 upon obtaining a bona fide commitment shall accurately  
11 disclose in the mortgage brokerage agreement:

12 (7)(a) The following statement, in no less than  
13 12-point boldface type immediately above the signature lines  
14 for the borrowers:

15  
16 "You are entering into a contract with a mortgage brokerage  
17 business to obtain a bona fide mortgage loan commitment under  
18 the same terms and conditions as stated hereinabove or in a  
19 separate executed good faith estimate form. If the mortgage  
20 brokerage business obtains a bona fide commitment under the  
21 same terms and conditions, you will be obligated to pay the  
22 mortgage brokerage business fees, including, but not limited  
23 to, a mortgage brokerage fee, even if you choose not to  
24 complete the loan transaction. If the provisions of s.  
25 494.00421, Florida Statutes, are not met, the mortgage  
26 brokerage fee can only be earned upon the funding of the  
27 mortgage loan. The borrower may contact the Department of  
28 Financial Services ~~Banking and Finance~~, Tallahassee, Florida,  
29 regarding any complaints that the borrower may have against  
30 the mortgage broker or the mortgage brokerage business. The  
31

1 telephone number of the department ~~as set by rule of the~~  
2 ~~department~~ is: ...[insert telephone number]...."

3 (b) Paragraph (a) does not apply to nonresidential  
4 mortgage loan commitments in excess of \$1 million.

5 Section 535. Subsections (1), (3), (6), (7), (8), (9),  
6 and (10) of section 494.0061, Florida Statutes, are amended to  
7 read:

8 494.0061 Mortgage lender's license requirements.--

9 (1) The commission or office ~~department~~ may require  
10 each applicant for a mortgage lender license to provide any  
11 information reasonably necessary to make a determination of  
12 the applicant's eligibility for licensure. The office  
13 ~~department~~ shall issue an initial mortgage lender license to  
14 any person that submits:

15 (a) A completed application form;

16 (b) A nonrefundable application fee of \$575;

17 (c) Audited financial statements, which documents  
18 disclose that the applicant has a bona fide and verifiable net  
19 worth, pursuant to generally accepted accounting principles,  
20 of at least \$250,000, which must be continuously maintained as  
21 a condition of licensure;

22 (d) A surety bond in the amount of \$10,000, payable to  
23 the state and conditioned upon compliance with ss.

24 494.001-494.0077, which inures to the office ~~department~~ and  
25 which must be continuously maintained thereafter in full  
26 force;

27 (e) Documentation that the applicant is duly  
28 incorporated, registered, or otherwise formed as a general  
29 partnership, limited partnership, limited liability company,  
30 or other lawful entity under the laws of this state or another  
31 state of the United States; and

1           (f) For applications submitted after October 1, 2001,  
2 proof that the applicant's principal representative has  
3 completed 24 hours of classroom instruction in primary and  
4 subordinate financing transactions and in the provisions of  
5 this chapter and rules adopted under this chapter.

6           (3) Each initial application for a mortgage lender's  
7 license must be in a form prescribed by the commission  
8 ~~department~~. The commission or office ~~department~~ may require  
9 each applicant to provide any information reasonably necessary  
10 to make a determination of the applicant's eligibility for  
11 licensure. The commission or office ~~department~~ may require  
12 that each officer, director, and ultimate equitable owner of a  
13 10-percent or greater interest in the applicant submit a  
14 complete set of fingerprints taken by an authorized law  
15 enforcement officer.

16           (6) A mortgage lender or branch office license may be  
17 canceled if it was issued through mistake or inadvertence of  
18 the office ~~department~~. A notice of cancellation must be issued  
19 by the office ~~department~~ within 90 days after the issuance of  
20 the license. A notice of cancellation shall be effective upon  
21 receipt. The notice of cancellation shall provide the  
22 applicant with notification of the right to request a hearing  
23 within 21 days after the applicant's receipt of the notice of  
24 cancellation. A license shall be reinstated if the applicant  
25 can demonstrate that the requirements for obtaining the  
26 license pursuant to this chapter have been satisfied.

27           (7) If an initial mortgage lender or branch office  
28 license has been issued but the check upon which the license  
29 is based is returned due to insufficient funds, the license  
30 shall be deemed canceled. A license deemed canceled pursuant  
31 to this subsection shall be reinstated if the office

1 ~~department~~ receives a certified check for the appropriate  
2 amount within 30 days after the date the check was returned  
3 due to insufficient funds.

4 (8) Each lender, regardless of the number of branches  
5 it operates, shall designate a principal representative who  
6 exercises control of the licensee's business and shall  
7 maintain a form prescribed by the commission ~~department~~  
8 designating the principal representative. If the form is not  
9 accurately maintained, the business is considered to be  
10 operated by each officer, director, or equitable owner of a  
11 10-percent or greater interest in the business.

12 (9) After October 1, 2001, an applicant's principal  
13 representative must pass a written test prescribed by the  
14 commission ~~department~~ which covers primary and subordinate  
15 mortgage financing transactions and the provisions of this  
16 chapter and rules adopted under this chapter.

17 (10) A lender shall notify the office ~~department~~ of  
18 the name and address of any new principal representative and  
19 shall document that the person has completed the educational  
20 and testing requirements of this section upon the designation  
21 of a new principal representative.

22 Section 536. Subsections (1), (3), (9), (10), (11),  
23 (12), and (13) of section 494.0062, Florida Statutes, are  
24 amended to read:

25 494.0062 Correspondent mortgage lender's license  
26 requirements.--

27 (1) The office ~~department~~ shall issue an initial  
28 correspondent mortgage lender license to any person who  
29 submits:

30 (a) A completed application form;

31 (b) A nonrefundable application fee of \$500;

1 (c) Audited financial statements, which document that  
2 the application has a bona fide and verifiable net worth  
3 pursuant to generally accepted accounting principles of  
4 \$25,000 or more, which must be continuously maintained as a  
5 condition of licensure;

6 (d) A surety bond in the amount of \$10,000, payable to  
7 the State of Florida and conditioned upon compliance with ss.  
8 494.001-494.0077, which inures to the office ~~department~~ and  
9 which must be continuously maintained, thereafter, in full  
10 force;

11 (e) Documentation that the applicant is duly  
12 incorporated, registered, or otherwise formed as a general  
13 partnership, limited partnership, limited liability company,  
14 or other lawful entity under the laws of this state or another  
15 state of the United States; and

16 (f) For applications filed after October 1, 2001,  
17 proof that the applicant's principal representative has  
18 completed 24 hours of classroom instruction in primary and  
19 subordinate financing transactions and in the provisions of  
20 this chapter and rules enacted under this chapter.

21 (3) Each initial application for a correspondent  
22 mortgage lender's license must be in a form prescribed by the  
23 commission ~~department~~. The commission or office ~~department~~ may  
24 require each applicant to provide any information reasonably  
25 necessary to make a determination of the applicant's  
26 eligibility for licensure. The commission or office ~~department~~  
27 may require that each officer, director, and ultimate  
28 equitable owner of a 10-percent or greater interest submit a  
29 complete set of fingerprints taken by an authorized law  
30 enforcement officer.

31

1           (9) A correspondent mortgage lender or branch office  
2 license may be canceled if it was issued through mistake or  
3 inadvertence of the office ~~department~~. A notice of  
4 cancellation must be issued by the office ~~department~~ within 90  
5 days after the issuance of the license. A notice of  
6 cancellation shall be effective upon receipt. The notice of  
7 cancellation shall provide the applicant with notification of  
8 the right to request a hearing within 21 days after the  
9 applicant's receipt of the notice of cancellation. A license  
10 shall be reinstated if the applicant can demonstrate that the  
11 requirements for obtaining the license pursuant to this  
12 chapter have been satisfied.

13           (10) If an initial correspondent mortgage lender or  
14 branch office license has been issued but the check upon which  
15 the license is based is returned due to insufficient funds,  
16 the license shall be deemed canceled. A license deemed  
17 canceled pursuant to this subsection shall be reinstated if  
18 the office ~~department~~ receives a certified check for the  
19 appropriate amount within 30 days after the date the check was  
20 returned due to insufficient funds.

21           (11) Each correspondent lender shall designate a  
22 principal representative who exercises control over the  
23 business and shall maintain a form prescribed by the  
24 commission ~~department~~ designating the principal  
25 representative. If the form is not accurately maintained, the  
26 business is considered to be operated by each officer,  
27 director, or equitable owner of a 10-percent or greater  
28 interest in the business.

29           (12) After October 1, 2001, an applicant's principal  
30 representative must pass a written test prescribed by the  
31 commission ~~department~~ which covers primary and subordinate

1 mortgage financing transactions and the provisions of this  
2 chapter and rules adopted under this chapter.

3 (13) A correspondent lender shall notify the office  
4 ~~department~~ of the name and address of any new principal  
5 representative and shall document that such person has  
6 completed the educational and testing requirements of this  
7 section upon the lender's designation of a new principal  
8 representative.

9 Section 537. Section 494.0064, Florida Statutes, is  
10 amended to read:

11 494.0064 Renewal of mortgage lender's license; branch  
12 office license renewal.--

13 (1)(a) The office ~~department~~ shall renew a mortgage  
14 lender license upon receipt of a completed renewal form and  
15 the nonrefundable renewal fee of \$575. The office ~~department~~  
16 shall renew a correspondent lender license upon receipt of a  
17 completed renewal form and a nonrefundable renewal fee of  
18 \$475. Each licensee shall pay at the time of renewal a  
19 nonrefundable fee of \$325 for the renewal of each branch  
20 office license.

21 (b) A licensee shall also submit, as part of the  
22 renewal form, certification that during the preceding 2 years  
23 the licensee's principal representative, loan originators, and  
24 associates have completed the education requirements of s.  
25 494.00295.

26 (2) The commission ~~department~~ shall adopt rules  
27 establishing a procedure for the biennial renewal of mortgage  
28 lender's licenses, correspondent lender's licenses, and branch  
29 office permits. The commission ~~department~~ may prescribe the  
30 form for renewal and may require an update of all information  
31 provided in the licensee's initial application.

1           (3) The license of a mortgage lender, correspondent  
2 mortgage lender, or branch office that is not renewed by the  
3 end of the biennium prescribed by the commission ~~department~~  
4 automatically reverts to inactive status. An inactive license  
5 may be reactivated within 6 months after becoming inactive by  
6 filing a completed reactivation form with the office  
7 ~~department~~, payment of the appropriate renewal fee, and  
8 payment of a nonrefundable reactivation fee of \$100. A  
9 license that is not renewed within 6 months after the end of  
10 the biennial period automatically expires.

11           (4) The commission ~~department~~ may adopt rules setting  
12 forth the evidence or documentation of minimum net worth to be  
13 submitted for renewal of a license.

14           Section 538. Paragraph (a) of subsection (1) and  
15 subsections (2), (3), (5), and (8) of section 494.0065,  
16 Florida Statutes, are amended to read:

17           494.0065 Saving clause.--

18           (1)(a) Any person in good standing who holds an active  
19 registration pursuant to former s. 494.039 or license pursuant  
20 to former s. 521.205, or any person who acted solely as a  
21 mortgage servicer on September 30, 1991, is eligible to apply  
22 to the office ~~department~~ for a mortgage lender's license and  
23 is eligible for licensure if the applicant:

24           1. For at least 12 months during the period of October  
25 1, 1989, through September 30, 1991, has engaged in the  
26 business of either acting as a seller or assignor of mortgage  
27 loans or as a servicer of mortgage loans, or both;

28           2. Has documented a minimum net worth of \$25,000 in  
29 audited financial statements; and

30           3. Has applied for licensure pursuant to this section  
31 by January 1, 1992, and paid an application fee of \$100.

1           (2) A licensee issued a license pursuant to subsection  
2 (1) may renew its mortgage lending license if it documents a  
3 minimum net worth of \$25,000, according to generally accepted  
4 accounting principles, which must be continuously maintained  
5 as a condition to licensure. The office ~~department~~ shall  
6 require an audited financial statement which documents such  
7 net worth.

8           (3) The commission ~~department~~ may prescribe by rule  
9 forms and procedures for application for licensure, and  
10 amendment and withdrawal of application for licensure, or  
11 transfer, including any existing branch offices, in accordance  
12 with subsections (4) and (5), and for renewal of licensure of  
13 licensees under this section.

14           (5) The commission or office ~~department~~ may require  
15 each applicant for any transfer to provide any information  
16 reasonably necessary to make a determination of the  
17 applicant's eligibility for licensure. The office ~~department~~  
18 shall issue the transfer of licensure to any person who  
19 submits the following documentation at least 90 days prior to  
20 the anticipated transfer:

21           (a) A completed application form.

22           (b) A nonrefundable fee set by rule of the commission  
23 ~~department~~ in the amount of \$500.

24           (c) Audited financial statements that substantiate  
25 that the applicant has a bona fide and verifiable net worth,  
26 according to generally accepted accounting principles, of at  
27 least \$25,000, which must be continuously maintained as a  
28 condition of licensure.

29           (d) Documentation that the applicant is incorporated,  
30 registered, or otherwise formed as a general partnership,  
31 limited partnership, limited liability company, or other

1 lawful entity under the laws of this state or another state of  
2 the United States.

3

4 The commission or office ~~department~~ may require that each  
5 officer, director, and ultimate equitable owner of a  
6 10-percent or greater interest in the applicant submit a  
7 complete set of fingerprints taken by an authorized law  
8 enforcement officer.

9 (8) ~~The department shall require~~ Each person applying  
10 for a transfer of any branch office pursuant to subsection (4)  
11 must of this section to comply with the requirements of s.  
12 494.0066.

13 Section 539. Subsection (2) of section 494.0066,  
14 Florida Statutes, is amended to read:

15 494.0066 Branch offices.--

16 (2) The office ~~department~~ shall issue a branch office  
17 license upon receipt of a completed application form as  
18 prescribed by rule by the commission ~~department~~ and an initial  
19 nonrefundable branch office license fee of \$325. The branch  
20 office application must include the name and license number of  
21 the licensee under ss. 494.006-494.0077, the name of the  
22 licensee's employee in charge of the branch office, and the  
23 address of the branch office. The branch office license shall  
24 be issued in the name of the licensee under ss.  
25 494.006-494.0077 and must be renewed in conjunction with the  
26 license renewal.

27 Section 540. Subsections (4), (5), (6), (8), and (9)  
28 of section 494.0067, Florida Statutes, are amended to read:

29 494.0067 Requirements of licensees under ss.  
30 494.006-494.0077.--

31

1           (4) The commission or office ~~department~~ may require  
2 each licensee under ss. 494.006-494.0077 to report any change  
3 of address of the principal place of business, change of  
4 address of any branch office, or change of principal officer,  
5 director, or ultimate equitable owner of 10 percent or more of  
6 the licensed corporation to the office ~~department~~ in a form  
7 prescribed by rule of the commission ~~department~~ not later than  
8 30 business days after the change is effective.

9           (5) Each licensee under ss. 494.006-494.0077 shall  
10 report in a form prescribed by rule by the commission  
11 ~~department~~ any indictment, information, charge, conviction,  
12 plea of nolo contendere, or plea of guilty to any crime or  
13 administrative violation that involves fraud, dishonest  
14 dealing, or any other act of moral turpitude, in any  
15 jurisdiction, by the licensee under ss. 494.006-494.0077 or  
16 any principal officer, director, or ultimate equitable owner  
17 of 10 percent or more of the licensed corporation, not later  
18 than 30 business days after the indictment, information,  
19 charge, conviction, or final administrative action.

20           (6) Each licensee under ss. 494.006-494.0077 shall  
21 report any action in bankruptcy, voluntary or involuntary, to  
22 the office ~~department~~, not later than 7 business days after  
23 the action is instituted.

24           (8) Each licensee under ss. 494.006-494.0077 shall  
25 provide an applicant for a mortgage loan a good faith estimate  
26 of the costs the applicant can reasonably expect to pay in  
27 obtaining a mortgage loan. The good faith estimate of costs  
28 shall be mailed or delivered to the applicant within a  
29 reasonable time after the licensee receives a written loan  
30 application from the applicant. The estimate of costs may be  
31 provided to the applicant by a person other than the licensee

1 making the loan. The commission ~~department~~ may adopt rules  
2 that set forth the disclosure requirements of this section.

3 (9) On or before April 30, 2000, each mortgage lender  
4 or correspondent mortgage lender shall file an initial report  
5 stating the full legal name, residential address, social  
6 security number, date of birth, mortgage broker license  
7 number, date of hire, and, if applicable, date of termination  
8 for each person who acted as a loan originator or an associate  
9 of the mortgage lender or correspondent mortgage lender during  
10 the immediate preceding quarter. Thereafter, a mortgage  
11 lender or correspondent mortgage lender shall file a report  
12 only if a person became or ceased to be a loan originator or  
13 an associate of the mortgage lender or correspondent mortgage  
14 lender during the immediate preceding quarter. Such report  
15 shall be filed within 30 days after the last day of each  
16 calendar quarter and shall contain the full legal name,  
17 residential address, social security number, date of birth,  
18 date of hire and, if applicable, the mortgage broker license  
19 number and date of termination of each person who became or  
20 ceased to be a loan originator or an associate of the mortgage  
21 lender or correspondent mortgage lender during the immediate  
22 preceding quarter. The commission ~~department~~ shall prescribe,  
23 by rule, the procedures for filing reports required by this  
24 subsection.

25 Section 541. Subsection (6) of section 494.0069,  
26 Florida Statutes, is amended to read:

27 494.0069 Lock-in agreement.--

28 (6) The commission ~~department~~ may adopt by rule a form  
29 for required lock-in agreement disclosures.

30  
31

1           Section 542. Subsection (1) and paragraphs (j), (m),  
2 and (n) of subsection (2) of section 494.0072, Florida  
3 Statutes, are amended to read:

4           494.0072 Administrative penalties and fines; license  
5 violations.--

6           (1) Whenever the office ~~department~~ finds a person in  
7 violation of an act specified in subsection (2), it may enter  
8 an order imposing one or more of the following penalties  
9 against that person:

10           (a) Revocation of a license or registration.

11           (b) Suspension of a license or registration, subject  
12 to reinstatement upon satisfying all reasonable conditions  
13 that the office ~~department~~ specifies.

14           (c) Placement of the licensee or applicant on  
15 probation for a period of time and subject to all reasonable  
16 conditions that the office ~~department~~ specifies.

17           (d) Issuance of a reprimand.

18           (e) Imposition of a fine in an amount not exceeding  
19 \$5,000 for each count or separate offense.

20           (f) Denial of a license or registration.

21           (2)

22           (j) Failure to comply with any ~~department~~ order or  
23 rule made or issued under the provisions of ss.  
24 494.001-494.0077.

25           (m) Failure to maintain, preserve, and keep available  
26 for examination all books, accounts, or other documents  
27 required by ss. 494.001-494.0077 or the rules of the  
28 commission ~~department~~.

29           (n) Refusal to permit an investigation or examination  
30 of books and records, or refusal to comply with an office ~~a~~  
31 ~~department~~ subpoena or subpoena duces tecum.

1           Section 543. Subsection (2) of section 494.00721,  
2 Florida Statutes, is amended to read:

3           494.00721 Net worth.--

4           (2) If a mortgage lender or correspondent mortgage  
5 lender fails to satisfy the net worth requirements, the  
6 mortgage lender or correspondent mortgage lender shall  
7 immediately cease taking any new mortgage loan applications.  
8 Thereafter, the mortgage lender or correspondent mortgage  
9 lender shall have up to 60 days within which to satisfy the  
10 net worth requirements. If the licensee makes the office  
11 ~~department~~ aware, prior to an examination, that the licensee  
12 no longer meets the net worth requirements, the mortgage  
13 lender or correspondent mortgage lender shall have 120 days  
14 within which to satisfy the net worth requirements. A mortgage  
15 lender or correspondent mortgage lender shall not resume  
16 acting as a mortgage lender or correspondent mortgage lender  
17 without written authorization from the office ~~department~~,  
18 which authorization shall be granted if the mortgage lender or  
19 correspondent mortgage lender provides the office ~~department~~  
20 with documentation which satisfies the requirements of s.  
21 494.0061(1)(c), s. 494.0062(1)(c), or s. 494.0065(2),  
22 whichever is applicable.

23           Section 544. Paragraph (b) of subsection (2) of  
24 section 494.0076, Florida Statutes, is amended to read:

25           494.0076 Servicing audits.--

26           (2)

27           (b) The commission may ~~department is authorized to~~  
28 adopt rules to ensure that investors are adequately protected  
29 under this subsection.

30           Section 545. Subsection (5) of section 494.0079,  
31 Florida Statutes, is amended, present subsections (6) and (7)

1 of that section are renumbered as (7) and (8), respectively,  
2 and a new subsection (6) is added to that section to read:

3 494.0079 Definitions.--As used in this act:

4 (5) "Commission" means the Financial Services  
5 ~~Commission~~~~Department~~ means the Department of Banking and  
6 Finance.

7 (6) "Office" means the Office of Financial  
8 Institutions and Securities Regulation of the commission.

9 Section 546. Section 494.00795, Florida Statutes, is  
10 amended to read:

11 494.00795 Powers and duties of the commission and  
12 ~~office~~ ~~Department of Banking and Finance~~; investigations;  
13 examinations; injunctions; orders.--

14 (1)(a) The commission and office ~~department~~ shall  
15 be responsible for the administration and enforcement of this  
16 act.

17 (b) The commission ~~department~~ may adopt rules pursuant  
18 to ss. 120.536(1) and 120.54 to implement this act. The  
19 commission ~~department~~ may adopt rules to allow electronic  
20 submission of any forms, documents, or fees required by this  
21 act.

22 (2)(a) The office ~~department~~ may conduct an  
23 investigation of any person whenever the office ~~department~~ has  
24 reason to believe, upon complaint or otherwise, that any  
25 violation of the act has occurred.

26 (b) Any person having reason to believe that a  
27 provision of this act has been violated may file a written  
28 complaint with the office ~~department~~ setting forth the details  
29 of the alleged violation.

30 (c) The office ~~department~~ may conduct examinations of  
31 any person to determine compliance with this act.

1           (3)(a) The office department may bring action, through  
2 its own counsel in the name and on behalf of the state,  
3 against any person who has violated or is about to violate any  
4 provision of this act, or any rule or order ~~of the department~~  
5 issued under the act, to enjoin the person from continuing in  
6 or engaging in any act in furtherance of the violation.

7           (b) In any injunctive proceeding, the court may, on  
8 due showing by the office department, issue a subpoena or  
9 subpoena duces tecum requiring the attendance of any witness  
10 and requiring the production of any books, accounts, records,  
11 or other documents and materials that appear necessary to the  
12 expeditious resolution of the application for injunction.

13           (4) The office department may issue and serve upon any  
14 person an order to cease and desist and to take corrective  
15 action whenever the office department has reason to believe  
16 the person is violating, has violated, or is about to violate  
17 any provision of this act, any rule or order ~~of the department~~  
18 issued under this act, or any written agreement between the  
19 person and the office department. All procedural matters  
20 relating to issuance and enforcement of cease and desist  
21 orders are governed by the Administrative Procedure Act.

22           (5) Whenever the office department finds a person in  
23 violation of this act, it may enter an order imposing a fine  
24 in an amount not exceeding \$5,000 for each count or separate  
25 offense, provided that the aggregate fine for all violations  
26 of this act that could have been asserted at the time of the  
27 order imposing the fine shall not exceed \$500,000.

28           (6) Any violation of this act shall also be deemed to  
29 be a violation of chapter 494, chapter 516, chapter 520,  
30 chapter 655, chapter 657, chapter 658, chapter 660, chapter  
31

1 663, chapter 665, or chapter 667. The commission ~~department~~  
2 may adopt rules to enforce this subsection.

3 Section 547. Section 494.00797, Florida Statutes, is  
4 amended to read:

5 494.00797 General rule.--All counties and  
6 municipalities of this state are prohibited from enacting and  
7 enforcing ordinances, resolutions, and rules regulating  
8 financial or lending activities, including ordinances,  
9 resolutions, and rules disqualifying persons from doing  
10 business with a city, county, or municipality based upon  
11 lending interest rates or imposing reporting requirements or  
12 any other obligations upon persons regarding financial  
13 services or lending practices of persons or entities, and any  
14 subsidiaries or affiliates thereof, who:

15 (1) Are subject to the jurisdiction of the office  
16 ~~department~~, including for activities subject to this chapter,  
17 except entities licensed under s. 537.004;

18 (2) Are subject to the jurisdiction of the Office of  
19 Thrift Supervision, the Office of the Comptroller of the  
20 Currency, the National Credit Union Administration, the  
21 Federal Deposit Insurance Corporation, the Federal Trade  
22 Commission, or the United States Department of Housing and  
23 Urban Development;

24 (3) Originate, purchase, sell, assign, secure, or  
25 service property interests or obligations created by financial  
26 transactions or loans made, executed, or originated by persons  
27 referred to in subsection (1) or subsection (2) to assist or  
28 facilitate such transactions;

29 (4) Are chartered by the United States Congress to  
30 engage in secondary market mortgage transactions; or

31

1           (5) Are created by the Florida Housing Finance  
2 Corporation.

3  
4 Proof of noncompliance with this act can be used by a city,  
5 county, or municipality of this state to disqualify a vendor  
6 or contractor from doing business with a city, county, or  
7 municipality of this state.

8           Section 548. Subsection (16) of section 497.005,  
9 Florida Statutes, is amended to read:

10           497.005 Definitions.--As used in this chapter:

11           (16) "Department" means the Department of Financial  
12 Services ~~Banking and Finance~~.

13           Section 549. Subsection (1) of section 497.101,  
14 Florida Statutes, is amended to read:

15           497.101 Board of Funeral and Cemetery Services;  
16 membership; appointment; terms.--

17           (1) The Board of Funeral and Cemetery Services is  
18 created within the department of ~~Banking and Finance~~ and shall  
19 consist of seven members appointed by the Governor, from  
20 nominations made by the Chief Financial Officer ~~Comptroller~~,  
21 and confirmed by the Senate. The Chief Financial Officer  
22 ~~Comptroller~~ shall nominate three persons for each vacancy on  
23 the board, and the Governor shall fill each vacancy on the  
24 board by appointing one of the three persons nominated by the  
25 Chief Financial Officer ~~Comptroller~~ to fill that vacancy. If  
26 the Governor objects to each of the three nominations for a  
27 vacancy, she or he shall inform the Chief Financial Officer  
28 ~~Comptroller~~ in writing. Upon notification of an objection by  
29 the Governor, the Chief Financial Officer ~~Comptroller~~ shall  
30 submit three additional nominations for that vacancy until the  
31 vacancy is filled.

1           Section 550. Section 497.105, Florida Statutes, is  
2 amended to read:

3           497.105 ~~Department of Banking and Finance~~; powers and  
4 duties.--The department ~~of Banking and Finance~~ shall:

5           (1) Adopt rules establishing procedures for the  
6 renewal of licenses, registrations, and certificates of  
7 authority.

8           (2) Appoint the executive director of the Board of  
9 Funeral and Cemetery Services, subject to the approval of the  
10 board.

11           (3) With the advice of the board, submit a biennial  
12 budget to the Legislature at a time and in the manner provided  
13 by law.

14           (4) Develop a training program for persons newly  
15 appointed to membership on the board. The program shall  
16 familiarize such persons with the substantive and procedural  
17 laws and rules which relate to the regulation under this  
18 chapter and with the structure of the department.

19           (5) Adopt rules pursuant to ss. 120.536(1) and 120.54  
20 to implement the provisions of this chapter conferring duties  
21 upon it.

22           (6) Establish by rule procedures by which the  
23 department shall use the expert or technical advice of the  
24 board, for the purposes of investigation, inspection, audit,  
25 evaluation of applications, other duties of the department, or  
26 any other areas the department may deem appropriate.

27           (7) Require all proceedings of the board or panels  
28 thereof within the department and all formal or informal  
29 proceedings conducted by the department, an administrative law  
30 judge, or a hearing officer with respect to licensing,  
31 registration, certification, or discipline to be

1 electronically recorded in a manner sufficient to ensure the  
2 accurate transcription of all matters so recorded.

3 (8) Select only those investigators approved by the  
4 board. Such investigators shall report to and work in  
5 coordination with the executive director of the board and are  
6 responsible for all inspections and investigations other than  
7 financial examinations.

8 Section 551. Section 497.107, Florida Statutes, is  
9 amended to read:

10 497.107 Headquarters.--The Board of Funeral and  
11 Cemetery Services may be contacted through the headquarters of  
12 the department ~~of Banking and Finance~~ in the City of  
13 Tallahassee.

14 Section 552. Subsection (4) of section 497.109,  
15 Florida Statutes, is amended to read:

16 497.109 Board of Funeral and Cemetery Services;  
17 membership.--

18 (4) Unless otherwise provided by law, a board member  
19 shall be compensated \$50 for each day the member attends an  
20 official meeting of the board and for each day the member  
21 participates in any other business involving the board. The  
22 board shall adopt rules defining the phrase "other business  
23 involving the board," but the phrase may not be defined to  
24 include telephone conference calls. A board member is  
25 entitled to reimbursement for expenses pursuant to s. 112.061,  
26 but travel out of state requires the prior approval of the  
27 Chief Financial Officer ~~Comptroller~~.

28 Section 553. Section 497.115, Florida Statutes, is  
29 amended to read:

30 497.115 Board rules; final agency action;  
31 challenges.--

1           (1) The Chief Financial Officer ~~Comptroller~~ shall have  
2 standing to challenge any rule or proposed rule of the board  
3 pursuant to s. 120.56. In addition to challenges for any  
4 invalid exercise of delegated legislative authority, the  
5 administrative law judge, upon such a challenge by the Chief  
6 Financial Officer ~~Comptroller~~, may declare all or part of a  
7 rule or proposed rule invalid if it:

8           (a) Does not protect the public from any significant  
9 and discernible harm or damages;

10           (b) Unreasonably restricts competition or the  
11 availability of professional services in the state or in a  
12 significant part of the state; or

13           (c) Unnecessarily increases the cost of professional  
14 services without a corresponding or equivalent public benefit.

15  
16 However, there shall not be created a presumption of the  
17 existence of any of the conditions cited in this subsection in  
18 the event that the rule or proposed rule is challenged.

19           (2) In addition, either the Chief Financial Officer  
20 ~~Comptroller~~ or the board shall be a substantially interested  
21 party for purposes of s. 120.54(7). The board may, as an  
22 adversely affected party, initiate and maintain an action  
23 pursuant to s. 120.68 challenging the final agency action.

24           Section 554. Section 497.117, Florida Statutes, is  
25 amended to read:

26           497.117 Legal and investigative services.--

27           (1) The Department of Legal Affairs shall provide  
28 legal services to the board within the Department of Financial  
29 Services ~~Banking and Finance~~, but the primary responsibility  
30 of the Department of Legal Affairs shall be to represent the  
31 interests of the citizens of the state by vigorously

1 counseling the board with respect to its obligations under the  
2 laws of the state. Subject to the prior approval of the  
3 Attorney General, the board may retain independent legal  
4 counsel to provide legal advice to the board on a specific  
5 matter. Fees and costs of such counsel shall be paid from the  
6 Regulatory Trust Fund of the Department of Financial Services  
7 ~~Banking and Finance~~.

8 (2) The Department of Financial Services ~~Banking and~~  
9 ~~Finance~~ may employ or utilize the legal services of outside  
10 counsel and the investigative services of outside personnel.  
11 However, no attorney employed or utilized by the department  
12 shall prosecute a matter or provide legal services to the  
13 board with respect to the same matter.

14 Section 555. Subsections (1), (4), and (8) of section  
15 497.131, Florida Statutes, are amended to read:

16 497.131 Disciplinary proceedings.--

17 (1) The department shall cause to be investigated any  
18 complaint which is filed before it if the complaint is in  
19 writing, signed by the complainant, and legally sufficient. A  
20 complaint is legally sufficient if it contains ultimate facts  
21 which show that a violation of this chapter, or of any rule  
22 promulgated by the department or board has occurred. In order  
23 to determine legal sufficiency, the department may require  
24 supporting information or documentation. The department may  
25 investigate or continue to investigate, and the department and  
26 the board may take appropriate final action on, a complaint  
27 even though the original complainant withdraws it or otherwise  
28 indicates her or his desire not to cause the complaint to be  
29 investigated or prosecuted to completion. The department may  
30 investigate an anonymous complaint if the complaint is in  
31 writing and is legally sufficient, if the alleged violation of

1 law or rules is substantial, and if the department has reason  
2 to believe, after preliminary inquiry, that the alleged  
3 violations in the complaint are true. The department may  
4 investigate a complaint made by a confidential informant if  
5 the complaint is legally sufficient, if the alleged violation  
6 of law or rule is substantial, and if the department has  
7 reason to believe, after preliminary inquiry, that the  
8 allegations of the complainant are true. The department may  
9 initiate an investigation if it has reasonable cause to  
10 believe that a person has violated a state statute, a rule of  
11 the department, or a rule of the board. When an investigation  
12 of any person is undertaken, the department shall promptly  
13 furnish to the person or her or his attorney a copy of the  
14 complaint or document which resulted in the initiation of the  
15 investigation. The person may submit a written response to  
16 the information contained in such complaint or document within  
17 20 days after service to the person of the complaint or  
18 document. The person's written response shall be considered  
19 by the probable cause panel. This right to respond shall not  
20 prohibit the department from issuing a summary emergency order  
21 if necessary to protect the public. However, if the Chief  
22 Financial Officer ~~Comptroller~~ or her or his designee and the  
23 chair of the board or the chair of its probable cause panel  
24 agree in writing that such notification would be detrimental  
25 to the investigation, the department may withhold  
26 notification. The department may conduct an investigation  
27 without notification to any person if the act under  
28 investigation is a criminal offense.

29 (4) The determination as to whether probable cause  
30 exists shall be made by majority vote of the probable cause  
31 panel of the board. The board shall provide, by rule, that the

1 determination of probable cause shall be made by a panel of  
2 its members or by the department. The board may provide, by  
3 rule, for multiple probable cause panels composed of at least  
4 two members. The board may provide, by rule, that one or more  
5 members of the panel or panels may be a former board member.  
6 The length of term or repetition of service of any such former  
7 board member on a probable cause panel may vary according to  
8 the direction of the board when authorized by board rule. Any  
9 probable cause panel must include one of the board's former or  
10 present consumer members, if one is available, willing to  
11 serve, and is authorized to do so by the board chair. Any  
12 probable cause panel must include a present board member. Any  
13 probable cause panel must include a former or present  
14 professional board member. However, any former professional  
15 board member serving on the probable cause panel must hold an  
16 active valid license for that profession. All probable cause  
17 proceedings conducted pursuant to the provisions of this  
18 section are exempt from the provisions of s. 286.011 and s.  
19 24(b), Art. I of the State Constitution. The probable cause  
20 panel may make a reasonable request, and upon such request the  
21 department shall provide such additional investigative  
22 information as is necessary to the determination of probable  
23 cause. A request for additional investigative information  
24 shall be made within 15 days from the date of receipt by the  
25 probable cause panel of the investigative report of the  
26 department. The probable cause panel shall make its  
27 determination of probable cause within 30 days after receipt  
28 by it of the final investigative report of the department. The  
29 Chief Financial Officer ~~Comptroller~~ may grant extensions of  
30 the 15-day and the 30-day time limits. If the probable cause  
31 panel does not find probable cause within the 30-day time

1 limit, as may be extended, or if the probable cause panel  
2 finds no probable cause, the department may determine, within  
3 10 days after the panel fails to determine probable cause or  
4 10 days after the time limit has elapsed, that probable cause  
5 exists. If the probable cause panel finds that probable cause  
6 exists, it shall direct the department to file a formal  
7 complaint against the licensee. The department shall follow  
8 the directions of the probable cause panel regarding the  
9 filing of a formal complaint. If directed to do so, the  
10 department shall file a formal complaint against the subject  
11 of the investigation and prosecute that complaint pursuant to  
12 the provisions of chapter 120. However, the department may  
13 decide not to prosecute the complaint if it finds that  
14 probable cause had been improvidently found by the panel. In  
15 such cases, the department shall refer the matter to the  
16 board. The board may then file a formal complaint and  
17 prosecute the complaint pursuant to the provisions of chapter  
18 120. The department shall also refer to the board any  
19 investigation or disciplinary proceeding not before the  
20 Division of Administrative Hearings pursuant to chapter 120 or  
21 otherwise completed by the department within 1 year after the  
22 filing of a complaint. A probable cause panel or the board may  
23 retain independent legal counsel, employ investigators, and  
24 continue the investigation as it deems necessary; all costs  
25 thereof shall be paid from the department's Regulatory Trust  
26 Fund. All proceedings of the probable cause panel shall be  
27 exempt from the provisions of s. 120.525.

28 (8) Any proceeding for the purpose of summary  
29 suspension of a license, or for the restriction of a license,  
30 of a licensee pursuant to s. 120.60(6) shall be conducted by  
31

1 the Chief Financial Officer ~~Comptroller~~ or her or his  
2 designee, who shall issue the final summary order.

3 Section 556. Paragraph (f) of subsection (3) of  
4 section 497.201, Florida Statutes, is amended to read:

5 497.201 Cemetery companies; license; application;  
6 fee.--

7 (3) If the board finds that the applicant meets the  
8 criteria established in subsection (2), the department shall  
9 notify the applicant that a license will be issued when:

10 (f) The applicant has recorded, in the public records  
11 of the county in which the land is located, a notice which  
12 contains the following language:

13  
14 NOTICE

15  
16 The property described herein shall not be sold, conveyed,  
17 leased, mortgaged, or encumbered without the prior written  
18 approval of the Department of Financial Services ~~Banking and~~  
19 ~~Finance~~, as provided in the Florida Funeral and Cemetery  
20 Services Act.

21  
22 Such notice shall be clearly printed in boldfaced type of not  
23 less than 10 points and may be included on the face of the  
24 deed of conveyance to the licensee or may be contained in a  
25 separate recorded instrument which contains a description of  
26 the property.

27 Section 557. Paragraph (d) of subsection (3) of  
28 section 497.253, Florida Statutes, is amended to read:

29 497.253 Minimum acreage; sale or disposition of  
30 cemetery lands.--

31 (3)

1 (d) Any deed, mortgage, or other conveyance by a  
2 cemetery company or other owner pursuant to subsections (a)  
3 and (c) above must contain a disclosure in the following or  
4 substantially similar form:

5  
6 NOTICE: The property described herein was formerly used and  
7 dedicated as a cemetery. Conveyance of this property and its  
8 use for noncemetery purposes was authorized by the Florida  
9 Department of Financial Services ~~Banking and Finance~~ by Order  
10 No. . . . ., dated . . . . .

11 Section 558. Subsection (4) of section 497.313,  
12 Florida Statutes, is amended to read:

13 497.313 Other charges.--Other than the fees for the  
14 sale of burial rights, burial merchandise, and burial  
15 services, no other fee may be directly or indirectly charged,  
16 contracted for, or received by a cemetery company as a  
17 condition for a customer to use any burial right, burial  
18 merchandise, or burial service, except for:

19 (4) Charges for credit life and credit disability  
20 insurance, as requested by the purchaser, the premiums for  
21 which may not exceed the applicable premiums chargeable in  
22 accordance with the rates filed with the Office of Insurance  
23 Regulation of the Financial Services Commission ~~Department of~~  
24 Insurance.

25 Section 559. Section 497.403, Florida Statutes, is  
26 amended to read:

27 497.403 Insurance business not authorized.--Nothing in  
28 the Florida Insurance Code or this chapter shall be deemed to  
29 authorize any preneed funeral merchandise or service contract  
30 business or any preneed burial merchandise or service business  
31 to transact any insurance business, other than that of preneed

1 funeral merchandise or service insurance or preneed burial  
2 merchandise or service insurance, or otherwise to engage in  
3 any other type of insurance unless it is authorized under a  
4 certificate of authority issued ~~by the Department of Insurance~~  
5 under the provisions of the Florida Insurance Code. Any  
6 insurance business transacted under this section must comply  
7 with the provisions of s. 626.785.

8 Section 560. Paragraphs (d) and (m) of subsection (1)  
9 of section 498.025, Florida Statutes, are amended to read:

10 498.025 Exemptions.--

11 (1) Except as provided in s. 498.022, the provisions  
12 of this chapter do not apply to:

13 (d) An offer or transfer of securities currently  
14 registered with the Office of Financial Institutions and  
15 Securities Regulation of the Financial Services Commission  
16 ~~Department of Banking and Finance~~ or the United States  
17 Securities and Exchange Commission, except when s. 498.023(4)  
18 applies.

19 (m) The offer or disposition of an interest in  
20 subdivided lands to an accredited investor, as defined by rule  
21 of the Financial Services Commission ~~Florida Department of~~  
22 ~~Banking and Finance~~ in accordance with Securities and Exchange  
23 Commission Regulation 230.501, 17 C.F.R. s. 230.501.

24 Section 561. Subsection (5) of section 498.049,  
25 Florida Statutes, is amended to read:

26 498.049 Suspension; revocation; civil penalties.--

27 (5) Each person who materially participates in any  
28 offer or disposition of any interest in subdivided lands in  
29 violation of this chapter or relevant rules involving fraud,  
30 deception, false pretenses, misrepresentation, or false  
31 advertising or the disposition, concealment, or diversion of

1 any funds or assets of any person which adversely affects the  
2 interests of a purchaser of any interest in subdivided lands,  
3 and who directly or indirectly controls a subdivider or is a  
4 general partner, officer, director, agent, or employee of a  
5 subdivider shall also be liable under this subsection jointly  
6 and severally with and to the same extent as the subdivider,  
7 unless that person did not know, and in the exercise of  
8 reasonable care could not have known, of the existence of the  
9 facts creating the alleged liability. Among these persons a  
10 right of contribution shall exist, except that a creditor of a  
11 subdivider shall not be jointly and severally liable unless  
12 the creditor has assumed managerial or fiduciary  
13 responsibility in a manner related to the basis for the  
14 liability of the subdivider under this subsection. Civil  
15 penalties shall be limited to \$10,000 for each offense, and  
16 all amounts collected shall be deposited with the Chief  
17 Financial Officer ~~Treasurer~~ to the credit of the Division of  
18 Florida Land Sales, Condominiums, and Mobile Homes Trust Fund.  
19 No order requiring the payment of a civil penalty shall become  
20 effective until 20 days after the date of the order, unless  
21 otherwise agreed in writing by the person on whom the penalty  
22 is imposed.

23 Section 562. Section 499.057, Florida Statutes, is  
24 amended to read:

25 499.057 Expenses and salaries.--All expenses and  
26 salaries shall be paid out of the special fund hereby created  
27 in the office of the Chief Financial Officer ~~Treasurer~~, which  
28 fund is to be known as the "Florida Drug, Device, and Cosmetic  
29 Trust Fund."

30 Section 563. Subsection (4) of section 501.212,  
31 Florida Statutes, is amended to read:

1           501.212 Application.--This part does not apply to:  
2           (4) Any person or activity regulated under laws  
3 administered by the Department of Financial Services or the  
4 Office of Insurance Regulation of the Financial Services  
5 Commission ~~Department of Insurance~~ or banks and savings and  
6 loan associations regulated by the Office of Financial  
7 Institutions and Securities Regulation of the Financial  
8 Services Commission ~~Department of Banking and Finance~~ or banks  
9 or savings and loan associations regulated by federal  
10 agencies.

11           Section 564. Subsection (3) of section 507.03, Florida  
12 Statutes, is amended to read:

13           507.03 Registration.--

14           (3) Registration fees shall be \$300 per year per  
15 mover. All amounts collected shall be deposited by the Chief  
16 Financial Officer ~~Treasurer~~ to the credit of the General  
17 Inspection Trust Fund of the department for the sole purpose  
18 of administration of this act.

19           Section 565. Subsection (7) of section 509.215,  
20 Florida Statutes, is amended to read:

21           509.215 Firesafety.--

22           (7) The National Fire Protection Association  
23 publications referenced in this section are the ones most  
24 recently adopted by rule of the Division of State Fire Marshal  
25 of the Department of Financial Services ~~Insurance~~.

26           Section 566. Paragraph (a) of subsection (2) of  
27 section 513.055, Florida Statutes, is amended to read:

28           513.055 Revocation or suspension of permit; fines;  
29 procedure.--

30           (2)

31

1           (a) In lieu of such suspension or revocation of a  
2 permit, the department may impose a fine against a permittee  
3 for the permittee's failure to comply with the provisions  
4 described in paragraph (1)(a) or may place such licensee on  
5 probation. No fine so imposed shall exceed \$500 for each  
6 offense, and all amounts collected in fines shall be deposited  
7 with the Chief Financial Officer ~~Treasurer~~ to the credit of  
8 the County Health Department Trust Fund.

9           Section 567. Subsection (3) of section 516.01, Florida  
10 Statutes is amended, present subsections (4) through (6) of  
11 that section are renumbered as (5) through (7), respectively,  
12 and a new subsection (4) is added to that section to read:

13           516.01 Definitions.--As used in this chapter, the  
14 term:

15           (3) "Commission" means the Financial Services  
16 Commission~~"Department" means the Department of Banking and~~  
17 ~~Finance.~~

18           (4) "Office" means the Office of Financial  
19 Institutions and Securities Regulation of the commission.

20           Section 568. Subsection (1) of section 516.02, Florida  
21 Statutes, is amended to read:

22           516.02 Loans; lines of credit; rate of interest;  
23 license.--

24           (1) A person must not engage in the business of making  
25 consumer finance loans unless she or he is authorized to do so  
26 under this chapter or other statutes and unless the person  
27 first obtains a license from the office ~~department~~.

28           Section 569. Section 516.03, Florida Statutes, is  
29 amended to read:

30           516.03 Application for license; fees; etc.--

31

1           (1) APPLICATION.--Application for a license to make  
2 loans under this chapter shall be in the form prescribed by  
3 rule of the commission ~~department~~, and shall contain the name,  
4 residence and business addresses of the applicant and, if the  
5 applicant is a copartnership or association, of every member  
6 thereof and, if a corporation, of each officer and director  
7 thereof, also the county and municipality with the street and  
8 number or approximate location where the business is to be  
9 conducted, and such further relevant information as the  
10 commission or office ~~department~~ may require. At the time of  
11 making such application the applicant shall pay to the office  
12 ~~department~~ a biennial license fee of \$625. Applications,  
13 except for applications to renew or reactivate a license, must  
14 also be accompanied by an investigation fee of \$200. The  
15 commission ~~department~~ may adopt rules to allow electronic  
16 submission of any form, document, or fee required by this act.

17           (2) FEES.--Fees herein provided for shall be collected  
18 by the office ~~department~~ and shall be turned into the State  
19 Treasury to the credit of the regulatory trust fund under the  
20 office ~~department~~. The office ~~department~~ shall have full  
21 power to employ such examiners or clerks to assist the office  
22 ~~department~~ as may from time to time be deemed necessary and  
23 fix their compensation. The commission ~~department~~ may adopt  
24 rules to allow electronic submission of any fee required by  
25 this section.

26           Section 570. Subsection (2) of section 516.031,  
27 Florida Statutes, is amended to read:

28           516.031 Finance charge; maximum rates.--

29           (2) ANNUAL PERCENTAGE RATE UNDER FEDERAL TRUTH IN  
30 LENDING ACT.--The annual percentage rate of finance charge  
31 which may be contracted for and received under any loan

1 contract made by a licensee under this chapter may equal, but  
2 not exceed, the annual percentage rate which must be computed  
3 and disclosed as required by the federal Truth in Lending Act  
4 and Regulation Z of the Board of Governors of the Federal  
5 Reserve System. The maximum annual percentage rate of finance  
6 charge which may be contracted for and received is 12 times  
7 the maximum monthly rate, and the maximum monthly rate shall  
8 be computed on the basis of one-twelfth of the annual rate for  
9 each full month. The commission ~~department~~ shall by rule  
10 ~~regulation~~ establish the rate for each day in a fraction of a  
11 month when the period for which the charge is computed is more  
12 or less than 1 month.

13 Section 571. Section 516.05, Florida Statutes, is  
14 amended to read:

15 516.05 License.--

16 (1) Upon the filing of an application for a license  
17 and payment of all applicable fees, the office ~~department~~  
18 shall, unless the application is to renew or reactivate an  
19 existing license, make an investigation of the facts  
20 concerning the applicant's proposed activities. If the office  
21 ~~department~~ determines that a license should be granted, it  
22 shall issue the license for a period not to exceed 2 years.  
23 Biennial licensure periods and procedures for renewal of  
24 licenses shall be established by the rule of the commission  
25 ~~department~~. If the office ~~department~~ determines that grounds  
26 exist under this chapter for denial of an application other  
27 than an application to renew a license, it shall deny such  
28 application, return to the applicant the sum paid as a license  
29 fee, and retain the investigation fee.

30 (2) A license that is not renewed at the end of the  
31 biennium established by the commission ~~department~~ shall

1 automatically revert to inactive status. An inactive license  
2 may be reactivated upon submission of a completed reactivation  
3 application, payment of the biennial license fee, and payment  
4 of a reactivation fee which shall equal the biennial license  
5 fee. A license expires on the date at which it has been  
6 inactive for 6 months.

7 (3) Only one place of business for the purpose of  
8 making loans under this chapter may be maintained under one  
9 license, but the office ~~department~~ may issue additional  
10 licenses to a licensee upon compliance with all the provisions  
11 of this chapter governing issuance of a single license.

12 (4) Prior to relocating his or her place of business,  
13 a licensee must file with the office ~~department~~, in the manner  
14 prescribed by commission ~~department~~ rule, notice of the  
15 relocation.

16 (5) A licensee may conduct the business of making  
17 loans under this chapter within a place of business in which  
18 other business is solicited or engaged in, unless the office  
19 ~~department~~ shall find that the conduct of such other business  
20 by the licensee results in an evasion of this chapter. Upon  
21 such finding, the office ~~department~~ shall order the licensee  
22 to desist from such evasion; provided, however, that no  
23 license shall be granted to or renewed for any person or  
24 organization engaged in the pawnbroker business.

25 (6) If any person purchases substantially all of the  
26 assets of any existing licensed place of business, the  
27 purchaser shall give immediate notice thereof to the office  
28 ~~department~~ and shall be granted a 90-day temporary license for  
29 the place of business within 10 days after the office's  
30 ~~department's~~ receipt of an application for a permanent  
31 license. Issuance of a temporary license for a place of

1 business nullifies the existing license for the place of  
2 business, and the temporary licensee is subject to any  
3 disciplinary action provided for by this chapter.

4 (7) Licenses are not transferable or assignable. A  
5 licensee may invalidate any license by delivering it to the  
6 office ~~department~~ with a written notice of the delivery, but  
7 such delivery does not affect any civil or criminal liability  
8 or the authority to enforce this chapter for acts committed in  
9 violation thereof.

10 (8) The office ~~department~~ may refuse to process an  
11 initial application for a license if the applicant or any  
12 person with power to direct the management or policies of the  
13 applicant's business is the subject of a pending criminal  
14 prosecution in any jurisdiction until conclusion of such  
15 criminal prosecution.

16 (9) A licensee that is the subject of a voluntary or  
17 involuntary bankruptcy filing must report such filing to the  
18 office ~~department~~ within 7 business days after the filing  
19 date.

20 Section 572. Subsections (1), (2), and (3) of section  
21 516.07, Florida Statutes, are amended to read:

22 516.07 Grounds for denial of license or for  
23 disciplinary action.--

24 (1) The following acts are violations of this chapter  
25 and constitute grounds for denial of an application for a  
26 license to make consumer finance loans and grounds for any of  
27 the disciplinary actions specified in subsection (2):

28 (a) A material misstatement of fact in an application  
29 for a license;

30  
31

1 (b) Failure to maintain liquid assets of at least  
2 \$25,000 at all times for the operation of business at a  
3 licensed location or proposed location;

4 (c) Failure to demonstrate financial responsibility,  
5 experience, character, or general fitness, such as to command  
6 the confidence of the public and to warrant the belief that  
7 the business operated at the licensed or proposed location is  
8 lawful, honest, fair, efficient, and within the purposes of  
9 this chapter;

10 (d) The violation, either knowingly or without the  
11 exercise of due care, of any provision of this chapter, any  
12 rule or order adopted under this chapter, or any written  
13 agreement entered into with the office ~~department~~;

14 (e) Any act of fraud, misrepresentation, or deceit,  
15 regardless of reliance by or damage to a borrower, or any  
16 illegal activity, where such acts are in connection with a  
17 loan under this chapter. Such acts include, but are not  
18 limited to:

19 1. Willful imposition of illegal or excessive charges;

20 or

21 2. Misrepresentation, circumvention, or concealment of  
22 any matter required to be stated or furnished to a borrower;

23 (f) The use of unreasonable collection practices or of  
24 false, deceptive, or misleading advertising, where such acts  
25 are in connection with the operation of a business to make  
26 consumer finance loans;

27 (g) Any violation of part III of chapter 817 or part  
28 II of chapter 559 or of any rule adopted under part II of  
29 chapter 559;

30 (h) Failure to maintain, preserve, and keep available  
31 for examination, all books, accounts, or other documents

1 required by this chapter, by any rule or order adopted under  
2 this chapter, or by any agreement entered into with the office  
3 ~~department~~;

4 (i) Refusal to permit inspection of books and records  
5 in an investigation or examination by the office ~~department~~ or  
6 refusal to comply with a subpoena issued by the office  
7 ~~department~~;

8 (j) Pleading nolo contendere to, or having been  
9 convicted or found guilty of, a crime involving fraud,  
10 dishonest dealing, or any act of moral turpitude, regardless  
11 of whether adjudication is withheld;

12 (k) Paying money or anything else of value, directly  
13 or indirectly, to any person as compensation, inducement, or  
14 reward for referring loan applicants to a licensee;

15 (l) Allowing any person other than the licensee to use  
16 the licensee's business name, address, or telephone number in  
17 an advertisement;

18 (m) Accepting or advertising that the licensee accepts  
19 money on deposit or as consideration for the issuance or  
20 delivery of certificates of deposit, savings certificates, or  
21 similar instruments, except to the extent permitted under  
22 chapter 517; or

23 (n) Failure to pay any fee, charge, or fine imposed or  
24 assessed pursuant to this chapter or any rule adopted under  
25 this chapter.

26 (2) Upon a finding by the office ~~department~~ that any  
27 person has committed any of the acts set forth in subsection  
28 (1), the office ~~department~~ may enter an order taking one or  
29 more of the following actions:

30 (a) Denying an application for a license;

31

1 (b) Revoking or suspending a license previously  
2 granted;

3 (c) Placing a licensee or an applicant for a license  
4 on probation for a period of time and subject to such  
5 conditions as the office ~~department~~ may specify;

6 (d) Placing permanent restrictions or conditions upon  
7 issuance or maintenance of a license;

8 (e) Issuing a reprimand; or

9 (f) Imposing an administrative fine not to exceed  
10 \$1,000 for each such act.

11 (3) The office ~~department~~ may take any of the actions  
12 specified in subsection (2) against any partnership,  
13 corporation, or association, if the office ~~department~~ finds  
14 that any of the acts set forth in subsection (1) have been  
15 committed by any member of the partnership, any officer or  
16 director of the corporation or association, or any person with  
17 power to direct the management or policies of the partnership,  
18 corporation, or association.

19 Section 573. Section 516.11, Florida Statutes, is  
20 amended to read:

21 516.11 Investigations and complaints.--

22 (1) The office ~~department~~ shall, at intermittent  
23 periods, make such investigations and examinations of any  
24 licensee or other person as it deems necessary to determine  
25 compliance with this chapter. For such purposes, the office  
26 ~~department~~ may examine the books, accounts, records, and other  
27 documents or matters of any licensee or other person and  
28 compel the production of all relevant books, records, and  
29 other documents and materials relative to an examination or  
30 investigation. Examinations of a licensee may not be made  
31 more often than once a year unless the office ~~department~~ has

1 reason to believe the licensee is not complying with this  
2 chapter.

3 (2) The office ~~department~~ shall conduct all  
4 examinations at a convenient location in this state unless the  
5 office ~~department~~ determines that it is more effective or  
6 cost-efficient to perform an examination at the licensee's  
7 out-of-state location. For an examination performed at the  
8 licensee's out-of-state location, the licensee shall pay the  
9 travel expense and per diem subsistence at the rate provided  
10 by law for up to thirty 8-hour days per year for each examiner  
11 who participates in such an examination. However, if the  
12 examination involves or reveals possible fraudulent conduct of  
13 the licensee, the licensee shall pay the travel expenses and  
14 per diem subsistence provided by law, without limitation, for  
15 each participating examiner.

16 (3) Any person who has reason to believe that this  
17 chapter has been or will be violated may file a written  
18 complaint with the office ~~department~~.

19 Section 574. Section 516.12, Florida Statutes, is  
20 amended to read:

21 516.12 Records to be kept by licensee.--

22 (1) The licensee shall keep and use in her or his  
23 business such books, accounts, and records in accordance with  
24 sound and accepted accounting practices to enable the office  
25 ~~department~~ to determine whether such licensee is complying  
26 with the provisions of this chapter and with the rules ~~and~~  
27 ~~regulations~~ lawfully made by the commission ~~department~~  
28 hereunder. Every licensee shall preserve such books, accounts,  
29 and records, including cards used in the card system, if any,  
30 for at least 2 years after making the final entry on any loan  
31 recorded therein.

1           (2) A licensee, operating two or more licensed places  
2 of business in this state, may maintain the books, accounts,  
3 and records of all such offices at any one of such offices, or  
4 at any other office maintained by such licensee, upon the  
5 filing of a written request with the office ~~department~~  
6 designating in the written request the office at which such  
7 records are maintained. However, the licensee shall make all  
8 books, accounts, and records available at a convenient  
9 location in this state upon request of the office ~~department~~.

10           Section 575. Section 516.22, Florida Statutes, is  
11 amended to read:

12           516.22 Rules; certified copies.--

13           (1) RULES.--The commission may ~~department has~~  
14 ~~authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54  
15 to implement the provisions of law conferring duties upon it.

16           (2) CERTIFIED COPIES OF OFFICIAL DOCUMENTS.--On  
17 application of any person and payment of the costs thereof, at  
18 the same rate and fees as allowed clerks of the circuit court  
19 by statute, the office ~~department~~ shall furnish a certified  
20 copy of any license, regulation, or order. In any court or  
21 proceeding, such copy shall be prima facie evidence of the  
22 fact of the issuance of such license, regulation, or order.

23           Section 576. Section 516.221, Florida Statutes, is  
24 amended to read:

25           516.221 Liability when acting upon ~~department's~~ order,  
26 declaratory statement, or rule.--No person or licensee  
27 hereunder shall be deemed to be in violation of this chapter  
28 nor shall such person or licensee be subject to any civil or  
29 criminal liability for any act or omission to act in good  
30 faith in reliance upon a subsisting order, declaratory  
31 statement, or rule issued by the office or commission

1 ~~department~~, notwithstanding a subsequent decision by a court  
2 of competent jurisdiction invalidating the order, declaratory  
3 statement, or rule.

4 Section 577. Section 516.23, Florida Statutes, is  
5 amended to read:

6 516.23 Subpoenas; enforcement actions; rules.--

7 (1) The office ~~department~~ may issue and serve  
8 subpoenas to compel the attendance of witnesses and the  
9 production of documents, papers, books, records, and other  
10 evidence before it in any matter pertaining to this chapter.  
11 The office ~~department~~ may administer oaths and affirmations to  
12 any person whose testimony is required. If any person refuses  
13 to testify, produce books, records, and documents, or  
14 otherwise refuses to obey a subpoena issued under this  
15 section, the office ~~department~~ may enforce the subpoena in the  
16 same manner as subpoenas issued under the Administrative  
17 Procedure Act are enforced. Witnesses are entitled to the same  
18 fees and mileage as they are entitled to by law for attending  
19 as witnesses in the circuit court, unless such examination or  
20 investigation is held at the place of business or residence of  
21 the witness.

22 (2) In addition to any other powers conferred upon it  
23 to enforce or administer this chapter, the office ~~department~~  
24 may:

25 (a) Bring an action in any court of competent  
26 jurisdiction to enforce or administer this chapter, any rule  
27 or order adopted under this chapter, or any written agreement  
28 entered into with the office ~~department~~. In such action, the  
29 office ~~department~~ may seek any relief at law or equity  
30 including a temporary or permanent injunction, appointment of  
31 a receiver or administrator, or an order of restitution.

1           (b) Issue and serve upon a person an order requiring  
2 such person to cease and desist and take corrective action  
3 whenever the office ~~department~~ finds that such person is  
4 violating, has violated, or is about to violate any provision  
5 of this chapter, any rule or order adopted under this chapter,  
6 or any written agreement entered into with the office  
7 ~~department~~.

8           (c) Impose and collect an administrative fine against  
9 any person found to have violated any provision of this  
10 chapter, any rule or order adopted under this chapter, or any  
11 written agreement entered into with the office ~~department~~, in  
12 an amount not to exceed \$1,000 for each violation.

13           (3) The commission may ~~department has authority to~~  
14 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement  
15 the provisions of this chapter.

16           Section 578. Section 516.32, Florida Statutes, is  
17 amended to read:

18           516.32 Consumer credit counseling.--The office  
19 ~~department~~ shall be responsible for promoting a consumer  
20 credit counseling service for the purpose of promoting and  
21 helping establish consumer credit counseling services for  
22 individuals in areas where a need has been established. The  
23 purposes of the consumer credit counseling service shall be  
24 to:

25           (1) Assist and educate individual consumers as to  
26 money management.

27           (2) Assist individual consumers in consolidating  
28 obligations when a situation exists in which the individual  
29 consumer is in need of such assistance.

30  
31

1           (3) Work with consumer credit grantors in an effort to  
2 establish better relations with the individual consumer and  
3 with state and federal regulatory agencies.

4           Section 579. Section 516.33, Florida Statutes, is  
5 amended to read:

6           516.33 Public disclosures.--All findings of facts and  
7 orders filed with the commission or office ~~department~~ shall be  
8 a public record.

9           Section 580. Subsection (1) of section 516.35, Florida  
10 Statutes, is amended to read:

11           516.35 Credit insurance must comply with credit  
12 insurance act.--

13           (1) Tangible property offered as security may be  
14 reasonably insured against loss for a reasonable term,  
15 considering the circumstances of the loan. If such insurance  
16 is sold at standard rates through a person duly licensed by  
17 the Office of Insurance Regulation of the Financial Services  
18 Commission ~~Department of Insurance~~ and if the policy is  
19 payable to the borrower or any member of her or his family, it  
20 shall not be deemed to be a collateral sale, purchase, or  
21 agreement even though a customary mortgagee clause is attached  
22 or the licensee is a coassured.

23           Section 581. Subsection (7) of section 517.021,  
24 Florida Statutes, is amended, present subsections (8) through  
25 (20) of that section are renumbered as (9) through (21),  
26 respectively, and a new subsection (8) is added to that  
27 section to read:

28           517.021 Definitions.--When used in this chapter,  
29 unless the context otherwise indicates, the following terms  
30 have the following respective meanings:

31

1           (7) "Commission" means the Financial Services  
2 Commission~~"Department" means the Department of Banking and~~  
3 ~~Finance.~~

4           (8) "Office" means the Office of Financial  
5 Institutions and Securities Regulation of the commission.

6           Section 582. Section 517.03, Florida Statutes, is  
7 amended to read:

8           517.03 Rulemaking; immunity for acts in conformity  
9 with rules.--

10           (1) The office ~~Department of Banking and Finance~~ shall  
11 administer and provide for the enforcement of all the  
12 provisions of this chapter. The commission ~~department has~~  
13 ~~authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54  
14 to implement the provisions of this chapter conferring powers  
15 or duties upon the office ~~it~~, including, without limitation,  
16 adopting rules and forms governing reports. The commission  
17 ~~department~~ shall also have the nonexclusive power to define by  
18 rule any term, whether or not used in this chapter, insofar as  
19 the definition is not inconsistent with the provisions of this  
20 chapter.

21           (2) No provision of this chapter imposing liability  
22 shall apply to an act done, or omitted to be done, in  
23 conformity with a rule of the commission ~~department~~ in  
24 existence at the time of the act or omission, even though such  
25 rule may thereafter be amended or repealed or determined by  
26 judicial or other authority to be invalid for any reason.

27           Section 583. Section 517.051, Florida Statutes, is  
28 amended to read:

29           517.051 Exempt securities.--The exemptions provided  
30 herein from the registration requirements of s. 517.07 are  
31 self-executing and do not require any filing with the office

1 ~~department~~ prior to claiming such exemption. Any person who  
2 claims entitlement to any of these exemptions bears the burden  
3 of proving such entitlement in any proceeding brought under  
4 this chapter. The registration provisions of s. 517.07 do not  
5 apply to any of the following securities:

6 (1) A security issued or guaranteed by the United  
7 States or any territory or insular possession of the United  
8 States, by the District of Columbia, or by any state of the  
9 United States or by any political subdivision or agency or  
10 other instrumentality thereof; provided that no person shall  
11 directly or indirectly offer or sell securities, other than  
12 general obligation bonds, under this subsection if the issuer  
13 or guarantor is in default or has been in default any time  
14 after December 31, 1975, as to principal or interest:

15 (a) With respect to an obligation issued by the issuer  
16 or successor of the issuer; or

17 (b) With respect to an obligation guaranteed by the  
18 guarantor or successor of the guarantor,

19  
20 except by an offering circular containing a full and fair  
21 disclosure as prescribed by rule of the commission ~~department~~.

22 (2) A security issued or guaranteed by any foreign  
23 government with which the United States is maintaining  
24 diplomatic relations at the time of the sale or offer of sale  
25 of the security, or by any state, province, or political  
26 subdivision thereof having the power of taxation or  
27 assessment, which security is recognized at the time it is  
28 offered for sale in this state as a valid obligation by such  
29 foreign government or by such state, province, or political  
30 subdivision thereof issuing the security.

31 (3) A security issued or guaranteed by:

1 (a) A national bank, a federally chartered savings and  
2 loan association, or a federally chartered savings bank, or  
3 the initial subscription for equity securities in such  
4 national bank, federally chartered savings and loan  
5 association, or federally chartered savings bank;

6 (b) Any federal land bank, joint-stock land bank, or  
7 national farm loan association under the provisions of the  
8 Federal Farm Loan Act of July 17, 1916;

9 (c) An international bank of which the United States  
10 is a member; or

11 (d) A corporation created and acting as an  
12 instrumentality of the government of the United States.

13 (4) A security issued or guaranteed, as to principal,  
14 interest, or dividend, by a corporation owning or operating a  
15 railroad or any other public service utility; provided that  
16 such corporation is subject to regulation or supervision  
17 whether as to its rates and charges or as to the issue of its  
18 own securities by a public commission, board, or officer of  
19 the government of the United States, of any state, territory,  
20 or insular possession of the United States, of any  
21 municipality located therein, of the District of Columbia, or  
22 of the Dominion of Canada or of any province thereof; also  
23 equipment securities based on chattel mortgages, leases, or  
24 agreements for conditional sale of cars, motive power, or  
25 other rolling stock mortgaged, leased, or sold to or furnished  
26 for the use of or upon such railroad or other public service  
27 utility corporation or where the ownership or title of such  
28 equipment is pledged or retained in accordance with the  
29 provisions of the laws of the United States or of any state or  
30 of the Dominion of Canada to secure the payment of such  
31 equipment securities; and also bonds, notes, or other

1 evidences of indebtedness issued by a holding corporation and  
2 secured by collateral consisting of any securities hereinabove  
3 described; provided, further, that the collateral securities  
4 equal in fair value at least 125 percent of the par value of  
5 the bonds, notes, or other evidences of indebtedness so  
6 secured.

7 (5) A security issued or guaranteed by any of the  
8 following which are subject to the examination, supervision,  
9 or control of this state or of the Federal Deposit Insurance  
10 Corporation or the National Credit Union Association:

- 11 (a) A bank,  
12 (b) A trust company,  
13 (c) A savings institution,  
14 (d) A building or savings and loan association,  
15 (e) An international development bank, or  
16 (f) A credit union;

17  
18 or the initial subscription for equity securities of any  
19 institution listed in paragraphs (a)-(f), provided such  
20 institution is subject to the examination, supervision, or  
21 control of this state.

22 (6) A security, other than common stock, providing for  
23 a fixed return, which security has been outstanding in the  
24 hands of the public for a period of not less than 5 years, and  
25 upon which security no default in payment of principal or  
26 failure to pay the fixed return has occurred for an  
27 immediately preceding period of 5 years.

28 (7) Securities of nonprofit agricultural cooperatives  
29 organized under the laws of this state when the securities are  
30 sold or offered for sale to persons principally engaged in  
31 agricultural production or selling agricultural products.

1           (8) A note, draft, bill of exchange, or banker's  
2 acceptance having a unit amount of \$25,000 or more which  
3 arises out of a current transaction, or the proceeds of which  
4 have been or are to be used for current transactions, and  
5 which has a maturity period at the time of issuance not  
6 exceeding 9 months exclusive of days of grace, or any renewal  
7 thereof which has a maturity period likewise limited. This  
8 subsection applies only to prime quality negotiable commercial  
9 paper of a type not ordinarily purchased by the general  
10 public; that is, paper issued to facilitate well-recognized  
11 types of current operational business requirements and of a  
12 type eligible for discounting by Federal Reserve banks.

13           (9) A security issued by a corporation organized and  
14 operated exclusively for religious, educational, benevolent,  
15 fraternal, charitable, or reformatory purposes and not for  
16 pecuniary profit, no part of the net earnings of which  
17 corporation inures to the benefit of any private stockholder  
18 or individual, or any security of a fund that is excluded from  
19 the definition of an investment company under s. 3(c)(10)(B)  
20 of the Investment Company Act of 1940; provided that no person  
21 shall directly or indirectly offer or sell securities under  
22 this subsection except by an offering circular containing full  
23 and fair disclosure, as prescribed by the rules of the  
24 commission ~~department~~, of all material information, including,  
25 but not limited to, a description of the securities offered  
26 and terms of the offering, a description of the nature of the  
27 issuer's business, a statement of the purpose of the offering  
28 and the intended application by the issuer of the proceeds  
29 thereof, and financial statements of the issuer prepared in  
30 conformance with generally accepted accounting principles.  
31 Section 6(c) of the Philanthropy Protection Act of 1995, Pub.

1 L. No. 104-62, shall not preempt any provision of this  
2 chapter.

3 (10) Any insurance or endowment policy or annuity  
4 contract or optional annuity contract or self-insurance  
5 agreement issued by a corporation, insurance company,  
6 reciprocal insurer, or risk retention group subject to the  
7 supervision of the insurance regulator ~~commissioner~~ or bank  
8 regulator ~~commissioner~~, or any agency or officer performing  
9 like functions, of any state or territory of the United States  
10 or the District of Columbia.

11 Section 584. Section 517.061, Florida Statutes, is  
12 amended to read:

13 517.061 Exempt transactions.--The exemption for each  
14 transaction listed below is self-executing and does not  
15 require any filing with the office ~~department~~ prior to  
16 claiming such exemption. Any person who claims entitlement to  
17 any of the exemptions bears the burden of proving such  
18 entitlement in any proceeding brought under this chapter. The  
19 registration provisions of s. 517.07 do not apply to any of  
20 the following transactions; however, such transactions are  
21 subject to the provisions of ss. 517.301, 517.311, and  
22 517.312:

23 (1) At any judicial, executor's, administrator's,  
24 guardian's, or conservator's sale, or at any sale by a  
25 receiver or trustee in insolvency or bankruptcy, or any  
26 transaction incident to a judicially approved reorganization  
27 in which a security is issued in exchange for one or more  
28 outstanding securities, claims, or property interests.

29 (2) By or for the account of a pledgeholder or  
30 mortgagee selling or offering for sale or delivery in the  
31 ordinary course of business and not for the purposes of

1 avoiding the provisions of this chapter, to liquidate a bona  
2 fide debt, a security pledged in good faith as security for  
3 such debt.

4 (3) The isolated sale or offer for sale of securities  
5 when made by or on behalf of a vendor not the issuer or  
6 underwriter of the securities, who, being the bona fide owner  
7 of such securities, disposes of her or his own property for  
8 her or his own account, and such sale is not made directly or  
9 indirectly for the benefit of the issuer or an underwriter of  
10 such securities or for the direct or indirect promotion of any  
11 scheme or enterprise with the intent of violating or evading  
12 any provision of this chapter. For purposes of this  
13 subsection, isolated offers or sales include, but are not  
14 limited to, an isolated offer or sale made by or on behalf of  
15 a vendor of securities not the issuer or underwriter of the  
16 securities if:

17 (a) The offer or sale of securities is in a  
18 transaction satisfying all of the requirements of  
19 subparagraphs (11)(a)1., 2., 3., and 4. and paragraph (11)(b);  
20 or

21 (b) The offer or sale of securities is in a  
22 transaction exempt under s. 4(1) of the Securities Act of  
23 1933, as amended.

24  
25 For purposes of this subsection, any person, including,  
26 without limitation, a promoter or affiliate of an issuer,  
27 shall not be deemed an underwriter, an issuer, or a person  
28 acting for the direct or indirect benefit of the issuer or an  
29 underwriter with respect to any securities of the issuer which  
30 she or he has owned beneficially for at least 1 year.

31

1           (4) The distribution by a corporation, trust, or  
2 partnership, actively engaged in the business authorized by  
3 its charter or other organizational articles or agreement, of  
4 securities to its stockholders or other equity security  
5 holders, partners, or beneficiaries as a stock dividend or  
6 other distribution out of earnings or surplus.

7           (5) The issuance of securities to such equity security  
8 holders or other creditors of a corporation, trust, or  
9 partnership in the process of a reorganization of such  
10 corporation or entity, made in good faith and not for the  
11 purpose of avoiding the provisions of this chapter, either in  
12 exchange for the securities of such equity security holders or  
13 claims of such creditors or partly for cash and partly in  
14 exchange for the securities or claims of such equity security  
15 holders or creditors.

16           (6) Any transaction involving the distribution of the  
17 securities of an issuer exclusively among its own security  
18 holders, including any person who at the time of the  
19 transaction is a holder of any convertible security, any  
20 nontransferable warrant, or any transferable warrant which is  
21 exercisable within not more than 90 days of issuance, when no  
22 commission or other remuneration is paid or given directly or  
23 indirectly in connection with the sale or distribution of such  
24 additional securities.

25           (7) The offer or sale of securities to a bank, trust  
26 company, savings institution, insurance company, dealer,  
27 investment company as defined by the Investment Company Act of  
28 1940, pension or profit-sharing trust, or qualified  
29 institutional buyer as defined by rule of the commission  
30 ~~department~~ in accordance with Securities and Exchange  
31 Commission Rule 144A (17 C.F.R. 230.144(A)(a)), whether any of

1 such entities is acting in its individual or fiduciary  
2 capacity; provided that such offer or sale of securities is  
3 not for the direct or indirect promotion of any scheme or  
4 enterprise with the intent of violating or evading any  
5 provision of this chapter.

6 (8) The sale of securities from one corporation to  
7 another corporation provided that:

8 (a) The sale price of the securities is \$50,000 or  
9 more; and

10 (b) The buyer and seller corporations each have assets  
11 of \$500,000 or more.

12 (9) The offer or sale of securities from one  
13 corporation to another corporation, or to security holders  
14 thereof, pursuant to a vote or consent of such security  
15 holders as may be provided by the articles of incorporation  
16 and the applicable corporate statutes in connection with  
17 mergers, share exchanges, consolidations, or sale of corporate  
18 assets.

19 (10) The issuance of notes or bonds in connection with  
20 the acquisition of real property or renewals thereof, if such  
21 notes or bonds are issued to the sellers of, and are secured  
22 by all or part of, the real property so acquired.

23 (11)(a) The offer or sale, by or on behalf of an  
24 issuer, of its own securities, which offer or sale is part of  
25 an offering made in accordance with all of the following  
26 conditions:

27 1. There are no more than 35 purchasers, or the issuer  
28 reasonably believes that there are no more than 35 purchasers,  
29 of the securities of the issuer in this state during an  
30 offering made in reliance upon this subsection or, if such  
31

1 offering continues for a period in excess of 12 months, in any  
2 consecutive 12-month period.

3           2. Neither the issuer nor any person acting on behalf  
4 of the issuer offers or sells securities pursuant to this  
5 subsection by means of any form of general solicitation or  
6 general advertising in this state.

7           3. Prior to the sale, each purchaser or the  
8 purchaser's representative, if any, is provided with, or given  
9 reasonable access to, full and fair disclosure of all material  
10 information.

11           4. No person defined as a "dealer" in this chapter is  
12 paid a commission or compensation for the sale of the issuer's  
13 securities unless such person is registered as a dealer under  
14 this chapter.

15           5. When sales are made to five or more persons in this  
16 state, any sale in this state made pursuant to this subsection  
17 is voidable by the purchaser in such sale either within 3 days  
18 after the first tender of consideration is made by such  
19 purchaser to the issuer, an agent of the issuer, or an escrow  
20 agent or within 3 days after the availability of that  
21 privilege is communicated to such purchaser, whichever occurs  
22 later.

23           (b) The following purchasers are excluded from the  
24 calculation of the number of purchasers under subparagraph  
25 (a)1.:

26           1. Any relative or spouse, or relative of such spouse,  
27 of a purchaser who has the same principal residence as such  
28 purchaser.

29           2. Any trust or estate in which a purchaser, any of  
30 the persons related to such purchaser specified in  
31 subparagraph 1., and any corporation specified in subparagraph

1 3. collectively have more than 50 percent of the beneficial  
2 interest (excluding contingent interest).

3 3. Any corporation or other organization of which a  
4 purchaser, any of the persons related to such purchaser  
5 specified in subparagraph 1., and any trust or estate  
6 specified in subparagraph 2. collectively are beneficial  
7 owners of more than 50 percent of the equity securities or  
8 equity interest.

9 4. Any purchaser who makes a bona fide investment of  
10 \$100,000 or more, provided such purchaser or the purchaser's  
11 representative receives, or has access to, the information  
12 required to be disclosed by subparagraph (a)3.

13 5. Any accredited investor, as defined by rule of the  
14 commission ~~department~~ in accordance with Securities and  
15 Exchange Commission Regulation 230.501 (17 C.F.R. 230.501).

16 (c)1. For purposes of determining which offers and  
17 sales of securities constitute part of the same offering under  
18 this subsection and are therefore deemed to be integrated with  
19 one another:

20 a. Offers or sales of securities occurring more than 6  
21 months prior to an offer or sale of securities made pursuant  
22 to this subsection shall not be considered part of the same  
23 offering, provided there are no offers or sales by or for the  
24 issuer of the same or a similar class of securities during  
25 such 6-month period.

26 b. Offers or sales of securities occurring at any time  
27 after 6 months from an offer or sale made pursuant to this  
28 subsection shall not be considered part of the same offering,  
29 provided there are no offers or sales by or for the issuer of  
30 the same or a similar class of securities during such 6-month  
31 period.

1           2. Offers or sales which do not satisfy the conditions  
2 of any of the provisions of subparagraph 1. may or may not be  
3 part of the same offering, depending on the particular facts  
4 and circumstances in each case. The commission ~~department~~ may,  
5 ~~but is not required to~~, adopt a rule or rules indicating what  
6 factors should be considered in determining whether offers and  
7 sales not qualifying for the provisions of subparagraph 1. are  
8 part of the same offering for purposes of this subsection.

9           (d) Offers or sales of securities made pursuant to,  
10 and in compliance with, any other subsection of this section  
11 or any subsection of s. 517.051 shall not be considered part  
12 of an offering pursuant to this subsection, regardless of when  
13 such offers and sales are made.

14           (12) The sale of securities by a bank or trust company  
15 organized or incorporated under the laws of the United States  
16 or this state at a profit to such bank or trust company of not  
17 more than 2 percent of the total sale price of such  
18 securities; provided that there is no solicitation of this  
19 business by such bank or trust company where such bank or  
20 trust company acts as agent in the purchase or sale of such  
21 securities.

22           (13) An unsolicited purchase or sale of securities on  
23 order of, and as the agent for, another by a dealer registered  
24 ~~with the Department of Banking and Finance~~ pursuant to the  
25 provisions of s. 517.12; provided that this exemption applies  
26 solely and exclusively to such registered dealers and does not  
27 authorize or permit the purchase or sale of securities on  
28 order of, and as agent for, another by any person other than a  
29 dealer so registered; and provided, further, that such  
30 purchase or sale is not directly or indirectly for the benefit  
31 of the issuer or an underwriter of such securities or for the

1 direct or indirect promotion of any scheme or enterprise with  
2 the intent of violation or evading any provision of this  
3 chapter.

4 (14) The offer or sale of shares of a corporation  
5 which represent ownership, or entitle the holders of the  
6 shares to possession and occupancy, of specific apartment  
7 units in property owned by such corporation and organized and  
8 operated on a cooperative basis, solely for residential  
9 purposes.

10 (15) The offer or sale of securities under a bona fide  
11 employer-sponsored stock option, stock purchase, pension,  
12 profit-sharing, savings, or other benefit plan when offered  
13 only to employees of the sponsoring organization or to  
14 employees of its controlled subsidiaries.

15 (16) The sale by or through a registered dealer of any  
16 securities option if at the time of the sale of the option:

17 (a) The performance of the terms of the option is  
18 guaranteed by any dealer registered under the federal  
19 Securities Exchange Act of 1934, as amended, which guaranty  
20 and dealer are in compliance with such requirements or rules  
21 as may be approved or adopted by the commission ~~department~~; or

22 (b) Such options transactions are cleared by the  
23 Options Clearing Corporation or any other clearinghouse  
24 recognized by the office ~~department~~; and

25 (c) The option is not sold by or for the benefit of  
26 the issuer of the underlying security; and

27 (d) The underlying security may be purchased or sold  
28 on a recognized securities exchange or is quoted on the  
29 National Association of Securities Dealers Automated Quotation  
30 System; and

31

1           (e) Such sale is not directly or indirectly for the  
2 purpose of providing or furthering any scheme to violate or  
3 evade any provisions of this chapter.

4           (17)(a) The offer or sale of securities, as agent or  
5 principal, by a dealer registered pursuant to s. 517.12, when  
6 such securities are offered or sold at a price reasonably  
7 related to the current market price of such securities,  
8 provided such securities are:

9           1. Securities of an issuer for which reports are  
10 required to be filed by s. 13 or s. 15(d) of the Securities  
11 Exchange Act of 1934, as amended;

12           2. Securities of a company registered under the  
13 Investment Company Act of 1940, as amended;

14           3. Securities of an insurance company, as that term is  
15 defined in s. 2(a)(17) of the Investment Company Act of 1940,  
16 as amended;

17           4. Securities, other than any security that is a  
18 federal covered security pursuant to s. 18(b)(1) of the  
19 Securities Act of 1933 and is not subject to any registration  
20 or filing requirements under this act, which appear in any  
21 list of securities dealt in on any stock exchange registered  
22 pursuant to the Securities Exchange Act of 1934, as amended,  
23 and which securities have been listed or approved for listing  
24 upon notice of issuance by such exchange, and also all  
25 securities senior to any securities so listed or approved for  
26 listing upon notice of issuance, or represented by  
27 subscription rights which have been so listed or approved for  
28 listing upon notice of issuance, or evidences of indebtedness  
29 guaranteed by companies any stock of which is so listed or  
30 approved for listing upon notice of issuance, such securities  
31 to be exempt only so long as such listings or approvals remain

1 in effect. The exemption provided for herein does not apply  
2 when the securities are suspended from listing approval for  
3 listing or trading.

4 (b) The exemption provided in this subsection does not  
5 apply if the sale is made for the direct or indirect benefit  
6 of an issuer or controlling persons of such issuer or if such  
7 securities constitute the whole or part of an unsold allotment  
8 to, or subscription or participation by, a dealer as an  
9 underwriter of such securities.

10 (c) This exemption shall not be available for any  
11 securities which have been denied registration ~~by the~~  
12 ~~department~~ pursuant to s. 517.111. Additionally, the office  
13 ~~department~~ may deny this exemption with reference to any  
14 particular security, other than a federal covered security, by  
15 order published in such manner as the office ~~department~~ finds  
16 proper.

17 (18) The offer or sale of any security effected by or  
18 through a person registered pursuant to s. 517.12(17).

19 (19) Other transactions defined by rules as  
20 transactions exempted from the registration provisions of s.  
21 517.07, which rules the commission ~~department~~ may, ~~but is not~~  
22 ~~required to~~, adopt from time to time, but only after a finding  
23 by the office ~~department~~ that the application of the  
24 provisions of s. 517.07 to a particular transaction is not  
25 necessary in the public interest and for the protection of  
26 investors because of the small dollar amount of securities  
27 involved or the limited character of the offering. In  
28 conjunction with its adoption of such rules, the commission  
29 ~~department~~ may also provide in such rules that persons selling  
30 or offering for sale the exempted securities are exempt from  
31 the registration requirements of s. 517.12. No rule so

1 adopted may have the effect of narrowing or limiting any  
2 exemption provided for by statute in the other subsections of  
3 this section.

4 (20) Any nonissuer transaction by a registered  
5 associated person of a registered dealer, and any resale  
6 transaction by a sponsor of a unit investment trust registered  
7 under the Investment Company Act of 1940, in a security of a  
8 class that has been outstanding in the hands of the public for  
9 at least 90 days; provided, at the time of the transaction:

10 (a) The issuer of the security is actually engaged in  
11 business and is not in the organization stage or in bankruptcy  
12 or receivership and is not a blank check, blind pool, or shell  
13 company whose primary plan of business is to engage in a  
14 merger or combination of the business with, or an acquisition  
15 of, any unidentified person;

16 (b) The security is sold at a price reasonably related  
17 to the current market price of the security;

18 (c) The security does not constitute the whole or part  
19 of an unsold allotment to, or a subscription or participation  
20 by, the broker-dealer as an underwriter of the security;

21 (d) A nationally recognized securities manual  
22 designated by rule of the commission or order of the office  
23 ~~department~~ or a document filed with the Securities and  
24 Exchange Commission that is publicly available through the  
25 commission's electronic data gathering and retrieval system  
26 contains:

27 1. A description of the business and operations of the  
28 issuer;

29 2. The names of the issuer's officers and directors,  
30 if any, or, in the case of an issuer not domiciled in the  
31

1 United States, the corporate equivalents of such persons in  
2 the issuer's country of domicile;

3           3. An audited balance sheet of the issuer as of a date  
4 within 18 months before such transaction or, in the case of a  
5 reorganization or merger in which parties to the  
6 reorganization or merger had such audited balance sheet, a pro  
7 forma balance sheet; and

8           4. An audited income statement for each of the  
9 issuer's immediately preceding 2 fiscal years, or for the  
10 period of existence of the issuer, if in existence for less  
11 than 2 years or, in the case of a reorganization or merger in  
12 which the parties to the reorganization or merger had such  
13 audited income statement, a pro forma income statement; and

14           (e) The issuer of the security has a class of equity  
15 securities listed on a national securities exchange registered  
16 under the Securities Exchange Act of 1934 or designated for  
17 trading on the National Association of Securities Dealers  
18 Automated Quotation System, unless:

19           1. The issuer of the security is a unit investment  
20 trust registered under the Investment Company Act of 1940;

21           2. The issuer of the security has been engaged in  
22 continuous business, including predecessors, for at least 3  
23 years; or

24           3. The issuer of the security has total assets of at  
25 least \$2 million based on an audited balance sheet as of a  
26 date within 18 months before such transaction or, in the case  
27 of a reorganization or merger in which parties to the  
28 reorganization or merger had such audited balance sheet, a pro  
29 forma balance sheet.

30           Section 585. Section 517.07, Florida Statutes, is  
31 amended to read:

1           517.07 Registration of securities.--

2           (1) It is unlawful and a violation of this chapter for  
3 any person to sell or offer to sell a security within this  
4 state unless the security is exempt under s. 517.051, is sold  
5 in a transaction exempt under s. 517.061, is a federal covered  
6 security, or is registered pursuant to this chapter.

7           (2) No securities that are required to be registered  
8 under this chapter shall be sold or offered for sale within  
9 this state unless such securities have been registered  
10 pursuant to this chapter and unless prior to each sale the  
11 purchaser is furnished with a prospectus meeting the  
12 requirements of rules adopted by the commission ~~department~~.

13           (3) The office ~~department~~ shall issue a permit when  
14 registration has been granted by the office ~~department~~. A  
15 permit to sell securities is effective for 1 year from the  
16 date it was granted. Registration of securities shall be  
17 deemed to include the registration of rights to subscribe to  
18 such securities if the application under s. 517.081 or s.  
19 517.082 for registration of such securities includes a  
20 statement that such rights are to be issued.

21           (4) A record of the registration of securities shall  
22 be kept by ~~in~~ the office ~~of the department~~, in which register  
23 of securities shall also be recorded any orders entered by the  
24 office ~~department~~ with respect to such securities. Such  
25 register, and all information with respect to the securities  
26 registered therein, shall be open to public inspection.

27           (5) Notwithstanding any other provision of this  
28 section, offers of securities required to be registered by  
29 this section may be made in this state before the registration  
30 of such securities if the offers are made in conformity with  
31 rules adopted by the commission ~~department~~.

1           Section 586. Subsections (2), (3), (4), and (5) of  
2 section 517.075, Florida Statutes, are amended to read:

3           517.075 Cuba, prospectus disclosure of doing business  
4 with, required.--

5           (2) Any disclosure required by subsection (1) must  
6 include:

7           (a) The name of such person, affiliate, or government  
8 with which the issuer does business and the nature of that  
9 business;

10           (b) A statement that the information is accurate as of  
11 the date the securities were effective with the United States  
12 Securities and Exchange Commission or with the office  
13 ~~department~~, whichever date is later; and

14           (c) A statement that current information concerning  
15 the issuer's business dealings with the government of Cuba or  
16 with any person or affiliate located in Cuba may be obtained  
17 from the office ~~Department of Banking and Finance~~, which  
18 statement must include the address and phone number of the  
19 office ~~department~~.

20           (3) If an issuer commences engaging in business with  
21 the government of Cuba or with any person or affiliate located  
22 in Cuba, after the date issuer's securities become effective  
23 with the Securities and Exchange Commission or with the office  
24 ~~department~~, whichever date is later, or if the information  
25 reported in the prospectus concerning that business changes in  
26 any material way, the issuer must provide the office  
27 ~~department~~ notice of that business or change, as appropriate,  
28 in a manner form acceptable to the office ~~department~~. The  
29 commission ~~department~~ shall prescribe by rule a form for  
30 persons to use to report the commencement of such business or  
31 any change in such business which occurs after the effective

1 registration of such securities. This form must include, at a  
2 minimum, the information required by subsection (2). The  
3 information reported on the form must be kept current.  
4 Information is current if reported to the office ~~department~~  
5 within 90 days after the commencement of business or within 90  
6 days after the change occurs with respect to previously  
7 reported information.

8 (4) The office ~~department~~ shall provide, upon request,  
9 a copy of any form filed with the office ~~department~~ under  
10 subsection (3) to any person requesting the form.

11 (5) Each securities offering sold in violation of this  
12 section, and each failure of an issuer to timely file the form  
13 required by subsection (3), subjects the issuer to a fine of  
14 up to \$5,000. Any fine collected under this section shall be  
15 deposited into the Anti-Fraud Trust Fund of the office  
16 ~~Department of Banking and Finance~~.

17 Section 587. Section 517.081, Florida Statutes, is  
18 amended to read:

19 517.081 Registration procedure.--

20 (1) All securities required by this chapter to be  
21 registered before being sold in this state and not entitled to  
22 registration by notification shall be registered in the manner  
23 provided by this section.

24 (2) The office ~~department~~ shall receive and act upon  
25 applications to have securities registered and the commission  
26 may prescribe forms on which it may require such applications  
27 to be submitted. Applications shall be duly signed by the  
28 applicant, sworn to by any person having knowledge of the  
29 facts, and filed with the office ~~department~~. The commission  
30 ~~department~~ may establish, by rule, procedures for depositing  
31 fees and filing documents by electronic means provided such

1 procedures provide the office ~~department~~ with the information  
2 and data required by this section. An application may be made  
3 either by the issuer of the securities for which registration  
4 is applied or by any registered dealer desiring to sell the  
5 same within the state.

6 (3) The office ~~department~~ may require the applicant to  
7 submit to the office ~~department~~ the following information  
8 concerning the issuer and such other relevant information as  
9 the office ~~department~~ may in its judgment deem necessary to  
10 enable it to ascertain whether such securities shall be  
11 registered pursuant to the provisions of this section:

12 (a) The names and addresses of the directors,  
13 trustees, and officers, if the issuer be a corporation,  
14 association, or trust; of all the partners, if the issuer be a  
15 partnership; or of the issuer, if the issuer be an individual.

16 (b) The location of the issuer's principal business  
17 office and of its principal office in this state, if any.

18 (c) The general character of the business actually to  
19 be transacted by the issuer and the purposes of the proposed  
20 issue.

21 (d) A statement of the capitalization of the issuer.

22 (e) A balance sheet showing the amount and general  
23 character of its assets and liabilities on a day not more than  
24 90 days prior to the date of filing such balance sheet or such  
25 longer period of time, not exceeding 6 months, as the office  
26 ~~department~~ may permit at the written request of the issuer on  
27 a showing of good cause therefor.

28 (f) A detailed statement of the plan upon which the  
29 issuer proposes to transact business.

30  
31

1 (g)1. A specimen copy of the security and a copy of  
2 any circular, prospectus, advertisement, or other description  
3 of such securities.

4 2. The commission ~~department~~ shall adopt a form for a  
5 simplified offering circular to be used solely by corporations  
6 to register, under this section, securities of the corporation  
7 that are sold in offerings in which the aggregate offering  
8 price in any consecutive 12-month period does not exceed the  
9 amount provided in s. 3(b) of the Securities Act of 1933. The  
10 following issuers shall not be eligible to submit a simplified  
11 offering circular adopted pursuant to this subparagraph:

12 a. An issuer seeking to register securities for resale  
13 by persons other than the issuer.

14 b. An issuer who is subject to any of the  
15 disqualifications described in 17 C.F.R. s. 230.262, adopted  
16 pursuant to the Securities Act of 1933, or who has been or is  
17 engaged or is about to engage in an activity that would be  
18 grounds for denial, revocation, or suspension under s.  
19 517.111. For purposes of this subparagraph, an issuer includes  
20 an issuer's director, officer, shareholder who owns at least  
21 10 percent of the shares of the issuer, promoter, or selling  
22 agent of the securities to be offered or any officer,  
23 director, or partner of such selling agent.

24 c. An issuer who is a development-stage company that  
25 either has no specific business plan or purpose or has  
26 indicated that its business plan is to merge with an  
27 unidentified company or companies.

28 d. An issuer of offerings in which the specific  
29 business or properties cannot be described.

30 e. Any issuer the office ~~department~~ determines is  
31 ineligible if the form would not provide full and fair

1 disclosure of material information for the type of offering to  
2 be registered by the issuer.

3 f. Any corporation which has failed to provide the  
4 office department the reports required for a previous offering  
5 registered pursuant to this subparagraph.

6  
7 As a condition precedent to qualifying for use of the  
8 simplified offering circular, a corporation shall agree to  
9 provide the office department with an annual financial report  
10 containing a balance sheet as of the end of the issuer's  
11 fiscal year and a statement of income for such year, prepared  
12 in accordance with generally accepted accounting principles  
13 and accompanied by an independent accountant's report. If the  
14 issuer has more than 100 security holders at the end of a  
15 fiscal year, the financial statements must be audited. Annual  
16 financial reports must be filed with the office department  
17 within 90 days after the close of the issuer's fiscal year for  
18 each of the first 5 years following the effective date of the  
19 registration.

20 (h) A statement of the amount of the issuer's income,  
21 expenses, and fixed charges during the last fiscal year or, if  
22 in actual business less than 1 year, then for such time as the  
23 issuer has been in actual business.

24 (i) A statement of the issuer's cash sources and  
25 application during the last fiscal year or, if in actual  
26 business less than 1 year, then for such time as the issuer  
27 has been in actual business.

28 (j) A statement showing the maximum price at which  
29 such security is proposed to be sold, together with the  
30 maximum amount of commission, including expenses, or other  
31 form of remuneration to be paid in cash or otherwise, directly

1 or indirectly, for or in connection with the sale or offering  
2 for sale of such securities.

3 (k) A copy of the opinion or opinions of counsel  
4 concerning the legality of the issue or other matters which  
5 the office ~~department~~ may determine to be relevant to the  
6 issue.

7 (l) A detailed statement showing the items of cash,  
8 property, services, patents, good will, and any other  
9 consideration in payment for which such securities have been  
10 or are to be issued.

11 (m) The amount of securities to be set aside and  
12 disposed of and a statement of all securities issued from time  
13 to time for promotional purposes.

14 (n) If the issuer is a corporation, there shall be  
15 filed with the application a copy of its articles of  
16 incorporation with all amendments and of its existing bylaws,  
17 if not already on file in the office ~~department~~. If the  
18 issuer is a trustee, there shall be filed with the application  
19 a copy of all instruments by which the trust is created or  
20 declared and in which it is accepted and acknowledged. If the  
21 issuer is a partnership, unincorporated association,  
22 joint-stock company, or any other form of organization  
23 whatsoever, there shall be filed with the application a copy  
24 of its articles of partnership or association and all other  
25 papers pertaining to its organization, if not already on file  
26 in the office ~~department~~.

27 (4) All of the statements, exhibits, and documents of  
28 every kind required ~~by the department~~ under this section,  
29 except properly certified public documents, shall be verified  
30 by the oath of the applicant or of the issuer in such manner  
31 and form as may be required by the commission ~~department~~.

1           (5) The commission ~~department~~ may by rule fix the  
2 maximum discounts, commissions, expenses, remuneration, and  
3 other compensation to be paid in cash or otherwise, not to  
4 exceed 20 percent, directly or indirectly, for or in  
5 connection with the sale or offering for sale of such  
6 securities in this state.

7           (6) An issuer filing an application under this section  
8 shall, at the time of filing, pay the office ~~department~~ a  
9 nonreturnable fee of \$1,000 per application.

10           (7) If upon examination of any application the office  
11 ~~department~~ shall find that the sale of the security referred  
12 to therein would not be fraudulent and would not work or tend  
13 to work a fraud upon the purchaser, that the terms of the sale  
14 of such securities would be fair, just, and equitable, and  
15 that the enterprise or business of the issuer is not based  
16 upon unsound business principles, it shall record the  
17 registration of such security in the register of securities;  
18 and thereupon such security so registered may be sold by any  
19 registered dealer, subject, however, to the further order of  
20 the office ~~department~~.

21           Section 588. Section 517.082, Florida Statutes, is  
22 amended to read:

23           517.082 Notification registration.--

24           (1) Except as provided in subsection (3), securities  
25 offered or sold pursuant to a registration statement filed  
26 under the Securities Act of 1933 shall be entitled to  
27 registration by notification in the manner provided in  
28 subsection (2), provided that prior to the offer or sale the  
29 registration statement has become effective.

30           (2) An application for registration by notification  
31 shall be filed with the office ~~department~~, shall contain the

1 following information, and shall be accompanied by the  
2 following:

3 (a) An application to sell executed by the issuer, any  
4 person on whose behalf the offering is made, a dealer  
5 registered under this chapter, or any duly authorized agent of  
6 any such person, setting forth the name and address of the  
7 applicant, the name and address of the issuer, and the title  
8 of the securities to be offered and sold;

9 (b) Copies of such documents filed with the Securities  
10 and Exchange Commission as the Financial Services Commission  
11 ~~department~~ may by rule require;

12 (c) An irrevocable written consent to service as  
13 required by s. 517.101; and

14 (d) A nonreturnable fee of \$1,000 per application.  
15

16 A registration under this section becomes effective when the  
17 federal registration statement becomes effective or as of the  
18 date the application is filed with the office ~~department~~,  
19 whichever is later, provided that, in addition to the items  
20 listed in paragraphs (a)-(d), the office ~~department~~ has  
21 received written notification of effective registration under  
22 the Securities Act of 1933 or the Investment Company Act of  
23 1940 within 10 business days from the date federal  
24 registration is granted. Failure to provide all the  
25 information required by this subsection to the office  
26 ~~department~~ within 60 days of the date the registration  
27 statement becomes effective with the Securities and Exchange  
28 Commission shall be a violation of this chapter.

29 (3) Except for units of limited partnership interests  
30 or such other securities as the commission ~~department~~  
31 describes by rule as exempt from this subsection due to high

1 investment quality, the provisions of this section may not be  
2 used to register securities if the offering price at the time  
3 of effectiveness with the Securities and Exchange Commission  
4 is \$5 or less per share, unless such securities are listed or  
5 designated, or approved for listing or designation upon notice  
6 of issuance, on a stock exchange registered pursuant to the  
7 Securities Exchange Act of 1934 or on the National Association  
8 of Securities Dealers Automated Quotation (NASDAQ) System, or  
9 unless such securities are of the same issuer and of senior or  
10 substantially equal rank to securities so listed or  
11 designated.

12 (4) In lieu of filing with the office ~~department~~ the  
13 application, fees, and documents for registration required by  
14 subsection (2), the commission ~~department~~ may establish, by  
15 rule, procedures for depositing fees and filing documents by  
16 electronic means, provided such procedures provide the office  
17 ~~department~~ with the information and data required by this  
18 section.

19 Section 589. Section 517.101, Florida Statutes, is  
20 amended to read:

21 517.101 Consent to service.--

22 (1) Upon any initial application for registration  
23 under s. 517.081 or s. 517.082 or upon request of the office  
24 ~~department~~, the issuer shall file with such application the  
25 irrevocable written consent of the issuer that in suits,  
26 proceedings, and actions growing out of the violation of any  
27 provision of this chapter, the service on the office  
28 ~~department~~ of a notice, process, or pleading therein,  
29 authorized by the laws of this state, shall be as valid and  
30 binding as if due service had been made on the issuer.

31

1           (2) Any such action shall be brought either in the  
2 county of the plaintiff's residence or in the county in which  
3 the office ~~department~~ has its official headquarters. The  
4 written consent shall be authenticated by the seal of said  
5 issuer, if it has a seal, and by the acknowledged signature of  
6 a member of the copartnership or company, or by the  
7 acknowledged signature of any officer of the incorporated or  
8 unincorporated association, if it be an incorporated or  
9 unincorporated association, duly authorized by resolution of  
10 the board of directors, trustees, or managers of the  
11 corporation or association, and shall in such case be  
12 accompanied by a duly certified copy of the resolution of the  
13 board of directors, trustees, or managers of the corporation  
14 or association, authorizing the officers to execute the same.  
15 In case any process or pleadings mentioned in this chapter are  
16 served upon the office ~~department~~, it shall be by duplicate  
17 copies, one of which shall be filed in the office ~~department~~  
18 and another immediately forwarded by the office ~~department~~ by  
19 registered mail to the principal office of the issuer against  
20 which said process or pleadings are directed.

21           Section 590. Section 517.111, Florida Statutes, is  
22 amended to read:

23           517.111 Revocation or denial of registration of  
24 securities.--

25           (1) The office ~~department~~ may revoke or suspend the  
26 registration of any security, or may deny any application to  
27 register securities, if upon examination into the affairs of  
28 the issuer of such security it shall appear that:

29           (a) The issuer is insolvent;

30           (b) The issuer or any officer, director, or control  
31 person of the issuer has violated any provision of this

1 chapter or any rule made hereunder or any order of the office  
2 ~~department~~ of which such issuer has notice;  
3 (c) The issuer or any officer, director, or control  
4 person of the issuer has been or is engaged or is about to  
5 engage in fraudulent transactions;  
6 (d) The issuer or any officer, director, or control  
7 person of the issuer has been found guilty of a fraudulent act  
8 in connection with any sale of securities, has engaged, is  
9 engaged, or is about to engage, in making a fictitious sale or  
10 purchase of any security, or in any practice or sale of any  
11 security which is fraudulent or a violation of any law;  
12 (e) The issuer or any officer, director, or control  
13 person of the issuer has had a final judgment entered against  
14 such issuer or person in a civil action on the grounds of  
15 fraud, embezzlement, misrepresentation, or deceit;  
16 (f) The issuer or any officer, director, or control  
17 person of the issuer has demonstrated any evidence of  
18 unworthiness;  
19 (g) The issuer or any officer, director, or control  
20 person of the issuer is in any other way dishonest or has made  
21 any fraudulent representations or failed to disclose any  
22 material information in any prospectus or in any circular or  
23 other literature that has been distributed concerning the  
24 issuer or its securities;  
25 (h) The security registered or sought to be registered  
26 is the subject of an injunction entered by a court of  
27 competent jurisdiction or is the subject of an administrative  
28 stop-order or similar order prohibiting the offer or sale of  
29 the security;  
30  
31

1 (i) For any security for which registration has been  
2 applied pursuant to s. 517.081, the terms of the offer or sale  
3 of such securities would not be fair, just, or equitable; or

4 (j) The issuer or any person acting on behalf of the  
5 issuer has failed to timely complete any application for  
6 registration filed with the office ~~department~~ pursuant to the  
7 provisions of s. 517.081 or s. 517.082 or any rule adopted  
8 under such sections.

9  
10 In making such examination, the office ~~department~~ shall have  
11 access to and may compel the production of all the books and  
12 papers of such issuer and may administer oaths to and examine  
13 the officers of such issuer or any other person connected  
14 therewith as to its business and affairs and may also require  
15 a balance sheet exhibiting the assets and liabilities of any  
16 such issuer or its income statement, or both, to be certified  
17 to by a public accountant either of this state or of any other  
18 state where the issuer's business is located. Whenever the  
19 office deems ~~department may deem~~ it necessary, it may also  
20 require such balance sheet or income statement, or both, to be  
21 made more specific in such particulars as the office  
22 ~~department~~ may require.

23 (2) If any issuer shall refuse to permit an  
24 examination to be made by the office ~~department~~, it shall be  
25 proper ground for revocation of registration.

26 (3) If the office deems ~~department shall deem~~ it  
27 necessary, it may enter an order suspending the right to sell  
28 securities pending any investigation, provided that the order  
29 shall state the office's ~~department's~~ grounds for taking such  
30 action.

31

1           (4) Notice of the entry of such order shall be given  
2 by mail, personally, by telephone confirmed in writing, or by  
3 telegraph to the issuer. Before such order is made final, the  
4 issuer applying for registration shall, on application, be  
5 entitled to a hearing.

6           (5) The office ~~department~~ may deny any request to  
7 terminate any registration or to withdraw any application for  
8 registration if the office ~~department~~ believes that an act  
9 which would be grounds for denial, suspension, or revocation  
10 under this chapter has been committed.

11           Section 591. Section 517.12, Florida Statutes, is  
12 amended to read:

13           517.12 Registration of dealers, associated persons,  
14 investment advisers, and branch offices.--

15           (1) No dealer, associated person, or issuer of  
16 securities shall sell or offer for sale any securities in or  
17 from offices in this state, or sell securities to persons in  
18 this state from offices outside this state, by mail or  
19 otherwise, unless the person has been registered with the  
20 office ~~department~~ pursuant to the provisions of this section.  
21 The office ~~department~~ shall not register any person as an  
22 associated person of a dealer unless the dealer with which the  
23 applicant seeks registration is lawfully registered with the  
24 office ~~department~~ pursuant to this chapter.

25           (2) The registration requirements of this section do  
26 not apply to the issuers of securities exempted by s.  
27 517.051(1)-(8) and (10).

28           (3) Except as otherwise provided in s.  
29 517.061(11)(a)4., (13), (16), (17), or (19), the registration  
30 requirements of this section do not apply in a transaction  
31 exempted by s. 517.061(1)-(12), (14), and (15).

1           (4) No investment adviser or associated person of an  
2 investment adviser or federal covered adviser shall engage in  
3 business from offices in this state, or render investment  
4 advice to persons of this state, by mail or otherwise, unless  
5 the federal covered adviser has made a notice filing with the  
6 office ~~department~~ pursuant to s. 517.1201 or the investment  
7 adviser is registered pursuant to the provisions of this  
8 chapter and associated persons of the federal covered adviser  
9 or investment adviser have been registered with the office  
10 ~~department~~ pursuant to this section. The office ~~department~~  
11 shall not register any person or an associated person of a  
12 federal covered adviser or an investment adviser unless the  
13 federal covered adviser or investment adviser with which the  
14 applicant seeks registration is in compliance with the notice  
15 filing requirements of s. 517.1201 or is lawfully registered  
16 with the office ~~department~~ pursuant to this chapter. A dealer  
17 or associated person who is registered pursuant to this  
18 section may render investment advice upon notification to and  
19 approval from the office ~~department~~.

20           (5) No dealer or investment adviser shall conduct  
21 business from a branch office within this state unless the  
22 branch office is registered with the office ~~department~~  
23 pursuant to the provisions of this section.

24           (6) A dealer, associated person, investment adviser,  
25 or branch office, in order to obtain registration, must file  
26 with the office ~~department~~ a written application, on a form  
27 which the commission ~~department~~ may by rule prescribe,  
28 verified under oath. The commission ~~department~~ may establish,  
29 by rule, procedures for depositing fees and filing documents  
30 by electronic means provided such procedures provide the  
31 office ~~department~~ with the information and data required by

1 this section. Each dealer or investment adviser must also file  
2 an irrevocable written consent to service of civil process  
3 similar to that provided for in s. 517.101. The application  
4 shall contain such information as the commission or office  
5 ~~department~~ may require concerning such matters as:

6 (a) The name of the applicant and the address of its  
7 principal office and each office in this state.

8 (b) The applicant's form and place of organization;  
9 and, if the applicant is a corporation, a copy of its articles  
10 of incorporation and amendments to the articles of  
11 incorporation or, if a partnership, a copy of the partnership  
12 agreement.

13 (c) The applicant's proposed method of doing business  
14 and financial condition and history, including a certified  
15 financial statement showing all assets and all liabilities,  
16 including contingent liabilities of the applicant as of a date  
17 not more than 90 days prior to the filing of the application.

18 (d) The names and addresses of all associated persons  
19 of the applicant to be employed in this state and the offices  
20 to which they will be assigned.

21 (7) The application shall also contain such  
22 information as the commission or office ~~department~~ may require  
23 about the applicant; any partner, officer, or director of the  
24 applicant or any person having a similar status or performing  
25 similar functions; any person directly or indirectly  
26 controlling the applicant; or any employee of a dealer or of  
27 an investment adviser rendering investment advisory services.  
28 Each applicant shall file a complete set of fingerprints taken  
29 by an authorized law enforcement officer. Such fingerprints  
30 shall be submitted to the Department of Law Enforcement or the  
31 Federal Bureau of Investigation for state and federal

1 processing. The commission ~~department~~ may waive, by rule, the  
2 requirement that applicants must file a set of fingerprints or  
3 the requirement that such fingerprints must be processed by  
4 the Department of Law Enforcement or the Federal Bureau of  
5 Investigation. The commission or office ~~department~~ may  
6 require information about any such applicant or person  
7 concerning such matters as:

8 (a) His or her full name, and any other names by which  
9 he or she may have been known, and his or her age, photograph,  
10 qualifications, and educational and business history.

11 (b) Any injunction or administrative order by a state  
12 or federal agency, national securities exchange, or national  
13 securities association involving a security or any aspect of  
14 the securities business and any injunction or administrative  
15 order by a state or federal agency regulating banking,  
16 insurance, finance, or small loan companies, real estate,  
17 mortgage brokers, or other related or similar industries,  
18 which injunctions or administrative orders relate to such  
19 person.

20 (c) His or her conviction of, or plea of nolo  
21 contendere to, a criminal offense or his or her commission of  
22 any acts which would be grounds for refusal of an application  
23 under s. 517.161.

24 (d) The names and addresses of other persons of whom  
25 the office ~~department~~ may inquire as to his or her character,  
26 reputation, and financial responsibility.

27 (8) The commission or office ~~department~~ may require  
28 the applicant or one or more principals or general partners,  
29 or natural persons exercising similar functions, or any  
30 associated person applicant to successfully pass oral or  
31 written examinations. Because any principal, manager,

1 supervisor, or person exercising similar functions shall be  
2 responsible for the acts of the associated persons affiliated  
3 with a dealer or investment adviser, the examination standards  
4 may be higher for a dealer, office manager, principal, or  
5 person exercising similar functions than for a nonsupervisory  
6 associated person. The commission ~~department~~ may waive the  
7 examination process when it determines that such examinations  
8 are not in the public interest. The office ~~department~~ shall  
9 waive the examination requirements for any person who has  
10 passed any tests as prescribed in s. 15(b)(7) of the  
11 Securities Exchange Act of 1934 that relates to the position  
12 to be filled by the applicant.

13 (9)(a) All dealers, except securities dealers who are  
14 designated by the Federal Reserve Bank of New York as primary  
15 government securities dealers or securities dealers registered  
16 as issuers of securities, shall comply with the net capital  
17 and ratio requirements imposed pursuant to the Securities  
18 Exchange Act of 1934. The commission ~~department~~ may by rule  
19 require a dealer to file with the office ~~department~~ any  
20 financial or operational information that is required to be  
21 filed by the Securities Exchange Act of 1934 or any rules  
22 adopted under such act.

23 (b) The commission ~~department~~ may by rule require the  
24 maintenance of a minimum net capital for securities dealers  
25 who are designated by the Federal Reserve Bank of New York as  
26 primary government securities dealers and securities dealers  
27 registered as issuers of securities and investment advisers,  
28 or prescribe a ratio between net capital and aggregate  
29 indebtedness, to assure adequate protection for the investing  
30 public. The provisions of this section shall not apply to any  
31 investment adviser that maintains its principal place of

1 business in a state other than this state, provided such  
2 investment adviser is registered in the state where it  
3 maintains its principal place of business and is in compliance  
4 with such state's net capital requirements.

5 (10) An applicant for registration shall pay an  
6 assessment fee of \$200, in the case of a dealer or investment  
7 adviser, or \$40, in the case of an associated person. The  
8 assessment fee of an associated person shall be reduced to  
9 \$30, but only after the office department determines, by final  
10 order, that sufficient funds have been allocated to the  
11 Securities Guaranty Fund pursuant to s. 517.1203 to satisfy  
12 all valid claims filed in accordance with s. 517.1203(2) and  
13 after all amounts payable under any service contract entered  
14 into by the office department pursuant to s. 517.1204, and all  
15 notes, bonds, certificates of indebtedness, other obligations,  
16 or evidences of indebtedness secured by such notes, bonds,  
17 certificates of indebtedness, or other obligations, have been  
18 paid or provision has been made for the payment of such  
19 amounts, notes, bonds, certificates of indebtedness, other  
20 obligations, or evidences of indebtedness. An associated  
21 person not having current fingerprint cards filed with the  
22 National Association of Securities Dealers or a national  
23 securities exchange registered with the Securities and  
24 Exchange Commission shall be assessed an additional fee to  
25 cover the cost for said fingerprint cards to be processed by  
26 the office department. Such fee shall be determined by rule  
27 of the commission department. Each dealer and each investment  
28 adviser shall pay an assessment fee of \$100 for each office in  
29 this state, except its designated principal office. Such fees  
30 become the revenue of the state, except for those assessments  
31 provided for under s. 517.131(1) until such time as the

1 Securities Guaranty Fund satisfies the statutory limits, and  
2 are not returnable in the event that registration is withdrawn  
3 or not granted.

4 (11) If the office ~~department~~ finds that the applicant  
5 is of good repute and character and has complied with the  
6 provisions of this chapter and the rules made pursuant hereto,  
7 it shall register the applicant. The registration of each  
8 dealer, investment adviser, and associated person will expire  
9 on December 31, and the registration of each branch office  
10 will expire on March 31, of the year in which it became  
11 effective unless the registrant has renewed its registration  
12 on or before that date. Registration may be renewed by  
13 furnishing such information as the commission ~~department~~ may  
14 require, together with payment of the fee required in  
15 subsection (10) for dealers, investment advisers, associated  
16 persons, or branch offices and the payment of any amount  
17 lawfully due and owing to the office ~~department~~ pursuant to  
18 any order of the office ~~department~~ or pursuant to any  
19 agreement with the office ~~department~~. Any dealer, investment  
20 adviser, or associated person registrant who has not renewed a  
21 registration by the time the current registration expires may  
22 request reinstatement of such registration by filing with the  
23 office ~~department~~, on or before January 31 of the year  
24 following the year of expiration, such information as may be  
25 required by the commission ~~department~~, together with payment  
26 of the fee required in subsection (10) for dealers, investment  
27 advisers, or associated persons and a late fee equal to the  
28 amount of such fee. Any reinstatement of registration granted  
29 by the office ~~department~~ during the month of January shall be  
30 deemed effective retroactive to January 1 of that year.

31

1           (12)(a) The office ~~department~~ may issue a license to a  
2 dealer, investment adviser, associated person, or branch  
3 office to evidence registration under this chapter. The  
4 office ~~department~~ may require the return to the office  
5 ~~department~~ of any license it may issue prior to issuing a new  
6 license.

7           (b) Every dealer, investment adviser, or federal  
8 covered adviser shall promptly file with the office  
9 ~~department~~, as prescribed by rules adopted by the commission  
10 ~~department~~, notice as to the termination of employment of any  
11 associated person registered for such dealer or investment  
12 adviser in this state and shall also furnish the reason or  
13 reasons for such termination.

14           (c) Each dealer or investment adviser shall designate  
15 in writing to, and register with, the office ~~department~~ a  
16 manager for each office the dealer or investment adviser has  
17 in this state.

18           (13) Changes in registration occasioned by changes in  
19 personnel of a partnership or in the principals, copartners,  
20 officers, or directors of any dealer or investment adviser or  
21 by changes of any material fact or method of doing business  
22 shall be reported by written amendment in such form and at  
23 such time as the commission ~~department~~ may specify. In any  
24 case in which a person or a group of persons, directly or  
25 indirectly or acting by or through one or more persons,  
26 proposes to purchase or acquire a controlling interest in a  
27 registered dealer or investment adviser, such person or group  
28 shall submit an initial application for registration as a  
29 dealer or investment adviser prior to such purchase or  
30 acquisition. The commission ~~department~~ shall adopt rules  
31 providing for waiver of the application required by this

1 subsection where control of a registered dealer or investment  
2 adviser is to be acquired by another dealer or investment  
3 adviser registered under this chapter or where the application  
4 is otherwise unnecessary in the public interest.

5 (14) Every dealer, investment adviser, or branch  
6 office registered or required to be registered with the office  
7 ~~department~~ shall keep records of all currency transactions in  
8 excess of \$10,000 and shall file reports, as prescribed under  
9 the financial recordkeeping regulations in 31 C.F.R. part 103,  
10 with the office ~~department~~ when transactions occur in or from  
11 this state. All reports required by this subsection to be  
12 filed with the office ~~department~~ shall be confidential and  
13 exempt from s. 119.07(1) except that any law enforcement  
14 agency or the Department of Revenue shall have access to, and  
15 shall be authorized to inspect and copy, such reports.

16 (15) In lieu of filing with the office ~~department~~ the  
17 applications specified in subsection (6), the fees required by  
18 subsection (10), and the termination notices required by  
19 subsection (12), the commission ~~department~~ may by rule  
20 establish procedures for the deposit of such fees and  
21 documents with the Central Registration Depository of the  
22 National Association of Securities Dealers, Inc., as developed  
23 under contract with the North American Securities  
24 Administrators Association, Inc.; provided, however, that such  
25 procedures shall provide the office ~~department~~ with the  
26 information and data as required by this section.

27 (16) Except for securities dealers who are designated  
28 by the Federal Reserve Bank of New York as primary government  
29 securities dealers or securities dealers registered as issuers  
30 of securities, every applicant for initial or renewal  
31 registration as a securities dealer and every person

1 registered as a securities dealer shall be registered as a  
2 broker or dealer with the Securities and Exchange Commission  
3 and shall be subject to insurance coverage by the Securities  
4 Investor Protection Corporation.

5 (17)(a) A dealer that is located in Canada and has no  
6 office or other physical presence in this state may, provided  
7 the dealer is registered in accordance with this section,  
8 effect transactions in securities with or for, or induce or  
9 attempt to induce the purchase or sale of any security by:

10 1. A person from Canada who temporarily resides in  
11 this state and with whom the Canadian dealer had a bona fide  
12 dealer-client relationship before the person entered the  
13 United States; or

14 2. A person from Canada who is a resident of this  
15 state, and whose transactions are in a self-directed tax  
16 advantage retirement plan in Canada of which the person is the  
17 holder or contributor.

18 (b) An associated person who represents a Canadian  
19 dealer registered under this section may, provided the agent  
20 is registered in accordance with this section, effect  
21 transactions in securities in this state as permitted for a  
22 dealer, under subsection (a).

23 (c) A Canadian dealer may register under this section  
24 provided that such dealer:

25 1. Files an application in the form required by the  
26 jurisdiction in which the dealer has a head office.

27 2. Files a consent to service of process.

28 3. Is registered as a dealer in good standing in the  
29 jurisdiction from which it is effecting transactions into this  
30 state and files evidence of such registration with the office  
31 ~~department~~.

1           4. Is a member of a self-regulatory organization or  
2 stock exchange in Canada.

3           (d) An associated person who represents a Canadian  
4 dealer registered under this section in effecting transactions  
5 in securities in this state may register under this section  
6 provided that such person:

7           1. Files an application in the form required by the  
8 jurisdiction in which the dealer has its head office.

9           2. Is registered in good standing in the jurisdiction  
10 from which he or she is effecting transactions into this state  
11 and files evidence of such registration with the office  
12 ~~department~~.

13           (e) If the office ~~department~~ finds that the applicant  
14 is of good repute and character and has complied with the  
15 provisions of this chapter, the office ~~department~~ shall  
16 register the applicant.

17           (f) A Canadian dealer registered under this section  
18 shall:

19           1. Maintain its provincial or territorial registration  
20 and its membership in a self-regulatory organization or stock  
21 exchange in good standing.

22           2. Provide the office ~~department~~ upon request with its  
23 books and records relating to its business in this state as a  
24 dealer.

25           3. Provide the office ~~department~~ notice of each civil,  
26 criminal, or administrative action initiated against the  
27 dealer.

28           4. Disclose to its clients in this state that the  
29 dealer and its agents are not subject to the full regulatory  
30 requirements under this chapter.

31

1           5. Correct any inaccurate information within 30 days,  
2 if the information contained in the application form becomes  
3 inaccurate for any reason before or after the dealer becomes  
4 registered.

5           (g) An associated person of a Canadian dealer  
6 registered under this section shall:

7           1. Maintain provincial or territorial registration in  
8 good standing.

9           2. Provide the office ~~department~~ with notice of each  
10 civil, criminal, or administrative action initiated against  
11 such person.

12           3. Through the dealer, correct any inaccurate  
13 information within 30 days, if the information contained in  
14 the application form becomes inaccurate for any reason before  
15 or after the associated person becomes registered.

16           (h) Renewal applications for Canadian dealers and  
17 associated persons under this section must be filed before  
18 December 31 each year. Every applicant for registration or  
19 renewal registration under this section shall pay the fee for  
20 dealers and associated persons under this chapter.

21           (18) Every dealer or associated person registered or  
22 required to be registered with the office ~~department~~ shall  
23 satisfy any continuing education requirements established by  
24 rule pursuant to law.

25           (19) The registration requirements of this section  
26 which apply to investment advisers and associated persons do  
27 not apply to a commodity trading adviser who:

28           (a) Is registered as such with the Commodity Futures  
29 Trading Commission pursuant to the Commodity Exchange Act.

30           (b) Advises or exercises trading discretion, with  
31 respect to foreign currency options listed and traded

1 exclusively on the Philadelphia Stock Exchange, on behalf of  
2 an "appropriate person" as defined by the Commodity Exchange  
3 Act.

4  
5 The exemption provided in this subsection does not apply to a  
6 commodity trading adviser who engages in other activities that  
7 require registration under this chapter.

8 (20) The registration requirements of this section do  
9 not apply to any general lines insurance agent or life  
10 insurance agent licensed under chapter 626 individuals  
11 ~~licensed under s. 626.041 or its successor statute, or s.~~  
12 ~~626.051 or its successor statute,~~ for the sale of a security  
13 as defined in s. 517.021(20)(g)~~s. 517.021(19)(g)~~, if the  
14 individual is directly authorized by the issuer to offer or  
15 sell the security on behalf of the issuer and the issuer is a  
16 federally chartered savings bank subject to regulation by the  
17 Federal Deposit Insurance Corporation. Actions under this  
18 subsection shall constitute activity under the insurance  
19 agent's license for purposes of ss. 626.611 and 626.621.

20 Section 592. Section 517.1201, Florida Statutes, is  
21 amended to read:

22 517.1201 Notice filing requirements for federal  
23 covered advisers.--

24 (1) It is unlawful for a person to transact business  
25 in this state as a federal covered adviser unless such person  
26 has made a notice filing with the office ~~department~~. A notice  
27 filing under this section shall consist of a copy of those  
28 documents that have been filed or are required to be filed by  
29 the federal covered adviser with the Securities and Exchange  
30 Commission that the Financial Services Commission ~~department~~  
31 by rule requires to be filed, together with a consent to

1 service of process and a filing fee of \$200. The commission  
2 ~~department~~ may establish by rule procedures for the deposit of  
3 fees and the filing of documents to be made through electronic  
4 means, if the procedures provide to the office ~~department~~ the  
5 information and data required by this section.

6 (2) A notice filing shall be effective upon receipt.  
7 A notice filing shall expire on December 31 of the year in  
8 which the filing became effective unless the federal covered  
9 adviser has renewed the filing on or before that date. A  
10 federal covered adviser may renew a notice filing by  
11 furnishing to the office ~~department~~ such information that has  
12 been filed or is required to be filed with the Securities and  
13 Exchange Commission, as the Financial Services Commission or  
14 office ~~department~~ may require, together with a renewal fee of  
15 \$200 and the payment of any amount due and owing the office  
16 ~~department~~ pursuant to any agreement with the office  
17 ~~department~~. Any federal covered adviser who has not renewed a  
18 notice filing by the time a current notice filing expires may  
19 request reinstatement of such notice filing by filing with the  
20 office ~~department~~, on or before January 31 of the year  
21 following the year the notice filing expires, such information  
22 that has been filed or is required to be filed with the  
23 Securities and Exchange Commission as may be required by the  
24 Financial Services Commission or office ~~department~~, together  
25 with the payment of \$200 and a late fee equal to \$200. Any  
26 reinstatement of a notice filing granted by the office  
27 ~~department~~ during the month of January shall be deemed  
28 effective retroactive to January 1 of that year.

29 (3) The commission ~~department~~ may require, by rule, a  
30 federal covered adviser who has made a notice filing pursuant  
31 to this section to file with the office ~~department~~ copies of

1 any amendments filed or required to be filed with the  
2 Securities and Exchange Commission.

3 (4) The office ~~department~~ may issue a permit to  
4 evidence the effectiveness of a notice filing for a federal  
5 covered adviser.

6 (5) A notice filing may be terminated by filing notice  
7 of such termination with the office ~~department~~. Unless  
8 another date is specified by the federal covered adviser, such  
9 notice shall be effective upon its receipt by the office  
10 ~~department~~.

11 (6) All fees collected under this section become the  
12 revenue of the state, except for those assessments provided  
13 for under s. 517.131(1) until such time as the Securities  
14 Guaranty Fund satisfies the statutory limits, and are not  
15 returnable in the event that a notice filing is withdrawn.

16 Section 593. Section 517.1203, Florida Statutes, is  
17 amended to read:

18 517.1203 Allocation and disbursement of assessment  
19 fees.--

20 (1) Notwithstanding s. 517.131(1), an additional  
21 amount equal to 25 percent of all revenues received as  
22 assessment fees pursuant to s. 517.12(10) and (11) from  
23 persons applying for or renewing registrations as associated  
24 persons shall be allocated to the Securities Guaranty Fund and  
25 disbursed as provided in this section. This allocation shall  
26 continue until the office ~~department~~ determines, by final  
27 order, that sufficient funds have been allocated to the  
28 Securities Guaranty Fund pursuant to this section to satisfy  
29 all valid claims filed in accordance with subsection (2) and  
30 until all amounts payable under any service contract entered  
31 into by the office ~~department~~ pursuant to s. 517.1204, and all

1 notes, bonds, certificates of indebtedness, other obligations,  
2 or evidences of indebtedness secured by such notes, bonds,  
3 certificates of indebtedness, or other obligations, have been  
4 paid or provision has been made for the payment of such  
5 amounts, notes, bonds, certificates of indebtedness, other  
6 obligations, or evidences of indebtedness. This assessment fee  
7 shall be part of the regular license fee and shall be  
8 transferred to or deposited into the Securities Guaranty Fund.  
9 The moneys allocated to the Securities Guaranty Fund under  
10 this section shall not be included in the calculation of the  
11 allocation of the assessment fees referred to in s.  
12 517.131(1)(b). Moneys allocated under this section in excess  
13 of the valid claims filed pursuant to subsection (2) shall be  
14 allocated to the Anti-Fraud Trust Fund.

15 (2)(a) Notwithstanding the provisions of ss. 517.131  
16 and 517.141, moneys allocated to the Securities Guaranty Fund  
17 under this section shall be used to pay amounts payable under  
18 any service contract entered into by the office ~~department~~  
19 pursuant to s. 517.1204, subject to annual appropriation by  
20 the Legislature, and to pay investors who have filed claims  
21 with the Department of Banking and Finance after October 1,  
22 1996, and on or before December 31, 1998, who have:

23 1. Received a final judgment against an associated  
24 person of GIC Government Securities, Inc., based upon  
25 allegations which would amount to a violation of s. 517.07 or  
26 s. 517.301; or

27 2. Demonstrated to the former Department of Banking  
28 and Finance or office that the claimant has suffered monetary  
29 damages as a result of the acts or actions of GIC Government  
30 Securities, Inc., or any associated person thereof, based upon  
31

1 allegations which would amount to a violation of s. 517.07 or  
2 s. 517.301.

3 (b)1. Claims shall be paid in the order that they were  
4 ~~have been~~ filed with the former Department of Banking and  
5 Finance, unless the department ~~has~~ noticed its intent to deny  
6 the claim in whole or in part. If a notice of intent to deny  
7 a claim in whole or in part was ~~is~~ issued, the claim shall not  
8 be paid until a final order has been entered which is not  
9 subject to an order staying its effect.

10 2. If at any time the money in the Securities Guaranty  
11 Fund allocated under this section is insufficient to satisfy  
12 any valid claim or portion of a valid claim approved by the  
13 department or office under this section, the office ~~department~~  
14 shall prorate the payment based upon the ratio that the  
15 person's claim bears to the total approved claims filed on the  
16 same day. The office ~~department~~ shall satisfy the unpaid  
17 claims as soon as a sufficient amount of money has been  
18 deposited in or transferred to the fund as provided in this  
19 section.

20 3. A claimant shall not be substantially affected by  
21 the payment of another person's claim.

22 (c) Claims shall be limited to the amount of the  
23 investment, reduced by any amounts received from a bankruptcy  
24 proceeding or from any other source. If an investor is  
25 deceased, the award shall be made to the surviving spouse. If  
26 the investor and surviving spouse are both deceased, the award  
27 shall be made pursuant to the laws of descent and  
28 distribution. Neither the office ~~department~~ nor the Investment  
29 Fraud Restoration Financing Corporation shall make payment to  
30 assignees, secured parties, lien creditors, or other such  
31 entities.

1           (3) In rendering a determination, the office  
2 ~~department~~ may rely on records from the bankruptcy proceeding  
3 regarding GIC Government Securities, Inc., unless there is  
4 good cause to believe that the record is not genuine.

5           (4) Amounts deposited into the Securities Guaranty  
6 Fund pursuant to this section shall be applied to or allocated  
7 for payment of amounts payable by the office ~~department~~  
8 pursuant to paragraph (2)(a), under a service contract entered  
9 into by the office ~~department~~ pursuant to s. 517.1204, subject  
10 to annual appropriation by the Legislature, before making or  
11 providing for any other disbursements from the fund.

12           Section 594. Subsection (2), paragraph (e) of  
13 subsection (3), and subsections (4), (5), and (6) of section  
14 517.1204, Florida Statutes, are amended to read:

15           517.1204 Investment Fraud Restoration Financing  
16 Corporation.--

17           (2) The corporation shall be governed by a board of  
18 directors consisting of the director of the office or his or  
19 her designee ~~assistant comptroller~~, the Secretary of Elderly  
20 Affairs or the secretary's designee, and the executive  
21 director of the Department of Veterans' Affairs or the  
22 executive director's designee. The executive director of the  
23 State Board of Administration shall be the chief executive  
24 officer of the corporation and shall direct and supervise the  
25 administrative affairs of the corporation and shall control,  
26 direct, and supervise the operation of the corporation. The  
27 corporation shall also have such other officers as may be  
28 determined by the board of directors.

29           (3) The corporation shall have all the powers of a  
30 corporate body under the laws of this state to the extent not  
31

1 inconsistent with or restricted by the provisions of this  
2 section, including, but not limited to, the power to:

3 (e) Elect or appoint and employ such officers, agents,  
4 and employees as the corporation deems advisable to operate  
5 and manage the affairs of the corporation, which officers,  
6 agents, and employees may be officers or employees of the  
7 office ~~department~~ and the state agencies represented on the  
8 board of directors of the corporation.

9 (4) The corporation is authorized to enter into one or  
10 more service contracts with the office ~~department~~ pursuant to  
11 which the corporation shall provide services to the office  
12 ~~department~~ in connection with financing the functions and  
13 activities provided for in s. 517.1203. The office ~~department~~  
14 may enter into one or more such service contracts with the  
15 corporation and provide for payments under such contracts  
16 pursuant to s. 517.1203(2)(a), subject to annual appropriation  
17 by the Legislature. The proceeds from such service contracts  
18 may be used for the costs and expenses of administration of  
19 the corporation after payments as set forth in subsection (5).  
20 Each service contract shall have a term not to exceed 15 years  
21 and shall terminate no later than July 1, 2021. The aggregate  
22 amount payable from the Securities Guaranty Fund under all  
23 such service contracts shall not exceed the amount provided by  
24 s. 517.1203(1). In compliance with provisions of s. 287.0641  
25 and other applicable provisions of law, the obligations of the  
26 office ~~department~~ under such service contracts shall not  
27 constitute a general obligation of the state or a pledge of  
28 the faith and credit or taxing power of the state nor shall  
29 such obligations be construed in any manner as an obligation  
30 of the State Board of Administration or entities for which it  
31 invests funds, other than the office ~~department~~ as provided in

1 | this section, but shall be payable solely from amounts  
2 | available in the Securities Guaranty Fund, subject to annual  
3 | appropriation. In compliance with this subsection and s.  
4 | 287.0582, such service contracts shall expressly include the  
5 | following statement: "The State of Florida's performance and  
6 | obligation to pay under this contract is contingent upon an  
7 | annual appropriation by the Legislature."

8 |         (5) The corporation may issue and incur notes, bonds,  
9 | certificates of indebtedness, or other obligations or  
10 | evidences of indebtedness payable from and secured by amounts  
11 | payable to the corporation by the office ~~department~~ under a  
12 | service contract entered into pursuant to subsection (4) for  
13 | the purpose of the simultaneous payment of all claims approved  
14 | pursuant to s. 517.1203. The term of any such note, bond,  
15 | certificate of indebtedness, or other obligation or evidence  
16 | of indebtedness shall not exceed 15 years. The corporation may  
17 | select a financing team and issue obligations through  
18 | competitive bidding or negotiated contracts, whichever is most  
19 | cost-effective. Any such indebtedness of the corporation  
20 | shall not constitute a debt or obligation of the state or a  
21 | pledge of the faith and credit or taxing power of the state,  
22 | but shall be payable from and secured by payments made by the  
23 | office ~~department~~ under the service contract pursuant to  
24 | subsection (4).

25 |         (6) The corporation shall pay all claims approved  
26 | pursuant to s. 517.1203 as determined by and at the direction  
27 | of the office ~~department~~.

28 |         Section 595. Section 517.121, Florida Statutes, is  
29 | amended to read:

30 |             517.121 Books and records requirements;  
31 | examinations.--

1 (1) A dealer, investment adviser, branch office, or  
2 associated person shall maintain such books and records as the  
3 commission ~~department~~ may prescribe by rule.

4 (2) The office ~~department~~ shall, at intermittent  
5 periods, examine the affairs and books and records of each  
6 registered dealer, investment adviser, branch office, or  
7 associated person, or require such records and reports to be  
8 submitted to it as required ~~it may require~~ by rule of the  
9 commission, to determine compliance with this act.

10 Section 596. Paragraph (a) of subsection (1),  
11 paragraphs (b) and (e) of subsection (3), and subsection (4)  
12 of section 517.131, Florida Statutes, are amended to read:

13 517.131 Securities Guaranty Fund.--

14 (1)(a) The Chief Financial Officer ~~Treasurer~~ shall  
15 establish a Securities Guaranty Fund. An amount not exceeding  
16 20 percent of all revenues received as assessment fees  
17 pursuant to s. 517.12(10) and (11) for dealers and investment  
18 advisers or s. 517.1201 for federal covered advisers and an  
19 amount not exceeding 10 percent of all revenues received as  
20 assessment fees pursuant to s. 517.12(10) and (11) for  
21 associated persons shall be allocated to the fund. An  
22 additional amount not exceeding 3.5 percent of all revenues  
23 received as assessment fees for associated persons pursuant to  
24 s. 517.12(10) and (11) shall be allocated to the Securities  
25 Guaranty Fund but only after the office ~~department~~ determines,  
26 by final order, that sufficient funds have been allocated to  
27 the fund pursuant to s. 517.1203 to satisfy all valid claims  
28 filed in accordance with s. 517.1203(2) and after all amounts  
29 payable under any service contract entered into by the office  
30 ~~department~~ pursuant to s. 517.1204, and all notes, bonds,  
31 certificates of indebtedness, other obligations, or evidences

1 of indebtedness secured by such notes, bonds, certificates of  
2 indebtedness, or other obligations, have been paid or  
3 provision has been made for the payment of such amounts,  
4 notes, bonds, certificates of indebtedness, other obligations,  
5 or evidences of indebtedness. This assessment fee shall be  
6 part of the regular license fee and shall be transferred to or  
7 deposited in the Securities Guaranty Fund.

8 (3) Any person is eligible to seek recovery from the  
9 Securities Guaranty Fund if:

10 (b) Such person has made all reasonable searches and  
11 inquiries to ascertain whether the judgment debtor possesses  
12 real or personal property or other assets subject to being  
13 sold or applied in satisfaction of the judgment, and by her or  
14 his search the person has discovered no property or assets; or  
15 she or he has discovered property and assets and has taken all  
16 necessary action and proceedings for the application thereof  
17 to the judgment, but the amount thereby realized was  
18 insufficient to satisfy the judgment. To verify compliance  
19 with such condition, the office ~~department~~ may require such  
20 person to have a writ of execution be issued upon such  
21 judgment and may further require a showing that no personal or  
22 real property of the judgment debtor liable to be levied upon  
23 in complete satisfaction of the judgment can be found.

24 (e) The office ~~department~~ waives compliance with the  
25 requirements of paragraph (a) or paragraph (b). The office  
26 ~~department~~ may waive such compliance if the dealer, investment  
27 adviser, or associated person which is the subject of the  
28 claim filed with the office ~~department~~ is the subject of any  
29 proceeding in which a receiver has been appointed by a court  
30 of competent jurisdiction. If the office ~~department~~ waives  
31 such compliance, the office ~~department~~ may, upon petition by

1 the debtor or the court-appointed trustee, examiner, or  
2 receiver, distribute funds from the Securities Guaranty Fund  
3 up to the amount allowed under s. 517.141. Any waiver granted  
4 pursuant to this section shall be considered a judgment for  
5 purposes of complying with the requirements of this section  
6 and of s. 517.141.

7 (4) Any person who files an action that may result in  
8 the disbursement of funds from the Securities Guaranty Fund  
9 pursuant to the provisions of s. 517.141 shall give written  
10 notice by certified mail to the office ~~department~~ as soon as  
11 practicable after such action has been filed. The failure to  
12 give such notice shall not bar a payment from the Securities  
13 Guaranty Fund if all of the conditions specified in subsection  
14 (3) are satisfied.

15 Section 597. Section 517.141, Florida Statutes, is  
16 amended to read:

17 517.141 Payment from the fund.--

18 (1) Any person who meets all of the conditions  
19 prescribed in s. 517.131 may apply to the office ~~department~~  
20 for payment to be made to such person from the Securities  
21 Guaranty Fund in the amount equal to the unsatisfied portion  
22 of such person's judgment or \$10,000, whichever is less, but  
23 only to the extent and amount reflected in the judgment as  
24 being actual or compensatory damages, excluding costs and  
25 attorney's fees.

26 (2) Regardless of the number of claimants involved,  
27 payments for claims shall be limited in the aggregate to  
28 \$100,000 against any one dealer, investment adviser, or  
29 associated person. If the total claims exceed the aggregate  
30 limit of \$100,000, the office ~~department~~ shall prorate the  
31

1 payment based upon the ratio that the person's claim bears to  
2 the total claims filed.

3 (3) No payment shall be made on any claim against any  
4 one dealer, investment adviser, or associated person before  
5 the expiration of 2 years from the date any claimant is found  
6 by the office ~~department~~ to be eligible for recovery pursuant  
7 to this section. If during this 2-year period more than one  
8 claim is filed against the same dealer, investment adviser, or  
9 associated person, or if the office ~~department~~ receives notice  
10 pursuant to s. 517.131(4) that an action against the same  
11 dealer, investment adviser, or associated person is pending,  
12 all such claims and notices of pending claims received during  
13 this period against the same dealer, investment adviser, or  
14 associated person may be handled by the office ~~department~~ as  
15 provided in this section. Two years after the first claimant  
16 against that same dealer, investment adviser, or associated  
17 person applies for payment pursuant to this section:

18 (a) The office ~~department~~ shall determine those  
19 persons eligible for payment or for potential payment in the  
20 event of a pending action. All such persons may be entitled  
21 to receive their pro rata shares of the fund as provided in  
22 this section.

23 (b) Those persons who meet all the conditions  
24 prescribed in s. 517.131 and who have applied for payment  
25 pursuant to this section will be entitled to receive their pro  
26 rata shares of the total disbursement.

27 (c) Those persons who have filed notice with the  
28 office ~~department~~ of a pending claim pursuant to s. 517.131(4)  
29 but who are not yet eligible for payment from the fund will be  
30 entitled to receive their pro rata shares of the total  
31 disbursement once they have complied with subsection (1).

1 However, in the event that the amounts they are eligible to  
2 receive pursuant to subsection (1) are less than their pro  
3 rata shares as determined under this section, any excess shall  
4 be distributed pro rata to those persons entitled to  
5 disbursement under this subsection whose pro rata shares of  
6 the total disbursement were less than the amounts of their  
7 claims.

8 (4) Individual claims filed by persons owning the same  
9 joint account, or claims stemming from any other type of  
10 account maintained by a particular licensee on which more than  
11 one name appears, shall be treated as the claims of one  
12 eligible claimant with respect to payment from the fund. If a  
13 claimant who has obtained a judgment which qualifies for  
14 disbursement under s. 517.131 has maintained more than one  
15 account with the dealer, investment adviser, or associated  
16 person who is the subject of the claims, for purposes of  
17 disbursement of the fund, all such accounts, whether joint or  
18 individual, shall be considered as one account and shall  
19 entitle such claimant to only one distribution from the fund  
20 not to exceed the lesser of \$10,000 or the unsatisfied portion  
21 of such claimant's judgment as provided in subsection (1). To  
22 the extent that a claimant obtains more than one judgment  
23 against a dealer, investment adviser, or one or more  
24 associated persons arising out of the same transactions,  
25 occurrences, or conduct or out of the dealer's, investment  
26 adviser's, or associated person's handling of the claimant's  
27 account, such judgments shall be consolidated for purposes of  
28 this section and shall entitle the claimant to only one  
29 disbursement from the fund not to exceed the lesser of \$10,000  
30 or the unsatisfied portion of such claimant's judgment as  
31 provided in subsection (1).

1           (5) If the final judgment which gave rise to the claim  
2 is overturned in any appeal or in any collateral proceeding,  
3 the claimant shall reimburse the fund all amounts paid to the  
4 claimant on the claim. Such reimbursement shall be paid to  
5 the office ~~department~~ within 60 days after the final  
6 resolution of the appellate or collateral proceedings, with  
7 the 60-day period commencing on the date the final order or  
8 decision is entered in such proceedings.

9           (6) If a claimant receives payments in excess of that  
10 which is permitted under this chapter, the claimant shall  
11 reimburse the fund such excess within 60 days after the  
12 claimant receives such excess payment or after the payment is  
13 determined to be in excess of that permitted by law, whichever  
14 is later.

15           (7) The office ~~department~~ may institute legal  
16 proceedings to enforce compliance with this section and with  
17 s. 517.131 to recover moneys owed to the fund, and shall be  
18 entitled to recover interest, costs, and attorney's fees in  
19 any action brought pursuant to this section in which the  
20 office ~~department~~ prevails.

21           (8) If at any time the money in the Securities  
22 Guaranty Fund is insufficient to satisfy any valid claim or  
23 portion of a valid claim approved by the office ~~department~~,  
24 the office ~~department~~ shall satisfy such unpaid claim or  
25 portion of such valid claim as soon as a sufficient amount of  
26 money has been deposited in or transferred to the fund. When  
27 there is more than one unsatisfied claim outstanding, such  
28 claims shall be paid in the order in which the claims were  
29 approved by final order of the office ~~department~~, which order  
30 is not subject to an appeal or other pending proceeding.

31

1           (9) Upon receipt by the claimant of the payment from  
2 the Securities Guaranty Fund, the claimant shall assign any  
3 additional right, title, and interest in the judgment, to the  
4 extent of such payment, to the office ~~department~~. If the  
5 provisions of s. 517.131(3)(e) apply, the claimant must assign  
6 to the office ~~department~~ any right, title, and interest in the  
7 debt to the extent of any payment by the office ~~department~~  
8 from the Securities Guaranty Fund.

9           (10) All payments and disbursements made from the  
10 Securities Guaranty Fund shall be made by the Chief Financial  
11 Officer ~~Treasurer~~ upon authorization ~~a voucher~~ signed by the  
12 director of the office ~~Comptroller, as head of the department,~~  
13 or such agent as she or he may designate.

14           Section 598. Section 517.151, Florida Statutes, is  
15 amended to read:

16           517.151 Investments of the fund.--The funds of the  
17 Securities Guaranty Fund shall be invested by the Chief  
18 Financial Officer ~~Treasurer~~ under the same limitations as  
19 other state funds, and the interest earned thereon shall be  
20 deposited to the credit of the fund and available for the same  
21 purpose as other moneys deposited in the Securities Guaranty  
22 Fund.

23           Section 599. Subsection (1), (3), and (5), and  
24 paragraph (b) of subsection (6) of section 517.161, Florida  
25 Statutes, are amended to read:

26           517.161 Revocation, denial, or suspension of  
27 registration of dealer, investment adviser, associated person,  
28 or branch office.--

29           (1) Registration under s. 517.12 may be denied or any  
30 registration granted may be revoked, restricted, or suspended

31

1 by the office ~~department~~ if the office ~~department~~ determines  
2 that such applicant or registrant:  
3       (a) Has violated any provision of this chapter or any  
4 rule or order made under this chapter;  
5       (b) Has made a material false statement in the  
6 application for registration;  
7       (c) Has been guilty of a fraudulent act in connection  
8 with rendering investment advice or in connection with any  
9 sale of securities, has been or is engaged or is about to  
10 engage in making fictitious or pretended sales or purchases of  
11 any such securities or in any practice involving the rendering  
12 of investment advice or the sale of securities which is  
13 fraudulent or in violation of the law;  
14       (d) Has made a misrepresentation or false statement  
15 to, or concealed any essential or material fact from, any  
16 person in the rendering of investment advice or the sale of a  
17 security to such person;  
18       (e) Has failed to account to persons interested for  
19 all money and property received;  
20       (f) Has not delivered, after a reasonable time, to  
21 persons entitled thereto securities held or agreed to be  
22 delivered by the dealer, broker, or investment adviser, as and  
23 when paid for, and due to be delivered;  
24       (g) Is rendering investment advice or selling or  
25 offering for sale securities through any associated person not  
26 registered in compliance with the provisions of this chapter;  
27       (h) Has demonstrated unworthiness to transact the  
28 business of dealer, investment adviser, or associated person;  
29       (i) Has exercised management or policy control over or  
30 owned 10 percent or more of the securities of any dealer or  
31 investment adviser that has been declared bankrupt, or had a

1 trustee appointed under the Securities Investor Protection  
2 Act; or is, in the case of a dealer or investment adviser,  
3 insolvent;

4 (j) Has been convicted of, or has entered a plea of  
5 guilty or nolo contendere to, a crime against the laws of this  
6 state or any other state or of the United States or of any  
7 other country or government which relates to registration as a  
8 dealer, investment adviser, issuer of securities, associated  
9 person, or branch office; which relates to the application for  
10 such registration; or which involves moral turpitude or  
11 fraudulent or dishonest dealing;

12 (k) Has had a final judgment entered against her or  
13 him in a civil action upon grounds of fraud, embezzlement,  
14 misrepresentation, or deceit;

15 (l) Is of bad business repute; or

16 (m) Has been the subject of any decision, finding,  
17 injunction, suspension, prohibition, revocation, denial,  
18 judgment, or administrative order by any court of competent  
19 jurisdiction, administrative law judge, or by any state or  
20 federal agency, national securities, commodities, or option  
21 exchange, or national securities, commodities, or option  
22 association, involving a violation of any federal or state  
23 securities or commodities law or any rule or regulation  
24 promulgated thereunder, or any rule or regulation of any  
25 national securities, commodities, or options exchange or  
26 national securities, commodities, or options association, or  
27 has been the subject of any injunction or adverse  
28 administrative order by a state or federal agency regulating  
29 banking, insurance, finance or small loan companies, real  
30 estate, mortgage brokers, or other related or similar  
31 industries. For purposes of this subsection, the office

1 ~~department~~ may not deny registration to any applicant who has  
2 been continuously registered with the office department for 5  
3 years from the entry of such decision, finding, injunction,  
4 suspension, prohibition, revocation, denial, judgment, or  
5 administrative order provided such decision, finding,  
6 injunction, suspension, prohibition, revocation, denial,  
7 judgment, or administrative order has been timely reported to  
8 the office department pursuant to the commission's  
9 ~~department's~~ rules and regulations.

10 (3) In the event the office department determines to  
11 deny an application or revoke a registration, it shall enter a  
12 final order with its findings on the register of dealers and  
13 associated persons; and denial, suspension, or revocation of  
14 the registration of a dealer or investment adviser shall also  
15 deny, suspend, or revoke the registration of all her or his  
16 associated persons.

17 (5) The office department may deny any request to  
18 terminate or withdraw any application or registration if the  
19 office department believes that an act which would be a ground  
20 for denial, suspension, restriction, or revocation under this  
21 chapter has been committed.

22 (6) Registration under s. 517.12 may be denied or any  
23 registration granted may be suspended or restricted if an  
24 applicant or registrant is charged, in a pending enforcement  
25 action or pending criminal prosecution, with any conduct that  
26 would authorize denial or revocation under subsection (1).

27 (b) Any order of suspension or restriction under this  
28 subsection shall:

29 1. Take effect only after a hearing, unless no hearing  
30 is requested by the registrant or unless the suspension or  
31 restriction is made in accordance with s. 120.60(6).

1           2. Contain a finding that evidence of a prima facie  
2 case supports the charge made in the enforcement action or  
3 criminal prosecution.

4           3. Operate for no longer than 10 days beyond receipt  
5 of notice by the office ~~department~~ of termination with respect  
6 to the registrant of the enforcement action or criminal  
7 prosecution.

8           Section 600. Section 517.181, Florida Statutes, is  
9 amended to read:

10           517.181 Escrow agreement.--

11           (1) If the statement containing information as to  
12 securities to be registered, as provided for in s. 517.081,  
13 shall disclose that any such securities or any securities  
14 senior thereto shall have been or shall be intended to be  
15 issued for any patent right, copyright, trademark, process,  
16 formula, or goodwill; for organization or promotion fees or  
17 expenses; or for goodwill or going-concern value or other  
18 intangible assets, then the amount and nature thereof shall be  
19 fully set forth, and the office ~~department~~ may require that  
20 such securities so issued in payment of such patent right,  
21 copyright, trademark, process, formula, or goodwill; for  
22 organization or promotion fees or expenses; or for other  
23 intangible assets shall be delivered in escrow to the office  
24 ~~department~~ or other depository satisfactory to the office  
25 ~~department~~ under an escrow agreement. The escrow agreement  
26 shall be in a form suitable to the office ~~department~~ and shall  
27 provide for the escrow or impoundment of such securities for a  
28 reasonable length of time determined by the office ~~department~~  
29 to be in the best interest of other shareholders. The  
30 securities subject to escrow shall also include any dividend,  
31 cash, or stock that may be paid during the life of the escrow

1 and any stock issued through, or by reason of, any stock  
2 split, exchange of shares, recapitalization, merger,  
3 consolidation, reorganization, or similar combination or  
4 subdivision in substitution for or in lieu of any stock  
5 subject to this provision; and in case of dissolution or  
6 insolvency during the time such securities are held in escrow,  
7 the owners of such securities shall not participate in the  
8 assets until after the owners of all other securities shall  
9 have been paid in full.

10 (2) Any securities held in escrow under this section  
11 on November 1, 1978, may be released to the owners thereof  
12 upon request, if satisfactory financial data is submitted to  
13 the office ~~department~~ showing that the issuer is currently  
14 operating on sound business principles and has net income in  
15 accordance with criteria-implementing rules of the commission  
16 ~~department~~ relating to escrow of securities. At any time, the  
17 office ~~department~~ may review any existing escrow agreement  
18 made under this section and determine that the same may be  
19 amended in order to permit a subsequent release of the  
20 securities upon terms and conditions which are just and  
21 equitable as defined by said rules.

22 (3) When it shall appear from information available to  
23 the office ~~department~~ that the issuer of securities held in  
24 escrow has been dissolved or disbanded or is defunct or no  
25 longer actively engaged in business and such securities are of  
26 no value, the office ~~department~~, after giving at least 60  
27 days' notice in at least one newspaper of general circulation  
28 and after giving interested parties opportunity for hearing,  
29 may enter its order authorizing the destruction of said  
30 securities. Any affected escrow agent may rely on such order

31

1 and shall not be required to determine the validity or  
2 sufficiency thereof.

3 Section 601. Section 517.191, Florida Statutes, is  
4 amended to read:

5 517.191 Injunction to restrain violations.--

6 (1) When it appears ~~shall appear~~ to the office  
7 ~~department~~, either upon complaint or otherwise, that a person  
8 has engaged or is about to engage in any act or practice  
9 constituting a violation of this chapter or a rule or order  
10 hereunder, the office ~~department~~ may investigate; and whenever  
11 it shall believe from evidence satisfactory to it that any  
12 such person has engaged, is engaged, or is about to engage in  
13 any act or practice constituting a violation of this chapter  
14 or a rule or order hereunder, the office ~~department~~ may, in  
15 addition to any other remedies, bring action in the name and  
16 on behalf of the state against such person and any other  
17 person concerned in or in any way participating in or about to  
18 participate in such practices or engaging therein or doing any  
19 act or acts in furtherance thereof or in violation of this  
20 chapter to enjoin such person or persons from continuing such  
21 fraudulent practices or engaging therein or doing any act or  
22 acts in furtherance thereof or in violation of this chapter.  
23 In any such court proceedings, the office ~~department~~ may apply  
24 for, and on due showing be entitled to have issued, the  
25 court's subpoena requiring forthwith the appearance of any  
26 defendant and her or his employees, associated persons, or  
27 agents and the production of documents, books, and records  
28 that may appear necessary for the hearing of such petition, to  
29 testify or give evidence concerning the acts or conduct or  
30 things complained of in such application for injunction. In  
31 such action, the equity courts shall have jurisdiction of the

1 subject matter, and a judgment may be entered awarding such  
2 injunction as may be proper.

3 (2) In addition to all other means provided by law for  
4 the enforcement of any temporary restraining order, temporary  
5 injunction, or permanent injunction issued in any such court  
6 proceedings, the court shall have the power and jurisdiction,  
7 upon application of the office ~~department~~, to impound and to  
8 appoint a receiver or administrator for the property, assets,  
9 and business of the defendant, including, but not limited to,  
10 the books, records, documents, and papers appertaining  
11 thereto. Such receiver or administrator, when appointed and  
12 qualified, shall have all powers and duties as to custody,  
13 collection, administration, winding up, and liquidation of  
14 said property and business as shall from time to time be  
15 conferred upon her or him by the court. In any such action,  
16 the court may issue orders and decrees staying all pending  
17 suits and enjoining any further suits affecting the receiver's  
18 or administrator's custody or possession of the said property,  
19 assets, and business or, in its discretion, may with the  
20 consent of the presiding judge of the circuit require that all  
21 such suits be assigned to the circuit court judge appointing  
22 the said receiver or administrator.

23 (3) In addition to any other remedies provided by this  
24 chapter, the office ~~department~~ may apply to the court hearing  
25 this matter for an order of restitution whereby the defendants  
26 in such action shall be ordered to make restitution of those  
27 sums shown by the office ~~department~~ to have been obtained by  
28 them in violation of any of the provisions of this chapter.  
29 Such restitution shall, at the option of the court, be payable  
30 to the administrator or receiver appointed pursuant to this  
31

1 section or directly to the persons whose assets were obtained  
2 in violation of this chapter.

3 Section 602. Section 517.201, Florida Statutes, is  
4 amended to read:

5 517.201 Investigations; examinations; subpoenas;  
6 hearings; witnesses.--

7 (1) The office ~~department~~:

8 (a) May make investigations and examinations within or  
9 outside of this state as it deems necessary:

10 1. To determine whether a person has violated or is  
11 about to violate any provision of this chapter or a rule or  
12 order hereunder; or

13 2. To aid in the enforcement of this chapter.

14 (b) May require or permit a person to file a statement  
15 in writing, under oath or otherwise as the office ~~department~~  
16 determines, as to all the facts and circumstances concerning  
17 the matter to be investigated.

18 (2) When it is proposed to conduct an investigation or  
19 examination, the office ~~department~~ may gather evidence in the  
20 matter. The office ~~department~~ may administer oaths, examine  
21 witnesses, and issue subpoenas.

22 (3) Subpoenas for witnesses whose evidence is deemed  
23 material to any investigation or examination may be issued by  
24 the office ~~department~~ under the seal of the office ~~department~~,  
25 or by any county court judge or clerk of the circuit court or  
26 county court, commanding such witnesses to be or appear before  
27 the office ~~department~~ at a time and place to be therein named  
28 and to bring such books, records, and documents as may be  
29 specified or to submit such books, records, and documents to  
30 inspection; and such subpoenas may be served by an authorized  
31 representative of the office ~~department~~.

1           (4)(a) In the event of substantial noncompliance with  
2 a subpoena or subpoena duces tecum issued or caused to be  
3 issued by the office ~~department~~ pursuant to this section, the  
4 office ~~department~~ may petition the circuit court of the county  
5 in which the person subpoenaed resides or has its principal  
6 place of business for an order requiring the subpoenaed person  
7 to appear and testify and to produce such books, records, and  
8 documents as are specified in such subpoena duces tecum. The  
9 court may grant injunctive relief restraining the issuance,  
10 sale or offer for sale, purchase or offer to purchase,  
11 promotion, negotiation, advertisement, or distribution in or  
12 from offices in this state of securities or investments by a  
13 person or agent, employee, broker, partner, officer, director,  
14 or stockholder thereof, and may grant such other relief,  
15 including, but not limited to, the restraint, by injunction or  
16 appointment of a receiver, of any transfer, pledge,  
17 assignment, or other disposition of such person's assets or  
18 any concealment, alteration, destruction, or other disposition  
19 of subpoenaed books, records, or documents, as the court deems  
20 appropriate, until such person has fully complied with such  
21 subpoena or subpoena duces tecum and the office ~~department~~ has  
22 completed its investigation or examination. The office  
23 ~~department~~ is entitled to the summary procedure provided in s.  
24 51.011, and the court shall advance the cause on its calendar.  
25 Costs incurred by the office ~~department~~ to obtain an order  
26 granting, in whole or in part, such petition for enforcement  
27 of a subpoena or subpoena duces tecum shall be taxed against  
28 the subpoenaed person, and failure to comply with such order  
29 shall be a contempt of court.

30           (b) When it shall appear to the office ~~department~~ that  
31 the compliance with a subpoena or subpoena duces tecum issued

1 or caused to be issued by the office ~~department~~ pursuant to  
2 this section is essential and otherwise unavailable to an  
3 investigation or examination, the office ~~department~~, in  
4 addition to the other remedies provided for herein, may, by  
5 verified petition setting forth the facts, apply to the  
6 circuit court of the county in which the subpoenaed person  
7 resides or has its principal place of business for a writ of  
8 ne exeat. The court shall thereupon direct the issuance of  
9 the writ against the subpoenaed person requiring sufficient  
10 bond conditioned on compliance with the subpoena or subpoena  
11 duces tecum. The court shall cause to be endorsed on the writ  
12 a suitable amount of bond on payment of which the person named  
13 in the writ shall be freed, having a due regard to the nature  
14 of the case.

15 (5) Witnesses shall be entitled to the same fees and  
16 mileage as they may be entitled by law for attending as  
17 witnesses in the circuit court, except where such examination  
18 or investigation is held at the place of business or residence  
19 of the witness.

20 Section 603. Subsections (1) and (3) of section  
21 517.2015, Florida Statutes, are amended to read:

22 517.2015 Confidentiality of information relating to  
23 investigations and examinations.--

24 (1)(a) Except as otherwise provided by this section,  
25 information relative to an investigation or examination by the  
26 office ~~department~~ pursuant to this chapter, including any  
27 consumer complaint, is confidential and exempt from s.  
28 119.07(1) until the investigation or examination is completed  
29 or ceases to be active. The information compiled by the office  
30 ~~department~~ in such an investigation or examination shall  
31 remain confidential and exempt from s. 119.07(1) after the

1 office's ~~department's~~ investigation or examination is  
2 completed or ceases to be active if the office ~~department~~  
3 submits the information to any law enforcement or  
4 administrative agency or regulatory organization for further  
5 investigation. Such information shall remain confidential and  
6 exempt from s. 119.07(1) until that agency's or organization's  
7 investigation is completed or ceases to be active. For  
8 purposes of this section, an investigation or examination  
9 shall be considered "active" so long as the office ~~department~~  
10 or any law enforcement or administrative agency or regulatory  
11 organization is proceeding with reasonable dispatch and has a  
12 reasonable good faith belief that the investigation or  
13 examination may lead to the filing of an administrative,  
14 civil, or criminal proceeding or to the denial or conditional  
15 grant of a license, registration, or permit. This section  
16 shall not be construed to prohibit disclosure of information  
17 which is required by law to be filed with the office  
18 ~~department~~ and which, but for the investigation or  
19 examination, would be subject to s. 119.07(1).

20 (b) Except as necessary for the office ~~department~~ to  
21 enforce the provisions of this chapter, a consumer complaint  
22 and other information relative to an investigation or  
23 examination shall remain confidential and exempt from s.  
24 119.07(1) after the investigation or examination is completed  
25 or ceases to be active to the extent disclosure would:

- 26 1. Jeopardize the integrity of another active  
27 investigation or examination.
- 28 2. Reveal the name, address, telephone number, social  
29 security number, or any other identifying number or  
30 information of any complainant, customer, or account holder.
- 31 3. Disclose the identity of a confidential source.

1           4. Disclose investigative techniques or procedures.

2           5. Reveal a trade secret as defined in s. 688.002.

3           (c) In the event that office ~~department~~ personnel are  
4 or have been involved in an investigation or examination of  
5 such nature as to endanger their lives or physical safety or  
6 that of their families, then the home addresses, telephone  
7 numbers, places of employment, and photographs of such  
8 personnel, together with the home addresses, telephone  
9 numbers, photographs, and places of employment of spouses and  
10 children of such personnel and the names and locations of  
11 schools and day care facilities attended by the children of  
12 such personnel are confidential and exempt from s. 119.07(1).

13           (d) Nothing in this section shall be construed to  
14 prohibit the office ~~department~~ from providing information to  
15 any law enforcement or administrative agency or regulatory  
16 organization. Any law enforcement or administrative agency or  
17 regulatory organization receiving confidential information in  
18 connection with its official duties shall maintain the  
19 confidentiality of the information so long as it would  
20 otherwise be confidential.

21           (e) All information obtained by the office ~~department~~  
22 from any person which is only made available to the office  
23 ~~department~~ on a confidential or similarly restricted basis  
24 shall be confidential and exempt from s. 119.07(1). This  
25 exemption shall not be construed to prohibit disclosure of  
26 information which is required by law to be filed with the  
27 office ~~department~~ or which is otherwise subject to s.  
28 119.07(1).

29           (3) A privilege against civil liability is granted to  
30 a person who furnishes information or evidence to the office  
31

1 ~~department~~, unless such person acts in bad faith or with  
2 malice in providing such information or evidence.

3 Section 604. Section 517.221, Florida Statutes, is  
4 amended to read:

5 517.221 Cease and desist orders.--

6 (1) The office ~~department~~ may issue and serve upon a  
7 person a cease and desist order whenever the office ~~department~~  
8 has reason to believe that such person is violating, has  
9 violated, or is about to violate any provision of this  
10 chapter, any rule or order promulgated by the commission or  
11 office ~~department~~, or any written agreement entered into with  
12 the office ~~department~~.

13 (2) Whenever the office ~~department~~ finds that conduct  
14 described in subsection (1) presents an immediate danger to  
15 the public requiring an immediate final order, it may issue an  
16 emergency cease and desist order reciting with particularity  
17 the facts underlying such findings. The emergency cease and  
18 desist order is effective immediately upon service of a copy  
19 of the order on the respondent named therein and remains  
20 effective for 90 days. If the office ~~department~~ begins  
21 nonemergency cease and desist proceedings under subsection  
22 (1), the emergency cease and desist order remains effective  
23 until conclusion of the proceedings under ss. 120.569 and  
24 120.57.

25 (3) The office ~~department~~ may impose and collect an  
26 administrative fine against any person found to have violated  
27 any provision of this chapter, any rule or order promulgated  
28 by the commission or office ~~department~~, or any written  
29 agreement entered into with the office ~~department~~ in an amount  
30 not to exceed \$5,000 for each such violation. All fines

31

1 collected hereunder shall be deposited as received in the  
2 Anti-Fraud Trust Fund.

3 Section 605. Subsection (1) of section 517.241,  
4 Florida Statutes, is amended to read:

5 517.241 Remedies.--

6 (1) Any person aggrieved by a final order of the  
7 office ~~department~~ may have the order reviewed as provided by  
8 chapter 120, the Administrative Procedure Act.

9 Section 606. Paragraph (c) of subsection (1) and  
10 paragraph (b) of subsection (2) of section 517.301, Florida  
11 Statutes, are amended to read:

12 517.301 Fraudulent transactions; falsification or  
13 concealment of facts.--

14 (1) It is unlawful and a violation of the provisions  
15 of this chapter for a person:

16 (c) In any matter within the jurisdiction of the  
17 office ~~department~~, to knowingly and willfully falsify,  
18 conceal, or cover up, by any trick, scheme, or device, a  
19 material fact, make any false, fictitious, or fraudulent  
20 statement or representation, or make or use any false writing  
21 or document, knowing the same to contain any false,  
22 fictitious, or fraudulent statement or entry.

23 (2) For purposes of ss. 517.311 and 517.312 and this  
24 section, the term "investment" means any commitment of money  
25 or property principally induced by a representation that an  
26 economic benefit may be derived from such commitment, except  
27 that the term "investment" does not include a commitment of  
28 money or property for:

29 (b) The purchase of tangible personal property through  
30 a person not engaged in telephone solicitation, where said  
31

1 property is offered and sold in accordance with the following  
2 conditions:

3 1. There are no specific representations or guarantees  
4 made by the offeror or seller as to the economic benefit to be  
5 derived from the purchase;

6 2. The tangible property is delivered to the purchaser  
7 within 30 days after sale, except that such 30-day period may  
8 be extended by the office ~~department~~ if market conditions so  
9 warrant; and

10 3. The seller has offered the purchaser a full refund  
11 policy in writing, exercisable by the purchaser within 10 days  
12 of the date of delivery of such tangible personal property,  
13 except that the amount of such refund in no event shall exceed  
14 the bid price in effect at the time the property is returned  
15 to the seller. If the applicable sellers' market is closed at  
16 the time the property is returned to the seller for a refund,  
17 the amount of such refund shall be based on the bid price for  
18 such property at the next opening of such market.

19 Section 607. Subsection (3) of section 517.302,  
20 Florida Statutes, is amended to read:

21 517.302 Criminal penalties; alternative fine;  
22 Anti-Fraud Trust Fund; time limitation for criminal  
23 prosecution.--

24 (3) In lieu of a fine otherwise authorized by law, a  
25 person who has been convicted of or who has pleaded guilty or  
26 no contest to having engaged in conduct in violation of the  
27 provisions of this chapter may be sentenced to pay a fine that  
28 does not exceed the greater of three times the gross value  
29 gained or three times the gross loss caused by such conduct,  
30 plus court costs and the costs of investigation and  
31 prosecution reasonably incurred.

1           (a) There is created within the office ~~department~~ a  
2 trust fund to be known as the Anti-Fraud Trust Fund. Any  
3 amounts assessed as costs of investigation and prosecution  
4 under this subsection shall be deposited in the trust fund.  
5 Funds deposited in such trust fund shall be used, when  
6 authorized by appropriation, for investigation and prosecution  
7 of administrative, civil, and criminal actions arising under  
8 the provisions of this chapter. Funds may also be used to  
9 improve the public's awareness and understanding of prudent  
10 investing.

11           (b) The office ~~department~~ shall report to the  
12 Executive Office of the Governor annually by November 15, the  
13 amounts deposited into the Anti-Fraud Trust Fund during the  
14 previous fiscal year. The Executive Office of the Governor  
15 shall distribute these reports to the President of the Senate  
16 and the Speaker of the House of Representatives.

17           Section 608. Subsections (1) and (2) of section  
18 517.313, Florida Statutes, are amended to read:

19           517.313 Destroying certain records; reproduction.--

20           (1) The commission and office may ~~department is~~  
21 ~~authorized to~~ photograph, microphotograph, or reproduce on  
22 film or prints documents, records, data, and information of a  
23 permanent character.

24           (2) The commission and office may ~~department is~~  
25 ~~authorized to~~ destroy any of said documents after audit ~~of the~~  
26 ~~office~~ has been completed for the period embracing the dates  
27 of said instruments, after complying with the provisions of  
28 chapter 119.

29           Section 609. Section 517.315, Florida Statutes, is  
30 amended to read:

31

1           517.315 Fees.--All fees and charges of any nature  
2 collected by the office ~~department~~ pursuant to this chapter,  
3 except the fees and charges collected pursuant to s. 517.131,  
4 shall be paid into the State Treasury and credited to the  
5 General Revenue Fund; and an appropriation shall be made  
6 annually of necessary funds for the administration of the  
7 provisions of this chapter.

8           Section 610. Section 517.32, Florida Statutes, is  
9 amended to read:

10           517.32 Exemption from excise tax, certain obligations  
11 to pay.--There shall be exempt from all excise taxes imposed  
12 by chapter 201 all promissory notes, nonnegotiable notes, and  
13 other written obligations to pay money bearing dates  
14 subsequent to July 1, 1957, when the maker thereof is a  
15 security dealer registered by the office ~~department~~ under this  
16 chapter and when such promissory note, nonnegotiable note or  
17 notes, or other written obligation to pay money shall be for  
18 the duration of 30 days or less and secured by pledge or  
19 deposit, as collateral security for the payment thereof,  
20 security or securities as defined in s. 517.021, provided all  
21 excise taxes imposed by chapter 201 shall have been paid upon  
22 such collateral security.

23           Section 611. Paragraph (b) of subsection (1) of  
24 section 518.115, Florida Statutes, is amended to read:

25           518.115 Power of fiduciary or custodian to deposit  
26 securities in a central depository.--

27           (1)

28           (b) A bank or a trust company so depositing securities  
29 with a clearing corporation shall be subject to such rules and  
30 regulations with respect to the making and maintenance of such  
31 deposit as, in the case of state-chartered institutions, the

1 Financial Services Commission ~~Department of Banking and~~  
2 ~~Finance~~ and, in the case of national banking associations, the  
3 Comptroller of the Currency may from time to time issue.

4 Section 612. Paragraph (b) of subsection (1) of  
5 section 518.116, Florida Statutes, is amended to read:

6 518.116 Power of certain fiduciaries and custodians to  
7 deposit United States Government and agency securities with a  
8 Federal Reserve bank.--

9 (1)

10 (b) A bank or trust company so depositing securities  
11 with a Federal Reserve Bank shall be subject to such rules and  
12 regulations with respect to the making and maintenance of such  
13 deposits as, in the case of state-chartered institutions, the  
14 Financial Services Commission ~~Department of Banking and~~  
15 ~~Finance~~ and, in the case of national banking associations, the  
16 Comptroller of the Currency may from time to time issue. The  
17 records of such bank or trust company shall at all times show  
18 the ownership of the securities held in such account.

19 Section 613. Section 518.15, Florida Statutes, is  
20 amended to read:

21 518.15 Bonds or motor vehicle tax anticipation  
22 certificates legal investments and security.--Notwithstanding  
23 any restrictions on investments contained in any law of this  
24 state, the state and all public officers, municipal  
25 corporations, political subdivisions, and public bodies, all  
26 banks, bankers, trust companies, savings banks, building and  
27 loan associations, savings and loan associations, investment  
28 companies, and all persons carrying on an insurance business,  
29 and all executors, administrators, guardians, trustees, and  
30 other fiduciaries may legally invest any sinking funds, moneys  
31 or other funds belonging to them or within their control in

1 bonds or motor vehicle anticipation certificates issued under  
2 authority of s. 18, Art. XII of the State Constitution of 1885  
3 as adopted by s. 9(d) of Art. XII, 1968 revised constitution,  
4 and the additional provisions of s. 9(d), and such bonds or  
5 certificates shall be authorized security for all public  
6 deposits, including, but not restricted to, deposits as  
7 authorized in s. 17.57 ~~s. 18.10~~, it being the purpose of this  
8 act to authorize any person, firm or corporation, association,  
9 political subdivision, body, and officer, public or private,  
10 to use any funds owned or controlled by them, including, but  
11 not limited to, sinking, insurance, investment, retirement,  
12 compensation, pension, and trust funds, and funds held on  
13 deposit, for the purchase of any such bonds or anticipation  
14 certificates, up to the amount as authorized by law to be  
15 invested in any type of security, including United States  
16 Government Bonds.

17 Section 614. Section 518.151, Florida Statutes, is  
18 amended to read:

19 518.151 Higher education bonds or certificates legal  
20 investments and security.--Notwithstanding any restrictions on  
21 investments contained in any law of this state, the state and  
22 all public officers, municipal corporations, political  
23 subdivisions, and public bodies, all banks, bankers, trust  
24 companies, savings banks, building and loan associations,  
25 savings and loan associations, investment companies, and all  
26 persons carrying on an insurance business, and all executors,  
27 administrators, guardians, trustees, and other fiduciaries may  
28 legally invest any sinking funds, moneys or other funds  
29 belonging to them or within their control in higher education  
30 bonds or certificates issued under authority of s. 19, Art.  
31 XII of the State Constitution of 1885 or of s. 9(a), Art. XII

1 of the constitution as revised in 1968, as amended, and such  
2 bonds or certificates shall be authorized security for all  
3 public deposits, including, but not restricted to, deposits as  
4 authorized in s. 17.57 ~~s. 18.10~~, it being the purpose of this  
5 act to authorize any person, firm or corporation, association,  
6 political subdivision, body, and officer, public or private,  
7 to use any funds owned or controlled by them, including, but  
8 not limited to, sinking, insurance, investment, retirement,  
9 compensation, pension, and trust funds, and funds held on  
10 deposit, for the purchase of any such bonds or certificates,  
11 up to the amount as authorized by law to be invested in any  
12 type of security, including United States Government Bonds.

13 Section 615. Section 518.152, Florida Statutes, is  
14 amended to read:

15 518.152 Puerto Rican bonds or obligations, legal  
16 investments and securities.--Notwithstanding any restrictions  
17 on investments contained in any law of this state, all public  
18 officers and public bodies of the state, counties, municipal  
19 corporations, and other political subdivisions; all banks,  
20 bankers, trust companies, savings banks, building and loan  
21 associations, savings and loan associations, investment  
22 companies, and other persons carrying on a banking business;  
23 all insurance companies, insurance associations and other  
24 persons carrying on an insurance business; all persons holding  
25 in trust any pension, health and welfare, and vacation funds;  
26 all administrators, executors, guardians, trustees, and other  
27 fiduciaries of any public, quasi-public, or private fund or  
28 estate; and all other persons authorized to invest in bonds or  
29 other obligations may legally invest any sinking funds,  
30 moneys, or other funds belonging to them or within their  
31 control in bonds or other obligations issued by the

1 Commonwealth of Puerto Rico, its agencies, authorities,  
2 instrumentalities, municipalities, or political subdivisions,  
3 provided such agency, authority, instrumentality,  
4 municipality, or political subdivision has not, within 5 years  
5 prior to the making of such investment, defaulted for more  
6 than 90 days in the payment of any part of the principal or  
7 interest of its bonded indebtedness. Such bonds or  
8 obligations shall be authorized security for all public  
9 deposits, including, but not restricted to, deposits as  
10 authorized in s. 17.57 ~~s. 18.10~~, it being the purpose of this  
11 section to authorize any person, firm, corporation,  
12 association, political subdivision, body, and officer, public  
13 or private, to use any funds owned or controlled by them,  
14 including, but not limited to, sinking, insurance, investment,  
15 retirement, compensation, pension and trust funds, and funds  
16 held on deposit, for the purchase of any such bonds or  
17 obligations up to the amount as authorized by law to be  
18 invested in any type of security, including United States  
19 Government Bonds. However, nothing contained in this section  
20 shall be construed as relieving any person from any duty of  
21 exercising reasonable care in selecting securities.

22 Section 616. Section 519.101, Florida Statutes, is  
23 amended to read:

24 519.101 Florida equity exchange feasibility study;  
25 structure, operation, and regulation.--

26 (1) There may be created one or more Florida equity  
27 exchanges, with one or more offices each, upon a determination  
28 by the Office of Financial Institutions and Securities  
29 Regulation of the Financial Services Commission ~~Comptroller~~  
30 that each such exchange has a reasonable promise of successful  
31 operation, will promote economic development, will produce net

1 economic benefits in the state, and will not expose the public  
2 to undue risk of financial loss. This determination shall be  
3 based on the results of a feasibility study concerning the  
4 possible structure, operation, and regulation of each such  
5 exchange, to be carried out under the supervision of the  
6 office Comptroller. ~~The Secretary of Commerce shall provide~~  
7 ~~the Comptroller any needed advice on economic development~~  
8 ~~aspects of the feasibility study.~~ Said feasibility study  
9 shall evaluate to what extent securities laws may limit the  
10 transferability of investments in which any exchange would  
11 deal; to what extent companies financed through securities in  
12 which the exchange would deal would prefer a stable group of  
13 investors; to what extent the particular investment objectives  
14 of potential participants in any exchange might be  
15 inconsistent with an exchange operation; and the possibility  
16 that the frequency of investment opportunities of the type in  
17 which an exchange would deal would be too low to economically  
18 operate any exchange. The determination of the office  
19 ~~Comptroller~~ shall constitute a final order as defined in s.  
20 120.52 and shall be subject to the provisions of chapter 120.  
21 Nothing in this section, however, shall be construed to  
22 require the expenditure of state funds for the purpose of  
23 conducting any such feasibility study. For the purposes of  
24 this section, the term "exchange" shall apply to any such  
25 Florida equity exchange proposed or created under this  
26 section.

27 (2) The purpose of the exchange shall be to provide a  
28 marketplace for the negotiation, arrangement, exchange, sale,  
29 purchase, brokerage, syndication, and underwriting, and all  
30 activities incidental thereto, of investment opportunities, in  
31

1 an institutionalized and, to the maximum extent possible,  
2 self-regulated fashion.

3 (3) Within 30 days following such determination, a  
4 committee shall be appointed to write the constitution and  
5 bylaws of the exchange. The office ~~Comptroller~~ may provide  
6 technical assistance to the committee on the development of  
7 the constitution and bylaws of the exchange. The committee  
8 shall consist of 15 members, 11 members to be appointed by the  
9 Governor, 2 members to be appointed by the Speaker of the  
10 House of Representatives, and 2 members to be appointed by the  
11 President of the Senate. The chair shall be elected by a  
12 majority of the committee. The committee shall transmit such  
13 proposed constitution, bylaws, and other recommendations for  
14 the approval of the office ~~Comptroller~~ no later than 90 days  
15 following the first meeting of the committee. In reviewing  
16 the constitution and the bylaws of the exchange, as well as  
17 any other recommendations made to the office ~~Comptroller~~ by  
18 the committee, the office ~~Comptroller~~ shall consider whether  
19 such constitution, bylaws, and recommendations are reasonably  
20 consistent with the public interest and the efficient  
21 functioning of the exchange. The office ~~Comptroller~~ shall  
22 approve the constitution and bylaws of the exchange if he or  
23 she finds that they specifically describe the types of  
24 business that the exchange will conduct, that such business  
25 activities are not inconsistent with state or federal law,  
26 that the form of business organization of the exchange  
27 complies with statutory requirements, and that the interest of  
28 owners or members of the exchange would be adequately  
29 protected. The submission of the proposed constitution and  
30 bylaws to the office ~~Comptroller~~ shall be deemed an

31

1 application for a license and shall be subject to the  
2 provisions of s. 120.80(9).

3 (4) The exchange shall have full authority to function  
4 60 days after its constitution and bylaws are approved by the  
5 office Comptroller. The initial Board of Governors of the  
6 exchange shall consist of the members of the committee who  
7 shall serve until the first election pursuant to the  
8 constitution and bylaws. If the constitution and bylaws are  
9 disapproved by the office Comptroller, the committee, in  
10 consultation with the office Comptroller, shall have 60 days  
11 from the date of such disapproval within which to submit an  
12 acceptable constitution and bylaws.

13 (5) The constitution and bylaws of the exchange shall  
14 include provision that:

15 (a) There shall be no less than 9 nor more than 15  
16 governors of the exchange, at least one-third of whom shall  
17 not be members of the exchange.

18 (b) The principal offices of each exchange and the  
19 principal offices of its members shall be located within this  
20 state for the purpose of conducting the type of business  
21 described in subsection (2). Any exchange may have such other  
22 offices around the state as it deems necessary from time to  
23 time, subject to a determination by the office Comptroller  
24 that such additional offices will be necessary for the  
25 efficient operation of the exchange and will be in the public  
26 interest.

27 (c) All members and applicants for membership on the  
28 exchange shall submit all financial information reasonably  
29 required by the office Comptroller.

30 (d) The exchange shall establish or participate in a  
31 security fund which shall be capitalized or underwritten in

1 such form and amount as will reasonably protect persons  
2 transacting business through the exchange from any harm or  
3 loss occasioned by the insolvency of any member of the  
4 exchange. The formation of such security fund and the  
5 adequacy of the financial security provided thereby shall be  
6 subject to the approval of the Office of Financial  
7 Institutions and Securities Regulation ~~Department of Banking~~  
8 ~~and Finance~~ based upon the types and amounts of transactions  
9 effected through the facilities of the exchange.

10 (e) Rules shall be adopted prescribing eligibility for  
11 membership and the voting power, duties, and rights to  
12 participate in the conduct and management of the affairs of  
13 the exchange by the members thereof, such rights and duties to  
14 include, without limitation, the manner and form of conducting  
15 business, financial stability requirements, dues, membership  
16 fees, resolution of dispute mechanisms, and all other matters  
17 necessary or appropriate to conduct any business permitted  
18 herein; however, such rules shall not impose any limit on the  
19 number of members of any such exchange. Any amendments to the  
20 constitution and bylaws shall be subject to the approval of  
21 the office ~~Comptroller~~.

22 (f) Elections to the Board of Governors of the  
23 exchange shall be held once every 2 years, with those persons  
24 receiving the greatest number of votes cast being elected  
25 thereto.

26 (6) If the exchange contemplated by this section is  
27 established, the office ~~Comptroller~~ shall furnish the chairs  
28 of the finance and taxation committees of the Legislature with  
29 copies of its constitution and bylaws. Upon receipt of the  
30 constitution and bylaws, the Legislature shall consider what  
31

1 tax policy and tax exemptions are needed to facilitate  
2 successful operation of the exchange.

3 (7) If the exchange contemplated by this section is  
4 finally established, the Financial Services Commission  
5 ~~Comptroller~~ shall forthwith adopt rules providing for the  
6 reimbursement by the exchange or any member thereof of the  
7 actual costs incurred by the office ~~Comptroller~~ in connection  
8 with the regulation and supervision of the exchange. As used  
9 in this section, "actual costs" means all direct and indirect  
10 costs and expenses incurred by the office ~~Comptroller~~ in  
11 connection with the exchange including, without limitation,  
12 general administrative costs, travel expenses, salaries, and  
13 other benefits given to persons involved in the regulation and  
14 supervision of the exchange. The office ~~Comptroller~~ shall  
15 have the power to make any allocations that are deemed  
16 reasonable and necessary and may require the exchange or any  
17 members to pay interim assessments related to estimated final  
18 assessments.

19 (8) The Florida securities laws and rules shall apply  
20 to the exchange and to its members.

21 (9) The Financial Services Commission ~~Comptroller~~ may  
22 establish limitations on investments in members of the  
23 exchange by any person or company, consistent with the public  
24 interest and the efficient functioning of the exchange.

25 Section 617. Subsection (3) of section 520.02, Florida  
26 Statutes, is amended, present subsections (4) through (17) of  
27 that section are renumbered as (5) through (18), respectively,  
28 and a new subsection (4) is added to that section to read:

29 520.02 Definitions.--In this act, unless the context  
30 or subject matter otherwise requires:

31

1           (3) "Commission" means the Financial Services  
2 Commission~~"Department" means the Department of Banking and~~  
3 ~~Finance.~~

4           (4) "Office" means the Office of Financial  
5 Institutions and Securities Regulation of the commission.

6           Section 618. Subsections (2), (3), (4), and (5) of  
7 section 520.03, Florida Statutes, are amended to read:

8           520.03 Licenses.--

9           (2) An application for a license under this part must  
10 be submitted to the office ~~department~~ in such form as the  
11 commission ~~department~~ may prescribe by rule. If the office  
12 ~~department~~ determines that an application should be granted,  
13 it shall issue the license for a period not to exceed 2 years.  
14 A nonrefundable application fee of \$175 shall accompany an  
15 initial application for the principal place of business and  
16 each application for a branch location of a retail installment  
17 seller who is required to be licensed under this chapter.

18           (3) The renewal fee for a motor vehicle retail  
19 installment seller license shall be \$175. The commission  
20 ~~department~~ shall establish by rule biennial licensure periods  
21 and procedures for renewal of licenses. A license that is not  
22 renewed by the end of the biennium established by the  
23 commission ~~department~~ shall revert from active to inactive  
24 status. An inactive license may be reactivated within 6  
25 months after becoming inactive upon filing a completed  
26 reactivation form, payment of the renewal fee, and payment of  
27 a reactivation fee equal to the renewal fee. A license that  
28 is not reactivated within 6 months after becoming inactive  
29 automatically expires.

30           (4) Each license shall specify the location for which  
31 it is issued and must be conspicuously displayed at that

1 location. Prior to relocating a principal place of business or  
2 any branch location, the licensee must provide to the office  
3 ~~department~~ notice of the relocation in a form prescribed by  
4 commission ~~department~~ rule. A licensee may not transact  
5 business as a motor vehicle retail installment seller except  
6 under the name by which it is licensed. Licenses issued under  
7 this part are not transferable or assignable.

8 (5) The office ~~department~~ may deny an initial  
9 application for a license under this part if the applicant or  
10 any person with power to direct the management or policies of  
11 the applicant is the subject of a pending criminal prosecution  
12 or governmental enforcement action, in any jurisdiction, until  
13 conclusion of such criminal prosecution or enforcement action.

14 Section 619. Subsections (4) and (9) of section  
15 520.07, Florida Statutes, are amended to read:

16 520.07 Requirements and prohibitions as to retail  
17 installment contracts.--

18 (4) The amount, if any, included for insurance which  
19 may be purchased by the holder of the retail installment  
20 contract may not exceed the applicable premiums chargeable in  
21 accordance with the rates filed with the Office of Insurance  
22 Regulation of the Commission ~~Department of Insurance~~. If dual  
23 interest insurance on the motor vehicle is purchased by the  
24 holder, it shall, within 30 days after execution of the retail  
25 installment contract, send or cause to be sent to the buyer a  
26 policy or policies or certificate of insurance, written by an  
27 insurance company authorized to do business in this state,  
28 clearly setting forth the amount of the premium, the kind or  
29 kinds of insurance, the coverages, and all the terms,  
30 exceptions, limitations, restrictions, and conditions of the  
31 contract or contracts of insurance. Nothing in this act shall

1 | impair or abrogate the right of a buyer, as defined herein, to  
2 | procure insurance from an agent and company of his or her own  
3 | selection as provided by the insurance laws of this state; and  
4 | nothing contained in this act shall modify, amend, alter, or  
5 | repeal any of the insurance laws of the state, including any  
6 | such laws enacted by the 1957 Legislature.

7 |         (9) The office ~~department~~ may order a seller to refund  
8 | any amounts assessed and charged on a retail installment  
9 | contract which exceed the maximum charges provided by this act  
10 | or by rules of the commission ~~department~~.

11 |         Section 620. Subsection (3) of section 520.31, Florida  
12 | Statutes, is amended, present subsections (4) through (17) of  
13 | that section are renumbered as (5) through (18), respectively,  
14 | and a new subsection (4) is added to that section to read:

15 |             520.31 Definitions.--Unless otherwise clearly  
16 | indicated by the context, the following words when used in  
17 | this act, for the purposes of this act, shall have the  
18 | meanings respectively ascribed to them in this section:

19 |             (3) "Commission" means the Financial Services  
20 | ~~Commission~~ "~~Department~~" means the ~~Department of Banking and~~  
21 | ~~Finance~~.

22 |             (4) "Office" means the Office of Financial  
23 | Institutions and Securities Regulation of the commission.

24 |         Section 621. Subsections (2), (3), (4), and (5) of  
25 | section 520.32, Florida Statutes, are amended to read:

26 |             520.32 Licenses.--

27 |             (2) An application for a license under this part must  
28 | be submitted to the office ~~department~~ in such form as the  
29 | commission ~~department~~ may prescribe by rule. If the office  
30 | ~~department~~ determines that an application should be granted,  
31 | it shall issue the license for a period not to exceed 2 years.

1 A nonrefundable application fee of \$175 shall accompany an  
2 initial application for the principal place of business and  
3 each application for a branch location of a retail installment  
4 seller.

5 (3) The renewal fee for a retail seller license shall  
6 be \$175. Biennial licensure periods and procedures for renewal  
7 of licenses may also be established by the commission  
8 ~~department~~ by rule. A license that is not renewed at the end  
9 of the biennium established by the commission ~~department~~ shall  
10 revert from active to inactive status. An inactive license  
11 may be reactivated within 6 months after becoming inactive  
12 upon filing a completed reactivation form, payment of the  
13 renewal fee, and payment of a reactivation fee equal to the  
14 renewal fee. A license that is not reactivated within 6  
15 months after becoming inactive automatically expires.

16 (4) Each license must specify the location for which  
17 it is issued and must be conspicuously displayed at that  
18 location. If a licensee's principal place of business or  
19 branch location changes, the licensee shall notify the office  
20 ~~department~~ and the office ~~department~~ shall endorse the change  
21 of location without charge. A licensee may not transact  
22 business as a retail installment seller except under the name  
23 by which it is licensed. A license issued under this part is  
24 not transferable or assignable.

25 (5) The office ~~department~~ may deny an initial  
26 application for a license under this part if the applicant or  
27 any person with power to direct the management or policies of  
28 the applicant is the subject of a pending criminal prosecution  
29 or governmental enforcement action, in any jurisdiction, until  
30 conclusion of such criminal prosecution or enforcement action.

31

1           Section 622. Subsection (8) of section 520.34, Florida  
2 Statutes, is amended to read:

3           520.34 Retail installment contracts.--

4           (8) The seller under any retail installment contract  
5 shall, within 30 days after execution of the contract, deliver  
6 or mail or cause to be delivered or mailed to the buyer at his  
7 or her aforesaid address any policy or policies of insurance  
8 the seller has agreed to purchase in connection therewith, or  
9 in lieu thereof a certificate or certificates of such  
10 insurance. The amount, if any, included for insurance shall  
11 not exceed the applicable premiums chargeable in accordance  
12 with the rates filed with the Office of Insurance Regulation  
13 of the commission ~~Department of Insurance~~; if any such  
14 insurance is canceled, unearned insurance premium refunds and  
15 any unearned finance charges thereon received by the holder  
16 shall, at his or her option, be credited to the final maturing  
17 installments of the contract or paid to the buyer, except to  
18 the extent applied toward the payment for similar insurance  
19 protecting the interests of the seller and the holder or  
20 either of them. The finance charge on the original  
21 transaction shall be separately computed:

22           (a) With the premium for the canceled or adjusted  
23 insurance included in the "amount financed"; and

24           (b) With the premium for the canceled insurance or the  
25 amount of the premium adjustment excluded from the "amount  
26 financed."

27  
28 The difference in the finance charge resulting from these  
29 computations shall be the portion of the finance charge  
30 attributable to the canceled or adjusted insurance, and the  
31 unearned portion thereof shall be determined by the use of the

1 rule of 78ths. "Cancellation of insurance" occurs at such  
2 time as the seller or holder receives from the insurance  
3 carrier the proper refund of unearned insurance premiums.  
4 Nothing in this act shall impair or abrogate the right of a  
5 buyer to procure insurance from an agent and company of his or  
6 her own selection, as provided by the insurance laws of this  
7 state; and nothing contained in this act shall modify, alter,  
8 or repeal any of the insurance laws of this state.

9 Section 623. Subsections (2), (3), (4), and (5) of  
10 section 520.52, Florida Statutes, are amended to read:

11 520.52 Licensees.--

12 (2) An application for a license under this part must  
13 be submitted to the office ~~department~~ in such form as the  
14 commission ~~department~~ may prescribe by rule. If the office  
15 ~~department~~ determines that an application should be granted,  
16 it shall issue the license for a period not to exceed 2 years.  
17 A nonrefundable application fee of \$175 shall accompany an  
18 initial application for the principal place of business and  
19 each branch location of a sales finance company.

20 (3) The renewal fee for a sales finance company  
21 license shall be \$175. Biennial licensure periods and  
22 procedures for renewal of licenses may also be established by  
23 the commission ~~department~~ by rule. A license that is not  
24 renewed at the end of the biennium established by the  
25 commission ~~department~~ shall revert from active to inactive  
26 status. An inactive license may be reactivated within 6  
27 months after becoming inactive upon filing a completed  
28 reactivation form, payment of the renewal fee, and payment of  
29 a reactivation fee equal to the renewal fee. A license that  
30 is not reactivated within 6 months after becoming inactive  
31 automatically expires.

1           (4) Each license must specify the location for which  
2 it is issued and must be conspicuously displayed at that  
3 location. If a licensee's principal place of business or  
4 branch location changes, the licensee shall notify the office  
5 ~~department~~ and the office ~~department~~ shall endorse the change  
6 of location without charge. A licensee may not transact  
7 business as a sales finance company except under the name by  
8 which it is licensed. A license issued under this part is not  
9 transferable or assignable.

10           (5) The office ~~department~~ may deny an initial  
11 application for a license under this part if the applicant or  
12 any person with power to direct the management or policies of  
13 the applicant is the subject of a pending criminal prosecution  
14 or governmental enforcement action, in any jurisdiction, until  
15 conclusion of such criminal prosecution or enforcement action.

16           Section 624. Subsection (6) of section 520.61, Florida  
17 Statutes, is amended, present subsections (7) through (21) of  
18 that section are renumbered as (8) through (22), respectively,  
19 and a new subsection (7) is added to that section to read:

20           520.61 Definitions.--As used in this act:

21           (6) "Commission" means the Financial Services  
22 ~~Commission"Department" means the Department of Banking and~~  
23 ~~Finance.~~

24           (7) "Office" means the Office of Financial  
25 Institutions and Securities Regulation of the commission.

26           Section 625. Section 520.63, Florida Statutes, is  
27 amended to read:

28           520.63 Licensees.--

29           (1) A person may not engage in or transact any  
30 business as a home improvement finance seller or operate a  
31 branch without first obtaining a license from the office

1 ~~department~~, except that a banking institution, trust company,  
2 savings and loan association, credit union authorized to do  
3 business in this state, or licensee under ss. 494.006-494.0077  
4 is not required to obtain a license to engage in home  
5 improvement financing.

6 (2) An application for a license under this part must  
7 be submitted to the office ~~department~~ in such form as the  
8 commission ~~department~~ may prescribe by rule. If the office  
9 ~~department~~ determines that an application should be granted,  
10 it shall issue the license for a period not to exceed 2 years.  
11 A nonrefundable application fee of \$175 shall accompany an  
12 initial application for the principal place of business and  
13 each application for a branch location of a home improvement  
14 finance seller.

15 (3) The renewal fee for a home improvement finance  
16 license shall be \$175. Biennial licensure periods and  
17 procedures for renewal of licenses may also be established by  
18 the commission ~~department~~ by rule. A license that is not  
19 renewed at the end of the biennium established by the  
20 commission ~~department~~ shall automatically revert from active  
21 to inactive status. An inactive license may be reactivated  
22 within 6 months after becoming inactive upon filing a  
23 completed reactivation form, payment of the renewal fee, and  
24 payment of a reactivation fee equal to the renewal fee. A  
25 license that is not reactivated within 6 months after becoming  
26 inactive automatically expires.

27 (4) Each license must specify the location for which  
28 it is issued and must be conspicuously displayed at that  
29 location. If a home improvement finance seller's principal  
30 place of business or any branch location changes, the licensee  
31 shall notify the office ~~department~~ and the office ~~department~~

1 shall endorse the change of location without charge. A  
2 licensee may not transact business as a home improvement  
3 finance seller except under the name by which it is licensed.  
4 A license issued under this part is not transferable or  
5 assignable.

6 (5) The office ~~department~~ may deny an initial  
7 application for a license under this part if the applicant or  
8 any person with power to direct the management or policies of  
9 the applicant is the subject of a pending criminal prosecution  
10 or governmental enforcement action, in any jurisdiction, until  
11 conclusion of such criminal prosecution or enforcement action.

12 (6) Each seller shall designate and maintain an agent  
13 in the state for service of process.

14 Section 626. Subsections (1) and (5) of section  
15 520.73, Florida Statutes, are amended to read:

16 520.73 Home improvement contract; form and content;  
17 separate disclosures.--

18 (1) Every home improvement contract shall be evidenced  
19 by a written agreement and shall be signed by the parties.  
20 The home improvement contract shall be in the form approved by  
21 the office ~~department~~ and shall contain:

22 (a) The name, address, and license number of the home  
23 improvement finance seller;

24 (b) The names of the home improvement finance seller's  
25 employees who solicited or negotiated the home improvement  
26 contract;

27 (c) The approximate dates when the work will begin and  
28 will be completed; and

29 (d) A description of the work to be done and the  
30 materials to be used.

31



1 credited to the final maturing installments of the home  
2 improvement contract. However, no such credit need be made if  
3 the amount would be less than \$1.

4 Section 628. Subsection (2) of section 520.81, Florida  
5 Statutes, is amended to read:

6 520.81 Completion certificate.--

7 (2) The form of the certificate shall be prescribed by  
8 the commission ~~department~~.

9 Section 629. Subsection (2) of section 520.83, Florida  
10 Statutes, is amended to read:

11 520.83 Cancellation of contract on payment in full.--

12 (2) For all other home improvement contracts, the  
13 holder, upon payment in full by the owner of the time sales  
14 price and other amounts lawfully due under the home  
15 improvement contract, shall furnish the owner with such  
16 instruments as the commission ~~department~~ may by rule  
17 ~~regulation~~ provide.

18 Section 630. Subsections (10) and (12) of section  
19 520.90, Florida Statutes, are amended to read:

20 520.90 Prohibited acts.--The following acts are  
21 prohibited:

22 (10) Willful failure to notify the office ~~department~~  
23 of any change of control in ownership, management, business  
24 name, or location.

25 (12) Willful failure to comply with any order, demand,  
26 or requirement lawfully made by the office ~~department~~.

27 Section 631. Section 520.994, Florida Statutes, is  
28 amended to read:

29 520.994 Powers of office ~~department~~.--

30 (1) The office ~~department~~ may issue and serve  
31 subpoenas to compel the attendance of witnesses and the

1 production of documents, papers, books, records, and other  
2 evidence before it in any matter pertaining to this chapter.  
3 The office ~~department~~ may administer oaths and affirmations to  
4 any person whose testimony is required. If any person refuses  
5 to testify, produce books, records, and documents, or  
6 otherwise refuses to obey a subpoena issued under this  
7 section, the office ~~department~~ may present its petition to a  
8 court of competent jurisdiction in or for the county in which  
9 such person resides or has its principal place of business,  
10 whereupon the court shall issue its rule nisi requiring such  
11 person to obey forthwith the subpoena issued by the office  
12 ~~department~~ or show cause for failing to obey such subpoena.  
13 Unless the person shows sufficient cause for failing to obey  
14 the subpoena, the court shall forthwith direct such person to  
15 obey the subpoena, subject to such punishment as the court may  
16 direct, including, but not limited to, the restraint, by  
17 injunction or by appointment of a receiver, of any transfer,  
18 pledge, assignment, or other disposition of such person's  
19 assets or any concealment, alteration, destruction, or other  
20 disposition of subpoenaed books, records, or documents as the  
21 court deems appropriate, until such person has fully complied  
22 with such subpoena and the office ~~department~~ has completed its  
23 investigation or examination. The office ~~department~~ is  
24 entitled to the summary procedure provided in s. 51.011, and  
25 the court shall advance the cause on its calendar. Costs  
26 incurred by the office ~~department~~ to obtain an order granting,  
27 in whole or in part, its petition shall be taxed against the  
28 subpoenaed person, and failure to comply with such order is a  
29 contempt of court. Witnesses are entitled to the same fees and  
30 mileage as they are entitled to by law for attending as  
31 witnesses in the circuit court, unless such examination or

1 investigation is held at the place of business or residence of  
2 the witness.

3 (2) In addition to any other powers conferred upon it  
4 to enforce or administer this chapter, the office ~~department~~  
5 may bring an action in any court of competent jurisdiction to  
6 enforce or administer any provision of this chapter, any rule  
7 or order adopted pursuant to this chapter, or any written  
8 agreement entered into with the office ~~department~~. In such  
9 action, the office ~~department~~ may seek temporary or permanent  
10 injunction, appointment of a receiver or administrator, or an  
11 order of restitution. If in any such action the office  
12 ~~department~~ alleges that five or more persons have been  
13 defrauded by acts constituting violations of this chapter, it  
14 shall state the circumstances constituting such fraud with  
15 particularity and may seek any appropriate remedy at law or in  
16 equity, provided the remedy does not impair any rights granted  
17 by law to any holder in due course as defined in s. 673.302.

18 (3) In addition to any other powers conferred upon it  
19 to enforce or administer this chapter, the office ~~department~~  
20 may issue and serve upon a person a cease and desist order  
21 whenever the office ~~department~~ finds that such person is  
22 violating, has violated, or is about to violate any provision  
23 of this chapter, any rule or order adopted pursuant to this  
24 chapter, or any written agreement entered into with the office  
25 ~~department~~. Any such order shall contain a notice of the  
26 rights provided by ss. 120.569 and 120.57.

27 (4) In addition to any other powers conferred upon it  
28 to enforce or administer this chapter, the office ~~department~~  
29 may impose and collect an administrative fine against any  
30 person found to have violated any provision of this chapter,  
31 any rule or order adopted pursuant to this chapter, or any

1 written agreement entered into with the office ~~department~~, in  
2 an amount not to exceed \$1,000 for each violation.

3 (5) The office ~~department~~ shall administer and enforce  
4 this chapter. The commission ~~department~~ has authority to adopt  
5 rules pursuant to ss. 120.536(1) and 120.54 to implement the  
6 provisions of this chapter. The commission ~~department~~ may  
7 adopt rules to allow electronic submission of any form,  
8 document, or fee required by this chapter.

9 Section 632. Subsections (1), (2), and (4) of section  
10 520.995, Florida Statutes, are amended to read:

11 520.995 Grounds for disciplinary action.--

12 (1) The following acts are violations of this chapter  
13 and constitute grounds for the disciplinary actions specified  
14 in subsection (2):

15 (a) Failure to comply with any provision of this  
16 chapter, any rule or order adopted pursuant to this chapter,  
17 or any written agreement entered into with the office  
18 ~~department~~;

19 (b) Fraud, misrepresentation, deceit, or gross  
20 negligence in any home improvement finance transaction or  
21 retail installment transaction, regardless of reliance by or  
22 damage to the buyer or owner;

23 (c) Fraudulent misrepresentation, circumvention, or  
24 concealment of any matter required to be stated or furnished  
25 to a retail buyer or owner pursuant to this chapter,  
26 regardless of reliance by or damage to the buyer or owner;

27 (d) Willful imposition of illegal or excessive charges  
28 in any retail installment transaction or home improvement  
29 finance transaction;

30 (e) False, deceptive, or misleading advertising by a  
31 seller or home improvement finance seller;

1           (f) Failure to maintain, preserve, and keep available  
2 for examination, all books, accounts, or other documents  
3 required by this chapter, by any rule or order adopted  
4 pursuant to this chapter, or by any agreement entered into  
5 with the office ~~department~~;

6           (g) Refusal to permit inspection of books and records  
7 in an investigation or examination by the office ~~department~~ or  
8 refusal to comply with a subpoena issued by the office  
9 ~~department~~;

10          (h) Criminal conduct in the course of a person's  
11 business as a seller, as a home improvement finance seller, or  
12 as a sales finance company; or

13          (i) Failure to timely pay any fee, charge, or fine  
14 imposed or assessed pursuant to this chapter or any rule  
15 adopted under this chapter.

16          (2) Upon a finding by the office ~~department~~ that any  
17 person has committed any of the acts set forth in subsection  
18 (1), the office ~~department~~ may enter an order taking one or  
19 more of the following actions:

20           (a) Denying an application for a license pursuant to  
21 this chapter;

22           (b) Revoking or suspending a license previously  
23 granted pursuant to this chapter;

24           (c) Placing a licensee or an applicant for a license  
25 on probation for a period of time and subject to such  
26 conditions as the office ~~department~~ may specify;

27           (d) Placing permanent restrictions or conditions upon  
28 issuance or maintenance of a license pursuant to this chapter;

29           (e) Issuing a reprimand; or

30           (f) Imposing an administrative fine not to exceed  
31 \$1,000 for each such act.

1           (4) It is sufficient cause for the office ~~department~~  
2 to take any of the actions specified in subsection (2) as to  
3 any partnership, corporation, or association, if the office  
4 ~~department~~ finds grounds for such action as to any member of  
5 the partnership, as to any officer or director of the  
6 corporation or association, or as to any person with power to  
7 direct the management or policies of the partnership,  
8 corporation, or association.

9           Section 633. Section 520.996, Florida Statutes, is  
10 amended to read:

11           520.996 Investigations and complaints.--

12           (1)(a) The office ~~department~~ or its agent may, at  
13 intermittent periods, make such investigations and  
14 examinations of any licensee or other person as it deems  
15 necessary to determine compliance with this chapter. For such  
16 purposes, it may examine the books, accounts, records, and  
17 other documents or matters of any licensee or other person. It  
18 shall have the power to compel the production of all relevant  
19 books, records, and other documents and materials relative to  
20 an examination or investigation. Such investigations and  
21 examinations shall not be made more often than once during any  
22 12-month period unless the office ~~department~~ has good and  
23 sufficient reason to believe the licensee is not complying  
24 with the provisions of this chapter. Such examination fee  
25 shall be calculated on an hourly basis and shall be rounded to  
26 the nearest hour.

27           (b) The office ~~department~~ shall conduct all  
28 examinations at a convenient location in this state unless the  
29 office ~~department~~ determines that it is more effective or  
30 cost-efficient to perform an examination at the licensee's  
31 out-of-state location. For an examination performed at the

1 licensee's out-of-state location, the licensee shall pay the  
2 travel expense and per diem subsistence at the rate provided  
3 by law for up to thirty 8-hour days per year for each examiner  
4 who participates in such an examination. However, if the  
5 examination involves or reveals possible fraudulent conduct of  
6 the licensee, the licensee shall pay the travel expenses and  
7 per diem subsistence provided by law, without limitation, for  
8 each participating examiner.

9 (2) The examination expenses incurred by the office  
10 ~~department~~ in each examination shall be paid by the licensee  
11 examined. The expenses of the office ~~department~~ incurred in  
12 each examination of a home improvement finance seller or of an  
13 employee representing such home improvement finance seller  
14 shall be paid by the home improvement finance seller. Expenses  
15 incurred for each examination of a sales finance company shall  
16 be paid by it. The examination expenses shall be paid by such  
17 licensee examined or such other person obligated to pay such  
18 examination expenses within 30 days after demand therefor by  
19 the office ~~department~~.

20 (3) Any retail buyer or owner having reason to believe  
21 that the provisions of this chapter have been violated may  
22 file with the office or the Department of Financial Services a  
23 written complaint setting forth the details of such alleged  
24 violations and the office ~~department~~ upon receipt of such  
25 complaint, may inspect the pertinent books, records, letters,  
26 and contracts of the licensee and of the seller involved,  
27 relating to such specific written complaint.

28 Section 634. Section 520.9965, Florida Statutes, is  
29 amended to read:

30 520.9965 Confidentiality of information relating to  
31 investigations and examinations.--

1           (1)(a) Except as otherwise provided by this section,  
2 information relative to an investigation or examination by the  
3 office department pursuant to this chapter, including any  
4 consumer complaint received by the office or the Department of  
5 Financial Services, is confidential and exempt from s.  
6 119.07(1) until the investigation or examination is completed  
7 or ceases to be active. The information compiled by the office  
8 department in such an investigation or examination shall  
9 remain confidential and exempt from s. 119.07(1) after the  
10 office's department's investigation or examination is  
11 completed or ceases to be active if the office department  
12 submits the information to any law enforcement or  
13 administrative agency for further investigation. Such  
14 information shall remain confidential and exempt from s.  
15 119.07(1) until that agency's investigation is completed or  
16 ceases to be active. For purposes of this section, an  
17 investigation or examination shall be considered "active" so  
18 long as the office department or any law enforcement or  
19 administrative agency is proceeding with reasonable dispatch  
20 and has a reasonable good faith belief that the investigation  
21 or examination may lead to the filing of an administrative,  
22 civil, or criminal proceeding or to the denial or conditional  
23 grant of a license, registration, or permit. This section  
24 shall not be construed to prohibit disclosure of information  
25 which is required by law to be filed with the office  
26 department and which, but for the investigation or  
27 examination, would be subject to s. 119.07(1).

28           (b) Except as necessary for the office department to  
29 enforce the provisions of this chapter, a consumer complaint  
30 and other information relative to an investigation or  
31 examination shall remain confidential and exempt from s.

1 119.07(1) after the investigation or examination is completed  
2 or ceases to be active to the extent disclosure would:

3 1. Jeopardize the integrity of another active  
4 investigation or examination.

5 2. Reveal the name, address, telephone number, social  
6 security number, or any other identifying number or  
7 information of any complainant, customer, or account holder.

8 3. Disclose the identity of a confidential source.

9 4. Disclose investigative techniques or procedures.

10 5. Reveal a trade secret as defined in s. 688.002.

11 (c) In the event that office department personnel or  
12 personnel of the former Department of Banking and Finance are  
13 or have been involved in an investigation or examination of  
14 such nature as to endanger their lives or physical safety or  
15 that of their families, then the home addresses, telephone  
16 numbers, places of employment, and photographs of such  
17 personnel, together with the home addresses, telephone  
18 numbers, photographs, and places of employment of spouses and  
19 children of such personnel and the names and locations of  
20 schools and day care facilities attended by the children of  
21 such personnel are confidential and exempt from s. 119.07(1).

22 (d) Nothing in this section shall be construed to  
23 prohibit the office department from providing information to  
24 any law enforcement or administrative agency. Any law  
25 enforcement or administrative agency receiving confidential  
26 information in connection with its official duties shall  
27 maintain the confidentiality of the information so long as it  
28 would otherwise be confidential.

29 (e) All information obtained by the office department  
30 from any person which is only made available to the office  
31 department on a confidential or similarly restricted basis

1 shall be confidential and exempt from s. 119.07(1). This  
2 exemption shall not be construed to prohibit disclosure of  
3 information which is required by law to be filed with the  
4 office ~~department~~ or which is otherwise subject to s.  
5 119.07(1).

6 (2) If information subject to subsection (1) is  
7 offered in evidence in any administrative, civil, or criminal  
8 proceeding, the presiding officer may, in his or her  
9 discretion, prevent the disclosure of information which would  
10 be confidential pursuant to paragraph (1)(b).

11 (3) A privilege against civil liability is granted to  
12 a person who furnishes information or evidence to the office  
13 ~~department~~, unless such person acts in bad faith or with  
14 malice in providing such information or evidence.

15 Section 635. Section 520.997, Florida Statutes, is  
16 amended to read:

17 520.997 Books, accounts, and records.--

18 (1) Every licensee shall maintain, at the principal  
19 place of business, such books, accounts, and records of the  
20 business conducted under the license issued for such place of  
21 business as will enable the office ~~department~~ to determine  
22 whether the business of the licensee contemplated by this  
23 chapter is being operated in accordance with the provisions of  
24 this chapter. The licensee shall make all such books,  
25 accounts, and records of business conducted under the license  
26 available at a convenient location in this state upon request  
27 of the office ~~department~~.

28 (2) A licensee, operating two or more licensed places  
29 of business in this state, may maintain the general control  
30 records of all such offices at any one of such offices, or at  
31 any other office maintained by such licensee, upon the filing

1 of a written request with the office ~~department~~ designating  
2 therein the office at which such control records are  
3 maintained.

4 (3) All books, accounts, and records of licensees,  
5 including any cards used in a card system, shall be preserved  
6 and available for examination by the office ~~department~~ for at  
7 least 2 years after making the final entry therein.

8 (4) The commission may ~~department is hereby authorized~~  
9 ~~and empowered to~~ prescribe the minimum information to be shown  
10 in the books, accounts, and records of licensees so that such  
11 records will enable the office ~~department~~ to determine  
12 compliance with the provisions of this chapter.

13 (5) A licensee that is the subject of a voluntary or  
14 involuntary bankruptcy filing must provide notice of such  
15 filing to the office ~~department~~ within 7 days after the filing  
16 date.

17 Section 636. Section 520.998, Florida Statutes, is  
18 amended to read:

19 520.998 Regulatory Trust Fund.--All fees, charges, and  
20 fines collected by the office ~~department~~ pursuant to this  
21 chapter shall be deposited in the State Treasury to the credit  
22 of the Regulatory Trust Fund under the office ~~department~~.

23 Section 637. Subsection (7) of section 526.141,  
24 Florida Statutes, is amended to read:

25 526.141 Self-service gasoline stations; attendants;  
26 regulations.--

27 (7) The Chief Financial Officer ~~Insurance~~  
28 ~~Commissioner~~, under her or his powers, duties, and functions  
29 as State Fire Marshal, shall adopt ~~promulgate~~ rules and  
30 ~~regulations~~ for the administration and enforcement of this  
31 section, except for subsection (5) which shall be administered

1 and enforced by the Department of Agriculture and Consumer  
2 Services.

3 Section 638. Subsection (2) of section 537.003,  
4 Florida Statutes, is amended, present subsections (3) through  
5 (15) of that section are renumbered as (4) through (16),  
6 respectively, and a new subsection (3) is added to that  
7 section to read:

8 537.003 Definitions.--As used in this act, unless the  
9 context otherwise requires:

10 (2) "Commission" means the Financial Services  
11 Commission~~"Department" means the Department of Banking and~~  
12 ~~Finance.~~

13 (3) "Office" means the Office of Financial  
14 Institutions and Securities Regulation of the commission.

15 Section 639. Subsections (1) through (5), (9), and  
16 (10) of section 537.004, Florida Statutes, are amended to  
17 read:

18 537.004 License required; license fees.--

19 (1) A person may not act as a title loan lender or own  
20 or operate a title loan office unless such person has an  
21 active title loan lender license issued by the office  
22 ~~department~~ under this act. A title loan lender may not own or  
23 operate more than one title loan office unless the lender  
24 obtains a separate title loan lender license for each title  
25 loan office.

26 (2) A person applying for licensure as a title loan  
27 lender shall file with the office ~~department~~ an application,  
28 the bond required by s. 537.005(3), a nonrefundable  
29 application fee of \$1,200, a nonrefundable investigation fee  
30 of \$200, and a complete set of fingerprints taken by an  
31 authorized law enforcement officer. The office ~~department~~

1 shall submit such fingerprints to the Department of Law  
2 Enforcement for state processing, and the Department of Law  
3 Enforcement shall forward the fingerprints to the Federal  
4 Bureau of Investigation for national processing.

5 (3) If the office ~~department~~ determines that an  
6 application should be approved, the office ~~department~~ shall  
7 issue a license for a period not to exceed 2 years.

8 (4) A license shall be renewed biennially by filing a  
9 renewal form and a nonrefundable renewal fee of \$1,200. A  
10 license that is not renewed by the end of the biennial period  
11 shall automatically revert to inactive status. An inactive  
12 license may be reactivated within 6 months after becoming  
13 inactive by filing a reactivation form, payment of the  
14 nonrefundable \$1,200 renewal fee, and payment of a  
15 nonrefundable reactivation fee of \$600. A license that is not  
16 reactivated within 6 months after becoming inactive may not be  
17 reactivated and shall automatically expire. The commission  
18 ~~department~~ shall establish by rule the procedures for renewal  
19 and reactivation of a license and shall adopt a renewal form  
20 and a reactivation form.

21 (5) Each license must be conspicuously displayed at  
22 the title loan office. When a licensee wishes to move a title  
23 loan office to another location, the licensee shall provide  
24 prior written notice to the office ~~department~~.

25 (9) The commission ~~department~~ may adopt rules to allow  
26 for electronic filing of applications, fees, and forms  
27 required by this act.

28 (10) All moneys collected by the office ~~department~~  
29 under this act shall be deposited into the Regulatory Trust  
30 Fund of the office ~~Department of Banking and Finance~~.

31

1           Section 640. Section 537.005, Florida Statutes, is  
2 amended to read:

3           537.005 Application for license.--

4           (1) A verified application for licensure under this  
5 act, in the form prescribed by commission ~~department~~ rule,  
6 shall:

7           (a) Contain the name and the residence and business  
8 address of the applicant. If the applicant is other than a  
9 natural person, the application shall contain the name and the  
10 residence and business address of each ultimate equitable  
11 owner of 10 percent or more of such entity and each director,  
12 general partner, and executive officer of such entity.

13           (b) State whether any individual identified in  
14 paragraph (a) has, within the last 10 years, pleaded nolo  
15 contendere to, or has been convicted or found guilty of, a  
16 felony, regardless of whether adjudication was withheld.

17           (c) Identify the county and municipality with the  
18 street and number or location where the business is to be  
19 conducted.

20           (d) Contain additional information as the commission  
21 ~~department~~ determines by rule to be necessary to ensure  
22 compliance with this act.

23           (2) Notwithstanding subsection (1), the application  
24 need not state the full name and address of each officer,  
25 director, and shareholder if the applicant is owned directly  
26 or beneficially by a person who as an issuer has a class of  
27 securities registered pursuant to s. 12 of the Securities  
28 Exchange Act of 1934 or, pursuant to s. 13 or s. 15(d) of such  
29 act, is an issuer of securities which is required to file  
30 reports with the Securities and Exchange Commission, if the  
31 person files with the office ~~department~~ any information,

1 documents, and reports required by such act to be filed with  
2 the Securities and Exchange Commission.

3 (3) An applicant for licensure shall file with the  
4 office ~~department~~ a bond, in the amount of \$100,000 for each  
5 license, with a surety company qualified to do business in  
6 this state. However, in no event shall the aggregate amount of  
7 the bond required for a single title loan lender exceed \$1  
8 million. In lieu of the bond, the applicant may establish a  
9 certificate of deposit or an irrevocable letter of credit in a  
10 financial institution, as defined in s. 655.005, in the amount  
11 of the bond. The original bond, certificate of deposit, or  
12 letter of credit shall be filed with the office ~~department~~,  
13 and the office ~~department~~ shall be the beneficiary to that  
14 document. The bond, certificate of deposit, or letter of  
15 credit shall be in favor of the office ~~department~~ for the use  
16 and benefit of any consumer who is injured pursuant to a title  
17 loan transaction by the fraud, misrepresentation, breach of  
18 contract, financial failure, or violation of any provision of  
19 this act by the title loan lender. Such liability may be  
20 enforced either by proceeding in an administrative action or  
21 by filing a judicial suit at law in a court of competent  
22 jurisdiction. However, in such court suit, the bond,  
23 certificate of deposit, or letter of credit posted with the  
24 office ~~department~~ shall not be amenable or subject to any  
25 judgment or other legal process issuing out of or from such  
26 court in connection with such lawsuit, but such bond,  
27 certificate of deposit, or letter of credit shall be amenable  
28 to and enforceable only by and through administrative  
29 proceedings before the office ~~department~~. It is the intent of  
30 the Legislature that such bond, certificate of deposit, or  
31 letter of credit shall be applicable and liable only for the

1 payment of claims duly adjudicated by order of the office  
2 ~~department~~. The bond, certificate of deposit, or letter of  
3 credit shall be payable on a pro rata basis as determined by  
4 the office ~~department~~, but the aggregate amount may not exceed  
5 the amount of the bond, certificate of deposit, or letter of  
6 credit.

7 (4) The office ~~department~~ shall approve an application  
8 and issue a license if the office ~~department~~ determines that  
9 the applicant satisfies the requirements of this act.

10 Section 641. Paragraphs (a), (f), (h), and (o) of  
11 subsection (1) and subsections (2) and (4) of section 537.006,  
12 Florida Statutes, are amended to read:

13 537.006 Denial, suspension, or revocation of  
14 license.--

15 (1) The following acts are violations of this act and  
16 constitute grounds for the disciplinary actions specified in  
17 subsection (2):

18 (a) Failure to comply with any provision of this act,  
19 any rule or order adopted pursuant to this act, or any written  
20 agreement entered into with the office ~~department~~.

21 (f) Failure to maintain, preserve, and keep available  
22 for examination all books, accounts, or other documents  
23 required by this act, by any rule or order adopted pursuant to  
24 this act, or by any agreement entered into with the office  
25 ~~department~~.

26 (h) Refusal to provide information upon request of the  
27 office ~~department~~, to permit inspection of books and records  
28 in an investigation or examination by the office ~~department~~,  
29 or to comply with a subpoena issued by the office ~~department~~.

30  
31

1           (o) Having demonstrated unworthiness, as defined by  
2 commission ~~department~~ rule, to transact the business of a  
3 title loan lender.

4           (2) Upon a finding by the office ~~department~~ that any  
5 person has committed any of the acts set forth in subsection  
6 (1), the office ~~department~~ may enter an order taking one or  
7 more of the following actions:

8           (a) Denying an application for licensure under this  
9 act.

10           (b) Revoking or suspending a license previously  
11 granted pursuant to this act.

12           (c) Placing a licensee or an applicant for a license  
13 on probation for a period of time and subject to such  
14 conditions as the office ~~department~~ specifies.

15           (d) Issuing a reprimand.

16           (e) Imposing an administrative fine not to exceed  
17 \$5,000 for each separate act or violation.

18           (4) It is sufficient cause for the office ~~department~~  
19 to take any of the actions specified in subsection (2), as to  
20 any entity other than a natural person, if the office  
21 ~~department~~ finds grounds for such action as to any member of  
22 such entity, as to any executive officer or director of the  
23 entity, or as to any person with power to direct the  
24 management or policies of the entity.

25           Section 642. Paragraph (b) of subsection (2) of  
26 section 527.008, Florida Statutes, is amended to read:

27           537.008 Title loan agreement.--

28           (2) The following information shall also be printed on  
29 all title loan agreements:

30  
31

1           (b) The name and address of the Department of  
2 Financial Services as well as a telephone number to which  
3 consumers may address complaints.

4           Section 643. Section 537.009, Florida Statutes, is  
5 amended to read:

6           537.009 Recordkeeping; reporting; safekeeping of  
7 property.--

8           (1) Every title loan lender shall maintain, at the  
9 lender's title loan office, such books, accounts, and records  
10 of the business conducted under the license issued for such  
11 place of business as will enable the office ~~department~~ to  
12 determine the licensee's compliance with this act.

13           (2) The office ~~department~~ may authorize the  
14 maintenance of books, accounts, and records at a location  
15 other than the lender's title loan office. The office  
16 ~~department~~ may require books, accounts, and records to be  
17 produced and available at a reasonable and convenient location  
18 in this state within a reasonable period of time after such a  
19 request.

20           (3) The title loan lender shall maintain the original  
21 copy of each completed title loan agreement on the title loan  
22 office premises, and shall not obliterate, discard, or destroy  
23 any such original copy, for a period of at least 2 years after  
24 making the final entry on any loan recorded in such office or  
25 after an a ~~department~~ examination by the Office of Financial  
26 Institutions and Securities Regulation, whichever is later.

27           (4) Loan property which is delivered to a title loan  
28 lender shall be securely stored and maintained at the title  
29 loan office unless the loan property has been forwarded to the  
30 appropriate state agency for the purpose of having a lien  
31 recorded or deleted.

1           (5) The commission ~~department~~ may prescribe by rule  
2 the books, accounts, and records, and the minimum information  
3 to be shown in the books, accounts, and records, of licensees  
4 so that such records will enable the office ~~department~~ to  
5 determine compliance with the provisions of this act.

6           Section 644. Subsection (2) and paragraph (c) of  
7 subsection (4) of section 537.011, Florida Statutes, are  
8 amended to read:

9           537.011 Title loan charges.--

10          (2) The annual percentage rate that may be charged for  
11 a title loan may equal, but not exceed, the annual percentage  
12 rate that must be computed and disclosed as required by the  
13 federal Truth in Lending Act and Regulation Z of the Board of  
14 Governors of the Federal Reserve System. The maximum annual  
15 percentage rate of interest that may be charged is 12 times  
16 the maximum monthly rate, and the maximum monthly rate must be  
17 computed on the basis of one-twelfth of the annual rate for  
18 each full month. The commission ~~Department of Banking and~~  
19 ~~Finance~~ shall establish by rule the rate for each day in a  
20 fraction of a month when the period for which the charge is  
21 computed is more or less than 1 month.

22          (4) Any interest contracted for or received, directly  
23 or indirectly, by a title loan lender, or an agent of the  
24 title loan lender, in excess of the amounts authorized under  
25 this chapter is prohibited and may not be collected by the  
26 title loan lender or an agent of the title loan lender.

27          (c) The office ~~department~~ may order a title loan  
28 lender, or an agent of the title loan lender, to comply with  
29 the provisions of paragraphs (a) and (b).  
30  
31

1           Section 645. Paragraphs (b), (f), and (n) of  
2 subsection (1) of section 537.013, Florida Statutes, are  
3 amended to read:

4           537.013 Prohibited acts.--

5           (1) A title loan lender, or any agent or employee of a  
6 title loan lender, shall not:

7           (b) Refuse to allow the office ~~department~~ to inspect  
8 completed title loan agreements, extensions of such  
9 agreements, or loan property during the ordinary operating  
10 hours of the title loan lender's business or other times  
11 acceptable to both parties.

12           (f) Fail to exercise reasonable care, as defined by  
13 commission ~~department~~ rule, in the safekeeping of loan  
14 property or of titled personal property repossessed pursuant  
15 to this act.

16           (n) Act as a title loan lender under this act within a  
17 place of business in which the licensee solicits or engages in  
18 business outside the scope of this act if the office  
19 ~~department~~ determines that the licensee's operation of and  
20 conduct pertaining to such other business results in an  
21 evasion of this act. Upon making such a determination, the  
22 office ~~department~~ shall order the licensee to cease and desist  
23 from such evasion; provided, no licensee shall engage in the  
24 pawnbroker business.

25           Section 646. Section 537.016, Florida Statutes, is  
26 amended to read:

27           537.016 Subpoenas; enforcement actions; rules.--

28           (1) The office ~~department~~ may issue and serve  
29 subpoenas to compel the attendance of witnesses and the  
30 production of documents, papers, books, records, and other  
31 evidence before the office ~~department~~ in any matter pertaining

1 to this act. The office ~~department~~ may administer oaths and  
2 affirmations to any person whose testimony is required. If any  
3 person refuses to testify; produce books, records, and  
4 documents; or otherwise refuses to obey a subpoena issued  
5 under this section, the office ~~department~~ may enforce the  
6 subpoena in the same manner as subpoenas issued under the  
7 Administrative Procedure Act are enforced. Witnesses are  
8 entitled to the same fees and mileage as they are entitled to  
9 by law for attending as witnesses in the circuit court, unless  
10 such examination or investigation is held at the place of  
11 business or residence of the witness.

12 (2) In addition to any other powers conferred upon the  
13 office ~~department~~ to enforce or administer this act, the  
14 office ~~department~~ may:

15 (a) Bring an action in any court of competent  
16 jurisdiction to enforce or administer this act, any rule or  
17 order adopted under this act, or any written agreement entered  
18 into with the office ~~department~~. In such action, the office  
19 ~~department~~ may seek any relief at law or equity, including a  
20 temporary or permanent injunction, appointment of a receiver  
21 or administrator, or an order of restitution.

22 (b) Issue and serve upon a person an order requiring  
23 such person to cease and desist and take corrective action  
24 whenever the office ~~department~~ finds that such person is  
25 violating, has violated, or is about to violate any provision  
26 of this act, any rule or order adopted under this act, or any  
27 written agreement entered into with the office ~~department~~.

28 (c) Whenever the office ~~department~~ finds that conduct  
29 described in paragraph (b) presents an immediate danger to the  
30 public health, safety, or welfare requiring an immediate final  
31 order, the office ~~department~~ may issue an emergency cease and

1 desist order reciting with particularity the facts underlying  
2 such findings. The emergency cease and desist order is  
3 effective immediately upon service of a copy of the order on  
4 the respondent named in the order and shall remain effective  
5 for 90 days. If the office ~~department~~ begins nonemergency  
6 proceedings under paragraph (b), the emergency cease and  
7 desist order remains effective until the conclusion of the  
8 proceedings under ss. 120.569 and 120.57.

9 (3) The commission ~~department~~ may adopt rules to  
10 administer this act.

11 Section 647. Section 537.017, Florida Statutes, is  
12 amended to read:

13 537.017 Investigations and complaints.--

14 (1) The office ~~department~~ may make any investigation  
15 and examination of any licensee or other person the office  
16 ~~department~~ deems necessary to determine compliance with this  
17 act. For such purposes, the office ~~department~~ may examine the  
18 books, accounts, records, and other documents or matters of  
19 any licensee or other person. The office ~~department~~ may compel  
20 the production of all relevant books, records, and other  
21 documents and materials relative to an examination or  
22 investigation. Examinations shall not be made more often than  
23 once during any 12-month period unless the office ~~department~~  
24 has reason to believe the licensee is not complying with the  
25 provisions of this act.

26 (2) The office ~~department~~ shall conduct all  
27 examinations at a convenient location in this state unless the  
28 office ~~department~~ determines that it is more effective or  
29 cost-efficient to perform an examination at the licensee's  
30 out-of-state location. For an examination performed at the  
31 licensee's out-of-state location, the licensee shall pay the

1 travel expense and per diem subsistence at the rate provided  
2 by law for up to thirty 8-hour days per year for each office  
3 ~~department~~ examiner who participates in such an examination.  
4 However, if the examination involves or reveals possible  
5 fraudulent conduct by the licensee, the licensee shall pay the  
6 travel expenses and per diem subsistence provided by law,  
7 without limitation, for each participating examiner.

8 (3) Any person having reason to believe that any  
9 provision of this act has been violated may file with the  
10 Department of Financial Services or the office a written  
11 complaint setting forth the details of such alleged violation,  
12 and the office ~~department~~ may investigate such complaint.

13 Section 648. Subsection (1) of section 548.066,  
14 Florida Statutes, is amended to read:

15 548.066 Ticket refunds.--

16 (1) Upon the postponement, substitution of either  
17 participant, or cancellation of the main event or the entire  
18 program of matches, the promoter shall refund the full  
19 purchase price of a ticket to each person presenting a ticket  
20 for a refund within 30 days after the scheduled date of the  
21 event. Within 10 days after the expiration of the 30-day  
22 period, the promoter shall pay all unclaimed ticket receipts  
23 to the commission. The commission shall hold the funds for 1  
24 year and make refunds during such time to any person  
25 presenting a ticket for a refund. Thereafter, the commission  
26 shall pay all remaining moneys from the ticket sale to the  
27 Chief Financial Officer ~~State Treasurer~~ for deposit into the  
28 General Revenue Fund.

29 Section 649. Section 548.077, Florida Statutes, is  
30 amended to read:

31

1           548.077 Florida State Boxing Commission; collection  
2 and disposition of moneys.--All fees, fines, forfeitures, and  
3 other moneys collected under the provisions of this chapter  
4 shall be paid by the commission to the Chief Financial Officer  
5 ~~State Treasurer~~ who, after the expenses of the commission are  
6 paid, shall deposit them in the Professional Regulation Trust  
7 Fund to be used for the administration and operation of the  
8 commission and to enforce the laws and rules under its  
9 jurisdiction. In the event the unexpended balance of such  
10 moneys collected under the provisions of this chapter exceeds  
11 \$250,000, any excess of that amount shall be deposited in the  
12 General Revenue Fund.

13           Section 650. Subsection (10) of section 550.0251,  
14 Florida Statutes, is amended to read:

15           550.0251 The powers and duties of the Division of  
16 Pari-mutuel Wagering of the Department of Business and  
17 Professional Regulation.--The division shall administer this  
18 chapter and regulate the pari-mutuel industry under this  
19 chapter and the rules adopted pursuant thereto, and:

20           (10) The division may impose an administrative fine  
21 for a violation under this chapter of not more than \$1,000 for  
22 each count or separate offense, except as otherwise provided  
23 in this chapter, and may suspend or revoke a permit, a  
24 pari-mutuel license, or an occupational license for a  
25 violation under this chapter. All fines imposed and collected  
26 under this subsection must be deposited with the Chief  
27 Financial Officer ~~Treasurer~~ to the credit of the General  
28 Revenue Fund.

29           Section 651. Paragraph (b) of subsection (9) of  
30 section 550.054, Florida Statutes, is amended to read:

31

1           550.054 Application for permit to conduct pari-mutuel  
2 wagering.--

3           (9)

4           (b) The division may revoke or suspend any permit or  
5 license issued under this chapter upon the willful violation  
6 by the permitholder or licensee of any provision of this  
7 chapter or of any rule adopted under this chapter. In lieu of  
8 suspending or revoking a permit or license, the division may  
9 impose a civil penalty against the permitholder or licensee  
10 for a violation of this chapter or any rule adopted by the  
11 division. The penalty so imposed may not exceed \$1,000 for  
12 each count or separate offense. All penalties imposed and  
13 collected must be deposited with the Chief Financial Officer  
14 ~~Treasurer~~ to the credit of the General Revenue Fund.

15           Section 652. Paragraph (a) of subsection (1) and  
16 subsection (5) of section 550.0951, Florida Statutes, are  
17 amended to read:

18           550.0951 Payment of daily license fee and taxes.--

19           (1)(a) DAILY LICENSE FEE.--Each person engaged in the  
20 business of conducting race meetings or jai alai games under  
21 this chapter, hereinafter referred to as the "permitholder,"  
22 "licensee," or "permittee," shall pay to the division, for the  
23 use of the division, a daily license fee on each live or  
24 simulcast pari-mutuel event of \$100 for each horserace and \$80  
25 for each dograce and \$40 for each jai alai game conducted at a  
26 racetrack or fronton licensed under this chapter. In addition  
27 to the tax exemption specified in s. 550.09514(1) of \$360,000  
28 or \$500,000 per greyhound permitholder per state fiscal year,  
29 each greyhound permitholder shall receive in the current state  
30 fiscal year a tax credit equal to the number of live greyhound  
31 races conducted in the previous state fiscal year times the

1 daily license fee specified for each dograce in this  
2 subsection applicable for the previous state fiscal year.  
3 This tax credit and the exemption in s. 550.09514(1) shall be  
4 applicable to any tax imposed by this chapter or the daily  
5 license fees imposed by this chapter except during any charity  
6 or scholarship performances conducted pursuant to s. 550.0351.  
7 Each permitholder shall pay daily license fees not to exceed  
8 \$500 per day on any simulcast races or games on which such  
9 permitholder accepts wagers regardless of the number of  
10 out-of-state events taken or the number of out-of-state  
11 locations from which such events are taken. This license fee  
12 shall be deposited with the Chief Financial Officer ~~Treasurer~~  
13 to the credit of the Pari-mutuel Wagering Trust Fund.

14 (5) PAYMENT AND DISPOSITION OF FEES AND  
15 TAXES.--Payment for the admission tax, tax on handle, and the  
16 breaks tax imposed by this section shall be paid to the  
17 division. The division shall deposit these sums with the Chief  
18 Financial Officer ~~Treasurer~~, to the credit of the Pari-mutuel  
19 Wagering Trust Fund, hereby established. The permitholder  
20 shall remit to the division payment for the daily license fee,  
21 the admission tax, the tax on handle, and the breaks tax. Such  
22 payments shall be remitted by 3 p.m. Wednesday of each week  
23 for taxes imposed and collected for the preceding week ending  
24 on Sunday. Permitholders shall file a report under oath by the  
25 5th day of each calendar month for all taxes remitted during  
26 the preceding calendar month. Such payments shall be  
27 accompanied by a report under oath showing the total of all  
28 admissions, the pari-mutuel wagering activities for the  
29 preceding calendar month, and such other information as may be  
30 prescribed by the division.

31

1           Section 653. Paragraph (a) of subsection (3) of  
2 section 550.125, Florida Statutes, is amended to read:

3           550.125 Uniform reporting system; bond requirement.--

4           (3)(a) Each permitholder to which a license is granted  
5 under this chapter, at its own cost and expense, must, before  
6 the license is delivered, give a bond in the penal sum of  
7 \$50,000 payable to the Governor of the state and her or his  
8 successors in office, with a surety or sureties to be approved  
9 by the division and the Chief Financial Officer ~~Treasurer~~,  
10 conditioned to faithfully make the payments to the Chief  
11 Financial Officer ~~Treasurer~~ in her or his capacity as  
12 treasurer of the division; to keep its books and records and  
13 make reports as provided; and to conduct its racing in  
14 conformity with this chapter. When the greatest amount of tax  
15 owed during any month in the prior state fiscal year, in which  
16 a full schedule of live racing was conducted, is less than  
17 \$50,000, the division may assess a bond in a sum less than  
18 \$50,000. The division may review the bond for adequacy and  
19 require adjustments each fiscal year. The division has the  
20 authority to adopt rules to implement this paragraph and  
21 establish guidelines for such bonds.

22           Section 654. Section 550.135, Florida Statutes, is  
23 amended to read:

24           550.135 Division of moneys derived under this  
25 law.--All moneys that are deposited with the Chief Financial  
26 Officer ~~Treasurer~~ to the credit of the Pari-mutuel Wagering  
27 Trust Fund shall be distributed as follows:

28           (1) The daily license fee revenues collected pursuant  
29 to s. 550.0951(1) shall be used to fund the operating cost of  
30 the division and to provide a proportionate share of the  
31 operation of the office of the secretary and the Division of

1 Administration of the Department of Business and Professional  
2 Regulation; however, other collections in the Pari-mutuel  
3 Wagering Trust Fund may also be used to fund the operation of  
4 the division in accordance with authorized appropriations.

5 (2) All unappropriated funds in excess of \$3.5 million  
6 in the Pari-mutuel Wagering Trust Fund shall be deposited with  
7 ~~to~~ the Chief Financial Officer ~~Treasurer~~ to the credit of the  
8 General Revenue Fund.

9 Section 655. Subsection (3) of section 550.1645,  
10 Florida Statutes, is amended to read:

11 550.1645 Escheat to state of abandoned interest in or  
12 contribution to pari-mutuel pools.--

13 (3) All money or other property that has escheated to  
14 and become the property of the state as provided herein, and  
15 which is held by such licensee authorized to conduct  
16 pari-mutuel pools in this state, shall be paid by such  
17 licensee to the Chief Financial Officer ~~Treasurer~~ annually  
18 within 60 days after the close of the race meeting of the  
19 licensee. Such moneys so paid by the licensee to the Chief  
20 Financial Officer ~~Treasurer~~ shall be deposited in the State  
21 School Fund to be used for the support and maintenance of  
22 public free schools as required by s. 6, Art. IX of the State  
23 Constitution.

24 Section 656. Subsection (14) of section 552.081,  
25 Florida Statutes, is amended to read:

26 552.081 Definitions.--As used in this chapter:

27 (14) "Division" means the Division of State Fire  
28 Marshal of the Department of Financial Services ~~Insurance~~.

29 Section 657. Subsection (2) of section 552.161,  
30 Florida Statutes, is amended to read:

31 552.161 Administrative fines.--

1           (2) All such fines, monetary penalties, and costs  
2 received by the division in connection with this chapter shall  
3 be deposited in the Insurance ~~Commissioner's~~ Regulatory Trust  
4 Fund.

5           Section 658. Subsection (3) of section 552.21, Florida  
6 Statutes, is amended to read:

7           552.21 Confiscation and disposal of explosives.--

8           (3) Costs incurred in the confiscation and disposal of  
9 such explosives shall be paid from the Insurance  
10 ~~Commissioner's~~ Regulatory Trust Fund.

11           Section 659. Section 552.26, Florida Statutes, is  
12 amended to read:

13           552.26 Administration of chapter; personnel; fees to  
14 be deposited in Insurance ~~Commissioner's~~ Regulatory Trust  
15 Fund.--

16           (1) The division is authorized to employ such persons  
17 as it may deem qualified and necessary, and incur such other  
18 expenses as may be required, in connection with the  
19 administration of this chapter.

20           (2) All fees collected for licenses and permits and  
21 competency examination filing fees required by this chapter  
22 shall be deposited in the Insurance ~~Commissioner's~~ Regulatory  
23 Trust Fund and are ~~hereby~~ appropriated for the use of the  
24 division in the administration of this chapter.

25           Section 660. Subsection (4) of section 553.72, Florida  
26 Statutes, is amended to read:

27           553.72 Intent.--

28           (4) It is the intent of the Legislature that the  
29 Florida Fire Prevention Code and the Life Safety Code of this  
30 state be adopted, modified, updated, interpreted, and  
31 maintained by the Department of Financial Services ~~Insurance~~

1 in accordance with ss. 120.536(1) and 120.54 and included by  
2 reference as sections in the Florida Building Code.

3 Section 661. Paragraph (c) of subsection (1) of  
4 section 553.73, Florida Statutes, is amended to read:

5 553.73 Florida Building Code.--

6 (1)

7 (c) The Florida Fire Prevention Code and the Life  
8 Safety Code shall be referenced in the Florida Building Code,  
9 but shall be adopted, modified, revised, or amended,  
10 interpreted, and maintained by the Department of Financial  
11 Services Insurance by rule adopted pursuant to ss. 120.536(1)  
12 and 120.54. The Florida Building Commission may not adopt a  
13 fire prevention or lifesafety code, and nothing in the Florida  
14 Building Code shall affect the statutory powers, duties, and  
15 responsibilities of any fire official or the Department of  
16 Financial Services Insurance.

17 Section 662. Paragraph (k) of subsection (1) of  
18 section 553.74, Florida Statutes, is amended to read:

19 553.74 Florida Building Commission.--

20 (1) The Florida Building Commission is created and  
21 shall be located within the Department of Community Affairs  
22 for administrative purposes. Members shall be appointed by the  
23 Governor subject to confirmation by the Senate. The commission  
24 shall be composed of 23 members, consisting of the following:

25 (k) One member who represents the Department of  
26 Financial Services Insurance.

27 Section 663. Effective October 1, 2003, paragraph (k)  
28 of subsection (1) of section 553.74, Florida Statutes, as  
29 amended by chapter 2002-293, Laws of Florida, is amended to  
30 read:

31 553.74 Florida Building Commission.--

1           (1) The Florida Building Commission is created and  
2 shall be located within the Department of Community Affairs  
3 for administrative purposes. Members shall be appointed by the  
4 Governor subject to confirmation by the Senate. The commission  
5 shall be composed of 23 members, consisting of the following:

6           (k) One member who represents the Department of  
7 Financial Services Insurance.

8  
9 Any person serving on the commission under paragraph (c) or  
10 paragraph (h) on October 1, 2003, and who has served less than  
11 two full terms is eligible for reappointment to the commission  
12 regardless of whether he or she meets the new qualification.

13           Section 664. Subsection (16) of section 553.79,  
14 Florida Statutes, is amended to read:

15           553.79 Permits; applications; issuance; inspections.--

16           (16) Notwithstanding any other provision of law, state  
17 agencies responsible for the construction, erection,  
18 alteration, modification, repair, or demolition of public  
19 buildings, or the regulation of public and private buildings,  
20 structures, and facilities, shall be subject to enforcement of  
21 the Florida Building Code by local jurisdictions. This  
22 subsection applies in addition to the jurisdiction and  
23 authority of the Department of Financial Services Insurance to  
24 inspect state-owned buildings. This subsection does not apply  
25 to the jurisdiction and authority of the Department of  
26 Agriculture and Consumer Services to inspect amusement rides  
27 or the Department of Financial Services Insurance to inspect  
28 state-owned buildings and boilers.

29           Section 665. Subsection (6) of section 553.88, Florida  
30 Statutes, is amended to read:

31

1           553.88 Adoption of electrical and alarm  
2 standards.--For the purpose of establishing minimum electrical  
3 and alarm standards in this state, the current edition of the  
4 following standards are adopted:

5           (6) The minimum standards for grounding of portable  
6 electric equipment, chapter 8C-27 as recommended by the  
7 ~~Industrial Standards Section, Division of Workers'~~  
8 Compensation, Department of Financial Services ~~Labor and~~  
9 ~~Employment Security~~.

10  
11 The Florida Building Commission shall update and maintain such  
12 electrical standards consistent with the procedures  
13 established in s. 553.73 and may recommend the National  
14 Electrical Installation Standards.

15           Section 666. Subsection (6) of section 554.1021,  
16 Florida Statutes, is amended to read:

17           554.1021 Definitions.--As used in ss.  
18 554.1011-554.115:

19           (6) "Department" means the Department of Financial  
20 Services Insurance.

21           Section 667. Subsection (1) of section 554.105,  
22 Florida Statutes, is amended to read:

23           554.105 Chief inspector.--

24           (1) The Chief Financial Officer ~~Insurance Commissioner~~  
25 ~~and Treasurer~~ shall appoint a chief inspector, who shall have  
26 not less than 5 years' experience in the construction,  
27 installation, inspection, operation, maintenance, or repair of  
28 high pressure, high temperature water boilers and who shall  
29 hold a commission from the National Board of Boiler and  
30 Pressure Vessel Inspectors or a certificate of competency from  
31 the department.

1 Section 668. Subsection (3) of section 554.111,  
2 Florida Statutes, is amended to read:

3 554.111 Fees.--

4 (3) The chief inspector shall deposit all fees  
5 received pursuant to ss. 554.1011-554.115 into the Insurance  
6 ~~Commissioner's~~ Regulatory Trust Fund.

7 Section 669. Paragraph (b) of subsection (2) and  
8 subsection (3) of section 559.10, Florida Statutes, are  
9 amended to read:

10 559.10 Definition; "budget planning".--

11 (2) The term "budget planning" does not include the  
12 following:

13 (b) Other activities defined by rule of the Financial  
14 Services Commission ~~Department of Banking and Finance~~ as not  
15 within the prohibition of this part, provided such rule is  
16 adopted after a finding that consumers are adequately  
17 protected in the activity and that its prohibition is not  
18 required in the public interest.

19 (3) The Financial Services Commission ~~Department of~~  
20 ~~Banking and Finance~~ may adopt rules as necessary to implement  
21 and enforce this part.

22 Section 670. Subsection (5) of section 559.543,  
23 Florida Statutes, is amended, and subsection (6) is added to  
24 that section, to read:

25 559.543 Definitions.--As used in this part:

26 (5) "Commission" means the Financial Services  
27 Commission ~~"Department"~~ ~~means the Department of Banking and~~  
28 ~~Finance.~~

29 (6) "Office" means the Office of Financial  
30 Institutions and Securities Regulation of the commission.

31

1           Section 671. Subsections (2), (3), and (4) of section  
2 559.544, Florida Statutes, are amended to read:

3           559.544 Registration required; exemptions.--

4           (2) Each commercial collection agency doing business  
5 in this state shall register with the office ~~department~~ and  
6 annually renew such registration, providing the registration  
7 fee, information, and surety bond required by this part.

8           (3) No registration shall be valid for any commercial  
9 collection agency transacting business at any place other than  
10 that designated in the registration unless the office  
11 ~~department~~ is first notified in advance of any change of  
12 location. A registration under this part is not transferable  
13 or assignable. Any commercial collection agency desiring to  
14 change its registered name, location, or agent for service of  
15 process at any time other than renewal of registration shall  
16 notify the office ~~department~~ of such change prior to the  
17 change.

18           (4) The office ~~department~~ shall not accept any  
19 registration for any commercial collection agency as validly  
20 made and filed with the office ~~department~~ under this section  
21 unless the registration information furnished to the office  
22 ~~department~~ by the registrant is complete pursuant to s.  
23 559.545 and facially demonstrates that such registrant is  
24 qualified to engage in business as a commercial collection  
25 agency, including specifically that neither the registrant nor  
26 any principal of the registrant has engaged in any unlawful  
27 collection practices, dishonest dealings, acts of moral  
28 turpitude, or other criminal acts that reflect an inability to  
29 engage in the commercial collection agency business. The  
30 office ~~department~~ shall inform any person whose registration  
31 is rejected by the office ~~department~~ of the fact of and basis

1 for such rejection. A prospective registrant shall be  
2 entitled to be registered when her or his or its registration  
3 information is complete on its face, the applicable  
4 registration fee has been paid, and the required evidence of  
5 current bond is furnished to the office ~~department~~.

6 Section 672. Section 559.545, Florida Statutes, is  
7 amended to read:

8 559.545 Registration of commercial collection  
9 agencies; procedure.--Any person who wishes to register as a  
10 commercial collection agency in compliance with this part  
11 shall do so on forms adopted by the commission and furnished  
12 by the office ~~department~~. Any renewal of registration shall  
13 be made between October 1 and December 31 of each year. In  
14 registering or renewing a registration as required by this  
15 part, each commercial collection agency shall furnish to the  
16 office ~~department~~ a registration fee, information, and surety  
17 bond, as follows:

18 (1) The registrant shall pay to the office ~~department~~  
19 a registration fee of \$500. All amounts collected shall be  
20 deposited to the credit of the Regulatory Trust Fund of the  
21 office ~~department~~.

22 (2) The registrant shall provide the following  
23 information:

24 (a) The business name or trade name of the commercial  
25 collection agency, the current mailing address of the agency,  
26 and the current business location of each place from which the  
27 agency operates either a main or branch office, with a  
28 designation of which location constitutes its principal place  
29 of business.

30 (b) The full names, current addresses, current  
31 telephone numbers, and social security numbers, or federal

1 identification numbers of any corporate owner, of the  
2 registrant's owners or corporate officers and directors, and  
3 of the Florida resident agent of the registering agency.

4 (c) A statement as to whether the registrant is a  
5 domestic or foreign corporation, together with the state and  
6 date of incorporation, charter number of the corporation, and,  
7 if a foreign corporation, the date the corporation first  
8 registered to do business in this state.

9 (d) A statement listing each county in this state in  
10 which the registrant is currently doing business or plans to  
11 do business within the next calendar year, indicating each  
12 county in which the registrant holds an occupational license.

13 (e) A statement listing each county in this state in  
14 which the registrant is operating under a fictitious name or  
15 trade name other than that of the registrant, indicating the  
16 date and place of registration of any such fictitious name or  
17 trade name.

18 (f) A statement listing the names of any other  
19 corporations, entities, or trade names through which any owner  
20 or director of the registrant was known or did business as a  
21 commercial or consumer collection agency within the 5 calendar  
22 years immediately preceding the year in which the agency is  
23 registering.

24 (g) A statement clearly identifying and explaining any  
25 occasion on which any professional license or occupational  
26 license held by the registrant, any principal of the  
27 registrant, or any business entity in which any principal of  
28 the registrant was the owner of 10 percent or more of such  
29 business was the subject of any suspension, revocation, or  
30 other disciplinary action.

31

1 (h) A statement clearly identifying and explaining any  
2 occasion of a finding of guilt of any crime involving moral  
3 turpitude or dishonest conduct on the part of any principal of  
4 the registrant.

5 (3) The registrant shall furnish to the office  
6 ~~department~~ evidence, as provided in s. 559.546, of the  
7 registrant having a current surety bond in the amount of  
8 \$50,000, valid for the year of registration, paid for and  
9 issued for the use and benefit of any credit grantor who  
10 suffers or sustains any loss or damage by reason of any  
11 violation of the provisions of this part by the registrant, or  
12 by any agent or employee of the registrant acting within the  
13 scope of her or his employment, and issued to ensure  
14 conformance with the provisions of this part.

15 Section 673. Section 559.546, Florida Statutes, is  
16 amended to read:

17 559.546 Bond; evidence of current and valid  
18 bond.--Pursuant to s. 559.545, the registrant shall provide to  
19 the office ~~department~~ evidence that the registrant has been  
20 issued a current and valid surety bond as required by this  
21 part.

22 (1) In addition to each registration filed pursuant to  
23 s. 559.545 and any renewal of such registration, each  
24 registrant shall furnish to the office ~~department~~ the  
25 following:

26 (a) A copy of the surety bond, which bond shall be one  
27 issued by a surety known by the registrant to be acceptable to  
28 the office ~~department~~.

29 (b) A statement from the surety that the annual  
30 premium for the bond has been paid in full by the registrant.

31

1 (c) A statement from the surety that the bond issued  
2 by the surety meets the requirements of this part.

3 (2) The liability of the surety under any bond issued  
4 pursuant to the requirements of this part shall not exceed in  
5 the aggregate the amount of the bond, regardless of the number  
6 or amount of any claims filed or which might be asserted  
7 against the surety on such bond. If multiple claims are filed  
8 against the surety on any such bond in excess of the amount of  
9 the bond, the surety may pay the full amount of the bond to  
10 the office ~~department~~ and shall not be further liable under  
11 the bond. The office ~~department~~ shall hold such funds for  
12 distribution to claimants and administratively determine and  
13 pay to each claimant the pro rata share of each valid claim  
14 made against the funds within 6 months after the date of the  
15 filing of the first claim against the surety.

16 Section 674. Paragraph (a) of subsection (1) and  
17 paragraph (a) of subsection (2) of section 559.548, Florida  
18 Statutes, are amended to read:

19 559.548 Penalties.--

20 (1) Each of the following acts constitutes a felony of  
21 the third degree, punishable as provided in s. 775.082, s.  
22 775.083, or s. 775.084:

23 (a) Operating or soliciting business as a commercial  
24 collection agency in this state without first registering with  
25 the office ~~department~~, unless specifically exempted by this  
26 part.

27 (2) Each of the following acts constitutes a  
28 misdemeanor of the second degree, punishable as provided in s.  
29 775.082 or s. 775.083:

30 (a) Relocating a business as a commercial collection  
31 agency, or operating under any name other than that designated

1 in the registration, unless written notification is given to  
2 the office department and to the surety or sureties on the  
3 original bond.

4 Section 675. Subsection (4) of section 559.55, Florida  
5 Statutes, is amended to read:

6 559.55 Definitions.--The following terms shall, unless  
7 the context otherwise indicates, have the following meanings  
8 for the purpose of this part:

9 (4) "Office" means the Office of Financial  
10 Institutions and Securities Regulation of the Financial  
11 Services Commission~~"Department" means the Department of~~  
12 ~~Banking and Finance.~~

13 Section 676. Subsections (2) and (3) of section  
14 559.553, Florida Statutes, are amended to read:

15 559.553 Registration of consumer collection agencies  
16 required; exemptions.--

17 (2) Each consumer collection agency doing business in  
18 this state shall register with the office department and renew  
19 such registration annually as set forth in s. 559.555.

20 (3) A prospective registrant shall be entitled to be  
21 registered when registration information is complete on its  
22 face and the applicable registration fee has been paid;  
23 however, the office department may reject a registration  
24 submitted by a prospective registrant if the registrant or any  
25 principal of the registrant previously has held any  
26 professional license or state registration which was the  
27 subject of any suspension or revocation which has not been  
28 explained by the prospective registrant to the satisfaction of  
29 the office department either in the registration information  
30 submitted initially or upon the subsequent written request of  
31 the office department. In the event that an attempted

1 registration is rejected by the office ~~department~~ the  
2 prospective registrant shall be informed of the basis for  
3 rejection.

4 Section 677. Section 559.555, Florida Statutes, is  
5 amended to read:

6 559.555 Registration of consumer collection agencies;  
7 procedure.--Any person required to register as a consumer  
8 collection agency shall furnish to the office ~~department~~ the  
9 registration fee and information as follows:

10 (1) The registrant shall pay to the office ~~department~~  
11 a registration fee in the amount of \$200. All amounts  
12 collected shall be deposited by the office ~~department~~ to the  
13 credit of the Regulatory Trust Fund of the office ~~department~~.

14 (2) Each registrant shall provide to the office  
15 ~~department~~ the business name or trade name, the current  
16 mailing address, the current business location which  
17 constitutes its principal place of business, and the full name  
18 of each individual who is a principal of the registrant.  
19 "Principal of a registrant" means the registrant's owners if a  
20 partnership or sole proprietorship, corporate officers,  
21 corporate directors other than directors of a not-for-profit  
22 corporation organized pursuant to chapter 617 and Florida  
23 resident agent if a corporate registrant. The registration  
24 information shall include a statement clearly identifying and  
25 explaining any occasion on which any professional license or  
26 state registration held by the registrant, by any principal of  
27 the registrant, or by any business entity in which any  
28 principal of the registrant was the owner of 10 percent or  
29 more of such business, was the subject of any suspension or  
30 revocation.

31

1           (3) Renewal of registration shall be made between  
2 October 1 and December 31 of each year. There shall be no  
3 proration of the fee for any registration.

4           Section 678. Section 559.563, Florida Statutes, is  
5 amended to read:

6           559.563 Void registration.--Any registration made  
7 under this part based upon false identification or false  
8 information, or identification not current with respect to  
9 name, address, and business location, or other fact which is  
10 material to such registration, shall be void. Any  
11 registration made and subsequently void under this section  
12 shall not be construed as creating any defense in any action  
13 by the office ~~department~~ to impose any sanction for any  
14 violation of this part.

15           Section 679. Section 559.725, Florida Statutes, is  
16 amended to read:

17           559.725 Consumer complaints; administrative duties.--

18           (1) The Division of Consumer Services of the  
19 Department of Agriculture and Consumer Services shall serve as  
20 the registry for receiving and maintaining records of  
21 inquiries, correspondence, and complaints from consumers  
22 concerning any and all persons who collect debts, including  
23 consumer collection agencies.

24           (2) The division shall classify complaints by type and  
25 identify the number of written complaints against persons  
26 collecting or attempting to collect debts in this state,  
27 including credit grantors collecting their own debts, debt  
28 collectors generally, and, specifically, consumer collection  
29 agencies as distinguished from other persons who collect debts  
30 such as commercial debt collection agencies regulated under  
31 part V of this chapter. The division shall identify the

1 nature and number of various kinds of written complaints,  
2 including specifically those alleging violations of s. 559.72.

3 (3) The division shall inform and furnish relevant  
4 information to the appropriate regulatory body of the state,  
5 or The Florida Bar in the case of attorneys, when any consumer  
6 debt collector exempt from registration under this part has  
7 been named in five or more written consumer complaints  
8 alleging violations of s. 559.72 within a 12-month period.

9 (4) The division shall furnish a form to each  
10 complainant whose complaint concerns an alleged violation of  
11 s. 559.72 by a consumer collection agency. Such form may be  
12 filed with the office ~~Department of Banking and Finance~~. The  
13 form shall identify the accused consumer collection agency and  
14 provide for the complainant's summary of the nature of the  
15 alleged violation and facts which allegedly support the  
16 complaint. The form shall include a provision for the  
17 complainant to state under oath before a notary public that  
18 the allegations therein made are true.

19 (5) Upon receipt of such sworn complaint, the office  
20 ~~department~~ shall promptly furnish a copy of the sworn  
21 complaint to the accused consumer collection agency.

22 (6) The office ~~department~~ shall investigate sworn  
23 complaints by direct written communication with the  
24 complainant and the affected consumer collection agency. In  
25 addition, the office ~~department~~ shall attempt to resolve each  
26 sworn complaint and shall record the resolution of such  
27 complaints.

28 (7) Periodically, the office ~~department~~ shall identify  
29 consumer collection agencies that have unresolved sworn  
30 consumer complaints from five or more different consumers  
31 within a 12-month period under the provisions of this part.

1           (8) The office ~~department~~ shall issue a written  
2 warning notice to the accused consumer collection agency if  
3 the office ~~department~~ is unable to resolve all such sworn  
4 complaints and fewer than five unresolved complaints remain.  
5 Such notice shall include a statement that the warning may  
6 constitute evidence in any future investigation of similar  
7 complaints against that agency and in any future  
8 administrative determination of the imposition of other  
9 administrative remedies available to the office ~~department~~  
10 under this part.

11           (9) The office ~~department~~ may issue a written  
12 reprimand when five or more such unresolved sworn complaints  
13 against a consumer collection agency collectively fall short  
14 of constituting apparent repeated violations that warrant more  
15 serious administrative sanctions. Such reprimand shall include  
16 a statement that the reprimand may constitute evidence in any  
17 future investigation of similar complaints against that agency  
18 and in any future administrative determination of the  
19 imposition of other administrative remedies available to the  
20 office ~~department~~.

21           (10) The office ~~department~~ shall issue a notice of  
22 intent either to revoke or suspend the registration or to  
23 impose an administrative fine when the office ~~department~~  
24 preliminarily determines that repeated violations of s. 559.72  
25 by an accused registrant have occurred which would warrant  
26 more serious administrative sanctions being imposed under this  
27 part. The office ~~department~~ shall advise each registrant of  
28 the right to require an administrative hearing under chapter  
29 120, prior to the agency's final action on the matter as  
30 authorized by s. 559.730.

31

1           (11) The office ~~department~~ shall advise the  
2 appropriate state attorney, or the Attorney General in the  
3 case of an out-of-state consumer debt collector, of any  
4 determination by the office ~~department~~ of a violation of the  
5 requirements of this part by any consumer collection agency  
6 which is not registered as required by this part. The office  
7 ~~department~~ shall furnish the state attorney or Attorney  
8 General with the office's ~~department's~~ information concerning  
9 the alleged violations of such requirements.

10           Section 680. Section 559.730, Florida Statutes, is  
11 amended to read:

12           559.730 Administrative remedies.--

13           (1) The office ~~department~~ may revoke or suspend the  
14 registration of any registrant under this part who has engaged  
15 in repeated violations which establish a clear pattern of  
16 abuse of prohibited collection practices under s. 559.72.  
17 Final office ~~department~~ action to revoke or suspend the  
18 registration of any registrant shall be subject to review in  
19 accordance with chapter 120 in the same manner as revocation  
20 of a license. The repeated violations of the law by one  
21 employee shall not be grounds for revocation or suspension of  
22 the registration of the employing consumer collection agency,  
23 unless the employee is also the owner of a majority interest  
24 in the collection agency.

25           (2) The registration of a registrant shall not be  
26 revoked or suspended if the registrant shows by a  
27 preponderance of the evidence that the violations were not  
28 intentional and resulted from bona fide error notwithstanding  
29 the maintenance of procedures reasonably adapted to avoid any  
30 such error.

31

1           (3) The office ~~department~~ shall consider the number of  
2 complaints against the registrant in relation to the accused  
3 registrant's volume of business when determining whether  
4 suspension or revocation is the more appropriate sanction when  
5 circumstances warrant that one or the other should be imposed  
6 upon a registrant.

7           (4) The office ~~department~~ shall impose suspension  
8 rather than revocation when circumstances warrant that one or  
9 the other should be imposed upon a registrant and the accused  
10 registrant demonstrates that the registrant has taken  
11 affirmative steps which can be expected to effectively  
12 eliminate the repeated violations and that the registrant's  
13 registration has never previously been suspended.

14           (5) The office ~~department~~ may impose an administrative  
15 fine up to \$1,000 against the offending registrant as a  
16 sanction for repeated violations of the provisions of s.  
17 559.72 when violations do not rise to the level of misconduct  
18 governed by subsection (1). Final office ~~department~~ action to  
19 impose an administrative fine shall be subject to review in  
20 accordance with ss. 120.569 and 120.57.

21           (6) Any administrative fine imposed under this part  
22 shall be payable to the office ~~department~~. The office  
23 ~~department~~ shall maintain an appropriate record and shall  
24 deposit such fine into the Regulatory Trust Fund of the office  
25 ~~department~~.

26           (7) An administrative action by the office ~~department~~  
27 to impose revocation, suspension, or fine shall be brought  
28 within 2 years after the date of the last violation upon which  
29 the action is founded.

30           (8) Nothing in this part shall be construed to  
31 preclude any person from pursuing remedies available under the

1 Federal Fair Debt Collection Practices Act for any violation  
2 of such act, including specifically against any person who is  
3 exempt from the registration provisions of this part.

4 Section 681. Section 559.785, Florida Statutes, is  
5 amended to read:

6 559.785 Criminal penalty.--It shall be a misdemeanor  
7 of the first degree, punishable as provided in s. 775.082 or  
8 s. 775.083, for any person not exempt from registering as  
9 provided in this part to engage in collecting consumer debts  
10 in this state without first registering with the office  
11 ~~department~~, or to register or attempt to register by means of  
12 fraud, misrepresentation, or concealment.

13 Section 682. Subsection (2) of section 559.928,  
14 Florida Statutes, is amended to read:

15 559.928 Registration.--

16 (2) Registration fees shall be \$300 per year per  
17 registrant. All amounts collected shall be deposited by the  
18 Chief Financial Officer ~~Treasurer~~ to the credit of the General  
19 Inspection Trust Fund of the Department of Agriculture and  
20 Consumer Services pursuant to s. 570.20, for the sole purpose  
21 of administration of this part.

22 Section 683. Subsection (2) of section 559.9232,  
23 Florida Statutes, is amended to read:

24 559.9232 Definitions; exclusion of rental-purchase  
25 agreements from certain regulations.--

26 (2) A rental-purchase agreement that complies with  
27 this act shall not be construed to be, nor be governed by, any  
28 of the following:

29 (a) A lease or agreement which constitutes a credit  
30 sale as defined in 12 C.F.R. s. 226.2(a)(16) and s. 1602(g) of  
31 the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq.;

1 (b) A lease which constitutes a "consumer lease" as  
2 defined in 12 C.F.R. s. 213.2(a)(6);

3 (c) Any lease for agricultural, business, or  
4 commercial purposes;

5 (d) Any lease made to an organization;

6 (e) A lease or agreement which constitutes a "retail  
7 installment contract" or "retail installment transaction" as  
8 those terms are defined in s. 520.31(13) and (14)~~s.~~

9 ~~520.31(12) and (13);~~ or

10 (f) A security interest as defined in s. 671.201(37).

11 Section 684. Subsection (1) and paragraph (h) of  
12 subsection (2) of section 560.102, Florida Statutes, are  
13 amended to read:

14 560.102 Purpose; application.--The purposes of the  
15 code are to:

16 (1) Provide general regulatory powers to be exercised  
17 by the Financial Services Commission and the Office of  
18 Financial Institutions and Securities Regulation ~~Department of~~  
19 ~~Banking and Finance~~ in relation to the regulation of the money  
20 transmitter industry. The code applies to all money  
21 transmitters transacting business in this state and to the  
22 enforcement of all laws relating to the money transmitter  
23 industry.

24 (2) Provide for and promote, subject to the provisions  
25 of the code:

26 (h) Only such rulemaking power to the commission and  
27 administrative discretion to the office ~~department~~ as is  
28 necessary, in order that the supervision and regulation of  
29 money transmitters may be flexible and readily responsive to  
30 changes in economic conditions, in technology, and in money  
31 transmitter practices.

1           Section 685. Subsections (1), (7), (17), and (20) of  
2 section 560.103, Florida Statutes, are amended, present  
3 subsections (8) through (20) of that section are renumbered as  
4 (9) through (21), respectively, and a new subsection (8) is  
5 added to that section to read:

6           560.103 Definitions.--As used in the code, unless the  
7 context otherwise requires:

8           (1) "Appropriate regulator" means any state or federal  
9 agency, including the commission or office ~~department~~, which  
10 has been granted state or federal statutory authority with  
11 regard to the money transmission function.

12           (7) "Commission" means the Financial Services  
13 Commission ~~"Department" means the Florida Department of~~  
14 ~~Banking and Finance.~~

15           (8) "Office" means the Office of Financial  
16 Institutions and Securities Regulation of the commission.

17           (18) ~~(17)~~ "Registrant" means a person registered by the  
18 office ~~department~~ pursuant to the code.

19           (21) ~~(20)~~ "Unsafe or unsound practice" means any  
20 practice or conduct found by the office ~~department~~ to be  
21 contrary to generally accepted standards applicable to the  
22 specific money transmitter, or a violation of any prior order  
23 of an appropriate regulatory agency, which practice, conduct,  
24 or violation creates the likelihood of material loss,  
25 insolvency, or dissipation of assets of the money transmitter  
26 or otherwise materially prejudices the interests of its  
27 customers. In making this determination, the office ~~department~~  
28 must consider the size and condition of the money transmitter,  
29 the magnitude of the loss, the gravity of the violation, and  
30 the prior conduct of the person or business involved.

31

1           Section 686. Section 560.105, Florida Statutes, is  
2 amended to read:

3           560.105 Supervisory powers ~~of the department;~~  
4 rulemaking.--

5           (1) Consistent with the purposes of the code, the  
6 office department shall have:

7           (a)(1) Supervision over all money transmitters and  
8 their authorized vendors.

9           (b)(2) Access to books and records of persons over  
10 whom the office department exercises supervision as is  
11 necessary for the performance of the duties and functions of  
12 the office department prescribed by the code.

13           (c)(3) Power to issue orders and declaratory  
14 statements, disseminate information, and otherwise exercise  
15 its discretion to effectuate the purposes, policies, and  
16 provisions of the code.

17           (2) Consistent with the purposes of the code, the  
18 commission may and to adopt rules pursuant to ss. 120.536(1)  
19 and 120.54 to implement the provisions of the code.

20           Section 687. Subsection (2) of section 560.106,  
21 Florida Statutes, is amended to read:

22           560.106 Construction; standards.--

23           (2) The purposes and policies stated in s. 560.102  
24 constitute the standards to be observed by both the commission  
25 and the office department in the exercise of their ~~its~~  
26 discretionary powers under the code, in the adoption of rules,  
27 in the issuance of orders and declaratory statements, in the  
28 examination and supervision of money transmitters and their  
29 authorized vendors, and in all matters of construction and  
30 application of the code required for any determination or  
31 action by the commission or the office department.

1           Section 688. Section 560.107, Florida Statutes, is  
2 amended to read:

3           560.107 Liability.--No person acting, or who has  
4 acted, in good faith reliance upon a rule, order, or  
5 declaratory statement issued by the commission or the office  
6 ~~department~~ shall be subject to any criminal, civil, or  
7 administrative liability for such action, notwithstanding a  
8 subsequent decision by a court of competent jurisdiction  
9 invalidating the rule, order, or declaratory statement. In the  
10 case of an order or a declaratory statement that is not of  
11 general application, no person other than the person to whom  
12 the order or declaratory statement was issued is entitled to  
13 rely upon it, except upon material facts or circumstances that  
14 are substantially the same as those upon which the order or  
15 declaratory statement was based.

16           Section 689. Section 560.1073, Florida Statutes, is  
17 amended to read:

18           560.1073 False or misleading statements or supporting  
19 documents; penalty.--Any person who, personally or otherwise,  
20 files with the office ~~department~~, or signs as the duly  
21 authorized representative for filing with the office  
22 ~~department~~, any financial statement or any document in support  
23 thereof which is required by law or rule with intent to  
24 deceive and with knowledge that the statement or document is  
25 materially false or materially misleading commits a felony of  
26 the third degree, punishable as provided in s. 775.082, s.  
27 775.083, or s. 775.084.

28           Section 690. Section 560.108, Florida Statutes, is  
29 amended to read:

30           560.108 Administrative enforcement guidelines.--  
31

1           (1) In imposing any administrative remedy or penalty  
2 provided for in the code, the office ~~department~~ shall take  
3 into account the appropriateness of the penalty with respect  
4 to the size of the financial resources and good faith of the  
5 person charged, the gravity of the violation, the history of  
6 previous violations, and such other matters as justice may  
7 require.

8           (2) All administrative proceedings pursuant to the  
9 code shall be conducted in accordance with chapter 120. Any  
10 service required or authorized to be made by the office  
11 ~~department~~ under the code must be made by certified mail,  
12 return receipt requested, delivered to the addressee only by  
13 personal delivery or in accordance with chapter 48. The  
14 service provided for in this subsection is effective on the  
15 date of delivery.

16           Section 691. Section 560.109, Florida Statutes, is  
17 amended to read:

18           560.109 Investigations, subpoenas, hearings, and  
19 witnesses.--

20           (1) The office ~~department~~ may make investigations,  
21 within or outside this state, which it deems necessary in  
22 order to determine whether a person has violated any provision  
23 of the code or the rules adopted by the commission ~~department~~  
24 pursuant to the code.

25           (2)(a) In the course of or in connection with an  
26 investigation by the office ~~department~~ pursuant to the  
27 provisions of subsection (1) or an investigation or  
28 examination in connection with any application to the office  
29 ~~department~~ for the organization or establishment of a money  
30 transmitter business, or in connection with an examination or  
31 investigation of a money transmitter or its authorized vendor,

1 the office ~~department~~, or any of its officers holding no  
2 lesser title and position than financial examiner or analyst,  
3 financial investigator, or attorney at law, may:

- 4 1. Administer oaths and affirmations.
- 5 2. Take or cause to be taken testimony and  
6 depositions.

7 (b) The office ~~department~~, or any of its officers  
8 holding no lesser title than attorney or area financial  
9 manager, may issue, revoke, quash, or modify subpoenas and  
10 subpoenas duces tecum under the seal of the office ~~department~~  
11 or cause any such subpoena or subpoena duces tecum to be  
12 issued by any county court judge or clerk of the circuit court  
13 or county court to require persons to appear before the office  
14 ~~department~~ at a reasonable time and place to be therein named  
15 and to bring such books, records, and documents for inspection  
16 as may be therein designated. Such subpoenas may be served by  
17 a representative of the office ~~department~~ or may be served as  
18 otherwise provided for by law for the service of subpoenas.

19 (c) In connection with any such investigation or  
20 examination, the office ~~department~~ may permit a person to file  
21 a statement in writing, under oath or otherwise as the office  
22 ~~department~~ determines, as to facts and circumstances specified  
23 by the office ~~department~~.

24 (3)(a) In the event of noncompliance with a subpoena  
25 issued or caused to be issued by the office ~~department~~  
26 pursuant to this section, the office ~~department~~ may petition  
27 the circuit court of the county in which the person subpoenaed  
28 resides or has its principal place of business for an order  
29 requiring the subpoenaed person to appear and testify and to  
30 produce such books, records, and documents as are specified in  
31 such subpoena duces tecum. The office ~~department~~ is entitled

1 to the summary procedure provided in s. 51.011, and the court  
2 shall advance the cause on its calendar.

3 (b) A copy of the petition shall be served upon the  
4 person subpoenaed by any person authorized by this section to  
5 serve subpoenas, who shall make and file with the court an  
6 affidavit showing the time, place, and date of service.

7 (c) At any hearing on any such petition, the person  
8 subpoenaed, or any person whose interests will be  
9 substantially affected by the investigation, examination, or  
10 subpoena, may appear and object to the subpoena and to the  
11 granting of the petition. The court may make any order that  
12 justice requires in order to protect a party or other person  
13 and her or his personal and property rights, including, but  
14 not limited to, protection from annoyance, embarrassment,  
15 oppression, or undue burden or expense.

16 (d) Failure to comply with an order granting, in whole  
17 or in part, a petition for enforcement of a subpoena is a  
18 contempt of the court.

19 (4) Witnesses are entitled to the same fees and  
20 mileage to which they would be entitled by law for attending  
21 as witnesses in the circuit court, except that no fees or  
22 mileage is allowed for testimony of a person taken at the  
23 person's principal office or residence.

24 (5) Reasonable and necessary costs incurred by the  
25 office ~~department~~ and payable to persons involved with  
26 investigations may be assessed against any person on the basis  
27 of actual costs incurred. Assessable expenses include, but are  
28 not limited to: expenses for interpreters; expenses for  
29 communications; expenses for legal representation; expenses  
30 for economic, legal, or other research, analyses, and  
31 testimony; and fees and expenses for witnesses. The failure to

1 reimburse the office ~~department~~ is a ground for denial of the  
2 registration application or for revocation of any approval  
3 thereof. No such costs shall be assessed against a person  
4 unless the office ~~department~~ has determined that the person  
5 has operated or is operating in violation of the code.

6 Section 692. Subsection (1) of section 560.111,  
7 Florida Statutes, is amended to read:

8 560.111 Prohibited acts and practices.--

9 (1) It is unlawful for any money transmitter or money  
10 transmitter-affiliated party to:

11 (a) Receive or possess itself of any property  
12 otherwise than in payment of a just demand, and, with intent  
13 to deceive or defraud, to omit to make or cause to be made a  
14 full and true entry thereof in its books and accounts, or to  
15 concur in omitting to make any material entry thereof;

16 (b) Embezzle, abstract, or misapply any money,  
17 property, or thing of value of the money transmitter or  
18 authorized vendor with intent to deceive or defraud such money  
19 transmitter or authorized vendor;

20 (c) Make any false entry in any book, report, or  
21 statement of such money transmitter or authorized vendor with  
22 intent to deceive or defraud such money transmitter,  
23 authorized vendor, or another person, or with intent to  
24 deceive the office ~~department~~, any other state or federal  
25 regulatory agency, or any authorized representative appointed  
26 to examine or investigate the affairs of such money  
27 transmitter or authorized vendor;

28 (d) Engage in an act that violates 18 U.S.C. s. 1956,  
29 31 U.S.C. s. 5324, or any other law, rule, or regulation of  
30 another state or of the United States relating to the business  
31 of money transmission or usury which may cause the denial or

1 revocation of a money transmitter license or registration in  
2 such jurisdiction;

3 (e) Deliver or disclose to the office ~~department~~ or  
4 any of its employees any examination report, report of  
5 condition, report of income and dividends, audit, account,  
6 statement, or document known by it to be fraudulent or false  
7 as to any material matter; or

8 (f) Place among the assets of such money transmitter  
9 or authorized vendor any note, obligation, or security that  
10 the money transmitter or authorized vendor does not own or  
11 that to the person's knowledge is fraudulent or otherwise  
12 worthless, or for any such person to represent to the office  
13 ~~department~~ that any note, obligation, or security carried as  
14 an asset of such money transmitter or authorized vendor is the  
15 property of the money transmitter or authorized vendor and is  
16 genuine if it is known to such person that such representation  
17 is false or that such note, obligation, or security is  
18 fraudulent or otherwise worthless.

19 Section 693. Subsections (1), (3), and (6) of section  
20 560.112, Florida Statutes, are amended to read:

21 560.112 Procedures for disciplinary actions.--

22 (1) The office ~~department~~ may issue and serve upon any  
23 person a complaint stating charges whenever the office  
24 ~~department~~ has reason to believe that such person has engaged  
25 in or is engaging in conduct described in s. 560.114.

26 (3) If no hearing is requested within the time allowed  
27 by ss. 120.569 and 120.57, or if a hearing is held and the  
28 office ~~department~~ finds that any of the charges are true, the  
29 office ~~department~~ may enter an order directing the money  
30 transmitter, the money transmitter-affiliated party, or the  
31 person named therein to cease and desist from engaging in the

1 conduct complained of and to take reasonable corrective  
2 action. The office ~~department~~ may also issue an order  
3 suspending or barring any money transmitter-affiliated party  
4 from continuing to be employed by or associated with any money  
5 transmitter or authorized vendor during the period such order  
6 is in effect.

7 (6) Whenever the office ~~department~~ finds that conduct  
8 described in s. 560.114 is likely to cause substantial  
9 dissipation of assets or earnings of the money transmitter or,  
10 insolvency or substantial prejudice to the customers of the  
11 money transmitter or authorized vendor, it may issue an  
12 emergency removal order or an emergency cease and desist order  
13 requiring any person to disassociate itself from participating  
14 in the affairs of the money transmitter or authorized vendor  
15 or to immediately cease and desist from engaging in the  
16 conduct complained of and to take corrective action. The  
17 emergency order is effective immediately upon service of the  
18 order upon the person and remains effective for 90 days. Such  
19 person may object to the issuance of the emergency order  
20 pursuant to the provisions of chapter 120. Such objection must  
21 be in writing and must include a request for a formal hearing,  
22 which is to be promptly instituted and acted upon. If the  
23 office ~~department~~ begins nonemergency proceedings under  
24 subsection (1), the emergency order remains effective until  
25 the conclusion of the proceedings under ss. 120.569 and  
26 120.57.

27 Section 694. Section 560.113, Florida Statutes, is  
28 amended to read:

29 560.113 Injunctions.--Whenever a violation of the code  
30 is threatened or impending and such violation will cause  
31 substantial injury to any person, the circuit court has

1 jurisdiction to hear any complaint filed by the office  
2 ~~department~~ and, upon proper showing, to issue an injunction  
3 restraining such violation or granting other such appropriate  
4 relief.

5 Section 695. Subsections (1) and (2) of section  
6 560.114, Florida Statutes, are amended to read:

7 560.114 Disciplinary actions.--

8 (1) The following actions by a money transmitter or  
9 money transmitter-affiliated party are violations of the code  
10 and constitute grounds for the issuance of a cease and desist  
11 order, the issuance of a removal order, the denial of a  
12 registration application or the suspension or revocation of  
13 any registration previously issued pursuant to the code, or  
14 the taking of any other action within the authority of the  
15 office ~~department~~ pursuant to the code:

16 (a) Failure to comply with any provision of the code,  
17 any rule or order adopted pursuant thereto, or any written  
18 agreement entered into with the office ~~department~~.

19 (b) Fraud, misrepresentation, deceit, or gross  
20 negligence in any transaction involving money transmission,  
21 regardless of reliance thereon by, or damage to, a money  
22 transmitter customer.

23 (c) Fraudulent misrepresentation, circumvention, or  
24 concealment of any matter required to be stated or furnished  
25 to a money transmitter customer pursuant to the code,  
26 regardless of reliance thereon by, or damage to, such  
27 customer.

28 (d) False, deceptive, or misleading advertising.

29 (e) Failure to maintain, preserve, and keep available  
30 for examination all books, accounts, or other documents  
31 required by the code, by any rule or order adopted pursuant to

1 the code, or by any agreement entered into with the office  
2 ~~department~~.

3 (f) Refusal to permit the examination or inspection of  
4 books and records in an investigation or examination by the  
5 office ~~department~~, pursuant to the provisions of the code, or  
6 to comply with a subpoena issued by the office ~~department~~.

7 (g) Failure to pay a judgment recovered in any court  
8 in this state by a claimant in an action arising out of a  
9 money transmission transaction within 30 days after the  
10 judgment becomes final.

11 (h) Engaging in an act or practice proscribed by s.  
12 560.111.

13 (i) Insolvency or operating in an unsafe and unsound  
14 manner.

15 (j) Failure by a money transmitter to remove a money  
16 transmitter-affiliated party after the office ~~department~~ has  
17 issued and served upon the money transmitter a final order  
18 setting forth a finding that the money transmitter-affiliated  
19 party has violated any provision of the code.

20 (k) Making any material misstatement or  
21 misrepresentation or committing any fraud in an initial or  
22 renewal application for registration.

23 (l) Committing any act resulting in an application for  
24 registration, or a registration or its equivalent, to practice  
25 any profession or occupation being denied, suspended, revoked,  
26 or otherwise acted against by a registering authority in any  
27 jurisdiction or a finding by an appropriate regulatory body of  
28 engaging in unlicensed activity as a money transmitter within  
29 any jurisdiction.

30 (m) Committing any act resulting in a registration or  
31 its equivalent, or an application for registration, to

1 practice any profession or occupation being denied, suspended,  
2 or otherwise acted against by a registering authority in any  
3 jurisdiction for a violation of 18 U.S.C. s. 1956, 31 U.S.C.  
4 s. 5324, or any other law, rule, or regulation of another  
5 state or of the United States relating to the business of  
6 money transmission or usury which may cause the denial or  
7 revocation of a money transmitter license or registration in  
8 such jurisdiction.

9 (n) Having been convicted of or found guilty of, or  
10 having pleaded guilty or nolo contendere to, any felony or  
11 crime punishable by imprisonment of 1 year or more under the  
12 law of any state or of the United States which involves fraud,  
13 moral turpitude, or dishonest dealing, without regard to  
14 whether a judgment of conviction has been entered by the  
15 court.

16 (o) Having been convicted of or found guilty of, or  
17 having pleaded guilty or nolo contendere to, a crime under 18  
18 U.S.C. s. 1956 or 31 U.S.C. s. 5324, without regard to whether  
19 a judgment of conviction has been entered by the court.

20 (p) Having been convicted of or found guilty of, or  
21 having pleaded guilty or nolo contendere to, misappropriation,  
22 conversion, or unlawful withholding of moneys that belong to  
23 others and were received in the conduct of the business of the  
24 money transmitter.

25 (q) Failure to inform the office ~~department~~ in writing  
26 within 15 days after pleading guilty or nolo contendere to, or  
27 being convicted or found guilty of, any felony or crime  
28 punishable by imprisonment of 1 year or more under the law of  
29 any state or of the United States, or of any crime involving  
30 fraud, moral turpitude, or dishonest dealing, without regard  
31

1 to whether a judgment of conviction has been entered by the  
2 court.

3 (r) Aiding, assisting, procuring, advising, or  
4 abetting any person in violating a provision of this code or  
5 any order or rule of the office or commission ~~department~~.

6 (s) Failure to timely pay any fee, charge, or fine  
7 under the code.

8 (t) Failure to pay any judgment entered by any court  
9 within 30 days after the judgment becomes final.

10 (u) Engaging or holding oneself out to be engaged in  
11 the business of a money transmitter without the proper  
12 registration.

13 (v) Any action that would be grounds for denial of a  
14 registration or for revocation, suspension, or restriction of  
15 a registration previously granted under part III of this  
16 chapter.

17 (w) Failure to pay any fee, charge, or fine under the  
18 code.

19 (x) Engaging or advertising engagement in the business  
20 of a money transmitter without a registration, unless the  
21 person is exempted from the registration requirements of the  
22 code.

23 (2) The office ~~department~~ may issue a cease and desist  
24 order or removal order, suspend or revoke any previously  
25 issued registration, or take any other action within the  
26 authority of the office ~~department~~ against a money transmitter  
27 based on any fact or condition that exists and that, if it had  
28 existed or been known to exist at the time the money  
29 transmitter applied for registration, would have been grounds  
30 for denial of registration.

31

1           Section 696. Section 560.115, Florida Statutes, is  
2 amended to read:

3           560.115 Surrender of registration.--Any money  
4 transmitter registered pursuant to the code may voluntarily  
5 surrender its registration at any time by giving written  
6 notice to the office ~~department~~.

7           Section 697. Section 560.116, Florida Statutes, is  
8 amended to read:

9           560.116 Civil immunity.--Any person having reason to  
10 believe that a provision of the code is being violated, or has  
11 been violated, or is about to be violated, may file a  
12 complaint with the office ~~department~~ setting forth the details  
13 of the alleged violation. An immunity from civil liability is  
14 hereby granted to any person who furnishes such information,  
15 unless the information provided is false and the person  
16 providing the information does so with reckless disregard for  
17 the truth.

18           Section 698. Section 560.117, Florida Statutes, is  
19 amended to read:

20           560.117 Administrative fines; enforcement.--

21           (1) The office ~~department~~ may, by complaint, initiate  
22 a proceeding pursuant to chapter 120 to impose an  
23 administrative fine against any person found to have violated  
24 any provision of the code or a cease and desist order of the  
25 office ~~department~~ or any written agreement with the office  
26 ~~department~~. However, the office ~~department~~ shall give notice,  
27 in writing, if it suspects that the licensee has violated any  
28 of the following provisions of the code and shall give the  
29 licensee 15 days after actual notice is served on the person  
30 within which to correct the violation before bringing  
31 disciplinary action under the code:

1 (a) Failure to timely pay any fee, charge, or fine  
2 under the code;

3 (b) Failure to pay any judgment entered by any court  
4 within 30 days after the judgment becomes final;

5 (c) Failure to notify the office ~~department~~ of a  
6 change of control of a money transmitter as required by s.  
7 560.127; or

8 (d) Failure to notify the office ~~department~~ of any  
9 change of address or fictitious name as required by s.  
10 560.205.

11  
12 Except as provided in this section, such fine may not exceed  
13 \$100 a day for each violation. The office ~~department~~ may  
14 excuse any such fine with a showing of good cause by the  
15 person being fined.

16 (2) If the office ~~department~~ finds that one or more  
17 grounds exist for the suspension, revocation, or refusal to  
18 renew or continue a license or registration issued under this  
19 chapter, the office ~~department~~ may, in addition to or in lieu  
20 of suspension, revocation, or refusal to renew or continue a  
21 license or registration, impose a fine in an amount up to  
22 \$10,000 for each violation of this chapter.

23 (3) Notwithstanding any other provision of this  
24 section, the office ~~department~~ may impose a fine not to exceed  
25 \$1,000 per day for each day that a person violates the code by  
26 engaging in the business of a money transmitter without being  
27 registered.

28 (4) Any administrative fine levied by the office  
29 ~~department~~ may be enforced by the office ~~department~~ by  
30 appropriate proceedings in the circuit court of the county in  
31 which such person resides or maintains a principal office. In

1 any administrative or judicial proceeding arising under this  
2 section, a party may elect to correct the violation asserted  
3 by the office ~~department~~ and, upon the party's doing so, any  
4 fine ceases to accrue; however, an election to correct the  
5 violation does not render moot any administrative or judicial  
6 proceeding.

7 Section 699. Section 560.118, Florida Statutes, is  
8 amended to read:

9 560.118 Examinations, reports, and internal audits;  
10 penalty.--

11 (1)(a) The office ~~department~~ may conduct an  
12 examination of a money transmitter or authorized vendor by  
13 providing not less than 15 days' advance notice to the money  
14 transmitter or authorized vendor. However, if the office  
15 ~~department~~ suspects that the money transmitter or authorized  
16 vendor has violated any provisions of this code or any  
17 criminal laws of this state or of the United States or is  
18 engaging in an unsafe and unsound practice, the office  
19 ~~department~~ may, at any time without advance notice, conduct an  
20 examination of all affairs, activities, transactions,  
21 accounts, business records, and assets of any money  
22 transmitter or any money transmitter-affiliated party for the  
23 protection of the public. For the purpose of examinations, the  
24 office ~~department~~ may administer oaths and examine a money  
25 transmitter or any of its affiliated parties concerning their  
26 operations and business activities and affairs. The office  
27 ~~department~~ may accept an audit or examination from any  
28 appropriate regulatory agency or from an independent third  
29 party with respect to the operations of a money transmitter or  
30 an authorized vendor. The office ~~department~~ may also make a  
31 joint or concurrent examination with any state or federal

1 regulatory agency. The office ~~department~~ may furnish a copy of  
2 all examinations made of such money transmitter or authorized  
3 vendor to the money transmitter and any appropriate regulatory  
4 agency provided that such agency agrees to abide by the  
5 confidentiality provisions as set forth in chapter 119.

6 (b) Persons subject to this chapter who are examined  
7 shall make available to the office ~~department~~ or its examiners  
8 the accounts, records, documents, files, information, assets,  
9 and matters which are in their immediate possession or control  
10 and which relate to the subject of the examination. Those  
11 accounts, records, documents, files, information, assets, and  
12 matters not in their immediate possession shall be made  
13 available to the office ~~department~~ or the office's  
14 ~~department's~~ examiners within 10 days after actual notice is  
15 served on such persons.

16 (c) The audit of a money transmitter required under  
17 this section may be performed by an independent third party  
18 that has been approved by the office ~~department~~ or by a  
19 certified public accountant authorized to do business in the  
20 United States. The examination of a money transmitter or  
21 authorized vendor required under this section may be performed  
22 by an independent third party that has been approved by the  
23 office ~~department~~ or by a certified public accountant  
24 authorized to do business in the United States. The cost of  
25 such an independent examination or audit shall be directly  
26 borne by the money transmitter or authorized vendor.

27 (2)(a) Annual financial reports that are required to  
28 be filed under the code or any rules adopted thereunder must  
29 be audited by an independent third party that has been  
30 approved by the office ~~department~~ or by a certified public  
31 accountant authorized to do business in the United States. The

1 money transmitter or authorized vendor shall directly bear the  
2 cost of the audit. This paragraph does not apply to any seller  
3 of payment instruments who can prove to the satisfaction of  
4 the office ~~department~~ that it has a combined total of fewer  
5 than 50 employees and authorized vendors or that its annual  
6 payment instruments issued from its activities as a payment  
7 instrument seller are less than \$200,000.

8 (b) The commission ~~department~~ may, by rule, require  
9 each money transmitter or authorized vendor to submit  
10 quarterly reports to the office ~~department~~. The commission  
11 ~~department~~ may require that each report contain a declaration  
12 by an officer, or any other responsible person authorized to  
13 make such declaration, that the report is true and correct to  
14 the best of her or his knowledge and belief. Such report must  
15 include such information as the commission ~~department~~ by rule  
16 requires for that type of money transmitter.

17 (c) The office ~~department~~ may levy an administrative  
18 fine of up to \$100 per day for each day the report is past  
19 due, unless it is excused for good cause. In excusing any such  
20 administrative fine, the office ~~department~~ may consider the  
21 prior payment history of the money transmitter or authorized  
22 vendor.

23 (3) Any person who willfully violates this section or  
24 fails to comply with any lawful written demand or order of the  
25 office ~~department~~ made under this section commits a felony of  
26 the third degree, punishable as provided in s. 775.082, s.  
27 775.083, or s. 775.084.

28 Section 700. Section 560.119, Florida Statutes, is  
29 amended to read:

30 560.119 Deposit of fees and assessments.--The  
31 application fees, registration renewal fees, late payment

1 penalties, civil penalties, administrative fines, and other  
2 fees or penalties provided for in the code shall, in all  
3 cases, be paid directly to the office ~~department~~, which shall  
4 deposit such proceeds into the Regulatory Trust Fund. Each  
5 year, the Legislature shall appropriate from the trust fund to  
6 the office ~~department~~ sufficient moneys to pay the office's  
7 ~~department's~~ costs for administration of the code. The  
8 Regulatory Trust Fund is subject to the service charge imposed  
9 pursuant to chapter 215.

10 Section 701. Paragraph (a) of subsection (1) and  
11 subsections (2) and (3) of section 560.121, Florida Statutes,  
12 are amended to read:

13 560.121 Records; limited restrictions upon public  
14 access.--

15 (1)(a) Orders of courts or of administrative law  
16 judges for the production of confidential records or  
17 information shall provide for inspection in camera by the  
18 court or the administrative law judge and, after the court or  
19 administrative law judge has made a determination that the  
20 documents requested are relevant or would likely lead to the  
21 discovery of admissible evidence, said documents shall be  
22 subject to further orders by the court or the administrative  
23 law judge to protect the confidentiality thereof. Any order  
24 directing the release of information shall be immediately  
25 reviewable, and a petition by the office ~~department~~ for review  
26 of such order shall automatically stay further proceedings in  
27 the trial court or the administrative hearing until the  
28 disposition of such petition by the reviewing court. If any  
29 other party files such a petition for review, it will operate  
30 as a stay of such proceedings only upon order of the reviewing  
31 court.

1           (2) Examination reports, investigatory records,  
2 applications, and related information compiled by the office  
3 ~~department~~, or photographic copies thereof, shall be retained  
4 by the office ~~department~~ for a period of at least 10 years.

5           (3) A copy of any document on file with the office  
6 ~~department~~ which is certified by the office ~~department~~ as  
7 being a true copy may be introduced in evidence as if it were  
8 the original. The commission ~~department~~ shall establish a  
9 schedule of fees for preparing true copies of documents.

10           Section 702. Subsections (2), (4), (5), (6), and (7)  
11 of section 560.123, Florida Statutes, are amended to read:

12           560.123 Florida control of money laundering in the  
13 Money Transmitters' Code; reports of transactions involving  
14 currency or monetary instruments; when required; purpose;  
15 definitions; penalties; corpus delicti.--

16           (2) It is the purpose of this section to require the  
17 submission to the office ~~department~~ of reports and the  
18 maintenance of certain records of transactions involving  
19 currency or monetary instruments which reports and records  
20 deter the use of money transmitters to conceal proceeds from  
21 criminal activity and are useful in criminal, tax, or  
22 regulatory investigations or proceedings.

23           (a) Every money transmitter shall keep a record of  
24 each financial transaction occurring in this state known to it  
25 to involve currency or other monetary instrument, as the  
26 commission ~~department~~ prescribes by rule, of a value in excess  
27 of \$10,000, to involve the proceeds of specified unlawful  
28 activity, or to be designed to evade the reporting  
29 requirements of this section or chapter 896 and shall maintain  
30 appropriate procedures to ensure compliance with this section  
31 and chapter 896.

1 (b) Multiple financial transactions shall be treated  
2 as a single transaction if the money transmitter has knowledge  
3 that they are made by or on behalf of any person and result in  
4 either cash in or cash out totaling more than \$10,000 during  
5 any day.

6 (c) Any money transmitter may keep a record of any  
7 financial transaction occurring in this state, regardless of  
8 the value, if it suspects that the transaction involves the  
9 proceeds of specified unlawful activity.

10 (d) A money transmitter, or officer, employee, or  
11 agent thereof, that files a report in good faith pursuant to  
12 this section is not liable to any person for loss or damage  
13 caused in whole or in part by the making, filing, or  
14 governmental use of the report, or any information contained  
15 therein.

16 (4) In enforcing this section, the commission and  
17 office ~~department~~ shall acknowledge and take into  
18 consideration the requirements of Title 31, United States  
19 Code, both to reduce the burden of fulfilling duplicate  
20 requirements and to acknowledge the economic advantage of  
21 having similar reporting and recordkeeping requirements  
22 between state and federal regulatory authorities.

23 (5)(a) Each money transmitter must file a report with  
24 the office ~~department~~ of the record required by this section.  
25 Each record filed pursuant to this section must be filed at  
26 such time and contain such information as the commission  
27 ~~department~~ requires by rule.

28 (b) The timely filing of the report required by 31  
29 U.S.C. s. 5313, with the appropriate federal agency is deemed  
30 compliance with the reporting requirements of this subsection  
31

1 unless the reports are not regularly and comprehensively  
2 transmitted by the federal agency to the office ~~department~~.

3 (6) The office ~~department~~ must retain a copy of all  
4 reports received under subsection (5) for a minimum of 5  
5 calendar years after receipt of the report. However, if a  
6 report or information contained in a report is known by the  
7 office ~~department~~ to be the subject of an existing criminal  
8 proceeding, the report must be retained for a minimum of 10  
9 calendar years from the date of receipt.

10 (7) In addition to any other powers conferred upon the  
11 office ~~department~~ to enforce and administer the code, the  
12 office ~~department~~ may:

13 (a) Bring an action in any court of competent  
14 jurisdiction to enforce or administer this section. In such  
15 action, the office ~~department~~ may seek award of any civil  
16 penalty authorized by law and any other appropriate relief at  
17 law or equity.

18 (b) Issue and serve upon a person an order requiring  
19 such person to cease and desist and take corrective action  
20 whenever the office ~~department~~ finds that such person is  
21 violating, has violated, or is about to violate any provision  
22 of this section or chapter 896; any rule or order adopted  
23 under this section or chapter 896; or any written agreement  
24 related to this section or chapter 896 which is entered into  
25 with the office ~~department~~.

26 (c) Issue and serve upon a person an order suspending  
27 or revoking such person's money transmitter registration  
28 whenever the office ~~department~~ finds that such person is  
29 violating, has violated, or is about to violate any provision  
30 of this section or chapter 896; any rule or order adopted  
31 under this section or chapter 896; or any written agreement

1 related to this section or chapter 896 which is entered into  
2 with the office ~~department~~.

3 (d) Issue and serve upon any person an order of  
4 removal whenever the office ~~department~~ finds that such person  
5 is violating, has violated, or is about to violate any  
6 provision of this section or chapter 896; any rule or order  
7 adopted under this section or chapter 896; or any written  
8 agreement related to this section or chapter 896 which is  
9 entered into with the office ~~department~~.

10 (e) Impose and collect an administrative fine against  
11 any person found to have violated any provision of this  
12 section or chapter 896; any rule or order adopted under this  
13 section or chapter 896; or any written agreement related to  
14 this section or chapter 896 which is entered into with the  
15 office ~~department~~, in an amount not exceeding \$10,000 a day  
16 for each willful violation or \$500 a day for each negligent  
17 violation.

18 Section 703. Subsections (3) and (4) of section  
19 560.125, Florida Statutes, are amended to read:

20 560.125 Money transmitter business by unauthorized  
21 persons; penalties.--

22 (3) Any person whose substantial interests are  
23 affected by a proceeding brought by the office ~~department~~  
24 pursuant to the code may, pursuant to s. 560.113, petition any  
25 court to enjoin the person or activity that is the subject of  
26 the proceeding from violating any of the provisions of this  
27 section. For the purpose of this subsection, any money  
28 transmitter registered pursuant to the code, any person  
29 residing in this state, and any person whose principal place  
30 of business is in this state are presumed to be substantially  
31 affected. In addition, the interests of a trade organization

1 or association are deemed substantially affected if the  
2 interests of any of its members are so affected.

3 (4) The office ~~department~~ may issue and serve upon any  
4 person who violates any of the provisions of this section a  
5 complaint seeking a cease and desist order in accordance with  
6 the procedures and in the manner prescribed by s. 560.112. The  
7 office ~~department~~ may also impose an administrative fine  
8 pursuant to s. 560.117(3) against any person who violates any  
9 of the provisions of this section.

10 Section 704. Section 560.126, Florida Statutes, is  
11 amended to read:

12 560.126 Significant events; notice required.--Unless  
13 exempted by the office ~~department~~, every money transmitter  
14 must provide the office ~~department~~ with a written notice  
15 within 15 days after the occurrence or knowledge of, whichever  
16 period of time is greater, any of the following events:

17 (1) The filing of a petition under the United States  
18 Bankruptcy Code for bankruptcy or reorganization by the money  
19 transmitter.

20 (2) The commencement of any registration suspension or  
21 revocation proceeding, either administrative or judicial, or  
22 the denial of any original registration request or a  
23 registration renewal, by any state, the District of Columbia,  
24 any United States territory, or any foreign country, in which  
25 the money transmitter operates or plans to operate or has  
26 registered to operate.

27 (3) A felony indictment relating to the money  
28 transmission business involving the money transmitter or a  
29 money transmitter-affiliated party of the money transmitter.

30 (4) The felony conviction, guilty plea, or plea of  
31 nolo contendere, if the court adjudicates the nolo contendere

1 pleader guilty, or the adjudication of guilt of a money  
2 transmitter or money transmitter-affiliated party.

3 (5) The interruption of any corporate surety bond  
4 required by the code.

5 (6) Any suspected criminal act, as defined by the  
6 commission ~~department~~ by rule, perpetrated in this state  
7 against a money transmitter or authorized vendor.

8  
9 However, no liability shall be incurred by any person as a  
10 result of making a good faith effort to fulfill this  
11 disclosure requirement.

12 Section 705. Section 560.127, Florida Statutes, is  
13 amended to read:

14 560.127 Control of a money transmitter.--

15 (1) A person has control over a money transmitter if:

16 (a) The person directly or indirectly or acting  
17 through one or more other persons owns, controls, or has power  
18 to vote 25 percent or more of any class of voting securities  
19 of the money transmitter; or

20 (b) The office ~~department~~ determines, after notice and  
21 opportunity for hearing, that the person directly or  
22 indirectly exercises a controlling influence over the  
23 activities of the money transmitter.

24 (2) In any case in which a person or a group of  
25 persons, directly or indirectly or acting by or through one or  
26 more persons, proposes to purchase or acquire a controlling  
27 interest in a money transmitter, and thereby to change the  
28 control of that money transmitter, each person or group of  
29 persons shall provide written notice to the office ~~department~~.

30 (a) A money transmitter whose stock is traded on an  
31 organized stock exchange shall provide the office ~~department~~

1 with written notice within 15 days after knowledge of such  
2 change in control.

3 (b) A money transmitter whose stock is not publicly  
4 traded shall provide the office ~~department~~ with not less than  
5 30 days' prior written notice of such proposed change in  
6 control.

7 (3) After a review of the written notification, the  
8 office ~~department~~ may require the money transmitter to provide  
9 additional information relating to other and former addresses,  
10 and the reputation, character, responsibility, and business  
11 affiliations, of the proposed new owner or each of the  
12 proposed new owners of the money transmitter.

13 (a) The office ~~department~~ may deny the person or group  
14 of persons proposing to purchase, or who have acquired control  
15 of, a money transmitter if, after investigation, the office  
16 ~~department~~ determines that the person or persons are not  
17 qualified by reputation, character, experience, or financial  
18 responsibility to control or operate the money transmitter in  
19 a legal and proper manner and that the interests of the other  
20 stockholders, if any, or the interests of the public generally  
21 may be jeopardized by the proposed change in ownership,  
22 controlling interest, or management.

23 (b) The office ~~department~~ may disapprove any person  
24 who has been convicted of, or pled guilty or nolo contendere  
25 to, a violation of s. 560.123, s. 655.50, chapter 896, or any  
26 similar state, federal, or foreign law.

27 Section 706. Section 560.128, Florida Statutes, is  
28 amended to read:

29 560.128 Consumer disclosure.--

30 (1) Every money transmitter and authorized vendor  
31 shall provide each consumer of a money transmitter transaction

1 a toll-free telephone number for the purpose of consumer  
2 contacts; however, in lieu of such toll-free telephone number,  
3 the money transmitter or authorized vendor may provide the  
4 address and telephone number of the office and the Division of  
5 Consumer Services of the Department of Financial Services  
6 department.

7 (2) The commission ~~department~~ may by rule require  
8 every money transmitter to display its registration at each  
9 location, including the location of each person designated by  
10 the registrant as an authorized vendor, where the money  
11 transmitter engages in the activities authorized by the  
12 registration.

13 Section 707. Section 560.129, Florida Statutes, is  
14 amended to read:

15 560.129 Confidentiality.--

16 ~~(1) For purposes of this section, the definitions~~  
17 ~~contained in s. 560.103, as created by chapter 94-238, Laws of~~  
18 ~~Florida, and chapter 94-354, Laws of Florida, apply.~~

19 (1)(2)(a) Except as otherwise provided in this  
20 section, all information concerning an investigation or  
21 examination by the office ~~department~~ pursuant to this chapter,  
22 including any consumer complaint received by the office or the  
23 Department of Financial Services, is confidential and exempt  
24 from s. 119.07(1) and s. 24(a), Art. I of the State  
25 Constitution until the investigation or examination ceases to  
26 be active. For purposes of this section, an investigation or  
27 examination is considered "active" so long as the office  
28 ~~department~~ or any other administrative, regulatory, or law  
29 enforcement agency of any jurisdiction is proceeding with  
30 reasonable dispatch and has a reasonable good faith belief

31

1 that action may be initiated by the office ~~department~~ or other  
2 administrative, regulatory, or law enforcement agency.

3 (b) Notwithstanding paragraph (a), all information  
4 obtained by the office ~~department~~ in the course of its  
5 investigation or examination which is a trade secret, as  
6 defined in s. 688.002, or which is personal financial  
7 information shall remain confidential. If any administrative,  
8 civil, or criminal proceeding against the money transmitter or  
9 a money transmitter-affiliated party is initiated and the  
10 office ~~department~~ seeks to use matter that a registrant  
11 believes to be a trade secret or personal financial  
12 information, such records shall be subject to an in camera  
13 review by the administrative law judge, if the matter is  
14 before the Division of Administrative Hearings, or a judge of  
15 any court of this state, any other state, or the United  
16 States, as appropriate, for the purpose of determining if the  
17 matter is a trade secret or is personal financial information.  
18 If it is determined that the matter is a trade secret, the  
19 matter shall remain confidential. If it is determined that the  
20 matter is personal financial information, the matter shall  
21 remain confidential unless the administrative law judge or  
22 judge determines that, in the interests of justice, the matter  
23 should become public.

24 (c) If any administrative, civil, or criminal  
25 proceeding against the money transmitter or a money  
26 transmitter-affiliated party results in an acquittal or the  
27 dismissal of all of the allegations against the money  
28 transmitter or a money transmitter-affiliated party, upon the  
29 request of any party, the administrative law judge or the  
30 judge may order all or a portion of the record of the  
31 proceeding to be sealed, and it shall thereafter be

1 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
2 of the State Constitution.

3 (d) Except as necessary for the office ~~department~~ or  
4 any other administrative, regulatory, or law enforcement  
5 agency of any jurisdiction to enforce the provisions of this  
6 chapter or the law of any other state or the United States, a  
7 consumer complaint and other information concerning an  
8 investigation or examination shall remain confidential and  
9 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
10 Constitution after the investigation or examination ceases to  
11 be active to the extent that disclosure would:

12 1. Jeopardize the integrity of another active  
13 investigation;

14 2. Reveal personal financial information;

15 3. Reveal the identity of a confidential source; or

16 4. Reveal investigative techniques or procedures.

17 (2)~~(3)~~ This section does not prevent or restrict:

18 (a) Furnishing records or information to any  
19 appropriate regulatory agency if such agency adheres to the  
20 confidentiality provisions of the code;

21 (b) Furnishing records or information to an  
22 independent third party or a certified public accountant who  
23 has been approved by the office ~~department~~ to conduct an  
24 examination under s. 560.118(1)(b), if the independent third  
25 party or certified public accountant adheres to the  
26 confidentiality provisions of the code; or

27 (c) Reporting any suspected criminal activity, with  
28 supporting documents and information, to appropriate law  
29 enforcement or prosecutorial agencies.

30 (3)~~(4)~~ All quarterly reports submitted by a money  
31 transmitter to the office ~~department~~ under s. 560.118(2)(b)

1 are confidential and exempt from s. 119.07(1) and s. 24(a),  
2 Art. I of the State Constitution.

3 ~~(4)(5)~~ Examination reports, investigatory records,  
4 applications, and related information compiled by the office  
5 ~~department~~, or photographic copies thereof, shall be retained  
6 by the office ~~department~~ for a period of at least 10 years.

7 ~~(5)(6)~~ Any person who willfully discloses information  
8 made confidential by this section commits a felony of the  
9 third degree, punishable as provided in s. 775.082 or s.  
10 775.083.

11 Section 708. Subsection (4) of section 560.202,  
12 Florida Statutes, is amended to read:

13 560.202 Definitions.--In addition to the definitions  
14 provided in s. 560.103, for purposes of this part, unless  
15 otherwise clearly indicated by the context:

16 (4) "Registrant" means a person registered by the  
17 office ~~department~~ pursuant to this part.

18 Section 709. Section 560.205, Florida Statutes, is  
19 amended to read:

20 560.205 Qualifications of applicant for registration;  
21 contents.--

22 (1) To qualify for registration under this part, an  
23 applicant must demonstrate to the office ~~department~~ such  
24 character and general fitness as to command the confidence of  
25 the public and warrant the belief that the registered business  
26 will be operated lawfully and fairly. The office ~~department~~  
27 may investigate each applicant to ascertain whether the  
28 qualifications and requirements prescribed by this part have  
29 been met. The office's ~~department's~~ investigation may include  
30 a criminal background investigation of all controlling  
31 shareholders, principals, officers, directors, members, and

1 responsible persons of a funds transmitter and a payment  
2 instrument seller and all persons designated by a funds  
3 transmitter or payment instrument seller as an authorized  
4 vendor. Each controlling shareholder, principal, officer,  
5 director, member, and responsible person of a funds  
6 transmitter or payment instrument seller, unless the applicant  
7 is a publicly traded corporation, a subsidiary thereof, or a  
8 subsidiary of a bank or bank holding company, shall file a  
9 complete set of fingerprints taken by an authorized law  
10 enforcement officer. Such fingerprints must be submitted to  
11 the Department of Law Enforcement or the Federal Bureau of  
12 Investigation for state and federal processing. The commission  
13 ~~department~~ may waive by rule the requirement that applicants  
14 file a set of fingerprints or the requirement that such  
15 fingerprints be processed by the Department of Law Enforcement  
16 or the Federal Bureau of Investigation.

17 (2) Each application for registration must be  
18 submitted under oath to the office ~~department~~ on such forms as  
19 the commission ~~department~~ prescribes by rule and must be  
20 accompanied by a nonrefundable application fee. Such fee may  
21 not exceed \$500 for each payment instrument seller or funds  
22 transmitter and \$50 for each authorized vendor or location  
23 operating within this state. The application forms shall set  
24 forth such information as the commission ~~department~~ reasonably  
25 requires, including, but not limited to:

26 (a) The name and address of the applicant, including  
27 any fictitious or trade names used by the applicant in the  
28 conduct of its business.

29 (b) The history of the applicant's material  
30 litigation, criminal convictions, pleas of nolo contendere,  
31 and cases of adjudication withheld.

1 (c) A description of the activities conducted by the  
2 applicant, the applicant's history of operations, and the  
3 business activities in which the applicant seeks to engage in  
4 this state.

5 (d) A list identifying the applicant's proposed  
6 authorized vendors in this state, including the location or  
7 locations in this state at which the applicant and its  
8 authorized vendors propose to conduct registered activities.

9 (e) A sample authorized vendor contract, if  
10 applicable.

11 (f) A sample form of payment instrument, if  
12 applicable.

13 (g) The name and address of the clearing financial  
14 institution or financial institutions through which the  
15 applicant's payment instruments will be drawn or through which  
16 such payment instruments will be payable.

17 (h) Documents revealing that the net worth and bonding  
18 requirements specified in s. 560.209 have been or will be  
19 fulfilled.

20 (3) Each application for registration by an applicant  
21 that is a corporation shall also set forth such information as  
22 the commission ~~department~~ reasonably requires, including, but  
23 not limited to:

24 (a) The date of the applicant's incorporation and  
25 state of incorporation.

26 (b) A certificate of good standing from the state or  
27 country in which the applicant was incorporated.

28 (c) A description of the corporate structure of the  
29 applicant, including the identity of any parent or subsidiary  
30 of the applicant, and the disclosure of whether any parent or  
31 subsidiary is publicly traded on any stock exchange.

1           (d) The name, business and residence addresses, and  
2 employment history for the past 5 years for each executive  
3 officer, each director, each controlling shareholder, and the  
4 responsible person who will be in charge of all the  
5 applicant's business activities in this state.

6           (e) The history of material litigation and criminal  
7 convictions, pleas of nolo contendere, and cases of  
8 adjudication withheld for each executive officer, each  
9 director, each controlling shareholder, and the responsible  
10 person who will be in charge of the applicant's registered  
11 activities.

12           (f) Copies of the applicant's audited financial  
13 statements for the current year and, if available, for the  
14 immediately preceding 2-year period. In cases where the  
15 applicant is a wholly owned subsidiary of another corporation,  
16 the parent's consolidated audited financial statements may be  
17 submitted to satisfy this requirement. An applicant who is not  
18 required to file audited financial statements may satisfy this  
19 requirement by filing unaudited financial statements verified  
20 under penalty of perjury, as provided by the commission  
21 ~~department~~ by rule.

22           (g) An applicant who is not required to file audited  
23 financial statements may file copies of the applicant's  
24 unconsolidated, unaudited financial statements for the current  
25 year and, if available, for the immediately preceding 2-year  
26 period.

27           (h) If the applicant is a publicly traded company,  
28 copies of all filings made by the applicant with the United  
29 States Securities and Exchange Commission, or with a similar  
30 regulator in a country other than the United States, within  
31 the year preceding the date of filing of the application.

1           (4) Each application for registration submitted to the  
2 office ~~department~~ by an applicant that is not a corporation  
3 shall also set forth such information as the commission  
4 ~~department~~ reasonably requires, including, but not limited to:

5           (a) Evidence that the applicant is registered to do  
6 business in this state.

7           (b) The name, business and residence addresses,  
8 personal financial statement and employment history for the  
9 past 5 years for each individual having a controlling  
10 ownership interest in the applicant, and each responsible  
11 person who will be in charge of the applicant's registered  
12 activities.

13           (c) The history of material litigation and criminal  
14 convictions, pleas of nolo contendere, and cases of  
15 adjudication withheld for each individual having a controlling  
16 ownership interest in the applicant and each responsible  
17 person who will be in charge of the applicant's registered  
18 activities.

19           (d) Copies of the applicant's audited financial  
20 statements for the current year, and, if available, for the  
21 preceding 2 years. An applicant who is not required to file  
22 audited financial statements may satisfy this requirement by  
23 filing unaudited financial statements verified under penalty  
24 of perjury, as provided by the commission ~~department~~ by rule.

25           (5) Each applicant shall designate and maintain an  
26 agent in this state for service of process.

27           Section 710. Section 560.206, Florida Statutes, is  
28 amended to read:

29           560.206 Investigation of applicants.--Upon the filing  
30 of a properly completed application, accompanied by the  
31 nonrefundable application fee and other required documents,

1 the office ~~department~~ shall investigate to ascertain whether  
2 the qualifications and requirements prescribed by this part  
3 have been met. If the office ~~department~~ finds that the  
4 applicant meets such qualifications and requirements, the  
5 office ~~department~~ shall issue the applicant a registration to  
6 engage in the business of selling payment instruments and  
7 transmitting funds in this state. Any registration issued  
8 under this part shall remain effective through April 30 of the  
9 second year following the date of issuance of the  
10 registration, not to exceed 24 months, unless during such  
11 period the registration is surrendered, suspended, or revoked.

12 Section 711. Subsections (1) and (2) of section  
13 560.207, Florida Statutes, are amended to read:

14 560.207 Renewal of registration; registration fee.--

15 (1) Registration may be renewed for a 24-month period  
16 or the remainder of any such period without proration  
17 following the date of its expiration, upon the filing with the  
18 office ~~department~~ of an application and other statements and  
19 documents as may reasonably be required of registrants by the  
20 commission ~~department~~. However, the registrant must remain  
21 qualified for such registration under the provisions of this  
22 part.

23 (2) All registration renewal applications shall be  
24 accompanied by a renewal fee not to exceed \$1,000. All renewal  
25 applications must be filed on or after January 1 of the year  
26 in which the existing registration expires, but before the  
27 expiration date of April 30. If the renewal application is  
28 filed prior to the expiration date of an existing  
29 registration, no late fee shall be paid in connection with  
30 such renewal application. If the renewal application is filed  
31 within 60 calendar days after the expiration date of an

1 existing registration, then, in addition to the \$1,000 renewal  
2 fee, the renewal application shall be accompanied by a  
3 nonrefundable late fee of \$500. If the registrant has not  
4 filed a renewal application within 60 calendar days after the  
5 expiration date of an existing registration, a new application  
6 shall be filed with the office ~~department~~ pursuant to s.  
7 560.205.

8 Section 712. Subsections (2) and (3) of section  
9 560.208, Florida Statutes, are amended to read:

10 560.208 Conduct of business.--

11 (2) Within 60 days after the date a registrant either  
12 opens a location within this state or authorizes an authorized  
13 vendor to operate on the registrant's behalf within this  
14 state, the registrant shall notify the office ~~department~~ on a  
15 form prescribed by the commission ~~department~~ by rule. The  
16 notification shall be accompanied by a nonrefundable \$50 fee  
17 for each authorized vendor or location. Each notification  
18 shall also be accompanied by a financial statement  
19 demonstrating compliance with s. 560.209(1), unless compliance  
20 has been demonstrated by a financial statement filed with the  
21 registrant's quarterly report in compliance with s.  
22 560.118(2). The financial statement must be dated within 90  
23 days of the date of designation of the authorized vendor or  
24 location. This subsection shall not apply to any authorized  
25 vendor or location that has been designated by the registrant  
26 before October 1, 2001.

27 (3) Within 60 days after the date a registrant closes  
28 a location within this state or withdraws authorization for an  
29 authorized vendor to operate on the registrant's behalf within  
30 this state, the registrant shall notify the office ~~department~~  
31 on a form prescribed by the commission ~~department~~ by rule.

1           Section 713. Subsections (2), (3), (4), (5), and (6)  
2 of section 560.209, Florida Statutes, are amended to read:

3           560.209 Net worth; corporate surety bond; collateral  
4 deposit in lieu of bond.--

5           (2) Before the office ~~department~~ may issue a  
6 registration, the applicant must provide to the office  
7 ~~department~~ a corporate surety bond, issued by a bonding  
8 company or insurance company authorized to do business in this  
9 state.

10           (a) The corporate surety bond shall be in such amount  
11 as may be determined by commission ~~department~~ rule, but shall  
12 not exceed \$250,000. However, the commission and office  
13 ~~department~~ may consider extraordinary circumstances, such as  
14 the registrant's financial condition, the number of locations,  
15 and the existing or anticipated volume of outstanding payment  
16 instruments or funds transmitted, and require an additional  
17 amount above \$250,000, up to \$500,000.

18           (b) The corporate surety bond shall be in a form  
19 satisfactory to the office ~~department~~ and shall run to the  
20 state for the benefit of any claimants in this state against  
21 the applicant or its authorized vendors to secure the faithful  
22 performance of the obligations of the applicant and its  
23 authorized vendors with respect to the receipt, handling,  
24 transmission, and payment of funds. The aggregate liability of  
25 the corporate surety bond in no event shall exceed the  
26 principal sum of the bond. Such claimants against the  
27 applicant or its authorized vendors may themselves bring suit  
28 directly on the corporate surety bond, or the Department of  
29 Legal Affairs may bring suit thereon on behalf of such  
30 claimants, in either one action or in successive actions.

31

1           (c) A corporate surety bond filed with the office  
2 ~~department~~ for purposes of compliance with this section may  
3 not be canceled by either the registrant or the corporate  
4 surety except upon written notice to the office ~~department~~ by  
5 registered or certified mail with return receipt requested. A  
6 cancellation shall not take effect less than 30 days after  
7 receipt by the office ~~department~~ of such written notice.

8           (d) The corporate surety must, within 10 days after it  
9 pays any claim to any claimant, give written notice to the  
10 office ~~department~~ by registered or certified mail of such  
11 payment with details sufficient to identify the claimant and  
12 the claim or judgment so paid.

13           (e) Whenever the principal sum of such bond is reduced  
14 by one or more recoveries or payments, the registrant must  
15 furnish a new or additional bond so that the total or  
16 aggregate principal sum of such bond equals the sum required  
17 by the commission ~~department~~. Alternatively, a registrant may  
18 furnish an endorsement executed by the corporate surety  
19 reinstating the bond to the required principal sum thereof.

20           (3) In lieu of such corporate surety bond, or of any  
21 portion of the principal thereof required by this section, the  
22 applicant may deposit collateral cash, securities, or  
23 alternative security devices approved by the commission  
24 ~~department~~, with any federally insured financial institution.

25           (a) Acceptable collateral deposit items in lieu of a  
26 bond include cash and interest-bearing stocks and bonds,  
27 notes, debentures, or other obligations of the United States  
28 or any agency or instrumentality thereof, or guaranteed by the  
29 United States, or of this state.

30           (b) The collateral deposit must be in an aggregate  
31 amount, based upon principal amount or market value, whichever

1 is lower, of not less than the amount of the required  
2 corporate surety bond or portion thereof.

3 (c) Collateral deposits made under this subsection  
4 shall be pledged to the office ~~department~~ and held by the  
5 insured financial institution to secure the same obligations  
6 as would the corporate surety bond, but the depositor is  
7 entitled to receive all interest and dividends thereon and  
8 may, with the approval of the office ~~department~~, substitute  
9 other securities or deposits for those deposited. The  
10 principal amount of the deposit shall be released only on  
11 written authorization of the office ~~department~~ or on the order  
12 of a court of competent jurisdiction.

13 (4) A registrant must at all times have and maintain  
14 the bond or collateral deposit in the amount prescribed by the  
15 commission ~~department~~. If the office ~~department~~ at any time  
16 reasonably determines that the bond or elements of the  
17 collateral deposit are insecure, deficient in amount, or  
18 exhausted in whole or in part, the office ~~department~~ may, by  
19 written order, require the filing of a new or supplemental  
20 bond or the deposit of new or additional collateral deposit  
21 items.

22 (5) The bond and collateral deposit shall remain in  
23 place for 5 years after the registrant ceases registered  
24 operations in this state. The office ~~department~~ may permit the  
25 bond or collateral deposit to be reduced or eliminated prior  
26 to that time to the extent that the amount of the registrant's  
27 outstanding payment instruments or funds transmitted in this  
28 state are reduced. The office ~~department~~ may also permit a  
29 registrant to substitute a letter of credit or such other form  
30 of acceptable security for the bond or collateral deposit at  
31

1 the time the registrant ceases money transmission operations  
2 in this state.

3 (6) The office ~~department~~ may waive or reduce a  
4 registrant's net worth or bond or collateral deposit  
5 requirement. Such waiver or modification must be requested by  
6 the applicant or registrant, and may be granted upon a showing  
7 by the applicant or registrant to the satisfaction of the  
8 office ~~department~~ that:

9 (a) The existing net worth, bond, or collateral  
10 deposit requirement is sufficiently in excess of the  
11 registrant's highest potential level of outstanding payment  
12 instruments or money transmissions in this state;

13 (b) The direct and indirect cost of meeting the net  
14 worth, bond, or collateral deposit requirement will restrict  
15 the ability of the money transmitter to effectively serve the  
16 needs of its customers and the public; or

17 (c) The direct and indirect cost of meeting the net  
18 worth, bond, or collateral requirement will not only have a  
19 negative impact on the money transmitter but will severely  
20 hinder the ability of the money transmitter to participate in  
21 and promote the economic progress and welfare of this state or  
22 the United States.

23 Section 714. Paragraph (i) of subsection (2) and  
24 subsections (3) and (4) of section 560.210, Florida Statutes,  
25 are amended to read:

26 560.210 Permissible investments.--

27 (2) Acceptable permissible investments include:

28 (i) Any other investment approved by the commission  
29 ~~department~~.

30 (3) Notwithstanding any other provision of this part,  
31 the office ~~department~~, with respect to any particular

1 registrant or all registrants, may limit the extent to which  
2 any class of permissible investments may be considered a  
3 permissible investment, except for cash and certificates of  
4 deposit.

5 (4) The office ~~department~~ may waive the permissible  
6 investments requirement if the dollar value of a registrant's  
7 outstanding payment instruments and funds transmitted do not  
8 exceed the bond or collateral deposit posted by the registrant  
9 under s. 560.209.

10 Section 715. Subsection (2) of section 560.211,  
11 Florida Statutes, is amended to read:

12 560.211 Records.--

13 (2) The records required to be maintained by the code  
14 may be maintained by the registrant at any location, provided  
15 that the registrant notifies the office ~~department~~ in writing  
16 of the location of the records in its application or  
17 otherwise. The registrant shall make such records available to  
18 the office ~~department~~ for examination and investigation in  
19 this state, as permitted by the code, within 7 days after  
20 receipt of a written request.

21 Section 716. Subsection (2) of section 560.302,  
22 Florida Statutes, is amended to read:

23 560.302 Definitions.--In addition to the definitions  
24 provided in s. 560.103, unless otherwise clearly indicated by  
25 the context, for purposes of this part:

26 (2) "Registrant" means a person authorized by the  
27 office ~~department~~ pursuant to this part.

28 Section 717. Section 560.305, Florida Statutes, is  
29 amended to read:

30 560.305 Application.--Each application for  
31 registration shall be in writing and under oath to the office

1 ~~department~~, in such form as the commission prescribes  
2 ~~department may prescribe~~. The application shall include the  
3 following:

4 (1) The legal name and residence and business  
5 addresses of the applicant if the applicant is a natural  
6 person, or, if the applicant is a partnership, association, or  
7 corporation, the name of every partner, officer, or director  
8 thereof.

9 (2) The location of the principal office of the  
10 applicant.

11 (3) The complete address of any other locations at  
12 which the applicant proposes to engage in such activities  
13 since the provisions of registration apply to each and every  
14 operating location of a registrant.

15 (4) Such other information as the commission or office  
16 ~~department may reasonably requires~~ require with respect to the  
17 applicant or any money transmitter-affiliated party of the  
18 applicant; however, the commission or office ~~department~~ may  
19 not require more information than is specified in part II.

20 Section 718. Section 560.306, Florida Statutes, is  
21 amended to read:

22 560.306 Standards.--

23 (1) In order to qualify for registration under this  
24 part, an applicant must demonstrate to the office ~~department~~  
25 that he or she has such character and general fitness as will  
26 command the confidence of the public and warrant the belief  
27 that the registered business will be operated lawfully and  
28 fairly. The office ~~department~~ may investigate each applicant  
29 to ascertain whether the qualifications and requirements  
30 prescribed by this part have been met. The office's  
31 ~~department's~~ investigation may include a criminal background

1 investigation of all controlling shareholders, principals,  
2 officers, directors, members, and responsible persons of a  
3 check casher and a foreign currency exchanger and all persons  
4 designated by a foreign currency exchanger or check casher as  
5 an authorized vendor. Each controlling shareholder, principal,  
6 officer, director, member, and responsible person of a check  
7 casher or foreign currency exchanger, unless the applicant is  
8 a publicly traded corporation, a subsidiary thereof, or a  
9 subsidiary of a bank or bank holding company, shall file a  
10 complete set of fingerprints taken by an authorized law  
11 enforcement officer. Such fingerprints must be submitted to  
12 the Department of Law Enforcement or the Federal Bureau of  
13 Investigation for state and federal processing. The commission  
14 ~~department~~ may waive by rule the requirement that applicants  
15 file a set of fingerprints or the requirement that such  
16 fingerprints be processed by the Department of Law Enforcement  
17 or the Federal Bureau of Investigation.

18 (2) The office ~~department~~ may deny registration if it  
19 finds that the applicant, or any money transmitter-affiliated  
20 party of the applicant, has been convicted of a crime  
21 involving moral turpitude in any jurisdiction or of a crime  
22 which, if committed in this state, would constitute a crime  
23 involving moral turpitude under the laws of this state. For  
24 the purposes of this part, a person shall be deemed to have  
25 been convicted of a crime if such person has either pleaded  
26 guilty to or been found guilty of a charge before a court or  
27 federal magistrate, or by the verdict of a jury, irrespective  
28 of the pronouncement of sentence or the suspension thereof.  
29 The office ~~department~~ may take into consideration the fact  
30 that such plea of guilty, or such decision, judgment, or  
31 verdict, has been set aside, reversed, or otherwise abrogated

1 by lawful judicial process or that the person convicted of the  
2 crime received a pardon from the jurisdiction where the  
3 conviction was entered or received a certificate pursuant to  
4 any provision of law which removes the disability under this  
5 part because of such conviction.

6 (3) The office ~~department~~ may deny an application for  
7 registration if the applicant or money transmitter-affiliated  
8 party of the applicant is the subject of a pending criminal  
9 prosecution or governmental enforcement action, in any  
10 jurisdiction, until the conclusion of such criminal  
11 prosecution or enforcement action.

12 (4) Each registration application and renewal  
13 application must specify the location at which the applicant  
14 proposes to establish its principal place of business and any  
15 other location, including authorized vendors operating in this  
16 state. The registrant shall notify the office ~~department~~ of  
17 any changes to any such locations. Any registrant may satisfy  
18 this requirement by providing the office ~~department~~ with a  
19 list of such locations, including all authorized vendors  
20 operating in this state, not less than annually. A registrant  
21 may not transact business as a check cashier or a foreign  
22 currency exchanger except pursuant to the name under which it  
23 is registered.

24 (5) Each applicant shall designate and maintain an  
25 agent in this state for service of process.

26 Section 719. Subsections (2) and (3) of section  
27 560.307, Florida Statutes, are amended to read:

28 560.307 Fees.--

29 (2) Within 60 days after the date a registrant either  
30 opens a location within this state or authorizes an authorized  
31 vendor to operate on the registrant's behalf within this

1 state, the registrant shall notify the office ~~department~~ on a  
2 form prescribed by the commission ~~department~~ by rule. The  
3 notification shall be accompanied by a nonrefundable \$50 fee  
4 for each authorized vendor or location. This subsection shall  
5 not apply to any authorized vendor or location that has been  
6 designated by the registrant before October 1, 2001.

7 (3) Within 60 days after the date a registrant closes  
8 a location within this state or withdraws authorization for an  
9 authorized vendor to operate on the registrant's behalf within  
10 this state, the registrant shall notify the office ~~department~~  
11 on a form prescribed by the commission ~~department~~ by rule.

12 Section 720. Subsections (2) and (4) of section  
13 560.308, Florida Statutes, are amended to read:

14 560.308 Registration terms; renewal; renewal fees.--

15 (2) The office ~~department~~ shall renew registration  
16 upon receipt of a completed renewal form and payment of a  
17 nonrefundable renewal fee not to exceed \$500. The completed  
18 renewal form and payment of the renewal fee shall occur on or  
19 after June 1 of the year in which the existing registration  
20 expires.

21 (4) Registration that is not renewed on or before the  
22 expiration date of the registration period automatically  
23 expires. A renewal application and fee, and a late fee of  
24 \$250, must be filed within 60 calendar days after the  
25 expiration of an existing registration in order for the  
26 registration to be reinstated. If the registrant has not filed  
27 a renewal application within 60 days after the expiration date  
28 of an existing registration, a new application must be filed  
29 with the office ~~department~~ pursuant to s. 560.307.

30 Section 721. Subsections (3) and (4) of section  
31 560.309, Florida Statutes, are amended to read:

1           560.309 Rules.--

2           (3) The commission ~~department~~ may by rule require  
3 every check casher to display its registration and post a  
4 notice containing its charges for cashing payment instruments.

5           (4) Exclusive of the direct costs of verification  
6 which shall be established by commission ~~department~~ rule, no  
7 check casher shall:

8           (a) Charge fees, except as otherwise provided by this  
9 part, in excess of 5 percent of the face amount of the payment  
10 instrument, or 6 percent without the provision of  
11 identification, or \$5, whichever is greater;

12           (b) Charge fees in excess of 3 percent of the face  
13 amount of the payment instrument, or 4 percent without the  
14 provision of identification, or \$5, whichever is greater, if  
15 such payment instrument is the payment of any kind of state  
16 public assistance or federal social security benefit payable  
17 to the bearer of such payment instrument; or

18           (c) Charge fees for personal checks or money orders in  
19 excess of 10 percent of the face amount of those payment  
20 instruments, or \$5, whichever is greater.

21           (d) As used in this subsection, "identification"  
22 means, and is limited to, an unexpired and otherwise valid  
23 driver license, a state identification card issued by any  
24 state of the United States or its territories or the District  
25 of Columbia, and showing a photograph and signature, a United  
26 States Government Resident Alien Identification Card, a United  
27 States passport, or a United States Military identification  
28 card.

29           Section 722. Subsections (2) and (5) of section  
30 560.310, Florida Statutes, are amended to read:

31

1           560.310 Records of check cashers and foreign currency  
2 exchangers.--

3           (2) The records required to be maintained by the code  
4 may be maintained by the registrant at any location, provided  
5 that the registrant notifies the office ~~department~~, in  
6 writing, of the location of the records in its application or  
7 otherwise. The registrant shall make such records available to  
8 the office ~~department~~ for examination and investigation in  
9 this state, as permitted by the code, within 7 days after  
10 receipt of a written request.

11           (5) Any person who willfully violates this section or  
12 fails to comply with any lawful written demand or order of the  
13 office ~~department~~ made pursuant to this section commits a  
14 felony of the third degree, punishable as provided in s.  
15 775.082, s. 775.083, or s. 775.084.

16           Section 723. Subsection (5) of section 560.402,  
17 Florida Statutes, is amended to read:

18           560.402 Definitions.--In addition to the definitions  
19 provided in ss. 560.103, 560.202, and 560.302 and unless  
20 otherwise clearly indicated by the context, for purposes of  
21 this part:

22           (5) "Deferred presentment provider" means a person who  
23 engages in a deferred presentment transaction and is  
24 registered under part II or part III of the code and has filed  
25 a declaration of intent with the office ~~department~~.

26           Section 724. Subsections (1) and (4) of section  
27 560.403, Florida Statutes, are amended to read:

28           560.403 Requirements of registration; declaration of  
29 intent.--

30           (1) No person, unless otherwise exempt from this  
31 chapter, shall engage in a deferred presentment transaction

1 unless the person is registered under the provisions of part  
2 II or part III and has on file with the office ~~department~~ a  
3 declaration of intent to engage in deferred presentment  
4 transactions. The declaration of intent shall be under oath  
5 and on such form as the commission ~~department~~ prescribes by  
6 rule. The declaration of intent shall be filed together with  
7 a nonrefundable filing fee of \$1,000. Any person who is  
8 registered under part II or part III on the effective date of  
9 this act and intends to engage in deferred presentment  
10 transactions shall have 60 days after the effective date of  
11 this act to file a declaration of intent.

12 (4) The notice of intent of a registrant under this  
13 part who fails to timely renew his or her intent to engage in  
14 the business of deferred presentment transactions or to act as  
15 a deferred presentment provider on or before the expiration  
16 date of the registration period automatically expires. A  
17 renewal declaration of intent and fee, and a late fee of \$500,  
18 must be filed within 60 calendar days after the expiration of  
19 an existing registration in order for the declaration of  
20 intent to be reinstated. If the registrant has not filed a  
21 renewal declaration of intent within 60 days after the  
22 expiration date of an existing registration, a new declaration  
23 must be filed with the office ~~department~~.

24 Section 725. Subsection (3), paragraph (b) of  
25 subsection (19), paragraph (b) of subsection (22), and  
26 subsection (23) of section 560.404, Florida Statutes, are  
27 amended to read:

28 560.404 Requirements for deferred presentment  
29 transactions.--

30  
31

1           (3) Each written agreement shall contain the following  
2 information, in addition to any information the commission  
3 ~~department~~ requires by rule:

4           (a) The name or trade name, address, and telephone  
5 number of the deferred presentment provider and the name and  
6 title of the person who signs the agreement on behalf of the  
7 deferred presentment provider.

8           (b) The date the deferred presentment transaction was  
9 made.

10           (c) The amount of the drawer's check.

11           (d) The length of deferral period.

12           (e) The last day of the deferment period.

13           (f) The address and telephone number of the office and  
14 the Division of Consumer Services of the Department of  
15 Financial Services ~~department~~.

16           (g) A clear description of the drawer's payment  
17 obligations under the deferred presentment transaction.

18           (h) The transaction number assigned by the office's  
19 ~~department's~~ database.

20           (19) A deferred presentment provider may not enter  
21 into a deferred presentment transaction with a person who has  
22 an outstanding deferred presentment transaction with that  
23 provider or with any other deferred presentment provider, or  
24 with a person whose previous deferred presentment transaction  
25 with that provider or with any other provider has been  
26 terminated for less than 24 hours. The deferred presentment  
27 provider must verify such information as follows:

28           (b) The deferred presentment provider shall access the  
29 office's ~~department's~~ database established pursuant to  
30 subsection (23) and shall verify whether any other deferred  
31 presentment provider has an outstanding deferred presentment

1 transaction with a particular person or has terminated a  
2 transaction with that person within the previous 24 hours.  
3 Prior to the time that the office ~~department~~ has implemented  
4 such a database, the deferred presentment provider may rely  
5 upon the written verification of the drawer as provided in  
6 subsection (20).

7 (22)

8 (b) At the commencement of the grace period, the  
9 deferred presentment provider shall provide the drawer:  
10 1. Verbal notice of the availability of the grace  
11 period consistent with the written notice in subsection (20).

12 2. A list of approved consumer credit counseling  
13 agencies prepared by the office ~~department~~. ~~The department~~  
14 ~~shall prepare the list by October 1, 2001.~~ The office  
15 ~~department~~ list shall include nonprofit consumer credit  
16 counseling agencies affiliated with the National Foundation  
17 for Credit Counseling which provide credit counseling services  
18 to Florida residents in person, by telephone, or through the  
19 Internet. The office ~~department~~ list must include phone  
20 numbers for the agencies, the counties served by the agencies,  
21 and indicate the agencies that provide telephone counseling  
22 and those that provide Internet counseling. The office  
23 ~~department~~ shall update the list at least once each year.

24 3. The following notice in at least 14-point type in  
25 substantially the following form:

26  
27 AS A CONDITION OF OBTAINING A GRACE PERIOD  
28 EXTENDING THE TERM OF YOUR DEFERRED PRESENTMENT  
29 AGREEMENT FOR AN ADDITIONAL 60 DAYS, UNTIL  
30 [DATE], WITHOUT ANY ADDITIONAL FEES, YOU MUST  
31 COMPLETE CONSUMER CREDIT COUNSELING PROVIDED BY

1 AN AGENCY INCLUDED ON THE LIST THAT WILL BE  
2 PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO  
3 AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT  
4 PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY  
5 BE IN PERSON, BY TELEPHONE, OR THROUGH THE  
6 INTERNET. YOU MUST NOTIFY US WITHIN SEVEN (7)  
7 DAYS, BY [DATE], THAT YOU HAVE MADE AN  
8 APPOINTMENT WITH SUCH A CONSUMER CREDIT  
9 COUNSELING AGENCY. YOU MUST ALSO NOTIFY US  
10 WITHIN SIXTY (60) DAYS, BY [DATE], THAT YOU  
11 HAVE COMPLETED THE CONSUMER CREDIT COUNSELING.  
12 WE MAY VERIFY THIS INFORMATION WITH THE AGENCY.  
13 IF YOU FAIL TO PROVIDE EITHER THE 7-DAY OR  
14 60-DAY NOTICE, OR IF YOU HAVE NOT MADE THE  
15 APPOINTMENT OR COMPLETED THE COUNSELING WITHIN  
16 THE TIME REQUIRED, WE MAY DEPOSIT OR PRESENT  
17 YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY  
18 AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT.  
19 (23) ~~On or before March 1, 2002,~~The office department  
20 shall implement a common database with real-time access  
21 through an Internet connection for deferred presentment  
22 providers, as provided in this subsection. The database must  
23 be accessible to the office department and the deferred  
24 presentment providers to verify whether any deferred  
25 presentment transactions are outstanding for a particular  
26 person. Deferred presentment providers shall submit such data  
27 before entering into each deferred presentment transaction in  
28 such format as the commission department shall require by  
29 rule, including the drawer's name, social security number or  
30 employment authorization alien number, address, driver's  
31 license number, amount of the transaction, date of

1 transaction, the date that the transaction is closed, and such  
2 additional information as is required by the commission  
3 ~~department~~. The commission ~~department~~ may impose a fee not to  
4 exceed \$1 per transaction for data required to be submitted by  
5 a deferred presentment provider. A deferred presentment  
6 provider may rely on the information contained in the database  
7 as accurate and is not subject to any administrative penalty  
8 or civil liability as a result of relying on inaccurate  
9 information contained in the database. The commission  
10 ~~department~~ may adopt rules to administer and enforce the  
11 provisions of this section and to assure that the database is  
12 used by deferred presentment providers in accordance with this  
13 section.

14 Section 726. Section 560.4041, Florida Statutes, is  
15 amended to read:

16 560.4041 Database for deferred presentment providers;  
17 public-records exemption.--The identifying information  
18 contained in the database for deferred presentment providers,  
19 which is authorized under s. 560.404, is confidential and  
20 exempt from s. 119.07(1), and s. 24(a), Art. I of the State  
21 Constitution, except that the identifying information in the  
22 database may be accessed by deferred presentment providers to  
23 verify whether any deferred presentment transactions are  
24 outstanding for a particular person and by the office  
25 ~~Department of Banking and Finance~~ for the purpose of  
26 maintaining the database. This section is subject to the Open  
27 Government Sunset Review Act of 1995 in accordance with s.  
28 119.15, and shall stand repealed October 2, 2006, unless  
29 reviewed and saved from repeal through reenactment by the  
30 Legislature.

31

1           Section 727. Subsections (1), (2), and (3) of section  
2 560.407, Florida Statutes, are amended to read:

3           560.407 Records.--

4           (1) Each registrant under this part must maintain all  
5 books, accounts, records, and documents necessary to determine  
6 the registrant's compliance with the provisions of the code.  
7 Such books, accounts, records, and documents shall be retained  
8 for a period of at least 3 years unless a longer period is  
9 expressly required by the commission ~~department~~, the laws of  
10 this state, or any federal law.

11           (2) The records required to be maintained by the code  
12 or any rule adopted pursuant thereto may be maintained by the  
13 registrant at any location within this state, provided that  
14 the registrant notifies the office ~~department~~, in writing, of  
15 the location of the records in its application or otherwise.

16           (3) A registrant shall make records available to the  
17 office ~~department~~ for examination and investigation in this  
18 state, as permitted by the code, within 7 days after receipt  
19 of a written request.

20           Section 728. Subsection (2) of section 560.408,  
21 Florida Statutes, is amended to read:

22           560.408 Legislative intent; report.--

23           (2) The director of the office shall submit a report  
24 on January 1, 2004, ~~Comptroller shall submit a report~~ to the  
25 President of the Senate and the Speaker of the House of  
26 Representatives ~~on January 1, 2003, and January 1, 2004,~~  
27 containing findings and conclusions concerning the  
28 effectiveness of this act in preventing fraud, abuse, and  
29 other unlawful activity associated with deferred presentment  
30 transactions. The report may contain legislative  
31 recommendations addressing the prevention of fraud, abuse, and

1 other unlawful activity associated with deferred presentment  
2 transactions. Prior to filing each ~~the~~ report, the Comptroller  
3 and director of the office shall consult with the Attorney  
4 General for the purpose of including any recommendations or  
5 concerns expressed by the Attorney General.

6 Section 729. Section 561.051, Florida Statutes, is  
7 amended to read:

8 561.051 Reporting requirements of director.--The  
9 director of the division shall promptly report and remit to  
10 the Chief Financial Officer ~~Treasurer~~ all taxes and fees  
11 collected by him or her hereunder ~~and shall send copies of the~~  
12 ~~reports to the Comptroller.~~

13 Section 730. Section 562.44, Florida Statutes, is  
14 amended to read:

15 562.44 Donation of forfeited beverages or raw  
16 materials to state institutions; sale of forfeited  
17 beverages.--Any alcoholic beverage or raw materials used for  
18 the manufacture of alcoholic beverages that may be seized and  
19 forfeited under any of the provisions of the Beverage Law may,  
20 with the approval and consent of the Department of Business  
21 and Professional Regulation, be donated to any state-operated  
22 or charitable institution that may have a legitimate use  
23 therefor in the operation of such institution, or the division  
24 may sell such beverage so seized and forfeited to any licensed  
25 wholesaler in the state, upon the condition that all federal  
26 and state taxes that may be due thereon shall be paid, that  
27 such sale shall be made only upon submission by said division  
28 of a request for bids to at least five wholesale dealers in  
29 the state, and that such sale shall be made to the highest and  
30 best bidder therefor. However, if no satisfactory bid from a  
31 wholesaler is received, the division may then reject all bids

1 and sell such beverage so seized and forfeited to any  
2 retailer, licensed in this state to sell such beverage, upon  
3 the condition that all federal and state taxes that may be due  
4 thereon shall have been paid, that such sale shall be made  
5 only upon submission by said division of a request for bids to  
6 at least five retail dealers in the state and that such sale  
7 shall be to the highest and best bidder therefor. All moneys  
8 received from such sales shall be paid by the division to the  
9 Chief Financial Officer ~~State Treasurer~~ for the account of the  
10 beverage fund and shall be subject to disbursement in  
11 accordance with the law relating thereto.

12 Section 731. Section 567.08, Florida Statutes, is  
13 amended to read:

14 567.08 Refund of unused portion of state license  
15 tax.--When any county votes by an election to discontinue  
16 permitting the sale of intoxicating liquors, wines, or beer,  
17 prior to the date of expiration of any license issued by the  
18 state for the sale of intoxicating liquors, wines, or beer in  
19 such county, the fee for the unexpired and unused portion of  
20 said license shall be refunded to the licensee by warrant  
21 drawn by the Chief Financial Officer, ~~State Comptroller on the~~  
22 ~~State Treasurer~~ who shall pay such warrants from any moneys in  
23 the State Treasury not otherwise appropriated.

24 Section 732. Subsections (1) and (2) of section  
25 569.205, Florida Statutes, are amended to read:

26 569.205 Department of Business and Professional  
27 Regulation Tobacco Settlement Trust Fund.--

28 (1) The Department of Business and Professional  
29 Regulation Tobacco Settlement Trust Fund is hereby created  
30 within that department. Funds to be credited to the trust fund  
31 shall consist of funds disbursed, by nonoperating transfer,

1 from the Department of Financial Services ~~Banking and Finance~~  
2 Tobacco Settlement Clearing Trust Fund in amounts equal to the  
3 annual appropriations made from this trust fund.

4 (2) Notwithstanding the provisions of s. 216.301 and  
5 pursuant to s. 216.351, any unencumbered balance in the trust  
6 fund at the end of any fiscal year and any encumbered balance  
7 remaining undisbursed on December 31 of the same calendar year  
8 shall revert to the Department of Financial Services ~~Banking~~  
9 ~~and Finance~~ Tobacco Settlement Clearing Trust Fund.

10 Section 733. Subsection (1) of section 569.215,  
11 Florida Statutes, is amended to read:

12 569.215 Confidential records relating to tobacco  
13 settlement agreement.--

14 (1) Proprietary confidential business information  
15 received by the Governor, the Attorney General, or outside  
16 counsel representing the State of Florida in negotiations for  
17 settlement payments pursuant to the settlement agreement, as  
18 amended, in the case of State of Florida et al. v. American  
19 Tobacco Company et al., No. 95-1466AH, in the Circuit Court of  
20 the Fifteenth Judicial Circuit, in and for Palm Beach County,  
21 or received by the Chief Financial Officer ~~Comptroller~~ or the  
22 Auditor General for any purpose relating to verifying  
23 settlement payments made pursuant to the settlement agreement  
24 is confidential and exempt from the provisions of s. 119.07(1)  
25 and s. 24(a) of Art. I of the State Constitution. Any state or  
26 federal agency that is authorized to have access to such  
27 documents by any provision of law shall be granted such access  
28 in furtherance of such agency's statutory duties,  
29 notwithstanding the provisions of this section. Proprietary  
30 confidential business information received under this section  
31 shall not retain its confidential and exempt status if that

1 information is made public, including publicizing such  
2 information in a Securities and Exchange Commission filing, an  
3 annual financial statement, or other document or means. This  
4 exemption is subject to the Open Government Sunset Review Act  
5 of 1995 in accordance with s. 119.15, and shall stand repealed  
6 on October 2, 2006, unless reviewed and saved from repeal  
7 through reenactment by the Legislature.

8 Section 734. Subsection (2) of section 570.13, Florida  
9 Statutes, is amended to read:

10 570.13 Salary of commissioner, officers, and  
11 employees; expenses.--

12 (2) The reasonable and necessary travel and other  
13 expenses of the commissioner, assistant commissioner, counsel,  
14 directors, and other officers and employees of the department,  
15 while actually engaged in the performance of their duties,  
16 outside of the City of Tallahassee, or if any such officer or  
17 employee be in charge of or regularly employed at a branch  
18 office of the department, the reasonable and necessary travel  
19 and other expenses outside the place such branch office is  
20 located, shall be paid from the State Treasury after audit by  
21 the Chief Financial Officer ~~Comptroller~~ of vouchers approved  
22 by the department in the amount provided in s. 112.061.

23 Section 735. Subsection (1) of section 570.195,  
24 Florida Statutes, is amended to read:

25 570.195 Tobacco farmers; assistance.--

26 (1) In order to assist Florida tobacco farmers in  
27 reducing encumbered debt on stranded investment in equipment,  
28 the nonrecurring sum of \$2.5 million is appropriated from the  
29 Department of Financial Services ~~Banking and Finance~~ Tobacco  
30 Settlement Clearing Trust Fund to the Department of  
31 Agriculture and Consumer Services for the purchase at fair

1 market value of equipment associated with agricultural  
2 production of tobacco from persons or entities that were using  
3 such equipment for production of tobacco between April 1 and  
4 October 1, 2000, on land within this state and sign a letter  
5 of intent to cease tobacco production upon the development and  
6 implementation of an alternative crop that would provide the  
7 same net revenue and proportional costs as tobacco. The  
8 department may adopt rules that, at a minimum, define and  
9 describe the equipment to be purchased under this section,  
10 prescribe criteria for identifying persons and entities who  
11 are eligible to have such equipment purchased by the  
12 department, and prescribe procedures to be followed for  
13 equipment purchases. From the funds appropriated by this  
14 section, the department is authorized to expend such sums as  
15 are reasonable and necessary to administer the program.

16 Section 736. Section 570.20, Florida Statutes, is  
17 amended to read:

18 570.20 General Inspection Trust Fund.--All donations  
19 and all inspection fees and other funds authorized and  
20 received from whatever source in the enforcement of the  
21 inspection laws administered by the department shall be paid  
22 into the General Inspection Trust Fund of Florida, which is  
23 created in the office of the Chief Financial Officer  
24 ~~Treasurer~~. All expenses incurred in carrying out the  
25 provisions of the inspection laws shall be paid from this fund  
26 as other funds are paid from the State Treasury. A percentage  
27 of all revenue deposited in this fund, including transfers  
28 from any subsidiary accounts, shall be deposited in the  
29 General Revenue Fund pursuant to chapter 215, except that  
30 funds collected for marketing orders shall pay at the rate of  
31 3 percent.

1           Section 737. Subsection (6) of section 574.03, Florida  
2 Statutes, is amended to read:

3           574.03 Warehouseman; licenses and fees.--

4           (6) As a prerequisite to the issuance of a license  
5 under the provisions of this section, each applicant shall  
6 furnish evidence to the Department of Agriculture and Consumer  
7 Services that the applicant has in force a standard fire and  
8 extended coverage insurance policy for the full market value  
9 of the maximum amount of tobacco contained in his or her sales  
10 warehouse at any one time during the marketing season for  
11 which the license is sought. The insurance policy shall be  
12 written by an insurance company of the warehouseman's choice  
13 authorized to transact business in this state, and such  
14 insurance coverage shall be approved in form by the Office of  
15 Insurance Regulation of the Financial Services Commission  
16 ~~Department of Insurance~~, and a copy of the insurance policy  
17 shall be filed with the director of the Division of Marketing  
18 and Development of the Department of Agriculture and Consumer  
19 Services. The policy shall contain an endorsement requiring  
20 notification to the director of the Division of Marketing and  
21 Development of the Department of Agriculture and Consumer  
22 Services by the insurance company at least 10 days prior to  
23 cancellation of their intention to cancel the policy.

24           Section 738. Section 589.06, Florida Statutes, is  
25 amended to read:

26           589.06 Warrants for payment of accounts.--Upon the  
27 presentation to the Chief Financial Officer ~~Comptroller~~ of any  
28 accounts duly approved by the Division of Forestry,  
29 accompanied by such itemized vouchers or accounts as shall be  
30 required by her or him, the Chief Financial Officer  
31 ~~Comptroller~~ shall audit the same and draw a warrant ~~on the~~

1 ~~State Treasurer~~ for the amount for which the account is  
2 audited, payable out of funds to the credit of the division.

3 Section 739. Paragraph (a) of subsection (7) of  
4 section 597.010, Florida Statutes, is amended to read:

5 597.010 Shellfish regulation; leases.--

6 (7) SURCHARGE FOR IMPROVEMENT OR REHABILITATION.--A  
7 surcharge of \$10 per acre, or any fraction of an acre, per  
8 annum shall be levied upon each lease, other than a perpetual  
9 lease granted pursuant to chapter 370 prior to 1985, and  
10 deposited into the General Inspection Trust Fund. The purpose  
11 of the surcharge is to provide a mechanism to have financial  
12 resources immediately available for improvement of lease areas  
13 and for cleanup and rehabilitation of abandoned or vacated  
14 lease sites. The department is authorized to adopt rules  
15 necessary to carry out the provisions of this subsection.

16 (a) Moneys in the fund that are not needed currently  
17 for cleanup and rehabilitation of abandoned or vacated lease  
18 sites shall be deposited with the Chief Financial Officer  
19 ~~Treasurer~~ to the credit of the fund and may be invested in  
20 such manner as is provided for by statute. Interest received  
21 on such investment shall be credited to the fund.

22  
23 The department shall recover to the use of the fund from the  
24 person or persons abandoning or vacating the lease, jointly  
25 and severally, all sums owed or expended from the fund.

26 Section 740. Subsections (9) and (10) of section  
27 601.10, Florida Statutes, are amended to read:

28 601.10 Powers of the Department of Citrus.--The  
29 Department of Citrus shall have and shall exercise such  
30 general and specific powers as are delegated to it by this  
31

1 chapter and other statutes of the state, which powers shall  
2 include, but shall not be confined to, the following:

3 (9) When, in the opinion of the Department of Citrus,  
4 the tax revenues collected pursuant to this chapter, whether  
5 allocated for research, advertising or promotion, reserve  
6 funds, advertising incentive plans, or other purposes, are not  
7 immediately needed for the purpose for which such funds are  
8 provided, the Chief Financial Officer ~~Treasurer~~ is authorized  
9 and shall, upon the request and approval of the Department of  
10 Citrus, or its general manager if she or he has been given  
11 such authority, invest and reinvest the funds designated and  
12 for the period of time specified in such request. In the  
13 investment of such funds, the Chief Financial Officer  
14 ~~Treasurer~~ shall have the powers and be subject to the  
15 limitations provided for in s. 17.61 ~~s. 18.125~~.

16 (10) Subject to the concurrence of the Chief Financial  
17 Officer ~~Treasurer~~, whenever the department contracts with a  
18 foreign entity for performance of services or the purchase of  
19 materials, and such contract requires payment in equivalent  
20 foreign currency, the department may, for payment of such  
21 contract obligation, deposit sufficient state funds in a  
22 foreign bank, or purchase foreign currency at the current  
23 market rate, up to an amount not in excess of the contract  
24 obligation. All payments from these funds must have prior  
25 audit approval from the office of the Chief Financial Officer  
26 ~~Comptroller~~.

27 Section 741. Paragraph (c) of subsection (8) of  
28 section 601.15, Florida Statutes, is amended to read:

29 601.15 Advertising campaign; methods of conducting;  
30 excise tax; emergency reserve fund; citrus research.--

31 (8)

1 (c) All obligations, expenses, and costs incurred  
2 under the provisions of this section shall be paid out of the  
3 Citrus Advertising Fund upon warrant of the Chief Financial  
4 Officer ~~Comptroller~~ when vouchers thereof, approved by the  
5 Department of Citrus, are exhibited.

6 Section 742. Subsection (6) of section 601.28, Florida  
7 Statutes, is amended to read:

8 601.28 Inspection fees.--

9 (6) When any portion of the revenues deposited to the  
10 Citrus Inspection Trust Fund is not immediately needed for the  
11 purpose for which such funds are appropriated, the Chief  
12 Financial Officer ~~Treasurer~~ shall invest and reinvest such  
13 funds, and the earnings thereon shall be deposited to and made  
14 a part of the Citrus Inspection Trust Fund.

15 Section 743. Subsection (2) of section 607.0501,  
16 Florida Statutes, is amended to read:

17 607.0501 Registered office and registered agent.--

18 (2) This section does not apply to corporations which  
19 are required by law to designate the Chief Financial Officer  
20 ~~Insurance Commissioner and Treasurer~~ as their attorney for the  
21 service of process, associations subject to the provisions of  
22 chapter 665, and banks and trust companies subject to the  
23 provisions of the financial institutions codes.

24 Section 744. Section 607.14401, Florida Statutes, is  
25 amended to read:

26 607.14401 Deposit with Department of Financial  
27 Services ~~Banking and Finance~~.--Assets of a dissolved  
28 corporation that should be transferred to a creditor,  
29 claimant, or shareholder of the corporation who cannot be  
30 found or who is not competent to receive them shall be  
31 deposited, within 6 months from the date fixed for the payment

1 of the final liquidating distribution, with the Department of  
2 Financial Services ~~Banking and Finance~~, where such assets  
3 shall be held as abandoned property. When the creditor,  
4 claimant, or shareholder furnishes satisfactory proof of  
5 entitlement to the amount or assets deposited, the Department  
6 of Financial Services ~~Banking and Finance~~ shall pay the  
7 creditor, claimant, or shareholder or his or her  
8 representative that amount or those assets.

9 Section 745. Section 609.05, Florida Statutes, is  
10 amended to read:

11 609.05 Qualification with Office of Financial  
12 Institutions and Securities Regulation ~~Department of Banking~~  
13 ~~and Finance~~.--Before any person may offer for sale, barter or  
14 sell any unit, share, contract, note, bond, mortgage, oil or  
15 mineral lease or other security of an association doing  
16 business under what is known as a "declaration of trust" in  
17 this state, such person shall procure from the Office of  
18 Financial Institutions and Securities Regulation of the  
19 Financial Services Commission ~~Department of Banking and~~  
20 ~~Finance~~ a permit to offer for sale and sell such securities,  
21 which permit shall be applied for and granted under the same  
22 conditions as like permits are applied for and granted to  
23 corporations.

24 Section 746. Subsection (2) of section 617.0501,  
25 Florida Statutes, is amended to read:

26 617.0501 Registered office and registered agent.--

27 (2) This section does not apply to corporations which  
28 are required by law to designate the Chief Financial Officer  
29 ~~Insurance Commissioner and Treasurer~~ as their attorney for the  
30 service of process.

31

1 Section 747. Section 617.1440, Florida Statutes, is  
2 amended to read:

3 617.1440 Deposit with Department of Financial Services  
4 ~~Banking and Finance~~.--Assets of a dissolved corporation that  
5 should be transferred to a creditor, claimant, member of the  
6 corporation, or other person who cannot be found or who is not  
7 competent to receive them shall be deposited, within 6 months  
8 after the date fixed for the payment of the final liquidating  
9 distribution, with the Department of Financial Services  
10 ~~Banking and Finance~~, where such assets shall be held as  
11 abandoned property. When the creditor, claimant, member, or  
12 other person furnishes satisfactory proof of entitlement to  
13 the amount or assets deposited, the Department of Financial  
14 Services ~~Banking and Finance~~ shall pay him or her or his or  
15 her representative that amount or those assets.

16 Section 748. Section 624.01, Florida Statutes, is  
17 amended to read:

18 624.01 Short title.--Chapters 624-632, 634, 635, 636,  
19 641, 642, 648, and 651 constitute the "Florida Insurance  
20 Code."

21 Section 749. Section 624.05, Florida Statutes, is  
22 amended to read:

23 624.05 "Department," "commission," and "office"  
24 defined.--As used in the Insurance Code:

25 (1) "Department" means the Department of Financial  
26 Services. The term does not mean the Financial Services  
27 Commission or any office of the Financial Services Commission  
28 ~~Insurance of this state, unless the context otherwise~~  
29 ~~requires.~~

30 (2) "Commission" means the Financial Services  
31 Commission.

1           (3) "Office" means the Office of Insurance Regulation  
2 of the Financial Services Commission.

3           Section 750. Subsection (2) of section 624.07, Florida  
4 Statutes, is amended to read:

5           624.07 "Domicile" defined.--Except as provided in s.  
6 631.011, the "domicile" of an insurer means:

7           (2) As to other alien insurers authorized to transact  
8 insurance in one or more states, the state designated by the  
9 insurer in writing filed with the office ~~department~~ at the  
10 time of admission to this state or within 6 months after the  
11 effective date of this code, whichever date is the later, and  
12 may be any of the following states:

13           (a) That in which the insurer was first authorized to  
14 transact insurance if the insurer is still so authorized.

15           (b) That in which is located the insurer's principal  
16 place of business in the United States.

17           (c) That in which is held the larger deposit of  
18 trusted assets of the insurer for the protection of its  
19 policyholders and creditors in the United States.

20  
21 If the insurer makes no such designation, its domicile shall  
22 be deemed to be that state in which is located its principal  
23 place of business in the United States.

24           Section 751. Subsection (1) of section 624.09, Florida  
25 Statutes, is amended to read:

26           624.09 "Authorized," "unauthorized" insurer defined.--

27           (1) An "authorized" insurer is one duly authorized by  
28 a subsisting certificate of authority issued by the office  
29 ~~department~~ to transact insurance in this state.

30           Section 752. Subsection (2) of section 624.11, Florida  
31 Statutes, is amended to read:

1           624.11 Compliance required.--

2           (2) Any risk retention group organized and existing  
3 under the provisions of the Product Liability Risk Retention  
4 Act of 1981 (Pub. L. No. 97-45), which has been licensed as an  
5 insurance company and authorized to engage in the business of  
6 insurance may transact insurance in this state and shall be  
7 subject to the provisions of ss. 624.15, 624.316, 624.418,  
8 624.421, 624.4211, 624.422, 624.509, 626.112, 626.611,  
9 626.621, 626.7315, 626.741, 626.932, 626.938, 626.9541,  
10 627.351, and 627.915; part I of chapter 631; and all other  
11 applicable provisions of the laws of this state. Any such  
12 group formed in another jurisdiction shall furnish to the  
13 office ~~department~~, upon request, a copy of any financial  
14 report submitted by the group in the licensing jurisdiction.

15           Section 753. Section 624.124, Florida Statutes, is  
16 amended to read:

17           624.124 Motor vehicle services; exemption from  
18 code.--Any person may, in exchange for fees, dues, charges, or  
19 other consideration, provide any of the following services  
20 related to the ownership, operation, use, or maintenance of a  
21 motor vehicle without being deemed an insurer and without  
22 being subject to the provisions of this code:

23           (1) Towing service.

24           (2) Procuring from an insurer group coverage for bail  
25 and arrest bonds or for accidental death and dismemberment.

26           (3) Emergency service.

27           (4) Procuring prepaid legal services, or providing  
28 reimbursement for legal services, except that this shall not  
29 be deemed to be an exemption from chapter 642.

30           (5) Offering assistance in locating or recovering  
31 stolen or missing motor vehicles.

1           (6) Paying emergency living and transportation  
2 expenses of the owner of a motor vehicle when the motor  
3 vehicle is damaged.

4  
5 For purposes of this section, "motor vehicle" has the same  
6 meaning specified by s. 634.011(6)~~s. 634.011(7)~~.

7           Section 754. Subsection (3) of section 624.129,  
8 Florida Statutes, is amended to read:

9           624.129 Certain location and recovery services;  
10 exemption from code.--

11           (3) The written agreement or enrollment form used by  
12 the provider of such services for subscribers in this state  
13 shall contain a conspicuous legend to the effect that the  
14 services are not regulated by either the department or the  
15 office as insurance.

16           Section 755. Subsections (2) and (5) of section  
17 624.155, Florida Statutes, are amended to read:

18           624.155 Civil remedy.--

19           (2)(a) As a condition precedent to bringing an action  
20 under this section, the office ~~department~~ and the insurer must  
21 have been given 60 days' written notice of the violation. If  
22 the office ~~department~~ returns a notice for lack of  
23 specificity, the 60-day time period shall not begin until a  
24 proper notice is filed.

25           (b) The notice shall be on a form adopted by the  
26 commission and provided by the office ~~department~~ and shall  
27 state with specificity the following information, and such  
28 other information as the commission requires ~~department may~~  
29 ~~require~~:

30           1. The statutory provision, including the specific  
31 language of the statute, which the insurer allegedly violated.

1           2. The facts and circumstances giving rise to the  
2 violation.

3           3. The name of any individual involved in the  
4 violation.

5           4. Reference to specific policy language that is  
6 relevant to the violation, if any. If the person bringing the  
7 civil action is a third party claimant, she or he shall not be  
8 required to reference the specific policy language if the  
9 insurer has not provided a copy of the policy to the third  
10 party claimant pursuant to written request.

11           5. A statement that the notice is given in order to  
12 perfect the right to pursue the civil remedy authorized by  
13 this section.

14           (c) Within 20 days of receipt of the notice, the  
15 office ~~department~~ may return any notice that does not provide  
16 the specific information required by this section, and the  
17 office ~~department~~ shall indicate the specific deficiencies  
18 contained in the notice. A determination by the office  
19 ~~department~~ to return a notice for lack of specificity shall be  
20 exempt from the requirements of chapter 120.

21           (d) No action shall lie if, within 60 days after  
22 filing notice, the damages are paid or the circumstances  
23 giving rise to the violation are corrected.

24           (e) The insurer that is the recipient of a notice  
25 filed pursuant to this section shall report to the office  
26 ~~department~~ on the disposition of the alleged violation.

27           (f) The applicable statute of limitations for an  
28 action under this section shall be tolled for a period of 65  
29 days by the mailing of the notice required by this subsection  
30 or the mailing of a subsequent notice required by this  
31 subsection.

1           (5) This section shall not be construed to authorize a  
2 class action suit against an insurer or a civil action against  
3 the commission, the office, or the department or any of their,  
4 ~~its employees, or the Insurance Commissioner,~~ or to create a  
5 cause of action when a health insurer refuses to pay a claim  
6 for reimbursement on the ground that the charge for a service  
7 was unreasonably high or that the service provided was not  
8 medically necessary.

9           Section 756. Section 624.19, Florida Statutes, is  
10 amended to read:

11           624.19 Existing forms and filings.--Every form of  
12 insurance document and every rate or other filing lawfully in  
13 use immediately prior to January 7, 2003 ~~October 1, 1959~~, may  
14 continue to be so used or be effective until the commission or  
15 office department otherwise prescribes pursuant to this code.

16           Section 757. Section 624.302, Florida Statutes, is  
17 amended to read:

18           624.302 Offices.--The department shall establish and  
19 maintain offices at the State Capitol in Tallahassee, and in  
20 such other places throughout the state as it designates ~~may~~  
21 ~~from time to time designate.~~ The Office of Insurance  
22 Regulation shall establish and maintain offices in Tallahassee  
23 and in such other places throughout the state as it  
24 designates.

25           Section 758. Section 624.303, Florida Statutes, is  
26 amended to read:

27           624.303 Seal; certified copies as evidence.--

28           (1) The department, commission, and office shall each  
29 have an official seal by which its respective proceedings are  
30 authenticated.

31

1           (2) All certificates executed by the department or  
2 office, other than licenses of agents, solicitors, or  
3 adjusters or similar licenses or permits, shall bear its  
4 respective seal.

5           (3) Any written instrument purporting to be a copy of  
6 any action, proceeding, or finding of fact by the department,  
7 commission, or office or any record of the department,  
8 commission, or office or copy of any document on file in its  
9 office when authenticated under hand of the respective agency  
10 head or his or her designee ~~commissioner~~ by the seal shall be  
11 accepted by all the courts of this state as prima facie  
12 evidence of its contents.

13           Section 759. Section 624.305, Florida Statutes, is  
14 amended to read:

15           624.305 Prohibited interests, rewards.--

16           (1) No employee of the department, commission, or  
17 office, including the members of the commission, but not  
18 including employees of the Office of Financial Institutions  
19 and Securities Regulation, Insurance Commissioner and  
20 ~~Treasurer~~ shall:

21           (a) Be financially interested, directly or indirectly,  
22 in any insurer or insurance agency authorized to transact  
23 insurance in this state, or in any insurance transaction  
24 except as a policyholder or claimant under a policy; or

25           (b) Be given or receive any fee, compensation, loan,  
26 gift, or other thing of value in addition to the compensation  
27 and expense allowance provided by law, for any service  
28 rendered or to be rendered in her or his capacity as a  
29 department, commission, or office employee.

30           (2) This section shall not be deemed to prohibit an  
31 insurer from making, in the regular course of business, a loan

1 to any employee of the department, commission, or office, if  
2 such loan is adequately secured by a mortgage upon real estate  
3 or other collateral and qualifies as an eligible investment of  
4 the insurer under part II of chapter 625.

5 (3) When there is no conflict of interest, the  
6 department, commission, and office may each employ or retain  
7 from time to time an insurance actuary, accountant, or other  
8 professional person who is independently practicing her or his  
9 profession even though such person is similarly employed or  
10 retained by insurers or others.

11 (4) Any person employed by the department, commission,  
12 or office on January 7, 2003, including a member of the  
13 commission, who was not subject to this section prior to that  
14 date, has until January 1, 2004, to comply with this section.

15 Section 760. Section 624.307, Florida Statutes, is  
16 amended to read:

17 624.307 General powers; duties.--

18 (1) The department and office shall enforce the  
19 provisions of this code and shall execute the duties imposed  
20 upon it by this code, within the respective jurisdiction of  
21 each, as provided by law.

22 (2) The department shall have the powers and authority  
23 expressly conferred upon it by, or reasonably implied from,  
24 the provisions of this code. The office shall have the powers  
25 and authority expressly conferred upon it by, or reasonably  
26 implied from, the provisions of this code.

27 (3) The department or office may conduct such  
28 investigations of insurance matters, in addition to  
29 investigations expressly authorized, as it may deem proper to  
30 determine whether any person has violated any provision of  
31 this code within its respective regulatory jurisdiction or to

1 secure information useful in the lawful administration of any  
2 such provision. The cost of such investigations shall be  
3 borne by the state.

4 (4) The department and office may each collect,  
5 propose, publish, and disseminate information relating to the  
6 subject matter of any duties imposed upon it by law.

7 (5) The department and office shall each have such  
8 additional powers and duties as may be provided by other laws  
9 of this state.

10 (6) The department and office may each employ  
11 actuaries who shall be at-will employees and who shall serve  
12 at the pleasure of the Chief Financial Officer, in the case of  
13 department employees, or at the pleasure of the director of  
14 the office, in the case of office employees ~~Insurance~~  
15 ~~Commissioner~~. Actuaries employed pursuant to this paragraph  
16 shall be members of the Society of Actuaries or the Casualty  
17 Actuarial Society and shall be exempt from the Career Service  
18 System established under chapter 110. The salaries of the  
19 actuaries employed pursuant to this paragraph ~~by the~~  
20 ~~department~~ shall be set in accordance with s. 216.251(2)(a)5.  
21 and shall be set at levels which are commensurate with salary  
22 levels paid to actuaries by the insurance industry.

23 (7) The office ~~department~~ shall, within existing  
24 resources, develop and implement an outreach program for the  
25 purpose of encouraging the entry of additional insurers into  
26 the Florida market.

27 Section 761. Subsection (1) of section 624.308,  
28 Florida Statutes, is amended to read:

29 624.308 Rules.--

30 (1) The department and the commission may each ~~has~~  
31 ~~authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54

1 to implement provisions of law conferring duties upon the  
2 department or the commission, respectively it.

3 Section 762. Section 624.310, Florida Statutes, is  
4 amended to read:

5 624.310 Enforcement; cease and desist orders; removal  
6 of certain persons; fines.--

7 (1) DEFINITIONS.--For the purposes of this section,  
8 the term:

9 (a) "Affiliated party" means any person who directs or  
10 participates in the conduct of the affairs of a licensee and  
11 who is:

12 1. A director, officer, employee, trustee, committee  
13 member, or controlling stockholder of a licensee or a  
14 subsidiary or service corporation of the licensee, other than  
15 a controlling stockholder which is a holding company, or an  
16 agent of a licensee or a subsidiary or service corporation of  
17 the licensee;

18 2. A person who has filed or is required to file a  
19 statement or any other information required to be filed under  
20 s. 628.461 or s. 628.4615;

21 3. A stockholder, other than a stockholder that is a  
22 holding company of the licensee, who participates in the  
23 conduct of the affairs of the licensee; or

24 4. An independent contractor who:

25 a. Renders a written opinion required by the laws of  
26 this state under her or his professional credentials on behalf  
27 of the licensee, which opinion is reasonably relied on by the  
28 department or office in the performance of its duties; or

29 b. Affirmatively and knowingly conceals facts, through  
30 a written misrepresentation to the department or office, with  
31 knowledge that such misrepresentation:

1 (I) Constitutes a violation of the insurance code or a  
2 lawful rule or order of the department, commission, or office;  
3 and

4 (II) Directly and materially endangers the ability of  
5 the licensee to meet its obligations to policyholders.

6  
7 For the purposes of this subparagraph, any representation of  
8 fact made by an independent contractor on behalf of a  
9 licensee, affirmatively communicated as a representation of  
10 the licensee to the independent contractor, shall not be  
11 considered a misrepresentation by the independent contractor  
12 ~~to the department.~~

13 (b) "Licensee" means a person issued a license or  
14 certificate of authority or approval under this code or a  
15 person registered under a provision of this code.

16 (2) ENFORCEMENT GENERALLY.--

17 (a) The powers granted by this section to the office  
18 apply only with respect to licensees of the office and their  
19 affiliated parties and to unlicensed persons subject to the  
20 regulatory jurisdiction of the office, and the powers granted  
21 by this section to the department apply only with respect to  
22 licensees of the department and their affiliated parties and  
23 to unlicensed persons subject to regulatory jurisdiction of  
24 the department.

25 (b) The department and office each may institute such  
26 suits or other legal proceedings as may be required to enforce  
27 any provision of this code within the respective regulatory  
28 jurisdiction of each. If it appears that any person has  
29 violated any provision of this code for which criminal  
30 prosecution is provided, the department or office shall  
31 provide the appropriate state attorney or other prosecuting

1 agency having jurisdiction with respect to such prosecution  
2 with the relevant information in its possession.

3 (3) CEASE AND DESIST ORDERS.--

4 (a) The department or office may issue and serve a  
5 complaint stating charges upon any licensee or upon any  
6 affiliated party, whenever the department or office has  
7 reasonable cause to believe that the person or individual  
8 named therein is engaging in or has engaged in conduct that  
9 is:

10 1. An act that demonstrates a lack of fitness or  
11 trustworthiness to engage in the business of insurance, is  
12 hazardous to the insurance buying public, or constitutes  
13 business operations that are a detriment to policyholders,  
14 stockholders, investors, creditors, or the public;

15 2. A violation of any provision of the Florida  
16 Insurance Code;

17 3. A violation of any rule of the department or  
18 commission;

19 4. A violation of any order of the department or  
20 office; or

21 5. A breach of any written agreement with the  
22 department or office.

23 (b) The complaint shall contain a statement of facts  
24 and notice of opportunity for a hearing pursuant to ss.  
25 120.569 and 120.57.

26 (c) If no hearing is requested within the time allowed  
27 by ss. 120.569 and 120.57, or if a hearing is held and the  
28 department or office finds that any of the charges are proven,  
29 the department or office may enter an order directing the  
30 licensee or the affiliated party named in the complaint to  
31 cease and desist from engaging in the conduct complained of

1 and take corrective action to remedy the effects of past  
2 improper conduct and assure future compliance.

3 (d) If the licensee or affiliated party named in the  
4 order fails to respond to the complaint within the time  
5 allotted by ss. 120.569 and 120.57, the failure constitutes a  
6 default and justifies the entry of a cease and desist order.

7 (e) A contested or default cease and desist order is  
8 effective when reduced to writing and served upon the licensee  
9 or affiliated party named therein. An uncontested cease and  
10 desist order is effective as agreed.

11 (f) Whenever the department or office finds that  
12 conduct described in paragraph (a) is likely to cause  
13 insolvency, substantial dissipation or misvaluation of assets  
14 or earnings of the licensee, substantial inability to pay  
15 claims on a timely basis, or substantial prejudice to  
16 prospective or existing insureds, policyholders, subscribers,  
17 or the public, it may issue an emergency cease and desist  
18 order requiring the licensee or any affiliated party to  
19 immediately cease and desist from engaging in the conduct  
20 complained of and to take corrective and remedial action. The  
21 emergency order is effective immediately upon service of a  
22 copy of the order upon the licensee or affiliated party named  
23 therein and remains effective for 90 days. If the department  
24 or office begins nonemergency cease and desist proceedings  
25 under this subsection, the emergency order remains effective  
26 until the conclusion of the proceedings under ss. 120.569 and  
27 120.57. Any emergency order entered under this subsection is  
28 exempt from s. 119.07(1) and is confidential until it is made  
29 permanent unless the department or office finds that the  
30 confidentiality will result in substantial risk of financial  
31 loss to the public. All emergency cease and desist orders

1 that are not made permanent are available for public  
2 inspection 1 year from the date the emergency cease and desist  
3 order expires; however, portions of an emergency cease and  
4 desist order remain confidential and exempt from the  
5 provisions of s. 119.07(1) if disclosure would:

- 6 1. Jeopardize the integrity of another active  
7 investigation;
- 8 2. Impair the safety and financial soundness of the  
9 licensee or affiliated party;
- 10 3. Reveal personal financial information;
- 11 4. Reveal the identity of a confidential source;
- 12 5. Defame or cause unwarranted damage to the good name  
13 or reputation of an individual or jeopardize the safety of an  
14 individual; or
- 15 6. Reveal investigative techniques or procedures.

16 (4) REMOVAL OF AFFILIATED PARTIES ~~BY THE DEPARTMENT.~~--

17 (a) The department or office may issue and serve a  
18 complaint stating charges upon any affiliated party and upon  
19 the licensee involved, whenever the department or office has  
20 reason to believe that an affiliated party is engaging in or  
21 has engaged in conduct that constitutes:

- 22 1. An act that demonstrates a lack of fitness or  
23 trustworthiness to engage in the business of insurance through  
24 engaging in illegal activity or mismanagement of business  
25 activities;
- 26 2. A willful violation of any law relating to the  
27 business of insurance; however, if the violation constitutes a  
28 misdemeanor, no complaint shall be served as provided in this  
29 section until the affiliated party is notified in writing of  
30 the matter of the violation and has been afforded a reasonable  
31

1 period of time, as set forth in the notice, to correct the  
2 violation and has failed to do so;

3 3. A violation of any other law involving fraud or  
4 moral turpitude that constitutes a felony;

5 4. A willful violation of any rule of the department  
6 or commission;

7 5. A willful violation of any order of the department  
8 or office;

9 6. A material misrepresentation of fact, made  
10 knowingly and willfully or made with reckless disregard for  
11 the truth of the matter; or

12 7. An act of commission or omission or a practice  
13 which is a breach of trust or a breach of fiduciary duty.

14 (b) The complaint shall contain a statement of facts  
15 and notice of opportunity for a hearing pursuant to ss.  
16 120.569 and 120.57.

17 (c) If no hearing is requested within the time  
18 allotted by ss. 120.569 and 120.57, or if a hearing is held  
19 and the department or office finds that any of the charges in  
20 the complaint are proven true and that:

21 1. The licensee has suffered or will likely suffer  
22 loss or other damage;

23 2. The interests of the policyholders, creditors, or  
24 public are, or could be, seriously prejudiced by reason of the  
25 violation or act or breach of fiduciary duty;

26 3. The affiliated party has received financial gain by  
27 reason of the violation, act, or breach of fiduciary duty; or

28 4. The violation, act, or breach of fiduciary duty is  
29 one involving personal dishonesty on the part of the  
30 affiliated party or the conduct jeopardizes or could  
31

1 reasonably be anticipated to jeopardize the financial  
2 soundness of the licensee,

3

4 The department or office may enter an order removing the  
5 affiliated party or restricting or prohibiting participation  
6 by the person in the affairs of that particular licensee or of  
7 any other licensee.

8 (d) If the affiliated party fails to respond to the  
9 complaint within the time allotted by ss. 120.569 and 120.57,  
10 the failure constitutes a default and justifies the entry of  
11 an order of removal, suspension, or restriction.

12 (e) A contested or default order of removal,  
13 restriction, or prohibition is effective when reduced to  
14 writing and served on the licensee and the affiliated party.  
15 An uncontested order of removal, restriction, or prohibition  
16 is effective as agreed.

17 (f)1. The chief executive officer, or the person  
18 holding the equivalent office, of a licensee shall promptly  
19 notify the department or office that issued the license if she  
20 or he has actual knowledge that any affiliated party is  
21 charged with a felony in a state or federal court.

22 2. Whenever any affiliated party is charged with a  
23 felony in a state or federal court or with the equivalent of a  
24 felony in the courts of any foreign country with which the  
25 United States maintains diplomatic relations, and the charge  
26 alleges violation of any law involving fraud, theft, or moral  
27 turpitude, the department or office may enter an emergency  
28 order suspending the affiliated party or restricting or  
29 prohibiting participation by the affiliated party in the  
30 affairs of the particular licensee or of any other licensee  
31 upon service of the order upon the licensee and the affiliated

1 party charged. The order shall contain notice of opportunity  
2 for a hearing pursuant to ss. 120.569 and 120.57, where the  
3 affiliated party may request a postsuspension hearing to show  
4 that continued service to or participation in the affairs of  
5 the licensee does not pose a threat to the interests of the  
6 licensee's policyholders or creditors and does not threaten to  
7 impair public confidence in the licensee. In accordance with  
8 applicable ~~departmental~~ rules, the department or office shall  
9 notify the affiliated party whether the order suspending or  
10 prohibiting the person from participation in the affairs of a  
11 licensee will be rescinded or otherwise modified. The  
12 emergency order remains in effect, unless otherwise modified  
13 by the department or office, until the criminal charge is  
14 disposed of. The acquittal of the person charged, or the  
15 final, unappealed dismissal of all charges against the person,  
16 dissolves the emergency order, but does not prohibit the  
17 department or office from instituting proceedings under  
18 paragraph (a). If the person charged is convicted or pleads  
19 guilty or nolo contendere, whether or not an adjudication of  
20 guilt is entered by the court, the emergency order shall  
21 become final.

22 (g) Any affiliated party removed from office pursuant  
23 to this section is not eligible for reelection or appointment  
24 to the position or to any other official position in any  
25 licensee in this state except upon the written consent of the  
26 department or office. Any affiliated party who is removed,  
27 restricted, or prohibited from participation in the affairs of  
28 a licensee pursuant to this section may petition the  
29 department or office for modification or termination of the  
30 removal, restriction, or prohibition.

31

1 (h) Resignation or termination of an affiliated party  
2 does not affect the department's or office's jurisdiction to  
3 proceed under this subsection.

4 (5) ADMINISTRATIVE FINES; ENFORCEMENT.--

5 (a) The department or office may, in a proceeding  
6 initiated pursuant to chapter 120, impose an administrative  
7 fine against any person found in the proceeding to have  
8 violated any provision of this code, a cease and desist order  
9 of the department or office, or any written agreement with the  
10 department or office. No proceeding shall be initiated and no  
11 fine shall accrue until after the person has been notified in  
12 writing of the nature of the violation and has been afforded a  
13 reasonable period of time, as set forth in the notice, to  
14 correct the violation and has failed to do so.

15 (b) A fine imposed under this subsection may not  
16 exceed the amounts specified in s. 624.4211, per violation.

17 (c) The department or office may, in addition to the  
18 imposition of an administrative fine under this subsection,  
19 also suspend or revoke the license or certificate of authority  
20 of the licensee fined under this subsection.

21 (d) Any administrative fine levied by the department  
22 or office under this subsection may be enforced by the  
23 department or office by appropriate proceedings in the circuit  
24 court of the county in which the person resides or in which  
25 the principal office of a licensee is located, or, in the case  
26 of a foreign insurer or person not residing in this state, in  
27 Leon County. In any administrative or judicial proceeding  
28 arising under this section, a party may elect to correct the  
29 violation asserted by the department or office, and, upon  
30 doing so, any fine shall cease to accrue; however, the  
31 election to correct the violation does not render any

1 administrative or judicial proceeding moot. All fines  
2 collected under this section shall be paid to the Insurance  
3 ~~Commissioner's~~ Regulatory Trust Fund.

4 (e) In imposing any administrative penalty or remedy  
5 provided for under this section, the department or office  
6 shall take into account the appropriateness of the penalty  
7 with respect to the size of the financial resources and the  
8 good faith of the person charged, the gravity of the  
9 violation, the history of previous violations, and other  
10 matters as justice may require.

11 (f) The imposition of an administrative fine under  
12 this subsection may be in addition to any other penalty or  
13 administrative fine authorized under this code.

14 (6) ADMINISTRATIVE PROCEDURES.--All administrative  
15 proceedings under subsections (3), (4), and (5) shall be  
16 conducted in accordance with chapter 120. Any service  
17 required or authorized to be made by the department or office  
18 under this code shall be made by certified mail, return  
19 receipt requested, delivered to the addressee only; by  
20 personal delivery; or in accordance with chapter 48. The  
21 service provided for herein shall be effective from the date  
22 of delivery.

23 (7) OTHER LAWS NOT SUPERSEDED.--The provisions of this  
24 section are in addition to other provisions of this code, and  
25 shall not be construed to curtail, impede, replace, or delete  
26 any other similar provision or power of the department or  
27 office under the insurance code as defined in s. 624.01 or any  
28 power of the department or office which may exist under the  
29 common law of this state. The procedures set forth in s.  
30 626.9581 do not apply to regulatory action taken pursuant to  
31 the provisions of this section.

1           Section 763. Section 624.3102, Florida Statutes, is  
2 amended to read:

3           624.3102 Immunity from civil liability for providing  
4 department, commission, or office with information about  
5 condition of insurer.--A person, other than a person filing a  
6 required report or other required information, who provides  
7 the department, commission, or office with information about  
8 the financial condition of an insurer is immune from civil  
9 liability arising out of the provision of the information  
10 unless the person acted with knowledge that the information  
11 was false or with reckless disregard for the truth or falsity  
12 of the information.

13           Section 764. Section 624.311, Florida Statutes, is  
14 amended to read:

15           624.311 Records; reproductions; destruction.--

16           (1) Except as provided in this section, the  
17 department, commission, and office shall each preserve in  
18 permanent form records of its proceedings, hearings,  
19 investigations, and examinations and shall file such records  
20 in its office.

21           (2) The records of insurance claim negotiations of any  
22 state agency or political subdivision are confidential and  
23 exempt from s. 119.07(1) until termination of all litigation  
24 and settlement of all claims arising out of the same incident.

25           (3) The department, commission, and office may each  
26 photograph, microphotograph, or reproduce on film, whereby  
27 each page will be reproduced in exact conformity with the  
28 original, all financial records, financial statements of  
29 domestic insurers, reports of business transacted in this  
30 state by foreign insurers and alien insurers, reports of  
31 examination of domestic insurers, and such other records and

1 documents on file in its office as it may in its discretion  
2 select.

3 (4) To facilitate the efficient use of floor space and  
4 filing equipment in its offices, the department, commission,  
5 and office may each destroy the following records and  
6 documents pursuant to chapter 257:

7 (a) General closed correspondence files over 3 years  
8 old;

9 (b) Agent, adjuster, and similar license files,  
10 including license files of the Division of State Fire Marshal,  
11 over 2 years old; except that the department or office shall  
12 preserve by reproduction or otherwise a copy of the original  
13 records upon the basis of which each such licensee qualified  
14 for her or his initial license, except a competency  
15 examination, and of any disciplinary proceeding affecting the  
16 licensee;

17 (c) All agent, adjuster, and similar license files and  
18 records, including original license qualification records and  
19 records of disciplinary proceedings 5 years after a licensee  
20 has ceased to be qualified for a license;

21 (d) Insurer certificate of authority files over 2  
22 years old, except that the office ~~department~~ shall preserve by  
23 reproduction or otherwise a copy of the initial certificate of  
24 authority of each insurer;

25 (e) All documents and records which have been  
26 photographed or otherwise reproduced as provided in subsection  
27 (3), if such reproductions have been filed and an audit of the  
28 department or office has been completed for the period  
29 embracing the dates of such documents and records; and

30 (f) All other records, documents, and files not  
31 expressly provided for in paragraphs (a)-(e).

1           Section 765. Subsections (2) and (3) of section  
2 624.312, Florida Statutes, are amended to read:

3           624.312 Reproductions and certified copies of records  
4 as evidence.--

5           (2) Upon the request of any person and payment of the  
6 applicable fee, the department, commission, or office shall  
7 give a certified copy of any record in its office which is  
8 then subject to public inspection.

9           (3) Copies of original records or documents in its  
10 office certified by the department, commission, or office  
11 shall be received in evidence in all courts as if they were  
12 originals.

13           Section 766. Section 624.313, Florida Statutes, is  
14 amended to read:

15           624.313 Publications.--

16           (1) As early as reasonably possible, the office  
17 ~~department~~ shall annually have printed and made available a  
18 statistical report which must include all of the following  
19 information on either a calendar year or fiscal year basis:

20           (a) A summary of all information reported to the  
21 office ~~department~~ under s. 627.915(1).

22           (b) The total amount of premiums written and earned by  
23 line of insurance.

24           (c) The total amount of losses paid and losses  
25 incurred by line of insurance.

26           (d) The ratio of premiums written to losses paid by  
27 line of insurance.

28           (e) The ratio of premiums earned to losses incurred by  
29 line of insurance.

30           (f) The market share of the 10 largest insurers or  
31 insurer groups by line of insurance and of each insurer or

1 insurer group that has a market share of at least 1 percent of  
2 a line of insurance in this state.

3 (g) The profitability of each major line of insurance.

4 (h) An analysis of the impact of the insurance  
5 industry on the economy of the state.

6 (i) A complaint ratio by line of insurance for the  
7 insurers referred to in paragraph (f), based upon information  
8 provided to the office by the department. The office  
9 ~~department~~ shall determine the most appropriate ratio or  
10 ratios for quantifying complaints.

11 (j) An analysis of such lines or kinds of insurance  
12 for which the office ~~department~~ determines that an  
13 availability problem exists in this state.

14 (k) A summary of the findings of market examinations  
15 performed by the office ~~department~~ under s. 624.3161 during  
16 the preceding year.

17 (l) Such other information as the office ~~department~~  
18 deems relevant.

19 (2)(a) The department may prepare and have printed and  
20 published in pamphlet or book form the following:

21 1.(a) As needed, questions and answers for the use of  
22 persons applying for an examination for licensing as agents or  
23 solicitors for property, casualty, surety, health, and  
24 miscellaneous insurers.

25 2.(b) As needed, questions and answers for the use of  
26 persons applying for an examination for licensing as agents  
27 for life and health insurers.

28 (b)(c) The office may prepare and have printed and  
29 published in pamphlet or book form, as needed, questions and  
30 answers for the use of persons applying for an examination for  
31 licensing as adjusters.

1           (3) The department or office shall sell the  
2 publications mentioned in subsections (1) and (2) to  
3 purchasers at a price fixed by the department or office it at  
4 not less than the cost of printing and binding such  
5 publications, plus packaging and postage costs for mailing;  
6 except that the department or office may deliver copies of  
7 such publications free of cost to state agencies and officers;  
8 insurance supervisory authorities of other states and  
9 jurisdictions; institutions of higher learning located in  
10 Florida; the Library of Congress; insurance officers of Naval,  
11 Military, and Air Force bases located in Florida; and to  
12 persons serving as advisers to the department or office in  
13 preparation of the publications.

14           (4) The department or office may contract with outside  
15 vendors, in accordance with chapter 287, to compile data in an  
16 electronic data processing format that is compatible with the  
17 systems of the department or office.

18           Section 767. Section 624.314, is amended to read:

19           624.314 Publications; Insurance ~~Commissioner's~~  
20 Regulatory Trust Fund.--The department and office shall each  
21 deposit all moneys received from the sale of publications  
22 under s. 624.313 in the Insurance ~~Commissioner's~~ Regulatory  
23 Trust Fund for the purpose of paying costs for the  
24 preparation, printing, and delivery ~~to the department~~ of the  
25 publications mentioned in s. 624.313(2), packaging and mailing  
26 costs, and banking, accounting, and incidental expenses  
27 connected with the sale and delivery of such publications ~~by~~  
28 ~~the department~~. All moneys so deposited and all funds  
29 hereafter transferred to the Insurance ~~Commissioner's~~  
30 Regulatory Trust Fund are appropriated for the uses and  
31 purposes above mentioned.

1           Section 768. Section 624.315, Florida Statutes, is  
2 amended to read:

3           624.315 Department; annual report.--

4           (1) As early as reasonably possible, the office, with  
5 such assistance from the department as requested, shall  
6 annually prepare a report to the Speaker and Minority Leader  
7 of the House of Representatives, the President and Minority  
8 Leader of the Senate, the chairs of the legislative committees  
9 with jurisdiction over matters of insurance, and the Governor  
10 showing, with respect to the preceding calendar year:

11           (a) Names of the authorized insurers transacting  
12 insurance in this state, with abstracts of their financial  
13 statements including assets, liabilities, and net worth.

14           (b) Names of insurers whose business was closed during  
15 the year, the cause thereof, and amounts of assets and  
16 liabilities as ascertainable.

17           (c) Names of insurers against which delinquency or  
18 similar proceedings were instituted, and a concise statement  
19 of the circumstances and results of each such proceeding.

20           (d) The receipts and estimated expenses of the office  
21 ~~department~~ for the year.

22           (e) Such other pertinent information and matters as  
23 the office ~~department~~ deems to be in the public interest.

24           (f) Annually after each regular session of the  
25 Legislature, a compilation of the laws of this state relating  
26 to insurance. Any such publication may be printed, revised,  
27 or reprinted upon the basis of the original low bid.

28           (g) An analysis and summary report of the state of the  
29 insurance industry in this state evaluated as of the end of  
30 the most recent calendar year.

31

- 1           (2) The office ~~department~~ shall maintain the following  
2 information and make such information available upon request:
- 3           (a) Calendar year profitability, including investment  
4 income from policyholders' unearned premium and loss reserves  
5 (Florida and countrywide).
- 6           (b) Aggregate Florida loss reserves.
- 7           (c) Premiums written (Florida and countrywide).
- 8           (d) Premiums earned (Florida and countrywide).
- 9           (e) Incurred losses (Florida and countrywide).
- 10          (f) Paid losses (Florida and countrywide).
- 11          (g) Allocated Florida loss adjustment expenses.
- 12          (h) Renewal ratio (countrywide).
- 13          (i) Variation of premiums charged by the industry as  
14 compared to rates promulgated by the Insurance Services Office  
15 (Florida and countrywide).
- 16          (j) An analysis of policy size limits (Florida and  
17 countrywide).
- 18          (k) Insureds' selection of claims-made versus  
19 occurrence coverage (Florida and countrywide).
- 20          (l) A subreport on the involuntary market in Florida  
21 encompassing such joint underwriting plans and assigned risk  
22 plans operating in the state.
- 23          (m) A subreport providing information relevant to  
24 emerging markets and alternate marketing mechanisms, such as  
25 self-insured trusts, risk retention groups, purchasing groups,  
26 and the excess-surplus lines market.
- 27          (n) Trends; emerging trends as exemplified by the  
28 percentage change in frequency and severity of both paid and  
29 incurred claims, and pure premium (Florida and countrywide).
- 30          (o) Fast track loss ratios as defined and assimilated  
31 by the Insurance Services Office (Florida and countrywide).

1           (3) The office ~~department~~ may contract with outside  
2 vendors, in accordance with chapter 287, to compile data in an  
3 electronic data processing format that is compatible with the  
4 systems of the office ~~department~~.

5           Section 769. Section 624.316, Florida Statutes, is  
6 amended to read:

7           624.316 Examination of insurers.--

8           (1)(a) The office ~~department~~ shall examine the  
9 affairs, transactions, accounts, records, and assets of each  
10 authorized insurer and of the attorney in fact of a reciprocal  
11 insurer as to its transactions affecting the insurer as often  
12 as it deems advisable, except as provided in this section.  
13 The examination may include examination of the affairs,  
14 transactions, accounts, and records relating directly or  
15 indirectly to the insurer and of the assets of the insurer's  
16 managing general agents and controlling or controlled person,  
17 as defined in s. 625.012. The examination shall be pursuant to  
18 a written order of the office ~~department~~. Such order shall  
19 expire upon receipt by the office ~~department~~ of the written  
20 report of the examination.

21           (b) As a part of its examination procedure, the office  
22 ~~department~~ shall examine each insurer regarding all of the  
23 information required by s. 627.915.

24           (c) The office ~~department~~ shall examine each insurer  
25 according to accounting procedures designed to fulfill the  
26 requirements of generally accepted insurance accounting  
27 principles and practices and good internal control and in  
28 keeping with generally accepted accounting forms, accounts,  
29 records, methods, and practices relating to insurers. To  
30 facilitate uniformity in examinations, the commission  
31 ~~department~~ may adopt, by rule, the Market ~~and Financial~~

1 Conduct Examiners Examination Handbook and the Financial  
2 Condition Examiners Handbook of the National Association of  
3 Insurance Commissioners, 2002 ~~1990~~, and may adopt subsequent  
4 amendments thereto, if the examination methodology remains  
5 substantially consistent.

6 (2)(a) Except as provided in paragraph (f), the office  
7 ~~department~~ may examine each insurer as often as may be  
8 warranted for the protection of the policyholders and in the  
9 public interest, and shall examine each domestic insurer not  
10 less frequently than once every 3 years. The examination shall  
11 cover the preceding 3 fiscal years of the insurer and shall be  
12 commenced within 12 months after the end of the most recent  
13 fiscal year being covered by the examination. The examination  
14 may cover any period of the insurer's operations since the  
15 last previous examination. The examination may include  
16 examination of events subsequent to the end of the most recent  
17 fiscal year and the events of any prior period that affect the  
18 present financial condition of the insurer. In lieu of making  
19 its own examination, the office ~~department~~ may accept an  
20 independent certified public accountant's audit report  
21 prepared on a statutory basis consistent with the Florida  
22 Insurance Code on that specific company. The office ~~department~~  
23 may not accept the report in lieu of the requirement imposed  
24 by paragraph (1)(b). When an examination is conducted by the  
25 office ~~department~~ for the sole purpose of examining the 3  
26 preceding fiscal years of the insurer within 12 months after  
27 the opinion date of an independent certified public  
28 accountant's audit report prepared on a statutory basis on  
29 that specific company consistent with the Florida Insurance  
30 Code, the cost of the examination as charged to the insurer  
31 pursuant to s. 624.320 shall be reduced by the cost to the

1 insurer of the independent certified public accountant's audit  
2 reports. Requests for the reduction in cost of examination  
3 must be submitted to the office ~~department~~ in writing no later  
4 than 90 days after the conclusion of the examination and shall  
5 include sufficient documentation to support the charges  
6 incurred for the statutory audit performed by the independent  
7 certified public accountant.

8 (b) The office ~~department~~ shall examine each insurer  
9 applying for an initial certificate of authority to transact  
10 insurance in this state before granting the initial  
11 certificate.

12 (c) In lieu of making its own examination, the office  
13 ~~department~~ may accept a full report of the last recent  
14 examination of a foreign insurer, certified to by the  
15 insurance supervisory official of another state.

16 (d) The examination by the office ~~department~~ of an  
17 alien insurer shall be limited to the alien insurer's  
18 insurance transactions and affairs in the United States,  
19 except as otherwise required by the office ~~department~~.

20 (e) The commission ~~department~~ shall adopt rules  
21 providing that, upon agreement between the office ~~department~~  
22 and the insurer, an examination under this section may be  
23 conducted by independent certified public accountants,  
24 actuaries meeting criteria specified by rule, and reinsurance  
25 specialists meeting criteria specified by rule. The rules  
26 shall provide:

27 1. That the agreement of the insurer is not required  
28 if the office ~~department~~ reasonably suspects criminal  
29 misconduct on the part of the insurer.

30 2. That the office ~~department~~ shall provide the  
31 insurer with a list of three firms acceptable to the office

1 ~~department~~, and that the insurer shall select the firm to  
2 conduct the examination from the list provided by the office  
3 ~~department~~.

4           3. That the insurer being examined must make payment  
5 for the examination directly to the firm performing the  
6 examination in accordance with the rates and terms agreed to  
7 by the office ~~department~~, the insurer, and the firm performing  
8 the examination.

9           4. That if the examination is conducted without the  
10 consent of the insurer, the insurer must pay all reasonable  
11 charges of the examining firm if the examination finds  
12 impairment, insolvency, or criminal misconduct on the part of  
13 the insurer.

14           (f)1.

15           a. An examination under this section must be conducted  
16 at least once every year with respect to a domestic insurer  
17 that has continuously held a certificate of authority for less  
18 than 3 years. The examination must cover the preceding fiscal  
19 year or the period since the last examination of the insurer.  
20 The office ~~department~~ may limit the scope of the examination.

21           b. The office ~~department~~ may not accept an independent  
22 certified public accountant's audit report in lieu of an  
23 examination required by this subparagraph.

24           c. An insurer may not be required to pay more than  
25 \$25,000 to cover the costs of any one examination under this  
26 subparagraph.

27           2. An examination under this section must be conducted  
28 not less frequently than once every 5 years with respect to an  
29 insurer that has continuously held a certificate of authority,  
30 without a change in ownership subject to s. 624.4245 or s.  
31 628.461, for more than 15 years. The examination must cover

1 the preceding 5 fiscal years of the insurer or the period  
2 since the last examination of the insurer. This subparagraph  
3 does not limit the ability of the office ~~department~~ to conduct  
4 more frequent examinations.

5 Section 770. Section 624.3161, Florida Statutes, is  
6 amended to read:

7 624.3161 Market conduct examinations.--

8 (1) As often as it deems necessary, the office  
9 ~~department~~ shall examine each licensed rating organization,  
10 each advisory organization, each group, association, carrier,  
11 as defined in s. 440.02, or other organization of insurers  
12 which engages in joint underwriting or joint reinsurance, and  
13 each authorized insurer transacting in this state any class of  
14 insurance to which the provisions of chapter 627 are  
15 applicable. The examination shall be for the purpose of  
16 ascertaining compliance by the person examined with the  
17 applicable provisions of chapters 440, 624, 626, 627, and 635.

18 (2) In lieu of any such examination, the office  
19 ~~department~~ may accept the report of a similar examination made  
20 by the insurance supervisory official of another state.

21 (3) The examination may be conducted by an independent  
22 professional examiner under contract to the office ~~department~~,  
23 in which case payment shall be made directly to the contracted  
24 examiner by the insurer examined in accordance with the rates  
25 and terms agreed to by the office ~~department~~ and the examiner.

26 (4) The reasonable cost of the examination shall be  
27 paid by the person examined, and such person shall be subject,  
28 as though an insurer, to the provisions of s. 624.320.

29 (5) Such examinations shall also be subject to the  
30 applicable provisions of chapter 440 and ss. 624.318, 624.319,  
31 624.321, and 624.322.

1           Section 771. Section 624.317, Florida Statutes, is  
2 amended to read:

3           624.317 Investigation of agents, adjusters,  
4 administrators, service companies, and others.--If it has  
5 reason to believe that any person has violated or is violating  
6 any provision of this code, or upon the written complaint  
7 signed by any interested person indicating that any such  
8 violation may exist:--

9           (1) The department shall conduct such investigation as  
10 it deems necessary of the accounts, records, documents, and  
11 transactions pertaining to or affecting the insurance affairs  
12 of any\*

13           ~~(1)~~ general agent, surplus line agent, managing  
14 general agent, adjuster, administrator, service company, or  
15 other person.

16           ~~(2)~~ insurance agent, customer representative, service  
17 representative, or other person subject to its jurisdiction or  
18 solicitor, subject to the requirements of s. 626.601.

19           (2) The office shall conduct such investigation as it  
20 deems necessary of the accounts, records, documents, and  
21 transactions pertaining to or affecting the insurance affairs  
22 of any:

23           (a) Adjuster, administrator, service company, or other  
24 person subject to its jurisdiction.

25           (b)~~(3)~~ Person having a contract or power of attorney  
26 under which she or he enjoys in fact the exclusive or dominant  
27 right to manage or control an insurer.

28           (c)~~(4)~~ Person engaged in or proposing to be engaged in  
29 the promotion or formation of:

30           1.~~(a)~~ A domestic insurer;

31           2.~~(b)~~ An insurance holding corporation; or

1           ~~3.(c)~~ A corporation to finance a domestic insurer or  
2 in the production of the domestic insurer's business.

3           Section 772. Section 624.318, Florida Statutes, is  
4 amended to read:

5           624.318 Conduct of examination or investigation;  
6 access to records; correction of accounts; appraisals.--

7           (1) The examination or investigation may be conducted  
8 by the accredited examiners or investigators of the department  
9 or office at the offices wherever located of the person being  
10 examined or investigated and at such other places as may be  
11 required for determination of matters under examination or  
12 investigation. In the case of alien insurers, the examination  
13 may be so conducted in the insurer's offices and places in the  
14 United States, except as otherwise required by the department  
15 or office.

16           (2) Every person being examined or investigated, and  
17 its officers, attorneys, employees, agents, and  
18 representatives, shall make freely available to the department  
19 or office or its examiners or investigators the accounts,  
20 records, documents, files, information, assets, and matters in  
21 their possession or control relating to the subject of the  
22 examination or investigation. An agent who provides other  
23 products or services or maintains customer information not  
24 related to insurance must maintain records relating to  
25 insurance products and transactions separately if necessary to  
26 give the department or office access to such records. If  
27 records relating to the insurance transactions are maintained  
28 by an agent on premises owned or operated by a third party,  
29 the agent and the third party must provide access to the  
30 records by the department or office.

31

1           (3) If the department or office finds any accounts or  
2 records to be inadequate, or inadequately kept or posted, it  
3 may employ experts to reconstruct, rewrite, post, or balance  
4 them at the expense of the person being examined if such  
5 person has failed to maintain, complete, or correct such  
6 records or accounting after the department or office has given  
7 her or him notice and a reasonable opportunity to do so.

8           (4) If the office ~~department~~ deems it necessary to  
9 value any asset involved in such an examination of an insurer,  
10 it may make written request of the insurer to designate one or  
11 more competent appraisers acceptable to the office ~~department~~,  
12 who shall promptly make an appraisal of the asset and furnish  
13 a copy thereof to the office ~~department~~. If the insurer fails  
14 to designate such an appraiser or appraisers within 20 days  
15 after the request of the office ~~department~~, the office  
16 ~~department~~ may designate the appraiser or appraisers. The  
17 reasonable expense of any such appraisal shall be a part of  
18 the expense of examination, to be borne by the insurer.

19           (5) Neither the department, the office, nor any  
20 examiner shall remove any record, account, document, file, or  
21 other property of the person being examined from the offices  
22 of such person except with the written consent of such person  
23 given in advance of such removal or pursuant to an order of  
24 court duly obtained.

25           (6) Any individual who willfully obstructs the  
26 department, the office, or the ~~or its~~ examiner in the  
27 examinations or investigations authorized by this part is  
28 guilty of a misdemeanor and upon conviction shall be punished  
29 as provided in s. 624.15.

30           Section 773. Section 624.319, Florida Statutes, is  
31 amended to read:

1           624.319 Examination and investigation reports.--

2           (1) The department or office or its examiner shall  
3 make a full and true written report of each examination. The  
4 examination report shall contain only information obtained  
5 from examination of the records, accounts, files, and  
6 documents of or relative to the insurer examined or from  
7 testimony of individuals under oath, together with relevant  
8 conclusions and recommendations of the examiner based thereon.  
9 The department or office shall furnish a copy of the  
10 examination report to the insurer examined not less than 30  
11 days prior to filing the examination report in its office. If  
12 such insurer so requests in writing within such 30-day period,  
13 the department or office shall grant a hearing with respect to  
14 the examination report and shall not so file the examination  
15 report until after the hearing and after such modifications  
16 have been made therein as the department or office deems  
17 proper.

18           (2) The examination report when so filed shall be  
19 admissible in evidence in any action or proceeding brought by  
20 the department or office against the person examined, or  
21 against its officers, employees, or agents. In all other  
22 proceedings, the admissibility of the examination report is  
23 governed by the evidence code. The department or office or  
24 its examiners may at any time testify and offer other proper  
25 evidence as to information secured or matters discovered  
26 during the course of an examination, whether or not a written  
27 report of the examination has been either made, furnished, or  
28 filed in the department or office.

29           (3)(a) Examination reports, until filed, are  
30 confidential and exempt from the provisions of s. 119.07(1).  
31 Investigation reports are confidential and exempt from the

1 provisions of s. 119.07(1) until the investigation is  
2 completed or ceases to be active. For purposes of this  
3 subsection, an investigation is active while it is being  
4 conducted by the department or office with a reasonable, good  
5 faith belief that it could lead to the filing of  
6 administrative, civil, or criminal proceedings. An  
7 investigation does not cease to be active if the department or  
8 office is proceeding with reasonable dispatch and has a good  
9 faith belief that action could be initiated by the department  
10 or office or other administrative or law enforcement agency.  
11 After an investigation is completed or ceases to be active,  
12 portions of the investigation report relating to the  
13 investigation remain confidential and exempt from the  
14 provisions of s. 119.07(1) if disclosure would:

- 15 1. Jeopardize the integrity of another active  
16 investigation;
- 17 2. Impair the safety and financial soundness of the  
18 licensee or affiliated party;
- 19 3. Reveal personal financial information;
- 20 4. Reveal the identity of a confidential source;
- 21 5. Defame or cause unwarranted damage to the good name  
22 or reputation of an individual or jeopardize the safety of an  
23 individual; or
- 24 6. Reveal investigative techniques or procedures.

25 (b) Workpapers and other information held by the  
26 department or office, and workpapers and other information  
27 received from another governmental entity or the National  
28 Association of Insurance Commissioners, for the department's  
29 or office's use in the performance of its examination or  
30 investigation duties pursuant to this section and ss. 624.316,  
31 624.3161, 624.317, and 624.318 are confidential and exempt

1 from the provisions of s. 119.07(1) and s. 24(a), Art. I of  
2 the State Constitution. This exemption applies to workpapers  
3 and other information held by the department or office before,  
4 on, or after the effective date of this exemption. Such  
5 confidential and exempt information may be disclosed to  
6 another governmental entity, if disclosure is necessary for  
7 the receiving entity to perform its duties and  
8 responsibilities, and may be disclosed to the National  
9 Association of Insurance Commissioners. The receiving  
10 governmental entity or the association must maintain the  
11 confidential and exempt status of the information. The  
12 information made confidential and exempt by this paragraph may  
13 be used in a criminal, civil, or administrative proceeding so  
14 long as the confidential and exempt status of such information  
15 is maintained. This paragraph is subject to the Open  
16 Government Sunset Review Act of 1995 in accordance with s.  
17 119.15 and shall stand repealed on October 2, 2007, unless  
18 reviewed and saved from repeal through reenactment by the  
19 Legislature.

20 (c) Lists of insurers or regulated companies are  
21 confidential and exempt from the provisions of s. 119.07(1)  
22 if:

23 1. The financial solvency, condition, or soundness of  
24 such insurers or regulated companies is being monitored by the  
25 office ~~department~~;

26 2. The list is prepared to internally coordinate  
27 regulation by the office ~~department~~ of the financial solvency,  
28 condition, or soundness of the insurers or regulated  
29 companies; and

30 3. The office determines ~~Insurance Commissioner and~~  
31 ~~Treasurer determine~~ that public inspection of such list could

1 | impair the financial solvency, condition, or soundness of such  
2 | insurers or regulated companies.

3 |         (4) After the examination report has been filed  
4 | pursuant to subsection (1), the department or office may  
5 | publish the results of any such examination in one or more  
6 | newspapers published in this state whenever it deems it to be  
7 | in the public interest.

8 |         (5) After the examination report of an insurer has  
9 | been filed pursuant to subsection (1), an affidavit shall be  
10 | filed with the office ~~department~~, not more than 30 days after  
11 | the report has been filed, on a form furnished by the office  
12 | ~~department~~ and signed by the officer of the company in charge  
13 | of the insurer's business in this state, stating that she or  
14 | he has read the report and that the recommendations made in  
15 | the report will be considered within a reasonable time.

16 |         Section 774. Subsections (1), (2), (3), and (5) of  
17 | section 624.320, Florida Statutes, are amended to read:

18 |         624.320 Examination expenses.--

19 |         (1) Each insurer so examined shall pay to the office  
20 | ~~department~~ the expenses of the examination at the rates  
21 | adopted by the office ~~department~~. Such expenses shall include  
22 | actual travel expenses, reasonable living expense allowance,  
23 | compensation of the examiner or other person making the  
24 | examination, and necessary attendant administrative costs of  
25 | the office ~~department~~ directly related to the examination.  
26 | Such travel expense and living expense allowance shall be  
27 | limited to those expenses necessarily incurred on account of  
28 | the examination and shall be paid by the examined insurer  
29 | together with compensation upon presentation by the office  
30 | ~~department~~ to such insurer of a detailed account of such

31 |

1 charges and expenses after a detailed statement has been filed  
2 by the examiner and approved by the office ~~department~~.

3 (2) All moneys collected from insurers for  
4 examinations shall be deposited into the Insurance  
5 ~~Commissioner's~~ Regulatory Trust Fund, and the office may  
6 ~~department is authorized to~~ make deposits from time to time  
7 into such fund from moneys appropriated for the operation of  
8 the office ~~department~~.

9 (3) Notwithstanding the provisions of s. 112.061, the  
10 office may ~~department is authorized to~~ pay to the examiner or  
11 person making the examination out of such trust fund the  
12 actual travel expenses, reasonable living expense allowance,  
13 and compensation in accordance with the statement filed with  
14 the office ~~department~~ by the examiner or other person, as  
15 provided in subsection (1) upon approval by the office  
16 ~~department~~.

17 (5) The office may ~~department is authorized to~~ pay to  
18 regular insurance examiners, not residents of Leon County,  
19 Florida, per diem for periods not exceeding 30 days for each  
20 such examiner while at the Office of Insurance Regulation ~~the~~  
21 ~~department~~ in Tallahassee, Florida, for the purpose of  
22 auditing insurers' annual statements. Such expenses shall be  
23 paid out of moneys budgeted for such purpose, as for regular  
24 employees at rates provided in s. 112.061.

25 Section 775. Subsections (1) and (2) of section  
26 624.321, Florida Statutes, are amended to read:

27 624.321 Witnesses and evidence.--

28 (1) As to any examination, investigation, or hearing  
29 being conducted under this code, a person designated by the  
30 department or office, respectively ~~the Insurance Commissioner~~  
31 ~~and Treasurer or her or his designee:~~

1 (a) May administer oaths, examine and cross-examine  
2 witnesses, receive oral and documentary evidence; and

3 (b) Shall have the power to subpoena witnesses, compel  
4 their attendance and testimony, and require by subpoena the  
5 production of books, papers, records, files, correspondence,  
6 documents, or other evidence which is relevant to the inquiry.

7 (2) If any person refuses to comply with any such  
8 subpoena or to testify as to any matter concerning which she  
9 or he may be lawfully interrogated, the Circuit Court of Leon  
10 County or of the county wherein such examination,  
11 investigation, or hearing is being conducted, or of the county  
12 wherein such person resides, may, on the application of the  
13 department or office, issue an order requiring such person to  
14 comply with the subpoena and to testify.

15 Section 776. Section 624.322, Florida Statutes, is  
16 amended to read:

17 624.322 Testimony compelled; immunity from  
18 prosecution.--

19 (1) If any natural person asks to be excused from  
20 attending or testifying or from producing any books, papers,  
21 records, contracts, documents, or other evidence in connection  
22 with any examination, hearing, or investigation being  
23 conducted by the department, commission, or office or its  
24 examiner, on the ground that the testimony or evidence  
25 required of her or him may tend to incriminate the person or  
26 subject her or him to a penalty or forfeiture, and shall  
27 notwithstanding be directed to give such testimony or produce  
28 such evidence, the person must, if so directed by the  
29 department, commission, or office and the Department of Legal  
30 Affairs, nonetheless comply with such direction; but she or he  
31 shall not thereafter be prosecuted or subjected to any penalty

1 or forfeiture for or on account of any transaction, matter, or  
2 thing concerning which she or he may have so testified or  
3 produced evidence; and no testimony so given or evidence  
4 produced shall be received against the person upon any  
5 criminal action, investigation, or proceeding. However, no  
6 such person so testifying shall be exempt from prosecution or  
7 punishment for any perjury committed by her or him in such  
8 testimony, and the testimony or evidence so given or produced  
9 shall be admissible against her or him upon any criminal  
10 action, investigation, or proceeding concerning such perjury.  
11 No license or permit conferred or to be conferred to such  
12 person shall be refused, suspended, or revoked based upon the  
13 use of such testimony.

14 (2) Any such individual may execute, acknowledge, and  
15 file with the department, commission, or office, as  
16 appropriate, in the office of the Department of Insurance a  
17 statement expressly waiving such immunity or privilege in  
18 respect to any transaction, matter, or thing specified in such  
19 statement; and thereupon the testimony of such individual or  
20 such evidence in relation to such transaction, matter, or  
21 thing may be received or produced before any judge or justice,  
22 court, tribunal, grand jury, or otherwise; and, if so received  
23 or produced, such individual shall not be entitled to any  
24 immunity or privileges on account of any testimony she or he  
25 may so give or evidence so produced.

26 Section 777. Section 624.324, Florida Statutes, is  
27 amended to read:

28 624.324 Hearings.--The department, commission, and  
29 office may each hold hearings for any purpose within the scope  
30 of this code deemed to be necessary.

31

1           Section 778. Section 624.33, Florida Statutes, is  
2 amended to read:

3           624.33 Jurisdiction regarding health or life  
4 coverage.--

5           (1) Notwithstanding any other provision of law, and  
6 except as provided in this section, any person or other entity  
7 which in this state provides life insurance coverage;  
8 annuities; or coverage for medical, surgical, chiropractic,  
9 physical therapy, speech-language pathology, audiology,  
10 professional mental health, dental, hospital, or optometric  
11 expenses, or any other health insurance coverage, whether such  
12 coverage is by direct payment, reimbursement, or otherwise,  
13 shall, upon request, file with the office ~~Department of~~  
14 ~~Insurance~~ a copy of Internal Revenue Service form 5500 and  
15 attached schedules as filed with the Internal Revenue Service  
16 and the United States Department of Labor, and an annual  
17 summary, as required by the Employee Retirement Income  
18 Security Act of 1974, 29 U.S.C. ss. 1001 et seq., as amended.

19           (2) Any person or entity providing any of the  
20 coverages or benefits referred to in subsection (1) which does  
21 not meet the filing requirements referred to in subsection  
22 (1), or which otherwise fails to demonstrate to the office  
23 ~~department~~ that, while providing such services, it is exempt  
24 from state law, shall submit to an examination by the office  
25 ~~department~~ to determine the organization and solvency of the  
26 person or entity and to determine whether or not such entity  
27 is in compliance with the applicable provisions of chapters  
28 624-651.

29           (3) A governmental trust which is established or  
30 maintained entirely by the state, counties, municipalities, or  
31 special taxing districts or any agency or instrumentality

1 thereof or any combination thereof exclusively for the benefit  
2 of their employees is exempt from the terms of this section.

3 (4) Any licensed agent, administrator, service  
4 company, or other person which, in connection with coverage  
5 offered by an entity subject to examination by the office  
6 ~~department~~ in accordance with subsection (2), is engaged in  
7 this state in the solicitation, negotiation, or effectuation  
8 of any such coverage or the inspection of risks or the setting  
9 of rates, the investigation or adjustment of losses, the  
10 collection of premiums, or any other function connected with  
11 any such coverage is subject to the jurisdiction of the  
12 department or office and to such examination as the department  
13 or office deems necessary of the accounts, records, documents,  
14 and transactions pertaining to or affecting such coverage to  
15 the same extent as the person or entity affording such  
16 coverage.

17 (5) This section does not apply to an insurer, health  
18 maintenance organization, professional service plan  
19 corporation, or person providing continuing care, which person  
20 or entity possesses a valid certificate of authority issued by  
21 the office ~~department~~, except to the extent that such person  
22 or entity provides the coverages described in subsection (1)  
23 to its employees other than under a policy or contract which  
24 is otherwise subject to regulation under the Florida Insurance  
25 Code.

26 Section 779. Subsections (2) and (3) of section  
27 624.34, Florida Statutes, are amended to read:

28 624.34 Authority of Department of Law Enforcement to  
29 accept fingerprints of, and exchange criminal history records  
30 with respect to, certain persons.--

31

1           (2) The Department of Law Enforcement may accept  
2 fingerprints of individuals who apply for a license as an  
3 agent, customer representative, adjuster, service  
4 representative, or managing general agent or the fingerprints  
5 of the majority owner, sole proprietor, partners, officers,  
6 and directors of a corporation or other legal entity that  
7 applies for licensure with the department or office under the  
8 provisions of the Florida Insurance Code.

9           (3) The Department of Law Enforcement may, to the  
10 extent provided for by federal law, exchange state,  
11 multistate, and federal criminal history records with the  
12 department or office for the purpose of the issuance,  
13 suspension, or revocation of a certificate of authority or  
14 license to operate in this state.

15           Section 780. Subsections (1) and (2) of section  
16 624.401, Florida Statutes, are amended to read:

17           624.401 Certificate of authority required.--

18           (1) No person shall act as an insurer, and no insurer  
19 or its agents, attorneys, subscribers, or representatives  
20 shall directly or indirectly transact insurance, in this state  
21 except as authorized by a subsisting certificate of authority  
22 issued to the insurer by the office ~~department~~, except as to  
23 such transactions as are expressly otherwise provided for in  
24 this code.

25           (2) No insurer shall from offices or by personnel or  
26 facilities located in this state solicit insurance  
27 applications or otherwise transact insurance in another state  
28 or country unless it holds a subsisting certificate of  
29 authority issued to it by the office ~~department~~ authorizing it  
30 to transact the same kind or kinds of insurance in this state.

31

1           Section 781. Subsection (8) of section 624.4031,  
2 Florida Statutes, is amended to read:

3           624.4031 Church benefit plans and church benefit  
4 board.--

5           (8) The Florida Insurance Code does not apply to a  
6 church benefits board that has operated more than 5 years in  
7 its state of domicile and has more than \$2 million in  
8 reserves. This exemption extends to the programs, plans,  
9 benefits, activities, or affiliates of the church benefits  
10 board. A church benefits board may qualify for this exemption  
11 if an authorized representative of the church benefits board  
12 submits to the office ~~department~~ an affidavit stating that the  
13 church benefits board meets or exceeds the requirements of  
14 this section. If the office ~~department~~ believes the  
15 information provided on the affidavit is inaccurate, the  
16 office ~~department~~ has the burden of proving that the church  
17 benefits board fails to meet the requirements of this section.

18           Section 782. Subsections (2), (3), (4), (5), and (7)  
19 of section 624.404, Florida Statutes, are amended to read:

20           624.404 General eligibility of insurers for  
21 certificate of authority.--To qualify for and hold authority  
22 to transact insurance in this state, an insurer must be  
23 otherwise in compliance with this code and with its charter  
24 powers and must be an incorporated stock insurer, an  
25 incorporated mutual insurer, or a reciprocal insurer, of the  
26 same general type as may be formed as a domestic insurer under  
27 this code; except that:

28           (2) No foreign or alien insurer or exchange shall be  
29 authorized to transact insurance in this state unless it is  
30 otherwise qualified therefor under this code and has operated  
31 satisfactorily for at least 3 years in its state or country of

1 domicile; however, the office ~~department~~ may waive the 3-year  
2 requirement if the foreign or alien insurer or exchange:

3 (a) Has operated successfully and has capital and  
4 surplus of \$5 million;

5 (b) Is the wholly owned subsidiary of an insurer which  
6 is an authorized insurer in this state;

7 (c) Is the successor in interest through merger or  
8 consolidation of an authorized insurer; or

9 (d) Provides a product or service not readily  
10 available to the consumers of this state.

11 (3)(a) The office ~~department~~ shall not grant or  
12 continue authority to transact insurance in this state as to  
13 any insurer the management, officers, or directors of which  
14 are found by it to be incompetent or untrustworthy; or so  
15 lacking in insurance company managerial experience as to make  
16 the proposed operation hazardous to the insurance-buying  
17 public; or so lacking in insurance experience, ability, and  
18 standing as to jeopardize the reasonable promise of successful  
19 operation; or which it has good reason to believe are  
20 affiliated directly or indirectly through ownership, control,  
21 reinsurance transactions, or other insurance or business  
22 relations, with any person or persons whose business  
23 operations are or have been marked, to the detriment of  
24 policyholders or stockholders or investors or creditors or of  
25 the public, by manipulation of assets, accounts, or  
26 reinsurance or by bad faith.

27 (b) The office ~~department~~ shall not grant or continue  
28 authority to transact insurance in this state as to any  
29 insurer if any person, including any subscriber, stockholder,  
30 or incorporator, who exercises or has the ability to exercise  
31 effective control of the insurer, or who influences or has the

1 ability to influence the transaction of the business of the  
2 insurer, does not possess the financial standing and business  
3 experience for the successful operation of the insurer.

4 (c) The office ~~department~~ may deny, suspend, or revoke  
5 the authority to transact insurance in this state of any  
6 insurer if any person, including any subscriber, stockholder,  
7 or incorporator, who exercises or has the ability to exercise  
8 effective control of the insurer, or who influences or has the  
9 ability to influence the transaction of the business of the  
10 insurer, has been found guilty of, or has pleaded guilty or  
11 nolo contendere to, any felony or crime punishable by  
12 imprisonment of 1 year or more under the law of the United  
13 States or any state thereof or under the law of any other  
14 country which involves moral turpitude, without regard to  
15 whether a judgment of conviction has been entered by the court  
16 having jurisdiction in such case. However, in the case of an  
17 insurer operating under a subsisting certificate of authority,  
18 the insurer shall remove any such person immediately upon  
19 discovery of the conditions set forth in this paragraph when  
20 applicable to such person or upon the order of the office  
21 ~~department~~, and the failure to so act by said insurer shall be  
22 grounds for revocation or suspension of the insurer's  
23 certificate of authority.

24 (d) The office ~~department~~ may deny, suspend, or revoke  
25 the authority of an insurer to transact insurance in this  
26 state if any person, including any subscriber, stockholder, or  
27 incorporator, who exercises or has the ability to exercise  
28 effective control of the insurer, or who influences or has the  
29 ability to influence the transaction of the business of the  
30 insurer, which person the office ~~department~~ has good reason to  
31 believe is now or was in the past affiliated directly or

1 indirectly, through ownership interest of 10 percent or more,  
2 control, or reinsurance transactions, with any business,  
3 corporation, or other entity that has been found guilty of or  
4 has pleaded guilty or nolo contendere to any felony or crime  
5 punishable by imprisonment for 1 year or more under the laws  
6 of the United States, any state, or any other country,  
7 regardless of adjudication. However, in the case of an  
8 insurer operating under a subsisting certificate of authority,  
9 the insurer shall immediately remove such person or  
10 immediately notify the office ~~department~~ of such person upon  
11 discovery of the conditions set forth in this paragraph,  
12 either when applicable to such person or upon order of the  
13 office ~~department~~; the failure to remove such person, provide  
14 such notice, or comply with such order constitutes grounds for  
15 suspension or revocation of the insurer's certificate of  
16 authority.

17 (4)(a) No authorized insurer shall act as a fronting  
18 company for any unauthorized insurer which is not an approved  
19 reinsurer.

20 (b) A "fronting company" is an authorized insurer  
21 which by reinsurance or otherwise generally transfers more  
22 than 50 percent to one unauthorized insurer which does not  
23 meet the requirements of s. 624.610(3)(a), (b), or (c), or  
24 more than 75 percent to two or more unauthorized insurers  
25 which do not meet the requirements of s. 624.610(3)(a), (b),  
26 or (c), of the entire risk of loss on all of the insurance  
27 written by it in this state, or on one or more lines of  
28 insurance, on all of the business produced through one or more  
29 agents or agencies, or on all of the business from a  
30 designated geographical territory, without obtaining the prior  
31 approval of the office ~~department~~.

1           (c) The office ~~department~~ may, in its discretion,  
2 approve a transfer of risk in excess of the limits in  
3 paragraph (b) upon presentation of evidence, satisfactory to  
4 the office ~~department~~, that the transfer would be in the best  
5 interests of the financial condition of the insurer and in the  
6 best interests of the policyholders.

7           (5) No insurer shall be authorized to transact  
8 insurance in this state which, during the 3 years immediately  
9 preceding its application for a certificate of authority, has  
10 violated any of the insurance laws of this state and after  
11 being informed of such violation has failed to correct the  
12 same; except that, if all other requirements are met, the  
13 office ~~department~~ may nevertheless issue a certificate of  
14 authority to such an insurer upon the filing by the insurer of  
15 a sworn statement of all such insurance so written in  
16 violation of law, and upon payment to the office ~~department~~ of  
17 a sum of money as additional filing fee equivalent to all  
18 premium taxes and other state taxes and fees as would have  
19 been payable by the insurer if such insurance had been  
20 lawfully written by an authorized insurer under the laws of  
21 this state. This fee, when collected, shall be deposited to  
22 the credit of the Insurance ~~Commissioner's~~ Regulatory Trust  
23 Fund.

24           (7) For the purpose of satisfying the requirements of  
25 ss. 624.407 and 624.408, the investment portfolio of an  
26 insurer applying for an initial certificate of authority to do  
27 business in this state shall value its bonds and stocks in  
28 accordance with the provisions of the latest edition of the  
29 publication "Purposes and Procedures Manual of the NAIC  
30 Securities Valuation Office" ~~"Valuations of Securities"~~ by the  
31 National Association of Insurance Commissioners, July 1, 2002

1 ~~1990~~, and subsequent amendments thereto, if the valuation  
2 methodology remains substantially unchanged.

3 Section 783. Subsection (1) of section 624.4072,  
4 Florida Statutes, is amended to read:

5 624.4072 Minority-owned property and casualty  
6 insurers; limited exemption for taxation and assessments.--

7 (1) A minority business that is at least 51 percent  
8 owned by minority persons, as defined in s. 288.703(3),  
9 initially issued a certificate of authority in this state as  
10 an authorized insurer after May 1, 1998, and before January 1,  
11 2002, to write property and casualty insurance shall be  
12 exempt, for a period not to exceed 10 years from the date of  
13 receiving its certificate of authority, from the following  
14 taxes and assessments:

15 (a) Taxes imposed under ss. 175.101, 185.08, and  
16 624.509;

17 (b) Assessments by the Citizens Property Insurance  
18 Corporation ~~Florida Residential Property and Casualty Joint~~  
19 ~~Underwriting Association or by the Florida Windstorm~~  
20 ~~Underwriting Association, as provided under s. 627.351, except~~  
21 ~~for emergency assessments collected from policyholders~~  
22 ~~pursuant to s. 627.351(6)(b)3.d.s. 627.351(2)(b)2.d.(III) and~~  
23 ~~(6)(b)3.d.~~ Any such insurer shall be a member insurer of the  
24 Citizens Property Insurance Corporation ~~Florida Windstorm~~  
25 ~~Underwriting Association and the Florida Residential Property~~  
26 ~~and Casualty Joint Underwriting Association.~~ The premiums of  
27 such insurer shall be included in determining, for the  
28 Citizens Property Insurance Corporation ~~Florida Windstorm~~  
29 ~~Underwriting Association, the aggregate statewide direct~~  
30 ~~written premium for property insurance and in determining, for~~  
31 ~~the Florida Residential Property and Casualty Joint~~

1 ~~Underwriting Association~~, the aggregate statewide direct  
2 written premium for the subject lines of business for all  
3 member insurers.

4 Section 784. Section 624.4085, Florida Statutes, is  
5 amended to read:

6 624.4085 Risk-based capital requirements for  
7 insurers.--

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

9 (a) "Adjusted risk-based capital report" means a  
10 risk-based capital report that has been adjusted by the office  
11 ~~department~~ in accordance with this section.

12 (b) "Authorized control level risk-based capital"  
13 means the number determined under the risk-based capital  
14 formula in the risk-based capital instructions.

15 (c) "Company action level risk-based capital" means  
16 the product of 2.0 and an insurer's authorized control level  
17 risk-based capital.

18 (d) "Corrective order" means an order issued by the  
19 office ~~department~~ specifying corrective actions that the  
20 office ~~department~~ has determined are required.

21 ~~(e) "Department" means the Department of Insurance.~~

22 (e)(f) "Domestic insurer" means any insurer domiciled  
23 in this state.

24 (f)(g) "Foreign insurer" means any insurer that is  
25 authorized or eligible to do business in this state but that  
26 is not domiciled in this state.

27 (g)(h) "Life and health insurer" means any insurer  
28 authorized or eligible under the Florida Insurance Code to  
29 underwrite life or health insurance. The term includes a  
30 property and casualty insurer that writes accident and health  
31 insurance only.

1           (h)~~(i)~~ "Mandatory control level risk-based capital"  
2 means the product of 0.70 and the authorized control level  
3 risk-based capital.

4           (i)~~(j)~~ "Negative trend" means, with respect to a life  
5 and health insurer, a negative trend over a period of time, as  
6 determined in accordance with the trend test calculation  
7 included in the risk-based capital instructions.

8           (j)~~(k)~~ "Property and casualty insurer" means any  
9 insurer licensed under the Florida Insurance Code, but does  
10 not include a single-line mortgage guaranty insurer, financial  
11 guaranty insurer, or title insurer or a life and health  
12 insurer.

13           (k)~~(l)~~ "Regulatory action level risk-based capital"  
14 means the product of 1.5 and an insurer's authorized control  
15 level risk-based capital.

16           (l)~~(m)~~ "Revised risk-based capital plan" means the  
17 revision of the risk-based capital plan which is prepared by  
18 an insurer after the office ~~department~~ rejects the original  
19 plan.

20           (m)~~(n)~~ "Risk-based capital instructions" means the  
21 instructions for preparing a risk-based capital report as  
22 adopted by the National Association of Insurance  
23 Commissioners.

24           (n)~~(o)~~ "Risk-based capital level" means an insurer's  
25 company action level risk-based capital, regulatory action  
26 level risk-based capital, authorized control level risk-based  
27 capital, or mandatory control level risk-based capital.

28           (o)~~(p)~~ "Risk-based capital plan" means a comprehensive  
29 financial plan specified in paragraph (4)(b).

30           (p)~~(q)~~ "Risk-based capital report" means the report  
31 required in subsection (2).

1            (q)~~(r)~~ "Total adjusted capital" means the sum of:  
2            1. An insurer's statutory capital and surplus; and  
3            2. Any other item required by the risk-based capital  
4 instructions.  
5            (2)(a) Each domestic insurer that is subject to this  
6 section shall, on or before March 1 of each year, prepare and  
7 file with the National Association of Insurance Commissioners  
8 a report of its risk-based capital levels as of the end of the  
9 calendar year just ended, in a form and containing the  
10 information required in the risk-based capital instructions.  
11 In addition, each domestic insurer shall file a printed copy  
12 of its risk-based capital report:  
13            1. With the office ~~department~~ on or before March 1 of  
14 each year.  
15            2. With the insurance department in any other state in  
16 which the insurer is authorized to do business, if that  
17 department has notified the insurer of its request in writing,  
18 in which case the insurer shall file its risk-based capital  
19 report not later than the later of:  
20            a. Fifteen days after the receipt of notice to file  
21 its risk-based capital report with that state; or  
22            b. March 1.  
23            (b) The comparison of an insurer's total adjusted  
24 capital to any of its risk-based capital levels is a  
25 regulatory tool that may indicate the need for possible  
26 corrective action with respect to the insurer, and may not be  
27 used as a means to rank insurers generally. Therefore, except  
28 as otherwise required under this section, the making,  
29 publishing, disseminating, circulating, or placing before the  
30 public, or causing, directly or indirectly, to be made,  
31 published, disseminated, circulated, or placed before the

1 public, in a newspaper, magazine, or other publication, or in  
2 the form of a notice, circular, pamphlet, letter, or poster,  
3 or over any radio or television station, or in any other way,  
4 an advertisement, announcement, or statement containing an  
5 assertion, representation, or statement with regard to the  
6 risk-based capital levels of any insurer, or of any component  
7 derived in the calculation, by any insurer, agent, broker, or  
8 other person engaged in any manner in the insurance business  
9 would be misleading and is therefore prohibited; however, if  
10 any materially false statement with respect to the comparison  
11 regarding an insurer's total adjusted capital to its  
12 risk-based capital levels (or any of them) or an inappropriate  
13 comparison of any other amount to the insurer's risk-based  
14 capital levels is published in any written publication and the  
15 insurer is able to demonstrate to the office ~~commissioner~~ with  
16 substantial proof the falsity or inappropriateness of the  
17 statement, the insurer may publish in a written publication an  
18 announcement the sole purpose of which is to rebut the  
19 materially false statement.

20 (c) The office ~~department~~ shall use the risk-based  
21 capital instructions, risk-based capital reports, adjusted  
22 risk-based capital reports, risk-based capital plans, and  
23 revised risk-based capital plans solely for monitoring the  
24 solvency of insurers and assessing the need for corrective  
25 action with respect to insurers. The office ~~department~~ may not  
26 use that information for ratemaking, as evidence in any rate  
27 proceeding, or for calculating or deriving any elements of an  
28 appropriate premium level or rate of return for any line of  
29 insurance which an insurer or an affiliate of such insurer is  
30 authorized to write.

31

1 (d) A life and health insurer's risk-based capital is  
2 determined in accordance with the formula set forth in the  
3 risk-based capital instructions. The formula takes into  
4 account and may adjust for the covariance between:

- 5 1. The risk with respect to the insurer's assets;
- 6 2. The risk of adverse insurance experience with  
7 respect to the insurer's liabilities and obligations;
- 8 3. The interest rate risk with respect to the  
9 insurer's business; and
- 10 4. Any other business or other relevant risk set out  
11 in the risk-based capital instructions,

12  
13 determined in each case by applying the factors in the manner  
14 set forth in the risk-based capital instructions.

15 (e) A property and casualty insurer's risk-based  
16 capital is determined in accordance with the formula set forth  
17 in the risk-based capital instructions. The formula takes into  
18 account and may adjust for the covariance between:

- 19 1. The asset risk;
- 20 2. The credit risk;
- 21 3. The underwriting risk; and
- 22 4. Any other business or other relevant risk set out  
23 in the risk-based capital instructions,

24  
25 determined in each case by applying the factors in the manner  
26 set forth in the risk-based capital instructions.

27 (f) The Legislature finds that an excess of capital  
28 over the amount produced by the risk-based capital  
29 requirements and the formulas, schedules, and instructions  
30 specified in this section is a desirable goal with respect to  
31 the business of insurance. Accordingly, insurers should seek

1 to maintain capital above the risk-based capital levels  
2 required by this section. Additional capital is used and  
3 useful in the insurance business and helps to secure an  
4 insurer against various risks inherent in, or affecting, the  
5 business of insurance and not accounted for or only partially  
6 measured by the risk-based capital requirements contained in  
7 this section.

8 (g) If a domestic insurer files a risk-based capital  
9 report that the office ~~department~~ finds is inaccurate, the  
10 office ~~department~~ shall adjust the risk-based capital report  
11 to correct the inaccuracy and shall notify the insurer of the  
12 adjustment. The notice must state the reason for the  
13 adjustment. A risk-based capital report that is so adjusted  
14 is referred to as the adjusted risk-based capital report. The  
15 adjusted risk-based capital report must also be filed by the  
16 insurer with the National Association of Insurance  
17 Commissioners.

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

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

21 a. The insurer's total adjusted capital is greater  
22 than or equal to its regulatory action level risk-based  
23 capital but less than its company action level risk-based  
24 capital; or

25 b. If a life and health insurer, the insurer has total  
26 adjusted capital that is greater than or equal to its company  
27 action level risk-based capital, but is less than the product  
28 of its authorized control level risk-based capital and 2.5,  
29 and has a negative trend;

30 2. The notification by the office ~~department~~ to the  
31 insurer of an adjusted risk-based capital report that

1 indicates an event in subparagraph 1., unless the insurer  
2 challenges the adjusted risk-based capital report under  
3 subsection (7); or

4           3. If, under subsection (7), an insurer challenges an  
5 adjusted risk-based capital report that indicates an event in  
6 subparagraph 1., the notification by the office ~~department~~ to  
7 the insurer that the office ~~department~~ has, after a hearing,  
8 rejected the insurer's challenge.

9           (b) If a company action level event occurs, the  
10 insurer shall prepare and submit to the office ~~department~~ a  
11 risk-based capital plan, which must:

12           1. Identify the conditions that contribute to the  
13 company action level event;

14           2. Contain proposals of corrective actions that the  
15 insurer intends to take and that are reasonably expected to  
16 result in the elimination of the company action level event;

17           3. Provide projections of the insurer's financial  
18 results in the current year and at least the 4 succeeding  
19 years, both in the absence of proposed corrective actions and  
20 giving effect to the proposed corrective actions, including  
21 projections of statutory operating income, net income,  
22 capital, and surplus. The projections for both new and renewal  
23 business may include separate projections for each major line  
24 of business and, if separate projections are provided, must  
25 separately identify each significant income, expense, and  
26 benefit component;

27           4. Identify the key assumptions affecting the  
28 insurer's projections and the sensitivity of the projections  
29 to the assumptions; and

30           5. Identify the quality of, and problems associated  
31 with, the insurer's business, including, but not limited to,

1 its assets, anticipated business growth and associated surplus  
2 strain, extraordinary exposure to risk, mix of business, and  
3 any use of reinsurance.

4 (c) The risk-based capital plan must be submitted:

5 1. Within 45 days after the company action level  
6 event; or

7 2. If the insurer challenges an adjusted risk-based  
8 capital report under subsection (7), within 45 days after  
9 notification to the insurer that the office ~~department~~ has,  
10 after a hearing, rejected the insurer's challenge.

11 (d) Within 60 days after the submission by an insurer  
12 of a risk-based capital plan to the office ~~department~~, the  
13 office ~~department~~ shall notify the insurer whether the  
14 risk-based capital plan must be implemented or is, in the  
15 judgment of the office ~~department~~, unsatisfactory. If the  
16 office ~~department~~ determines that the risk-based capital plan  
17 is unsatisfactory, the notification to the insurer must set  
18 forth the reasons for the determination and may set forth  
19 proposed revisions. Upon notification from the office  
20 ~~department~~, the insurer shall prepare a revised risk-based  
21 capital plan, which may incorporate by reference any revisions  
22 proposed by the office ~~department~~, and shall submit the  
23 revised risk-based capital plan to the office ~~department~~:

24 1. Within 45 days after the notification from the  
25 office ~~department~~; or

26 2. If the insurer challenges the notification from the  
27 office ~~department~~ under subsection (7), within 45 days after a  
28 notification to the insurer that the office ~~department~~ has,  
29 after a hearing, rejected the insurer's challenge.

30 (e) If the office ~~department~~ notifies an insurer that  
31 the insurer's risk-based capital plan or revised risk-based

1 capital plan is unsatisfactory, the office ~~department~~ may, at  
2 its discretion and subject to the insurer's right to a hearing  
3 under subsection (7), specify in the notification that the  
4 notification is a regulatory action level event.

5 (f) Each domestic insurer that files a risk-based  
6 capital plan or a revised risk-based capital plan with the  
7 office ~~department~~ shall file a copy of the risk-based capital  
8 plan or the revised risk-based capital plan with the insurance  
9 department in any other state in which the insurer is  
10 authorized to do business if:

11 1. That state has a risk-based capital law that is  
12 substantially similar to paragraph (8)(a); and

13 2. The insurance department of that state has notified  
14 the insurer of its request for the filing in writing, in which  
15 case the insurer shall file a copy of the risk-based capital  
16 plan or the revised risk-based capital plan in that state no  
17 later than the later of:

18 a. Fifteen days after the receipt of notice to file a  
19 copy of its risk-based capital plan or revised risk-based  
20 capital plan with the state; or

21 b. The date on which the risk-based capital plan or  
22 the revised risk-based capital plan is filed under paragraph  
23 (c) or paragraph (d).

24 (4)(a) A regulatory action level event includes:

25 1. The filing of a risk-based capital report by the  
26 insurer which indicates that the insurer's total adjusted  
27 capital is greater than or equal to its authorized control  
28 level risk-based capital but is less than its regulatory  
29 action level risk-based capital;

30 2. The notification by the office ~~department~~ to the  
31 insurer of an adjusted risk-based capital report that

1 indicates the event described in subparagraph 1., unless the  
2 insurer challenges the adjusted risk-based capital report  
3 under subsection (7);

4         3. If, under subsection (7), the insurer challenges an  
5 adjusted risk-based capital report that indicates the event  
6 described in subparagraph 1., the notification by the office  
7 ~~department~~ to the insurer that the office ~~department~~ has,  
8 after a hearing, rejected the insurer's challenge;

9         4. The failure of the insurer to file a risk-based  
10 capital report by the filing date, unless the insurer provides  
11 an explanation for such failure which is satisfactory to the  
12 office ~~department~~ and cures the failure within 10 days after  
13 the filing date;

14         5. The failure of the insurer to submit a risk-based  
15 capital plan to the office ~~department~~ within the time period  
16 set forth in paragraph (3)(c);

17         6. Notification by the office ~~department~~ to the  
18 insurer that:

19             a. The risk-based capital plan or the revised  
20 risk-based capital plan submitted by the insurer is, in the  
21 judgment of the office ~~department~~, unsatisfactory; and

22             b. This notification constitutes a regulatory action  
23 level event with respect to the insurer, unless the insurer  
24 challenges the determination under subsection (7);

25         7. If, under subsection (7), the insurer challenges a  
26 determination by the office ~~department~~ under subparagraph 6.,  
27 the notification by the office ~~department~~ to the insurer that  
28 the office ~~department~~ has, after a hearing, rejected the  
29 challenge;

30         8. Notification by the office ~~department~~ to the  
31 insurer that the insurer has failed to adhere to its

1 risk-based capital plan or revised risk-based capital plan,  
2 but only if this failure has a substantial adverse effect on  
3 the ability of the insurer to eliminate the company action  
4 level event in accordance with its risk-based capital plan or  
5 revised risk-based capital plan and the office ~~department~~ has  
6 so stated in the notification, unless the insurer challenges  
7 the determination under subsection (7); or

8           9. If, under subsection (7), the insurer challenges a  
9 determination by the office ~~department~~ under subparagraph 8.,  
10 the notification by the office ~~department~~ to the insurer that  
11 the office ~~department~~ has, after a hearing, rejected the  
12 challenge.

13           (b) If a regulatory action level event occurs, the  
14 office ~~department~~ shall:

15           1. Require the insurer to prepare and submit a  
16 risk-based capital plan or, if applicable, a revised  
17 risk-based capital plan;

18           2. Perform an examination pursuant to s. 624.316 or an  
19 analysis, as the office ~~department~~ considers necessary, of the  
20 assets, liabilities, and operations of the insurer, including  
21 a review of the risk-based capital plan or the revised  
22 risk-based capital plan; and

23           3. After the examination or analysis, issue a  
24 corrective order specifying such corrective actions as the  
25 office ~~department~~ determines are required.

26           (c) In determining corrective actions, the office  
27 ~~department~~ shall consider any factor relevant to the insurer  
28 based upon the office's ~~department's~~ examination or analysis  
29 of the assets, liabilities, and operations of the insurer,  
30 including, but not limited to, the results of any sensitivity  
31 tests undertaken as provided in the risk-based capital

1 instructions. The risk-based capital plan or the revised  
2 risk-based capital plan must be submitted:

3 1. Within 45 days after the occurrence of the  
4 regulatory action level event;

5 2. If the insurer challenges an adjusted risk-based  
6 capital report under subsection (7), within 45 days after the  
7 notification to the insurer that the office ~~department~~ has,  
8 after a hearing, rejected the insurer's challenge; or

9 3. If the insurer challenges a revised risk-based  
10 capital plan under subsection (7), within 45 days after the  
11 notification to the insurer that the office ~~department~~ has,  
12 after a hearing, rejected the insurer's challenge.

13 (d) The office ~~department~~ may retain actuaries,  
14 investment experts, and other consultants to review an  
15 insurer's risk-based capital plan or revised risk-based  
16 capital plan, examine or analyze the assets, liabilities, and  
17 operations of an insurer, and formulate the corrective order  
18 with respect to the insurer. The fees, costs, and expenses  
19 relating to consultants must be borne by the affected insurer  
20 or by any other party as directed by the office ~~department~~.

21 (5)(a) An authorized control level event includes:

22 1. The filing of a risk-based capital report by the  
23 insurer which indicates that the insurer's total adjusted  
24 capital is greater than or equal to its mandatory control  
25 level risk-based capital but is less than its authorized  
26 control level risk-based capital;

27 2. The notification by the office ~~department~~ to the  
28 insurer of an adjusted risk-based capital report that  
29 indicates the event in subparagraph 1., unless the insurer  
30 challenges the adjusted risk-based capital report under  
31 subsection (7);

1           3. If, under subsection (7), the insurer challenges an  
2 adjusted risk-based capital report that indicates the event in  
3 subparagraph 1., notification by the office ~~department~~ to the  
4 insurer that the office ~~department~~ has, after a hearing,  
5 rejected the insurer's challenge;

6           4. The failure of the insurer to respond, in a manner  
7 satisfactory to the office ~~department~~, to a corrective order,  
8 unless the insurer challenges the corrective order under  
9 subsection (7); or

10          5. If the insurer challenges a corrective order under  
11 subsection (7) and the office ~~department~~ has, after a hearing,  
12 rejected the challenge or modified the corrective order, the  
13 failure of the insurer to respond, in a manner satisfactory to  
14 the office ~~department~~, to the corrective order after rejection  
15 or modification by the office ~~department~~.

16          (b) If an authorized control level event occurs, the  
17 office ~~department~~ shall:

18           1. Take any action required under subsection (4)  
19 regarding the insurer with respect to which a regulatory  
20 action level event has occurred; or

21           2. If the office ~~department~~ considers it to be in the  
22 best interests of the policyholders and creditors of the  
23 insurer and of the public, take any action as necessary to  
24 cause the insurer to be placed under regulatory control under  
25 chapter 631. An authorized control level event is sufficient  
26 ground for the department to be appointed as receiver as  
27 provided in chapter 631.

28          (6)(a) A mandatory control level event includes:

29           1. The filing of a risk-based capital report that  
30 indicates that the insurer's total adjusted capital is less  
31 than its mandatory control level risk-based capital;

1           2. Notification by the office ~~department~~ to the  
2 insurer of an adjusted risk-based capital report that  
3 indicates the event in subparagraph 1., unless the insurer  
4 challenges the adjusted risk-based capital report under  
5 subsection (7); or

6           3. If, under subsection (7), the insurer challenges an  
7 adjusted risk-based capital report that indicates the event in  
8 subparagraph 1., notification by the office ~~department~~ to the  
9 insurer that the office ~~department~~ has, after a hearing,  
10 rejected the insurer's challenge.

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

12           1. With respect to a life and health insurer, the  
13 office ~~department~~ shall, after due consideration of s.  
14 624.408, take any action necessary to place the insurer under  
15 regulatory control, including any remedy available under  
16 chapter 631. A mandatory control level event is sufficient  
17 ground for the department to be appointed as receiver as  
18 provided in chapter 631. The office ~~department~~ may forego  
19 taking action for up to 90 days after the mandatory control  
20 level event if the office ~~department~~ finds there is a  
21 reasonable expectation that the mandatory control level event  
22 may be eliminated within the 90-day period.

23           2. With respect to a property and casualty insurer,  
24 the office ~~department~~ shall, after due consideration of s.  
25 624.408, take any action necessary to place the insurer under  
26 regulatory control, including any remedy available under  
27 chapter 631, or, in the case of an insurer that is not writing  
28 new business, may allow the insurer to continue to operate  
29 under the supervision of the office ~~department~~. In either  
30 case, the mandatory control level event is sufficient ground  
31 for the department to be appointed as receiver as provided in

1 chapter 631. The office ~~department~~ may forego taking action  
2 for up to 90 days after the mandatory control level event if  
3 the office ~~department~~ finds there is a reasonable expectation  
4 that the mandatory control level event will be eliminated  
5 within the 90-day period.

6 (7)(a) An insurer has a right to a hearing before the  
7 office ~~department~~ upon:

8 1. Notification to an insurer by the office ~~department~~  
9 of an adjusted risk-based capital report;

10 2. Notification to an insurer by the office ~~department~~  
11 that the insurer's risk-based capital plan or revised  
12 risk-based capital plan is unsatisfactory, and that the  
13 notification constitutes a regulatory action level event with  
14 respect to such insurer;

15 3. Notification to any insurer by the office  
16 ~~department~~ that the insurer has failed to adhere to its  
17 risk-based capital plan or revised risk-based capital plan and  
18 that the failure has a substantial adverse effect on the  
19 ability of the insurer to eliminate the company action level  
20 event in accordance with its risk-based capital plan or its  
21 revised risk-based capital plan; or

22 4. Notification to an insurer by the office ~~department~~  
23 of a corrective order with respect to the insurer.

24 (b) At such hearing the insurer may challenge any  
25 determination or action by the office ~~department~~. The insurer  
26 shall notify the office ~~department~~ of its request for a  
27 hearing within 5 days after receipt of the notification by the  
28 office ~~department~~ under this subsection. Upon receipt of the  
29 request for a hearing, the office ~~department~~ shall set a date  
30 for the hearing, which date must be no fewer than 10 nor more  
31 than 30 days after the date the office ~~department~~ receives the

1 insurer's request. The hearing must be conducted as provided  
2 in s. 624.324, with the right to appellate review under s.  
3 120.68.

4 (8)(a) Any foreign insurer shall, upon the written  
5 request of the office ~~department~~, submit to the office  
6 ~~department~~ a risk-based capital report, as of the end of the  
7 calendar year just ended, no later than the later of:

8 1. The date a risk-based capital report is required to  
9 be filed by a domestic insurer under this section; or

10 2. Fifteen days after the request is received by the  
11 foreign insurer.

12 (b) Any foreign insurer shall, upon the written  
13 request of the office ~~department~~, promptly submit to the  
14 office ~~department~~ a copy of any risk-based capital plan that  
15 is filed with the insurance department of another state.

16 (c) The office ~~department~~ may require a foreign  
17 insurer to file a risk-based capital plan if:

18 1. A company action level event, regulatory action  
19 level event, or authorized control level event occurs with  
20 respect to any foreign insurer as determined under the  
21 risk-based capital law of the state of domicile of the  
22 insurer, or, if there is no risk-based capital law in that  
23 state, under this section.

24 2. The insurance department of the state of domicile  
25 of the foreign insurer fails to require the foreign insurer to  
26 file a risk-based capital plan in the manner specified under  
27 the risk-based capital law of that state, or, if there is no  
28 risk-based capital law in that state, under subsection (3).

29

30 The failure of the foreign insurer to file a risk-based  
31 capital plan with the office ~~department~~ when required under

1 this paragraph is a ground for the office ~~department~~ to take  
2 any action under s. 624.418 which it determines is necessary.

3 (d) If a mandatory control level event occurs with  
4 respect to any foreign insurer and a domiciliary receiver has  
5 not been appointed with respect to the foreign insurer under  
6 the rehabilitation and liquidation law of the state of  
7 domicile of the foreign insurer, the office ~~department~~ may  
8 apply to the Circuit Court of Leon County and such event  
9 constitutes grounds for the department to be appointed as  
10 receiver as provided in chapter 631 with respect to the  
11 liquidation of property of foreign insurers found in this  
12 state. The occurrence of a mandatory control level event is a  
13 ground for such application.

14 (9) There shall be no liability on the part of, and no  
15 cause of action shall arise against, the commission,  
16 ~~commissioner, the department, or office, or their~~ its  
17 employees or agents, for any action taken by them in the  
18 performance of their powers and duties under this section.

19 (10) The office ~~department~~ shall transmit any notice  
20 that may result in regulatory action by registered mail,  
21 certified mail, or any other method of transmission. Notice  
22 is effective when the insurer receives it.

23 ~~(11) For the purposes of the risk-based capital~~  
24 ~~reports required to be filed by life and health insurers with~~  
25 ~~respect to their 1997 annual statement data and the risk-based~~  
26 ~~capital reports required to be filed by property and casualty~~  
27 ~~insurers with respect to their 1997 annual statement data, the~~  
28 ~~following requirements apply in lieu of the provisions of~~  
29 ~~subsections (3), (4), (5), and (6):~~

30  
31

1           ~~(a) If a company action level event occurs with~~  
2 ~~respect to a domestic insurer, the department may not take any~~  
3 ~~regulatory action.~~

4           ~~(b) If a regulatory action level event occurs under~~  
5 ~~subparagraph (4)(a)1., 2., or 3., the department shall take~~  
6 ~~the actions required under subsection (3).~~

7           ~~(c) If a regulatory action level event occurs under~~  
8 ~~subparagraph (4)(a)4., 5., 6., 7., 8., or 9., or an authorized~~  
9 ~~control level event occurs, the department shall take the~~  
10 ~~actions required under subsection (4).~~

11           ~~(d) If a mandatory control level event occurs with~~  
12 ~~respect to an insurer, the department shall take the actions~~  
13 ~~required under subsection (5).~~

14           ~~(11)(12)~~ This section is supplemental to the other  
15 laws of this state and does not preclude or limit any power or  
16 duty of the department or office under those laws or under the  
17 rules adopted under those laws.

18           ~~(12)(13)~~ This section does not apply to a domestic  
19 property and casualty insurer that meets all of the following  
20 conditions:

21           (a) Writes direct business only in this state;

22           (b) Writes direct annual premiums of \$2 million or  
23 less; and

24           (c) Assumes no reinsurance in excess of 5 percent of  
25 direct premiums written.

26           ~~(13)(14)~~ The commission ~~department~~ may adopt rules to  
27 administer this section, including, but not limited to, those  
28 regarding risk-based capital reports, adjusted risk-based  
29 capital reports, risk-based capital plans, corrective orders  
30 and procedures to be followed in the event of a triggering of  
31 a company action level event, a regulatory action level event,

1 an authorized control level event, or a mandatory control  
2 level event.

3 Section 785. Subsections (1) and (2) of section  
4 624.40851, Florida Statutes, are amended to read:

5 624.40851 Confidentiality of risk-based capital  
6 information.--

7 (1) The initial risk-based capital report and any  
8 adjusted risk-based capital report; any risk-based capital  
9 plan and any revised risk-based capital plan; and working  
10 papers and reports of examination or analysis of an insurer  
11 performed pursuant to a plan or corrective order, or  
12 regulatory action level event, with respect to any domestic  
13 insurer or foreign insurer, held by the office ~~Department of~~  
14 ~~Insurance~~, and transcripts of hearings made as required by  
15 this section, are confidential and exempt from s. 119.07(1)  
16 and s. 24(a), Art. I of the State Constitution.

17 (2) Hearings conducted pursuant to s. 624.4085  
18 relating to the office's ~~department's~~ actions regarding any  
19 insurer's risk-based capital plan, revised risk-based capital  
20 plan, risk-based capital report, or adjusted risk-based  
21 capital report, are exempt from s. 286.011 and s. 24(b), Art.  
22 I of the State Constitution, except as otherwise provided in  
23 this section. Such hearings shall be recorded by a court  
24 reporter. The office ~~Department of Insurance~~ shall open such  
25 hearings or provide a copy of the transcript of such hearings  
26 or information otherwise made confidential and exempt pursuant  
27 to this section to a department, agency, or instrumentality of  
28 this or another state or of the United States if the office  
29 ~~department~~ determines the disclosure is necessary or proper  
30 for the enforcement of the laws of the United States or of  
31 this or another state.

1           Section 786. Section 624.4094, Florida Statutes, is  
2 amended to read:

3           624.4094 Bail bond premiums.--

4           (1) The Legislature finds that a significant portion  
5 of bail bond premiums is retained by the licensed bail bond  
6 agents or licensed managing general agents. For purposes of  
7 reporting in financial statements required to be filed with  
8 the office ~~department~~ pursuant to s. 624.424, direct written  
9 premiums for bail bonds by a domestic insurer in this state  
10 shall be reported net of any amounts retained by licensed bail  
11 bond agents or licensed managing general agents. However, in  
12 no case shall the direct written premiums for bail bonds be  
13 less than 6.5 percent of the total consideration received by  
14 the agent for all bail bonds written by the agent. This  
15 subsection also applies to any determination of compliance  
16 with s. 624.4095.

17           (2) Premiums assumed by a domestic insurer shall be  
18 reported consistent with subsections (1) and (4) for purposes  
19 of filing financial statements with the office ~~department~~.

20           (3) Each domestic bail bond insurer shall keep  
21 complete and accurate records of the total consideration paid  
22 for all bail bonds written by such insurer.

23           (4) Each domestic bail bond insurer shall disclose the  
24 following information in the notes to the financial statement  
25 in the insurer's annual statement filed with the office  
26 ~~department~~.

27           (a) The gross bail bond premiums written in each state  
28 by agents for the company.

29           (b) The amount of premium taxes incurred by the  
30 company in each state.

31

1 (c) Total consideration withheld by agents and not  
2 reported as an expense by the insurer in financial statements  
3 filed with the office department.

4 (d) The amount of bail bond premium included on the  
5 surety line of the annual statement filed with the office  
6 department.

7 (5) This section does not affect the reporting or  
8 payment of insurance premium taxes under ss. 624.509,  
9 624.5091, and 624.5092, and the insurance premium tax and  
10 related excise taxes shall continue to be calculated using  
11 gross bail bond premiums.

12 Section 787. Subsection (1) of section 624.4095,  
13 Florida Statutes, is amended to read:

14 624.4095 Premiums written; restrictions.--

15 (1) Whenever an insurer's ratio of actual or projected  
16 annual written premiums as adjusted in accordance with  
17 subsection (4) to current or projected surplus as to  
18 policyholders as adjusted in accordance with subsection (6)  
19 ~~(5)~~ exceeds 10 to 1 for gross written premiums or exceeds 4 to  
20 1 for net written premiums, the office department shall  
21 suspend the insurer's certificate of authority or establish by  
22 order maximum gross or net annual premiums to be written by  
23 the insurer consistent with maintaining the ratios specified  
24 herein unless the insurer demonstrates to the office's  
25 ~~department's~~ satisfaction that exceeding the ratios of this  
26 section does not endanger the financial condition of the  
27 insurer or endanger the interests of the insurer's  
28 policyholders.

29 Section 788. Section 624.410, Florida Statutes, is  
30 amended to read:

31

1           624.410 Permissible insuring combinations without  
2 additional capital funds.--A property insurer may include such  
3 amount and kind of insurance against legal liability for  
4 injury, damage, or loss to the person or property of others,  
5 and for medical, hospital, and surgical expense related to  
6 such injury, as the office ~~department~~ deems to be reasonably  
7 incidental to insurance of real property against fire and  
8 other perils under policies covering residential properties  
9 involving not more than four families, with or without  
10 incidental office, professional, private school or studio  
11 occupancy by an insured, whether or not the premium or rate  
12 charged for certain perils so covered is specified in the  
13 policy. Any provision of s. 624.609 to the contrary  
14 notwithstanding, no insurer authorized as to property  
15 insurance only shall, pursuant to this subsection, retain risk  
16 as to any one subject of insurance as to hazards other than  
17 property insurance hazards, in an amount exceeding 5 percent  
18 of its surplus as to policyholders.

19           Section 789. Section 624.411, Florida Statutes, is  
20 amended to read:

21           624.411 Deposit requirement; domestic insurers and  
22 foreign insurers.--

23           (1) As to domestic insurers, the office ~~department~~  
24 shall not issue or permit to exist a certificate of authority  
25 unless such insurer has deposited and maintains deposited in  
26 trust for the protection of the insurer's policyholders or its  
27 policyholders and creditors with the department securities  
28 eligible for such deposit under s. 625.52, having at all times  
29 a value of not less than as follows:

30           (a) To transact casualty insurance, \$250,000.

31

1           (b) To transact all other kinds of insurance, \$100,000  
2 per kind of insurance.

3           (c) A domestic insurer authorized to transact more  
4 than one kind of insurance shall not be required to deposit  
5 more than \$300,000 under this subsection.

6           (2) As to foreign insurers, the office ~~department~~,  
7 upon issuing or permitting to exist a certificate of  
8 authority, may require for good cause a deposit and  
9 maintenance of the deposit in trust for the protection of the  
10 insured's policyholders or its policyholders and creditors  
11 with the department securities eligible for such deposit under  
12 s. 625.52, having at all times a value of not less than as  
13 follows:

14           (a) To transact casualty insurance, \$150,000.

15           (b) To transact all other kinds of insurance, \$100,000  
16 per kind of insurance.

17           (c) A foreign insurer authorized to transact more than  
18 one kind of insurance in this state shall not be required to  
19 deposit more than \$200,000 under this subsection.

20           (d) A foreign insurer with surplus as to policyholders  
21 of more than \$10 million according to its latest annual  
22 statement shall not be required to make a deposit under this  
23 subsection.

24           (3) Whenever the office ~~department~~ determines that the  
25 financial condition of an insurer has deteriorated or that the  
26 policyholders' best interests are not being preserved by the  
27 activities of an insurer, the office ~~department~~ may require  
28 such insurer to deposit and maintain deposited in trust with  
29 the department for the protection of the insurer's  
30 policyholders or its policyholders and creditors, for such  
31 time as the office ~~department~~ deems necessary, securities

1 eligible for such deposit under s. 625.52, having a market  
2 value of not less than the amount which the office department  
3 determines is necessary, which amount shall be not less than  
4 \$100,000, or more than 25 percent of the insurer's obligations  
5 in this state, as determined from the latest annual financial  
6 statement of the insured. The deposit required under this  
7 subsection shall not exceed \$2 million and is in addition to  
8 any other deposits required of an insurer pursuant to  
9 subsections (1) and (2) or any other provisions of the Florida  
10 Insurance Code.

11 (4) All such deposits in this state are subject to the  
12 applicable provisions of part III of chapter 625.

13 Section 790. Subsection (1) of section 624.412,  
14 Florida Statutes, is amended to read:

15 624.412 Deposit of alien insurers.--

16 (1) An alien insurer shall not have authority to  
17 transact insurance in this state unless it has and maintains  
18 within the United States as trust deposits with public  
19 officials having supervision over insurers, or with trustees,  
20 public depositories, or trust institutions approved by the  
21 office department, assets available for discharge of its  
22 United States insurance obligations, which assets shall be in  
23 amount not less than the outstanding reserves and other  
24 liabilities of the insurer arising out of its insurance  
25 transactions in the United States together with the amount of  
26 surplus as to policyholders required by s. 624.408 of a  
27 domestic stock insurer transacting like kinds of insurance.

28 Section 791. Subsection (1) of section 624.413,  
29 Florida Statutes, is amended to read:

30 624.413 Application for certificate of authority.--

31

1           (1) To apply for a certificate of authority, an  
2 insurer shall file its application therefor with the office  
3 ~~department~~, upon a form adopted by the commission and  
4 furnished by the office ~~it~~, showing its name; location of its  
5 home office and, if an alien insurer, its principal office in  
6 the United States; kinds of insurance to be transacted; state  
7 or country of domicile; and such additional information as the  
8 commission ~~department~~ ~~may~~ reasonably requires ~~require~~,  
9 together with the following documents:

10           (a) One copy of its corporate charter, articles of  
11 incorporation, existing and proposed nonfacultative  
12 reinsurance contracts, declaration of trust, or other charter  
13 documents, with all amendments thereto, certified by the  
14 public official with whom the originals are on file in the  
15 state or country of domicile.

16           (b) If a mutual insurer, a copy of its bylaws, as  
17 amended, certified by its secretary or other officer having  
18 custody thereof.

19           (c) If a foreign or alien reciprocal insurer, a copy  
20 of the power of attorney of its attorney in fact and of its  
21 subscribers' agreement, if any, certified by the attorney in  
22 fact; and, if a domestic reciprocal insurer, the declaration  
23 provided for in s. 629.081.

24           (d) A copy of its financial statement as of December  
25 31 next preceding, containing information generally included  
26 in insurer financial statements prepared in accordance with  
27 generally accepted insurance accounting principles and  
28 practices and in a form generally utilized by insurers for  
29 financial statements, sworn to by at least two executive  
30 officers of the insurer, or certified by the public official  
31 having supervision of insurance in the insurer's state of

1 domicile or of entry into the United States. To facilitate  
2 uniformity in financial statements, the commission ~~department~~  
3 may by rule adopt the form for financial statements approved  
4 by the National Association of Insurance Commissioners in 2002  
5 ~~1990~~, and may adopt subsequent amendments thereto if the form  
6 remains substantially consistent.

7 (e) Supplemental quarterly financial statements for  
8 each calendar quarter since the beginning of the year of its  
9 application for the certificate of authority, sworn to by at  
10 least two of its executive officers. To facilitate uniformity  
11 in financial statements, the commission ~~department~~ may by rule  
12 adopt the form for quarterly financial statements approved by  
13 the National Association of Insurance Commissioners in 2002  
14 ~~1990~~, and may adopt subsequent amendments thereto if the form  
15 remains substantially consistent.

16 (f) If a foreign or alien insurer, a copy of the  
17 report of the most recent examination of the insurer certified  
18 by the public official having supervision of insurance in its  
19 state of domicile or of entry into the United States. The end  
20 of the most recent year covered by the examination must be  
21 within the 3-year period preceding the date of application.  
22 In lieu of the certified examination report, the office  
23 ~~department~~ may accept an audited certified public accountant's  
24 report prepared on a basis consistent with the insurance laws  
25 of the insurer's state of domicile, certified by the public  
26 official having supervision of insurance in its state of  
27 domicile or of entry into the United States.

28 (g) If a foreign or alien insurer, a certificate of  
29 compliance from the public official having supervision of  
30 insurance in its state or country of domicile showing that it  
31

1 is duly organized and authorized to transact insurance therein  
2 and the kinds of insurance it is so authorized to transact.

3 (h) If a foreign or alien insurer, a certificate of  
4 the public official having custody of any deposit maintained  
5 by the insurer in another state in lieu of a deposit or part  
6 thereof required in this state under s. 624.411 or s. 624.412,  
7 showing the amount of such deposit and the assets or  
8 securities of which comprised.

9 (i) If a life insurer, a certificate of valuation.

10 (j) If an alien insurer, a copy of the appointment and  
11 authority of its United States manager, certified by its  
12 officer having custody of its records.

13 Section 792. Section 624.4135, Florida Statutes, is  
14 amended to read:

15 624.4135 Redomestication.--The commission ~~department~~  
16 shall adopt rules establishing procedures and forms for a  
17 foreign insurer to apply for a certificate of authority as a  
18 domestic insurer.

19 Section 793. Section 624.414, Florida Statutes, is  
20 amended to read:

21 624.414 Issuance or refusal of authority.--The fee for  
22 filing application for a certificate of authority shall not be  
23 subject to refund. The office ~~department~~ shall issue to the  
24 applicant insurer a proper certificate of authority if it  
25 finds that the insurer has met the requirements of this code,  
26 exclusive of the requirements relative to the filing and  
27 approval of an insurer's policy forms, riders, endorsements,  
28 applications, and rates. If it does not so find, the office  
29 ~~department~~ shall issue its order refusing the certificate.  
30 The certificate, if issued, shall specify the kind or kinds  
31 and line or lines of insurance the insurer is authorized to

1 transact in this state. The issuance of a certificate of  
2 authority does not signify that an insurer has met the  
3 requirements of this code relative to the filing and approval  
4 of an insurer's policy forms, riders, endorsements,  
5 applications, and rates which may be required prior to an  
6 insurer actually writing any premiums.

7 Section 794. Section 624.415, Florida Statutes, is  
8 amended to read:

9 624.415 Ownership of certificate of authority;  
10 return.--Although issued to the insurer, the certificate of  
11 authority is at all times the property of this state. Upon  
12 any expiration, suspension, or termination thereof, the  
13 insurer shall promptly deliver the certificate of authority to  
14 the office ~~department~~.

15 Section 795. Subsections (2), (3), and (4) of section  
16 624.416, Florida Statutes, are amended to read:

17 624.416 Continuance, expiration, reinstatement, and  
18 amendment of certificate of authority.--

19 (2) If not so continued by the insurer, its  
20 certificate of authority shall expire at midnight on the May  
21 31 next following such failure of the insurer so to continue  
22 it in force. The office ~~department~~ shall promptly notify the  
23 insurer of the occurrence of any failure resulting in  
24 impending expiration of its certificate of authority.

25 (3) The office ~~department~~ may, in its discretion,  
26 reinstate a certificate of authority which the insurer has  
27 inadvertently permitted to expire, after the insurer has fully  
28 cured all its failures which resulted in the expiration, and  
29 upon payment by the insurer of the fee for reinstatement, in  
30 the amount provided in s. 624.501(1)(b). Otherwise, the  
31 insurer shall be granted another certificate of authority only

1 after filing application therefor and meeting all other  
2 requirements as for an original certificate of authority in  
3 this state.

4 (4) The office ~~department~~ may amend a certificate of  
5 authority at any time to accord with changes in the insurer's  
6 charter or insuring powers.

7 Section 796. Section 624.418, Florida Statutes, is  
8 amended to read:

9 624.418 Suspension, revocation of certificate of  
10 authority for violations and special grounds.--

11 (1) The office ~~department~~ shall suspend or revoke an  
12 insurer's certificate of authority if it finds that the  
13 insurer:

14 (a) Is in unsound financial condition.

15 (b) Is using such methods and practices in the conduct  
16 of its business as to render its further transaction of  
17 insurance in this state hazardous or injurious to its  
18 policyholders or to the public.

19 (c) Has failed to pay any final judgment rendered  
20 against it in this state within 60 days after the judgment  
21 became final.

22 (d) No longer meets the requirements for the authority  
23 originally granted.

24 (2) The office ~~department~~ may, in its discretion,  
25 suspend or revoke the certificate of authority of an insurer  
26 if it finds that the insurer:

27 (a) Has violated any lawful order or rule of the  
28 office or commission ~~department~~ or any provision of this code.

29 (b) Has refused to be examined or to produce its  
30 accounts, records, and files for examination, or if any of its  
31 officers have refused to give information with respect to its

1 | affairs or to perform any other legal obligation as to such  
2 | examination, when required by the office ~~department~~.

3 |       (c) Has for any line, class, or combination thereof,  
4 | with such frequency as to indicate its general business  
5 | practice in this state, without just cause refused to pay  
6 | proper claims arising under its policies, whether any such  
7 | claim is in favor of an insured or is in favor of a third  
8 | person with respect to the liability of an insured to such  
9 | third person, or without just cause compels such insureds or  
10 | claimants to accept less than the amount due them or to employ  
11 | attorneys or to bring suit against the insurer or such an  
12 | insured to secure full payment or settlement of such claims.

13 |       (d) Is affiliated with and under the same general  
14 | management or interlocking directorate or ownership as another  
15 | insurer which transacts direct insurance in this state without  
16 | having a certificate of authority therefor, except as  
17 | permitted as to surplus lines insurers under part VIII of  
18 | chapter 626.

19 |       (e) Has been convicted of, or entered a plea of guilty  
20 | or nolo contendere to, a felony relating to the transaction of  
21 | insurance, in this state or in any other state, without regard  
22 | to whether adjudication was withheld.

23 |       (f) Has a ratio of net premiums written to surplus as  
24 | to policyholders that exceeds 4 to 1, and the office  
25 | ~~department~~ has reason to believe that the financial condition  
26 | of the insurer endangers the interests of the policyholders.  
27 | The ratio of net premiums written to surplus as to  
28 | policyholders shall be on an annualized actual or projected  
29 | basis. The ratio shall be based on the insurer's current  
30 | calendar year activities and experience to date or the  
31 | insurer's previous calendar year activities and experience, or

1 both, and shall be calculated to represent a 12-month period.  
2 However, the provisions of this paragraph do not apply to any  
3 insurance or insurer exempted from s. 624.4095.

4 (g) Is under suspension or revocation in another  
5 state.

6 (3) The insolvency or impairment of an insurer  
7 constitutes an immediate serious danger to the public health,  
8 safety, or welfare; and the office ~~department~~ may, at its  
9 discretion, without prior notice and the opportunity for  
10 hearing immediately suspend the certificate of authority of an  
11 insurer upon a determination that:

12 (a) The insurer is impaired or insolvent; or

13 (b) Receivership, conservatorship, rehabilitation, or  
14 other delinquency proceedings have been initiated against the  
15 insurer by the public insurance supervisory official of any  
16 state.

17 Section 797. Section 624.420, Florida Statutes, is  
18 amended to read:

19 624.420 Order, notice of suspension or revocation of  
20 certificate of authority; effect; publication.--

21 (1) Suspension or revocation of an insurer's  
22 certificate of authority shall be by the order of the office  
23 ~~department~~. The office ~~department~~ shall promptly also give  
24 notice of such suspension or revocation to the insurer's  
25 agents in this state of record ~~in the office of the~~  
26 ~~department~~. The insurer shall not solicit or write any new  
27 coverages in this state during the period of any such  
28 suspension and may renew coverages only upon a finding by the  
29 office ~~department~~ that the insurer is capable of servicing the  
30 renewal coverage. The insurer shall not solicit or write any  
31 new or renewal coverages after any such revocation.

1           (2) In its discretion, the office ~~department~~ may cause  
2 notice of any such suspension or revocation to be published in  
3 one or more newspapers of general circulation published in  
4 this state.

5           Section 798. Subsections (2), (3), (4), and (5) of  
6 section 624.421, Florida Statutes, are amended to read:

7           624.421 Duration of suspension; insurer's obligations  
8 during suspension period; reinstatement.--

9           (2) During the period of suspension, the insurer shall  
10 file with the office ~~department~~ all documents and information  
11 and pay all license fees and taxes as required under this code  
12 as if the certificate had continued in full force.

13           (3) If the suspension of the certificate of authority  
14 is for a fixed period of time and the certificate of authority  
15 has not been otherwise terminated, upon expiration of the  
16 suspension period the insurer's certificate of authority shall  
17 be reinstated unless the office ~~department~~ finds that the  
18 insurer is not in compliance with the requirements of this  
19 code. The office ~~department~~ shall promptly notify the insurer  
20 of such reinstatement, and the insurer shall not consider its  
21 certificate of authority reinstated until so notified by the  
22 office ~~department~~. If not reinstated, the certificate of  
23 authority shall be deemed to have expired as of the end of the  
24 suspension period or upon failure of the insurer to continue  
25 the certificate during the suspension period in accordance  
26 with subsection (2), whichever event first occurs.

27           (4) If the suspension of the certificate of authority  
28 was until the occurrence of a specific event or events and the  
29 certificate of authority has not been otherwise terminated,  
30 upon the presentation of evidence satisfactory to the office  
31 ~~department~~ that the specific event or events have occurred,

1 the insurer's certificate of authority shall be reinstated  
2 unless the office ~~department~~ finds that the insurer is  
3 otherwise not in compliance with the requirements of this  
4 code. The office ~~department~~ shall promptly notify the insurer  
5 of such reinstatement, and the insurer shall not consider its  
6 certificate of authority reinstated until so notified by the  
7 office ~~department~~. If satisfactory evidence as to the  
8 occurrence of the specific event or events has not been  
9 presented to the office ~~department~~ within 2 years of the date  
10 of such suspension, the certificate of authority shall be  
11 deemed to have expired as of 2 years from the date of  
12 suspension or upon failure of the insurer to continue the  
13 certificate during the suspension period in accordance with  
14 subsection (2), whichever first occurs.

15 (5) Upon reinstatement of the insurer's certificate of  
16 authority, the authority of its agents in this state to  
17 represent the insurer shall likewise reinstate. The office  
18 ~~department~~ shall promptly notify the insurer of such  
19 reinstatement.

20 Section 799. Subsections (1), (3), and (4) of section  
21 624.4211, Florida Statutes, are amended to read:

22 624.4211 Administrative fine in lieu of suspension or  
23 revocation.--

24 (1) If the office ~~department~~ finds that one or more  
25 grounds exist for the discretionary revocation or suspension  
26 of a certificate of authority issued under this chapter, the  
27 office ~~department~~ may, in lieu of such revocation or  
28 suspension, impose a fine upon the insurer.

29 (3) With respect to any knowing and willful violation  
30 of a lawful order or rule of the office or commission  
31 ~~department~~ or a provision of this code, the office ~~department~~

1 may impose a fine upon the insurer in an amount not to exceed  
2 \$20,000 for each such violation. In no event shall such fine  
3 exceed an aggregate amount of \$100,000 for all knowing and  
4 willful violations arising out of the same action. In  
5 addition to such fines, such insurer shall make restitution  
6 when due in accordance with the provisions of subsection (2).

7 (4) The failure of an insurer to make restitution when  
8 due as required under this section constitutes a willful  
9 violation of this code. However, if an insurer in good faith  
10 is uncertain as to whether any restitution is due or as to the  
11 amount of such restitution, it shall promptly notify the  
12 office ~~department~~ of the circumstances; and the failure to  
13 make restitution pending a determination thereof shall not  
14 constitute a violation of this code.

15 Section 800. Section 624.422, Florida Statutes, is  
16 amended to read:

17 624.422 Service of process; appointment of Chief  
18 Financial Officer ~~Insurance Commissioner and Treasurer~~ as  
19 process agent.--

20 (1) Each licensed insurer, whether domestic, foreign,  
21 or alien, shall be deemed to have appointed the Chief  
22 Financial Officer ~~Insurance Commissioner and Treasurer~~ and her  
23 or his successors in office as its attorney to receive service  
24 of all legal process issued against it in any civil action or  
25 proceeding in this state; and process so served shall be valid  
26 and binding upon the insurer.

27 (2) Prior to its authorization to transact insurance  
28 in this state, each insurer shall file with the department  
29 designation of the name and address of the person to whom  
30 process against it served upon the Chief Financial Officer  
31 ~~Insurance Commissioner and Treasurer~~ is to be forwarded. The

1 insurer may change the designation at any time by a new  
2 filing.

3 (3) Service of process upon the Chief Financial  
4 Officer ~~Insurance Commissioner and Treasurer~~ as the insurer's  
5 attorney pursuant to such an appointment shall be the sole  
6 method of service of process upon an authorized domestic,  
7 foreign, or alien insurer in this state.

8 Section 801. Section 624.423, Florida Statutes, is  
9 amended to read:

10 624.423 Serving process.--

11 (1) Service of process upon the Chief Financial  
12 Officer ~~Insurance Commissioner and Treasurer~~ as process agent  
13 of the insurer (under s. 624.422) shall be made by serving  
14 copies in triplicate of the process upon the Chief Financial  
15 Officer ~~Insurance Commissioner and Treasurer~~ or upon her or  
16 his assistant, deputy, or other person in charge of her or his  
17 office. Upon receiving such service, the Chief Financial  
18 Officer ~~Insurance Commissioner and Treasurer~~ shall file one  
19 copy in her or his office, return one copy with her or his  
20 admission of service, and promptly forward one copy of the  
21 process by registered or certified mail to the person last  
22 designated by the insurer to receive the same, as provided  
23 under s. 624.422(2).

24 (2) Where process is served upon the Chief Financial  
25 Officer ~~Insurance Commissioner and Treasurer~~ as an insurer's  
26 process agent, the insurer shall not be required to answer or  
27 plead except within 20 days after the date upon which the  
28 Chief Financial Officer ~~Insurance Commissioner and Treasurer~~  
29 mailed a copy of the process served upon her or him as  
30 required by subsection (1).

31

1           (3) Process served upon the Chief Financial Officer  
2 ~~Insurance Commissioner and Treasurer~~ and copy thereof  
3 forwarded as in this section provided shall for all purposes  
4 constitute valid and binding service thereof upon the insurer.

5           Section 802. Section 624.424, Florida Statutes, is  
6 amended to read:

7           624.424 Annual statement and other information.--

8           (1)(a) Each authorized insurer shall file with the  
9 office department full and true statements of its financial  
10 condition, transactions, and affairs. An annual statement  
11 covering the preceding calendar year shall be filed on or  
12 before March 1, and quarterly statements covering the periods  
13 ending on March 31, June 30, and September 30 shall be filed  
14 within 45 days after each such date. The office department  
15 may, for good cause, grant an extension of time for filing of  
16 an annual or quarterly statement. The statements shall contain  
17 information generally included in insurers' financial  
18 statements prepared in accordance with generally accepted  
19 insurance accounting principles and practices and in a form  
20 generally utilized by insurers for financial statements, sworn  
21 to by at least two executive officers of the insurer or, if a  
22 reciprocal insurer, by the oath of the attorney in fact or its  
23 like officer if a corporation. To facilitate uniformity in  
24 financial statements and to facilitate office department  
25 analysis, the commission department may by rule adopt the form  
26 for financial statements approved by the National Association  
27 of Insurance Commissioners in 2002 ~~1990~~, and may adopt  
28 subsequent amendments thereto if the methodology remains  
29 substantially consistent, and may by rule require each insurer  
30 to submit to the office department or such organization as the  
31 office department may designate all or part of the information

1 contained in the financial statement in a computer-readable  
2 form compatible with the electronic data processing system  
3 specified by the office ~~department~~.

4 (b) Each insurer's annual statement must contain a  
5 statement of opinion on loss and loss adjustment expense  
6 reserves made by a member of the American Academy of Actuaries  
7 or by a qualified loss reserve specialist, under criteria  
8 established by rule of the commission ~~department~~. In adopting  
9 the rule, the commission ~~department~~ must consider any criteria  
10 established by the National Association of Insurance  
11 Commissioners. The office ~~department~~ may require semiannual  
12 updates of the annual statement of opinion as to a particular  
13 insurer if the office ~~department~~ has reasonable cause to  
14 believe that such reserves are understated to the extent of  
15 materially misstating the financial position of the insurer.  
16 Workpapers in support of the statement of opinion must be  
17 provided to the office ~~department~~ upon request. This paragraph  
18 does not apply to life insurance or title insurance.

19 (c) The commission ~~department~~ may by rule require  
20 reports or filings required under the insurance code to be  
21 submitted on a computer-diskette compatible with the  
22 electronic data processing equipment specified by the  
23 commission ~~department~~.

24 (2) The statement of an alien insurer shall be  
25 verified by the insurer's United States manager or other  
26 officer duly authorized. It shall be a separate statement, to  
27 be known as its general statement, of its transactions,  
28 assets, and affairs within the United States unless the office  
29 ~~department~~ requires otherwise. If the office ~~department~~  
30 requires a statement as to the insurer's affairs elsewhere,  
31

1 the insurer shall file such statement with the office  
2 ~~department~~ as soon as reasonably possible.

3 (3) Each insurer having a deposit as required under s.  
4 624.411 shall file with the office ~~department~~ annually with  
5 its annual statement a certificate to the effect that the  
6 assets so deposited have a market value equal to or in excess  
7 of the amount of deposit so required.

8 (4) At the time of filing, the insurer shall pay the  
9 fee for filing its annual statement in the amount specified in  
10 s. 624.501.

11 (5) The office ~~department~~ may refuse to continue, or  
12 may suspend or revoke, the certificate of authority of an  
13 insurer failing to file its annual or quarterly statements and  
14 accompanying certificates when due.

15 (6) In addition to information called for and  
16 furnished in connection with its annual or quarterly  
17 statements, an insurer shall furnish to the office ~~department~~  
18 as soon as reasonably possible such information as to its  
19 transactions or affairs as the office ~~department~~ may from time  
20 to time request in writing. All such information furnished  
21 pursuant to the office's ~~department's~~ request shall be  
22 verified by the oath of two executive officers of the insurer  
23 or, if a reciprocal insurer, by the oath of the attorney in  
24 fact or its like officers if a corporation.

25 (7) The signatures of all such persons when written on  
26 annual or quarterly statements or other reports required by  
27 this section shall be presumed to have been so written by  
28 authority of the person whose signature is affixed thereon.  
29 The affixing of any signature by anyone other than the  
30 purported signer constitutes a felony of the second degree,  
31

1 punishable as provided in s. 775.082, s. 775.083, or s.  
2 775.084.

3 (8)(a) All authorized insurers must have conducted an  
4 annual audit by an independent certified public accountant and  
5 must file an audited financial report with the office  
6 ~~department~~ on or before June 1 for the preceding year ending  
7 December 31. The office ~~department~~ may require an insurer to  
8 file an audited financial report earlier than June 1 upon 90  
9 days' advance notice to the insurer. The office ~~department~~  
10 may immediately suspend an insurer's certificate of authority  
11 by order if an insurer's failure to file required reports,  
12 financial statements, or information required by this  
13 subsection or rule adopted pursuant thereto creates a  
14 significant uncertainty as to the insurer's continuing  
15 eligibility for a certificate of authority.

16 (b) Any authorized insurer otherwise subject to this  
17 section having direct premiums written in this state of less  
18 than \$1 million in any calendar year and fewer ~~less~~ than 1,000  
19 policyholders or certificateholders of directly written  
20 policies nationwide at the end of such calendar year is exempt  
21 from this section for such year unless the office ~~department~~  
22 makes a specific finding that compliance is necessary in order  
23 for the office ~~department~~ to carry out its statutory  
24 responsibilities. However, any insurer having assumed  
25 premiums pursuant to contracts or treaties or reinsurance of  
26 \$1 million or more is not exempt. Any insurer subject to an  
27 exemption must submit by March 1 following the year to which  
28 the exemption applies an affidavit sworn to by a responsible  
29 officer of the insurer specifying the amount of direct  
30 premiums written in this state and number of policyholders or  
31 certificateholders.

1           (c) The board of directors of an insurer shall hire  
2 the certified public accountant that prepares the audit  
3 required by this subsection and the board shall establish an  
4 audit committee of three or more directors of the insurer or  
5 an affiliated company. The audit committee shall be  
6 responsible for discussing audit findings and interacting with  
7 the certified public accountant with regard to her or his  
8 findings. The audit committee shall be comprised solely of  
9 members who are free from any relationship that, in the  
10 opinion of its board of directors, would interfere with the  
11 exercise of independent judgment as a committee member. The  
12 audit committee shall report to the board any findings of  
13 adverse financial conditions or significant deficiencies in  
14 internal controls that have been noted by the accountant. The  
15 insurer may request the office ~~department~~ to waive this  
16 requirement of the audit committee membership based upon  
17 unusual hardship to the insurer.

18           (d) An insurer may not use the same accountant or  
19 partner of an accounting firm responsible for preparing the  
20 report required by this subsection for more than 7 consecutive  
21 years. Following this period, the insurer may not use such  
22 accountant or partner for a period of 2 years, but may use  
23 another accountant or partner of the same firm. An insurer  
24 may request the office ~~department~~ to waive this prohibition  
25 based upon an unusual hardship to the insurer and a  
26 determination that the accountant is exercising independent  
27 judgment that is not unduly influenced by the insurer  
28 considering such factors as the number of partners, expertise  
29 of the partners or the number of insurance clients of the  
30 accounting firm; the premium volume of the insurer; and the

31

1 number of jurisdictions in which the insurer transacts  
2 business.

3 (e) The commission ~~department~~ shall adopt rules to  
4 implement this subsection, which rules must be in substantial  
5 conformity with the 1998 ~~1990~~ Model Rule Requiring Annual  
6 Audited Financial Reports adopted by the National Association  
7 of Insurance Commissioners, except where inconsistent with the  
8 requirements of this subsection. Any exception to, waiver of,  
9 or interpretation of accounting requirements of the commission  
10 ~~department~~ must be in writing and signed by an authorized  
11 representative of the office ~~department~~. No insurer may raise  
12 as a defense in any action, any exception to, waiver of, or  
13 interpretation of accounting requirements, unless previously  
14 issued in writing by an authorized representative of the  
15 office ~~department~~.

16 (9)(a) Each authorized insurer shall, pursuant to s.  
17 409.910(20), provide records and information to the Agency for  
18 Health Care Administration to identify potential insurance  
19 coverage for claims filed with that agency and its fiscal  
20 agents for payment of medical services under the Medicaid  
21 program.

22 (b) Each authorized insurer shall, pursuant to s.  
23 409.2561(5)(c), notify the Medicaid agency of a cancellation  
24 or discontinuance of a policy within 30 days if the insurer  
25 received notification from the Medicaid agency to do so.

26 (c) Any information provided by an insurer under this  
27 subsection does not violate any right of confidentiality or  
28 contract that the insurer may have with covered persons. The  
29 insurer is immune from any liability that it may otherwise  
30 incur through its release of such information to the Agency  
31 for Health Care Administration.

1           (10) Each insurer or insurer group doing business in  
2 this state shall file on a quarterly basis in conjunction with  
3 financial reports required by paragraph (1)(a) a supplemental  
4 report on an individual and group basis on a form prescribed  
5 by the commission ~~department~~ with information on personal  
6 lines and commercial lines residential property insurance  
7 policies in this state. The supplemental report shall include  
8 separate information for personal lines property policies and  
9 for commercial lines property policies and totals for each  
10 item specified, including premiums written for each of the  
11 property lines of business as described in ss. 215.555(2)(c)  
12 and 627.351(6)(a). The report shall include the following  
13 information for each county on a monthly basis:

- 14           (a) Total number of policies in force at the end of  
15 each month.
- 16           (b) Total number of policies canceled.
- 17           (c) Total number of policies nonrenewed.
- 18           (d) Number of policies canceled due to hurricane risk.
- 19           (e) Number of policies nonrenewed due to hurricane  
20 risk.
- 21           (f) Number of new policies written.
- 22           (g) Total dollar value of structure exposure under  
23 policies that include wind coverage.
- 24           (h) Number of policies that exclude wind coverage.

25           Section 803. Section 624.4241, Florida Statutes, is  
26 amended to read:

27           624.4241 NAIC filing requirements.--

28           (1) Each domestic, foreign, and alien insurer who is  
29 authorized to transact insurance in this state shall file one  
30 extra copy of its annual statement convention blank, along  
31 with such additional filings as prescribed by the commission

1 ~~department~~ for the preceding year. Such extra copy shall be  
2 for the explicit purpose of allowing the office ~~department~~ to  
3 forward it to the National Association of Insurance  
4 Commissioners.

5 (2) Coincident with the filing of the documents  
6 required in subsection (1), each insurer shall pay to the  
7 office ~~department~~ a reasonable fee to cover the costs  
8 associated with the filing and analysis of the documents by  
9 the National Association of Insurance Commissioners and the  
10 office ~~department~~.

11 (3) The provisions of this section shall not apply to  
12 any foreign, domestic, or alien insurer which has filed such  
13 documents directly with the National Association of Insurance  
14 Commissioners if the National Association of Insurance  
15 Commissioners has certified receipt of the required documents  
16 to the office ~~department~~.

17 Section 804. Subsections (2) and (3) of section  
18 624.4243, Florida Statutes, are amended to read:

19 624.4243 Reporting of premium growth.--

20 (2) Until an insurer has held a certificate of  
21 authority in this state for 24 months, the insurer shall,  
22 instead of making the calculations required under subsection  
23 (1), report to the office ~~department~~ no later than the last  
24 day of each month the insurer's direct and assumed written  
25 premiums from the United States and its territories for the  
26 previous month.

27 (3) If the amount of the premium growth calculated by  
28 an insurer under this section exceeds 33 percent, the insurer  
29 shall, within 30 days after the end of the 12-month period  
30 ending on the last day of the previous month, file with the  
31 office ~~department~~ a statement of the premium growth

1 calculations under this section. The commission ~~department~~  
2 shall adopt rules specifying the form for the report. In  
3 response to a report under this section, the office ~~department~~  
4 may require the insurer to submit an explanation of the  
5 insurer's pattern of premium growth.

6 Section 805. Section 624.4245, Florida Statutes, is  
7 amended to read:

8 624.4245 Change in controlling interest of foreign or  
9 alien insurer; report required.--In the event of a change in  
10 the controlling capital stock or a change of 50 percent or  
11 more of the assets of a foreign or alien insurer, such insurer  
12 shall report such change in writing to the office ~~department~~  
13 within 30 days of the effective date thereof. The report  
14 shall contain the name and address of the new owner or owners  
15 of the controlling stock or assets, the nature and value of  
16 the new assets, and such other relevant information as the  
17 commission or office ~~department~~ may reasonably require. For  
18 the purposes of this section, the term "controlling capital  
19 stock" means a sufficient number of shares of the issued and  
20 outstanding capital stock of such insurer or person so as to  
21 give the owner thereof power to exercise a controlling  
22 influence over the management or policies of such insurer or  
23 person.

24 Section 806. Subsections (1), (2), (3), (7), and (8)  
25 of section 624.430, Florida Statutes, are amended to read:

26 624.430 Withdrawal of insurer or discontinuance of  
27 writing certain kinds or lines of insurance.--

28 (1) Any insurer desiring to surrender its certificate  
29 of authority, withdraw from this state, or discontinue the  
30 writing of any one or multiple kinds or lines of insurance in  
31 this state shall give 90 days' notice in writing to the office

1 ~~department~~ setting forth its reasons for such action. Any  
2 insurer who does not write any premiums in a kind or line of  
3 insurance within a calendar year shall have that kind or line  
4 of insurance removed from its certificate of authority;  
5 however, such line of insurance shall be restored to the  
6 insurer's certificate upon the insurer demonstrating that it  
7 has available the expertise necessary and meets the other  
8 requirements of this code to write that line of insurance.

9 (2) If the office ~~department~~ determines, based upon  
10 its review of the notice and other required information, that  
11 the plan of an insurer withdrawing from this state makes  
12 adequate provision for the satisfaction of the insurer's  
13 obligations and is not hazardous to policyholders or the  
14 public, the office ~~department~~ shall approve the surrender of  
15 the insurer's certificate of authority. The office ~~department~~  
16 shall, within 45 days from receipt of a complete notice and  
17 all required or requested additional information, approve,  
18 disapprove, or approve with conditions the plan submitted by  
19 the insurer. Failure to timely take action with respect to the  
20 notice shall be deemed an approval of the surrender of the  
21 certificate of authority.

22 (3) Upon office ~~department~~ approval of the surrender  
23 of the certificate of authority of a domestic property and  
24 casualty insurer that is a corporation, the insurer may  
25 initiate the dissolution of the corporation in accordance with  
26 the applicable provisions of chapter 607.

27 (7) This section does not apply to insurers who have  
28 discontinued writing in accordance with an order issued by the  
29 office ~~department~~.

30 (8) The commission ~~department~~ may adopt rules to  
31 administer this section.

1           Section 807. Subsections (5) and (6) of section  
2 624.4361, Florida Statutes, are amended to read:

3           624.4361 Definitions.--As used in ss. 624.436-624.446:

4           (5) "Statutory accounting principles" means generally  
5 accepted accounting principles, except as modified by part I  
6 of chapter 625 and by rules adopted by the commission  
7 ~~department~~ which recognize the difference between an  
8 arrangement and an insurer.

9           (6) "Surplus notes" means funds borrowed by a  
10 multiple-employer welfare arrangement which result in a  
11 written instrument which includes all of the following:

12           (a) The effective date, amount, interest, and parties  
13 involved are clearly set forth.

14           (b) The principal sum and any interest accrued thereon  
15 are subject to and subordinate to all other liabilities of the  
16 multiple-employer welfare arrangement.

17           (c) The instrument states that the parties agree that  
18 the multiple-employer welfare arrangement shall satisfy the  
19 office ~~department~~ that all claims of participants and general  
20 creditors of the organization have been paid or otherwise  
21 discharged prior to any payment of interest or repayment of  
22 principal.

23           (d) The instrument is executed by both parties and a  
24 certified copy of the instrument is filed with the office  
25 ~~department~~.

26           (e) The parties agree not to modify, terminate, or  
27 cancel the surplus note without the prior approval of the  
28 office ~~department~~.

29           Section 808. Subsections (2) and (4) of section  
30 624.437, Florida Statutes, are amended to read:

31

1           624.437 "Multiple-employer welfare arrangement"  
2 defined; certificate of authority required; penalty.--  
3           (2) No person shall operate, maintain, or, after  
4 October 1, 1983, establish a multiple-employer welfare  
5 arrangement unless such arrangement has a valid certificate of  
6 authority issued by the office ~~department~~.  
7           (4)(a) Any person failing to hold a subsisting  
8 certificate of authority from the office ~~department~~ while  
9 operating or maintaining a multiple-employer welfare  
10 arrangement shall be subject to a fine of not less than \$5,000  
11 or more than \$100,000 for each violation.  
12           (b) Any person who operates or maintains a  
13 multiple-employer welfare arrangement without a subsisting  
14 certificate of authority from the office ~~department~~ shall be  
15 subject to the cease and desist penalty powers of the office  
16 ~~department~~ as set forth in ss. 626.9571, 626.9581, 626.9591,  
17 and 626.9601.  
18           (c)1. Any person who operates or maintains a  
19 multiple-employer welfare arrangement without a subsisting  
20 certificate of authority as required under this section  
21 commits a felony of the third degree, punishable as provided  
22 in s. 775.082 or s. 775.083.  
23           2. Except as provided in subparagraph 1., any person  
24 who violates the provisions of ss. 624.437-624.446 commits a  
25 misdemeanor of the first degree, punishable as provided in s.  
26 775.082 or s. 775.083.  
27           (d) In addition to the penalties and other enforcement  
28 provisions of the Florida Insurance Code, the office  
29 ~~department~~ is vested with the power to seek both temporary and  
30 permanent injunctive relief when:  
31

1           1. A multiple-employer welfare arrangement is being  
2 operated by any person or entity without a subsisting  
3 certificate of authority.

4           2. Any person, entity, or multiple-employer welfare  
5 arrangement has engaged in any activity prohibited by the  
6 Florida Insurance Code or by any rule adopted pursuant  
7 thereto.

8           3. Any multiple-employer welfare arrangement, person,  
9 or entity is renewing, issuing, or delivering a policy,  
10 contract, certificate, summary plan description, or other  
11 evidence of the benefits and coverages provided to employees  
12 or employee family members without a subsisting certificate of  
13 authority.

14  
15 The office's ~~department's~~ authority to seek injunctive relief  
16 shall not be conditioned on having conducted any proceeding  
17 pursuant to chapter 120. The authority vested in the office  
18 ~~department~~ by virtue of the operation of this section shall  
19 not act to reduce any other enforcement remedy or power to  
20 seek injunctive relief that may otherwise be available to the  
21 office ~~department~~.

22           Section 809. Subsections (5) and (6) of section  
23 624.438, Florida Statutes, are amended to read:

24           624.438 General eligibility.--

25           (5) The office ~~department~~ shall not grant or continue  
26 a certificate of authority for any arrangement if the office  
27 ~~department~~ determines any trustee, manager, or administrator  
28 to be incompetent, untrustworthy, or so lacking in insurance  
29 expertise as to make the operations of the arrangement  
30 hazardous to potential and existing insureds; that any  
31 trustee, manager, or administrator has been found guilty of,

1 or has pled guilty or no contest to a felony, a crime  
2 involving moral turpitude, or a crime punishable by  
3 imprisonment of 1 year or more under the law of any state,  
4 territory, or country, whether or not a judgment or conviction  
5 has been entered; that any trustee, manager, or administrator  
6 has had any type of insurance license revoked in this or any  
7 other state; or that the business operations of the  
8 arrangement are or have been marked, to the detriment of the  
9 employers participating in the arrangement, of persons  
10 receiving benefits from the arrangement, or of creditors or  
11 the public, by the improper manipulation of assets, accounts,  
12 or specific excess insurance or by bad faith.

13 (6) To qualify for and retain approval to transact  
14 business, an arrangement shall make all contracts with  
15 administrators or service companies available for inspection  
16 by the office ~~department~~ initially, and annually thereafter  
17 upon reasonable notice.

18 Section 810. Section 624.439, Florida Statutes, is  
19 amended to read:

20 624.439 Filing of application.--The sponsoring  
21 association shall file with the office ~~department~~ an  
22 application for a certificate of authority upon a form to be  
23 adopted by the commission and furnished by the office  
24 ~~department~~, signed under oath by officers of the trust, which  
25 shall include or have attached the following:

26 (1) A copy of the articles of incorporation,  
27 constitution, and bylaws of the association, if any.

28 (2) A list of the names, addresses, and official  
29 capacities within the arrangement of the individuals who are  
30 to be responsible for the management of and the conduct of the  
31 affairs of the arrangement, including all trustees, officers,

1 and directors. Such individuals shall fully disclose to the  
2 office ~~department~~ the extent and nature of any contracts or  
3 arrangements between themselves and the arrangement, including  
4 any possible conflicts of interest.

5 (3) A copy of the articles of incorporation, bylaws,  
6 or trust agreement which governs the operation of the  
7 arrangement.

8 (4) A copy of the policy, contract, certificate,  
9 summary plan description, or other evidence of the benefits  
10 and coverages provided to covered employees, which shall be in  
11 accordance with s. 627.651(4), and which shall include a table  
12 of the rates charged, or proposed to be charged, for each form  
13 of such contract. A qualified actuary shall certify that:

14 (a) The rates are not inadequate.

15 (b) The rates are appropriate for the class of risks  
16 for which they have been computed.

17 (c) An adequate description of the rating methodology  
18 has been filed with the office ~~department~~ and such methodology  
19 follows consistent and equitable actuarial principles.

20 (5) A copy of the fidelity bond in an amount equal to  
21 not less than 10 percent of the funds handled annually and  
22 issued in the name of the arrangement covering its trustees,  
23 directors, officers, employees, administrator, or other  
24 individuals managing or handling the funds or assets of the  
25 arrangement. In no case may such bond be less than \$50,000 or  
26 more than \$500,000, except that the office ~~department~~, after  
27 due notice to all interested parties and opportunity for  
28 hearing, and after consideration of the record, may prescribe  
29 an amount in excess of \$500,000, subject to the 10-percent  
30 limitation of the preceding sentence.

31

1           (6)(a) A copy of the arrangement's excess insurance  
2 agreement, which shall provide that the net retention level  
3 for any one risk shall not exceed \$50,000, and which shall  
4 otherwise be in accordance with sound actuarial principles.

5           (b) The office ~~department~~ may waive or modify the  
6 maximum net retention requirement if:

7           1. The excess insurance is not available for a  
8 reasonable cost; or

9           2. The arrangement:

10           a. Has 150 percent of the statutory reserve  
11 requirement as specified in s. 624.441;

12           b. Has a fund balance in excess of that required by  
13 statute; and

14           c. Has a ratio of current assets to current  
15 liabilities of at least 2.0 to 1.0.

16           (7)(a) A feasibility study, done by an independent  
17 qualified actuary and an independent certified public  
18 accountant, determined by the office ~~department~~ to  
19 satisfactorily address market potential, market penetration,  
20 market competition, operating expenses, gross revenues, net  
21 income, total assets and liabilities, cash flow, and such  
22 other items as the office or commission ~~department may~~  
23 reasonably requires ~~require~~. The study shall be for the  
24 greater of 3 years or until the arrangement has been projected  
25 to be profitable for 12 consecutive months. The study must  
26 show that the arrangement would not, at any month-end of the  
27 projection period, have less than the minimum statutory  
28 deposit as required by s. 624.441 or have a fund balance less  
29 than the amount required by s. 624.4392.

30  
31

1           (b) The feasibility study shall reflect and support  
2 that initial gross premiums for the first year of operation  
3 will be at least \$100,000.

4           (8) Evidence satisfactory to the office ~~department~~  
5 showing that the arrangement will be operated in accordance  
6 with sound actuarial principles. The office ~~department~~ shall  
7 not approve the arrangement unless the office ~~department~~  
8 determines that the plan is designed to provide sufficient  
9 revenues to pay current and future liabilities, as determined  
10 in accordance with sound actuarial principles.

11           (9) Confirmation of insolvency protection as required  
12 by s. 624.441.

13           (10) A copy of each contract between the arrangement  
14 and any administrator or service company which may be made  
15 available for review rather than filed or attached.

16           (11) Such additional information as the office or  
17 commission ~~department~~ may reasonably requires ~~require~~.

18           Section 811. Subsections (1) and (3) of section  
19 624.4392, Florida Statutes, are amended to read:

20           624.4392 Fund balance.--

21           (1) Each multiple-employer welfare arrangement  
22 licensed on or after October 1, 1991, shall have a fund  
23 balance equal to \$200,000 before a certificate of authority  
24 may be issued by the office ~~department~~. After it has received  
25 a certificate of authority, the arrangement must maintain a  
26 fund balance equal to \$100,000 or 10 percent of total  
27 liabilities, whichever is greater.

28           (3) The office ~~department~~ shall order the arrangement  
29 to assess participating employers at any time the fund balance  
30 does not meet the requirements of this section.

31

1           Section 812. Section 624.44, Florida Statutes, is  
2 amended to read:

3           624.44 Examination by the office ~~department~~.--

4           (1)(a) The office ~~department~~ shall examine the  
5 affairs, transactions, accounts, business records, and assets  
6 of any multiple-employer welfare arrangement as often as it  
7 deems necessary for the protection of the people of the state,  
8 but not less frequently than once every 3 years. For the  
9 purpose of examinations, the office ~~department~~ may administer  
10 oaths and examine the trustees, directors, officers, and  
11 agents of an arrangement concerning its business and affairs.

12           (b) The expenses of examination of each arrangement by  
13 the office ~~are department shall be~~ subject to the same terms  
14 and conditions as apply to insurers under part II.

15           (c) The office ~~department~~ may contract, at reasonable  
16 fees for work performed, with qualified, impartial, outside  
17 sources to perform audits or examinations or portions thereof  
18 to determine continued compliance with the requirements of ss.  
19 624.436-624.446. Any contracted assistance shall be under  
20 direct supervision of the office ~~department~~. The results of  
21 any contracted assistance shall be subject to review,  
22 approval, disapproval, or modification by the office  
23 ~~department~~.

24           (2) If the office ~~department~~ preliminarily finds that  
25 an arrangement is insolvent, the office ~~department~~ shall  
26 notify the arrangement of such insolvency. Upon being so  
27 notified, the arrangement shall within 15 days file with the  
28 office ~~department~~ all information that proves that the  
29 arrangement is not insolvent.

30           (3) If the arrangement fails within the 15-day period  
31 provided in subsection (2) to supply information showing to

1 the satisfaction of the office ~~department~~ that the arrangement  
2 is not insolvent, the office ~~department~~ may:

- 3 (a)1. Suspend any new enrollment;  
4 2. Suspend or revoke the arrangement's certificate of  
5 authority; or  
6 3. Place the arrangement in administrative supervision  
7 under s. 624.80; or

8 (b) For the purposes of dissolution, liquidation, or  
9 rehabilitation, place the arrangement under the supervision of  
10 the department pursuant to chapter 631.

11 Section 813. Subsections (2) and (3) of section  
12 624.441, Florida Statutes, are amended to read:

13 624.441 Insolvency protection.--

14 (2) All income from deposits shall belong to the  
15 depositing arrangement and shall be paid to it as it becomes  
16 available. An arrangement that has made a securities deposit  
17 may withdraw that deposit, or any part thereof, after making a  
18 substitute deposit of cash, securities, or any combination of  
19 these or other measures of equal amount and value, upon  
20 approval by the office and department. No judgment creditor  
21 or other claimant of a multiple-employer welfare association  
22 shall have the right to levy upon any of the assets or  
23 securities held in this state as a deposit under this section.

24 (3) Deposits of securities or cash pursuant to this  
25 section shall be administered by the office and department in  
26 accordance with part III of chapter 625.

27 Section 814. Section 624.4411, Florida Statutes, is  
28 amended to read:

29 624.4411 Administrative, provider, and management  
30 contracts.--

31

1           (1) The office ~~department~~ may require a  
2 multiple-employer welfare arrangement to submit any contract  
3 for administrative services, contract with a provider other  
4 than an individual physician, contract for management  
5 services, or contract with an affiliated person to the office  
6 ~~department~~, if the office ~~department~~ has reason to believe  
7 that the arrangement has entered into a contract which  
8 requires it to pay a fee which is unreasonably high in  
9 relation to the services provided. Multiple-employer welfare  
10 arrangements are prohibited from paying a fee to a sponsoring  
11 association unless such fee is directly related to services  
12 provided by the association for the arrangement.

13           (2) After review of a contract, the office ~~department~~  
14 may order the arrangement to cancel the contract in accordance  
15 with the terms of the contract and applicable law if the  
16 office ~~department~~ determines that the fees to be paid by the  
17 arrangement under the contract are so unreasonably high in  
18 relation to the services provided that the contract is  
19 detrimental to the policyholders or certificateholders of the  
20 arrangement.

21           (3) All contracts for administrative services,  
22 management services, and provider services other than  
23 individual physician contracts, and all contracts with  
24 affiliated entities, entered into or renewed by an arrangement  
25 on or after October 1, 1991, shall contain a provision that  
26 the contract shall be canceled upon issuance of an order by  
27 the office ~~department~~ pursuant to this section.

28           Section 815. Section 624.4412, Florida Statutes, is  
29 amended to read:

30           624.4412 Policy forms.--

31

1           (1) No policy or contract form, application form,  
2 certificate, rider, endorsement, summary plan description, or  
3 other evidence of coverage shall be issued by an arrangement  
4 unless the form and all changes thereto have been filed with  
5 the office ~~department at its offices in Tallahassee~~ by or on  
6 behalf of the arrangement which proposes to use such form and  
7 have been approved by the office ~~department~~. Filing of all  
8 forms shall be in accordance with the provisions of s.  
9 627.410(2).

10           (2) The office ~~department~~ shall disapprove any form  
11 filed under this section, or withdraw any previous approval  
12 thereof, only if the form:

13           (a) Is in any respect in violation of, or does not  
14 comply with, this code;

15           (b) Contains or incorporates by reference, where such  
16 incorporation is otherwise permissible, any inconsistent,  
17 ambiguous, or misleading clauses, or exceptions and conditions  
18 which deceptively affect the risk purported to be assumed in  
19 the general coverage of the contract;

20           (c) Has any title, heading, or other indication of its  
21 provisions which is misleading;

22           (d) Is printed or otherwise reproduced in such manner  
23 as to render any material provision of the form substantially  
24 illegible; or

25           (e) Contains provisions which are unfair or  
26 inequitable, or contrary to the public policy of this state or  
27 which encourage misrepresentation.

28           Section 816. Section 624.442, Florida Statutes, is  
29 amended to read:

30           624.442 Annual reports; actuarial certification;  
31 quarterly reports; penalties.--

1           (1) Every arrangement shall, annually within 3 months  
2 after the end of the fiscal year or within such extension of  
3 time therefor as the office department for good cause may  
4 grant, file a report with the office department, on forms  
5 prescribed by the commission department, verified by the oath  
6 of a member of the board of trustees and by an administrative  
7 executive appointed by the board, showing its condition on the  
8 last day of the preceding fiscal year. The report shall  
9 contain an audited financial statement of the arrangement  
10 prepared in accordance with statutory accounting principles,  
11 including its balance sheet and a statement of operations for  
12 the preceding year certified by an independent certified  
13 public accountant. The report shall also include an analysis  
14 of the adequacy of reserves and contributions or premiums  
15 charged, based on a review of past and projected claims and  
16 expenses.

17           (2) In addition to information called for and  
18 furnished in connection with the annual report, if reasonable  
19 grounds exist, the office department may request information  
20 which summarizes paid and incurred expenses, and contributions  
21 or premiums received, and may request evidence satisfactory to  
22 the office department that the arrangement is actuarially  
23 sound. Such information and evidence shall be furnished to  
24 the office department by the arrangement as soon as reasonably  
25 possible after requested by the office department, but not  
26 later than 30 days after such request, unless the office  
27 ~~department~~, for good cause, grants an extension.

28           (3) Annually, in conjunction with the annual report  
29 required by subsection (1), each arrangement shall submit an  
30 actuarial certification prepared by an independent actuary  
31 certifying that:

1           (a) The arrangement is actuarially sound. The  
2 certification shall consider the rates, benefits, and expenses  
3 of, and any other funds available for the payment of the  
4 obligations of, the arrangement.

5           (b) The rates being charged and to be charged for  
6 contracts are actuarially adequate through the end of the  
7 period for which rates have been guaranteed.

8           (c) Incurred but not reported claims and claims  
9 reported but not fully paid have been adequately provided for.

10           (d) Such other information relating to the performance  
11 of the arrangement as the commission or office ~~department~~  
12 requires.

13           (4) Each arrangement shall file quarterly, within 45  
14 days after the end of each of its four quarterly reporting  
15 periods, an unaudited financial statement of the arrangement  
16 on forms prescribed by the commission ~~department~~, verified  
17 according to the best of their information, knowledge, and  
18 belief by the oath of a member of the board of trustees and by  
19 an administrative executive appointed by the board showing its  
20 condition on the last day of the preceding quarter.

21           (5) Any arrangement that fails to file an annual  
22 financial report, actuarial report, or quarterly financial  
23 report in the form and within the time required by this  
24 section shall forfeit to the office ~~department~~ an amount set  
25 by order of the office ~~department~~ which does not exceed \$1,000  
26 for each of the first 10 days of noncompliance and does not  
27 exceed \$2,000 for each subsequent day of noncompliance. Upon  
28 notice by the office ~~department~~ that the arrangement is not in  
29 compliance with this section, the arrangement's authority to  
30 enroll new enrollees or to do business in this state ceases  
31 until the office ~~department~~ determines the arrangement to be

1 in compliance. The office ~~department~~ may not collect more  
2 than \$100,000 under this paragraph with respect to any  
3 particular report.

4 (6) All moneys collected by the office ~~department~~  
5 under this section shall be deposited to the credit of the  
6 Insurance ~~Commissioner's~~ Regulatory Trust Fund.

7 (7) Each authorized arrangement must retain an  
8 independent certified public accountant, referred to in this  
9 subsection as "CPA," who agrees by written contract with the  
10 arrangement to comply with ss. 624.436-624.445. The contract  
11 must state that:

12 (a) The CPA will provide to the arrangement audited  
13 financial statements consistent with ss. 624.436-624.445.

14 (b) Any determination by the CPA that the arrangement  
15 does not meet the minimum surplus requirements set forth in  
16 ss. 624.436-624.445 will be stated by the CPA, in writing, in  
17 the audited financial statement.

18 (c) The completed workpapers and any written  
19 communications between the CPA and the arrangement will be  
20 made available for review on a visual inspection-only basis by  
21 the office ~~department~~ at the location ~~offices~~ of the  
22 arrangement, the office ~~department~~, or any other reasonable  
23 place agreeable to both the office ~~department~~ and the  
24 arrangement.

25 (d) The CPA will retain for review the workpapers and  
26 written communications with the arrangement for not less than  
27 6 years.

28 Section 817. Section 624.443, Florida Statutes, is  
29 amended to read:

30 624.443 Place of business; maintenance of  
31 records.--Each arrangement shall have and maintain its

1 principal place of business in this state and shall therein  
2 make available to the office ~~department~~ complete records of  
3 its assets, transactions, and affairs in accordance with such  
4 methods and systems as are customary for, or suitable to, the  
5 kind or kinds of business transacted.

6 Section 818. Section 624.4431, Florida Statutes, is  
7 amended to read:

8 624.4431 Administration; rules.--The administration of  
9 ss. 624.436-624.446 is vested in the commission and office  
10 ~~department~~. The commission may ~~department has authority to~~  
11 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement  
12 the provisions of ss. 624.436-624.446.

13 Section 819. Section 624.444, Florida Statutes, is  
14 amended to read:

15 624.444 Suspension, revocation of approval.--

16 (1) The office ~~department~~ shall deny, suspend, or  
17 revoke an arrangement's certificate of authority if it finds  
18 that the arrangement:

19 (a) Is insolvent;

20 (b) Is using such methods and practices in the conduct  
21 of its business as to render its further transaction of  
22 business in this state hazardous or injurious to its  
23 participating employers, covered employees and dependents, or  
24 to the public;

25 (c) Has failed to pay any final judgment rendered  
26 against it in this state within 60 days after the judgment  
27 became final;

28 (d) Is in violation of any provision of this chapter,  
29 including any requirements for the granting of a certificate  
30 of authority;

31

1 (e) Is no longer actuarially sound or the arrangement  
2 does not have the minimum surplus required by this chapter; or

3 (f) The existing contract rates are inadequate.

4 (2) The office ~~department~~ may, in its discretion,  
5 deny, suspend, or revoke the certificate of authority of any  
6 arrangement if it finds that the arrangement:

7 (a) Has violated any lawful order or rule of the  
8 office or commission ~~department~~ or any applicable provision of  
9 the Florida Insurance Code; or

10 (b) Has refused to be examined or to produce its  
11 accounts, records, and files for examination, or if any of its  
12 officers have refused to give information with respect to its  
13 affairs or to perform any other legal obligation as to such  
14 examination, when required by the office ~~department~~.

15 (3) Whenever the financial condition of the  
16 arrangement is such that, if not modified or corrected, its  
17 continued operation would result in impairment or insolvency,  
18 the department may order the arrangement to file with the  
19 office ~~department~~ and implement a corrective action plan  
20 designed to do one or more of the following:

21 (a) Reduce the total amount of present potential  
22 liability for benefits by reinsurance or other means.

23 (b) Reduce the volume of new business being accepted.

24 (c) Reduce the expenses of the arrangement by  
25 specified methods.

26 (d) Suspend or limit the writing of new business for a  
27 specified period of time.

28 (e) Require an increase in the arrangement's net  
29 worth.

30  
31

1 If the arrangement fails to submit a plan within 30 days after  
2 the office's ~~department's~~ order, or if the plan submitted is  
3 insufficient to correct the arrangement's financial condition,  
4 the office ~~department~~ may order the arrangement to implement  
5 one or more of the corrective actions specified in this  
6 subsection.

7 (4) In any order to suspend the authority of an  
8 arrangement to enroll new subscribers, the office ~~department~~  
9 shall specify the period during which the suspension is to be  
10 in effect and the conditions, if any, which must be met by the  
11 arrangement prior to reinstatement of its authority to enroll  
12 new subscribers. The order of suspension is subject to  
13 rescission or modification by further order of the office  
14 ~~department~~ prior to the expiration of the suspension period.  
15 An arrangement's authority to enroll new subscribers shall not  
16 be reinstated unless it requests reinstatement, and shall not  
17 be reinstated if the office ~~department~~ finds that the  
18 circumstances that gave rise to the suspension still exist.

19 Section 820. Subsection (2) of section 624.445,  
20 Florida Statutes, is amended to read:

21 624.445 Order, notice, duration, effect of suspension  
22 or revocation; administrative fine.--

23 (2) If the office ~~department~~ finds that one or more  
24 grounds exist for the discretionary revocation or suspension  
25 of an arrangement's certificate of authority under ss.  
26 624.436-624.446, the office ~~department~~ may, in lieu of or in  
27 addition to such revocation or suspension, impose a fine upon  
28 such arrangement, in accordance with s. 624.4211.

29 Section 821. Section 624.4435, Florida Statutes, is  
30 transferred, renumbered as section 624.448, Florida Statutes,  
31 and amended to read:

1           624.448 ~~624.4435~~ Assets of insurers; reporting  
2 requirements.--

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

4           (a) "Material acquisition of assets" or "material  
5 disposition of assets" means one or more transactions  
6 occurring during any 30-day period which are nonrecurring and  
7 not in the ordinary course of business and involve more than 5  
8 percent of the reporting insurer's total admitted assets as  
9 reported in its most recent statutory statement filed with the  
10 insurance department of the insurer's state of domicile.

11           (b) "Material nonrenewal, cancellation, or revision of  
12 a ceded reinsurance agreement" is one that affects:

13           1. With respect to property and casualty business,  
14 including accident and health business written by a property  
15 and casualty insurer:

16           a. More than 50 percent of the insurer's total ceded  
17 written premium; or

18           b. More than 50 percent of the insurer's total ceded  
19 indemnity and loss adjustment reserves.

20           2. With respect to life, annuity, and accident and  
21 health business, more than 50 percent of the total reserve  
22 credit taken for business ceded, on an annualized basis, as  
23 indicated in the insurer's most recent annual statement.

24           3. With respect to property and casualty business or  
25 life, annuity, and accident and health business, a material  
26 revision includes:

27           a. The replacement of an authorized reinsurer  
28 representing more than 10 percent of a total cession by one or  
29 more unauthorized reinsurers; or

30           b. The reduction or waiver, with respect to one or  
31 more unauthorized insurers, of previously established

1 collateral requirements representing more than 10 percent of a  
2 total cession.

3 (2) Each domestic insurer shall file a report with the  
4 office ~~Department of Insurance~~ disclosing a material  
5 acquisition of assets, a material disposition of assets, or a  
6 material nonrenewal, cancellation, or revision of a ceded  
7 reinsurance agreement, unless the material acquisition or  
8 disposition of assets or the material nonrenewal,  
9 cancellation, or revision of a ceded reinsurance agreement has  
10 been submitted to the office ~~department~~ for review, approval,  
11 or informational purposes under another section of the Florida  
12 Insurance Code or a rule adopted thereunder. A copy of the  
13 report and each exhibit or other attachment must be filed by  
14 the insurer with the National Association of Insurance  
15 Commissioners. The report required in this section is due  
16 within 15 days after the end of the calendar month in which  
17 the transaction occurs.

18 (3) An immaterial acquisition or disposition of assets  
19 need not be reported under this section.

20 (4)(a) Acquisitions of assets which are subject to  
21 this section include each purchase, lease, exchange, merger,  
22 consolidation, succession, or other acquisition of assets.  
23 Asset acquisitions for the construction or development of real  
24 property by or for the reporting insurer and the acquisition  
25 of construction materials for this purpose are not subject to  
26 this section.

27 (b) Dispositions of assets which are subject to this  
28 section include each sale, lease, exchange, merger,  
29 consolidation, mortgage, hypothecation, assignment for the  
30 benefit of a creditor or otherwise, abandonment, destruction,  
31 or other disposition of assets.

1           (5)(a) The following information must be disclosed in  
2 any report of a material acquisition or disposition of assets:

- 3           1. The date of the transaction;
- 4           2. The manner of acquisition or disposition;
- 5           3. The description of the assets involved;
- 6           4. The nature and amount of the consideration given or  
7 received;
- 8           5. The purpose of, or reason for, the transaction;
- 9           6. The manner by which the amount of consideration was  
10 determined;
- 11           7. The gain or loss recognized or realized as a result  
12 of the transaction; and
- 13           8. The name of the person from whom the assets were  
14 acquired or to whom they were disposed.

15           (b) Insurers must report material acquisitions or  
16 dispositions on a nonconsolidated basis unless the insurer is  
17 part of a consolidated group of insurers which uses a pooling  
18 arrangement or a 100-percent reinsurance agreement that  
19 affects the solvency and integrity of the insurer's reserves  
20 and the insurer has ceded substantially all of its direct and  
21 assumed business to the pool. An insurer is deemed to have  
22 ceded substantially all of its direct and assumed business to  
23 a pool if the insurer has less than \$1 million in total direct  
24 and assumed written premiums during a calendar year which are  
25 not subject to a pooling arrangement and if the net income of  
26 the business which is not subject to the pooling arrangement  
27 represents less than 5 percent of the insurer's capital and  
28 surplus.

29           (6) The nonrenewal, cancellation, or revision of a  
30 ceded reinsurance agreement need not be reported if the  
31 renewal or the revision is not material or if:

1 (a) With respect to property and casualty business,  
2 including accident and health business written by a property  
3 and casualty insurer, the insurer's total ceded written  
4 premium represents, on an annualized basis, less than 10  
5 percent of its total written premium for direct and assumed  
6 business; or

7 (b) With respect to life, annuity, and accident and  
8 health business, the total reserve credit taken for business  
9 ceded represents, on an annualized basis, less than 10 percent  
10 of the statutory reserve requirement before the cession.

11 (7)(a) The following information must be disclosed in  
12 any report of a material nonrenewal, cancellation, or revision  
13 of a ceded reinsurance agreement:

14 1. The effective date of the nonrenewal, cancellation,  
15 or revision;

16 2. The description of the transaction and the  
17 identification of the initiator of the transaction;

18 3. The purpose of, or reason for, the transaction; and

19 4. If applicable, the identity of each replacement  
20 reinsurer.

21 (b) Insurers shall report the material nonrenewal,  
22 cancellation, or revision of a ceded reinsurance agreement on  
23 a nonconsolidated basis unless the insurer is part of a  
24 consolidated group of insurers which uses a pooling  
25 arrangement or a 100-percent reinsurance agreement that  
26 affects the solvency and integrity of the insurer's reserves  
27 and the insurer has ceded substantially all of its direct and  
28 assumed business to the pool. An insurer is deemed to have  
29 ceded substantially all of its direct and assumed business to  
30 a pool if the insurer has less than \$1 million in total direct  
31 and assumed written premiums during a calendar year which are

1 not subject to a pooling arrangement and if the net income of  
2 the business not subject to the pooling arrangement represents  
3 less than 5 percent of the insurer's capital and surplus.

4 Section 822. Subsection (1) of section 624.45, Florida  
5 Statutes, is amended to read:

6 624.45 Participation of financial institutions in  
7 reinsurance and in insurance exchanges.--Subject to applicable  
8 laws relating to financial institutions and to any other  
9 applicable provision of the Florida Insurance Code, any  
10 financial institution or aggregation of such institutions may:

11 (1) Own or control, directly or indirectly, any  
12 insurer which is authorized or approved by the office  
13 ~~department~~, which insurer transacts only reinsurance in this  
14 state and which actively engages in reinsuring risks located  
15 in this state.

16  
17 Nothing in this section shall be deemed to prohibit a  
18 financial institution from engaging in any presently  
19 authorized insurance activity.

20 Section 823. Subsections (1), (2), (3), (4), (5), and  
21 (6) of section 624.4621, Florida Statutes, are amended to  
22 read:

23 624.4621 Group self-insurance funds.--

24 (1) The commission ~~department~~ shall adopt rules that  
25 allow two or more employers to enter into agreements to pool  
26 their liabilities under chapter 440 for the purpose of  
27 qualifying as a group self-insurer's fund, which shall be  
28 classified as a self-insurer, and each employer member of such  
29 approved group shall be known as a group self-insurer's fund  
30 member and shall be classified as a self-insurer as defined in  
31 chapter 440. The agreement entered into under this section may

1 provide that the pool will be liable for 80 percent, and the  
2 employer member will be liable for 20 percent, of the medical  
3 benefits due any employee for an injury compensable under this  
4 chapter up to the amount of \$5,000. One hundred percent of the  
5 medical benefits above \$5,000 due to an employee for one  
6 injury shall be paid by the pool. The agreement may also  
7 provide that each employer member will be responsible for up  
8 to the first \$500 of medical benefits due each of its  
9 employees for each injury. The claim shall be paid by the  
10 pool, regardless of its size, which shall be reimbursed by the  
11 employer for any amounts required to be paid by the employer  
12 under the agreement.

13 (2) The commission ~~department~~ shall adopt rules:

14 (a) Requiring monetary reserves to be maintained by  
15 such self-insurers to insure their financial solvency; and

16 (b) Governing their organization and operation to  
17 assure compliance with such requirements.

18 (3) The commission ~~department~~ shall adopt rules  
19 implementing the reserve requirements in accordance with  
20 accepted actuarial techniques.

21 (4) Any self-insurer established under this section,  
22 except for self-insurers that are state or local governmental  
23 entities, is required to carry reinsurance in accordance with  
24 rules adopted by the commission ~~department~~.

25 (5) A dividend or premium refund of any self-insurer  
26 established under this section, otherwise earned, may not be  
27 made contingent upon continued membership in the fund, renewal  
28 of any policy, or the payment of renewal premiums for  
29 membership in the fund or on any policy issued by such  
30 self-insurer. Before making any dividend or premium refund,  
31

1 the group self-insurer shall submit to the office ~~department~~  
2 the following information:

- 3 (a) An audited certified financial statement.  
4 (b) An annual report of financial condition.  
5 (c) A loss reserve review by a qualified actuary.  
6

7 The required information listed in paragraphs (a)-(c) shall be  
8 submitted annually, no later than 7 months after the end of  
9 the group self-insurer's fund year. A request for such  
10 dividend or premium refund may not be made before the required  
11 information is filed. The request for such dividend or premium  
12 refund must include a resolution of the board of trustees of  
13 the group self-insurer requesting approval of a specific  
14 amount to be distributed. A dividend, premium refund, or  
15 premium discount or credit must not discriminate on the basis  
16 of continued coverage or continued membership in the group  
17 self-insurer. The office ~~department~~ shall review the request  
18 and shall issue a decision within 60 days after the filing.  
19 Failure to issue a decision within 60 days constitutes an  
20 approval of the request. Any dividend or premium refund  
21 approved by the office ~~department~~ for distribution which  
22 cannot be paid to the applicable member or policyholder or  
23 former member or policyholder of the group self-insurer  
24 because the former member or policyholder cannot be reasonably  
25 located shall become the property of the group self-insurer.

26 (6) The office ~~department~~ may impose civil penalties  
27 not to exceed \$100 per occurrence for violations of the  
28 provisions of this chapter or rules adopted pursuant hereto.

29 Section 824. Section 624.4622, Florida Statutes, is  
30 amended to read:

31 624.4622 Local government self-insurance funds.--

1           (1) Any two or more local governmental entities may  
2 enter into interlocal agreements for the purpose of securing  
3 the payment of benefits under chapter 440, provided the local  
4 government self-insurance fund that is created must:

5           (a) Have annual normal premiums in excess of \$5  
6 million;

7           (b) Maintain a continuing program of excess insurance  
8 coverage and reserve evaluation to protect the financial  
9 stability of the fund in an amount and manner determined by a  
10 qualified and independent actuary;

11           (c) Submit annually an audited fiscal year-end  
12 financial statement by an independent certified public  
13 accountant within 6 months after the end of the fiscal year to  
14 the office ~~department~~; and

15           (d) Have a governing body which is comprised entirely  
16 of local elected officials.

17           (2) A local government self-insurance fund that meets  
18 the requirements of this section is not subject to s. 624.4621  
19 and is not required to file any report with the office  
20 ~~department~~ under s. 440.38(2)(b) which is uniquely required of  
21 group self-insurer funds qualified under s. 624.4621. If any  
22 of the requirements of this section are not met, the local  
23 government self-insurance fund is subject to the requirements  
24 of s. 624.4621.

25           Section 825. Section 624.464, Florida Statutes, is  
26 amended to read:

27           624.464 Certificate of authority required;  
28 penalties.--

29           (1) No person shall establish a commercial  
30 self-insurance fund unless such fund is issued a certificate  
31 of authority by the office ~~department~~ pursuant to s. 624.466.

1           (2)(a) Any person failing to hold a subsisting  
2 certificate of authority from the office ~~department~~ while  
3 operating or maintaining a commercial self-insurance fund  
4 shall be subject to a fine of not less than \$5,000 or more  
5 than \$10,000 for each violation.

6           (b) Any person who operates or maintains a commercial  
7 self-insurance fund without a subsisting certificate of  
8 authority from the office ~~department~~ shall be subject to the  
9 cease and desist penalty powers of the office ~~department~~ as  
10 set forth in ss. 626.9571, 626.9581, 626.9591, and 626.9601.

11           (c) In addition to the penalties and other enforcement  
12 provisions of the Florida Insurance Code, the office  
13 ~~department~~ is vested with the power to seek both temporary and  
14 permanent injunctive relief when:

15           1. A commercial self-insurance fund is being operated  
16 by any person or entity without a subsisting certificate of  
17 authority.

18           2. Any person, entity, or commercial self-insurance  
19 fund has engaged in any activity prohibited by the Florida  
20 Insurance Code made applicable by ss. 624.460-624.488 or by  
21 any rule adopted pursuant thereto.

22           3. Any commercial self-insurance fund, person, or  
23 entity is renewing, issuing, or delivering a policy, contract,  
24 certificate, summary plan description, or other evidence of  
25 the benefits and coverages provided to members without a  
26 subsisting certificate of authority.

27  
28 The office's ~~department's~~ authority to seek injunctive relief  
29 shall not be conditioned on having conducted any proceeding  
30 pursuant to chapter 120. The authority vested in the office  
31 ~~department~~ by virtue of the operation of this section shall

1 not act to reduce any other enforcement remedy or power to  
2 seek injunctive relief that may otherwise be available to the  
3 office ~~department~~.

4 Section 826. Section 624.466, Florida Statutes, is  
5 amended to read:

6 624.466 Application requirements for certificate of  
7 authority.--All applications for a certificate of authority  
8 for a commercial self-insurance fund shall be on a form  
9 adopted by the commission and furnished by the office  
10 ~~department~~ and shall include or have attached the following:

11 (1) The name of the fund and the location of the  
12 fund's principal office, which shall be maintained within this  
13 state.

14 (2) The kinds of insurance initially proposed to be  
15 transacted and a copy of each policy, endorsement, and  
16 application form it initially proposes to issue or use.

17 (3) A copy of the constitution, bylaws, or trust  
18 agreement which governs the operation of the fund. The  
19 constitution, bylaws, or trust agreement shall contain a  
20 provision prohibiting any distribution of surplus funds or  
21 profit except to members of the fund, as approved by the  
22 office ~~department~~ pursuant to s. 624.473.

23 (4) The names and addresses of the trustees of the  
24 fund. The office ~~department~~ shall not grant or continue  
25 approval as to any fund if the office ~~department~~ determines  
26 any trustee to be incompetent or untrustworthy; that any  
27 trustee has been found guilty of, or has pled guilty or no  
28 contest to, a felony, a crime involving moral turpitude, or a  
29 crime punishable by imprisonment of 1 year or more under the  
30 law of any state, territory, or country, whether or not a  
31 judgment or conviction has been entered; or that any trustee

1 has had any type of insurance license revoked in this or any  
2 other state.

3 (5) A copy of a properly executed indemnity agreement  
4 binding each fund member to individual, several, and  
5 proportionate liability as set forth in ss. 624.472 and  
6 624.474.

7 (6) A plan of risk management which has established  
8 measures and procedures to minimize both the frequency and  
9 severity of losses.

10 (7) Proof of competent and trustworthy persons to  
11 administer or service the fund in the areas of claims  
12 adjusting, underwriting, risk management, and loss control.

13 (8) Membership applications and the name and address  
14 of each member applying for coverage and a current financial  
15 statement on each member applying for coverage showing the  
16 aggregate net worth of all members to be not less than  
17 \$500,000, a combined ratio of current assets to current  
18 liabilities of more than 1 to 1, and a combined working  
19 capital of an amount establishing financial strength and  
20 liquidity of the businesses to promptly provide for payment of  
21 the normal property or casualty claims proposed to be  
22 self-insured.

23 (9)(a) An initial deposit of cash or securities of the  
24 type eligible for deposit by insurers under s. 625.52 in the  
25 amount of \$100,000.

26 1. All income from deposits shall belong to the fund  
27 and shall be transmitted to the fund as it becomes available.

28 2. No judgment creditor or other claimant of the fund  
29 shall have the right to levy upon any of the assets or  
30 securities held as a deposit under this section.

31

1           (b) In lieu of the deposit of cash or securities, a  
2 fund may file with the office ~~department~~ a surety bond in like  
3 amount. The bond shall be one issued by an authorized surety  
4 insurer, shall be for the same purpose as the deposit in lieu  
5 of which it is filed, and shall be subject to the office's  
6 ~~department's~~ approval.

7           1. No bond shall be approved unless it covers  
8 liabilities arising from all policies and contracts issued and  
9 entered into during the time the bond is in effect and unless  
10 the office ~~department~~ is satisfied that the bond provides the  
11 same degree of security as would be provided by a deposit of  
12 securities.

13           2. No bond shall be canceled or subject to  
14 cancellation unless at least 60 days' advance notice thereof  
15 in writing is filed with the office ~~department~~.

16           (c) Deposits of securities or cash pursuant to this  
17 section shall be administered by the office and department in  
18 accordance with part III of chapter 625.

19           (10)(a) Copies of acceptable excess insurance policies  
20 written by an insurer or insurers authorized or approved to  
21 transact insurance in this state, which excess insurance  
22 provides specific and aggregate limits and retention levels  
23 satisfactory to the office ~~department~~ in accordance with sound  
24 actuarial principles. The office ~~department~~ may waive this  
25 requirement if the fund demonstrates to the satisfaction of  
26 the office ~~department~~ that its operation is and will be  
27 actuarially sound without obtaining excess insurance.

28           (b) At least 10 days prior to the proposed effective  
29 date of the issuance of any policy, the trustees shall submit  
30 proof that the members have paid into a common claims fund in  
31 a designated depository cash premiums in an amount of not less

1 than \$50,000 or 10 percent of the estimated annual premium of  
2 the members at the inception, whichever is greater.

3 (11) A copy of a fidelity bond or insurance policy  
4 from an authorized insurer providing coverage in an amount  
5 equal to not less than 10 percent of the funds handled  
6 annually and issued in the name of the fund covering its  
7 trustees, employees, administrator, or other individuals  
8 managing or handling the funds or assets of the fund. In no  
9 case may such bond or policy be less than \$1,000 or more than  
10 \$500,000, except that the office department may for good cause  
11 prescribe an amount in excess of \$500,000, subject to the  
12 10-percent limitation of the preceding sentence.

13 (12)(a) A plan of operation designed to provide  
14 sufficient revenues to pay current and future liabilities, as  
15 determined in accordance with sound actuarial principles.

16 (b) A statement prepared by an actuary who is a member  
17 of the American Academy of Actuaries or the Casualty Actuarial  
18 Society establishing that the fund has prepared a plan of  
19 operation which is based on sound actuarial principles. The  
20 office department shall not approve the fund unless the office  
21 ~~department~~ determines that the plan established by the fund is  
22 designed to provide sufficient revenues to pay current and  
23 future liabilities, as determined in accordance with sound  
24 actuarial principles.

25 (13) Such additional information as the commission or  
26 office department ~~may reasonably requires~~ require.

27 Section 827. Subsections (1), (4), (6), (8), (9),  
28 (10), and (12) of section 624.468, Florida Statutes, are  
29 amended to read:

30 624.468 Continuing requirements for certificate of  
31 authority.--After issuance of its initial certificate of

1 authority a commercial self-insurance fund shall thereafter  
2 meet the following requirements as a condition of maintaining  
3 its certificate of authority:

4 (1) Maintenance of competent and trustworthy persons  
5 to service the program, as further specified in s. 624.466(7).  
6 Written notice shall be provided to the office ~~department~~  
7 before changing the fund's method of fulfilling its servicing  
8 requirements.

9 (4) Maintenance of excess insurance in accordance with  
10 sound actuarial principles, unless waived by the office  
11 ~~department~~, as further specified in s. 624.466(10).

12 (6) Maintenance of appropriate funded loss reserves  
13 determined in accordance with sound actuarial principles  
14 satisfactory to the office ~~department~~.

15 (8) Each fund shall have and maintain its principal  
16 place of business in this state and shall therein make  
17 available to the office ~~department~~ upon reasonable notice  
18 complete records of its assets, transactions, and affairs in  
19 accordance with such methods and systems as are customary for,  
20 or suitable to, the kind or kinds of business transacted.

21 (9) A fund shall file such reports with the office  
22 ~~department~~ as are required by s. 624.470.

23 (10) A fund shall report to the office ~~department~~  
24 within 15 days of a determination that the actual premiums  
25 written or liability assumed or any other factor which  
26 substantially contributes to the financial condition of the  
27 plan deviates by more than 25 percent from the projections  
28 used in the most recent annual report, as required by s.  
29 624.470 or, if the first annual report has not yet been filed,  
30 projections used in the initial plan of operation.

31

1           (12) A fund shall maintain records which will confirm  
2 that membership in the fund is in accordance with the  
3 constitution or bylaws of the association as required by s.  
4 624.462(3). The office ~~department~~ may request from the fund,  
5 not more than annually, a certification which confirms that  
6 all members of the fund are members of the association and are  
7 in compliance with the constitution or bylaws of the  
8 association and may require that the fund submit a plan,  
9 acceptable to the office ~~department~~, to eliminate membership  
10 that does not comply with s. 624.462(3).

11           Section 828. Paragraph (b) of subsection (1) and  
12 subsection (2) of section 624.470, Florida Statutes, are  
13 amended to read:

14           624.470 Annual reports.--

15           (1)

16           (b) For financial statements filed on or after January  
17 1, 1998, future investment income may only be reported as an  
18 admitted asset by an Assessable Mutual or Self-Insurance Fund  
19 which reported future investment income in financial  
20 statements filed with the Department of Insurance prior to  
21 January 1, 1998.

22           (2) Every fund shall, annually within 6 months of the  
23 end of the fiscal year, file a report with the office  
24 ~~department~~ verified by the oath of a member of the board of  
25 trustees or by an administrative executive appointed by the  
26 board, containing the following information:

27           (a) A financial statement of the fund, including its  
28 balance sheet and a statement of operations for the preceding  
29 year certified by an independent certified public accountant.

30           (b) A report prepared by an actuary who is a member of  
31 the American Academy of Actuaries as to the actuarial

1 soundness of the fund. The report shall consist of, but shall  
2 not be limited to, the following:

3 1. Adequacy of premiums or contributions in paying  
4 claims and changes, if any, needed in the contribution rates  
5 to achieve or preserve a level of funding deemed adequate,  
6 which shall include a valuation of present assets, based on  
7 statement value, and prospective assets and liabilities of the  
8 plan and the extent of any unfunded accrued liabilities.

9 2. A plan to amortize any unfunded liabilities and a  
10 description of actions taken to reduce unfunded liabilities.

11 3. A description and explanation of actuarial  
12 assumptions.

13 4. A schedule illustrating the amortization of any  
14 unfunded liabilities.

15 5. A comparative review illustrating the level of  
16 funds available to the commercial self-insurance fund from  
17 rates, investment income, and other sources realized over the  
18 period covered by the report, indicating the assumptions used.

19 6. A projection of the following year's plan of  
20 operation, including additional number of members, gross  
21 premiums to be written, and projected liabilities.

22 7. A statement by the actuary that the report is  
23 complete and accurate and that in her or his opinion the  
24 techniques and assumptions used are reasonable and meet the  
25 requirements of this subsection.

26 8. Other factors or statements as may be reasonably  
27 required by the office or commission ~~department~~ in order to  
28 determine the actuarial soundness of the plan.

29 (c) Any changes in the constitution, bylaws, or trust  
30 agreement of the fund.

31

1           Section 829. Section 624.473, Florida Statutes, is  
2 amended to read:

3           624.473 Dividends.--A commercial self-insurance fund  
4 shall obtain the approval of the office ~~department~~ prior to  
5 paying any dividend or refund to its members. No such dividend  
6 or refund may be approved until 12 months after the last day  
7 of the fiscal year for which the dividend or refund is  
8 payable, or such later time as the office ~~department~~ may  
9 require in accordance with sound actuarial principles.

10           Section 830. Section 624.4741, Florida Statutes, is  
11 amended to read:

12           624.4741 Venue in assessment actions.--In any action  
13 brought by a self-insurance fund to collect assessments levied  
14 under this chapter, venue lies where the fund maintains its  
15 principal place of business or, if the department, the office,  
16 or the Florida Group Self-Insurers Guaranty Association is a  
17 party to such action, in the Circuit Court of Leon County.

18           Section 831. Subsections (2), (3), and (4) of section  
19 624.476, Florida Statutes, are amended to read:

20           624.476 Impaired self-insurance funds.--

21           (2) If any fund levies an assessment pursuant to  
22 subsection (1), the office ~~department~~ shall require the fund  
23 to consent to administrative supervision under part VI of this  
24 chapter. The office ~~department~~ may waive the requirement to  
25 consent to administrative supervision for good cause.

26           (3) If the trustees fail to make an assessment as  
27 required by subsection (1), the office ~~department~~ shall order  
28 the trustees to do so. If the deficiency is not sufficiently  
29 made up within 60 days after the date of the order, the fund  
30 shall be deemed insolvent and grounds shall exist to proceed  
31 against the fund as provided for in part I of chapter 631.

1           (4) Notwithstanding the requirement of the fund to  
2 make an assessment pursuant to subsection (1) or subsection  
3 (3), the office ~~department~~ may at any time request that the  
4 department ~~to~~ be appointed receiver for purposes of  
5 rehabilitation or liquidation if it is able to demonstrate  
6 that any grounds for rehabilitation or liquidation exist  
7 pursuant to s. 631.051 or s. 631.061.

8           Section 832. Section 624.477, Florida Statutes, is  
9 amended to read:

10           624.477 Liquidation, rehabilitation, reorganization,  
11 and conservation.--Any rehabilitation, liquidation,  
12 conservation, or dissolution of a self-insurance fund shall be  
13 conducted under the supervision of the office and department,  
14 which shall each have all power with respect thereto granted  
15 to the fund under part I of chapter 631 governing the  
16 rehabilitation, liquidation, conservation, or dissolution of  
17 insurers and including all grounds for the appointment of a  
18 receiver contained in ss. 631.051 and 631.061.

19           Section 833. Section 624.480, Florida Statutes, is  
20 amended to read:

21           624.480 Filing, approval, and disapproval of forms.--

22           (1) A basic insurance policy or application form for  
23 which written application is required and is to be a part of  
24 the policy or contract or printed rider or endorsement form  
25 may not be issued by a self-insurance fund unless the form has  
26 been filed with and approved by the office ~~department~~.

27           (2) Every such filing shall be made not less than 30  
28 days in advance of any such use or delivery. At the expiration  
29 of such 30 days, the form so filed shall be deemed approved  
30 unless prior thereto it has been affirmatively approved or  
31 disapproved by order of the office ~~department~~. The office

1 ~~department~~ may extend by not more than an additional 15 days  
2 the period within which it may so affirmatively approve or  
3 disapprove any such form, by giving notice of such extension  
4 before expiration of the initial 30-day period. At the  
5 expiration of any such period as so extended, and in the  
6 absence of such prior affirmative approval or disapproval, any  
7 such form must be deemed approved.

8 (3) The office ~~department~~ shall disapprove any form or  
9 withdraw any previous approval thereof only, if the form:

10 (a) Is in any respect in violation of, or does not  
11 comply with, this code.

12 (b) Contains or incorporates by reference, when such  
13 incorporation is otherwise permissible, any inconsistent,  
14 ambiguous, or misleading clauses, or any exceptions and  
15 conditions which deceptively affect the risk purported to be  
16 assumed in the general coverage of the contract.

17 (c) Has any title, heading, or other indication of its  
18 provisions which is misleading.

19 (d) Is printed or otherwise reproduced in such manner  
20 as to render any material provision of such form substantially  
21 illegible.

22 Section 834. Subsections (1), (5), (6), (7), and (8)  
23 of section 624.482, Florida Statutes, are amended to read:

24 624.482 Making and use of rates.--

25 (1) With respect to all classes of insurance which a  
26 self-insurance fund underwrites, the rates must not be  
27 excessive, inadequate, or unfairly discriminatory. In  
28 determining what rates, including credits and surcharges, are  
29 excessive, inadequate, or unfairly discriminatory, the office  
30 ~~department~~ shall apply the same standards applicable to other  
31 insurers regulated by the office ~~department~~.

1           (5) If the office ~~department~~ determines that the  
2 continued use of a rate for a coverage endangers the solvency  
3 of the fund, it may issue an order requiring the rate to be  
4 increased or requiring the fund to limit or cease writing the  
5 coverage.

6           (6) A fund shall have the burden of proving that a  
7 rate filed is adequate if, during the first 5 years of issuing  
8 policies, the fund files a rate that is below the rate for  
9 loss and loss adjustment expenses for the same type and  
10 classification of insurance that has been filed by the  
11 Insurance Services Office and approved by the office  
12 ~~department~~.

13           (7) Nothing herein shall be construed to prohibit the  
14 office ~~department~~ from examining a fund pursuant to s.  
15 624.3161.

16           (8) A self-insurance fund shall file its rates,  
17 including credits and surcharge schedules, with the office  
18 ~~department~~ for approval pursuant to the standards of this  
19 section and the procedures of s. 624.480(2).

20           Section 835. Section 624.484, Florida Statutes, is  
21 amended to read:

22           624.484 Registration of agent.--A self-insurance fund  
23 shall register with and designate the Chief Financial Officer  
24 ~~Insurance Commissioner~~ as its agent solely for the purpose of  
25 receiving service of legal documents or process.

26           Section 836. Section 624.486, Florida Statutes, is  
27 amended to read:

28           624.486 Examination.--Self-insurance funds licensed  
29 under ss. 624.460-624.488 are subject to periodic examination  
30 by the office ~~department~~ in the same manner and subject to the  
31

1 same terms and conditions applicable to insurers under part II  
2 of this chapter.

3 Section 837. Section 624.487, Florida Statutes, is  
4 amended to read:

5 624.487 Enforcement of specified insurance provisions;  
6 adoption of rules.--The office ~~department~~ may enforce, with  
7 respect to group self-insurance funds established or operated  
8 under s. 624.4621, the provisions of s. 624.316, s. 624.424,  
9 s. 625.091, or s. 625.305 as they relate to workers'  
10 compensation insurers, and the commission may adopt rules to  
11 implement the enforcement authority granted by this section.

12 Section 838. Section 624.501, Florida Statutes, is  
13 amended to read:

14 624.501 Filing, license, appointment, and  
15 miscellaneous fees.--The department, commission, or office, as  
16 appropriate, shall collect in advance, and persons so served  
17 shall pay to it in advance, fees, licenses, and miscellaneous  
18 charges as follows:

- 19 (1) Certificate of authority of insurer.  
20 (a) Filing application for original certificate of  
21 authority or modification thereof as a result of a merger,  
22 acquisition, or change of controlling interest due to a sale  
23 or exchange of stock, including all documents required to be  
24 filed therewith, filing fee.....\$1,500.00  
25 (b) Reinstatement fee.....\$50.00  
26 (2) Charter documents of insurer.  
27 (a) Filing articles of incorporation or other charter  
28 documents, other than at time of application for original  
29 certificate of authority, filing fee.....\$10.00

30  
31

1           (b) Filing amendment to articles of incorporation or  
2 charter, other than at time of application for original  
3 certificate of authority, filing fee.....\$5.00  
4           (c) Filing bylaws, when required, or amendments  
5 thereof, filing fee.....\$5.00  
6           (3) Annual license tax of insurer, each domestic  
7 insurer, foreign insurer, and alien insurer (except that, as  
8 to fraternal benefit societies insuring less than 200 members  
9 in this state and the members of which as a prerequisite to  
10 membership possess a physical handicap or disability, such  
11 license tax shall be \$25).....\$1,000.00  
12           (4) Statements of insurer, filing (except when filed  
13 as part of application for original certificate of authority),  
14 filing fees:  
15           (a) Annual statement.....\$250.00  
16           (b) Quarterly statement.....\$250.00  
17           (5) All insurance representatives, application for  
18 license, each filing, filing fee.....\$50.00  
19           (6) Insurance representatives, property, marine,  
20 casualty, and surety insurance.  
21           (a) Agent's original appointment and biennial renewal  
22 or continuation thereof, each insurer:  
23           Appointment fee.....\$42.00  
24           State tax.....12.00  
25           County tax.....6.00  
26 Total.....\$60.00  
27           (b) Solicitor's or customer representative's original  
28 appointment and biennial renewal or continuation thereof:  
29           Appointment fee.....\$42.00  
30           State tax.....12.00  
31           County tax.....6.00

1	Total.....	\$60.00
2	(c) Nonresident agent's original appointment and	
3	biennial renewal or continuation thereof, appointment fee,	
4	each insurer.....	\$60.00
5	(d) Service representatives; managing general agents.	
6	Original appointment and biennial renewal or	
7	continuation thereof, each insurer or managing general agent,	
8	whichever is applicable.....	\$60.00
9	(7) Life insurance agents.	
10	(a) Agent's original appointment and biennial renewal	
11	or continuation thereof, each insurer:	
12	Appointment fee.....	\$42.00
13	State tax.....	12.00
14	County tax.....	6.00
15	Total.....	\$60.00
16	(b) Nonresident agent's original appointment and	
17	biennial renewal or continuation thereof, appointment fee,	
18	each insurer.....	\$60.00
19	(8) Health insurance agents.	
20	(a) Agent's original appointment and biennial renewal	
21	or continuation thereof, each insurer:	
22	Appointment fee.....	\$42.00
23	State tax.....	12.00
24	County tax.....	6.00
25	Total.....	\$60.00
26	(b) Nonresident agent's original appointment and	
27	biennial renewal or continuation thereof, appointment fee,	
28	each insurer.....	\$60.00
29	(9) All limited appointments as agent, as provided for	
30	in s. 626.321. Agent's original appointment and biennial	
31	renewal or continuation thereof, each insurer:	

1	Appointment fee.....	\$42.00	
2	State tax.....	12.00	
3	County tax.....	6.00	
4	Total.....	\$60.00	
5	(10) Fraternal benefit society agents. Original		
6	appointment and biennial renewal or continuation thereof, each		
7	insurer:		
8	Appointment fee.....	\$42.00	
9	State tax.....	12.00	
10	County tax.....	6.00	
11	Total.....	\$60.00	
12	(11) Surplus lines agent. Agent's appointment and		
13	biennial renewal or continuation thereof, appointment fee		
14	.....	\$150.00	
15	(12) Adjusters:		
16	(a) Adjuster's original appointment and biennial		
17	renewal or continuation thereof, appointment fee.....		\$60.00
18	(b) Nonresident adjuster's original appointment and		
19	biennial renewal or continuation thereof, appointment fee		
20	.....	\$60.00	
21	(c) Emergency adjuster's license, appointment fee		
22	.....	\$10.00	
23	(d) Fee to cover actual cost of credit report, when		
24	such report must be secured by <u>office</u> <del>department</del> .		
25	(13) Examination--Fee to cover actual cost of		
26	examination.		
27	(14) Temporary license and appointment as agent or		
28	adjuster, where expressly provided for, rate of fee for each		
29	month of the period for which the license and appointment is		
30	issued.....	\$5.00	
31			

- 1           (15) Issuance, reissuance, reinstatement, modification  
2 resulting in a modified license being issued, duplicate copy  
3 of any insurance representative license, or an appointment  
4 being reinstated.....\$5.00  
5           (16) Additional appointment continuation fees as  
6 prescribed in chapter 626.....\$5.00  
7           (17) Filing application for permit to form insurer as  
8 referred to in chapter 628, filing fee.....\$25.00  
9           (18) Annual license fee of rating organization, each  
10 domestic or foreign organization.....\$25.00  
11           (19) Miscellaneous services:  
12           (a) For copies of documents or records on file with  
13 the department, commission, or office per page.....\$ .50  
14           (b) For each certificate of the department,  
15 commission, or office under its seal, authenticating any  
16 document or other instrument (other than a license or  
17 certificate of authority).....\$5.00  
18           (c) For preparing lists of agents, solicitors,  
19 adjusters, and other insurance representatives, and for other  
20 miscellaneous services, such reasonable charge as may be fixed  
21 by the office or department.  
22           (d) For processing requests for approval of continuing  
23 education courses, processing fee.....\$100.00  
24           (e) Insurer's registration fee for agent exchanging  
25 business more than 24 times in calendar year under s. 626.752,  
26 s. 626.793, or s. 626.837, registration fee per agent per year  
27 .....\$30.00  
28           (20) Insurance agency or adjusting firm, 3-year  
29 license.....\$60.00  
30           (21) Limited surety agent or professional bail bond  
31 agent, as defined in s. 648.25, each agent and each insurer

1 represented. Original appointment and biennial renewal or  
2 continuation thereof, each agent or insurer, whichever is  
3 applicable:  
4       Appointment fee.....\$44.00  
5       State tax.....24.00  
6       County tax.....12.00  
7 Total.....\$80.00  
8       (22) Certain military installations, as authorized  
9 under s. 626.322: original appointment and biennial renewal  
10 or continuation thereof, each insurer.....\$20.00  
11       (23) Filing application for original certificate of  
12 authority for third-party administrator or original  
13 certificate of approval for a service company, including all  
14 documents required to be filed therewith, filing fee...\$100.00  
15       (24) Fingerprinting processing fee--Fee to cover  
16 fingerprint processing.  
17       (25) Sales representatives, miscellaneous lines.  
18 Original appointment and biennial renewal or continuation  
19 thereof, appointment fee.....\$60.00  
20       (26) Reinsurance intermediary:  
21       (a) Application filing and license fee.....\$50.00  
22       (b) Original appointment and biennial renewal or  
23 continuation thereof, appointment fee.....\$60.00  
24       (27) Title insurance agents:  
25       (a) Agent's original appointment or biennial renewal  
26 or continuation thereof, each insurer:  
27       Appointment fee.....\$42.00  
28       State tax.....12.00  
29       County tax.....6.00  
30 Total.....\$60.00  
31

1 (b) Agency original appointment or biennial renewal or  
2 continuation thereof, each insurer:  
3 Appointment fee.....\$42.00  
4 State tax.....12.00  
5 County tax.....6.00  
6 Total.....\$60.00  
7 (c) Filing for title insurance agent's license:  
8 Application for filing, each filing, filing fee..\$10.00  
9 (d) Additional appointment continuation fee as  
10 prescribed by s. 626.843.....\$5.00  
11 (e) Title insurer and title insurance agency  
12 administrative surcharge:  
13 1. On or before January 30 of each calendar year, each  
14 title insurer shall pay to the office ~~department~~ for each  
15 licensed title insurance agency appointed by the title insurer  
16 and for each retail office of the insurer on January 1 of that  
17 calendar year an administrative surcharge of \$200.00.  
18 2. On or before January 30 of each calendar year, each  
19 licensed title insurance agency shall remit to the department  
20 an administrative surcharge of \$200.00.  
21  
22 The administrative surcharge may be used solely to defray the  
23 costs to the department and office in their ~~its~~ examination or  
24 audit of title insurance agencies and retail offices of title  
25 insurers and to gather title insurance data for statistical  
26 purposes to be furnished to and used by the office in its  
27 regulation of title insurance.  
28 Section 839. Subsection (1) of section 624.5015,  
29 Florida Statutes, is amended to read:  
30 624.5015 Advance collection of fees and taxes; title  
31 insurers not to pay without reimbursement.--

1           (1) The department or the office ~~of Insurance~~ shall  
2 collect in advance from the applicant or licensee fees and  
3 taxes as provided in s. 624.501.

4           Section 840. Section 624.502, Florida Statutes, is  
5 amended to read:

6           624.502 Service of process fee.--In all instances as  
7 provided in any section of the insurance code and s. 48.151(3)  
8 in which service of process is authorized to be made upon the  
9 Chief Financial Officer or the director of the office  
10 ~~Insurance Commissioner and Treasurer~~, the plaintiff shall pay  
11 to the department or office a fee of \$15 for such service of  
12 process, which fee shall be deposited into the Insurance  
13 ~~Commissioner's~~ Regulatory Trust Fund.

14           Section 841. Subsections (1) and (3) of section  
15 624.506, Florida Statutes, are amended to read:

16           624.506 County tax; deposit and remittance.--

17           (1) The department ~~Insurance Commissioner and~~  
18 ~~Treasurer~~ shall deposit in the Agents and Solicitors County  
19 Tax Trust Fund all moneys accepted as county tax under this  
20 part. She or he shall keep a separate account for all moneys  
21 so collected for each county and, after deducting therefrom  
22 the service charges provided for in s. 215.20, shall remit the  
23 balance to the counties.

24           (3) The Chief Financial Officer ~~Comptroller~~ shall  
25 annually, as of January 1 following the date of collection,  
26 and thereafter at such other times as she or he ~~the Insurance~~  
27 ~~Commissioner and Treasurer~~ may elect, draw her or his warrants  
28 on the State Treasury payable to the respective counties  
29 entitled to receive the same for the full net amount of such  
30 taxes to each county.

31

1           Section 842. Paragraph (b) of subsection (5) of  
2 section 624.509, Florida Statutes, is amended to read:

3           624.509 Premium tax; rate and computation.--

4           (5) There shall be allowed a credit against the net  
5 tax imposed by this section equal to 15 percent of the amount  
6 paid by the insurer in salaries to employees located or based  
7 within this state and who are covered by the provisions of  
8 chapter 443. For purposes of this subsection:

9           (b) The term "employees" does not include independent  
10 contractors or any person whose duties require that the person  
11 hold a valid license under the Florida Insurance Code, except  
12 persons defined in s. 626.015(1), (15)~~(16)~~, and (17)~~(18)~~.

13           Section 843. Subsection (5) of section 624.5091,  
14 Florida Statutes, is amended to read:

15           624.5091 Retaliatory provision, insurers.--

16           (5) The excess amount of all fees, licenses, and taxes  
17 collected by the Department of Revenue under this section over  
18 the amount of similar fees, licenses, and taxes provided for  
19 in this part, together with all fines, penalties, or other  
20 monetary obligations collected under this section and ss.  
21 626.711 and 626.743 exclusive of such fees, licenses, and  
22 taxes, shall be deposited by the Department of Revenue to the  
23 credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund;  
24 provided that such excess amount shall not exceed \$125,000 for  
25 1992, and for any subsequent year shall not exceed \$125,000  
26 adjusted annually by the lesser of 20 percent or the growth in  
27 the total of such excess amount. The remainder of such excess  
28 amount shall be deposited into the General Revenue Fund.

29           Section 844. Subsection (1) of section 624.5092,  
30 Florida Statutes, is amended to read:

31           624.5092 Administration of taxes; payments.--

1           (1) The Department of Revenue shall administer, audit,  
2 and enforce the assessment and collection of those taxes to  
3 which this section is applicable. The office and department  
4 may ~~Department of Insurance is authorized to~~ share information  
5 with the Department of Revenue as necessary to verify premium  
6 tax or other tax liability arising under such taxes and  
7 credits which may apply thereto.

8           Section 845. Section 624.516, Florida Statutes, is  
9 amended to read:

10           624.516 State Fire Marshal regulatory assessment and  
11 surcharge; deposit and use of funds.--

12           (1) The regulatory assessment imposed under s.  
13 624.515(1) and the surcharge imposed under s. 624.515(2) shall  
14 be deposited by the Department of Revenue, when received and  
15 audited, into the Insurance ~~Commissioner's~~ Regulatory Trust  
16 Fund.

17           (2) The moneys received and deposited in the funds, as  
18 provided in subsection (1), are appropriated for use by the  
19 Chief Financial Officer ~~State Treasurer~~ as ex officio State  
20 Fire Marshal, hereinafter referred to as "State Fire Marshal,"  
21 to defray the expenses of the State Fire Marshal in the  
22 discharge of her or his administrative and regulatory powers  
23 and duties as prescribed by law, including the maintaining of  
24 offices and necessary supplies therefor, essential equipment  
25 and other materials, salaries and expenses of required  
26 personnel, and all other legitimate expenses relating to the  
27 discharge of the administrative and regulatory powers and  
28 duties imposed in and charged to her or him under such laws.

29           (3) If, at the end of any fiscal year, a balance of  
30 funds remains in the Insurance ~~Commissioner's~~ Regulatory Trust  
31 Fund, such balance shall not revert to the general fund of the

1 state, but shall be retained in the Insurance ~~Commissioner's~~  
2 Regulatory Trust Fund to be used for the purposes for which  
3 the moneys are appropriated as set forth in subsection (2).

4 Section 846. Section 624.517, Florida Statutes, is  
5 amended to read:

6 624.517 State Fire Marshal regulatory assessment;  
7 reduction of assessment.--

8 (1) The office ~~Department of Insurance~~ shall ascertain  
9 on or before December 1 of each year whether the amounts  
10 estimated to be received from the regulatory assessment  
11 imposed under s. 624.515 for that calendar year, payable on or  
12 before the following March 1, as herein prescribed, shall  
13 result in an accumulation of funds in excess of the just  
14 requirements for which the assessment is imposed as set forth  
15 in s. 624.516; and if it determines that the imposition of the  
16 full amount of the assessment would result in such excess, it  
17 may reduce the percentage amount of the assessment for that  
18 calendar year to such percentage as may be necessary to meet  
19 the just requirements for which the assessment is imposed.

20 (2) When a determination is made so reducing the  
21 amount of the assessment, the department shall make and issue  
22 its order setting forth such determination and fixing the  
23 amount of assessment for that calendar year, payable on or  
24 before March 1 of the following year, and shall mail a copy of  
25 such order to each insurer who, according to the records of  
26 the office ~~department~~, is subject to the assessment.

27 Section 847. Section 624.519, Florida Statutes, is  
28 amended to read:

29 624.519 Nonpayment of premium tax or fire marshal  
30 assessment; penalty.--If any insurer fails to pay to the  
31 Department of Revenue on or before March 1 in each and every

1 year any premium taxes required of it under s. 624.509 or s.  
2 624.510, or any state fire marshal regulatory assessment  
3 required of it under s. 624.515 or s. 624.517, the office  
4 ~~Department of Insurance~~ may revoke its certificate of  
5 authority.

6 Section 848. Subsection (1) of section 624.521,  
7 Florida Statutes, is amended to read:

8 624.521 Deposit of certain tax receipts; refund of  
9 improper payments.--

10 (1) The Department of Financial Services ~~Insurance~~  
11 shall promptly deposit in the State Treasury to the credit of  
12 the Insurance ~~Commissioner's~~ Regulatory Trust Fund all "state  
13 tax" portions of agents' and solicitors' licenses collected  
14 under s. 624.501 necessary to fund the Division of Insurance  
15 Fraud. The balance of the tax shall be credited to the General  
16 Fund. All moneys received by the Department of Financial  
17 Services or the office ~~Insurance~~ not in accordance with the  
18 provisions of this code or not in the exact amount as  
19 specified by the applicable provisions of this code shall be  
20 returned to the remitter. The records of the department or  
21 office shall show the date and reason for such return.

22 Section 849. Section 624.523, Florida Statutes, is  
23 amended to read:

24 624.523 Insurance ~~Commissioner's~~ Regulatory Trust  
25 Fund.--

26 (1) There is created in the State Treasury a trust  
27 fund designated "Insurance ~~Commissioner's~~ Regulatory Trust  
28 Fund" to which shall be credited all payments received on  
29 account of the following items:

30  
31

- 1           (a) All fines, monetary penalties, and costs imposed  
2 upon persons by the department or the office as authorized by  
3 law for violation of the laws of this state.
- 4           (b) Any sums received for copies of the stenographic  
5 record of hearings, as authorized by law.
- 6           (c) All sums received under s. 624.404(5).
- 7           (d) All sums received under s. 624.5091, as provided  
8 in subsection (5) thereof.
- 9           (e) All payments received on account of items provided  
10 for under respective provisions of s. 624.501, as follows:
- 11           1. Subsection (1) (certificate of authority of  
12 insurer).
- 13           2. Subsection (2) (charter documents of insurer).
- 14           3. Subsection (3) (annual license tax of insurer).
- 15           4. Subsection (4) (annual statement of insurer).
- 16           5. Subsection (5) (application fee for insurance  
17 representatives).
- 18           6. The "appointment fee" portion of any appointment  
19 provided for under paragraphs (6)(a) and (b) (insurance  
20 representatives, property, marine, casualty and surety  
21 insurance, and agents).
- 22           7. Paragraph (6)(c) (nonresident agents).
- 23           8. Paragraph (6)(d) (service representatives).
- 24           9. The "appointment fee" portion of any appointment  
25 provided for under paragraph (7)(a) (life insurance agents,  
26 original appointment, and renewal or continuation of  
27 appointment).
- 28           10. Paragraph (7)(b) (nonresident agent license).
- 29           11. The "appointment fee" portion of any appointment  
30 provided for under paragraph (8)(a) (health insurance agents,  
31 agent's appointment, and renewal or continuation fee).

- 1           12. Paragraph (8)(b) (nonresident agent appointment).  
2           13. The "appointment fee" portion of any appointment  
3 provided for under subsections (9) and (10) (limited licenses  
4 and fraternal benefit society agents).  
5           14. Subsection (11) (vending machines).  
6           15. Subsection (12) (surplus lines agent).  
7           16. Subsection (13) (adjusters' appointment).  
8           17. Subsection (14) (examination fee).  
9           18. Subsection (15) (temporary license and appointment  
10 as agent or adjuster).  
11           19. Subsection (16) (reissuance, reinstatement, etc.).  
12           20. Subsection (17) (additional license continuation  
13 fees).  
14           21. Subsection (18) (filing application for permit to  
15 form insurer).  
16           22. Subsection (19) (license fee of rating  
17 organization).  
18           23. Subsection (20) (miscellaneous services).  
19           24. Subsection (21) (insurance agencies).  
20           (f) All payments received on account of actuarial and  
21 other services in the valuation or computation of the reserves  
22 of life insurers pursuant to s. 625.121(2).  
23           (g) All sums received under ss. 626.711 and 626.743.  
24           (h) Sums received under s. 626.932, as provided in  
25 subsection (5) thereof.  
26           (i) Sums received under s. 626.938, as provided in  
27 subsection (7) thereof.  
28           (j) All sums received under s. 627.828.  
29           (k) All sums received from motor vehicle service  
30 agreement companies under s. 634.221.  
31

1           (1) All sums received under s. 648.27 (bail bond  
2 agent, limited surety agent, continuation fee), the  
3 "appointment fee" portion of any license or permit provided  
4 for under s. 648.31, and the application fees provided for  
5 under s. 648.34(3)~~ss. 648.34(3) and 648.37(3)~~.

6           (m) All sums received under s. 651.015.

7           (n) All sums received by the Chief Financial Officer  
8 or the director of the office ~~Insurance Commissioner and~~  
9 ~~Treasurer~~ as fees for her or his services as  
10 service-of-process agent.

11           (o) All state tax portions of agents' licenses  
12 collected under s. 624.501.

13           (2) The moneys so received and deposited in this  
14 regulatory trust fund are hereby appropriated for use by the  
15 department and the office to defray the expenses of the  
16 department and the office in the discharge of their ~~its~~  
17 administrative and regulatory powers and duties as prescribed  
18 by law.

19           Section 850. Paragraph (q) of section 624.6012,  
20 Florida Statutes, is amended to read:

21           624.6012 "Lines of insurance" defined.--Kinds of  
22 insurance shall be classified into "lines of insurance." The  
23 commission ~~department~~ shall adopt by rule the lines of  
24 insurance to be utilized. Such lines of insurance shall be  
25 consistent with the reporting requirements of the National  
26 Association of Insurance Commissioners.

27           Section 851. Paragraph (q) of subsection (1) of  
28 section 624.605, Florida Statutes, is amended to read:

29           624.605 "Casualty insurance" defined.--

30           (1) "Casualty insurance" includes:  
31

1           (q) Miscellaneous.--When first approved by the office  
2 ~~department~~ as not being contrary to law or public policy nor  
3 covered by any other kind of insurance as defined in the code,  
4 insurance against liability for any other kind of loss or  
5 damage to person or property, properly a subject of insurance  
6 and not within any other kind of insurance as defined in this  
7 code.

8           Section 852. Subsection (3) of section 624.607,  
9 Florida Statutes, is amended to read:

10           624.607 "Marine insurance," "wet marine and  
11 transportation insurance," and "inland marine insurance"  
12 defined.--

13           (3) For the purposes of this code, "inland marine  
14 insurance" is as established by general custom of the  
15 insurance business and promulgated by rule of the commission  
16 ~~department~~.

17           Section 853. Subsection (6) of section 624.609,  
18 Florida Statutes, is amended to read:

19           624.609 Limit of risk.--

20           (6) "Surplus to policyholders" for the purposes of  
21 this section, in addition to the insurer's capital and  
22 surplus, shall be deemed to include any voluntary reserves  
23 which are not required pursuant to law and shall be determined  
24 from the last sworn statement of the insurer on file with the  
25 office ~~department~~, or by the last report of examination of the  
26 insurer, whichever is the more recent at time of assumption of  
27 risk.

28           Section 854. Subsections (1), (3), (4), (5), (7),  
29 (11), (12), and (14) of section 624.610, Florida Statutes, are  
30 amended to read:

31           624.610 Reinsurance.--

1           (1) The purpose of this section is to protect the  
2 interests of insureds, claimants, ceding insurers, assuming  
3 insurers, and the public. It is the intent of the Legislature  
4 to ensure adequate regulation of insurers and reinsurers and  
5 adequate protection for those to whom they owe obligations.  
6 In furtherance of that state interest, the Legislature  
7 requires that upon the insolvency of a non-United States  
8 insurer or reinsurer which provides security to fund its  
9 United States obligations in accordance with this section,  
10 such security shall be maintained in the United States and  
11 claims shall be filed with and valued by the state insurance  
12 regulator ~~Commissioner~~ with regulatory oversight, and the  
13 assets shall be distributed in accordance with the insurance  
14 laws of the state in which the trust is domiciled that are  
15 applicable to the liquidation of domestic United States  
16 insurance companies. The Legislature declares that the  
17 matters contained in this section are fundamental to the  
18 business of insurance in accordance with 15 U.S.C. ss.  
19 1011-1012.

20           (3)(a) Credit must be allowed when the reinsurance is  
21 ceded to an assuming insurer that is authorized to transact  
22 insurance or reinsurance in this state.

23           (b)1. Credit must be allowed when the reinsurance is  
24 ceded to an assuming insurer that is accredited as a reinsurer  
25 in this state. An accredited reinsurer is one that:

26           a. Files with the office ~~department~~ evidence of its  
27 submission to this state's jurisdiction;

28           b. Submits to this state's authority to examine its  
29 books and records;

30           c. Is licensed or authorized to transact insurance or  
31 reinsurance in at least one state or, in the case of a United

1 States branch of an alien assuming insurer, is entered  
2 through, licensed, or authorized to transact insurance or  
3 reinsurance in at least one state;

4 d. Files annually with the office ~~department~~ a copy of  
5 its annual statement filed with the insurance department of  
6 its state of domicile any quarterly statements if required by  
7 its state of domicile or such quarterly statements if  
8 specifically requested by the office ~~department~~, and a copy of  
9 its most recent audited financial statement; and

10 (I) Maintains a surplus as regards policyholders in an  
11 amount not less than \$20 million and whose accreditation has  
12 not been denied by the office ~~department~~ within 90 days after  
13 its submission; or

14 (II) Maintains a surplus as regards policyholders in  
15 an amount not less than \$20 million and whose accreditation  
16 has been approved by the office ~~department~~.

17 2. The office ~~department~~ may deny or revoke an  
18 assuming insurer's accreditation if the assuming insurer does  
19 not submit the required documentation pursuant to subparagraph  
20 1., if the assuming insurer fails to meet all of the standards  
21 required of an accredited reinsurer, or if the assuming  
22 insurer's accreditation would be hazardous to the  
23 policyholders of this state. In determining whether to deny or  
24 revoke accreditation, the office ~~department~~ may consider the  
25 qualifications of the assuming insurer with respect to all the  
26 following subjects:

- 27 a. Its financial stability;
- 28 b. The lawfulness and quality of its investments;
- 29 c. The competency, character, and integrity of its  
30 management;

31

1           d. The competency, character, and integrity of persons  
2 who own or have a controlling interest in the assuming  
3 insurer; and

4           e. Whether claims under its contracts are promptly and  
5 fairly adjusted and are promptly and fairly paid in accordance  
6 with the law and the terms of the contracts.

7           3. Credit must not be allowed a ceding insurer if the  
8 assuming insurer's accreditation has been revoked by the  
9 office ~~department~~ after notice and the opportunity for a  
10 hearing.

11           4. The actual costs and expenses incurred by the  
12 office ~~department~~ to review a reinsurer's request for  
13 accreditation and subsequent reviews must be charged to and  
14 collected from the requesting reinsurer. If the reinsurer  
15 fails to pay the actual costs and expenses promptly when due,  
16 the office ~~department~~ may refuse to accredit the reinsurer or  
17 may revoke the reinsurer's accreditation.

18           (c)1. Credit must be allowed when the reinsurance is  
19 ceded to an assuming insurer that maintains a trust fund in a  
20 qualified United States financial institution, as defined in  
21 paragraph (5)(b), for the payment of the valid claims of its  
22 United States ceding insurers and their assigns and successors  
23 in interest. To enable the office ~~department~~ to determine the  
24 sufficiency of the trust fund, the assuming insurer shall  
25 report annually to the office ~~department~~ information  
26 substantially the same as that required to be reported on the  
27 NAIC Annual Statement form by authorized insurers. The  
28 assuming insurer shall submit to examination of its books and  
29 records by the office ~~department~~ and bear the expense of  
30 examination.

31

1           2.a. Credit for reinsurance must not be granted under  
2 this subsection unless the form of the trust and any  
3 amendments to the trust have been approved by:

4           (I) The insurance regulator ~~commissioner~~ of the state  
5 in which the trust is domiciled; or

6           (II) The insurance regulator ~~commissioner~~ of another  
7 state who, pursuant to the terms of the trust instrument, has  
8 accepted principal regulatory oversight of the trust.

9           b. The form of the trust and any trust amendments must  
10 be filed with the insurance regulator ~~commissioner~~ of every  
11 state in which the ceding insurer beneficiaries of the trust  
12 are domiciled. The trust instrument must provide that  
13 contested claims are valid and enforceable upon the final  
14 order of any court of competent jurisdiction in the United  
15 States. The trust must vest legal title to its assets in its  
16 trustees for the benefit of the assuming insurer's United  
17 States ceding insurers and their assigns and successors in  
18 interest. The trust and the assuming insurer are subject to  
19 examination as determined by the insurance regulator  
20 ~~commissioner~~.

21           c. The trust remains in effect for as long as the  
22 assuming insurer has outstanding obligations due under the  
23 reinsurance agreements subject to the trust. No later than  
24 February 28 of each year, the trustee of the trust shall  
25 report to the insurance regulator ~~commissioner~~ in writing the  
26 balance of the trust and list the trust's investments at the  
27 preceding year end, and shall certify that the trust will not  
28 expire prior to the following December 31.

29           3. The following requirements apply to the following  
30 categories of assuming insurer:

31

1           a. The trust fund for a single assuming insurer  
2 consists of funds in trust in an amount not less than the  
3 assuming insurer's liabilities attributable to reinsurance  
4 ceded by United States ceding insurers, and, in addition, the  
5 assuming insurer shall maintain a trustee surplus of not less  
6 than \$20 million. The funds in the trust and trustee surplus  
7 consist of assets of a quality substantially similar to that  
8 required in part II of chapter 625.

9           b.(I) In the case of a group including incorporated  
10 and individual unincorporated underwriters:

11           (A) For reinsurance ceded under reinsurance agreements  
12 with an inception, amendment, or renewal date on or after  
13 August 1, 1995, the trust consists of a trustee account in an  
14 amount not less than the group's several liabilities  
15 attributable to business ceded by United States domiciled  
16 ceding insurers to any member of the group;

17           (B) For reinsurance ceded under reinsurance agreements  
18 with an inception date on or before July 31, 1995, and not  
19 amended or renewed after that date, notwithstanding the other  
20 provisions of this section, the trust consists of a trustee  
21 account in an amount not less than the group's several  
22 insurance and reinsurance liabilities attributable to business  
23 written in the United States; and

24           (C) In addition to these trusts, the group shall  
25 maintain in trust a trustee surplus of which \$100 million  
26 must be held jointly for the benefit of the United States  
27 domiciled ceding insurers of any member of the group for all  
28 years of account.

29           (II) The incorporated members of the group must not be  
30 engaged in any business other than underwriting of a member of  
31 the group, and are subject to the same level of regulation and

1 solvency control by the group's domiciliary regulator as the  
2 unincorporated members.

3 (III) Within 90 days after its financial statements  
4 are due to be filed with the group's domiciliary regulator,  
5 the group shall provide to the insurance regulator  
6 ~~commissioner~~ an annual certification by the group's  
7 domiciliary regulator of the solvency of each underwriter  
8 member or, if a certification is unavailable, financial  
9 statements, prepared by independent public accountants, of  
10 each underwriter member of the group.

11 (d) Credit must be allowed when the reinsurance is  
12 ceded to an assuming insurer not meeting the requirements of  
13 paragraph (a), paragraph (b), or paragraph (c), but only as to  
14 the insurance of risks located in jurisdictions in which the  
15 reinsurance is required to be purchased by a particular entity  
16 by applicable law or regulation of that jurisdiction.

17 (e) If the assuming insurer is not authorized or  
18 accredited to transact insurance or reinsurance in this state  
19 pursuant to paragraph (a) or paragraph (b), the credit  
20 permitted by paragraph (c) must not be allowed unless the  
21 assuming insurer agrees in the reinsurance agreements:

22 1.a. That in the event of the failure of the assuming  
23 insurer to perform its obligations under the terms of the  
24 reinsurance agreement, the assuming insurer, at the request of  
25 the ceding insurer, shall submit to the jurisdiction of any  
26 court of competent jurisdiction in any state of the United  
27 States, will comply with all requirements necessary to give  
28 the court jurisdiction, and will abide by the final decision  
29 of the court or of any appellate court in the event of an  
30 appeal; and

31

1           b. To designate the Chief Financial Officer  
2 ~~commissioner~~, pursuant to s. 48.151, or a designated attorney  
3 as its true and lawful attorney upon whom may be served any  
4 lawful process in any action, suit, or proceeding instituted  
5 by or on behalf of the ceding company.

6           2. This paragraph is not intended to conflict with or  
7 override the obligation of the parties to a reinsurance  
8 agreement to arbitrate their disputes, if this obligation is  
9 created in the agreement.

10           (f) If the assuming insurer does not meet the  
11 requirements of paragraph (a) or paragraph (b), the credit  
12 permitted by paragraph (c) is not allowed unless the assuming  
13 insurer agrees in the trust agreements, in substance, to the  
14 following conditions:

15           1. Notwithstanding any other provisions in the trust  
16 instrument, if the trust fund is inadequate because it  
17 contains an amount less than the amount required by paragraph  
18 (c), or if the grantor of the trust has been declared  
19 insolvent or placed into receivership, rehabilitation,  
20 liquidation, or similar proceedings under the laws of its  
21 state or country of domicile, the trustee shall comply with an  
22 order of the insurance regulator ~~commissioner~~ with regulatory  
23 oversight over the trust or with an order of a United States  
24 court of competent jurisdiction directing the trustee to  
25 transfer to the insurance regulator ~~commissioner~~ with  
26 regulatory oversight all of the assets of the trust fund.

27           2. The assets must be distributed by and claims must  
28 be filed with and valued by the insurance regulator  
29 ~~commissioner~~ with regulatory oversight in accordance with the  
30 laws of the state in which the trust is domiciled which are  
31 applicable to the liquidation of domestic insurance companies.

1           3. If the insurance regulator ~~commissioner~~ with  
2 regulatory oversight determines that the assets of the trust  
3 fund or any part thereof are not necessary to satisfy the  
4 claims of the United States ceding insurers of the grantor of  
5 the trust, the assets or part thereof must be returned by the  
6 insurance regulator ~~commissioner~~ with regulatory oversight to  
7 the trustee for distribution in accordance with the trust  
8 agreement.

9           4. The grantor shall waive any right otherwise  
10 available to it under United States law which is inconsistent  
11 with this provision.

12           (4) An asset allowed or a deduction from liability  
13 taken for the reinsurance ceded by an insurer to an assuming  
14 insurer not meeting the requirements of subsections (2) and  
15 (3) is allowed in an amount not exceeding the liabilities  
16 carried by the ceding insurer. The deduction must be in the  
17 amount of funds held by or on behalf of the ceding insurer,  
18 including funds held in trust for the ceding insurer, under a  
19 reinsurance contract with the assuming insurer as security for  
20 the payment of obligations thereunder, if the security is held  
21 in the United States subject to withdrawal solely by, and  
22 under the exclusive control of, the ceding insurer, or, in the  
23 case of a trust, held in a qualified United States financial  
24 institution, as defined in paragraph (5)(b). This security may  
25 be in the form of:

- 26           (a) Cash in United States dollars;  
27           (b) Securities listed by the Securities Valuation  
28 Office of the National Association of Insurance Commissioners  
29 and qualifying as admitted assets pursuant to part II of  
30 chapter 625;

31

1 (c) Clean, irrevocable, unconditional letters of  
2 credit, issued or confirmed by a qualified United States  
3 financial institution, as defined in paragraph (5)(a),  
4 effective no later than December 31 of the year for which the  
5 filing is made, and in the possession of, or in trust for, the  
6 ceding company on or before the filing date of its annual  
7 statement; or

8 (d) Any other form of security acceptable to the  
9 office ~~department~~.

10 (5)(a) For purposes of paragraph (4)(c) regarding  
11 letters of credit, a "qualified United States financial  
12 institution" means an institution that:

13 1. Is organized or, in the case of a United States  
14 office of a foreign banking organization, is licensed under  
15 the laws of the United States or any state thereof;

16 2. Is regulated, supervised, and examined by United  
17 States or state authorities having regulatory authority over  
18 banks and trust companies; and

19 3. Has been determined by either the office ~~department~~  
20 or the Securities Valuation Office of the National Association  
21 of Insurance Commissioners to meet such standards of financial  
22 condition and standing as are considered necessary and  
23 appropriate to regulate the quality of financial institutions  
24 whose letters of credit will be acceptable to the office  
25 ~~department~~.

26 (b) For purposes of those provisions of this law which  
27 specify institutions that are eligible to act as a fiduciary  
28 of a trust, a "qualified United States financial institution"  
29 means an institution that is a member of the Federal Reserve  
30 System or that has been determined by the office ~~department~~ to  
31 meet the following criteria:

1           1. Is organized or, in the case of a United States  
2 branch or agency office of a foreign banking organization, is  
3 licensed under the laws of the United States or any state  
4 thereof and has been granted authority to operate with  
5 fiduciary powers; and

6           2. Is regulated, supervised, and examined by federal  
7 or state authorities having regulatory authority over banks  
8 and trust companies.

9           (7) After notice and an opportunity for a hearing, the  
10 office ~~department~~ may disallow any credit that it finds would  
11 be contrary to the proper interests of the policyholders or  
12 stockholders of a ceding domestic insurer.

13           (11)(a) Any domestic or commercially domiciled insurer  
14 ceding directly written risks of loss under this section  
15 shall, within 30 days after receipt of a cover note or similar  
16 confirmation of coverage, or, without exception, no later than  
17 6 months after the effective date of the reinsurance treaty,  
18 file with the office ~~department~~ one copy of a summary  
19 statement containing the following information about each  
20 treaty:

- 21           1. The contract period;
- 22           2. The nature of the reinsured's business;
- 23           3. An indication as to whether the treaty is  
24 proportional, nonproportional, coinsurance, modified  
25 coinsurance, or indemnity, as applicable;
- 26           4. The ceding company's loss retention per risk;
- 27           5. The reinsured limits;
- 28           6. Any special contract restrictions;
- 29           7. A schedule of reinsurers assuming the risks of  
30 loss;

31

1           8. An indication as to whether payments to the  
2 assuming insurer are based on written premiums or earned  
3 premiums;

4           9. Identification of any intermediary or broker used  
5 in obtaining the reinsurance and the commission paid to such  
6 intermediary or broker if known; and

7           10. Ceding commissions and allowances.

8           (b) The summary statement must be signed and attested  
9 to by either the chief executive officer or the chief  
10 financial officer of the reporting insurer. In addition to the  
11 summary statement, the office ~~Insurance Commissioner~~ may  
12 require the filing of any supporting information relating to  
13 the ceding of such risks as it ~~she or he~~ deems necessary. If  
14 the summary statement prepared by the ceding insurer discloses  
15 that the net effect of a reinsurance treaty or treaties (or  
16 series of treaties with one or more affiliated reinsurers  
17 entered into for the purpose of avoiding the following  
18 threshold amount) at any time results in an increase of more  
19 than 25 percent to the insurer's surplus as to policyholders,  
20 then the insurer shall certify in writing to the office  
21 ~~department~~ that the relevant reinsurance treaty or treaties  
22 comply with the accounting requirements contained in any rule  
23 adopted by the commission ~~department~~ under subsection (14). If  
24 such certificate is filed after the summary statement of such  
25 reinsurance treaty or treaties, the insurer shall refile the  
26 summary statement with the certificate. In any event, the  
27 certificate must state that a copy of the certificate was sent  
28 to the reinsurer under the reinsurance treaty.

29           (c) This subsection applies to cessions of directly  
30 written risk or loss. This subsection does not apply to  
31 contracts of facultative reinsurance or to any ceding insurer

1 with surplus as to policyholders that exceeds \$100 million as  
2 of the immediately preceding December 31. Additionally, any  
3 ceding insurer otherwise subject to this section with less  
4 than \$500,000 in direct premiums written in this state during  
5 the preceding calendar year or with less than 1,000  
6 policyholders at the end of the preceding calendar year is  
7 exempt from the requirements of this subsection. However, any  
8 ceding insurer otherwise subject to this section with more  
9 than \$250,000 in direct premiums written in this state during  
10 the preceding calendar quarter is not exempt from the  
11 requirements of this subsection.

12 (d) An authorized insurer not otherwise exempt from  
13 the provisions of this subsection shall provide the  
14 information required by this subsection with underlying and  
15 supporting documentation upon written request of the office  
16 ~~department~~.

17 (e) The office ~~department~~ may, upon a showing of good  
18 cause, waive the requirements of this subsection.

19 (12) If the office ~~department~~ finds that a reinsurance  
20 agreement creates a substantial risk of insolvency to either  
21 insurer entering into the reinsurance agreement, the office  
22 ~~department~~ may by order require a cancellation of the  
23 reinsurance agreement.

24 (14) The commission ~~department~~ may adopt rules  
25 implementing the provisions of this section. Rules are  
26 authorized to protect the interests of insureds, claimants,  
27 ceding insurers, assuming insurers, and the public. These  
28 rules shall be in substantial compliance with:

29 (a) The National Association of Insurance  
30 Commissioners model regulations relating to credit for  
31 reinsurance;

1           (b) ~~Version 2001~~ of The National Association of  
2 Insurance Commissioners Accounting Practices and Procedures  
3 Manual as of March 2002 and subsequent amendments thereto if  
4 the methodology remains substantially consistent; and

5           (c) The National Association of Insurance  
6 Commissioners model regulation for Credit for Reinsurance and  
7 Life and Health Reinsurance Agreements.

8  
9 The commission ~~department~~ may further adopt rules to provide  
10 for transition from existing requirements for the approval of  
11 reinsurers to the accreditation of reinsurers pursuant to this  
12 section.

13           Section 855. Subsections (2) and (3) of section  
14 624.80, Florida Statutes, are amended to read:

15           624.80 Definitions.--As used in this part:

16           (2) "Unsound condition" means that the office  
17 ~~department~~ has determined that one or more of the following  
18 conditions exist with respect to an insurer:

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

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

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

27           (d) The insurer meets one or more of the grounds in s.  
28 631.051 for the appointment of the department as receiver.

29           (3) "Exceeded its powers" means the following  
30 conditions:

31

1 (a) The insurer has refused to permit examination by  
2 the office ~~department~~ of its books, papers, accounts, records,  
3 or business practices;

4 (b) An insurer organized in this state has unlawfully  
5 removed from this state books, papers, accounts, or records  
6 necessary for an examination of the insurer by the office  
7 ~~department~~;

8 (c) The insurer has failed to promptly comply with the  
9 applicable financial reporting statutes and office  
10 ~~departmental~~ requests relating thereto;

11 (d) The insurer has neglected or refused to observe an  
12 order of the office ~~department~~ to correct a deficiency in its  
13 capital or surplus; or

14 (e) The insurer has unlawfully or in violation of an  
15 office ~~a department~~ order:

16 1. Totally reinsured its entire outstanding business;  
17 or

18 2. Merged or consolidated substantially its entire  
19 property or business with another insurer.

20 Section 856. Section 624.81, Florida Statutes, is  
21 amended to read:

22 624.81 Notice to comply with written requirements of  
23 office ~~department~~; noncompliance.--

24 (1) If the office ~~department~~ determines that the  
25 conditions set forth in subsection (2) exist, the office  
26 ~~department~~ shall issue an order placing the insurer in  
27 administrative supervision, setting forth the reasons giving  
28 rise to the determination, and specifying that the office  
29 ~~department~~ is applying and effectuating the provisions of this  
30 part. An order issued by the office ~~department~~ pursuant to  
31 this subsection entitles the insurer to request a proceeding

1 under ss. 120.569 and 120.57, and such a request shall stay  
2 the action pending such proceeding.

3 (2) An insurer shall be subject to administrative  
4 supervision by the office ~~department~~ if upon examination or at  
5 any other time the office ~~department~~ determines that:

6 (a) The insurer is in unsound condition;

7 (b) The insurer's methods or practices render the  
8 continuance of its business hazardous to the public or to its  
9 insureds; or

10 (c) The insurer has exceeded its powers granted under  
11 its certificate of authority and applicable law.

12 (3) Within 15 days of receipt of notice of the  
13 office's ~~department's~~ determination to proceed under this  
14 part, an insurer shall submit to the office ~~department~~ a plan  
15 to correct the conditions set forth in the notice. For good  
16 cause shown, the office ~~department~~ may extend the 15-day time  
17 period for submission of the plan. If the office ~~department~~  
18 and the insurer agree on a corrective plan, a written  
19 agreement shall be entered into to carry out the plan.

20 (4) If an insurer fails to timely submit a plan, the  
21 office ~~department~~ may specify the requirements of a plan to  
22 address the conditions giving rise to imposition of  
23 administrative supervision under this part. In addition,  
24 failure of the insurer to timely submit a plan is a violation  
25 of the provisions of this code punishable in accordance with  
26 s. 624.418.

27 (5) The plan shall address, but shall not be limited  
28 to, each of the activities of the insurer's business which are  
29 set forth in s. 624.83.

30 (6) If the office ~~department~~ and the insurer are  
31 unable to agree on the provisions of the plan, the office

1 ~~department~~ may require the insurer to take such corrective  
2 action as may be reasonably necessary to remove the causes and  
3 conditions giving rise to the need for administrative  
4 supervision.

5 (7) The insurer shall have 60 days, or a longer period  
6 of time as designated by the office ~~department~~ but not to  
7 exceed 120 days, after the date of the written agreement or  
8 the receipt of the office's ~~department's~~ plan within which to  
9 comply with the requirements of the office ~~department~~. At the  
10 conclusion of the initial period of supervision, the office  
11 ~~department~~ may extend the supervision in increments of 60 days  
12 or longer, not to exceed 120 days, if conditions justifying  
13 supervision exist. Each extension of supervision shall provide  
14 the insurer with a point of entry pursuant to chapter 120.

15 (8) The initiation or pendency of administrative  
16 proceedings arising from actions taken under this section  
17 shall not preclude the office ~~department~~ from initiating  
18 judicial proceedings to place an insurer in conservation,  
19 rehabilitation, or liquidation or initiating other delinquency  
20 proceedings however designated under the laws of this state.

21 (9) If it is determined that the conditions giving  
22 rise to administrative supervision have been remedied so that  
23 the continuance of its business is no longer hazardous to the  
24 public or to its insureds, the office ~~department~~ shall release  
25 the insurer from supervision.

26 (10) The commission ~~department~~ may adopt rules to  
27 define standards of hazardous financial condition and  
28 corrective action substantially similar to that indicated in  
29 the National Association of Insurance Commissioners' 1997  
30 "Model Regulation to Define Standards and Commissioner's  
31 Authority for Companies Deemed to be in Hazardous Financial

1 Condition," which are necessary to implement the provisions of  
2 this part.

3 Section 857. Subsections (1), (2), (3), and (4) of  
4 section 624.82, Florida Statutes, are amended to read:

5 624.82 Confidentiality of certain proceedings and  
6 records.--

7 (1) Orders, notices, correspondence, reports, records,  
8 and other information in the possession of the office  
9 ~~department~~ relating to the supervision of any insurer are  
10 confidential and exempt from the provisions of s. 119.07(1),  
11 except as otherwise provided in this section. Proceedings and  
12 hearings relating to the office's ~~department's~~ supervision of  
13 any insurer are exempt from the provisions of s. 286.011,  
14 except as otherwise provided in this section.

15 (2) The personnel of the department and the office  
16 shall have access to proceedings, hearings, notices,  
17 correspondence, reports, records, or other information as  
18 permitted by the office ~~department~~.

19 (3) The office ~~department~~ may open the proceedings or  
20 hearings or disclose the contents of the notices,  
21 correspondence, reports, records, or other information to a  
22 department, agency, or instrumentality of this or another  
23 state or the United States if it determines that the  
24 disclosure is necessary or proper for the enforcement of the  
25 laws of the United States or of this or another state of the  
26 United States.

27 (4) The office ~~department~~ may open the proceedings or  
28 hearings or make public the notices, correspondence, reports,  
29 records, or other information if the office ~~department~~ finds  
30 that it is in the best interest of the public, the insurer in  
31 supervision, or its insureds.

1           Section 858. Section 624.83, Florida Statutes, is  
2 amended to read:

3           624.83 Prohibited acts during period of  
4 supervision.--The office ~~department~~ may provide that the  
5 insurer may not conduct the following activities during the  
6 period of supervision, without prior approval by the office  
7 ~~department~~:

8           (1) Dispose of, convey, or encumber any of its assets  
9 or its business in force;

10           (2) Withdraw any of its bank accounts;

11           (3) Lend any of its funds;

12           (4) Invest any of its funds;

13           (5) Transfer any of its property;

14           (6) Incur any debt, obligation, or liability;

15           (7) Merge or consolidate with another company;

16           (8) Enter into any new reinsurance contract or treaty;

17           (9) Terminate, surrender, forfeit, convert, or lapse  
18 any insurance policy, certificate, or contract of insurance,  
19 except for nonpayment of premiums due;

20           (10) Release, pay, or refund premium deposits, accrued  
21 cash or loan values, unearned premiums, or other reserves on  
22 any insurance policy or certificate; or

23           (11) Make any material change in management.

24           Section 859. Section 624.84, Florida Statutes, is  
25 amended to read:

26           624.84 Review.--During the period of supervision, the  
27 insurer may contest an action taken or proposed to be taken by  
28 the supervisor, specifying the manner wherein the action  
29 complained of would not result in improving the condition of  
30 the insurer. Such request shall not stay the action specified  
31 pending reconsideration of the action by the office

1 ~~department~~. Denial of the insurer's request upon  
2 reconsideration entitles the insurer to request a proceeding  
3 under ss. 120.569 and 120.57.

4 Section 860. Section 624.85, Florida Statutes, is  
5 amended to read:

6 624.85 Administrative election of proceedings.--If the  
7 office ~~department~~ determines to act under authority of this  
8 part, the sequence of its acts and proceedings shall be as set  
9 forth herein. However, it is a purpose and substance of this  
10 part to allow the office ~~department~~ administrative discretion  
11 in the event of insurer delinquencies and, in furtherance of  
12 that purpose, the office ~~department~~ is hereby authorized, in  
13 respect to insurer delinquencies or suspected delinquencies,  
14 to proceed and administer either under the provisions of this  
15 part or under any other applicable law, or under the  
16 provisions of this part in conjunction with other applicable  
17 law, and it is so provided. Nothing contained in this part or  
18 in any other provision of law shall preclude the office  
19 ~~department~~ from initiating judicial proceedings to place an  
20 insurer in conservation, rehabilitation, or liquidation  
21 proceedings or other delinquency proceedings however  
22 designated under the laws of this state, regardless of whether  
23 the office ~~department~~ has previously initiated administrative  
24 supervision proceedings under this part against the insurer.  
25 The entry of an order of seizure, rehabilitation, or  
26 liquidation pursuant to chapter 631 shall terminate all  
27 proceedings pending pursuant to this part.

28 Section 861. Section 624.86, Florida Statutes, is  
29 amended to read:

30 624.86 Other laws; conflicts; meetings between the  
31 office ~~department~~ and the supervisor.--During the period of

1 administrative supervision, the office ~~department~~ may meet  
2 with a supervisor appointed under this part and with the  
3 attorney or other representative of the supervisor and such  
4 meetings are exempt from the provisions of s. 286.011.

5 Section 862. Section 624.87, Florida Statutes, is  
6 amended to read:

7 624.87 Administrative supervision; expenses.--

8 (1) During the period of supervision the office  
9 ~~department~~ by contract or otherwise may appoint a deputy  
10 supervisor to supervise the insurer.

11 (2) Each insurer which is subject to administrative  
12 supervision by the office ~~department~~ shall pay to the office  
13 ~~department~~ the expenses of its administrative supervision at  
14 the rates adopted by the office ~~department~~. Expenses shall  
15 include actual travel expenses, a reasonable living expense  
16 allowance, compensation of the deputy supervisor or other  
17 person employed or appointed by the office ~~department~~ for  
18 purposes of the supervision, and necessary attendant  
19 administrative costs of the office ~~department~~ directly related  
20 to the supervision. The travel expense and living expense  
21 allowance shall be limited to those expenses necessarily  
22 incurred on account of the administrative supervision and  
23 shall be paid by the insurer together with compensation upon  
24 presentation by the office ~~department~~ to the insurer of a  
25 detailed account of the charges and expenses after a detailed  
26 statement has been filed by the deputy supervisor or other  
27 person employed or appointed by the office ~~department~~ and  
28 approved by the office ~~department~~.

29 (3) All moneys collected from insurers for the  
30 expenses of administrative supervision shall be deposited into  
31 the Insurance ~~Commissioner's~~ Regulatory Trust Fund, and the

1 ~~office department~~ is authorized to make deposits from time to  
2 time into this fund from moneys appropriated for the operation  
3 of the office department.

4 (4) Notwithstanding the provisions of s. 112.061, the  
5 ~~office department~~ is authorized to pay to the deputy  
6 supervisor or person employed or appointed by the office  
7 ~~department~~ for purposes of the supervision out of such trust  
8 fund the actual travel expenses, reasonable living expense  
9 allowance, and compensation in accordance with the statement  
10 filed with the office department by the deputy supervisor or  
11 other person, as provided in subsection (2), upon approval by  
12 the office department.

13 (5) The office department may in whole or in part  
14 defer payment of expenses due from the insurer pursuant to  
15 this section upon a showing that payment would adversely  
16 impact on the financial condition of the insurer and  
17 jeopardize its rehabilitation. The payment shall be made by  
18 the insurer when the condition is removed and the payment  
19 would no longer jeopardize the insurer's financial condition.

20 Section 863. Section 625.01115, Florida Statutes, is  
21 amended to read:

22 625.01115 Definitions.--As used in this chapter, the  
23 term "statutory accounting principles" means accounting  
24 principles as defined in the National Association of Insurance  
25 Commissioners Accounting Practices and Procedures Manual as of  
26 March 2002 and subsequent amendments thereto if the  
27 methodology remains substantially consistent ~~effective January~~  
28 ~~1, 2001~~.

29 Section 864. Paragraph (d) of subsection (2),  
30 paragraphs (a) and (c) of subsection (5), and subsections

31

1 (10), (13), and (16) of section 625.012, Florida Statutes, are  
2 amended to read:

3           625.012 "Assets" defined.--In any determination of the  
4 financial condition of an insurer, there shall be allowed as  
5 "assets" only such assets as are owned by the insurer and  
6 which consist of:

7           (2) Investments, securities, properties, and loans  
8 acquired or held in accordance with this code, and in  
9 connection therewith the following items:

10           (d) Interest due or accrued on deposits in solvent  
11 banks, savings and loan associations, and trust companies, and  
12 interest due or accrued on other assets, if such interest is  
13 in the judgment of the office ~~department~~ a collectible asset.

14           (5)(a) Premiums in the course of collection, other  
15 than for life insurance, not more than 3 months past due, less  
16 commissions payable thereon. The foregoing limitation shall  
17 not apply to premiums payable directly or indirectly by the  
18 United States Government or by any of its instrumentalities.  
19 All premiums, excluding commissions payable thereon, due from  
20 a controlling or controlled person shall not be allowed as an  
21 asset to the extent that:

22           1. The premiums collected by the controlling or  
23 controlled person and not remitted to the insurer are not held  
24 in a trust account with a bank or other depository approved by  
25 the office ~~department~~. Such funds shall be held as trust funds  
26 and may not be commingled with any other funds of the  
27 controlling or controlled person. Disbursements from the trust  
28 account may be made only to the insurer, the insured, or, for  
29 the purpose of returning premiums, an entity who is entitled  
30 to returned premiums on behalf of the insured. A written copy  
31 of the trust agreement must be filed with and approved by the

1 office department prior to its becoming effective. However,  
2 the investment income derived from the trust may be allocated  
3 as the parties deem proper. A controlling or controlled person  
4 shall deposit premiums collected into the trust account within  
5 15 working days after collection;

6         2. The controlling or controlled person has not  
7 provided to the insurer and the insurer has not maintained in  
8 its possession an unexpired, clean irrevocable letter of  
9 credit, payable to the insurer, issued for a term of not less  
10 than 1 year and in conformity with the requirements set forth  
11 in this subparagraph, the amount of which equals or exceeds  
12 the liability of the controlling or controlled person to the  
13 insurer, at all times during the period which the letter of  
14 credit is in effect, for premiums collected by the controlling  
15 or controlled person. The requirements are that such letter of  
16 credit be issued under arrangements satisfactory to the office  
17 ~~department~~ and that the letter be issued by a banking  
18 institution which is a member of the Federal Reserve System  
19 and which has a financial standing satisfactory to the office  
20 ~~department~~;

21         3. The controlling or controlled person has not  
22 provided to the insurer and the insurer maintained in its  
23 possession evidence that the controlling or controlled person  
24 has purchased and has currently in effect a financial guaranty  
25 bond, payable to the insurer, issued for a term of not less  
26 than 1 year and which is in conformity with the requirements  
27 set forth in this subparagraph, the amount of which equals or  
28 exceeds the liability of the controlling or controlled person  
29 to the insurer, at all times during which the financial  
30 guaranty bond is in effect, for the premiums collected by the  
31 controlling or controlled person. The requirements are that

1 such a financial guaranty bond shall be issued under an  
2 arrangement satisfactory to the office ~~department~~ and that the  
3 financial guaranty bond be issued by an insurer authorized to  
4 transact such business in Florida and which has a financial  
5 standing satisfactory to the office ~~department~~ and which is  
6 neither controlled nor controlling in relation to either the  
7 insurer or the person for whom the bond is purchased; or

8 4. A financial evaluation indicates that the  
9 controlling or controlled person is unlikely to have the  
10 ability to pay such premiums as they become due. The financial  
11 evaluation shall be based on a review of the books and records  
12 of the controlling or controlled person.

13 (c) The office ~~department~~ shall disapprove any trust  
14 agreement filed pursuant to paragraph (a) which does not  
15 assure the safety of the premiums collected.

16 (10) Deposits or equities recoverable from  
17 underwriting associations, syndicates, and reinsurance funds,  
18 or from any suspended banking institution, to the extent  
19 deemed by the office ~~department~~ available for the payment of  
20 losses and claims and at values to be determined by it.

21 (13) Loans or advances by an insurer to its parent or  
22 principal owner if approved by the office ~~department~~.

23 (16) Other assets, not inconsistent with the  
24 provisions of this section, deemed by the office ~~department~~ to  
25 be available for the payment of losses and claims, at values  
26 to be determined by it.

27 Section 865. Paragraph (d) of subsection (2) of  
28 section 625.041, Florida Statutes, is amended to read:

29 625.041 Liabilities, in general.--In any determination  
30 of the financial condition of an insurer, liabilities to be  
31 charged against its assets shall include:

1           (2) With reference to life and health insurance and  
2 annuity contracts:

3           (d) Any additional reserves that may be required by  
4 the office ~~department~~ consistent with practice formulated or  
5 approved by the National Association of Insurance  
6 Commissioners or its successor organization, on account of  
7 such insurance, including contract and premium deficiency  
8 reserves.

9           Section 866. Subsection (2) of section 625.051,  
10 Florida Statutes, is amended to read:

11           625.051 Unearned premium reserve.--

12           (2) The office ~~department~~ may require that such  
13 reserves be equal to the unearned portions of the gross  
14 premiums in force after deducting applicable reinsurance in  
15 solvent insurers as computed on each respective risk from the  
16 date of issue of the policy. If the office ~~department~~ does not  
17 so require, the portions of the gross premium in force, less  
18 applicable reinsurance in solvent insurers, to be held as an  
19 unearned premium reserve, shall be computed according to the  
20 following table:

21	22	23
	Term for which policy	Reserve for unearned
	was written	premium
24		
25	1 year or less.....	1/2
26	2 years.....	1st year-- 3/4
27		2nd year-- 1/4
28	3 years.....	1st year-- 5/6
29		2nd year-- 1/2
30		3rd year-- 1/6
31	4 years.....	1st year-- 7/8

1		2nd year-- 5/8
2		3rd year-- 3/8
3		4th year-- 1/8
4	5 years.....	1st year-- 9/10
5		2nd year-- 7/10
6		3rd year-- 1/2
7		4th year-- 3/10
8		5th year-- 1/10
9	Over 5 years.....	pro rata

10  
11           Section 867. Section 625.061, Florida Statutes, is  
12 amended to read:

13           625.061 Unearned premium reserve for marine and  
14 transportation insurance.--As to marine and transportation  
15 insurance, the entire amount of premiums on trip risks not  
16 terminated shall be deemed unearned; and the office ~~department~~  
17 may require the insurer to carry a reserve equal to 100  
18 percent of premiums on trip risks written during the month  
19 ended as of the date of statement.

20           Section 868. Section 625.071, Florida Statutes, is  
21 amended to read:

22           625.071 Special reserve for bail and judicial  
23 bonds.--In lieu of the unearned premium reserve required on  
24 surety bonds under s. 625.051, the office ~~department~~ may  
25 require any surety insurer or limited surety insurer to set up  
26 and maintain a reserve on all bail bonds or other  
27 single-premium bonds without definite expiration date,  
28 furnished in judicial proceedings, equal to the lesser of 35  
29 percent of the bail premiums in force or \$7 per \$1,000 of bail  
30 liability. Such reserve shall be reported as a liability in  
31 financial statements required to be filed with the office

1 ~~department~~. Each insurer shall file a supplementary schedule  
2 showing bail premiums in force and bail liability and the  
3 associated special reserve for bail and judicial bonds with  
4 financial statements required by s. 624.424. Bail premiums in  
5 force do not include amounts retained by licensed bail bond  
6 agents or licensed managing general agents, but may not be  
7 less than 6.5 percent of the total consideration received for  
8 all bail bonds in force.

9           Section 869. Section 625.081, Florida Statutes, is  
10 amended to read:

11           625.081 Reserve for health insurance.--For all health  
12 insurance policies, the insurer shall maintain an active life  
13 reserve which places a sound value on the insurer's  
14 liabilities under such policies; is not less than the reserve  
15 according to appropriate standards set forth in rules issued  
16 by the commission ~~department~~; and, in no event, is less in the  
17 aggregate than the pro rata gross unearned premiums for such  
18 policies.

19           Section 870. Paragraph (d) of subsection (4) of  
20 section 625.091, Florida Statutes, is amended to read:

21           625.091 Losses and loss adjustment expense reserves;  
22 liability insurance and workers' compensation insurance.--The  
23 reserve liabilities recorded in the insurer's annual statement  
24 and financial statements for unpaid losses and loss adjustment  
25 expenses shall be the estimated value of its claims when  
26 ultimately settled and shall be computed as follows:

27           (4)

28           (d)1. Beginning in calendar year 1998, each insurer  
29 shall separately identify anticipated recoveries from the  
30 Special Disability Trust Fund on the annual statement required  
31 to be filed pursuant to s. 624.424.

1           2. For all financial statements filed with the office  
2 ~~department beginning in calendar year 1998~~, each insurer shall  
3 disclose in the notes to the financial statements of any  
4 financial statement required to be filed pursuant to s.  
5 624.424 any credit in loss reserves taken for anticipated  
6 recoveries from the Special Disability Trust Fund. That  
7 disclosure shall include:

8           a. The amount of credit taken by the insurer in the  
9 determination of its loss reserves for the prior calendar year  
10 and the current reporting period on a year-to-date basis.

11           b. The amount of payments received by the insurer from  
12 the Special Disability Trust Fund during the prior calendar  
13 year and the year-to-date recoveries for the current year.

14           c. The amount the insurer was assessed by the Special  
15 Disability Trust Fund during the prior calendar year and  
16 during the current calendar year.

17           Section 871. Section 625.101, Florida Statutes, is  
18 amended to read:

19           625.101 Increase of inadequate loss reserves.--If loss  
20 experience shows that an insurer's loss reserves, however  
21 computed or estimated, are inadequate, the office ~~department~~  
22 shall require the insurer to maintain loss reserves in such  
23 additional amount as is needed to make them adequate. This  
24 section does not apply as to life insurance.

25           Section 872. Subsections (2), (3), and (4), paragraphs  
26 (c), (d), (g), (h), (i), and (j) of subsection (5), paragraph  
27 (e) of subsection (6), subsection (10), paragraph (b) of  
28 subsection (12), and subsection (14) of section 625.121,  
29 Florida Statutes, are amended to read:

30           625.121 Standard Valuation Law; life insurance.--

31

1           (2) ANNUAL VALUATION.--The office ~~department~~ shall  
2 annually value, or cause to be valued, the reserve  
3 liabilities, hereinafter called "reserves," for all  
4 outstanding life insurance policies and annuity and pure  
5 endowment contracts of every life insurer doing business in  
6 this state, and may certify the amount of any such reserves,  
7 specifying the mortality table or tables, rate or rates of  
8 interest, and methods, net-level premium method or others,  
9 used in the calculation of such reserves. In the case of an  
10 alien insurer, such valuation shall be limited to its  
11 insurance transactions in the United States. In calculating  
12 such reserves, the office ~~department~~ may use group methods and  
13 approximate averages for fractions of a year or otherwise. It  
14 may accept in its discretion the insurer's calculation of such  
15 reserves. In lieu of the valuation of the reserves herein  
16 required of any foreign or alien insurer, it may accept any  
17 valuation made or caused to be made by the insurance  
18 supervisory official of any state or other jurisdiction when  
19 such valuation complies with the minimum standard herein  
20 provided and if the official of such state or jurisdiction  
21 accepts as sufficient and valid for all legal purposes the  
22 certificate of valuation of the office ~~department~~ when such  
23 certificate states the valuation to have been made in a  
24 specified manner according to which the aggregate reserves  
25 would be at least as large as if they had been computed in the  
26 manner prescribed by the law of that state or jurisdiction.  
27 When any such valuation is made by the office ~~department~~, it  
28 may use the actuary of the office ~~department~~ or employ an  
29 actuary for the purpose; and the reasonable compensation of  
30 the actuary, at a rate approved by the office ~~department~~, and  
31 reimbursement of travel expenses pursuant to s. 624.320 upon

1 demand by the office ~~department~~, supported by an itemized  
2 statement of such compensation and expenses, shall be paid by  
3 the insurer. When a domestic insurer furnishes the office  
4 ~~department~~ with a valuation of its outstanding policies as  
5 computed by its own actuary or by an actuary deemed  
6 satisfactory for the purpose by the office ~~department~~, the  
7 valuation shall be verified by the actuary of the office  
8 ~~department~~ without cost to the insurer.

9 (3) ACTUARIAL OPINION OF RESERVES.--

10 (a)1. Each life insurance company doing business in  
11 this state shall annually submit the opinion of a qualified  
12 actuary as to whether the reserves and related actuarial items  
13 held in support of the policies and contracts specified by the  
14 commission ~~department~~ by rule are computed appropriately, are  
15 based on assumptions which satisfy contractual provisions, are  
16 consistent with prior reported amounts, and comply with  
17 applicable laws of this state. The commission ~~department~~ by  
18 rule shall define the specifics of this opinion and add any  
19 other items determined to be necessary to its scope.

20 2. The opinion shall be submitted with the annual  
21 statement reflecting the valuation of such reserve liabilities  
22 for each year ending on or after December 31, 1992.

23 3. The opinion shall apply to all business in force,  
24 including individual and group health insurance plans, in the  
25 form and substance acceptable to the office ~~department~~ as  
26 specified by rule of the commission.

27 4. The commission ~~department~~ may adopt rules providing  
28 the standards of the actuarial opinion consistent with  
29 standards adopted by the Actuarial Standards Board on December  
30 31, 2002 ~~October 1, 1991~~, and subsequent revisions thereto,  
31 provided that the standards remain substantially consistent.

1           5. In the case of an opinion required to be submitted  
2 by a foreign or alien company, the office ~~department~~ may  
3 accept the opinion filed by that company with the insurance  
4 supervisory official of another state if the office ~~department~~  
5 determines that the opinion reasonably meets the requirements  
6 applicable to a company domiciled in this state.

7           6. For the purposes of this subsection, "qualified  
8 actuary" means a member in good standing of the American  
9 Academy of Actuaries who also meets the requirements specified  
10 by rule of the commission ~~department~~.

11           7. Disciplinary action by the office ~~department~~  
12 against the company or the qualified actuary shall be in  
13 accordance with the insurance code and related rules adopted  
14 by the commission ~~department~~.

15           8. A memorandum in the form and substance specified by  
16 rule shall be prepared to support each actuarial opinion.

17           9. If the insurance company fails to provide a  
18 supporting memorandum at the request of the office ~~department~~  
19 within a period specified by rule of the commission, or if the  
20 office ~~department~~ determines that the supporting memorandum  
21 provided by the insurance company fails to meet the standards  
22 prescribed by rule of the commission, the office ~~department~~  
23 may engage a qualified actuary at the expense of the company  
24 to review the opinion and the basis for the opinion and  
25 prepare such supporting memorandum as is required by the  
26 office ~~department~~.

27           10. Except as otherwise provided in this paragraph,  
28 any memorandum or other material in support of the opinion is  
29 confidential and exempt from the provisions of s. 119.07(1);  
30 however, the memorandum or other material may be released by  
31 the office ~~department~~ with the written consent of the company,

1 or to the American Academy of Actuaries upon request stating  
2 that the memorandum or other material is required for the  
3 purpose of professional disciplinary proceedings and setting  
4 forth procedures satisfactory to the office ~~department~~ for  
5 preserving the confidentiality of the memorandum or other  
6 material. If any portion of the confidential memorandum is  
7 cited by the company in its marketing or is cited before any  
8 governmental agency other than a state insurance department or  
9 is released by the company to the news media, no portion of  
10 the memorandum is confidential.

11 (b) In addition to the opinion required by  
12 subparagraph (a)1., the office ~~department~~ may, pursuant to  
13 commission ~~by rule~~, require an opinion of the same qualified  
14 actuary as to whether the reserves and related actuarial items  
15 held in support of the policies and contracts specified by the  
16 commission ~~department~~ by rule, when considered in light of the  
17 assets held by the company with respect to the reserves and  
18 related actuarial items, including but not limited to the  
19 investment earnings on the assets and considerations  
20 anticipated to be received and retained under the policies and  
21 contracts, make adequate provision for the company's  
22 obligations under the policies and contracts, including, but  
23 not limited to, the benefits under, and expenses associated  
24 with, the policies and contracts.

25 (c) The commission ~~department~~ may provide by rule for  
26 a transition period for establishing any higher reserves which  
27 the qualified actuary may deem necessary in order to render  
28 the opinion required by this subsection.

29 (4) MINIMUM STANDARD FOR VALUATION OF POLICIES AND  
30 CONTRACTS ISSUED BEFORE OPERATIVE DATE OF STANDARD  
31 NONFORFEITURE LAW.--The minimum standard for the valuation of

1 all such policies and contracts issued prior to the operative  
2 date of s. 627.476 (Standard Nonforfeiture Law) shall be any  
3 basis satisfactory to the office ~~department~~. Any basis  
4 satisfactory to the former Department of Insurance on the  
5 effective date of this code shall be deemed to meet such  
6 minimum standards.

7 (5) MINIMUM STANDARD FOR VALUATION OF POLICIES AND  
8 CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF STANDARD  
9 NONFORFEITURE LAW.--Except as otherwise provided in paragraph  
10 (h) and subsections (6), (11), and (14), the minimum standard  
11 for the valuation of all such policies and contracts issued on  
12 or after the operative date of s. 627.476 (Standard  
13 Nonforfeiture Law for Life Insurance) shall be the  
14 commissioners' reserve valuation method defined in subsections  
15 (7), (11), and (14); 5 percent interest for group annuity and  
16 pure endowment contracts and 3.5 percent interest for all  
17 other such policies and contracts, or in the case of life  
18 insurance policies and contracts, other than annuity and pure  
19 endowment contracts, issued on or after July 1, 1973, 4  
20 percent interest for such policies issued prior to October 1,  
21 1979, and 4.5 percent interest for such policies issued on or  
22 after October 1, 1979; and the following tables:

23 (c) For individual annuity and pure endowment  
24 contracts, excluding any disability and accidental death  
25 benefits in such policies, the 1937 Standard Annuity Mortality  
26 Table or, at the option of the insurer, the Annuity Mortality  
27 Table for 1949, Ultimate, or any modification of either of  
28 these tables approved by the office ~~department~~.

29 (d) For group annuity and pure endowment contracts,  
30 excluding any disability and accidental death benefits in such  
31 policies, the Group Annuity Mortality Table for 1951; any

1 modification of such table approved by the office ~~department~~;  
2 or, at the option of the insurer, any of the tables or  
3 modifications of tables specified for individual annuity and  
4 pure endowment contracts.

5 (g) For group life insurance, life insurance issued on  
6 the substandard basis, and other special benefits, such tables  
7 as may be approved by the office ~~department~~ as being  
8 sufficient with relation to the benefits provided by such  
9 policies.

10 (h) Except as provided in subsection (6), the minimum  
11 standard for the valuation of all individual annuity and pure  
12 endowment contracts issued on or after the operative date of  
13 this paragraph and for all annuities and pure endowments  
14 purchased on or after such operative date under group annuity  
15 and pure endowment contracts shall be the commissioners'  
16 reserve valuation method defined in subsection (7) and the  
17 following tables and interest rates:

18 1. For individual annuity and pure endowment contracts  
19 issued prior to October 1, 1979, excluding any disability and  
20 accidental death benefits in such contracts, the 1971  
21 Individual Annuity Mortality Table, or any modification of  
22 this table approved by the office ~~department~~, and 6 percent  
23 interest for single-premium immediate annuity contracts and 4  
24 percent interest for all other individual annuity and pure  
25 endowment contracts.

26 2. For individual single-premium immediate annuity  
27 contracts issued on or after October 1, 1979, and prior to  
28 October 1, 1986, excluding any disability and accidental death  
29 benefits in such contracts, the 1971 Individual Annuity  
30 Mortality Table, or any modification of this table approved by  
31 the office ~~department~~, and 7.5 percent interest. For such

1 contracts issued on or after October 1, 1986, the 1983  
2 Individual Annual Mortality Table, or any modification of such  
3 table approved by the office ~~department~~, and the applicable  
4 calendar year statutory valuation interest rate as described  
5 in subsection (6).

6           3. For individual annuity and pure endowment contracts  
7 issued on or after October 1, 1979, and prior to October 1,  
8 1986, other than single-premium immediate annuity contracts,  
9 excluding any disability and accidental death benefits in such  
10 contracts, the 1971 Individual Annuity Mortality Table, or any  
11 modification of this table approved by the office ~~department~~,  
12 and 5.5 percent interest for single-premium deferred annuity  
13 and pure endowment contracts and 4.5 percent interest for all  
14 other such individual annuity and pure endowment contracts.  
15 For such contracts issued on or after October 1, 1986, the  
16 1983 Individual Annual Mortality Table, or any modification of  
17 such table approved by the office ~~department~~, and the  
18 applicable calendar year statutory valuation interest rate as  
19 described in subsection (6).

20           4. For all annuities and pure endowments purchased  
21 prior to October 1, 1979, under group annuity and pure  
22 endowment contracts, excluding any disability and accidental  
23 death benefits purchased under such contracts, the 1971 Group  
24 Annuity Mortality Table, or any modification of this table  
25 approved by the office ~~department~~, and 6 percent interest.

26           5. For all annuities and pure endowments purchased on  
27 or after October 1, 1979, and prior to October 1, 1986, under  
28 group annuity and pure endowment contracts, excluding any  
29 disability and accidental death benefits purchased under such  
30 contracts, the 1971 Group Annuity Mortality Table, or any  
31 modification of this table approved by the office ~~department~~,

1 and 7.5 percent interest. For such contracts purchased on or  
2 after October 1, 1986, the 1983 Group Annuity Mortality Table,  
3 or any modification of such table approved by the office  
4 ~~department~~, and the applicable calendar year statutory  
5 valuation interest rate as described in subsection (6).

6  
7 After July 1, 1973, any insurer may have filed ~~file~~ with the  
8 former Department of Insurance a written notice of its  
9 election to comply with the provisions of this paragraph after  
10 a specified date before January 1, 1979, which shall be the  
11 operative date of this paragraph for such insurer. However, an  
12 insurer may elect a different operative date for individual  
13 annuity and pure endowment contracts from that elected for  
14 group annuity and pure endowment contracts. If an insurer  
15 makes no such election, the operative date of this paragraph  
16 for such insurer shall be January 1, 1979.

17 (i) In lieu of the mortality tables specified in this  
18 subsection, and subject to rules previously adopted by the  
19 former Department of Insurance, the insurance company may, at  
20 its option:

21 1. Substitute the applicable 1958 CSO or CET Smoker  
22 and Nonsmoker Mortality Tables, in lieu of the 1980 CSO or CET  
23 mortality table standard, for policies issued on or after the  
24 operative date of s. 627.476(9) and before January 1, 1989.

25 2. Substitute the applicable 1980 CSO or CET Smoker  
26 and Nonsmoker Mortality Tables in lieu of the 1980 CSO or CET  
27 mortality table standard;

28 3. Use the Annuity 2000 Mortality Table for  
29 determining the minimum standard of valuation for individual  
30 annuity and pure endowment contracts issued on or after  
31 January 1, 1998, and before July 1, 1998 ~~the operative date of~~

1 ~~this section until the department, on a date certain that is~~  
2 ~~on or after January 1, 1998, adopts by rule that table for~~  
3 ~~determining the minimum standard for valuation purposes.~~

4           4. Use the 1994 GAR Table for determining the minimum  
5 standard of valuation for annuities and pure endowments  
6 purchased on or after January 1, 1998, and before July 1,  
7 1998,~~the operative date of this section under group annuity~~  
8 ~~and pure endowment contracts until the department, on a date~~  
9 ~~certain that is on or after January 1, 1998, adopts by rule~~  
10 ~~that table for determining the minimum standard for valuation~~  
11 ~~purposes.~~

12           (j) The commission ~~department~~ may adopt by rule the  
13 model regulation for valuation of life insurance policies as  
14 approved by the National Association of Insurance  
15 Commissioners in March 1999, including tables of select  
16 mortality factors, and may make the regulation effective for  
17 policies issued on or after January 1, 2000.

18           (6) MINIMUM STANDARD OF VALUATION.--

19           (e) The interest rate index shall be the Moody's  
20 Corporate Bond Yield Average-Monthly Average Corporates as  
21 published by Moody's Investors Service, Inc., as long as this  
22 index is calculated by using substantially the same  
23 methodology as used by it on January 1, 1981. If Moody's  
24 corporate bond yield average ceases to be calculated in this  
25 manner, the interest rate index shall be the index approved by  
26 rule promulgated by the commission ~~department~~. The methodology  
27 used in determining the index approved by rule shall be  
28 substantially the same as the methodology employed on January  
29 1, 1981, for determining Moody's Corporate Bond Yield  
30 Average-Monthly Average Corporates as published by Moody's  
31 Investors Services, Inc.

1           (10) LOWER VALUATIONS.--An insurer which at any time  
2 had adopted any standard of valuation producing greater  
3 aggregate reserves than those calculated according to the  
4 minimum standard herein provided may, with the approval of the  
5 office ~~department~~, adopt any lower standard of valuation, but  
6 not lower than the minimum herein provided; however, for the  
7 purposes of this subsection, the holding of additional  
8 reserves previously determined by a qualified actuary to be  
9 necessary to render the opinion required by subsection (3)  
10 shall not be deemed to be the adoption of a higher standard of  
11 valuation.

12           (12) ALTERNATE METHOD FOR DETERMINING RESERVES IN  
13 CERTAIN CASES.--In the case of any plan of life insurance  
14 which provides for future premium determination, the amounts  
15 of which are to be determined by the insurer based on then  
16 estimates of future experience, or in the case of any plan of  
17 life insurance or annuity which is of such a nature that the  
18 minimum reserves cannot be determined by the methods described  
19 in subsection (7), the reserves which are held under any such  
20 plan shall:

21           (b) Be computed by a method which is consistent with  
22 the principles of this section, as determined by rules  
23 promulgated by the commission ~~department~~.

24           (14) MINIMUM STANDARDS FOR HEALTH PLANS.--The  
25 commission ~~department~~ shall adopt a rule containing the  
26 minimum standards applicable to the valuation of health plans  
27 in accordance with sound actuarial principles.

28           Section 873. Subsection (2) of section 625.131,  
29 Florida Statutes, is amended to read:

30           625.131 Credit life and disability policies, special  
31 reserve bases.--

1           (2) As to single-premium credit life insurance  
2 policies, the insurer shall establish and maintain reserves  
3 which are not less than the value, at the valuation date, of  
4 the risk for the unexpired portion of the period for which the  
5 premium has been paid as computed on the basis of the  
6 commissioners' 1980 Standard Ordinary Mortality Table and 3.5  
7 percent interest. At the discretion of the office ~~department~~,  
8 the insurer may make a reasonable assumption as to the ages at  
9 which net premiums are to be determined. In lieu of the  
10 foregoing basis, reserves based upon unearned gross premiums  
11 may be used at the option of the insurer.

12           Section 874. Section 625.141, Florida Statutes, is  
13 amended to read:

14           625.141 Valuation of bonds.--

15           (1) All bonds or other evidences of debt having a  
16 fixed term and rate of interest held by an insurer may, if  
17 amply secured and not in default as to principal or interest,  
18 be valued as follows:

19           (a) If purchased at par, at the par value.

20           (b) If purchased above or below par, on the basis of  
21 the purchase price adjusted so as to bring the value to par at  
22 maturity and so as to yield in the meantime the effective rate  
23 of interest at which the purchase was made, or in lieu of such  
24 method, according to such accepted method of valuation as is  
25 approved by the commission ~~department~~.

26           (c) Purchase price shall in no case be taken at a  
27 higher figure than the actual market value at the time of  
28 purchase, plus actual brokerage, transfer, postage, or express  
29 charges paid in the acquisition of such securities.

30           (2) The office ~~department~~ shall have full discretion  
31 in determining the method of calculating values according to

1 the rules set forth in this section, but no such method or  
2 valuation shall be inconsistent with the method formulated or  
3 approved by the National Association of Insurance  
4 Commissioners or its successor organization and set forth in  
5 the latest edition of its publication "Valuation of  
6 Securities"; provided that such valuation methodology is  
7 substantially similar to the methodology used by the National  
8 Association of Insurance Commissioners in its July 1, 2002,  
9 ~~2001~~ edition of such publication. Amortization of bond premium  
10 or discount must be calculated using the scientific (constant  
11 yield) interest method taking into consideration specified  
12 interest and principal provisions over the life of the bond.  
13 Bonds containing call provisions shall be amortized to the  
14 call or maturity value or date that produces the lowest asset  
15 value.

16 Section 875. Subsections (1), (2), and (4) of section  
17 625.151, Florida Statutes, are amended to read:

18 625.151 Valuation of other securities.--

19 (1) Securities, other than those referred to in s.  
20 625.141, held by an insurer shall be valued, in the discretion  
21 of the office ~~department~~, at their market value, or at their  
22 appraised value, or at prices determined by it as representing  
23 their fair market value.

24 (2) Preferred or guaranteed stocks or shares while  
25 paying full dividends may be carried at a fixed value in lieu  
26 of market value, at the discretion of the office ~~department~~  
27 and in accordance with such method of valuation as it may  
28 approve.

29 (4) No valuations under this section shall be  
30 inconsistent with any applicable valuation or method contained  
31 in the latest edition of the publication "Valuation of

1 Securities" published by the National Association of Insurance  
2 Commissioners or its successor organization; provided that  
3 such valuation methodology is substantially similar to the  
4 methodology used by the National Association of Insurance  
5 Commissioners in its July 1, 2002, 1988 edition of such  
6 publication.

7 Section 876. Subsections (1), (2), (3), and (5) of  
8 section 625.161, Florida Statutes, are amended to read:

9 625.161 Valuation of property.--

10 (1) Real property owned by an insurer which is  
11 reported in financial statements filed with the office  
12 ~~department~~ shall be valued at the lower of depreciated cost or  
13 fair market value.

14 (2) Real property acquired pursuant to a mortgage loan  
15 or contract for sale, in the absence of a recent appraisal  
16 deemed by the office ~~department~~ to be reliable, shall not be  
17 valued at an amount greater than the unpaid principal and  
18 accrued interest of the defaulted loan or contract at the date  
19 of such acquisition, together with any taxes and expenses paid  
20 or incurred in connection with such acquisition, and the cost  
21 of improvements thereafter made by the insurer and any amounts  
22 thereafter paid by the insurer on assessments levied for  
23 improvements in connection with the property.

24 (3) Other real property held by an insurer shall not  
25 be valued at an amount in excess of fair value as determined  
26 by recent appraisal. If the valuation of real property is  
27 based on an appraisal more than 5 years old, the office  
28 ~~department~~ may, at its discretion, call for and require a new  
29 appraisal in order to determine fair market value.

30 (5) In carrying out its responsibilities under this  
31 section, in the event that the office ~~department~~ and the

1 insurer do not agree on the value of real or personal property  
2 of such insurer, the office department may retain the services  
3 of a qualified real or personal property appraiser. In the  
4 event it is subsequently determined that the insurer has  
5 overvalued assets, the office department shall be reimbursed  
6 for the costs of the services of any such appraiser incurred  
7 with respect to its responsibilities under this section  
8 regarding an insurer by said insurer and any reimbursement  
9 shall be deposited in the Insurance ~~Commissioner's~~ Regulatory  
10 Trust Fund.

11 Section 877. Section 625.172, Florida Statutes, is  
12 amended to read:

13 625.172 Replacing certain assets; reporting certain  
14 liabilities.--

15 (1) The office department, upon determining that an  
16 insurer's asset has not been evaluated according to applicable  
17 law or that it does not qualify as an asset, shall require the  
18 insurer to properly reevaluate the asset or replace the asset  
19 with an asset suitable to the office department.

20 (2) The office department, upon determining that an  
21 insurer has failed to report certain liabilities that should  
22 have been reported, shall require that the insurer report such  
23 liabilities to the office department within 90 days.

24 (3) If it is determined that the proper valuation of  
25 an asset or the establishment of certain liabilities would  
26 place the insurer in financial impairment or insolvency, the  
27 office department may, at its discretion, immediately suspend  
28 the certificate of authority of an insurer or take other  
29 action it deems appropriate to protect the interests of  
30 policyholders or the general public.

31

1           Section 878. Section 625.181, Florida Statutes, is  
2 amended to read:

3           625.181 Assets received as capital or surplus  
4 contributions.--Assets received by an insurer as a capital or  
5 surplus contribution shall, for purposes of this code, be  
6 deemed to be purchased by the insurer at a cost equal to, in  
7 the discretion of the office ~~department~~, their market value,  
8 their appraised value, or prices determined by the office  
9 ~~department~~ as representing their fair market value. Assets so  
10 acquired shall be valued in accordance with the appropriate  
11 sections of this code as if the insurer had purchased such  
12 assets directly.

13           Section 879. Subsection (2) of section 625.303,  
14 Florida Statutes, is amended to read:

15           625.303 General qualifications.--

16           (2) No security or investment shall be eligible for  
17 purchase at a price above its market value unless it is  
18 approved by the office ~~department~~ and is made in accordance  
19 with valuation procedures of the National Association of  
20 Insurance Commissioners which have been adopted by the  
21 commission ~~department~~.

22           Section 880. Subsections (3) and (9) of section  
23 625.305, Florida Statutes, are amended, subsection (7) of that  
24 section is repealed, and present subsection (9) of that  
25 section is amended to read:

26           625.305 Diversification.--

27           (3) The cost of investments made by insurers in a  
28 mortgage loan authorized by s. 625.327 shall not exceed the  
29 lesser of 5 percent of the insurer's admitted assets or 10  
30 percent of the insurer's capital and surplus. An insurer shall  
31 not invest in additional mortgage loans without the consent of

1 the office department if the admitted value of all mortgage  
2 loans held by the insurer exceeds:

3 (a) With respect to life and health insurers, 40  
4 percent of the admitted assets of the insurer.

5 (b) With respect to property and casualty insurers, 10  
6 percent of the admitted assets of the insurer.

7  
8 ~~An insurer that, as of October 1, 1991, has mortgage~~  
9 ~~investments that exceed the aggregate limitation specified in~~  
10 ~~this subsection shall submit to the department no later than~~  
11 ~~January 31, 1992, a plan to bring the amount of mortgage~~  
12 ~~investments into compliance with such limitations by January~~  
13 ~~1, 2001.~~

14 ~~(8)(9)~~ The office department may limit the extent of  
15 an insurer's deposits with any financial institution which  
16 does not meet its regulatory capital requirement if the office  
17 department determines that the financial solvency of the  
18 insurer is threatened by a deposit in excess of such limit.

19 Section 881. Section 625.317, Florida Statutes, is  
20 amended to read:

21 625.317 Corporate bonds and debentures.--An insurer  
22 may invest in bonds, notes, or other interest-bearing or  
23 interest-accruing obligations of any solvent corporation  
24 organized under the laws of the United States or Canada or  
25 under the laws of any state, the District of Columbia, any  
26 territory or possession of the United States, or any Province  
27 of Canada or in bonds or notes issued by the Citizens Property  
28 Insurance Corporation as authorized by s. 627.351(6) Florida  
29 ~~Windstorm Underwriting Association or a private nonprofit~~  
30 ~~corporation, a private nonprofit unincorporated association,~~  
31 ~~or a nonprofit mutual company organized by that association,~~

1 ~~all as authorized in s. 627.351(2)(c), or any subsidiary or~~  
2 ~~affiliate thereof authorized by the Department of Insurance to~~  
3 ~~issue such bonds or notes.~~

4 Section 882. Section 625.322, Florida Statutes, is  
5 amended to read:

6 625.322 Collateral loans.--An insurer may invest in  
7 loans with a maturity not in excess of 12 years from the date  
8 thereof which are secured by the pledge of assets permitted by  
9 part I of this chapter. Loans made pursuant to this section  
10 shall not be admitted as an asset when it is considered  
11 probable that any portion of the amounts due under the  
12 contractual terms of the loan will not be collected.

13 Collateral loans reported in financial statements filed with  
14 the office ~~department~~ shall not exceed the value of the  
15 collateral held by the company.

16 Section 883. Section 625.324, Florida Statutes, is  
17 amended to read:

18 625.324 Corporate stocks.--An insurer may invest in  
19 stocks, common or preferred, of any corporation created or  
20 existing under the laws of the United States or of any state  
21 or Canada or any province thereof. An insurer may invest in  
22 stocks, common or preferred, of any corporation created or  
23 existing under the laws of any foreign country other than  
24 Canada if such stocks are listed and traded on a national  
25 securities exchange in the United States or, in the  
26 alternative, if such investment in stocks of any corporation  
27 created or existing under the laws of any foreign country are  
28 first approved by the office ~~department~~. Nothing in this  
29 section shall apply to qualifying investments made by an  
30 insurer in a foreign country under authority of s. 625.326.

31

1           Section 884. Subsection (4) of section 625.325,  
2 Florida Statutes, is amended to read:

3           625.325 Investments in subsidiaries and related  
4 corporations.--

5           (4) DEBT OBLIGATIONS.--Debt obligations, other than  
6 mortgage loans, made under the authority of this section must  
7 meet amortization requirements in accordance with the latest  
8 edition of the publication "Valuation of Securities" by the  
9 National Association of Insurance Commissioners or its  
10 successor organization; provided that such amortization  
11 methodology is substantially similar to the methodology used  
12 by the National Association of Insurance Commissioners in its  
13 July 1, 2002, 1988 edition of such publication.

14           Section 885. Section 625.326, Florida Statutes, is  
15 amended to read:

16           625.326 Foreign investments.--An insurer authorized to  
17 transact insurance in a foreign country may have funds  
18 invested in such securities as may be required for such  
19 authority and for the transaction of such business. Canadian  
20 securities eligible for investment under other provisions of  
21 this part are not subject to this section. Subject to the  
22 approval of the office ~~department~~:

23           (1) An insurer may invest in eurodollar certificates  
24 of deposit issued by foreign branches of United States  
25 commercial banks.

26           (2) In addition to Canadian securities eligible for  
27 investment and to investments in countries in which an insurer  
28 transacts insurance, an insurer may invest in bonds, notes, or  
29 stocks of any foreign country or corporation if such security  
30 meets the general requirements of s. 625.303 and does not  
31 exceed, in total, 5 percent of admitted assets.

1           Section 886. Subsection (1) of section 625.330,  
2 Florida Statutes, is amended to read:

3           625.330 Special investments by title insurer.--

4           (1) In addition to other investments eligible under  
5 this part, a title insurer may invest and have invested an  
6 amount not exceeding the greater of \$300,000 or 50 percent of  
7 that part of its surplus as to policyholders which exceeds the  
8 minimum surplus required by s. 624.408 in its abstract plant  
9 and equipment, in loans secured by mortgages on abstract  
10 plants and equipment, and, with the consent of the office  
11 ~~department~~, in stocks of abstract companies. If the insurer  
12 transacts kinds of insurance in addition to title insurance,  
13 for the purposes of this section its paid-in capital stock  
14 shall be prorated between title insurance and such other  
15 insurances upon the basis of the reserves maintained by the  
16 insurer for the various kinds of insurance; but the capital so  
17 assigned to title insurance shall in no event be less than  
18 \$100,000.

19           Section 887. Subsection (1) of section 625.331,  
20 Florida Statutes, is amended to read:

21           625.331 Special consent investments.--

22           (1) After satisfying the requirements of this part,  
23 any funds of an insurer in excess of its reserves and  
24 policyholders' surplus required to be maintained may be  
25 invested:

26           (a) Without limitation in any investments otherwise  
27 authorized by this part; or

28           (b) In such other investments not specifically  
29 authorized by this part as long as such investments do not  
30 exceed the lesser of 5 percent of the insurer's total admitted  
31 assets or 25 percent of the amount by which the insurer's

1 policyholders' surplus exceeds the minimum required to be  
2 maintained.

3

4 The limitations in paragraph (b) may be exceeded if consented  
5 to in writing by the office ~~department~~.

6 Section 888. Paragraphs (a) and (b) of subsection (1)  
7 of section 625.332, Florida Statutes, are amended to read:

8 625.332 Prohibited investments and investment  
9 underwriting.--

10 (1) In addition to investments excluded pursuant to  
11 other provisions of this code, an insurer shall not directly  
12 or indirectly invest in or lend its funds upon the security  
13 of:

14 (a) Issued shares of its own capital stock, except for  
15 the purpose of mutualization under s. 628.431, or in  
16 connection with a plan approved by the office ~~department~~ for  
17 purchase of such shares by the insurer's officers, employees,  
18 or agents. No such stock shall, however, constitute an asset  
19 of the insurer in any determination of its financial  
20 condition.

21 (b) Except with the consent of the office ~~department~~,  
22 securities issued by any corporation or enterprise the  
23 controlling interest of which is, or will after such  
24 acquisition by the insurer be, held directly or indirectly by  
25 the insurer or any combination of the insurer and the  
26 insurer's directors, officers, parent corporation,  
27 subsidiaries, or controlling stockholders. Investments in  
28 subsidiaries under s. 625.325 shall not be subject to this  
29 provision.

30

31

1           Section 889. Paragraph (e) of subsection (1) and  
2 subsection (3) of section 625.333, Florida Statutes, are  
3 amended to read:

4           625.333 Real estate, in general.--An insurer shall not  
5 directly or indirectly acquire or hold real estate except as  
6 authorized in this section.

7           (1) An insurer may acquire and hold:

8           (e) Additional real property and equipment incident to  
9 real property, if necessary or convenient for the enhancement  
10 of the marketability or sale value of real property previously  
11 acquired or held by it under paragraphs (b)-(d), but subject  
12 to the prior written approval of the office ~~department~~.

13           (3) The amount in real property acquired and held by  
14 an insurer shall not exceed 15 percent of the insurer's  
15 admitted assets, but the office ~~department~~ may grant  
16 permission to the insurer to invest in real property in such  
17 increased amount as it may deem proper.

18           Section 890. Section 625.338, Florida Statutes, is  
19 amended to read:

20           625.338 Time limit for disposal of ineligible property  
21 and securities; effect of failure to dispose.--

22           (1) Any property or securities lawfully acquired by an  
23 insurer which it could not otherwise have invested in or  
24 loaned its funds upon at the time of such acquisition shall be  
25 disposed of within 3 years from the date of acquisition,  
26 unless within such period the security has attained to the  
27 standard of eligibility except that any security or property  
28 acquired under any agreement of bulk reinsurance, merger, or  
29 consolidation may be retained for a longer period if so  
30 provided in the plan for such reinsurance, merger, or  
31 consolidation as approved by the office ~~department~~ under

1 chapter 628. Upon application by the insurer and proof that  
2 forced sale of any such property or security would materially  
3 injure the interests of the insurer, the office ~~department~~ may  
4 extend the disposal period for an additional reasonable time.

5 (2) Any property or securities lawfully acquired and  
6 held by an insurer after expiration of the period for disposal  
7 thereof or any extension of such period granted by the office  
8 ~~department~~ shall not be allowed as an asset of the insurer.

9 Section 891. Paragraph (d) of subsection (3) and  
10 subsection (4) of section 625.52, Florida Statutes, are  
11 amended to read:

12 625.52 Securities eligible for deposit.--

13 (3) To be eligible for deposit under paragraph (1)(h),  
14 any certificate of deposit must have the following  
15 characteristics:

16 (d) The issuing bank, savings bank, or savings  
17 association must agree to the terms and conditions of the  
18 department ~~State Treasurer~~ regarding the rights to the  
19 certificate of deposit and must have executed a written  
20 certificate of deposit agreement with the department ~~State~~  
21 ~~Treasurer~~. The terms and conditions of such agreement shall  
22 include, but need not be limited to:

23 1. Exclusive authorized signature authority for the  
24 Chief Financial Officer ~~State Treasurer~~.

25 2. Agreement to pay, without protest, the proceeds of  
26 its certificate of deposit to the department within 30  
27 business days after presentation.

28 3. Prohibition against levies, setoffs, survivorship,  
29 or other conditions that might hinder the department's ability  
30 to recover the full face value of a certificate of deposit.

31

1           4. Instructions regarding interest payments, renewals,  
2 taxpayer identification, and early withdrawal penalties.

3           5. Agreement to be subject to the jurisdiction of the  
4 courts of this state, or those of the United States which are  
5 located in this state, for the purposes of any litigation  
6 arising out of this section.

7           6. Such other conditions as the department requires.

8           (4) The office or department may refuse to accept  
9 certain securities or refuse to accept the reported market  
10 value of certain securities offered pursuant to this section  
11 in order to ensure that sufficient cash and securities are on  
12 hand to meet the purposes of the deposit. In making a refusal  
13 under this subsection, the guidelines for use of the office or  
14 department may include, but need not be limited to, whether  
15 the market value of the securities cannot be readily  
16 ascertained and the lack of liquidity of the securities.  
17 Securities refused under this subsection are not acceptable as  
18 deposits.

19           Section 892. Subsection (2) of section 625.53, Florida  
20 Statutes, is amended to read:

21           625.53 Depository.--

22           (2) The department shall hold all such deposits in  
23 safekeeping in the vaults located in the offices of the  
24 department ~~Treasurer~~.

25           Section 893. Subsections (5) of section 625.55,  
26 Florida Statutes, is amended to read:

27           625.55 Custodial arrangements.--

28           (5) The department or office may at any time, in its  
29 discretion, terminate any such custodial arrangement and  
30 require the deposit represented thereby to be made with it  
31 directly as otherwise provided for under this code.

1           Section 894. Subsection (1) of section 625.56, Florida  
2 Statutes, is amended to read:

3           625.56 Registration, conveyance of assets or  
4 securities.--

5           (1) The insurer shall duly register in the name of the  
6 Chief Financial Officer ~~department~~ all securities being  
7 deposited with the department under this code which are not  
8 negotiable by delivery.

9           Section 895. Section 625.57, Florida Statutes, is  
10 amended to read:

11           625.57 Appraisal.--The office or department may, in  
12 its discretion, prior to acceptance for deposit of any  
13 particular asset or security, or at any time thereafter while  
14 so deposited, have the same appraised or valued by competent  
15 appraisers. The reasonable costs of any such appraisal or  
16 valuation shall be borne by the insurer.

17           Section 896. Section 625.58, Florida Statutes, is  
18 amended to read:

19           625.58 Excess and deficit deposits.--

20           (1) If securities or assets deposited by an insurer  
21 under this part are subject to material fluctuations in market  
22 value, the office or department may, in its discretion,  
23 require the insurer to deposit and maintain on deposit  
24 additional securities or assets in an amount as may be  
25 reasonably necessary to assure that the deposit will at all  
26 times have a market value of not less than the amount  
27 specified under or pursuant to the law by which the deposit is  
28 required.

29           (2) The insurer is responsible at all times for having  
30 deposited with, or pledged to, if custodial arrangements are  
31 used, the department eligible securities which have a market

1 value of not less than the amount specified pursuant to the  
2 law by which the deposit is required. If for any reason the  
3 market value of assets and securities of an insurer held on  
4 deposit in this state under this code falls below the amount  
5 required, the insurer shall promptly deposit other or  
6 additional assets or securities eligible for deposit  
7 sufficient to cure such deficiency. If the insurer has failed  
8 to cure the deficiency within 30 days after receipt of notice  
9 thereof by registered or certified mail from the office  
10 ~~department~~, the office ~~department~~ shall revoke the insurer's  
11 certificate of authority or may take such other administrative  
12 action as provided by law.

13 (3) An insurer may at its option deposit assets or  
14 securities in an amount exceeding its deposit required or  
15 otherwise permitted under this code by not more than 3 times  
16 the amount of the required or permitted deposit for the  
17 purpose of satisfying the office ~~department~~ that the insurer's  
18 obligations in this state will be met. During the solvency of  
19 the insurer, the amount of any excess or a portion thereof  
20 shall be released to the insurer if the office ~~department~~ is  
21 satisfied that the insurer's obligations in this state will be  
22 met. During the insolvency of the insurer, the amount of any  
23 excess deposit shall be released only as provided in s.  
24 625.62.

25 Section 897. Paragraph (c) of subsection (2) of  
26 section 625.62, Florida Statutes, is amended to read:

27 625.62 Duration and release of deposit.--

28 (2) Any such deposit, whether in the form of a  
29 certificate of deposit or otherwise, shall be released and  
30 returned:

31

1 (c) To the insurer, during solvency, upon its written  
2 request, when such insurer has met all requirements and the  
3 ~~office department~~ is satisfied, or, for deposits made under s.  
4 625.51(2) or (3), the department is satisfied, that the  
5 deposit is no longer necessary.

6 Section 898. Section 625.63, Florida Statutes, is  
7 amended to read:

8 625.63 Proofs for release of deposit.--

9 (1) Before authorizing the release of any deposit or  
10 excess portion thereof to the insurer, as provided in s.  
11 625.62, the office or department shall require the insurer to  
12 file with the office or department a written statement in such  
13 form and with such verification as the office or department  
14 deems advisable setting forth the facts upon which it bases  
15 its entitlement to such release.

16 (2) If release of the deposit is claimed by the  
17 insurer upon the ground that its liabilities in this state, as  
18 to which the deposit was originally made and is held, have  
19 been assumed by another insurer authorized to transact  
20 insurance in this state, the insurer shall file with the  
21 ~~office department~~ a duly attested copy of the contract or  
22 agreement of such reinsurance.

23 (3) Upon being satisfied by such statement and such  
24 other information and evidence as the office or department may  
25 reasonably require, and by such examination, if any, of the  
26 affairs of the insurer as it deems advisable to make, that the  
27 insurer is entitled to the release of its deposits or excess  
28 portions thereof as provided in s. 625.62, the office or  
29 department shall release, or authorize the custodian bank or  
30 trust company in the case of deposits made under s. 625.55 to  
31 release, the deposit or excess portion thereof to the insurer

1 or its authorized representative. The office and department  
2 shall have no liability as to any such release so made or  
3 authorized by it in good faith.

4 (4) The department may release a deposit upon sending  
5 notification by certified mail to the public official having  
6 supervision over insurers in another state, province, or  
7 country that has filed a notification of reliance on a deposit  
8 made pursuant to s. 625.51(2) unless the release is denied in  
9 writing to the department by another state, province, or  
10 country within 90 days. The department has no liability as to  
11 any such release so made or authorized by it in good faith.

12 (5) Upon the failure of the office or department to  
13 release any deposit whether in the form of a certificate of  
14 deposit or otherwise or any excess portion thereof, requested  
15 as provided in s. 625.62 upon compliance by the insurer with  
16 the requirements of this section or within 90 days after  
17 receipt of the insurer's written request, whichever is later,  
18 the office or department shall, upon petition by the insurer,  
19 post or cause to be posted a notice of pendency of the  
20 insurer's request, at the place customarily used for the  
21 posting of public notices, at the courthouse of each county,  
22 and shall make a copy of such notice available to the  
23 established news agencies having offices at Tallahassee,  
24 Florida. The commission or department may by rule prescribe  
25 the general form of such notice, shall specify the insurer's  
26 name, or may list such names when more than one request is  
27 pending at the same time. Such notice shall state therein  
28 that such insurer or insurers have petitioned for the release  
29 and return of deposits pursuant to and in compliance with s.  
30 625.62 and this section; that the office or department has no  
31 information upon which to base a finding that the insurer or

1 insurers named in the notice are not lawfully entitled to  
2 obtain the release and return of such deposits; and that,  
3 unless such information is presented to it within 90 days from  
4 the date specified in the notice, such deposits must be  
5 returned to the insurer or insurers. In the event that no such  
6 information is presented to the office or department within  
7 such 90-day period, it shall thereupon release and return the  
8 deposit or deposits as requested by the insurer or insurers  
9 whose request was not challenged. In the event that such  
10 information is presented to the office or department within  
11 that period, it shall refuse to release or return the deposit  
12 of the insurer or insurers concerned and shall hold a hearing  
13 with respect thereto upon the request of such insurer or  
14 insurers.

15 Section 899. Section 625.75, Florida Statutes, is  
16 amended to read:

17 625.75 Certain persons and directors and officers of  
18 domestic stock insurer to file statements.--Every person who  
19 is directly or indirectly the beneficial owner of more than 10  
20 percent of any class of any equity security of a domestic  
21 stock insurer, or who is a director or an officer of a  
22 domestic stock insurer, shall file with ~~in~~ the office ~~of the~~  
23 ~~department~~ within 10 days after becoming such beneficial  
24 owner, director, or officer a statement, in such form as the  
25 commission ~~department~~ may by rule prescribe, of the amount of  
26 all equity securities of such insurer of which he or she is  
27 the beneficial owner; within 10 days after the close of each  
28 calendar month thereafter, if there has been a change in such  
29 ownership during such month, he or she shall file with ~~in~~  
30 office ~~of the department~~ a statement, in such form as the  
31 commission ~~department~~ may by rule prescribe, indicating his or

1 her ownership of such equity securities at the close of the  
2 calendar month and such changes in his or her ownership of  
3 such equity securities as have occurred during such calendar  
4 month.

5 Section 900. Section 625.765, Florida Statutes, is  
6 amended to read:

7 625.765 Exemptions from ss. 625.75 and 625.76.--The  
8 commission ~~department~~ may adopt by rule exemptions from ss.  
9 625.75 and 625.76 for transactions that are not subject to s.  
10 628.461 and that are the result of proceedings in probate,  
11 incompetency, or bankruptcy; sales of securities by odd-lot  
12 securities dealers; small transactions by gift which do not  
13 exceed \$3,000 over any 6-month period; transactions that are  
14 effected in connection with the distribution of a substantial  
15 block of securities; acquisitions of shares of stock and stock  
16 options under a stock bonus plan, stock option plan, or  
17 similar plan; securities acquired by redeeming other  
18 securities by an insurer; consolidations or mergers of  
19 insurers that hold over 85 percent of the companies being  
20 merged or consolidated; acquisitions or dispositions of an  
21 equity security involved in the deposit of the security under,  
22 or the withdrawal of the security from, a voting trust or  
23 deposit agreement; and conversions of an insurer's equity  
24 securities into another equity security of the same insurer.  
25 The commission ~~department~~ may limit by rule the scope of  
26 exemptions and provide conditions for exemptions as necessary  
27 to maintain the purpose and intent of ss. 625.75 and 625.76  
28 and prevent the circumvention of ss. 625.75 and 625.76.

29 Section 901. Section 625.78, Florida Statutes, is  
30 amended to read:

31

1           625.78 Certain sale and purchase exempted; investment  
2 account.--The provisions of s. 625.76 do not apply to any  
3 purchase and sale, or sale and purchase, and the provisions of  
4 s. 625.77 do not apply to any sale, of an equity security of a  
5 domestic stock insurer not then or theretofore held by a  
6 person required to report under s. 625.75 in an investment  
7 account, which transaction is by a dealer in the ordinary  
8 course of business and incident to the establishment or  
9 maintenance by him or her of a primary or secondary market,  
10 other than on an exchange as defined in the Securities  
11 Exchange Act of 1934, for such security. The commission  
12 ~~department~~ may, by such rules as it deems necessary or  
13 appropriate in the public interest, define and prescribe terms  
14 and conditions with respect to securities held in an  
15 investment account and transactions made in the ordinary  
16 course of business and incident to the establishment or  
17 maintenance of a primary or secondary market.

18           Section 902. Section 625.79, Florida Statutes, is  
19 amended to read:

20           625.79 Certain foreign or domestic arbitrage  
21 transactions exempted.--The provisions of ss. 625.75-625.77 do  
22 not apply to foreign or domestic arbitrage transactions unless  
23 made in contravention of rules that ~~which~~ the commission has  
24 adopted ~~department may adopt~~.

25           Section 903. Section 625.80, Florida Statutes, is  
26 amended to read:

27           625.80 "Equity security" defined.--The term "equity  
28 security" when used in this part means:

29           (1) Any stock or similar security;

30  
31

1           (2) Any security convertible, with or without  
2 consideration, into such a security, or carrying any warrant  
3 or right to subscribe to or purchase such a security;

4           (3) Any such warrant or right; or

5           (4) Any other security which the commission ~~department~~  
6 deems to be of similar nature and considers necessary or  
7 appropriate, by such rules as it may prescribe in the public  
8 interest or for the protection of investors, to treat as an  
9 equity security.

10           Section 904. Section 625.82, Florida Statutes, is  
11 amended to read:

12           625.82 Rules.--The commission ~~may adopt department~~  
13 ~~shall have the power to make~~ such rules as are ~~may be~~  
14 necessary for the execution of the functions vested in it by  
15 ss. 625.75-625.81 and may for such purpose classify domestic  
16 stock insurers, securities, and other persons or matters  
17 within its jurisdiction. No provision of ss. 625.75-625.77  
18 imposing any liability shall apply to any act done or omitted  
19 in good faith in conformity with any rule of the commission  
20 ~~department~~, notwithstanding that such rule may, after such act  
21 or omission, be amended or rescinded or determined by judicial  
22 or other authority to be invalid for any reason.

23           Section 905. Section 625.83, Florida Statutes, is  
24 amended to read:

25           625.83 Failure to file reporting forms.--Any insurer  
26 who knowingly fails to file information, documents, or reports  
27 required to be filed under s. 625.75 or any rule thereunder  
28 shall forfeit to the state the sum of \$100 for each day such  
29 failure to file continues. Such forfeiture shall be payable  
30 to the office ~~Treasurer~~ to be deposited in the Insurance  
31 ~~Commissioner's~~ Regulatory Trust Fund and shall be recoverable

1 in a civil suit in the name of the state. A time for filing  
2 may be extended for a reasonable period by the office  
3 ~~department~~.

4 Section 906. Subsection (6) of section 626.015,  
5 Florida Statutes, is repealed and present subsection (11) of  
6 that section is amended to read:

7 626.015 Definitions.--As used in this part:

8 ~~(10)~~~~(11)~~ "License" means a document issued by the  
9 department or office authorizing a person to be appointed to  
10 transact insurance or adjust claims for the kind, line, or  
11 class of insurance identified in the document.

12 Section 907. Section 626.016, Florida Statutes, is  
13 created to read:

14 626.016 Powers and duties of department, commission,  
15 and office.--

16 (1) The powers and duties of the Chief Financial  
17 Officer and the department specified in this chapter apply  
18 only with respect to insurance agents, managing general  
19 agents, reinsurance intermediaries, viatical settlement  
20 brokers, customer representatives, service representatives,  
21 agencies, and unlicensed persons subject to the regulatory  
22 jurisdiction of the department.

23 (2) The powers and duties of the commission and office  
24 specified in this chapter apply only with respect to insurance  
25 adjusters, service companies, administrators, viatical  
26 settlement providers and contracts, and unlicensed persons  
27 subject to the regulatory jurisdiction of the commission and  
28 office.

29 (3) The department has jurisdiction to enforce  
30 provisions of this chapter with respect to persons who engage  
31 in actions for which a license issued by the department is

1 legally required. The office has jurisdiction to enforce  
2 provisions of this chapter with respect to persons who engage  
3 in actions for which a license or certificate of authority  
4 issued by the office is legally required. For persons who  
5 violate a provision of this chapter for whom a license or  
6 certificate of authority issued by either the department or  
7 office is not required, either the department or office may  
8 take administrative action against such person as authorized  
9 by this chapter, pursuant to agreement between the office and  
10 department.

11 (4) Nothing in this section is intended to limit the  
12 authority of the department and the Division of Insurance  
13 Fraud, as specified in s. 626.989.

14 Section 908. Subsection (16) of section 626.025,  
15 Florida Statutes, is amended to read:

16 626.025 Consumer protections.--To transact insurance,  
17 agents shall comply with consumer protection laws, including  
18 the following, as applicable:

19 (16) Any other licensing requirement, restriction, or  
20 prohibition designated a consumer protection by the Chief  
21 Financial Officer ~~Insurance Commissioner~~, but not inconsistent  
22 with the requirements of Subtitle C of the Gramm-Leach-Bliley  
23 Act, 15 U.S.C.A. ss. 6751 et seq.

24 Section 909. Paragraph (a) of subsection (1) of  
25 section 626.112, Florida Statutes, is amended to read:

26 626.112 License and appointment required; agents,  
27 customer representatives, adjusters, insurance agencies,  
28 service representatives, managing general agents.--

29 (1)(a) No person may be, act as, or advertise or hold  
30 himself or herself out to be an insurance agent, or customer  
31 representative, ~~or adjuster~~ unless he or she is currently

1 licensed by the department and appointed by one or more  
2 insurers. No person may be, act as, or advertise or hold  
3 himself or herself out to be an insurance adjuster unless he  
4 or she is currently licensed by the office and appointed by  
5 one or more insurers.  
6

7 However, an employee leasing company licensed pursuant to  
8 chapter 468 which is seeking to enter into a contract with an  
9 employer that identifies products and services offered to  
10 employees may deliver proposals for the purchase of employee  
11 leasing services to prospective clients of the employee  
12 leasing company setting forth the terms and conditions of  
13 doing business; classify employees as permitted by s. 468.529;  
14 collect information from prospective clients and other sources  
15 as necessary to perform due diligence on the prospective  
16 client and to prepare a proposal for services; provide and  
17 receive enrollment forms, plans, and other documents; and  
18 discuss or explain in general terms the conditions,  
19 limitations, options, or exclusions of insurance benefit plans  
20 available to the client or employees of the employee leasing  
21 company were the client to contract with the employee leasing  
22 company. Any advertising materials or other documents  
23 describing specific insurance coverages must identify and be  
24 from a licensed insurer or its licensed agent or a licensed  
25 and appointed agent employed by the employee leasing company.  
26 The employee leasing company may not advise or inform the  
27 prospective business client or individual employees of  
28 specific coverage provisions, exclusions, or limitations of  
29 particular plans. As to clients for which the employee leasing  
30 company is providing services pursuant to s. 468.525(4), the  
31 employee leasing company may engage in activities permitted by

1 ss. 626.7315, 626.7845, and 626.8305, subject to the  
2 restrictions specified in those sections. If a prospective  
3 client requests more specific information concerning the  
4 insurance provided by the employee leasing company, the  
5 employee leasing company must refer the prospective business  
6 client to the insurer or its licensed agent or to a licensed  
7 and appointed agent employed by the employee leasing company.

8 Section 910. Section 626.161, Florida Statutes, is  
9 amended to read:

10 626.161 Licensing forms.--The department shall  
11 prescribe and furnish all printed forms required in connection  
12 with the application for issuance of and termination of all  
13 licenses and appointments, except that, with respect to  
14 adjusters, the commission shall prescribe and the office shall  
15 furnish such forms.

16 Section 911. Subsections (1), (2), and (5) of section  
17 626.171, Florida Statutes, are amended to read:

18 626.171 Application for license.--

19 (1) The department or office shall not issue a license  
20 as agent, customer representative, adjuster, insurance agency,  
21 service representative, managing general agent, or reinsurance  
22 intermediary to any person except upon written application  
23 therefor filed with it, qualification therefor, and payment in  
24 advance of all applicable fees. Any such application shall be  
25 made under the oath of the applicant and be signed by the  
26 applicant. Beginning November 1, 2002, the department shall  
27 accept the uniform application for nonresident agent  
28 licensing. The department may adopt revised versions of the  
29 uniform application by rule.

30 (2) In the application, the applicant shall set forth:  
31

1           (a) His or her full name, age, social security number,  
2 residence, and place of business.

3           (b) Proof that he or she has completed or is in the  
4 process of completing any required prelicensing course.

5           (c) Whether he or she has been refused or has  
6 voluntarily surrendered or has had suspended or revoked a  
7 license to solicit insurance by the department or by the  
8 supervising officials of any state.

9           (d) Whether any insurer or any managing general agent  
10 claims the applicant is indebted under any agency contract or  
11 otherwise and, if so, the name of the claimant, the nature of  
12 the claim, and the applicant's defense thereto, if any.

13           (e) Proof that the applicant meets the requirements  
14 for the type of license for which he or she is applying.

15           (f) Such other or additional information as the  
16 department or office may deem proper to enable it to determine  
17 the character, experience, ability, and other qualifications  
18 of the applicant to hold himself or herself out to the public  
19 as an insurance representative.

20           (5) An application for a license as an agent, customer  
21 representative, adjuster, insurance agency, service  
22 representative, managing general agent, or reinsurance  
23 intermediary must be accompanied by a set of the individual  
24 applicant's fingerprints, or, if the applicant is not an  
25 individual, by a set of the fingerprints of the sole  
26 proprietor, majority owner, partners, officers, and directors,  
27 on a form adopted by rule of the department or commission and  
28 accompanied by the fingerprint processing fee set forth in s.  
29 624.501. The fingerprints shall be certified by a law  
30 enforcement officer.

31

1           Section 912. Section 626.181, Florida Statutes, is  
2 amended to read:

3           626.181 Number of applications for licensure  
4 required.--After a license as agent, customer representative,  
5 or adjuster has been issued to an individual, the same  
6 individual shall not be required to take another examination  
7 for a similar license, regardless, in the case of an agent, of  
8 the number of insurers to be represented by him or her as  
9 agent, unless:

10           (1) Specifically ordered by the department or office  
11 to complete a new application for license; or

12           (2) During any period of 48 months since the filing of  
13 the original license application, such individual was not  
14 appointed as an agent, customer representative, or adjuster,  
15 unless the failure to be so appointed was due to military  
16 service, in which event the period within which a new  
17 application is not required may, in the discretion of the  
18 department or office, be extended to 12 months following the  
19 date of discharge from military service if the military  
20 service does not exceed 3 years, but in no event to extend  
21 under this clause for a period of more than 6 years from the  
22 date of filing of the original application for license.

23           Section 913. Section 626.191, Florida Statutes, is  
24 amended to read:

25           626.191 Repeated applications.--The failure of an  
26 applicant to secure a license upon an application shall not  
27 preclude him or her from applying again as many times as  
28 desired, but the department or office shall not give  
29 consideration to or accept any further application by the same  
30 individual for a similar license dated or filed within 30 days

31

1 subsequent to the date the department or office denied the  
2 last application, except as provided in s. 626.281.

3 Section 914. Section 626.201, Florida Statutes, is  
4 amended to read:

5 626.201 Investigation.--The department or office may  
6 propound any reasonable interrogatories in addition to those  
7 contained in the application, to any applicant for license or  
8 appointment, or on any renewal, reinstatement, or continuation  
9 thereof, relating to his or her qualifications, residence,  
10 prospective place of business, and any other matter which, in  
11 the opinion of the department or office, is deemed necessary  
12 or advisable for the protection of the public and to ascertain  
13 the applicant's qualifications. The department or office may,  
14 upon completion of the application, make such further  
15 investigation as it may deem advisable of the applicant's  
16 character, experience, background, and fitness for the license  
17 or appointment. Such an inquiry or investigation shall be in  
18 addition to any examination required to be taken by the  
19 applicant as hereinafter in this chapter provided.

20 Section 915. Section 626.202, Florida Statutes, is  
21 amended to read:

22 626.202 Fingerprinting requirements.--If there is a  
23 change in ownership or control of any entity licensed under  
24 this chapter, or if a new partner, officer, or director is  
25 employed or appointed, a set of fingerprints of the new owner,  
26 partner, officer, or director must be filed with the  
27 department or office within 30 days after the change. The  
28 acquisition of 10 percent or more of the voting securities of  
29 a licensed entity is considered a change of ownership or  
30 control. The fingerprints must be certified by a law

31

1 enforcement officer and be accompanied by the fingerprint  
2 processing fee in s. 624.501.

3 Section 916. Section 626.211, Florida Statutes, is  
4 amended to read:

5 626.211 Approval, disapproval of application.--

6 (1) If upon the basis of a completed application for  
7 license and such further inquiry or investigation as the  
8 department or office may make concerning an applicant the  
9 department or office is satisfied that, subject to any  
10 examination required to be taken and passed by the applicant  
11 for a license, the applicant is qualified for the license  
12 applied for and that all pertinent fees have been paid, it  
13 shall approve the application. The department or office shall  
14 not deny, delay, or withhold approval of an application due to  
15 the fact that it has not received a criminal history report  
16 based on the applicant's fingerprints.

17 (2) Upon approval of an applicant for license as  
18 agent, customer representative, or adjuster who is subject to  
19 written examination, the department or office shall notify the  
20 applicant when and where he or she may take the required  
21 examination.

22 (3) Upon approval of an applicant for license who is  
23 not subject to examination, the department or office shall  
24 promptly issue the license.

25 (4) If upon the basis of the completed application and  
26 such further inquiry or investigation the department or office  
27 deems the applicant to be lacking in any one or more of the  
28 required qualifications for the license applied for, the  
29 department or office shall disapprove the application and  
30 notify the applicant, stating the grounds of disapproval.

31

1           Section 917. Section 626.221, Florida Statutes, is  
2 amended to read:

3           626.221 Examination requirement; exemptions.--

4           (1) The department or office shall not issue any  
5 license as agent, customer representative, or adjuster to any  
6 individual who has not qualified for, taken, and passed to the  
7 satisfaction of the department or office a written examination  
8 of the scope prescribed in s. 626.241.

9           (2) However, no such examination shall be necessary in  
10 any of the following cases:

11           (a) An applicant for renewal of appointment as an  
12 agent, customer representative, or adjuster, unless the  
13 department or office determines that an examination is  
14 necessary to establish the competence or trustworthiness of  
15 such applicant.

16           (b) An applicant for limited license as agent for  
17 personal accident insurance, baggage and motor vehicle excess  
18 liability insurance, credit life or disability insurance,  
19 credit insurance, credit property insurance, in-transit and  
20 storage personal property insurance, or communications  
21 equipment property insurance or communication equipment inland  
22 marine insurance.

23           (c) In the discretion of the department or office, an  
24 applicant for reinstatement of license or appointment as an  
25 agent, customer representative, or adjuster whose license has  
26 been suspended within 2 years prior to the date of application  
27 or written request for reinstatement.

28           (d) An applicant who, within 2 years prior to  
29 application for license and appointment as an agent, customer  
30 representative, or adjuster, was a full-time salaried employee  
31 of the department or office and had continuously been such an

1 employee with responsible insurance duties for not less than 2  
2 years and who had been a licensee within 2 years prior to  
3 employment by the department or office with the same class of  
4 license as that being applied for.

5 (e) An individual who qualified as a managing general  
6 agent, service representative, customer representative, or  
7 all-lines adjuster by passing a general lines agent's  
8 examination and subsequently was licensed and appointed and  
9 has been actively engaged in all lines of property and  
10 casualty insurance may, upon filing an application for  
11 appointment, be licensed and appointed as a general lines  
12 agent for the same kinds of business without taking another  
13 examination if he or she holds any such currently effective  
14 license referred to in this paragraph or held the license  
15 within 24 months prior to the date of filing the application  
16 with the department.

17 (f) A person who has been licensed and appointed ~~by~~  
18 ~~the department~~ as a public adjuster or independent adjuster,  
19 or licensed and appointed either as an agent or company  
20 adjuster as to all property, casualty, and surety insurances,  
21 may be licensed and appointed as a company adjuster as to any  
22 of such insurances, or as an independent adjuster or public  
23 adjuster, without additional written examination if an  
24 application for appointment is filed with the office  
25 ~~department~~ within 24 months following the date of cancellation  
26 or expiration of the prior appointment.

27 (g) A person who has been licensed ~~by the department~~  
28 as an adjuster for motor vehicle, property and casualty,  
29 workers' compensation, and health insurance may be licensed as  
30 such an adjuster without additional written examination if his  
31 or her application for appointment is filed with the office

1 ~~department~~ within 24 months after cancellation or expiration  
2 of the prior license.

3 (h) An applicant for temporary license, except as  
4 provided in this code.

5 (i) An applicant for a life or health license who has  
6 received the designation of chartered life underwriter (CLU)  
7 from the American College of Life Underwriters and who has  
8 been engaged in the insurance business within the past 4  
9 years, except that such an individual may be examined on  
10 pertinent provisions of this code.

11 (j) An applicant for license as a general lines agent,  
12 customer representative, or adjuster who has received the  
13 designation of chartered property and casualty underwriter  
14 (CPCU) from the American Institute for Property and Liability  
15 Underwriters and who has been engaged in the insurance  
16 business within the past 4 years, except that such an  
17 individual may be examined on pertinent provisions of this  
18 code.

19 (k) An applicant for license as a customer  
20 representative who has the designation of Accredited Advisor  
21 in Insurance (AAI) from the Insurance Institute of America,  
22 the designation of Certified Insurance Counselor (CIC) from  
23 the Society of Certified Insurance Service Counselors, the  
24 designation of Accredited Customer Service Representative  
25 (ACSR) from the Independent Insurance Agents of America, the  
26 designation of Certified Professional Service Representative  
27 (CPSR) from the National Association of Professional Insurance  
28 Agents, the designation of Certified Insurance Service  
29 Representative (CISR) from the Society of Certified Insurance  
30 Service Representatives. Also, an applicant for license as a  
31 customer representative who has the designation of Certified

1 Customer Service Representative (CCSR) from the Florida  
2 Association of Insurance Agents, or the designation of  
3 Registered Customer Service Representative (RCSR) from a  
4 regionally accredited postsecondary institution in this state,  
5 or the designation of Professional Customer Service  
6 Representative (PCSR) from the Professional Career Institute,  
7 whose curriculum has been approved by the department and whose  
8 curriculum includes comprehensive analysis of basic property  
9 and casualty lines of insurance and testing at least equal to  
10 that of standard department testing for the customer  
11 representative license. The department shall adopt rules  
12 establishing standards for the approval of curriculum.

13 (l) An applicant for license as an adjuster who has  
14 the designation of Accredited Claims Adjuster (ACA) from a  
15 regionally accredited postsecondary institution in this state,  
16 or the designation of Professional Claims Adjuster (PCA) from  
17 the Professional Career Institute, whose curriculum has been  
18 approved by the office ~~department~~ and whose curriculum  
19 includes comprehensive analysis of basic property and casualty  
20 lines of insurance and testing at least equal to that of  
21 standard office ~~department~~ testing for the all-lines adjuster  
22 license. The commission ~~department~~ shall adopt rules  
23 establishing standards for the approval of curriculum.

24 (m) An applicant qualifying for a license transfer  
25 under s. 626.292, if the applicant:

26 1. Has successfully completed the prelicensing  
27 examination requirements in the applicant's previous state  
28 which are substantially equivalent to the examination  
29 requirements in this state, as determined by the department  
30 ~~Insurance Commissioner of this state;~~

31

1           2. Has received the designation of chartered property  
2 and casualty underwriter (CPCU) from the American Institute  
3 for Property and Liability Underwriters and has been engaged  
4 in the insurance business within the past 4 years if applying  
5 to transfer a general lines agent license; or

6           3. Has received the designation of chartered life  
7 underwriter (CLU) from the American College of Life  
8 Underwriters and has been engaged in the insurance business  
9 within the past 4 years, if applying to transfer a life or  
10 health agent license.

11           (n) An applicant for a nonresident agent license, if  
12 the applicant:

13           1. Has successfully completed prelicensing examination  
14 requirements in the applicant's home state which are  
15 substantially equivalent to the examination requirements in  
16 this state, as determined by the department Insurance  
17 ~~Commissioner of this state~~, as a requirement for obtaining a  
18 resident license in his or her home state;

19           2. Held a general lines agent license, life agent  
20 license, or health agent license prior to the time a written  
21 examination was required;

22           3. Has received the designation of chartered property  
23 and casualty underwriter (CPCU) from the American Institute  
24 for Property and Liability Underwriters and has been engaged  
25 in the insurance business within the past 4 years, if an  
26 applicant for a nonresident license as a general lines agent;  
27 or

28           4. Has received the designation of chartered life  
29 underwriter (CLU) from the American College of Life  
30 Underwriters and has been in the insurance business within the  
31

1 past 4 years, if an applicant for a nonresident license as a  
2 life agent or health agent.

3 (3) An individual who is already licensed as a  
4 customer representative shall not be licensed as a general  
5 lines agent without application and examination for such  
6 license.

7 Section 918. Section 626.231, Florida Statutes, is  
8 amended to read:

9 626.231 Eligibility for examination.--No person shall  
10 be permitted to take an examination for license until his or  
11 her application for the license has been approved and the  
12 required fees have been received by the department or office  
13 or a person designated by the department or office to  
14 administer the examination.

15 Section 919. Subsection (1) of section 626.241,  
16 Florida Statutes, is amended to read:

17 626.241 Scope of examination.--

18 (1) Each examination for a license as agent, customer  
19 representative, or adjuster shall be of such scope as is  
20 deemed by the department or office to be reasonably necessary  
21 to test the applicant's ability and competence and knowledge  
22 of the kinds of insurance and transactions to be handled under  
23 the license applied for, of the duties and responsibilities of  
24 such a licensee, and of the pertinent provisions of the laws  
25 of this state.

26 Section 920. Section 626.251, Florida Statutes, is  
27 amended to read:

28 626.251 Time and place of examination; notice.--

29 (1) The department or office or a person designated by  
30 the department or office shall mail written notice of the time  
31 and place of the examination to each applicant for license

1 required to take an examination who will be eligible to take  
2 the examination as of the examination date. The notice shall  
3 be so mailed, postage prepaid, and addressed to the applicant  
4 at his or her address shown on the application for license or  
5 at such other address as requested by the applicant in writing  
6 filed with the department or office prior to the mailing of  
7 the notice. Notice shall be deemed given when so mailed.

8 (2) The examination shall be held in an adequate and  
9 designated examination center in this state.

10 (3) The department or office shall make an examination  
11 available to the applicant, to be taken as soon as reasonably  
12 possible after the applicant is eligible therefor. Any  
13 examination required under this part shall be available in  
14 this state at a designated examination center.

15 Section 921. Section 626.261, Florida Statutes, is  
16 amended to read:

17 626.261 Conduct of examination.--

18 (1) The applicant for license shall appear in person  
19 and personally take the examination for license at the time  
20 and place specified by the department or office or by a person  
21 designated by the department or office.

22 (2) The examination shall be conducted by an employee  
23 of the department or office or a person designated by the  
24 department or office for that purpose.

25 (3) The questions propounded shall be as prepared by  
26 the department or office, or by a person designated by the  
27 department or office for that purpose, consistent with the  
28 applicable provisions of this code.

29 (4) All examinations shall be given and graded in a  
30 fair and impartial manner and without unfair discrimination in  
31 favor of or against any particular applicant.

1           Section 922. Section 626.266, Florida Statutes, is  
2 amended to read:

3           626.266 Printing of examinations or related materials  
4 to preserve examination security.--A contract let for the  
5 development, administration, or grading of examinations or  
6 related materials by the department or office ~~of Insurance~~  
7 pursuant to the various agent, customer representative,  
8 solicitor, or adjuster licensing and examination provisions of  
9 this code may include the printing or furnishing of these  
10 examinations or related materials in order to preserve  
11 security. Any such contract shall be let as a contract for a  
12 contractual service pursuant to s. 287.057.

13           Section 923. Subsection (1) of section 626.271,  
14 Florida Statutes, is amended to read:

15           626.271 Examination fee; determination, refund.--

16           (1) Prior to being permitted to take an examination,  
17 each applicant who is subject to examination shall pay to the  
18 department or office or a person designated by the department  
19 or office an examination fee. A separate and additional  
20 examination fee shall be payable for each separate class of  
21 license applied for, notwithstanding that all such  
22 examinations are taken on the same date and at the same place.

23           Section 924. Section 626.281, Florida Statutes, is  
24 amended to read:

25           626.281 Reexamination.--

26           (1) Any applicant for license who has either:

27           (a) Taken an examination and failed to make a passing  
28 grade, or

29           (b) Failed to appear for the examination or to take or  
30 complete the examination at the time and place specified in  
31 the notice of the department or office,

1  
2 may take additional examinations, after filing with the  
3 department or office an application for reexamination together  
4 with applicable fees. The failure of an applicant to pass an  
5 examination or the failure to appear for the examination or to  
6 take or complete the examination does not preclude the  
7 applicant from taking subsequent examinations.

8 (2) The department or office may require any  
9 individual whose license as an agent, customer representative,  
10 or adjuster has expired or has been suspended to pass an  
11 examination prior to reinstating or relicensing the individual  
12 as to any class of license. The examination fee shall be paid  
13 as to each examination.

14 Section 925. Subsections (5) and (6) of section  
15 626.2815, Florida Statutes, are amended to read:

16 626.2815 Continuing education required; application;  
17 exceptions; requirements; penalties.--

18 (5) The department ~~of insurance~~ shall refuse to renew  
19 the appointment of any agent who has not had his or her  
20 continuing education requirements certified unless the agent  
21 has been granted an extension by the department. The  
22 department may not issue a new appointment of the same or  
23 similar type, with any insurer, to an agent who was denied a  
24 renewal appointment for failure to complete continuing  
25 education as required until the agent completes his or her  
26 continuing education requirement.

27 (6)(a) There is created an 11-member continuing  
28 education advisory board to be appointed by the Chief  
29 Financial Officer ~~Insurance Commissioner and Treasurer~~.  
30 Appointments shall be for terms of 4 years. The purpose of  
31 the board is to advise the department in determining standards

1 by which courses may be evaluated and categorized as basic,  
2 intermediate, or advanced. ~~The board shall establish such~~  
3 ~~criteria and the department shall implement such criteria by~~  
4 ~~January 1, 1997.~~ The board shall submit recommendations to  
5 the department of changes needed in such criteria not less  
6 frequently than every 2 years ~~thereafter~~. The department shall  
7 require all approved course providers to submit courses for  
8 approval to the department using the criteria. All materials,  
9 brochures, and advertisements related to the approved courses  
10 must specify the level assigned to the course.

11 (b) The board members shall be appointed as follows:

12 1. Seven members representing agents of which at least  
13 one must be a representative from each of the following  
14 organizations: the Florida Association of Insurance Agents;  
15 the Florida Association of Life Underwriters; the Professional  
16 Insurance Agents of Florida, Inc.; the Florida Association of  
17 Health Underwriters; the Specialty Agents' Association; the  
18 Latin American Agents' Association; and the National  
19 Association of Insurance Women. Such board members must  
20 possess at least a bachelor's degree or higher from an  
21 accredited college or university with major coursework in  
22 insurance, risk management, or education or possess the  
23 designation of CLU, CPCU, CHFC, CFP, AAI, or CIC. In  
24 addition, each member must possess 5 years of classroom  
25 instruction experience or 5 years of experience in the  
26 development or design of educational programs or 10 years of  
27 experience as a licensed resident agent. Each organization  
28 may submit to the department a list of recommendations for  
29 appointment. If one organization does not submit a list of  
30 recommendations, the Chief Financial Officer Insurance

31

1 ~~Commissioner~~ may select more than one recommended person from  
2 a list submitted by other eligible organizations.

3           2. Two members representing insurance companies at  
4 least one of whom must represent a Florida Domestic Company  
5 and one of whom must represent the Florida Insurance Council.  
6 Such board members must be employed within the training  
7 department of the insurance company. At least one such member  
8 must be a member of the Society of Insurance Trainers and  
9 Educators.

10           3. One member representing the general public who is  
11 not directly employed in the insurance industry. Such board  
12 member must possess a minimum of a bachelor's degree or higher  
13 from an accredited college or university with major coursework  
14 in insurance, risk management, training, or education.

15           4. One member, appointed by the Chief Financial  
16 Officer ~~Insurance Commissioner~~, who represents the department.

17           (c) The members of the board shall serve at the  
18 pleasure of the Chief Financial Officer ~~Insurance Commissioner~~  
19 ~~and Treasurer~~. Each board member shall be entitled to  
20 reimbursement for expenses pursuant to s. 112.061. The board  
21 shall designate one member as chair. The board shall meet at  
22 the call of the chair or the Chief Financial Officer ~~Insurance~~  
23 ~~Commissioner and Treasurer~~.

24           Section 926. Section 626.2817, Florida Statutes, is  
25 amended to read:

26           626.2817 Regulation of course providers, instructors,  
27 school officials, and monitor groups involved in prelicensure  
28 education for insurance agents and other licensees.--

29           (1) Any course provider, instructor, school official,  
30 or monitor group must be approved by and registered with the  
31

1 department or office before offering prelicensure education  
2 courses for insurance agents and other licensees.

3 (2) The department or commission shall adopt rules  
4 establishing standards for the approval, registration,  
5 discipline, or removal from registration of course providers,  
6 instructors, school officials, and monitor groups. The  
7 standards must be designed to ensure that such persons have  
8 the knowledge, competence, and integrity to fulfill the  
9 educational objectives of the prelicensure requirements of  
10 this chapter and chapter 648 and to assure that insurance  
11 agents and licensees are competent to engage in the activities  
12 authorized under the license.

13 (3) The department or commission shall adopt rules to  
14 establish a process for determining compliance with the  
15 prelicensure requirements of this chapter and chapter 648 and  
16 shall establish a prelicensure cycle for insurance agents and  
17 other licensees. The department or commission shall adopt  
18 rules prescribing the forms necessary to administer the  
19 prelicensure requirements.

20 Section 927. Section 626.291, Florida Statutes, is  
21 amended to read:

22 626.291 Denial, issuance of license.--

23 (1) Within 30 days after the applicant has completed  
24 any examination required under s. 626.221, the department or  
25 office or its designee shall provide a score report; and, if  
26 it finds that the applicant has received a passing grade, the  
27 department or office shall within such period notify the  
28 applicant and issue and transmit the license to which such  
29 examination related. If it finds that the applicant did not  
30 make a passing grade on the examination for a particular  
31 license, the department or office or its designee shall within

1 this period provide notice to the applicant to that effect and  
2 of its denial of the license.

3 (2) As to an applicant for a license for which no  
4 examination is required, the department or office shall  
5 promptly issue the license applied for as soon as it has  
6 approved the application.

7 (3) The department or office shall not deny, delay, or  
8 withhold issuance of a license due to the fact that it has not  
9 received a criminal history report based on the applicant's  
10 fingerprints.

11 Section 928. Paragraph (d) of subsection (2) of  
12 section 626.292, Florida Statutes, is amended to read:

13 626.292 Transfer of license from another state.--

14 (2) To qualify for a license transfer, an individual  
15 applicant must meet the following requirements:

16 (d) The individual shall satisfy prelicensing  
17 education requirements in this state, unless the completion of  
18 prelicensing education requirements was a prerequisite for  
19 licensure in the other state and the prelicensing education  
20 requirements in the other state are substantially equivalent  
21 to the prelicensing requirements of this state as determined  
22 by the department ~~Insurance Commissioner of this state.~~

23 Section 929. Section 626.301, Florida Statutes, is  
24 amended to read:

25 626.301 Form and contents of licenses, in  
26 general.--Each license issued by the department or office  
27 shall be in such form as the department or commission may  
28 designate and contain the licensee's name, lines of authority  
29 the licensee is authorized to transact, the licensee's  
30 personal identification number, the date of issuance, and any  
31 other information the department or commission deems necessary

1 to fully identify the licensee and the authority being  
2 granted. The department or commission may by rule require  
3 photographs of applicants as a part of the licensing process.

4 Section 930. Section 626.322, Florida Statutes, is  
5 amended to read:

6 626.322 License, appointment; certain military  
7 installations.--A natural person, not a resident of this  
8 state, may be licensed and appointed to represent an  
9 authorized life insurer domiciled in this state or an  
10 authorized foreign life insurer which maintains a regional  
11 home office in this state, provided such person represents  
12 such insurer exclusively at a United States military  
13 installation located in a foreign country. The department may,  
14 upon request of the applicant and the insurer on application  
15 forms furnished by the department and upon payment of fees as  
16 prescribed in s. 624.501, issue a license and appointment to  
17 such person. The insurer shall certify to the department that  
18 the applicant has the necessary training to hold himself or  
19 herself out as a life insurance representative, and the  
20 insurer shall further certify that it is willing to be bound  
21 by the acts of such applicant within the scope of his or her  
22 employment. Appointments shall be continued as prescribed in  
23 s. 626.381 and upon payment of a fee as prescribed in s.  
24 624.501, unless sooner terminated. Such fees received shall  
25 be credited to the Insurance ~~Commissioner's~~ Regulatory Trust  
26 Fund as provided for in s. 624.523.

27 Section 931. Section 626.361, Florida Statutes, is  
28 amended to read:

29 626.361 Effective date of appointments.--All  
30 appointments shall be submitted to the department or office on  
31 a monthly basis no later than 45 days after the date of

1 appointment. All appointments shall be effective as of the  
2 date requested on the appointment form.

3 Section 932. Section 626.371, Florida Statutes, is  
4 amended to read:

5 626.371 Payment of fees, taxes for appointment period  
6 without appointment.--If, upon application and qualification  
7 for an appointment and such investigation as the department or  
8 office may make, it appears to the department or office that  
9 an individual who was formerly appointed has been actively  
10 engaged or is currently actively engaged as such an appointee,  
11 but without being appointed as required, the department or  
12 office may, if it finds that such failure to be appointed was  
13 an inadvertent error on the part of the insurer or employer so  
14 represented, nevertheless issue the appointment as applied for  
15 but subject to the condition that, before the appointment is  
16 issued, all fees and taxes which would have been due had the  
17 applicant been so appointed during such current and prior  
18 periods, together with a continuation fee for such current and  
19 prior terms of appointment, shall be paid to the department or  
20 office.

21 Section 933. Subsections (2), (3), and (4), of section  
22 626.381, Florida Statutes, are amended to read:

23 626.381 Renewal, continuation, reinstatement, or  
24 termination of appointment.--

25 (2) Each appointing entity shall file with the  
26 department or office the lists, statements, and information as  
27 to appointees whose appointments are being renewed or  
28 terminated, accompanied by payment of the applicable renewal  
29 fees and taxes as prescribed in s. 624.501, by a date set  
30 forth by the department or office following the month during  
31 which the appointments will expire.

1           (3) Renewal of an appointment which is received on a  
2 date set forth by the department or office in the succeeding  
3 month may be renewed by the department or office without  
4 penalty and shall be effective as of the day the appointment  
5 would have expired.

6           (4) Renewal of an appointment which is received by the  
7 department or office after the date set by the department or  
8 office may be accepted and effectuated by the department or  
9 office in its discretion if an additional appointment,  
10 continuation, and reinstatement fee accompanies the renewal  
11 pursuant to s. 624.501.

12           Section 934. Subsection (2) of section 626.431,  
13 Florida Statutes, is amended to read:

14           626.431 Effect of expiration of license and  
15 appointment.--

16           (2) When a licensee's last appointment for a  
17 particular class of insurance has been terminated or not  
18 renewed, the department or office must notify the licensee  
19 that his or her eligibility for appointment as such an  
20 appointee will expire unless he or she is appointed prior to  
21 expiration of the 48-month period referred to in subsection  
22 (3).

23           Section 935. Section 626.451, Florida Statutes, is  
24 amended to read:

25           626.451 Appointment of agent or other  
26 representative.--

27           (1) Each appointing entity appointing an agent,  
28 adjuster, service representative, customer representative, or  
29 managing general agent in this state shall file the  
30 appointment with the department or office and, at the same  
31 time, pay the applicable appointment fee and taxes. Every

1 appointment shall be subject to the prior issuance of the  
2 appropriate agent's, adjuster's, service representative's,  
3 customer representative's, or managing general agent's  
4 license.

5 (2) As a part of each appointment there shall be a  
6 certified statement or affidavit of an appropriate officer or  
7 official of the appointing entity stating what investigation  
8 the appointing entity has made concerning the proposed  
9 appointee and his or her background and the appointing  
10 entity's opinion to the best of its knowledge and belief as to  
11 the moral character, fitness, and reputation of the proposed  
12 appointee and any other information the department or office  
13 may reasonably require relative to the proposed appointee.

14 (3) In the appointment of an agent, adjuster, service  
15 representative, customer representative, or managing general  
16 agent the appointing entity shall also certify therein that it  
17 is willing to be bound by the acts of the agent, adjuster,  
18 service representative, customer representative, or managing  
19 general agent, within the scope of his or her employment.

20 (4) Each appointing entity shall advise the department  
21 or office in writing within 15 days after it or its general  
22 agent, officer, or other official becomes aware that an  
23 appointee has pleaded guilty or nolo contendere to or has been  
24 found guilty of a felony after being appointed.

25 (5) Any law enforcement agency or state attorney's  
26 office that is aware that an agent, adjuster, service  
27 representative, customer representative, or managing general  
28 agent has pleaded guilty or nolo contendere to or has been  
29 found guilty of a felony shall notify the department or office  
30 of such fact.

31

1           (6) Upon the filing of an information or indictment  
2 against an agent, adjuster, service representative, customer  
3 representative, or managing general agent, the state attorney  
4 shall immediately furnish the department or office a certified  
5 copy of the information or indictment.

6           Section 936. Section 626.461, Florida Statutes, is  
7 amended to read:

8           626.461 Continuation of appointment of agent or other  
9 representative.--Subject to renewal or continuation by the  
10 appointing entity, the appointment of the agent, adjuster,  
11 solicitor, service representative, customer representative, or  
12 managing general agent shall continue in effect until the  
13 person's license is revoked or otherwise terminated, unless  
14 written notice of earlier termination of the appointment is  
15 filed with the department or office by either the appointing  
16 entity or the appointee.

17           Section 937. Subsections (2), (3), (4), and (5) of  
18 section 626.471, Florida Statutes, are amended to read:

19           626.471 Termination of appointment.--

20           (2) As soon as possible and at all events within 30  
21 days after terminating the appointment of an appointee, other  
22 than as to an appointment terminated by the appointing  
23 entity's failure to continue or renew it, the appointing  
24 entity shall file written notice thereof with the department  
25 or office, together with a statement that it has given the  
26 appointee notice thereof as provided in subsection (1) and  
27 shall file with the department or office the reasons and facts  
28 involved in such termination as required under s. 626.511.

29           (3) Upon termination of the appointment of an  
30 appointee, whether by failure to renew or continue the  
31 appointment, the appointing entity shall:

1 (a) File with the department or office the information  
2 required under s. 626.511.

3 (b) Subject to the exceptions provided under  
4 subsection (1), continue the outstanding contracts transacted  
5 by an agent until the expiration date or anniversary date when  
6 the policy is a continuous policy with no expiration date.  
7 This paragraph shall not be construed to prohibit the  
8 cancellation of such contracts when not otherwise prohibited  
9 by law.

10 (4) An appointee may terminate the appointment at any  
11 time by giving written notice thereof to the appointing entity  
12 and filing a copy of the notice with the department or office.  
13 Such termination shall be subject to the appointee's contract  
14 rights, if any.

15 (5) Upon receiving notice of termination, the  
16 department or office shall terminate the appointment.

17 Section 938. Section 626.511, Florida Statutes, is  
18 amended to read:

19 626.511 Reasons for termination; confidential  
20 information.--

21 (1) Any insurer terminating the appointment of an  
22 agent; any general lines agent terminating the appointment of  
23 a customer representative or a crop hail or multiple-peril  
24 crop insurance agent; and any employer terminating the  
25 appointment of an adjuster, service representative, or  
26 managing general agent, whether such termination is by direct  
27 action of the appointing insurer, agent, or employer or by  
28 failure to renew or continue the appointment as provided,  
29 shall file with the department or office a statement of the  
30 reasons, if any, for and the facts relative to such  
31 termination. In the case of termination of the appointment of

1 an agent, such information may be filed by the insurer or by  
2 the general agent of the insurer.

3 (2) In the case of terminations by failure to renew or  
4 continue the appointment, the information required under  
5 subsection (1) shall be filed with the department or office as  
6 soon as possible, and at all events within 30 days, after the  
7 date notice of intention not to so renew or continue was filed  
8 with the department or office as required in this chapter. In  
9 all other cases, the information required under subsection (1)  
10 shall be filed with the department or office at the time, or  
11 at all events within 10 days after, notice of the termination  
12 was filed with the department or office.

13 (3) Any information, document, record, or statement  
14 furnished to the department or office under subsection (1) is  
15 confidential and exempt from the provisions of s. 119.07(1).

16 Section 939. Subsections (2), (3), and (5) of section  
17 626.521, Florida Statutes, are amended to read:

18 626.521 Character, credit reports.--

19 (2) If requested by the department or office, the  
20 insurer, manager, general agent, general lines agent, or  
21 employer, as the case may be, shall furnish to the department  
22 or office on a form adopted by the department or commission  
23 and furnished by the department or office, such information as  
24 it may reasonably require relative to such individual and  
25 investigation.

26 (3) As to an applicant for an adjuster's or  
27 reinsurance intermediary's license who is to be self-employed,  
28 the department or office may secure, at the cost of the  
29 applicant, a full detailed credit and character report made by  
30 an established and reputable independent reporting service  
31 relative to the applicant.

1           (5) Information contained in credit or character  
2 reports furnished to or secured by the department or office  
3 under this section is confidential and exempt from the  
4 provisions of s. 119.07(1).

5           Section 940. Subsections (1) and (2) of section  
6 626.541, Florida Statutes, are amended to read:

7           626.541 Firm, corporate, and business names; officers;  
8 associates; notice of changes.--

9           (1) Any licensed agent or adjuster doing business  
10 under a firm or corporate name or under any business name  
11 other than his or her own individual name shall, within 30  
12 days after the initial transaction of insurance under such  
13 business name, file with the department or office, on forms  
14 adopted by the department or commission and furnished by the  
15 department or office ~~it~~, a written statement of the firm,  
16 corporate, or business name being so used, the address of any  
17 office or offices or places of business making use of such  
18 name, and the name and social security number of each officer  
19 and director of the corporation and of each individual  
20 associated in such firm or corporation as to the insurance  
21 transactions thereof or in the use of such business name.

22           (2) In the event of any change of such name, or of any  
23 of the officers and directors, or of any of such addresses, or  
24 in the personnel so associated, written notice of such change  
25 must be filed with the department or office within 30 days by  
26 or on behalf of those licensees terminating any such firm,  
27 corporate, or business name or continuing to operate  
28 thereunder.

29           Section 941. Section 626.551, Florida Statutes, is  
30 amended to read:

31

1           626.551 Notice of change of address, name.--Every  
2 licensee shall notify the department or office in writing  
3 within 60 days after a change of name, residence address,  
4 principal business street address, or mailing address. Any  
5 licensed agent who has moved his or her residence from this  
6 state shall have his or her license and all appointments  
7 immediately terminated by the department or office. Failure to  
8 notify the department or office within the required time  
9 period shall result in a fine not to exceed \$250 for the first  
10 offense and, for subsequent offenses, a fine of not less than  
11 \$500 or suspension or revocation of the license pursuant to s.  
12 626.611 or s. 626.621.

13           Section 942. Subsections (1) and (2) of section  
14 626.561, Florida Statutes, are amended to read:

15           626.561 Reporting and accounting for funds.--

16           (1) All premiums, return premiums, or other funds  
17 belonging to insurers or others received by an agent, customer  
18 representative, or adjuster in transactions under his or her  
19 license are trust funds received by the licensee in a  
20 fiduciary capacity. An agent shall keep the funds belonging to  
21 each insurer for which he or she is not appointed, other than  
22 a surplus lines insurer, in a separate account so as to allow  
23 the department or office to properly audit such funds. The  
24 licensee in the applicable regular course of business shall  
25 account for and pay the same to the insurer, insured, or other  
26 person entitled thereto.

27           (2) The licensee shall keep and make available to the  
28 department or office books, accounts, and records as will  
29 enable the department or office to determine whether such  
30 licensee is complying with the provisions of this code. Every  
31 licensee shall preserve books, accounts, and records

1 | pertaining to a premium payment for at least 3 years after  
2 | payment; provided, however, the preservation of records by  
3 | computer or photographic reproductions or records in  
4 | photographic form shall constitute compliance with this  
5 | requirement. All other records shall be maintained in  
6 | accordance with s. 626.748. The 3-year requirement shall not  
7 | apply to insurance binders when no policy is ultimately issued  
8 | and no premium is collected.

9 |         Section 943. Section 626.591, Florida Statutes, is  
10 | amended to read:

11 |             626.591 Penalty for violation of s. 626.581.--

12 |             (1) If any ~~insurer or~~ agent is found by the department  
13 | to be in violation of s. 626.581, the department may, in its  
14 | discretion, suspend or revoke ~~the insurer's certificate of~~  
15 | authority and the agent's license. If any insurer is found by  
16 | the office to be in violation of s. 626.581, the office may,  
17 | in its discretion, suspend or revoke the insurer's certificate  
18 | of authority.

19 |             (2) Any such suspension or revocation shall be for a  
20 | period of not less than 6 months, and the insurer or agent  
21 | shall not subsequently be authorized or licensed to transact  
22 | insurance unless the office or department is satisfied that  
23 | the insurer or agent will not again violate any of the  
24 | provisions of s. 626.581.

25 |         Section 944. Subsection (1) of section 626.592,  
26 | Florida Statutes, is amended to read:

27 |             626.592 Primary agents.--

28 |             (1) Each person operating an insurance agency and each  
29 | location of a multiple location agency shall designate a  
30 | primary agent for each insurance agency location and shall  
31 | file the name of the person so designated, and the address of

1 the insurance agency location where he or she is primary  
2 agent, with the department ~~of insurance~~, on a form approved by  
3 the department. The designation of the primary agent may be  
4 changed at the option of the agency, and any change shall be  
5 effective upon notification to the department. Notice of  
6 change must be sent to the department within 30 days after  
7 such change.

8 Section 945. Section 626.601, Florida Statutes, is  
9 amended to read:

10 626.601 Improper conduct; inquiry; fingerprinting.--

11 (1) The department or office may, upon its own motion  
12 or upon a written complaint signed by any interested person  
13 and filed with the department or office, inquire into any  
14 alleged improper conduct of any licensed agent, adjuster,  
15 service representative, managing general agent, customer  
16 representative, title insurance agent, title insurance agency,  
17 continuing education course provider, instructor, school  
18 official, or monitor group under this code. The department or  
19 office may thereafter initiate an investigation of any such  
20 licensee if it has reasonable cause to believe that the  
21 licensee has violated any provision of the insurance code.  
22 During the course of its investigation, the department or  
23 office shall contact the licensee being investigated unless it  
24 determines that contacting such person could jeopardize the  
25 successful completion of the investigation or cause injury to  
26 the public.

27 (2) In the investigation by the department or office  
28 of the alleged misconduct, the licensee shall, whenever so  
29 required by the department or office, cause his or her books  
30 and records to be open for inspection for the purpose of such  
31 inquiries.

1           (3) The complaints against any licensee may be  
2 informally alleged and need not be in any such language as is  
3 necessary to charge a crime on an indictment or information.

4           (4) The expense for any hearings or investigations  
5 under this law, as well as the fees and mileage of witnesses,  
6 may be paid out of the appropriate fund.

7           (5) If the department or office, after investigation,  
8 has reason to believe that a licensee may have been found  
9 guilty of or pleaded guilty or nolo contendere to a felony or  
10 a crime related to the business of insurance in this or any  
11 other state or jurisdiction, the department or office may  
12 require the licensee to file with the department or office a  
13 complete set of his or her fingerprints, which shall be  
14 accompanied by the fingerprint processing fee set forth in s.  
15 624.501. The fingerprints shall be certified by an authorized  
16 law enforcement officer.

17           (6) The complaint and any information obtained  
18 pursuant to the investigation by the department or office are  
19 confidential and are exempt from the provisions of s. 119.07,  
20 unless the department or office files a formal administrative  
21 complaint, emergency order, or consent order against the  
22 licensee. Nothing in this subsection shall be construed to  
23 prevent the department or office from disclosing the complaint  
24 or such information as it deems necessary to conduct the  
25 investigation, to update the complainant as to the status and  
26 outcome of the complaint, or to share such information with  
27 any law enforcement agency.

28           Section 946. Section 626.611, Florida Statutes, is  
29 amended to read:

30           626.611 Grounds for compulsory refusal, suspension, or  
31 revocation of agent's, title agency's, adjuster's, customer

1 representative's, service representative's, or managing  
2 general agent's license or appointment.--The department or  
3 office shall deny an application for, suspend, revoke, or  
4 refuse to renew or continue the license or appointment of any  
5 applicant, agent, title agency, adjuster, customer  
6 representative, service representative, or managing general  
7 agent, and it shall suspend or revoke the eligibility to hold  
8 a license or appointment of any such person, if it finds that  
9 as to the applicant, licensee, or appointee any one or more of  
10 the following applicable grounds exist:

11 (1) Lack of one or more of the qualifications for the  
12 license or appointment as specified in this code.

13 (2) Material misstatement, misrepresentation, or fraud  
14 in obtaining the license or appointment or in attempting to  
15 obtain the license or appointment.

16 (3) Failure to pass to the satisfaction of the  
17 department or office any examination required under this code.

18 (4) If the license or appointment is willfully used,  
19 or to be used, to circumvent any of the requirements or  
20 prohibitions of this code.

21 (5) Willful misrepresentation of any insurance policy  
22 or annuity contract or willful deception with regard to any  
23 such policy or contract, done either in person or by any form  
24 of dissemination of information or advertising.

25 (6) If, as an adjuster, or agent licensed and  
26 appointed to adjust claims under this code, he or she has  
27 materially misrepresented to an insured or other interested  
28 party the terms and coverage of an insurance contract with  
29 intent and for the purpose of effecting settlement of claim  
30 for loss or damage or benefit under such contract on less  
31

1 favorable terms than those provided in and contemplated by the  
2 contract.

3 (7) Demonstrated lack of fitness or trustworthiness to  
4 engage in the business of insurance.

5 (8) Demonstrated lack of reasonably adequate knowledge  
6 and technical competence to engage in the transactions  
7 authorized by the license or appointment.

8 (9) Fraudulent or dishonest practices in the conduct  
9 of business under the license or appointment.

10 (10) Misappropriation, conversion, or unlawful  
11 withholding of moneys belonging to insurers or insureds or  
12 beneficiaries or to others and received in conduct of business  
13 under the license or appointment.

14 (11) Unlawfully rebating, attempting to unlawfully  
15 rebate, or unlawfully dividing or offering to divide his or  
16 her commission with another.

17 (12) Having obtained or attempted to obtain, or having  
18 used or using, a license or appointment as agent or customer  
19 representative for the purpose of soliciting or handling  
20 "controlled business" as defined in s. 626.730 with respect to  
21 general lines agents, s. 626.784 with respect to life agents,  
22 and s. 626.830 with respect to health agents.

23 (13) Willful failure to comply with, or willful  
24 violation of, any proper order or rule of the department,  
25 commission, or office or willful violation of any provision of  
26 this code.

27 (14) Having been found guilty of or having pleaded  
28 guilty or nolo contendere to a felony or a crime punishable by  
29 imprisonment of 1 year or more under the law of the United  
30 States of America or of any state thereof or under the law of  
31 any other country which involves moral turpitude, without

1 regard to whether a judgment of conviction has been entered by  
2 the court having jurisdiction of such cases.

3 (15) Fraudulent or dishonest practice in submitting or  
4 aiding or abetting any person in the submission of an  
5 application for workers' compensation coverage under chapter  
6 440 containing false or misleading information as to employee  
7 payroll or classification for the purpose of avoiding or  
8 reducing the amount of premium due for such coverage.

9 (16) Sale of an unregistered security that was  
10 required to be registered, pursuant to chapter 517.

11 Section 947. Section 626.621, Florida Statutes, is  
12 amended to read:

13 626.621 Grounds for discretionary refusal, suspension,  
14 or revocation of agent's, adjuster's, customer  
15 representative's, service representative's, or managing  
16 general agent's license or appointment.--The department or  
17 office may, in its discretion, deny an application for,  
18 suspend, revoke, or refuse to renew or continue the license or  
19 appointment of any applicant, agent, adjuster, customer  
20 representative, service representative, or managing general  
21 agent, and it may suspend or revoke the eligibility to hold a  
22 license or appointment of any such person, if it finds that as  
23 to the applicant, licensee, or appointee any one or more of  
24 the following applicable grounds exist under circumstances for  
25 which such denial, suspension, revocation, or refusal is not  
26 mandatory under s. 626.611:

27 (1) Any cause for which issuance of the license or  
28 appointment could have been refused had it then existed and  
29 been known to the department or office.

30  
31

1           (2) Violation of any provision of this code or of any  
2 other law applicable to the business of insurance in the  
3 course of dealing under the license or appointment.

4           (3) Violation of any lawful order or rule of the  
5 department, commission, or office.

6           (4) Failure or refusal, upon demand, to pay over to  
7 any insurer he or she represents or has represented any money  
8 coming into his or her hands belonging to the insurer.

9           (5) Violation of the provision against twisting, as  
10 defined in s. 626.9541(1)(1).

11           (6) In the conduct of business under the license or  
12 appointment, engaging in unfair methods of competition or in  
13 unfair or deceptive acts or practices, as prohibited under  
14 part IX of this chapter, or having otherwise shown himself or  
15 herself to be a source of injury or loss to the public or  
16 detrimental to the public interest.

17           (7) Willful overinsurance of any property or health  
18 insurance risk.

19           (8) Having been found guilty of or having pleaded  
20 guilty or nolo contendere to a felony or a crime punishable by  
21 imprisonment of 1 year or more under the law of the United  
22 States of America or of any state thereof or under the law of  
23 any other country, without regard to whether a judgment of  
24 conviction has been entered by the court having jurisdiction  
25 of such cases.

26           (9) If a life agent, violation of the code of ethics.

27           (10) Cheating on an examination required for licensure  
28 or violating test center or examination procedures published  
29 orally, in writing, or electronically at the test site by  
30 authorized representatives of the examination program

31

1 administrator. Communication of test center and examination  
2 procedures must be clearly established and documented.

3 (11) Failure to inform the department or office in  
4 writing within 30 days after pleading guilty or nolo  
5 contendere to, or being convicted or found guilty of, any  
6 felony or a crime punishable by imprisonment of 1 year or more  
7 under the law of the United States or of any state thereof, or  
8 under the law of any other country without regard to whether a  
9 judgment of conviction has been entered by the court having  
10 jurisdiction of the case.

11 (12) Knowingly aiding, assisting, procuring, advising,  
12 or abetting any person in the violation of or to violate a  
13 provision of the insurance code or any order or rule of the  
14 department, commission, or office.

15 Section 948. Section 626.631, Florida Statutes, is  
16 amended to read:

17 626.631 Procedure for refusal, suspension, or  
18 revocation of license.--

19 (1) If any licensee is convicted by a court of a  
20 violation of this code or a felony, the licenses and  
21 appointments of such person shall be immediately revoked by  
22 the department or office. The licensee may subsequently  
23 request a hearing pursuant to ss. 120.569 and 120.57, and the  
24 department or office shall expedite any such requested  
25 hearing. The sole issue at such hearing shall be whether the  
26 revocation should be rescinded because such person was not in  
27 fact convicted of a violation of this code or a felony.

28 (2) The papers, documents, reports, or evidence of the  
29 department or office relative to a hearing for revocation or  
30 suspension of a license or appointment pursuant to the  
31 provisions of this chapter and chapter 120 are confidential

1 and exempt from the provisions of s. 119.07(1) until after the  
2 same have been published at the hearing. However, such papers,  
3 documents, reports, or items of evidence are subject to  
4 discovery in a hearing for revocation or suspension of a  
5 license or appointment.

6 Section 949. Subsections (1) and (2) of section  
7 626.641, Florida Statutes, are amended to read:

8 626.641 Duration of suspension or revocation.--

9 (1) The department or office shall, in its order  
10 suspending a license or appointment or in its order suspending  
11 the eligibility of a person to hold or apply for such license  
12 or appointment, specify the period during which the suspension  
13 is to be in effect; but such period shall not exceed 2 years.  
14 The license, appointment, or eligibility shall remain  
15 suspended during the period so specified, subject, however, to  
16 any rescission or modification of the order by the department  
17 or office, or modification or reversal thereof by the court,  
18 prior to expiration of the suspension period. A license,  
19 appointment, or eligibility which has been suspended shall not  
20 be reinstated except upon request for such reinstatement; but  
21 the department or office shall not grant such reinstatement if  
22 it finds that the circumstance or circumstances for which the  
23 license, appointment, or eligibility was suspended still exist  
24 or are likely to recur.

25 (2) No person or appointee under any license or  
26 appointment revoked by the department or office, nor any  
27 person whose eligibility to hold same has been revoked by the  
28 department or office, shall have the right to apply for  
29 another license or appointment under this code within 2 years  
30 from the effective date of such revocation or, if judicial  
31 review of such revocation is sought, within 2 years from the

1 date of final court order or decree affirming the revocation.  
2 The department or office shall not, however, grant a new  
3 license or appointment or reinstate eligibility to hold such  
4 license or appointment if it finds that the circumstance or  
5 circumstances for which the eligibility was revoked or for  
6 which the previous license or appointment was revoked still  
7 exist or are likely to recur; if an individual's license as  
8 agent or customer representative or eligibility to hold same  
9 has been revoked upon the ground specified in s. 626.611(12),  
10 the department or office shall refuse to grant or issue any  
11 new license or appointment so applied for.

12 Section 950. Subsection (2) of section 626.661,  
13 Florida Statutes, is amended to read:

14 626.661 Surrender of license.--

15 (2) This section shall not be deemed to require the  
16 surrender to the department or office of any license unless  
17 such surrender has been requested by the department or office.

18 Section 951. Section 626.681, Florida Statutes, is  
19 amended to read:

20 626.681 Administrative fine in lieu of or in addition  
21 to suspension, revocation, or refusal of license, appointment,  
22 or disapproval.--

23 (1) Except as to insurance agencies, if the department  
24 or office finds that one or more grounds exist for the  
25 suspension, revocation, or refusal to issue, renew, or  
26 continue any license or appointment issued under this chapter,  
27 or disapproval of a continuing education course provider,  
28 instructor, school official, or monitor groups, the department  
29 or office may, in its discretion, in lieu of or in addition to  
30 such suspension or revocation, or in lieu of such refusal, or  
31 disapproval, and except on a second offense or when such

1 suspension, revocation, or refusal is mandatory, impose upon  
2 the licensee, appointee, course provider, instructor, school  
3 official, or monitor group an administrative penalty in an  
4 amount up to \$500 or, if the department or office has found  
5 willful misconduct or willful violation on the part of the  
6 licensee, appointee, course provider, instructor, school  
7 official, or monitor group up to \$3,500. The administrative  
8 penalty may, in the discretion of the department or office, be  
9 augmented by an amount equal to any commissions received by or  
10 accruing to the credit of the licensee or appointee in  
11 connection with any transaction as to which the grounds for  
12 suspension, revocation, or refusal related.

13 (2) With respect to insurance agencies, if the  
14 department finds that one or more grounds exist for the  
15 suspension, revocation, or refusal to issue, renew, or  
16 continue any license issued under this chapter, the department  
17 may, in its discretion, in lieu of or in addition to such  
18 suspension or revocation, or in lieu of such refusal, impose  
19 upon the licensee an administrative penalty in an amount not  
20 to exceed \$10,000 per violation. The administrative penalty  
21 may, in the discretion of the department, be augmented by an  
22 amount equal to any commissions received by or accruing to the  
23 credit of the licensee in connection with any transaction as  
24 to which the grounds for suspension, revocation, or refusal  
25 related.

26 (3) The department or office may allow the licensee,  
27 appointee, or continuing education course provider,  
28 instructor, school official, or monitor group a reasonable  
29 period, not to exceed 30 days, within which to pay to the  
30 department or office the amount of the penalty so imposed. If  
31 the licensee, appointee, course provider, instructor, school

1 official, or monitor group fails to pay the penalty in its  
2 entirety to the department or office within the period so  
3 allowed, the license, appointments, approval, or status of  
4 that person shall stand suspended or revoked or issuance,  
5 renewal, or continuation shall be refused, as the case may be,  
6 upon expiration of such period.

7 Section 952. Section 626.691, Florida Statutes, is  
8 amended to read:

9 626.691 Probation.--

10 (1) If the department or office finds that one or more  
11 grounds exist for the suspension, revocation, or refusal to  
12 renew or continue any license or appointment issued under this  
13 part, the department or office may, in its discretion, except  
14 when an administrative fine is not permissible under s.  
15 626.681 or when such suspension, revocation, or refusal is  
16 mandatory, in lieu of or in addition to such suspension or  
17 revocation, or in lieu of such refusal, or in connection with  
18 any administrative monetary penalty imposed under s. 626.681,  
19 place the offending licensee or appointee on probation for a  
20 period, not to exceed 2 years, as specified by the department  
21 or office in its order.

22 (2) As a condition to such probation or in connection  
23 therewith, the department or office may specify in its order  
24 reasonable terms and conditions to be fulfilled by the  
25 probationer during the probation period. If during the  
26 probation period the department or office has good cause to  
27 believe that the probationer has violated a term or condition,  
28 it shall suspend, revoke, or refuse to issue, renew, or  
29 continue the license or appointment of the probationer, as  
30 upon the original grounds referred to in subsection (1).

31

1           Section 953. Section 626.692, Florida Statutes, is  
2 amended to read:

3           626.692 Restitution.--If any ground exists for the  
4 suspension, revocation, or refusal of a license or  
5 appointment, the department or office may, in addition to any  
6 other penalty authorized under this chapter, order the  
7 licensee to pay restitution to any person who has been  
8 deprived of money by the licensee's misappropriation,  
9 conversion, or unlawful withholding of moneys belonging to  
10 insurers, insureds, beneficiaries, or others. In no instance  
11 shall the amount of restitution required to be paid under this  
12 section exceed the amount of money misappropriated, converted,  
13 or unlawfully withheld. Nothing in this section limits or  
14 restricts a person's right to seek other remedies as provided  
15 for by law.

16           Section 954. Section 626.7315, Florida Statutes, is  
17 amended to read:

18           626.7315 Prohibition against the unlicensed  
19 transaction of general lines insurance.--With respect to any  
20 line of authority as defined in s. 626.015(6)~~s. 626.015(7)~~,  
21 no individual shall, unless licensed as a general lines agent:

22           (1) Solicit insurance or procure applications  
23 therefor;

24           (2) In this state, receive or issue a receipt for any  
25 money on account of or for any insurer, or receive or issue a  
26 receipt for money from other persons to be transmitted to any  
27 insurer for a policy, contract, or certificate of insurance or  
28 any renewal thereof, even though the policy, certificate, or  
29 contract is not signed by him or her as agent or  
30 representative of the insurer;

31

1           (3) Directly or indirectly represent himself or  
2 herself to be an agent of any insurer or as an agent, to  
3 collect or forward any insurance premium, or to solicit,  
4 negotiate, effect, procure, receive, deliver, or forward,  
5 directly or indirectly, any insurance contract or renewal  
6 thereof or any endorsement relating to an insurance contract,  
7 or attempt to effect the same, of property or insurable  
8 business activities or interests, located in this state;

9           (4) In this state, engage or hold himself or herself  
10 out as engaging in the business of analyzing or abstracting  
11 insurance policies or of counseling or advising or giving  
12 opinions, other than as a licensed attorney at law, relative  
13 to insurance or insurance contracts, for fee, commission, or  
14 other compensation, other than as a salaried bona fide  
15 full-time employee so counseling and advising his or her  
16 employer relative to the insurance interests of the employer  
17 and of the subsidiaries or business affiliates of the  
18 employer;

19           (5) In any way, directly or indirectly, make or cause  
20 to be made, or attempt to make or cause to be made, any  
21 contract of insurance for or on account of any insurer;

22           (6) Solicit, negotiate, or in any way, directly or  
23 indirectly, effect insurance contracts, if a member of a  
24 partnership or association, or a stockholder, officer, or  
25 agent of a corporation which holds an agency appointment from  
26 any insurer; or

27           (7) Receive or transmit applications for suretyship,  
28 or receive for delivery bonds founded on applications  
29 forwarded from this state, or otherwise procure suretyship to  
30 be effected by a surety insurer upon the bonds of persons in  
31 this state or upon bonds given to persons in this state.

1           Section 955. Subsection (3) of section 626.732,  
2 Florida Statutes, is amended to read:

3           626.732 Requirement as to knowledge, experience, or  
4 instruction.--

5           (3) An individual who was or became qualified to sit  
6 for an agent's, customer representative's, or adjuster's  
7 examination at or during the time he or she was employed by  
8 the department or office and who, while so employed, was  
9 employed in responsible insurance duties as a full-time bona  
10 fide employee shall be permitted to take an examination if  
11 application for such examination is made within 90 days after  
12 the date of termination of his or her employment with the  
13 department or office.

14           Section 956. Section 626.742, Florida Statutes, is  
15 amended to read:

16           626.742 Nonresident agents; service of process.--

17           (1) Each licensed nonresident agent shall appoint the  
18 Chief Financial Officer ~~Insurance Commissioner and Treasurer~~  
19 as his or her attorney to receive service of legal process  
20 issued against the agent in this state, upon causes of action  
21 arising within this state out of transactions under the  
22 agent's license and appointment. Service upon the Chief  
23 Financial Officer ~~Insurance Commissioner and Treasurer~~ as  
24 attorney shall constitute effective legal service upon the  
25 agent.

26           (2) The appointment of the Chief Financial Officer  
27 ~~Insurance Commissioner and Treasurer~~ for service of process  
28 shall be irrevocable for as long as there could be any cause  
29 of action against the agent arising out of his or her  
30 insurance transactions in this state.

31

1           (3) Duplicate copies of such legal process against  
2 such agent shall be served upon the Chief Financial Officer  
3 ~~Insurance Commissioner and Treasurer~~ by a person competent to  
4 serve a summons.

5           (4) Upon receiving such service, the Chief Financial  
6 Officer ~~Insurance Commissioner and Treasurer~~ shall forthwith  
7 send one of the copies of the process, by registered mail with  
8 return receipt requested, to the defendant agent at his or her  
9 last address of record with the department.

10           (5) The Chief Financial Officer ~~Insurance Commissioner~~  
11 ~~and Treasurer~~ shall keep a record of the day and hour of  
12 service upon him or her of all such legal process.

13           Section 957. Subsections (4) and (7) of section  
14 626.7451, Florida Statutes, are amended to read:

15           626.7451 Managing general agents; required contract  
16 provisions.--No person acting in the capacity of a managing  
17 general agent shall place business with an insurer unless  
18 there is in force a written contract between the parties which  
19 sets forth the responsibility for a particular function,  
20 specifies the division of responsibilities, and contains the  
21 following minimum provisions:

22           (4) Separate records of business written by the  
23 managing general agent shall be maintained unless the managing  
24 general agent is a controlled or controlling person. The  
25 insurer shall have access and the right to copy all accounts  
26 and records related to its business in a form usable by the  
27 insurer, and the department and office shall have access to  
28 all books, bank accounts, and records of the managing general  
29 agent in a form usable to the department and office. The  
30 records shall be retained according to s. 626.561.

31

1           (7) If the contract permits the managing general agent  
2 to settle claims on behalf of the insurer:

3           (a) All claims must be reported to the company in a  
4 timely manner and all claims must be adjusted by properly  
5 licensed persons.

6           (b) Notice shall be sent by the managing general agent  
7 to the insurer as soon as it becomes known that the claim:

- 8           1. Exceeds the limit set by the insurer;  
9           2. Involves a coverage dispute;  
10           3. Exceeds the managing general agent's claims  
11 settlement authority;  
12           4. Is open for more than 6 months; or  
13           5. Is closed by payment of an amount set by the office  
14 ~~department~~ or an amount set by the insurer, whichever is less.

15           (c) All claims files shall be the joint property of  
16 the insurer and managing general agent. However, upon an  
17 order of liquidation of the insurer the claims and related  
18 application files shall become the sole property of the  
19 insurer or its estate. The managing general agent shall have  
20 reasonable access to and the right to copy the files on a  
21 timely basis.

22           (d) Any settlement authority granted to the managing  
23 general agent may be terminated for cause upon the insurer's  
24 written notice to the managing general agent or upon the  
25 termination of the contract. The insurer may suspend the  
26 settlement authority during the pendency of any dispute  
27 regarding the cause for termination.

28  
29 For the purposes of this section and ss. 626.7453 and  
30 626.7454, the term "controlling person" or "controlling" has  
31 the meaning set forth in s. 625.012(5)(b)1., and the term

1 "controlled person" or "controlled" has the meaning set forth  
2 in s. 625.012(5)(b)2.

3 Section 958. Subsections (1), (5), and (6) of section  
4 626.7454, Florida Statutes, are amended to read:

5 626.7454 Managing general agents; duties of  
6 insurers.--

7 (1) The insurer shall have on file for each managing  
8 general agent with which it has done business an independent  
9 financial examination in a form acceptable to the office  
10 ~~department~~.

11 (5) Within 30 days after entering into or terminating  
12 a contract with a managing general agent, the insurer shall  
13 provide written notification of the appointment or termination  
14 to the department and office. Notices of appointment of a  
15 managing general agent shall include a statement of duties  
16 which the applicant is expected to perform on behalf of the  
17 insurer, the lines of insurance for which the applicant is to  
18 be authorized to act, and any other information the department  
19 or office may request.

20 (6) An insurer shall review its books and records on a  
21 quarterly basis to determine if any producer has become a  
22 managing general agent as defined in s. 626.015. If the  
23 insurer determines that a producer has become a managing  
24 general agent, the insurer shall promptly notify the producer  
25 and the department and office of such determination and the  
26 insurer and producer must fully comply with the provisions of  
27 this section and ss. 626.7451, 626.7452, and 626.7453 within  
28 30 days after such determination.

29  
30 Subsections (1), (3), and (4) do not apply to a managing  
31 general agent that is a controlled or controlling person.

1           Section 959. Subsections (6), (7), and (8) of section  
2 626.7491, Florida Statutes, are amended to read:

3           626.7491 Business transacted with producer controlled  
4 property and casualty insurer.--

5           (6) AUDIT COMMITTEE.--Every controlled insurer shall  
6 have an audit committee of the board of directors composed of  
7 independent directors. The audit committee shall annually meet  
8 with management, the insurer's independent certified public  
9 accountants, and an independent casualty actuary or other  
10 independent loss reserve specialist acceptable to the office  
11 ~~department~~ to review the adequacy of the insurer's loss  
12 reserves.

13           (7) REPORTING REQUIREMENTS.--

14           (a) In addition to any other required loss reserve  
15 certification, the controlled insurer shall, on April 1 of  
16 each year, file with the office ~~department~~ the opinion of an  
17 independent casualty actuary, or such other independent loss  
18 reserve specialist acceptable to the office ~~department~~,  
19 reporting loss ratios for each line of business written and  
20 attesting to the adequacy of loss reserves established for  
21 losses incurred and outstanding as of the year end, including  
22 incurred but not reported losses, on business placed by the  
23 producer.

24           (b) The controlled insurer shall annually report to  
25 the office ~~department~~ the amount of commissions paid to the  
26 producer, the percentage such amount represents of the net  
27 premiums written, and comparable amounts and percentages paid  
28 to noncontrolling producers for placements of the same kinds  
29 of insurance.

30           (8) PENALTIES.--

31

1 (a) If the department believes that the controlling  
2 producer or any other person has not materially complied with  
3 this section, or any rule adopted or order issued hereunder,  
4 the department may order the controlling producer to cease  
5 placing business with the controlled insurer.

6 (b) If, due to such material noncompliance, the  
7 controlled insurer or any policyholder thereof has suffered  
8 any loss or damage, the department or office may maintain a  
9 civil action or intervene in an action brought by or on behalf  
10 of the insurer or policyholder for recovery of compensatory  
11 damages for the benefit of the insurer or policyholder or  
12 other appropriate relief.

13 (c) If an order for liquidation or rehabilitation of  
14 the controlled insurer has been entered pursuant to chapter  
15 631 and the receiver appointed under such order believes that  
16 the controlling producer or any other person has not  
17 materially complied with this section or any rule adopted or  
18 order issued hereunder and the insurer has suffered any loss  
19 or damage therefrom, the receiver may maintain a civil action  
20 for recovery of damages or other appropriate sanctions for the  
21 benefit of the insurer.

22 (d) Nothing contained in this section shall affect the  
23 right of the department or office to impose any other  
24 penalties provided for in the Florida Insurance Code.

25 (e) Nothing contained in this section is intended to  
26 or shall in any manner alter or affect the rights of  
27 policyholders, claimants, creditors, or other third parties.

28 Section 960. Paragraph (e) of subsection (3) and  
29 subsections (11) and (12) of section 626.7492, Florida  
30 Statutes, are amended to read:

31 626.7492 Reinsurance intermediaries.--

1           (3) LICENSURE.--

2           (e) If the applicant for a reinsurance intermediary  
3 license is a nonresident, the applicant, as a condition  
4 precedent to receiving or holding a license, must designate  
5 the Chief Financial Officer ~~Insurance Commissioner~~ as agent  
6 for service of process in the manner, and with the same legal  
7 effect, provided for by this section for designation of  
8 service of process upon unauthorized insurers. Such applicant  
9 shall also furnish the department with the name and address of  
10 a resident of this state upon whom notices or orders of the  
11 department or process affecting the nonresident reinsurance  
12 intermediary may be served. The licensee shall promptly notify  
13 the department in writing of each change in its designated  
14 agent for service of process, and the change shall not become  
15 effective until acknowledged by the department.

16           (11) PENALTIES AND LIABILITIES.--

17           (a) A reinsurance intermediary found by the  
18 department, or an insurer, or reinsurer found by the office,  
19 ~~department~~ to be in violation of any provision of this section  
20 must:

21           1. For each separate violation pay a penalty in an  
22 amount not to exceed \$5,000;

23           2. Be subject to revocation or suspension of its  
24 license; and

25           3. If a violation was committed by the reinsurance  
26 intermediary, the reinsurance intermediary must make  
27 restitution to the insurer, reinsurer, rehabilitator, or  
28 liquidator of the insurer or reinsurer for the net losses  
29 incurred by the insurer or reinsurer attributable to the  
30 violation.

31

1 (b) Nothing contained in this section shall affect the  
2 right of the office or department to impose any other  
3 penalties provided in the Florida Insurance Code.

4 (c) Nothing contained in this section is intended to  
5 or shall in any manner limit or restrict the rights of  
6 policyholders, claimants, creditors, or other third parties or  
7 confer any rights to these persons.

8 ~~(12) No insurer or reinsurer may continue to use the~~  
9 ~~services of a reinsurance intermediary on or after April 8,~~  
10 ~~1992, unless such use is in compliance with this section.~~

11 Section 961. Subsection (5) of section 626.752,  
12 Florida Statutes, is amended to read:

13 626.752 Exchange of business.--

14 (5) Within 15 days after the last day of each month,  
15 any insurer accepting business under this section shall report  
16 to the department the name, address, telephone number, and  
17 social security number of each agent from which the insurer  
18 received more than 24 personal lines risks during the calendar  
19 year, except for risks being removed from the Citizens  
20 Property Insurance Corporation Residential Property and  
21 Casualty Joint Underwriting Association and placed with that  
22 insurer by a brokering agent. Once the insurer has reported  
23 pursuant to this subsection an agent's name to the department,  
24 additional reports on the same agent shall not be required.  
25 However, the fee set forth in s. 624.501 shall be paid for the  
26 agent by the insurer for each year until the insurer notifies  
27 the department that the insurer is no longer accepting  
28 business from the agent pursuant to this section. The insurer  
29 may require that the agent reimburse the insurer for the fee.

30 Section 962. Subsection (2) of section 626.7845,  
31 Florida Statutes, is amended to read:

1           626.7845 Prohibition against unlicensed transaction of  
2 life insurance.--

3           (2) Except as provided in s. 626.112(6), with respect  
4 to any line of authority specified in s. 626.015(11) ~~s.~~  
5 ~~626.015(12)~~, no individual shall, unless licensed as a life  
6 agent:

7           (a) Solicit insurance or annuities or procure  
8 applications; or

9           (b) In this state, engage or hold himself or herself  
10 out as engaging in the business of analyzing or abstracting  
11 insurance policies or of counseling or advising or giving  
12 opinions to persons relative to insurance or insurance  
13 contracts other than:

14           1. As a consulting actuary advising an insurer; or

15           2. As to the counseling and advising of labor unions,  
16 associations, trustees, employers, or other business entities,  
17 the subsidiaries and affiliates of each, relative to their  
18 interests and those of their members or employees under  
19 insurance benefit plans.

20           Section 963. Section 626.7851, Florida Statutes, is  
21 amended to read:

22           626.7851 Requirement as to knowledge, experience, or  
23 instruction.--No applicant for a license as a life agent,  
24 except for a chartered life underwriter (CLU), shall be  
25 qualified or licensed unless within the 4 years immediately  
26 preceding the date the application for a license is filed with  
27 the department he or she has:

28           (1) Successfully completed 40 hours of classroom  
29 courses in insurance satisfactory to the department at a  
30 school or college, or extension division thereof, or other  
31 authorized course of study, approved by the department.

1 Courses must include instruction on the subject matter of  
2 unauthorized entities engaging in the business of insurance,  
3 to include the Florida Nonprofit Multiple-Employer Welfare  
4 Arrangement Act and the Employee Retirement Income Security  
5 Act, 29 U.S.C. ss. 1001 et seq., as it relates to the  
6 provision of life insurance by employers to their employees  
7 and the regulation thereof;

8 (2) Successfully completed a correspondence course in  
9 insurance satisfactory to the department and regularly offered  
10 by accredited institutions of higher learning in this state,  
11 approved by the department. Courses must include instruction  
12 on the subject matter of unauthorized entities engaging in the  
13 business of insurance, to include the Florida Nonprofit  
14 Multiple-Employer Welfare Arrangement Act and the Employee  
15 Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as  
16 it relates to the provision of life insurance by employers to  
17 their employees and the regulation thereof;

18 (3) Held an active license in life, or life and  
19 health, insurance in another state. This provision may not be  
20 utilized unless the other state grants reciprocal treatment to  
21 licensees formerly licensed in Florida; or

22 (4) Been employed by the department or office for at  
23 least 1 year, full time in life or life and health insurance  
24 regulatory matters and who was not terminated for cause, and  
25 application for examination is made within 90 days after the  
26 date of termination of his or her employment with the  
27 department or office.

28 Section 964. Section 626.8305, Florida Statutes, is  
29 amended to read:

30 626.8305 Prohibition against the unlicensed  
31 transaction of health insurance.--Except as provided in s.

1 626.112(6), with respect to any line of authority specified in  
2 s. 626.015(7)~~s. 626.015(8)~~, no individual shall, unless  
3 licensed as a health agent:

4 (1) Solicit insurance or procure applications; or

5 (2) In this state, engage or hold himself or herself  
6 out as engaging in the business of analyzing or abstracting  
7 insurance policies or of counseling or advising or giving  
8 opinions to persons relative to insurance contracts other  
9 than:

10 (a) As a consulting actuary advising insurers; or

11 (b) As to the counseling and advising of labor unions,  
12 associations, trustees, employers, or other business entities,  
13 the subsidiaries and affiliates of each, relative to their  
14 interests and those of their members or employees under  
15 insurance benefit plans.

16 Section 965. Section 626.8311, Florida Statutes, is  
17 amended to read:

18 626.8311 Requirement as to knowledge, experience, or  
19 instruction.--No applicant for a license as a health agent,  
20 except for a chartered life underwriter (CLU), shall be  
21 qualified or licensed unless within the 4 years immediately  
22 preceding the date the application for license is filed with  
23 the department he or she has:

24 (1) Successfully completed 40 hours of classroom  
25 courses in insurance satisfactory to the department at a  
26 school or college, or extension division thereof, or other  
27 authorized course of study, approved by the department.  
28 Courses must include instruction on the subject matter of  
29 unauthorized entities engaging in the business of insurance,  
30 to include the Florida Nonprofit Multiple-Employer Welfare  
31 Arrangement Act and the Employee Retirement Income Security

1 Act, 29 U.S.C. ss. 1001 et seq., as it relates to the  
2 provision of health insurance by employers to their employees  
3 and the regulation thereof;

4 (2) Successfully completed a correspondence course in  
5 insurance satisfactory to the department and regularly offered  
6 by accredited institutions of higher learning in this state,  
7 approved by the department. Courses must include instruction  
8 on the subject matter of unauthorized entities engaging in the  
9 business of insurance, to include the Florida Nonprofit  
10 Multiple-Employer Welfare Arrangement Act and the Employee  
11 Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as  
12 it relates to the provision of health insurance by employers  
13 to their employees and the regulation thereof;

14 (3) Held an active license in health, or life and  
15 health, insurance in another state. This provision may not be  
16 utilized unless the other state grants reciprocal treatment to  
17 licensees formerly licensed in Florida; or

18 (4) Been employed by the department or office for at  
19 least 1 year, full time in health insurance regulatory matters  
20 and who was not terminated for cause, and application for  
21 examination is made within 90 days after the date of  
22 termination of his or her employment with the department or  
23 office.

24 Section 966. Subsection (1) of section 626.8427,  
25 Florida Statutes, is amended to read:

26 626.8427 Number of applications for licensure  
27 required; exemption; effect of expiration of license.--

28 (1) After a license as a title insurance agent has  
29 been issued to a title insurance agent, the agent is not  
30 required to file another license application for a similar  
31

1 license, irrespective of the number of insurers to be  
2 represented by the agent, unless:

3 (a) The agent is specifically ordered by the  
4 department to complete a new application; or

5 (b) During any period of 48 months since the filing of  
6 the original license application, the agent was not appointed,  
7 unless in the case of individuals the failure to be so  
8 appointed was due to military service, in which event the  
9 period within which a new application is not required may, in  
10 the discretion of the department ~~of Insurance~~, be extended for  
11 12 months following the date of discharge from military  
12 service if the military service does not exceed 3 years, but  
13 in no event shall the period be extended under this clause for  
14 a period of more than 6 years from the date of filing the  
15 original application.

16 Section 967. Subsections (1) and (3) of section  
17 626.8463, Florida Statutes, are amended to read:

18 626.8463 Witnesses and evidence.--

19 (1) As to the subject of any examination,  
20 investigation, or hearing being conducted by him or her under  
21 s. 624.5015, ss. 626.8417-626.847, or s. 627.791, an examiner  
22 appointed by the department or office ~~of Insurance~~ may  
23 administer oaths, examine and cross-examine witnesses, and  
24 receive oral and documentary evidence and shall have the power  
25 to subpoena witnesses, compel their attendance and testimony,  
26 and require by subpoena the production of books, papers,  
27 records, files, correspondence, documents, or other evidence  
28 which the examiner deems relevant to the inquiry.

29 (3) If a person refuses to comply with any such  
30 subpoena or to testify as to any matter concerning which the  
31 person may be lawfully interrogated, the circuit court in and

1 for Leon County, or the county in which such examination,  
2 investigation, or hearing is being conducted, or the county in  
3 which such person resides, upon application by the department  
4 or office, may issue an order requiring such person to comply  
5 with the subpoena and to testify. A person who fails to obey  
6 such an order of the court may be punished by the court for  
7 contempt.

8 Section 968. Section 626.8467, Florida Statutes, is  
9 amended to read:

10 626.8467 Testimony compelled; immunity from  
11 prosecution.--

12 (1) If a person asks to be excused from attending or  
13 testifying or from producing any books, papers, records,  
14 contracts, documents, or other evidence in connection with any  
15 examination, hearing, or investigation being conducted under  
16 s. 624.5015, ss. 626.8417-626.847, or s. 627.791 by the  
17 department or office or its examiner on the ground that the  
18 testimony or evidence required of the person may tend to  
19 incriminate him or her or subject him or her to a penalty or  
20 forfeiture and notwithstanding is directed to give such  
21 testimony or produce such evidence, the person must, if so  
22 directed by the Department of Financial Services ~~Insurance~~ and  
23 the Department of Legal Affairs or by the office and the  
24 Department of Legal Affairs, nonetheless comply with such  
25 direction, but he or she shall not thereafter be prosecuted or  
26 subjected to any penalty or forfeiture for or on account of  
27 any transaction, matter, or thing concerning which he or she  
28 may have so testified or produced evidence, and no testimony  
29 so given or evidence produced shall be received against the  
30 person upon any criminal action, investigation, or proceeding.  
31 However, a person so testifying shall not be exempt from

1 prosecution or punishment for any perjury committed by him or  
2 her in such testimony, and the testimony or evidence so given  
3 or produced shall be admissible against him or her upon any  
4 criminal action, investigation, or proceeding concerning such  
5 perjury; and such person shall not be exempt from the refusal,  
6 suspension, or revocation of any license or appointment,  
7 permission, or authority conferred or to be conferred pursuant  
8 to s. 624.5015, ss. 626.8417-626.847, or s. 627.791.

9 (2) Any such person may execute, acknowledge, and file  
10 with in the office of the Department of Financial Services or  
11 the office, as appropriate,~~Insurance~~ a statement expressly  
12 waiving such immunity or privilege with respect to any  
13 transaction, matter, or thing specified in the statement, and  
14 thereupon the testimony of such person or such evidence in  
15 relation to such transaction, matter, or thing may be received  
16 or produced before any judge or justice, court, tribunal, or  
17 grand jury or otherwise and, if so received or produced, such  
18 person shall not be entitled to any immunity or privilege on  
19 account of any testimony he or she may so give or evidence so  
20 produced.

21 Section 969. Section 626.847, Florida Statutes, is  
22 amended to read:

23 626.847 Penalty for refusal to testify.--A person who  
24 refuses or fails, without lawful cause, to testify relative to  
25 the affairs of any title insurer or other person when  
26 subpoenaed under s. 626.8463 and requested by the department  
27 or office of Insurance to so testify is guilty of a  
28 misdemeanor of the second degree and, upon conviction, is  
29 punishable as provided in s. 775.082 or s. 775.083.

30 Section 970. Subsection (3) of section 626.8473,  
31 Florida Statutes, is amended to read:

1           626.8473 Escrow; trust fund.--

2           (3) All funds received by a title insurance agent to  
3 be held in trust shall be immediately placed in a financial  
4 institution that is located within this state and is a member  
5 of the Federal Deposit Insurance Corporation or the National  
6 Credit Union Share Insurance Fund. These funds shall be  
7 invested in an escrow account in accordance with the  
8 investment requirements and standards established for deposits  
9 and investments of state funds in s. 17.57 ~~s. 18.10~~, where the  
10 funds shall be kept until disbursement thereof is properly  
11 authorized.

12           Section 971. Section 626.8582, Florida Statutes, is  
13 amended to read:

14           626.8582 "Nonresident public adjuster" defined.--A  
15 "nonresident public adjuster" is a person who:

16           (1) Is not a resident of this state;

17           (2) Is a currently licensed public adjuster in his or  
18 her state of residence for the type or kinds of insurance for  
19 which the licensee intends to adjust claims in this state or,  
20 if a resident of a state that does not license public  
21 adjusters, has passed the office's ~~department's~~ adjuster  
22 examination as prescribed in s. 626.8732(1)(b); and

23           (3) Is a self-employed public adjuster or associated  
24 with or employed by a public adjusting firm or other public  
25 adjuster.

26           Section 972. Section 626.8584, Florida Statutes, is  
27 amended to read:

28           626.8584 "Nonresident independent adjuster"  
29 defined.--A "nonresident independent adjuster" is a person  
30 who:

31           (1) Is not a resident of this state;

1           (2) Is a currently licensed independent adjuster in  
2 his or her state of residence for the type or kinds of  
3 insurance for which the licensee intends to adjust claims in  
4 this state or, if a resident of a state that does not license  
5 independent adjusters, has passed the office's ~~department's~~  
6 adjuster examination as prescribed in s. 626.8734(1)(b); and

7           (3) Is a self-employed independent adjuster or  
8 associated with or employed by an independent adjusting firm  
9 or other independent adjuster.

10           Section 973. Section 626.859, Florida Statutes, is  
11 amended to read:

12           626.859 "Catastrophe" or "emergency" adjuster  
13 defined.--A "catastrophe" or "emergency" adjuster is a person  
14 who is not a licensed adjuster under this part, but who has  
15 been designated and certified to the office ~~department~~ by  
16 insurers as qualified to adjust claims, losses, or damages  
17 under policies or contracts of insurance issued by such  
18 insurer, and whom the office ~~department~~ may license, in the  
19 event of a catastrophe or emergency, for the purposes and  
20 under the conditions which the office ~~department~~ shall fix and  
21 for the period of the emergency as the office ~~department~~ shall  
22 determine, to adjust claims, losses, or damages under the  
23 policies of insurance issued by the insurers.

24           Section 974. Subsection (2) of section 626.861,  
25 Florida Statutes, is amended to read:

26           626.861 Insurer's officers, insurer's employees,  
27 reciprocal insurer's representatives; adjustments by.--

28           (2) If any such officer, employee, attorney, or agent  
29 in connection with the adjustment of any such claim, loss, or  
30 damage engages in any of the misconduct described in or  
31

1 contemplated by s. 626.611(6), the office ~~department~~ may  
2 suspend or revoke the insurer's certificate of authority.

3 Section 975. Subsection (2) of section 626.863,  
4 Florida Statutes, is amended to read:

5 626.863 Licensed independent adjusters required;  
6 insurers' responsibility.--

7 (2) Before referring any claim or loss, the insurer  
8 shall ascertain from the office ~~department~~ whether the  
9 proposed independent adjuster is currently licensed and  
10 appointed as such. Having once ascertained that a particular  
11 person is so licensed and appointed, the insurer may assume  
12 that he or she will continue to be so licensed and appointed  
13 until the insurer has knowledge, or receives information from  
14 the office ~~department~~, to the contrary.

15 Section 976. Section 626.865, Florida Statutes, is  
16 amended to read:

17 626.865 Public adjuster's qualifications, bond.--

18 (1) The office ~~department~~ shall issue a license to an  
19 applicant for a public adjuster's license upon determining  
20 that the applicant has paid the applicable fees specified in  
21 s. 624.501 and possesses the following qualifications:

- 22 (a) Is a natural person at least 18 years of age.  
23 (b) Is a bona fide resident of this state.  
24 (c) Is trustworthy and has such business reputation as  
25 would reasonably assure that the applicant will conduct his or  
26 her business as insurance adjuster fairly and in good faith  
27 and without detriment to the public.  
28 (d) Has had sufficient experience, training, or  
29 instruction concerning the adjusting of damages or losses  
30 under insurance contracts, other than life and annuity  
31 contracts, is sufficiently informed as to the terms and

1 effects of the provisions of those types of insurance  
2 contracts, and possesses adequate knowledge of the laws of  
3 this state relating to such contracts as to enable and qualify  
4 him or her to engage in the business of insurance adjuster  
5 fairly and without injury to the public or any member thereof  
6 with whom the applicant may have business as a public  
7 adjuster.

8 (e) Has passed any required written examination.  
9 (2) At the time of application for license as a public  
10 adjuster, the applicant shall file with the office ~~department~~  
11 a bond executed and issued by a surety insurer authorized to  
12 transact such business in this state, in the amount of  
13 \$50,000, conditioned for the faithful performance of his or  
14 her duties as a public adjuster under the license applied for.  
15 The bond shall be in favor of the office ~~department~~ and shall  
16 specifically authorize recovery by the office ~~department~~ of  
17 the damages sustained in case the licensee is guilty of fraud  
18 or unfair practices in connection with his or her business as  
19 public adjuster. The aggregate liability of the surety for all  
20 such damages shall in no event exceed the amount of the bond.  
21 Such bond shall not be terminated unless at least 30 days'  
22 written notice is given to the licensee and filed with the  
23 office ~~department~~.

24 Section 977. Section 626.866, Florida Statutes, is  
25 amended to read:

26 626.866 Independent adjuster's qualifications.--The  
27 office ~~department~~ shall issue a license to an applicant for an  
28 independent adjuster's license upon determining that the  
29 applicable license fee specified in s. 624.501 has been paid  
30 and that the applicant possesses the following qualifications:

31 (1) Is a natural person at least 18 years of age.

1           (2) Is a bona fide resident of this state.

2           (3) Is trustworthy and has such business reputation as  
3 would reasonably assure that the applicant will conduct his or  
4 her business as insurance adjuster fairly and in good faith  
5 and without detriment to the public.

6           (4) Has had sufficient experience, training, or  
7 instruction concerning the adjusting of damage or loss under  
8 insurance contracts, other than life and annuity contracts, is  
9 sufficiently informed as to the terms and the effects of the  
10 provisions of such types of contracts, and possesses adequate  
11 knowledge of the insurance laws of this state relating to such  
12 contracts as to enable and qualify him or her to engage in the  
13 business of insurance adjuster fairly and without injury to  
14 the public or any member thereof with whom he or she may have  
15 relations as an insurance adjuster and to adjust all claims in  
16 accordance with the policy or contract and the insurance laws  
17 of this state.

18           (5) Has passed any required written examination.

19           Section 978. Section 626.867, Florida Statutes, is  
20 amended to read:

21           626.867 Company employee adjuster's  
22 qualifications.--The office ~~department~~ shall issue a license  
23 to an applicant for a company employee adjuster's license upon  
24 determining that the applicable license fee specified in s.  
25 624.501 has been paid and that the applicant possesses the  
26 following qualifications:

27           (1) Is a natural person at least 18 years of age.

28           (2) Is a bona fide resident of this state.

29           (3) Is trustworthy and has such business reputation as  
30 would reasonably assure that the applicant will conduct his or  
31

1 her business as insurance adjuster fairly and in good faith  
2 and without detriment to the public.

3 (4) Has had sufficient experience, training, or  
4 instruction concerning the adjusting of damage or loss of  
5 risks described in his or her application, is sufficiently  
6 informed as to the terms and the effects of the provisions of  
7 insurance contracts covering such risks, and possesses  
8 adequate knowledge of the insurance laws of this state  
9 relating to such insurance contracts as to enable and qualify  
10 him or her to engage in such business as insurance adjuster  
11 fairly and without injury to the public or any member thereof  
12 with whom he or she may have relations as an insurance  
13 adjuster and to adjust all claims in accordance with the  
14 policy or contract and the insurance laws of this state.

15 (5) Has passed any required written examination.

16 Section 979. Subsection (5) of section 626.869,  
17 Florida Statutes, is amended to read:

18 626.869 License, adjusters.--

19 (5) Any person holding a license for 24 consecutive  
20 months or longer and who engages in adjusting workers'  
21 compensation insurance must, beginning in their birth month  
22 and every 2 years thereafter, have completed 24 hours of  
23 courses, 2 hours of which relate to ethics, in subjects  
24 designed to inform the licensee regarding the current workers'  
25 compensation laws of this state, so as to enable him or her to  
26 engage in business as a workers' compensation insurance  
27 adjuster fairly and without injury to the public and to adjust  
28 all claims in accordance with the policy or contract and the  
29 workers' compensation laws of this state. In order to qualify  
30 as an eligible course under this subsection, the course must:

31

1 (a) Have a course outline approved by the office  
2 ~~department~~.

3 (b) Be taught at a school training facility or other  
4 location approved by the office ~~department~~.

5 (c) Be taught by instructors with at least 5 years of  
6 experience in the area of workers' compensation, general lines  
7 of insurance, or other persons approved by the office  
8 ~~department~~. However, a member of The Florida Bar is exempt  
9 from the 5 years' experience requirement.

10 (d) Furnish the attendee a certificate of completion.  
11 The course provider shall send a roster to the office  
12 ~~department~~ in a format prescribed by the commission  
13 ~~department~~.

14 Section 980. Section 626.8695, Florida Statutes, is  
15 amended to read:

16 626.8695 Primary adjuster.--

17 (1) Each person operating an adjusting firm and each  
18 location of a multiple location adjusting firm must designate  
19 a primary adjuster for each such firm or location and must  
20 file with the office ~~department~~ the name of such primary  
21 adjuster and the address of the firm or location where he or  
22 she is the primary adjuster, on a form approved by the  
23 commission ~~department~~. The designation of the primary adjuster  
24 may be changed at the option of the adjusting firm. Any such  
25 change is effective upon notification to the office  
26 ~~department~~. Notice of change must be sent to the office  
27 ~~department~~ within 30 days after such change.

28 (2)(a) For purposes of this section, a "primary  
29 adjuster" is the licensed adjuster who is responsible for the  
30 hiring and supervision of all individuals within an adjusting  
31 firm location who deal with the public and who acts in the

1 capacity of a public adjuster as defined in s. 626.854, or an  
2 independent adjuster as defined in s. 626.855. An adjuster  
3 may be designated as a primary adjuster for only one adjusting  
4 firm location.

5 (b) For purposes of this section, an "adjusting firm"  
6 is a location where an independent or public adjuster is  
7 engaged in the business of insurance.

8 (3) The office ~~department~~ may suspend or revoke the  
9 license of the primary adjuster if the adjusting firm employs  
10 any person who has had a license denied or any person whose  
11 license is currently suspended or revoked. However, if a  
12 person has been denied a license for failure to pass a  
13 required examination, he or she may be employed to perform  
14 clerical or administrative functions for which licensure is  
15 not required.

16 (4) The primary adjuster in an unincorporated  
17 adjusting firm, or the primary adjuster in an incorporated  
18 adjusting firm in which no officer, director, or stockholder  
19 is an adjuster, is responsible and accountable for the acts of  
20 salaried employees under his or her direct supervision and  
21 control while acting on behalf of the adjusting firm. Nothing  
22 in this section renders any person criminally liable or  
23 subject to any disciplinary proceedings for any act unless the  
24 person personally committed or knew or should have known of  
25 the act and of the facts constituting a violation of this  
26 code.

27 (5) The office ~~department~~ may suspend or revoke the  
28 license of any adjuster who is employed by a person whose  
29 license is currently suspended or revoked.

30 (6) An adjusting firm location may not conduct the  
31 business of insurance unless a primary adjuster is designated.

1 Failure of the person operating the adjusting firm to  
2 designate a primary adjuster for the firm, or for each  
3 location, as applicable, on a form prescribed by the  
4 commission ~~department~~ within 30 days after inception of the  
5 firm or change of primary adjuster designation, constitutes  
6 grounds for requiring the adjusting firm to obtain an  
7 adjusting firm license pursuant to s. 626.8696.

8 (7) Any adjusting firm may request, on a form  
9 prescribed by the commission ~~department~~, verification from the  
10 office ~~department~~ of any person's current licensure status. If  
11 a request is mailed to the office ~~department~~ within 5 working  
12 days after the date an adjuster is hired, and the office  
13 ~~department~~ subsequently notifies the adjusting firm that an  
14 employee's license is currently suspended, revoked, or has  
15 been denied, the license of the primary adjuster shall not be  
16 revoked or suspended if the unlicensed person is immediately  
17 dismissed from employment as an adjuster with the firm.

18 Section 981. Subsections (1) and (5) of section  
19 626.8696, Florida Statutes, are amended to read:

20 626.8696 Application for adjusting firm license.--

21 (1) The application for an adjusting firm license must  
22 include:

23 (a) The name of each majority owner, partner, officer,  
24 and director of the adjusting firm.

25 (b) The resident address of each person required to be  
26 listed in the application under paragraph (a).

27 (c) The name of the adjusting firm and its principal  
28 business address.

29 (d) The location of each adjusting firm office and the  
30 name under which each office conducts or will conduct  
31 business.

1           (e) Any additional information which the commission  
2 ~~department~~ may require.

3           (5) An adjusting firm required to be licensed pursuant  
4 to s. 626.8695 must remain so licensed for a period of 3 years  
5 from the date of licensure, unless the license is suspended or  
6 revoked. The office ~~department~~ may suspend or revoke the  
7 adjusting firm's authority to do business for activities  
8 occurring during the time the firm is licensed, regardless of  
9 whether the licensing period has terminated.

10           Section 982. Section 626.8697, Florida Statutes, is  
11 amended to read:

12           626.8697 Grounds for refusal, suspension, or  
13 revocation of adjusting firm license.--

14           (1) The office ~~department~~ shall deny, suspend, revoke,  
15 or refuse to continue the license of any adjusting firm if it  
16 finds, as to any adjusting firm or as to any majority owner,  
17 partner, manager, director, officer, or other person who  
18 manages or controls the firm, that any of the following  
19 grounds exist:

20           (a) Lack by the firm of one or more of the  
21 qualifications for the license as specified in this code.

22           (b) Material misstatement, misrepresentation, or fraud  
23 in obtaining the license or in attempting to obtain the  
24 license.

25           (2) The office ~~department~~ may, in its discretion,  
26 deny, suspend, revoke, or refuse to continue the license of  
27 any adjusting firm if it finds that any of the following  
28 applicable grounds exist with respect to the firm or any  
29 owner, partner, manager, director, officer, or other person  
30 who is otherwise involved in the operation of the firm:

31

1           (a) Any cause for which issuance of the license could  
2 have been refused had it then existed and been known to the  
3 office ~~department~~.

4           (b) Violation of any provision of this code or of any  
5 other law applicable to the business of insurance.

6           (c) Violation of any order or rule of the office or  
7 commission ~~department~~.

8           (d) An owner, partner, manager, director, officer, or  
9 other person who manages or controls the firm having been  
10 found guilty of or having pleaded guilty or nolo contendere to  
11 a felony or a crime punishable by imprisonment of 1 year or  
12 more under the laws of the United States or of any state or  
13 under the laws of any other country, without regard to whether  
14 adjudication was made or withheld by the court.

15           (e) Failure to inform the office ~~department~~ in writing  
16 within 30 days after a pleading by an owner, partner, manager,  
17 director, officer, or other person managing or controlling the  
18 firm of guilty or nolo contendere to, or being convicted or  
19 found guilty of, any felony or a crime punishable by  
20 imprisonment of 1 year or more under the laws of the United  
21 States or of any state, or under the laws of any other  
22 country, without regard to whether adjudication was made or  
23 withheld by the court.

24           (f) Knowingly aiding, assisting, procuring, advising,  
25 or abetting any person in the violation of or to violate a  
26 provision of the insurance code or any order or rule of the  
27 office or commission ~~department~~.

28           (g) Knowingly employing any individual in a managerial  
29 capacity or in a capacity dealing with the public who is under  
30 an order of revocation or suspension issued by the office  
31 ~~department~~.

1 (h) Committing any of the following acts with such a  
2 frequency as to have made the operation of the adjusting firm  
3 hazardous to the insurance-buying public or other persons:

4 1. Misappropriation, conversion, or unlawful or  
5 unreasonable withholding of moneys belonging to insurers or  
6 insureds or beneficiaries or claimants or to others and  
7 received in the conduct of business under the license.

8 2. Misrepresentation or deception with regard to the  
9 business of insurance, dissemination of information, or  
10 advertising.

11 3. Demonstrated lack of fitness or trustworthiness to  
12 engage in the business of insurance adjusting arising out of  
13 activities related to insurance adjusting or the adjusting  
14 firm.

15 (i) Failure to appoint a primary adjuster.

16 (3) In lieu of discretionary refusal, suspension, or  
17 revocation of an adjusting firm's license, the office  
18 ~~department~~ may impose an administrative penalty of up to  
19 \$1,000 for each violation or ground provided under this  
20 section, not to exceed an aggregate amount of \$10,000 for all  
21 violations or grounds.

22 (4) If any adjusting firm, having been licensed,  
23 thereafter has such license revoked or suspended, the firm  
24 shall terminate all adjusting activities while the license is  
25 revoked or suspended.

26 Section 983. Section 626.8698, Florida Statutes, is  
27 amended to read:

28 626.8698 Disciplinary guidelines for public  
29 adjusters.--The office ~~department~~ may deny, suspend, or revoke  
30 the license of a public adjuster, and administer a fine not to  
31 exceed \$5,000 per act, for any of the following:

1 (1) Violating any provision of this chapter or a rule  
2 or order of the office or commission ~~department~~;

3 (2) Receiving payment or anything of value as a result  
4 of an unfair or deceptive practice;

5 (3) Receiving or accepting any fee, kickback, or other  
6 thing of value pursuant to any agreement or understanding,  
7 oral or otherwise; entering into a split-fee arrangement with  
8 another person who is not a public adjuster; or being  
9 otherwise paid or accepting payment for services that have not  
10 been performed;

11 (4) Violating s. 316.066 or s. 817.234;

12 (5) Soliciting or otherwise taking advantage of a  
13 person who is vulnerable, emotional, or otherwise upset as the  
14 result of a trauma, accident, or other similar occurrence; or

15 (6) Violating any ethical rule of the commission  
16 ~~department~~.

17 Section 984. Section 626.870, Florida Statutes, is  
18 amended to read:

19 626.870 Application for license.--

20 (1) Application for a license under this part shall be  
21 made as provided in s. 626.171 and related sections of this  
22 code.

23 (2) The commission ~~department~~ shall so prepare the  
24 form of the application as to elicit and require from the  
25 applicant the information necessary to enable the office  
26 ~~department~~ to determine whether the applicant possesses the  
27 qualifications prerequisite to issuance of the license to the  
28 applicant.

29 (3) The commission ~~department~~ may, in its discretion,  
30 require that the application be supplemented by the  
31 certificate or affidavit of such person or persons as it deems

1 necessary for its determination of the applicant's residence,  
2 business reputation, and reputation for trustworthiness. The  
3 commission ~~department~~ shall prescribe and the office may  
4 furnish the forms for such certificates and affidavits.

5 Section 985. Section 626.871, Florida Statutes, is  
6 amended to read:

7 626.871 Reappointment after military service.--The  
8 office ~~department~~ may, without requiring a further written  
9 examination, issue an appointment as an adjuster to a formerly  
10 licensed and appointed adjuster of this state who held a  
11 current adjuster's appointment at the time of entering service  
12 in the Armed Forces of the United States, subject to the  
13 following conditions:

14 (1) The period of military service must not have been  
15 in excess of 3 years;

16 (2) The application for the appointment must be filed  
17 with the office ~~department~~ and the applicable fee paid, within  
18 12 months following the date of honorable discharge of the  
19 applicant from the military service; and

20 (3) The new appointment will be of the same type and  
21 class as that currently effective at the time the applicant  
22 entered military service; but, if such type and class of  
23 appointment is not being currently issued under this code, the  
24 new appointment shall be of that type and class or classes  
25 most closely resembling those of the former appointment.

26 Section 986. Subsections (1) and (5) of section  
27 626.872, Florida Statutes, are amended to read:

28 626.872 Temporary license.--

29 (1) The office ~~department~~ may, in its discretion,  
30 issue a temporary license as an independent adjuster or as a  
31

1 company employee adjuster, subject to the following  
2 conditions:

3 (a) The applicant must be an employee of an adjuster  
4 currently licensed by the office department, an employee of an  
5 authorized insurer, or an employee of an established adjusting  
6 firm or corporation which is supervised by a currently  
7 licensed independent adjuster.

8 (b) The application must be accompanied by a  
9 certificate of employment and a report as to the applicant's  
10 integrity and moral character on a form prescribed by the  
11 commission department and executed by the employer.

12 (c) The applicant must be a natural person of at least  
13 18 years of age, must be a bona fide resident of this state,  
14 must be trustworthy, and must have such business reputation as  
15 would reasonably assure that the applicant will conduct his or  
16 her business as an adjuster fairly and in good faith and  
17 without detriment to the public.

18 (d) The applicant's employer is responsible for the  
19 adjustment acts of any licensee under this section.

20 (e) The applicable license fee specified must be paid  
21 before issuance of the temporary license.

22 (f) The temporary license shall be effective for a  
23 period of 1 year, but subject to earlier termination at the  
24 request of the employer, or if the licensee fails to take an  
25 examination as an independent adjuster or company employee  
26 adjuster within 6 months after issuance of the temporary  
27 license, or if suspended or revoked by the office department.

28 (5) The office department shall not issue a temporary  
29 license as an independent adjuster or as a company employee  
30 adjuster to any individual who has ever held such a license in  
31 this state.

1           Section 987. Subsection (1) of section 626.873,  
2 Florida Statutes, is amended to read:

3           626.873 Nonresident company employee adjusters.--

4           (1) The office ~~department~~ shall, upon application  
5 therefor, issue a license to an applicant for a nonresident  
6 adjuster's license upon determining that the applicant has  
7 paid the applicable license fees required under s. 624.501  
8 and:

9           (a) Is a currently licensed insurance adjuster in his  
10 or her home state, if such state requires a license.

11           (b) Is an employee of an insurer, or a wholly owned  
12 subsidiary of an insurer, admitted to do business in this  
13 state.

14           (c) Has filed a certificate or letter of authorization  
15 from the insurance department of his or her home state, if  
16 such state requires an adjuster to be licensed, stating that  
17 he or she holds a current license or authorization to adjust  
18 insurance losses. Such certificate or authorization must be  
19 signed by the insurance commissioner, or his or her deputy, of  
20 the adjuster's home state and must reflect whether or not the  
21 adjuster has ever had his or her license or authorization in  
22 the adjuster's home state suspended or revoked and, if such is  
23 the case, the reason for such action.

24           Section 988. Section 626.8732, Florida Statutes, is  
25 amended to read:

26           626.8732 Nonresident public adjuster's qualifications,  
27 bond.--

28           (1) The office ~~department~~ shall, upon application  
29 therefor, issue a license to an applicant for a nonresident  
30 public adjuster's license upon determining that the applicant  
31

1 has paid the applicable license fees required under s. 624.501  
2 and:

3 (a) Is a natural person at least 18 years of age.

4 (b) Has passed to the satisfaction of the office  
5 ~~department~~ a written Florida public adjuster's examination of  
6 the scope prescribed in s. 626.241(6); however, the  
7 requirement for such an examination does not apply to any of  
8 the following:

9 1. An applicant who is licensed as a resident public  
10 adjuster in his or her state of residence, when that state  
11 requires the passing of a written examination in order to  
12 obtain the license and a reciprocal agreement with the  
13 appropriate official of that state has been entered into by  
14 the office ~~department~~; or

15 2. An applicant who is licensed as a nonresident  
16 public adjuster in a state other than his or her state of  
17 residence when the state of licensure requires the passing of  
18 a written examination in order to obtain the license and a  
19 reciprocal agreement with the appropriate official of the  
20 state of licensure has been entered into by the office  
21 ~~department~~.

22 (c) Is self-employed as a public adjuster or  
23 associated with or employed by a public adjusting firm or  
24 other public adjuster. Applicants licensed as nonresident  
25 public adjusters under this section must be appointed as such  
26 in accordance with the provisions of ss. 626.112 and 626.451.  
27 Appointment fees in the amount specified in s. 624.501 must be  
28 paid to the office ~~department~~ in advance. The appointment of a  
29 nonresident public adjuster shall continue in force until  
30 suspended, revoked, or otherwise terminated, but subject to  
31 biennial renewal or continuation by the licensee in accordance

1 with procedures prescribed in s. 626.381 for licensees in  
2 general.

3 (d) Is trustworthy and has such business reputation as  
4 would reasonably assure that he or she will conduct his or her  
5 business as a nonresident public adjuster fairly and in good  
6 faith and without detriment to the public.

7 (e) Has had sufficient experience, training, or  
8 instruction concerning the adjusting of damages or losses  
9 under insurance contracts, other than life and annuity  
10 contracts; is sufficiently informed as to the terms and  
11 effects of the provisions of those types of insurance  
12 contracts; and possesses adequate knowledge of the laws of  
13 this state relating to such contracts as to enable and qualify  
14 him or her to engage in the business of insurance adjuster  
15 fairly and without injury to the public or any member thereof  
16 with whom he or she may have business as a public adjuster.

17 (2) The applicant shall furnish the following with his  
18 or her application:

19 (a) A complete set of his or her fingerprints. The  
20 applicant's fingerprints must be certified by an authorized  
21 law enforcement officer. The office ~~department~~ may not  
22 authorize an applicant to take the required examination or  
23 issue a nonresident public adjuster's license to the applicant  
24 until the office ~~department~~ has received a report from the  
25 Florida Department of Law Enforcement and the Federal Bureau  
26 of Investigation relative to the existence or nonexistence of  
27 a criminal history report based on the applicant's  
28 fingerprints.

29 (b) If currently licensed as a resident public  
30 adjuster in the applicant's state of residence, a certificate  
31 or letter of authorization from the licensing authority of the

1 applicant's state of residence, stating that the applicant  
2 holds a current or comparable license to act as a public  
3 adjuster. The certificate or letter of authorization must be  
4 signed by the insurance commissioner or his or her deputy or  
5 the appropriate licensing official and must disclose whether  
6 the adjuster has ever had any license or eligibility to hold  
7 any license declined, denied, suspended, revoked, or placed on  
8 probation or whether an administrative fine or penalty has  
9 been levied against the adjuster and, if so, the reason for  
10 the action.

11 (c) If the applicant's state of residence does not  
12 require licensure as a public adjuster and the applicant has  
13 been licensed as a resident insurance adjuster, agent, broker,  
14 or other insurance representative in his or her state of  
15 residence or any other state within the past 3 years, a  
16 certificate or letter of authorization from the licensing  
17 authority stating that the applicant holds or has held a  
18 license to act as such an insurance adjuster, agent, or other  
19 insurance representative. The certificate or letter of  
20 authorization must be signed by the insurance commissioner or  
21 his or her deputy or the appropriate licensing official and  
22 must disclose whether or not the adjuster, agent, or other  
23 insurance representative has ever had any license or  
24 eligibility to hold any license declined, denied, suspended,  
25 revoked, or placed on probation or whether an administrative  
26 fine or penalty has been levied against the adjuster and, if  
27 so, the reason for the action.

28 (3) At the time of application for license as a  
29 nonresident public adjuster, the applicant shall file with the  
30 office ~~department~~ a bond executed and issued by a surety  
31 insurer authorized to transact surety business in this state,

1 in the amount of \$50,000, conditioned for the faithful  
2 performance of his or her duties as a nonresident public  
3 adjuster under the license applied for. The bond must be in  
4 favor of the office ~~department~~ and must specifically authorize  
5 recovery by the office ~~department~~ of the damages sustained if  
6 the licensee commits fraud or unfair practices in connection  
7 with his or her business as nonresident public adjuster. The  
8 aggregate liability of the surety for all the damages may not  
9 exceed the amount of the bond. The bond may not be terminated  
10 unless at least 30 days' written notice is given to the  
11 licensee and filed with the office ~~department~~.

12 (4) The usual and customary records pertaining to  
13 transactions under the license of a nonresident public  
14 adjuster must be retained for at least 3 years after  
15 completion of the adjustment and must be made available in  
16 this state to the office ~~department~~ upon request. The failure  
17 of a nonresident public adjuster to properly maintain records  
18 and make them available to the office ~~department~~ upon request  
19 constitutes grounds for the immediate suspension of the  
20 license issued under this section.

21 (5) After licensure as a nonresident public adjuster,  
22 as a condition of doing business in this state, the licensee  
23 must annually on or before January 1, on a form prescribed by  
24 the commission ~~department~~, submit an affidavit certifying that  
25 the licensee is familiar with and understands the insurance  
26 code and rules adopted thereunder and the provisions of the  
27 contracts negotiated or to be negotiated. Compliance with this  
28 filing requirement is a condition precedent to the issuance,  
29 continuation, reinstatement, or renewal of a nonresident  
30 public adjuster's appointment.

31

1           Section 989. Subsections (1), (3), and (4) of section  
2 626.8734, Florida Statutes, are amended to read:

3           626.8734 Nonresident independent adjuster's  
4 qualifications.--

5           (1) The office ~~department~~ shall, upon application  
6 therefor, issue a license to an applicant for a nonresident  
7 independent adjuster's license upon determining that the  
8 applicant has paid the applicable license fees required under  
9 s. 624.501 and:

10           (a) Is a natural person at least 18 years of age.

11           (b) Has passed to the satisfaction of the office  
12 ~~department~~ a written Florida independent adjuster's  
13 examination of the scope prescribed in s. 626.241(6); however,  
14 the requirement for the examination does not apply to any of  
15 the following:

16           1. An applicant who is licensed as a resident  
17 independent adjuster in his or her state of residence when  
18 that state requires the passing of a written examination in  
19 order to obtain the license and a reciprocal agreement with  
20 the appropriate official of that state has been entered into  
21 by the office ~~department~~; or

22           2. An applicant who is licensed as a nonresident  
23 independent adjuster in a state other than his or her state of  
24 residence when the state of licensure requires the passing of  
25 a written examination in order to obtain the license and a  
26 reciprocal agreement with the appropriate official of the  
27 state of licensure has been entered into by the office  
28 ~~department~~.

29           (c) Is self-employed or associated with or employed by  
30 an independent adjusting firm or other independent adjuster.

31 Applicants licensed as nonresident independent adjusters under

1 this section must be appointed as such in accordance with the  
2 provisions of ss. 626.112 and 626.451. Appointment fees in the  
3 amount specified in s. 624.501 must be paid to the office  
4 ~~department~~ in advance. The appointment of a nonresident  
5 independent adjuster shall continue in force until suspended,  
6 revoked, or otherwise terminated, but subject to biennial  
7 renewal or continuation by the licensee in accordance with  
8 procedures prescribed in s. 626.381 for licensees in general.

9 (d) Is trustworthy and has such business reputation as  
10 would reasonably assure that he or she will conduct his or her  
11 business as a nonresident independent adjuster fairly and in  
12 good faith and without detriment to the public.

13 (e) Has had sufficient experience, training, or  
14 instruction concerning the adjusting of damages or losses  
15 under insurance contracts, other than life and annuity  
16 contracts; is sufficiently informed as to the terms and  
17 effects of the provisions of those types of insurance  
18 contracts; and possesses adequate knowledge of the laws of  
19 this state relating to such contracts as to enable and qualify  
20 him or her to engage in the business of insurance adjuster  
21 fairly and without injury to the public or any member thereof  
22 with whom he or she may have business as an independent  
23 adjuster.

24 (3) The usual and customary records pertaining to  
25 transactions under the license of a nonresident independent  
26 adjuster must be retained for at least 3 years after  
27 completion of the adjustment and must be made available in  
28 this state to the office ~~department~~ upon request. The failure  
29 of a nonresident independent adjuster to properly maintain  
30 records and make them available to the office ~~department~~ upon  
31

1 request constitutes grounds for the immediate suspension of  
2 the license issued under this section.

3 (4) After licensure as a nonresident independent  
4 adjuster, as a condition of doing business in this state, the  
5 licensee must annually on or before January 1, on a form  
6 prescribed by the commission ~~department~~, submit an affidavit  
7 certifying that the licensee is familiar with and understands  
8 the insurance laws and administrative rules of this state and  
9 the provisions of the contracts negotiated or to be  
10 negotiated. Compliance with this filing requirement is a  
11 condition precedent to the issuance, continuation,  
12 reinstatement, or renewal of a nonresident independent  
13 adjuster's appointment.

14 Section 990. Section 626.8736, Florida Statutes, is  
15 amended to read:

16 626.8736 Nonresident independent or public adjusters;  
17 service of process.--

18 (1) Each licensed nonresident independent or public  
19 adjuster shall appoint the Chief Financial Officer ~~Insurance~~  
20 ~~Commissioner and Treasurer~~ and his or her successors in office  
21 as his or her attorney to receive service of legal process  
22 issued against the nonresident independent or public adjuster  
23 in this state, upon causes of action arising within this state  
24 out of transactions under his license and appointment. Service  
25 upon the Chief Financial Officer ~~Insurance Commissioner and~~  
26 ~~Treasurer~~ as attorney shall constitute effective legal service  
27 upon the nonresident independent or public adjuster.

28 (2) The appointment of the Chief Financial Officer  
29 ~~Insurance Commissioner and Treasurer~~ for service of process  
30 shall be irrevocable for as long as there could be any cause  
31 of action against the nonresident independent or public

1 adjuster arising out of his or her insurance transactions in  
2 this state.

3 (3) Duplicate copies of legal process against the  
4 nonresident independent or public adjuster shall be served  
5 upon the Chief Financial Officer ~~Insurance Commissioner and~~  
6 ~~Treasurer~~ by a person competent to serve a summons.

7 (4) Upon receiving the service, the Chief Financial  
8 ~~Officer Insurance Commissioner and Treasurer~~ shall forthwith  
9 send one of the copies of the process, by registered mail with  
10 return receipt requested, to the defendant nonresident  
11 independent or public adjuster at his or her last address of  
12 record with the office ~~department~~.

13 (5) The Chief Financial Officer ~~Insurance Commissioner~~  
14 ~~and Treasurer~~ shall keep a record of the day and hour of  
15 service upon him or her of all legal process received under  
16 this section.

17 Section 991. Section 626.8738, Florida Statutes, is  
18 amended to read:

19 626.8738 Penalty for violation.--In addition to any  
20 other remedy imposed pursuant to this code, any person who  
21 acts as a resident or nonresident public adjuster or holds  
22 himself or herself out to be a public adjuster to adjust  
23 claims in this state, without being licensed by the office  
24 ~~department~~ as a public adjuster and appointed as a public  
25 adjuster, commits a felony of the third degree, punishable as  
26 provided in s. 775.082, s. 775.083, or s. 775.084. Each act in  
27 violation of this section constitutes a separate offense.

28 Section 992. Section 626.874, Florida Statutes, is  
29 amended to read:

30 626.874 Catastrophe or emergency adjusters.--  
31

1           (1) In the event of a catastrophe or emergency, the  
2 office department may issue a license, for the purposes and  
3 under the conditions which it shall fix and for the period of  
4 emergency as it shall determine, to persons who are residents  
5 or nonresidents of this state and who are not licensed  
6 adjusters under this part but who have been designated and  
7 certified to it as qualified to act as adjusters by  
8 independent resident adjusters or by an authorized insurer or  
9 by a licensed general lines agent to adjust claims, losses, or  
10 damages under policies or contracts of insurance issued by  
11 such insurers. The fee for the license shall be as provided  
12 in s. 624.501(12)(c).

13           (2) If any person not a licensed adjuster who has been  
14 permitted to adjust such losses, claims, or damages under the  
15 conditions and circumstances set forth in subsection (1),  
16 engages in any of the misconduct described in or contemplated  
17 by ss. 626.611 and 626.621, the office department, without  
18 notice and hearing, shall be authorized to issue its order  
19 denying such person the privileges granted under this section;  
20 and thereafter it shall be unlawful for any such person to  
21 adjust any such losses, claims, or damages in this state.

22           Section 993. Section 626.878, Florida Statutes, is  
23 amended to read:

24           626.878 Rules; code of ethics.--An adjuster shall  
25 subscribe to the code of ethics specified in the rules of the  
26 commission department.

27           Section 994. Paragraphs (d) and (m) of subsection (1)  
28 of section 626.88, Florida Statutes, are amended to read:

29           626.88 Definitions of "administrator" and "insurer".--

30           (1) For the purposes of this part, an "administrator"  
31 is any person who directly or indirectly solicits or effects

1 coverage of, collects charges or premiums from, or adjusts or  
2 settles claims on residents of this state in connection with  
3 authorized commercial self-insurance funds or with insured or  
4 self-insured programs which provide life or health insurance  
5 coverage or coverage of any other expenses described in s.  
6 624.33(1) or any person who, through a health care risk  
7 contract as defined in s. 641.234 with an insurer or health  
8 maintenance organization, provides billing and collection  
9 services to health insurers and health maintenance  
10 organizations on behalf of health care providers, other than  
11 any of the following persons:

12 (d) A health care services plan, health maintenance  
13 organization, professional service plan corporation, or person  
14 in the business of providing continuing care, possessing a  
15 valid certificate of authority issued by the office  
16 ~~department~~, and the sales representatives thereof, if the  
17 activities of such entity are limited to the activities  
18 permitted under the certificate of authority.

19 (m) A person approved by the department ~~of Insurance~~  
20 who administers only self-insured workers' compensation plans.

21  
22 A person who provides billing and collection services to  
23 health insurers and health maintenance organizations on behalf  
24 of health care providers shall comply with the provisions of  
25 ss. 627.6131, 641.3155, and 641.51(4).

26 Section 995. Section 626.8805, Florida Statutes, is  
27 amended to read:

28 626.8805 Certificate of authority to act as  
29 administrator.--

30 (1) It is unlawful for any person to act as or hold  
31 himself or herself out to be an administrator in this state

1 without a valid certificate of authority issued by the office  
2 ~~department~~ pursuant to ss. 626.88-626.894. To qualify for and  
3 hold authority to act as an administrator in this state, an  
4 administrator must otherwise be in compliance with this code  
5 and with its organizational agreement. The failure of any  
6 person to hold such a certificate while acting as an  
7 administrator shall subject such person to a fine of not less  
8 than \$5,000 or more than \$10,000 for each violation.

9 (2) The administrator shall file with the office  
10 ~~department~~ an application for a certificate of authority upon  
11 a form to be adopted by the commission and furnished by the  
12 office ~~department~~, which application shall include or have  
13 attached the following information and documents:

14 (a) All basic organizational documents of the  
15 administrator, such as the articles of incorporation, articles  
16 of association, partnership agreement, trade name certificate,  
17 trust agreement, shareholder agreement, and other applicable  
18 documents, and all amendments to those documents.

19 (b) The bylaws, rules, and regulations or similar  
20 documents regulating the conduct or the internal affairs of  
21 the administrator.

22 (c) The names, addresses, official positions, and  
23 professional qualifications of the individuals who are  
24 responsible for the conduct of the affairs of the  
25 administrator, including all members of the board of  
26 directors, board of trustees, executive committee, or other  
27 governing board or committee, the principal officers in the  
28 case of a corporation, the partners or members in the case of  
29 a partnership or association, and any other person who  
30 exercises control or influence over the affairs of the  
31 administrator.

1           (d) Annual statements or reports for the 3 most recent  
2 years, or such other information as the office ~~department~~ may  
3 require in order to review the current financial condition of  
4 the applicant.

5           (e) If the applicant is not currently acting as an  
6 administrator, a statement of the amounts and sources of the  
7 funds available for organization expenses and the proposed  
8 arrangements for reimbursement and compensation of  
9 incorporators or other principals.

10           (3) The applicant shall make available for inspection  
11 by the office ~~department~~ copies of all contracts with insurers  
12 or other persons utilizing the services of the administrator.

13           (4) The office ~~department~~ shall not issue a  
14 certificate of authority if it determines that the  
15 administrator or any principal thereof is not competent,  
16 trustworthy, financially responsible, or of good personal and  
17 business reputation or has had an insurance license denied for  
18 cause by any state.

19           (5) A certificate of authority issued under this  
20 section shall remain valid, unless suspended or revoked by the  
21 office ~~department~~, so long as the certificateholder continues  
22 in business in this state.

23           (6) A certificate of authority issued under this  
24 section shall indicate that the administrator is authorized to  
25 administer commercial self-insurance funds or life and health  
26 programs or both, except that a certificate of authority  
27 issued prior to October 1, 1988, does not authorize the  
28 administration of commercial self-insurance funds.

29           Section 996. Section 626.8809, Florida Statutes, is  
30 amended to read:

31

1           626.8809 Fidelity bond.--An administrator shall have  
2 and keep in full force and effect a fidelity bond equal to at  
3 least 10 percent of the amount of the funds handled or managed  
4 annually by the administrator. However, the office ~~department~~  
5 may not require a bond greater than \$500,000 unless the office  
6 ~~department~~, after due notice to all interested parties and  
7 opportunity for hearing and after consideration of the record,  
8 requires an amount in excess of \$500,000 but not more than 10  
9 percent of the amount of the funds handled or managed annually  
10 by the administrator.

11           Section 997. Section 626.8814, Florida Statutes, is  
12 amended to read:

13           626.8814 Disclosure of ownership or affiliation.--Each  
14 administrator shall identify to the office ~~department~~ any  
15 ownership interest or affiliation of any kind with any  
16 insurance company responsible for providing benefits directly  
17 or through reinsurance to any plan for which the administrator  
18 provides administrative services.

19           Section 998. Subsection (2) of section 626.884,  
20 Florida Statutes, is amended to read:

21           626.884 Maintenance of records by administrator;  
22 access; confidentiality.--

23           (2) The office ~~department~~ shall have access to books  
24 and records maintained by the administrator for the purpose of  
25 examination, audit, and inspection. Information contained in  
26 such books and records is confidential and exempt from the  
27 provisions of s. 119.07(1) if the disclosure of such  
28 information would reveal a trade secret as defined in s.  
29 688.002. However, the office ~~department~~ may use such  
30 information in any proceeding instituted against the  
31 administrator.

1           Section 999. Subsections (1) and (3) of section  
2 626.89, Florida Statutes, are amended to read:

3           626.89 Annual financial statement and filing fee;  
4 notice of change of ownership.--

5           (1) Each authorized administrator shall file with the  
6 office ~~department~~ a full and true statement of its financial  
7 condition, transactions, and affairs. The statement shall be  
8 filed annually on or before March 1 or within such extension  
9 of time therefor as the office ~~department~~ for good cause may  
10 have granted and shall be for the preceding calendar year. The  
11 statement shall be in such form and contain such matters as  
12 the commission ~~department~~ prescribes and shall be verified by  
13 at least two officers of such administrator.

14           (3) In addition, the administrator shall immediately  
15 notify the office ~~department~~ of any material change in its  
16 ownership.

17           Section 1000. Section 626.891, Florida Statutes, is  
18 amended to read:

19           626.891 Grounds for suspension or revocation of  
20 certificate of authority.--

21           (1) The certificate of authority of an administrator  
22 shall be suspended or revoked if the office ~~department~~  
23 determines that the administrator:

24           (a) Is in an unsound financial condition;

25           (b) Has used or is using such methods or practices in  
26 the conduct of its business so as to render its further  
27 transaction of business in this state hazardous or injurious  
28 to insured persons or the public; or

29           (c) Has failed to pay any judgment rendered against it  
30 in this state within 60 days after the judgment has become  
31 final.

1           (2) The office ~~department~~ may, in its discretion,  
2 suspend or revoke the certificate of authority of an  
3 administrator if it finds that the administrator:

4           (a) Has violated any lawful rule or order of the  
5 commission or office ~~department~~ or any provision of this  
6 chapter;

7           (b) Has refused to be examined or to produce its  
8 accounts, records, and files for examination, or if any of its  
9 officers has refused to give information with respect to its  
10 affairs or has refused to perform any other legal obligation  
11 as to such examination, when required by the office  
12 ~~department~~;

13           (c) Has, without just cause, refused to pay proper  
14 claims or perform services arising under its contracts or has,  
15 without just cause, compelled insured persons to accept less  
16 than the amount due them or to employ attorneys or bring suit  
17 against the administrator to secure full payment or settlement  
18 of such claims;

19           (d) Is or was affiliated with and under the same  
20 general management or interlocking directorate or ownership as  
21 another administrator which transacts business in this state  
22 without having a certificate of authority;

23           (e) At any time fails to meet any qualification for  
24 which issuance of the certificate could have been refused had  
25 such failure then existed and been known to the office  
26 ~~department~~;

27           (f) Has been convicted of, or has entered a plea of  
28 guilty or nolo contendere to, a felony relating to the  
29 business of insurance or insurance administration in this  
30 state or in any other state without regard to whether  
31 adjudication was withheld; or

1 (g) Is under suspension or revocation in another  
2 state.

3 (3) The office ~~department~~ may, pursuant to s. 120.60,  
4 in its discretion and without advance notice or hearing  
5 thereon, immediately suspend the certificate of any  
6 administrator if it finds that one or more of the following  
7 circumstances exist:

8 (a) The administrator is insolvent or impaired.

9 (b) The fidelity bond required by s. 626.8809 is not  
10 maintained.

11 (c) A proceeding for receivership, conservatorship,  
12 rehabilitation, or other delinquency proceeding regarding the  
13 administrator has been commenced in any state.

14 (d) The financial condition or business practices of  
15 the administrator otherwise pose an imminent threat to the  
16 public health, safety, or welfare of the residents of this  
17 state.

18 (4) The violation of this part by any insurer shall be  
19 a ground for suspension or revocation of the certificate of  
20 authority of that insurer in this state.

21 Section 1001. Section 626.892, Florida Statutes, is  
22 amended to read:

23 626.892 Order of suspension or revocation of  
24 certificate of authority; notice.--

25 (1) The suspension or revocation of a certificate of  
26 authority of an administrator shall be effected by order of  
27 the office ~~department~~ mailed to the administrator by  
28 registered or certified mail.

29 (2) In its discretion, the office ~~department~~ may cause  
30 notice of any such revocation or suspension to be published in  
31

1 one or more newspapers of general circulation published in  
2 this state.

3 Section 1002. Subsections (1), (3), and (4) of section  
4 626.894, Florida Statutes, are amended to read:

5 626.894 Administrative fine in lieu of suspension or  
6 revocation.--

7 (1) If the office ~~department~~ finds that one or more  
8 grounds exist for the suspension or revocation of a  
9 certificate of authority issued under this part, the office  
10 ~~department~~ may, in lieu of such suspension or revocation,  
11 impose a fine upon the administrator.

12 (3) With respect to any knowing and willful violation  
13 of a lawful order or rule of the office or commission  
14 ~~department~~ or a provision of this part, the office ~~department~~  
15 may impose a fine upon the administrator in an amount not to  
16 exceed \$5,000 for each such violation. In no event may such  
17 fine exceed an aggregate amount of \$25,000 for all knowing and  
18 willful violations arising out of the same action. In addition  
19 to such fine, the administrator shall make restitution when  
20 due in accordance with the provisions of subsection (2).

21 (4) The failure of an administrator to make  
22 restitution when due as required under this section  
23 constitutes a willful violation of this part. However, if an  
24 administrator in good faith is uncertain as to whether any  
25 restitution is due or as to the amount of restitution due, it  
26 shall promptly notify the office ~~department~~ of the  
27 circumstances; and the failure to make restitution pending a  
28 determination of whether restitution is due or the amount of  
29 restitution due will not constitute a violation of this part.

30 Section 1003. Section 626.895, Florida Statutes, is  
31 amended to read:

1           626.895 Definition of "service company" or "service  
2 agent".--For the purpose of this part, a "service company" is  
3 any business entity which has met all the requirements of ss.  
4 626.895-626.899, which does not control funds, and which has  
5 obtained office ~~department~~ approval to contract with  
6 self-insurers or multiple-employer welfare arrangements for  
7 the purpose of providing all or any part of the services  
8 necessary to establish and maintain a multiple-employer  
9 welfare arrangement as defined in s. 624.437(1). The term  
10 "service agent" is synonymous with the term "service company"  
11 as used in this part.

12           Section 1004. Subsection (3) of section 626.896,  
13 Florida Statutes, is amended to read:

14           626.896 Servicing requirements for self-insurers and  
15 multiple-employer welfare arrangements.--

16           (3) It is the responsibility of the self-insurer or  
17 multiple-employer welfare arrangement to notify the office  
18 ~~department~~ within 90 days of changing its method of fulfilling  
19 its servicing requirements from those which were previously  
20 filed with the office ~~department~~.

21           Section 1005. Subsection (2) of section 626.897,  
22 Florida Statutes, is amended to read:

23           626.897 Application for authorization to act as  
24 service company; bond.--

25           (2) Any business desiring to act as a service company  
26 for individual self-insurers or multiple-employer welfare  
27 arrangements shall be approved by the office ~~department~~. Any  
28 business acting as a service company prior to October 1, 1983,  
29 will be approved as a service company upon complying with the  
30 filing requirements of this section and s. 626.898. The  
31 failure of any person to obtain such approval while acting as

1 a service company shall subject such person to a fine of not  
2 less than \$5,000 or more than \$10,000 for each violation.

3 Section 1006. Subsections (3) and (10) of section  
4 626.898, Florida Statutes, are amended to read:

5 626.898 Requirements for retaining authorization as  
6 service company; recertification.--

7 (3)(a) Each service company shall maintain at one or  
8 more locations within this state copies of all contracts with  
9 each self-insurer or multiple-employer welfare arrangement  
10 that it services and records relating thereto which are  
11 sufficient in type and quantity to verify the accuracy and  
12 completeness of all reports and documents submitted to the  
13 office ~~department~~ pursuant to this part. In the event that the  
14 service company has its records distributed in multiple  
15 locations, it shall inform the office ~~department~~ as to the  
16 location of each type of record, as well as the location of  
17 specific records for the self-insurers or multiple-employer  
18 welfare arrangements it services.

19 (b) These records shall be open to inspection by  
20 representatives of the office ~~department~~ during regular  
21 business hours. All records shall be retained according to the  
22 schedule adopted by the commission ~~department~~ for similar  
23 documents. The location of these records shall be made known  
24 to the office ~~department~~ as necessary.

25 (10) Each service company shall identify to the office  
26 ~~department~~ any ownership interest or affiliation of any kind  
27 with any insurance company responsible directly or through  
28 reinsurance for providing benefits to any plan for which it  
29 provides services.

30 Section 1007. Section 626.899, Florida Statutes, is  
31 amended to read:

1           626.899 Withdrawal of authorization as service  
2 company.--The failure to comply with any provision of ss.  
3 626.895-626.899 or with any rule or any order of the  
4 commission or office ~~department~~ within the time prescribed  
5 shall be considered good cause for withdrawal of the  
6 certificate of approval. The office ~~department~~ shall by  
7 registered or certified mail give to the service company prior  
8 written notice of such withdrawal. The service company shall  
9 have 30 days from the date of mailing to request a hearing.  
10 The failure to request a hearing within the time prescribed  
11 shall result in the withdrawal becoming effective 45 days from  
12 the date of mailing of the original notice. In no event shall  
13 the withdrawal of the certificate of approval be effective  
14 prior to the date upon which a hearing, if requested, is  
15 scheduled. Copies of such notice of withdrawal of a  
16 certificate of approval shall be furnished by the office  
17 ~~department~~ to each self-funded program serviced.

18           Section 1008. Subsection (4) of section 626.901,  
19 Florida Statutes, is amended to read:

20           626.901 Representing or aiding unauthorized insurer  
21 prohibited.--

22           (4) This section does not apply to:

23           (a) Matters authorized to be done by the office  
24 ~~department~~ under the Unauthorized Insurers Process Law, ss.  
25 626.904-626.912.

26           (b) Surplus lines insurance when written pursuant to  
27 the Surplus Lines Law, ss. 626.913-626.937.

28           (c) Transactions as to which a certificate of  
29 authority is not required of an insurer, as stated in s.  
30 624.402.

31

1 (d) Independently procured coverage written pursuant  
2 to s. 626.938.

3 Section 1009. Section 626.906, Florida Statutes, is  
4 amended to read:

5 626.906 Acts constituting Chief Financial Officer  
6 ~~Insurance Commissioner and Treasurer~~ as process agent.--Any of  
7 the following acts in this state, effected by mail or  
8 otherwise, by an unauthorized foreign insurer, alien insurer,  
9 or person representing or aiding such an insurer is equivalent  
10 to and shall constitute an appointment by such insurer or  
11 person representing or aiding such insurer of the Chief  
12 Financial Officer ~~Insurance Commissioner and Treasurer, and~~  
13 ~~his or her successor or successors in office,~~ to be its true  
14 and lawful attorney, upon whom may be served all lawful  
15 process in any action, suit, or proceeding instituted by or on  
16 behalf of an insured or beneficiary, arising out of any such  
17 contract of insurance; and any such act shall be signification  
18 of the insurer's or person's agreement that such service of  
19 process is of the same legal force and validity as personal  
20 service of process in this state upon such insurer or person  
21 representing or aiding such insurer:

22 (1) The issuance or delivery of contracts of insurance  
23 to residents of this state or to corporations authorized to do  
24 business therein;

25 (2) The solicitation of applications for such  
26 contracts;

27 (3) The collection of premiums, membership fees,  
28 assessments, or other considerations for such contracts; or

29 (4) Any other transaction of insurance.

30 Section 1010. Subsection (1) of section 626.907,  
31 Florida Statutes, is amended to read:

1           626.907 Service of process; judgment by default.--  
2           (1) Service of process upon an insurer or person  
3 representing or aiding such insurer pursuant to s. 626.906  
4 shall be made by delivering to and leaving with the Chief  
5 Financial Officer ~~Insurance Commissioner and Treasurer~~ or some  
6 person in apparent charge of his or her office two copies  
7 thereof. The Chief Financial Officer ~~Insurance Commissioner~~  
8 ~~and Treasurer~~ shall forthwith mail by registered mail one of  
9 the copies of such process to the defendant at the defendant's  
10 last known principal place of business and shall keep a record  
11 of all process so served upon him or her. The service of  
12 process is sufficient, provided notice of such service and a  
13 copy of the process are sent within 10 days thereafter by  
14 registered mail by plaintiff or plaintiff's attorney to the  
15 defendant at the defendant's last known principal place of  
16 business, and the defendant's receipt, or receipt issued by  
17 the post office with which the letter is registered, showing  
18 the name of the sender of the letter and the name and address  
19 of the person to whom the letter is addressed, and the  
20 affidavit of the plaintiff or plaintiff's attorney showing a  
21 compliance herewith are filed with the clerk of the court in  
22 which the action is pending on or before the date the  
23 defendant is required to appear, or within such further time  
24 as the court may allow.

25           Section 1011. Section 626.909, Florida Statutes, is  
26 amended to read:

27           626.909 Jurisdiction of office and department; service  
28 of process on Secretary of State.--

29           (1) The Legislature hereby declares that it is a  
30 subject of concern that the purpose of the Unauthorized  
31 Insurers Process Law as expressed in s. 626.905 may be denied

1 by the possibility that the right of service of process  
2 provided for in that law may be restricted only to those  
3 actions, suits, or proceedings brought by insureds or  
4 beneficiaries. It therefore declares that it is the intent of  
5 s. 626.905 that it is the obligation and duty of the state to  
6 protect its residents and also proceed under this law through  
7 the office or department in the courts of this state. It  
8 further declares that it is also the intent of the Legislature  
9 to subject unauthorized insurers and persons representing or  
10 aiding such insurers to the jurisdiction of the office or  
11 department in proceedings, examinations, or hearings before it  
12 as provided for in this code.

13           (2) In addition to the procedure for service of  
14 process on unauthorized insurers or persons representing or  
15 aiding such insurers contained in ss. 626.906 and 626.907, the  
16 office or department shall have the right to bring any action,  
17 suit, or proceeding in the name of the state or conduct any  
18 proceeding, examination, or hearing provided for in this code  
19 against any unauthorized insurer or person representing or  
20 aiding such insurer for violation of any lawful order of the  
21 office or department or any provision of this code,  
22 specifically including but not limited to the regulation of  
23 trade practices provided for in part IX of this chapter, if  
24 the insurer or person representing or aiding such insurer  
25 transacts insurance in this state as defined in ss. 624.10 and  
26 626.906 and the insurer does not transact such business under  
27 a subsisting certificate of authority as required by s.  
28 624.401. In the event the transaction of business is done by  
29 mail, the venue of the act is at the point where the matter  
30 transmitted by mail is delivered and takes effect.

31

1           (3) In addition to the right of action, suit, or  
2 proceeding authorized by subsection (2), the office or  
3 department shall have the right to bring a civil action in the  
4 name of the state, as parens patriae on behalf of any insured,  
5 beneficiary of any insured, claimant or dependent, or any  
6 other person or class of persons injured as a result of the  
7 transaction of any insurance business as defined in s. 626.906  
8 by any unauthorized insurer, as defined in s. 624.09 who is  
9 also an ineligible insurer as set forth in ss. 626.917 and  
10 626.918, or any person who represents or aids any unauthorized  
11 insurer, in violation of s. 626.901, to recover actual damages  
12 on behalf of individuals who were residents at the time the  
13 transaction occurred and the cost of such suit, including a  
14 reasonable attorney's fee. The court shall exclude from the  
15 amount of monetary relief awarded in such action any amount of  
16 monetary relief which duplicates amounts which have been  
17 awarded for the same injury.

18           (4) Transaction of business in this state, as so  
19 defined, by any unauthorized insurer or person representing or  
20 aiding such insurer shall be deemed consent by the insurer or  
21 person representing or aiding such insurer to the jurisdiction  
22 of the office or department in proceedings, examinations, and  
23 hearings before it as provided for in this code and shall  
24 constitute an irrevocable appointment by the insurer or person  
25 representing or aiding such insurer of the Secretary of State  
26 and his or her successor or successors in office as its true  
27 and lawful attorney upon whom may be served all lawful process  
28 in any action, suit, or proceeding in any court by the office  
29 or department or by the state and upon whom may be served all  
30 notices and orders of the office or department arising out of  
31 any such transaction of business; and such transaction of

1 business shall constitute the agreement of the insurer or  
2 person representing or aiding such insurer that any such  
3 process against it or any such notice or order which is so  
4 served shall be of the same legal force and validity as if  
5 served personally within this state on the insurer or person  
6 representing or aiding such insurer. Service of process shall  
7 be in accordance with and in the same manner as now provided  
8 for service of process upon nonresidents under the provision  
9 of s. 48.161, and service of process shall also be valid if  
10 made as provided in s. 626.907(2).

11 (5) No plaintiff shall be entitled to a judgment by  
12 default or a decree pro confesso under this section until the  
13 expiration of 30 days after date of the filing of the  
14 affidavit of compliance.

15 (6) Nothing in this section shall limit or abridge the  
16 right to serve any process, notice, orders, or demand upon the  
17 insurer or person representing or aiding such insurer in any  
18 other manner now or hereafter permitted by law.

19 (7) Nothing in this section shall apply as to surplus  
20 lines insurance when written pursuant to the Surplus Lines  
21 Law, ss. 626.913-626.937, or as to transactions as to which a  
22 certificate of authority is not required of the insurer, as  
23 stated in s. 624.402.

24 Section 1012. Section 626.910, Florida Statutes, is  
25 amended to read:

26 626.910 Penalty for violation by unauthorized insurers  
27 and persons representing or aiding such insurers.--Any  
28 unauthorized insurer or person representing or aiding such  
29 insurer transacting insurance in this state and subject to  
30 service of process as referred to in s. 626.909 shall forfeit  
31 and pay to the state a civil penalty of not more than \$1,000

1 for each nonwillful violation, or not more than \$10,000 for  
2 each willful violation, of any lawful order of the office or  
3 department or any provision of this code.

4 Section 1013. Section 626.912, Florida Statutes, is  
5 amended to read:

6 626.912 Exemptions from ss. 626.904-626.911.--The  
7 provisions of ss. 626.904-626.911 do not apply to any action,  
8 suit, or proceeding against any unauthorized foreign insurer,  
9 alien insurer, or person representing or aiding such an  
10 insurer arising out of any contract of insurance:

11 (1) Covering reinsurance, wet marine and  
12 transportation, commercial aircraft, or railway insurance  
13 risks;

14 (2) Against legal liability arising out of the  
15 ownership, operation, or maintenance of any property having a  
16 permanent situs outside this state;

17 (3) Against loss of or damage to any property having a  
18 permanent situs outside this state; or

19 (4) Issued under and in accordance with the Surplus  
20 Lines Law, when such insurer or person representing or aiding  
21 such insurer enters a general appearance or when such contract  
22 of insurance contains a provision designating the Chief  
23 Financial Officer ~~Insurance Commissioner and Treasurer and his~~  
24 ~~or her successor or successors in office~~ or designating a  
25 Florida resident agent to be the true and lawful attorney of  
26 such unauthorized insurer or person representing or aiding  
27 such insurer upon whom may be served all lawful process in any  
28 action, suit, or proceeding instituted by or on behalf of an  
29 insured or person representing or aiding such insurer or  
30 beneficiary arising out of any such contract of insurance; and  
31 service of process effected on such Chief Financial Officer

1 ~~Insurance Commissioner and Treasurer, his or her successor or~~  
2 ~~successors in office,~~ or such resident agent shall be deemed  
3 to confer complete jurisdiction over such unauthorized insurer  
4 or person representing or aiding such insurer in such action.

5 Section 1014. Subsection (2) of section 626.914,  
6 Florida Statutes, is amended to read:

7 626.914 Definitions.--As used in this Surplus Lines  
8 Law, the term:

9 (2) "Eligible surplus lines insurer" means an  
10 unauthorized insurer which has been made eligible by the  
11 office department to issue insurance coverage under this  
12 Surplus Lines Law.

13 Section 1015. Subsections (1) and (2) of section  
14 626.916, Florida Statutes, are amended to read:

15 626.916 Eligibility for export.--

16 (1) No insurance coverage shall be eligible for export  
17 unless it meets all of the following conditions:

18 (a) The full amount of insurance required must not be  
19 procurable, after a diligent effort has been made by the  
20 producing agent to do so, from among the insurers authorized  
21 to transact and actually writing that kind and class of  
22 insurance in this state, and the amount of insurance exported  
23 shall be only the excess over the amount so procurable from  
24 authorized insurers. Surplus lines agents must verify that a  
25 diligent effort has been made by requiring a properly  
26 documented statement of diligent effort from the retail or  
27 producing agent. However, to be in compliance with the  
28 diligent effort requirement, the surplus lines agent's  
29 reliance must be reasonable under the particular circumstances  
30 surrounding the export of that particular risk. Reasonableness  
31 shall be assessed by taking into account factors which

1 include, but are not limited to, a regularly conducted program  
2 of verification of the information provided by the retail or  
3 producing agent. Declinations must be documented on a  
4 risk-by-risk basis. If it is not possible to obtain the full  
5 amount of insurance required by layering the risk, it is  
6 permissible to export the full amount.

7 (b) The premium rate at which the coverage is exported  
8 shall not be lower than that rate applicable, if any, in  
9 actual and current use by a majority of the authorized  
10 insurers for the same coverage on a similar risk.

11 (c) The policy or contract form under which the  
12 insurance is exported shall not be more favorable to the  
13 insured as to the coverage or rate than under similar  
14 contracts on file and in actual current use in this state by  
15 the majority of authorized insurers actually writing similar  
16 coverages on similar risks; except that a coverage may be  
17 exported under a unique form of policy designed for use with  
18 respect to a particular subject of insurance if a copy of such  
19 form is filed with the office ~~department~~ by the surplus lines  
20 agent desiring to use the same and is subject to the  
21 disapproval of the office ~~department~~ within 10 days of filing  
22 such form exclusive of Saturdays, Sundays, and legal holidays  
23 if it finds that the use of such special form is not  
24 reasonably necessary for the principal purposes of the  
25 coverage or that its use would be contrary to the purposes of  
26 this Surplus Lines Law with respect to the reasonable  
27 protection of authorized insurers from unwarranted competition  
28 by unauthorized insurers.

29 (d) Except as to extended coverage in connection with  
30 fire insurance policies and except as to windstorm insurance,  
31 the policy or contract under which the insurance is exported

1 shall not provide for deductible amounts, in determining the  
2 existence or extent of the insurer's liability, other than  
3 those available under similar policies or contracts in actual  
4 and current use by one or more authorized insurers.

5 (2) The commission ~~department~~ may by rule ~~rules and~~  
6 ~~regulations~~ declare eligible for export generally, and  
7 notwithstanding the provisions of paragraphs (a), (b), (c),  
8 and (d) of subsection (1), any class or classes of insurance  
9 coverage or risk for which it finds, after a hearing, that  
10 there is no reasonable or adequate market among authorized  
11 insurers. Any such rules ~~and regulations~~ shall continue in  
12 effect during the existence of the conditions upon which  
13 predicated, but subject to termination by the commission  
14 ~~department~~.

15 Section 1016. Subsection (1) of section 626.917,  
16 Florida Statutes, is amended to read:

17 626.917 Eligibility for export; wet marine and  
18 transportation, aviation risks.--

19 (1) Insurance coverage of wet marine and  
20 transportation risks, as defined in this code in s.  
21 624.607(2), or aviation risks, including airport and products  
22 liability incidental thereto and hangarkeeper's liability, may  
23 be exported under the following conditions:

24 (a) The insurance must be placed only by or through a  
25 licensed Florida surplus lines agent; and

26 (b) The insurer must be one made eligible by the  
27 office ~~department~~ specifically for such coverages, based upon  
28 information furnished by the insurer and indicating that the  
29 insurer is well able to meet its financial obligations.

30 Section 1017. Section 626.918, Florida Statutes, is  
31 amended to read:

1           626.918 Eligible surplus lines insurers.--

2           (1) No surplus lines agent shall place any coverage  
3 with any unauthorized insurer which is not then an eligible  
4 surplus lines insurer, except as permitted under subsections  
5 (5) and (6).

6           (2) No unauthorized insurer shall be or become an  
7 eligible surplus lines insurer unless made eligible by the  
8 office ~~department~~ in accordance with the following conditions:

9           (a) Eligibility of the insurer must be requested in  
10 writing by the Florida Surplus Lines Service Office;

11           (b) The insurer must be currently an authorized  
12 insurer in the state or country of its domicile as to the kind  
13 or kinds of insurance proposed to be so placed and must have  
14 been such an insurer for not less than the 3 years next  
15 preceding or must be the wholly owned subsidiary of such  
16 authorized insurer or must be the wholly owned subsidiary of  
17 an already eligible surplus lines insurer as to the kind or  
18 kinds of insurance proposed for a period of not less than the  
19 3 years next preceding. However, the office ~~department~~ may  
20 waive the 3-year requirement if the insurer provides a product  
21 or service not readily available to the consumers of this  
22 state or has operated successfully for a period of at least 1  
23 year next preceding and has capital and surplus of not less  
24 than \$25 million;

25           (c) Before granting eligibility, the requesting  
26 surplus lines agent or the insurer shall furnish the office  
27 ~~department~~ with a duly authenticated copy of its current  
28 annual financial statement in the English language and with  
29 all monetary values therein expressed in United States  
30 dollars, at an exchange rate (in the case of statements  
31 originally made in the currencies of other countries)

1 then-current and shown in the statement, and with such  
2 additional information relative to the insurer as the office  
3 ~~department~~ may request;

4 (d)1. The insurer must have and maintain surplus as to  
5 policyholders of not less than \$15 million; in addition, an  
6 alien insurer must also have and maintain in the United States  
7 a trust fund for the protection of all its policyholders in  
8 the United States under terms deemed by the office ~~department~~  
9 to be reasonably adequate, in an amount not less than \$5.4  
10 million. Any such surplus as to policyholders or trust fund  
11 shall be represented by investments consisting of eligible  
12 investments for like funds of like domestic insurers under  
13 part II of chapter 625 provided, however, that in the case of  
14 an alien insurance company, any such surplus as to  
15 policyholders may be represented by investments permitted by  
16 the domestic regulator of such alien insurance company if such  
17 investments are substantially similar in terms of quality,  
18 liquidity, and security to eligible investments for like funds  
19 of like domestic insurers under part II of chapter 625;

20 2. For those surplus lines insurers that were eligible  
21 on January 1, 1994, and that maintained their eligibility  
22 thereafter, the required surplus as to policyholders shall be:

23 a. On December 31, 1994, and until December 30, 1995,  
24 \$2.5 million.

25 b. On December 31, 1995, and until December 30, 1996,  
26 \$3.5 million.

27 c. On December 31, 1996, and until December 30, 1997,  
28 \$4.5 million.

29 d. On December 31, 1997, and until December 30, 1998,  
30 \$5.5 million.

31

1 e. On December 31, 1998, and until December 30, 1999,  
2 \$6.5 million.  
3 f. On December 31, 1999, and until December 30, 2000,  
4 \$8 million.  
5 g. On December 31, 2000, and until December 30, 2001,  
6 \$9.5 million.  
7 h. On December 31, 2001, and until December 30, 2002,  
8 \$11 million.  
9 i. On December 31, 2002, and until December 30, 2003,  
10 \$13 million.  
11 j. On December 31, 2003, and thereafter, \$15 million.  
12 3. The capital and surplus requirements as set forth  
13 in subparagraph 2. do not apply in the case of an insurance  
14 exchange created by the laws of individual states, where the  
15 exchange maintains capital and surplus pursuant to the  
16 requirements of that state, or maintains capital and surplus  
17 in an amount not less than \$50 million in the aggregate. For  
18 an insurance exchange which maintains funds in the amount of  
19 at least \$12 million for the protection of all insurance  
20 exchange policyholders, each individual syndicate shall  
21 maintain minimum capital and surplus in an amount not less  
22 than \$3 million. If the insurance exchange does not maintain  
23 funds in the amount of at least \$12 million for the protection  
24 of all insurance exchange policyholders, each individual  
25 syndicate shall meet the minimum capital and surplus  
26 requirements set forth in subparagraph 2.;  
27 4. A surplus lines insurer which is a member of an  
28 insurance holding company that includes a member which is a  
29 Florida domestic insurer as set forth in its holding company  
30 registration statement, as set forth in s. 628.801 and rules  
31 adopted thereunder, may elect to maintain surplus as to

1 policyholders in an amount equal to the requirements of s.  
2 624.408, subject to the requirement that the surplus lines  
3 insurer shall at all times be in compliance with the  
4 requirements of chapter 625.

5  
6 The election shall be submitted to the office ~~department~~ and  
7 shall be effective upon the office's ~~department's~~ being  
8 satisfied that the requirements of subparagraph 4. have been  
9 met. The initial date of election shall be the date of office  
10 ~~department~~ approval. The election approval application shall  
11 be on a form adopted by commission ~~department~~ rule. The office  
12 ~~department~~ may approve an election form submitted pursuant to  
13 subparagraph 4. only if it was on file with the former  
14 Department of Insurance before February 28, 1998;

15 (e) The insurer must be of good reputation as to the  
16 providing of service to its policyholders and the payment of  
17 losses and claims;

18 (f) The insurer must be eligible, as for authority to  
19 transact insurance in this state, under s. 624.404(3); and

20 (g) This subsection does not apply as to unauthorized  
21 insurers made eligible under s. 626.917 as to wet marine and  
22 aviation risks.

23 (3) The office ~~department~~ shall from time to time  
24 publish a list of all currently eligible surplus lines  
25 insurers and shall mail a copy thereof to each licensed  
26 surplus lines agent at his or her office of record with the  
27 office ~~department~~.

28 (4) This section shall not be deemed to cast upon the  
29 office ~~department~~ any duty or responsibility to determine the  
30 actual financial condition or claims practices of any  
31 unauthorized insurer; and the status of eligibility, if

1 granted by the office ~~department~~, shall indicate only that the  
2 insurer appears to be sound financially and to have  
3 satisfactory claims practices and that the office ~~department~~  
4 has no credible evidence to the contrary.

5 (5) When it appears that any particular insurance risk  
6 which is eligible for export, but on which insurance coverage,  
7 in whole or in part, is not procurable from the eligible  
8 surplus lines insurers, after a search of eligible surplus  
9 lines insurers, then the surplus lines agent may file a  
10 supplemental signed statement setting forth such facts and  
11 advising the office ~~department~~ that such part of the risk as  
12 shall be unprocurable, as aforesaid, is being placed with  
13 named unauthorized insurers, in the amounts and percentages  
14 set forth in the statement. Such named unauthorized insurer  
15 shall, however, before accepting any risk in this state,  
16 deposit with the department cash or securities acceptable to  
17 the office ~~and~~ department of the market value of \$50,000 for  
18 each individual risk, contract, or certificate, which deposit  
19 shall be held by the department for the benefit of Florida  
20 policyholders only; and the surplus lines agent shall procure  
21 from such unauthorized insurer and file with the office  
22 ~~department~~ a certified copy of its statement of condition as  
23 of the close of the last calendar year. If such statement  
24 reveals, including both capital and surplus, net assets of at  
25 least that amount required for licensure of a domestic  
26 insurer, then the surplus lines agent may proceed to  
27 consummate such contract of insurance. Whenever any insurance  
28 risk, or any part thereof, is placed with an unauthorized  
29 insurer, as provided herein, the policy, binder, or cover note  
30 shall contain a statement signed by the insured and the agent  
31 with the following notation: "The insured is aware that

1 certain insurers participating in this risk have not been  
2 approved to transact business in Florida nor have they been  
3 declared eligible as surplus lines insurers by the Office of  
4 Insurance Regulation ~~Department of Insurance~~ of Florida. The  
5 placing of such insurance by a duly licensed surplus lines  
6 agent in Florida shall not be construed as approval of such  
7 insurer by the Office of Insurance Regulation ~~Department of~~  
8 ~~Insurance~~ of Florida. Consequently, the insured is aware that  
9 the insured has severely limited the assistance available  
10 under the insurance laws of Florida. The insured is further  
11 aware that he or she may be charged a reasonable per policy  
12 fee, as provided in s. 626.916(4), Florida Statutes, for each  
13 policy certified for export." All other provisions of this  
14 code shall apply to such placement the same as if such risks  
15 were placed with an eligible surplus lines insurer.

16 (6) When any particular insurance risk subject to  
17 subsection (5) is eligible for placement with an unauthorized  
18 insurer and not more than 12.5 percent of the risk is so  
19 subject, the office ~~Department of Insurance~~ may, at its  
20 discretion, permit the agent to obtain from the insured a  
21 signed statement as indicated in subsection (5). All other  
22 provisions of this code apply to such placement the same as if  
23 such risks were placed with an eligible surplus lines insurer.

24 Section 1018. Section 626.919, Florida Statutes, is  
25 amended to read:

26 626.919 Withdrawal of eligibility; surplus lines  
27 insurer.--

28 (1) If at any time the office ~~department~~ has reason to  
29 believe that any unauthorized insurer then on the list of  
30 eligible surplus lines insurers is insolvent or in unsound  
31 financial condition, or does not make reasonable prompt

1 payment of just losses and claims in this state, or that it is  
2 no longer eligible under the conditions therefor provided in  
3 s. 626.918, it shall withdraw the eligibility of the insurer  
4 to insure surplus lines risks in this state.

5 (2) If the office ~~department~~ finds that an insurer  
6 currently eligible as a surplus lines insurer has willfully  
7 violated the laws of this state or a rule of the commission  
8 ~~department~~, it may, in its discretion, withdraw the  
9 eligibility of the insurer to insure surplus lines risks in  
10 this state.

11 (3) The office ~~department~~ shall promptly mail notice  
12 of all such withdrawals of eligibility to each surplus lines  
13 agent at his or her address of record with the department.

14 Section 1019. Subsection (8) of section 626.921,  
15 Florida Statutes, is amended to read:

16 626.921 Florida Surplus Lines Service Office.--

17 (8)(a) Information furnished to the department under  
18 s. 626.923 or contained in the records subject to examination  
19 by the department under s. 626.930 is confidential and exempt  
20 from the provisions of s. 119.07(1) and s. 24(a), Art. I of  
21 the State Constitution if the disclosure of the information  
22 would reveal information specific to a particular policy or  
23 policyholder. The exemption does not apply to any proceeding  
24 instituted by the department or office against an agent or  
25 insurer.

26 (b) Information furnished to the Florida Surplus Lines  
27 Service Office under the Surplus Lines Law is confidential and  
28 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.  
29 I of the State Constitution if the disclosure of the  
30 information would reveal information specific to a particular  
31 policy or policyholder. This exemption does not prevent the

1 disclosure of any information by the Florida Surplus Lines  
2 Service Office to the department, but the exemption applies to  
3 records obtained by the department from the Florida Surplus  
4 Lines Service Office. The exemption does not apply to any  
5 proceeding instituted by the department or office against an  
6 agent or insurer. This paragraph is subject to the Open  
7 Government Sunset Review Act of 1995 in accordance with s.  
8 119.15, and shall stand repealed on October 2, 2006, unless  
9 reviewed and saved from repeal through reenactment by the  
10 Legislature.

11 Section 1020. Subsection (5) of section 626.931,  
12 Florida Statutes, is amended to read:

13 626.931 Agent affidavit and insurer reporting  
14 requirements.--

15 (5) The department may ~~Insurance Commissioner shall~~  
16 ~~have the authority to~~ waive the filing requirements described  
17 in subsections (3) and (4).

18 Section 1021. Subsections (2) and (5) of section  
19 626.932, Florida Statutes, are amended to read:

20 626.932 Surplus lines tax.--

21 (2)(a) The surplus lines agent shall make payable to  
22 the department ~~of Insurance~~ the tax related to each calendar  
23 quarter's business as reported to the Florida Surplus Lines  
24 Service Office, and remit the tax to the Florida Surplus Lines  
25 Service Office at the same time as provided for the filing of  
26 the quarterly affidavit, under s. 626.931. The Florida Surplus  
27 Lines Service Office shall forward to the department the taxes  
28 and any interest collected pursuant to paragraph (b), within  
29 10 days of receipt.

30 (b) The agent shall pay interest on the amount of any  
31 delinquent tax due, at the rate of 9 percent per year,

1 compounded annually, beginning the day the amount becomes  
2 delinquent.

3 (5) The department shall deposit 55 percent of all  
4 taxes collected under this section to the credit of the  
5 Insurance ~~Commissioner's~~ Regulatory Trust Fund. Forty-five  
6 percent of all taxes collected under this section shall be  
7 deposited into the General Revenue Fund.

8 Section 1022. Section 626.936, Florida Statutes, is  
9 amended to read:

10 626.936 Failure to file reports or pay tax or service  
11 fee; administrative penalty.--

12 (1) Any licensed surplus lines agent who neglects to  
13 file a report or an affidavit in the form and within the time  
14 required or provided for in the Surplus Lines Law may be fined  
15 up to \$50 per day for each day the neglect continues,  
16 beginning the day after the report or affidavit was due until  
17 the date the report or affidavit is received. All sums  
18 collected under this section shall be deposited into the  
19 Insurance ~~Commissioner's~~ Regulatory Trust Fund.

20 (2) Any licensed surplus lines agent who neglects to  
21 pay the taxes or service fees as required under the Surplus  
22 Lines Law and within the time required may be fined up to \$500  
23 per day for each day the failure to pay continues, beginning  
24 the day after the tax or service fees were due. The agent  
25 shall pay interest on the amount of any delinquent tax due, at  
26 the rate of 9 percent per year, compounded annually, beginning  
27 the day the amount becomes delinquent. The department shall  
28 deposit all sums collected under this section into the  
29 Insurance ~~Commissioner's~~ Regulatory Trust Fund.

30 Section 1023. Section 626.9361, Florida Statutes, is  
31 amended to read:

1           626.9361 Failure to file report; administrative  
2 penalty.--Any eligible surplus lines insurer who fails to file  
3 a report in the form and within the time required or provided  
4 for in the Surplus Lines Law may be fined up to \$500 per day  
5 for each day such failure continues, beginning the day after  
6 the report was due, until the date the report is received.  
7 Failure to file a report may also result in withdrawal of  
8 eligibility as a surplus lines insurer in this state. All sums  
9 collected by the department under this section shall be  
10 deposited into the Insurance ~~Commissioner's~~ Regulatory Trust  
11 Fund.

12           Section 1024. Subsections (2), (3), and (4) of section  
13 626.937, Florida Statutes, are amended to read:

14           626.937 Actions against insurer; service of process.--

15           (2) The unauthorized insurer accepting the risk or  
16 issuing the policy shall be deemed thereby to have authorized  
17 service of process against it in the manner and to the effect  
18 as provided in this section, and to have appointed the Chief  
19 Financial Officer ~~Insurance Commissioner and Treasurer~~ as its  
20 agent for service of process issuing upon any cause of action  
21 arising in this state under any such policy, contract, or  
22 insurance.

23           (3) Each unauthorized insurer requesting eligibility  
24 pursuant to s. 626.918 shall file with the department its  
25 appointment of the Chief Financial Officer ~~Insurance~~  
26 ~~Commissioner and Treasurer and his or her successors in~~  
27 ~~office~~, on a form as furnished by the department, as its  
28 attorney to receive service of all legal process issued  
29 against it in any civil action or proceeding in this state,  
30 and agreeing that process so served shall be valid and binding  
31 upon the insurer. The appointment shall be irrevocable, shall

1 bind the insurer and any successor in interest as to the  
2 assets or liabilities of the insurer, and shall remain in  
3 effect as long as there is outstanding in this state any  
4 obligation or liability of the insurer resulting from its  
5 insurance transactions therein.

6 (4) At the time of such appointment of the Chief  
7 Financial Officer ~~Insurance Commissioner and Treasurer~~ as its  
8 process agent, the insurer shall file with the department  
9 designation of the name and address of the person to whom  
10 process against it served upon the Chief Financial Officer  
11 ~~Insurance Commissioner and Treasurer~~ is to be forwarded. The  
12 insurer may change the designation at any time by a new  
13 filing.

14 Section 1025. Subsections (3) and (7) of section  
15 626.938, Florida Statutes, are amended to read:

16 626.938 Report and tax of independently procured  
17 coverages.--

18 (3) For the general support of the government of this  
19 state, there is levied upon the obligation, chose in action,  
20 or right represented by the premium charged for such insurance  
21 a tax at the rate of 5 percent of the gross amount of such  
22 premium and a 0.3 percent service fee pursuant to s. 626.9325.  
23 The insured shall withhold the amount of the tax and service  
24 fee from the amount of premium charged by and otherwise  
25 payable to the insurer for such insurance. Within 30 days  
26 after the insurance is procured, continued, or renewed, and  
27 simultaneously with the filing of the report provided for in  
28 subsection (1) with the Florida Surplus Lines Service Office,  
29 the insured shall make payable to the department ~~of Insurance~~  
30 the amount of the tax and make payable to the Florida Surplus  
31 Lines Service Office the amount of the service fee. The

1 insured shall remit the tax and the service fee to the Florida  
2 Surplus Lines Service Office. The Florida Surplus Lines  
3 Service Office shall forward to the department the taxes, and  
4 any interest collected pursuant to subsection (5), within 10  
5 days after receipt.

6 (7) The department shall deposit 55 percent of all  
7 taxes and interest collected under this section to the credit  
8 of the Insurance ~~Commissioner's~~ Regulatory Trust Fund.  
9 Forty-five percent of all taxes and interest collected under  
10 this section shall be deposited into the General Revenue Fund.

11 Section 1026. Section 626.9511, Florida Statutes, is  
12 amended to read:

13 626.9511 Definitions.--When used in this part:

14 (1) "Person" means any individual, corporation,  
15 association, partnership, reciprocal exchange, interinsurer,  
16 Lloyds insurer, fraternal benefit society, or business trust  
17 or any entity involved in the business of insurance.

18 ~~(2) "Department" means the Department of Insurance of~~  
19 ~~this state.~~

20 (2)~~(3)~~ "Insurance policy" or "insurance contract"  
21 means a written contract of, or a written agreement for or  
22 effecting, insurance, or the certificate thereof, by whatever  
23 name called, and includes all clauses, riders, endorsements,  
24 and papers which are a part thereof.

25 Section 1027. Paragraphs (h), (o), (w), and (aa) of  
26 subsection (1) of section 626.9541, Florida Statutes, are  
27 amended to read:

28 626.9541 Unfair methods of competition and unfair or  
29 deceptive acts or practices defined.--

30  
31

1           (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR  
2 DECEPTIVE ACTS.--The following are defined as unfair methods  
3 of competition and unfair or deceptive acts or practices:

4           (h) Unlawful rebates.--

5           1. Except as otherwise expressly provided by law, or  
6 in an applicable filing with the office ~~department~~, knowingly:

7           a. Permitting, or offering to make, or making, any  
8 contract or agreement as to such contract other than as  
9 plainly expressed in the insurance contract issued thereon;

10           b. Paying, allowing, or giving, or offering to pay,  
11 allow, or give, directly or indirectly, as inducement to such  
12 insurance contract, any unlawful rebate of premiums payable on  
13 the contract, any special favor or advantage in the dividends  
14 or other benefits thereon, or any valuable consideration or  
15 inducement whatever not specified in the contract;

16           c. Giving, selling, or purchasing, or offering to  
17 give, sell, or purchase, as inducement to such insurance  
18 contract or in connection therewith, any stocks, bonds, or  
19 other securities of any insurance company or other  
20 corporation, association, or partnership, or any dividends or  
21 profits accrued thereon, or anything of value whatsoever not  
22 specified in the insurance contract.

23           2. Nothing in paragraph (g) or subparagraph 1. of this  
24 paragraph shall be construed as including within the  
25 definition of discrimination or unlawful rebates:

26           a. In the case of any contract of life insurance or  
27 life annuity, paying bonuses to all policyholders or otherwise  
28 abating their premiums in whole or in part out of surplus  
29 accumulated from nonparticipating insurance; provided that any  
30 such bonuses or abatement of premiums is fair and equitable to  
31

1 all policyholders and for the best interests of the company  
2 and its policyholders.

3 b. In the case of life insurance policies issued on  
4 the industrial debit plan, making allowance to policyholders  
5 who have continuously for a specified period made premium  
6 payments directly to an office of the insurer in an amount  
7 which fairly represents the saving in collection expenses.

8 c. Readjustment of the rate of premium for a group  
9 insurance policy based on the loss or expense thereunder, at  
10 the end of the first or any subsequent policy year of  
11 insurance thereunder, which may be made retroactive only for  
12 such policy year.

13 d. Issuance of life insurance policies or annuity  
14 contracts at rates less than the usual rates of premiums for  
15 such policies or contracts, as group insurance or employee  
16 insurance as defined in this code.

17 e. Issuing life or disability insurance policies on a  
18 salary savings, bank draft, preauthorized check, payroll  
19 deduction, or other similar plan at a reduced rate reasonably  
20 related to the savings made by the use of such plan.

21 3.a. No title insurer, or any member, employee,  
22 attorney, agent, agency, or solicitor thereof, shall pay,  
23 allow, or give, or offer to pay, allow, or give, directly or  
24 indirectly, as inducement to title insurance, or after such  
25 insurance has been effected, any rebate or abatement of the  
26 agent's, agency's, or title insurer's share of the premium or  
27 any charge for related title services below the cost for  
28 providing such services, or provide any special favor or  
29 advantage, or any monetary consideration or inducement  
30 whatever. Nothing herein contained shall preclude an  
31 abatement in an attorney's fee charged for legal services.

1           b. Nothing in this subparagraph shall be construed as  
2 prohibiting the payment of fees to attorneys at law duly  
3 licensed to practice law in the courts of this state, for  
4 professional services, or as prohibiting the payment of earned  
5 portions of the premium to duly appointed agents or agencies  
6 who actually perform services for the title insurer.

7           c. No insured named in a policy, or any other person  
8 directly or indirectly connected with the transaction  
9 involving the issuance of such policy, including, but not  
10 limited to, any mortgage broker, real estate broker, builder,  
11 or attorney, any employee, agent, agency, or representative  
12 thereof, or any other person whatsoever, shall knowingly  
13 receive or accept, directly or indirectly, any rebate or  
14 abatement of said charge, or any monetary consideration or  
15 inducement, other than as set forth in sub-subparagraph b.

16           (o) Illegal dealings in premiums; excess or reduced  
17 charges for insurance.--

18           1. Knowingly collecting any sum as a premium or charge  
19 for insurance, which is not then provided, or is not in due  
20 course to be provided, subject to acceptance of the risk by  
21 the insurer, by an insurance policy issued by an insurer as  
22 permitted by this code.

23           2. Knowingly collecting as a premium or charge for  
24 insurance any sum in excess of or less than the premium or  
25 charge applicable to such insurance, in accordance with the  
26 applicable classifications and rates as filed with and  
27 approved by the office ~~department~~, and as specified in the  
28 policy; or, in cases when classifications, premiums, or rates  
29 are not required by this code to be so filed and approved,  
30 premiums and charges in excess of or less than those specified  
31 in the policy and as fixed by the insurer. This provision

1 shall not be deemed to prohibit the charging and collection,  
2 by surplus lines agents licensed under part VIII of this  
3 chapter, of the amount of applicable state and federal taxes,  
4 or fees as authorized by s. 626.916(4), in addition to the  
5 premium required by the insurer or the charging and  
6 collection, by licensed agents, of the exact amount of any  
7 discount or other such fee charged by a credit card facility  
8 in connection with the use of a credit card, as authorized by  
9 subparagraph (q)3., in addition to the premium required by the  
10 insurer. This subparagraph shall not be construed to prohibit  
11 collection of a premium for a universal life or a variable or  
12 indeterminate value insurance policy made in accordance with  
13 the terms of the contract.

14         3.a. Imposing or requesting an additional premium for  
15 a policy of motor vehicle liability, personal injury  
16 protection, medical payment, or collision insurance or any  
17 combination thereof or refusing to renew the policy solely  
18 because the insured was involved in a motor vehicle accident  
19 unless the insurer's file contains information from which the  
20 insurer in good faith determines that the insured was  
21 substantially at fault in the accident.

22         b. An insurer which imposes and collects such a  
23 surcharge or which refuses to renew such policy shall, in  
24 conjunction with the notice of premium due or notice of  
25 nonrenewal, notify the named insured that he or she is  
26 entitled to reimbursement of such amount or renewal of the  
27 policy under the conditions listed below and will subsequently  
28 reimburse him or her or renew the policy, if the named insured  
29 demonstrates that the operator involved in the accident was:

30             (I) Lawfully parked;

31

1 (II) Reimbursed by, or on behalf of, a person  
2 responsible for the accident or has a judgment against such  
3 person;

4 (III) Struck in the rear by another vehicle headed in  
5 the same direction and was not convicted of a moving traffic  
6 violation in connection with the accident;

7 (IV) Hit by a "hit-and-run" driver, if the accident  
8 was reported to the proper authorities within 24 hours after  
9 discovering the accident;

10 (V) Not convicted of a moving traffic violation in  
11 connection with the accident, but the operator of the other  
12 automobile involved in such accident was convicted of a moving  
13 traffic violation;

14 (VI) Finally adjudicated not to be liable by a court  
15 of competent jurisdiction;

16 (VII) In receipt of a traffic citation which was  
17 dismissed or nolle prossed; or

18 (VIII) Not at fault as evidenced by a written  
19 statement from the insured establishing facts demonstrating  
20 lack of fault which are not rebutted by information in the  
21 insurer's file from which the insurer in good faith determines  
22 that the insured was substantially at fault.

23 c. In addition to the other provisions of this  
24 subparagraph, an insurer may not fail to renew a policy if the  
25 insured has had only one accident in which he or she was at  
26 fault within the current 3-year period. However, an insurer  
27 may nonrenew a policy for reasons other than accidents in  
28 accordance with s. 627.728. This subparagraph does not  
29 prohibit nonrenewal of a policy under which the insured has  
30 had three or more accidents, regardless of fault, during the  
31 most recent 3-year period.

1           4. Imposing or requesting an additional premium for,  
2 or refusing to renew, a policy for motor vehicle insurance  
3 solely because the insured committed a noncriminal traffic  
4 infraction as described in s. 318.14 unless the infraction is:

5           a. A second infraction committed within an 18-month  
6 period, or a third or subsequent infraction committed within a  
7 36-month period.

8           b. A violation of s. 316.183, when such violation is a  
9 result of exceeding the lawful speed limit by more than 15  
10 miles per hour.

11           5. Upon the request of the insured, the insurer and  
12 licensed agent shall supply to the insured the complete proof  
13 of fault or other criteria which justifies the additional  
14 charge or cancellation.

15           6. No insurer shall impose or request an additional  
16 premium for motor vehicle insurance, cancel or refuse to issue  
17 a policy, or refuse to renew a policy because the insured or  
18 the applicant is a handicapped or physically disabled person,  
19 so long as such handicap or physical disability does not  
20 substantially impair such person's mechanically assisted  
21 driving ability.

22           7. No insurer may cancel or otherwise terminate any  
23 insurance contract or coverage, or require execution of a  
24 consent to rate endorsement, during the stated policy term for  
25 the purpose of offering to issue, or issuing, a similar or  
26 identical contract or coverage to the same insured with the  
27 same exposure at a higher premium rate or continuing an  
28 existing contract or coverage with the same exposure at an  
29 increased premium.

30           8. No insurer may issue a nonrenewal notice on any  
31 insurance contract or coverage, or require execution of a

1 consent to rate endorsement, for the purpose of offering to  
2 issue, or issuing, a similar or identical contract or coverage  
3 to the same insured at a higher premium rate or continuing an  
4 existing contract or coverage at an increased premium without  
5 meeting any applicable notice requirements.

6           9. No insurer shall, with respect to premiums charged  
7 for motor vehicle insurance, unfairly discriminate solely on  
8 the basis of age, sex, marital status, or scholastic  
9 achievement.

10           10. Imposing or requesting an additional premium for  
11 motor vehicle comprehensive or uninsured motorist coverage  
12 solely because the insured was involved in a motor vehicle  
13 accident or was convicted of a moving traffic violation.

14           11. No insurer shall cancel or issue a nonrenewal  
15 notice on any insurance policy or contract without complying  
16 with any applicable cancellation or nonrenewal provision  
17 required under the Florida Insurance Code.

18           12. No insurer shall impose or request an additional  
19 premium, cancel a policy, or issue a nonrenewal notice on any  
20 insurance policy or contract because of any traffic infraction  
21 when adjudication has been withheld and no points have been  
22 assessed pursuant to s. 318.14(9) and (10). However, this  
23 subparagraph does not apply to traffic infractions involving  
24 accidents in which the insurer has incurred a loss due to the  
25 fault of the insured.

26           (w) Soliciting or accepting new or renewal insurance  
27 risks by insolvent or impaired insurer prohibited; penalty.--

28           1. Whether or not delinquency proceedings as to the  
29 insurer have been or are to be initiated, but while such  
30 insolvency or impairment exists, no director or officer of an  
31 insurer, except with the written permission of the office

1 ~~Department of Insurance~~, shall authorize or permit the insurer  
2 to solicit or accept new or renewal insurance risks in this  
3 state after such director or officer knew, or reasonably  
4 should have known, that the insurer was insolvent or impaired.  
5 "Impaired" includes impairment of capital or surplus, as  
6 defined in s. 631.011(12) and (13).

7         2. Any such director or officer, upon conviction of a  
8 violation of this paragraph, is guilty of a felony of the  
9 third degree, punishable as provided in s. 775.082, s.  
10 775.083, or s. 775.084.

11         (aa) Churning.--

12         1. Churning is the practice whereby policy values in  
13 an existing life insurance policy or annuity contract,  
14 including, but not limited to, cash, loan values, or dividend  
15 values, and in any riders to that policy or contract, are  
16 utilized to purchase another insurance policy or annuity  
17 contract with that same insurer for the purpose of earning  
18 additional premiums, fees, commissions, or other compensation:

19             a. Without an objectively reasonable basis for  
20 believing that the replacement or extraction will result in an  
21 actual and demonstrable benefit to the policyholder;

22             b. In a fashion that is fraudulent, deceptive, or  
23 otherwise misleading or that involves a deceptive omission;

24             c. ~~Effective October 1, 1995,~~When the applicant is  
25 not informed that the policy values including cash values,  
26 dividends, and other assets of the existing policy or contract  
27 will be reduced, forfeited, or utilized in the purchase of the  
28 replacing or additional policy or contract, if this is the  
29 case; or

30             d. ~~Effective October 1, 1995,~~Without informing the  
31 applicant that the replacing or additional policy or contract

1 will not be a paid-up policy or that additional premiums will  
2 be due, if this is the case.

3

4 Churning by an insurer or an agent is an unfair method of  
5 competition and an unfair or deceptive act or practice.

6         2. ~~Effective October 1, 1995,~~Each insurer shall  
7 comply with sub-subparagraphs 1.c. and 1.d. by disclosing to  
8 the applicant at the time of the offer on a form designed and  
9 adopted by rule by the commission ~~department~~ if, how, and the  
10 extent to which the policy or contract values (including cash  
11 value, dividends, and other assets) of a previously issued  
12 policy or contract will be used to purchase a replacing or  
13 additional policy or contract with the same insurer. The form  
14 shall include disclosure of the premium, the death benefit of  
15 the proposed replacing or additional policy, and the date when  
16 the policy values of the existing policy or contract will be  
17 insufficient to pay the premiums of the replacing or  
18 additional policy or contract.

19         3. ~~Effective October 1, 1995,~~Each insurer shall adopt  
20 written procedures to reasonably avoid churning of policies or  
21 contracts that it has issued, and failure to adopt written  
22 procedures sufficient to reasonably avoid churning shall be an  
23 unfair method of competition and an unfair or deceptive act or  
24 practice.

25         Section 1028. Subsections (3), (5), (7), (8), (10),  
26 and (11) of section 626.9543, Florida Statutes, are amended to  
27 read:

28             626.9543 Holocaust victims.--

29             (3) DEFINITIONS.--For the purpose of this section, the  
30 term:

31             (a) ~~"Department" means the Department of Insurance.~~

1           (a)~~(b)~~ "Holocaust victim" means any person who lost  
2 his or her life or property as a result of discriminatory  
3 laws, policies, or actions targeted against discrete groups of  
4 persons between 1920 and 1945, inclusive, in Nazi Germany,  
5 areas occupied by Nazi Germany, or countries allied with Nazi  
6 Germany.

7           (b)~~(c)~~ "Insurance policy" means, but is not limited  
8 to, life insurance, property insurance, or education policies.

9           (c)~~(d)~~ "Legal relationship" means any parent,  
10 subsidiary, or affiliated company with an insurer doing  
11 business in this state.

12           (d)~~(e)~~ "Proceeds" means the face or other payout value  
13 of policies and annuities plus reasonable interest to date of  
14 payments without diminution for wartime or immediate postwar  
15 currency devaluation.

16           (5) PROOF OF A CLAIM.--Any insurer doing business in  
17 this state, in receipt of a claim from a Holocaust victim or  
18 from a beneficiary, descendant, or heir of a Holocaust victim,  
19 shall:

20           (a) Diligently and expeditiously investigate all such  
21 claims.

22           (b) Allow such claimants to meet a reasonable, not  
23 unduly restrictive, standard of proof to substantiate a claim,  
24 pursuant to standards established by rule of the commission  
25 ~~department~~.

26           (c) Permit claims irrespective of any statute of  
27 limitations or notice requirements imposed by any insurance  
28 policy issued, provided the claim is submitted within 10 years  
29 after the effective date of this section.

30           (7) REPORTS FROM INSURERS.--Any insurer doing business  
31 in this state shall have an affirmative duty to ascertain to

1 the extent possible and report to the office ~~department~~ within  
2 90 days after the effective date of this section and annually  
3 thereafter all efforts made and results of such efforts to  
4 ascertain:

5 (a) Any legal relationship with an international  
6 insurer that issued an insurance policy to a Holocaust victim  
7 between 1920 and 1945, inclusive.

8 (b) The number and total value of such policies.

9 (c) Any claim filed by a Holocaust victim, his or her  
10 beneficiary, heir, or descendant that has been paid, denied  
11 payment, or is pending.

12 (d) Attempts made by the insurer to locate the  
13 beneficiaries of any such policies for which no claim of  
14 benefits has been made.

15 (e) An explanation of any denial or pending payment of  
16 a claim to a Holocaust victim, his or her beneficiary, heir,  
17 or descendant.

18 (8) REPORTS TO THE LEGISLATURE.--The office and  
19 department shall jointly report to the Legislature 1 year  
20 after the effective date of this section and annually  
21 thereafter:

22 (a) The number of insurers doing business in this  
23 state which have a legal relationship with an international  
24 insurer that could have issued a policy to a Holocaust victim  
25 between 1920 and 1945, inclusive.

26 (b) A list of all claims paid, denied, or pending to a  
27 Holocaust victim, his or her beneficiary, heir, or descendant.

28 (c) A summary of the length of time for the processing  
29 and disposition of a claim by the insurer.

30 (10) PRIVATE RIGHT OF ACTION.--An action to recover  
31 damages caused by a violation of this section must be

1 commenced within 5 years after the cause of action has  
2 accrued. Any person who shall sustain damages by the reason  
3 of a violation of this section shall recover threefold the  
4 actual damages sustained thereby, as well as costs not  
5 exceeding \$50,000, and reasonable attorneys' fees. At or  
6 before the commencement of any civil action by a party, notice  
7 thereof shall be served upon the office ~~department~~.

8 (11) RULES.--The commission ~~department~~, by rule, shall  
9 provide for the implementation of the provisions of this  
10 section by establishing procedures and related forms for  
11 facilitating, monitoring, and verifying compliance with this  
12 section and for the establishment of a restitution program for  
13 Holocaust victims, survivors, and their heirs and  
14 beneficiaries.

15 Section 1029. Section 626.9545, Florida Statutes, is  
16 amended to read:

17 626.9545 Improper charge identification incentive  
18 program.--No section or provision of the Florida Insurance  
19 Code shall be construed as prohibiting an insurer from  
20 establishing a financial incentive program for remunerating a  
21 policyholder or an insured person with a selected percentage  
22 or stated portion of any health care charge identified by the  
23 policyholder or the insured person as an error or overcharge  
24 if the health care charge is recovered by the insurer. The  
25 financial incentive program shall be written and shall be  
26 available for inspection by the office ~~department~~.

27 Section 1030. Subsection (5) of section 626.9551,  
28 Florida Statutes, is amended to read:

29 626.9551 Favored agent or insurer; coercion of  
30 debtors.--

31

1           (5) The department or office may investigate the  
2 affairs of any person to whom this section applies to  
3 determine whether such person has violated this section. If a  
4 violation of this section is found to have been committed  
5 knowingly, the person in violation shall be subject to the  
6 same procedures and penalties as provided in ss. 626.9571,  
7 626.9581, 626.9591, and 626.9601.

8           Section 1031. Section 626.9561, Florida Statutes, is  
9 amended to read:

10           626.9561 Power of department and office.--The  
11 department and office shall each have power within its  
12 respective regulatory jurisdiction to examine and investigate  
13 the affairs of every person involved in the business of  
14 insurance in this state in order to determine whether such  
15 person has been or is engaged in any unfair method of  
16 competition or in any unfair or deceptive act or practice  
17 prohibited by s. 626.9521, and shall each have the powers and  
18 duties specified in ss. 626.9571-626.9601 in connection  
19 therewith.

20           Section 1032. Section 626.9571, Florida Statutes, is  
21 amended to read:

22           626.9571 Defined practices; hearings, witnesses,  
23 appearances, production of books and service of process.--

24           (1) Whenever the department or office has reason to  
25 believe that any person has engaged, or is engaging, in this  
26 state in any unfair method of competition or any unfair or  
27 deceptive act or practice as defined in s. 626.9541 or s.  
28 626.9551 or is engaging in the business of insurance without  
29 being properly licensed as required by this code and that a  
30 proceeding by it in respect thereto would be to the interest  
31

1 of the public, it shall conduct or cause to have conducted a  
2 hearing in accordance with chapter 120.

3 (2) The department or office, a duly empowered hearing  
4 officer, or an administrative law judge shall, during the  
5 conduct of such hearing, have those powers enumerated in s.  
6 120.569; however, the penalties for failure to comply with a  
7 subpoena or with an order directing discovery shall be limited  
8 to a fine not to exceed \$1,000 per violation.

9 (3) Statements of charges, notices, and orders under  
10 this act may be served by anyone duly authorized by the  
11 department or office, either in the manner provided by law for  
12 service of process in civil actions or by certifying and  
13 mailing a copy thereof to the person affected by such  
14 statement, notice, order, or other process at his or her or  
15 its residence or principal office or place of business. The  
16 verified return by the person so serving such statement,  
17 notice, order, or other process, setting forth the manner of  
18 the service, shall be proof of the same, and the return  
19 postcard receipt for such statement, notice, order, or other  
20 process, certified and mailed as aforesaid, shall be proof of  
21 service of the same.

22 Section 1033. Section 626.9581, Florida Statutes, is  
23 amended to read:

24 626.9581 Cease and desist and penalty orders.--After  
25 the hearing provided in s. 626.9571, the department or office  
26 shall enter a final order in accordance with s. 120.569. If it  
27 is determined that the person charged has engaged in an unfair  
28 or deceptive act or practice or the unlawful transaction of  
29 insurance, the department or office shall also issue an order  
30 requiring the violator to cease and desist from engaging in  
31 such method of competition, act, or practice or the unlawful

1 transaction of insurance. Further, if the act or practice is a  
2 violation of s. 626.9541 or s. 626.9551, the department or  
3 office may, at its discretion, order any one or more of the  
4 following:

5 (1) Suspension or revocation of the person's  
6 certificate of authority, license, or eligibility for any  
7 certificate of authority or license, if he or she knew, or  
8 reasonably should have known, he or she was in violation of  
9 this act.

10 (2) Such other relief as may be provided in the  
11 insurance code.

12 Section 1034. Section 626.9591, Florida Statutes, is  
13 amended to read:

14 626.9591 Appeals from the department or office.--Any  
15 person subject to an order of the department or office under  
16 s. 626.9581 or s. 626.9601 may obtain a review of such order  
17 by filing an appeal therefrom in accordance with the  
18 provisions and procedures for appeal from the orders of the  
19 department or office in general under s. 120.68.

20 Section 1035. Section 626.9601, Florida Statutes, is  
21 amended to read:

22 626.9601 Penalty for violation of cease and desist  
23 orders.--Any person who violates a cease and desist order of  
24 the department or office under s. 626.9581 while such order is  
25 in effect, after notice and hearing as provided in s.  
26 626.9571, shall be subject, at the discretion of the  
27 department or office, to any one or more of the following:

28 (1) A monetary penalty of not more than \$50,000 as to  
29 all matters determined in such hearing.

30  
31

1           (2) Suspension or revocation of such person's  
2 certificate of authority, license, or eligibility to hold such  
3 certificate of authority or license.

4           (3) Such other relief as may be provided in the  
5 insurance code.

6           Section 1036. Section 626.9611, Florida Statutes, is  
7 amended to read:

8           626.9611 Rules.--The department or commission may, in  
9 accordance with chapter 120, adopt ~~promulgate~~ reasonable rules  
10 as are necessary or proper to identify specific methods of  
11 competition or acts or practices which are prohibited by s.  
12 626.9541 or s. 626.9551, but the rules shall not enlarge upon  
13 or extend the provisions of ss. 626.9541 and 626.9551.

14           Section 1037. Section 626.9621, Florida Statutes, is  
15 amended to read:

16           626.9621 Provisions of part additional to existing  
17 law.--The powers vested in the department, commission, and  
18 office by this part shall be additional to any other powers to  
19 enforce any penalties, fines, or forfeitures authorized by  
20 law.

21           Section 1038. Section 626.9631, Florida Statutes, is  
22 amended to read:

23           626.9631 Civil liability.--The provisions of this part  
24 are cumulative to rights under the general civil and common  
25 law, and no action of the department, commission, or office  
26 shall abrogate such rights to damages or other relief in any  
27 court.

28           Section 1039. Subsection (1) of section 626.9641,  
29 Florida Statutes, is amended to read:

30           626.9641 Policyholders, bill of rights.--  
31

1           (1) The principles expressed in the following  
2 statements shall serve as standards to be followed by the  
3 department, commission, and office in exercising their ~~its~~  
4 powers and duties, in exercising administrative discretion, in  
5 dispensing administrative interpretations of the law, and in  
6 adopting ~~promulgating~~ rules:

7           (a) Policyholders shall have the right to competitive  
8 pricing practices and marketing methods that enable them to  
9 determine the best value among comparable policies.

10           (b) Policyholders shall have the right to obtain  
11 comprehensive coverage.

12           (c) Policyholders shall have the right to insurance  
13 advertising and other selling approaches that provide accurate  
14 and balanced information on the benefits and limitations of a  
15 policy.

16           (d) Policyholders shall have a right to an insurance  
17 company that is financially stable.

18           (e) Policyholders shall have the right to be serviced  
19 by a competent, honest insurance agent or broker.

20           (f) Policyholders shall have the right to a readable  
21 policy.

22           (g) Policyholders shall have the right to an insurance  
23 company that provides an economic delivery of coverage and  
24 that tries to prevent losses.

25           (h) Policyholders shall have the right to a balanced  
26 and positive regulation by the department, commission, and  
27 office.

28           Section 1040. Section 626.9651, Florida Statutes, is  
29 amended to read:

30           626.9651 Privacy.--The department and commission shall  
31 each adopt rules consistent with other provisions of the

1 Florida Insurance Code to govern the use of a consumer's  
2 nonpublic personal financial and health information. These  
3 rules must be based on, consistent with, and not more  
4 restrictive than the Privacy of Consumer Financial and Health  
5 Information Regulation, adopted September 26, 2000, by the  
6 National Association of Insurance Commissioners; however, the  
7 rules must permit the use and disclosure of nonpublic personal  
8 health information for scientific, medical, or public policy  
9 research, in accordance with federal law. In addition, these  
10 rules must be consistent with, and not more restrictive than,  
11 the standards contained in Title V of the Gramm-Leach-Bliley  
12 Act of 1999, Pub. L. No. 106-102. If the office ~~department~~  
13 determines that a health insurer or health maintenance  
14 organization is in compliance with, or is actively undertaking  
15 compliance with, the consumer privacy protection rules adopted  
16 by the United States Department of Health and Human Services,  
17 in conformance with the Health Insurance Portability and  
18 Affordability Act, that health insurer or health maintenance  
19 organization is in compliance with this section.

20 Section 1041. Paragraph (e) of subsection (4) and  
21 subsections (5) and (9) of section 626.989, Florida Statutes,  
22 are amended to read:

23 626.989 Investigation by department or Division of  
24 Insurance Fraud; compliance; immunity; confidential  
25 information; reports to division; division investigator's  
26 power of arrest.--

27 (4)

28 (e) The Chief Financial Officer ~~Insurance Commissioner~~  
29 and any employee or agent of the department, commission,  
30 office, or division, when acting without malice and in the  
31 absence of fraud or bad faith, is not subject to civil

1 liability for libel, slander, or any other relevant tort, and  
2 no civil cause of action of any nature exists against such  
3 person by virtue of the execution of official activities or  
4 duties of the department, commission, or office under this  
5 section or by virtue of the publication of any report or  
6 bulletin related to the official activities or duties of the  
7 department, ~~or~~ division, commission, or office under this  
8 section.

9 (5) The office's and the department's papers,  
10 documents, reports, or evidence relative to the subject of an  
11 investigation under this section are confidential and exempt  
12 from the provisions of s. 119.07(1) until such investigation  
13 is completed or ceases to be active. For purposes of this  
14 subsection, an investigation is considered "active" while the  
15 investigation is being conducted by the office or department  
16 with a reasonable, good faith belief that it could lead to the  
17 filing of administrative, civil, or criminal proceedings. An  
18 investigation does not cease to be active if the office or  
19 department is proceeding with reasonable dispatch and has a  
20 good faith belief that action could be initiated by the office  
21 or department or other administrative or law enforcement  
22 agency. After an investigation is completed or ceases to be  
23 active, portions of records relating to the investigation  
24 shall remain exempt from the provisions of s. 119.07(1) if  
25 disclosure would:

26 (a) Jeopardize the integrity of another active  
27 investigation;

28 (b) Impair the safety and soundness of an insurer;

29 (c) Reveal personal financial information;

30 (d) Reveal the identity of a confidential source;

31

1           (e) Defame or cause unwarranted damage to the good  
2 name or reputation of an individual or jeopardize the safety  
3 of an individual; or

4           (f) Reveal investigative techniques or procedures.  
5 Further, such papers, documents, reports, or evidence relative  
6 to the subject of an investigation under this section shall  
7 not be subject to discovery until the investigation is  
8 completed or ceases to be active. Office, department, or  
9 division investigators shall not be subject to subpoena in  
10 civil actions by any court of this state to testify concerning  
11 any matter of which they have knowledge pursuant to a pending  
12 insurance fraud investigation by the division.

13           (9) In recognition of the complementary roles of  
14 investigating instances of workers' compensation fraud and  
15 enforcing compliance with the workers' compensation coverage  
16 requirements under chapter 440, the department ~~of Insurance~~ is  
17 directed to prepare and submit a joint performance report to  
18 the President of the Senate and the Speaker of the House of  
19 Representatives by November 1, 2003, and then by November 1  
20 every 3 years thereafter, describing the results obtained in  
21 achieving compliance with the workers' compensation coverage  
22 requirements and reducing the incidence of workers'  
23 compensation fraud.

24           Section 1042. Subsection (1) of section 626.9892,  
25 Florida Statutes, is amended to read:

26           626.9892 Anti-Fraud Reward Program; reporting of  
27 insurance fraud.--

28           (1) The Anti-Fraud Reward Program is hereby  
29 established within the department, to be funded from the  
30 Insurance ~~Commissioner's~~ Regulatory Trust Fund.

31

1           Section 1043. Paragraph (k) of subsection (5) of  
2 section 626.99, Florida Statutes, is amended to read:

3           626.99 Life insurance solicitation.--

4           (5) GENERAL RULES RELATING TO SOLICITATION.--

5           (k) If an appropriately licensed agent proposes to  
6 replace a life insurance policy or an in-force annuity with a  
7 registered securities product, preapplication notice  
8 requirements ~~to the department~~ shall not apply.

9           Section 1044. Section 626.9911, Florida Statutes, is  
10 amended to read:

11           626.9911 Definitions.--As used in this act, the term:

12           ~~(1) "Department" means the Department of Insurance.~~

13           (1)~~(2)~~ "Independent third-party trustee or escrow  
14 agent" means an attorney, certified public accountant,  
15 financial institution, or other person providing escrow  
16 services under the authority of a regulatory body. The term  
17 does not include any person associated, affiliated, or under  
18 common control with a viatical settlement provider or viatical  
19 settlement broker.

20           (2)~~(3)~~ "Person" has the meaning specified in s. 1.01.

21           (3)~~(4)~~ "Viatical settlement broker" means a person  
22 who, on behalf of a viator and for a fee, commission, or other  
23 valuable consideration, offers or attempts to negotiate  
24 viatical settlement contracts between a viator resident in  
25 this state and one or more viatical settlement providers.  
26 Notwithstanding the manner in which the viatical settlement  
27 broker is compensated, a viatical settlement broker is deemed  
28 to represent only the viator and owes a fiduciary duty to the  
29 viator to act according to the viator's instructions and in  
30 the best interest of the viator. The term does not include an  
31 attorney, licensed Certified Public Accountant, or investment

1 adviser lawfully registered ~~with the department of Banking and~~  
2 ~~Finance~~ under chapter 517, who is retained to represent the  
3 viator and whose compensation is paid directly by or at the  
4 direction and on behalf of the viator.

5 (4)~~(5)~~ "Viatical settlement contract" means a written  
6 agreement entered into between a viatical settlement provider,  
7 or its related provider trust, and a viator. The viatical  
8 settlement contract includes an agreement to transfer  
9 ownership or change the beneficiary designation of a life  
10 insurance policy at a later date, regardless of the date that  
11 compensation is paid to the viator. The agreement must  
12 establish the terms under which the viatical settlement  
13 provider will pay compensation or anything of value, which  
14 compensation or value is less than the expected death benefit  
15 of the insurance policy or certificate, in return for the  
16 viator's assignment, transfer, sale, devise, or bequest of the  
17 death benefit or ownership of all or a portion of the  
18 insurance policy or certificate of insurance to the viatical  
19 settlement provider. A viatical settlement contract also  
20 includes a contract for a loan or other financial transaction  
21 secured primarily by an individual or group life insurance  
22 policy, other than a loan by a life insurance company pursuant  
23 to the terms of the life insurance contract, or a loan secured  
24 by the cash value of a policy.

25 (5)~~(6)~~ "Viatical settlement provider" means a person  
26 who, in this state, from this state, or with a resident of  
27 this state, effectuates a viatical settlement contract. The  
28 term does not include:

29 (a) Any bank, savings bank, savings and loan  
30 association, credit union, or other licensed lending  
31

1 institution that takes an assignment of a life insurance  
2 policy as collateral for a loan.†

3 (b) A life and health insurer that has lawfully issued  
4 a life insurance policy that provides accelerated benefits to  
5 terminally ill policyholders or certificateholders.†~~or~~

6 (c) Any natural person who enters into no more than  
7 one viatical settlement contract with a viator in 1 calendar  
8 year, unless such natural person has previously been licensed  
9 under this act or is currently licensed under this act.

10 (d) A trust that meets the definition of a "related  
11 provider trust."

12 (e) A viator in this state.

13 (f) A viatical settlement purchaser.

14 (g) A financing entity.

15 (6)~~(7)~~ "Viator" means the owner of a life insurance  
16 policy or a certificateholder under a group policy who enters  
17 or seeks to enter into a viatical settlement contract. This  
18 term does not include a viatical settlement purchaser or a  
19 viatical settlement provider or any person acquiring a policy  
20 or interest in a policy from a viatical settlement provider,  
21 nor does it include an independent third-party trustee or  
22 escrow agent.

23 (7)~~(8)~~ "Related provider trust" means a titling trust  
24 or other trust established by a licensed viatical settlement  
25 provider or financing entity for the sole purpose of holding  
26 the ownership or beneficial interest in purchased policies in  
27 connection with a financing transaction. The trust must have a  
28 written agreement with a licensed viatical settlement provider  
29 or financing entity under which the licensed viatical  
30 settlement provider or financing entity is responsible for  
31 insuring compliance with all statutory and regulatory

1 requirements and under which the trust agrees to make all  
2 records and files relating to viatical settlement transactions  
3 available to the office ~~department~~ as if those records and  
4 files were maintained directly by the licensed viatical  
5 settlement provider. This term does not include an independent  
6 third-party trustee or escrow agent or a trust that does not  
7 enter into agreements with a viator. A related provider trust  
8 shall be subject to all provisions of this act that apply to  
9 the viatical settlement provider who established the related  
10 provider trust, except s. 626.9912, which shall not be  
11 applicable. A viatical settlement provider may establish no  
12 more than one related provider trust, and the sole trustee of  
13 such related provider trust shall be the viatical settlement  
14 provider licensed under s. 626.9912. The name of the licensed  
15 viatical settlement provider shall be included within the name  
16 of the related provider trust.

17 (8)~~(9)~~ "Viatical settlement purchase agreement" means  
18 a contract or agreement, entered into by a viatical settlement  
19 purchaser, to which the viator is not a party, to purchase a  
20 life insurance policy or an interest in a life insurance  
21 policy, which is entered into for the purpose of deriving an  
22 economic benefit. The term also includes purchases made by  
23 viatical settlement purchasers from any person other than the  
24 provider who effectuated the viatical settlement contract.

25 (9)~~(10)~~ "Viatical settlement purchaser" means a person  
26 who gives a sum of money as consideration for a life insurance  
27 policy or an equitable or legal interest in the death benefits  
28 of a life insurance policy that has been or will be the  
29 subject of a viatical settlement contract, for the purpose of  
30 deriving an economic benefit, including purchases made from  
31 any person other than the provider who effectuated the

1 viatical settlement contract or an entity affiliated with the  
2 provider. The term does not include a licensee under this  
3 part, an accredited investor as defined in Rule 501,  
4 Regulation D of the Securities Act Rules, or a qualified  
5 institutional buyer as defined by Rule 144(a) of the Federal  
6 Securities Act, a special purpose entity, a financing entity,  
7 or a contingency insurer. The above references to Rule 501,  
8 Regulation D and Rule 144(a) of the Federal Securities Act are  
9 used strictly for defining purposes and shall not be  
10 interpreted in any other manner. Any person who claims to be  
11 an accredited investor shall sign an affidavit stating that he  
12 or she is an accredited investor, the basis of that claim, and  
13 that he or she understands that as an accredited investor he  
14 or she will not be entitled to certain protections of the  
15 Viatical Settlement Act. This affidavit must be kept with  
16 other documents required to be maintained by this act.

17 (10)~~(11)~~ "Viatical settlement sales agent" means a  
18 person other than a licensed viatical settlement provider who  
19 arranges the purchase through a viatical settlement purchase  
20 agreement of a life insurance policy or an interest in a life  
21 insurance policy.

22 (11)~~(12)~~ "Viaticated policy" means a life insurance  
23 policy, or a certificate under a group policy, which is the  
24 subject of a viatical settlement contract.

25 (12)~~(13)~~ "Related form" means any form, created by or  
26 on behalf of a licensee, which a viator or viatical settlement  
27 purchaser is required to sign or initial. The forms include,  
28 but are not limited to, a power of attorney, a release of  
29 medical information form, a suitability questionnaire, a  
30 disclosure document, or any addendum, schedule, or amendment  
31 to a viatical settlement contract or viatical settlement

1 purchase agreement considered necessary by a provider to  
2 effectuate a viatical settlement transaction.

3 (13)~~(14)~~ "Special purpose entity" means an entity  
4 established by a licensed viatical settlement provider or by a  
5 financing entity, which may be a corporation, partnership,  
6 trust, limited liability company, or other similar entity  
7 formed solely to provide, either directly or indirectly,  
8 access to institutional capital markets to a viatical  
9 settlement provider or financing entity. A special purpose  
10 entity shall not enter into a viatical settlement contract or  
11 a viatical settlement purchase agreement.

12 (14)~~(15)~~ "Financing entity" means an underwriter,  
13 placement agent, lender, purchaser of securities, or purchaser  
14 of a policy or certificate from a viatical settlement  
15 provider, credit enhancer, or any entity that has direct  
16 ownership in a policy or certificate that is the subject of a  
17 viatical settlement contract, but whose principal activity  
18 related to the transaction is providing funds or credit  
19 enhancement to effect the viatical settlement or the purchase  
20 of one or more viatical policies and who has an agreement in  
21 writing with one or more licensed viatical settlement  
22 providers to finance the acquisition of viatical settlement  
23 contracts. The term does not include a nonaccredited investor,  
24 a viatical settlement purchaser, or other natural person. A  
25 financing entity may not enter into a viatical settlement  
26 contract.

27 Section 1045. Section 626.9912, Florida Statutes, is  
28 amended to read:

29 626.9912 Viatical settlement provider license  
30 required; application for license.--

31

1           (1) A person may not perform the functions of a  
2 viatical settlement provider as defined in this act or enter  
3 into or solicit a viatical settlement contract without first  
4 having obtained a license from the office ~~department~~.

5           (2) Application for a viatical settlement provider  
6 license must be made to the office ~~department~~ by the applicant  
7 on a form prescribed by the commission ~~department~~, under oath  
8 and signed by the applicant. The application must be  
9 accompanied by a fee of \$500. If the applicant is a  
10 corporation, the application must be under oath and signed by  
11 the president and the secretary of the corporation.

12           (3) In the application, the applicant must provide all  
13 of the following:

14           (a) The applicant's full name, age, residence address,  
15 and business address, and all occupations engaged in by the  
16 applicant during the 5 years preceding the date of the  
17 application.

18           (b) A copy of the applicant's basic organizational  
19 documents, if any, including the articles of incorporation,  
20 articles of association, partnership agreement, trust  
21 agreement, or other similar documents, together with all  
22 amendments to such documents.

23           (c) Copies of all bylaws, rules, regulations, or  
24 similar documents regulating the conduct of the applicant's  
25 internal affairs.

26           (d) A list showing the name, business and residence  
27 addresses, and official position of each individual who is  
28 responsible for conduct of the applicant's affairs, including,  
29 but not limited to, any member of the applicant's board of  
30 directors, board of trustees, executive committee, or other  
31 governing board or committee and any other person or entity

1 owning or having the right to acquire 10 percent or more of  
2 the voting securities of the applicant.

3 (e) With respect to each individual identified under  
4 paragraph (d):

5 1. A sworn biographical statement on forms adopted by  
6 the commission and supplied by the office ~~department~~.

7 2. A set of fingerprints on forms prescribed by the  
8 commission ~~department~~, certified by a law enforcement officer,  
9 and accompanied by the fingerprinting fee specified in s.  
10 624.501.

11 3. Authority for release of information relating to  
12 the investigation of the individual's background.

13 (f) All applications, viatical settlement contract  
14 forms, viatical settlement purchase agreement forms, escrow  
15 forms, and other related forms proposed to be used by the  
16 applicant.

17 (g) Such other information as the commission or office  
18 ~~department~~ deems necessary to determine that the applicant and  
19 the individuals identified under paragraph (d) are competent  
20 and trustworthy and can lawfully and successfully act as a  
21 viatical settlement provider.

22 (4) The office ~~department~~ may not issue a license to  
23 an entity other than a natural person if it is not satisfied  
24 that all officers, directors, employees, stockholders,  
25 partners, and any other persons who exercise or have the  
26 ability to exercise effective control of the entity or who  
27 have the ability to influence the transaction of business by  
28 the entity meet the standards of this act and have not  
29 violated any provision of this act or rules of the commission  
30 ~~department~~ related to the business of viatical settlement  
31 contracts or viatical settlement purchase agreements.

1           (5) Upon the filing of a sworn application and the  
2 payment of the license fee, the office ~~department~~ shall  
3 investigate each applicant and may issue the applicant a  
4 license if the office ~~department~~ finds that the applicant:

5           (a) Has provided a detailed plan of operation.

6           (b) Is competent and trustworthy and intends to act in  
7 good faith in the business authorized by the license applied  
8 for.

9           (c) Has a good business reputation and has had  
10 experience, training, or education that qualifies the  
11 applicant to conduct the business authorized by the license  
12 applied for.

13           (d) If the applicant is a corporation, is a  
14 corporation incorporated under the laws of this state, or is a  
15 foreign corporation authorized to transact business in this  
16 state.

17           (e) Has designated the Chief Financial Officer  
18 ~~Insurance Commissioner and Treasurer~~ as its agent for service  
19 of process.

20           (f) Has made the deposit required by s. 626.9913(3).  
21 Section 1046. Subsections (2) and (3) of section  
22 626.9913, Florida Statutes, are amended to read:

23           626.9913 Viatical settlement provider license  
24 continuance; annual report; fees; deposit.--

25           (2) Annually, on or before March 1, the viatical  
26 settlement provider licensee shall file a statement containing  
27 information the commission ~~department~~ requires and shall pay  
28 to the office ~~department~~ a license fee in the amount of \$500.  
29 A viatical settlement provider shall include in all statements  
30 filed with the office ~~department~~ all information requested by  
31 the office ~~department~~ regarding a related provider trust

1 established by the viatical settlement provider. The office  
2 ~~department~~ may require more frequent reporting. Failure to  
3 timely file the annual statement or to timely pay the license  
4 fee is grounds for immediate suspension of the license.

5 (3) A viatical settlement provider licensee must  
6 deposit and maintain deposited in trust with the department  
7 securities eligible for deposit under s. 625.52, having at all  
8 times a value of not less than \$100,000. As an alternative to  
9 meeting the \$100,000 deposit requirement, the provider may  
10 deposit and maintain deposited in trust with the department  
11 such securities in the amount of \$25,000 and post with the  
12 office ~~department~~ a surety bond acceptable to the office  
13 ~~department~~ in the amount of \$75,000.

14 Section 1047. Section 626.9914, Florida Statutes, is  
15 amended to read:

16 626.9914 Suspension, revocation, or nonrenewal of  
17 viatical settlement provider license; grounds; administrative  
18 fine.--

19 (1) The office ~~department~~ shall suspend, revoke, or  
20 refuse to renew the license of any viatical settlement  
21 provider if the office ~~department~~ finds that the licensee:

22 (a) Has made a misrepresentation in the application  
23 for the license;

24 (b) Has engaged in fraudulent or dishonest practices,  
25 or otherwise has been shown to be untrustworthy or incompetent  
26 to act as a viatical settlement provider;

27 (c) Demonstrates a pattern of unreasonable payments to  
28 viators;

29 (d) Has been found guilty of, or has pleaded guilty or  
30 nolo contendere to, any felony, or a misdemeanor involving  
31

1 fraud or moral turpitude, regardless of whether a judgment of  
2 conviction has been entered by the court;

3 (e) Has issued viatical settlement contracts that have  
4 not been approved pursuant to this act;

5 (f) Has failed to honor contractual obligations  
6 related to the business of viatical settlement contracts;

7 (g) Deals in bad faith with viators;

8 (h) Has violated any provision of the insurance code  
9 or of this act;

10 (i) Employs any person who materially influences the  
11 licensee's conduct and who fails to meet the requirements of  
12 this act; or

13 (j) No longer meets the requirements for initial  
14 licensure.

15 (2) The office ~~department~~ may, in lieu of or in  
16 addition to any suspension or revocation, assess an  
17 administrative fine not to exceed \$2,500 for each nonwillful  
18 violation or \$10,000 for each willful violation by a viatical  
19 settlement provider licensee. The office ~~department~~ may also  
20 place a viatical settlement provider licensee on probation for  
21 a period not to exceed 2 years.

22 (3) If an employee of a viatical settlement provider  
23 violates any provision of this act, the office ~~department~~ may  
24 take disciplinary action against such employee as if the  
25 employee were licensed under this act, including suspending or  
26 otherwise prohibiting the employee from performing the  
27 functions of a viatical settlement provider or viatical  
28 settlement broker as defined in this act.

29 (4) If a viatical settlement provider establishes a  
30 related provider trust as permitted by this act, the viatical  
31 settlement provider shall be liable and responsible for the

1 performance of all obligations of the related provider trust  
2 under all viatical settlement contracts entered into by the  
3 related provider trust, and for the compliance of the related  
4 provider trust with all provisions of this act. Any violation  
5 of this act by the related provider trust shall be deemed a  
6 violation of this act by the viatical settlement provider as  
7 well as the related provider trust. If the related provider  
8 trust violates any provisions of this act, the office  
9 ~~department~~ may exercise all remedies set forth in this act for  
10 such violations against the viatical settlement provider, as  
11 well as the related provider trust.

12 Section 1048. Subsections (1), (2), and (4) of section  
13 626.9915, Florida Statutes, are amended to read:

14 626.9915 Effect of suspension or revocation of  
15 viatical settlement provider license; duration of suspension;  
16 reinstatement.--

17 (1) When its license is suspended or revoked, the  
18 provider must proceed, immediately following the effective  
19 date of the suspension or revocation, to conclude the affairs  
20 it is transacting under its license. The provider may not  
21 solicit, negotiate, advertise, or effectuate new contracts.  
22 The office ~~department~~ retains jurisdiction over the provider  
23 until all contracts have been fulfilled or canceled or have  
24 expired. A provider whose license is suspended or revoked may  
25 continue to maintain and service viaticated policies subject  
26 to the approval of the office ~~department~~.

27 (2) The suspension of the license of a viatical  
28 settlement provider licensee may be for such period, not to  
29 exceed 2 years, as determined by the office ~~department~~. The  
30 office ~~department~~ may shorten, rescind, or modify the  
31 suspension.

1           (4) If, upon expiration of the suspension order, the  
2 license has not otherwise been terminated, the office  
3 ~~department~~ must reinstate the license only upon written  
4 request by the suspended licensee unless the office ~~department~~  
5 finds that the grounds giving rise to the suspension have not  
6 been removed or that the licensee is otherwise not in  
7 compliance with the requirements of this act. The office  
8 ~~department~~ shall give the licensee notice of its findings no  
9 later than 90 days after receipt of the request or upon  
10 expiration of the suspension order, whichever occurs later.  
11 If a license is not reinstated pursuant to the procedures set  
12 forth in this subsection, it expires at the end of the  
13 suspension or on the date it otherwise would have expired,  
14 whichever is sooner.

15           Section 1049. Subsections (7), (8), and (9) of section  
16 626.9916, Florida Statutes, are amended to read:

17           626.9916 Viatical settlement broker license required;  
18 application for license.--

19           (7) Upon the filing of a sworn application and the  
20 payment of the license fee and all other applicable fees under  
21 this act, the department shall investigate each applicant and  
22 may issue the applicant a license if the department finds that  
23 the applicant:

24           (a) Is competent and trustworthy and intends to act in  
25 good faith in the business authorized by the license applied  
26 for.

27           (b) Has a good business reputation and has had  
28 experience, training, or education that qualifies the  
29 applicant to conduct the business authorized by the license  
30 applied for.

31

1           (c) Except with respect to applicants for nonresident  
2 licenses, is a bona fide resident of this state and actually  
3 resides in this state at least 180 days a year. If an  
4 applicant holds a similar license or an insurance agent's or  
5 broker's license in another state at the time of applying for  
6 a license under this section, the applicant may be found to  
7 meet the residency requirement of this paragraph only after he  
8 or she furnishes a letter of clearance satisfactory to the  
9 department or other proof that the applicant's resident  
10 licenses have been canceled or changed to nonresident status  
11 and that the applicant is in good standing with the licensing  
12 authority.

13           (d) Is a corporation, a corporation incorporated under  
14 the laws of this state, or a foreign corporation authorized to  
15 transact business in this state.

16           (e) Has designated the Chief Financial Officer  
17 ~~Insurance Commissioner and Treasurer~~ as its agent for service  
18 of process.

19           (8) An applicant for a nonresident viatical settlement  
20 broker license must, in addition to designating the Chief  
21 Financial Officer ~~Insurance Commissioner and Treasurer~~ as  
22 agent for service of process as required by this section, also  
23 furnish the department with the name and address of a resident  
24 of this state upon whom notices or orders of the department or  
25 process affecting the applicant or licensee may be served.  
26 After issuance of the license, the licensee must also notify  
27 the department of change of the person to receive such  
28 notices, orders, or process; such change is not effective  
29 until acknowledged by the department.

30  
31

1           (9) ~~Beginning July 1, 1997,~~The department may, by  
2 rule, specify experience, educational, or other training  
3 standards required for licensure under this section.

4           Section 1050. Section 626.9919, Florida Statutes, is  
5 amended to read:

6           626.9919 Notice of change of licensee address or  
7 name.--Each viatical settlement provider licensee, viatical  
8 settlement broker licensee, and viatical settlement sales  
9 agent licensee must provide the office or department, as  
10 applicable,at least 30 days' advance notice of any change in  
11 the licensee's name, residence address, principal business  
12 address, or mailing address.

13           Section 1051. Section 626.9921, Florida Statutes, is  
14 amended to read:

15           626.9921 Filing of forms; required procedures;  
16 approval.--

17           (1) A viatical settlement contract form, viatical  
18 settlement purchase agreement form, escrow form, or related  
19 form may be used in this state only after the form has been  
20 filed with the office department and only after the form has  
21 been approved by the office department.

22           (2) The viatical settlement contract form, viatical  
23 settlement purchase agreement form, escrow form, or related  
24 form must be filed with the office department at least 60 days  
25 before its use. The form is considered approved on the 60th  
26 day after its date of filing unless it has been previously  
27 disapproved by the office department. The office department  
28 must disapprove a viatical settlement contract form, viatical  
29 settlement purchase agreement form, escrow form, or related  
30 form that is unreasonable, contrary to the public interest,  
31

1 discriminatory, or misleading or unfair to the viator or the  
2 purchaser.

3 (3) If a viatical settlement provider elects to use a  
4 related provider trust in accordance with this act, the  
5 viatical settlement provider shall file notice of its  
6 intention to use a related provider trust with the office  
7 ~~department~~, including a copy of the trust agreement of the  
8 related provider trust. The organizational documents of the  
9 trust must be submitted to and approved by the office  
10 ~~department~~ before the transacting of business by the trust.

11 (4) The commission ~~department~~ may adopt, by rule,  
12 standardized forms to be used by licensees, at the licensee's  
13 option in place of separately approved forms.

14 Section 1052. Section 626.9922, Florida Statutes, is  
15 amended to read:

16 626.9922 Examination.--

17 (1) The office or department may examine the business  
18 and affairs of any of its respective licensees or applicants  
19 ~~licensee or applicant~~ for a license. The office or department  
20 may order any such licensee or applicant to produce any  
21 records, books, files, advertising and solicitation materials,  
22 or other information and may take statements under oath to  
23 determine whether the licensee or applicant is in violation of  
24 the law or is acting contrary to the public interest. The  
25 expenses incurred in conducting any examination or  
26 investigation must be paid by the licensee or applicant.  
27 Examinations and investigations must be conducted as provided  
28 in chapter 624, and licensees are subject to all applicable  
29 provisions of the insurance code.

30 (2) All accounts, books and records, documents, files,  
31 contracts, and other information relating to all transactions

1 of viatical settlement contracts or viatical settlement  
2 purchase agreements must be maintained by the licensee for a  
3 period of at least 3 years after the death of the insured and  
4 must be available to the office or department for inspection  
5 during reasonable business hours.

6 (3) All such records or accurate copies of such  
7 records must be maintained at the licensee's home office. As  
8 used in this section, the term "home office" means the  
9 principal place of business and any other single storage  
10 facility, the street address of which shall be disclosed to  
11 the office or department within 20 days after its initial use,  
12 or within 20 days of the effective date of this subsection.

13 (4) The originals of records required to be maintained  
14 under this section must be made available to the office or  
15 department for examination at the office's or department's  
16 request.

17 Section 1053. Subsection (2) of section 626.99235,  
18 Florida Statutes, is amended to read:

19 626.99235 Disclosures to viatical settlement  
20 purchasers; misrepresentations.--

21 (2) The viatical settlement provider and the viatical  
22 settlement sales agent, themselves or through another person,  
23 shall provide in writing the following disclosures to any  
24 viatical settlement purchaser or purchaser prospect:

25 (a) That the return represented as being available  
26 under the viatical settlement purchase agreement is directly  
27 tied to the projected life span of one or more insureds.

28 (b) If a return is represented, the disclosure shall  
29 indicate the projected life span of the insured or insureds  
30 whose life or lives are tied to the return.

31

1 (c) If required by the terms of the viatical  
2 settlement purchase agreement, that the viatical settlement  
3 purchaser shall be responsible for the payment of insurance  
4 premiums on the life of the insured, late or surrender fees,  
5 or other costs related to the life insurance policy on the  
6 life of the insured or insureds which may reduce the return.

7 (d) The amount of any trust fees, commissions,  
8 deductions, or other expenses, if any, to be charged to the  
9 viatical settlement purchaser.

10 (e) The name and address of the person responsible for  
11 tracking the insured.

12 (f) That group policies may contain limitations or  
13 caps in the conversion rights, that additional premiums may  
14 have to be paid if the policy is converted, and that the party  
15 responsible for the payment of such additional premiums shall  
16 be identified.

17 (g) That the life expectancy and rate of return are  
18 only estimates and cannot be guaranteed.

19 (h) That the purchase of a viatical settlement  
20 contract should not be considered a liquid purchase, since it  
21 is impossible to predict the exact timing of its maturity and  
22 the funds may not be available until the death of the insured.

23 (i) The name and address of the person with the  
24 responsibility for paying the premium until the death of the  
25 insured.

26  
27 The written disclosure required under this subsection shall be  
28 conspicuously displayed in any viatical settlement purchase  
29 agreement, and in any solicitation material furnished to the  
30 viatical settlement purchaser by such viatical settlement  
31 provider, related provider trust, or person, and shall be in

1 contrasting color and in not less than 10-point type or no  
2 smaller than the largest type on the page if larger than  
3 10-point type. The commission may ~~department is authorized to~~  
4 adopt by rule the disclosure form to be used. The disclosures  
5 need not be furnished in an invitation to inquire, the  
6 objective of which is to create a desire to inquire further  
7 about entering into a viatical settlement purchase agreement.  
8 The invitation to inquire may not quote rates of return, may  
9 not include material attendant to the execution of any  
10 specific viatical settlement purchase agreement, and may not  
11 relate to any specific viator.

12 Section 1054. Section 626.99245, Florida Statutes, is  
13 amended to read:

14 626.99245 Conflict of regulation of viaticals.--

15 (1) A viatical settlement provider who from this state  
16 enters into a viatical settlement purchase agreement with a  
17 purchaser who is a resident of another state that has enacted  
18 statutes or adopted regulations governing viatical settlement  
19 purchase agreements, shall be governed in the effectuation of  
20 that viatical settlement purchase agreement by the statutes  
21 and regulations of the purchaser's state of residence. If the  
22 state in which the purchaser is a resident has not enacted  
23 statutes or regulations governing viatical settlement purchase  
24 agreements, the provider shall give the purchaser notice that  
25 neither Florida nor his or her state regulates the transaction  
26 upon which he or she is entering. For transactions in these  
27 states, however, the viatical settlement provider is to  
28 maintain all records required as if the transactions were  
29 executed in Florida. However, the forms used in those states  
30 need not be approved by the office ~~department~~.

31

1           (2) A viatical settlement provider who from this state  
2 enters into a viatical settlement contract with a viator who  
3 is a resident of another state that has enacted statutes or  
4 adopted regulations governing viatical settlement contracts  
5 shall be governed in the effectuation of that viatical  
6 settlement contract by the statutes and regulations of the  
7 viator's state of residence. If the state in which the viator  
8 is a resident has not enacted statutes or regulations  
9 governing viatical settlement agreements, the provider shall  
10 give the viator notice that neither Florida nor his or her  
11 state regulates the transaction upon which he or she is  
12 entering. For transactions in those states, however, the  
13 viatical settlement provider is to maintain all records  
14 required as if the transactions were executed in Florida. The  
15 forms used in those states need not be approved by the office  
16 ~~department~~.

17           (3) This section does not affect the requirement of  
18 ss. 626.9911(5)~~626.9911(6)~~ and 626.9912(1) that a viatical  
19 settlement provider doing business from this state must obtain  
20 a viatical settlement license from the office ~~department~~. As  
21 used in this subsection, the term "doing business from this  
22 state" includes effectuating viatical settlement contracts and  
23 effectuating viatical settlement purchase agreements from  
24 offices in this state, regardless of the state of residence of  
25 the viator or the viatical settlement purchaser.

26           Section 1055. Section 626.9925, Florida Statutes, is  
27 amended to read:

28           626.9925 Rules.--The commission ~~department~~ may adopt  
29 rules to administer this act, including rules establishing  
30 standards for evaluating advertising by licensees; rules  
31 providing for the collection of data, for disclosures to

1 viators or purchasers, and for the reporting of life  
2 expectancies; and rules defining terms used in this act and  
3 prescribing recordkeeping requirements relating to executed  
4 viatical settlement contracts and viatical settlement purchase  
5 agreements.

6 Section 1056. Section 626.9926, Florida Statutes, is  
7 amended to read:

8 626.9926 Rate regulation not authorized.--Nothing in  
9 this act shall be construed to authorize the office or  
10 department to directly or indirectly regulate the amount paid  
11 as consideration for entry into a viatical settlement contract  
12 or viatical settlement purchase agreement.

13 Section 1057. Subsection (2) of section 626.9927,  
14 Florida Statutes, is amended to read:

15 626.9927 Unfair trade practices; cease and desist;  
16 injunctions; civil remedy.--

17 (2) In addition to the penalties and other enforcement  
18 provisions of this act, if any person violates this act or any  
19 rule implementing this act, the office or department, as  
20 appropriate, may seek an injunction in the circuit court of  
21 the county where the person resides or has a principal place  
22 of business and may apply for temporary and permanent orders  
23 that the office or department determines necessary to restrain  
24 the person from committing the violation.

25 Section 1058. Section 626.99272, Florida Statutes, is  
26 amended to read:

27 626.99272 Cease and desist orders and fines.--

28 (1) The office or department as appropriate may issue  
29 a cease and desist order upon a person that violates any  
30 provision of this part, any rule or order adopted by the

31

1 commission, office, or department, or any written agreement  
2 entered into with the office or department.

3 (2) When the office or department finds that such an  
4 action presents an immediate danger to the public which  
5 requires an immediate final order, it may issue an emergency  
6 cease and desist order reciting with particularity the facts  
7 underlying such findings. The emergency cease and desist order  
8 is effective immediately upon service of a copy of the order  
9 on the respondent and remains effective for 90 days. If the  
10 office or department begins nonemergency cease and desist  
11 proceedings under subsection (1), the emergency cease and  
12 desist order remains effective, absent an order by an  
13 appellate court of competent jurisdiction pursuant to s.  
14 120.68, until the conclusion of proceedings under ss. 120.569  
15 and 120.57.

16 (3) The office or department may impose and collect an  
17 administrative fine not to exceed \$10,000 for each nonwillful  
18 violation and \$25,000 for each willful violation of any  
19 provision of this part.

20 Section 1059. Section 626.99285, Florida Statutes, is  
21 amended to read:

22 626.99285 Applicability of insurance code.--In  
23 addition to other applicable provisions cited in the insurance  
24 code, the office or department, as appropriate, has the  
25 authority granted under ss. 624.310, 626.901, and 626.989 to  
26 regulate viatical settlement providers, viatical settlement  
27 brokers, viatical settlement sales agents, viatical settlement  
28 contracts, viatical settlement purchase agreements, and  
29 viatical settlement transactions.

30 Section 1060. Section 626.99295, Florida Statutes, is  
31 amended to read:

1           626.99295 Grace period.--An unlicensed viatical  
2 settlement provider or viatical settlement broker that was  
3 legally transacting business in this state on June 30, 2000,  
4 may continue to transact such business, in the absence of any  
5 orders by the office, department, or the former Department of  
6 Insurance to the contrary, until the office or department, as  
7 applicable, approves or disapproves the viatical settlement  
8 provider's application for licensure if the viatical  
9 settlement provider or viatical settlement broker filed ~~files~~  
10 with the former department an application for licensure no  
11 later than August 1, 2000, and if the viatical settlement  
12 provider or viatical settlement broker complies with all other  
13 provisions of this act. Any form for which former department  
14 approval was ~~is~~ required under this part must have been ~~be~~  
15 filed by August 1, 2000, and may continue to be used until  
16 disapproved by the office or department.

17           Section 1061. Subsection (2) of section 627.031,  
18 Florida Statutes, is amended to read:

19           627.031 Purposes of this part; interpretation.--

20           (2) It is the purpose of this part to protect  
21 policyholders and the public against the adverse effects of  
22 excessive, inadequate, or unfairly discriminatory insurance  
23 rates, and to authorize the office ~~department~~ to regulate such  
24 rates. If at any time the office ~~department~~ has reason to  
25 believe any such rate is excessive, inadequate, or unfairly  
26 discriminatory under the law, it is directed to take the  
27 necessary action to cause such rate to comply with the laws of  
28 this state.

29           Section 1062. Section 627.0612, Florida Statutes, is  
30 amended to read:

31

1           627.0612 Administrative proceedings in rating  
2 determinations.--In any proceeding to determine whether rates,  
3 rating plans, or other matters governed by this part comply  
4 with the law, the appellate court shall set aside a final  
5 order of the office ~~department~~ if the office ~~department~~ has  
6 violated s. 120.57(1)(k) by substituting its findings of fact  
7 for findings of an administrative law judge which were  
8 supported by competent substantial evidence.

9           Section 1063. Section 627.0613, Florida Statutes, is  
10 amended to read:

11           627.0613 Consumer advocate.--The Chief Financial  
12 Officer ~~Insurance Commissioner~~ must appoint a consumer  
13 advocate who must represent the general public of the state  
14 before the department and the office. The consumer advocate  
15 must report directly to the Chief Financial Officer ~~Insurance~~  
16 ~~Commissioner~~, but is not otherwise under the authority of the  
17 department or of any employee of the department. The consumer  
18 advocate has such powers as are necessary to carry out the  
19 duties of the office of consumer advocate, including, but not  
20 limited to, the powers to:

21           (1) Recommend to the department or office, by  
22 petition, the commencement of any proceeding or action; appear  
23 in any proceeding or action before the department or office;  
24 or appear in any proceeding before the Division of  
25 Administrative Hearings relating to subject matter under the  
26 jurisdiction of the department or office.

27           (2) Have access to and use of all files, records, and  
28 data of the department or office.

29           (3) Examine rate and form filings submitted to the  
30 office ~~department~~, hire consultants as necessary to aid in the  
31 review process, and recommend to the department or office any

1 position deemed by the consumer advocate to be in the public  
2 interest.

3 (4) Prepare an annual budget for presentation to the  
4 Legislature by the department, which budget must be adequate  
5 to carry out the duties of the office of consumer advocate.

6 Section 1064. Subsections (2), (3), and (6) of section  
7 627.062, Florida Statutes, are amended to read:

8 627.062 Rate standards.--

9 (2) As to all such classes of insurance:

10 (a) Insurers or rating organizations shall establish  
11 and use rates, rating schedules, or rating manuals to allow  
12 the insurer a reasonable rate of return on such classes of  
13 insurance written in this state. A copy of rates, rating  
14 schedules, rating manuals, premium credits or discount  
15 schedules, and surcharge schedules, and changes thereto, shall  
16 be filed with the office ~~department~~ under one of the following  
17 procedures:

18 1. If the filing is made at least 90 days before the  
19 proposed effective date and the filing is not implemented  
20 during the office's ~~department's~~ review of the filing and any  
21 proceeding and judicial review, then such filing shall be  
22 considered a "file and use" filing. In such case, the office  
23 ~~department~~ shall finalize its review by issuance of a notice  
24 of intent to approve or a notice of intent to disapprove  
25 within 90 days after receipt of the filing. The notice of  
26 intent to approve and the notice of intent to disapprove  
27 constitute agency action for purposes of the Administrative  
28 Procedure Act. Requests for supporting information, requests  
29 for mathematical or mechanical corrections, or notification to  
30 the insurer by the office ~~department~~ of its preliminary  
31 findings shall not toll the 90-day period during any such

1 proceedings and subsequent judicial review. The rate shall be  
2 deemed approved if the office ~~department~~ does not issue a  
3 notice of intent to approve or a notice of intent to  
4 disapprove within 90 days after receipt of the filing.

5         2. If the filing is not made in accordance with the  
6 provisions of subparagraph 1., such filing shall be made as  
7 soon as practicable, but no later than 30 days after the  
8 effective date, and shall be considered a "use and file"  
9 filing. An insurer making a "use and file" filing is  
10 potentially subject to an order by the office ~~department~~ to  
11 return to policyholders portions of rates found to be  
12 excessive, as provided in paragraph (h).

13         (b) Upon receiving a rate filing, the office  
14 ~~department~~ shall review the rate filing to determine if a rate  
15 is excessive, inadequate, or unfairly discriminatory. In  
16 making that determination, the office ~~department~~ shall, in  
17 accordance with generally accepted and reasonable actuarial  
18 techniques, consider the following factors:

19             1. Past and prospective loss experience within and  
20 without this state.

21             2. Past and prospective expenses.

22             3. The degree of competition among insurers for the  
23 risk insured.

24             4. Investment income reasonably expected by the  
25 insurer, consistent with the insurer's investment practices,  
26 from investable premiums anticipated in the filing, plus any  
27 other expected income from currently invested assets  
28 representing the amount expected on unearned premium reserves  
29 and loss reserves. The commission ~~department~~ may adopt  
30 ~~promulgate~~ rules utilizing reasonable techniques of actuarial  
31 science and economics to specify the manner in which insurers

1 shall calculate investment income attributable to such classes  
2 of insurance written in this state and the manner in which  
3 such investment income shall be used in the calculation of  
4 insurance rates. Such manner shall contemplate allowances for  
5 an underwriting profit factor and full consideration of  
6 investment income which produce a reasonable rate of return;  
7 however, investment income from invested surplus shall not be  
8 considered. ~~The profit and contingency factor as specified in~~  
9 ~~the filing shall be utilized in computing excess profits in~~  
10 ~~conjunction with s. 627.0625.~~

11 5. The reasonableness of the judgment reflected in the  
12 filing.

13 6. Dividends, savings, or unabsorbed premium deposits  
14 allowed or returned to Florida policyholders, members, or  
15 subscribers.

16 7. The adequacy of loss reserves.

17 8. The cost of reinsurance.

18 9. Trend factors, including trends in actual losses  
19 per insured unit for the insurer making the filing.

20 10. Conflagration and catastrophe hazards, if  
21 applicable.

22 11. A reasonable margin for underwriting profit and  
23 contingencies.

24 12. The cost of medical services, if applicable.

25 13. Other relevant factors which impact upon the  
26 frequency or severity of claims or upon expenses.

27 (c) In the case of fire insurance rates, consideration  
28 shall be given to the availability of water supplies and the  
29 experience of the fire insurance business during a period of  
30 not less than the most recent 5-year period for which such  
31 experience is available.

1           (d) If conflagration or catastrophe hazards are given  
2 consideration by an insurer in its rates or rating plan,  
3 including surcharges and discounts, the insurer shall  
4 establish a reserve for that portion of the premium allocated  
5 to such hazard and shall maintain the premium in a catastrophe  
6 reserve. Any removal of such premiums from the reserve for  
7 purposes other than paying claims associated with a  
8 catastrophe or purchasing reinsurance for catastrophes shall  
9 be subject to approval of the office ~~department~~. Any ceding  
10 commission received by an insurer purchasing reinsurance for  
11 catastrophes shall be placed in the catastrophe reserve.

12           (e) After consideration of the rate factors provided  
13 in paragraphs (b), (c), and (d), a rate may be found by the  
14 office ~~department~~ to be excessive, inadequate, or unfairly  
15 discriminatory based upon the following standards:

16           1. Rates shall be deemed excessive if they are likely  
17 to produce a profit from Florida business that is unreasonably  
18 high in relation to the risk involved in the class of business  
19 or if expenses are unreasonably high in relation to services  
20 rendered.

21           2. Rates shall be deemed excessive if, among other  
22 things, the rate structure established by a stock insurance  
23 company provides for replenishment of surpluses from premiums,  
24 when the replenishment is attributable to investment losses.

25           3. Rates shall be deemed inadequate if they are  
26 clearly insufficient, together with the investment income  
27 attributable to them, to sustain projected losses and expenses  
28 in the class of business to which they apply.

29           4. A rating plan, including discounts, credits, or  
30 surcharges, shall be deemed unfairly discriminatory if it  
31 fails to clearly and equitably reflect consideration of the

1 policyholder's participation in a risk management program  
2 adopted pursuant to s. 627.0625.

3           5. A rate shall be deemed inadequate as to the premium  
4 charged to a risk or group of risks if discounts or credits  
5 are allowed which exceed a reasonable reflection of expense  
6 savings and reasonably expected loss experience from the risk  
7 or group of risks.

8           6. A rate shall be deemed unfairly discriminatory as  
9 to a risk or group of risks if the application of premium  
10 discounts, credits, or surcharges among such risks does not  
11 bear a reasonable relationship to the expected loss and  
12 expense experience among the various risks.

13           (f) In reviewing a rate filing, the office ~~department~~  
14 may require the insurer to provide at the insurer's expense  
15 all information necessary to evaluate the condition of the  
16 company and the reasonableness of the filing according to the  
17 criteria enumerated in this section.

18           (g) The office ~~department~~ may at any time review a  
19 rate, rating schedule, rating manual, or rate change; the  
20 pertinent records of the insurer; and market conditions. If  
21 the office ~~department~~ finds on a preliminary basis that a rate  
22 may be excessive, inadequate, or unfairly discriminatory, the  
23 office ~~department~~ shall initiate proceedings to disapprove the  
24 rate and shall so notify the insurer. However, the office  
25 ~~department~~ may not disapprove as excessive any rate for which  
26 it has given final approval or which has been deemed approved  
27 for a period of 1 year after the effective date of the filing  
28 unless the office ~~department~~ finds that a material  
29 misrepresentation or material error was made by the insurer or  
30 was contained in the filing. Upon being so notified, the  
31 insurer or rating organization shall, within 60 days, file

1 with the office ~~department~~ all information which, in the  
2 belief of the insurer or organization, proves the  
3 reasonableness, adequacy, and fairness of the rate or rate  
4 change. The office ~~department~~ shall issue a notice of intent  
5 to approve or a notice of intent to disapprove pursuant to the  
6 procedures of paragraph (a) within 90 days after receipt of  
7 the insurer's initial response. In such instances and in any  
8 administrative proceeding relating to the legality of the  
9 rate, the insurer or rating organization shall carry the  
10 burden of proof by a preponderance of the evidence to show  
11 that the rate is not excessive, inadequate, or unfairly  
12 discriminatory. After the office ~~department~~ notifies an  
13 insurer that a rate may be excessive, inadequate, or unfairly  
14 discriminatory, unless the office ~~department~~ withdraws the  
15 notification, the insurer shall not alter the rate except to  
16 conform with the office's ~~department's~~ notice until the  
17 earlier of 120 days after the date the notification was  
18 provided or 180 days after the date of the implementation of  
19 the rate. The office ~~department~~ may, subject to chapter 120,  
20 disapprove without the 60-day notification any rate increase  
21 filed by an insurer within the prohibited time period or  
22 during the time that the legality of the increased rate is  
23 being contested.

24 (h) In the event the office ~~department~~ finds that a  
25 rate or rate change is excessive, inadequate, or unfairly  
26 discriminatory, the office ~~department~~ shall issue an order of  
27 disapproval specifying that a new rate or rate schedule which  
28 responds to the findings of the office ~~department~~ be filed by  
29 the insurer. The office ~~department~~ shall further order, for  
30 any "use and file" filing made in accordance with subparagraph  
31 (a)2., that premiums charged each policyholder constituting

1 the portion of the rate above that which was actuarially  
2 justified be returned to such policyholder in the form of a  
3 credit or refund. If the office ~~department~~ finds that an  
4 insurer's rate or rate change is inadequate, the new rate or  
5 rate schedule filed with the office ~~department~~ in response to  
6 such a finding shall be applicable only to new or renewal  
7 business of the insurer written on or after the effective date  
8 of the responsive filing.

9 (i) Except as otherwise specifically provided in this  
10 chapter, the office ~~department~~ shall not prohibit any insurer,  
11 including any residual market plan or joint underwriting  
12 association, from paying acquisition costs based on the full  
13 amount of premium, as defined in s. 627.403, applicable to any  
14 policy, or prohibit any such insurer from including the full  
15 amount of acquisition costs in a rate filing.

16

17 The provisions of this subsection shall not apply to workers'  
18 compensation and employer's liability insurance and to motor  
19 vehicle insurance.

20 (3)(a) For individual risks that are not rated in  
21 accordance with the insurer's rates, rating schedules, rating  
22 manuals, and underwriting rules filed with the office  
23 ~~department~~ and which have been submitted to the insurer for  
24 individual rating, the insurer must maintain documentation on  
25 each risk subject to individual risk rating. The  
26 documentation must identify the named insured and specify the  
27 characteristics and classification of the risk supporting the  
28 reason for the risk being individually risk rated, including  
29 any modifications to existing approved forms to be used on the  
30 risk. The insurer must maintain these records for a period of  
31 at least 5 years after the effective date of the policy.

1           (b) Individual risk rates and modifications to  
2 existing approved forms are not subject to this part or part  
3 II, except for paragraph (a) and ss. 627.402, 627.403,  
4 627.4035, 627.404, 627.405, 627.406, 627.407, 627.4085,  
5 627.409, 627.4132, 627.4133, 627.415, 627.416, 627.417,  
6 627.419, 627.425, 627.426, 627.4265, 627.427, and 627.428, but  
7 are subject to all other applicable provisions of this code  
8 and rules adopted thereunder.

9           (c) This subsection does not apply to private  
10 passenger motor vehicle insurance.

11           (6)(a) After any action with respect to a rate filing  
12 that constitutes agency action for purposes of the  
13 Administrative Procedure Act, an insurer may, in lieu of  
14 demanding a hearing under s. 120.57, require arbitration of  
15 the rate filing. Arbitration shall be conducted by a board of  
16 arbitrators consisting of an arbitrator selected by the office  
17 ~~department~~, an arbitrator selected by the insurer, and an  
18 arbitrator selected jointly by the other two arbitrators. Each  
19 arbitrator must be certified by the American Arbitration  
20 Association. A decision is valid only upon the affirmative  
21 vote of at least two of the arbitrators. No arbitrator may be  
22 an employee of any insurance regulator or regulatory body or  
23 of any insurer, regardless of whether or not the employing  
24 insurer does business in this state. The office ~~department~~ and  
25 the insurer must treat the decision of the arbitrators as the  
26 final approval of a rate filing. Costs of arbitration shall be  
27 paid by the insurer.

28           (b) Arbitration under this subsection shall be  
29 conducted pursuant to the procedures specified in ss.  
30 682.06-682.10. Either party may apply to the circuit court to  
31 vacate or modify the decision pursuant to s. 682.13 or s.

1 682.14. The commission ~~department~~ shall adopt rules for  
2 arbitration under this subsection, which rules may not be  
3 inconsistent with the arbitration rules of the American  
4 Arbitration Association as of January 1, 1996.

5 (c) Upon initiation of the arbitration process, the  
6 insurer waives all rights to challenge the action of the  
7 office ~~department~~ under the Administrative Procedure Act or  
8 any other provision of law; however, such rights are restored  
9 to the insurer if the arbitrators fail to render a decision  
10 within 90 days after initiation of the arbitration process.

11 Section 1065. Subsection (3) of section 627.0625,  
12 Florida Statutes, is amended to read:

13 627.0625 Commercial property and casualty risk  
14 management plans.--

15 (3) Each insurer or insurer group offering commercial  
16 casualty insurance or commercial property insurance covering  
17 risks located in this state shall develop and make available  
18 to insureds guidelines for risk management plans. The risk  
19 management program shall include the following:

20 (a) Safety measures, including, as applicable, the  
21 following areas:

- 22 1. Pollution and environmental hazards;
- 23 2. Disease hazards;
- 24 3. Accidental occurrences;
- 25 4. Fire hazards and fire prevention and detection;
- 26 5. Liability for acts from the course of business;
- 27 6. Slip and fall hazards;
- 28 7. Product injury; and
- 29 8. Hazards unique to a particular class or category of  
30 insureds.

31

1           (b) Training to insureds in safety management  
2 techniques.

3           (c) Safety management counseling services.  
4

5 There shall be no civil cause of action against any insurer or  
6 its agents or employees for acts or omissions in any way  
7 connected with the requirements of this subsection. This  
8 shall not limit the authority for the office ~~department~~ to  
9 enforce the provisions of this subsection.

10           Section 1066. Paragraphs (a), (b), and (c) of  
11 subsection (2) and paragraph (c) of subsection (3) of section  
12 627.0628, Florida Statutes, are amended to read:

13           627.0628 Florida Commission on Hurricane Loss  
14 Projection Methodology.--

15           (2) COMMISSION CREATED.--

16           (a) There is created the Florida Commission on  
17 Hurricane Loss Projection Methodology, which is assigned to  
18 the State Board of Administration. For the purposes of this  
19 section, the term "commission" means the Florida Commission on  
20 Hurricane Loss Projection Methodology.The commission shall be  
21 administratively housed within the State Board of  
22 Administration, but it shall independently exercise the powers  
23 and duties specified in this section.

24           (b) The commission shall consist of the following 11  
25 members:

26           1. The insurance consumer advocate.

27           2. The senior employee of the State Board of  
28 Administration responsible for operations ~~Chief Operating~~  
29 ~~Officer~~ of the Florida Hurricane Catastrophe Fund.  
30  
31

1           3. The Executive Director of the Citizens Property  
2 Insurance Corporation ~~Residential Property and Casualty Joint~~  
3 ~~Underwriting Association.~~

4           4. The Director of the Division of Emergency  
5 Management of the Department of Community Affairs.

6           5. The actuary member of the Florida Hurricane  
7 Catastrophe Fund Advisory Council.

8           6. Six members appointed by the Chief Financial  
9 Officer ~~Insurance Commissioner~~, as follows:

10           a. An employee of the office ~~Department of Insurance~~  
11 who is an actuary responsible for property insurance rate  
12 filings.

13           b. An actuary who is employed full time by a property  
14 and casualty insurer which was responsible for at least 1  
15 percent of the aggregate statewide direct written premium for  
16 homeowner's insurance in the calendar year preceding the  
17 member's appointment to the commission.

18           c. An expert in insurance finance who is a full time  
19 member of the faculty of the State University System and who  
20 has a background in actuarial science.

21           d. An expert in statistics who is a full time member  
22 of the faculty of the State University System and who has a  
23 background in insurance.

24           e. An expert in computer system design who is a full  
25 time member of the faculty of the State University System.

26           f. An expert in meteorology who is a full time member  
27 of the faculty of the State University System and who  
28 specializes in hurricanes.

29           (c) Members designated under subparagraphs (b)1.-5.  
30 shall serve on the commission as long as they maintain the  
31 respective offices designated in subparagraphs (b)1.-5.

1 Members appointed by the Chief Financial Officer ~~Insurance~~  
2 ~~Commissioner~~ under subparagraph (b)6. shall serve on the  
3 commission until the end of the term of office of the Chief  
4 Financial Officer ~~Insurance Commissioner~~ who appointed them,  
5 unless earlier removed by the Chief Financial Officer  
6 ~~Insurance Commissioner~~ for cause. Vacancies on the commission  
7 shall be filled in the same manner as the original  
8 appointment.

9 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

10 (c) With respect to a rate filing under s. 627.062, an  
11 insurer may employ actuarial methods, principles, standards,  
12 models, or output ranges found by the commission to be  
13 accurate or reliable to determine hurricane loss factors for  
14 use in a rate filing under s. 627.062, which findings and  
15 factors are admissible and relevant in consideration of a rate  
16 filing by the office ~~department~~ or in any arbitration or  
17 administrative or judicial review.

18 Section 1067. Paragraph (b) of subsection (2) and  
19 subsections (5), (6), and (9) of section 627.0629, Florida  
20 Statutes, are amended to read:

21 627.0629 Residential property insurance; rate  
22 filings.--

23 (2)

24 (b) A rate filing for residential property insurance  
25 made more than 150 days after approval by the office  
26 ~~department~~ of a building code rating factor plan submitted by  
27 a statewide rating organization shall include positive and  
28 negative rate factors that reflect the manner in which  
29 building code enforcement in a particular jurisdiction  
30 addresses risk of wind damage. The rate filing shall include  
31 variations from standard rate factors on an individual basis

1 based on inspection of a particular structure by a licensed  
2 home inspector. If an inspection is requested by the insured,  
3 the insurer may require the insured to pay the reasonable cost  
4 of the inspection. This paragraph applies to structures  
5 constructed or renovated after the implementation of this  
6 paragraph.

7 (5) In order to provide an appropriate transition  
8 period, an insurer may, in its sole discretion, implement an  
9 approved rate filing for residential property insurance over a  
10 period of years. An insurer electing to phase in its rate  
11 filing must provide an informational notice to the office  
12 ~~department~~ setting out its schedule for implementation of the  
13 phased-in rate filing.

14 (6) An insurer may not write a residential property  
15 insurance policy without providing windstorm coverage or  
16 hurricane coverage as defined in s. 627.4025. This subsection  
17 does not apply with respect to risks located in an area  
18 eligible for coverage under the high-risk account of the  
19 Citizens Property Insurance Corporation pursuant to s.  
20 627.351(6)~~Florida Windstorm Underwriting Association under s.~~  
21 ~~627.351(2)~~.

22 (9) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL  
23 SOUNDNESS.--

24 (a) It is the intent of the Legislature to provide a  
25 program whereby homeowners may obtain an evaluation of the  
26 wind resistance of their homes with respect to preventing  
27 damage from hurricanes, together with a recommendation of  
28 reasonable steps that may be taken to upgrade their homes to  
29 better withstand hurricane force winds.

30 (b) To the extent that funds are provided for this  
31 purpose in the General Appropriations Act, the Legislature

1 hereby authorizes the establishment of a program to be  
2 administered by the Citizens Property Insurance Corporation  
3 for homeowners insured in the high-risk account Florida  
4 ~~Windstorm Underwriting Association.~~

5 (c) The program shall provide grants to homeowners,  
6 for the purpose of providing homeowner applicants with funds  
7 to conduct an evaluation of the integrity of their homes with  
8 respect to withstanding hurricane force winds, recommendations  
9 to retrofit the homes to better withstand damage from such  
10 winds, and the estimated cost to make the recommended  
11 retrofits.

12 (d) The Department of Community Affairs shall  
13 establish by rule standards to govern the quality of the  
14 evaluation, the quality of the recommendations for  
15 retrofitting, the eligibility of the persons conducting the  
16 evaluation, and the selection of applicants under the program.  
17 In establishing the rule, the Department of Community Affairs  
18 shall consult with the advisory committee to minimize the  
19 possibility of fraud or abuse in the evaluation and  
20 retrofitting process, and to ensure that funds spent by  
21 homeowners acting on the recommendations achieve positive  
22 results.

23 (e) The Citizens Property Insurance Corporation  
24 ~~Florida Windstorm Underwriting Association~~ shall identify  
25 areas of this state with the greatest wind risk to residential  
26 properties and recommend annually to the Department of  
27 Community Affairs priority target areas for such evaluations  
28 and inclusion with the associated residential construction  
29 mitigation program.

30 Section 1068. Subsection (1), paragraph (b) of  
31 subsection (2), paragraph (a) of subsection (3), and

1 subsections (6), (7), and (9) of section 627.0645, Florida  
2 Statutes, are amended to read:

3           627.0645 Annual filings.--

4           (1) Each rating organization filing rates for, and  
5 each insurer writing, any line of property or casualty  
6 insurance to which this part applies, except:

7           (a) Workers' compensation and employer's liability  
8 insurance; or

9           (b) Commercial property and casualty insurance as  
10 defined in s. 627.0625(1) other than commercial multiple line  
11 and commercial motor vehicle,

12

13 shall make an annual base rate filing for each such line with  
14 the office ~~department~~ no later than 12 months after its  
15 previous base rate filing, demonstrating that its rates are  
16 not inadequate.

17           (2)

18           (b) The office ~~department~~, after receiving a request  
19 to be exempted from the provisions of this section, may, for  
20 good cause due to insignificant numbers of policies in force  
21 or insignificant premium volume, exempt a company, by line of  
22 coverage, from filing rates or rate certification as required  
23 by this section.

24           (3) The filing requirements of this section shall be  
25 satisfied by one of the following methods:

26           (a) A rate filing prepared by an actuary which  
27 contains documentation demonstrating that the proposed rates  
28 are not excessive, inadequate, or unfairly discriminatory  
29 pursuant to the applicable rating laws and pursuant to rules  
30 of the commission ~~department~~.

31

1           (6) If at the time a filing is required under this  
2 section an insurer is in the process of completing a rate  
3 review, the insurer may apply to the office ~~department~~ for an  
4 extension of up to an additional 30 days in which to make the  
5 filing. The request for extension must be received by the  
6 office ~~department~~ no later than the date the filing is due.

7           (7) Nothing in this section limits the office's  
8 ~~department's~~ authority to review rates at any time or to find  
9 that a rate or rate change is excessive, inadequate, or  
10 unfairly discriminatory pursuant to s. 627.062.

11           (9) If an insurer fails to meet the filing  
12 requirements of this section and does not submit the filing  
13 within 60 days after the date the filing is due, the office  
14 ~~department~~ may, in addition to any other penalty authorized by  
15 law, order the insurer to discontinue the issuance of policies  
16 for the line of insurance for which the required filing was  
17 not made until such time as the office ~~department~~ determines  
18 that the required filing is properly submitted.

19           Section 1069. Subsection (1) of section 627.06501,  
20 Florida Statutes, is amended to read:

21           627.06501 Insurance discounts for certain persons  
22 completing driver improvement course.--

23           (1) Any rate, rating schedule, or rating manual for  
24 the liability, personal injury protection, and collision  
25 coverages of a motor vehicle insurance policy filed with the  
26 office ~~department~~ may provide for an appropriate reduction in  
27 premium charges as to such coverages when the principal  
28 operator on the covered vehicle has successfully completed a  
29 driver improvement course approved and certified by the  
30 Department of Highway Safety and Motor Vehicles which is  
31 effective in reducing crash or violation rates, or both, as

1 determined pursuant to s. 318.1451(5). Any discount, not to  
2 exceed 10 percent, used by an insurer is presumed to be  
3 appropriate unless credible data demonstrates otherwise.

4 Section 1070. Subsections (1) and (2), paragraph (b)  
5 of subsection (5), subsections (9), (10), and (11), and  
6 paragraph (b) of subsection (13) of section 627.0651, Florida  
7 Statutes, are amended to read:

8 627.0651 Making and use of rates for motor vehicle  
9 insurance.--

10 (1) Insurers shall establish and use rates, rating  
11 schedules, or rating manuals to allow the insurer a reasonable  
12 rate of return on motor vehicle insurance written in this  
13 state. A copy of rates, rating schedules, and rating manuals,  
14 and changes therein, shall be filed with the office ~~department~~  
15 under one of the following procedures:

16 (a) If the filing is made at least 60 days before the  
17 proposed effective date and the filing is not implemented  
18 during the office's ~~department's~~ review of the filing and any  
19 proceeding and judicial review, such filing shall be  
20 considered a "file and use" filing. In such case, the office  
21 ~~department~~ shall initiate proceedings to disapprove the rate  
22 and so notify the insurer or shall finalize its review within  
23 60 days after receipt of the filing. Notification to the  
24 insurer by the office ~~department~~ of its preliminary findings  
25 shall toll the 60-day period during any such proceedings and  
26 subsequent judicial review. The rate shall be deemed approved  
27 if the office ~~department~~ does not issue notice to the insurer  
28 of its preliminary findings within 60 days after the filing.

29 (b) If the filing is not made in accordance with the  
30 provisions of paragraph (a), such filing shall be made as soon  
31 as practicable, but no later than 30 days after the effective

1 date, and shall be considered a "use and file" filing. An  
2 insurer making a "use and file" filing is potentially subject  
3 to an order by the office ~~department~~ to return to  
4 policyholders portions of rates found to be excessive, as  
5 provided in subsection (11).

6 (2) Upon receiving notice of a rate filing or rate  
7 change, the office ~~department~~ shall review the rate or rate  
8 change to determine if the rate is excessive, inadequate, or  
9 unfairly discriminatory. In making that determination, the  
10 office ~~department~~ shall in accordance with generally accepted  
11 and reasonable actuarial techniques consider the following  
12 factors:

13 (a) Past and prospective loss experience within and  
14 outside this state.

15 (b) The past and prospective expenses.

16 (c) The degree of competition among insurers for the  
17 risk insured.

18 (d) Investment income reasonably expected by the  
19 insurer, consistent with the insurer's investment practices,  
20 from investable premiums anticipated in the filing, plus any  
21 other expected income from currently invested assets  
22 representing the amount expected on unearned premium reserves  
23 and loss reserves. Such investment income shall not include  
24 income from invested surplus. The commission ~~department~~ may  
25 adopt ~~promulgate~~ rules utilizing reasonable techniques of  
26 actuarial science and economics to specify the manner in which  
27 insurers shall calculate investment income attributable to  
28 motor vehicle insurance policies written in this state and the  
29 manner in which such investment income is used in the  
30 calculation of insurance rates. Such manner shall contemplate  
31 the use of a positive underwriting profit allowance in the

1 rates that will be compatible with a reasonable rate of return  
2 plus provisions for contingencies. The total of the profit and  
3 contingency factor as specified in the filing shall be  
4 utilized in computing excess profits in conjunction with s.  
5 627.066. In adopting ~~promulgating~~ such rules, the commission  
6 ~~department~~ shall in all instances adhere to and implement the  
7 provisions of this paragraph.

8 (e) The reasonableness of the judgment reflected in  
9 the filing.

10 (f) Dividends, savings, or unabsorbed premium deposits  
11 allowed or returned to Florida policyholders, members, or  
12 subscribers.

13 (g) The cost of repairs to motor vehicles.

14 (h) The cost of medical services, if applicable.

15 (i) The adequacy of loss reserves.

16 (j) The cost of reinsurance.

17 (k) Trend factors, including trends in actual losses  
18 per insured unit for the insurer making the filing.

19 (l) Other relevant factors which impact upon the  
20 frequency or severity of claims or upon expenses.

21 (5)

22 (b) The office has ~~Insurance Commissioner shall have~~  
23 the responsibility to ensure that rates for private passenger  
24 vehicle insurance are adequate. To that end, the commission  
25 ~~department~~ shall adopt ~~promulgate~~ rules ~~and regulations~~  
26 establishing standards defining inadequate rates on private  
27 passenger vehicle insurance as defined in s. 627.041(8). In  
28 the event that the office ~~department~~ finds that a rate or rate  
29 change is inadequate, the office ~~department~~ shall order that a  
30 new rate or rate schedule be thereafter filed by the insurer  
31 and shall further provide information as to the manner in

1 which noncompliance of the standards may be corrected. When a  
2 violation of this provision occurs, the office ~~department~~  
3 shall impose an administrative fine pursuant to s. 624.4211.

4 (9) In reviewing the rate or rate change filed, the  
5 office ~~department~~ may require the insurer to provide at the  
6 insurer's expense all information necessary to evaluate the  
7 condition of the company and the reasonableness of the filing  
8 according to the criteria enumerated herein.

9 (10) The office ~~department~~ may, at any time, review a  
10 rate or rate change, the pertinent records of the insurer, and  
11 market conditions; and, if the office ~~department~~ finds on a  
12 preliminary basis that the rate or rate change may be  
13 excessive, inadequate, or unfairly discriminatory, the office  
14 ~~department~~ shall so notify the insurer. However, the office  
15 ~~department~~ may not disapprove as excessive any rate for which  
16 it has given final approval or which has been deemed approved  
17 for a period of 1 year after the effective date of the filing  
18 unless the office ~~department~~ finds that a material  
19 misrepresentation or material error was made by the insurer or  
20 was contained in the filing. Upon being so notified, the  
21 insurer or rating organization shall, within 60 days, file  
22 with the office ~~department~~ all information which, in the  
23 belief of the insurer or organization, proves the  
24 reasonableness, adequacy, and fairness of the rate or rate  
25 change. In such instances and in any administrative  
26 proceeding relating to the legality of the rate, the insurer  
27 or rating organization shall carry the burden of proof by a  
28 preponderance of the evidence to show that the rate is not  
29 excessive, inadequate, or unfairly discriminatory. After the  
30 office ~~department~~ notifies an insurer that a rate may be  
31 excessive, inadequate, or unfairly discriminatory, unless the

1 ~~office department~~ withdraws the notification, the insurer  
2 shall not increase the rate until the earlier of 120 days  
3 after the date the notification was provided or 180 days after  
4 the date of the implementation of the rate. The office  
5 ~~department~~ may, subject to chapter 120, disapprove without the  
6 60-day notification any rate increase filed by an insurer  
7 within the prohibited time period or during the time that the  
8 legality of the increased rate is being contested.

9 (11) In the event the office department finds that a  
10 rate or rate change is excessive, inadequate, or unfairly  
11 discriminatory, the office department shall issue an order of  
12 disapproval specifying that a new rate or rate schedule which  
13 responds to the findings of the office department be filed by  
14 the insurer. The office department shall further order for  
15 any "use and file" filing made in accordance with paragraph  
16 (1)(b), that premiums charged each policyholder constituting  
17 the portion of the rate above that which was actuarially  
18 justified be returned to such policyholder in the form of a  
19 credit or refund. If the office department finds that an  
20 insurer's rate or rate change is inadequate, the new rate or  
21 rate schedule filed with the office department in response to  
22 such a finding shall be applicable only to new or renewal  
23 business of the insurer written on or after the effective date  
24 of the responsive filing.

25 (13)

26 (b) The submission of rates, rating schedules, and  
27 rating manuals to the office department by a licensed rating  
28 organization of which an insurer is a member or subscriber  
29 will be sufficient compliance with this subsection for any  
30 insurer maintaining membership or subscribership in such  
31 organization, to the extent that the insurer uses the rates,

1 rating schedules, and rating manuals of such organization.  
2 All such information shall be available for public inspection,  
3 upon receipt by the office ~~department~~, during usual business  
4 hours.

5 Section 1071. Subsection (1) of section 627.0652,  
6 Florida Statutes, is amended to read:

7 627.0652 Insurance discounts for certain persons  
8 completing safety course.--

9 (1) Any rates, rating schedules, or rating manuals for  
10 the liability, personal injury protection, and collision  
11 coverages of a motor vehicle insurance policy filed with the  
12 office ~~department~~ shall provide for an appropriate reduction  
13 in premium charges as to such coverages when the principal  
14 operator on the covered vehicle is an insured 55 years of age  
15 or older who has successfully completed a motor vehicle  
16 accident prevention course approved by the Department of  
17 Highway Safety and Motor Vehicles. Any discount used by an  
18 insurer is presumed to be appropriate unless credible data  
19 demonstrates otherwise.

20 Section 1072. Section 627.0653, Florida Statutes, is  
21 amended to read:

22 627.0653 Insurance discounts for specified motor  
23 vehicle equipment.--

24 (1) Any rates, rating schedules, or rating manuals for  
25 the liability, personal injury protection, and collision  
26 coverages of a motor vehicle insurance policy filed with the  
27 office ~~department~~ shall provide a premium discount if the  
28 insured vehicle is equipped with factory-installed, four-wheel  
29 antilock brakes.

30 (2) Each insurer writing motor vehicle comprehensive  
31 coverage in this state shall include in its rating manual

1 discount provisions for comprehensive coverage which  
2 specifically relate to an antitheft device or vehicle recovery  
3 system utilized in the insured vehicle which are factory  
4 installed or approved by the office ~~department~~. The  
5 commission ~~department~~ shall adopt, by rule, procedures under  
6 which manufacturers, distributors, or sellers may apply to the  
7 office ~~department~~ for approval of non-factory-installed  
8 devices under this subsection. The rules must include, at a  
9 minimum, the test results that must accompany the application  
10 and the standards for approval.

11 (3) Any rates, rating schedules, or rating manuals for  
12 personal injury protection coverage and medical payments  
13 coverage, if offered, of a motor vehicle insurance policy  
14 filed with the office ~~department~~ shall provide a premium  
15 discount if the insured vehicle is equipped with one or more  
16 air bags which are factory installed.

17 (4) The removal of a discount or credit does not  
18 constitute the imposition of, or request for, additional  
19 premium or a surcharge if the basis for the discount or credit  
20 no longer exists or is substantially eliminated.

21 (5) Each insurer writing motor vehicle comprehensive  
22 coverage in this state may provide a premium discount for this  
23 coverage if the insured vehicle has the complete  
24 manufacturer's vehicle identification number permanently  
25 etched on the windshield and all windows of the vehicle. The  
26 etching must be by a tool or process that does not destroy the  
27 integrity of the glass or visibility for the operator of the  
28 motor vehicle. The identification numbers and letters must be  
29 at least 1/4 inch in height. A sticker may identify the  
30 presence of this identification system. The commission

31

1 ~~department~~ may, by rule, set forth appropriate guidelines to  
2 implement this subsection.

3 Section 1073. Section 627.06535, Florida Statutes, is  
4 amended to read:

5 627.06535 Electric vehicles; restrictions on imposing  
6 surcharges.--An insurer may not impose a surcharge on the  
7 premium for motor vehicle insurance written on an electric  
8 vehicle, as defined in s. 320.01, if the surcharge is based on  
9 a factor such as new technology, passenger payload,  
10 weight-to-horsepower ratio, or types of materials, including  
11 composite materials or aluminum, used to manufacture the  
12 vehicle, unless the office ~~Department of Insurance~~ determines  
13 from actuarial data submitted to it that the surcharge is  
14 justified.

15 Section 1074. Subsections (2), (7), (10), (11), and  
16 (13) of section 627.066, Florida Statutes, are amended to  
17 read:

18 627.066 Excessive profits for motor vehicle insurance  
19 prohibited.--

20 (2) Each Florida private passenger automobile insurer  
21 group shall file with the office ~~department~~, prior to July 1  
22 of each year on forms prescribed by the commission ~~department~~,  
23 the following data for Florida private passenger automobile  
24 business. The data filed for the group shall be a  
25 consolidation of the data of the individual insurers of the  
26 group. The data shall include both voluntary and joint  
27 underwriting association business, as follows:

28 (a) Calendar-year total limits earned premium.

29 (b) Accident-year incurred losses and loss adjustment  
30 expenses.

31

1           (c) The administrative and selling expenses incurred  
2 in this state or allocated to this state for the calendar  
3 year.

4           (d) Policyholder dividends incurred during the  
5 applicable calendar year.

6           (7) If the insurer group has realized an excessive  
7 profit, the office ~~department~~ shall order a return of the  
8 excessive amounts after affording the insurer group an  
9 opportunity for hearing and otherwise complying with the  
10 requirements of chapter 120. Such excessive amounts shall be  
11 refunded in all instances unless the insurer group  
12 affirmatively demonstrates to the office ~~department~~ that the  
13 refund of the excessive amounts will render a member of the  
14 insurer group financially impaired or will render it insolvent  
15 under the provisions of the Florida Insurance Code.

16           (10)(a) Cash refunds to policyholders may be rounded  
17 to the nearest dollar.

18           (b) Data in required reports to the office ~~department~~  
19 may be rounded to the nearest dollar.

20           (c) Rounding, if elected by the insurer group, shall  
21 be applied consistently.

22           (11)(a) Refunds shall be completed in one of the  
23 following ways:

24           1. If the insurer group elects to make a cash refund,  
25 the refund shall be completed within 60 days of entry of a  
26 final order indicating that excessive profits have been  
27 realized.

28           2. If the insurer group elects to make refunds in the  
29 form of a credit to renewal policies, such credits shall be  
30 applied to policy renewal premium notices which are forwarded  
31 to insureds more than 60 calendar days after entry of a final

1 order indicating that excessive profits have been realized.  
2 If an insurer group has made this election but an insured  
3 thereafter cancels his or her policy or otherwise allows the  
4 policy to terminate, the insurer group shall make a cash  
5 refund not later than 60 days after termination of such  
6 coverage.

7 (b) Upon completion of the renewal credits or refund  
8 payments, the insurer group shall immediately certify to the  
9 office ~~department~~ that the refunds have been made.

10 ~~(13) Since it appears to the Legislature that private~~  
11 ~~passenger automobile insurer groups have realized excessive~~  
12 ~~profits during all or part of the years 1977, 1978, and 1979~~  
13 ~~and that such profits were realized in part due to statutory~~  
14 ~~changes for which rates were not adequately adjusted, it is~~  
15 ~~the desire and intent of the Legislature that the provisions~~  
16 ~~of this section, as amended by chapter 80-236, Laws of~~  
17 ~~Florida, shall apply retroactively to excessive profits~~  
18 ~~realized during the years 1977, 1978, and 1979. In the event~~  
19 ~~that such retroactive application is judicially determined to~~  
20 ~~be unconstitutional, it is the intent of the Legislature that~~  
21 ~~the act be given prospective application as stated~~  
22 ~~hereinafter. Prior to July 1, 1982, the data required by this~~  
23 ~~section shall be submitted to the department for the years~~  
24 ~~1979, 1980, and 1981. Excessive profits shall be calculated~~  
25 ~~in accordance with the provisions of this section. However,~~  
26 ~~only the excessive profits realized by the insurer group in~~  
27 ~~1981 shall be refunded to policyholders, and such refunds~~  
28 ~~shall be made in accordance with this section. Prior to July~~  
29 ~~1, 1983, the data required by this section shall be submitted~~  
30 ~~to the department for the years 1980, 1981, and 1982.~~  
31 ~~Excessive profits shall be calculated in accordance with this~~

1 ~~section; however, refunds shall only be made for excessive~~  
2 ~~profits realized in the years 1981 and 1982. Thereafter,~~  
3 ~~excessive profits shall be calculated and refunded on the~~  
4 ~~basis of 3 years as set forth in this section.~~

5 Section 1075. Subsection (4) of section 627.072,  
6 Florida Statutes, is amended to read:

7 627.072 Making and use of rates.--

8 (4)(a) In the case of workers' compensation and  
9 employer's liability insurance, the office ~~department~~ shall  
10 consider utilizing the following methodology in rate  
11 determinations: Premiums, expenses, and expected claim costs  
12 would be discounted to a common point of time, such as the  
13 initial point of a policy year, in the determination of rates;  
14 the cash-flow pattern of premiums, expenses, and claim costs  
15 would be determined initially by using data from 8 to 10 of  
16 the largest insurers writing workers' compensation insurance  
17 in the state; such insurers may be selected for their  
18 statistical ability to report the data on an accident-year  
19 basis and in accordance with subparagraphs (b)1., 2., and 3.,  
20 for at least 2 1/2 years; such a cash-flow pattern would be  
21 modified when necessary in accordance with the data and  
22 whenever a radical change in the payout pattern is expected in  
23 the policy year under consideration.

24 (b) If the methodology set forth in paragraph (a) is  
25 utilized, to facilitate the determination of such a cash-flow  
26 pattern methodology:

27 1. Each insurer shall include in its statistical  
28 reporting to the rating bureau and the office ~~department~~ the  
29 accident year by calendar quarter data for paid-claim costs;

30 2. Each insurer shall submit financial reports to the  
31 rating bureau and the office ~~department~~ which shall include

1 total incurred claim amounts and paid-claim amounts by policy  
2 year and by injury types as of December 31 of each calendar  
3 year; and

4 3. Each insurer shall submit to the rating bureau and  
5 the office ~~department~~ paid-premium data on an individual risk  
6 basis in which risks are to be subdivided by premium size as  
7 follows:

8

9 Number of Risks in	
10 Premium Range	Standard Premium Size
11	
12 ...(to be filled in by carrier)...	\$300--999
13 ...(to be filled in by carrier)...	1,000--4,999
14 ...(to be filled in by carrier)...	5,000--49,999
15 ...(to be filled in by carrier)...	50,000--99,999
16 ...(to be filled in by carrier)...	100,000 or more
17 Total:	

18 Section 1076. Section 627.091, Florida Statutes, is  
19 amended to read:

20 627.091 Rate filings; workers' compensation and  
21 employer's liability insurances.--

22 (1) As to workers' compensation and employer's  
23 liability insurances, every insurer shall file with the office  
24 ~~department~~ every manual of classifications, rules, and rates,  
25 every rating plan, and every modification of any of the  
26 foregoing which it proposes to use. Every insurer is  
27 authorized to include deductible provisions in its manual of  
28 classifications, rules, and rates. Such deductibles shall in  
29 all cases be in a form and manner which is consistent with the  
30 underlying purpose of chapter 440.

31

1           (2) Every such filing shall state the proposed  
2 effective date thereof, and shall indicate the character and  
3 extent of the coverage contemplated. When a filing is not  
4 accompanied by the information upon which the insurer supports  
5 the filing and the office ~~department~~ does not have sufficient  
6 information to determine whether the filing meets the  
7 applicable requirements of this part, it shall within 15 days  
8 after the date of filing require the insurer to furnish the  
9 information upon which it supports the filing. The  
10 information furnished in support of a filing may include:  
11           (a) The experience or judgment of the insurer or  
12 rating organization making the filing;  
13           (b) Its interpretation of any statistical data it  
14 relies upon;  
15           (c) The experience of other insurers or rating  
16 organizations; or  
17           (d) Any other factors which the insurer or rating  
18 organization deems relevant.  
19           (3) A filing and any supporting information shall be  
20 open to public inspection as provided in s. 119.07(1).  
21           (4) An insurer may satisfy its obligation to make such  
22 filings by becoming a member of, or a subscriber to, a  
23 licensed rating organization which makes such filings and by  
24 authorizing the office ~~department~~ to accept such filings in  
25 its behalf; but nothing contained in this chapter shall be  
26 construed as requiring any insurer to become a member or a  
27 subscriber to any rating organization.  
28           (5) Pursuant to the provisions of s. 624.3161, the  
29 office ~~department~~ may examine the underlying statistical data  
30 used in such filings.  
31

1           (6) Whenever the committee of a recognized rating  
2 organization with responsibility for workers' compensation and  
3 employer's liability insurance rates in this state meets to  
4 discuss the necessity for, or a request for, Florida rate  
5 increases or decreases, the determination of Florida rates,  
6 the rates to be requested, and any other matters pertaining  
7 specifically and directly to such Florida rates, such meetings  
8 shall be held in this state and shall be subject to s.  
9 286.011. The committee of such a rating organization shall  
10 provide at least 3 weeks' prior notice of such meetings to the  
11 office ~~department~~ and shall provide at least 14 days' prior  
12 notice of such meetings to the public by publication in the  
13 Florida Administrative Weekly.

14           Section 1077. Section 627.0915, Florida Statutes, is  
15 amended to read:

16           627.0915 Rate filings; workers' compensation,  
17 drug-free workplace, and safe employers.--The office  
18 ~~Department of Insurance~~ shall approve rating plans for  
19 workers' compensation insurance that give specific  
20 identifiable consideration in the setting of rates to  
21 employers that either implement a drug-free workplace program  
22 pursuant to rules adopted by the commission ~~Department of~~  
23 ~~Insurance~~ or implement a safety program pursuant to provisions  
24 of the rating plan or implement both a drug-free workplace  
25 program and a safety program. The plans must be actuarially  
26 sound and must state the savings anticipated to result from  
27 such drug-testing and safety programs.

28           Section 1078. Section 627.0916, Florida Statutes, is  
29 amended to read:

30           627.0916 Agricultural horse farms.--Notwithstanding  
31 any other provision of this chapter to the contrary, any

1 rates, rating schedules, or rating manuals for workers'  
2 compensation and employer's liability insurance filed with the  
3 office ~~Department of Insurance~~ shall provide for the rates of  
4 an agricultural horse farm engaged in breeding or training to  
5 be separated into the following three rate classifications and  
6 the premium paid shall be applied proportionately according to  
7 payroll: breeding activity involving stallions; breeding  
8 activity not involving stallions, including but not limited to  
9 boarding and foaling; and training.

10 Section 1079. Section 627.092, Florida Statutes, is  
11 amended to read:

12 627.092 Workers' Compensation Administrator.--There is  
13 created within the office ~~Division of Insurer Services of the~~  
14 ~~Department of Insurance~~ the position of Workers' Compensation  
15 Administrator to monitor carrier practices in the field of  
16 workers' compensation.

17 Section 1080. Section 627.096, Florida Statutes, is  
18 amended to read:

19 627.096 Workers' Compensation Rating Bureau.--

20 (1) There is created within the office ~~department~~ a  
21 Workers' Compensation Rating Bureau, which shall make an  
22 investigation and study of all insurers authorized to issue  
23 workers' compensation and employer's liability coverage in  
24 this state. Such bureau shall study the data, statistics,  
25 schedules, or other information as it may deem necessary to  
26 assist and advise the office ~~department~~ in its review of  
27 filings made by or on behalf of workers' compensation and  
28 employer's liability insurers. The commission may adopt  
29 ~~department shall have the authority to promulgate~~ rules  
30 requiring all workers' compensation and employer's liability  
31 insurers to submit to the rating bureau any data, statistics,

1 schedules, and other information deemed necessary to the  
2 rating bureau's study and advisement.

3 (2) The acquisition by the Department of Management  
4 Services of data processing software, hardware, and services  
5 necessary to carry out the provisions of this act for the  
6 department or office ~~Treasurer's Management Information Center~~  
7 ~~of the Department of Insurance~~ shall be exempt from the  
8 provisions of part I of chapter 287.

9 Section 1081. Section 627.101, Florida Statutes, is  
10 amended to read:

11 627.101 When filing becomes effective; workers'  
12 compensation and employer's liability insurances.--

13 (1) The office ~~department~~ shall review filings as to  
14 workers' compensation and employer's liability insurances as  
15 soon as reasonably possible after they have been made in order  
16 to determine whether they meet the applicable requirements of  
17 this part. If the office ~~department~~ determines that part of a  
18 rate filing does not meet the applicable requirements of this  
19 part, it may reject so much of the filing as does not meet  
20 these requirements, and approve the remainder of the filing.

21 (2) The office ~~department~~ shall specifically approve  
22 the filing before it becomes effective, unless the office  
23 ~~department~~ has concluded it to be in the public interest to  
24 hold a public hearing to determine whether the filing meets  
25 the requirements of this chapter and has given notice of such  
26 hearing to the insurer or rating organization that made the  
27 filing, and in which case the effectiveness of the filing  
28 shall be subject to the further order of the office ~~department~~  
29 made as provided in s. 627.111. If the office ~~department~~  
30 specifically disapproves the filing, the provisions of  
31 subsection (4) shall apply.

1           (3) An insurer or rating organization may, at the time  
2 it makes a filing with the office ~~department~~, request a public  
3 hearing thereon. In such event, the office ~~department~~ shall  
4 give notice of the hearing.

5           (4) If the office ~~department~~ disapproves a filing, it  
6 shall promptly give notice of such disapproval to the insurer  
7 or rating organization that made the filing, stating the  
8 respects in which it finds that the filing does not meet the  
9 requirements of this chapter. If the office ~~department~~  
10 approves a filing, it shall give prompt notice thereof to the  
11 insurer or rating organization that made the filing, and in  
12 which case the filing shall become effective upon such  
13 approval or upon such subsequent date as may be satisfactory  
14 to the office ~~department~~ and the insurer or rating  
15 organization that made the filing.

16           Section 1082. Section 627.111, Florida Statutes, is  
17 amended to read:

18           627.111 Effective date of filing.--

19           (1) If, pursuant to s. 627.101(2), the office  
20 ~~department~~ determines to hold a public hearing as to a filing,  
21 or it holds such a public hearing pursuant to request therefor  
22 under s. 627.101(3), it shall give written notice thereof to  
23 the rating organization or insurer that made the filing and  
24 shall hold such hearing within 30 days, and not less than 10  
25 days prior to the date of the hearing, it shall give written  
26 notice of the hearing to the insurer or rating organization  
27 that made the filing. The office ~~department~~ may also, in its  
28 discretion, give advance public notice of such hearing by  
29 publication of notice in one or more daily newspapers of  
30 general circulation in this state.

31

1           (2) If the order of the office ~~department~~ disapproves  
2 the filing, the filing shall not become effective during the  
3 effectiveness of such order. If the order of the office  
4 ~~department~~ approves the filing, the filing shall become  
5 effective upon the date of the order or upon such subsequent  
6 date as may be satisfactory to the insurer or rating  
7 organization that made the filing.

8           Section 1083. Section 627.141, Florida Statutes, is  
9 amended to read:

10           627.141 Subsequent disapproval of filing; workers'  
11 compensation and employer's liability insurances.--If at any  
12 time after a filing has been approved by it or has otherwise  
13 become effective the office ~~department~~ finds that the filing  
14 no longer meets the requirements of this chapter, it shall  
15 issue an order specifying in what respects it finds that such  
16 filing fails to meet such requirements and stating when,  
17 within a reasonable period thereafter, such filing shall be  
18 deemed no longer effective. The order shall not affect any  
19 insurance contract or policy made or issued prior to the  
20 expiration of the period set forth in the order.

21           Section 1084. Subsection (1) of section 627.151,  
22 Florida Statutes, is amended to read:

23           627.151 Basis of approval or disapproval of workers'  
24 compensation or employer's liability insurance filing; scope  
25 of disapproval power.--

26           (1) In determining at any time whether to approve or  
27 disapprove a filing as to workers' compensation or employer's  
28 liability insurance, or to permit the filing otherwise to  
29 become effective, the office ~~department~~ shall give  
30 consideration only to the applicable standards and factors  
31 referred to in ss. 627.062 and 627.072.

1           Section 1085. Subsection (1) of section 627.171,  
2 Florida Statutes, is amended to read:

3           627.171 Excess rates.--

4           (1) With written consent of the insured signed prior  
5 to the policy inception date and filed with the insurer, the  
6 insurer may use a rate in excess of the otherwise applicable  
7 filed rate on any specific risk. The signed consent form must  
8 include the filed rate as well as the excess rate for the risk  
9 insured and a copy of the form must be maintained by the  
10 insurer for 3 years and be available for review by the office  
11 ~~department~~.

12           Section 1086. Paragraph (f) of subsection (2) of  
13 section 627.192, Florida Statutes, is amended to read:

14           627.192 Workers' compensation insurance; employee  
15 leasing arrangements.--

16           (2) For purposes of the Florida Insurance Code:

17           (f) "Premium subject to dispute" means that the  
18 insured has provided a written notice of dispute to the  
19 insurer or service carrier, has initiated any applicable  
20 proceeding for resolving such disputes as prescribed by law or  
21 rating organization procedures approved by the office  
22 ~~department~~, or has initiated litigation regarding the premium  
23 dispute. The insured must have detailed the specific areas of  
24 dispute and provided an estimate of the premium the insured  
25 believes to be correct. The insured must have paid any  
26 undisputed portion of the bill.

27           Section 1087. Section 627.211, Florida Statutes, is  
28 amended to read:

29           627.211 Deviations; workers' compensation and  
30 employer's liability insurances.--

31

1           (1) Every member or subscriber to a rating  
2 organization shall, as to workers' compensation or employer's  
3 liability insurance, adhere to the filings made on its behalf  
4 by such organization; except that any such insurer may make  
5 written application to the office ~~department~~ for permission to  
6 file a uniform percentage decrease or increase to be applied  
7 to the premiums produced by the rating system so filed for a  
8 kind of insurance, for a class of insurance which is found by  
9 the office ~~department~~ to be a proper rating unit for the  
10 application of such uniform percentage decrease or increase,  
11 or for a subdivision of workers' compensation or employer's  
12 liability insurance:

13           (a) Comprised of a group of manual classifications  
14 which is treated as a separate unit for ratemaking purposes;  
15 or

16           (b) For which separate expense provisions are included  
17 in the filings of the rating organization.

18  
19 Such application shall specify the basis for the modification  
20 and shall be accompanied by the data upon which the applicant  
21 relies. A copy of the application and data shall be sent  
22 simultaneously to the rating organization.

23           (2) Every member or subscriber to a rating  
24 organization may, as to workers' compensation and employer's  
25 liability insurance, file a plan or plans to use deviations  
26 that vary according to factors present in each insured's  
27 individual risk. The insurer that files for the deviations  
28 provided in this subsection shall file the qualifications for  
29 the plans, schedules of rating factors, and the maximum  
30 deviation factors which shall be subject to the approval of  
31 the office ~~department~~ pursuant to s. 627.091. The actual

1 deviation which shall be used for each insured that qualifies  
2 under this subsection may not exceed the maximum filed  
3 deviation under that plan and shall be based on the merits of  
4 each insured's individual risk as determined by using  
5 schedules of rating factors which shall be applied uniformly.  
6 Insurers shall maintain statistical data in accordance with  
7 the schedule of rating factors. Such data shall be available  
8 to support the continued use of such varying deviations.

9 (3) In considering an application for the deviation,  
10 the office ~~department~~ shall give consideration to the  
11 applicable principles for ratemaking as set forth in ss.  
12 627.062 and 627.072, the financial condition of the insurer,  
13 and the impact of the deviation on the current market  
14 conditions including the composition of the market, the  
15 stability of rates, and the level of competition in the  
16 market. In evaluating the financial condition of the insurer,  
17 the office ~~department~~ may consider: (1) the insurer's audited  
18 financial statements and whether the statements provide  
19 unqualified opinions or contain significant qualifications or  
20 "subject to" provisions; (2) any independent or other  
21 actuarial certification of loss reserves; (3) whether workers'  
22 compensation and employer's liability reserves are above the  
23 midpoint or best estimate of the actuary's reserve range  
24 estimate; (4) the adequacy of the proposed rate; (5)  
25 historical experience demonstrating the profitability of the  
26 insurer; (6) the existence of excess or other reinsurance  
27 that contains a sufficiently low attachment point and maximums  
28 that provide adequate protection to the insurer; and (7) other  
29 factors considered relevant to the financial condition of the  
30 insurer by the office ~~department~~. The office ~~department~~ shall  
31 approve the deviation if it finds it to be justified, it would

1 not endanger the financial condition of the insurer, it would  
2 not adversely affect the current market conditions including  
3 the composition of the market, the stability of rates, and the  
4 level of competition in the market, and that the deviation  
5 would not constitute predatory pricing. It shall disapprove  
6 the deviation if it finds that the resulting premiums would be  
7 excessive, inadequate, or unfairly discriminatory, would  
8 endanger the financial condition of the insurer, or would  
9 adversely affect current market conditions including the  
10 composition of the marketplace, the stability of rates, and  
11 the level of competition in the market, or would result in  
12 predatory pricing. The insurer may not use a deviation unless  
13 the deviation is specifically approved by the office  
14 ~~department~~.

15 (4) Each deviation permitted to be filed shall be  
16 effective for a period of 1 year unless terminated, extended,  
17 or modified with the approval of the office ~~department~~. If at  
18 any time after a deviation has been approved the office  
19 ~~department~~ finds that the deviation no longer meets the  
20 requirements of this code, it shall notify the insurer in what  
21 respects it finds that the deviation fails to meet such  
22 requirements and specify when, within a reasonable period  
23 thereafter, the deviation shall be deemed no longer effective.  
24 The notice shall not affect any insurance contract or policy  
25 made or issued prior to the expiration of the period set forth  
26 in the notice.

27 (5) For purposes of this section, the office  
28 ~~department~~, when considering the experience of any insurer,  
29 shall consider the experience of any predecessor insurer when  
30 the business and the liabilities of the predecessor insurer  
31 were assumed by the insurer pursuant to an order of the office

1 ~~department~~ which approves the assumption of the business and  
2 the liabilities.

3 Section 1088. Section 627.212, Florida Statutes, is  
4 amended to read:

5 627.212 Workplace safety program surcharge.--The  
6 office ~~department~~ shall approve a rating plan for workers'  
7 compensation coverage insurance that provides for carriers  
8 voluntarily to impose a surcharge of no more than 10 percent  
9 on the premium of a policyholder or fund member if that  
10 policyholder or fund member has been identified by the  
11 ~~department of Labor and Employment Security~~ as having been  
12 required to implement a safety program and having failed to  
13 establish or maintain, either in whole or in part, a safety  
14 program. The department ~~division~~ shall adopt rules prescribing  
15 the criteria for the employee safety programs.

16 Section 1089. Paragraph (a) of subsection (1),  
17 subsection (9), paragraph (b) of subsection (11), and  
18 paragraph (b) of subsection (12) of section 627.215, Florida  
19 Statutes, are amended to read:

20 627.215 Excessive profits for workers' compensation,  
21 employer's liability, commercial property, and commercial  
22 casualty insurance prohibited.--

23 (1)(a) Each insurer group writing workers'  
24 compensation and employer's liability insurance as defined in  
25 s. 624.605(1)(c), commercial property insurance as defined in  
26 s. 627.0625, commercial umbrella liability insurance as  
27 defined in s. 627.0625, or commercial casualty insurance as  
28 defined in s. 627.0625 shall file with the office ~~department~~  
29 prior to July 1 of each year, on a form prescribed by the  
30 commission ~~department~~, the following data for the component  
31 types of such insurance as provided in the form:

- 1           1. Calendar-year earned premium.  
2           2. Accident-year incurred losses and loss adjustment  
3 expenses.  
4           3. The administrative and selling expenses incurred in  
5 this state or allocated to this state for the calendar year.  
6           4. Policyholder dividends applicable to the calendar  
7 year.

8  
9 Nothing herein is intended to prohibit an insurer from filing  
10 on a calendar-year basis.

11           (9) If the insurer group has realized an excessive  
12 profit, the office ~~department~~ shall order a return of the  
13 excessive amounts after affording the insurer group an  
14 opportunity for hearing and otherwise complying with the  
15 requirements of chapter 120. Such excessive amounts shall be  
16 refunded in all instances unless the insurer group  
17 affirmatively demonstrates to the office ~~department~~ that the  
18 refund of the excessive amounts will render a member of the  
19 insurer group financially impaired or will render it insolvent  
20 under the provisions of the Florida Insurance Code.

21           (11)

22           (b) Data in required reports to the office ~~department~~  
23 may be rounded to the nearest dollar.

24           (12)

25           (b) Upon completion of the renewal credits or refund  
26 payments, the insurer group shall immediately certify to the  
27 office ~~department~~ that the refunds have been made.

28           Section 1090. Section 627.221, Florida Statutes, is  
29 amended to read:

30           627.221 Rating organizations; licensing; fee.--  
31

1           (1) A person, whether located within or outside this  
2 state, may make application to the office ~~department~~ for a  
3 license as a rating organization. As to property or inland  
4 marine insurance, the application shall be for such kinds of  
5 insurance or subdivisions thereof or classes of risk or a part  
6 or combination thereof as are specified in the application. As  
7 to casualty and surety insurances, the application shall be  
8 for such kinds of insurance or subdivisions thereof as are  
9 specified in the application. The applicant shall file with  
10 its application:

11           (a) A copy of its constitution, its articles of  
12 agreement or association or its certificate of incorporation,  
13 and of its bylaws, rules, and regulations governing the  
14 conduct of its business;

15           (b) A list of its members and subscribers;

16           (c) The name and address of a resident of this state  
17 upon whom notices or orders of the office ~~department~~ or  
18 process affecting such rating organization may be served; and

19           (d) A statement of its qualifications as a rating  
20 organization.

21  
22 If the office ~~department~~ finds that the applicant is  
23 competent, trustworthy, and otherwise qualified to act as a  
24 rating organization and that its constitution, articles of  
25 agreement or association or certificate of incorporation, and  
26 its bylaws, rules, and regulations governing the conduct of  
27 its business conform to the requirements of law, it shall  
28 issue a license specifying (in the case of a casualty or  
29 surety rating organization) the kinds of insurance or  
30 subdivisions thereof, or (in the case of a property insurance  
31 rating organization) the kinds of insurance or subdivisions

1 thereof or classes of risk or a part or combination thereof,  
2 for which the applicant is authorized to act as a rating  
3 organization.

4 (2) Licenses issued pursuant to this section shall  
5 expire on the September 30 next following date of issuance and  
6 shall be subject to annual renewal.

7 (3) The fee for the license shall be in the amount  
8 specified therefor in s. 624.501. This fee, when collected,  
9 shall be deposited to the credit of the Insurance  
10 ~~Commissioner's~~ Regulatory Trust Fund.

11 Section 1091. Section 627.231, Florida Statutes, is  
12 amended to read:

13 627.231 Subscribers to rating organizations.--

14 (1) Subject to rules and regulations which have been  
15 approved by the office ~~department~~ as reasonable, each rating  
16 organization shall permit any insurer, not a member, to  
17 subscribe to its rating services. As to property and marine  
18 rating organizations, an insurer shall be so permitted to  
19 subscribe to rating services for any kind of insurance,  
20 subdivision thereof, or class of risk or a part or combination  
21 thereof for which the rating organization is authorized so to  
22 act. As to casualty and surety rating organizations, an  
23 insurer shall be so permitted to subscribe to rating services  
24 for any kind of insurance or subdivision thereof for which the  
25 rating organization is authorized so to act. The rating  
26 organization shall give notice to subscribers of proposed  
27 changes in such rules and regulations.

28 (2) The reasonableness of any rule or regulation in  
29 its application to subscribers, or the refusal of any rating  
30 organization to admit an insurer as a subscriber, shall, at  
31 the request of any subscriber or any such insurer, be reviewed

1 by the office ~~department~~. If the office ~~department~~ finds that  
2 such rule or regulation is unreasonable in its application to  
3 subscribers, it shall order that such rule or regulation shall  
4 not be applicable to subscribers. If the rating organization  
5 fails to grant or reject an insurer's application for  
6 subscribership within 30 days after it was made, the insurer  
7 may request a review by the office ~~department~~ as if the  
8 application had been rejected. If the office ~~department~~ finds  
9 that the insurer has been refused admittance to the rating  
10 organization as a subscriber without justification, it shall  
11 order the rating organization to admit the insurer as a  
12 subscriber. If it finds that the action of the rating  
13 organization was justified, it shall make an order affirming  
14 its action.

15 (3) Each rating organization shall furnish its rating  
16 services without discrimination to its members and  
17 subscribers.

18 Section 1092. Section 627.241, Florida Statutes, is  
19 amended to read:

20 627.241 Notice of changes.--Every rating organization  
21 shall notify the office ~~department~~ promptly of every change  
22 in:

23 (1) Its constitution, its articles of agreement or  
24 association, or its certificate of incorporation, and its  
25 bylaws, rules and regulations governing the conduct of its  
26 business;

27 (2) Its list of members and subscribers; and

28 (3) The name and address of the resident of this state  
29 designated by it upon whom notices or orders of the office  
30 ~~department~~ or process affecting such rating organization may  
31 be served.

1           Section 1093. Section 627.281, Florida Statutes, is  
2 amended to read:

3           627.281 Appeal from rating organization; workers'  
4 compensation and employer's liability insurance filings.--

5           (1) Any member or subscriber to a rating organization  
6 may appeal to the office ~~department~~ from the action or  
7 decision of such rating organization in approving or rejecting  
8 any proposed change in or addition to the workers'  
9 compensation or employer's liability insurance filings of such  
10 rating organization, and the office ~~department~~ shall issue an  
11 order approving the decision of such rating organization or  
12 directing it to give further consideration to such proposal.  
13 If such appeal is from the action or decision of the rating  
14 organization in rejecting a proposed addition to its filings,  
15 the office ~~department~~ may, in the event it finds that such  
16 action or decision was unreasonable, issue an order directing  
17 the rating organization to make an addition to its filings, on  
18 behalf of its members and subscribers, in a manner consistent  
19 with its findings, within a reasonable time after the issuance  
20 of such order.

21           (2) If such appeal is based upon the failure of the  
22 rating organization to make a filing on behalf of such member  
23 or subscriber which is based on a system of expense provisions  
24 which differs, in accordance with the right granted in s.  
25 627.072(2), from the system of expense provisions included in  
26 a filing made by the rating organization, the office  
27 ~~department~~ shall, if it grants the appeal, order the rating  
28 organization to make the requested filing for use by the  
29 appellant. In deciding such appeal, the office ~~department~~  
30 shall apply the applicable standards set forth in ss. 627.062  
31 and 627.072.

1           Section 1094. Subsection (2) of section 627.291,  
2 Florida Statutes, is amended to read:

3           627.291 Information to be furnished insureds; appeal  
4 by insureds; workers' compensation and employer's liability  
5 insurances.--

6           (2) As to workers' compensation and employer's  
7 liability insurances, every rating organization and every  
8 insurer which makes its own rates shall provide within this  
9 state reasonable means whereby any person aggrieved by the  
10 application of its rating system may be heard, in person or by  
11 his or her authorized representative, on his or her written  
12 request to review the manner in which such rating system has  
13 been applied in connection with the insurance afforded him or  
14 her. If the rating organization or insurer fails to grant or  
15 rejects such request within 30 days after it is made, the  
16 applicant may proceed in the same manner as if his or her  
17 application had been rejected. Any party affected by the  
18 action of such rating organization or insurer on such request  
19 may, within 30 days after written notice of such action,  
20 appeal to the office ~~department~~, which may affirm or reverse  
21 such action.

22           Section 1095. Section 627.301, Florida Statutes, is  
23 amended to read:

24           627.301 Advisory organizations.--

25           (1) No advisory organization shall conduct its  
26 operations in this state unless and until it has filed with  
27 the office ~~department~~:

28           (a) A copy of its constitution, articles of  
29 incorporation, articles of agreement or of association, and  
30 bylaws or rules and regulations governing its activities, all  
31 duly certified by the custodian of the originals thereof;

1           (b) A list of its members and subscribers; and  
2           (c) The name and address of a resident of this state  
3 upon whom notices or orders of the office ~~department~~ or  
4 process may be served.  
5           (2) Every such advisory organization shall notify the  
6 office ~~department~~ promptly of every change in:  
7           (a) Its constitution;  
8           (b) Its articles of incorporation, agreement, or  
9 association;  
10          (c) Its bylaws, rules and regulations governing the  
11 conduct of its business;  
12          (d) The list of members and subscribers; and  
13          (e) The name and address of the resident of this state  
14 designated by it upon whom notices or orders of the office  
15 ~~department~~ or process affecting such organization may be  
16 served.  
17          (3) No such advisory organization shall engage in any  
18 unfair or unreasonable practice with respect to such  
19 activities.  
20          Section 1096. Subsections (2) and (3) and paragraphs  
21 (a), (b), (c), (e), (f), and (g) of subsection (4) of section  
22 627.311, Florida Statutes, are amended to read:  
23          627.311 Joint underwriters and joint reinsurers.--  
24          (2) If the office ~~department~~ finds that any activity  
25 or practice of any such group, association, or other  
26 organization is unfair or unreasonable or otherwise  
27 inconsistent with the provisions of this chapter, it may issue  
28 a written order specifying in what respects such activity or  
29 practice is unfair or unreasonable or otherwise inconsistent  
30 with the provisions of this chapter, and requiring the  
31 discontinuance of such activity or practice.

1           (3) The office ~~department~~ may, after consultation with  
2 insurers licensed to write automobile insurance in this state,  
3 approve a joint underwriting plan for purposes of equitable  
4 apportionment or sharing among insurers of automobile  
5 liability insurance and other motor vehicle insurance, as an  
6 alternate to the plan required in s. 627.351(1). All insurers  
7 authorized to write automobile insurance in this state shall  
8 subscribe to the plan and participate therein. The plan shall  
9 be subject to continuous review by the office ~~department~~ which  
10 may at any time disapprove the entire plan or any part thereof  
11 if it determines that conditions have changed since prior  
12 approval and that in view of the purposes of the plan changes  
13 are warranted. Any disapproval by the office ~~department~~ shall  
14 be subject to the provisions of chapter 120. If adopted, the  
15 plan and the association created under the plan:

16           (a) Must be subject to all provisions of s.  
17 627.351(1), except apportionment of applicants.

18           (b) May provide for one or more designated insurers,  
19 able and willing to provide policy and claims service, to act  
20 on behalf of all other insurers to provide insurance for  
21 applicants who are in good faith entitled to, but unable to,  
22 procure insurance through the voluntary insurance market at  
23 standard rates.

24           (c) Must provide that designated insurers will issue  
25 policies of insurance and provide policyholder and claims  
26 service on behalf of all insurers for the joint underwriting  
27 association.

28           (d) Must provide for the equitable apportionment among  
29 insurers of losses and expenses incurred.

30           (e) Must provide that the joint underwriting  
31 association will operate subject to the supervision and

1 approval of a board of governors consisting of 11 individuals,  
2 including 1 who will be elected as chair. Five members of the  
3 board must be appointed by the Chief Financial Officer  
4 ~~Insurance Commissioner~~. Two of the Chief Financial Officer's  
5 ~~commissioner's~~ appointees must be chosen from the insurance  
6 industry. Any board member appointed by the Chief Financial  
7 Officer ~~Insurance Commissioner~~ may be removed and replaced by  
8 her or him at any time without cause. Six members of the board  
9 must be appointed by the participating insurers, two of whom  
10 must be from the insurance agents' associations. All board  
11 members, including the chair, must be appointed to serve for  
12 2-year terms beginning annually on a date designated by the  
13 plan.

14 (f) Must provide that an agent appointed to a  
15 servicing carrier must be a licensed general lines agent of an  
16 insurer which is authorized to write automobile liability and  
17 physical damage insurance in the state and which is actively  
18 writing such coverage in the county in which the agent is  
19 located, or the immediately adjoining counties, or an agent  
20 who places a volume of other property and casualty insurance  
21 in an amount equal to the premium volume placed with the  
22 Florida Joint Underwriting Association. The office ~~department~~  
23 may, however, determine that an agent may be appointed to a  
24 servicing carrier if, after public hearing, the office  
25 ~~department~~ finds that consumers in the agent's operating area  
26 would not have adequate and reasonable access to the purchase  
27 of automobile insurance if the agent were not appointed to a  
28 servicing carrier.

29 (g) Must make available noncancelable coverage as  
30 provided in s. 627.7275(2).

31

1           (h) Must provide for the furnishing of a list of  
2 insureds and their mailing addresses upon the request of a  
3 member of the association or an insurance agent licensed to  
4 place business with an association member. The list must  
5 indicate whether the insured is currently receiving a good  
6 driver discount from the association. The plan may charge a  
7 reasonable fee to cover the cost incurred in providing the  
8 list.

9           (i) Must not provide a renewal credit or discount or  
10 any other inducement designed to retain a risk.

11           (j) Must not provide any other good driver credit or  
12 discount that is not actuarially sound. In addition to other  
13 criteria that the plan may specify, to be eligible for a good  
14 driver credit, an insured must not have any criminal traffic  
15 violations within the most recent 36-month period preceding  
16 the date the discount is received.

17           (k) Shall have no liability, and no cause of action of  
18 any nature shall arise against, any member insurer or its  
19 agents or employees, agents or employees of the association,  
20 members of the board of governors of the association, the  
21 Chief Financial Officer, or the office ~~department~~ or its  
22 representatives, for any action taken by them in the  
23 performance of their duties or responsibilities under this  
24 subsection. Such immunity does not apply to actions for or  
25 arising out of breach of any contract or agreement pertaining  
26 to insurance, or any willful tort.

27           (1)1. Shall be subject to the public records  
28 requirements of chapter 119 and the public meeting  
29 requirements of s. 286.011. However, the following records of  
30 the Florida Automobile Joint Underwriting Association are  
31

1 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
2 of the State Constitution:

3 a. Underwriting files, except that a policyholder or  
4 an applicant shall have access to his or her own underwriting  
5 files.

6 b. Claims files, until termination of all litigation  
7 and settlement of all claims arising out of the same incident,  
8 although portions of the claims files may remain exempt, as  
9 otherwise provided by law. Confidential and exempt claims file  
10 records may be released to other governmental agencies upon  
11 written request and demonstration of need; such records held  
12 by the receiving agency remain confidential and exempt as  
13 provided by this paragraph.

14 c. Records obtained or generated by an internal  
15 auditor pursuant to a routine audit, until the audit is  
16 completed or, if the audit is conducted as part of an  
17 investigation, until the investigation is closed or ceases to  
18 be active. An investigation is considered "active" while the  
19 investigation is being conducted with a reasonable, good faith  
20 belief that it could lead to the filing of administrative,  
21 civil, or criminal proceedings.

22 d. Matters reasonably encompassed in privileged  
23 attorney-client communications.

24 e. Proprietary information licensed to the association  
25 under contract when the contract provides for the  
26 confidentiality of such proprietary information.

27 f. All information relating to the medical condition  
28 or medical status of an association employee which is not  
29 relevant to the employee's capacity to perform his or her  
30 duties, except as otherwise provided in this paragraph.

31 Information which is exempt shall include, but is not limited

1 to, information relating to workers' compensation, insurance  
2 benefits, and retirement or disability benefits.

3 g. All records relative to an employee's participation  
4 in an employee assistance program designed to assist any  
5 employee who has a behavioral or medical disorder, substance  
6 abuse problem, or emotional difficulty which affects the  
7 employee's job performance, except as otherwise provided in s.  
8 112.0455(11).

9 h. Information relating to negotiations for financing,  
10 reinsurance, depopulation, or contractual services, until the  
11 conclusion of the negotiations.

12 i. Minutes of closed meetings regarding underwriting  
13 files, and minutes of closed meetings regarding an open claims  
14 file until termination of all litigation and settlement of all  
15 claims with regard to that claim, except that information  
16 otherwise confidential or exempt by law must be redacted.

17  
18 When an authorized insurer is considering underwriting a risk  
19 insured by the association, relevant underwriting files and  
20 confidential claims files may be released to the insurer  
21 provided the insurer agrees in writing, notarized and under  
22 oath, to maintain the confidentiality of such files. When a  
23 file is transferred to an insurer, that file is no longer a  
24 public record because it is not held by an agency subject to  
25 the provisions of the public records law. The association may  
26 make the following information obtained from underwriting  
27 files and confidential claims files available to licensed  
28 general lines insurance agents: name, address, and telephone  
29 number of the automobile owner or insured; location of the  
30 risk; rating information; loss history; and policy type. The  
31

1 receiving licensed general lines insurance agent must retain  
2 the confidentiality of the information received.

3           2. Portions of meetings of the Florida Automobile  
4 Joint Underwriting Association during which confidential  
5 underwriting files or confidential open claims files are  
6 discussed are exempt from the provisions of s. 286.011 and s.  
7 24(b), Art. I of the State Constitution. All portions of  
8 association meetings which are closed to the public shall be  
9 recorded by a court reporter. The court reporter shall record  
10 the times of commencement and termination of the meeting, all  
11 discussion and proceedings, the names of all persons present  
12 at any time, and the names of all persons speaking. No  
13 portion of any closed meeting shall be off the record.

14 Subject to the provisions of this paragraph and s.  
15 119.07(2)(a), the court reporter's notes of any closed meeting  
16 shall be retained by the association for a minimum of 5 years.  
17 A copy of the transcript, less any exempt matters, of any  
18 closed meeting during which claims are discussed shall become  
19 public as to individual claims after settlement of the claim.

20  
21 This paragraph is subject to the Open Government Sunset Review  
22 Act of 1995 in accordance with s. 119.15, and shall stand  
23 repealed on October 2, 2003, unless reviewed and saved from  
24 repeal through reenactment by the Legislature.

25           (4)(a) ~~Effective upon this act becoming a law,~~The  
26 office department shall, after consultation with insurers,  
27 approve a joint underwriting plan of insurers which shall  
28 operate as a nonprofit entity. For the purposes of this  
29 subsection, the term "insurer" includes group self-insurance  
30 funds authorized by s. 624.4621, commercial self-insurance  
31 funds authorized by s. 624.462, assessable mutual insurers

1 authorized under s. 628.6011, and insurers licensed to write  
2 workers' compensation and employer's liability insurance in  
3 this state. The purpose of the plan is to provide workers'  
4 compensation and employer's liability insurance to applicants  
5 who are required by law to maintain workers' compensation and  
6 employer's liability insurance and who are in good faith  
7 entitled to but who are unable to purchase such insurance  
8 through the voluntary market. ~~The joint underwriting plan~~  
9 ~~shall issue policies beginning January 1, 1994.~~ The plan must  
10 have actuarially sound rates that assure that the plan is  
11 self-supporting.

12 (b) The operation of the plan is subject to the  
13 supervision of a 13-member board of governors. The board of  
14 governors shall be comprised of:

15 1. Five of the 20 domestic insurers, as defined in s.  
16 624.06(1), having the largest voluntary direct premiums  
17 written in this state for workers' compensation and employer's  
18 liability insurance, which shall be elected by those 20  
19 domestic insurers;

20 2. Five of the 20 foreign insurers as defined in s.  
21 624.06(2) having the largest voluntary direct premiums written  
22 in this state for workers' compensation and employer's  
23 liability insurance, which shall be elected by those 20  
24 foreign insurers;

25 3. One person, who shall serve as the chair, appointed  
26 by the Chief Financial Officer ~~Insurance Commissioner~~;

27 4. One person appointed by the largest property and  
28 casualty insurance agents' association in this state; and

29 5. The consumer advocate appointed under s. 627.0613  
30 or the consumer advocate's designee.

31

1 Each board member shall serve a 4-year term and may serve  
2 consecutive terms. No board member shall be an insurer which  
3 provides service to the plan or which has an affiliate which  
4 provides services to the plan or which is serviced by a  
5 service company or third-party administrator which provides  
6 services to the plan or which has an affiliate which provides  
7 services to the plan. The minutes, audits, and procedures of  
8 the board of governors are subject to chapter 119.

9 (c) The operation of the plan shall be governed by a  
10 plan of operation that is prepared at the direction of the  
11 board of governors. The plan of operation may be changed at  
12 any time by the board of governors or upon request of the  
13 office ~~department~~. The plan of operation and all changes  
14 thereto are subject to the approval of the office ~~department~~.  
15 The plan of operation shall:

16 1. Authorize the board to engage in the activities  
17 necessary to implement this subsection, including, but not  
18 limited to, borrowing money.

19 2. Develop criteria for eligibility for coverage by  
20 the plan, including, but not limited to, documented rejection  
21 by at least two insurers which reasonably assures that  
22 insureds covered under the plan are unable to acquire coverage  
23 in the voluntary market. Any insured may voluntarily elect to  
24 accept coverage from an insurer for a premium equal to or  
25 greater than the plan premium if the insurer writing the  
26 coverage adheres to the provisions of s. 627.171.

27 3. Require notice from the agent to the insured at the  
28 time of the application for coverage that the application is  
29 for coverage with the plan and that coverage may be available  
30 through an insurer, group self-insurers' fund, commercial  
31

1 self-insurance fund, or assessable mutual insurer through  
2 another agent at a lower cost.

3 4. Establish programs to encourage insurers to provide  
4 coverage to applicants of the plan in the voluntary market and  
5 to insureds of the plan, including, but not limited to:

6 a. Establishing procedures for an insurer to use in  
7 notifying the plan of the insurer's desire to provide coverage  
8 to applicants to the plan or existing insureds of the plan and  
9 in describing the types of risks in which the insurer is  
10 interested. The description of the desired risks must be on a  
11 form developed by the plan.

12 b. Developing forms and procedures that provide an  
13 insurer with the information necessary to determine whether  
14 the insurer wants to write particular applicants to the plan  
15 or insureds of the plan.

16 c. Developing procedures for notice to the plan and  
17 the applicant to the plan or insured of the plan that an  
18 insurer will insure the applicant or the insured of the plan,  
19 and notice of the cost of the coverage offered; and developing  
20 procedures for the selection of an insuring entity by the  
21 applicant or insured of the plan.

22 d. Provide for a market-assistance plan to assist in  
23 the placement of employers. All applications for coverage in  
24 the plan received 45 days before the effective date for  
25 coverage shall be processed through the market-assistance  
26 plan. A market-assistance plan specifically designed to serve  
27 the needs of small good policyholders as defined by the board  
28 must be finalized by January 1, 1994.

29 5. Provide for policy and claims services to the  
30 insureds of the plan of the nature and quality provided for  
31 insureds in the voluntary market.

1           6. Provide for the review of applications for coverage  
2 with the plan for reasonableness and accuracy, using any  
3 available historic information regarding the insured.

4           7. Provide for procedures for auditing insureds of the  
5 plan which are based on reasonable business judgment and are  
6 designed to maximize the likelihood that the plan will collect  
7 the appropriate premiums.

8           8. Authorize the plan to terminate the coverage of and  
9 refuse future coverage for any insured that submits a  
10 fraudulent application to the plan or provides fraudulent or  
11 grossly erroneous records to the plan or to any service  
12 provider of the plan in conjunction with the activities of the  
13 plan.

14           9. Establish service standards for agents who submit  
15 business to the plan.

16           10. Establish criteria and procedures to prohibit any  
17 agent who does not adhere to the established service standards  
18 from placing business with the plan or receiving, directly or  
19 indirectly, any commissions for business placed with the plan.

20           11. Provide for the establishment of reasonable safety  
21 programs for all insureds in the plan.

22           12. Authorize the plan to terminate the coverage of  
23 and refuse future coverage to any insured who fails to pay  
24 premiums or surcharges when due; who, at the time of  
25 application, is delinquent in payments of workers'  
26 compensation or employer's liability insurance premiums or  
27 surcharges owed to an insurer, group self-insurers' fund,  
28 commercial self-insurance fund, or assessable mutual insurer  
29 licensed to write such coverage in this state; or who refuses  
30 to substantially comply with any safety programs recommended  
31 by the plan.

1           13. Authorize the board of governors to provide the  
2 services required by the plan through staff employed by the  
3 plan, through reasonably compensated service providers who  
4 contract with the plan to provide services as specified by the  
5 board of governors, or through a combination of employees and  
6 service providers.

7           14. Provide for service standards for service  
8 providers, methods of determining adherence to those service  
9 standards, incentives and disincentives for service, and  
10 procedures for terminating contracts for service providers  
11 that fail to adhere to service standards.

12           15. Provide procedures for selecting service providers  
13 and standards for qualification as a service provider that  
14 reasonably assure that any service provider selected will  
15 continue to operate as an ongoing concern and is capable of  
16 providing the specified services in the manner required.

17           16. Provide for reasonable accounting and  
18 data-reporting practices.

19           17. Provide for annual review of costs associated with  
20 the administration and servicing of the policies issued by the  
21 plan to determine alternatives by which costs can be reduced.

22           18. Authorize the acquisition of such excess insurance  
23 or reinsurance as is consistent with the purposes of the plan.

24           19. Provide for an annual report to the office  
25 ~~department~~ on a date specified by the office ~~department~~ and  
26 containing such information as the office ~~department~~  
27 reasonably requires.

28           20. Establish multiple rating plans for various  
29 classifications of risk which reflect risk of loss, hazard  
30 grade, actual losses, size of premium, and compliance with  
31 loss control. At least one of such plans must be a

1 preferred-rating plan to accommodate small-premium  
2 policyholders with good experience as defined in  
3 sub-subparagraph 22.a.

4           21. Establish agent commission schedules.

5           22. Establish three subplans as follows:

6           a. Subplan "A" must include those insureds whose  
7 annual premium does not exceed \$2,500 and who have neither  
8 incurred any lost-time claims nor incurred medical-only claims  
9 exceeding 50 percent of their premium for the immediate 2  
10 years.

11           b. Subplan "B" must include insureds that are  
12 employers identified by the board of governors as high-risk  
13 employers due solely to the nature of the operations being  
14 performed by those insureds and for whom no market exists in  
15 the voluntary market, and whose experience modifications are  
16 less than 1.00.

17           c. Subplan "C" must include all other insureds within  
18 the plan.

19           (e) The plan shall establish and use its rates and  
20 rating plans, and the plan may establish and use changes in  
21 rating plans at any time, but no more frequently than two  
22 times per any rating class for any calendar year. By December  
23 1, 1993, and December 1 of each year thereafter, the board  
24 shall establish and use actuarially sound rates for use by the  
25 plan to assure that the plan is self-funding while those rates  
26 are in effect. Such rates and rating plans must be filed with  
27 the office ~~department~~ within 30 calendar days after their  
28 effective dates, and shall be considered a "use and file"  
29 filing. Any disapproval by the office ~~department~~ must have an  
30 effective date that is at least 60 days from the date of  
31 disapproval of the rates and rating plan and must have

1 prospective effect only. The plan may not be subject to any  
2 order by the office ~~department~~ to return to policyholders any  
3 portion of the rates disapproved by the office ~~department~~. The  
4 office ~~department~~ may not disapprove any rates or rating plans  
5 unless it demonstrates that such rates and rating plans are  
6 excessive, inadequate, or unfairly discriminatory.

7 (f) No later than June 1 of each year, the plan shall  
8 obtain an independent actuarial certification of the results  
9 of the operations of the plan for prior years, and shall  
10 furnish a copy of the certification to the office ~~department~~.  
11 If, after the effective date of the plan, the projected  
12 ultimate incurred losses and expenses and dividends for prior  
13 years exceed collected premiums, accrued net investment  
14 income, and prior assessments for prior years, the  
15 certification is subject to review and approval by the office  
16 ~~department~~ before it becomes final.

17 (g) Whenever a deficit exists, the plan shall, within  
18 90 days, provide the office ~~department~~ with a program to  
19 eliminate the deficit within a reasonable time. The deficit  
20 may be funded through increased premiums charged to insureds  
21 of the plan for subsequent years, through the use of  
22 policyholder surplus attributable to any year, and through  
23 assessments on insureds in the plan if the plan uses  
24 assessable policies.

25 Section 1097. Section 627.3111, Florida Statutes, is  
26 amended to read:

27 627.3111 Public records exemption.--All bank account  
28 numbers and debit, charge, and credit card numbers, and all  
29 other personal financial and health information of a consumer  
30 held by the department or office ~~of insurance~~ or their ~~its~~  
31 service providers or agents, relating to a consumer's

1 complaint or inquiry regarding a matter or activity regulated  
2 under the Florida Insurance Code, are confidential and exempt  
3 from s. 119.07(1) and s. 24(a), Art. I of the State  
4 Constitution. For the purpose of this section, the term  
5 "consumer" includes but is not limited to a prospective  
6 purchaser, purchaser, or beneficiary of, or applicant for, any  
7 product or service regulated under the Florida Insurance Code,  
8 and a family member or dependent of a consumer, a subscriber  
9 under a group policy, or a policyholder. This information  
10 shall be redacted from records that contain nonexempt  
11 information prior to disclosure. This exemption applies to  
12 information made confidential and exempt by this section held  
13 by the department or office ~~of Insurance~~ or their ~~its~~ service  
14 providers or agents before, on, or after the effective date of  
15 this exemption. Such confidential and exempt information may  
16 be disclosed to another governmental entity, if disclosure is  
17 necessary for the receiving entity to perform its duties and  
18 responsibilities, and may be disclosed to the National  
19 Association of Insurance Commissioners. The receiving  
20 governmental entity and the association must maintain the  
21 confidential and exempt status of such information. The  
22 information made confidential and exempt by this section may  
23 be used in a criminal, civil, or administrative proceeding so  
24 long as the confidential and exempt status of such information  
25 is maintained. This exemption does not include the name and  
26 address of an inquirer or complainant to the department or  
27 office or the name of an insurer or other regulated entity  
28 which is the subject of the inquiry or complaint. This section  
29 is subject to the Open Government Sunset Review Act of 1995 in  
30 accordance with s. 119.15 and shall stand repealed on October  
31

1 2, 2007, unless reviewed and saved from repeal through  
2 reenactment by the Legislature.

3 Section 1098. Subsection (6) of section 627.314,  
4 Florida Statutes, is amended to read:

5 627.314 Concerted action by two or more insurers.--

6 (6) Notwithstanding any other provisions of this part,  
7 insurers shall not participate directly or indirectly in the  
8 deliberations or decisions of rating organizations on private  
9 passenger automobile insurance. However, such rating  
10 organizations shall, upon request of individual insurers, be  
11 required to furnish at reasonable cost the rate indications  
12 resulting from the loss and expense statistics gathered by  
13 them. Individual insurers may modify the indications to  
14 reflect their individual experience in determining their own  
15 rates. Such rates shall be filed with the office ~~department~~  
16 for public inspection whenever requested and shall be  
17 available for public announcement only by the press, office  
18 ~~department~~, or insurer.

19 Section 1099. Section 627.318, Florida Statutes, is  
20 amended to read:

21 627.318 Records.--Every insurer, rating organization,  
22 and advisory organization and every group, association, or  
23 other organization of insurers which engages in joint  
24 underwriting or joint reinsurance shall maintain reasonable  
25 records, of the type and kind reasonably adapted to its method  
26 of operation, of its experience or the experience of its  
27 members and of the data, statistics, or information collected  
28 or used by it in connection with the rates, rating plans,  
29 rating systems, underwriting rules, policy or bond forms,  
30 surveys, or inspections made or used by it, so that such  
31 records will be available at all reasonable times to enable

1 the office ~~department~~ to determine whether such organization,  
2 insurer, group, or association, and, in the case of an insurer  
3 or rating organization, every rate, rating plan, and rating  
4 system made or used by it, complies with the provisions of  
5 this part applicable to it. The maintenance of such records  
6 in the office of a licensed rating organization of which an  
7 insurer is a member or subscriber will be sufficient  
8 compliance with this section for any such insurer maintaining  
9 membership or subscribership in such organization, to the  
10 extent that the insurer uses the rates, rating plans, rating  
11 systems, or underwriting rules of such organization. Such  
12 records shall be maintained in an office within this state or  
13 shall be made available for examination or inspection within  
14 this state by the department at any time upon reasonable  
15 notice.

16 Section 1100. Section 627.331, Florida Statutes, is  
17 amended to read:

18 627.331 Recording and reporting of loss, expense, and  
19 claims experience; rating information.--

20 (1) The commission ~~department~~ may promulgate rules and  
21 statistical plans which shall thereafter be used by each  
22 insurer in the recording and reporting of its loss, expense,  
23 and claims experience, in order that the experience of all  
24 insurers may be made available at least annually in such form  
25 and detail as may be necessary to aid the office ~~department~~ in  
26 determining whether the insurer's activities comply with the  
27 applicable standards of this code.

28 (2) In promulgating such rules and plans, the  
29 commission ~~department~~ shall give due consideration to the  
30 rating systems in use in this state and, in order that such  
31 rules and plans may be as uniform as is practicable among the

1 several states, to the rules and to the form of the plans used  
2 for such rating systems in other states. No insurer shall be  
3 required to record or report its loss experience on a  
4 classification basis that is inconsistent with the rating  
5 system used by it, except for motor vehicle insurance as  
6 otherwise provided by law.

7 (3) The office ~~department~~ may designate one or more  
8 rating organizations or other agencies to assist it in  
9 gathering such experience and making compilations thereof; and  
10 such compilations shall be made available, subject to  
11 reasonable rules adopted ~~promulgated~~ by the commission  
12 ~~department~~, to insurers and rating organizations.

13 Section 1101. Subsection (1), paragraphs (a) and (c)  
14 of subsection (3), paragraphs (a), (c), and (d) of subsection  
15 (4), and subsections (5) and (6) of section 627.351, Florida  
16 Statutes, are amended, and paragraph (f) is added to  
17 subsection (2) of that section to read:

18 627.351 Insurance risk apportionment plans.--

19 (1) MOTOR VEHICLE INSURANCE RISK  
20 APPORTIONMENT.--Agreements may be made among casualty and  
21 surety insurers with respect to the equitable apportionment  
22 among them of insurance which may be afforded applicants who  
23 are in good faith entitled to, but are unable to, procure such  
24 insurance through ordinary methods, and such insurers may  
25 agree among themselves on the use of reasonable rate  
26 modifications for such insurance. Such agreements and rate  
27 modifications shall be subject to the approval of the office  
28 ~~department~~. The office ~~department~~ shall, after consultation  
29 with the insurers licensed to write automobile liability  
30 insurance in this state, adopt a reasonable plan or plans for  
31 the equitable apportionment among such insurers of applicants

1 for such insurance who are in good faith entitled to, but are  
2 unable to, procure such insurance through ordinary methods,  
3 and, when such plan has been adopted, all such insurers shall  
4 subscribe thereto and shall participate therein. Such plan or  
5 plans shall include rules for classification of risks and  
6 rates therefor. The plan or plans shall make available  
7 noncancelable coverage as provided in s. 627.7275(2). Any  
8 insured placed with the plan shall be notified of the fact  
9 that insurance coverage is being afforded through the plan and  
10 not through the private market, and such notification shall be  
11 given in writing within 10 days of such placement. To assure  
12 that plan rates are made adequate to pay claims and expenses,  
13 insurers shall develop a means of obtaining loss and expense  
14 experience at least annually, and the plan shall file such  
15 experience, when available, with the office ~~department~~ in  
16 sufficient detail to make a determination of rate adequacy.  
17 Prior to the filing of such experience with the office  
18 ~~department~~, the plan shall poll each member insurer as to the  
19 need for an actuary who is a member of the Casualty Actuarial  
20 Society and who is not affiliated with the plan's statistical  
21 agent to certify the plan's rate adequacy. If a majority of  
22 those insurers responding indicate a need for such  
23 certification, the plan shall include the certification as  
24 part of its experience filing. Such experience shall be filed  
25 with the office ~~department~~ not more than 9 months following  
26 the end of the annual statistical period under review,  
27 together with a rate filing based on said experience. The  
28 office ~~department~~ shall initiate proceedings to disapprove the  
29 rate and so notify the plan or shall finalize its review  
30 within 60 days of receipt of the filing. Notification to the  
31 plan by the office ~~department~~ of its preliminary findings,

1 which include a point of entry to the plan pursuant to chapter  
2 120, shall toll the 60-day period during any such proceedings  
3 and subsequent judicial review. The rate shall be deemed  
4 approved if the office ~~department~~ does not issue notice to the  
5 plan of its preliminary findings within 60 days of the filing.  
6 In addition to provisions for claims and expenses, the  
7 ratemaking formula shall include a factor for projected claims  
8 trending and 5 percent for contingencies. In no instance shall  
9 the formula include a renewal discount for plan insureds.  
10 However, the plan shall reunderwrite each insured on an annual  
11 basis, based upon all applicable rating factors approved by  
12 the office ~~department~~. Trend factors shall not be found to be  
13 inappropriate if not in excess of trend factors normally used  
14 in the development of residual market rates by the appropriate  
15 licensed rating organization. Each application for coverage  
16 in the plan shall include, in boldfaced 12-point type  
17 immediately preceding the applicant's signature, the following  
18 statement:

19  
20 "THIS INSURANCE IS BEING AFFORDED THROUGH THE  
21 FLORIDA JOINT UNDERWRITING ASSOCIATION AND NOT  
22 THROUGH THE PRIVATE MARKET. PLEASE BE ADVISED  
23 THAT COVERAGE WITH A PRIVATE INSURER MAY BE  
24 AVAILABLE FROM ANOTHER AGENT AT A LOWER COST.  
25 AGENT AND COMPANY LISTINGS ARE AVAILABLE IN THE  
26 LOCAL YELLOW PAGES."  
27

28 The plan shall annually report to the office  
29 ~~department~~ the number and percentage of plan insureds  
30 who are not surcharged due to their driving record.

31 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

1           (f) As used in this subsection, the term "department"  
2 means the former Department of Insurance.

3           (3) POLITICAL SUBDIVISION; CASUALTY INSURANCE RISK  
4 APPORTIONMENT.--

5           (a) The office ~~department~~ shall, after consultation  
6 with the casualty insurers licensed in this state, adopt a  
7 plan or plans for the equitable apportionment among them of  
8 casualty insurance coverage which may be afforded political  
9 subdivisions which are in good faith entitled to, but are  
10 unable to, procure such coverage through the voluntary market  
11 at standard rates or through a statutorily approved plan  
12 authorized by the office ~~department~~. The office ~~department~~ may  
13 adopt a joint underwriting plan which shall provide for one or  
14 more designated insurers able and willing to provide  
15 policyholder and claims service, including the issuance of  
16 insurance policies, to act on behalf of all other insurers  
17 required to participate in the joint underwriting plan. Any  
18 joint underwriting plan adopted shall provide for the  
19 equitable apportionment of any profits realized, or of losses  
20 and expenses incurred, among participating insurers. The plan  
21 shall include, but shall not be limited to:

22           1. Rules for the classification of risks and rates  
23 which reflect the past loss experience and prospective loss  
24 experience in different geographic areas.

25           2. A rating plan which reasonably reflects the prior  
26 claims experience of the insureds.

27           3. Excess coverage by insurers if the office ~~Insurance~~  
28 ~~Commissioner~~, in its ~~his or her~~ discretion, requires such  
29 coverage by insurers participating in the joint underwriting  
30 plan.

31

1           (c) Any deficit sustained under the plan shall first  
2 be recovered through a premium contingency assessment.  
3 Concurrently, the rates for insureds shall be adjusted for the  
4 next year so as to be actuarially sound in conformance with  
5 rules adopted by ~~of the commission~~ department.

6           (4) MEDICAL MALPRACTICE RISK APPORTIONMENT.--

7           (a) The office ~~department~~ shall, after consultation  
8 with insurers as set forth in paragraph (b), adopt a joint  
9 underwriting plan as set forth in paragraph (d).

10           (c) The Joint Underwriting Association shall operate  
11 subject to the supervision and approval of a board of  
12 governors consisting of representatives of five of the  
13 insurers participating in the Joint Underwriting Association,  
14 an attorney to be named by The Florida Bar, a physician to be  
15 named by the Florida Medical Association, a dentist to be  
16 named by the Florida Dental Association, and a hospital  
17 representative to be named by the Florida Hospital  
18 Association. The board of governors shall choose, during the  
19 first meeting of the board after June 30 of each year, one of  
20 its members to serve as chair of the board and another member  
21 to serve as vice chair of the board. There shall be no  
22 liability on the part of, and no cause of action of any nature  
23 shall arise against, any member insurer, self-insurer, or its  
24 agents or employees, the Joint Underwriting Association or its  
25 agents or employees, members of the board of governors, or the  
26 office ~~department~~ or its representatives for any action taken  
27 by them in the performance of their powers and duties under  
28 this subsection.

29           (d) The plan shall provide coverage for claims arising  
30 out of the rendering of, or failure to render, medical care or  
31 services and, in the case of health care facilities, coverage

1 for bodily injury or property damage to the person or property  
2 of any patient arising out of the insured's activities, in  
3 appropriate policy forms for all health care providers as  
4 defined in paragraph (h). The plan shall include, but shall  
5 not be limited to:

6           1. Classifications of risks and rates which reflect  
7 past and prospective loss and expense experience in different  
8 areas of practice and in different geographical areas. To  
9 assure that plan rates are adequate to pay claims and  
10 expenses, the Joint Underwriting Association shall develop a  
11 means of obtaining loss and expense experience; and the plan  
12 shall file such experience, when available, with the office  
13 ~~department~~ in sufficient detail to make a determination of  
14 rate adequacy. Within 60 days after a rate filing, the office  
15 ~~department~~ shall approve such rates or rate revisions as are  
16 fully supported by the filing. In addition to provisions for  
17 claims and expenses, the ratemaking formula may include a  
18 factor for projected claims trending and a margin for  
19 contingencies. The use of trend factors shall not be found to  
20 be inappropriate.

21           2. A rating plan which reasonably recognizes the prior  
22 claims experience of insureds.

23           3. Provisions as to rates for:

- 24           a. Insureds who are retired or semiretired.  
25           b. The estates of deceased insureds.  
26           c. Part-time professionals.

27           4. Protection in an amount not to exceed \$250,000 per  
28 claim, \$750,000 annual aggregate for health care providers  
29 other than hospitals and in an amount not to exceed \$1.5  
30 million per claim, \$5 million annual aggregate for hospitals.  
31 Such coverage for health care providers other than hospitals

1 shall be available as primary coverage and as excess coverage  
2 for the layer of coverage between the primary coverage and the  
3 total limits of \$250,000 per claim, \$750,000 annual aggregate.  
4 The plan shall also provide tail coverage in these amounts to  
5 insureds whose claims-made coverage with another insurer or  
6 trust has or will be terminated. Such tail coverage shall  
7 provide coverage for incidents that occurred during the  
8 claims-made policy period for which a claim is made after the  
9 policy period.

10           5. A risk management program for insureds of the  
11 association. This program shall include, but not be limited  
12 to: investigation and analysis of frequency, severity, and  
13 causes of adverse or untoward medical injuries; development of  
14 measures to control these injuries; systematic reporting of  
15 medical incidents; investigation and analysis of patient  
16 complaints; and auditing of association members to assure  
17 implementation of this program. The plan may refuse to insure  
18 any insured who refuses or fails to comply with the risk  
19 management program implemented by the association. Prior to  
20 cancellation or refusal to renew an insured, the association  
21 shall provide the insured 60 days' notice of intent to cancel  
22 or nonrenew and shall further notify the insured of any action  
23 which must be taken to be in compliance with the risk  
24 management program.

25           (5) PROPERTY AND CASUALTY INSURANCE RISK  
26 APPORTIONMENT.--The commission ~~department~~ shall adopt by rule  
27 a joint underwriting plan to equitably apportion among  
28 insurers authorized in this state to write property insurance  
29 as defined in s. 624.604 or casualty insurance as defined in  
30 s. 624.605, the underwriting of one or more classes of  
31 property insurance or casualty insurance, except for the types

1 of insurance that are included within property insurance or  
2 casualty insurance for which an equitable apportionment plan,  
3 assigned risk plan, or joint underwriting plan is authorized  
4 under s. 627.311 or subsection (1), subsection (2), subsection  
5 (3), subsection (4), or subsection (5) and except for risks  
6 eligible for flood insurance written through the federal flood  
7 insurance program to persons with risks eligible under  
8 subparagraph (a)1. and who are in good faith entitled to, but  
9 are unable to, obtain such property or casualty insurance  
10 coverage, including excess coverage, through the voluntary  
11 market. For purposes of this subsection, an adequate level of  
12 coverage means that coverage which is required by state law or  
13 by responsible or prudent business practices. The Joint  
14 Underwriting Association shall not be required to provide  
15 coverage for any type of risk for which there are no insurers  
16 providing similar coverage in this state. The office  
17 ~~department~~ may designate one or more participating insurers  
18 who agree to provide policyholder and claims service,  
19 including the issuance of policies, on behalf of the  
20 participating insurers.

21 (a) The plan shall provide:

22 1. A means of establishing eligibility of a risk for  
23 obtaining insurance through the plan, which provides that:

24 a. A risk shall be eligible for such property  
25 insurance or casualty insurance as is required by Florida law  
26 if the insurance is unavailable in the voluntary market,  
27 including the market assistance program and the surplus lines  
28 market.

29 b. A commercial risk not eligible under  
30 sub-subparagraph a. shall be eligible for property or casualty  
31 insurance if:

1 (I) The insurance is unavailable in the voluntary  
2 market, including the market assistance plan and the surplus  
3 lines market;

4 (II) Failure to secure the insurance would  
5 substantially impair the ability of the entity to conduct its  
6 affairs; and

7 (III) The risk is not determined by the Risk  
8 Underwriting Committee to be uninsurable.

9 c. In the event the Federal Government terminates the  
10 Federal Crime Insurance Program established under 44 C.F.R.  
11 ss. 80-83, Florida commercial and residential risks previously  
12 insured under the federal program shall be eligible under the  
13 plan.

14 d.(I) In the event a risk is eligible under this  
15 paragraph and in the event the market assistance plan receives  
16 a minimum of 100 applications for coverage within a 3-month  
17 period, or 200 applications for coverage within a 1-year  
18 period or less, for a given class of risk contained in the  
19 classification system defined in the plan of operation of the  
20 Joint Underwriting Association, and unless the market  
21 assistance plan provides a quotation for at least 80 percent  
22 of such applicants, such classification shall immediately be  
23 eligible for coverage in the Joint Underwriting Association.

24 (II) Any market assistance plan application which is  
25 rejected because an individual risk is so hazardous as to be  
26 practically uninsurable, considering whether the likelihood of  
27 a loss for such a risk is substantially higher than for other  
28 risks of the same class due to individual risk  
29 characteristics, prior loss experience, unwillingness to  
30 cooperate with a prior insurer, physical characteristics and  
31 physical location shall not be included in the minimum

1 percentage calculation provided above. In the event that there  
2 is any legal or administrative challenge to a determination by  
3 the office ~~department~~ that the conditions of this subparagraph  
4 have been met for eligibility for coverage in the Joint  
5 Underwriting Association for a given classification, any  
6 eligible risk may obtain coverage during the pendency of any  
7 such challenge.

8 e. In order to qualify as a quotation for the purpose  
9 of meeting the minimum percentage calculation in this  
10 subparagraph, the quoted premium must meet the following  
11 criteria:

12 (I) In the case of an admitted carrier, the quoted  
13 premium must not exceed the premium available for a given  
14 classification currently in use by the Joint Underwriting  
15 Association or the premium developed by using the rates and  
16 rating plans on file with the office ~~department~~ by the quoting  
17 insurer, whichever is greater.

18 (II) In the case of an authorized surplus lines  
19 insurer, the quoted premium must not exceed the premium  
20 available for a given classification currently in use by the  
21 Joint Underwriting Association by more than 25 percent, after  
22 consideration of any individual risk surcharge or credit.

23 f. Any agent who falsely certifies the unavailability  
24 of coverage as provided by sub-subparagraphs a. and b., is  
25 subject to the penalties provided in s. 626.611.

26 2. A means for the equitable apportionment of profits  
27 or losses and expenses among participating insurers.

28 3. Rules for the classification of risks and rates  
29 which reflect the past and prospective loss experience.

30 4. A rating plan which reasonably reflects the prior  
31 claims experience of the insureds. Such rating plan shall

1 include at least two levels of rates for risks that have  
2 favorable loss experience and risks that have unfavorable loss  
3 experience, as established by the plan.

4           5. Reasonable limits to available amounts of  
5 insurance. Such limits may not be less than the amounts of  
6 insurance required of eligible risks by Florida law.

7           6. Risk management requirements for insurance where  
8 such requirements are reasonable and are expected to reduce  
9 losses.

10           7. Deductibles as may be necessary to meet the needs  
11 of insureds.

12           8. Policy forms which are consistent with the forms in  
13 use by the majority of the insurers providing coverage in the  
14 voluntary market for the coverage requested by the applicant.

15           9. A means to remove risks from the plan once such  
16 risks no longer meet the eligibility requirements of this  
17 paragraph. For this purpose, the plan shall include the  
18 following requirements: At each 6-month interval after the  
19 activation of any class of insureds, the board of governors or  
20 its designated committee shall review the number of  
21 applications to the market assistance plan for that class. If,  
22 based on these latest numbers, at least 90 percent of such  
23 applications have been provided a quotation, the Joint  
24 Underwriting Association shall cease underwriting new  
25 applications for such class within 30 days, and notification  
26 of this decision shall be sent to the office Insurance  
27 ~~Commissioner~~, the major agents' associations, and the board of  
28 directors of the market assistance plan. A quotation for the  
29 purpose of this subparagraph shall meet the same criteria for  
30 a quotation as provided in sub-subparagraph 1.e

31 ~~sub-subparagraph d.~~ All policies which were previously written

1 for that class shall continue in force until their normal  
2 expiration date, at which time, subject to the required timely  
3 notification of nonrenewal by the Joint Underwriting  
4 Association, the insured may then elect to reapply to the  
5 Joint Underwriting Association according to the requirements  
6 of eligibility. If, upon reapplication, those previously  
7 insured Joint Underwriting Association risks meet the  
8 eligibility requirements, the Joint Underwriting Association  
9 shall provide the coverage requested.

10           10. A means for providing credits to insurers against  
11 any deficit assessment levied pursuant to paragraph (c), for  
12 risks voluntarily written through the market assistance plan  
13 by such insurers.

14           11. That the Joint Underwriting Association shall  
15 operate subject to the supervision and approval of a board of  
16 governors consisting of 13 individuals appointed by the Chief  
17 Financial Officer ~~Insurance Commissioner~~, and shall have an  
18 executive or underwriting committee. At least four of the  
19 members shall be representatives of insurance trade  
20 associations as follows: one member from the American  
21 Insurance Association, one member from the Alliance of  
22 American Insurers, one member from the National Association of  
23 Independent Insurers, and one member from an unaffiliated  
24 insurer writing coverage on a national basis. Two  
25 representatives shall be from two of the statewide agents'  
26 associations. Each board member shall be appointed to serve  
27 for 2-year terms beginning on a date designated by the plan  
28 and shall serve at the pleasure of the Chief Financial Officer  
29 ~~commissioner~~. Members may be reappointed for subsequent terms.

30           (b) Rates used by the Joint Underwriting Association  
31 shall be actuarially sound. To the extent applicable, the rate

1 standards set forth in s. 627.062 shall be considered by the  
2 office department in establishing rates to be used by the  
3 joint underwriting plan. The initial rate level shall be  
4 determined using the rates, rules, rating plans, and  
5 classifications contained in the most current Insurance  
6 Services Office (ISO) filing with the office department or the  
7 filing of other licensed rating organizations with an  
8 additional increment of 25 percent of premium. For any type of  
9 coverage or classification which lends itself to manual rating  
10 for which the Insurance Services Office or another licensed  
11 rating organization does not file or publish a rate, the Joint  
12 Underwriting Association shall file and use an initial rate  
13 based on the average current market rate. The initial rate  
14 level for the rate plan shall also be subject to an experience  
15 and schedule rating plan which may produce a maximum of 25  
16 percent debits or credits. For any risk which does not lend  
17 itself to manual rating and for which no rate has been  
18 promulgated under the rate plan, the board shall develop and  
19 file with the office commissioner, subject to its his or her  
20 approval, appropriate criteria and factors for rating the  
21 individual risk. Such criteria and factors shall include, but  
22 not be limited to, loss rating plans, composite rating plans,  
23 and unique and unusual risk rating plans. The initial rates  
24 required under this paragraph shall be adjusted in conformity  
25 with future filings by the Insurance Services Office with the  
26 office department and shall remain in effect until such time  
27 as the Joint Underwriting Association has sufficient data as  
28 to independently justify an actuarially sound change in such  
29 rates.

30 (c)1. In the event an underwriting deficit exists for  
31 any policy year the plan is in effect, any surplus which has

1 accrued from previous years and is not projected within  
2 reasonable actuarial certainty to be needed for payment for  
3 claims in the year the surplus arose shall be used to offset  
4 the deficit to the extent available.

5           2. As to any remaining deficit, the board of governors  
6 of the Joint Underwriting Association shall levy and collect  
7 an assessment in an amount sufficient to offset such deficit.  
8 Such assessment shall be levied against the insurers  
9 participating in the plan during the year giving rise to the  
10 assessment. Any assessments against insurers for the lines of  
11 property and casualty insurance issued to commercial risks  
12 shall be recovered from the participating insurers in the  
13 proportion that the net direct premium of each insurer for  
14 commercial risks written during the preceding calendar year  
15 bears to the aggregate net direct premium written for  
16 commercial risks by all members of the plan for the lines of  
17 insurance included in the plan. Any assessments against  
18 insurers for the lines of property and casualty insurance  
19 issued to personal risks eligible under sub-subparagraph  
20 (a)1.a. or sub-subparagraph (a)1.c. shall be recovered from  
21 the participating insurers in the proportion that the net  
22 direct premium of each insurer for personal risks written  
23 during the preceding calendar year bears to the aggregate net  
24 direct premium written for personal risks by all members of  
25 the plan for the lines of insurance included in the plan.

26           3. The board shall take all reasonable and prudent  
27 steps necessary to collect the amount of assessment due from  
28 each participating insurer and policyholder, including, if  
29 prudent, filing suit to collect such assessment. If the board  
30 is unable to collect an assessment from any insurer, the  
31 uncollected assessments shall be levied as an additional

1 assessment against the participating insurers and any  
2 participating insurer required to pay an additional assessment  
3 as a result of such failure to pay shall have a cause of  
4 action against such nonpaying insurer.

5 4. Any funds or entitlements that the state may be  
6 eligible to receive by virtue of the Federal Government's  
7 termination of the Federal Crime Insurance Program referenced  
8 in sub-subparagraph (a)1.c. may be used under the plan to  
9 offset any subsequent underwriting deficits that may occur  
10 from risks previously insured with the Federal Crime Insurance  
11 Program.

12 5. Assessments shall be included as an appropriate  
13 factor in the making of rates as provided in s. 627.3512.

14 6.a. The Legislature finds that the potential for  
15 unlimited assessments under this paragraph may induce insurers  
16 to attempt to reduce their writings in the voluntary market,  
17 and that such actions would worsen the availability problems  
18 that the association was created to remedy. It is the intent  
19 of the Legislature that insurers remain fully responsible for  
20 covering any deficits of the association; however, it is also  
21 the intent of the Legislature to provide a means by which  
22 assessment liabilities may be amortized over a period of  
23 years.

24 b. The total amount of deficit assessments under this  
25 paragraph with respect to any year may not exceed 10 percent  
26 of the statewide total gross written premium for all insurers  
27 for the coverages referred to in the introductory language of  
28 this subsection for the prior year, except that if the deficit  
29 with respect to any plan year exceeds such amount and bonds  
30 are issued under sub-subparagraph c. to defray the deficit,  
31 the total amount of assessments with respect to such deficit

1 may not in any year exceed 10 percent of the deficit, or such  
2 lesser percentage as is sufficient to retire the bonds as  
3 determined by the board, and shall continue annually until the  
4 bonds are retired.

5           c. The governing body of any unit of local government,  
6 any residents or businesses of which are insured by the  
7 association, may issue bonds as defined in s. 125.013 or s.  
8 166.101 from time to time to fund an assistance program, in  
9 conjunction with the association, for the purpose of defraying  
10 deficits of the association. Revenue bonds may not be issued  
11 until validated pursuant to chapter 75, unless a state of  
12 emergency is declared by executive order or proclamation of  
13 the Governor pursuant to s. 252.36 making such findings as are  
14 necessary to determine that it is in the best interests of,  
15 and necessary for, the protection of the public health,  
16 safety, and general welfare of residents of this state and the  
17 protection and preservation of the economic stability of  
18 insurers operating in this state, and declaring it an  
19 essential public purpose to permit certain municipalities or  
20 counties to issue such bonds as will provide relief to  
21 claimants and policyholders of the joint underwriting  
22 association and insurers responsible for apportionment of  
23 association losses. The unit of local government shall enter  
24 into such contracts with the association as are necessary to  
25 carry out this paragraph. Any bonds issued under this  
26 sub-subparagraph shall be payable from and secured by moneys  
27 received by the association from assessments under this  
28 paragraph, and assigned and pledged to or on behalf of the  
29 unit of local government for the benefit of the holders of  
30 such bonds. The funds, credit, property, and taxing power of  
31 the state or of the unit of local government shall not be

1 pledged for the payment of such bonds. If any of the bonds  
2 remain unsold 60 days after issuance, the office ~~department~~  
3 shall require all insurers subject to assessment to purchase  
4 the bonds, which shall be treated as admitted assets; each  
5 insurer shall be required to purchase that percentage of the  
6 unsold portion of the bond issue that equals the insurer's  
7 relative share of assessment liability under this subsection.  
8 An insurer shall not be required to purchase the bonds to the  
9 extent that the office ~~department~~ determines that the purchase  
10 would endanger or impair the solvency of the insurer.

11           7. The plan shall provide for the deferment, in whole  
12 or in part, of the assessment of an insurer if the office  
13 ~~department~~ finds that payment of the assessment would endanger  
14 or impair the solvency of the insurer. In the event an  
15 assessment against an insurer is deferred in whole or in part,  
16 the amount by which such assessment is deferred may be  
17 assessed against the other member insurers in a manner  
18 consistent with the basis for assessments set forth in  
19 subparagraph 2.

20           (d) Upon adoption of the plan, all insurers authorized  
21 in this state to underwrite property or casualty insurance  
22 shall participate in the plan.

23           (e) A Risk Underwriting Committee of the Joint  
24 Underwriting Association composed of three members experienced  
25 in evaluating insurance risks is created to review risks  
26 rejected by the voluntary market for which application is made  
27 for insurance through the joint underwriting plan. The  
28 committee shall consist of a representative of the market  
29 assistance plan created under s. 627.3515, a member selected  
30 by the insurers participating in the Joint Underwriting  
31 Association, and a member named by the Chief Financial Officer

1 ~~Insurance Commissioner~~. The Risk Underwriting Committee shall  
2 appoint such advisory committees as are provided for in the  
3 plan and are necessary to conduct its functions. The salaries  
4 and expenses of the members of the Risk Underwriting Committee  
5 and its advisory committees shall be paid by the joint  
6 underwriting plan. The plan approved by the office ~~department~~  
7 shall establish criteria and procedures for use by the Risk  
8 Underwriting Committee for determining whether an individual  
9 risk is so hazardous as to be uninsurable. In making this  
10 determination and in establishing the criteria and procedures,  
11 the following shall be considered:

12         1. Whether the likelihood of a loss for the individual  
13 risk is substantially higher than for other risks of the same  
14 class; and

15         2. Whether the uncertainty associated with the  
16 individual risk is such that an appropriate premium cannot be  
17 determined.

18

19 The acceptance or rejection of a risk by the underwriting  
20 committee shall be construed as the private placement of  
21 insurance, and the provisions of chapter 120 shall not apply.

22         (f) There shall be no liability on the part of, and no  
23 cause of action of any nature shall arise against, any member  
24 insurer or its agents or employees, the Florida Property and  
25 Casualty Joint Underwriting Association or its agents or  
26 employees, members of the board of governors, the Chief  
27 Financial Officer, or the office ~~department~~ or its  
28 representatives for any action taken by them in the  
29 performance of their duties under this subsection. Such  
30 immunity does not apply to actions for breach of any contract

31

1 or agreement pertaining to insurance, or any other willful  
2 tort.

3 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

4 (a)1. The Legislature finds that actual and threatened  
5 catastrophic losses to property in this state from hurricanes  
6 have caused insurers to be unwilling or unable to provide  
7 property insurance coverage to the extent sought and needed.  
8 It is in the public interest and a public purpose to assist in  
9 assuring that property in the state is insured so as to  
10 facilitate the remediation, reconstruction, and replacement of  
11 damaged or destroyed property in order to reduce or avoid the  
12 negative effects otherwise resulting to the public health,  
13 safety, and welfare; to the economy of the state; and to the  
14 revenues of the state and local governments needed to provide  
15 for the public welfare. It is necessary, therefore, to provide  
16 property insurance to applicants who are in good faith  
17 entitled to procure insurance through the voluntary market but  
18 are unable to do so. The Legislature intends by this  
19 subsection that property insurance be provided and that it  
20 continues, as long as necessary, through an entity organized  
21 to achieve efficiencies and economies, all toward the  
22 achievement of the foregoing public purposes. Because it is  
23 essential for the corporation to have the maximum financial  
24 resources to pay claims following a catastrophic hurricane, it  
25 is the intent of the Legislature that the income of the  
26 corporation be exempt from federal income taxation and that  
27 interest on the debt obligations issued by the corporation be  
28 exempt from federal income taxation.

29 2. The Residential Property and Casualty Joint  
30 Underwriting Association originally created by this statute  
31 shall be known, as of July 1, 2002, as the Citizens Property

1 Insurance Corporation. The corporation shall provide insurance  
2 for residential and commercial property, for applicants who  
3 are in good faith entitled, but are unable, to procure  
4 insurance through the voluntary market. The corporation shall  
5 operate pursuant to a plan of operation approved by order of  
6 the office ~~department~~. The plan is subject to continuous  
7 review by the office ~~department~~. The office ~~department~~ may, by  
8 order, withdraw approval of all or part of a plan if the  
9 office ~~department~~ determines that conditions have changed  
10 since approval was granted and that the purposes of the plan  
11 require changes in the plan. For the purposes of this  
12 subsection, residential coverage includes both personal lines  
13 residential coverage, which consists of the type of coverage  
14 provided by homeowner's, mobile home owner's, dwelling,  
15 tenant's, condominium unit owner's, and similar policies, and  
16 commercial lines residential coverage, which consists of the  
17 type of coverage provided by condominium association,  
18 apartment building, and similar policies.

19 (b)1. All insurers authorized to write one or more  
20 subject lines of business in this state are subject to  
21 assessment by the corporation and, for the purposes of this  
22 subsection, are referred to collectively as "assessable  
23 insurers." Insurers writing one or more subject lines of  
24 business in this state pursuant to part VIII of chapter 626  
25 are not assessable insurers, but insureds who procure one or  
26 more subject lines of business in this state pursuant to part  
27 VIII of chapter 626 are subject to assessment by the  
28 corporation and are referred to collectively as "assessable  
29 insureds." An authorized insurer's assessment liability shall  
30 begin on the first day of the calendar year following the year  
31 in which the insurer was issued a certificate of authority to

1 transact insurance for subject lines of business in this state  
2 and shall terminate 1 year after the end of the first calendar  
3 year during which the insurer no longer holds a certificate of  
4 authority to transact insurance for subject lines of business  
5 in this state.

6           2.a. All revenues, assets, liabilities, losses, and  
7 expenses of the corporation shall be divided into three  
8 separate accounts as follows:

9           (I) A personal lines account for personal residential  
10 policies issued by the corporation or issued by the  
11 Residential Property and Casualty Joint Underwriting  
12 Association and renewed by the corporation that provide  
13 comprehensive, multiperil coverage on risks that are not  
14 located in areas eligible for coverage in the Florida  
15 Windstorm Underwriting Association as those areas were defined  
16 on January 1, 2002 and for such policies that do not provide  
17 coverage for the peril of wind on risks that are located in  
18 such areas;

19           (II) A commercial lines account for commercial  
20 residential policies issued by the corporation or issued by  
21 the Residential Property and Casualty Joint Underwriting  
22 Association and renewed by the corporation that provide  
23 coverage for basic property perils on risks that are not  
24 located in areas eligible for coverage in the Florida  
25 Windstorm Underwriting Association as those areas were defined  
26 on January 1, 2002, and for such policies that do not provide  
27 coverage for the peril of wind on risks that are located in  
28 such areas; and

29           (III) A high-risk account for personal residential  
30 policies and commercial residential and commercial  
31 nonresidential property policies issued by the corporation or

1 transferred to the corporation that provide coverage for the  
2 peril of wind on risks that are located in areas eligible for  
3 coverage in the Florida Windstorm Underwriting Association as  
4 those areas were defined on January 1, 2002. The high-risk  
5 account must also include quota share primary insurance under  
6 subparagraph (c)2. The area eligible for coverage under the  
7 high-risk account also includes the area within Port  
8 Canaveral, which is bordered on the south by the City of Cape  
9 Canaveral, bordered on the west by the Banana River, and  
10 bordered on the north by Federal Government property. The  
11 office ~~department~~ may remove territory from the area eligible  
12 for wind-only and quota share coverage if, after a public  
13 hearing, the office ~~department~~ finds that authorized insurers  
14 in the voluntary market are willing and able to write  
15 sufficient amounts of personal and commercial residential  
16 coverage for all perils in the territory, including coverage  
17 for the peril of wind, such that risks covered by wind-only  
18 policies in the removed territory could be issued a policy by  
19 the corporation in either the personal lines or commercial  
20 lines account without a significant increase in the  
21 corporation's probable maximum loss in such account. Removal  
22 of territory from the area eligible for wind-only or quota  
23 share coverage does not alter the assignment of wind coverage  
24 written in such areas to the high-risk account.

25           b. The three separate accounts must be maintained as  
26 long as financing obligations entered into by the Florida  
27 Windstorm Underwriting Association or Residential Property and  
28 Casualty Joint Underwriting Association are outstanding, in  
29 accordance with the terms of the corresponding financing  
30 documents. When the financing obligations are no longer  
31 outstanding, in accordance with the terms of the corresponding

1 financing documents, the corporation may use a single account  
2 for all revenues, assets, liabilities, losses, and expenses of  
3 the corporation.

4 c. Creditors of the Residential Property and Casualty  
5 Joint Underwriting Association shall have a claim against, and  
6 recourse to, the accounts referred to in sub-sub-subparagraphs  
7 a.(I) and (II) and shall have no claim against, or recourse  
8 to, the account referred to in sub-sub-subparagraph a.(III).  
9 Creditors of the Florida Windstorm Underwriting Association  
10 shall have a claim against, and recourse to, the account  
11 referred to in sub-sub-subparagraph a.(III) and shall have no  
12 claim against, or recourse to, the accounts referred to in  
13 sub-sub-subparagraphs a.(I) and (II).

14 d. Revenues, assets, liabilities, losses, and expenses  
15 not attributable to particular accounts shall be prorated  
16 among the accounts.

17 e. The Legislature finds that the revenues of the  
18 corporation are revenues that are necessary to meet the  
19 requirements set forth in documents authorizing the issuance  
20 of bonds under this subsection.

21 f. No part of the income of the corporation may inure  
22 to the benefit of any private person.

23 3. With respect to a deficit in an account:

24 a. When the deficit incurred in a particular calendar  
25 year is not greater than 10 percent of the aggregate statewide  
26 direct written premium for the subject lines of business for  
27 the prior calendar year, the entire deficit shall be recovered  
28 through regular assessments of assessable insurers under  
29 paragraph (g) and assessable insureds.

30 b. When the deficit incurred in a particular calendar  
31 year exceeds 10 percent of the aggregate statewide direct

1 written premium for the subject lines of business for the  
2 prior calendar year, the corporation shall levy regular  
3 assessments on assessable insurers under paragraph (g) and on  
4 assessable insureds in an amount equal to the greater of 10  
5 percent of the deficit or 10 percent of the aggregate  
6 statewide direct written premium for the subject lines of  
7 business for the prior calendar year. Any remaining deficit  
8 shall be recovered through emergency assessments under  
9 sub-subparagraph d.

10 c. Each assessable insurer's share of the amount being  
11 assessed under sub-subparagraph a. or sub-subparagraph b.  
12 shall be in the proportion that the assessable insurer's  
13 direct written premium for the subject lines of business for  
14 the year preceding the assessment bears to the aggregate  
15 statewide direct written premium for the subject lines of  
16 business for that year. The assessment percentage applicable  
17 to each assessable insured is the ratio of the amount being  
18 assessed under sub-subparagraph a. or sub-subparagraph b. to  
19 the aggregate statewide direct written premium for the subject  
20 lines of business for the prior year. Assessments levied by  
21 the corporation on assessable insurers under sub-subparagraphs  
22 a. and b. shall be paid as required by the corporation's plan  
23 of operation and paragraph (g). Assessments levied by the  
24 corporation on assessable insureds under sub-subparagraphs a.  
25 and b. shall be collected by the surplus lines agent at the  
26 time the surplus lines agent collects the surplus lines tax  
27 required by s. 626.932 and shall be paid to the Florida  
28 Surplus Lines Service Office at the time the surplus lines  
29 agent pays the surplus lines tax to the Florida Surplus Lines  
30 Service Office. Upon receipt of regular assessments from  
31 surplus lines agents, the Florida Surplus Lines Service Office

1 shall transfer the assessments directly to the corporation as  
2 determined by the corporation.

3 d. Upon a determination by the board of governors that  
4 a deficit in an account exceeds the amount that will be  
5 recovered through regular assessments under sub-subparagraph  
6 a. or sub-subparagraph b., the board shall levy, after  
7 verification by the office ~~department~~, emergency assessments,  
8 for as many years as necessary to cover the deficits, to be  
9 collected by assessable insurers and the corporation and  
10 collected from assessable insureds upon issuance or renewal of  
11 policies for subject lines of business, excluding National  
12 Flood Insurance policies. The amount of the emergency  
13 assessment collected in a particular year shall be a uniform  
14 percentage of that year's direct written premium for subject  
15 lines of business and all accounts of the corporation,  
16 excluding National Flood Insurance Program policy premiums, as  
17 annually determined by the board and verified by the office  
18 ~~department~~. The office ~~department~~ shall verify the arithmetic  
19 calculations involved in the board's determination within 30  
20 days after receipt of the information on which the  
21 determination was based. Notwithstanding any other provision  
22 of law, the corporation and each assessable insurer that  
23 writes subject lines of business shall collect emergency  
24 assessments from its policyholders without such obligation  
25 being affected by any credit, limitation, exemption, or  
26 deferment. Emergency assessments levied by the corporation on  
27 assessable insureds shall be collected by the surplus lines  
28 agent at the time the surplus lines agent collects the surplus  
29 lines tax required by s. 626.932 and shall be paid to the  
30 Florida Surplus Lines Service Office at the time the surplus  
31 lines agent pays the surplus lines tax to the Florida Surplus

1 Lines Service Office. The emergency assessments so collected  
2 shall be transferred directly to the corporation on a periodic  
3 basis as determined by the corporation and shall be held by  
4 the corporation solely in the applicable account. The  
5 aggregate amount of emergency assessments levied for an  
6 account under this sub-subparagraph in any calendar year may  
7 not exceed the greater of 10 percent of the amount needed to  
8 cover the original deficit, plus interest, fees, commissions,  
9 required reserves, and other costs associated with financing  
10 of the original deficit, or 10 percent of the aggregate  
11 statewide direct written premium for subject lines of business  
12 and for all accounts of the corporation for the prior year,  
13 plus interest, fees, commissions, required reserves, and other  
14 costs associated with financing the original deficit.

15 e. The corporation may pledge the proceeds of  
16 assessments, projected recoveries from the Florida Hurricane  
17 Catastrophe Fund, other insurance and reinsurance  
18 recoverables, market equalization surcharges and other  
19 surcharges, and other funds available to the corporation as  
20 the source of revenue for and to secure bonds issued under  
21 paragraph (g), bonds or other indebtedness issued under  
22 subparagraph (c)3., or lines of credit or other financing  
23 mechanisms issued or created under this subsection, or to  
24 retire any other debt incurred as a result of deficits or  
25 events giving rise to deficits, or in any other way that the  
26 board determines will efficiently recover such deficits. The  
27 purpose of the lines of credit or other financing mechanisms  
28 is to provide additional resources to assist the corporation  
29 in covering claims and expenses attributable to a catastrophe.  
30 As used in this subsection, the term "assessments" includes  
31 regular assessments under sub-subparagraph a.,

1 sub-subparagraph b., or subparagraph (g)1. and emergency  
2 assessments under sub-subparagraph d. Emergency assessments  
3 collected under sub-subparagraph d. are not part of an  
4 insurer's rates, are not premium, and are not subject to  
5 premium tax, fees, or commissions; however, failure to pay the  
6 emergency assessment shall be treated as failure to pay  
7 premium. The emergency assessments under sub-subparagraph d.  
8 shall continue as long as any bonds issued or other  
9 indebtedness incurred with respect to a deficit for which the  
10 assessment was imposed remain outstanding, unless adequate  
11 provision has been made for the payment of such bonds or other  
12 indebtedness pursuant to the documents governing such bonds or  
13 other indebtedness.

14 f. As used in this subsection, the term "subject lines  
15 of business" means insurance written by assessable insurers or  
16 procured by assessable insureds on real or personal property,  
17 as defined in s. 624.604, including insurance for fire,  
18 industrial fire, allied lines, farmowners multiperil,  
19 homeowners multiperil, commercial multiperil, and mobile  
20 homes, and including liability coverage on all such insurance,  
21 but excluding inland marine as defined in s. 624.607(3) and  
22 excluding vehicle insurance as defined in s. 624.605(1) other  
23 than insurance on mobile homes used as permanent dwellings.

24 g. The Florida Surplus Lines Service Office shall  
25 determine annually the aggregate statewide written premium in  
26 subject lines of business procured by assessable insureds and  
27 shall report that information to the corporation in a form and  
28 at a time the corporation specifies to ensure that the  
29 corporation can meet the requirements of this subsection and  
30 the corporation's financing obligations.

31

1           h. The Florida Surplus Lines Service Office shall  
2 verify the proper application by surplus lines agents of  
3 assessment percentages for regular assessments and emergency  
4 assessments levied under this subparagraph on assessable  
5 insureds and shall assist the corporation in ensuring the  
6 accurate, timely collection and payment of assessments by  
7 surplus lines agents as required by the corporation.

8           (c) The plan of operation of the corporation:

9           1. Must provide for adoption of residential property  
10 and casualty insurance policy forms and commercial residential  
11 and nonresidential property insurance forms, which forms must  
12 be approved by the office ~~department~~ prior to use. The  
13 corporation shall adopt the following policy forms:

14           a. Standard personal lines policy forms that are  
15 comprehensive multiperil policies providing full coverage of a  
16 residential property equivalent to the coverage provided in  
17 the private insurance market under an HO-3, HO-4, or HO-6  
18 policy.

19           b. Basic personal lines policy forms that are policies  
20 similar to an HO-8 policy or a dwelling fire policy that  
21 provide coverage meeting the requirements of the secondary  
22 mortgage market, but which coverage is more limited than the  
23 coverage under a standard policy.

24           c. Commercial lines residential policy forms that are  
25 generally similar to the basic perils of full coverage  
26 obtainable for commercial residential structures in the  
27 admitted voluntary market.

28           d. Personal lines and commercial lines residential  
29 property insurance forms that cover the peril of wind only.  
30 The forms are applicable only to residential properties  
31

1 | located in areas eligible for coverage under the high-risk  
2 | account referred to in sub-subparagraph (b)2.a.

3 |       e. Commercial lines nonresidential property insurance  
4 | forms that cover the peril of wind only. The forms are  
5 | applicable only to nonresidential properties located in areas  
6 | eligible for coverage under the high-risk account referred to  
7 | in sub-subparagraph (b)2.a.

8 |       2.a. Must provide that the corporation adopt a program  
9 | in which the corporation and authorized insurers enter into  
10 | quota share primary insurance agreements for hurricane  
11 | coverage, as defined in s. 627.4025(2)(a), for eligible risks,  
12 | and adopt property insurance forms for eligible risks which  
13 | cover the peril of wind only. As used in this subsection, the  
14 | term:

15 |       (I) "Quota share primary insurance" means an  
16 | arrangement in which the primary hurricane coverage of an  
17 | eligible risk is provided in specified percentages by the  
18 | corporation and an authorized insurer. The corporation and  
19 | authorized insurer are each solely responsible for a specified  
20 | percentage of hurricane coverage of an eligible risk as set  
21 | forth in a quota share primary insurance agreement between the  
22 | corporation and an authorized insurer and the insurance  
23 | contract. The responsibility of the corporation or authorized  
24 | insurer to pay its specified percentage of hurricane losses of  
25 | an eligible risk, as set forth in the quota share primary  
26 | insurance agreement, may not be altered by the inability of  
27 | the other party to the agreement to pay its specified  
28 | percentage of hurricane losses. Eligible risks that are  
29 | provided hurricane coverage through a quota share primary  
30 | insurance arrangement must be provided policy forms that set  
31 | forth the obligations of the corporation and authorized

1 insurer under the arrangement, clearly specify the percentages  
2 of quota share primary insurance provided by the corporation  
3 and authorized insurer, and conspicuously and clearly state  
4 that neither the authorized insurer nor the corporation may be  
5 held responsible beyond its specified percentage of coverage  
6 of hurricane losses.

7 (II) "Eligible risks" means personal lines residential  
8 and commercial lines residential risks that meet the  
9 underwriting criteria of the corporation and are located in  
10 areas that were eligible for coverage by the Florida Windstorm  
11 Underwriting Association on January 1, 2002.

12 b. The corporation may enter into quota share primary  
13 insurance agreements with authorized insurers at corporation  
14 coverage levels of 90 percent and 50 percent.

15 c. If the corporation determines that additional  
16 coverage levels are necessary to maximize participation in  
17 quota share primary insurance agreements by authorized  
18 insurers, the corporation may establish additional coverage  
19 levels. However, the corporation's quota share primary  
20 insurance coverage level may not exceed 90 percent.

21 d. Any quota share primary insurance agreement entered  
22 into between an authorized insurer and the corporation must  
23 provide for a uniform specified percentage of coverage of  
24 hurricane losses, by county or territory as set forth by the  
25 corporation board, for all eligible risks of the authorized  
26 insurer covered under the quota share primary insurance  
27 agreement.

28 e. Any quota share primary insurance agreement entered  
29 into between an authorized insurer and the corporation is  
30 subject to review and approval by the office ~~department~~.  
31 However, such agreement shall be authorized only as to

1 insurance contracts entered into between an authorized insurer  
2 and an insured who is already insured by the corporation for  
3 wind coverage.

4 f. For all eligible risks covered under quota share  
5 primary insurance agreements, the exposure and coverage levels  
6 for both the corporation and authorized insurers shall be  
7 reported by the corporation to the Florida Hurricane  
8 Catastrophe Fund. For all policies of eligible risks covered  
9 under quota share primary insurance agreements, the  
10 corporation and the authorized insurer shall maintain complete  
11 and accurate records for the purpose of exposure and loss  
12 reimbursement audits as required by Florida Hurricane  
13 Catastrophe Fund rules. The corporation and the authorized  
14 insurer shall each maintain duplicate copies of policy  
15 declaration pages and supporting claims documents.

16 g. The corporation board shall establish in its plan  
17 of operation standards for quota share agreements which ensure  
18 that there is no discriminatory application among insurers as  
19 to the terms of quota share agreements, pricing of quota share  
20 agreements, incentive provisions if any, and consideration  
21 paid for servicing policies or adjusting claims.

22 h. The quota share primary insurance agreement between  
23 the corporation and an authorized insurer must set forth the  
24 specific terms under which coverage is provided, including,  
25 but not limited to, the sale and servicing of policies issued  
26 under the agreement by the insurance agent of the authorized  
27 insurer producing the business, the reporting of information  
28 concerning eligible risks, the payment of premium to the  
29 corporation, and arrangements for the adjustment and payment  
30 of hurricane claims incurred on eligible risks by the claims  
31 adjuster and personnel of the authorized insurer. Entering

1 into a quota sharing insurance agreement between the  
2 corporation and an authorized insurer shall be voluntary and  
3 at the discretion of the authorized insurer.

4           3. May provide that the corporation may employ or  
5 otherwise contract with individuals or other entities to  
6 provide administrative or professional services that may be  
7 appropriate to effectuate the plan. The corporation shall have  
8 the power to borrow funds, by issuing bonds or by incurring  
9 other indebtedness, and shall have other powers reasonably  
10 necessary to effectuate the requirements of this subsection.  
11 The corporation may, but is not required to, seek judicial  
12 validation of its bonds or other indebtedness under chapter  
13 75. The corporation may issue bonds or incur other  
14 indebtedness, or have bonds issued on its behalf by a unit of  
15 local government pursuant to subparagraph (g)2., in the  
16 absence of a hurricane or other weather-related event, upon a  
17 determination by the corporation, subject to approval by the  
18 office ~~department~~, that such action would enable it to  
19 efficiently meet the financial obligations of the corporation  
20 and that such financings are reasonably necessary to  
21 effectuate the requirements of this subsection. The  
22 corporation is authorized to take all actions needed to  
23 facilitate tax-free status for any such bonds or indebtedness,  
24 including formation of trusts or other affiliated entities.  
25 The corporation shall have the authority to pledge  
26 assessments, projected recoveries from the Florida Hurricane  
27 Catastrophe Fund, other reinsurance recoverables, market  
28 equalization and other surcharges, and other funds available  
29 to the corporation as security for bonds or other  
30 indebtedness. In recognition of s. 10, Art. I of the State  
31 Constitution, prohibiting the impairment of obligations of

1 contracts, it is the intent of the Legislature that no action  
2 be taken whose purpose is to impair any bond indenture or  
3 financing agreement or any revenue source committed by  
4 contract to such bond or other indebtedness.

5 ~~4.a.~~ Must require that the corporation operate subject  
6 to the supervision and approval of a board of governors  
7 consisting of 7 individuals who are residents of this state,  
8 from different geographical areas of this state, appointed by  
9 the Chief Financial Officer ~~Treasurer~~. The Chief Financial  
10 Officer ~~Treasurer~~ shall designate one of the appointees as  
11 chair. All board members serve at the pleasure of the Chief  
12 Financial Officer ~~Treasurer~~. All board members, including the  
13 chair, must be appointed to serve for 3-year terms beginning  
14 annually on a date designated by the plan. Any board vacancy  
15 shall be filled for the unexpired term by the Chief Financial  
16 Officer ~~Treasurer~~. The Chief Financial Officer ~~Treasurer~~ shall  
17 appoint a technical advisory group to provide information and  
18 advice to the board of governors in connection with the  
19 board's duties under this subsection. The executive director  
20 and senior managers of the corporation shall be engaged by the  
21 Chief Financial Officer ~~Treasurer~~ and serve at the pleasure of  
22 the Chief Financial Officer ~~Treasurer~~. The executive director  
23 is responsible for employing other staff as the corporation  
24 may require, subject to review and concurrence by the Office  
25 of the Chief Financial Officer ~~Treasurer~~.

26 ~~b. To ensure the effective and efficient~~  
27 ~~implementation of this subsection, the Treasurer shall appoint~~  
28 ~~the board of governors by July 1, 2002. The board of governors~~  
29 ~~shall work in conjunction with the Residential Property~~  
30 ~~Insurance Market Coordinating Council to address appropriate~~  
31 ~~organizational, operational, and financial matters relating to~~

1 ~~the corporation. In addition, after consultation with the~~  
2 ~~Residential Property Insurance Market Coordinating Council,~~  
3 ~~the bond trustees and rating agencies, the Treasurer may~~  
4 ~~postpone for a period not to exceed 180 days after the~~  
5 ~~effective date, the implementation of the corporation or the~~  
6 ~~implementation of one or more of the provisions relating to~~  
7 ~~transfer of Florida Windstorm Underwriting Association~~  
8 ~~policies, obligations, rights, assets, and liabilities into~~  
9 ~~the high-risk accounts and such other provisions that may be~~  
10 ~~affected thereby if the Treasurer determines that postponement~~  
11 ~~is necessary:~~

12 ~~(I) Due to emergency conditions;~~

13 ~~(II) To ensure the effective and efficient~~  
14 ~~implementation of the corporation's operations; or~~

15 ~~(III) To maintain existing financing arrangements~~  
16 ~~without a material adverse effect on the creditors of the~~  
17 ~~Residential Property and Casualty Joint Underwriting~~  
18 ~~Association or the Florida Windstorm Underwriting Association.~~

19 5. Must provide a procedure for determining the  
20 eligibility of a risk for coverage, as follows:

21 a. Subject to the provisions of s. 627.3517, with  
22 respect to personal lines residential risks, if the risk is  
23 offered coverage from an authorized insurer at the insurer's  
24 approved rate under either a standard policy including wind  
25 coverage or, if consistent with the insurer's underwriting  
26 rules as filed with the office department, a basic policy  
27 including wind coverage, the risk is not eligible for any  
28 policy issued by the corporation association. If the risk is  
29 not able to obtain any such offer, the risk is eligible for  
30 either a standard policy including wind coverage or a basic  
31 policy including wind coverage issued by the corporation

1 ~~association~~; however, if the risk could not be insured under a  
2 standard policy including wind coverage regardless of market  
3 conditions, the risk shall be eligible for a basic policy  
4 including wind coverage unless rejected under subparagraph 8.  
5 The corporation ~~association~~ shall determine the type of policy  
6 to be provided on the basis of objective standards specified  
7 in the underwriting manual and based on generally accepted  
8 underwriting practices.

9 (I) If the risk accepts an offer of coverage through  
10 the market assistance plan or an offer of coverage through a  
11 mechanism established by the corporation ~~association~~ before a  
12 policy is issued to the risk by the corporation ~~association~~ or  
13 during the first 30 days of coverage by the corporation  
14 ~~association~~, and the producing agent who submitted the  
15 application to the plan or to the corporation ~~association~~ is  
16 not currently appointed by the insurer, the insurer shall:

17 (A) Pay to the producing agent of record of the  
18 policy, for the first year, an amount that is the greater of  
19 the insurer's usual and customary commission for the type of  
20 policy written or a fee equal to the usual and customary  
21 commission of the corporation ~~association~~; or

22 (B) Offer to allow the producing agent of record of  
23 the policy to continue servicing the policy for a period of  
24 not less than 1 year and offer to pay the agent the greater of  
25 the insurer's or the corporation's ~~association's~~ usual and  
26 customary commission for the type of policy written.

27  
28 If the producing agent is unwilling or unable to accept  
29 appointment, the new insurer shall pay the agent in accordance  
30 with sub-sub-sub-subparagraph (A).

31

1           (II) When the corporation ~~association~~ enters into a  
2 contractual agreement for a take-out plan, the producing agent  
3 of record of the corporation ~~association~~ policy is entitled to  
4 retain any unearned commission on the policy, and the insurer  
5 shall:

6           (A) Pay to the producing agent of record of the  
7 corporation ~~association~~ policy, for the first year, an amount  
8 that is the greater of the insurer's usual and customary  
9 commission for the type of policy written or a fee equal to  
10 the usual and customary commission of the corporation  
11 ~~association~~; or

12           (B) Offer to allow the producing agent of record of  
13 the corporation ~~association~~ policy to continue servicing the  
14 policy for a period of not less than 1 year and offer to pay  
15 the agent the greater of the insurer's or the corporation's  
16 ~~association's~~ usual and customary commission for the type of  
17 policy written.

18  
19 If the producing agent is unwilling or unable to accept  
20 appointment, the new insurer shall pay the agent in accordance  
21 with sub-sub-sub-subparagraph (A).

22           b. With respect to commercial lines residential risks,  
23 if the risk is offered coverage under a policy including wind  
24 coverage from an authorized insurer at its approved rate, the  
25 risk is not eligible for any policy issued by the corporation  
26 ~~association~~. If the risk is not able to obtain any such offer,  
27 the risk is eligible for a policy including wind coverage  
28 issued by the corporation ~~association~~.

29           (I) If the risk accepts an offer of coverage through  
30 the market assistance plan or an offer of coverage through a  
31 mechanism established by the corporation ~~association~~ before a

1 policy is issued to the risk by the corporation ~~association~~ or  
2 during the first 30 days of coverage by the corporation  
3 ~~association~~, and the producing agent who submitted the  
4 application to the plan or the corporation ~~association~~ is not  
5 currently appointed by the insurer, the insurer shall:

6 (A) Pay to the producing agent of record of the  
7 policy, for the first year, an amount that is the greater of  
8 the insurer's usual and customary commission for the type of  
9 policy written or a fee equal to the usual and customary  
10 commission of the corporation ~~association~~; or

11 (B) Offer to allow the producing agent of record of  
12 the policy to continue servicing the policy for a period of  
13 not less than 1 year and offer to pay the agent the greater of  
14 the insurer's or the corporation's ~~association's~~ usual and  
15 customary commission for the type of policy written.

16  
17 If the producing agent is unwilling or unable to accept  
18 appointment, the new insurer shall pay the agent in accordance  
19 with sub-sub-sub-paragraph (A).

20 (II) When the corporation ~~association~~ enters into a  
21 contractual agreement for a take-out plan, the producing agent  
22 of record of the corporation ~~association~~ policy is entitled to  
23 retain any unearned commission on the policy, and the insurer  
24 shall:

25 (A) Pay to the producing agent of record of the  
26 corporation ~~association~~ policy, for the first year, an amount  
27 that is the greater of the insurer's usual and customary  
28 commission for the type of policy written or a fee equal to  
29 the usual and customary commission of the corporation  
30 ~~association~~; or

31

1           (B) Offer to allow the producing agent of record of  
2 the corporation ~~association~~ policy to continue servicing the  
3 policy for a period of not less than 1 year and offer to pay  
4 the agent the greater of the insurer's or the corporation's  
5 ~~association's~~ usual and customary commission for the type of  
6 policy written.

7  
8 If the producing agent is unwilling or unable to accept  
9 appointment, the new insurer shall pay the agent in accordance  
10 with sub-sub-sub-subparagraph (A).

11           ~~c. This subparagraph does not require the association~~  
12 ~~to provide wind coverage or hurricane coverage in any area in~~  
13 ~~which such coverage is available through the Florida Windstorm~~  
14 ~~Underwriting Association.~~

15           6. Must include rules for classifications of risks and  
16 rates therefor.

17           7. Must provide that if premium and investment income  
18 for an account attributable to a particular calendar year are  
19 in excess of projected losses and expenses for the account  
20 attributable to that year, such excess shall be held in  
21 surplus in the account. Such surplus shall be available to  
22 defray deficits in that account as to future years and shall  
23 be used for that purpose prior to assessing assessable  
24 insurers and assessable insureds as to any calendar year.

25           8. Must provide objective criteria and procedures to  
26 be uniformly applied for all applicants in determining whether  
27 an individual risk is so hazardous as to be uninsurable. In  
28 making this determination and in establishing the criteria and  
29 procedures, the following shall be considered:

30  
31

1           a. Whether the likelihood of a loss for the individual  
2 risk is substantially higher than for other risks of the same  
3 class; and

4           b. Whether the uncertainty associated with the  
5 individual risk is such that an appropriate premium cannot be  
6 determined.

7  
8 The acceptance or rejection of a risk by the corporation shall  
9 be construed as the private placement of insurance, and the  
10 provisions of chapter 120 shall not apply.

11           9. Must provide that the corporation shall make its  
12 best efforts to procure catastrophe reinsurance at reasonable  
13 rates, as determined by the board of governors.

14           10. Must provide that in the event of regular deficit  
15 assessments under sub-subparagraph (b)3.a. or sub-subparagraph  
16 (b)3.b., in the personal lines account, the commercial lines  
17 residential account, or the high-risk account, the corporation  
18 shall levy upon corporation policyholders in its next rate  
19 filing, or by a separate rate filing solely for this purpose,  
20 a market equalization surcharge arising from a regular  
21 assessment in such account in a percentage equal to the total  
22 amount of such regular assessments divided by the aggregate  
23 statewide direct written premium for subject lines of business  
24 for the prior calendar year. Market equalization surcharges  
25 under this subparagraph are not considered premium and are not  
26 subject to commissions, fees, or premium taxes; however,  
27 failure to pay a market equalization surcharge shall be  
28 treated as failure to pay premium.

29           11. The policies issued by the corporation must  
30 provide that, if the corporation or the market assistance plan  
31 obtains an offer from an authorized insurer to cover the risk

1 at its approved rates, the risk is no longer eligible for  
2 renewal through the corporation.

3 12. Corporation policies and applications must include  
4 a notice that the corporation policy could, under this  
5 section, be replaced with a policy issued by an authorized  
6 insurer that does not provide coverage identical to the  
7 coverage provided by the corporation. The notice shall also  
8 specify that acceptance of corporation coverage creates a  
9 conclusive presumption that the applicant or policyholder is  
10 aware of this potential.

11 13. May establish, subject to approval by the office  
12 ~~department~~, different eligibility requirements and operational  
13 procedures for any line or type of coverage for any specified  
14 county or area if the board determines that such changes to  
15 the eligibility requirements and operational procedures are  
16 justified due to the voluntary market being sufficiently  
17 stable and competitive in such area or for such line or type  
18 of coverage and that consumers who, in good faith, are unable  
19 to obtain insurance through the voluntary market through  
20 ordinary methods would continue to have access to coverage  
21 from the corporation. When coverage is sought in connection  
22 with a real property transfer, such requirements and  
23 procedures shall not provide for an effective date of coverage  
24 later than the date of the closing of the transfer as  
25 established by the transferor, the transferee, and, if  
26 applicable, the lender.

27 14. Must provide that, with respect to the high-risk  
28 account, any assessable insurer with a surplus as to  
29 policyholders of \$25 million or less writing 25 percent or  
30 more of its total countrywide property insurance premiums in  
31 this state may petition the office ~~department~~, within the

1 first 90 days of each calendar year, to qualify as a limited  
2 apportionment company. In no event shall a limited  
3 apportionment company be required to participate in the  
4 portion of any assessment, within the high-risk account,  
5 pursuant to sub-subparagraph (b)3.a. or sub-subparagraph  
6 (b)3.b. in the aggregate which exceeds \$50 million after  
7 payment of available high-risk account funds in any calendar  
8 year. However, a limited apportionment company shall collect  
9 from its policyholders any emergency assessment imposed under  
10 sub-subparagraph (b)3.d. The plan shall provide that, if the  
11 office ~~department~~ determines that any regular assessment will  
12 result in an impairment of the surplus of a limited  
13 apportionment company, the office ~~department~~ may direct that  
14 all or part of such assessment be deferred as provided in  
15 subparagraph (g)4. However, there shall be no limitation or  
16 deferment of an emergency assessment to be collected from  
17 policyholders under sub-subparagraph (b)3.d.

18         15. Must provide that the corporation appoint as its  
19 licensed agents only those agents who also hold an appointment  
20 as defined in s. 626.104 with an insurer who at the time of  
21 the agent's initial appointment by the corporation is  
22 authorized to write and is actually writing personal lines  
23 residential property coverage, commercial residential property  
24 coverage, or commercial nonresidential property coverage  
25 within the state.

26         (d)1. It is the intent of the Legislature that the  
27 rates for coverage provided by the corporation be actuarially  
28 sound and not competitive with approved rates charged in the  
29 admitted voluntary market, so that the corporation functions  
30 as a residual market mechanism to provide insurance only when  
31 the insurance cannot be procured in the voluntary market.

1 Rates shall include an appropriate catastrophe loading factor  
2 that reflects the actual catastrophic exposure of the  
3 corporation.

4           2. For each county, the average rates of the  
5 corporation for each line of business for personal lines  
6 residential policies excluding rates for wind-only policies  
7 shall be no lower than the average rates charged by the  
8 insurer that had the highest average rate in that county among  
9 the 20 insurers with the greatest total direct written premium  
10 in the state for that line of business in the preceding year,  
11 except that with respect to mobile home coverages, the average  
12 rates of the corporation shall be no lower than the average  
13 rates charged by the insurer that had the highest average rate  
14 in that county among the 5 insurers with the greatest total  
15 written premium for mobile home owner's policies in the state  
16 in the preceding year.

17           3. Rates for personal lines residential wind-only  
18 policies must be actuarially sound and not competitive with  
19 approved rates charged by authorized insurers. However, for  
20 personal lines residential wind-only policies issued or  
21 renewed between July 1, 2002, and June 30, 2003, the maximum  
22 premium increase must be no greater than 10 percent of the  
23 Florida Windstorm Underwriting Association premium for that  
24 policy in effect on June 30, 2002, as adjusted for coverage  
25 changes and seasonal occupancy surcharges. The personal lines  
26 residential wind-only rates for the corporation effective July  
27 1, 2003, must be based on a rate filing by the corporation  
28 which establishes rates which are actuarially sound and not  
29 competitive with approved rates charged by authorized  
30 insurers. Corporation rate manuals shall include a rate  
31 surcharge for seasonal occupancy. To ensure that personal

1 lines residential wind-only rates effective on or after July  
2 1, 2003, are not competitive with approved rates charged by  
3 authorized insurers, the office department, by March 1 of each  
4 year, shall provide the corporation, for each county in which  
5 there are geographical areas in which personal lines  
6 residential wind-only policies may be issued, the average  
7 rates charged by the insurer that had the highest average rate  
8 in that county for wind coverage in that insurer's rating  
9 territories which most closely approximate the geographical  
10 area in that county in which personal lines residential  
11 wind-only policies may be written by the corporation. The  
12 average rates provided must be from an insurer among the 20  
13 insurers with the greatest total direct written premium in the  
14 state for personal lines residential property insurance for  
15 the preceding year. With respect to mobile homes, the five  
16 insurers with the greatest total written premium for that line  
17 of business in the preceding year shall be used. The  
18 corporation shall certify to the office department that its  
19 average personal lines residential wind-only rates are no  
20 lower in each county than the average rates provided by the  
21 office department. The commission may department is authorized  
22 ~~to~~ adopt rules to establish reporting requirements to obtain  
23 the necessary wind-only rate information from insurers to  
24 implement this provision.

25 4. Rates for commercial lines coverage shall not be  
26 subject to the requirements of subparagraph 2., but shall be  
27 subject to all other requirements of this paragraph and s.  
28 627.062.

29 5. Nothing in this paragraph shall require or allow  
30 the corporation to adopt a rate that is inadequate under s.  
31 627.062.

1           6. The corporation shall make a rate filing at least  
2 once a year, but no more often than quarterly.

3           7. In addition to the rates otherwise determined  
4 pursuant to this paragraph, the corporation shall impose and  
5 collect an amount equal to the premium tax provided for in s.  
6 624.509 to augment the financial resources of the corporation.

7           (e) If coverage in an account is deactivated pursuant  
8 to paragraph (f), coverage through the corporation shall be  
9 reactivated by order of the office ~~department~~ only under one  
10 of the following circumstances:

11           1. If the market assistance plan receives a minimum of  
12 100 applications for coverage within a 3-month period, or 200  
13 applications for coverage within a 1-year period or less for  
14 residential coverage, unless the market assistance plan  
15 provides a quotation from admitted carriers at their filed  
16 rates for at least 90 percent of such applicants. Any market  
17 assistance plan application that is rejected because an  
18 individual risk is so hazardous as to be uninsurable using the  
19 criteria specified in subparagraph (c)8. shall not be included  
20 in the minimum percentage calculation provided herein. In the  
21 event that there is a legal or administrative challenge to a  
22 determination by the office ~~department~~ that the conditions of  
23 this subparagraph have been met for eligibility for coverage  
24 in the corporation, any eligible risk may obtain coverage  
25 during the pendency of such challenge.

26           2. In response to a state of emergency declared by the  
27 Governor under s. 252.36, the office ~~department~~ may activate  
28 coverage by order for the period of the emergency upon a  
29 finding by the office ~~department~~ that the emergency  
30 significantly affects the availability of residential property  
31 insurance.

1           (f)1. The corporation shall file with the office  
2 ~~department~~ quarterly statements of financial condition, an  
3 annual statement of financial condition, and audited financial  
4 statements in the manner prescribed by law. In addition, the  
5 corporation shall report to the office ~~department~~ monthly on  
6 the types, premium, exposure, and distribution by county of  
7 its policies in force, and shall submit other reports as the  
8 office ~~department~~ requires to carry out its oversight of the  
9 corporation.

10           2. The activities of the corporation shall be reviewed  
11 at least annually by the office ~~department~~ to determine  
12 whether coverage shall be deactivated in an account on the  
13 basis that the conditions giving rise to its activation no  
14 longer exist.

15           (g)1. The corporation shall certify to the office  
16 ~~department~~ its needs for annual assessments as to a particular  
17 calendar year, and for any interim assessments that it deems  
18 to be necessary to sustain operations as to a particular year  
19 pending the receipt of annual assessments. Upon verification,  
20 the office ~~department~~ shall approve such certification, and  
21 the corporation shall levy such annual or interim assessments.  
22 Such assessments shall be prorated as provided in paragraph  
23 (b). The corporation shall take all reasonable and prudent  
24 steps necessary to collect the amount of assessment due from  
25 each assessable insurer, including, if prudent, filing suit to  
26 collect such assessment. If the corporation is unable to  
27 collect an assessment from any assessable insurer, the  
28 uncollected assessments shall be levied as an additional  
29 assessment against the assessable insurers and any assessable  
30 insurer required to pay an additional assessment as a result  
31 of such failure to pay shall have a cause of action against

1 such nonpaying assessable insurer. Assessments shall be  
2 included as an appropriate factor in the making of rates. The  
3 failure of a surplus lines agent to collect and remit any  
4 regular or emergency assessment levied by the corporation is  
5 considered to be a violation of s. 626.936 and subjects the  
6 surplus lines agent to the penalties provided in that section.

7         2. The governing body of any unit of local government,  
8 any residents of which are insured by the corporation, may  
9 issue bonds as defined in s. 125.013 or s. 166.101 from time  
10 to time to fund an assistance program, in conjunction with the  
11 corporation, for the purpose of defraying deficits of the  
12 corporation. In order to avoid needless and indiscriminate  
13 proliferation, duplication, and fragmentation of such  
14 assistance programs, any unit of local government, any  
15 residents of which are insured by the corporation, may provide  
16 for the payment of losses, regardless of whether or not the  
17 losses occurred within or outside of the territorial  
18 jurisdiction of the local government. Revenue bonds under this  
19 subparagraph may not be issued until validated pursuant to  
20 chapter 75, unless a state of emergency is declared by  
21 executive order or proclamation of the Governor pursuant to s.  
22 252.36 making such findings as are necessary to determine that  
23 it is in the best interests of, and necessary for, the  
24 protection of the public health, safety, and general welfare  
25 of residents of this state and declaring it an essential  
26 public purpose to permit certain municipalities or counties to  
27 issue such bonds as will permit relief to claimants and  
28 policyholders of the corporation. Any such unit of local  
29 government may enter into such contracts with the corporation  
30 and with any other entity created pursuant to this subsection  
31 as are necessary to carry out this paragraph. Any bonds issued

1 under this subparagraph shall be payable from and secured by  
2 moneys received by the corporation from emergency assessments  
3 under sub-subparagraph (b)3.d., and assigned and pledged to or  
4 on behalf of the unit of local government for the benefit of  
5 the holders of such bonds. The funds, credit, property, and  
6 taxing power of the state or of the unit of local government  
7 shall not be pledged for the payment of such bonds. If any of  
8 the bonds remain unsold 60 days after issuance, the office  
9 ~~department~~ shall require all insurers subject to assessment to  
10 purchase the bonds, which shall be treated as admitted assets;  
11 each insurer shall be required to purchase that percentage of  
12 the unsold portion of the bond issue that equals the insurer's  
13 relative share of assessment liability under this subsection.  
14 An insurer shall not be required to purchase the bonds to the  
15 extent that the office ~~department~~ determines that the purchase  
16 would endanger or impair the solvency of the insurer.

17 3.a. The corporation shall adopt one or more programs  
18 subject to approval by the office ~~department~~ for the reduction  
19 of both new and renewal writings in the corporation. The  
20 corporation may consider any prudent and not unfairly  
21 discriminatory approach to reducing corporation writings, and  
22 may adopt a credit against assessment liability or other  
23 liability that provides an incentive for insurers to take  
24 risks out of the corporation and to keep risks out of the  
25 corporation by maintaining or increasing voluntary writings in  
26 counties or areas in which corporation risks are highly  
27 concentrated and a program to provide a formula under which an  
28 insurer voluntarily taking risks out of the corporation by  
29 maintaining or increasing voluntary writings will be relieved  
30 wholly or partially from assessments under sub-subparagraphs  
31 (b)3.a. and b. When the corporation enters into a contractual

1 agreement for a take-out plan, the producing agent of record  
2 of the corporation policy is entitled to retain any unearned  
3 commission on such policy, and the insurer shall either:

4 (I) Pay to the producing agent of record of the  
5 policy, for the first year, an amount which is the greater of  
6 the insurer's usual and customary commission for the type of  
7 policy written or a policy fee equal to the usual and  
8 customary commission of the corporation; or

9 (II) Offer to allow the producing agent of record of  
10 the policy to continue servicing the policy for a period of  
11 not less than 1 year and offer to pay the agent the insurer's  
12 usual and customary commission for the type of policy written.  
13 If the producing agent is unwilling or unable to accept  
14 appointment by the new insurer, the new insurer shall pay the  
15 agent in accordance with sub-sub-subparagraph (I).

16 b. Any credit or exemption from regular assessments  
17 adopted under this subparagraph shall last no longer than the  
18 3 years following the cancellation or expiration of the policy  
19 by the corporation. With the approval of the office  
20 ~~department~~, the board may extend such credits for an  
21 additional year if the insurer guarantees an additional year  
22 of renewability for all policies removed from the corporation,  
23 or for 2 additional years if the insurer guarantees 2  
24 additional years of renewability for all policies so removed.

25 c. There shall be no credit, limitation, exemption, or  
26 deferment from emergency assessments to be collected from  
27 policyholders pursuant to sub-subparagraph (b)3.d.

28 4. The plan shall provide for the deferment, in whole  
29 or in part, of the assessment of an assessable insurer, other  
30 than an emergency assessment collected from policyholders  
31 pursuant to sub-subparagraph (b)3.d., if the office ~~department~~

1 finds that payment of the assessment would endanger or impair  
2 the solvency of the insurer. In the event an assessment  
3 against an assessable insurer is deferred in whole or in part,  
4 the amount by which such assessment is deferred may be  
5 assessed against the other assessable insurers in a manner  
6 consistent with the basis for assessments set forth in  
7 paragraph (b).

8 (h) Nothing in this subsection shall be construed to  
9 preclude the issuance of residential property insurance  
10 coverage pursuant to part VIII of chapter 626.

11 (i) There shall be no liability on the part of, and no  
12 cause of action of any nature shall arise against, any  
13 assessable insurer or its agents or employees, the corporation  
14 or its agents or employees, members of the board of governors  
15 or their respective designees at a board meeting, corporation  
16 committee members, or the office ~~department~~ or its  
17 representatives, for any action taken by them in the  
18 performance of their duties or responsibilities under this  
19 subsection. Such immunity does not apply to:

20 1. Any of the foregoing persons or entities for any  
21 willful tort;

22 2. The corporation or its producing agents for breach  
23 of any contract or agreement pertaining to insurance coverage;

24 3. The corporation with respect to issuance or payment  
25 of debt; or

26 4. Any assessable insurer with respect to any action  
27 to enforce an assessable insurer's obligations to the  
28 corporation under this subsection.

29 (j) For the purposes of s. 199.183(1), the corporation  
30 shall be considered a political subdivision of the state and  
31 shall be exempt from the corporate income tax. The premiums,

1 assessments, investment income, and other revenue of the  
2 corporation are funds received for providing property  
3 insurance coverage as required by this subsection, paying  
4 claims for Florida citizens insured by the corporation,  
5 securing and repaying debt obligations issued by the  
6 corporation, and conducting all other activities of the  
7 corporation, and shall not be considered taxes, fees,  
8 licenses, or charges for services imposed by the Legislature  
9 on individuals, businesses, or agencies outside state  
10 government. Bonds and other debt obligations issued by or on  
11 behalf of the corporation are not to be considered "state  
12 bonds" within the meaning of s. 215.58(8)~~s. 215.58(10)~~. The  
13 corporation is not subject to the procurement provisions of  
14 chapter 287, and policies and decisions of the corporation  
15 relating to incurring debt, levying of assessments and the  
16 sale, issuance, continuation, terms and claims under  
17 corporation policies, and all services relating thereto, are  
18 not subject to the provisions of chapter 120. The corporation  
19 is not required to obtain or to hold a certificate of  
20 authority issued by the office ~~department~~, nor is it required  
21 to participate as a member insurer of the Florida Insurance  
22 Guaranty Association. However, the corporation is required to  
23 pay, in the same manner as an authorized insurer, assessments  
24 pledged by the Florida Insurance Guaranty Association to  
25 secure bonds issued or other indebtedness incurred to pay  
26 covered claims arising from insurer insolvencies caused by, or  
27 proximately related to, hurricane losses. It is the intent of  
28 the Legislature that the tax exemptions provided in this  
29 paragraph will augment the financial resources of the  
30 corporation to better enable the corporation to fulfill its  
31 public purposes. Any bonds issued by the corporation, their

1 transfer, and the income therefrom, including any profit made  
2 on the sale thereof, shall at all times be free from taxation  
3 of every kind by the state and any political subdivision or  
4 local unit or other instrumentality thereof; however, this  
5 exemption does not apply to any tax imposed by chapter 220  
6 ~~chapter 200~~ on interest, income, or profits on debt  
7 obligations owned by corporations other than the corporation.

8 (k) Upon a determination by the office ~~department~~ that  
9 the conditions giving rise to the establishment and activation  
10 of the corporation no longer exist, the corporation is  
11 dissolved. Upon dissolution, the assets of the corporation  
12 ~~association~~ shall be applied first to pay all debts,  
13 liabilities, and obligations of the corporation, including the  
14 establishment of reasonable reserves for any contingent  
15 liabilities or obligations, and all remaining assets of the  
16 corporation shall become property of the state and be  
17 deposited in the Florida Hurricane Catastrophe Fund. However,  
18 no dissolution shall take effect as long as the corporation  
19 has bonds or other financial obligations outstanding unless  
20 adequate provision has been made for the payment of the bonds  
21 or other financial obligations pursuant to the documents  
22 authorizing the issuance of the bonds or other financial  
23 obligations.

24 (l)1. Effective July 1, 2002, policies of the  
25 Residential Property and Casualty Joint Underwriting  
26 Association shall become policies of the corporation. All  
27 obligations, rights, assets and liabilities of the Residential  
28 Property and Casualty Joint Underwriting Association,  
29 including bonds, note and debt obligations, and the financing  
30 documents pertaining to them become those of the corporation  
31 as of July 1, 2002. The corporation is not required to issue

1 endorsements or certificates of assumption to insureds during  
2 the remaining term of in-force transferred policies.

3         2. Effective July 1, 2002, policies of the Florida  
4 Windstorm Underwriting Association are transferred to the  
5 corporation and shall become policies of the corporation. All  
6 obligations, rights, assets, and liabilities of the Florida  
7 Windstorm Underwriting Association, including bonds, note, and  
8 debt obligations, and the financing documents pertaining to  
9 them are transferred to and assumed by the corporation on July  
10 1, 2002. The corporation is not required to issue endorsement  
11 or certificates of assumption to insureds during the remaining  
12 term of in-force transferred policies.

13         3. The Florida Windstorm Underwriting Association and  
14 the Residential Property and Casualty Joint Underwriting  
15 Association shall take all actions as may be proper to further  
16 evidence the transfers and shall provide the documents and  
17 instruments of further assurance as may reasonably be  
18 requested by the corporation for that purpose. The corporation  
19 shall execute assumptions and instruments as the trustees or  
20 other parties to the financing documents of the Florida  
21 Windstorm Underwriting Association or the Residential Property  
22 and Casualty Joint Underwriting Association may reasonably  
23 request to further evidence the transfers and assumptions,  
24 which transfers and assumptions, however, are effective on the  
25 date provided under this paragraph whether or not, and  
26 regardless of the date on which, the assumptions or  
27 instruments are executed by the corporation. Subject to the  
28 relevant financing documents pertaining to their outstanding  
29 bonds, notes, indebtedness, or other financing obligations,  
30 the moneys, investments, receivables, choses in action, and  
31 other intangibles of the Florida Windstorm Underwriting

1 Association shall be credited to the high-risk account of the  
2 corporation, and those of the personal lines residential  
3 coverage account and the commercial lines residential coverage  
4 account of the Residential Property and Casualty Joint  
5 Underwriting Association shall be credited to the personal  
6 lines account and the commercial lines account, respectively,  
7 of the corporation.

8           4. Effective July 1, 2002, a new applicant for  
9 property insurance coverage who would otherwise have been  
10 eligible for coverage in the Florida Windstorm Underwriting  
11 Association is eligible for coverage from the corporation as  
12 provided in this subsection.

13           5. The transfer of all policies, obligations, rights,  
14 assets, and liabilities from the Florida Windstorm  
15 Underwriting Association to the corporation and the renaming  
16 of the Residential Property and Casualty Joint Underwriting  
17 Association as the corporation shall in no way affect the  
18 coverage with respect to covered policies as defined in s.  
19 215.555(2)(c) provided to these entities by the Florida  
20 Hurricane Catastrophe Fund. The coverage provided by the  
21 Florida Hurricane Catastrophe Fund to the Florida Windstorm  
22 Underwriting Association based on its exposures as of June 30,  
23 2002, and each June 30 thereafter shall be redesignated as  
24 coverage for the high-risk account of the corporation.  
25 Notwithstanding any other provision of law, the coverage  
26 provided by the Florida Hurricane Catastrophe Fund to the  
27 Residential Property and Casualty Joint Underwriting  
28 Association based on its exposures as of June 30, 2002, and  
29 each June 30 thereafter shall be transferred to the personal  
30 lines account and the commercial lines account of the  
31 corporation. Notwithstanding any other provision of law, the

1 high-risk account shall be treated, for all Florida Hurricane  
2 Catastrophe Fund purposes, as if it were a separate  
3 participating insurer with its own exposures, reimbursement  
4 premium, and loss reimbursement. Likewise, the personal lines  
5 and commercial lines accounts shall be viewed together, for  
6 all Florida Hurricane Catastrophe Fund purposes, as if the two  
7 accounts were one and represent a single, separate  
8 participating insurer with its own exposures, reimbursement  
9 premium, and loss reimbursement. The coverage provided by the  
10 Florida Hurricane Catastrophe Fund to the corporation shall  
11 constitute and operate as a full transfer of coverage from the  
12 Florida Windstorm Underwriting Association and Residential  
13 Property and Casualty Joint Underwriting to the corporation.

14 (m) Notwithstanding any other provision of law:

15 1. The pledge or sale of, the lien upon, and the  
16 security interest in any rights, revenues, or other assets of  
17 the corporation created or purported to be created pursuant to  
18 any financing documents to secure any bonds or other  
19 indebtedness of the corporation shall be and remain valid and  
20 enforceable, notwithstanding the commencement of and during  
21 the continuation of, and after, any rehabilitation,  
22 insolvency, liquidation, bankruptcy, receivership,  
23 conservatorship, reorganization, or similar proceeding against  
24 the corporation under the laws of this state.

25 2. No such proceeding shall relieve the corporation of  
26 its obligation, or otherwise affect its ability to perform its  
27 obligation, to continue to collect, or levy and collect,  
28 assessments, market equalization or other surcharges under  
29 subparagraph (c)10., or any other rights, revenues, or other  
30 assets of the corporation pledged pursuant to any financing  
31 documents.

1           3. Each such pledge or sale of, lien upon, and  
2 security interest in, including the priority of such pledge,  
3 lien, or security interest, any such assessments, market  
4 equalization or other surcharges, or other rights, revenues,  
5 or other assets which are collected, or levied and collected,  
6 after the commencement of and during the pendency of, or  
7 after, any such proceeding shall continue unaffected by such  
8 proceeding. As used in this subsection, the term "financing  
9 documents" means any agreement or agreements, instrument or  
10 instruments, or other document or documents now existing or  
11 hereafter created evidencing any bonds or other indebtedness  
12 of the corporation or pursuant to which any such bonds or  
13 other indebtedness has been or may be issued and pursuant to  
14 which any rights, revenues, or other assets of the corporation  
15 are pledged or sold to secure the repayment of such bonds or  
16 indebtedness, together with the payment of interest on such  
17 bonds or such indebtedness, or the payment of any other  
18 obligation or financial product, as defined in the plan of  
19 operation of the corporation related to such bonds or  
20 indebtedness.

21           4. Any such pledge or sale of assessments, revenues,  
22 contract rights, or other rights or assets of the corporation  
23 shall constitute a lien and security interest, or sale, as the  
24 case may be, that is immediately effective and attaches to  
25 such assessments, revenues, or contract rights or other rights  
26 or assets, whether or not imposed or collected at the time the  
27 pledge or sale is made. Any such pledge or sale is effective,  
28 valid, binding, and enforceable against the corporation or  
29 other entity making such pledge or sale, and valid and binding  
30 against and superior to any competing claims or obligations  
31 owed to any other person or entity, including policyholders in

1 this state, asserting rights in any such assessments,  
2 revenues, or contract rights or other rights or assets to the  
3 extent set forth in and in accordance with the terms of the  
4 pledge or sale contained in the applicable financing  
5 documents, whether or not any such person or entity has notice  
6 of such pledge or sale and without the need for any physical  
7 delivery, recordation, filing, or other action.

8 (n)1. The following records of the corporation are  
9 confidential and exempt from the provisions of s. 119.07(1)  
10 and s. 24(a), Art. I of the State Constitution:

11 a. Underwriting files, except that a policyholder or  
12 an applicant shall have access to his or her own underwriting  
13 files.

14 b. Claims files, until termination of all litigation  
15 and settlement of all claims arising out of the same incident,  
16 although portions of the claims files may remain exempt, as  
17 otherwise provided by law. Confidential and exempt claims file  
18 records may be released to other governmental agencies upon  
19 written request and demonstration of need; such records held  
20 by the receiving agency remain confidential and exempt as  
21 provided for herein.

22 c. Records obtained or generated by an internal  
23 auditor pursuant to a routine audit, until the audit is  
24 completed, or if the audit is conducted as part of an  
25 investigation, until the investigation is closed or ceases to  
26 be active. An investigation is considered "active" while the  
27 investigation is being conducted with a reasonable, good faith  
28 belief that it could lead to the filing of administrative,  
29 civil, or criminal proceedings.

30 d. Matters reasonably encompassed in privileged  
31 attorney-client communications.

1 e. Proprietary information licensed to the corporation  
2 under contract and the contract provides for the  
3 confidentiality of such proprietary information.

4 f. All information relating to the medical condition  
5 or medical status of a corporation employee which is not  
6 relevant to the employee's capacity to perform his or her  
7 duties, except as otherwise provided in this paragraph.  
8 Information which is exempt shall include, but is not limited  
9 to, information relating to workers' compensation, insurance  
10 benefits, and retirement or disability benefits.

11 g. Upon an employee's entrance into the employee  
12 assistance program, a program to assist any employee who has a  
13 behavioral or medical disorder, substance abuse problem, or  
14 emotional difficulty which affects the employee's job  
15 performance, all records relative to that participation shall  
16 be confidential and exempt from the provisions of s. 119.07(1)  
17 and s. 24(a), Art. I of the State Constitution, except as  
18 otherwise provided in s. 112.0455(11).

19 h. Information relating to negotiations for financing,  
20 reinsurance, depopulation, or contractual services, until the  
21 conclusion of the negotiations.

22 i. Minutes of closed meetings regarding underwriting  
23 files, and minutes of closed meetings regarding an open claims  
24 file until termination of all litigation and settlement of all  
25 claims with regard to that claim, except that information  
26 otherwise confidential or exempt by law will be redacted.

27  
28 When an authorized insurer is considering underwriting a risk  
29 insured by the corporation, relevant underwriting files and  
30 confidential claims files may be released to the insurer  
31 provided the insurer agrees in writing, notarized and under

1 oath, to maintain the confidentiality of such files. When a  
2 file is transferred to an insurer that file is no longer a  
3 public record because it is not held by an agency subject to  
4 the provisions of the public records law. Underwriting files  
5 and confidential claims files may also be released to staff of  
6 and the board of governors of the market assistance plan  
7 established pursuant to s. 627.3515, who must retain the  
8 confidentiality of such files, except such files may be  
9 released to authorized insurers that are considering assuming  
10 the risks to which the files apply, provided the insurer  
11 agrees in writing, notarized and under oath, to maintain the  
12 confidentiality of such files. Finally, the corporation or  
13 the board or staff of the market assistance plan may make the  
14 following information obtained from underwriting files and  
15 confidential claims files available to licensed general lines  
16 insurance agents: name, address, and telephone number of the  
17 residential property owner or insured; location of the risk;  
18 rating information; loss history; and policy type. The  
19 receiving licensed general lines insurance agent must retain  
20 the confidentiality of the information received.

21 2. Portions of meetings of the corporation are exempt  
22 from the provisions of s. 286.011 and s. 24(b), Art. I of the  
23 State Constitution wherein confidential underwriting files or  
24 confidential open claims files are discussed. All portions of  
25 corporation meetings which are closed to the public shall be  
26 recorded by a court reporter. The court reporter shall record  
27 the times of commencement and termination of the meeting, all  
28 discussion and proceedings, the names of all persons present  
29 at any time, and the names of all persons speaking. No  
30 portion of any closed meeting shall be off the record.  
31 Subject to the provisions hereof and s. 119.07(2)(a), the

1 court reporter's notes of any closed meeting shall be retained  
2 by the corporation for a minimum of 5 years. A copy of the  
3 transcript, less any exempt matters, of any closed meeting  
4 wherein claims are discussed shall become public as to  
5 individual claims after settlement of the claim.

6 (o) It is the intent of the Legislature that the  
7 amendments to this subsection enacted in 2002 should, over  
8 time, reduce the probable maximum windstorm losses in the  
9 residual markets and should reduce the potential assessments  
10 to be levied on property insurers and policyholders statewide.  
11 In furtherance of this intent:

12 1. The board shall, on or before February 1 of each  
13 year, provide a report to the President of the Senate and the  
14 Speaker of the House of Representatives showing the reduction  
15 or increase in the 100-year probable maximum loss attributable  
16 to wind-only coverages and the quota share program under this  
17 subsection combined, as compared to the benchmark 100-year  
18 probable maximum loss of the Florida Windstorm Underwriting  
19 Association. For purposes of this paragraph, the benchmark  
20 100-year probable maximum loss of the Florida Windstorm  
21 Underwriting Association shall be the calculation dated  
22 February 2001 and based on November 30, 2000, exposures. In  
23 order to ensure comparability of data, the board shall use the  
24 same methods for calculating its probable maximum loss as were  
25 used to calculate the benchmark probable maximum loss.

26 2. Beginning February 1, 2007, if the report under  
27 subparagraph 1. for any year indicates that the 100-year  
28 probable maximum loss attributable to wind-only coverages and  
29 the quota share program combined does not reflect a reduction  
30 of at least 25 percent from the benchmark, the board shall  
31 reduce the boundaries of the high-risk area eligible for

1 wind-only coverages under this subsection in a manner  
2 calculated to reduce such probable maximum loss to an amount  
3 at least 25 percent below the benchmark.

4           3. Beginning February 1, 2012, if the report under  
5 subparagraph 1. for any year indicates that the 100-year  
6 probable maximum loss attributable to wind-only coverages and  
7 the quota share program combined does not reflect a reduction  
8 of at least 50 percent from the benchmark, the boundaries of  
9 the high-risk area eligible for wind-only coverages under this  
10 subsection shall be reduced by the elimination of any area  
11 that is not seaward of a line 1,000 feet inland from the  
12 Intracoastal Waterway.

13           (p) In enacting the provisions of this section, the  
14 Legislature recognizes that both the Florida Windstorm  
15 Underwriting Association and the Residential Property and  
16 Casualty Joint Underwriting Association have entered into  
17 financing arrangements that obligate each entity to service  
18 its debts and maintain the capacity to repay funds secured  
19 under these financing arrangements. It is the intent of the  
20 Legislature that nothing in this section be construed to  
21 compromise, diminish, or interfere with the rights of  
22 creditors under such financing arrangements. It is further the  
23 intent of the Legislature to preserve the obligations of the  
24 Florida Windstorm Underwriting Association and Residential  
25 Property and Casualty Joint Underwriting Association with  
26 regard to outstanding financing arrangements, with such  
27 obligations passing entirely and unchanged to the corporation  
28 and, specifically, to the applicable account of the  
29 corporation. So long as any bonds, notes, indebtedness, or  
30 other financing obligations of the Florida Windstorm  
31 Underwriting Association or the Residential Property and

1 Casualty Joint Underwriting Association are outstanding, under  
2 the terms of the financing documents pertaining to them, the  
3 governing board of the corporation shall have and shall  
4 exercise the authority to levy, charge, collect, and receive  
5 all premiums, assessments, surcharges, charges, revenues, and  
6 receipts that the associations had authority to levy, charge,  
7 collect, or receive under the provisions of subsection (2) and  
8 this subsection, respectively, as they existed on January 1,  
9 2002, to provide moneys, without exercise of the authority  
10 provided by this subsection, in at least the amounts, and by  
11 the times, as would be provided under those former provisions  
12 of subsection (2) or this subsection, respectively, so that  
13 the value, amount, and collectability of any assets, revenues,  
14 or revenue source pledged or committed to, or any lien thereon  
15 securing such outstanding bonds, notes, indebtedness, or other  
16 financing obligations will not be diminished, impaired, or  
17 adversely affected by the amendments made by this act and to  
18 permit compliance with all provisions of financing documents  
19 pertaining to such bonds, notes, indebtedness, or other  
20 financing obligations, or the security or credit enhancement  
21 for them, and any reference in this subsection to bonds,  
22 notes, indebtedness, financing obligations, or similar  
23 obligations, of the corporation shall include like instruments  
24 or contracts of the Florida Windstorm Underwriting Association  
25 and the Residential Property and Casualty Joint Underwriting  
26 Association to the extent not inconsistent with the provisions  
27 of the financing documents pertaining to them.

28 ~~(q) Effective January 7, 2003, any reference in this~~  
29 ~~subsection to the Treasurer shall be deemed to be a reference~~  
30 ~~to the Chief Financial Officer and any reference to the~~  
31 ~~Department of Insurance shall be deemed to be a reference to~~

1 ~~the Department of Insurance and Financial Services or other~~  
2 ~~successor to the Department of Insurance specified by law.~~

3       (g)~~(r)~~ The corporation shall not require the securing  
4 of flood insurance as a condition of coverage if the insured  
5 or applicant executes a form approved by the office ~~department~~  
6 affirming that flood insurance is not provided by the  
7 corporation and that if flood insurance is not secured by the  
8 applicant or insured in addition to coverage by the  
9 corporation, the risk will not be covered for flood damage. A  
10 corporation policyholder electing not to secure flood  
11 insurance and executing a form as provided herein making a  
12 claim for water damage against the corporation shall have the  
13 burden of proving the damage was not caused by flooding.  
14 Notwithstanding other provisions of this subsection, the  
15 corporation may deny coverage to an applicant or insured who  
16 refuses to execute the form described herein.

17       Section 1102. Section 627.3511, Florida Statutes, is  
18 amended to read:

19       627.3511 Depopulation of Citizens Property Insurance  
20 Corporation Residential Property and Casualty Joint  
21 ~~Underwriting Association.~~--

22       (1) LEGISLATIVE INTENT.--The Legislature finds that  
23 the public policy of this state requires the maintenance of a  
24 residual market for residential property insurance. It is the  
25 intent of the Legislature to provide a variety of financial  
26 incentives to encourage the replacement of the highest  
27 possible number of Citizens Property Insurance Corporation  
28 ~~Residential Property and Casualty Joint Underwriting~~  
29 ~~Association~~ policies with policies written by admitted  
30 insurers at approved rates.

31

1           (2) TAKE-OUT BONUS.--The Citizens Property Insurance  
2 Corporation Residential Property and Casualty Joint  
3 ~~Underwriting Association~~ shall pay the sum of up to \$100 to an  
4 insurer for each risk that the insurer removes from the  
5 corporation association, either by issuance of a policy upon  
6 expiration or cancellation of the corporation association  
7 policy or by assumption of the corporation's association's  
8 obligations with respect to an in-force policy. Such payment  
9 is subject to approval of the corporation association board.  
10 In order to qualify for the bonus under this subsection, the  
11 take-out plan must include a minimum of 25,000 policies.  
12 Within 30 days after approval by the board, the office  
13 ~~department~~ may reject the insurer's take-out plan and  
14 disqualify the insurer from the bonus, based on the following  
15 criteria:

16           (a) The capacity of the insurer to absorb the policies  
17 proposed to be taken out of the corporation association and  
18 the concentration of risks of those policies.

19           (b) Whether the geographic and risk characteristics of  
20 policies in the proposed take-out plan serve to reduce the  
21 exposure of the corporation association sufficiently to  
22 justify the bonus.

23           (c) Whether coverage for risks to be taken out  
24 otherwise exists in the admitted voluntary market.

25           (d) The degree to which the take-out bonus is  
26 promoting new capital being allocated by the insurer to  
27 Florida residential property coverage.

28           (3) EXEMPTION FROM DEFICIT ASSESSMENTS.--

29           (a) The calculation of an insurer's assessment  
30 liability under s. 627.351(6)(b)3.a. or b. shall, for an  
31 insurer that in any calendar year removes 50,000 or more risks

1 from the Citizens Property Insurance Corporation Residential  
2 ~~Property and Casualty Joint Underwriting Association~~, either  
3 by issuance of a policy upon expiration or cancellation of the  
4 corporation ~~association~~ policy or by assumption of the  
5 corporation's ~~association's~~ obligations with respect to  
6 in-force policies, exclude such removed policies for the  
7 succeeding 3 years, as follows:

8           1. In the first year following removal of the risks,  
9 the risks are excluded from the calculation to the extent of  
10 100 percent.

11           2. In the second year following removal of the risks,  
12 the risks are excluded from the calculation to the extent of  
13 75 percent.

14           3. In the third year following removal of the risks,  
15 the risks are excluded from the calculation to the extent of  
16 50 percent.

17  
18 If the removal of risks is accomplished through assumption of  
19 obligations with respect to in-force policies, the corporation  
20 ~~association~~ shall pay to the assuming insurer all unearned  
21 premium with respect to such policies less any policy  
22 acquisition costs agreed to by the corporation ~~association~~ and  
23 assuming insurer. The term "policy acquisition costs" is  
24 defined as costs of issuance of the policy by the corporation  
25 ~~association~~ which includes agent commissions, servicing  
26 company fees, and premium tax. This paragraph does not apply  
27 to an insurer that, at any time within 5 years before removing  
28 the risks, had a market share in excess of 0.1 percent of the  
29 statewide aggregate gross direct written premium for any line  
30 of property insurance, or to an affiliate of such an insurer.  
31 This paragraph does not apply unless either at least 40

1 percent of the risks removed from the corporation ~~association~~  
2 are located in Dade, Broward, and Palm Beach Counties, or at  
3 least 30 percent of the risks removed from the corporation  
4 ~~association~~ are located in such counties and an additional 50  
5 percent of the risks removed from the corporation ~~association~~  
6 are located in other coastal counties.

7 (b) An insurer that first wrote personal lines  
8 residential property coverage in this state on or after July  
9 1, 1994, is exempt from regular deficit assessments imposed  
10 pursuant to s. 627.351(6)(b)3.a. and b., but not emergency  
11 assessments collected from policyholders pursuant to s.  
12 627.351(6)(b)3.d., of the Citizens Property Insurance

13 Corporation Residential Property and Casualty Joint  
14 ~~Underwriting Association~~ until the earlier of the following:

15 1. The end of the calendar year in which it first  
16 wrote 0.5 percent or more of the statewide aggregate direct  
17 written premium for any line of residential property coverage;  
18 or

19 2. December 31, 1997, or December 31 of the third year  
20 in which it wrote such coverage in this state, whichever is  
21 later.

22 (c) Other than an insurer that is exempt under  
23 paragraph (b), an insurer that in any calendar year increases  
24 its total structure exposure subject to wind coverage by 25  
25 percent or more over its exposure for the preceding calendar  
26 year is, with respect to that year, exempt from deficit  
27 assessments imposed pursuant to s. 627.351(6)(b)3.a. and b.,  
28 but not emergency assessments collected from policyholders  
29 pursuant to s. 627.351(6)(b)3.d., of the Citizens Property  
30 Insurance Corporation Residential Property and Casualty Joint

31

1 ~~Underwriting Association~~ attributable to such increase in  
2 exposure.

3 (d) Any exemption or credit from regular assessments  
4 authorized by this section shall last no longer than 3 years  
5 following the cancellation or expiration of the policy by the  
6 corporation ~~association~~. With the approval of the office  
7 ~~department~~, the board may extend such credits for an  
8 additional year if the insurer guarantees an additional year  
9 of renewability for all policies removed from the corporation  
10 ~~association~~, or for 2 additional years if the insurer  
11 guarantees 2 additional years of renewability for all policies  
12 so removed.

13 (4) AGENT BONUS.--When the corporation ~~Residential~~  
14 ~~Property and Casualty Joint Underwriting Association~~ enters  
15 into a contractual agreement for a take-out plan that provides  
16 a bonus to the insurer, the producing agent of record of the  
17 corporation ~~association~~ policy is entitled to retain any  
18 unearned commission on such policy, and the insurer shall  
19 either:

20 (a) Pay to the producing agent of record of the  
21 association policy, for the first year, an amount that is the  
22 greater of the insurer's usual and customary commission for  
23 the type of policy written or a fee equal to the usual and  
24 customary commission of the corporation ~~association~~; or

25 (b) Offer to allow the producing agent of record of  
26 the corporation ~~association~~ policy to continue servicing the  
27 policy for a period of not less than 1 year and offer to pay  
28 the agent the greater of the insurer's or the corporation's  
29 ~~association's~~ usual and customary commission for the type of  
30 policy written.

31

1 If the producing agent is unwilling or unable to accept  
2 appointment, the new insurer shall pay the agent in accordance  
3 with paragraph (a). The requirement of this subsection that  
4 the producing agent of record is entitled to retain the  
5 unearned commission on an association policy does not apply to  
6 a policy for which coverage has been provided in the  
7 association for 30 days or less or for which a cancellation  
8 notice has been issued pursuant to s. 627.351(6)(c)11. during  
9 the first 30 days of coverage.

10 (5) APPLICABILITY.--

11 (a) The take-out bonus provided by subsection (2) and  
12 the exemption from assessment provided by paragraph (3)(a)  
13 apply only if the corporation ~~association~~ policy is replaced  
14 by either a standard policy including wind coverage or, if  
15 consistent with the insurer's underwriting rules as filed with  
16 the office ~~department~~, a basic policy including wind coverage;  
17 however, with respect to risks located in areas where coverage  
18 through the high-risk account of the corporation ~~Florida~~  
19 ~~Windstorm Underwriting Association~~ is available, the  
20 replacement policy need not provide wind coverage. The insurer  
21 must renew the replacement policy at approved rates on  
22 substantially similar terms for two additional 1-year terms,  
23 unless canceled by the insurer for a lawful reason other than  
24 reduction of hurricane exposure. If an insurer assumes the  
25 corporation's ~~association's~~ obligations for a policy, it must  
26 issue a replacement policy for a 1-year term upon expiration  
27 of the corporation ~~association~~ policy and must renew the  
28 replacement policy at approved rates on substantially similar  
29 terms for two additional 1-year terms, unless canceled by the  
30 insurer for a lawful reason other than reduction of hurricane  
31 exposure. For each replacement policy canceled or nonrenewed

1 by the insurer for any reason during the 3-year coverage  
2 period required by this paragraph, the insurer must remove  
3 from the corporation ~~association~~ one additional policy  
4 covering a risk similar to the risk covered by the canceled or  
5 nonrenewed policy. In addition to these requirements, the  
6 corporation ~~association~~ must place the bonus moneys in escrow  
7 for a period of 3 years; such moneys may be released from  
8 escrow only to pay claims. A take-out bonus provided by  
9 subsection (2) or subsection (6) shall not be considered  
10 premium income for purposes of taxes and assessments under the  
11 Florida Insurance Code and shall remain the property of the  
12 corporation ~~Residential Property and Casualty Joint~~  
13 ~~Underwriting Association~~, subject to the prior security  
14 interest of the insurer under the escrow agreement until it is  
15 released from escrow, and after it is released from escrow it  
16 shall be considered an asset of the insurer and credited to  
17 the insurer's capital and surplus.

18 (b) It is the intent of the Legislature that an  
19 insurer eligible for the exemption under paragraph (3)(a)  
20 establish a preference in appointment of agents for those  
21 agents who lose a substantial amount of business as a result  
22 of risks being removed from the corporation ~~association~~.

23 (6) COMMERCIAL RESIDENTIAL TAKE-OUT PLANS.--

24 (a) The corporation ~~Residential Property and Casualty~~  
25 ~~Joint Underwriting Association~~ shall pay a bonus to an insurer  
26 for each commercial residential policy that the insurer  
27 removes from the corporation ~~association~~ pursuant to an  
28 approved take-out plan, either by issuance of a new policy  
29 upon expiration of the corporation ~~association~~ policy or by  
30 assumption of the corporation's ~~association's~~ obligations with  
31 respect to an in-force policy. The corporation ~~association~~

1 board shall determine the amount of the bonus based on such  
2 factors as the coverage provided, relative hurricane risk, the  
3 length of time that the property has been covered by the  
4 corporation ~~association~~, and the criteria specified in  
5 paragraphs (b) and (c). The amount of the bonus with respect  
6 to a particular policy may not exceed 25 percent of the  
7 corporation's ~~association's~~ 1-year premium for the policy.  
8 Such payment is subject to approval of the corporation  
9 ~~association~~ board. In order to qualify for the bonus under  
10 this subsection, the take-out plan must include policies  
11 reflecting at least \$100 million in structure exposure.

12 (b) In order for a plan to qualify for approval:

13 1. At least 40 percent of the policies removed from  
14 the corporation ~~association~~ under the plan must be located in  
15 Dade, Broward, and Palm Beach Counties, or at least 30 percent  
16 of the policies removed from the corporation ~~association~~ under  
17 the plan must be located in such counties and an additional 50  
18 percent of the policies removed from the corporation  
19 ~~association~~ must be located in other coastal counties.

20 2. The insurer must renew the replacement policy at  
21 approved rates on substantially similar terms for two  
22 additional 1-year terms, unless canceled or nonrenewed by the  
23 insurer for a lawful reason other than reduction of hurricane  
24 exposure. If an insurer assumes the corporation's  
25 ~~association's~~ obligations for a policy, it must issue a  
26 replacement policy for a 1-year term upon expiration of the  
27 corporation ~~association~~ policy and must renew the replacement  
28 policy at approved rates on substantially similar terms for  
29 two additional 1-year terms, unless canceled by the insurer  
30 for a lawful reason other than reduction of hurricane  
31 exposure. For each replacement policy canceled or nonrenewed

1 by the insurer for any reason during the 3-year coverage  
2 period required by this subparagraph, the insurer must remove  
3 from the corporation ~~association~~ one additional policy  
4 covering a risk similar to the risk covered by the canceled or  
5 nonrenewed policy.

6 (c) A take-out plan is deemed approved unless the  
7 office ~~department~~, within 120 days after the board votes to  
8 recommend the plan, disapproves the plan based on:

9 1. The capacity of the insurer to absorb the policies  
10 proposed to be taken out of the corporation ~~association~~ and  
11 the concentration of risks of those policies.

12 2. Whether the geographic and risk characteristics of  
13 policies in the proposed take-out plan serve to reduce the  
14 exposure of the corporation ~~association~~ sufficiently to  
15 justify the bonus.

16 3. Whether coverage for risks to be taken out  
17 otherwise exists in the admitted voluntary market.

18 4. The degree to which the take-out bonus is promoting  
19 new capital being allocated by the insurer to residential  
20 property coverage in this state.

21 (d) The calculation of an insurer's regular assessment  
22 liability under s. 627.351(b)3.a. and b., but not emergency  
23 assessments collected from policyholders pursuant to s.  
24 627.351(6)(b)3.d., shall, with respect to commercial  
25 residential policies removed from the corporation ~~association~~  
26 under an approved take-out plan, exclude such removed policies  
27 for the succeeding 3 years, as follows:

28 1. In the first year following removal of the  
29 policies, the policies are excluded from the calculation to  
30 the extent of 100 percent.

31

1           2. In the second year following removal of the  
2 policies, the policies are excluded from the calculation to  
3 the extent of 75 percent.

4           3. In the third year following removal of the  
5 policies, the policies are excluded from the calculation to  
6 the extent of 50 percent.

7           (e) An insurer that first wrote commercial residential  
8 property coverage in this state on or after June 1, 1996, is  
9 exempt from regular assessments under s. 627.351(6)(b)3.a. and  
10 b., but not emergency assessments collected from policyholders  
11 pursuant to s. 627.351(6)(b)3.d., with respect to commercial  
12 residential policies until the earlier of:

13           1. The end of the calendar year in which such insurer  
14 first wrote 0.5 percent or more of the statewide aggregate  
15 direct written premium for commercial residential property  
16 coverage; or

17           2. December 31 of the third year in which such insurer  
18 wrote commercial residential property coverage in this state.

19           (f) An insurer that is not otherwise exempt from  
20 regular assessments under s. 627.351(6)(b)3.a. and b. with  
21 respect to commercial residential policies is, for any  
22 calendar year in which such insurer increased its total  
23 commercial residential hurricane exposure by 25 percent or  
24 more over its exposure for the preceding calendar year, exempt  
25 from regular assessments under s. 627.351(6)(b)3.a. and b.,  
26 but not emergency assessments collected from policyholders  
27 pursuant to s. 627.351(6)(b)3.d., attributable to such  
28 increased exposure.

29           (7) A minority business, which is at least 51 percent  
30 owned by minority persons as described in s. 288.703(3),  
31 desiring to operate or become licensed as a property and

1 casualty insurer may exempt up to \$50 of the escrow  
2 requirements of the take-out bonus, as described in this  
3 section. Such minority business, which has applied for a  
4 certificate of authority to engage in business as a property  
5 and casualty insurer, may simultaneously file the business'  
6 proposed take-out plan, as described in this section, with the  
7 corporation to the Residential Property and Casualty Joint  
8 Underwriting Association.

9 Section 1103. Subsections (3) and (4) of section  
10 627.3512, Florida Statutes, are amended to read:

11 627.3512 Recoupment of residual market deficit  
12 assessments.--

13 (3) The insurer or insurer group shall file with the  
14 office ~~department~~ a statement setting forth the amount of the  
15 assessment factor and an explanation of how the factor will be  
16 applied, at least 15 days prior to the factor being applied to  
17 any policies. The statement shall include documentation of  
18 the assessment paid by the insurer or insurer group and the  
19 arithmetic calculations supporting the assessment factor. The  
20 office ~~department~~ shall complete its review within 15 days  
21 after receipt of the filing and shall limit its review to  
22 verification of the arithmetic calculations. The insurer or  
23 insurer group may use the assessment factor at any time after  
24 the expiration of the 15-day period unless the office  
25 ~~department~~ has notified the insurer or insurer group in  
26 writing that the arithmetic calculations are incorrect.

27 (4) The commission ~~department~~ may adopt rules to  
28 implement this section.

29 Section 1104. Section 627.3513, Florida Statutes, is  
30 amended to read:

31

1           627.3513 Standards for sale of bonds by Citizens  
2 Property Insurance Corporation ~~underwriting associations~~.--

3           (1)(a) The purpose of this section is to provide  
4 standards for the sale of bonds pursuant to s. 627.351(2) and  
5 (6).

6           (b) The term "corporation," as used in this section,  
7 means the Citizens Property Insurance Corporation.

8 ~~"Association" or "associations," for purposes of this section,~~  
9 ~~means the Florida Windstorm Underwriting Association and the~~  
10 ~~Residential Property and Casualty Joint Underwriting~~  
11 ~~Association as established pursuant to s. 627.351(2) and (6),~~  
12 ~~and any corporation or other entity established pursuant to~~  
13 ~~those subsections.~~

14           (2) The plan of operation of the corporation ~~each~~  
15 ~~association~~ shall provide for the selection of financial  
16 services providers and underwriters. Such provisions shall  
17 include the method for publicizing or otherwise providing  
18 reasonable notice to potential financial services providers,  
19 underwriters, and other interested parties, which may include  
20 expedited procedures and methods for emergency situations. The  
21 corporation ~~associations~~ shall not engage the services of any  
22 person or firm as a securities broker or bond underwriter that  
23 is not eligible to be engaged by the state under the  
24 provisions of s. 215.684. The corporation ~~associations~~ shall  
25 make all selections of financial service providers and  
26 managing underwriters at a noticed public meeting.

27           (3) The plan of operation of the corporation ~~each~~  
28 ~~association~~ shall provide for any managing underwriter or  
29 financial adviser to provide to the corporation ~~association~~ a  
30 disclosure statement containing at least the following  
31 information:

1 (a) An itemized list setting forth the nature and  
2 estimated amounts of expenses to be incurred by the managing  
3 underwriter in connection with the issuance of such bonds.  
4 Notwithstanding the foregoing, any such list may include an  
5 item for miscellaneous expenses, provided such item includes  
6 only minor items of expense which cannot be easily categorized  
7 elsewhere in the statement.

8 (b) The names, addresses, and estimated amounts of  
9 compensation of any finders connected with the issuance of the  
10 bonds.

11 (c) The amount of underwriting spread expected to be  
12 realized and the amount of fees and expenses expected to be  
13 paid to the financial adviser.

14 (d) Any management fee charged by the managing  
15 underwriter.

16 (e) Any other fee, bonus, or compensation estimated to  
17 be paid by the managing underwriter in connection with the  
18 bond issue to any person not regularly employed or retained by  
19 it.

20 (f) The name and address of each financial adviser or  
21 managing underwriter, if any, connected with the bond issue.

22 (g) Any other disclosure which the corporation  
23 ~~association~~ may require.

24 (4)(a) No underwriter, commercial bank, investment  
25 banker, or financial consultant or adviser shall pay any  
26 finder any bonus, fee, or gratuity in connection with the sale  
27 of bonds issued by the corporation ~~association~~ unless full  
28 disclosure is made in writing to the corporation ~~association~~  
29 prior to or concurrently with the submission of a purchase  
30 proposal for bonds by the underwriter, commercial bank,  
31 investment banker, or financial consultant or adviser,

1 providing the name and address of any finder and the amount of  
2 bonus, fee, or gratuity paid to such finder. A violation of  
3 this subsection shall not affect the validity of the bond  
4 issue.

5 (b) As used in this subsection, the term "finder"  
6 means a person who is neither regularly employed by, nor a  
7 partner or officer of, an underwriter, bank, banker, or  
8 financial consultant or adviser and who enters into an  
9 understanding with either the issuer or the managing  
10 underwriter, or both, for any paid or promised compensation or  
11 valuable consideration, directly or indirectly, expressed or  
12 implied, to act solely as an intermediary between such issuer  
13 and managing underwriter for the purpose of influencing any  
14 transaction in the purpose of such bonds.

15 (5) This section is not intended to restrict or  
16 prohibit the employment of professional services relating to  
17 bonds issued under s. 627.351(6)~~s. 627.351(2) or (6)~~ or the  
18 issuance of bonds by the corporation ~~associations~~.

19 (6) The failure of the corporation ~~association~~ to  
20 comply with one or more provisions of this section shall not  
21 affect the validity of the bond issue; however, the failure of  
22 the corporation ~~either association~~ to comply in good faith  
23 both with this section and with the plan as amended shall be a  
24 violation of its plan of operation and a violation of the  
25 insurance code.

26 Section 1105. Section 627.3515, Florida Statutes, is  
27 amended to read:

28 627.3515 Market assistance plan; property and casualty  
29 risks.--

30 (1) The office ~~department~~ shall adopt a market  
31 assistance plan to assist in the placement of risks of

1 applicants who are unable to procure property insurance as  
2 defined in s. 624.604 or casualty insurance as defined in s.  
3 624.605(1)(b), (e), (f), (g), or (h) from authorized insurers  
4 when such insurance is otherwise generally available from  
5 insurers authorized to transact and actually writing that kind  
6 and class of insurance in this state. Through such measures as  
7 are found appropriate by the board of governors, the market  
8 assistance plan shall take affirmative steps to assist in the  
9 removal from the Citizens Property Insurance Corporation  
10 ~~Residential Property and Casualty Joint Underwriting~~  
11 ~~Association~~ any risk that can be placed in the voluntary  
12 market. All property and casualty insurers licensed in this  
13 state shall participate in the plan.

14 (2)(a) Each person serving as a member of the board of  
15 governors of the Citizens Property Insurance Corporation  
16 ~~Residential Property and Casualty Joint Underwriting~~  
17 ~~Association~~ shall also serve as a member of the board of  
18 governors of the market assistance plan.

19 (b) The plan shall be funded through payments from the  
20 Citizens Property Insurance Corporation ~~Residential Property~~  
21 ~~and Casualty Joint Underwriting Association~~ and annual  
22 assessments of residential property insurers in the amount of  
23 \$450.

24 (c) The plan is not required to assist in the  
25 placement of any workers' compensation, employer's liability,  
26 malpractice, or motor vehicle insurance coverage.

27 Section 1106. Section 627.3517, Florida Statutes, is  
28 amended to read:

29 627.3517 Consumer choice.--No provision of s. 627.351,  
30 s. 627.3511, or s. 627.3515 shall be construed to impair the  
31 right of any insurance risk apportionment plan policyholder,

1 upon receipt of any keepout or take-out offer, to retain his  
2 or her current agent, so long as that agent is duly licensed  
3 and appointed by the insurance risk apportionment plan or  
4 otherwise authorized to place business with the insurance risk  
5 apportionment plan. This right shall not be canceled,  
6 suspended, impeded, abridged, or otherwise compromised by any  
7 rule, plan of operation, or depopulation plan, whether through  
8 keepout, take-out, midterm assumption, or any other means, of  
9 any insurance risk apportionment plan or depopulation plan,  
10 including, but not limited to, those described in s. 627.351,  
11 s. 627.3511, or s. 627.3515. The commission ~~department~~ shall  
12 adopt any rules necessary to cause any insurance risk  
13 apportionment plan or market assistance plan under such  
14 sections to demonstrate that the operations of the plan do not  
15 interfere with, promote, or allow interference with the rights  
16 created under this section. If the policyholder's current  
17 agent is unable or unwilling to be appointed with the insurer  
18 making the take-out or keepout offer, the policyholder shall  
19 not be disqualified from participation in the appropriate  
20 insurance risk apportionment plan because of an offer of  
21 coverage in the voluntary market. An offer of full property  
22 insurance coverage by the insurer currently insuring either  
23 the ex-wind or wind-only coverage on the policy to which the  
24 offer applies shall not be considered a take-out or keepout  
25 offer. Any rule, plan of operation, or plan of depopulation,  
26 through keepout, take-out, midterm assumption, or any other  
27 means, of any property insurance risk apportionment plan under  
28 s. 627.351(2) or (6) is subject to ss. 627.351(2)(b) and  
29 (6)(c) and 627.3511(4).

30  
31

1           Section 1107. Subsections (2), (4), and (6),  
2 paragraphs (c) and (h) of subsection (7), and subsection (8)  
3 of section 627.357, Florida Statutes, are amended to read:

4           627.357 Medical malpractice self-insurance.--

5           (2) A group or association of health care providers  
6 composed of any number of members, is authorized to  
7 self-insure against claims arising out of the rendering of, or  
8 failure to render, medical care or services, or against claims  
9 for injury or death to the insured's patients arising out of  
10 the insured's activities, upon obtaining approval from the  
11 office ~~department~~ and upon complying with the following  
12 conditions:

13           (a) Establishment of a Medical Malpractice Risk  
14 Management Trust Fund to provide coverage against professional  
15 medical malpractice liability.

16           (b) Employment of professional consultants for loss  
17 prevention and claims management coordination under a risk  
18 management program.

19           (4) The fund is subject to regulation and  
20 investigation by the office ~~department~~. The fund is subject  
21 to rules of the commission ~~department~~ and to part IX of  
22 chapter 626, relating to trade practices and frauds.

23           (6) The commission ~~department~~ shall adopt rules to  
24 implement this section, including rules that ensure that a  
25 trust fund maintains a sufficient reserve to cover contingent  
26 liabilities under subsection (7) in the event of its  
27 dissolution.

28           (7)

29           (c) The trust fund may from time to time assess  
30 members of the fund liable therefor under the terms of their  
31 policies and pursuant to this section. The office ~~department~~

1 may assess the members in the event of liquidation of the  
2 fund.

3 (h) If the trust fund fails to make an assessment as  
4 required by paragraph (g), the office ~~department~~ shall order  
5 the fund to do so. If the deficiency is not sufficiently made  
6 up within 60 days after the date of the order, the fund is  
7 deemed insolvent and grounds exist to proceed against the fund  
8 as provided for in part I of chapter 631.

9 (8) The expense factors associated with rates used by  
10 a fund shall be filed with the office ~~department~~ at least 30  
11 days prior to use and may not be used until approved by the  
12 office ~~department~~. The office ~~department~~ shall disapprove the  
13 rates unless the filed expense factors associated therewith  
14 are justified and reasonable for the benefits and services  
15 provided.

16 Section 1108. Section 627.361, Florida Statutes, is  
17 amended to read:

18 627.361 False or misleading information.--No person  
19 shall willfully withhold information from or knowingly give  
20 false or misleading information to the office ~~department~~, any  
21 statistical agency designated by the office ~~department~~, any  
22 rating organization, or any insurer, which will affect the  
23 rates or premiums chargeable under this part.

24 Section 1109. Section 627.371, Florida Statutes, is  
25 amended to read:

26 627.371 Hearings.--

27 (1) Any person aggrieved by any rate charged, rating  
28 plan, rating system, or underwriting rule followed or adopted  
29 by an insurer, and any person aggrieved by any rating plan,  
30 rating system, or underwriting rule followed or adopted by a  
31 rating organization, may herself or himself or by her or his

1 authorized representative make written request of the insurer  
2 or rating organization to review the manner in which the rate,  
3 plan, system, or rule has been applied with respect to  
4 insurance afforded her or him. If the request is not granted  
5 within 30 days after it is made, the requester may treat it as  
6 rejected. Any person aggrieved by the refusal of an insurer  
7 or rating organization to grant the review requested, or by  
8 the failure or refusal to grant all or part of the relief  
9 requested, may file a written complaint with the office  
10 ~~department~~, specifying the grounds relied upon. If the office  
11 ~~department~~ has already disposed of the issue as raised by a  
12 similar complaint or believes that probable cause for the  
13 complaint does not exist or that the complaint is not made in  
14 good faith, it shall so notify the complainant. Otherwise, and  
15 if it also finds that the complaint charges a violation of  
16 this chapter and that the complainant would be aggrieved if  
17 the violation is proven, it shall proceed as provided in  
18 subsection (2).

19 (2) If after examination of an insurer, rating  
20 organization, advisory organization, or group, association, or  
21 other organization of insurers which engages in joint  
22 underwriting or joint reinsurance, upon the basis of other  
23 information, or upon sufficient complaint as provided in  
24 subsection (1), the office ~~department~~ has good cause to  
25 believe that such insurer, organization, group, or  
26 association, or any rate, rating plan, or rating system made  
27 or used by any such insurer or rating organization, does not  
28 comply with the requirements and standards of this part  
29 applicable to it, it shall, unless it has good cause to  
30 believe such noncompliance is willful, give notice in writing  
31 to such insurer, organization, group, or association stating

1 therein in what manner and to what extent noncompliance is  
2 alleged to exist and specifying therein a reasonable time, not  
3 less than 10 days thereafter, in which the noncompliance may  
4 be corrected, including any premium adjustment.

5 (3) If the office ~~department~~ has good cause to believe  
6 that such noncompliance is willful or if, within the period  
7 prescribed by the office ~~department~~ in the notice required by  
8 subsection (2), the insurer, organization, group, or  
9 association does not make such changes as may be necessary to  
10 correct the noncompliance specified by the office ~~department~~  
11 or establish to the satisfaction of the office ~~department~~ that  
12 such specified noncompliance does not exist, then the office  
13 ~~department~~ is required to proceed to further determine the  
14 matter. If no notice has been given as provided in subsection  
15 (2), the notice shall state in what manner and to what extent  
16 noncompliance is alleged to exist. The proceedings shall not  
17 consider any subject not specified in the notice required by  
18 subsections (2) and (3).

19 Section 1110. Section 627.381, Florida Statutes, is  
20 amended to read:

21 627.381 Penalty for violation.--

22 (1) The office ~~department~~ may, if it finds that any  
23 person or organization has violated any provision of this  
24 part, impose an administrative fine pursuant to s. 624.4211.

25 (2) The office ~~department~~ may suspend the license or  
26 authority of any rating organization or insurer which fails to  
27 comply with an order of the office ~~department~~ within the time  
28 limited by such order, or any extension thereof which the  
29 office ~~department~~ may grant. The office ~~department~~ shall not  
30 suspend the license or authority of any rating organization or  
31 insurer for failure to comply with an order until the time

1 prescribed for an appeal therefrom has expired or, if an  
2 appeal has been taken, until such order has been affirmed. The  
3 office ~~department~~ may determine when a suspension of license  
4 or authority shall become effective and it shall remain in  
5 effect for the period fixed by it, unless it modifies or  
6 rescinds such suspension, or until the order upon which such  
7 suspension is based is modified, rescinded, or reversed.

8 Section 1111. Paragraph (i) of subsection (2) of  
9 section 627.4035, Florida Statutes, is amended to read:

10 627.4035 Cash payment of premiums; claims.--

11 (2) Subsection (1) is not applicable to:

12 (i) Such other methods of paying for life insurance as  
13 may be permitted by the commission ~~department~~ pursuant to rule  
14 or regulation.

15 Section 1112. Section 627.410, Florida Statutes, is  
16 amended to read:

17 627.410 Filing, approval of forms.--

18 (1) No basic insurance policy or annuity contract  
19 form, or application form where written application is  
20 required and is to be made a part of the policy or contract,  
21 or group certificates issued under a master contract delivered  
22 in this state, or printed rider or endorsement form or form of  
23 renewal certificate, shall be delivered or issued for delivery  
24 in this state, unless the form has been filed with the office  
25 ~~department at its offices in Tallahassee~~ by or in behalf of  
26 the insurer which proposes to use such form and has been  
27 approved by the office ~~department~~. This provision does not  
28 apply to surety bonds or to policies, riders, endorsements, or  
29 forms of unique character which are designed for and used with  
30 relation to insurance upon a particular subject (other than as  
31 to health insurance), or which relate to the manner of

1 distribution of benefits or to the reservation of rights and  
2 benefits under life or health insurance policies and are used  
3 at the request of the individual policyholder, contract  
4 holder, or certificateholder. As to group insurance policies  
5 effectuated and delivered outside this state but covering  
6 persons resident in this state, the group certificates to be  
7 delivered or issued for delivery in this state shall be filed  
8 with the office ~~department~~ for information purposes only.

9 (2) Every such filing must be made not less than 30  
10 days in advance of any such use or delivery. At the  
11 expiration of such 30 days, the form so filed will be deemed  
12 approved unless prior thereto it has been affirmatively  
13 approved or disapproved by order of the office ~~department~~. The  
14 approval of any such form by the office ~~department~~ constitutes  
15 a waiver of any unexpired portion of such waiting period. The  
16 office ~~department~~ may extend by not more than an additional 15  
17 days the period within which it may so affirmatively approve  
18 or disapprove any such form, by giving notice of such  
19 extension before expiration of the initial 30-day period. At  
20 the expiration of any such period as so extended, and in the  
21 absence of such prior affirmative approval or disapproval, any  
22 such form shall be deemed approved.

23 (3) The office ~~department~~ may, for cause, withdraw a  
24 previous approval. No insurer shall issue or use any form  
25 disapproved by the office ~~department~~, or as to which the  
26 office ~~department~~ has withdrawn approval, after the effective  
27 date of the order of the office ~~department~~.

28 (4) The office ~~department~~ may, by order, exempt from  
29 the requirements of this section for so long as it deems  
30 proper any insurance document or form or type thereof as  
31 specified in such order, to which, in its opinion, this

1 section may not practicably be applied, or the filing and  
2 approval of which are, in its opinion, not desirable or  
3 necessary for the protection of the public.

4 (5) This section also applies to any such form used by  
5 domestic insurers for delivery in a jurisdiction outside this  
6 state if the insurance supervisory official of such  
7 jurisdiction informs the office ~~department~~ that such form is  
8 not subject to approval or disapproval by such official, and  
9 upon the order of the office ~~department~~ requiring the form to  
10 be submitted to it for the purpose. The applicable same  
11 standards apply to such forms as apply to forms for domestic  
12 use.

13 (6)(a) An insurer shall not deliver or issue for  
14 delivery or renew in this state any health insurance policy  
15 form until it has filed with the office ~~department~~ a copy of  
16 every applicable rating manual, rating schedule, change in  
17 rating manual, and change in rating schedule; if rating  
18 manuals and rating schedules are not applicable, the insurer  
19 must file with the order ~~department~~ applicable premium rates  
20 and any change in applicable premium rates. This paragraph  
21 does not apply to group health insurance policies, effectuated  
22 and delivered in this state, insuring groups of 51 or more  
23 persons, except for Medicare supplement insurance, long-term  
24 care insurance, and any coverage under which the increase in  
25 claim costs over the lifetime of the contract due to advancing  
26 age or duration is prefunded in the premium.

27 (b) The commission ~~department~~ may establish by rule,  
28 for each type of health insurance form, procedures to be used  
29 in ascertaining the reasonableness of benefits in relation to  
30 premium rates and may, by rule, exempt from any requirement of  
31 paragraph (a) any health insurance policy form or type thereof

1 (as specified in such rule) to which form or type such  
2 requirements may not be practically applied or to which form  
3 or type the application of such requirements is not desirable  
4 or necessary for the protection of the public. With respect to  
5 any health insurance policy form or type thereof which is  
6 exempted by rule from any requirement of paragraph (a),  
7 premium rates filed pursuant to ss. 627.640 and 627.662 shall  
8 be for informational purposes.

9 (c) Every filing made pursuant to this subsection  
10 shall be made within the same time period provided in, and  
11 shall be deemed to be approved under the same conditions as  
12 those provided in, subsection (2).

13 (d) Every filing made pursuant to this subsection,  
14 except disability income policies and accidental death  
15 policies, shall be prohibited from applying the following  
16 rating practices:

17 1. Select and ultimate premium schedules.

18 2. Premium class definitions which classify insured  
19 based on year of issue or duration since issue.

20 3. Attained age premium structures on policy forms  
21 under which more than 50 percent of the policies are issued to  
22 persons age 65 or over.

23 (e) Except as provided in subparagraph 1., an insurer  
24 shall continue to make available for purchase any individual  
25 policy form issued on or after October 1, 1993. A policy form  
26 shall not be considered to be available for purchase unless  
27 the insurer has actively offered it for sale in the previous  
28 12 months.

29 1. An insurer may discontinue the availability of a  
30 policy form if the insurer provides to the office ~~department~~  
31 in writing its decision at least 30 days prior to

1 discontinuing the availability of the form of the policy or  
2 certificate. After receipt of the notice by the office  
3 ~~department~~, the insurer shall no longer offer for sale the  
4 policy form or certificate form in this state.

5         2. An insurer that discontinues the availability of a  
6 policy form pursuant to subparagraph 1. shall not file for  
7 approval a new policy form providing similar benefits as the  
8 discontinued form for a period of 5 years after the insurer  
9 provides notice to the office ~~department~~ of the  
10 discontinuance. The period of discontinuance may be reduced if  
11 the office ~~department~~ determines that a shorter period is  
12 appropriate.

13         3. The experience of all policy forms providing  
14 similar benefits shall be combined for all rating purposes.

15         (7)(a) Each insurer subject to the requirements of  
16 subsection (6) shall make an annual filing with the office  
17 ~~department~~ no later than 12 months after its previous filing,  
18 demonstrating the reasonableness of benefits in relation to  
19 premium rates. The office ~~department~~, after receiving a  
20 request to be exempted from the provisions of this section,  
21 may, for good cause due to insignificant numbers of policies  
22 in force or insignificant premium volume, exempt a company, by  
23 line of coverage, from filing rates or rate certification as  
24 required by this section.

25         (b) The filing required by this subsection shall be  
26 satisfied by one of the following methods:

27         1. A rate filing prepared by an actuary which contains  
28 documentation demonstrating the reasonableness of benefits in  
29 relation to premiums charged in accordance with the applicable  
30 rating laws and rules promulgated by the commission  
31 ~~department~~.

1           2. If no rate change is proposed, a filing which  
2 consists of a certification by an actuary that benefits are  
3 reasonable in relation to premiums currently charged in  
4 accordance with applicable laws and rules promulgated by the  
5 commission ~~department~~.

6           (c) As used in this section, "actuary" means an  
7 individual who is a member of the Society of Actuaries or the  
8 American Academy of Actuaries. If an insurer does not employ  
9 or otherwise retain the services of an actuary, the insurer's  
10 certification shall be prepared by insurer personnel or  
11 consultants with a minimum of 5 years' experience in insurance  
12 ratemaking. The chief executive officer of the insurer shall  
13 review and sign the certification indicating his or her  
14 agreement with its conclusions.

15           (d) If at the time a filing is required under this  
16 section an insurer is in the process of completing a rate  
17 review, the insurer may apply to the office ~~department~~ for an  
18 extension of up to an additional 30 days in which to make the  
19 filing. The request for extension must be received by the  
20 office ~~department in its offices in Tallahassee~~ no later than  
21 the date the filing is due.

22           (e) If an insurer fails to meet the filing  
23 requirements of this subsection and does not submit the filing  
24 within 60 days following the date the filing is due, the  
25 office ~~department~~ may, in addition to any other penalty  
26 authorized by law, order the insurer to discontinue the  
27 issuance of policies for which the required filing was not  
28 made, until such time as the office ~~department~~ determines that  
29 the required filing is properly submitted.

30           (8)(a) For the purposes of subsections (6) and (7),  
31 benefits of an individual accident and health insurance policy

1 form, including Medicare supplement policies as defined in s.  
2 627.672, when authorized by rules adopted by the commission  
3 ~~department~~, and excluding long-term care insurance policies as  
4 defined in s. 627.9404, and other policy forms under which  
5 more than 50 percent of the policies are issued to individuals  
6 age 65 and over, are deemed to be reasonable in relation to  
7 premium rates if the rates are filed pursuant to a loss ratio  
8 guarantee and both the initial rates and the durational and  
9 lifetime loss ratios have been approved by the office  
10 ~~department~~, and such benefits shall continue to be deemed  
11 reasonable for renewal rates while the insurer complies with  
12 such guarantee, provided the currently expected lifetime loss  
13 ratio is not more than 5 percent less than the filed lifetime  
14 loss ratio as certified to by an actuary. The office  
15 ~~department~~ shall have the right to bring an administrative  
16 action should it deem that the lifetime loss ratio will not be  
17 met. For Medicare supplement filings, the office ~~department~~  
18 may withdraw a previously approved filing which was made  
19 pursuant to a loss ratio guarantee if it determines that the  
20 filing is not in compliance with ss. 627.671-627.675 or the  
21 currently expected lifetime loss ratio is less than the filed  
22 lifetime loss ratio as certified by an actuary in the initial  
23 guaranteed loss ratio filing. If this section conflicts with  
24 ss. 627.671-627.675, ss. 627.671-627.675 shall control.

25 (b) The renewal premium rates shall be deemed to be  
26 approved upon filing with the office ~~department~~ if the filing  
27 is accompanied by the most current approved loss ratio  
28 guarantee. The loss ratio guarantee shall be in writing, shall  
29 be signed by an officer of the insurer, and shall contain at  
30 least:

31

1           1. A recitation of the anticipated lifetime and  
2 durational target loss ratios contained in the actuarial  
3 memorandum filed with the policy form when it was originally  
4 approved. The durational target loss ratios shall be  
5 calculated for 1-year experience periods. If statutory  
6 changes have rendered any portion of such actuarial memorandum  
7 obsolete, the loss ratio guarantee shall also include an  
8 amendment to the actuarial memorandum reflecting current law  
9 and containing new lifetime and durational loss ratio targets.

10           2. A guarantee that the applicable loss ratios for the  
11 experience period in which the new rates will take effect, and  
12 for each experience period thereafter until new rates are  
13 filed, will meet the loss ratios referred to in subparagraph  
14 1.

15           3. A guarantee that the applicable loss ratio results  
16 for the experience period will be independently audited at the  
17 insurer's expense. The audit shall be performed in the second  
18 calendar quarter of the year following the end of the  
19 experience period, and the audited results shall be reported  
20 to the office ~~department~~ no later than the end of such  
21 quarter. The commission ~~department~~ shall establish by rule  
22 the minimum information reasonably necessary to be included in  
23 the report. The audit shall be done in accordance with  
24 accepted accounting and actuarial principles.

25           4. A guarantee that affected policyholders in this  
26 state shall be issued a proportional refund, based on the  
27 premium earned, of the amount necessary to bring the  
28 applicable experience period loss ratio up to the durational  
29 target loss ratio referred to in subparagraph 1. The refund  
30 shall be made to all policyholders in this state who are  
31 insured under the applicable policy form as of the last day of

1 the experience period, except that no refund need be made to a  
2 policyholder in an amount less than \$10. Refunds less than \$10  
3 shall be aggregated and paid pro rata to the policyholders  
4 receiving refunds. The refund shall include interest at the  
5 then-current variable loan interest rate for life insurance  
6 policies established by the National Association of Insurance  
7 Commissioners, from the end of the experience period until the  
8 date of payment. Payments shall be made during the third  
9 calendar quarter of the year following the experience period  
10 for which a refund is determined to be due. However, no  
11 refunds shall be made until 60 days after the filing of the  
12 audit report in order that the office ~~department~~ has adequate  
13 time to review the report.

14 5. A guarantee that if the applicable loss ratio  
15 exceeds the durational target loss ratio for that experience  
16 period by more than 20 percent, provided there are at least  
17 2,000 policyholders on the form nationwide or, if not, then  
18 accumulated each calendar year until 2,000 policyholder years  
19 is reached, the insurer, if directed by the office ~~department~~,  
20 shall withdraw the policy form for the purposes of issuing new  
21 policies.

22 (c) As used in this subsection:

23 1. "Loss ratio" means the ratio of incurred claims to  
24 earned premium.

25 2. "Applicable loss ratio" means the loss ratio  
26 attributable solely to this state if there are 2,000 or more  
27 policyholders in the state. If there are 500 or more  
28 policyholders in this state but less than 2,000, it is the  
29 linear interpolation of the nationwide loss ratio and the loss  
30 ratio for this state. If there are less than 500  
31 policyholders in this state, it is the nationwide loss ratio.

1           3. "Experience period" means the period, ordinarily a  
2 calendar year, for which a loss ratio guarantee is calculated.

3           Section 1113. Section 627.4101, Florida Statutes, is  
4 amended to read:

5           627.4101 Credit insurance enrollment forms.--~~Effective~~  
6 ~~October 1, 2002,~~All credit insurance enrollment forms must be  
7 approved by the office ~~Department of Insurance~~ pursuant to the  
8 provisions of s. 627.410 or s. 627.682.

9           Section 1114. Section 627.4105, Florida Statutes, is  
10 amended to read:

11           627.4105 Life and health insurance; reduced premiums  
12 upon rigorous physical examination.--Upon request, the office  
13 ~~department~~ may approve special life and health insurance  
14 policy forms providing for reduced premiums for each applicant  
15 passing a rigorous physical examination.

16           Section 1115. Section 627.411, Florida Statutes, is  
17 amended to read:

18           627.411 Grounds for disapproval.--

19           (1) The office ~~department~~ shall disapprove any form  
20 filed under s. 627.410, or withdraw any previous approval  
21 thereof, only if the form:

22           (a) Is in any respect in violation of, or does not  
23 comply with, this code.

24           (b) Contains or incorporates by reference, where such  
25 incorporation is otherwise permissible, any inconsistent,  
26 ambiguous, or misleading clauses, or exceptions and conditions  
27 which deceptively affect the risk purported to be assumed in  
28 the general coverage of the contract.

29           (c) Has any title, heading, or other indication of its  
30 provisions which is misleading.

31

1 (d) Is printed or otherwise reproduced in such manner  
2 as to render any material provision of the form substantially  
3 illegible.

4 (e) Is for health insurance, and provides benefits  
5 which are unreasonable in relation to the premium charged,  
6 contains provisions which are unfair or inequitable or  
7 contrary to the public policy of this state or which encourage  
8 misrepresentation, or which apply rating practices which  
9 result in premium escalations that are not viable for the  
10 policyholder market or result in unfair discrimination in  
11 sales practices.

12 (f) Excludes coverage for human immunodeficiency virus  
13 infection or acquired immune deficiency syndrome or contains  
14 limitations in the benefits payable, or in the terms or  
15 conditions of such contract, for human immunodeficiency virus  
16 infection or acquired immune deficiency syndrome which are  
17 different than those which apply to any other sickness or  
18 medical condition.

19 (2) In determining whether the benefits are reasonable  
20 in relation to the premium charged, the office ~~department~~, in  
21 accordance with reasonable actuarial techniques, shall  
22 consider:

23 (a) Past loss experience and prospective loss  
24 experience within and without this state.

25 (b) Allocation of expenses.

26 (c) Risk and contingency margins, along with  
27 justification of such margins.

28 (d) Acquisition costs.

29 Section 1116. Section 627.412, Florida Statutes, is  
30 amended to read:

31 627.412 Standard provisions, in general.--

1           (1) Insurance contracts shall contain such standard or  
2 uniform provisions as are required by the applicable  
3 provisions of this code pertaining to contracts of particular  
4 kinds of insurance. The office ~~department~~ may waive the  
5 required use of a particular provision in a particular  
6 insurance policy form if:

7           (a) It finds such provision unnecessary for the  
8 protection of the insured and inconsistent with the purposes  
9 of the policy; and

10           (b) The policy is otherwise approved by it.

11           (2) No policy shall contain any provision inconsistent  
12 with or contradictory to any standard or uniform provision  
13 used or required to be used, but the office ~~department~~ may  
14 approve any substitute provision which is, in its opinion, not  
15 less favorable in any particular to the insured or beneficiary  
16 than the provisions otherwise required.

17           (3) In lieu of the provisions required by this code  
18 for contracts for particular kinds of insurance, substantially  
19 similar provisions required by the law of the domicile of a  
20 foreign or alien insurer may be used when approved by the  
21 office ~~department~~.

22           Section 1117. Paragraph (g) of subsection (1) and  
23 subsections (4) and (5) of section 627.413, Florida Statutes,  
24 are amended to read:

25           627.413 Contents of policies, in general;  
26 identification.--

27           (1) Every policy shall specify:

28           (g) The form numbers and edition dates or numeric code  
29 indicating edition dates, when such code has been supplied to  
30 the office ~~department~~, of all endorsements attached to a  
31 policy. This requirement applies to life insurance policies

1 and health insurance policies only at the time of original  
2 issue.

3 (4) All policies and annuity contracts issued by  
4 insurers, and the forms thereof filed with the office  
5 ~~department~~, shall have printed thereon an appropriate  
6 designating letter or figure, or combination of letters or  
7 figures or terms identifying the respective forms of policies  
8 or contracts. Whenever any change is made in any such form,  
9 the designating letters, figures, or terms thereon shall be  
10 correspondingly changed.

11 (5) Any policy that is a minimum premium policy issued  
12 by an insurer pursuant to the minimum premium provisions of  
13 rules adopted by rating organizations licensed by the office  
14 ~~Department of Insurance~~, shall have typed, printed, stamped,  
15 or legibly handwritten on the certificate the words "minimum  
16 premium policy" or equivalent language. The office ~~department~~  
17 may impose an administrative fine pursuant to s. 624.4211 if  
18 the office ~~department~~ finds any violation of this subsection.

19 Section 1118. Subsections (1), (2), and (3) and  
20 paragraph (f) of subsection (5) of section 627.4145, Florida  
21 Statutes, are amended to read:

22 627.4145 Readable language in insurance policies.--

23 (1) Every policy shall be readable as required by this  
24 section. For the purposes of this section, the term "policy"  
25 means a policy form or endorsement. A policy is deemed  
26 readable if:

27 (a) The text achieves a minimum score of 45 on the  
28 Flesch reading ease test as computed in subsection (5) or an  
29 equivalent score on any other test comparable in result and  
30 approved by the office ~~department~~;

31

1 (b) It uses layout and spacing which separate the  
2 paragraphs from each other and from the border of the paper;

3 (c) It has section titles that are captioned in  
4 boldfaced type or that otherwise stand out significantly from  
5 the text;

6 (d) It avoids the use of unnecessarily long,  
7 complicated, or obscure words, sentences, paragraphs, or  
8 constructions;

9 (e) The style, arrangement, and overall appearance of  
10 the policy give no undue prominence to any portion of the text  
11 of the policy or to any endorsements or riders; and

12 (f) It contains a table of contents or an index of the  
13 principal sections of the policy, if the policy has more than  
14 3,000 words or more than three pages.

15 (2) The office ~~department~~ may authorize a lower score  
16 than the Flesch reading ease test score required in subsection  
17 (1) whenever it finds that a lower score will provide a more  
18 accurate reflection of the readability of a policy form, is  
19 warranted by the nature of a particular policy form or type or  
20 class of policy forms, or is the result of language which is  
21 used to conform to the requirements of any law.

22 (3) A filing subject to this section shall be  
23 accompanied by a certification signed by an officer of the  
24 insurer stating that the policy meets the requirements of  
25 subsection (1). Such certification shall state that the policy  
26 meets the minimum reading ease test score on the test used or  
27 that the score is lower than the minimum required but should  
28 be approved in accordance with subsection (2). The office  
29 ~~department~~ may require the submission of further information  
30 to verify any certification.

31

1           (5) A Flesch reading ease test score shall be measured  
2 by the following method:

3           (f) The term "text" as used in this subsection  
4 includes all printed matter except:

5           1. The name and address of the insurer; the name,  
6 number, or title of the policy; the table of contents or  
7 index; captions and subcaptions; specification pages;  
8 schedules; or tables;

9           2. Policy language required by any collectively  
10 bargained agreement;

11           3. Any medical terminology;

12           4. Words which are defined in the policy; and

13           5. Any policy language required by law, if the insurer  
14 identifies the language or terminology excepted by this  
15 paragraph and certifies to the office department, in writing,  
16 that the language or terminology is entitled to be excepted  
17 under this paragraph.

18           Section 1119. Subsection (2) of section 627.417,  
19 Florida Statutes, is amended to read:

20           627.417 Underwriters' and combination policies.--

21           (2) Two or more authorized insurers may, with the  
22 approval of the office department, issue a combination policy  
23 which shall contain provisions substantially as follows:

24           (a) That the insurers executing the policy shall be  
25 severally liable for the full amount of any loss or damage,  
26 according to the terms of the policy, or for specified  
27 percentages or amounts thereof, aggregating the full amount of  
28 insurance under the policy; and

29           (b) That service of process, or of any notice or proof  
30 of loss required by such policy, upon any of the insurers  
31

1 executing the policy, shall constitute service upon all such  
2 insurers.

3 Section 1120. Subsection (2) of section 627.418,  
4 Florida Statutes, is amended to read:

5 627.418 Validity of noncomplying contracts.--

6 (2) Any insurance contract delivered or issued for  
7 delivery in this state covering a subject or subjects of  
8 insurance resident, located, or to be performed in this state,  
9 which subjects, pursuant to the provisions of this code, the  
10 insurer may not lawfully insure under such a contract, shall  
11 be cancelable at any time by the insurer, any provision of the  
12 contract to the contrary notwithstanding; and the insurer  
13 shall promptly cancel the contract in accordance with the  
14 request of the office ~~department~~ therefor. No such illegality  
15 or cancellation shall be deemed to relieve the insurer of any  
16 liability incurred by it under the contract while in force, or  
17 to prohibit the insurer from retaining the pro rata earned  
18 premium thereon. This provision does not relieve the insurer  
19 from any penalty otherwise incurred by the insurer under this  
20 code on account of any such violation.

21 Section 1121. Subsection (7) of section 627.4234,  
22 Florida Statutes, is amended to read:

23 627.4234 Health insurance cost containment provisions  
24 required.--A health insurance policy or health care services  
25 plan which provides medical, hospital, or surgical expense  
26 coverage delivered or issued for delivery in this state must  
27 contain one or more of the following procedures or provisions  
28 to contain health insurance costs or cost increases:

29 (7) Any lawful measure or combination of measures for  
30 which the insurer provides to the office ~~department~~  
31 information demonstrating that the measure or combination of

1 measures is reasonably expected to have an effect toward  
2 containing health insurance costs or cost increases.

3 Section 1122. Paragraph (a) of subsection (3) of  
4 section 627.4236, Florida Statutes, is amended to read:

5 627.4236 Coverage for bone marrow transplant  
6 procedures.--

7 (3)(a) The Agency for Health Care Administration shall  
8 adopt rules specifying the bone marrow transplant procedures  
9 that are accepted within the appropriate oncological specialty  
10 and are not experimental for purposes of this section. The  
11 rules must be based upon recommendations of an advisory panel  
12 appointed by the secretary of the agency, composed of:

13 1. One adult oncologist, selected from a list of three  
14 names recommended by the Florida Medical Association;

15 2. One pediatric oncologist, selected from a list of  
16 three names recommended by the Florida Pediatric Society;

17 3. One representative of the J. Hillis Miller Health  
18 Center at the University of Florida;

19 4. One representative of the H. Lee Moffitt Cancer  
20 Center and Research Institute, Inc.;

21 5. One consumer representative, selected from a list  
22 of three names recommended by the Chief Financial Officer  
23 ~~Insurance Commissioner~~;

24 6. One representative of the Health Insurance  
25 Association of America;

26 7. Two representatives of health insurers, one of whom  
27 represents the insurer with the largest Florida health  
28 insurance premium volume and one of whom represents the  
29 insurer with the second largest Florida health insurance  
30 premium volume; and

31

1           8. One representative of the insurer with the largest  
2 Florida small group health insurance premium volume.

3           Section 1123. Section 627.4238, Florida Statutes, is  
4 amended to read:

5           627.4238 Health insurer examinations.--The office  
6 ~~department~~ may examine each authorized health insurer which  
7 transacts health insurance in this state. The purpose of the  
8 examination is to ascertain compliance by the insurer with the  
9 applicable provisions of this chapter. In lieu of the  
10 examination, the office ~~department~~ may accept the report of a  
11 similar examination made by the insurance supervisory official  
12 of this state or another state. The reasonable cost of the  
13 examination shall be paid by the person examined, and such  
14 person is subject to the provisions of s. 624.320. Any  
15 examination is also subject to the applicable provisions of  
16 ss. 624.318, 624.319, 624.321, and 624.322. An examination  
17 under this section may not exceed 10 working days in length,  
18 may not be conducted more often than annually, and may not be  
19 conducted during the same calendar year as a market conduct  
20 examination conducted by the office ~~department~~, except in a  
21 case in which the office ~~department~~ has prima facie evidence  
22 of a violation of this chapter or of chapter 626, which  
23 violation is of a nature so as to provide an immediate danger  
24 to the insurance-consuming public.

25           Section 1124. Subsection (2) of section 627.427,  
26 Florida Statutes, is amended to read:

27           627.427 Payment of judgment by insurer; penalty for  
28 failure.--

29           (2) If the judgment or decree is not satisfied as  
30 required under subsection (1), and proof of such failure to  
31 satisfy is made by filing with the office ~~department~~ a

1 certified transcript of the docket of the judgment or decree  
2 together with a certificate by the clerk of the court wherein  
3 the judgment or decree was entered that the judgment or decree  
4 remains unsatisfied, in whole or in part, after the time  
5 aforesaid, the office ~~department~~ shall forthwith revoke the  
6 insurer's certificate of authority. The office ~~department~~  
7 shall not issue to such insurer any new certificate of  
8 authority until the judgment or decree is wholly paid and  
9 satisfied and proof thereof filed with the office ~~department~~  
10 under the official certificate of the clerk of the court  
11 wherein the judgment was recovered, showing that the same is  
12 satisfied of record, and until the expenses and fees incurred  
13 in the case are also paid by the insurer.

14 Section 1125. Paragraph (b) of subsection (4) of  
15 section 627.429, Florida Statutes, is amended to read:

16 627.429 Medical tests for HIV infection and AIDS for  
17 insurance purposes.--

18 (4) USE OF MEDICAL TESTS FOR UNDERWRITING.--

19 (b) Prior to testing, the insurer shall disclose its  
20 intent to test the person for the HIV infection or for a  
21 specific sickness or medical condition derived therefrom and  
22 shall obtain the person's written informed consent to  
23 administer the test. The written informed consent required by  
24 this paragraph shall include a fair explanation of the test,  
25 including its purpose, potential uses, and limitations, and  
26 the meaning of its results and the right to confidential  
27 treatment of information. Use of a form approved by the  
28 office ~~department~~ raises a conclusive presumption of informed  
29 consent.

30 Section 1126. Subsection (1) of section 627.452,  
31 Florida Statutes, is amended to read:

1           627.452 Standard provisions required.--

2           (1) No policy of life insurance, except as stated in  
3 subsection (3), shall be delivered or issued for delivery in  
4 this state unless it contains in substance each of the  
5 provisions as required by ss. 627.453-627.462 inclusive and  
6 ss. 627.475 and 627.476, or provisions which in the opinion of  
7 the office ~~department~~ are more favorable to the policyholder.

8           Section 1127. Subsection (1) of section 627.458,  
9 Florida Statutes, is amended to read:

10           627.458 Policy loan.--

11           (1) There shall be a provision that after the policy  
12 has a cash surrender value and while no premium is in default,  
13 the insurer will advance, on proper assignment or pledge of  
14 the policy and on the sole security thereof, at a rate of  
15 interest not exceeding 10 percent per year, for policies  
16 issued prior to October 1, 1981, payable in advance, an amount  
17 equal to or, at the option of the party entitled thereto, less  
18 than the loan value of the policy. The loan value of the  
19 policy shall be at least equal to the cash surrender value at  
20 the end of the then-current policy year, except that the  
21 insurer may deduct, either from such loan value or from the  
22 proceeds of the loan, any existing indebtedness not already  
23 deducted in determining such cash surrender value, including  
24 any interest then accrued but not due, any unpaid balance of  
25 the premium for the current policy year, and interest on the  
26 loan to the end of the current policy year. However, as a  
27 condition for approval of a policy loan interest rate in  
28 excess of 6 percent per year, the office ~~department~~ shall  
29 require the insurer to furnish such assurances as the office  
30 ~~department~~ deems necessary that the interest rate on such  
31 loans will bear a reasonable relationship to other interest

1 rates and that the holders of such policies will benefit  
2 through higher dividends or lower premiums, or both.

3 Section 1128. Section 627.462, Florida Statutes, is  
4 amended to read:

5 627.462 Table of installments.--If a policy provides  
6 for payment of its proceeds in installments, a table showing  
7 the amount and period of such installments shall be included  
8 in the policy; except that certain tables may be omitted from  
9 the policy if in the judgment of the office ~~department~~ it is  
10 not practical to include them.

11 Section 1129. Subsection (1) of section 627.464,  
12 Florida Statutes, is amended to read:

13 627.464 Annuity contracts, pure endowment contracts;  
14 standard provisions.--

15 (1) No fixed-dollar annuity, variable annuity, or pure  
16 endowment contract, other than a reversionary annuity,  
17 survivorship annuity, or group annuity, shall be delivered or  
18 issued for delivery in this state unless it contains in  
19 substance each of the provisions set forth in ss.

20 627.465-627.470, inclusive, or provisions which in the opinion  
21 of the office ~~department~~ are more favorable to the  
22 policyholder. Any of such provisions not applicable to  
23 single-premium annuities or single-premium pure endowment  
24 contracts shall not to that extent be incorporated therein.

25 Section 1130. Subsections (2) and (8), paragraphs (h)  
26 and (k) of subsection (9), and subsections (10) and (14) of  
27 section 627.476, Florida Statutes, are amended to read:

28 627.476 Standard Nonforfeiture Law for Life  
29 Insurance.--

30 (2) NONFORFEITURE PROVISIONS.--In the case of policies  
31 issued on or after the operative date of this section as

1 defined in subsection (14), no policy of life insurance,  
2 except as set forth in subsection (13), shall be delivered or  
3 issued for delivery in this state unless it contains in  
4 substance the following provisions, or corresponding  
5 provisions which in the opinion of the office ~~department~~ are  
6 at least as favorable to the defaulting or surrendering  
7 policyholder as are the minimum requirements hereinafter  
8 specified and are essentially in compliance with subsection  
9 (12):

10           (a) That in the event of default in any premium  
11 payment, after premiums have been paid for at least 1 full  
12 year in the case of ordinary insurance or 3 full years in the  
13 case of industrial insurance, the insurer will grant, upon  
14 proper request not later than 60 days after the due date of  
15 the premium in default, a paid-up nonforfeiture benefit on a  
16 plan stipulated in the policy, effective as of such due date,  
17 of such amount as may be hereinafter specified. In lieu of  
18 such stipulated paid-up nonforfeiture benefit, the company may  
19 substitute, upon proper request not later than 60 days after  
20 the due date of the premium in default, an actuarially  
21 equivalent alternative paid-up nonforfeiture benefit which  
22 provides a greater amount or longer period of death benefits  
23 or, if applicable, a greater amount or earlier payment of  
24 endowment benefits. With respect to all policy forms filed on  
25 or after October 1, 1990, the policy forms shall include, but  
26 not be limited to, a reduced paid-up nonforfeiture benefit.  
27 For the purposes of this subsection, the term "reduced paid-up  
28 nonforfeiture benefit" means a benefit whereby the policy may  
29 be continued at the option of the insured as reduced paid-up  
30 life insurance, the amount of which shall be as much as the  
31 surrender value of the policy will provide on the date of

1 default, calculated using the surrender value of the policy as  
2 a net single premium on the due date of the first unpaid  
3 premium at the then-current age of the insured.

4 (b) That upon surrender of the policy within 60 days  
5 after the due date of any premium payment in default after  
6 premiums have been paid for at least 3 full years in the case  
7 of ordinary insurance or 5 full years in the case of  
8 industrial insurance, the insurer will pay, in lieu of any  
9 paid-up nonforfeiture benefit, a cash surrender value of such  
10 amount as may be hereinafter specified.

11 (c) That a specified paid-up nonforfeiture benefit  
12 shall become effective as specified in the policy unless the  
13 person entitled to make such election elects another available  
14 option not later than 60 days after the due date of the  
15 premium in default.

16 (d) That if the policy becomes paid up by completion  
17 of all premium payments, or if it is continued under any  
18 paid-up nonforfeiture benefit which became effective on or  
19 after the third policy anniversary in the case of ordinary  
20 insurance or the fifth policy anniversary in the case of  
21 industrial insurance, the insurer will pay, upon surrender of  
22 the policy within 30 days after any policy anniversary, a cash  
23 surrender value of such amount as may be hereinafter  
24 specified.

25 (e) In the case of a policy which causes on a basis  
26 guaranteed in the policy unscheduled changes in benefits or  
27 premiums, or which provides an option for changes in benefits  
28 or premiums other than a change to a new policy, a statement  
29 of the mortality table, interest rate, and method used in  
30 calculating cash surrender values and the paid-up  
31 nonforfeiture benefits available under the policy. In the

1 case of any other policy, a statement of the mortality table  
2 and interest rate used in calculating the cash surrender  
3 values and the paid-up nonforfeiture benefits available under  
4 the policy, together with a table showing the cash surrender  
5 value, if any, and paid-up nonforfeiture benefit, if any,  
6 available under the policy on each policy anniversary, either  
7 during the first 20 policy years or during the term of the  
8 policy, whichever is shorter, such values and benefits to be  
9 calculated upon the assumption that there are no dividends or  
10 paid-up additions credited to the policy and that there is no  
11 indebtedness to the insurer on the policy.

12 (f) A statement that the cash surrender values and the  
13 paid-up nonforfeiture benefits available under the policy are  
14 not less than the minimum values and benefits required by or  
15 pursuant to the insurance law of this state; an explanation of  
16 the manner in which the cash surrender values and the paid-up  
17 nonforfeiture benefits are altered by the existence of any  
18 paid-up additions credited to the policy or any indebtedness  
19 to the insurer on the policy; if a detailed statement of the  
20 method of computation of the values and benefits shown in the  
21 policy is not stated therein, a statement that such method of  
22 computation has been filed with the insurance supervisory  
23 official of the state in which the policy is delivered; and a  
24 statement of the method to be used in calculating the cash  
25 surrender value and paid-up nonforfeiture benefit available  
26 under the policy on any policy anniversary beyond the last  
27 anniversary for which such values and benefits are  
28 consecutively shown in the policy.

29 (8) MORTALITY TABLES; INTEREST.--This subsection shall  
30 not apply to policies issued on or after the operative date of  
31 subsection (9), as defined therein. All adjusted premiums and

1 present values referred to in this section shall for all  
2 policies of ordinary insurance be calculated on the basis of  
3 the Commissioners' 1958 Standard Ordinary Mortality Table,  
4 except that, for any category of such policies issued on  
5 female risks, adjusted premiums and present values may be  
6 calculated according to an age not more than 6 years younger  
7 than the actual age of the insured. Such calculations for all  
8 policies of industrial insurance shall be made on the basis of  
9 the following tables:

10 (a) For policies issued on and after the operative  
11 date of this section but before January 1, 1968, the 1941  
12 Standard Industrial Mortality Table, unless the Commissioners'  
13 1961 Standard Industrial Mortality Table is applicable  
14 according to subsection (14);

15 (b) For policies issued on and after January 1, 1968,  
16 the Commissioners' 1961 Standard Industrial Mortality Table.

17  
18 All calculations shall be made on the basis of the rate of  
19 interest specified in the policy for calculating cash  
20 surrender values and paid-up nonforfeiture benefits; however,  
21 such rate of interest shall not exceed 3.5 percent per year,  
22 except that a rate of interest not exceeding 4 percent per  
23 year may be used for policies issued on or after July 1, 1973,  
24 and prior to October 1, 1979, and a rate of interest not  
25 exceeding 4.5 percent per year may be used for policies issued  
26 on or after October 1, 1979, and a rate of interest not  
27 exceeding 5.5 percent per year may be used for policies issued  
28 on or after October 1, 1980. In calculating the present value  
29 of any paid-up term insurance with accompanying pure  
30 endowment, if any, offered as a nonforfeiture benefit, the  
31 rates of mortality assumed may be not more than those shown in

1 the Commissioners' 1958 Extended Term Insurance Table, for  
2 ordinary policies. In the case of industrial policies:

3 (c) For policies issued on and after the operative  
4 date of this section but before January 1, 1968, not more than  
5 130 percent of the rates of mortality according to the 1941  
6 Standard Industrial Mortality Table, unless the Commissioners'  
7 1961 Industrial Extended Term Insurance Table is applicable  
8 according to subsection (14), in which case not more than  
9 those of the latter table;

10 (d) For policies issued on and after January 1, 1968,  
11 not more than those of the Commissioners' 1961 Industrial  
12 Extended Term Insurance Table.

13

14 For insurance issued on a substandard basis, the calculation  
15 of any such adjusted premiums and present values may be based  
16 on such other table of mortality as may be specified by the  
17 insurer and approved by the office ~~department~~.

18 (9) CALCULATION OF ADJUSTED PREMIUMS AND PRESENT  
19 VALUES FOR POLICIES ISSUED AFTER OPERATIVE DATE OF THIS  
20 SUBSECTION.--

21 (h) All adjusted premiums and present values referred  
22 to in this section shall for all policies of ordinary  
23 insurance be calculated on the basis of the Commissioners'  
24 1980 Standard Ordinary Mortality Table or, at the election of  
25 the insurer for any one or more specified plans of life  
26 insurance, the Commissioners' 1980 Standard Ordinary Mortality  
27 Table with Ten-Year Select Mortality Factors; shall for all  
28 policies of industrial insurance be calculated on the basis of  
29 the Commissioners' 1961 Standard Industrial Mortality Table;  
30 and shall for all policies issued in a particular calendar  
31 year be calculated on the basis of a rate of interest not

1 exceeding the nonforfeiture interest rate as defined in this  
2 subsection for policies issued in that calendar year. However:

3       1. At the option of the insurer, calculations for all  
4 policies issued in a particular calendar year may be made on  
5 the basis of a rate of interest not exceeding the  
6 nonforfeiture interest rate, as defined in this subsection,  
7 for policies issued in the immediately preceding calendar  
8 year.

9       2. Under any paid-up nonforfeiture benefit, including  
10 any paid-up dividend additions, any cash surrender value  
11 available, whether or not required by subsection (2), shall be  
12 calculated on the basis of the mortality table and rate of  
13 interest used in determining the amount of such paid-up  
14 nonforfeiture benefit and paid-up dividend additions, if any.

15       3. An insurer may calculate the amount of any  
16 guaranteed paid-up nonforfeiture benefit, including any  
17 paid-up additions under the policy, on the basis of an  
18 interest rate no lower than that specified in the policy for  
19 calculating cash surrender values.

20       4. In calculating the present value of any paid-up  
21 term insurance with accompanying pure endowment, if any,  
22 offered as a nonforfeiture benefit, the rates of mortality  
23 assumed may be not more than those shown in the Commissioners'  
24 1980 Extended Term Insurance Table for policies of ordinary  
25 insurance and not more than the Commissioners' 1961 Industrial  
26 Extended Term Insurance Table for policies of industrial  
27 insurance.

28       5. In lieu of the mortality tables specified in this  
29 section, at the option of the insurance company and subject to  
30 rules adopted by the commission ~~department~~, the insurance  
31 company may substitute:

1           a. The 1958 CSO or CET Smoker and Nonsmoker Mortality  
2 Tables, whichever is applicable, for policies issued on or  
3 after the operative date of this subsection and before January  
4 1, 1989;

5           b. The 1980 CSO or CET Smoker and Nonsmoker Mortality  
6 Tables, whichever is applicable, for policies issued on or  
7 after the operative date of this subsection;

8           c. A mortality table that is a blend of the  
9 sex-distinct 1980 CSO or CET mortality table standard,  
10 whichever is applicable, or a mortality table that is a blend  
11 of the sex-distinct 1980 CSO or CET smoker and nonsmoker  
12 mortality table standards, whichever is applicable, for  
13 policies that are subject to the United States Supreme Court  
14 decision in Arizona Governing Committee v. Norris to prevent  
15 unfair discrimination in employment situations.

16           6. For insurance issued on a substandard basis, the  
17 calculation of any such adjusted premiums and present values  
18 may be based on appropriate modifications of the  
19 aforementioned tables.

20           (k) After October 1, 1981, any insurer may file with  
21 the office ~~department~~ a written notice of its election to  
22 comply with the provisions of this subsection after a  
23 specified date before January 1, 1989, which shall be the  
24 operative date of this subsection for that insurer. If an  
25 insurer makes no such election, the operative date of this  
26 subsection for the insurer shall be January 1, 1989.

27           (10) INDETERMINATE PREMIUMS OR MINIMUM VALUES.--In the  
28 case of any plan of life insurance which provides for future  
29 premium determination, the amounts of which are to be  
30 determined by the insurer based on then estimates of future  
31 experience, or in the case of any plan of life insurance which

1 is of such a nature that minimum values cannot be determined  
2 by the methods described in subsections (2)-(9):

3 (a) The office ~~department~~ must be satisfied that the  
4 benefits provided under the plan are substantially as  
5 favorable to policyholders and insureds as the minimum  
6 benefits otherwise required by subsections (2)-(9);

7 (b) The office ~~department~~ must be satisfied that the  
8 benefits and the pattern of premiums of that plan are not such  
9 as to mislead prospective policyholders or insureds; and

10 (c) The cash surrender values and paid-up  
11 nonforfeiture benefits provided by such plan must not be less  
12 than the minimum values and benefits required for the plan  
13 computed by a method consistent with the principles of this  
14 Standard Nonforfeiture Law for Life Insurance, as determined  
15 by rules promulgated by the commission ~~department~~.

16 (14) OPERATIVE DATE.--After the effective date of this  
17 code, any insurer may file with the office ~~department~~ a  
18 written notice or notices of its election to comply with the  
19 provisions of this section on and after a specified date or  
20 dates before January 1, 1966, as to either or both of its  
21 policies of ordinary and industrial insurance, in which case  
22 such specified date or dates shall be the operative date of  
23 this section with respect to such policies. The operative  
24 date of this section for policies of both ordinary and  
25 industrial insurance shall be the earlier of January 1, 1966,  
26 and any prior operative date or dates resulting from such  
27 previously filed written notices. With respect to policies of  
28 industrial insurance issued on and after the operative date of  
29 this section for such policies but before January 1, 1968, any  
30 insurer may file with the office ~~department~~ written notice of  
31 its election to have the Commissioners' 1961 Standard

1 Industrial Mortality Table and the Commissioners' 1961  
2 Industrial Extended Term Insurance Table applicable with  
3 respect to subsection (8) for policies issued on and after the  
4 date specified in such election.

5 Section 1131. Subsections (2) and (3) of section  
6 627.479, Florida Statutes, are amended to read:

7 627.479 Prohibited policy plans.--

8 (2) No insurer shall issue policies containing annual  
9 endowments or other specialty-type policies such as founder's  
10 policies or coupon-bearing policies. The commission  
11 ~~department~~ shall, by rule, define such prohibited policies.

12 (3) The office ~~department~~ shall revoke the certificate  
13 of authority of any insurer which violates this section.

14 Section 1132. Section 627.480, Florida Statutes, is  
15 amended to read:

16 627.480 Cash payments of single-premium life  
17 policies.--Premiums for single-premium life insurance policies  
18 shall be paid in cash. This section is not applicable to the  
19 use of dividends to purchase paid-up additional insurance or  
20 to such other usual and customary methods of paying for life  
21 insurance as may be permitted by rule of the commission  
22 ~~department~~.

23 Section 1133. Paragraph (a) of subsection (2) and  
24 subsections (4), (6), and (11) of section 627.481, Florida  
25 Statutes, are amended to read:

26 627.481 Requirements for certain annuity agreements.--

27 (2)(a) Every such domestic corporation or such  
28 domestic or foreign trust shall have and maintain admitted  
29 assets at least equal to the sum of the reserves on its  
30 outstanding annuity agreements, and a surplus of 10 percent of  
31 such reserves, calculated using:

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

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

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

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

11           (I) The mortality tables described in s.  
12 625.121(5)(h), for individual annuities;

13           (II) At the option of the corporation or trust, the  
14 1983 Individual Annuity Mortality Table; or

15           (III) At the option of the corporation or trust, the  
16 2000 Individual Annuity Mortality Table for annuities issued  
17 between January 1, 1998, and June 30, 1998, inclusive.

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

19           (I) The mortality tables set forth in s.  
20 625.121(5)(i)3.;

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

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

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

31

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

7	8 Year of Issue	9 Single Premium Immediate 10 Annuity Interest Rate
11	1992	7.75 percent
12	1993	7.00 percent
13	1994	6.50 percent
14	1995	7.25 percent
15	1996	6.75 percent
16	1997	6.75 percent
17	1998	6.25 percent
18	1999	6.25 percent
19	2000	7.00 percent
20	2001	6.75 percent

21  
22           b. For 2002 and subsequent years, until an interest  
23 rate for a specified year can be determined in accordance with  
24 s. 625.121(6), the prior year's rate shall be used unless the  
25 office ~~department~~ requires use of a lower rate.

26           (4) Any corporation or trust that engages in the  
27 business of issuing these annuity agreements shall notify the  
28 office ~~department~~ in writing by the later of 90 days after the  
29 effective date of this act or the date on which it enters into  
30 the first of these annuity agreements. The notice must:

31

1 (a) Be signed by two or more officers or directors of  
2 the organization;

3 (b) Identify the organization; and

4 (c) Certify that the organization meets the  
5 requirements of this section.

6 (6) If the office ~~department~~ finds that any such  
7 corporation or trust has failed to comply with the  
8 requirements of this section, it may order such corporation or  
9 trust to cease making any new annuity agreements until such  
10 requirements have been satisfied. The office ~~department~~ may,  
11 in its discretion, require annual statements by such  
12 corporation or trust and may accept in lieu thereof a sworn  
13 statement by two or more of the principal officers thereof, in  
14 such form as will satisfy the office ~~department~~ that the  
15 requirements of this section are being complied with.

16 (11) The commission ~~department~~ shall adopt rules and  
17 forms for the filing of annual statements and agreements  
18 pertaining to donor annuity organizations.

19 Section 1134. Subsection (2) of section 627.482,  
20 Florida Statutes, is amended to read:

21 627.482 Interest payable on cash surrender of  
22 policy.--

23 (2) An insurer shall be exempt from the requirements  
24 of this section if, upon petition by the insurer to the office  
25 ~~department~~, it is determined by the office ~~department~~ that  
26 payment of such interest threatens the solvency of the  
27 insurer.

28 Section 1135. Subsection (2) of section 627.502,  
29 Florida Statutes, is amended to read:

30 627.502 "Industrial life insurance" defined;  
31 reporting.--

1           (2) Every life insurer transacting industrial life  
2 insurance shall report to the office ~~department~~ all annual  
3 statement data regarding the exhibit of life insurance,  
4 including relevant information for industrial life insurance.

5           Section 1136. Subsection (1) of section 627.503,  
6 Florida Statutes, is amended to read:

7           627.503 Required provisions.--

8           (1) No policy of industrial life insurance shall be  
9 delivered or issued for delivery in this state unless it  
10 contains in substance each of the provisions as required in s.  
11 627.476 and ss. 627.504-627.521, or provisions which in the  
12 opinion of the office ~~department~~ are more favorable to the  
13 policyholder.

14           Section 1137. Subsection (2) of section 627.510,  
15 Florida Statutes, is amended to read:

16           627.510 Settlement on proof of death.--

17           (2) Insurers transacting industrial life insurance  
18 business in the state who require a claim form to be filed by  
19 a claimant for settlement of a policy shall allow the claimant  
20 to file the claim using the uniform life insurance claim form  
21 developed by the commission ~~department~~. The commission  
22 ~~department~~ shall establish by rule a uniform life insurance  
23 claim form to be used by claimants for settlement of any  
24 industrial life insurance policy issued by an insurer  
25 transacting life insurance business in this state.

26           Section 1138. Subsections (4) and (5) of section  
27 627.5515, Florida Statutes, are amended to read:

28           627.5515 Out-of-state groups.--

29           (4) Prior to solicitation in this state, a copy of the  
30 master policy and a copy of the form of the certificate  
31 evidencing coverage that will be issued to residents of this

1 state shall be filed with the office ~~department~~ for  
2 informational purposes.

3 (5) Prior to solicitation in this state, an officer of  
4 the insurer shall truthfully certify to the office ~~department~~  
5 that the policy and certificates evidencing coverage have been  
6 reviewed and approved by the state in which the group policy  
7 is issued.

8 Section 1139. Subsection (2) of section 627.5565,  
9 Florida Statutes, is amended to read:

10 627.5565 Additional groups.--

11 (2) An insurer shall inform the office ~~department~~ of  
12 the effectuation of any coverage under this section within 30  
13 days after effectuation of coverage. The insurer is  
14 responsible for establishing that the criteria of subsection  
15 (1) have been satisfied.

16 Section 1140. Section 627.558, Florida Statutes, is  
17 amended to read:

18 627.558 Provisions required in group contracts.--No  
19 policy of group life insurance shall be delivered in this  
20 state unless it contains in substance the provisions set forth  
21 in ss. 627.559-627.568 or provisions which in the opinion of  
22 the office ~~department~~ are more favorable to the persons  
23 insured, or at least as favorable to the persons insured and  
24 more favorable to the policyholder; except that:

25 (1) Sections 627.564-627.568 inclusive do not apply to  
26 policies issued to a creditor to insure debtors of such  
27 creditor;

28 (2) The standard provisions required for individual  
29 life insurance policies do not apply to group life insurance  
30 policies; and

31

1           (3) If the group life insurance policy is on a plan of  
2 insurance other than the term plan, it shall contain a  
3 nonforfeiture provision or provisions which in the opinion of  
4 the office ~~department~~ is or are equitable to the insured  
5 persons and to the policyholder, but nothing in this section  
6 shall be construed to require that group life insurance  
7 policies contain the same nonforfeiture provisions as are  
8 required for individual life insurance policies.

9           Section 1141. Paragraph (g) of subsection (1) and  
10 subsection (2) of section 627.602, Florida Statutes, are  
11 amended to read:

12           627.602 Scope, format of policy.--

13           (1) Each health insurance policy delivered or issued  
14 for delivery to any person in this state must comply with all  
15 applicable provisions of this code and all of the following  
16 requirements:

17           (g) The policy may not contain any provision  
18 purporting to make any portion of the charter, rules,  
19 constitution, or bylaws of the insurer a part of the policy  
20 unless the portion is set forth in full in the policy, except  
21 in the case of the incorporation of, or reference to, a  
22 statement of rates, statement of classification of risks, or  
23 short-rate table filed with the office ~~department~~.

24           (2) The office ~~department~~ may require any health  
25 insurance policy or certificate containing a provision  
26 commonly known as a "deductible provision" to have printed or  
27 stamped on such policy or certificate: "This policy or  
28 certificate contains a deductible provision."; or appropriate  
29 words of similar import approved by the office ~~department~~. The  
30 statement shall appear on the first page of the policy or  
31 certificate in at least 18-point type and may be printed or

1 stamped either as an overprint or by means of a rubber stamp  
2 impression.

3 Section 1142. Section 627.604, Florida Statutes, is  
4 amended to read:

5 627.604 Nonresident insured.--If any health insurance  
6 policy is issued by an insurer domiciled in this state for  
7 delivery to a person residing in another state, and if the  
8 official having responsibility for the administration of the  
9 insurance laws of such other state has advised the office  
10 ~~department~~ that any such policy is not subject to approval or  
11 disapproval by such official, the commission ~~department~~ may by  
12 rule require that such policy meet the standards set forth in  
13 this part.

14 Section 1143. Section 627.605, Florida Statutes, is  
15 amended to read:

16 627.605 Required provisions; captions, omissions,  
17 substitutions.--

18 (1) Except as provided in subsection (2), each such  
19 policy delivered or issued for delivery to any person in this  
20 state shall contain the provisions specified in ss.

21 627.606-627.617, inclusive, in the words in which the same  
22 appear; except that the insurer may, at its option, substitute  
23 for one or more of such provisions corresponding provisions of  
24 different wording approved by the office ~~department~~ which are  
25 in each instance not less favorable in any respect to the  
26 insured or the beneficiary. Each such provision shall be  
27 preceded individually by the applicable caption shown or, at  
28 the option of the insurer, by such appropriate individual or  
29 group captions or subcaptions as the office ~~department~~ may  
30 approve.

31

1           (2) If any such provision is in whole or in part  
2 inapplicable to or inconsistent with the coverage provided by  
3 a particular form of policy, the insurer, with the approval of  
4 the office ~~department~~, shall omit from such policy any  
5 inapplicable provision or part of a provision and shall modify  
6 any inconsistent provision or part of a provision in such  
7 manner as to make the provision as contained in the policy  
8 consistent with the coverage provided by the policy.

9           Section 1144. Subsection (14) of section 627.6131,  
10 Florida Statutes, is amended to read:

11           627.6131 Payment of claims.--

12           (14) A permissible error ratio of 5 percent is  
13 established for insurer's claims payment violations of  
14 paragraphs (4)(a), (b), (c), and (e) and (5)(a), (b), (c), and  
15 (e). If the error ratio of a particular insurer does not  
16 exceed the permissible error ratio of 5 percent for an audit  
17 period, no fine shall be assessed for the noted claims  
18 violations for the audit period. The error ratio shall be  
19 determined by dividing the number of claims with violations  
20 found on a statistically valid sample of claims for the audit  
21 period by the total number of claims in the sample. If the  
22 error ratio exceeds the permissible error ratio of 5 percent,  
23 a fine may be assessed according to s. 624.4211 for those  
24 claims payment violations which exceed the error ratio.  
25 Notwithstanding the provisions of this section, the office  
26 ~~department~~ may fine a health insurer for claims payment  
27 violations of paragraphs (4)(e) and (5)(e) which create an  
28 uncontestable obligation to pay the claim. The office  
29 ~~department~~ shall not fine insurers for violations which the  
30 office ~~department~~ determines were due to circumstances beyond  
31 the insurer's control.

1           Section 1145. Section 627.618, Florida Statutes, is  
2 amended to read:

3           627.618 Optional policy provisions.--Except as  
4 provided in s. 627.605(2), no health insurance policy  
5 delivered or issued for delivery to any person in this state  
6 shall contain any provision respecting the matters set forth  
7 in ss. 627.619-627.629, inclusive, unless such provision is in  
8 the words in which the same appears in the applicable section,  
9 except that the insurer may, at its option, use in lieu of any  
10 such provision a corresponding provision of different wording  
11 approved by the office ~~department~~ which is not less favorable  
12 in any respect to the insured or the beneficiary. Any such  
13 provision contained in the policy shall be preceded  
14 individually by the appropriate caption or, at the option of  
15 the insurer, by such appropriate individual or group captions  
16 or subcaptions as the office ~~department~~ may approve.

17           Section 1146. Subsection (2) of section 627.622,  
18 Florida Statutes, is amended to read:

19           627.622 Insurance with other insurers.--  
20           (2) If the foregoing policy provision is included in a  
21 policy which also contains the policy provision set out in s.  
22 627.623, there shall be added to the caption of the foregoing  
23 provision the phrase: "--Expense-incurred Benefits." The  
24 insurer may, at its option, include in this provision a  
25 definition of "other valid coverage," approved as to form by  
26 the office ~~department~~, which definition shall be limited to  
27 coverage provided by organizations subject to regulation by  
28 the insurance law of any jurisdiction. In the absence of such  
29 definition, such term does not include group insurance,  
30 automobile medical payments insurance, or coverage provided by  
31 health care services plans or by union welfare plans or

1 employer or employee benefit organizations. Any benefit  
2 provided for an insured pursuant to any compulsory benefit  
3 statute shall in all cases be deemed to be "other valid  
4 coverage" of which the insurer has had notice. In applying  
5 the foregoing policy provision, no third-party liability  
6 coverage shall be included as "other valid coverage."

7 Section 1147. Subsection (2) of section 627.623,  
8 Florida Statutes, Florida Statutes, Florida Statutes, is  
9 amended to read:

10 627.623 Insurance with other insurers; other  
11 benefits.--

12 (2) If the foregoing policy provision is included in a  
13 policy which also contains the policy provision set out in s.  
14 627.622, there shall be added to the caption of the foregoing  
15 provision the phrase: "--Other Benefits." The insurer may, at  
16 its option, include in this provision a definition of "other  
17 valid coverage," approved as to form by the office ~~department~~,  
18 which definition shall be limited to coverage provided by  
19 organizations subject to regulation by the insurance law of  
20 any jurisdiction. In the absence of such definition, such  
21 term does not include group insurance, or benefits provided by  
22 union welfare plans or by employer or employee benefit  
23 organizations. Any benefit provided for an insured pursuant  
24 to any compulsory benefit statute shall in all cases be deemed  
25 to be "other valid coverage" of which the insurer has had  
26 notice. In applying the foregoing policy provision, no  
27 third-party liability coverage shall be included as "other  
28 valid coverage."

29 Section 1148. Subsection (2) of section 627.624,  
30 Florida Statutes, is amended to read:

31 627.624 Relation of earnings to insurance.--

1           (2) The foregoing policy provision may be inserted  
2 only in a policy which the insured has the right to continue  
3 in force subject to its terms by the timely payment of  
4 premiums until at least age 50 or, in the case of a policy  
5 issued after age 44, for at least 5 years from its date of  
6 issue. The insurer may, at its option, include in this  
7 provision a definition of "valid loss-of-time coverage,"  
8 approved as to form by the office department, which definition  
9 shall be limited to coverage provided by governmental agencies  
10 or by organizations subject to regulation by insurance law, or  
11 any combination of such coverages. In the absence of such  
12 definition, such term does not include any coverage provided  
13 for such insured pursuant to any compulsory benefit statute or  
14 benefits provided by union welfare plans or by employer or  
15 employee benefit organizations.

16           Section 1149. Subsection (2) of section 627.635,  
17 Florida Statutes, is amended to read:

18           627.635 Excess insurance.--

19           (2) Any excess insurance policy, or any policy  
20 containing any excess insurance provision, shall have  
21 imprinted or stamped conspicuously upon the face thereof the  
22 designation "excess insurance" or appropriate words of similar  
23 import approved by the office department.

24           Section 1150. Section 627.640, Florida Statutes, is  
25 amended to read:

26           627.640 Filing of classifications and rates.--An  
27 insurer shall not deliver or issue for delivery in this state  
28 any health insurance policy until it has filed with the office  
29 ~~department~~ a copy of any applicable classification of risks  
30 and premium rates.

31

1           Section 1151. Paragraph (b) of subsection (3) of  
2 section 627.6425, Florida Statutes, is amended to read:

3           627.6425 Renewability of individual coverage.--

4           (3)

5           (b)1. Subject to subparagraph (a)3., in any case in  
6 which an insurer elects to discontinue offering all health  
7 insurance coverage in the individual market in this state,  
8 health insurance coverage may be discontinued by the insurer  
9 only if:

10           a. The insurer provides notice to the office  
11 ~~department~~ and to each individual of such discontinuation at  
12 least 180 days prior to the date of the nonrenewal of such  
13 coverage; and

14           b. All health insurance issued or delivered for  
15 issuance in the state in the individual market is discontinued  
16 and coverage under such health insurance coverage in such  
17 market is not renewed.

18           2. In the case of a discontinuation under subparagraph  
19 1. in the individual market, the insurer may not provide for  
20 the issuance of any individual health insurance coverage in  
21 this state during the 5-year period beginning on the date of  
22 the discontinuation of the last health insurance coverage not  
23 so renewed.

24           Section 1152. Section 627.643, Florida Statutes, is  
25 amended to read:

26           627.643 Uniform minimum standards.--

27           (1) The commission ~~department~~ shall adopt rules which  
28 establish minimum standards for the general content of forms  
29 of individual and family health insurance policies. The rules  
30 must include terms of renewability, initial and subsequent  
31 conditions of eligibility, termination of insurance,

1 probationary periods, exclusions, limitations, and reductions.  
2 The minimum standards are in addition to, and must comply  
3 with, the individual health insurance policy provisions  
4 provided in part II and in this part.

5 (2) The commission ~~department~~ shall adopt rules which  
6 establish minimum standards of benefits and identification for  
7 each of the following categories of coverage in individual and  
8 family accident and health insurance policy forms, other than  
9 conversion policy forms:

- 10 (a) Basic hospital expense insurance.
- 11 (b) Basic medical expense insurance.
- 12 (c) Basic surgical expense insurance.
- 13 (d) Hospital confinement indemnity insurance.
- 14 (e) Major medical expense insurance.
- 15 (f) Disability income protection insurance.
- 16 (g) Accident-only insurance.
- 17 (h) Limited benefit insurance.
- 18 (i) Supplemental insurance.
- 19 (j) Home health care coverage.
- 20 (k) Nonconventional coverage.

21  
22 This subsection does not preclude the issuance of a policy  
23 which combines two or more of the categories of coverage  
24 enumerated in paragraphs (a)-(e). This subsection does not  
25 preclude the issuance of a policy that does not meet the  
26 prescribed minimum standards for categories of coverage in  
27 paragraphs (a)-(g) if the office ~~department~~ determines that  
28 the policy is either experimental in nature or is demonstrated  
29 to be a type of coverage that fulfills a reasonable need of  
30 the person or persons to be insured. Any policy not meeting  
31 the minimum standards that is approved by the office

1 ~~department~~ must be identified as to category only as  
2 prescribed by the office department.

3 (3) The office department may, within the time  
4 provided by law for the disapproval of an individual or family  
5 form of accident or health insurance, disapprove any form if  
6 it finds that the form does not comply with applicable law or  
7 it finds that the form is unjust, unfair, or inequitable to  
8 the policyholder, any insured, or any beneficiary. In acting  
9 upon any submission, the office department shall consider  
10 whether the benefits afforded under the submitted policy or  
11 benefit form fulfill a reasonable need of a policyholder.

12 Section 1153. Subsection (1) of section 627.647,  
13 Florida Statutes, is amended to read:

14 627.647 Standard health claim form.--

15 (1) The commission department shall prescribe a  
16 standard health claim form to be used by all hospitals and a  
17 standard health claim form to be used by all physicians,  
18 dentists, and pharmacists. Such forms shall be in a format  
19 that allows for the use of generally accepted coding systems  
20 by providers in order to facilitate the processing of claims.  
21 Such forms shall provide for the disclosure by the claimant of  
22 the name, policy number, and address of every insurance policy  
23 which may cover the claimant with respect to the submitted  
24 claim except those policies specified in s. 627.4235(5). The  
25 required information on diagnosis, dental procedures, medical  
26 procedures, services, date of service, supplies, and fees may  
27 also be met by an attachment to the appropriate physician  
28 claim form. However, for the purpose of filing Medicaid  
29 claims, such attachments shall be prohibited. Such standard  
30 health claim forms shall be accepted by all insurers and all  
31 agencies, departments, and divisions of the state.

1           Section 1154. Paragraph (c) of subsection (14) of  
2 section 627.6472, Florida Statutes, is amended to read:

3           627.6472 Exclusive provider organizations.--  
4           (14)

5           (c) The failure of the insurer to pay the assessment  
6 within the time specified in s. 641.58 constitutes grounds for  
7 suspension or revocation of the insurer's certificate of  
8 authority by the office ~~Department of Insurance~~.

9           Section 1155. Paragraphs (a) and (b) of subsection  
10 (5), subsection (6), paragraphs (b), (c), (e), and (g) of  
11 subsection (7), and subsection (9) of section 627.6475,  
12 Florida Statutes, are amended to read:

13           627.6475 Individual reinsurance pool.--

14           (5) ISSUER'S ELECTION TO BECOME A RISK-ASSUMING  
15 CARRIER.--

16           (a) Each health insurance issuer that offers  
17 individual health insurance must elect to become a  
18 risk-assuming carrier or a reinsuring carrier for purposes of  
19 this section. Each such issuer must make an initial election,  
20 binding through December 31, 1999. The issuer's initial  
21 election must be made no later than October 31, 1997. By  
22 October 31, 1997, all issuers must file a final election,  
23 which is binding for 2 years, from January 1, 1998, through  
24 December 31, 1999, after which an election shall be binding  
25 for a period of 5 years. The office ~~department~~ may permit an  
26 issuer to modify its election at any time for good cause  
27 shown, after a hearing.

28           (b) The office ~~department~~ shall establish an  
29 application process for issuers seeking to change their status  
30 under this subsection.

31

1           (6) ELECTION PROCESS TO BECOME A RISK-ASSUMING  
2 CARRIER.--

3           (a)1. A health insurance issuer that offers individual  
4 health insurance may become a risk-assuming carrier by filing  
5 with the office ~~department~~ a designation of election under  
6 this subsection in a format and manner prescribed by the  
7 commission ~~department~~. The office ~~department~~ shall approve the  
8 election of a health insurance issuer to become a  
9 risk-assuming carrier if the office ~~department~~ finds that the  
10 issuer is capable of assuming that status pursuant to the  
11 criteria set forth in paragraph (b).

12           2. The office ~~department~~ must approve or disapprove  
13 any designation as a risk-assuming carrier within 60 days  
14 after a filing.

15           (b) In determining whether to approve an application  
16 by an issuer to become a risk-assuming carrier, the office  
17 ~~department~~ shall consider:

18           1. The issuer's financial ability to support the  
19 assumption of the risk of individuals.

20           2. The issuer's history of rating and underwriting  
21 individuals.

22           3. The issuer's commitment to market fairly to all  
23 individuals in the state or its service area, as applicable.

24           4. The issuer's ability to assume and manage the risk  
25 of enrolling individuals without the protection of the  
26 reinsurance program provided in subsection (7).

27           (c) The office ~~department~~ shall provide public notice  
28 of an issuer's designation of election under this subsection  
29 to become a risk-assuming carrier and shall provide at least a  
30 21-day period for public comment prior to making a decision on  
31

1 the election. The office ~~department~~ shall hold a hearing on  
2 the election at the request of the issuer.

3 (d) The office ~~department~~ may rescind the approval  
4 granted to a risk-assuming carrier under this subsection if  
5 the office ~~department~~ finds that the carrier no longer meets  
6 the criteria of paragraph (b).

7 (7) INDIVIDUAL HEALTH REINSURANCE PROGRAM.--

8 (b) A reinsuring carrier may reinsure with the program  
9 coverage of an eligible individual, subject to each of the  
10 following provisions:

11 1. A reinsuring carrier may reinsure an eligible  
12 individual within 60 days after commencement of the coverage  
13 of the eligible individual.

14 2. The program may not reimburse a participating  
15 carrier with respect to the claims of a reinsured eligible  
16 individual until the carrier has paid incurred claims of at  
17 least \$5,000 in a calendar year for benefits covered by the  
18 program. In addition, the reinsuring carrier is responsible  
19 for 10 percent of the next \$50,000 and 5 percent of the next  
20 \$100,000 of incurred claims during a calendar year, and the  
21 program shall reinsure the remainder.

22 3. The board shall annually adjust the initial level  
23 of claims and the maximum limit to be retained by the carrier  
24 to reflect increases in costs and utilization within the  
25 standard market for health benefit plans within the state. The  
26 adjustment may not be less than the annual change in the  
27 medical component of the "Commerce Price Index for All Urban  
28 Consumers" of the Bureau of Labor Statistics of the United  
29 States Department of Labor, unless the board proposes and the  
30 office ~~department~~ approves a lower adjustment factor.

31

1           4. A reinsuring carrier may terminate reinsurance for  
2 all reinsured eligible individuals on any plan anniversary.

3           5. The premium rate charged for reinsurance by the  
4 program to a health maintenance organization that is approved  
5 by the Secretary of Health and Human Services as a federally  
6 qualified health maintenance organization pursuant to 42  
7 U.S.C. s. 300e(c)(2)(A) and that, as such, is subject to  
8 requirements that limit the amount of risk that may be ceded  
9 to the program, which requirements are more restrictive than  
10 subparagraph 2., shall be reduced by an amount equal to that  
11 portion of the risk, if any, which exceeds the amount set  
12 forth in subparagraph 2., which may not be ceded to the  
13 program.

14           6. The board may consider adjustments to the premium  
15 rates charged for reinsurance by the program or carriers that  
16 use effective cost-containment measures, including high-cost  
17 case management, as defined by the board.

18           7. A reinsuring carrier shall apply its  
19 case-management and claims-handling techniques, including, but  
20 not limited to, utilization review, individual case  
21 management, preferred provider provisions, other managed-care  
22 provisions, or methods of operation consistently with both  
23 reinsured business and nonreinsured business.

24           (c)1. The board, as part of the plan of operation,  
25 shall establish a methodology for determining premium rates to  
26 be charged by the program for reinsuring eligible individuals  
27 pursuant to this section. The methodology must include a  
28 system for classifying individuals which reflects the types of  
29 case characteristics commonly used by carriers in this state.  
30 The methodology must provide for the development of basic  
31 reinsurance premium rates, which shall be multiplied by the

1 factors set for them in this paragraph to determine the  
2 premium rates for the program. The basic reinsurance premium  
3 rates shall be established by the board, subject to the  
4 approval of the office ~~department~~, and shall be set at levels  
5 that reasonably approximate gross premiums charged to eligible  
6 individuals for individual health insurance by health  
7 insurance issuers. The premium rates set by the board may vary  
8 by geographical area, as determined under this section, to  
9 reflect differences in cost. An eligible individual may be  
10 reinsured for a rate that is five times the rate established  
11 by the board.

12           2. The board shall periodically review the methodology  
13 established, including the system of classification and any  
14 rating factors, to ensure that it reasonably reflects the  
15 claims experience of the program. The board may propose  
16 changes to the rates that are subject to the approval of the  
17 office ~~department~~.

18           (e)1. Before March 1 of each calendar year, the board  
19 shall determine and report to the office ~~department~~ the  
20 program net loss in the individual account for the previous  
21 year, including administrative expenses for that year and the  
22 incurred losses for that year, taking into account investment  
23 income and other appropriate gains and losses.

24           2. Any net loss in the individual account for the year  
25 shall be recouped by assessing the carriers as follows:

26           a. The operating losses of the program shall be  
27 assessed in the following order subject to the specified  
28 limitations. The first tier of assessments shall be made  
29 against reinsuring carriers in an amount that may not exceed 5  
30 percent of each reinsuring carrier's premiums for individual  
31 health insurance. If such assessments have been collected and

1 additional moneys are needed, the board shall make a second  
2 tier of assessments in an amount that may not exceed 0.5  
3 percent of each carrier's health benefit plan premiums.

4           b. Except as provided in paragraph (f), risk-assuming  
5 carriers are exempt from all assessments authorized pursuant  
6 to this section. The amount paid by a reinsuring carrier for  
7 the first tier of assessments shall be credited against any  
8 additional assessments made.

9           c. The board shall equitably assess reinsuring  
10 carriers for operating losses of the individual account based  
11 on market share. The board shall annually assess each carrier  
12 a portion of the operating losses of the individual account.  
13 The first tier of assessments shall be determined by  
14 multiplying the operating losses by a fraction, the numerator  
15 of which equals the reinsuring carrier's earned premium  
16 pertaining to direct writings of individual health insurance  
17 in the state during the calendar year for which the assessment  
18 is levied, and the denominator of which equals the total of  
19 all such premiums earned by reinsuring carriers in the state  
20 during that calendar year. The second tier of assessments  
21 shall be based on the premiums that all carriers, except  
22 risk-assuming carriers, earned on all health benefit plans  
23 written in this state. The board may levy interim assessments  
24 against reinsuring carriers to ensure the financial ability of  
25 the plan to cover claims expenses and administrative expenses  
26 paid or estimated to be paid in the operation of the plan for  
27 the calendar year prior to the association's anticipated  
28 receipt of annual assessments for that calendar year. Any  
29 interim assessment is due and payable within 30 days after  
30 receipt by a carrier of the interim assessment notice. Interim  
31 assessment payments shall be credited against the carrier's

1 annual assessment. Health benefit plan premiums and benefits  
2 paid by a carrier that are less than an amount determined by  
3 the board to justify the cost of collection may not be  
4 considered for purposes of determining assessments.

5 d. Subject to the approval of the office ~~department~~,  
6 the board shall adjust the assessment formula for reinsuring  
7 carriers that are approved as federally qualified health  
8 maintenance organizations by the Secretary of Health and Human  
9 Services pursuant to 42 U.S.C. s. 300e(c)(2)(A) to the extent,  
10 if any, that restrictions are placed on them which are not  
11 imposed on other carriers.

12 3. Before March 1 of each year, the board shall  
13 determine and file with the office ~~department~~ an estimate of  
14 the assessments needed to fund the losses incurred by the  
15 program in the individual account for the previous calendar  
16 year.

17 4. If the board determines that the assessments needed  
18 to fund the losses incurred by the program in the individual  
19 account for the previous calendar year will exceed the amount  
20 specified in subparagraph 2., the board shall evaluate the  
21 operation of the program and report its findings and  
22 recommendations to the office ~~department~~ in the format  
23 established in s. 627.6699(11) for the comparable report for  
24 the small employer reinsurance program.

25 (g) Except as otherwise provided in this section, the  
26 board and the office ~~department~~ shall have all powers, duties,  
27 and responsibilities with respect to carriers that issue and  
28 reinsure individual health insurance, as specified for the  
29 board and the office ~~department~~ in s. 627.6699(11) with  
30 respect to small employer carriers, including, but not limited  
31 to, the provisions of s. 627.6699(11) relating to:

- 1           1. Use of assessments that exceed the amount of actual
- 2 losses and expenses.
- 3           2. The annual determination of each carrier's
- 4 proportion of the assessment.
- 5           3. Interest for late payment of assessments.
- 6           4. Authority for the office ~~department~~ to approve
- 7 deferment of an assessment against a carrier.
- 8           5. Limited immunity from legal actions or carriers.
- 9           6. Development of standards for compensation to be
- 10 paid to agents. Such standards shall be limited to those
- 11 specifically enumerated in s. 627.6699(13)(d).
- 12           7. Monitoring compliance by carriers with this
- 13 section.
- 14           (9) RULEMAKING AUTHORITY.--The commission ~~department~~
- 15 may adopt rules to administer this section, including rules
- 16 governing compliance by carriers.
- 17           Section 1156. Subsections (11) and (12) of section
- 18 627.6482, Florida Statutes, are amended to read:
- 19           627.6482 Definitions.--As used in ss.
- 20 627.648-627.6498, the term:
- 21           (11) "Plan" means the comprehensive health insurance
- 22 plan adopted by the association or by rule of the commission
- 23 ~~Department of Insurance~~.
- 24           (12) "Premium" means the entire cost of an insurance
- 25 plan, including the administrative fee, the risk assumption
- 26 charge, and, in the instance of a minimum premium plan or
- 27 stop-loss coverage, the incurred claims whether or not such
- 28 claims are paid directly by the insurer. "Premium" shall not
- 29 include a health maintenance organization's annual earned
- 30 premium revenue for Medicare and Medicaid contracts for any
- 31 assessment due for calendar years 1990 and 1991. For

1 assessments due for calendar year 1992 and subsequent years, a  
2 health maintenance organization's annual earned premium  
3 revenue for Medicare and Medicaid contracts is subject to  
4 assessments unless the office ~~department~~ determines that the  
5 health maintenance organization has made a reasonable effort  
6 to amend its Medicare or Medicaid government contract for 1992  
7 and subsequent years to provide reimbursement for any  
8 assessment on Medicare or Medicaid premiums paid by the health  
9 maintenance organization and the contract does not provide for  
10 such reimbursement.

11 Section 1157. Subsections (1) and (2) of section  
12 627.6484, Florida Statutes, are amended to read:

13 627.6484 Termination of enrollment; availability of  
14 other coverage.--

15 (1) The association shall accept applications for  
16 insurance only until June 30, 1991, after which date no  
17 further applications may be accepted. Upon receipt of an  
18 application for insurance, the association shall issue  
19 coverage for an eligible applicant. When appropriate, the  
20 administrator shall forward a copy of the application to a  
21 market assistance plan created by the office ~~department~~, which  
22 shall conduct a diligent search of the private marketplace for  
23 a carrier willing to accept the application.

24 (2) The office ~~department~~ shall, after consultation  
25 with the health insurers licensed in this state, adopt a  
26 market assistance plan to assist in the placement of risks of  
27 Florida Comprehensive Health Association applicants. All  
28 health insurers and health maintenance organizations licensed  
29 in this state shall participate in the plan.

30  
31

1           Section 1158. Paragraph (b) of subsection (4),  
2 paragraph (a) of subsection (5), and subsection (6) of section  
3 627.6487, Florida Statutes, are amended to read:

4           627.6487 Guaranteed availability of individual health  
5 insurance coverage to eligible individuals.--

6           (4)

7           (b) The requirement of this subsection is met for  
8 health insurance coverage policy forms offered by an issuer in  
9 the individual market if the issuer offers the policy forms  
10 for individual health insurance coverage with the largest, and  
11 next to largest, premium volume of all such policy forms  
12 offered by the issuer in this state or applicable marketing or  
13 service area, as prescribed in rules adopted by the commission  
14 ~~department~~, in the individual market in the period involved.  
15 To the greatest extent possible, such rules must be consistent  
16 with regulations adopted by the United States Department of  
17 Health and Human Services.

18           (5)(a) In the case of a health insurance issuer that  
19 offers individual health insurance coverage through a network  
20 plan, the issuer may:

21           1. Limit the individuals who may be enrolled under  
22 such coverage to those who live, reside, or work within the  
23 service area for such network plan; and

24           2. Within the service area of such plan, deny such  
25 coverage to such individuals if the issuer has demonstrated to  
26 the office ~~department~~ that:

27           a. It will not have the capacity to deliver services  
28 adequately to additional individual enrollees because of its  
29 obligations to existing group contract holders and enrollees  
30 and individual enrollees; and

31

1           b. It is applying this paragraph uniformly to  
2 individuals without regard to any health-status-related factor  
3 of such individuals and without regard to whether the  
4 individuals are eligible individuals.

5           (6)(a) A health insurance issuer may deny individual  
6 health insurance coverage to an eligible individual if the  
7 issuer has demonstrated to the office ~~department~~ that:

8           1. It does not have the financial reserves necessary  
9 to underwrite additional coverage; and

10           2. It is applying this paragraph uniformly to all  
11 individuals in the individual market in this state consistent  
12 with the laws of this state and without regard to any  
13 health-status-related factor of such individuals and without  
14 regard to whether the individuals are eligible individuals.

15           (b) An issuer, upon denying individual health  
16 insurance coverage in any service area in accordance with  
17 paragraph (a), may not offer such coverage in the individual  
18 market within such service area for a period of 180 days after  
19 the date such coverage is denied or until the issuer has  
20 demonstrated to the office ~~department~~ that the issuer has  
21 sufficient financial reserves to underwrite additional  
22 coverage, whichever occurs later.

23           Section 1159. Paragraphs (a) and (e) of subsection  
24 (2), subsection (3), paragraphs (e), (j), and (k) of  
25 subsection (4), and subsection (6) of section 627.6488,  
26 Florida Statutes, are amended to read:

27           627.6488 Florida Comprehensive Health Association.--

28           (2)(a) The association shall operate subject to the  
29 supervision and approval of a three-member board of directors.  
30 The board of directors shall be appointed by the Chief  
31 Financial Officer ~~Insurance Commissioner~~ as follows:

1           1. The chair of the board shall be the Chief Financial  
2 Officer ~~Insurance Commissioner~~ or his or her designee.

3           2. One representative of policyholders who is not  
4 associated with the medical profession, a hospital, or an  
5 insurer.

6           3. One representative of insurers.

7  
8 The administrator or his or her affiliate shall not be a  
9 member of the board. Any board member appointed by the Chief  
10 Financial Officer ~~commissioner~~ may be removed and replaced by  
11 him or her at any time without cause.

12           (e) There shall be no liability on the part of, and no  
13 cause of action of any nature shall arise against, any member  
14 insurer, or its agents or employees, agents or employees of  
15 the association, members of the board of directors of the  
16 association, or the Chief Financial Officer's ~~departmental~~  
17 representatives for any act or omission taken by them in the  
18 performance of their powers and duties under this act, unless  
19 such act or omission by such person is in intentional  
20 disregard of the rights of the claimant.

21           (3) The association shall adopt a plan pursuant to  
22 this act and submit its articles, bylaws, and operating rules  
23 to the office ~~department~~ for approval. If the association  
24 fails to adopt such plan and suitable articles, bylaws, and  
25 operating rules within 180 days after the appointment of the  
26 board, the commission ~~department~~ shall adopt rules to  
27 effectuate the provisions of this act; and such rules shall  
28 remain in effect until superseded by a plan and articles,  
29 bylaws, and operating rules submitted by the association and  
30 approved by the office ~~department~~.

31           (4) The association shall:

1           (e) Require that all policy forms issued by the  
2 association conform to standard forms developed by the  
3 association. The forms shall be approved by the office  
4 ~~department~~.

5           (j) Make a report to the Governor, the office  
6 ~~Insurance Commissioner~~, the President of the Senate, the  
7 Speaker of the House of Representatives, and the Minority  
8 Leaders of the Senate and House of Representatives, not later  
9 than 45 days after the close of each calendar quarter, which  
10 includes, for the prior quarter, current data and estimates of  
11 net written and earned premiums, the expenses of  
12 administration, and the paid and incurred losses. The report  
13 shall identify any statutorily mandated program that has not  
14 been fully implemented by the board.

15           (k) To facilitate preparation of assessments and for  
16 other purposes, the board shall direct preparation of annual  
17 audited financial statements for each calendar year as soon as  
18 feasible following the conclusion of that calendar year, and  
19 shall, within 30 days after rendition of such statements, file  
20 with the office ~~department~~ the annual report containing such  
21 information as required by the office ~~department~~ to be filed  
22 on March 1 of each year.

23           (6) The office ~~department~~ shall examine and  
24 investigate the association in the manner provided in part II  
25 of chapter 624.

26           Section 1160. Paragraph (f) of subsection (3) of  
27 section 627.649, Florida Statutes, is amended to read:

28           627.649 Administrator.--

29           (3) The administrator shall:

30           (f) Following the close of each calendar year,  
31 determine net premiums, reinsurance premiums less

1 administrative expense allowance, the expense of  
2 administration pertaining to the reinsurance operations of the  
3 association, and the incurred losses of the year and report  
4 this information to the association and the office ~~department~~.

5 Section 1161. Subsection (2) of section 627.6494,  
6 Florida Statutes, is amended to read:

7 627.6494 Assessments; deferment, limitation.--

8 (2) The association, upon approval of the office  
9 ~~department~~, may abate or defer, in whole or in part, the  
10 assessment of a participating insurer if, in the opinion of  
11 the board, payment of the assessment would endanger the  
12 ability of the participating insurer to fulfill its  
13 contractual obligations. In the event that an assessment  
14 against a participating insurer is abated or deferred, in  
15 whole or in part, the amount by which such assessment is  
16 abated or deferred may be assessed against the other  
17 participating insurers in a manner consistent with the basis  
18 for assessments set forth in s. 627.6492; and the insurer  
19 receiving such abatement or deferment shall remain liable to  
20 the association for the deficiency for 4 years.

21 Section 1162. Paragraph (a) of subsection (4) of  
22 section 627.6498, Florida Statutes, is amended to read:

23 627.6498 Minimum benefits coverage; exclusions;  
24 premiums; deductibles.--

25 (4) PREMIUMS, DEDUCTIBLES, AND COINSURANCE.--

26 (a) The plan shall provide for annual deductibles for  
27 major medical expense coverage in the amount of \$1,000 or any  
28 higher amounts proposed by the board and approved by the  
29 office ~~department~~, plus the benefits payable under any other  
30 type of insurance coverage or workers' compensation. The  
31 schedule of premiums and deductibles shall be established by

1 the association. With regard to any preferred provider  
2 arrangement utilized by the association, the deductibles  
3 provided in this paragraph shall be the minimum deductibles  
4 applicable to the preferred providers and higher deductibles,  
5 as approved by the office ~~department~~, may be applied to  
6 providers who are not preferred providers.

7 1. Separate schedules of premium rates based on age  
8 may apply for individual risks.

9 2. Rates are subject to approval by the office  
10 ~~department~~.

11 3. Standard risk rates for coverages issued by the  
12 association shall be established by the office ~~department~~,  
13 pursuant to s. 627.6675(3).

14 4. The board shall establish separate premium  
15 schedules for low-risk individuals, medium-risk individuals,  
16 and high-risk individuals and shall revise premium schedules  
17 annually beginning January 1999. No rate shall exceed 200  
18 percent of the standard risk rate for low-risk individuals,  
19 225 percent of the standard risk rate for medium-risk  
20 individuals, or 250 percent of the standard risk rate for  
21 high-risk individuals. For the purpose of determining what  
22 constitutes a low-risk individual, medium-risk individual, or  
23 high-risk individual, the board shall consider the anticipated  
24 claims payment for individuals based upon an individual's  
25 health condition.

26 Section 1163. Section 627.6499, Florida Statutes, is  
27 amended to read:

28 627.6499 Reporting by insurers and third-party  
29 administrators.--The office ~~department~~ may require any  
30 insurer, third-party administrator, or service company to  
31

1 report any information reasonably required to assist the board  
2 in assessing insurers as required by this act.

3 Section 1164. Subsections (4) and (5) of section  
4 627.6515, Florida Statutes, are amended to read:

5 627.6515 Out-of-state groups.--

6 (4) Prior to solicitation in this state, a copy of the  
7 master policy and a copy of the form of the certificate  
8 evidencing coverage that will be issued to residents of this  
9 state shall be filed with the office ~~department~~ for  
10 informational purposes.

11 (5) Prior to solicitation in this state, an officer of  
12 the insurer shall truthfully certify to the office ~~department~~  
13 that the policy and certificates evidencing coverage have been  
14 reviewed and approved by the state in which the group policy  
15 is issued.

16 Section 1165. Paragraphs (a), (b), and (c) of  
17 subsection (5), paragraph (b) of subsection (7), paragraphs  
18 (a) and (e) of subsection (8), and paragraph (b) of subsection  
19 (9) of section 627.6561, Florida Statutes, are amended to  
20 read:

21 627.6561 Preexisting conditions.--

22 (5)(a) The term, "creditable coverage," means, with  
23 respect to an individual, coverage of the individual under any  
24 of the following:

25 1. A group health plan, as defined in s. 2791 of the  
26 Public Health Service Act.

27 2. Health insurance coverage consisting of medical  
28 care, provided directly, through insurance or reimbursement,  
29 or otherwise and including terms and services paid for as  
30 medical care, under any hospital or medical service policy or  
31 certificate, hospital or medical service plan contract, or

- 1 health maintenance contract offered by a health insurance  
2 issuer.
- 3 3. Part A or part B of Title XVIII of the Social  
4 Security Act.
- 5 4. Title XIX of the Social Security Act, other than  
6 coverage consisting solely of benefits under s. 1928.
- 7 5. Chapter 55 of Title 10, United States Code.
- 8 6. A medical care program of the Indian Health Service  
9 or of a tribal organization.
- 10 7. The Florida Comprehensive Health Association or  
11 another state health benefit risk pool.
- 12 8. A health plan offered under chapter 89 of Title 5,  
13 United States Code.
- 14 9. A public health plan as defined by rules adopted by  
15 the commission ~~department~~. To the greatest extent possible,  
16 such rules must be consistent with regulations adopted by the  
17 United States Department of Health and Human Services.
- 18 10. A health benefit plan under s. 5(e) of the Peace  
19 Corps Act (22 U.S.C. s. 2504(e)).
- 20 (b) Creditable coverage does not include coverage that  
21 consists solely of one or more or any combination thereof of  
22 the following excepted benefits:
- 23 1. Coverage only for accident, or disability income  
24 insurance, or any combination thereof.
- 25 2. Coverage issued as a supplement to liability  
26 insurance.
- 27 3. Liability insurance, including general liability  
28 insurance and automobile liability insurance.
- 29 4. Workers' compensation or similar insurance.
- 30 5. Automobile medical payment insurance.
- 31 6. Credit-only insurance.

1           7. Coverage for on-site medical clinics, including  
2 prepaid health clinics under part II of chapter 641.

3           8. Other similar insurance coverage, specified in  
4 rules adopted by the commission ~~department~~, under which  
5 benefits for medical care are secondary or incidental to other  
6 insurance benefits. To the extent possible, such rules must be  
7 consistent with regulations adopted by the United States  
8 Department of Health and Human Services.

9           (c) The following benefits are not subject to the  
10 creditable coverage requirements, if offered separately:

11           1. Limited scope dental or vision benefits.  
12           2. Benefits for long-term care, nursing home care,  
13 home health care, community-based care, or any combination  
14 thereof.

15           3. Such other similar, limited benefits as are  
16 specified in rules adopted by the commission ~~department~~.

17           (7)

18           (b) An insurer may elect to count, as creditable  
19 coverage, coverage of benefits within each of several classes  
20 or categories of benefits specified in rules adopted by the  
21 commission ~~department~~ rather than as provided under paragraph

22 (a). To the extent possible, such rules must be consistent  
23 with regulations adopted by the United States Department of  
24 Health and Human Services. Such election shall be made on a  
25 uniform basis for all participants and beneficiaries. Under  
26 such election, an insurer shall count a period of creditable  
27 coverage with respect to any class or category of benefits if  
28 any level of benefits is covered within such class or  
29 category.

30           (8)(a) Periods of creditable coverage with respect to  
31 an individual shall be established through presentation of

1 certifications described in this subsection or in such other  
2 manner as is specified in rules adopted by the commission  
3 ~~department~~. To the extent possible, such rules must be  
4 consistent with regulations adopted by the United States  
5 Department of Health and Human Services.

6 (e) The commission ~~department~~ shall adopt rules to  
7 prevent an insurer's failure to provide information under this  
8 subsection with respect to previous coverage of an individual  
9 from adversely affecting any subsequent coverage of the  
10 individual under another group health plan or health insurance  
11 coverage. To the greatest extent possible, such rules must be  
12 consistent with regulations adopted by the United States  
13 Department of Health and Human Services.

14 (9)

15 (b) The commission ~~department~~ shall adopt rules that  
16 provide a process whereby individuals who need to establish  
17 creditable coverage for periods before July 1, 1996, and who  
18 would have such coverage credited but for paragraph (a), may  
19 be given credit for creditable coverage for such periods  
20 through the presentation of documents or other means. To the  
21 greatest extent possible, such rules must be consistent with  
22 regulations adopted by the United States Department of Health  
23 and Human Services.

24 Section 1166. Paragraph (b) of subsection (3) of  
25 section 627.6571, Florida Statutes, is amended to read:

26 627.6571 Guaranteed renewability of coverage.--

27 (3)

28 (b)1. In any case in which an insurer elects to  
29 discontinue offering all health insurance coverage in the  
30 small-group market or the large-group market, or both, in this  
31

1 state, health insurance coverage may be discontinued by the  
2 insurer only if:

3 a. The insurer provides notice to the office  
4 ~~department~~ and to each policyholder, and participants and  
5 beneficiaries covered under such coverage, of such  
6 discontinuation at least 180 days prior to the date of the  
7 nonrenewal of such coverage; and

8 b. All health insurance issued or delivered for  
9 issuance in this state in such market is discontinued and  
10 coverage under such health insurance coverage in such market  
11 is not renewed.

12 2. In the case of a discontinuation under subparagraph  
13 1. in a market, the insurer may not provide for the issuance  
14 of any health insurance coverage in the market in this state  
15 during the 5-year period beginning on the date of the  
16 discontinuation of the last insurance coverage not renewed.

17 Section 1167. Section 627.6675, Florida Statutes, is  
18 amended to read:

19 627.6675 Conversion on termination of  
20 eligibility.--Subject to all of the provisions of this  
21 section, a group policy delivered or issued for delivery in  
22 this state by an insurer or nonprofit health care services  
23 plan that provides, on an expense-incurred basis, hospital,  
24 surgical, or major medical expense insurance, or any  
25 combination of these coverages, shall provide that an employee  
26 or member whose insurance under the group policy has been  
27 terminated for any reason, including discontinuance of the  
28 group policy in its entirety or with respect to an insured  
29 class, and who has been continuously insured under the group  
30 policy, and under any group policy providing similar benefits  
31 that the terminated group policy replaced, for at least 3

1 months immediately prior to termination, shall be entitled to  
2 have issued to him or her by the insurer a policy or  
3 certificate of health insurance, referred to in this section  
4 as a "converted policy." A group insurer may meet the  
5 requirements of this section by contracting with another  
6 insurer, authorized in this state, to issue an individual  
7 converted policy, which policy has been approved by the office  
8 ~~department~~ under s. 627.410. An employee or member shall not  
9 be entitled to a converted policy if termination of his or her  
10 insurance under the group policy occurred because he or she  
11 failed to pay any required contribution, or because any  
12 discontinued group coverage was replaced by similar group  
13 coverage within 31 days after discontinuance.

14 (1) TIME LIMIT.--Written application for the converted  
15 policy shall be made and the first premium must be paid to the  
16 insurer, not later than 63 days after termination of the group  
17 policy. However, if termination was the result of failure to  
18 pay any required premium or contribution and such nonpayment  
19 of premium was due to acts of an employer or policyholder  
20 other than the employee or certificateholder, written  
21 application for the converted policy must be made and the  
22 first premium must be paid to the insurer not later than 63  
23 days after notice of termination is mailed by the insurer or  
24 the employer, whichever is earlier, to the employee's or  
25 certificateholder's last address as shown by the record of the  
26 insurer or the employer, whichever is applicable. In such case  
27 of termination due to nonpayment of premium by the employer or  
28 policyholder, the premium for the converted policy may not  
29 exceed the rate for the prior group coverage for the period of  
30 coverage under the converted policy prior to the date notice  
31 of termination is mailed to the employee or certificateholder.

1 For the period of coverage after such date, the premium for  
2 the converted policy is subject to the requirements of  
3 subsection (3).

4 (2) EVIDENCE OF INSURABILITY.--The converted policy  
5 shall be issued without evidence of insurability.

6 (3) CONVERSION PREMIUM; EFFECT ON PREMIUM RATES FOR  
7 GROUP COVERAGE.--

8 (a) The premium for the converted policy shall be  
9 determined in accordance with premium rates applicable to the  
10 age and class of risk of each person to be covered under the  
11 converted policy and to the type and amount of insurance  
12 provided. However, the premium for the converted policy may  
13 not exceed 200 percent of the standard risk rate as  
14 established by the office ~~department~~, pursuant to this  
15 subsection.

16 (b) Actual or expected experience under converted  
17 policies may be combined with such experience under group  
18 policies for the purposes of determining premium and loss  
19 experience and establishing premium rate levels for group  
20 coverage.

21 (c) The office ~~department~~ shall annually determine  
22 standard risk rates, using reasonable actuarial techniques and  
23 standards adopted by the commission ~~department~~ by rule. The  
24 standard risk rates must be determined as follows:

25 1. Standard risk rates for individual coverage must be  
26 determined separately for indemnity policies, preferred  
27 provider/exclusive provider policies, and health maintenance  
28 organization contracts.

29 2. The office ~~department~~ shall survey insurers and  
30 health maintenance organizations representing at least an 80  
31 percent market share, based on premiums earned in the state

1 for the most recent calendar year, for each of the categories  
2 specified in subparagraph 1.

3 3. Standard risk rate schedules must be determined,  
4 computed as the average rates charged by the carriers  
5 surveyed, giving appropriate weight to each carrier's  
6 statewide market share of earned premiums.

7 4. The rate schedule shall be determined from analysis  
8 of the one county with the largest market share in the state  
9 of all such carriers.

10 5. The rate for other counties must be determined by  
11 using the weighted average of each carrier's county factor  
12 relationship to the county determined in subparagraph 4.

13 6. The rate schedule must be determined for different  
14 age brackets and family size brackets.

15 (4) EFFECTIVE DATE OF COVERAGE.--The effective date of  
16 the converted policy shall be the day following the  
17 termination of insurance under the group policy.

18 (5) SCOPE OF COVERAGE.--The converted policy shall  
19 cover the employee or member and his or her dependents who  
20 were covered by the group policy on the date of termination of  
21 insurance. At the option of the insurer, a separate converted  
22 policy may be issued to cover any dependent.

23 (6) OPTIONAL COVERAGE.--The insurer shall not be  
24 required to issue a converted policy covering any person who  
25 is or could be covered by Medicare. The insurer shall not be  
26 required to issue a converted policy covering a person if  
27 paragraphs (a) and (b) apply to the person:

28 (a) If any of the following apply to the person:

29 1. The person is covered for similar benefits by  
30 another hospital, surgical, medical, or major medical expense  
31 insurance policy or hospital or medical service subscriber

1 contract or medical practice or other prepayment plan, or by  
2 any other plan or program.

3 2. The person is eligible for similar benefits,  
4 whether or not actually provided coverage, under any  
5 arrangement of coverage for individuals in a group, whether on  
6 an insured or uninsured basis.

7 3. Similar benefits are provided for or are available  
8 to the person under any state or federal law.

9 (b) If the benefits provided under the sources  
10 referred to in subparagraph (a)1. or the benefits provided or  
11 available under the sources referred to in subparagraphs (a)2.  
12 and 3., together with the benefits provided by the converted  
13 policy, would result in overinsurance according to the  
14 insurer's standards. The insurer's standards must bear some  
15 reasonable relationship to actual health care costs in the  
16 area in which the insured lives at the time of conversion and  
17 must be filed with the office ~~department~~ prior to their use in  
18 denying coverage.

19 (7) INFORMATION REQUESTED BY INSURER.--

20 (a) A converted policy may include a provision under  
21 which the insurer may request information, in advance of any  
22 premium due date, of any person covered thereunder as to  
23 whether:

24 1. The person is covered for similar benefits by  
25 another hospital, surgical, medical, or major medical expense  
26 insurance policy or hospital or medical service subscriber  
27 contract or medical practice or other prepayment plan or by  
28 any other plan or program.

29 2. The person is covered for similar benefits under  
30 any arrangement of coverage for individuals in a group,  
31 whether on an insured or uninsured basis.

1           3. Similar benefits are provided for or are available  
2 to the person under any state or federal law.

3           (b) The converted policy may provide that the insurer  
4 may refuse to renew the policy or the coverage of any person  
5 only for one or more of the following reasons:

6           1. Either the benefits provided under the sources  
7 referred to in subparagraphs (a)1. and 2. for the person or  
8 the benefits provided or available under the sources referred  
9 to in subparagraph (a)3. for the person, together with the  
10 benefits provided by the converted policy, would result in  
11 overinsurance according to the insurer's standards on file  
12 with the office ~~department~~.

13           2. The converted policyholder fails to provide the  
14 information requested pursuant to paragraph (a).

15           3. Fraud or intentional misrepresentation in applying  
16 for any benefits under the converted policy.

17           4. Other reasons approved by the office ~~department~~.

18           (8) BENEFITS OFFERED.--

19           (a) An insurer shall not be required to issue a  
20 converted policy that provides benefits in excess of those  
21 provided under the group policy from which conversion is made.

22           (b) An insurer shall offer the benefits specified in  
23 s. 627.668 and the benefits specified in s. 627.669 if those  
24 benefits were provided in the group plan.

25           (c) An insurer shall offer maternity benefits and  
26 dental benefits if those benefits were provided in the group  
27 plan.

28           (9) PREEXISTING CONDITION PROVISION.--The converted  
29 policy shall not exclude a preexisting condition not excluded  
30 by the group policy. However, the converted policy may provide  
31 that any hospital, surgical, or medical benefits payable under

1 the converted policy may be reduced by the amount of any such  
2 benefits payable under the group policy after the termination  
3 of coverage ~~covered~~ under the group policy. The converted  
4 policy may also provide that during the first policy year the  
5 benefits payable under the converted policy, together with the  
6 benefits payable under the group policy, shall not exceed  
7 those that would have been payable had the individual's  
8 insurance under the group policy remained in force.

9 (10) REQUIRED OPTION FOR MAJOR MEDICAL  
10 COVERAGE.--Subject to the provisions and conditions of this  
11 part, the employee or member shall be entitled to obtain a  
12 converted policy providing major medical coverage under a plan  
13 meeting the following requirements:

14 (a) A maximum benefit equal to the lesser of the  
15 policy limit of the group policy from which the individual  
16 converted or \$500,000 per covered person for all covered  
17 medical expenses incurred during the covered person's  
18 lifetime.

19 (b) Payment of benefits at the rate of 80 percent of  
20 covered medical expenses which are in excess of the  
21 deductible, until 20 percent of such expenses in a benefit  
22 period reaches \$2,000, after which benefits will be paid at  
23 the rate of 90 percent during the remainder of the contract  
24 year unless the insured is in the insurer's case management  
25 program, in which case benefits shall be paid at the rate of  
26 100 percent during the remainder of the contract year. For  
27 the purposes of this paragraph, "case management program"  
28 means the specific supervision and management of the medical  
29 care provided or prescribed for a specific individual, which  
30 may include the use of health care providers designated by the  
31 insurer. Payment of benefits for outpatient treatment of

1 mental illness, if provided in the converted policy, may be at  
2 a lesser rate but not less than 50 percent.

3 (c) A deductible for each calendar year that must be  
4 \$500, \$1,000, or \$2,000, at the option of the policyholder.

5 (d) The term "covered medical expenses," as used in  
6 this subsection, shall be consistent with those customarily  
7 offered by the insurer under group or individual health  
8 insurance policies but is not required to be identical to the  
9 covered medical expenses provided in the group policy from  
10 which the individual converted.

11 (11) ALTERNATIVE PLANS.--The insurer shall, in  
12 addition to the option required by subsection (10), offer the  
13 standard health benefit plan, as established pursuant to s.  
14 627.6699(12). The insurer may, at its option, also offer  
15 alternative plans for group health conversion in addition to  
16 the plans required by this section.

17 (12) RETIREMENT COVERAGE.--If coverage would be  
18 continued under the group policy on an employee following the  
19 employee's retirement prior to the time he or she is or could  
20 be covered by Medicare, the employee may elect, instead of  
21 such continuation of group insurance, to have the same  
22 conversion rights as would apply had his or her insurance  
23 terminated at retirement by reason or termination of  
24 employment or membership.

25 (13) REDUCTION OF COVERAGE DUE TO MEDICARE.--The  
26 converted policy may provide for reduction of coverage on any  
27 person upon his or her eligibility for coverage under Medicare  
28 or under any other state or federal law providing for benefits  
29 similar to those provided by the converted policy.

30 (14) CONVERSION PRIVILEGE ALLOWED.--The conversion  
31 privilege shall also be available to any of the following:

1           (a) The surviving spouse, if any, at the death of the  
2 employee or member, with respect to the spouse and the  
3 children whose coverages under the group policy terminate by  
4 reason of the death, otherwise to each surviving child whose  
5 coverage under the group policy terminates by reason of such  
6 death, or, if the group policy provides for continuation of  
7 dependents' coverages following the employee's or member's  
8 death, at the end of such continuation.

9           (b) The former spouse whose coverage would otherwise  
10 terminate because of annulment or dissolution of marriage, if  
11 the former spouse is dependent for financial support.

12           (c) The spouse of the employee or member upon  
13 termination of coverage of the spouse, while the employee or  
14 member remains insured under the group policy, by reason of  
15 ceasing to be a qualified family member under the group  
16 policy, with respect to the spouse and the children whose  
17 coverages under the group policy terminate at the same time.

18           (d) A child solely with respect to himself or herself  
19 upon termination of his or her coverage by reason of ceasing  
20 to be a qualified family member under the group policy, if a  
21 conversion privilege is not otherwise provided in this  
22 subsection with respect to such termination.

23           (15) BENEFIT LEVELS.--If the benefit levels required  
24 in subsection (10) exceed the benefit levels provided under  
25 the group policy, the conversion policy may offer benefits  
26 which are substantially similar to those provided under the  
27 group policy in lieu of those required in subsection (10).

28           (16) GROUP COVERAGE INSTEAD OF INDIVIDUAL  
29 COVERAGE.--The insurer may elect to provide group insurance  
30 coverage instead of issuing a converted individual policy.

31

1           (17) NOTIFICATION.--A notification of the conversion  
2 privilege shall be included in each certificate of coverage.  
3 The insurer shall mail an election and premium notice form,  
4 including an outline of coverage, on a form approved by the  
5 office ~~department~~, within 14 days after an individual who is  
6 eligible for a converted policy gives notice to the insurer  
7 that the individual is considering applying for the converted  
8 policy or otherwise requests such information. The outline of  
9 coverage must contain a description of the principal benefits  
10 and coverage provided by the policy and its principal  
11 exclusions and limitations, including, but not limited to,  
12 deductibles and coinsurance.

13           (18) OUTSIDE CONVERSIONS.--A converted policy that is  
14 delivered outside of this state must be on a form that could  
15 be delivered in the other jurisdiction as a converted policy  
16 had the group policy been issued in that jurisdiction.

17           (19) APPLICABILITY.--This section does not require  
18 conversion on termination of eligibility for a policy or  
19 contract that provides benefits for specified diseases, or for  
20 accidental injuries only, disability income, Medicare  
21 supplement, hospital indemnity, limited benefit,  
22 nonconventional, or excess policies.

23           (20) Nothing in this section or in the incorporation  
24 of it into insurance policies shall be construed to require  
25 insurers to provide benefits equal to those provided in the  
26 group policy from which the individual converted; provided,  
27 however, that comprehensive benefits are offered which shall  
28 be subject to approval by the office ~~Insurance Commissioner~~.

29           Section 1168. Paragraph (a) of subsection (2) of  
30 section 627.6685, Florida Statutes, is amended to read:

31           627.6685 Mental health coverage.--

1 (2) BENEFITS.--

2 (a)1. In the case of a group health plan, or health  
3 insurance coverage offered in connection with such a plan,  
4 which provides both medical and surgical benefits and mental  
5 health benefits:

6 a. If the plan or coverage does not include an  
7 aggregate lifetime limit on substantially all medical and  
8 surgical benefits, the plan or coverage may not impose any  
9 aggregate lifetime limit on mental health benefits.

10 b. If the plan or coverage includes an aggregate  
11 lifetime limit on substantially all medical and surgical  
12 benefits, the plan or coverage must:

13 (I) Apply that applicable lifetime limit both to the  
14 medical and surgical benefits to which it otherwise would  
15 apply and to mental health benefits and not distinguish in the  
16 application of such limit between such medical and surgical  
17 benefits and mental health benefits; or

18 (II) Not include any aggregate lifetime limit on  
19 mental health benefits which is less than that applicable  
20 lifetime limit.

21 c. For any plan or coverage that is not described in  
22 sub-subparagraph a. or sub-subparagraph b. and that includes  
23 no or different aggregate lifetime limits on different  
24 categories of medical and surgical benefits, the commission  
25 ~~department~~ shall establish rules under which sub-subparagraph  
26 b. is applied to such plan or coverage with respect to mental  
27 health benefits by substituting for the applicable lifetime  
28 limit an average aggregate lifetime limit that is computed  
29 taking into account the weighted average of the aggregate  
30 lifetime limits applicable to such categories.

31

1           2. In the case of a group health plan, or health  
2 insurance coverage offered in connection with such a plan,  
3 which provides both medical and surgical benefits and mental  
4 health benefits:

5           a. If the plan or coverage does not include an annual  
6 limit on substantially all medical and surgical benefits, the  
7 plan or coverage may not impose any annual limit on mental  
8 health benefits.

9           b. If the plan or coverage includes an annual limit on  
10 substantially all medical and surgical benefits, the plan or  
11 coverage must:

12           (I) Apply that applicable annual limit both to medical  
13 and surgical benefits to which it otherwise would apply and to  
14 mental health benefits and not distinguish in the application  
15 of such limit between such medical and surgical benefits and  
16 mental health benefits; or

17           (II) Not include any annual limit on mental health  
18 benefits which is less than the applicable annual limit.

19           c. For any plan or coverage that is not described in  
20 sub-subparagraph a. or sub-subparagraph b. and that includes  
21 no or different annual limits on different categories of  
22 medical and surgical benefits, the commission ~~department~~ shall  
23 establish rules under which sub-subparagraph b. is applied to  
24 such plan or coverage with respect to mental health benefits  
25 by substituting for the applicable annual limit an average  
26 annual limit that is computed taking into account the weighted  
27 average of the annual limits applicable to such categories.

28           Section 1169. Paragraph (d) of subsection (5) and  
29 subsection (9) of section 627.6692, Florida Statutes, are  
30 amended to read:

31

1           627.6692 Florida Health Insurance Coverage  
2 Continuation Act.--  
3           (5) CONTINUATION OF COVERAGE UNDER GROUP HEALTH  
4 PLANS.--  
5           (d)1. A qualified beneficiary must give written notice  
6 to the insurance carrier within 30 days after the occurrence  
7 of a qualifying event. Unless otherwise specified in the  
8 notice, a notice by any qualified beneficiary constitutes  
9 notice on behalf of all qualified beneficiaries. The written  
10 notice must inform the insurance carrier of the occurrence and  
11 type of the qualifying event giving rise to the potential  
12 election by a qualified beneficiary of continuation of  
13 coverage under the group health plan issued by that insurance  
14 carrier, except that in cases where the covered employee has  
15 been involuntarily discharged, the nature of such discharge  
16 need not be disclosed. The written notice must, at a minimum,  
17 identify the employer, the group health plan number, the name  
18 and address of all qualified beneficiaries, and such other  
19 information required by the insurance carrier under the terms  
20 of the group health plan or the commission ~~department~~ by rule,  
21 to the extent that such information is known by the qualified  
22 beneficiary.  
23           2. Within 14 days after the receipt of written notice  
24 under subparagraph 1., the insurance carrier shall send each  
25 qualified beneficiary by certified mail an election and  
26 premium notice form, approved by the office ~~department~~, which  
27 form must provide for the qualified beneficiary's election or  
28 nonelection of continuation of coverage under the group health  
29 plan and the applicable premium amount due after the election  
30 to continue coverage. This subparagraph does not require  
31 separate mailing of notices to qualified beneficiaries

1 residing in the same household, but requires a separate  
2 mailing for each separate household.

3 (9) RULES.--The commission ~~department~~ shall adopt  
4 rules establishing standards for the initial notice of rights  
5 and as otherwise necessary to administer this section.

6 Section 1170. Paragraph (a) of subsection (3),  
7 paragraphs (c), (d), (e), and (i) of subsection (5),  
8 paragraphs (a) and (b) of subsection (6), paragraphs (b), (c),  
9 and (d) of subsection (8), paragraphs (a) and (b) of  
10 subsection (9), subsection (10), paragraphs (b), (c), (d),  
11 (e), (g), (h), (j), and (m) of subsection (11), subsection  
12 (12), paragraph (i) of subsection (13), paragraph (a) of  
13 subsection (15), and subsection (16) of section 627.6699,  
14 Florida Statutes, are amended to read:

15 627.6699 Employee Health Care Access Act.--

16 (3) DEFINITIONS.--As used in this section, the term:

17 (a) "Actuarial certification" means a written  
18 statement, by a member of the American Academy of Actuaries or  
19 another person acceptable to the office ~~department~~, that a  
20 small employer carrier is in compliance with subsection (6),  
21 based upon the person's examination, including a review of the  
22 appropriate records and of the actuarial assumptions and  
23 methods used by the carrier in establishing premium rates for  
24 applicable health benefit plans.

25 (5) AVAILABILITY OF COVERAGE.--

26 (c) Every small employer carrier must, as a condition  
27 of transacting business in this state:

28 1. ~~Beginning July 1, 2000,~~ Offer and issue all small  
29 employer health benefit plans on a guaranteed-issue basis to  
30 every eligible small employer, with 2 to 50 eligible  
31 employees, that elects to be covered under such plan, agrees

1 to make the required premium payments, and satisfies the other  
2 provisions of the plan. A rider for additional or increased  
3 benefits may be medically underwritten and may only be added  
4 to the standard health benefit plan. The increased rate  
5 charged for the additional or increased benefit must be rated  
6 in accordance with this section.

7 ~~2. Beginning July 1, 2000, and until July 31, 2001,~~  
8 ~~offer and issue basic and standard small employer health~~  
9 ~~benefit plans on a guaranteed-issue basis to every eligible~~  
10 ~~small employer which is eligible for guaranteed renewal, has~~  
11 ~~less than two eligible employees, is not formed primarily for~~  
12 ~~the purpose of buying health insurance, elects to be covered~~  
13 ~~under such plan, agrees to make the required premium payments,~~  
14 ~~and satisfies the other provisions of the plan. A rider for~~  
15 ~~additional or increased benefits may be medically underwritten~~  
16 ~~and may be added only to the standard benefit plan. The~~  
17 ~~increased rate charged for the additional or increased benefit~~  
18 ~~must be rated in accordance with this section. For purposes of~~  
19 ~~this subparagraph, a person, his or her spouse, and his or her~~  
20 ~~dependent children shall constitute a single eligible employee~~  
21 ~~if that person and spouse are employed by the same small~~  
22 ~~employer and either one has a normal work week of less than 25~~  
23 ~~hours.~~

24 2.3. ~~Beginning August 1, 2001,~~ Offer and issue basic  
25 and standard small employer health benefit plans on a  
26 guaranteed-issue basis, during a 31-day open enrollment period  
27 of August 1 through August 31 of each year, to every eligible  
28 small employer, with fewer than two eligible employees, which  
29 small employer is not formed primarily for the purpose of  
30 buying health insurance and which elects to be covered under  
31 such plan, agrees to make the required premium payments, and

1 satisfies the other provisions of the plan. Coverage provided  
2 under this subparagraph shall begin on October 1 of the same  
3 year as the date of enrollment, unless the small employer  
4 carrier and the small employer agree to a different date. A  
5 rider for additional or increased benefits may be medically  
6 underwritten and may only be added to the standard health  
7 benefit plan. The increased rate charged for the additional  
8 or increased benefit must be rated in accordance with this  
9 section. For purposes of this subparagraph, a person, his or  
10 her spouse, and his or her dependent children constitute a  
11 single eligible employee if that person and spouse are  
12 employed by the same small employer and either that person or  
13 his or her spouse has a normal work week of less than 25  
14 hours.

15 ~~3.4.~~ This paragraph does not limit a carrier's ability  
16 to offer other health benefit plans to small employers if the  
17 standard and basic health benefit plans are offered and  
18 rejected.

19 (d) A small employer carrier must file with the office  
20 ~~department~~, in a format and manner prescribed by the  
21 committee, a standard health care plan and a basic health care  
22 plan to be used by the carrier.

23 (e) The office ~~department~~ at any time may, after  
24 providing notice and an opportunity for a hearing, disapprove  
25 the continued use by the small employer carrier of the  
26 standard or basic health benefit plan on the grounds that such  
27 plan does not meet the requirements of this section.

28 (i)1. A small employer carrier need not offer coverage  
29 or accept applications pursuant to paragraph (a):

30 a. To a small employer if the small employer is not  
31 physically located in an established geographic service area

1 of the small employer carrier, provided such geographic  
2 service area shall not be less than a county;

3 b. To an employee if the employee does not work or  
4 reside within an established geographic service area of the  
5 small employer carrier; or

6 c. To a small employer group within an area in which  
7 the small employer carrier reasonably anticipates, and  
8 demonstrates to the satisfaction of the office department,  
9 that it cannot, within its network of providers, deliver  
10 service adequately to the members of such groups because of  
11 obligations to existing group contract holders and enrollees.

12 2. A small employer carrier that cannot offer coverage  
13 pursuant to sub-subparagraph 1.c. may not offer coverage in  
14 the applicable area to new cases of employer groups having  
15 more than 50 eligible employees or small employer groups until  
16 the later of 180 days following each such refusal or the date  
17 on which the carrier notifies the office department that it  
18 has regained its ability to deliver services to small employer  
19 groups.

20 3.a. A small employer carrier may deny health  
21 insurance coverage in the small-group market if the carrier  
22 has demonstrated to the office department that:

23 (I) It does not have the financial reserves necessary  
24 to underwrite additional coverage; and

25 (II) It is applying this sub-subparagraph uniformly to  
26 all employers in the small-group market in this state  
27 consistent with this section and without regard to the claims  
28 experience of those employers and their employees and their  
29 dependents or any health-status-related factor that relates to  
30 such employees and dependents.

31

1           b. A small employer carrier, upon denying health  
2 insurance coverage in connection with health benefit plans in  
3 accordance with sub-subparagraph a., may not offer coverage in  
4 connection with group health benefit plans in the small-group  
5 market in this state for a period of 180 days after the date  
6 such coverage is denied or until the insurer has demonstrated  
7 to the office ~~department~~ that the insurer has sufficient  
8 financial reserves to underwrite additional coverage,  
9 whichever is later. The office ~~department~~ may provide for the  
10 application of this sub-subparagraph on a  
11 service-area-specific basis.

12           4. ~~Beginning in 1994,~~The commission ~~department~~ shall,  
13 by rule, require each small employer carrier to report, on or  
14 before March 1 of each year, its gross annual premiums for all  
15 health benefit plans issued to small employers during the  
16 previous calendar year, and also to report its gross annual  
17 premiums for new, but not renewal, standard and basic health  
18 benefit plans subject to this section issued during the  
19 previous calendar year. No later than May 1 of each year, the  
20 office ~~department~~ shall calculate each carrier's percentage of  
21 all small employer group health premiums for the previous  
22 calendar year and shall calculate the aggregate gross annual  
23 premiums for new, but not renewal, standard and basic health  
24 benefit plans for the previous calendar year.

25           (6) RESTRICTIONS RELATING TO PREMIUM RATES.--

26           (a) The commission ~~department~~ may, by rule, establish  
27 regulations to administer this section and to assure that  
28 rating practices used by small employer carriers are  
29 consistent with the purpose of this section, including  
30 assuring that differences in rates charged for health benefit  
31 plans by small employer carriers are reasonable and reflect

1 objective differences in plan design, not including  
2 differences due to the nature of the groups assumed to select  
3 particular health benefit plans.

4 (b) For all small employer health benefit plans that  
5 are subject to this section and are issued by small employer  
6 carriers on or after January 1, 1994, premium rates for health  
7 benefit plans subject to this section are subject to the  
8 following:

9 1. Small employer carriers must use a modified  
10 community rating methodology in which the premium for each  
11 small employer must be determined solely on the basis of the  
12 eligible employee's and eligible dependent's gender, age,  
13 family composition, tobacco use, or geographic area as  
14 determined under paragraph (5)(j) and in which the premium may  
15 be adjusted as permitted by this paragraph.

16 2. Rating factors related to age, gender, family  
17 composition, tobacco use, or geographic location may be  
18 developed by each carrier to reflect the carrier's experience.  
19 The factors used by carriers are subject to office ~~department~~  
20 review and approval.

21 3. Small employer carriers may not modify the rate for  
22 a small employer for 12 months from the initial issue date or  
23 renewal date, unless the composition of the group changes or  
24 benefits are changed. However, a small employer carrier may  
25 modify the rate one time prior to 12 months after the initial  
26 issue date for a small employer who enrolls under a previously  
27 issued group policy that has a common anniversary date for all  
28 employers covered under the policy if:

29 a. The carrier discloses to the employer in a clear  
30 and conspicuous manner the date of the first renewal and the  
31 fact that the premium may increase on or after that date.

1           b. The insurer demonstrates to the office ~~department~~  
2 that efficiencies in administration are achieved and reflected  
3 in the rates charged to small employers covered under the  
4 policy.

5           4. A carrier may issue a group health insurance policy  
6 to a small employer health alliance or other group association  
7 with rates that reflect a premium credit for expense savings  
8 attributable to administrative activities being performed by  
9 the alliance or group association if such expense savings are  
10 specifically documented in the insurer's rate filing and are  
11 approved by the office ~~department~~. Any such credit may not be  
12 based on different morbidity assumptions or on any other  
13 factor related to the health status or claims experience of  
14 any person covered under the policy. Nothing in this  
15 subparagraph exempts an alliance or group association from  
16 licensure for any activities that require licensure under the  
17 insurance code. A carrier issuing a group health insurance  
18 policy to a small employer health alliance or other group  
19 association shall allow any properly licensed and appointed  
20 agent of that carrier to market and sell the small employer  
21 health alliance or other group association policy. Such agent  
22 shall be paid the usual and customary commission paid to any  
23 agent selling the policy.

24           5. Any adjustments in rates for claims experience,  
25 health status, or duration of coverage may not be charged to  
26 individual employees or dependents. For a small employer's  
27 policy, such adjustments may not result in a rate for the  
28 small employer which deviates more than 15 percent from the  
29 carrier's approved rate. Any such adjustment must be applied  
30 uniformly to the rates charged for all employees and  
31 dependents of the small employer. A small employer carrier may

1 make an adjustment to a small employer's renewal premium, not  
2 to exceed 10 percent annually, due to the claims experience,  
3 health status, or duration of coverage of the employees or  
4 dependents of the small employer. Semiannually, small group  
5 carriers shall report information on forms adopted by rule by  
6 the commission ~~department~~, to enable the office ~~department~~ to  
7 monitor the relationship of aggregate adjusted premiums  
8 actually charged policyholders by each carrier to the premiums  
9 that would have been charged by application of the carrier's  
10 approved modified community rates. If the aggregate resulting  
11 from the application of such adjustment exceeds the premium  
12 that would have been charged by application of the approved  
13 modified community rate by 5 percent for the current reporting  
14 period, the carrier shall limit the application of such  
15 adjustments only to minus adjustments beginning not more than  
16 60 days after the report is sent to the office ~~department~~. For  
17 any subsequent reporting period, if the total aggregate  
18 adjusted premium actually charged does not exceed the premium  
19 that would have been charged by application of the approved  
20 modified community rate by 5 percent, the carrier may apply  
21 both plus and minus adjustments. A small employer carrier may  
22 provide a credit to a small employer's premium based on  
23 administrative and acquisition expense differences resulting  
24 from the size of the group. Group size administrative and  
25 acquisition expense factors may be developed by each carrier  
26 to reflect the carrier's experience and are subject to office  
27 ~~department~~ review and approval.

28           6. A small employer carrier rating methodology may  
29 include separate rating categories for one dependent child,  
30 for two dependent children, and for three or more dependent  
31 children for family coverage of employees having a spouse and

1 dependent children or employees having dependent children  
2 only. A small employer carrier may have fewer, but not  
3 greater, numbers of categories for dependent children than  
4 those specified in this subparagraph.

5           7. Small employer carriers may not use a composite  
6 rating methodology to rate a small employer with fewer than 10  
7 employees. For the purposes of this subparagraph, a "composite  
8 rating methodology" means a rating methodology that averages  
9 the impact of the rating factors for age and gender in the  
10 premiums charged to all of the employees of a small employer.

11           8.a. A carrier may separate the experience of small  
12 employer groups with less than 2 eligible employees from the  
13 experience of small employer groups with 2-50 eligible  
14 employees for purposes of determining an alternative modified  
15 community rating.

16           b. If a carrier separates the experience of small  
17 employer groups as provided in sub-subparagraph a., the rate  
18 to be charged to small employer groups of less than 2 eligible  
19 employees may not exceed 150 percent of the rate determined  
20 for small employer groups of 2-50 eligible employees. However,  
21 the carrier may charge excess losses of the experience pool  
22 consisting of small employer groups with less than 2 eligible  
23 employees to the experience pool consisting of small employer  
24 groups with 2-50 eligible employees so that all losses are  
25 allocated and the 150-percent rate limit on the experience  
26 pool consisting of small employer groups with less than 2  
27 eligible employees is maintained. Notwithstanding s.

28 627.411(1), the rate to be charged to a small employer group  
29 of fewer than 2 eligible employees, insured as of July 1,  
30 2002, may be up to 125 percent of the rate determined for  
31

1 small employer groups of 2-50 eligible employees for the first  
2 annual renewal and 150 percent for subsequent annual renewals.

3 (8) MAINTENANCE OF RECORDS.--

4 (b) Each small employer carrier must file with the  
5 office ~~department~~ on or before March 15 of each year an  
6 actuarial certification that the carrier is in compliance with  
7 this section and that the rating methods of the carrier are  
8 actuarially sound. The certification must be in a form and  
9 manner and contain the information prescribed by the  
10 commission ~~department~~. The carrier must retain a copy of the  
11 certification at its principal place of business.

12 (c) A small employer carrier must make the information  
13 and documentation described in paragraph (a) available to the  
14 office ~~department~~ upon request. The information constitutes  
15 proprietary and trade secret information and may not be  
16 disclosed by the office ~~department~~ to persons outside the  
17 office ~~department~~, except as agreed to by the carrier or as  
18 ordered by a court of competent jurisdiction.

19 (d) Each small employer carrier must file with the  
20 office ~~department~~ quarterly an enrollment report as directed  
21 by the office ~~department~~. Such report shall not constitute  
22 proprietary or trade secret information.

23 (9) SMALL EMPLOYER CARRIER'S ELECTION TO BECOME A  
24 RISK-ASSUMING CARRIER OR A REINSURING CARRIER.--

25 (a) A small employer carrier must elect to become  
26 either a risk-assuming carrier or a reinsuring carrier. Each  
27 small employer carrier must make an initial election, binding  
28 through January 1, 1994. The carrier's initial election must  
29 be made no later than October 31, 1992. By October 31, 1993,  
30 all small employer carriers must file a final election, which  
31 is binding for 2 years, from January 1, 1994, through December

1 31, 1995, after which an election shall be binding for a  
2 period of 5 years. Any carrier that is not a small employer  
3 carrier on October 31, 1992, and intends to become a small  
4 employer carrier after October 31, 1992, must file its  
5 designation when it files the forms and rates it intends to  
6 use for small employer group health insurance; such  
7 designation shall be binding for 2 years after the date of  
8 approval of the forms and rates, and any subsequent  
9 designation is binding for 5 years. The office ~~department~~ may  
10 permit a carrier to modify its election at any time for good  
11 cause shown, after a hearing.

12 (b) The commission ~~department~~ shall establish an  
13 application process for small employer carriers seeking to  
14 change their status under this subsection.

15 (10) ELECTION PROCESS TO BECOME A RISK-ASSUMING  
16 CARRIER.--

17 (a)1. A small employer carrier may become a  
18 risk-assuming carrier by filing with the office ~~department~~ a  
19 designation of election under subsection (9) in a format and  
20 manner prescribed by the commission ~~department~~. The office  
21 ~~department~~ shall approve the election of a small employer  
22 carrier to become a risk-assuming carrier if the office  
23 ~~department~~ finds that the carrier is capable of assuming that  
24 status pursuant to the criteria set forth in paragraph (b).

25 2. The office ~~department~~ must approve or disapprove  
26 any designation as a risk-assuming carrier within 60 days  
27 after filing.

28 (b) In determining whether to approve an application  
29 by a small employer carrier to become a risk-assuming carrier,  
30 the office ~~department~~ shall consider:

31

1           1. The carrier's financial ability to support the  
2 assumption of the risk of small employer groups.

3           2. The carrier's history of rating and underwriting  
4 small employer groups.

5           3. The carrier's commitment to market fairly to all  
6 small employers in the state or its service area, as  
7 applicable.

8           4. The carrier's ability to assume and manage the risk  
9 of enrolling small employer groups without the protection of  
10 the reinsurance program provided in subsection (11).

11           (c) A small employer carrier that becomes a  
12 risk-assuming carrier pursuant to this subsection is not  
13 subject to the assessment provisions of subsection (11).

14           (d) The office ~~department~~ shall provide public notice  
15 of a small employer carrier's designation of election under  
16 subsection (9) to become a risk-assuming carrier and shall  
17 provide at least a 21-day period for public comment prior to  
18 making a decision on the election. The office ~~department~~  
19 shall hold a hearing on the election at the request of the  
20 carrier.

21           (e) The office ~~department~~ may rescind the approval  
22 granted to a risk-assuming carrier under this subsection if  
23 the office ~~department~~ finds that the carrier no longer meets  
24 the criteria of paragraph (b).

25           (11) SMALL EMPLOYER HEALTH REINSURANCE PROGRAM.--

26           (b)1. The program shall operate subject to the  
27 supervision and control of the board.

28           2. Effective upon this act becoming a law, the board  
29 shall consist of the Chief Financial Officer ~~commissioner~~ or  
30 his or her designee, who shall serve as the chairperson, and  
31 13 additional members who are representatives of carriers and

1 insurance agents and are appointed by the Chief Financial  
2 Officer ~~commissioner~~ and serve as follows:

3 a. The Chief Financial Officer ~~commissioner~~ shall  
4 include representatives of small employer carriers subject to  
5 assessment under this subsection. If two or more carriers  
6 elect to be risk-assuming carriers, the membership must  
7 include at least two representatives of risk-assuming  
8 carriers; if one carrier is risk-assuming, one member must be  
9 a representative of such carrier. At least one member must be  
10 a carrier who is subject to the assessments, but is not a  
11 small employer carrier. Subject to such restrictions, at  
12 least five members shall be selected from individuals  
13 recommended by small employer carriers pursuant to procedures  
14 provided by rule of the commission ~~department~~. Three members  
15 shall be selected from a list of health insurance carriers  
16 that issue individual health insurance policies. At least two  
17 of the three members selected must be reinsuring carriers. Two  
18 members shall be selected from a list of insurance agents who  
19 are actively engaged in the sale of health insurance.

20 b. A member appointed under this subparagraph shall  
21 serve a term of 4 years and shall continue in office until the  
22 member's successor takes office, except that, in order to  
23 provide for staggered terms, the Chief Financial Officer  
24 ~~commissioner~~ shall designate two of the initial appointees  
25 under this subparagraph to serve terms of 2 years and shall  
26 designate three of the initial appointees under this  
27 subparagraph to serve terms of 3 years.

28 3. The Chief Financial Officer ~~commissioner~~ may remove  
29 a member for cause.

30  
31

1           4. Vacancies on the board shall be filled in the same  
2 manner as the original appointment for the unexpired portion  
3 of the term.

4           5. The Chief Financial Officer ~~commissioner~~ may  
5 require an entity that recommends persons for appointment to  
6 submit additional lists of recommended appointees.

7           (c)1. ~~No later than August 15, 1992,~~The board shall  
8 submit to the office ~~department~~ a plan of operation to assure  
9 the fair, reasonable, and equitable administration of the  
10 program. The board may at any time submit to the office  
11 ~~department~~ any amendments to the plan that the board finds to  
12 be necessary or suitable.

13           2. ~~No later than September 15, 1992,~~The office  
14 ~~department~~ shall, after notice and hearing, approve the plan  
15 of operation if it determines that the plan submitted by the  
16 board is suitable to assure the fair, reasonable, and  
17 equitable administration of the program and provides for the  
18 sharing of program gains and losses equitably and  
19 proportionately in accordance with paragraph (j).

20           3. The plan of operation, or any amendment thereto,  
21 becomes effective upon written approval of the office  
22 ~~department~~.

23           (d) The plan of operation must, among other things:

24           1. Establish procedures for handling and accounting  
25 for program assets and moneys and for an annual fiscal  
26 reporting to the office ~~department~~.

27           2. Establish procedures for selecting an administering  
28 carrier and set forth the powers and duties of the  
29 administering carrier.

30           3. Establish procedures for reinsuring risks.

31

1           4. Establish procedures for collecting assessments  
2 from participating carriers to provide for claims reinsured by  
3 the program and for administrative expenses, other than  
4 amounts payable to the administrative carrier, incurred or  
5 estimated to be incurred during the period for which the  
6 assessment is made.

7           5. Provide for any additional matters at the  
8 discretion of the board.

9           (e) The board shall recommend to the office ~~department~~  
10 market conduct requirements and other requirements for  
11 carriers and agents, including requirements relating to:

12           1. Registration by each carrier with the office  
13 ~~department~~ of its intention to be a small employer carrier  
14 under this section;

15           2. Publication by the office ~~department~~ of a list of  
16 all small employer carriers, including a requirement  
17 applicable to agents and carriers that a health benefit plan  
18 may not be sold by a carrier that is not identified as a small  
19 employer carrier;

20           3. The availability of a broadly publicized, toll-free  
21 telephone number for access by small employers to information  
22 concerning this section;

23           4. Periodic reports by carriers and agents concerning  
24 health benefit plans issued; and

25           5. Methods concerning periodic demonstration by small  
26 employer carriers and agents that they are marketing or  
27 issuing health benefit plans to small employers.

28           (g) A reinsuring carrier may reinsure with the program  
29 coverage of an eligible employee of a small employer, or any  
30 dependent of such an employee, subject to each of the  
31 following provisions:

1           1. With respect to a standard and basic health care  
2 plan, the program must reinsure the level of coverage  
3 provided; and, with respect to any other plan, the program  
4 must reinsure the coverage up to, but not exceeding, the level  
5 of coverage provided under the standard and basic health care  
6 plan.

7           2. Except in the case of a late enrollee, a reinsuring  
8 carrier may reinsure an eligible employee or dependent within  
9 60 days after the commencement of the coverage of the small  
10 employer. A newly employed eligible employee or dependent of a  
11 small employer may be reinsured within 60 days after the  
12 commencement of his or her coverage.

13           3. A small employer carrier may reinsure an entire  
14 employer group within 60 days after the commencement of the  
15 group's coverage under the plan. The carrier may choose to  
16 reinsure newly eligible employees and dependents of the  
17 reinsured group pursuant to subparagraph 1.

18           4. The program may not reimburse a participating  
19 carrier with respect to the claims of a reinsured employee or  
20 dependent until the carrier has paid incurred claims of at  
21 least \$5,000 in a calendar year for benefits covered by the  
22 program. In addition, the reinsuring carrier shall be  
23 responsible for 10 percent of the next \$50,000 and 5 percent  
24 of the next \$100,000 of incurred claims during a calendar year  
25 and the program shall reinsure the remainder.

26           5. The board annually shall adjust the initial level  
27 of claims and the maximum limit to be retained by the carrier  
28 to reflect increases in costs and utilization within the  
29 standard market for health benefit plans within the state. The  
30 adjustment shall not be less than the annual change in the  
31 medical component of the "Consumer Price Index for All Urban

1 Consumers" of the Bureau of Labor Statistics of the Department  
2 of Labor, unless the board proposes and the office ~~department~~  
3 approves a lower adjustment factor.

4 6. A small employer carrier may terminate reinsurance  
5 for all reinsured employees or dependents on any plan  
6 anniversary.

7 7. The premium rate charged for reinsurance by the  
8 program to a health maintenance organization that is approved  
9 by the Secretary of Health and Human Services as a federally  
10 qualified health maintenance organization pursuant to 42  
11 U.S.C. s. 300e(c)(2)(A) and that, as such, is subject to  
12 requirements that limit the amount of risk that may be ceded  
13 to the program, which requirements are more restrictive than  
14 subparagraph 4., shall be reduced by an amount equal to that  
15 portion of the risk, if any, which exceeds the amount set  
16 forth in subparagraph 4. which may not be ceded to the  
17 program.

18 8. The board may consider adjustments to the premium  
19 rates charged for reinsurance by the program for carriers that  
20 use effective cost containment measures, including high-cost  
21 case management, as defined by the board.

22 9. A reinsuring carrier shall apply its  
23 case-management and claims-handling techniques, including, but  
24 not limited to, utilization review, individual case  
25 management, preferred provider provisions, other managed care  
26 provisions or methods of operation, consistently with both  
27 reinsured business and nonreinsured business.

28 (h)1. The board, as part of the plan of operation,  
29 shall establish a methodology for determining premium rates to  
30 be charged by the program for reinsuring small employers and  
31 individuals pursuant to this section. The methodology shall

1 include a system for classification of small employers that  
2 reflects the types of case characteristics commonly used by  
3 small employer carriers in the state. The methodology shall  
4 provide for the development of basic reinsurance premium  
5 rates, which shall be multiplied by the factors set for them  
6 in this paragraph to determine the premium rates for the  
7 program. The basic reinsurance premium rates shall be  
8 established by the board, subject to the approval of the  
9 office ~~department~~, and shall be set at levels which reasonably  
10 approximate gross premiums charged to small employers by small  
11 employer carriers for health benefit plans with benefits  
12 similar to the standard and basic health benefit plan. The  
13 premium rates set by the board may vary by geographical area,  
14 as determined under this section, to reflect differences in  
15 cost. The multiplying factors must be established as follows:  
16       a. The entire group may be reinsured for a rate that  
17 is 1.5 times the rate established by the board.  
18       b. An eligible employee or dependent may be reinsured  
19 for a rate that is 5 times the rate established by the board.  
20       2. The board periodically shall review the methodology  
21 established, including the system of classification and any  
22 rating factors, to assure that it reasonably reflects the  
23 claims experience of the program. The board may propose  
24 changes to the rates which shall be subject to the approval of  
25 the office ~~department~~.  
26       (j)1. Before March 1 of each calendar year, the board  
27 shall determine and report to the office ~~department~~ the  
28 program net loss for the previous year, including  
29 administrative expenses for that year, and the incurred losses  
30 for the year, taking into account investment income and other  
31 appropriate gains and losses.

1           2. Any net loss for the year shall be recouped by  
2 assessment of the carriers, as follows:

3           a. The operating losses of the program shall be  
4 assessed in the following order subject to the specified  
5 limitations. The first tier of assessments shall be made  
6 against reinsuring carriers in an amount which shall not  
7 exceed 5 percent of each reinsuring carrier's premiums from  
8 health benefit plans covering small employers. If such  
9 assessments have been collected and additional moneys are  
10 needed, the board shall make a second tier of assessments in  
11 an amount which shall not exceed 0.5 percent of each carrier's  
12 health benefit plan premiums. Except as provided in paragraph  
13 (n), risk-assuming carriers are exempt from all assessments  
14 authorized pursuant to this section. The amount paid by a  
15 reinsuring carrier for the first tier of assessments shall be  
16 credited against any additional assessments made.

17           b. The board shall equitably assess carriers for  
18 operating losses of the plan based on market share. The board  
19 shall annually assess each carrier a portion of the operating  
20 losses of the plan. The first tier of assessments shall be  
21 determined by multiplying the operating losses by a fraction,  
22 the numerator of which equals the reinsuring carrier's earned  
23 premium pertaining to direct writings of small employer health  
24 benefit plans in the state during the calendar year for which  
25 the assessment is levied, and the denominator of which equals  
26 the total of all such premiums earned by reinsuring carriers  
27 in the state during that calendar year. The second tier of  
28 assessments shall be based on the premiums that all carriers,  
29 except risk-assuming carriers, earned on all health benefit  
30 plans written in this state. The board may levy interim  
31 assessments against carriers to ensure the financial ability

1 of the plan to cover claims expenses and administrative  
2 expenses paid or estimated to be paid in the operation of the  
3 plan for the calendar year prior to the association's  
4 anticipated receipt of annual assessments for that calendar  
5 year. Any interim assessment is due and payable within 30  
6 days after receipt by a carrier of the interim assessment  
7 notice. Interim assessment payments shall be credited against  
8 the carrier's annual assessment. Health benefit plan premiums  
9 and benefits paid by a carrier that are less than an amount  
10 determined by the board to justify the cost of collection may  
11 not be considered for purposes of determining assessments.

12 c. Subject to the approval of the office ~~department~~,  
13 the board shall make an adjustment to the assessment formula  
14 for reinsuring carriers that are approved as federally  
15 qualified health maintenance organizations by the Secretary of  
16 Health and Human Services pursuant to 42 U.S.C. s.  
17 300e(c)(2)(A) to the extent, if any, that restrictions are  
18 placed on them that are not imposed on other small employer  
19 carriers.

20 3. Before March 1 of each year, the board shall  
21 determine and file with the office ~~department~~ an estimate of  
22 the assessments needed to fund the losses incurred by the  
23 program in the previous calendar year.

24 4. If the board determines that the assessments needed  
25 to fund the losses incurred by the program in the previous  
26 calendar year will exceed the amount specified in subparagraph  
27 2., the board shall evaluate the operation of the program and  
28 report its findings, including any recommendations for changes  
29 to the plan of operation, to the office ~~department~~ within 90  
30 days following the end of the calendar year in which the  
31 losses were incurred. The evaluation shall include an

1 estimate of future assessments, the administrative costs of  
2 the program, the appropriateness of the premiums charged and  
3 the level of carrier retention under the program, and the  
4 costs of coverage for small employers. If the board fails to  
5 file a report with the office ~~department~~ within 90 days  
6 following the end of the applicable calendar year, the office  
7 ~~department~~ may evaluate the operations of the program and  
8 implement such amendments to the plan of operation the office  
9 ~~department~~ deems necessary to reduce future losses and  
10 assessments.

11 5. If assessments exceed the amount of the actual  
12 losses and administrative expenses of the program, the excess  
13 shall be held as interest and used by the board to offset  
14 future losses or to reduce program premiums. As used in this  
15 paragraph, the term "future losses" includes reserves for  
16 incurred but not reported claims.

17 6. Each carrier's proportion of the assessment shall  
18 be determined annually by the board, based on annual  
19 statements and other reports considered necessary by the board  
20 and filed by the carriers with the board.

21 7. Provision shall be made in the plan of operation  
22 for the imposition of an interest penalty for late payment of  
23 an assessment.

24 8. A carrier may seek, from the office ~~commissioner~~, a  
25 deferment, in whole or in part, from any assessment made by  
26 the board. The office ~~department~~ may defer, in whole or in  
27 part, the assessment of a carrier if, in the opinion of the  
28 office ~~department~~, the payment of the assessment would place  
29 the carrier in a financially impaired condition. If an  
30 assessment against a carrier is deferred, in whole or in part,  
31 the amount by which the assessment is deferred may be assessed

1 against the other carriers in a manner consistent with the  
2 basis for assessment set forth in this section. The carrier  
3 receiving such deferment remains liable to the program for the  
4 amount deferred and is prohibited from reinsuring any  
5 individuals or groups in the program if it fails to pay  
6 assessments.

7 (m) The board shall monitor compliance with this  
8 section, including the market conduct of small employer  
9 carriers, and shall report to the office ~~department~~ any unfair  
10 trade practices and misleading or unfair conduct by a small  
11 employer carrier that has been reported to the board by  
12 agents, consumers, or any other person. The office ~~department~~  
13 shall investigate all reports and, upon a finding of  
14 noncompliance with this section or of unfair or misleading  
15 practices, shall take action against the small employer  
16 carrier as permitted under the insurance code or chapter 641.  
17 The board is not given investigatory or regulatory powers, but  
18 must forward all reports of cases or abuse or  
19 misrepresentation to the office ~~department~~.

20 (12) STANDARD, BASIC, AND LIMITED HEALTH BENEFIT  
21 PLANS.--

22 (a)1. ~~By May 15, 1993,~~The Chief Financial Officer  
23 ~~commissioner~~ shall appoint a health benefit plan committee  
24 composed of four representatives of carriers which shall  
25 include at least two representatives of HMOs, at least one of  
26 which is a staff model HMO, two representatives of agents,  
27 four representatives of small employers, and one employee of a  
28 small employer. The carrier members shall be selected from a  
29 list of individuals recommended by the board. The Chief  
30 Financial Officer ~~commissioner~~ may require the board to submit  
31 additional recommendations of individuals for appointment.

1           2. The plans shall comply with all of the requirements  
2 of this subsection.

3           3. The plans must be filed with and approved by the  
4 office ~~department~~ prior to issuance or delivery by any small  
5 employer carrier.

6           4. After approval of the revised health benefit plans,  
7 if the office ~~department~~ determines that modifications to a  
8 plan might be appropriate, the Chief Financial Officer  
9 ~~commissioner~~ shall appoint a new health benefit plan committee  
10 in the manner provided in subparagraph 1. to submit  
11 recommended modifications to the office ~~department~~ for  
12 approval.

13           (b)1. Each small employer carrier issuing new health  
14 benefit plans shall offer to any small employer, upon request,  
15 a standard health benefit plan and a basic health benefit plan  
16 that meets the criteria set forth in this section.

17           2. For purposes of this subsection, the terms  
18 "standard health benefit plan" and "basic health benefit plan"  
19 mean policies or contracts that a small employer carrier  
20 offers to eligible small employers that contain:

21           a. An exclusion for services that are not medically  
22 necessary or that are not covered preventive health services;  
23 and

24           b. A procedure for preauthorization by the small  
25 employer carrier, or its designees.

26           3. A small employer carrier may include the following  
27 managed care provisions in the policy or contract to control  
28 costs:

29           a. A preferred provider arrangement or exclusive  
30 provider organization or any combination thereof, in which a  
31 small employer carrier enters into a written agreement with

1 the provider to provide services at specified levels of  
2 reimbursement or to provide reimbursement to specified  
3 providers. Any such written agreement between a provider and a  
4 small employer carrier must contain a provision under which  
5 the parties agree that the insured individual or covered  
6 member has no obligation to make payment for any medical  
7 service rendered by the provider which is determined not to be  
8 medically necessary. A carrier may use preferred provider  
9 arrangements or exclusive provider arrangements to the same  
10 extent as allowed in group products that are not issued to  
11 small employers.

12 b. A procedure for utilization review by the small  
13 employer carrier or its designees.

14

15 This subparagraph does not prohibit a small employer carrier  
16 from including in its policy or contract additional managed  
17 care and cost containment provisions, subject to the approval  
18 of the office ~~department~~, which have potential for controlling  
19 costs in a manner that does not result in inequitable  
20 treatment of insureds or subscribers. The carrier may use  
21 such provisions to the same extent as authorized for group  
22 products that are not issued to small employers.

23 4. The standard health benefit plan shall include:

24 a. Coverage for inpatient hospitalization;

25 b. Coverage for outpatient services;

26 c. Coverage for newborn children pursuant to s.

27 627.6575;

28 d. Coverage for child care supervision services

29 pursuant to s. 627.6579;

30 e. Coverage for adopted children upon placement in the

31 residence pursuant to s. 627.6578;

1 f. Coverage for mammograms pursuant to s. 627.6613;

2 g. Coverage for handicapped children pursuant to s.  
3 627.6615;

4 h. Emergency or urgent care out of the geographic  
5 service area; and

6 i. Coverage for services provided by a hospice  
7 licensed under s. 400.602 in cases where such coverage would  
8 be the most appropriate and the most cost-effective method for  
9 treating a covered illness.

10 5. The standard health benefit plan and the basic  
11 health benefit plan may include a schedule of benefit  
12 limitations for specified services and procedures. If the  
13 committee develops such a schedule of benefits limitation for  
14 the standard health benefit plan or the basic health benefit  
15 plan, a small employer carrier offering the plan must offer  
16 the employer an option for increasing the benefit schedule  
17 amounts by 4 percent annually.

18 6. The basic health benefit plan shall include all of  
19 the benefits specified in subparagraph 4.; however, the basic  
20 health benefit plan shall place additional restrictions on the  
21 benefits and utilization and may also impose additional cost  
22 containment measures.

23 7. Sections 627.419(2), (3), and (4), 627.6574,  
24 627.6612, 627.66121, 627.66122, 627.6616, 627.6618, 627.668,  
25 and 627.66911 apply to the standard health benefit plan and to  
26 the basic health benefit plan. However, notwithstanding said  
27 provisions, the plans may specify limits on the number of  
28 authorized treatments, if such limits are reasonable and do  
29 not discriminate against any type of provider.

30 8. Each small employer carrier that provides for  
31 inpatient and outpatient services by allopathic hospitals may

1 provide as an option of the insured similar inpatient and  
2 outpatient services by hospitals accredited by the American  
3 Osteopathic Association when such services are available and  
4 the osteopathic hospital agrees to provide the service.

5 (c) If a small employer rejects, in writing, the  
6 standard health benefit plan and the basic health benefit  
7 plan, the small employer carrier may offer the small employer  
8 a limited benefit policy or contract.

9 (d)1. Upon offering coverage under a standard health  
10 benefit plan, a basic health benefit plan, or a limited  
11 benefit policy or contract for any small employer, the small  
12 employer carrier shall provide such employer group with a  
13 written statement that contains, at a minimum:

14 a. An explanation of those mandated benefits and  
15 providers that are not covered by the policy or contract;

16 b. An explanation of the managed care and cost control  
17 features of the policy or contract, along with all appropriate  
18 mailing addresses and telephone numbers to be used by insureds  
19 in seeking information or authorization; and

20 c. An explanation of the primary and preventive care  
21 features of the policy or contract.

22

23 Such disclosure statement must be presented in a clear and  
24 understandable form and format and must be separate from the  
25 policy or certificate or evidence of coverage provided to the  
26 employer group.

27 2. Before a small employer carrier issues a standard  
28 health benefit plan, a basic health benefit plan, or a limited  
29 benefit policy or contract, it must obtain from the  
30 prospective policyholder a signed written statement in which  
31 the prospective policyholder:

1           a. Certifies as to eligibility for coverage under the  
2 standard health benefit plan, basic health benefit plan, or  
3 limited benefit policy or contract;

4           b. Acknowledges the limited nature of the coverage and  
5 an understanding of the managed care and cost control features  
6 of the policy or contract;

7           c. Acknowledges that if misrepresentations are made  
8 regarding eligibility for coverage under a standard health  
9 benefit plan, a basic health benefit plan, or a limited  
10 benefit policy or contract, the person making such  
11 misrepresentations forfeits coverage provided by the policy or  
12 contract; and

13           d. If a limited plan is requested, acknowledges that  
14 the prospective policyholder had been offered, at the time of  
15 application for the insurance policy or contract, the  
16 opportunity to purchase any health benefit plan offered by the  
17 carrier and that the prospective policyholder had rejected  
18 that coverage.

19  
20 A copy of such written statement shall be provided to the  
21 prospective policyholder no later than at the time of delivery  
22 of the policy or contract, and the original of such written  
23 statement shall be retained in the files of the small employer  
24 carrier for the period of time that the policy or contract  
25 remains in effect or for 5 years, whichever period is longer.

26           3. Any material statement made by an applicant for  
27 coverage under a health benefit plan which falsely certifies  
28 as to the applicant's eligibility for coverage serves as the  
29 basis for terminating coverage under the policy or contract.

30           4. Each marketing communication that is intended to be  
31 used in the marketing of a health benefit plan in this state

1 must be submitted for review by the office ~~department~~ prior to  
2 use and must contain the disclosures stated in this  
3 subsection.

4 (e) A small employer carrier may not use any policy,  
5 contract, form, or rate under this section, including  
6 applications, enrollment forms, policies, contracts,  
7 certificates, evidences of coverage, riders, amendments,  
8 endorsements, and disclosure forms, until the insurer has  
9 filed it with the office ~~department~~ and the office ~~department~~  
10 has approved it under ss. 627.410 and 627.411 and this  
11 section.

12 (13) STANDARDS TO ASSURE FAIR MARKETING.--

13 (i) The commission ~~department~~ may establish  
14 regulations setting forth additional standards to provide for  
15 the fair marketing and broad availability of health benefit  
16 plans to small employers in this state.

17 (15) APPLICABILITY OF OTHER STATE LAWS.--

18 (a) Except as expressly provided in this section, a  
19 law requiring coverage for a specific health care service or  
20 benefit, or a law requiring reimbursement, utilization, or  
21 consideration of a specific category of licensed health care  
22 practitioner, does not apply to a standard or basic health  
23 benefit plan policy or contract or a limited benefit policy or  
24 contract offered or delivered to a small employer unless that  
25 law is made expressly applicable to such policies or  
26 contracts. A law restricting or limiting deductibles,  
27 coinsurance, copayments, or annual or lifetime maximum  
28 payments does not apply to any health plan policy, including a  
29 standard or basic health benefit plan policy or contract,  
30 offered or delivered to a small employer unless such law is  
31 made expressly applicable to such policy or contract. However,

1 every small employer carrier must offer to eligible small  
2 employers the standard benefit plan and the basic benefit  
3 plan, as required by subsection (5), as such plans have been  
4 approved by the office ~~department~~ pursuant to subsection (12).

5 (16) RULEMAKING AUTHORITY.--The commission ~~department~~  
6 may adopt rules to administer this section, including rules  
7 governing compliance by small employer carriers and small  
8 employers.

9 Section 1171. Subsection (2) of section 627.673,  
10 Florida Statutes, is amended to read:

11 627.673 Designation as Medicare supplement policy;  
12 penalties for violations.--

13 (2) A violation of this part is punishable under s.  
14 624.4211. In addition, the office ~~department~~ may require  
15 insurers violating this part to cease marketing any Medicare  
16 supplement policy in this state which is related directly or  
17 indirectly to a violation of this part, or the office  
18 ~~department~~ may require the insurer to take any action  
19 necessary to comply with this part.

20 Section 1172. Section 627.6735, Florida Statutes, is  
21 amended to read:

22 627.6735 Order to discontinue certain advertising.--An  
23 insurer must file with the office ~~department~~ all  
24 advertisements for Medicare supplement policies pursuant to  
25 rules adopted by the commission ~~department~~. If, in the  
26 opinion of the office ~~department~~, any advertisement by a  
27 Medicare supplement policy insurer violates any of the  
28 provisions of part IX of chapter 626 or any rule of the  
29 commission ~~department~~, the office ~~department~~ may enter an  
30 immediate order requiring that the use of the advertisement be  
31 discontinued. If requested by the insurer, the office

1 ~~department~~ shall conduct a hearing within 10 days of the entry  
2 of such order. If, after the hearing or by agreement with the  
3 insurer, a final determination is made that the advertising  
4 was in fact violative of any provision of part IX of chapter  
5 626 or of any rule of the commission ~~department~~, the office  
6 ~~department~~ may, in lieu of revocation of the certificate of  
7 authority, require the publication of a corrective  
8 advertisement; impose an administrative penalty of up to  
9 \$10,000; and, in the case of an initial solicitation, require  
10 that the insurer, prior to accepting any application received  
11 in response to the advertisement, provide an acceptable  
12 clarification of the advertisement to each individual  
13 applicant.

14 Section 1173. Section 627.674, Florida Statutes, is  
15 amended to read:

16 627.674 Minimum standards; filing requirements.--

17 (1) An insurance policy or subscriber contract may not  
18 be advertised, solicited, or issued for delivery in this state  
19 as a Medicare supplement policy unless it meets the minimum  
20 standards adopted under this section. The minimum standards  
21 do not preclude other provisions or benefits which are not  
22 inconsistent with the minimum standards.

23 (2)(a) The commission ~~department~~ must adopt rules  
24 establishing minimum standards for Medicare supplement  
25 policies that, taken together with the requirements of this  
26 part, are no less comprehensive or beneficial to persons  
27 insured or covered under Medicare supplement policies issued,  
28 delivered, or issued for delivery in this state, including  
29 certificates under group or blanket policies issued,  
30 delivered, or issued for delivery in this state, than the  
31 standards provided in 42 U.S.C. s. 1395ss, or the most recent

1 version of the NAIC Model Regulation To Implement the NAIC  
2 Medicare Supplement Insurance Minimum Standards Model Act  
3 adopted by the National Association of Insurance  
4 Commissioners.

5 (b) The rules must establish specific standards,  
6 including standards of full and fair disclosure, that set  
7 forth the manner, content, and required disclosure for the  
8 sale of group, blanket, franchise, and individual Medicare  
9 supplement policies and Medicare supplement subscriber  
10 contracts of dental service plans and nonprofit health care  
11 services plans. The standards may cover, but not be limited  
12 to:

- 13 1. Terms of renewability.
- 14 2. Initial and subsequent conditions of eligibility.
- 15 3. Nonduplication of coverage.
- 16 4. Probationary periods.
- 17 5. Benefit limitations, exceptions, and reductions.
- 18 6. Elimination periods.
- 19 7. Requirements for replacement coverage.
- 20 8. Recurrent conditions.
- 21 9. Definitions of terms.
- 22 10. Application forms.

23 (c) The commission ~~department~~ may adopt rules that  
24 specify prohibited policies or policy provisions, not  
25 otherwise specifically authorized by statute, which in the  
26 opinion of the office ~~department~~ are unjust, unfair, or  
27 unfairly discriminatory to the policyholder, the person  
28 insured under the policy, or the beneficiary.

29 (d) For policies issued on or after January 1, 1991,  
30 the commission ~~department~~ may adopt rules to establish minimum  
31 policy standards to authorize the types of policies specified

1 by 42 U.S.C. s. 1395ss(p)(2)(C) and any optional benefits to  
2 facilitate policy comparisons.

3 (3) A policy may not be filed with the office  
4 ~~department~~ as a Medicare supplement policy unless the policy  
5 meets or exceeds the requirements of 42 U.S.C. s. 1395ss, or  
6 the most recent version of the NAIC Medicare Supplement  
7 Insurance Minimum Standards Model Act, adopted by the National  
8 Association of Insurance Commissioners.

9 (4) A policy filed with the office ~~department~~ as a  
10 Medicare supplement policy must:

11 (a) Have a definition of "Medicare eligible expense"  
12 that is not more restrictive than health care expenses of the  
13 kinds covered by Medicare or to the extent recognized as  
14 reasonable by Medicare. Payment of benefits by insurers for  
15 Medicare eligible expenses may be conditioned upon the same or  
16 less restrictive payment conditions, including determinations  
17 of medical necessity, as apply to Medicare claims.

18 (b) Provide that benefits designed to cover  
19 cost-sharing amounts under Medicare will be changed  
20 automatically to coincide with any changes in the applicable  
21 Medicare deductible amount and copayment percentage factor.  
22 Premiums may be modified to correspond with such changes,  
23 subject to prior approval by the office ~~department~~.

24 (c) Be written in simplified language, be easily  
25 understood by purchasers, and otherwise comply with s.  
26 627.602.

27 (d) Contain a prominently displayed no-loss  
28 cancellation clause enabling the applicant to return the  
29 policy within 30 days after receiving the policy, or the  
30 certificate issued thereunder, with return in full of any  
31 premium paid. The insurer must, in a timely manner, pay a

1 refund under this paragraph directly to the individual who  
2 paid the premium.

3 (e) Contain a prominently displayed notice of any  
4 coordination-of-benefits clause which might in any way  
5 restrict payment under the policy.

6 (f)1. Be accompanied by a copy of the Medicare  
7 Supplement Buyer's Guide developed jointly by the National  
8 Association of Insurance Commissioners and the Health Care  
9 Financing Administration of the United States Department of  
10 Health and Human Services.

11 2. A policy referred to in subparagraph (g)4. that  
12 does not qualify as a Medicare supplement policy under this  
13 part must also be accompanied by the buyer's guide pursuant to  
14 this paragraph.

15 3. Except in the case of a direct response insurer,  
16 delivery of the buyer's guide shall be made at the time of  
17 application, and acknowledgment of receipt or certification of  
18 delivery of the buyer's guide shall be provided to the  
19 insurer. Direct response insurers shall deliver the buyer's  
20 guide upon request, but not later than at the time the policy  
21 is delivered.

22 (g)1. Be accompanied by an outline of coverage in the  
23 form prescribed by the National Association of Insurance  
24 Commissioners in the NAIC Model Regulation To Implement the  
25 NAIC Medicare Supplement Insurance Minimum Standards Model  
26 Act, adopted by the National Association of Insurance  
27 Commissioners on July 31, 1991, and as prescribed in s.  
28 627.6743.

29 2. The outline shall be delivered to the applicant at  
30 the time application is made, and, except for the direct  
31 response policy, acknowledgment of receipt or certification of

1 delivery of the outline of coverage shall be provided to the  
2 insurer.

3           3. If the policy is issued on a basis which would  
4 require revision of the outline, a substitute outline of  
5 coverage properly describing the policy, contract, or group  
6 certificate must accompany the policy, when it is delivered,  
7 and contain the following statement, in no less than 12-point  
8 type, immediately above the company name: "NOTICE: Read this  
9 outline of coverage carefully. It is not identical to the  
10 outline of coverage provided upon application, and the  
11 coverage originally applied for has not been issued."

12           4. The following language must be printed on or  
13 attached to the first page of the outline of coverage  
14 delivered in conjunction with an individual policy of hospital  
15 confinement insurance, indemnity insurance, specified disease  
16 insurance, specified accident insurance, supplemental health  
17 insurance other than Medicare supplement insurance, or  
18 nonconventional health insurance coverage, as defined by law  
19 in this state, to a person eligible for Medicare: "This policy  
20 IS NOT A MEDICARE SUPPLEMENT policy. If you are eligible for  
21 Medicare, review the Medicare Supplement Buyer's Guide  
22 available from the company."

23           (5) A Medicare supplement policy may not contain  
24 benefits which duplicate benefits provided by Medicare.

25           Section 1174. Subsection (5) of section 627.6741,  
26 Florida Statutes, is amended to read:

27           627.6741 Issuance, cancellation, nonrenewal, and  
28 replacement.--

29           (5) The commission ~~department~~ shall by rule prescribe  
30 standards relating to the guaranteed issue of coverage,  
31 without exclusions for preexisting conditions, for

1 continuously covered individuals consistent with the  
2 provisions of 42 U.S.C. s. 1395ss(s)(3).

3 Section 1175. Subsection (1) of section 627.6742,  
4 Florida Statutes, is amended to read:

5 627.6742 Permitted compensation arrangements.--

6 (1) The commission ~~department~~ shall adopt rules  
7 governing the permitted compensation arrangements between  
8 insurers and agents with respect to Medicare supplement  
9 policies.

10 Section 1176. Subsection (1) of section 627.6744,  
11 Florida Statutes, is amended to read:

12 627.6744 Recommended purchase and excessive  
13 insurance.--

14 (1) Medicare supplement insurance may not be issued or  
15 sold, whether directly, through the mail, or otherwise, to an  
16 individual unless the issuer or seller obtains from the  
17 individual, as a part of the application, a written statement  
18 signed by the individual stating what Medicare supplement  
19 policies the individual has, from what source, and whether the  
20 individual has applied for and been determined to be entitled  
21 to Medicaid. The written statement must be accompanied by a  
22 written acknowledgment, signed by the seller, of the request  
23 for and receipt of the statement. The written acknowledgment  
24 does not constitute a verification or affirmation by the  
25 seller of the truth of any information supplied by the  
26 individual in the written statement. The written statement  
27 shall be on forms prescribed by the commission ~~department~~ in  
28 accordance with the Omnibus Budget Reconciliation Act of 1990  
29 (Pub. L. No. 101-508).

30 Section 1177. Subsections (4) and (7) of section  
31 627.6745, Florida Statutes, are amended to read:

1           627.6745 Loss ratio standards; public rate hearings.--

2           (4) Each insurer providing Medicare supplement  
3 insurance to residents of this state shall annually submit to  
4 the office ~~department~~ information on actual loss ratios on  
5 forms prescribed by the National Association of Insurance  
6 Commissioners pursuant to the Omnibus Budget Reconciliation  
7 Act of 1990 (Pub. L. No. 101-508).

8           (7) The commission ~~department~~ shall adopt a written  
9 policy statement regarding the holding of public hearings  
10 prior to approval of any premium increases for Medicare  
11 supplement insurance policies.

12           Section 1178. Section 627.678, Florida Statutes, is  
13 amended to read:

14           627.678 Rules.--

15           (1) For the effective protection of the public  
16 interest, the commission ~~department~~ shall have full power and  
17 authority to adopt, ~~promulgate,~~ and the office shall enforce,  
18 separate rules pertaining to issuance and use of each type of  
19 credit insurance defined in s. 627.677.

20           (2) Rules made pursuant to this section shall be  
21 principally designed, and shall be promulgated with the  
22 purpose of protecting the borrower from excessive charges by  
23 or collected through the lender for insurance in relation to  
24 the amount of the loan, to avoid duplication or overlapping of  
25 insurance coverage and to avoid loss of the borrower's funds  
26 by short-rate cancellation or termination of such insurance.  
27 However, nothing in such rules shall be construed to authorize  
28 the department, commission, or office to prohibit operation of  
29 normal dividend distributions under participating insurance  
30 contracts.

31

1           Section 1179. Subsections (1) and (2) of section  
2 627.6785, Florida Statutes, are amended to read:

3           627.6785 Filing of rates with department.--

4           (1) Credit disability and credit life insurers shall  
5 file with the office ~~department~~ a copy of all rates and any  
6 rate changes used in this state.

7           (2) No credit disability rate and no credit life rate  
8 shall exceed the maximum allowable rate promulgated by the  
9 commission ~~department~~.

10          Section 1180. Section 627.682, Florida Statutes, is  
11 amended to read:

12          627.682 Filing, approval of forms.--All forms of  
13 policies, certificates of insurance, statements of insurance,  
14 applications for insurance, binders, endorsements, and riders  
15 of credit life or disability insurance delivered or issued for  
16 delivery in this state shall be filed with and approved by the  
17 office ~~department~~ before use as provided in ss. 627.410 and  
18 627.411. In addition to grounds as specified in s. 627.411,  
19 the office ~~department~~, upon compliance with the procedures set  
20 forth in s. 627.410, shall disapprove any such form and may  
21 withdraw any previous approval thereof if the benefits  
22 provided therein are not reasonable in relation to the  
23 premiums charged, or if it contains provisions which are  
24 unjust, unfair, inequitable, misleading, or deceptive or which  
25 encourage misrepresentation of such policy.

26          Section 1181. Section 627.6844, Florida Statutes, is  
27 amended to read:

28          627.6844 Replacement rules.--Group-to-group  
29 consolidations are exempt from any rule of the commission  
30 ~~department~~ relating to the replacement of existing life or  
31 health insurance. Sections 627.6841-627.6845 do not create an

1 exemption from any such rule for consolidations that involve  
2 individual policies.

3 Section 1182. Section 627.6845, Florida Statutes, is  
4 amended to read:

5 627.6845 Policy forms used in connection with  
6 consolidations.--A policy or group certificate of credit  
7 insurance used in connection with any consolidation, or an  
8 application, endorsement, or rider which becomes a part of any  
9 such policy or certificate, may not be issued or delivered in  
10 this state until a copy of the form has been filed with and  
11 approved by the office ~~department~~ pursuant to s. 627.682.

12 Section 1183. Subsection (2), paragraph (b) of  
13 subsection (3), paragraph (d) of subsection (5), and  
14 subsections (6) and (8) of section 627.701, Florida Statutes,  
15 are amended to read:

16 627.701 Liability of insureds; coinsurance;  
17 deductibles.--

18 (2) Unless the office ~~department~~ determines that the  
19 deductible provision is clear and unambiguous, a property  
20 insurer may not issue an insurance policy or contract covering  
21 real property in this state which contains a deductible  
22 provision that:

23 (a) Applies solely to hurricane losses.

24 (b) States the deductible as a percentage rather than  
25 as a specific amount of money.

26 (3)

27 (b)1. Except as otherwise provided in this paragraph,  
28 prior to issuing a personal lines residential property  
29 insurance policy on or after April 1, 1996, or prior to the  
30 first renewal of a residential property insurance policy on or  
31 after April 1, 1996, the insurer must offer alternative

1 deductible amounts applicable to hurricane or wind losses  
2 equal to \$500 and 2 percent of the policy dwelling limits,  
3 unless the 2 percent deductible is less than \$500. The written  
4 notice of the offer shall specify the hurricane or wind  
5 deductible to be applied in the event that the applicant or  
6 policyholder fails to affirmatively choose a hurricane  
7 deductible. The insurer must provide such policyholder with  
8 notice of the availability of the deductible amounts specified  
9 in this paragraph in a form approved ~~specified~~ by the office  
10 ~~department~~ in conjunction with each renewal of the policy. The  
11 failure to provide such notice constitutes a violation of this  
12 code but does not affect the coverage provided under the  
13 policy.

14         2. This paragraph does not apply with respect to a  
15 deductible program lawfully in effect on June 14, 1995, or to  
16 any similar deductible program, if the deductible program  
17 requires a minimum deductible amount of no less than 2 percent  
18 of the policy limits.

19         3. With respect to a policy covering a risk with  
20 dwelling limits of at least \$100,000, but less than \$250,000,  
21 the insurer may, in lieu of offering a policy with a \$500  
22 hurricane or wind deductible as required by subparagraph 1.,  
23 offer a policy that the insurer guarantees it will not  
24 nonrenew for reasons of reducing hurricane loss for one  
25 renewal period and that contains up to a 2 percent hurricane  
26 or wind deductible as required by subparagraph 1.

27         4. With respect to a policy covering a risk with  
28 dwelling limits of \$250,000 or more, the insurer need not  
29 offer the \$500 hurricane or wind deductible as required by  
30 subparagraph 1., but must, except as otherwise provided in  
31

1 this subsection, offer the 2 percent hurricane or wind  
2 deductible as required by subparagraph 1.

3 (5)

4 (d) The office ~~department~~ shall draft and formally  
5 propose as a rule the form for the certificate of security ~~no~~  
6 ~~later than July 1, 1996~~. The certificate of security may be  
7 issued in any of the following circumstances:

8 1. A mortgage lender or other financial institution  
9 may issue a certificate of security after granting the  
10 applicant a line of credit, secured by equity in real property  
11 or other reasonable security, which line of credit may be  
12 drawn on only to pay for the deductible portion of insured  
13 construction or reconstruction after a hurricane loss. In the  
14 sole discretion of the mortgage lender or other financial  
15 institution, the line of credit may be issued to an applicant  
16 on an unsecured basis.

17 2. A licensed insurance agent may issue a certificate  
18 of security after obtaining for an applicant a line of credit,  
19 secured by equity in real property or other reasonable  
20 security, which line of credit may be drawn on only to pay for  
21 the deductible portion of insured construction or  
22 reconstruction after a hurricane loss. The Florida Hurricane  
23 Catastrophe Fund shall negotiate agreements creating a  
24 financing consortium to serve as an additional source of lines  
25 of credit to secure deductibles. Any licensed insurance agent  
26 may act as the agent of such consortium.

27 3. Any person qualified to act as a trustee for any  
28 purpose may issue a certificate of security secured by a  
29 pledge of assets, with the restriction that the assets may be  
30 drawn on only to pay for the deductible portion of insured  
31 construction or reconstruction after a hurricane loss.

1           4. Any insurer, including any admitted insurer or any  
2 surplus lines insurer, may issue a certificate of security  
3 after issuing the applicant a policy of supplemental insurance  
4 that will pay for 100 percent of the deductible portion of  
5 insured construction or reconstruction after a hurricane loss.

6           5. Any other method approved by the office ~~department~~  
7 upon finding that such other method provides a similar level  
8 of security as the methods specified in this paragraph and  
9 that such other method has no negative impact on residential  
10 property insurance catastrophic capacity. The legislative  
11 intent of this subparagraph is to provide the flexibility  
12 needed to achieve the public policy of expanding property  
13 insurance capacity while improving the affordability of  
14 property insurance.

15           (6) Prior to issuing a personal lines residential  
16 property insurance policy on or after April 1, 1997, or prior  
17 to the first renewal of a residential property insurance  
18 policy on or after April 1, 1997, the insurer must offer a  
19 deductible equal to \$500 applicable to losses from perils  
20 other than hurricane. The insurer must provide the  
21 policyholder with notice of the availability of the deductible  
22 specified in this subsection in a form approved ~~specified~~ by  
23 the office ~~department~~ at least once every 3 years. The failure  
24 to provide such notice constitutes a violation of this code  
25 but does not affect the coverage provided under the policy. An  
26 insurer may require a higher deductible only as part of a  
27 deductible program lawfully in effect on June 1, 1996, or as  
28 part of a similar deductible program.

29           (8) Notwithstanding the other provisions of this  
30 section or of other law, but only as to hurricane coverage as  
31 defined in s. 627.4025 for commercial lines residential

1 coverages, an insurer may offer a deductible in an amount not  
2 exceeding 5 percent of the insured value with respect to a  
3 condominium association or cooperative association policy, or  
4 in an amount not exceeding 10 percent of the insured value  
5 with respect to any other commercial lines residential policy,  
6 if, at the time of such offer and at each renewal, the insurer  
7 also offers to the policyholder a deductible in the amount of  
8 3 percent of the insured value. Nothing in this subsection  
9 prohibits any deductible otherwise authorized by this section.  
10 All forms by which the offers authorized in this subsection  
11 are made or required to be made shall be on forms that are  
12 adopted or approved by the commission or office ~~department~~.

13 Section 1184. Subsection (2) of section 627.7011,  
14 Florida Statutes, is amended to read:

15 627.7011 Homeowners' policies; offer of replacement  
16 cost coverage and law and ordinance coverage.--

17 (2) Unless the insurer obtains the policyholder's  
18 written refusal of the policies or endorsements specified in  
19 subsection (1), any policy covering the dwelling is deemed to  
20 include the coverage specified in paragraph (1)(b). The  
21 rejection or selection of alternative coverage shall be made  
22 on a form approved by the office ~~department~~. The form shall  
23 fully advise the applicant of the nature of the coverage being  
24 rejected. If this form is signed by a named insured, it will  
25 be conclusively presumed that there was an informed, knowing  
26 rejection of the coverage or election of the alternative  
27 coverage on behalf of all insureds. Unless the policyholder  
28 requests in writing the coverage specified in this section, it  
29 need not be provided in or supplemental to any other policy  
30 that renews, insures, extends, changes, supersedes, or  
31 replaces an existing policy when the policyholder has rejected

1 the coverage specified in this section or has selected  
2 alternative coverage. The insurer must provide such  
3 policyholder with notice of the availability of such coverage  
4 in a form approved ~~specified~~ by the office ~~department~~ at least  
5 once every 3 years. The failure to provide such notice  
6 constitutes a violation of this code, but does not affect the  
7 coverage provided under the policy.

8 Section 1185. Section 627.7012, Florida Statutes, is  
9 amended to read:

10 627.7012 Pools of insurance adjusters.--The Commission  
11 ~~Department of Insurance~~ may, by rule, establish a pool of  
12 qualified insurance adjusters. The rules must provide that, if  
13 a hurricane occurs or an emergency is declared, the office  
14 ~~department~~ may assign members of the pool to the affected area  
15 and that an insurer may request that a member of the pool  
16 adjust claims in the assigned area. The rules may not require  
17 that an insurer use those adjusters assigned by the office  
18 ~~department~~.

19 Section 1186. Section 627.7015, Florida Statutes, is  
20 amended to read:

21 627.7015 Alternative procedure for resolution of  
22 disputed property insurance claims.--

23 (1) PURPOSE AND SCOPE.--This section sets forth a  
24 nonadversarial alternative dispute resolution procedure for a  
25 mediated claim resolution conference prompted by the need for  
26 effective, fair, and timely handling of property insurance  
27 claims. There is a particular need for an informal,  
28 nonthreatening forum for helping parties who elect this  
29 procedure to resolve their claims disputes because most  
30 homeowner's insurance policies obligate insureds to  
31 participate in a potentially expensive and time-consuming

1 adversarial appraisal process prior to litigation. The  
2 procedure set forth in this section is designed to bring the  
3 parties together for a mediated claims settlement conference  
4 without any of the trappings or drawbacks of an adversarial  
5 process. Before resorting to these procedures, insureds and  
6 insurers are encouraged to resolve claims as quickly and  
7 fairly as possible. This section is available with respect to  
8 claims under personal lines policies for all claimants and  
9 insurers prior to commencing the appraisal process, or  
10 commencing litigation. If requested by the insured,  
11 participation by legal counsel shall be permitted. Mediation  
12 under this section is also available to litigants referred to  
13 the department by a county court or circuit court. This  
14 section does not apply to commercial coverages, to private  
15 passenger motor vehicle insurance coverages, or to disputes  
16 relating to liability coverages in policies of property  
17 insurance.

18 (2) At the time a first-party claim within the scope  
19 of this section is filed, the insurer shall notify all  
20 first-party claimants of their right to participate in the  
21 mediation program under this section. The department shall  
22 prepare a consumer information pamphlet for distribution to  
23 persons participating in mediation under this section.

24 (3) The costs of mediation shall be reasonable, and  
25 the insurer shall bear all of the cost of conducting mediation  
26 conferences, except as otherwise provided in this section. If  
27 an insured fails to appear at the conference, the conference  
28 shall be rescheduled upon the insured's payment of the costs  
29 of a rescheduled conference. If the insurer fails to appear at  
30 the conference, the insurer shall pay the insured's actual  
31 cash expenses incurred in attending the conference if the

1 insurer's failure to attend was not due to a good cause  
2 acceptable to the department. An insurer will be deemed to  
3 have failed to appear if the insurer's representative lacks  
4 authority to settle the full value of the claim. The insurer  
5 shall incur an additional fee for a rescheduled conference  
6 necessitated by the insurer's failure to appear at a scheduled  
7 conference. The fees assessed by the administrator shall  
8 include a charge necessary to defray the expenses of the  
9 department related to its duties under this section and shall  
10 be deposited in the Insurance ~~Commissioner's~~ Regulatory Trust  
11 Fund.

12 (4) The department shall adopt by rule a property  
13 insurance mediation program to be administered by the  
14 department or its designee. The department may also adopt  
15 special rules which are applicable in cases of an emergency  
16 within the state. The rules shall be modeled after practices  
17 and procedures set forth in mediation rules of procedure  
18 adopted by the Supreme Court. The rules shall provide for:

19 (a) Reasonable requirement for processing and  
20 scheduling of requests for mediation.

21 (b) Qualifications of mediators as provided in s.  
22 627.745 and in the Florida Rules of Certified and Court  
23 Appointed Mediators, and for such other individuals as are  
24 qualified by education, training, or experience as the  
25 department determines to be appropriate.

26 (c) Provisions governing who may attend mediation  
27 conferences.

28 (d) Selection of mediators.

29 (e) Criteria for the conduct of mediation conferences.

30 (f) Right to legal counsel.

31

1           (5) All statements made and documents produced at a  
2 mediation conference shall be deemed to be settlement  
3 negotiations in anticipation of litigation within the scope of  
4 s. 90.408. All parties to the mediation must negotiate in good  
5 faith and must have the authority to immediately settle the  
6 claim. Mediators are deemed to be agents of the department and  
7 shall have the immunity from suit provided in s. 44.107.

8           (6) Mediation is nonbinding; however, if a written  
9 settlement is reached, the insured has 3 business days within  
10 which the insured may rescind the settlement unless the  
11 insured has cashed or deposited any check or draft disbursed  
12 to the insured for the disputed matters as a result of the  
13 conference. If a settlement agreement is reached and is not  
14 rescinded, it shall be binding and act as a release of all  
15 specific claims that were presented in that mediation  
16 conference.

17           (7) If the insurer requests the mediation, and the  
18 mediation results are rejected by either party, the insured  
19 shall not be required to submit to or participate in any  
20 contractual loss appraisal process of the property loss damage  
21 as a precondition to legal action for breach of contract  
22 against the insurer for its failure to pay the policyholder's  
23 claims covered by the policy.

24           (8) The department may designate an entity or person  
25 to serve as administrator to carry out any of the provisions  
26 of this section and may take this action by means of a written  
27 contract or agreement.

28           Section 1187. Section 627.7017, Florida Statutes, is  
29 amended to read:

30           627.7017 Hurricane loss mitigation projects.--In  
31 addition to any other hurricane loss mitigation activities

1 authorized or required by law, the office ~~department~~ may  
2 contract with public or private entities for hurricane loss  
3 mitigation projects.

4 Section 1188. Subsection (6) of section 627.702,  
5 Florida Statutes, is amended to read:

6 627.702 Valued policy law.--

7 (6) With regard to mobile homes included in subsection  
8 (1), any total loss shall be adjusted on the basis of the  
9 amount of money for which such property was insured as  
10 specified in the policy, whether on an actual cash value  
11 basis, replacement cost basis, or stated amount, and for which  
12 a premium has been charged and paid only if the insured has  
13 elected to purchase such coverage at the inception of the  
14 policy. However, when coverage is written for a mobile home  
15 on any basis other than stated value, a complete disclosure of  
16 the relative cost between that policy and the stated value  
17 policy shall be made to the insured on a form and in a format  
18 approved by the office ~~department~~. Such forms shall disclose  
19 and describe the differences between the types of policies and  
20 shall be signed by the insured. Copies shall be maintained in  
21 the insurer's file, and a copy shall be made available to the  
22 insured. Each insurer licensed to write insurance covering  
23 mobile homes shall make such stated value coverage available  
24 at the option of the insured.

25 Section 1189. Subsection (4) of section 627.706,  
26 Florida Statutes, is amended to read:

27 627.706 Sinkhole insurance.--

28 (4) Every insurer authorized to transact property  
29 insurance in this state shall make a proper filing with the  
30 office ~~department~~ for the purpose of extending the appropriate  
31

1 forms of property insurance to include coverage for insurable  
2 sinkhole losses.

3 Section 1190. Subsections (1), (5), and (9) of section  
4 627.727, Florida Statutes, are amended to read:

5 627.727 Motor vehicle insurance; uninsured and  
6 underinsured vehicle coverage; insolvent insurer protection.--

7 (1) No motor vehicle liability insurance policy which  
8 provides bodily injury liability coverage shall be delivered  
9 or issued for delivery in this state with respect to any  
10 specifically insured or identified motor vehicle registered or  
11 principally garaged in this state unless uninsured motor  
12 vehicle coverage is provided therein or supplemental thereto  
13 for the protection of persons insured thereunder who are  
14 legally entitled to recover damages from owners or operators  
15 of uninsured motor vehicles because of bodily injury,  
16 sickness, or disease, including death, resulting therefrom.  
17 However, the coverage required under this section is not  
18 applicable when, or to the extent that, an insured named in  
19 the policy makes a written rejection of the coverage on behalf  
20 of all insureds under the policy. When a motor vehicle is  
21 leased for a period of 1 year or longer and the lessor of such  
22 vehicle, by the terms of the lease contract, provides  
23 liability coverage on the leased vehicle, the lessee of such  
24 vehicle shall have the sole privilege to reject uninsured  
25 motorist coverage or to select lower limits than the bodily  
26 injury liability limits, regardless of whether the lessor is  
27 qualified as a self-insurer pursuant to s. 324.171. Unless an  
28 insured, or lessee having the privilege of rejecting uninsured  
29 motorist coverage, requests such coverage or requests higher  
30 uninsured motorist limits in writing, the coverage or such  
31 higher uninsured motorist limits need not be provided in or

1 supplemental to any other policy which renews, extends,  
2 changes, supersedes, or replaces an existing policy with the  
3 same bodily injury liability limits when an insured or lessee  
4 had rejected the coverage. When an insured or lessee has  
5 initially selected limits of uninsured motorist coverage lower  
6 than her or his bodily injury liability limits, higher limits  
7 of uninsured motorist coverage need not be provided in or  
8 supplemental to any other policy which renews, extends,  
9 changes, supersedes, or replaces an existing policy with the  
10 same bodily injury liability limits unless an insured requests  
11 higher uninsured motorist coverage in writing. The rejection  
12 or selection of lower limits shall be made on a form approved  
13 by the office ~~Insurance Commissioner~~. The form shall fully  
14 advise the applicant of the nature of the coverage and shall  
15 state that the coverage is equal to bodily injury liability  
16 limits unless lower limits are requested or the coverage is  
17 rejected. The heading of the form shall be in 12-point bold  
18 type and shall state: "You are electing not to purchase  
19 certain valuable coverage which protects you and your family  
20 or you are purchasing uninsured motorist limits less than your  
21 bodily injury liability limits when you sign this form.  
22 Please read carefully." If this form is signed by a named  
23 insured, it will be conclusively presumed that there was an  
24 informed, knowing rejection of coverage or election of lower  
25 limits on behalf of all insureds. The insurer shall notify  
26 the named insured at least annually of her or his options as  
27 to the coverage required by this section. Such notice shall  
28 be part of, and attached to, the notice of premium, shall  
29 provide for a means to allow the insured to request such  
30 coverage, and shall be given in a manner approved by the  
31 office ~~department~~. Receipt of this notice does not constitute

1 an affirmative waiver of the insured's right to uninsured  
2 motorist coverage where the insured has not signed a selection  
3 or rejection form. The coverage described under this section  
4 shall be over and above, but shall not duplicate, the benefits  
5 available to an insured under any workers' compensation law,  
6 personal injury protection benefits, disability benefits law,  
7 or similar law; under any automobile medical expense coverage;  
8 under any motor vehicle liability insurance coverage; or from  
9 the owner or operator of the uninsured motor vehicle or any  
10 other person or organization jointly or severally liable  
11 together with such owner or operator for the accident; and  
12 such coverage shall cover the difference, if any, between the  
13 sum of such benefits and the damages sustained, up to the  
14 maximum amount of such coverage provided under this section.  
15 The amount of coverage available under this section shall not  
16 be reduced by a setoff against any coverage, including  
17 liability insurance. Such coverage shall not inure directly  
18 or indirectly to the benefit of any workers' compensation or  
19 disability benefits carrier or any person or organization  
20 qualifying as a self-insurer under any workers' compensation  
21 or disability benefits law or similar law.

22 (5) Any person having a claim against an insolvent  
23 insurer as defined in s. 631.54(5)~~s. 631.54(6)~~ under the  
24 provisions of this section shall present such claim for  
25 payment to the Florida Insurance Guaranty Association only.  
26 In the event of a payment to any person in settlement of a  
27 claim arising under the provisions of this section, the  
28 association is not subrogated or entitled to any recovery  
29 against the claimant's insurer. The association, however, has  
30 the rights of recovery as set forth in chapter 631 in the  
31 proceeds recoverable from the assets of the insolvent insurer.

1           (9) Insurers may offer policies of uninsured motorist  
2 coverage containing policy provisions, in language approved by  
3 the office ~~department~~, establishing that if the insured  
4 accepts this offer:

5           (a) The coverage provided as to two or more motor  
6 vehicles shall not be added together to determine the limit of  
7 insurance coverage available to an injured person for any one  
8 accident, except as provided in paragraph (c).

9           (b) If at the time of the accident the injured person  
10 is occupying a motor vehicle, the uninsured motorist coverage  
11 available to her or him is the coverage available as to that  
12 motor vehicle.

13           (c) If the injured person is occupying a motor vehicle  
14 which is not owned by her or him or by a family member  
15 residing with her or him, the injured person is entitled to  
16 the highest limits of uninsured motorist coverage afforded for  
17 any one vehicle as to which she or he is a named insured or  
18 insured family member. Such coverage shall be excess over the  
19 coverage on the vehicle the injured person is occupying.

20           (d) The uninsured motorist coverage provided by the  
21 policy does not apply to the named insured or family members  
22 residing in her or his household who are injured while  
23 occupying any vehicle owned by such insureds for which  
24 uninsured motorist coverage was not purchased.

25           (e) If, at the time of the accident the injured person  
26 is not occupying a motor vehicle, she or he is entitled to  
27 select any one limit of uninsured motorist coverage for any  
28 one vehicle afforded by a policy under which she or he is  
29 insured as a named insured or as an insured resident of the  
30 named insured's household.

31

1 In connection with the offer authorized by this subsection,  
2 insurers shall inform the named insured, applicant, or lessee,  
3 on a form approved by the office ~~department~~, of the  
4 limitations imposed under this subsection and that such  
5 coverage is an alternative to coverage without such  
6 limitations. If this form is signed by a named insured,  
7 applicant, or lessee, it shall be conclusively presumed that  
8 there was an informed, knowing acceptance of such limitations.  
9 When the named insured, applicant, or lessee has initially  
10 accepted such limitations, such acceptance shall apply to any  
11 policy which renews, extends, changes, supersedes, or replaces  
12 an existing policy unless the named insured requests deletion  
13 of such limitations and pays the appropriate premium for such  
14 coverage. Any insurer who provides coverage which includes  
15 the limitations provided in this subsection shall file revised  
16 premium rates with the office ~~department~~ for such uninsured  
17 motorist coverage to take effect prior to initially providing  
18 such coverage. The revised rates shall reflect the  
19 anticipated reduction in loss costs attributable to such  
20 limitations but shall in any event reflect a reduction in the  
21 uninsured motorist coverage premium of at least 20 percent for  
22 policies with such limitations. Such filing shall not  
23 increase the rates for coverage which does not contain the  
24 limitations authorized by this subsection, and such rates  
25 shall remain in effect until the insurer demonstrates the need  
26 for a change in uninsured motorist rates pursuant to s.  
27 627.0651.

28 Section 1191. Subsection (1) of section 627.7275,  
29 Florida Statutes, is amended to read:

30 627.7275 Motor vehicle property damage liability.--  
31

1           (1) No motor vehicle insurance policy providing  
2 personal injury protection as set forth in s. 627.736 shall be  
3 delivered or issued for delivery in this state with respect to  
4 any specifically insured or identified motor vehicle  
5 registered or principally garaged in this state unless the  
6 policy also provides coverage for property damage liability in  
7 the amount of at least \$10,000 because of damage to, or  
8 destruction of, property of others in any one accident arising  
9 out of the use of the motor vehicle or provides coverage in  
10 the amount of at least \$30,000 for combined property damage  
11 liability and bodily injury liability in any one accident  
12 arising out of the use of the motor vehicle. The policy, as  
13 to coverage of property damage liability, shall meet the  
14 applicable requirements of s. 324.151, subject to the usual  
15 policy exclusions such as have been approved in policy forms  
16 by the office ~~department~~.

17           Section 1192. Subsections (7), (8), and (9) of section  
18 627.728, Florida Statutes, are amended to read:

19           627.728 Cancellations; nonrenewals.--

20           (7) Except in the case of cancellation for nonpayment  
21 of premium or nonrenewal of the policy, the notice of  
22 cancellation as provided by this section must contain the  
23 following words which are to be prominently displayed: "You  
24 are permitted by law to appeal this cancellation. An appeal  
25 must be filed no later than 20 days before the effective date  
26 of cancellation set forth in this notice. Forms for such  
27 appeal and the regulations pertaining thereto may be obtained  
28 from the office ~~offices of the Department of Insurance~~. The  
29 office ~~Department of Insurance~~ does not have the authority to  
30 extend the effective date of cancellation; therefore you  
31

1 should obtain replacement coverage prior to the effective date  
2 of cancellation."

3 (8)(a) Within 2 working days after receipt of a timely  
4 appeal of the notice of cancellation, the office ~~department~~  
5 shall initiate a proceeding. If informal procedures fail to  
6 resolve the appeal, the office ~~department~~ shall, upon request  
7 of the insured, call a hearing upon 10 days' notice to the  
8 parties to be held by a disinterested employee of the office  
9 ~~department~~. Proceedings pursuant to this subsection are not  
10 subject to the provisions of chapter 120.

11 (b) Each insurer subject to this section shall  
12 maintain on file with the office ~~department~~ the name and  
13 address of the person authorized to receive notices pursuant  
14 to this section on behalf of the insurer.

15 (c) The office ~~department~~ shall, at the conclusion of  
16 the proceeding or hearing or not later than 2 working days  
17 thereafter, issue its written findings to the parties; and, if  
18 it finds for the named insured, it shall either order the  
19 insurer to rescind its notice of cancellation or, if the date  
20 cancellation is to be effective has elapsed, order the policy  
21 reinstated from the date of cancellation, and such coverage  
22 shall be continuous to, and shall operate prospectively from,  
23 the date of cancellation. However, no policy shall be  
24 reinstated while the named insured is in arrears in payment of  
25 premium on such policy. If the office ~~department~~ finds for  
26 the insurer, its written findings shall so state.

27 (d) Reinstatement of a policy under this subsection  
28 shall not operate in any way to extend the expiration,  
29 termination, or anniversary date provided in the policy. Upon  
30 such reinstatement, costs and attorney's fees may be assessed  
31 by the office ~~department~~ and paid to the named insured by an

1 insurer who has wrongfully canceled a policy, as determined by  
2 the proceeding or hearing provided for in paragraph (c).

3 (9) The office ~~department~~ shall deposit all fees  
4 provided for in this section into the Insurance ~~Commissioner's~~  
5 Regulatory Trust Fund.

6 Section 1193. Subsection (5) of section 627.7282,  
7 Florida Statutes, is amended to read:

8 627.7282 Notice of additional premium; cancellation  
9 upon nonpayment.--

10 (5) The commission ~~department~~ may adopt rules  
11 prescribing the format of the notice.

12 Section 1194. Paragraph (a) of subsection (5) of  
13 section 627.7295, Florida Statutes, is amended to read:

14 627.7295 Motor vehicle insurance contracts.--

15 (5)(a) A licensed general lines agent may charge a  
16 per-policy fee not to exceed \$10 to cover the administrative  
17 costs of the agent associated with selling the motor vehicle  
18 insurance policy if the policy covers only personal injury  
19 protection coverage as provided by s. 627.736 and property  
20 damage liability coverage as provided by s. 627.7275 and if no  
21 other insurance is sold or issued in conjunction with or  
22 collateral to the policy. The per-policy fee must be a  
23 component of the insurer's rate filing and may not be charged  
24 by an agent unless the fee is included in the filing. The fee  
25 is not considered part of the premium except for purposes of  
26 the office's ~~department's~~ review of expense factors in a  
27 filing made pursuant to s. 627.062.

28 Section 1195. Paragraph (c) of subsection (4),  
29 paragraphs (a) and (e) of subsection (5), paragraph (a) of  
30 subsection (6), and paragraph (c) of subsection (11) of  
31 section 627.736, Florida Statutes, are amended to read:

1           627.736 Required personal injury protection benefits;  
2 exclusions; priority; claims.--

3           (4) BENEFITS; WHEN DUE.--Benefits due from an insurer  
4 under ss. 627.730-627.7405 shall be primary, except that  
5 benefits received under any workers' compensation law shall be  
6 credited against the benefits provided by subsection (1) and  
7 shall be due and payable as loss accrues, upon receipt of  
8 reasonable proof of such loss and the amount of expenses and  
9 loss incurred which are covered by the policy issued under ss.  
10 627.730-627.7405. When the Agency for Health Care  
11 Administration provides, pays, or becomes liable for medical  
12 assistance under the Medicaid program related to injury,  
13 sickness, disease, or death arising out of the ownership,  
14 maintenance, or use of a motor vehicle, benefits under ss.  
15 627.730-627.7405 shall be subject to the provisions of the  
16 Medicaid program.

17           (c) All overdue payments shall bear simple interest at  
18 the rate established ~~by the Comptroller~~ under s. 55.03 or the  
19 rate established in the insurance contract, whichever is  
20 greater, for the year in which the payment became overdue,  
21 calculated from the date the insurer was furnished with  
22 written notice of the amount of covered loss. Interest shall  
23 be due at the time payment of the overdue claim is made.

24           (5) CHARGES FOR TREATMENT OF INJURED PERSONS.--

25           (a) Any physician, hospital, clinic, or other person  
26 or institution lawfully rendering treatment to an injured  
27 person for a bodily injury covered by personal injury  
28 protection insurance may charge only a reasonable amount for  
29 the services and supplies rendered, and the insurer providing  
30 such coverage may pay for such charges directly to such person  
31 or institution lawfully rendering such treatment, if the

1 insured receiving such treatment or his or her guardian has  
2 countersigned the invoice, bill, or claim form approved by the  
3 office ~~Department of Insurance~~ upon which such charges are to  
4 be paid for as having actually been rendered, to the best  
5 knowledge of the insured or his or her guardian. In no event,  
6 however, may such a charge be in excess of the amount the  
7 person or institution customarily charges for like services or  
8 supplies in cases involving no insurance.

9 (e) All statements and bills for medical services  
10 rendered by any physician, hospital, clinic, or other person  
11 or institution shall be submitted to the insurer on a Health  
12 Care Finance Administration 1500 form, UB 92 forms, or any  
13 other standard form approved by the office or adopted by the  
14 commission ~~department~~ for purposes of this paragraph. All  
15 billings for such services shall, to the extent applicable,  
16 follow the Physicians' Current Procedural Terminology (CPT) in  
17 the year in which services are rendered. No statement of  
18 medical services may include charges for medical services of a  
19 person or entity that performed such services without  
20 possessing the valid licenses required to perform such  
21 services. For purposes of paragraph (4)(b), an insurer shall  
22 not be considered to have been furnished with notice of the  
23 amount of covered loss or medical bills due unless the  
24 statements or bills comply with this paragraph.

25 (6) DISCOVERY OF FACTS ABOUT AN INJURED PERSON;  
26 DISPUTES.--

27 (a) Every employer shall, if a request is made by an  
28 insurer providing personal injury protection benefits under  
29 ss. 627.730-627.7405 against whom a claim has been made,  
30 furnish forthwith, in a form approved by the office  
31 ~~department~~, a sworn statement of the earnings, since the time

1 of the bodily injury and for a reasonable period before the  
2 injury, of the person upon whose injury the claim is based.

3 (11) DEMAND LETTER.--

4 (c) Each notice required by this section must be  
5 delivered to the insurer by United States certified or  
6 registered mail, return receipt requested. Such postal costs  
7 shall be reimbursed by the insurer if so requested by the  
8 provider in the notice, when the insurer pays the overdue  
9 claim. Such notice must be sent to the person and address  
10 specified by the insurer for the purposes of receiving notices  
11 under this section, on the document denying or reducing the  
12 amount asserted by the filer to be overdue. Each licensed  
13 insurer, whether domestic, foreign, or alien, may file with  
14 the office ~~department~~ designation of the name and address of  
15 the person to whom notices pursuant to this section shall be  
16 sent when such document does not specify the name and address  
17 to whom the notices under this section are to be sent or when  
18 there is no such document. The name and address on file with  
19 the office ~~department~~ pursuant to s. 624.422 shall be deemed  
20 the authorized representative to accept notice pursuant to  
21 this section in the event no other designation has been made.

22 Section 1196. Subsection (5) of section 627.739,  
23 Florida Statutes, is amended to read:

24 627.739 Personal injury protection; optional  
25 limitations; deductibles.--

26 (5) All such offers shall be made in clear and  
27 unambiguous language at the time the initial application is  
28 taken and prior to each annual renewal and shall indicate that  
29 a premium reduction will result from each election. At the  
30 option of the insurer, the requirements of the preceding  
31 sentence are met by using forms of notice approved by the

1 ~~office department~~, or by providing the following notice in  
2 10-point type in the insurer's application for initial  
3 issuance of a policy of motor vehicle insurance and the  
4 insurer's annual notice of renewal premium:

5       For personal injury protection insurance, the  
6       named insured may elect a deductible and to  
7       exclude coverage for loss of gross income and  
8       loss of earning capacity ("lost wages"). These  
9       elections apply to the named insured alone, or  
10       to the named insured and all dependent resident  
11       relatives. A premium reduction will result from  
12       these elections. The named insured is hereby  
13       advised not to elect the lost wage exclusion if  
14       the named insured or dependent resident  
15       relatives are employed, since lost wages will  
16       not be payable in the event of an accident.

17       Section 1197. Section 627.7401, Florida Statutes, is  
18 amended to read:

19       627.7401 Notification of insured's rights.--

20       (1) The ~~commission department~~, by rule, shall adopt a  
21 form for the notification of insureds of their right to  
22 receive personal injury protection benefits under the Florida  
23 Motor Vehicle No-Fault Law. Such notice shall include a  
24 description of the benefits provided by personal injury  
25 protection, including, but not limited to, the specific types  
26 of services for which medical benefits are paid, disability  
27 benefits, death benefits, significant exclusions from and  
28 limitations on personal injury protection benefits, when  
29 payments are due, how benefits are coordinated with other  
30 insurance benefits that the insured may have, penalties and  
31 interest that may be imposed on insurers for failure to make

1 timely payments of benefits, and rights of parties regarding  
2 disputes as to benefits.

3 (2) Each insurer issuing a policy in this state  
4 providing personal injury protection benefits must mail or  
5 deliver the notice as specified in subsection (1) to an  
6 insured within 21 days after receiving from the insured notice  
7 of an automobile accident or claim involving personal injury  
8 to an insured who is covered under the policy. The office  
9 ~~department~~ may allow an insurer additional time to provide the  
10 notice specified in subsection (1) not to exceed 30 days, upon  
11 a showing by the insurer that an emergency justifies an  
12 extension of time.

13 (3) The notice required by this section does not alter  
14 or modify the terms of the insurance contract or other  
15 requirements of this act.

16 Section 1198. Paragraph (h) of subsection (2) and  
17 subsections (4), (5), and (7) of section 627.744, Florida  
18 Statutes, are amended to read:

19 627.744 Required preinsurance inspection of private  
20 passenger motor vehicles.--

21 (2) This section does not apply:

22 (h) To any other vehicle or policy exempted by rule of  
23 the commission ~~department~~. The commission ~~department~~ may base  
24 a rule under this paragraph only on a determination that the  
25 likelihood of a fraudulent physical damage claim is remote or  
26 that the inspection would cause a serious hardship to the  
27 insurer or the applicant.

28 (4) The inspection required by this section shall be  
29 provided by the insurer or by a person or organization  
30 authorized by the insurer. The applicant may be required to  
31 pay the cost of the inspection, not to exceed \$5. The

1 inspection shall be recorded on a form prescribed by the  
2 commission department, and the form or a copy shall be  
3 retained by the insurer with its policy records for the  
4 insured. The insurer shall provide a copy of the form to the  
5 insured upon request. Any inspection fee paid directly by the  
6 applicant may not be considered part of the premium. However,  
7 an insurer that provides the inspection at no cost to the  
8 applicant may include the expense of the inspection within a  
9 rate filing.

10 (5) The inspection shall include at least the  
11 following:

12 (a) Taking a physical imprint of the vehicle  
13 identification number of the vehicle or otherwise recording  
14 the vehicle identification number in a manner prescribed by  
15 the commission department.

16 (b) Recording the presence of accessories required by  
17 the commission department to be recorded.

18 (c) Recording the locations of and a description of  
19 existing damage to the vehicle.

20 (7) The commission department may, by rule, establish  
21 such procedures and notice requirements that it finds  
22 necessary to implement this section.

23 Section 1199. Section 627.745, Florida Statutes, is  
24 amended to read:

25 627.745 Mediation of claims.--

26 (1)(a) In any claim filed with an insurer for personal  
27 injury in an amount of \$10,000 or less or any claim for  
28 property damage in any amount, arising out of the ownership,  
29 operation, use, or maintenance of a motor vehicle, either  
30 party may demand mediation of the claim prior to the  
31 institution of litigation.

1           (b) A request for mediation shall be filed with the  
2 office department on a form approved by the office department.  
3 The request for mediation shall state the reason for the  
4 request for mediation and the issues in dispute which are to  
5 be mediated. The filing of a request for mediation tolls the  
6 applicable time requirements for filing suit for a period of  
7 60 days following the conclusion of the mediation process or  
8 the time prescribed in s. 95.11, whichever is later.

9           (c) The insurance policy must specify in detail the  
10 terms and conditions for mediation of a first-party claim.

11           (d) The mediation shall be conducted as an informal  
12 process in which formal rules of evidence and procedure need  
13 not be observed. Any party participating in a mediation must  
14 have the authority to make a binding decision. All parties  
15 must mediate in good faith.

16           (e) The office department shall randomly select  
17 mediators. Each party may once reject the mediator selected,  
18 either originally or after the opposing side has exercised its  
19 option to reject a mediator.

20           (f) Costs of mediation shall be borne equally by both  
21 parties unless the mediator determines that one party has not  
22 mediated in good faith.

23           (g) Only one mediation may be requested for each  
24 claim, unless all parties agree to further mediation.

25           (2) Upon receipt of a request for mediation, the  
26 office department shall refer the request to a mediator. The  
27 mediator shall notify the applicant and all interested  
28 parties, as identified by the applicant, and any other parties  
29 the mediator believes may have an interest in the mediation,  
30 of the date, time, and place of the mediation conference. The  
31 conference may be held by telephone, if feasible. The

1 mediation conference shall be held within 45 days after the  
2 request for mediation.

3 (3)(a) The office ~~department~~ shall approve mediators  
4 to conduct mediations pursuant to this section. All mediators  
5 must file an application under oath for approval as a  
6 mediator.

7 (b) To qualify for approval as a mediator, a person  
8 must meet the following qualifications:

9 1. Possess a masters or doctorate degree in  
10 psychology, counseling, business, accounting, or economics, be  
11 a member of The Florida Bar, be licensed as a certified public  
12 accountant, or demonstrate that the applicant for approval has  
13 been actively engaged as a qualified mediator for at least 4  
14 years prior to July 1, 1990.

15 2. Within 4 years immediately preceding the date the  
16 application for approval is filed with the office ~~department~~,  
17 have completed a minimum of a 40-hour training program  
18 approved by the office ~~department~~ and successfully passed a  
19 final examination included in the training program and  
20 approved by the office ~~department~~. The training program shall  
21 include and address all of the following:

- 22 a. Mediation theory.  
23 b. Mediation process and techniques.  
24 c. Standards of conduct for mediators.  
25 d. Conflict management and intervention skills.  
26 e. Insurance nomenclature.

27 (4) The commission ~~department~~ must adopt rules of  
28 procedure for claims mediation, taking into consideration a  
29 system which:

- 30 (a) Is fair.  
31 (b) Promotes settlement.

1 (c) Avoids delay.  
2 (d) Is nonadversarial.  
3 (e) Uses a framework for modern mediating technique.  
4 (f) Controls costs and expenses of mediation.  
5 (5) Disclosures and information divulged in the  
6 mediation process are not admissible in any subsequent action  
7 or proceeding relating to the claim or to the cause of action  
8 giving rise to the claim. A person demanding mediation under  
9 this section may not demand or request mediation after a suit  
10 is filed relating to the same facts already mediated.

11 Section 1200. Subsections (1) and (2) of section  
12 627.758, Florida Statutes, are amended to read:

13 627.758 Surety on auto club traffic arrest bond;  
14 conditions, limit; bail bond.--

15 (1) Any authorized surety insurer may, in any year,  
16 become surety in an amount not to exceed \$1,000 with respect  
17 to any guaranteed traffic arrest bond certificate issued in  
18 such year by an automobile club or association by filing with  
19 the office ~~department~~ an undertaking to become surety.

20 (2) The undertaking shall be in the form prescribed by  
21 the commission ~~department~~ and shall state the following:

22 (a) The name and address of the automobile club or  
23 association with respect to the guaranteed traffic arrest bond  
24 certificates for which the surety insurer undertakes to be  
25 surety.

26 (b) The unqualified obligation of the surety insurer  
27 to pay the fine or forfeiture in an amount not to exceed  
28 \$1,000 for any person who, after posting a guaranteed traffic  
29 arrest bond certificate with respect to which the insurer has  
30 undertaken to be surety, fails to make the appearance for  
31 which the certificate was posted.

1           Section 1201. Subsection (2) of section 627.7711,  
2 Florida Statutes, is amended to read:

3           627.7711 Definitions.--As used in this part, the term:

4           (2) "Premium" means the charge, as specified by rule  
5 of the commission ~~department~~, that is made by a title insurer  
6 for a title insurance policy, including the charge for  
7 performance of primary title services by a title insurer or  
8 title insurance agent or agency, and incurring the risks  
9 incident to such policy, under the several classifications of  
10 title insurance contracts and forms, and upon which charge a  
11 premium tax is paid under s. 624.509. As used in this part or  
12 in any other law, with respect to title insurance, the word  
13 "premium" does not include a commission.

14           Section 1202. Section 627.777, Florida Statutes, is  
15 amended to read:

16           627.777 Approval of forms.--A title insurer may not  
17 issue or agree to issue any form of title insurance  
18 commitment, title insurance policy, other contract of title  
19 insurance, or related form until it is filed with and approved  
20 by the office ~~department~~. The office ~~department~~ may not  
21 disapprove a title guarantee or policy form on the ground that  
22 it has on it a blank form for an attorney's opinion on the  
23 title.

24           Section 1203. Subsection (2) of section 627.7773,  
25 Florida Statutes, is amended to read:

26           627.7773 Accounting and auditing of forms by title  
27 insurers.--

28           (2) If the office ~~department~~ has reason to believe  
29 that an audit of outstanding forms should be required of any  
30 title insurer as to a title insurance agent or agency, the  
31 office ~~department~~ may require the title insurer to make a

1 special audit of the forms. The title insurer shall complete  
2 the audit not later than 60 days after the request is received  
3 from the office ~~department~~, and shall report the results of  
4 the special audit to the office ~~department~~ no later than 90  
5 days after the request is received.

6 Section 1204. Subsection (1) of section 627.780,  
7 Florida Statutes, is amended to read:

8 627.780 Illegal dealings in risk premium.--

9 (1) A person may not knowingly quote, charge, accept,  
10 collect, or receive a premium for title insurance other than  
11 the premium adopted by the commission ~~department~~.

12 Section 1205. Subsections (1), (2), (7), and (8) of  
13 section 627.782, Florida Statutes, are amended to read:

14 627.782 Adoption of rates.--

15 (1) Subject to the rating provisions of this code, the  
16 commission ~~department~~ must adopt a rule specifying the premium  
17 to be charged in this state by title insurers for the  
18 respective types of title insurance contracts and, for  
19 policies issued through agents or agencies, the percentage of  
20 such premium required to be retained by the title insurer  
21 which shall not be less than 30 percent. However, in a  
22 transaction subject to the Real Estate Settlement Procedures  
23 Act of 1974, 12 U.S.C. ss. 2601 et seq., as amended, no  
24 portion of the premium attributable to providing a primary  
25 title service shall be paid to or retained by any person who  
26 does not actually perform or is not liable for the performance  
27 of such service. The commission ~~department~~ may, by rule,  
28 establish limitations on related title services charges made  
29 in addition to the premium based upon the expenses associated  
30 with the services rendered and other relevant factors.

31

1           (2) In adopting premium rates, the commission  
2 ~~department~~ must give due consideration to the following:

3           (a) The title insurers' loss experience and  
4 prospective loss experience under closing protection letters  
5 and policy liabilities.

6           (b) A reasonable margin for underwriting profit and  
7 contingencies, including contingent liability under s.  
8 627.7865, sufficient to allow title insurers, agents, and  
9 agencies to earn a rate of return on their capital that will  
10 attract and retain adequate capital investment in the title  
11 insurance business and maintain an efficient title insurance  
12 delivery system.

13           (c) Past expenses and prospective expenses for  
14 administration and handling of risks.

15           (d) Liability for defalcation.

16           (e) Other relevant factors.

17           (7) The commission ~~department~~ shall, in accordance  
18 with the standards provided in subsection (2), review the  
19 premium as needed, but not less frequently than once every 3  
20 years, and shall, based upon the review required by this  
21 subsection, revise the premium if the results of the review so  
22 warrant.

23           (8) The commission ~~department~~ may, by rule, require  
24 licensees under this part to annually submit statistical  
25 information, including loss and expense data, as the  
26 department determines to be necessary to analyze premium  
27 rates, retention rates, and the condition of the title  
28 insurance industry.

29           Section 1206. Section 627.783, Florida Statutes, is  
30 amended to read:

31           627.783 Rate deviation.--

1           (1) A title insurer may petition the office department  
2 for an order authorizing a specific deviation from the adopted  
3 premium, and a title insurer or title insurance agent may  
4 petition the office department for an order authorizing and  
5 permitting a specific deviation above the reasonable charge  
6 for related title services rendered specified in s.  
7 627.782(1). The petition shall be in writing and sworn to and  
8 shall set forth allegations of fact upon which the petitioner  
9 will rely, including the petitioner's reasons for requesting  
10 the deviation. Any authorized title insurer, agent, or agency  
11 may join in the petition for like authority to deviate or may  
12 file a separate petition praying for like authority or  
13 opposing the deviation. The office department shall rule on  
14 all such petitions simultaneously.

15           (2) If, in the judgment of the office department, the  
16 requested deviation is not justified, the office department  
17 may enter an order denying the petition. An order granting a  
18 petition constitutes an amendment to the adopted premium as to  
19 the petitioners named in the order, and is subject to s.  
20 627.782.

21           Section 1207. Subsection (3) of section 627.7843,  
22 Florida Statutes, is amended to read:

23           627.7843 Ownership and encumbrance reports.--

24           (3) Any ownership and encumbrance report or similar  
25 report that is relied on or intended to be relied on by a  
26 consumer must be on forms approved by the office department,  
27 and must provide for a maximum liability for incorrect  
28 information of not more than \$1,000.

29           Section 1208. Subsections (2) and (3) of section  
30 627.7845, Florida Statutes, are amended to read:

31

1           627.7845 Determination of insurability required;  
2 preservation of evidence of title search and examination.--

3           (2) The title insurer shall cause the evidence of the  
4 reasonable search and examination of the title to be preserved  
5 and retained in its files or in the files of its title  
6 insurance agent or agency for a period of not less than 7  
7 years after the title insurance commitment, title insurance  
8 policy, or guarantee of title was issued. The title insurer  
9 or agent or agency must produce the evidence required to be  
10 maintained by this subsection at its offices upon the demand  
11 of the office ~~department~~. Instead of retaining the original  
12 evidence, the title insurer or the title insurance agent or  
13 agency may, in the regular course of business, establish a  
14 system under which all or part of the evidence is recorded,  
15 copied, or reproduced by any photographic, photostatic,  
16 microfilm, microcard, miniature photographic, or other process  
17 which accurately reproduces or forms a durable medium for  
18 reproducing the original.

19           (3) The title insurer or its agent or agency must  
20 maintain a record of the actual risk premium and related title  
21 service charges made for issuance of the policy and any  
22 endorsements in its files for a period of not less than 7  
23 years. The title insurer, agent, or agency must produce the  
24 record at its office upon demand of the office ~~department~~.

25           Section 1209. Subsection (3) of section 627.786,  
26 Florida Statutes, is amended to read:

27           627.786 Transaction of title insurance and any other  
28 kind of insurance prohibited.--

29           (3) Subsection (1) does not preclude a title insurer  
30 from providing instruments to any prospective insured, in the  
31 form and content approved by the office ~~department~~, under

1 which the title insurer assumes liability for loss due to the  
2 fraud of, dishonesty of, misappropriation of funds by, or  
3 failure to comply with written closing instructions by, its  
4 contract agents, agencies, or approved attorneys in connection  
5 with a real property transaction for which the title insurer  
6 is to issue a title insurance policy.

7 Section 1210. Section 627.7865, Florida Statutes, is  
8 amended to read:

9 627.7865 Title insurer assessments.--As a condition of  
10 doing business in this state, each title insurer shall be  
11 liable for an assessment to pay all unpaid title insurance  
12 claims on real property in this state for any title insurer  
13 which is liquidated with unpaid outstanding claims. The  
14 office ~~department~~ shall assess all title insurers on a pro  
15 rata basis determined by their writings in this state for  
16 amounts necessary to pay the claims. A title insurer is not  
17 required to pay an amount in excess of one-tenth of its  
18 surplus as to policyholders.

19 Section 1211. Section 627.791, Florida Statutes, is  
20 amended to read:

21 627.791 Penalties against title insurers for  
22 violations by persons or entities not licensed.--A title  
23 insurer is subject to the penalties in ss. 624.418(2) and  
24 624.4211 for any violation of a lawful order or rule of the  
25 office or commission ~~department~~, or for any violation of this  
26 code, committed by:

27 (1) A person, firm, association, corporation,  
28 cooperative, joint-stock company, or other legal entity not  
29 licensed under this part when issuing and countersigning  
30 commitments or policies of title insurance on behalf of the  
31 title insurer.

1           (2) An attorney when issuing and countersigning  
2 commitments or policies of title insurance on behalf of the  
3 title insurer.

4           Section 1212. Section 627.793, Florida Statutes, is  
5 amended to read:

6           627.793 Rulemaking authority.--The commission may  
7 ~~department is authorized to~~ adopt rules implementing the  
8 provisions of this part.

9           Section 1213. Section 627.798, Florida Statutes, is  
10 amended to read:

11           627.798 Rulemaking authority.--The commission  
12 ~~department~~ shall by rule adopt a form to be used to provide  
13 notice to a purchaser-mortgagor that the purchaser-mortgagor  
14 is not protected by the title policy of the mortgagee.

15           Section 1214. Section 627.805, Florida Statutes, is  
16 amended to read:

17           627.805 ~~Departmental~~ Regulation of variable and  
18 indeterminate value contracts; rules.--The office department,  
19 notwithstanding any other provision of law, shall have the  
20 sole authority to regulate the issuance and sale of variable  
21 and indeterminate value contracts, and the commission has  
22 authority to adopt rules pursuant to ss. 120.536(1) and 120.54  
23 to implement the provisions of this part.

24           Section 1215. Section 627.8055, Florida Statutes, is  
25 amended to read:

26           627.8055 Qualification of companies to issue variable  
27 or indeterminate value contracts.--No insurance company shall  
28 issue or deliver any contract on a variable or indeterminate  
29 value basis until it has satisfied the office department that  
30 its financial condition, management, history, and methods of  
31

1 operation are not such as would render its operation harmful  
2 to the public welfare.

3 Section 1216. Section 627.828, Florida Statutes, is  
4 amended to read:

5 627.828 License required.--

6 (1) Except as provided in ss. 627.901 and 627.902, no  
7 person shall engage in the business of a premium finance  
8 company unless licensed by the office ~~department~~. Every  
9 premium finance company licensed under the provisions of this  
10 part shall maintain at all times a net worth of \$35,000.  
11 However, in lieu of having a net worth of \$35,000, a premium  
12 finance company that has a net worth of \$10,000 may file a  
13 surety bond with the office or other acceptable collateral  
14 with the department as approved by the office or department ~~it~~  
15 in the amount of \$35,000, which bond or collateral must be  
16 maintained.

17 (2) The application for a license shall be in writing  
18 and in the form prescribed by the commission ~~department~~.  
19 Every applicant shall provide evidence of a net worth of  
20 \$35,000 attested by two officers of the company, or a \$35,000  
21 surety bond and evidence of a net worth of \$10,000 attested by  
22 two officers of the company. Assets to be used in computing  
23 the required net worth shall be determined by rules adopted by  
24 the commission ~~department~~.

25 (3)(a) Each premium finance company authorized under  
26 the provisions of this part shall maintain at all times an  
27 errors and omissions insurance policy of no less than \$500,000  
28 covering the acts of its officers, employees, and agents. The  
29 policy may contain reasonable deductibles not to exceed 2  
30 percent of the policy limits.

31

1 (b)1. A premium finance company with an unencumbered  
2 net worth of at least \$15 million may self-insure the errors  
3 and omissions coverage if it meets the requirements of this  
4 paragraph.

5 2. To qualify as a self-insurer the premium finance  
6 company must:

7 a. Have and maintain an unencumbered net worth of \$15  
8 million, which shall be determined based on assets permissible  
9 for insurers pursuant to ss. 625.012 and 625.031;

10 b. Annually demonstrate as part of its annual report,  
11 to the satisfaction of the department, that the net-worth  
12 requirement is being met; and

13 c. Obtain, as a part of its annual application for  
14 licensure as a premium finance company, a certificate of  
15 self-insurance from the office ~~department~~ to be renewed  
16 annually.

17 3. If the office ~~department~~ finds that the premium  
18 finance company:

19 a. Is not maintaining at all times an unencumbered net  
20 worth of at least \$15 million; or

21 b. Is not, in good faith, covering the errors and  
22 omissions of its officers, employees and agents,

23  
24 the office ~~department~~ shall, in addition to other penalties  
25 under this code, revoke or suspend the certificate of  
26 self-insurance, and the premium finance company shall be  
27 subject to the requirements of paragraph (a).

28 (c) The commission ~~department~~ may adopt rules  
29 necessary to administer this subsection, including rules  
30 prescribing the necessary forms.

31

1           (4) A single license shall entitle the holder to  
2 operate more than one office.

3           (5) At the time of filing an application for a  
4 license, the applicant shall pay to the office ~~department~~ the  
5 license fee and, upon original application or upon application  
6 subsequent to denial of application, or revocation, suspension  
7 or surrender of a license, an investigation fee.

8           (6) Such license shall state the name and address of  
9 the licensee, and a copy shall be kept conspicuously posted in  
10 each office of the licensee and shall not be transferable or  
11 assignable.

12           (7) Prior to moving an existing office to another  
13 location, a licensee shall notify the office ~~department~~ in  
14 writing of its intention to do so.

15           Section 1217. Section 627.829, Florida Statutes, is  
16 amended to read:

17           627.829 Approval, disapproval of application; license  
18 renewal.--

19           (1) The office ~~department~~ shall issue the license,  
20 unless it finds that the management of the premium finance  
21 company filing the application is so lacking in managerial  
22 experience as to make the proposed operation hazardous to the  
23 insurance-buying public or unless it has good reason to  
24 believe the management of the premium finance company is  
25 affiliated directly or indirectly through ownership, control,  
26 or in other business relations with any person whose business  
27 operations are or have been marked as detrimental to the  
28 public, policyholders, stockholders, investors, or creditors  
29 by manipulation of assets or of accounts or by bad faith.

30           (2) If the office ~~department~~ refuses to issue a  
31 license, it shall notify the applicant of the denial and

1 return to the applicant the sum paid as a license fee, but  
2 shall retain the investigation fee to cover the costs of  
3 investigating the applicant.

4 (3) Each license shall remain in force until September  
5 30 of the year for which issued, unless earlier surrendered,  
6 suspended, or revoked, and may be renewed for the ensuing  
7 license year upon the filing of an application therefor. If  
8 an application for renewal is filed with the office ~~department~~  
9 before October 1 of any year, the license sought to be renewed  
10 shall be continued in force either until the issuance by the  
11 office ~~department~~ of the renewal license applied for or until  
12 5 days after the office ~~department~~ refuses to renew the  
13 license.

14 Section 1218. Section 627.832, Florida Statutes, is  
15 amended to read:

16 627.832 Grounds for refusal, suspension, or revocation  
17 of license.--

18 (1) The office ~~department~~ may deny, suspend, revoke,  
19 or refuse to renew any license, if it finds:

20 (a) That the licensee has failed to pay the annual  
21 license fee or any sum of money lawfully demanded under  
22 authority of any other section of this part or has failed to  
23 comply with any order of the office ~~department~~.

24 (b) That the licensee has violated any provision of  
25 this part or any rule of the commission ~~department~~.

26 (c) That any fact or condition exists which, if it had  
27 existed at the time of the original application, clearly would  
28 have warranted a refusal to issue the license.

29 (d) Material misstatement, misrepresentation, or fraud  
30 in obtaining the license or permit, or in attempting to obtain  
31 the license or permit.

1           (e) That the license or permit is being willfully  
2 used, or is to be used, to circumvent any of the requirements  
3 or prohibitions of this code.

4           (f) Willful misrepresentation of any premium finance  
5 contract or willful deception with regard to any such  
6 contract, accomplished either in person or by any form of  
7 dissemination of information.

8           (g) A demonstrated lack of fitness or trustworthiness.

9           (h) Fraudulent or dishonest practices in the conduct  
10 of business.

11           (i) Misappropriation, conversion, or unlawful  
12 withholding of moneys belonging to insurers, insureds, or  
13 beneficiaries or to others and received in the conduct of  
14 business.

15           (j) That the licensee has been found guilty of, or has  
16 pleaded guilty to, a felony in this state or any other state.

17           (2) A licensee may surrender a license by delivering  
18 to the office ~~department~~ written notice that she or he thereby  
19 surrenders such license, but such surrender shall not affect  
20 such licensee's civil or criminal liability for acts committed  
21 prior to such surrender.

22           (3) No revocation, suspension, or surrender of a  
23 license shall impair or affect the obligation of any insured  
24 under any lawful premium finance agreement previously acquired  
25 or held by the licensee.

26           (4) Every license issued hereunder shall remain in  
27 force and effect until it has been surrendered, revoked, or  
28 suspended or expires in accordance with the provisions of this  
29 part; but the office may ~~department shall have authority to~~  
30 reinstate a suspended license or to issue a new license to a  
31 licensee whose license has been revoked, if no fact or

1 condition then exists which clearly would have warranted  
2 office departmental refusal originally to issue such license  
3 under this part.

4 Section 1219. Section 627.833, Florida Statutes, is  
5 amended to read:

6 627.833 Administrative fine and probation in lieu of  
7 suspension, revocation, or refusal to renew license.--The  
8 office department may, in its discretion in lieu of a  
9 suspension, revocation, or refusal to renew or continue any  
10 license, impose on the licensee an administrative penalty or  
11 place such licensee on probation pursuant to ss. 626.681 and  
12 626.691.

13 Section 1220. Section 627.834, Florida Statutes, is  
14 amended to read:

15 627.834 Examinations.--

16 (1) The office department may conduct examinations and  
17 investigations of premium finance companies under the  
18 provisions of ss. 624.307 and 626.601.

19 (2) As often as it deems necessary and not less  
20 frequently than each 3 years, the office department shall  
21 examine each licensed premium finance company. The  
22 examination shall be for the purpose of ascertaining  
23 compliance by the person examined with the applicable  
24 provisions of this code.

25 Section 1221. Section 627.836, Florida Statutes, is  
26 amended to read:

27 627.836 Licensee's books and records; reports.--

28 (1) The licensee shall keep and use in her or his  
29 business such books, accounts, and records as will enable the  
30 office department to determine whether the licensee is  
31 complying with the provisions of this part and with the rules

1 pertaining thereto. Every licensee shall preserve such books,  
2 accounts, and records, including cards used in a card system,  
3 if any, for at least 3 years after making the final entry in  
4 respect to any premium finance agreement recorded therein;  
5 however, the preservation of photographic reproductions  
6 thereof or records in photographic form shall constitute  
7 compliance with this requirement.

8 (2) Each licensee shall annually, on or before March  
9 1, file a report with the office ~~department~~ giving such  
10 information as the office ~~department~~ may require. The report  
11 shall be made under oath and in the form prescribed by the  
12 commission ~~department~~ and shall be accompanied by the annual  
13 report filing fee specified in s. 627.849. The office  
14 ~~department~~ may make and publish annually an analysis and  
15 recapitulation of such reports. In addition, the office  
16 ~~department~~ may require such additional regular or special  
17 reports as it may deem necessary.

18 Section 1222. Section 627.838, Florida Statutes, is  
19 amended to read:

20 627.838 Filing and approval of forms; service  
21 charges.--

22 (1) No premium finance agreement form or related form  
23 shall be used in this state by a premium finance company  
24 unless it has been filed with and approved by the office  
25 ~~department~~. Every filing shall be made within 30 days of  
26 issuance or use.

27 (2) Each premium finance company shall file with the  
28 office ~~department~~ the service charge and interest rate plan,  
29 including all modifications thereto, for informational  
30 purposes only. Every filing shall be made within 30 days of  
31 its effective date.

1           (3) Each filing shall be accompanied by the filing fee  
2 specified in s. 627.849.

3           Section 1223. Paragraph (b) of subsection (3) of  
4 section 627.840, Florida Statutes, is amended to read:

5           627.840 Limitation on service and other charges.--

6           (3)

7           (b) The service charge shall be a maximum of \$12 per  
8 \$100 per year plus an additional charge not exceeding \$20,  
9 which additional charge need not be refunded upon prepayment.  
10 Such additional charge may be charged only once in a 12-month  
11 period for any one customer unless that customer's policy has  
12 been canceled due to nonpayment within the immediately  
13 preceding 12-month period. However, any insured may prepay her  
14 or his premium finance agreement in full at any time before  
15 the due date of the final payment; and in such event the  
16 unearned service charge shall be refunded in accordance with  
17 the "Rule of 78ths," or any other method at least as  
18 beneficial to the insured and approved by the office  
19 ~~department~~, and shall represent at least as great a proportion  
20 of the service charge, if any, as the sum of the periodic  
21 balances after the month in which prepayment is made bears to  
22 the sum of all periodic balances under the schedule of  
23 payments in the agreement. When the amount of the refund is  
24 less than \$1, no refund need be made if the agreement so  
25 states.

26           Section 1224. Section 627.8405, Florida Statutes, is  
27 amended to read:

28           627.8405 Prohibited acts; financing companies.--No  
29 premium finance company shall, in a premium finance agreement  
30 or other agreement, finance the cost of or otherwise provide  
31

1 for the collection or remittance of dues, assessments, fees,  
2 or other periodic payments of money for the cost of:

3 (1) A membership in an automobile club. The term  
4 "automobile club" means a legal entity which, in consideration  
5 of dues, assessments, or periodic payments of money, promises  
6 its members or subscribers to assist them in matters relating  
7 to the ownership, operation, use, or maintenance of a motor  
8 vehicle; however, this definition of "automobile club" does  
9 not include persons, associations, or corporations which are  
10 organized and operated solely for the purpose of conducting,  
11 sponsoring, or sanctioning motor vehicle races, exhibitions,  
12 or contests upon racetracks, or upon racecourses established  
13 and marked as such for the duration of such particular events.  
14 The words "motor vehicle" used herein have the same meaning as  
15 defined in chapter 320.

16 (2) An accidental death and dismemberment policy sold  
17 in combination with a personal injury protection and property  
18 damage only policy.

19 (3) Any product not regulated under the provisions of  
20 this insurance code.

21  
22 This section also applies to premium financing by any  
23 insurance agent or insurance company under part XVI. The  
24 commission ~~department~~ shall adopt rules to assure disclosure,  
25 at the time of sale, of coverages financed with personal  
26 injury protection and shall prescribe the form of such  
27 disclosure.

28 Section 1225. Paragraph (e) of subsection (1) and  
29 subsection (3) of section 627.848, Florida Statutes, are  
30 amended to read:

31

1           627.848 Cancellation of insurance contract upon  
2 default.--

3           (1) When a premium finance agreement contains a power  
4 of attorney or other authority enabling the premium finance  
5 company to cancel any insurance contract listed in the  
6 agreement, the insurance contract shall not be canceled unless  
7 cancellation is in accordance with the following provisions:

8           (e) Whenever an insurance contract is canceled in  
9 accordance with this section, the insurer shall promptly  
10 return the unpaid balance due under the finance contract, up  
11 to the gross amount available upon the cancellation of the  
12 policy, to the premium finance company and any remaining  
13 unearned premium to the agent or the insured, or both, for the  
14 benefit of the insured or insureds. The insurer shall notify  
15 the insured and the agent of the amount of unearned premium  
16 returned to the premium finance company and the amount of  
17 unearned commission held by the agent. The premium finance  
18 company within 15 days shall notify the insured and the agent  
19 of the amount of unearned premium. Within 15 days of receipt  
20 of notification from the premium finance company, the agent  
21 shall return such amount including any unearned commission to  
22 the insured or with the written approval of the insured apply  
23 such amount to the purchase of other insurance products  
24 regulated by the office ~~department~~. The commission ~~department~~  
25 may adopt rules necessary to implement the provisions of this  
26 subsection.

27           (3) The commission ~~department~~ shall adopt a standard  
28 cancellation notice for use by premium finance companies in  
29 canceling insurance policies. The commission ~~department~~ shall  
30 specify the color of the notice so as to promote usability and  
31 standardization.

1           Section 1226. Section 627.849, Florida Statutes, is  
2 amended to read:

3           627.849 Fees.--

4           (1) The office ~~department~~ shall collect in advance,  
5 and the persons so served shall pay to it in advance, the  
6 following fees:

7           (a) Annual license fee.....\$250

8           (b) Investigation fee.....100

9           (c) Annual report filing fee.....25

10          (d) Form filing fee.....10

11          (2) The fees received under this section shall be  
12 credited to the Insurance ~~Commissioner's~~ Regulatory Trust  
13 Fund.

14          Section 1227. Section 627.912, Florida Statutes, is  
15 amended to read:

16          627.912 Professional liability claims and actions;  
17 reports by insurers.--

18          (1) Each self-insurer authorized under s. 627.357 and  
19 each insurer or joint underwriting association providing  
20 professional liability insurance to a practitioner of medicine  
21 licensed under chapter 458, to a practitioner of osteopathic  
22 medicine licensed under chapter 459, to a podiatric physician  
23 licensed under chapter 461, to a dentist licensed under  
24 chapter 466, to a hospital licensed under chapter 395, to a  
25 crisis stabilization unit licensed under part IV of chapter  
26 394, to a health maintenance organization certificated under  
27 part I of chapter 641, to clinics included in chapter 390, to  
28 an ambulatory surgical center as defined in s. 395.002, or to  
29 a member of The Florida Bar shall report in duplicate to the  
30 office ~~Department of Insurance~~ any claim or action for damages  
31 for personal injuries claimed to have been caused by error,

1 omission, or negligence in the performance of such insured's  
2 professional services or based on a claimed performance of  
3 professional services without consent, if the claim resulted  
4 in:

5 (a) A final judgment in any amount.

6 (b) A settlement in any amount.

7  
8 Reports shall be filed with the office ~~department~~ and, if the  
9 insured party is licensed under chapter 458, chapter 459,  
10 chapter 461, or chapter 466, with the Department of Health, no  
11 later than 30 days following the occurrence of any event  
12 listed in paragraph (a) or paragraph (b). The Department of  
13 Health shall review each report and determine whether any of  
14 the incidents that resulted in the claim potentially involved  
15 conduct by the licensee that is subject to disciplinary  
16 action, in which case the provisions of s. 456.073 shall  
17 apply. The Department of Health, as part of the annual report  
18 required by s. 456.026, shall publish annual statistics,  
19 without identifying licensees, on the reports it receives,  
20 including final action taken on such reports by the Department  
21 of Health or the appropriate regulatory board.

22 (2) The reports required by subsection (1) shall  
23 contain:

24 (a) The name, address, and specialty coverage of the  
25 insured.

26 (b) The insured's policy number.

27 (c) The date of the occurrence which created the  
28 claim.

29 (d) The date the claim was reported to the insurer or  
30 self-insurer.

31

1           (e) The name and address of the injured person. This  
2 information is confidential and exempt from the provisions of  
3 s. 119.07(1), and must not be disclosed by the office  
4 ~~department~~ without the injured person's consent, except for  
5 disclosure by the office ~~department~~ to the Department of  
6 Health. This information may be used by the office ~~department~~  
7 for purposes of identifying multiple or duplicate claims  
8 arising out of the same occurrence.

9           (f) The date of suit, if filed.

10          (g) The injured person's age and sex.

11          (h) The total number and names of all defendants  
12 involved in the claim.

13          (i) The date and amount of judgment or settlement, if  
14 any, including the itemization of the verdict, together with a  
15 copy of the settlement or judgment.

16          (j) In the case of a settlement, such information as  
17 the office ~~department~~ may require with regard to the injured  
18 person's incurred and anticipated medical expense, wage loss,  
19 and other expenses.

20          (k) The loss adjustment expense paid to defense  
21 counsel, and all other allocated loss adjustment expense paid.

22          (l) The date and reason for final disposition, if no  
23 judgment or settlement.

24          (m) A summary of the occurrence which created the  
25 claim, which shall include:

26           1. The name of the institution, if any, and the  
27 location within the institution at which the injury occurred.

28           2. The final diagnosis for which treatment was sought  
29 or rendered, including the patient's actual condition.

30           3. A description of the misdiagnosis made, if any, of  
31 the patient's actual condition.

1           4. The operation, diagnostic, or treatment procedure  
2 causing the injury.

3           5. A description of the principal injury giving rise  
4 to the claim.

5           6. The safety management steps that have been taken by  
6 the insured to make similar occurrences or injuries less  
7 likely in the future.

8           (n) Any other information required by the office  
9 ~~department~~ to analyze and evaluate the nature, causes,  
10 location, cost, and damages involved in professional liability  
11 cases.

12           (3) Upon request by the Department of Health, the  
13 office ~~department~~ shall provide the Department of Health with  
14 any information received under this section related to persons  
15 licensed under chapter 458, chapter 459, chapter 461, or  
16 chapter 466. For purposes of safety management, the office  
17 ~~department~~ shall annually provide the Department of Health  
18 with copies of the reports in cases resulting in an indemnity  
19 being paid to the claimants.

20           (4) There shall be no liability on the part of, and no  
21 cause of action of any nature shall arise against, any insurer  
22 reporting hereunder or its agents or employees or the office  
23 ~~department~~ or its employees for any action taken by them under  
24 this section. The office ~~department~~ may impose a fine of \$250  
25 per day per case, but not to exceed a total of \$1,000 per  
26 case, against an insurer that violates the requirements of  
27 this section. This subsection applies to claims accruing on or  
28 after October 1, 1997.

29           (5) Any self-insurance program established under s.  
30 1004.24 shall report in duplicate to the office ~~Department of~~  
31 ~~insurance~~ any claim or action for damages for personal

1 injuries claimed to have been caused by error, omission, or  
2 negligence in the performance of professional services  
3 provided by the state university board of trustees through an  
4 employee or agent of the state university board of trustees,  
5 including practitioners of medicine licensed under chapter  
6 458, practitioners of osteopathic medicine licensed under  
7 chapter 459, podiatric physicians licensed under chapter 461,  
8 and dentists licensed under chapter 466, or based on a claimed  
9 performance of professional services without consent if the  
10 claim resulted in a final judgment in any amount, or a  
11 settlement in any amount. The reports required by this  
12 subsection shall contain the information required by  
13 subsection (3) and the name, address, and specialty of the  
14 employee or agent of the state university board of trustees  
15 whose performance or professional services is alleged in the  
16 claim or action to have caused personal injury.

17 Section 1228. Section 627.9122, Florida Statutes, is  
18 amended to read:

19 627.9122 Officers' and directors' liability claims;  
20 reports by insurers.--

21 (1) Each insurer providing coverage for officers' and  
22 directors' liability coverage shall report to the office  
23 ~~Department of Insurance~~ any claim or action for damages  
24 claimed to have been caused by error, omission, or negligence  
25 in the performance of the officer's or director's services, if  
26 the claim resulted in:

27 (a) A final judgment in any amount.

28 (b) A settlement in any amount.

29 (c) A final disposition not resulting in payment on  
30 behalf of the insured.

31

1 Reports shall be filed with the office ~~department~~ no later  
2 than 60 days following the occurrence of any event listed in  
3 paragraph (a), paragraph (b), or paragraph (c).

4 (2) The reports required by subsection (1) shall  
5 contain:

6 (a) The name, address, and position held by the  
7 insured, and the type of corporation or organization,  
8 including classifications as provided in s. 501(c) of the  
9 Internal Revenue Code of 1986, as amended.

10 (b) The insured's policy number.

11 (c) The date of the occurrence which created the  
12 claim.

13 (d) The date the claim was reported to the insurer.

14 (e) The name of the injured person. This information  
15 is confidential and exempt from the provisions of s.  
16 119.07(1), and must not be disclosed by the office ~~department~~  
17 without the consent of the injured person. This information  
18 may be used by the office ~~department~~ for purposes of  
19 identifying multiple or duplicate claims arising out of the  
20 same occurrence.

21 (f) The date of suit, if filed.

22 (g) The total number and names of all defendants  
23 involved in the claim.

24 (h) The date and amount of judgment or settlement,  
25 together with a copy of the settlement or judgment.

26 (i) In the case of a settlement, such information as  
27 the office ~~department~~ may require with regard to the  
28 claimant's anticipated future losses.

29 (j) The loss adjustment expense paid to defense  
30 counsel, and all other allocated loss adjustment expenses  
31 paid.

1           (k) The date and reason for final disposition, if no  
2 judgment or settlement.

3           (1) A summary of the occurrence which created the  
4 claim, which shall include:

5           1. Whether the injuries claimed were the result of  
6 physical damage to the claimant, were the result of damage to  
7 the reputation of the claimant, were based on self-dealing by  
8 the defendant, or were in the nature of a shareholder dispute.

9           2. A description of the type of activity which caused  
10 the injury.

11           3. The steps taken by the officers or directors to  
12 assure that similar occurrences are less likely in the future.

13           (m) Any other information required by the office  
14 ~~department~~ to analyze and evaluate the nature, causes, costs,  
15 and damages involved in officers' and directors' liability  
16 cases.

17           (3) The office ~~department~~ shall include a summary of  
18 this information in its annual report.

19           Section 1229. Section 627.9126, Florida Statutes, is  
20 amended to read:

21           627.9126 Reports by liability insurers.--

22           (1) Each insurer transacting commercial multiperil,  
23 products liability, commercial automobile liability, private  
24 passenger automobile liability, or other line of liability  
25 insurance shall maintain information as specified in this  
26 section. Such information shall be maintained for each line of  
27 insurance and for direct Florida business only. The office  
28 ~~department~~ may conduct a sampling of claims or actions for  
29 damages for personal injury or property damage claimed to have  
30 been caused by error, omission, or negligence of insureds if  
31 the claim resulted in:

1 (a) A final judgment in any amount.

2 (b) A settlement in any amount.

3 (c) A final disposition not resulting in payment on  
4 behalf of the insured.

5 (2) Upon request of the office ~~department~~, an insurer  
6 shall, within 60 days, submit to the office ~~department~~ a  
7 report that contains:

8 (a) A final judgment in any amount.

9 (b) A settlement in any amount.

10 (c) A final disposition not resulting in payment on  
11 behalf of the insured.

12 (3) The reports required by subsection (2) shall  
13 contain:

14 (a)1. The name, address, and class or line of coverage  
15 of the insured.

16 2. The insured's policy number.

17 3. The date of the occurrence which created the claim.

18 4. The date the claim was reported to the insurer or  
19 self-insurer.

20 5. The date of suit, if filed.

21 6. The claimant's name, age, and sex; however, the  
22 name of the claimant is confidential and exempt from the  
23 provisions of s. 119.07(1).

24 7. The total number and names of all defendants  
25 involved in the claim.

26 8. Claims settled after a suit was filed.

27 9. Claims paid based on a judgment.

28 10. Judgments appealed by the insurer, together with  
29 the total results of such appeals.

30

31

1           11. The date and amount of final judgment or  
2 settlement, if any, including the itemization of the verdict,  
3 together with a copy of the settlement or final judgment.

4           12. In the case of a settlement, such information as  
5 the office ~~department~~ may require with regard to the injured  
6 person's incurred and anticipated medical expense, wage loss,  
7 and other expenses.

8           13. The loss adjustment expense paid to defense  
9 counsel and other allocated loss adjustment expense paid.

10          14. The date and reason for final disposition, if no  
11 judgment or settlement.

12          (b) A summary of the occurrence which created the  
13 claim, which shall include:

14           1. The name of the facility, business, or institution,  
15 if any, and the location within the facility, business, or  
16 institution at which the injury occurred.

17           2. A description of the principal injury giving rise  
18 to the claim.

19           3. The safety management steps that have been taken by  
20 the insured to make similar occurrences or injuries less  
21 likely in the future.

22          (c) Any other information required by the office  
23 ~~department~~ to analyze and evaluate the nature, causes,  
24 location, cost, and damages involved in liability cases.

25          (4) There shall be no liability on the part of, and no  
26 cause of action of any nature shall arise against, any insurer  
27 reporting hereunder or its agents or employees or the office  
28 ~~department~~ or its employees for any action taken by them  
29 pursuant to this section.

30          Section 1230. Section 627.913, Florida Statutes, is  
31 amended to read:

1           627.913 Reports by products liability insurers.--The  
2 office department may require any insurer authorized to write  
3 a policy of products liability insurance in the state to  
4 transmit the following information, based on its statewide  
5 products liability insurance writings. Upon the request of the  
6 office department, an insurer shall, within 60 days, submit to  
7 the office department a report that contains:

- 8           (1) Premiums written;
- 9           (2) Premiums earned;
- 10          (3) Unearned premiums;
- 11          (4) The dollar amount of claims paid;
- 12          (5) Incurred claims, not including claims incurred but  
13 not reported;
- 14          (6) Claims closed without payment, and the amount  
15 reserved for such claims;
- 16          (7) Loss reserves for all claims except claims  
17 incurred but not reported;
- 18          (8) Reserves for claims incurred but not reported;
- 19          (9) Losses paid as a percentage of the amount reserved  
20 for such losses;
- 21          (10) Net investment gain or loss and other income gain  
22 or loss allocated to products liability lines according to the  
23 allocation formula used in the annual insurance expense  
24 exhibit;
- 25          (11) Underwriting income or loss;
- 26          (12) Actual expenses in detail, including, but not  
27 limited to, loss adjustment expense; commissions; general  
28 expense; and advertising, home office, and defense costs;
- 29          (13) Claims settled after a suit was filed;
- 30          (14) Claims paid based on a judgment; and

31

1 (15) Judgments appealed by the insurer, together with  
2 the total results of such appeals.

3 Section 1231. Section 627.914, Florida Statutes, is  
4 amended to read:

5 627.914 Reports of information by workers'  
6 compensation insurers required.--

7 (1) The commission ~~department~~ shall adopt rules and  
8 statistical plans that must thereafter be used by each insurer  
9 and self-insurance fund as defined in s. 624.461 in the  
10 recording and reporting of loss, expense, and claims  
11 experience, in order that the experience of all insurers and  
12 self-insurance funds may be made available at least annually  
13 in such form and detail as may be necessary to aid the office  
14 ~~department~~ in determining whether Florida experience for  
15 workers' compensation insurance is sufficient for establishing  
16 rates.

17 (2) Each insurer and self-insurance fund authorized to  
18 write a policy of workers' compensation insurance shall  
19 transmit the following information annually on both Florida  
20 experience and nationwide experience separately:

- 21 (a) Payrolls by classification.  
22 (b) Manual premiums by classification.  
23 (c) Standard premiums by classification.  
24 (d) Losses by classification and injury type.  
25 (e) Expenses.

26  
27 A report of this information shall be filed no later than July  
28 1 of each year. All reports shall be filed in accordance with  
29 standard reporting procedures for insurers, which procedures  
30 have received approval by the office ~~department~~, and shall  
31 contain data for the most recent policy period available. A

1 statistical or rating organization may be used by insurers and  
2 self-insurance funds to report the data required by this  
3 section. The statistical or rating organization shall report  
4 each data element in the aggregate only for insurers and  
5 self-insurance funds required to report under this section who  
6 elect to have the organization report on their behalf. Such  
7 insurers and self-insurance funds shall be named in the  
8 report.

9 (3) Individual self-insurers as defined in s. 440.02  
10 shall report only Florida data as prescribed in paragraphs  
11 (2)(a)-(e) to the office department.

12 (a) The office department shall publish the dates and  
13 forms necessary to enable individual self-insurers to comply  
14 with this section.

15 (b) A statistical or rating organization may be used  
16 by individual self-insurers for the purposes of reporting the  
17 data required by this section and calculating experience  
18 ratings.

19 (4) The office department shall provide a summary of  
20 information provided pursuant to subsection (2) in its annual  
21 report.

22 Section 1232. Section 627.915, Florida Statutes, is  
23 amended to read:

24 627.915 Insurer experience reporting.--

25 (1) Each insurer transacting private passenger  
26 automobile insurance in this state shall report certain  
27 information annually to the office department. The  
28 information will be due on or before July 1 of each year. The  
29 information shall be divided into the following categories:  
30 bodily injury liability; property damage liability; uninsured  
31 motorist; personal injury protection benefits; medical

1 payments; comprehensive and collision. The information given  
2 shall be on direct insurance writings in the state alone and  
3 shall represent total limits data. The information set forth  
4 in paragraphs (a)-(f) is applicable to voluntary private  
5 passenger and Joint Underwriting Association private passenger  
6 writings and shall be reported for each of the latest 3  
7 calendar-accident years, with an evaluation date of March 31  
8 of the current year. The information set forth in paragraphs  
9 (g)-(j) is applicable to voluntary private passenger writings  
10 and shall be reported on a calendar-accident year basis  
11 ultimately seven times at seven different stages of  
12 development.

13 (a) Premiums earned for the latest 3 calendar-accident  
14 years.

15 (b) Loss development factors and the historic  
16 development of those factors.

17 (c) Policyholder dividends incurred.

18 (d) Expenses for other acquisition and general  
19 expense.

20 (e) Expenses for agents' commissions and taxes,  
21 licenses, and fees.

22 (f) Profit and contingency factors as utilized in the  
23 insurer's automobile rate filings for the applicable years.

24 (g) Losses paid.

25 (h) Losses unpaid.

26 (i) Loss adjustment expenses paid.

27 (j) Loss adjustment expenses unpaid.

28 (2) Each insurer transacting fire, homeowner's  
29 multiple peril, commercial multiple peril, medical  
30 malpractice, products liability, workers' compensation,  
31 private passenger automobile liability, commercial automobile

- 1 liability, private passenger automobile physical damage,  
2 commercial automobile physical damage, officers' and  
3 directors' liability insurance, or other liability insurance  
4 shall report, for each such line of insurance, the information  
5 specified in this subsection to the office ~~department~~. The  
6 information shall be reported for direct Florida business only  
7 and shall be reported on a calendar-year basis annually by  
8 April 1 for the preceding calendar year:
- 9 (a) Direct premiums written.
  - 10 (b) Direct premiums earned.
  - 11 (c) Loss reserves for all known claims:
    - 12 1. At beginning of the year.
    - 13 2. At end of the year.
  - 14 (d) Reserves for losses incurred but not reported:
    - 15 1. At beginning of the year.
    - 16 2. At end of the year.
  - 17 (e) Allocated loss adjustment expense:
    - 18 1. Reserve at beginning of the year.
    - 19 2. Reserve at end of the year.
    - 20 3. Paid during the year.
  - 21 (f) Unallocated loss adjustment expense:
    - 22 1. Reserve at beginning of the year.
    - 23 2. Reserve at end of the year.
    - 24 3. Paid during the year.
  - 25 (g) Direct losses paid.
  - 26 (h) Underwriting income or loss.
  - 27 (i) Commissions and brokerage fees.
  - 28 (j) Taxes, licenses, and fees.
  - 29 (k) Other acquisition costs.
  - 30 (l) General expenses.
  - 31 (m) Policyholder dividends.

1           (n) Net investment gain or loss and other income gain  
2 or loss allocated pro rata by earned premium to Florida  
3 business utilizing the investment allocation formula contained  
4 in the National Association of Insurance Commissioner's  
5 Profitability Report by line by state.

6           (3) There shall be no liability on the part of, and no  
7 cause of action of any nature shall arise against, any insurer  
8 reporting hereunder or its agents or employees or the office  
9 ~~department~~ or its employees for any action taken by them  
10 pursuant to this section unless such action otherwise  
11 constitutes a violation of this code.

12           (4) The office ~~department~~ shall provide a summary of  
13 information provided pursuant to subsections (1) and (2) in  
14 its annual report.

15           (5) Any insurer or insurer group which does not write  
16 at least 0.5 percent of the Florida market based on premiums  
17 written shall not have to file any report required by  
18 subsection (2) other than a report indicating its percentage  
19 of the market share. That percentage shall be calculated by  
20 dividing the current premiums written by the preceding year's  
21 total premiums written in the state for that line of  
22 insurance.

23           Section 1233. Section 627.917, Florida Statutes, is  
24 amended to read:

25           627.917 Uniform risk classification reporting system  
26 for motor vehicle insurance.--

27           (1) The commission ~~department~~ shall establish and  
28 promulgate a uniform statewide reporting system to classify  
29 risks for the purpose of evaluating rates and premiums and for  
30 the purpose of evaluating competition and the availability of  
31 motor vehicle insurance in the voluntary market. The system

1 shall divide risks into classifications based upon variations  
2 in hazards or expenses of claims. The classification system  
3 may include any difference among risks that can be  
4 demonstrated to have a probable effect upon losses or  
5 expenses, but in no event shall the system adopted by the  
6 commission ~~department~~ discriminate among risks based upon  
7 race, creed, color, or national origin. The classification  
8 system shall divide the state into geographical areas based  
9 upon hazards or expenses of claims.

10 (2) Each insurer shall annually file with the office  
11 ~~department~~ a statement reflecting the total number of persons  
12 insured by the insurer within each classification by coverage,  
13 the premium volume in each classification by coverage, the  
14 paid and reserved losses incurred in each classification by  
15 coverage, the number of cancellations or nonrenewals by the  
16 insurer during the period, and the number of new insureds  
17 during the period. This statement shall be filed annually on  
18 a date determined by the commission ~~department~~ and shall cover  
19 a 1-year period.

20 (3) The commission ~~department~~ may adopt ~~promulgate~~  
21 rules to require each insurer to report its loss and expense  
22 experience by classification, in such detail and as often as  
23 may be necessary to aid the office ~~department~~ in determining  
24 the reasonableness of rates, the validity of loss projections,  
25 and the validity of the risk classification system.

26 Section 1234. Section 627.9175, Florida Statutes, is  
27 amended to read:

28 627.9175 Reports of information on health insurance.--

29 (1) Each health insurer shall submit annually to the  
30 office ~~department~~ as to policies of individual health  
31 insurance:

1           (a) A summary of typical benefits, exclusions, and  
2 limitations for each type of individual policy form currently  
3 being issued in the state. The summary shall include, as  
4 appropriate:

- 5           1. The deductible amount;
- 6           2. The coinsurance percentage;
- 7           3. The out-of-pocket maximum;
- 8           4. Outpatient benefits;
- 9           5. Inpatient benefits; and
- 10          6. Any exclusions for preexisting conditions.

11  
12 The commission ~~department~~ shall determine other appropriate  
13 benefits, exclusions, and limitations to be reported for  
14 inclusion in the consumer's guide published pursuant to this  
15 section.

16           (b) A schedule of rates for each type of individual  
17 policy form reflecting typical variations by age, sex, region  
18 of the state, or any other applicable factor which is in use  
19 and is determined to be appropriate for inclusion by the  
20 commission ~~department~~.

21  
22 The commission ~~department~~ shall provide by rule a uniform  
23 format for the submission of this information in order to  
24 allow for meaningful comparisons of premiums charged for  
25 comparable benefits. The office ~~department~~ shall provide this  
26 information to the department, which shall publish annually a  
27 consumer's guide which summarizes and compares the information  
28 required to be reported under this subsection.

29           (2)(a) Every insurer transacting health insurance in  
30 this state shall report annually to the office ~~department~~, not  
31 later than April 1, information relating to any measure the

1 insurer has implemented or proposes to implement during the  
2 next calendar year for the purpose of containing health  
3 insurance costs or cost increases. The reports shall identify  
4 each measure and the forms to which the measure is applied,  
5 shall provide an explanation as to how the measure is used,  
6 and shall provide an estimate of the cost effect of the  
7 measure.

8 (b) The commission ~~department~~ shall promulgate forms  
9 to be used by insurers in reporting information pursuant to  
10 this subsection and shall utilize such forms to analyze the  
11 effects of health care cost containment programs used by  
12 health insurers in this state.

13 (c) The office ~~department~~ shall analyze the data  
14 reported under this subsection and shall annually make  
15 available to the department which shall provide to the public  
16 a summary of its findings as to the types of cost containment  
17 measures reported and the estimated effect of these measures.

18 Section 1235. Section 627.918, Florida Statutes, is  
19 amended to read:

20 627.918 Reporting formats.--

21 (1) The office ~~department~~ shall require that the  
22 reporting provided for in this part be made on forms  
23 established by the commission ~~department~~ or in a format  
24 compatible with the office's ~~its~~ electronic data processing  
25 equipment.

26 (2) The reporting forms and formats established by the  
27 commission ~~department~~ shall not provide for repeated  
28 collection of identical information relating to a single  
29 independent data element except when repeated collection of  
30 such information is necessary to accomplish the purpose of the  
31 section under which the information is reported.

1           Section 1236. Section 627.919, Florida Statutes, is  
2 amended to read:

3           627.919 Maintenance of insurance data.--The office  
4 ~~department~~ shall maintain data elements required in insurers'  
5 annual statements and information reported by insurers  
6 pursuant to this part in a computer file which will be  
7 available for the generation of reports and calculations on a  
8 scheduled or demand basis by the office ~~department~~ and  
9 Legislature. The acquisition by the office ~~department~~ of data  
10 processing software, hardware, and services necessary to carry  
11 out the provisions of this section ~~by the Treasurer's~~  
12 ~~Management Information Center~~ shall be exempt from the  
13 provisions of part I of chapter 287.

14           Section 1237. Section 627.9403, Florida Statutes, is  
15 amended to read:

16           627.9403 Scope.--The provisions of this part shall  
17 apply to long-term care insurance policies delivered or issued  
18 for delivery in this state, and to policies delivered or  
19 issued for delivery outside this state to the extent provided  
20 in s. 627.9406, by an insurer, a fraternal benefit society as  
21 defined in s. 632.601, a health maintenance organization as  
22 defined in s. 641.19, a prepaid health clinic as defined in s.  
23 641.402, or a multiple-employer welfare arrangement as defined  
24 in s. 624.437. A policy which is advertised, marketed, or  
25 offered as a long-term care policy and as a Medicare  
26 supplement policy shall meet the requirements of this part and  
27 the requirements of ss. 627.671-627.675 and, to the extent of  
28 a conflict, be subject to the requirement that is more  
29 favorable to the policyholder or certificateholder. The  
30 provisions of this part shall not apply to a continuing care  
31 contract issued pursuant to chapter 651 and shall not apply to

1 guaranteed renewable policies issued prior to October 1, 1988.  
2 Any limited benefit policy that limits coverage to care in a  
3 nursing home or to one or more lower levels of care required  
4 or authorized to be provided by this part or by commission  
5 ~~department~~ rule must meet all requirements of this part that  
6 apply to long-term care insurance policies, except ss.  
7 627.9407(3)(c), (9), (10)(f), and (12) and 627.94073(2). If  
8 the limited benefit policy does not provide coverage for care  
9 in a nursing home, but does provide coverage for one or more  
10 lower levels of care, the policy shall also be exempt from the  
11 requirements of s. 627.9407(3)(d).

12 Section 1238. Subsections (6) and (7) of section  
13 627.9404, Florida Statutes, are amended to read:

14 627.9404 Definitions.--For the purposes of this part:

15 (6) "Licensed health care practitioner" means any  
16 physician, nurse licensed under part I of chapter 464, or  
17 psychotherapist licensed under chapter 490 or chapter 491, or  
18 any individual who meets any requirements prescribed by rule  
19 by the commission ~~department~~.

20 (7) "Limited benefit policy" means any policy that  
21 limits coverage to care in a nursing home or to one or more  
22 lower levels of care required or authorized to be provided by  
23 this part or by commission ~~department~~ rule.

24 Section 1239. Paragraph (d) of subsection (1) and  
25 subsection (3) of section 627.9405, Florida Statutes, are  
26 amended to read:

27 627.9405 Authorized groups; filing requirements.--

28 (1) No group long-term care insurance policy shall be  
29 delivered or issued for delivery in this state insuring more  
30 than one individual unless issued to one of the following  
31 groups:

1 (d) A group other than as described in paragraph (a),  
2 paragraph (b), or paragraph (c), subject to a determination by  
3 the office ~~department~~ that:

4 1. The issuance of the group policy is not contrary to  
5 the best interest of the public;

6 2. The issuance of the group policy would result in  
7 economies of acquisition or administration; and

8 3. The benefits are reasonable in relation to the  
9 premiums charged.

10 (3) Prior to advertising, marketing, or soliciting a  
11 group long-term care insurance policy in this state, the  
12 insurer shall demonstrate to the office ~~department~~ that the  
13 requirements of this section have been met pursuant to the  
14 filing procedures specified in s. 627.410.

15 Section 1240. Section 627.9406, Florida Statutes, is  
16 amended to read:

17 627.9406 Out-of-state group long-term care  
18 insurance.--No group long-term care insurance coverage may be  
19 offered to a resident of this state under a group policy  
20 issued in another state to a group described in s.  
21 627.9405(1)(c) or (d), unless this state or such other state  
22 having statutory and regulatory long-term care insurance  
23 requirements substantially similar to those adopted in this  
24 state has made a determination that such requirements have  
25 been met. Evidence to this effect shall be filed by the  
26 insurer with the office ~~department~~ pursuant to the procedures  
27 specified in s. 627.410.

28 Section 1241. Subsections (1) and (2), paragraphs (a)  
29 and (c) of subsection (3), paragraph (c) of subsection (4),  
30 and subsection (6) of section 627.9407, Florida Statutes, are  
31 amended to read:

1           627.9407 Disclosure, advertising, and performance  
2 standards for long-term care insurance.--

3           (1) STANDARDS.--The commission ~~department~~ shall adopt  
4 rules that include standards for full and fair disclosure  
5 setting forth the manner, content, and required disclosures of  
6 the sale of long-term care insurance policies, terms of  
7 renewability, initial and subsequent conditions of  
8 eligibility, nonduplication of coverage provisions, coverage  
9 of dependents, preexisting conditions, termination of  
10 insurance, continuation or conversion, probationary periods,  
11 limitations, exceptions, reductions, elimination periods,  
12 requirements for replacement, recurrent conditions, disclosure  
13 of tax consequences, benefit triggers, prohibition against  
14 post-claims underwriting, reporting requirements, standards  
15 for marketing, and definitions of terms.

16           (2) ADVERTISING.--The commission ~~department~~ shall  
17 adopt rules setting forth standards for advertising,  
18 marketing, and sale of long-term care policies in order to  
19 protect applicants from unfair or deceptive sales or  
20 enrollment practices. An insurer shall file with the office  
21 ~~department~~ any long-term care insurance advertising material  
22 intended for use in this state at least 30 days before the  
23 date of use of the advertisement in this state. Within 30  
24 days after the date of receipt of the advertising material,  
25 the office ~~department~~ shall review the material and shall  
26 disapprove any advertisement if, in the opinion of the office  
27 ~~department~~, such advertisement violates any of the provisions  
28 of this part or of part IX of chapter 626 or any rule of the  
29 commission ~~department~~. The office ~~department~~ may disapprove  
30 an advertisement at any time and enter an immediate order  
31 requiring that the use of the advertisement be discontinued if

1 it determines that the advertisement violates any of the  
2 provisions of this part or of part IX of chapter 626 or any  
3 rule of the commission ~~department~~.

4 (3) RESTRICTIONS.--A long-term care insurance policy  
5 may not:

6 (a) Be canceled, nonrenewed, or otherwise terminated  
7 on the grounds of the age or the deterioration of the mental  
8 or physical health of the insured individual or  
9 certificateholder; however, the office ~~department~~ may  
10 authorize nonrenewal for an insurer on a statewide basis on  
11 terms and conditions determined to be necessary by the office  
12 ~~department~~ to protect the interests of the insureds, if the  
13 insurer demonstrates that renewal will jeopardize the  
14 insurer's solvency or that substantial and unexpected loss  
15 experience cannot reasonably be mitigated or remedied.

16 (c) Restrict its coverage to care only in a nursing  
17 home licensed pursuant to part II of chapter 400 or provide  
18 significantly more coverage for such care than coverage for  
19 lower levels of care. The commission ~~department~~ shall adopt  
20 rules defining what constitutes significantly more coverage in  
21 nursing homes licensed pursuant to part II of chapter 400 than  
22 for lower levels of care.

23 (4) PREEXISTING CONDITION.--

24 (c) The office ~~department~~ may extend the limitation  
25 periods set forth in paragraphs (a) and (b) as to specific age  
26 group categories in specific policy forms upon findings that  
27 the extension is in the best interest of the public.

28 (6) LOSS RATIO AND RESERVE STANDARDS.--The commission  
29 ~~department~~ shall adopt rules establishing loss ratio and  
30 reserve standards for long-term care insurance policies. The  
31 rules must contain a specific reference to long-term care

1 insurance policies. Such loss ratio and reserve standards  
2 shall be established at levels at which benefits are  
3 reasonable in relation to premiums and that provide for  
4 adequate reserving of the long-term care insurance risk.

5 Section 1242. Subsection (2) of section 627.94072,  
6 Florida Statutes, is amended to read:

7 627.94072 Mandatory offers.--

8 (2) An insurer that offers a long-term care insurance  
9 policy, certificate, or rider in this state must offer a  
10 nonforfeiture protection provision providing reduced paid-up  
11 insurance, extended term, shortened benefit period, or any  
12 other benefits approved by the office ~~department~~ if all or  
13 part of a premium is not paid. Nonforfeiture benefits and any  
14 additional premium for such benefits must be computed in an  
15 actuarially sound manner, using a methodology that has been  
16 filed with and approved by the office ~~department~~.

17 Section 1243. Subsection (1) of section 627.94074,  
18 Florida Statutes, is amended to read:

19 627.94074 Standards for benefit triggers.--

20 (1)(a) A long-term care insurance policy shall  
21 condition the payment of benefits on a determination of the  
22 insured's ability to perform activities of daily living and on  
23 cognitive impairment. Eligibility for the payment of benefits  
24 shall not be more restrictive than requiring either a  
25 deficiency in the ability to perform not more than three of  
26 the activities of daily living or the presence of cognitive  
27 impairment; or

28 (b) If a policy is a qualified long-term care  
29 insurance policy, the policy shall condition the payment of  
30 benefits on a determination of the insured's being chronically  
31 ill; having a level of disability similar, as provided by rule

1 of the commission ~~Insurance Commissioner~~, to the insured's  
2 ability to perform activities of daily living; or being  
3 cognitively impaired as described in paragraph (6)(b).  
4 Eligibility for the payment of benefits shall not be more  
5 restrictive than requiring a deficiency in the ability to  
6 perform not more than three of the activities of daily living.

7 Section 1244. Section 627.9408, Florida Statutes, is  
8 amended to read:

9 627.9408 Rules.--

10 (1) The commission ~~department~~ may adopt rules pursuant  
11 to ss. 120.536(1) and 120.54 to administer this part.

12 (2) The commission ~~department~~ may adopt by rule the  
13 provisions of the Long-Term Care Insurance Model Regulation  
14 adopted by the National Association of Insurance Commissioners  
15 in the second quarter of the year 2000 which are not in  
16 conflict with the Florida Insurance Code.

17 Section 1245. Paragraph (g) of subsection (6) of  
18 section 627.942, Florida Statutes, is amended to read:

19 627.942 Definitions.--As used in this part, unless the  
20 context otherwise requires:

21 (6) "Plan of operation or a feasibility study" means  
22 an analysis which presents the expected activities and results  
23 of a risk retention group, including, at a minimum:

24 (g) Such other matters as are ~~may be~~ requested by the  
25 office ~~department~~.

26 Section 1246. Subsections (2) and (3) of section  
27 627.943, Florida Statutes, are amended to read:

28 627.943 Risk retention groups certified in Florida.--

29 (2) Before it may offer insurance in any state, each  
30 risk retention group shall also submit for approval to the  
31 office ~~department~~ a plan of operation or a feasibility study.

1 Before additional lines of liability insurance are offered in  
2 this or any other state approval shall be obtained from the  
3 office ~~department~~.

4 (3) A proposed risk retention group shall provide to  
5 the office ~~department~~ a summary of the application for a  
6 certificate of authority at the time it files the application.  
7 The summary information shall include the name of the risk  
8 retention group, the identity of those individuals who  
9 organized the group or who will provide administrative  
10 services or otherwise influence or control the activities of  
11 the group, the amount and nature of initial capitalization,  
12 and the states in which the group intends to operate. A copy  
13 of the summary shall be provided by the office ~~department~~ to  
14 the National Association of Insurance Commissioners.

15 Section 1247. Subsections (1), (2), (5), (6), and (11)  
16 of section 627.944, Florida Statutes, are amended to read:

17 627.944 Risk retention groups not certificated in this  
18 state.--Risk retention groups certificated or licensed in  
19 states other than this state and seeking to do business as a  
20 risk retention group in this state must observe and abide by  
21 the laws of this state as follows:

22 (1) NOTICE OF OPERATIONS AND DESIGNATION OF CHIEF  
23 FINANCIAL OFFICER ~~COMMISSIONER~~ AS AGENT.--Before offering  
24 insurance in this state, a risk retention group shall submit  
25 to the office ~~department~~:

26 (a) A statement identifying the state or states in  
27 which the risk retention group is certificated or licensed as  
28 a liability insurance company, date of certification or  
29 licensing, its principal place of business, and such other  
30 information, including information on its membership, as the  
31 office ~~department~~ may require to verify that the risk

1 retention group is qualified as a risk retention group under  
2 the provisions of this part.

3 (b) A copy of its plan of operations or a feasibility  
4 study and revisions of such plan or study submitted to its  
5 state of domicile; provided, however, that the provision  
6 relating to the submission of a plan of operation or a  
7 feasibility study shall not apply with respect to any line or  
8 classification of liability insurance which was defined in the  
9 Product Liability Risk Retention Act of 1981 before October  
10 27, 1986, and which was offered before such date by any risk  
11 retention group which had been certificated or licensed and  
12 operating for not less than 3 years before such date.

13 (c) A statement of registration which designates the  
14 Chief Financial Officer ~~Insurance Commissioner and Treasurer~~  
15 or her or his designee as its agent for the purpose of  
16 receiving service of legal documents of process.

17 (2) FINANCIAL CONDITION.--Any risk retention group  
18 doing business in this state shall submit to the office  
19 ~~department~~:

20 (a) A copy of the group's financial statement  
21 submitted to its state of domicile, which shall be certified  
22 by an independent public accountant and contain a statement of  
23 opinion on loss and loss adjustment expense reserves made by a  
24 member of the American Academy of Actuaries or a qualified  
25 loss reserve specialist under criteria established by rule of  
26 the commission ~~department~~ after considering any criteria  
27 established by the National Association of Insurance  
28 Commissioners.

29 (b) A copy of each examination of the risk retention  
30 group as certified by the insurance commissioner or public  
31 official conducting the examination.

1           (c) Upon request by the office department, a copy of  
2 any audit performed with respect to the risk retention group.

3           (d) Such information as may be required to verify its  
4 continuing qualification as a risk retention group under the  
5 provisions of this part.

6           (5) DECEPTIVE, FALSE, OR FRAUDULENT PRACTICES.--Any  
7 risk retention group shall comply with and be subject to the  
8 laws of this state regarding deceptive, false, or fraudulent  
9 acts or practices, including the provisions of part IX of  
10 chapter 626. If the office department seeks an injunction  
11 regarding conduct in violation of these laws, the injunction  
12 may be obtained from any Florida court of competent  
13 jurisdiction.

14           (6) EXAMINATION REGARDING FINANCIAL CONDITION.--Any  
15 risk retention group must submit to an examination by the  
16 office department to determine its financial condition if the  
17 insurance commissioner of the jurisdiction in which the group  
18 is certificated or licensed has not initiated an examination  
19 or does not initiate an examination within 30 days after a  
20 request by the office department. Any examination shall be  
21 coordinated to avoid unjustified repetition and conducted in  
22 an expeditious manner.

23           (11) DELINQUENCY PROCEEDINGS.--A risk retention group  
24 not domiciled in this state but doing business in this state  
25 shall comply with a lawful order issued in a voluntary  
26 dissolution proceeding or in a delinquency proceeding  
27 commenced by the office department if there has been a finding  
28 of financial impairment after an examination under subsection  
29 (6).

30           Section 1248. Section 627.948, Florida Statutes, is  
31 amended to read:

1           627.948 Notice and registration requirements of  
2 purchasing groups.--

3           (1) A purchasing group which intends to do business in  
4 this state shall furnish notice to the office ~~department~~ which  
5 shall:

6           (a) Identify the state in which the group is  
7 domiciled.

8           (b) Specify the lines and classifications of liability  
9 insurance which the purchasing group intends to purchase.

10           (c) Identify the insurance company or companies from  
11 which the group intends to purchase its insurance and the  
12 domicile of such company or companies.

13           (d) Identify the principal place of business of the  
14 group.

15           (e) Provide such other information as may be required  
16 by the office ~~department~~ to verify that the purchasing group  
17 is qualified as a purchasing group under the provisions of  
18 this part.

19           (2) The purchasing group shall register with and  
20 designate the Chief Financial Officer ~~Insurance Commissioner~~  
21 ~~and Treasurer~~ or her or his designee as its agent solely for  
22 the purpose of receiving service of legal documents or  
23 process. This requirement shall not apply in the case of a  
24 purchasing group:

25           (a) Which:

26           1. Was domiciled before April 1, 1986.

27           2. Is domiciled on and after October 27, 1986, in any  
28 state of the United States.

29           (b) Which:

30           1. Before October 27, 1986, purchased insurance from  
31 an insurance carrier licensed in any state; and

1           2. Since October 27, 1986, purchased its insurance  
2 from an insurance carrier licensed in any state.

3           (c) Which was a purchasing group under the  
4 requirements of the Product Liability Risk Retention Act of  
5 1981 before October 27, 1986.

6           (d) Which does not purchase insurance that was not  
7 authorized for purposes of an exemption under that act, as in  
8 effect before October 27, 1986.

9           Section 1249. Section 627.950, Florida Statutes, is  
10 amended to read:

11           627.950 Administrative and procedural authority  
12 regarding risk retention and purchasing groups.--The office  
13 ~~department~~ is authorized to make use of any of the powers  
14 established under the Florida Insurance Code to enforce the  
15 laws of this state so long as those powers are not  
16 specifically preempted by the Product Liability Risk Retention  
17 Act of 1981 as amended by the Risk Retention Amendments of  
18 1986. This includes, but is not limited to, the office's  
19 ~~department's~~ administrative authority to investigate, issue  
20 subpoenas, conduct depositions and hearings, issue orders, and  
21 impose penalties. With regard to any investigation,  
22 administrative proceedings, or litigation, the office  
23 ~~department~~ may rely on the procedural law and regulations of  
24 the state. The injunctive authority of the office ~~department~~  
25 in regard to risk retention groups is restricted to the extent  
26 that any injunction shall be issued by a court of competent  
27 jurisdiction.

28           Section 1250. Section 627.951, Florida Statutes, is  
29 amended to read:

30           627.951 Penalties; cease and desist orders;  
31 injunctions.--

1           (1) A risk retention group which violates any  
2 applicable provision of the Florida Insurance Code shall be  
3 subject to fines and penalties applicable to licensed insurers  
4 generally, including revocation of its license or the right to  
5 do business in this state. In addition, any such risk  
6 retention group shall be subject to the issuance of a cease  
7 and desist order of the office ~~department~~ or an injunction  
8 issued by a court of competent jurisdiction prohibiting such  
9 violation or prohibiting the soliciting, selling, or  
10 transacting of insurance or otherwise operating or conducting  
11 business in this state in violation of the laws of this state.  
12 The office ~~department~~ may obtain an order from a court of  
13 competent jurisdiction to enjoin a risk retention group from  
14 further operation or from transacting insurance in this state  
15 if the risk retention group is in hazardous financial  
16 condition or financially impaired or to enjoin a risk  
17 retention group from the soliciting, selling, or transacting  
18 of insurance with respect to any person who is not eligible  
19 for membership in the group under state or federal law.

20           (2) A purchasing group which violates any applicable  
21 provision of the Florida Insurance Code shall be subject to  
22 fines and penalties applicable to licensed insurers and agents  
23 generally. In addition, any such purchasing group shall be  
24 subject to the issuance of a cease and desist order of the  
25 office ~~department~~ or an injunction issued by any court of  
26 competent jurisdiction prohibiting the soliciting, selling,  
27 transacting, or purchasing of insurance or otherwise operating  
28 or conducting business in this state.

29           Section 1251. Subsection (4) of section 627.952,  
30 Florida Statutes, is amended to read:

31           627.952 Risk retention and purchasing group agents.--

1           (4) Any person retained or employed to solicit, offer,  
2 sell, or purchase memberships in a purchasing group may be  
3 ordered to cease any such enrollment activity in this state  
4 whenever the office ~~department~~ has reason to believe that any  
5 such purchasing group has liability insurance coverage from a  
6 risk retention group or insurance company which is insolvent  
7 or in a hazardous financial condition. Orders entered under  
8 this subsection shall be issued in accordance with the  
9 procedures set forth in s. 627.951.

10           Section 1252. Section 627.954, Florida Statutes, is  
11 amended to read:

12           627.954 Rules.--The commission ~~department~~ may  
13 establish and from time to time amend such rules relating to  
14 risk retention groups and purchasing groups as may be  
15 necessary or desirable to carry out the provisions of this  
16 part.

17           Section 1253. Subsections (1), (4), (10), and (11) of  
18 section 627.971, Florida Statutes, are amended to read:

19           627.971 Definitions.--As used in this part:

20           (1)(a) "Financial guaranty insurance" means a surety  
21 bond, insurance policy, an indemnity contract issued by an  
22 insurer, or any similar guaranty, under which loss is payable  
23 upon proof of occurrence of financial loss to an insured  
24 claimant, obligee, or indemnitee as a result of:

25           1. The failure of an obligor on a debt instrument or  
26 other monetary obligation, including common or preferred stock  
27 guaranteed under a surety bond, insurance policy, or indemnity  
28 contract, to make principal, interest, premium, dividend, or  
29 purchase price payments when due, if the failure is the result  
30 of a financial default or insolvency, whether such obligation  
31

1 is incurred directly or as guarantor by or on behalf of  
2 another obligor who also defaulted;

3 2. Changes in the levels of interest rates or the  
4 differential in interest rates between various markets or  
5 products;

6 3. Changes in the rate of exchange of currency;

7 4. Changes in the value of specific assets or  
8 commodities, financial or commodity indices, or price levels  
9 in general; or

10 5. Other events which the office ~~department~~ determines  
11 are substantially similar to any of the foregoing.

12 (b) However, "financial guaranty insurance" does not  
13 include:

14 1. Insurance of a loss resulting from an event  
15 described in paragraph (a), if the loss is payable only upon  
16 the occurrence of any of the following, as specified in a  
17 surety bond, insurance policy, or indemnity contract:

18 a. A fortuitous physical event;

19 b. A failure of or deficiency in the operation of  
20 equipment; or

21 c. An inability to extract or recover a natural  
22 resource;

23 2. An individual or schedule public official bond;

24 3. A court bond required in connection with judicial,  
25 probate, bankruptcy, or equity proceedings, including a  
26 waiver, probate, open estate, or life tenant bond;

27 4. A bond running to a federal, state, county,  
28 municipal government, or other political subdivision, as a  
29 condition precedent to the granting of a license to engage in  
30 a particular business or of a permit to exercise a particular  
31 privilege;

1           5. A loss security bond or utility payment indemnity  
2 bond running to a governmental unit, railroad, or charitable  
3 organization;

4           6. A lease, purchase and sale, or concessionaire  
5 surety bond;

6           7. Credit unemployment insurance on a debtor in  
7 connection with a specific loan or other credit transaction,  
8 to provide payments to a creditor in the event of unemployment  
9 of the debtor for the installments or other periodic payments  
10 becoming due while a debtor is unemployed;

11           8. Credit insurance indemnifying a manufacturer,  
12 merchant, or educational institution which extends credit  
13 against loss or damage resulting from nonpayment of debts owed  
14 to her or him for goods or services provided in the normal  
15 course of her or his business;

16           9. Guaranteed investment contracts that are issued by  
17 life insurance companies and that provide that the life  
18 insurer will make specified payments in exchange for specific  
19 premiums or contributions;

20           10. Mortgage guaranty insurance as defined in s.  
21 635.011(1) or s. 635.021;

22           11. Indemnity contracts or similar guaranties, to the  
23 extent that they are not otherwise limited or proscribed by  
24 this part, in which a life insurer guarantees:

25           a. Its obligations or indebtedness or the obligations  
26 or indebtedness of a subsidiary of which it owns more than 50  
27 percent, other than a financial guaranty insurance  
28 corporation, if:

29           (I) For any such obligations or indebtedness that are  
30 backed by specific assets, such assets are at all times owned  
31 by the insurer or the subsidiary; and

1 (II) For the obligations or indebtedness of the  
2 subsidiary that are not backed by specific assets of the life  
3 insurer, the guaranty terminates once the subsidiary ceases to  
4 be a subsidiary; or

5 b. The obligations or indebtedness, including the  
6 obligation to substitute assets where appropriate, with  
7 respect to specific assets acquired by a life insurer in the  
8 course of normal investment activities and not for the purpose  
9 of resale with credit enhancement, or guarantees obligations  
10 or indebtedness acquired by its subsidiary, provided that the  
11 assets so acquired have been:

12 (I) Acquired by a special purpose entity where the  
13 sole purpose is to acquire specific assets of the life insurer  
14 or the subsidiary and issue securities or participation  
15 certificates backed by such assets; or

16 (II) Sold to an independent third party; or

17 c. The obligations or indebtedness of an employee or  
18 agent of the life insurer;

19 12. Any form of surety insurance as defined in s.  
20 624.606; or

21 13. Any other form of insurance covering risks which  
22 the office ~~department~~ determines to be substantially similar  
23 to any of the foregoing.

24 (4) "Collateral" means:

25 (a) Cash;

26 (b) The market value of investment grade securities,  
27 other than securities evidencing an interest in the projects  
28 financed with the proceeds of the insured obligations;

29 (c) The scheduled cash flow from investment grade  
30 obligations scheduled to be received on or prior to the date  
31 of scheduled debt service on the insured obligation;

- 1 (d) A conveyance or mortgage of real property; or  
2 (e) A letter of credit;

3  
4 if deposited with or held by the corporation; held in trust by  
5 a trustee, acceptable to the office ~~department~~, for the  
6 benefit of the corporation; or held in trust, pursuant to the  
7 bond indenture, by a trustee acceptable to the office  
8 ~~department~~, for the benefit of bondholders in the form of  
9 sinking funds or other reserves which may be used solely for  
10 the payment of debt service.

11 (10) An "investment grade obligation" means an  
12 obligation that:

13 (a) Has been determined to be in one of the top four  
14 generic lettered rating classifications by a securities rating  
15 agency acceptable to the office ~~department~~;

16 (b) Has been identified in writing by such a rating  
17 agency as an insurable risk deemed to be of investment grade  
18 quality for purposes of insurance;

19 (c) Has received a "yes" rating by the Securities  
20 Valuation Office of the National Association of Insurance  
21 Commissioners; or

22 (d) Has been submitted for review to the appropriate  
23 rating agency or Securities Valuation Office and will be  
24 qualified pursuant to paragraph (a), paragraph (b), or  
25 paragraph (c).

26 (11) "Letter of credit" means:

27 (a) The stated amount of a clean unconditional,  
28 irrevocable letter of credit issued by a bank or trust company  
29 whose debt rating applicable to the term of the insured  
30 obligation is in one of the two highest generic lettered

31

1 rating classifications by a securities rating agency  
2 acceptable to the office ~~department~~; or

3 (b) Fifty percent of the stated amount of a clean  
4 unconditional, irrevocable letter of credit issued by a bank  
5 or trust company whose debt rating applicable to the term of  
6 the insured obligation is in a rating classification other  
7 than as set forth in paragraph (a).

8 (c) An issuing or confirming bank referred to in  
9 paragraph (a) or paragraph (b) shall be:

10 1. Determined by the Securities Valuation office of  
11 the National Association of Insurance Commissioners to meet  
12 such standards of financial condition and standing as are  
13 considered necessary and appropriate to regulate the quality  
14 of banks and trust companies whose letters of credit shall be  
15 acceptable to insurance regulatory authorities; provided, that  
16 the letter of credit is issued for the full term of the  
17 insured obligation, or the insured obligation is subject to  
18 mandatory call and redemption from the proceeds of the letter  
19 of credit if the letter of credit is not renewed or replaced;  
20 and

21 2.a. A member of the federal reserve system or  
22 chartered by a state of the United States; or

23 b. Organized and existing under the laws of a foreign  
24 country whose sovereign debt is rated in the highest major  
25 rating classification by a securities rating agency acceptable  
26 to the office ~~department~~; and which has been licensed as a  
27 domestic branch or agency by the Federal Government or a state  
28 of the United States; and which is regulated, supervised, and  
29 examined by United States federal or state authorities having  
30 regulatory authority over banks and trust companies.

31

1           Section 1254. Paragraph (b) of subsection (1),  
2 paragraph (d) of subsection (3), and subsections (4) and (5)  
3 of section 627.972, Florida Statutes, are amended to read:

4           627.972 Organization; financial requirements.--

5           (1) A financial guaranty insurance corporation must be  
6 organized and licensed in the manner prescribed in this code  
7 for stock property and casualty insurers except that:

8           (b)1. Prior to the issuance of a license, a  
9 corporation must submit to the office ~~department~~ for approval,  
10 a plan of operation detailing:

11           a. The types and projected diversification of  
12 guaranties to be issued;

13           b. The underwriting procedures to be followed;

14           c. The managerial oversight methods;

15           d. The investment policies; and

16           e. Any other matters prescribed by the office  
17 ~~department~~;

18           2. An insurer which is writing only the types of  
19 insurance allowed under this part on July 1, 1988, and  
20 otherwise meets the requirements of this part, is exempt from  
21 the requirements of this paragraph.

22           (3) An insurer may not transact financial guaranty  
23 insurance unless it establishes a contingency reserve, net of  
24 reinsurance, as follows:

25           (d) Withdrawals from the contingency reserve, to the  
26 extent of any excess, may be made with the approval of the  
27 office ~~department~~ from the earliest contributions to the  
28 reserve remaining therein:

29           1. In any year in which the actual incurred losses  
30 exceed 35 percent of earned premiums, or

31

1           2. If the contingency reserve has been in existence  
2 for 40 quarters for reserves subject to subparagraph (b)1.,  
3 and 20 quarters for reserves subject to subparagraph (b)2.,  
4 upon demonstration that the amount carried is excessive in  
5 relation to the insurer's outstanding obligations.

6           (4) In addition to the contingency reserve, the case  
7 basis method or other method prescribed by the office  
8 ~~department~~ is used to determine loss reserves, in a manner  
9 consistent with the requirements of part I of chapter 625,  
10 which must include a reserve for claims reported and unpaid  
11 net of collateral. A deduction from loss reserves shall be  
12 allowed for the time value of money by application of a  
13 discount rate equal to the average rate of return on the  
14 admitted assets of the insurer as of the date of the  
15 computation of any such reserve. The discount rate must be  
16 adjusted at the end of each calendar year.

17           (5) The insurer maintains an unearned premium reserve,  
18 net of reinsurance, computed on the monthly pro rata basis,  
19 where the premiums are paid on an installment basis. All  
20 other such premiums paid must be earned proportionately with  
21 the expiration of exposure or by such other method the office  
22 ~~department~~ prescribes or approves.

23           Section 1255. Section 627.973, Florida Statutes, is  
24 amended to read:

25           627.973 Limitations.--

26           (1) Financial guaranty insurance shall be transacted  
27 in this state only by a corporation licensed for such purpose,  
28 except that a property and casualty insurer transacting  
29 business pursuant to the provisions of this code may transact  
30 financial guaranty insurance in this state if the following  
31 conditions are met:

1 (a) Total policyholders' surplus exceeds \$100 million;

2 (b) Not more than 20 percent of total net premiums  
3 written are applicable to or for financial guaranty insurance;

4 (c) The provisions of this part are applied to the  
5 insurer's financial guaranty insurance business;

6 (d) Not more than 20 percent of the insurer's total  
7 policyholder's surplus is applied toward meeting the  
8 provisions of this part;

9 (e) The policyholders' surplus once utilized to meet  
10 the requirements of this part shall not be available for  
11 meeting any policyholders' surplus requirements for any other  
12 type of insurance;

13 (f) The insurer is licensed to write financial  
14 guaranty insurance; and

15 (g) Unless the insurer is transacting financial  
16 guaranty insurance prior to July 1, 1988, and otherwise meets  
17 the requirements of this section, prior to the issuance of a  
18 license, the insurer must submit to the office ~~department~~ for  
19 approval, a plan of operation complying with s. 627.972(1)(b).

20 (2) Financial guaranty insurance shall be written only  
21 to insure obligations defined in s. 627.971(1)(a)1., except  
22 that obligations defined in s. 627.971(1)(a)2., 3., 4., and 5.  
23 may be written with the prior written approval of the office  
24 ~~department~~ pursuant to limitations and restrictions  
25 promulgated by rule that the commission ~~department~~ deems  
26 appropriate and necessary to protect the policyholders of the  
27 insurer.

28 (3) At least 95 percent of the outstanding total  
29 liability on municipal obligation bonds of an insurer  
30 transacting financial guaranty insurance must be investment  
31 grade.

1           (4) An insurer transacting financial guaranty  
2 insurance must at all times maintain capital, surplus, and  
3 contingency reserves, subject to the restrictions in paragraph  
4 (1)(d) if applicable, in the aggregate no less than the sum  
5 of:

6           (a) One-third of one percent of the total liabilities  
7 outstanding under guaranties of municipal obligation bonds;

8           (b) One percent of the total liabilities outstanding  
9 under guaranties of investment grade obligations, including  
10 industrial development bonds and investment grade consumer  
11 debt obligations;

12           (c) One and one-third percent of the total liabilities  
13 outstanding under guaranties of noninvestment grade consumer  
14 debt obligations;

15           (d) Two percent of the total liabilities outstanding  
16 under guaranties of other obligations not of investment grade,  
17 other than consumer debt obligations; and

18           (e) Surplus determined by the office ~~department~~ to be  
19 adequate to support the writing of residual value insurance,  
20 surety insurance, and credit insurance, if the corporation has  
21 elected to transact these kinds of insurance pursuant to s.  
22 627.972(1).

23           (5) An insurer transacting financial guaranty  
24 insurance must limit its exposure to loss, net of collateral  
25 and reinsurance, as follows:

26           (a) For municipal bonds:

27           1. The insured average annual debt service with  
28 respect to any one entity and backed by a single revenue  
29 source may not exceed 10 percent of the aggregate of the  
30 corporation's capital, surplus, and contingency reserves,  
31

1 subject to the restrictions of paragraph (1)(d) if applicable;  
2 and

3           2. The insured unpaid principal issued by a single  
4 entity and backed by a single revenue source may not exceed 75  
5 percent of the aggregate of the corporation's capital,  
6 surplus, and contingency reserves, subject to the restrictions  
7 in paragraph (1)(d) if applicable; and

8           (b) For all other financial guaranties, the insured  
9 unpaid principal for any one risk may not exceed 10 percent of  
10 the aggregate of the corporation's capital, surplus, and  
11 contingency reserves, subject to the restrictions in paragraph  
12 (1)(d) if applicable. Single risk liability shall be defined  
13 with respect to any one issuer, except that, if the risk is  
14 payable from a specified revenue source or adequately secured  
15 by loan obligations or other assets, such risk shall be  
16 defined by the revenue source.

17           (6) If the exposure to loss of an insurer transacting  
18 financial guaranty insurance exceeds the limitations in  
19 subsection (4), it may not transact any new financial guaranty  
20 insurance business until its exposure to loss no longer  
21 exceeds those limitations.

22           (7) An insurer which wrote financial guaranty  
23 insurance in this state during the 12-month period immediately  
24 preceding July 1, 1988, but which does not meet the  
25 requirements of subsection (1) or of s. 627.972(2), may,  
26 nevertheless, continue to write financial guaranty insurance  
27 as authorized by subsection (2) after July 1, 1988, subject to  
28 all other provisions of this part, provided:

29           (a) Within 45 days after such date the insurer files  
30 with the office ~~department~~ a statement of its intentions to  
31 limit its writings to financial guaranty, surety, and fidelity

1 insurance. Effective upon such filing, the insurer shall be  
2 subject to the requirements of this part except that the  
3 surplus to policyholders requirement of s. 627.972(2) shall  
4 not apply to such insurer until July 1, 1998, at which time  
5 such insurer shall have and thereafter maintain the minimum  
6 surplus requirement of at least \$35 million. Failure of the  
7 insurer to meet the conditions of such statement of intent  
8 filed with the office ~~department~~, until such time as it meets  
9 the requirements of subsection (1), shall be grounds to  
10 subject the insurer to the penalties provided under this code,  
11 including immediate suspension or revocation of its  
12 certificate of authority. If the insurer does not file such  
13 statement of intent, it shall cease writing any new financial  
14 guaranty insurance business within 6 months after the  
15 effective date of this act. The insurer may:

16       1. Reinsure its net in-force business with a licensed  
17 financial guaranty insurance corporation or an insurer exempt  
18 under subsection (1);

19       2. Subject to the prior approval of its domiciliary  
20 insurance commissioner, reinsure all or part of its net  
21 in-force business pursuant to s. 627.975(1)(b), except that  
22 subparagraphs 2. and 4. do not apply. The assuming insurer  
23 must maintain reserves for the reinsured business in the  
24 manner applicable to the ceding insurer under paragraph (b);  
25 or

26       3. May continue the risks in force and, with 30 days  
27 prior written notice to its domiciliary insurance  
28 commissioner, write new financial guaranty policies if the  
29 writing of those policies is reasonably prudent to mitigate  
30 either the amount of or possibility of loss in connection with  
31 business written prior to July 1, 1988. However, an insurer

1 must receive the prior approval of its domiciliary insurance  
2 commissioner before writing any new financial guaranty  
3 insurance policies that would increase its risk of loss.

4 (b) Must, for all guaranties in force prior to July 1,  
5 1988, including those which fall under the definition of  
6 financial guaranty insurance, maintain the reserves applicable  
7 for municipal bond guaranties in effect prior to July 1, 1988.  
8 If the insurer's contingency reserves maintained as of July 1,  
9 1988, are less than those required for municipal bond  
10 guaranties, the insurer has 3 years to bring its reserves into  
11 compliance, except that a part of the reserve may be released  
12 proportional to the reduction in net total liabilities  
13 resulting from reinsurance if the reinsurer, on the effective  
14 date of the reinsurance, establishes a reserve in an amount  
15 equal to the amount released and except that a part of the  
16 reserve may be released with office ~~departmental~~ approval,  
17 upon demonstration that the amount carried is excessive in  
18 relation to the corporation's outstanding obligations.

19 (c) Shall be subject to the reserve requirements  
20 applicable to financial guaranty insurance corporations, for  
21 business written on or after July 1, 1988.

22 (d) This subsection shall not apply to insurers  
23 permitted to write financial guaranty insurance pursuant to  
24 the exception set forth in subsection (1) and such insurers  
25 may write financial guaranty insurance subject to the  
26 requirements of the Florida Insurance Code.

27 Section 1256. Section 627.974, Florida Statutes, is  
28 amended to read:

29 627.974 Filing of policy forms and rates.--

30 (1) Policy forms and any amendments thereto must be  
31 filed with the office ~~department~~ within 30 days after their

1 use by the insurer. A policy may not provide coverage of the  
2 acceleration of payments due under the guaranteed obligations,  
3 including any payment in advance of scheduled maturity to be  
4 made by the issuer of the guaranteed obligations at the sole  
5 option of the owner of the guaranteed obligations, unless the  
6 acceleration is at the sole option of the insurer. Each  
7 policy must disclose that the insurance provided by the policy  
8 is not covered by the Florida Insurance Guaranty Association  
9 created under part II of chapter 631. The commission  
10 ~~department~~ may prescribe additional minimum policy provisions  
11 which are determined by the commission department to be  
12 necessary or appropriate to protect policyholders, claimants,  
13 obligees, or indemnitees.

14 (2) Rates may not be excessive, inadequate, unfairly  
15 discriminatory, destructive of competition, or detrimental to  
16 the solvency of the insurer.

17 (3) Criteria and guidelines used by insurers  
18 transacting financial guaranty insurance in establishing  
19 rating categories and ranges of rates to be used must be filed  
20 with the office department for information prior to their use  
21 by the insurer.

22 (4) All such filings must be available for public  
23 inspection at the office department.

24 (5) This section is in lieu of the requirements of ss.  
25 627.062 and 627.410.

26 Section 1257. Section 627.986, Florida Statutes, is  
27 amended to read:

28 627.986 Replacement rules.--Group-to-group  
29 consolidations shall be exempt from any rule of the commission  
30 ~~department~~ relating to the replacement of existing life or  
31 health insurance. Nothing in this part shall be interpreted as

1 creating an exemption for consolidations which involve  
2 individual policies.

3 Section 1258. Section 627.987, Florida Statutes, is  
4 amended to read:

5 627.987 Policy forms.--No policy or group certificate  
6 of mortgage insurance used in connection with any  
7 consolidation, and no application, endorsement, or rider which  
8 becomes a part of any such policy or certificate, shall be  
9 issued or delivered in this state until a copy of the form has  
10 been filed with and approved by the office ~~department~~.

11 Section 1259. Section 628.051, Florida Statutes, is  
12 amended to read:

13 628.051 Application for permit to form insurer;  
14 contents; fee.--

15 (1) No domestic insurer shall be formed unless the  
16 persons so proposing have received a permit from the office  
17 ~~department~~.

18 (2) Written application for such permit shall be filed  
19 with the office ~~department~~. Such application and filing shall  
20 include:

21 (a) The name, type, and purpose of insurer.

22 (b) The name, residence address, business background,  
23 and qualifications of each person associated or to be  
24 associated in the formation or financing of the insurer. Each  
25 such person with an ownership interest of 10 percent or more,  
26 or who will hold a position as an officer or director, must  
27 furnish on forms adopted by the commission and supplied by the  
28 office ~~department~~ a sworn biographical statement, legible  
29 copies of fingerprints, and authority for release of  
30 information in regard to the investigation of such person's  
31 background.

1           (c) A full disclosure of the terms of all  
2 understandings and agreements existing or proposed among  
3 persons so associated relative to the insurer, or the  
4 formation or financing thereof, accompanied by a copy of each  
5 such agreement or understanding.

6           (d) A full disclosure of the terms of all  
7 understandings and agreements existing or proposed for  
8 management or exclusive agency contracts.

9           (e) A copy of all proposed articles or certificates of  
10 incorporation and proposed bylaws of the proposed insurer.

11           (f) A copy of all articles or certificates of  
12 incorporation of involved corporations, if a copy of the same  
13 is not already on file in the office ~~department~~.

14           (g) A copy of all syndicate, association, firm,  
15 partnership, organization, or other similar agreements, by  
16 whatever name called, involved in the formation of the  
17 proposed insurer or its financing.

18           (h) If the applicant is a reciprocal insurer, a copy  
19 of the power of attorney and of other agreements existing or  
20 proposed as affecting investors, subscribers, the attorney in  
21 fact, or the applicant.

22           (i) A copy of any security, or of any proposed  
23 document evidencing any right or interest, proposed to be  
24 offered.

25           (j) Such other pertinent information and documents as  
26 reasonably requested by the commission or office ~~department~~.

27           (3) The application shall be accompanied by the filing  
28 fee specified in s. 624.501.

29           Section 1260. Section 628.061, Florida Statutes, is  
30 amended to read:

31

1           628.061 Investigation of proposed organization.--In  
2 connection with any proposal to incorporate a domestic  
3 insurer, the office ~~department~~ shall make an investigation of:

4           (1) The character, reputation, financial standing, and  
5 motives of the organizers, incorporators, and subscribers  
6 organizing the proposed insurer.

7           (2) The character, financial responsibility, insurance  
8 experience, and business qualifications of its proposed  
9 officers.

10           (3) The character, financial responsibility, business  
11 experience, and standing of the proposed stockholders and  
12 directors.

13           Section 1261. Section 628.071, Florida Statutes, is  
14 amended to read:

15           628.071 Granting, denial of permit.--

16           (1) The office ~~department~~ shall expeditiously examine  
17 and investigate the application for a permit as referred to in  
18 s. 628.051. If the office ~~department~~ finds that:

19           (a) The application is complete;

20           (b) The documents therewith filed are in compliance  
21 with law;

22           (c) None of the stockholders, organizers,  
23 incorporators, subscribers, and other persons who directly or  
24 indirectly exercise or have the ability to exercise effective  
25 control of the proposed insurer or who will be involved in its  
26 management have been found guilty of, or have pleaded guilty  
27 or nolo contendere to, a felony or a crime punishable by  
28 imprisonment of 1 year or more under the law of the United  
29 States or any state thereof, or under the law of any other  
30 country, which involves moral turpitude, without regard to  
31

1 whether a judgment of conviction has been entered by the court  
2 having jurisdiction of such cases;

3 (d) The proposed financial structure is adequate; and

4 (e) All stockholders, organizers, incorporators,  
5 subscribers, and other persons who directly or indirectly  
6 exercise or have the ability to exercise effective control of  
7 the proposed insurer or who will be involved in management of  
8 the proposed insurer possess the financial standing and  
9 business experience to form an insurer;

10  
11 it shall issue to the applicant a permit to form the proposed  
12 insurer.

13 (2) If the office ~~department~~ does not so find, or  
14 finds that the insurer if formed or financed would not be able  
15 to qualify for or retain a certificate of authority by reason  
16 of the provisions of s. 624.404(3), a permit shall not be  
17 granted.

18 (3) A permit granted under the provisions of this  
19 section shall be valid for 1 year from the date of issue, and  
20 during any extension of such period, not to exceed an  
21 additional year, as may be authorized by the office ~~department~~  
22 upon cause shown. The articles of incorporation and all other  
23 proceedings thereunder shall become void 1 year from the issue  
24 date of such permit or upon the expiration of such extended  
25 period, unless the formation of the proposed insurer has been  
26 completed and a certificate of authority has been issued by  
27 the office ~~department~~.

28 Section 1262. Section 628.091, Florida Statutes, is  
29 amended to read:

30 628.091 Filing, approval of articles of  
31 incorporation.--

1           (1) No domestic stock or mutual insurer shall be  
2 formed unless its articles of incorporation are approved by  
3 the office ~~department~~ prior to filing the same with and  
4 approval by the Department of State as provided by law.

5           (2) The incorporators shall file the triplicate  
6 originals of the articles of incorporation with the office  
7 ~~department~~, accompanied by the filing fee specified in s.  
8 624.501.

9           (3) The office ~~department~~ shall promptly examine the  
10 articles of incorporation. If it finds that the articles of  
11 incorporation conform to law, and that a permit has been or  
12 will be issued, it shall endorse its approval on each of the  
13 triplicate originals of the articles of incorporation, retain  
14 one copy for its files, and return the remaining copies to the  
15 incorporators for filing with the Department of State.

16           (4) If the office ~~department~~ does not so find, it  
17 shall refuse to approve the articles of incorporation and  
18 shall return the originals.

19           Section 1263. Section 628.101, Florida Statutes, is  
20 amended to read:

21           628.101 Amendment of certificate of incorporation;  
22 stock insurer.--A domestic stock insurer shall not amend its  
23 certificate of incorporation until a copy of the proposed  
24 amendment has been filed with and approved by the office  
25 ~~department~~. The office ~~department~~ shall promptly examine any  
26 such proposed amendment and shall approve the same unless it  
27 finds that the proposed amendment does not comply with law.

28           Section 1264. Subsections (2) and (3) of section  
29 628.111, Florida Statutes, are amended to read:

30           628.111 Amendment of articles of incorporation; mutual  
31 insurer.--

1           (2)(a) Upon adoption of the amendment, the insurer  
2 shall make in triplicate under its corporate seal a  
3 certificate thereof, setting forth the amendment and the date  
4 and manner of the adoption thereof, which certificate shall be  
5 executed by the insurer's president or vice president and  
6 secretary or assistant secretary and acknowledged before an  
7 officer authorized to take acknowledgments. The insurer shall  
8 deliver the triplicate originals of the certificate to the  
9 office ~~department~~, together with the filing fee specified in  
10 s. 624.501.

11           (b) The office ~~department~~ shall promptly examine the  
12 certificate of amendment; and, if it finds that the  
13 certificate and the amendment comply with law, it shall  
14 endorse its approval upon each of the triplicate originals,  
15 place one on file in its office, and return the remaining sets  
16 to the insurer. The insurer shall forthwith file such  
17 endorsed certificates of amendment with the Department of  
18 State. The amendment shall be effective when filed with and  
19 approved by the Department of State.

20           (3) If the office ~~department~~ finds that the proposed  
21 amendment or certificate does not comply with the law, it  
22 shall not approve the same, and shall return the triplicate  
23 certificate of amendment to the insurer.

24           Section 1265. Subsections (1) and (3) of section  
25 628.152, Florida Statutes, are amended to read:

26           628.152 Domestic stock insurers; proxies, consents,  
27 and authorizations with respect to any voting security.--

28           (1) The commission ~~department~~ may, by rule, prescribe  
29 the form, content, and manner of solicitation of any proxy,  
30 consent, or authorization with respect to any voting security  
31 issued by a domestic stock insurer, as may be necessary or

1 appropriate in the public interest or for the proper  
2 protection of investors in the voting securities issued by  
3 such insurer or to ensure the fair dealing in such voting  
4 securities.

5 (3) Any proxy or consent obtained in violation of this  
6 section is void. The domestic stock insurer, any stockholder  
7 of record, or the office department may enforce compliance  
8 with this section, by an appropriate civil action.

9 Section 1266. Subsection (6) of section 628.161,  
10 Florida Statutes, is amended to read:

11 628.161 Initial qualifications; mutuals.--

12 (6) A self-insured fund organized under s. 624.4621 ~~s.~~  
13 ~~440.57~~ and holding a certificate of authority as a  
14 self-insurer's fund on December 31, 1993, may become a mutual  
15 insurer under this part, pursuant to a plan of reorganization  
16 approved by the office department. A plan of reorganization  
17 must be approved by the office department if:

18 (a) The self-insurer's fund has sufficient financial  
19 resources to satisfy all of its obligations under all policies  
20 and coverages afforded by the fund before the reorganization  
21 and has sufficient financial resources to satisfy all of its  
22 other liabilities;

23 (b) The self-insurer's fund has a minimum of \$5  
24 million of surplus;

25 (c) The self-insurer's fund submits a plan that  
26 demonstrates its ability to satisfy the requirements of this  
27 chapter pertaining to mutual insurers on an ongoing basis; and

28 (d) The mutual insurer resulting from the  
29 reorganization of the self-insurer's fund retains ownership of  
30 all of the assets of the self-insurer's fund, retains all of  
31 the liabilities of the self-insurer's fund, and agrees to hold

1 all fund members harmless from any assessment for liabilities  
2 of the self-insurer's fund before the date of reorganization.

3  
4 Upon approval of the plan by the office ~~department~~, any  
5 contingent liability of the members or former members of the  
6 self-insurer's fund for assessment for losses of the  
7 self-insurer's fund is considered satisfied, and all liability  
8 for any such contingent assessment is extinguished as of the  
9 date the self-insurer's fund becomes an authorized mutual  
10 insurer and retains all of the assets and liabilities of the  
11 self-insurer's fund.

12 Section 1267. Section 628.171, Florida Statutes, is  
13 amended to read:

14 628.171 Formation of mutual insurer; bond.--The  
15 incorporators of the proposed insurer shall file with the  
16 office ~~department~~ a copy of a fidelity bond or insurance  
17 policy providing coverage in an amount equal to not less than  
18 10 percent of the funds handled annually and issued in the  
19 name of the insurer covering its directors, employees,  
20 administrator, or other individuals managing or handling the  
21 funds or assets of the insurer. In no case may such bond or  
22 policy be less than \$1,000 or more than \$500,000.

23 Section 1268. Subsection (3) of section 628.221,  
24 Florida Statutes, is amended to read:

25 628.221 Bylaws of mutual insurer.--

26 (3) The insurer shall promptly file with the office  
27 ~~department~~ a copy, certified by the insurer's secretary, of  
28 its bylaws and of every modification thereof or addition  
29 thereto. The office ~~department~~ shall disapprove any bylaw  
30 provision deemed by it to be unlawful, unreasonable,  
31 inadequate, unfair, or detrimental to the proper interests or

1 protection of the insurer's members or any class thereof. The  
2 insurer shall not, after receiving written notice of such  
3 disapproval and during the existence thereof, effectuate any  
4 bylaw provision so disapproved.

5 Section 1269. Subsections (1) and (3) of section  
6 628.251, Florida Statutes, are amended to read:

7 628.251 Management and exclusive agency contracts.--

8 (1) No domestic mutual insurer or stock insurer shall  
9 make any contract whereby any person is granted or is to enjoy  
10 in fact the management of the insurer to the substantial  
11 exclusion of its board of directors or to have the controlling  
12 or preemptive right to produce substantially all insurance  
13 business for the insurer, unless the contract is filed with  
14 and approved by the office ~~department~~.

15 (3) The office ~~department~~ shall disapprove any such  
16 contract if it finds that it:

17 (a) Subjects the insurer to excessive charges; ~~or~~  
18 (b) Is to extend for an unreasonable length of time;  
19 ~~or~~

20 (c) Does not contain fair and adequate standards of  
21 performance; or

22 (d) Contains other inequitable provision or provisions  
23 which impair the proper interests of policyholders or members  
24 of the insurer.

25 Section 1270. Subsection (1) of section 628.255,  
26 Florida Statutes, is amended to read:

27 628.255 Person with effective control cannot receive  
28 commission unless contract approved; penalties.--

29 (1) No director, officer, or other person having  
30 effective control of a domestic insurer shall receive, and no  
31 such insurer shall pay to such person, a commission or other

1 compensation with respect to particular risks insured by the  
2 insurer, unless such commission or other compensation is paid  
3 pursuant to a contract filed with and approved by the office  
4 ~~department~~.

5 Section 1271. Section 628.261, Florida Statutes, is  
6 amended to read:

7 628.261 Notice of change of director or officer.--An  
8 insurer shall give the office ~~department~~ written notice of any  
9 change of personnel among the directors or principal officers  
10 of the insurer within 45 days of such change. The written  
11 notice shall include all information necessary to allow the  
12 office ~~department~~ to determine that the insurer will be in  
13 compliance with s. 624.404(3) and at a minimum shall contain  
14 the information required by s. 628.051(2)(b), (c), and (d).

15 Section 1272. Subsections (1) and (3) of section  
16 628.271, Florida Statutes, are amended to read:

17 628.271 Office and records; penalty for unlawful  
18 removal of records.--

19 (1) Every domestic insurer shall have an office in  
20 this state and shall keep therein complete records of its  
21 assets, transactions, and affairs, specifically including:

- 22 (a) Financial records;  
23 (b) Corporate records;  
24 (c) Reinsurance documents;  
25 (d) Access to all accounting transactions and access  
26 in this state, upon demand by the office ~~department~~, to all  
27 original accounting documents;  
28 (e) Claim files; and  
29 (f) Payment of claims,  
30  
31

1 in accordance with such methods and systems as are customary  
2 or suitable as to the kind or kinds of insurance transacted.  
3 (3) The removal of all or a material part of the  
4 records or assets of a domestic insurer from this state except  
5 pursuant to a plan of merger or consolidation approved by the  
6 office ~~department~~ under this code or for such reasonable  
7 purposes and periods of time as may be approved by the office  
8 ~~department~~ in writing in advance of such removal, or the  
9 concealment of such records or assets or material part thereof  
10 from the office ~~department~~, is prohibited. Any person who  
11 removes or attempts to remove such records or assets or such  
12 material part thereof from the home office or other place of  
13 business or of safekeeping of the insurer in this state with  
14 the intent to remove the same from this state, or who conceals  
15 or attempts to conceal the same from the office ~~department~~, in  
16 violation of this subsection, is guilty of a felony of the  
17 third degree, punishable as provided in s. 775.082, s.  
18 775.083, or s. 775.084. Upon any removal or attempted removal  
19 of such records or assets or upon retention of such records or  
20 assets or material part thereof outside this state, beyond the  
21 period therefor specified in the consent of the office  
22 ~~department~~ under which consent the records were so removed  
23 thereat, or upon concealment of or attempt to conceal records  
24 or assets in violation of this section, the office ~~department~~  
25 may institute delinquency proceedings against the insurer  
26 pursuant to the provisions of chapter 631.  
27 Section 1273. Subsection (1) of section 628.281,  
28 Florida Statutes, is amended to read:  
29 628.281 Exceptions to requirement that office,  
30 records, and assets be maintained in this state.--  
31

1           (1) The provisions of s. 628.271 shall not be deemed  
2 to prohibit or prevent an insurer from:

3           (a) Establishing and maintaining branch offices or  
4 regional home offices in other states where necessary or  
5 convenient to the transaction of its business and keeping  
6 therein the detailed records and assets customary and  
7 reasonably necessary for the servicing of its insurance in  
8 force and affairs in the territory served by such an office,  
9 as long as such records and assets are made readily available  
10 at such office for examination by the Office of Insurance  
11 Regulation department at its request.

12           (b) Having, depositing, or transmitting funds and  
13 assets of the insurer in or to jurisdictions outside this  
14 state as required by other jurisdictions as a condition of  
15 transacting insurance in such jurisdictions reasonably and  
16 customarily required in the regular course of its business.

17           (c) Establishing and maintaining its principal  
18 operations offices, its usual operations records, and such of  
19 its assets as may be necessary or convenient for the purpose,  
20 in another state in which the insurer is authorized to  
21 transact insurance in order that general administration of its  
22 affairs may be combined with that of an affiliated insurer or  
23 insurers, but subject to the following conditions:

24           1. That the office ~~department~~ consent in writing to  
25 such removal of offices, records, and assets from this state  
26 upon evidence satisfactory to it that the same will facilitate  
27 and make more economical the operations of the insurer and  
28 will not unreasonably diminish the service or protection  
29 thereafter to be given the insurer's policyholders in this  
30 state and elsewhere;

31

1           2. That the insurer will continue to maintain in this  
2 state its principal corporate office or place of business, and  
3 maintain therein available to the inspection of the office  
4 ~~department~~ complete records of its corporate proceedings and a  
5 copy of each financial statement of the insurer current within  
6 the preceding 5 years, including a copy of each interim  
7 financial statement prepared for the information of the  
8 insurer's officers or directors;

9           3. That, upon the written request of the office  
10 ~~department~~, the insurer will with reasonable promptness  
11 produce at its principal corporate offices in this state for  
12 examination or for subpoena its records or copies thereof  
13 relative to a particular transaction or transactions of the  
14 insurer as designated by the office ~~department~~ in its request;  
15 and

16           4. That, if at any time the office ~~department~~ finds  
17 that the conditions justifying the maintenance of such  
18 offices, records, and assets outside this state no longer  
19 exist, or that the insurer has willfully and knowingly  
20 violated any of the conditions stated in subparagraphs 2. and  
21 3., the office ~~department~~ may order the return of such  
22 offices, records, and assets to this state within such  
23 reasonable time, not less than 6 months, as may be specified  
24 in the order; and that for failure to comply with such order,  
25 as thereafter modified or extended, if any, the office  
26 ~~department~~ shall suspend or revoke the insurer's certificate  
27 of authority.

28           Section 1274. Subsection (1) of section 628.341,  
29 Florida Statutes, is amended to read:

30           628.341 Nonassessable policies; mutual insurers.--

31

1           (1) While possessing surplus funds in amount not less  
2 than the paid-in capital stock required of a domestic stock  
3 insurer transacting like kinds of insurance, a domestic mutual  
4 insurer may, upon receipt of the order of the office  
5 ~~department~~ so authorizing, extinguish the contingent liability  
6 of its members as to all its policies in force and may omit  
7 provisions imposing contingent liability in all its policies  
8 currently issued so long as such surplus funds meet such  
9 requirement as to amount.

10           Section 1275. Section 628.351, Florida Statutes, is  
11 amended to read:

12           628.351 Nonassessable policies; revocation of  
13 authority of mutual insurer.--The office ~~department~~ shall  
14 revoke the authority of a domestic mutual insurer to issue  
15 policies without contingent liability if at any time the  
16 insurer's assets are less than the sum of its liabilities and  
17 the surplus required for such authority, or if the insurer, by  
18 resolution of its board of directors approved by a majority of  
19 its members, requests that the authority be revoked. During  
20 the absence of such authority, the insurer shall not issue any  
21 policy without providing therein for the contingent liability  
22 of the policyholder, nor renew any policy which is renewable  
23 at the option of the insurer without endorsing the same to  
24 provide for such contingent liability. Such renewal or  
25 endorsement shall bear conspicuously on its face the provision  
26 for contingent liability of the policyholder.

27           Section 1276. Section 628.371, Florida Statutes, is  
28 amended to read:

29           628.371 Dividends to stockholders.--

30           (1) A domestic stock insurer shall not pay any  
31 dividend or distribute cash or other property to stockholders

1 except out of that part of its available and accumulated  
2 surplus funds which is derived from realized net operating  
3 profits on its business and net realized capital gains.

4 (2) Dividend payments or distributions to  
5 stockholders, without prior written approval of the office  
6 ~~department~~, shall not exceed the larger of:

7 (a) The lesser of 10 percent of surplus or net gain  
8 from operations (life and health companies) or net income  
9 (property and casualty companies), not including realized  
10 capital gains, plus a 2-year carryforward for property and  
11 casualty companies;

12 (b) Ten percent of surplus, with dividends payable  
13 constrained to unassigned funds minus 25 percent of unrealized  
14 capital gains;

15 (c) The lesser of 10 percent of surplus or net  
16 investment income (net gain before capital gains for life and  
17 health companies) plus a 3-year carryforward (2-year  
18 carryforward for life and health companies) with dividends  
19 payable constrained to unassigned funds minus 25 percent of  
20 unrealized capital gains.

21 (3) In lieu of the provisions in subsection (2), an  
22 insurer may pay a dividend or make a distribution without the  
23 prior written approval of the office ~~department~~ when:

24 (a) The dividend is equal to or less than the greater  
25 of:

26 1. Ten percent of the insurer's surplus as to  
27 policyholders derived from realized net operating profits on  
28 its business and net realized capital gains; or

29 2. The insurer's entire net operating profits and  
30 realized net capital gains derived during the immediately  
31 preceding calendar year; and

1           (b) The insurer will have surplus as to policyholders  
2 equal to or exceeding 115 percent of the minimum required  
3 statutory surplus as to policyholders after the dividend or  
4 distribution is made; and

5           (c) The insurer has filed notice with the office  
6 ~~department~~ at least 10 business days prior to the dividend  
7 payment or distribution, or such shorter period of time as  
8 approved by the office ~~department~~ on a case-by-case basis.  
9 Such notice shall not create a right in the office ~~department~~  
10 to approve or disapprove a dividend otherwise properly payable  
11 hereunder; and

12           (d) The notice includes a certification by an officer  
13 of the insurer attesting that after payment of the dividend or  
14 distribution the insurer will have at least 115 percent of  
15 required statutory surplus as to policyholders.

16           (4) The office ~~department~~ shall not approve a dividend  
17 or distribution in excess of the maximum amount allowed in  
18 subsection (1) unless, considering the following factors, it  
19 determines that the distribution or dividend would not  
20 jeopardize the financial condition of the insurer:

21           (a) The liquidity, quality, and diversification of the  
22 insurer's assets and the effect on its ability to meet its  
23 obligations.

24           (b) Reduction of investment portfolio and investment  
25 income.

26           (c) Effects on the written premium to surplus ratios  
27 as required by the Florida Insurance Code.

28           (d) Industrywide financial conditions.

29           (e) Prior dividend distributions of the insurer.

30           (f) Whether the dividend is only a "pass-through"  
31 dividend from a subsidiary of the insurer.

1           Section 1277. Subsection (3) of section 628.391,  
2 Florida Statutes, is amended to read:

3           628.391 Illegal dividends; penalty.--

4           (3) The office ~~department~~ may revoke or suspend the  
5 certificate of authority of an insurer which has declared or  
6 paid such an illegal dividend.

7           Section 1278. Subsections (3) and (4) of section  
8 628.401, Florida Statutes, are amended to read:

9           628.401 Borrowed surplus.--

10          (3) Any such loan to a domestic stock or mutual  
11 insurer shall be subject to the approval of the office  
12 ~~department~~ for the issue and the rate of interest to be paid.  
13 The insurer shall, in advance of the loan, file with the  
14 office ~~department~~ a statement of the purpose of the loan and a  
15 copy of the proposed loan agreement. The office ~~department~~  
16 shall disapprove any proposed loan or agreement if it finds  
17 that the loan is unnecessary or excessive for the purpose  
18 intended; that the terms of the loan agreement are not fair  
19 and equitable to the parties and to other similar lenders, if  
20 any, to the insurer; or that the information so filed by the  
21 insurer is inadequate.

22          (4) Any such loan to a domestic stock or mutual  
23 insurer, or a substantial portion thereof, shall be repaid by  
24 the insurer when no longer reasonably necessary for the  
25 purpose originally intended. No repayment of such a loan  
26 shall be made by a domestic stock or mutual insurer unless  
27 approved in advance by the office ~~department~~.

28          Section 1279. Subsections (1) and (4) of section  
29 628.411, Florida Statutes, are amended to read:

30          628.411 Impairment of capital or assets.--

31

1           (1) If a domestic stock insurer's capital, as  
2 represented by the aggregate par value of its outstanding  
3 capital stock, becomes impaired, or if the assets of a mutual  
4 insurer are less than the sum of its liabilities and the  
5 minimum amount of surplus required to be maintained by it, the  
6 office ~~department~~ shall at once determine the amount of  
7 deficiency and serve notice upon the insurer to make good the  
8 deficiency within 90 days after service of such notice.

9           (4) If the deficiency is not made good and proof  
10 thereof filed with the office ~~department~~ within such 90-day  
11 period, the insurer shall be deemed insolvent and the office  
12 ~~department~~ shall institute delinquency proceedings against it  
13 under chapter 631; except that if such deficiency exists  
14 because of increased loss reserves required by the office  
15 ~~department~~, or because of disallowance by the office  
16 ~~department~~ of certain assets or reduction of the value at  
17 which carried in the insurer's accounts, the office ~~department~~  
18 may, in its discretion and upon application and good cause  
19 shown, and if it finds that the establishment or maintenance  
20 of such inadequate reserves or overvalued assets was not  
21 willful on the part of the insurer, extend for not more than  
22 an additional 60 days the period within which such deficiency  
23 may be so made good and such proof thereof so filed.

24           Section 1280. Subsection (1) of section 628.421,  
25 Florida Statutes, is amended to read:

26           628.421 Assessment of stockholders or members.--

27           (1) Any insurer receiving the notice of the office  
28 ~~department~~ mentioned in s. 628.411(1):

29           (a) If a stock insurer, by resolution of its board of  
30 directors and subject to any limitations upon assessment  
31 contained in its certificate of incorporation, may assess its

1 stockholders for amounts necessary to cure the deficiency and  
2 provide the insurer with a reasonable amount of surplus in  
3 addition. If any stockholder fails to pay a lawful assessment  
4 after notice given to him or her in person or by advertisement  
5 in such time and manner as approved by the office ~~department~~,  
6 the insurer may require the return of the original certificate  
7 of stock held by the stockholder and, in cancellation and in  
8 lieu thereof, issue a new certificate for such number of  
9 shares as the stockholder may then be entitled to, upon the  
10 basis of the stockholder's proportionate interest in the  
11 amount of the insurer's capital stock as determined by the  
12 office ~~department~~ to be remaining at the time of determination  
13 of the amount of impairment under s. 628.411, after deducting  
14 from such proportionate interest the amount of such unpaid  
15 assessment. The insurer may pay for or issue fractional  
16 shares under this subsection.

17 (b) If a mutual insurer, shall levy such an assessment  
18 upon members as is provided for under s. 628.321.

19 Section 1281. Subsections (1) and (2) of section  
20 628.431, Florida Statutes, are amended to read:

21 628.431 Mutualization of stock insurers.--

22 (1) A stock insurer other than a title insurer may  
23 become a mutual insurer under such plan and procedure as may  
24 be approved by the office ~~department~~.

25 (2) The office ~~department~~ shall not approve any such  
26 plan, procedure, or mutualization unless:

27 (a) It is equitable to stockholders and policyholders;

28 (b) It is subject to approval by the holders of not  
29 less than three-fourths of the insurer's outstanding capital  
30 stock having voting rights and by not less than two-thirds of  
31 the insurer's policyholders who vote on such plan in person,

1 by proxy, or by mail pursuant to such notice and procedure as  
2 may be approved by the office ~~department~~;

3 (c) If a life insurer, the right to vote thereon is  
4 limited to holders of policies other than term or group  
5 policies, and whose policies have been in force for more than  
6 1 year;

7 (d) Mutualization will result in retirement of shares  
8 of the insurer's capital stock at a price not in excess of the  
9 fair market value thereof as determined by competent  
10 disinterested appraisers;

11 (e) The plan provides for the purchase of the shares  
12 of any nonconsenting stockholder in the same manner and  
13 subject to the same applicable conditions as provided by s.  
14 607.247, as to rights of nonconsenting stockholders, with  
15 respect to consolidation or merger of private corporations;

16 (f) The plan provides for definite conditions to be  
17 fulfilled by a designated early date upon which such  
18 mutualization will be deemed effective; and

19 (g) The mutualization leaves the insurer with surplus  
20 funds reasonably adequate for the security of its  
21 policyholders and to enable it to continue successfully in  
22 business in the states in which it is then authorized to  
23 transact insurance, and for the kinds of insurance included in  
24 its certificates of authority in such states.

25 Section 1282. Section 628.441, Florida Statutes, is  
26 amended to read:

27 628.441 Converting mutual insurer.--

28 (1) A mutual insurer may become a stock insurer under  
29 such plan and procedure as may be approved by the office  
30 ~~department~~.

31

1           (2) The office ~~department~~ shall not approve any such  
2 plan or procedure unless:

3           (a) It is equitable to the insurer's members;

4           (b) It is subject to approval by vote of not less than  
5 three-fourths of the insurer's current members voting thereon  
6 in person, by proxy, or by mail at a meeting of members called  
7 for the purpose pursuant to such reasonable notice and  
8 procedure as may be approved by the office ~~department~~; if a  
9 life insurer, the right to vote may be limited to members who  
10 hold policies other than term or group policies, and whose  
11 policies have been in force for not less than 1 year;

12           (c) The corporate equity of each policyholder in the  
13 insurer, other than as to unearned premiums, nonforfeiture  
14 rights, and benefit claims under his or her policy, is  
15 determinable under a fair formula approved by the office  
16 ~~department~~, which equity shall be based upon not less than the  
17 insurer's entire surplus, after deducting contributed or  
18 borrowed surplus funds, plus a reasonable present equity in  
19 its reserves and in all nonadmitted assets;

20           (d) The policyholders entitled to participate in the  
21 purchase of stock or distribution of assets shall include all  
22 current policyholders and all existing persons who had been  
23 policyholders of the insurer within 3 years prior to the date  
24 such plan was submitted to the office ~~department~~;

25           (e) The plan gives to each policyholder of the insurer  
26 as specified in paragraph (d) a preemptive right to acquire  
27 his or her proportionate part of all of the proposed capital  
28 stock of the insurer, within a designated reasonable period,  
29 and to apply upon the purchase thereof the amount of his or  
30 her equity in the insurer as determined under paragraph (c);

31

1 (f) Shares are so offered to policyholders at a price  
2 not greater than to be thereafter offered to others;

3 (g) The plan provides for payment of cash to each  
4 policyholder not electing to apply his or her equity in the  
5 insurer toward the purchase price of stock to which he or she  
6 is preemptively entitled. The amount so paid shall be not less  
7 than 50 percent of the amount of the policyholder's equity not  
8 so used for the purchase of stock. Such cash payment together  
9 with stock so purchased, if any, shall constitute full payment  
10 and discharge of the policyholder's corporate equity in such  
11 mutual insurer; and

12 (h) The plan, when completed, would provide for the  
13 converted insurer paid-in capital stock in an amount not less  
14 than the minimum paid-in capital required of a domestic stock  
15 insurer transacting like kinds of insurance, together with  
16 surplus funds in amounts not less than one-half of such  
17 required capital.

18 Section 1283. Subsection (2) of section 628.451,  
19 Florida Statutes, is amended to read:

20 628.451 Merger or share exchange of stock insurers and  
21 other entities.--

22 (2) No such merger or share exchange shall be  
23 effectuated unless in advance thereof the plan and agreement  
24 therefor have been filed with the office ~~department~~ and  
25 approved by it. The office ~~department~~ shall give such approval  
26 provided it finds such plan or agreement:

27 (a) Is in compliance with law;

28 (b) Is fair to the stockholders of or other holders of  
29 interests in any insurer or self-insurer involved; and

30  
31

1 (c) Would not substantially reduce the security of and  
2 service to be rendered to policyholders of the domestic  
3 insurer in this state or elsewhere.

4 Section 1284. Section 628.461, Florida Statutes, is  
5 amended to read:

6 628.461 Acquisition of controlling stock.--

7 (1) No person shall, individually or in conjunction  
8 with any affiliated person of such person, acquire directly or  
9 indirectly, conclude a tender offer or exchange offer for,  
10 enter into any agreement to exchange securities for, or  
11 otherwise finally acquire 5 percent or more of, the  
12 outstanding voting securities of a domestic stock insurer or  
13 of a controlling company, unless:

14 (a) The person or affiliated person has filed with the  
15 office ~~department~~ and sent to the insurer and controlling  
16 company a statement as specified in subsection (3) no later  
17 than 5 days after any form of tender offer or exchange offer  
18 is proposed, or no later than 5 days after the acquisition of  
19 the securities if no tender offer or exchange offer is  
20 involved; and

21 (b) The office ~~department~~ has approved the tender or  
22 exchange offer, or acquisition if no tender offer or exchange  
23 offer is involved, and approval is in effect.

24  
25 In lieu of a filing as required under this subsection, a party  
26 acquiring less than 10 percent of the outstanding voting  
27 securities of an insurer may file a disclaimer of affiliation  
28 and control. The disclaimer shall fully disclose all material  
29 relationships and basis for affiliation between the person and  
30 the insurer as well as the basis for disclaiming the  
31 affiliation and control. After a disclaimer has been filed,

1 the insurer shall be relieved of any duty to register or  
2 report under this section which may arise out of the insurer's  
3 relationship with the person unless and until the office  
4 ~~department~~ disallows the disclaimer. The office ~~department~~  
5 shall disallow a disclaimer only after furnishing all parties  
6 in interest with notice and opportunity to be heard and after  
7 making specific findings of fact to support the disallowance.  
8 A filing as required under this subsection must be made as to  
9 any acquisition that equals or exceeds 10 percent of the  
10 outstanding voting securities.

11 (2) This section does not apply to any acquisition of  
12 voting securities of a domestic stock insurer or of a  
13 controlling company by any person who, on July 1, 1976, is the  
14 owner of a majority of such voting securities or who, on or  
15 after July 1, 1976, becomes the owner of a majority of such  
16 voting securities with the approval of the office ~~department~~  
17 pursuant to this section.

18 (3) The statement to be filed with the office  
19 ~~department~~ and furnished to the insurer and controlling  
20 company shall contain the following information and any  
21 additional information as the office deems ~~department may deem~~  
22 necessary to determine the character, experience, ability, and  
23 other qualifications of the person or affiliated person of  
24 such person for the protection of the policyholders and  
25 shareholders of the insurer and the public:

26 (a) The identity of, and the background information  
27 specified in subsection (4) on, each natural person by whom,  
28 or on whose behalf, the acquisition is to be made; and, if the  
29 acquisition is to be made by, or on behalf of, a corporation,  
30 association, or trust, as to the corporation, association, or  
31 trust and as to any person who controls either directly or

1 indirectly the corporation, association, or trust, the  
2 identity of, and the background information specified in  
3 subsection (4) on, each director, officer, trustee, or other  
4 natural person performing duties similar to those of a  
5 director, officer, or trustee for the corporation,  
6 association, or trust;

7 (b) The source and amount of the funds or other  
8 consideration used, or to be used, in making the acquisition;

9 (c) Any plans or proposals which such persons may have  
10 made to liquidate such insurer, to sell any of its assets or  
11 merge or consolidate it with any person, or to make any other  
12 major change in its business or corporate structure or  
13 management; and any plans or proposals which such persons may  
14 have made to liquidate any controlling company of such  
15 insurer, to sell any of its assets or merge or consolidate it  
16 with any person, or to make any other major change in its  
17 business or corporate structure or management;

18 (d) The number of shares or other securities which the  
19 person or affiliated person of such person proposes to  
20 acquire, the terms of the proposed acquisition, and the manner  
21 in which the securities are to be acquired; and

22 (e) Information as to any contract, arrangement, or  
23 understanding with any party with respect to any of the  
24 securities of the insurer or controlling company, including,  
25 but not limited to, information relating to the transfer of  
26 any of the securities, option arrangements, puts or calls, or  
27 the giving or withholding of proxies, which information names  
28 the party with whom the contract, arrangement, or  
29 understanding has been entered into and gives the details  
30 thereof.

31

1           (4)(a) The information as to the background and  
2 identity of each person, which information is required to be  
3 furnished pursuant to paragraph (3)(a), shall include:

4           1. The person's occupations, positions of employment,  
5 and offices held during the past 10 years.

6           2. The principal business and address of any business,  
7 corporation, or other organization in which each such office  
8 of the person was held or in which each such occupation or  
9 position of employment was carried on.

10          3. Whether the person was, at any time during such  
11 10-year period, convicted of any crime other than a traffic  
12 violation.

13          4. Whether the person has been, during such 10-year  
14 period, the subject of any proceeding for the revocation of  
15 any license and, if so, the nature of the proceeding and the  
16 disposition of the proceeding.

17          5. Whether, during the 10-year period, the person has  
18 been the subject of any proceeding under the federal  
19 Bankruptcy Act or whether, during the 10-year period, any  
20 corporation, partnership, firm, trust, or association in which  
21 the person was a director, officer, trustee, partner, or other  
22 official has been subject to any such proceeding, either  
23 during the time in which the person was a director, officer,  
24 trustee, partner, or other official or within 12 months  
25 thereafter.

26          6. Whether, during the 10-year period, the person has  
27 been enjoined, either temporarily or permanently, by a court  
28 of competent jurisdiction from violating any federal or state  
29 law regulating the business of insurance, securities, or  
30 banking, or from carrying out any particular practice or  
31 practices in the course of the business of insurance,

1 securities, or banking, together with details as to any such  
2 event.

3 (b) Any corporation, association, or trust filing the  
4 statement required by this section shall give all required  
5 information that is within the knowledge of the directors,  
6 officers, or trustees (or others performing functions similar  
7 to those of a director, officer, or trustee) of the  
8 corporation, association, or trust making the filing and of  
9 any person controlling either directly or indirectly such  
10 corporation, association, or trust. A copy of the statement  
11 and any amendments to the statement shall be sent by  
12 registered mail to the insurer at its principal office within  
13 the state and to any controlling company at its principal  
14 office. If any material change occurs in the facts set forth  
15 in the statement filed with the office ~~department~~ and sent to  
16 such insurer or controlling company pursuant to this section,  
17 an amendment setting forth such changes shall be filed  
18 immediately with the office ~~department~~ and sent immediately to  
19 such insurer and controlling company.

20 (5)(a) The acquisition of voting securities shall be  
21 deemed approved unless the office ~~department~~ disapproves the  
22 proposed acquisition within 90 days after the statement  
23 required by subsection (1) has been filed. The office  
24 ~~department~~ may on its own initiate, or if requested to do so  
25 in writing by a substantially affected party shall conduct, a  
26 proceeding to consider the appropriateness of the proposed  
27 filing. The 90-day time period shall be tolled during the  
28 pendency of the proceeding. Any written request for a  
29 proceeding must be filed with the office ~~department~~ within 10  
30 days of the date notice of the filing is given. During the  
31 pendency of the proceeding or review period by the office

1 ~~department~~, any person or affiliated person complying with the  
2 filing requirements of this section may proceed and take all  
3 steps necessary to conclude the acquisition so long as the  
4 acquisition becoming final is conditioned upon obtaining  
5 office ~~departmental~~ approval. The office ~~department~~ shall,  
6 however, at any time that it finds an immediate danger to the  
7 public health, safety, and welfare of the domestic  
8 policyholders exists, immediately order, pursuant to s.  
9 120.569(2)(n), the proposed acquisition temporarily  
10 disapproved and any further steps to conclude the acquisition  
11 ceased.

12 (b) During the pendency of the office's ~~department's~~  
13 review of any acquisition subject to the provisions of this  
14 section, the acquiring person shall not make any material  
15 change in the operation of the insurer or controlling company  
16 unless the office ~~department~~ has specifically approved the  
17 change nor shall the acquiring person make any material change  
18 in the management of the insurer unless advance written notice  
19 of the change in management is furnished to the office  
20 ~~department~~. A material change in the operation of the insurer  
21 is a transaction which disposes of or obligates 5 percent or  
22 more of the capital and surplus of the insurer. A material  
23 change in the management of the insurer is any change in  
24 management involving officers or directors of the insurer or  
25 any person of the insurer or controlling company having  
26 authority to dispose of or obligate 5 percent or more of the  
27 insurer's capital or surplus. The office ~~department~~ shall  
28 approve a material change in operation if it finds the  
29 applicable provisions of subsection (7) have been met. The  
30 office ~~department~~ may disapprove a material change in  
31 management if it finds that the applicable provisions of

1 subsection (7) have not been met and in such case the insurer  
2 shall promptly change management as acceptable to the office  
3 ~~department~~.

4 (c) If a request for a proceeding is filed, the  
5 proceeding shall be conducted within 60 days after the date  
6 the written request for a proceeding is received by the office  
7 ~~department~~. A recommended order shall be issued within 20 days  
8 of the date of the close of the proceedings. A final order  
9 shall be issued within 20 days of the date of the recommended  
10 order or, if exceptions to the recommended order are filed,  
11 within 20 days of the date the exceptions are filed.

12 (6) The office ~~department~~ may disapprove any  
13 acquisition subject to the provisions of this section by any  
14 person or any affiliated person of such person who:

15 (a) Willfully violates this section;

16 (b) In violation of an order of the office ~~department~~  
17 issued pursuant to subsection (10), fails to divest himself or  
18 herself of any stock obtained in violation of this section, or  
19 fails to divest himself or herself of any direct or indirect  
20 control of such stock, within 25 days after such order; or

21 (c) In violation of an order issued by the office  
22 ~~department~~ pursuant to subsection (10), acquires additional  
23 stock of the domestic insurance company or controlling  
24 company, or direct or indirect control of such stock, without  
25 complying with this section.

26 (7) The person or persons filing the statement  
27 required by subsection (1) shall have the burden of proof. The  
28 office ~~department~~ shall approve any such acquisition if it  
29 finds, on the basis of the record made during any proceeding  
30 or on the basis of the filed statement if no proceeding is  
31 conducted, that:

1           (a) Upon completion of the acquisition, the domestic  
2 stock insurer will be able to satisfy the requirements for the  
3 issuance of a license to write the line or lines of insurance  
4 for which it is presently licensed;

5           (b) The financial condition of the acquiring person or  
6 persons will not jeopardize the financial stability of the  
7 insurer or prejudice the interests of its policyholders or the  
8 public;

9           (c) Any plan or proposal which the acquiring person  
10 has, or acquiring persons have, made:

11           1. To liquidate the insurer, sell its assets, or merge  
12 or consolidate it with any person, or to make any other major  
13 change in its business or corporate structure or management;  
14 or

15           2. To liquidate any controlling company, sell its  
16 assets, or merge or consolidate it with any person, or to make  
17 any major change in its business or corporate structure or  
18 management which would have an effect upon the insurer

19  
20 is fair and free of prejudice to the policyholders of the  
21 domestic stock insurer or to the public;

22           (d) The competence, experience, and integrity of those  
23 persons who will control directly or indirectly the operation  
24 of the domestic stock insurer indicate that the acquisition is  
25 in the best interest of the policyholders of the insurer and  
26 in the public interest;

27           (e) The natural persons for whom background  
28 information is required to be furnished pursuant to this  
29 section have such backgrounds as to indicate that it is in the  
30 best interests of the policyholders of the domestic stock

31

1 insurer, and in the public interest, to permit such persons to  
2 exercise control over such domestic stock insurer;

3 (f) The officers and directors to be employed after  
4 the acquisition have sufficient insurance experience and  
5 ability to assure reasonable promise of successful operation;

6 (g) The management of the insurer after the  
7 acquisition will be competent and trustworthy and will possess  
8 sufficient managerial experience so as to make the proposed  
9 operation of the insurer not hazardous to the insurance-buying  
10 public;

11 (h) The management of the insurer after the  
12 acquisition will not include any person who has directly or  
13 indirectly through ownership, control, reinsurance  
14 transactions, or other insurance or business relations  
15 unlawfully manipulated the assets, accounts, finances, or  
16 books of any insurer or otherwise acted in bad faith with  
17 respect thereto;

18 (i) The acquisition is not likely to be hazardous or  
19 prejudicial to the insurer's policyholders or the public; and

20 (j) The effect of the acquisition of control would not  
21 substantially lessen competition in insurance in this state or  
22 would not tend to create a monopoly therein.

23 (8) No vote by the stockholder of record, or by any  
24 other person, of any security acquired in contravention of the  
25 provisions of this section is valid. Any acquisition of any  
26 security contrary to the provisions of this section is void.  
27 Upon the petition of the domestic stock insurer or controlling  
28 company, the circuit court for the county in which the  
29 principal office of such domestic stock insurer is located  
30 may, without limiting the generality of its authority, order  
31 the issuance or entry of an injunction or other order to

1 enforce the provisions of this section. There shall be a  
2 private right of action in favor of the domestic stock insurer  
3 or controlling company to enforce the provisions of this  
4 section. No demand upon the office ~~department~~ that it perform  
5 its functions shall be required as a prerequisite to any suit  
6 by the domestic stock insurer or controlling company against  
7 any other person, and in no case shall the office ~~department~~  
8 be deemed a necessary party to any action by such domestic  
9 stock insurer or controlling company to enforce the provisions  
10 of this section. Any person who makes or proposes an  
11 acquisition requiring the filing of a statement pursuant to  
12 this section, or who files such a statement, shall be deemed  
13 to have thereby designated the Chief Financial Officer  
14 ~~Insurance Commissioner and Treasurer~~, or his or her assistant  
15 or deputy or another person in charge of his or her office, as  
16 such person's agent for service of process under this section,  
17 and shall thereby be deemed to have submitted himself or  
18 herself to the administrative jurisdiction of the office  
19 ~~department~~ and to the jurisdiction of the circuit court.

20 (9) Any approval by the office ~~department~~ under this  
21 section does not constitute a recommendation by the office  
22 ~~department~~ for an acquisition, tender offer, or exchange  
23 offer. It is unlawful for a person to represent that the  
24 office's ~~department's~~ approval constitutes a recommendation. A  
25 person who violates the provisions of this subsection is  
26 guilty of a felony of the third degree, punishable as provided  
27 in s. 775.082, s. 775.083, or s. 775.084. The  
28 statute-of-limitations period for the prosecution of an  
29 offense committed under this subsection is 5 years.

30 (10) Upon notification to the office ~~department~~ by the  
31 domestic stock insurer or a controlling company that any

1 person or any affiliated person of such person has acquired 5  
2 percent or more of the outstanding voting securities of the  
3 domestic stock insurer or controlling company without  
4 complying with the provisions of this section, the office  
5 ~~department~~ shall order that the person and any affiliated  
6 person of such person cease acquisition of any further  
7 securities of the domestic stock insurer or controlling  
8 company; however, the person or any affiliated person of such  
9 person may request a proceeding, which proceeding shall be  
10 convened within 7 days after the rendering of the order for  
11 the sole purpose of determining whether the person,  
12 individually or in connection with any affiliated person of  
13 such person, has acquired 5 percent or more of the outstanding  
14 voting securities of a domestic stock insurer or controlling  
15 company. Upon the failure of the person or affiliated person  
16 to request a hearing within 7 days, or upon a determination at  
17 a hearing convened pursuant to this subsection that the person  
18 or affiliated person has acquired voting securities of a  
19 domestic stock insurer or controlling company in violation of  
20 this section, the office ~~department~~ may order the person and  
21 affiliated person to divest themselves of any voting  
22 securities so acquired.

23 (11)(a) The office ~~department~~ shall, if necessary to  
24 protect the public interest, suspend or revoke the certificate  
25 of authority of any insurer or controlling company:

26 1. The control of which is acquired in violation of  
27 this section;

28 2. That is controlled, directly or indirectly, by any  
29 person or any affiliated person of such person who, in  
30 violation of this section, has obtained control of a domestic  
31 stock insurer or controlling company; or

1           3. That is controlled, directly or indirectly, by any  
2 person who, directly or indirectly, controls any other person  
3 who, in violation of this section, acquires control of a  
4 domestic stock insurer or controlling company.

5           (b) If any insurer is subject to suspension or  
6 revocation pursuant to paragraph (a), the insurer shall be  
7 deemed to be in such condition, or to be using or to have been  
8 subject to such methods or practices in the conduct of its  
9 business, as to render its further transaction of insurance  
10 presently or prospectively hazardous to its policyholders,  
11 creditors, or stockholders or to the public.

12           (12)(a) For the purpose of this section, the term  
13 "affiliated person" of another person means:

14           1. The spouse of such other person;

15           2. The parents of such other person and their lineal  
16 descendants and the parents of such other person's spouse and  
17 their lineal descendants;

18           3. Any person who directly or indirectly owns or  
19 controls, or holds with power to vote, 5 percent or more of  
20 the outstanding voting securities of such other person;

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

24           5. Any person or group of persons who directly or  
25 indirectly control, are controlled by, or are under common  
26 control with such other person;

27           6. Any officer, director, partner, copartner, or  
28 employee of such other person;

29           7. If such other person is an investment company, any  
30 investment adviser of such company or any member of an  
31 advisory board of such company;

1           8. If such other person is an unincorporated  
2 investment company not having a board of directors, the  
3 depositor of such company; or

4           9. Any person who has entered into an agreement,  
5 written or unwritten, to act in concert with such other person  
6 in acquiring or limiting the disposition of securities of a  
7 domestic stock insurer or controlling company.

8           (b) For the purposes of this section, the term  
9 "controlling company" means any corporation, trust, or  
10 association owning, directly or indirectly, 25 percent or more  
11 of the voting securities of one or more domestic stock  
12 insurance companies.

13           (13) The commission may ~~department is authorized to~~  
14 adopt, amend, or repeal rules that are necessary to implement  
15 the provisions of this section, pursuant to chapter 120.

16           Section 1285. Section 628.4615, Florida Statutes, is  
17 amended to read:

18           628.4615 Specialty insurers; acquisition of  
19 controlling stock, ownership interest, assets, or control;  
20 merger or consolidation.--

21           (1) For the purposes of this section, the term  
22 "specialty insurer" means any person holding a license or  
23 certificate of authority as:

24           (a) A motor vehicle service agreement company  
25 authorized to issue motor vehicle service agreements as those  
26 terms are defined in s. 634.011(7) and (8)~~s. 634.011(8) and~~  
27 ~~(9)~~;

28           (b) A home warranty association authorized to issue  
29 "home warranties" as those terms are defined in s. 634.301(3)  
30 and (4)~~s. 634.301(4) and (5)~~;

31

1 (c) A service warranty association authorized to issue  
2 "service warranties" as those terms are defined in s.  
3 634.401(13) and (14)~~s. 634.401(14) and (15)~~;

4 (d) A prepaid limited health service organization  
5 authorized to issue prepaid limited health service contracts,  
6 as those terms are defined in chapter 636 ~~An optometric~~  
7 ~~service plan corporation authorized to issue optometric~~  
8 ~~service plan contracts as those terms are defined in s.~~  
9 ~~637.001(2) and (3)~~;

10 ~~(e) A pharmaceutical service plan corporation~~  
11 ~~authorized to issue pharmaceutical service plan contracts as~~  
12 ~~those terms are defined in s. 637.1701(2) and (3)~~;

13 ~~(f) A dental service plan corporation licensed to~~  
14 ~~issue contracts for dental services pursuant to a dental~~  
15 ~~service plan as that term is defined in s. 637.401(1)~~;

16 ~~(g) An ambulance service association authorized to~~  
17 ~~issue ambulance service contracts as those terms are defined~~  
18 ~~in s. 638.021(1) and (2)~~;

19 ~~(e)(h)~~ An authorized health maintenance organization  
20 operating pursuant to s. 641.21;

21 ~~(f)(i)~~ An authorized prepaid health clinic operating  
22 pursuant to s. 641.405;

23 ~~(g)(j)~~ A legal expense insurance corporation  
24 authorized to engage in a legal expense insurance business  
25 pursuant to s. 642.021;

26 ~~(h)(k)~~ A provider which is licensed to operate a  
27 facility which undertakes to provide continuing care as those  
28 terms are defined in s. 651.011(2), (4), (5), and (6), ~~and~~  
29 ~~(7)~~;

30 ~~(i)(l)~~ A multiple-employer welfare arrangement  
31 operating pursuant to ss. 624.436-624.446;

1           (j)~~(m)~~ A premium finance company authorized to finance  
2 insurance premiums pursuant to s. 627.828; or

3           (k)~~(n)~~ A corporation authorized to accept donor  
4 annuity agreements pursuant to s. 627.481.

5           (2) No person shall, individually or in conjunction  
6 with any affiliated person of such person, directly or  
7 indirectly, conclude a tender offer or exchange offer for,  
8 enter into any agreement to exchange securities for, or  
9 otherwise finally acquire, 10 percent or more of the  
10 outstanding voting securities of a specialty insurer which is  
11 a stock corporation or of a controlling company of a specialty  
12 insurer which is a stock corporation; or conclude an  
13 acquisition of, or otherwise finally acquire, 10 percent or  
14 more of the ownership interest of a specialty insurer which is  
15 not a stock corporation or of a controlling company of a  
16 specialty insurer which is not a stock corporation, unless:

17           (a) The person or affiliated person has filed with the  
18 office ~~department~~ and sent by registered mail to the principal  
19 office of the specialty insurer and controlling company an  
20 application, signed under oath and prepared on forms  
21 prescribed by the commission ~~department~~, that contains the  
22 information specified in subsection (4) no later than 5 days  
23 after any form of tender offer or exchange offer is proposed,  
24 or no later than 5 days after the acquisition of the  
25 securities or ownership interest if no tender offer or  
26 exchange offer is involved.

27           (b) The office ~~department~~ has approved the tender  
28 offer or exchange offer, or acquisition if no tender offer or  
29 exchange offer is involved.

30           (3) This section does not apply to any acquisition of  
31 voting securities or ownership interest of a specialty insurer

1 or of a controlling company by any person who, on July 9,  
2 1986, is the owner of a majority of such voting securities or  
3 ownership interest or who, on or after July 9, 1986, becomes  
4 the owner of a majority of such voting securities or ownership  
5 interest with the approval of the office ~~department~~ pursuant  
6 to this section.

7 (4) The application to be filed with the office  
8 ~~department~~ and furnished to the specialty insurer and  
9 controlling company shall contain the following information  
10 and any additional information as the office deems ~~department~~  
11 ~~may deem~~ necessary to determine the character, experience,  
12 ability, and other qualifications of the person or affiliated  
13 person of such person for the protection of the insureds of  
14 the insurer and of the public:

15 (a)1. The identity of, and the background information  
16 specified in subsection (5) on, each natural person by whom,  
17 or on whose behalf, the acquisition is to be made; and,

18 2. If the acquisition is to be made by, or on behalf  
19 of, a person other than a natural person and as to any person  
20 who controls, either directly or indirectly, such other  
21 person, the identity of, and the background information  
22 specified in subsection (5) on:

23 a. Each director, officer, or trustee, if a  
24 corporation, or

25 b. Each partner, owner, manager, or joint venturer, or  
26 other person performing duties similar to those of persons in  
27 the aforementioned positions, if not a corporation,

28

29 for the person.

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

1           (c) Any plans or proposals which such persons may have  
2 made to liquidate the specialty insurer, to sell any of its  
3 assets or merge or consolidate it with any person, or to make  
4 any other major change in its business or corporate structure  
5 or management; and any plans or proposals which such persons  
6 may have made to liquidate any controlling company of the  
7 specialty insurer, to sell any of its assets or merge or  
8 consolidate it with any person, or to make any other major  
9 change in its business or corporate structure or management.

10           (d) The nature and the extent of the controlling  
11 interest which the person or affiliated person of such person  
12 proposes to acquire, the terms of the proposed acquisition,  
13 and the manner in which the controlling interest is to be  
14 acquired of a specialty insurer or controlling company which  
15 is not a stock corporation.

16           (e) The number of shares or other securities which the  
17 person or affiliated person of such person proposes to  
18 acquire, the terms of the proposed acquisition, and the manner  
19 in which the securities are to be acquired.

20           (f) Information as to any contract, arrangement, or  
21 understanding with any party with respect to any of the  
22 securities of the specialty insurer or controlling company,  
23 including, but not limited to, information relating to the  
24 transfer of any of the securities, option arrangements, puts  
25 or calls, or the giving or withholding of proxies, which  
26 information names the party with whom the contract,  
27 arrangement, or understanding has been entered into and gives  
28 the details thereof.

29           (5)(a) The information as to the background and  
30 identity of each natural person, which information is required  
31 to be furnished pursuant to paragraph (4)(a), shall include:

1           1. The natural person's occupations, positions of  
2 employment, and offices held during the past 10 years.

3           2. The principal business and address of any business,  
4 corporation, or organization in which each such office of the  
5 natural person was held, or in which each such occupation or  
6 position of employment was carried on.

7           3. Whether the natural person was, at any time during  
8 such 10-year period, convicted of any crime other than a  
9 traffic violation.

10          4. Whether the natural person has been, during such  
11 10-year period, the subject of any proceeding for the  
12 revocation of any license and, if so, the nature of the  
13 proceeding and the disposition of the proceeding.

14          5. Whether, during the 10-year period, the natural  
15 person has been the subject of any proceeding under the  
16 federal Bankruptcy Act; or whether, during the 10-year period,  
17 any person or other business or organization in which the  
18 natural person was a director, officer, trustee, partner,  
19 owner, manager, or other official has been subject to any such  
20 proceeding, either during the time in which the natural person  
21 was a director, officer, or trustee, if a corporation, or a  
22 partner, owner, manager, joint venturer, or other official, if  
23 not a corporation, or within 12 months thereafter.

24          6. Whether, during the 10-year period, the natural  
25 person has been enjoined, either temporarily or permanently,  
26 by a court of competent jurisdiction from violating any  
27 federal or state law regulating the business of insurance,  
28 securities, or banking, or from carrying out any particular  
29 practice or practices in the course of the business of  
30 insurance, securities, or banking, together with details as to  
31 any such event.

1           7. Fingerprints of each person referred to in  
2 subsection (4).

3           (b) Any person filing the statement required by this  
4 section shall give all required information that is within the  
5 knowledge of:

6           1. The directors, officers, or trustees, if a  
7 corporation, or

8           2. The partners, owners, managers, or joint venturers,  
9 or others performing functions similar to those of a director,  
10 officer, or trustee, if not a corporation,

11  
12 of the person making the filing and of any person controlling  
13 either directly or indirectly such person. If any material  
14 change occurs in the facts set forth in the application filed  
15 with the office ~~department~~ pursuant to this section, an  
16 amendment setting forth such changes shall be filed  
17 immediately with the office ~~department~~, and a copy of the  
18 amendment shall be sent by registered mail to the principal  
19 office of the specialty insurer and to the principal office of  
20 the controlling company.

21           (6)(a) The acquisition application shall be reviewed  
22 in accordance with chapter 120. The office ~~department~~ may on  
23 its own initiate, or, if requested to do so in writing by a  
24 substantially affected person, shall conduct, a proceeding to  
25 consider the appropriateness of the proposed filing. Time  
26 periods for purposes of chapter 120 shall be tolled during the  
27 pendency of the proceeding. Any written request for a  
28 proceeding must be filed with the office ~~department~~ within 10  
29 days of the date notice of the filing is given. During the  
30 pendency of the proceeding or review period by the office  
31 ~~department~~, any person or affiliated person complying with the

1 filing requirements of this section may proceed and take all  
2 steps necessary to conclude the acquisition so long as the  
3 acquisition becoming final is conditioned upon obtaining  
4 office ~~departmental~~ approval. The office ~~department~~ shall,  
5 however, at any time it finds an immediate danger to the  
6 public health, safety, and welfare of the insureds exists,  
7 immediately order, pursuant to s. 120.569(2)(n), the proposed  
8 acquisition disapproved and any further steps to conclude the  
9 acquisition ceased.

10 (b) During the pendency of the office's ~~department's~~  
11 review of any acquisition subject to the provisions of this  
12 section, the acquiring person shall not make any material  
13 change in the operation of the specialty insurer or  
14 controlling company unless the office ~~department~~ has  
15 specifically approved the change nor shall the acquiring  
16 person make any material change in the management of the  
17 specialty insurer unless advance written notice of the change  
18 in management is furnished to the office ~~department~~. A  
19 material change in the operation of the specialty insurer is a  
20 transaction which disposes of or obligates 5 percent or more  
21 of the capital and surplus of the specialty insurer. A  
22 material change in the management of the specialty insurer is  
23 any change in management involving officers or directors of  
24 the specialty insurer or any person of the specialty insurer  
25 or controlling company having authority to dispose of or  
26 obligate 5 percent or more of the specialty insurer's capital  
27 or surplus. The office ~~department~~ shall approve a material  
28 change in operations if it finds the applicable provisions of  
29 subsection (8) have been met. The office ~~department~~ may  
30 disapprove a material change in management if it finds that  
31 the applicable provisions of subsection (8) have not been met

1 and in such case the specialty insurer shall promptly change  
2 management as acceptable to the office ~~department~~.

3 (c) If a request for a proceeding is filed, the  
4 proceeding shall be conducted within 60 days after the date  
5 the written request for a proceeding is received by the office  
6 ~~department~~. A recommended order shall be issued within 20 days  
7 of the date of the close of the proceedings. A final order  
8 shall be issued within 20 days of the date of the recommended  
9 order or, if exceptions to the recommended order are filed,  
10 within 20 days of the date the exceptions are filed.

11 (7) The office ~~department~~ may disapprove any  
12 acquisition subject to the provisions of this section by any  
13 person or any affiliated person of such person who:

14 (a) Willfully violates this section;

15 (b) In violation of an order of the office ~~department~~  
16 issued pursuant to subsection (11), fails to divest himself or  
17 herself of any stock or ownership interest obtained in  
18 violation of this section or fails to divest himself or  
19 herself of any direct or indirect control of such stock or  
20 ownership interest, within 25 days after such order; or

21 (c) In violation of an order issued by the office  
22 ~~department~~ pursuant to subsection (11), acquires an additional  
23 stock or ownership interest in a specialty insurer or  
24 controlling company or direct or indirect control of such  
25 stock or ownership interest, without complying with this  
26 section.

27 (8) The person or persons filing the application  
28 required by subsection (2) shall have the burden of proof. The  
29 office ~~department~~ shall approve any such acquisition if it  
30 finds, on the basis of the record made during any proceeding  
31

1 or on the basis of the filed application if no proceeding is  
2 conducted, that:

3 (a) Upon completion of the acquisition, the specialty  
4 insurer will be able to satisfy the requirements for the  
5 issuance of a license or certificate to write the line of  
6 insurance for which it is presently licensed or certificated.

7 (b) The financial condition of the acquiring person or  
8 persons will not jeopardize the financial stability of the  
9 specialty insurer or prejudice the interests of its insureds  
10 or the public.

11 (c) Any plan or proposal which the acquiring person  
12 has, or acquiring persons have, made:

13 1. To liquidate the specialty insurer, sell its  
14 assets, or merge or consolidate it with any person, or to make  
15 any other major change in its business or corporate structure  
16 or management, or

17 2. To liquidate any controlling company, sell its  
18 assets, or merge or consolidate it with any person, or to make  
19 any major change in its business or corporate structure or  
20 management which would have an effect upon the specialty  
21 insurer,

22  
23 is fair and free of prejudice to the insureds of the specialty  
24 insurer or to the public.

25 (d) The competence, experience, and integrity of those  
26 persons who will control directly or indirectly the operation  
27 of the specialty insurer indicate that the acquisition is in  
28 the best interest of the insureds of the insurer and in the  
29 public interest.

30 (e) The natural persons for whom background  
31 information is required to be furnished pursuant to this

1 section have such backgrounds as to indicate that it is in the  
2 best interests of the insureds of the specialty insurer and in  
3 the public interest to permit such persons to exercise control  
4 over the specialty insurer.

5 (f) The directors and officers, if such specialty  
6 insurer or controlling company is a stock corporation, or the  
7 trustees, partners, owners, managers, or joint venturers or  
8 other persons performing duties similar to those of persons in  
9 the aforementioned positions, if such specialty insurer or  
10 controlling company is not a stock corporation, to be employed  
11 after the acquisition have sufficient insurance experience and  
12 ability to assure reasonable promise of successful operation.

13 (g) The management of the specialty insurer after the  
14 acquisition will be competent and trustworthy, and will  
15 possess sufficient managerial experience so as to make the  
16 proposed operation of the specialty insurer not hazardous to  
17 the insurance-buying public.

18 (h) The management of the specialty insurer after the  
19 acquisition shall not include any person who has directly or  
20 indirectly through ownership, control, reinsurance  
21 transactions, or other insurance or business relations  
22 unlawfully manipulated the assets, accounts, finances, or  
23 books of any insurer or otherwise acted in bad faith with  
24 respect thereto.

25 (i) The acquisition is not likely to be hazardous or  
26 prejudicial to the insureds of the insurer or to the public.

27 (j) The effect of the acquisition would not  
28 substantially lessen competition in the line of insurance for  
29 which the specialty insurer is licensed or certified in this  
30 state or would not tend to create a monopoly therein.

31

1           (9) No vote by the stockholder of record, or by any  
2 other person, of any security acquired in contravention of the  
3 provisions of this section is valid. Any acquisition contrary  
4 to the provisions of this section is void. Upon the petition  
5 of the specialty insurer or the controlling company, the  
6 circuit court for the county in which the principal office of  
7 the specialty insurer is located may, without limiting the  
8 generality of its authority, order the issuance or entry of an  
9 injunction or other order to enforce the provisions of this  
10 section. There shall be a private right of action in favor of  
11 the specialty insurer or controlling company to enforce the  
12 provisions of this section. No demand upon the office  
13 ~~department~~ that it perform its functions shall be required as  
14 a prerequisite to any suit by the specialty insurer or  
15 controlling company against any other person, and in no case  
16 shall the office ~~department~~ be deemed a necessary party to any  
17 action by the specialty insurer or controlling company to  
18 enforce the provisions of this section. Any person who makes  
19 or proposes an acquisition requiring the filing of an  
20 application pursuant to this section, or who files such an  
21 application, shall be deemed to have thereby designated the  
22 Chief Financial Officer ~~Insurance Commissioner and Treasurer~~,  
23 or his or her assistant or deputy or another person in charge  
24 of his or her office, as such person's agent for service of  
25 process under this section and shall thereby be deemed to have  
26 submitted himself or herself to the administrative  
27 jurisdiction of the office ~~department~~ and to the jurisdiction  
28 of the circuit court.

29           (10) Any approval by the office ~~department~~ under this  
30 section does not constitute a recommendation by the office  
31 ~~department~~ of the tender offer or exchange offer, or

1 acquisition, if no tender offer or exchange offer is involved.  
2 It is unlawful for a person to represent that the office's  
3 ~~department's~~ approval constitutes a recommendation. A person  
4 who violates the provisions of this subsection commits a  
5 felony of the third degree, punishable as provided in s.  
6 775.082, s. 775.083, or s. 775.084. The statute-of-limitations  
7 period for the prosecution of an offense committed under this  
8 subsection is 5 years.

9 (11) If the office ~~department~~ determines that any  
10 person or any affiliated person of such person has acquired 10  
11 percent or more of the outstanding voting securities of a  
12 specialty insurer or controlling company which is a stock  
13 corporation, or 10 percent or more of the ownership interest  
14 of a specialty insurer or controlling company which is not a  
15 stock corporation, without complying with the provisions of  
16 this section, the office ~~department~~ may order that the person  
17 and any affiliated person of such person cease acquisition of  
18 the specialty insurer or controlling company and, if  
19 appropriate, divest itself of any stock or ownership interest  
20 acquired in violation of this section.

21 (12)(a) The office ~~department~~ shall, if necessary to  
22 protect the public interest, suspend or revoke the certificate  
23 of authority of any specialty insurer or controlling company  
24 acquired in violation of this section.

25 (b) If any specialty insurer is subject to suspension  
26 or revocation pursuant to paragraph (a), the specialty insurer  
27 shall be deemed to be in such condition, or to be using or to  
28 have been subject to such methods or practices in the conduct  
29 of its business, as to render its further transaction of  
30 insurance presently or prospectively hazardous to its  
31 insureds, creditors, or stockholders or to the public.

1           (13)(a) For the purpose of this section, the term  
2 "acquisition" includes:

3           1. A tender offer or exchange offer for securities,  
4 assets, or other ownership interest;

5           2. An agreement to exchange securities for other  
6 securities, assets, or other ownership interest;

7           3. A merger of a person or affiliated person into a  
8 specialty insurer or a merger of any person with a specialty  
9 insurer;

10           4. A consolidation; or

11           5. Any other form of change of control  
12

13 whereby any person or affiliated person acquires or attempts  
14 to acquire, directly or indirectly, 10 percent or more of the  
15 ownership interest or assets of a specialty insurer or of a  
16 controlling company. However, in the case of a health  
17 maintenance organization organized as a for-profit  
18 corporation, the provisions of s. 628.451 shall govern with  
19 respect to any merger or consolidation, and, in the case of a  
20 health maintenance organization organized as a not-for-profit  
21 corporation, the provisions of s. 628.471 shall govern with  
22 respect to any merger or consolidation.

23           (b) For the purpose of this section, the term  
24 "affiliated person" of another person includes:

25           1. The spouse of such other natural person;

26           2. The parents of such other natural person and their  
27 lineal descendants and the parents of such other natural  
28 person's spouse and their lineal descendants;

29           3. Any person who directly or indirectly owns or  
30 controls, or holds with power to vote, 10 percent or more of  
31 the outstanding voting securities of such other person;

1           4. Any person who directly or indirectly owns 10  
2 percent or more of the outstanding voting securities which are  
3 directly or indirectly owned or controlled, or held with power  
4 to vote, by such other person;

5           5. Any person or group of persons who directly or  
6 indirectly control, are controlled by, or are under common  
7 control with such other person;

8           6. Any director, officer, trustee, partner, owner,  
9 manager, joint venturer, or employee, or other person  
10 performing duties similar to those of persons in the  
11 aforementioned positions, of such other person;

12           7. If such other person is an investment company, any  
13 investment adviser of such company or any member of an  
14 advisory board of such company;

15           8. If such other person is an unincorporated  
16 investment company not having a board of directors, the  
17 depositor of such company; or

18           9. Any person who has entered into an agreement,  
19 written or unwritten, to act in concert with such other person  
20 in acquiring, or limiting the disposition of, securities of a  
21 specialty insurer or controlling company which is a stock  
22 corporation or in acquiring, or limiting the disposition of,  
23 an ownership interest of a specialty insurer or controlling  
24 company which is not a stock corporation.

25           (c) For the purposes of this section, the term  
26 "controlling company" means any corporation, trust, or  
27 association owning, directly or indirectly, 25 percent or more  
28 of the voting securities of one or more specialty insurance  
29 companies which are stock corporations, or 25 percent or more  
30 of the ownership interest of one or more specialty insurance  
31 companies which are not stock corporations.

1 (d) For the purpose of this section, the term "natural  
2 person" means an individual.

3 (e) For the purpose of this section, the term "person"  
4 includes a natural person, corporation, association, trust,  
5 general partnership, limited partnership, joint venture, firm,  
6 proprietorship, or any other entity which may hold a license  
7 or certificate as a specialty insurer.

8 (14) The commission ~~may department is authorized to~~  
9 adopt, amend, or repeal rules that are necessary to implement  
10 the provisions of this section, pursuant to chapter 120.

11 Section 1286. Subsections (3) and (4) of section  
12 628.471, Florida Statutes, are amended to read:

13 628.471 Mergers; mutual insurers.--

14 (3) The plan and agreement for merger shall be  
15 submitted to and approved by at least two-thirds of the  
16 members of each mutual insurer voting thereon at meetings  
17 called for the purpose pursuant to such reasonable notice and  
18 procedure as has been approved by the office ~~department~~. If a  
19 life insurer, the right to vote may be limited to members  
20 whose policies are other than term and group policies and have  
21 been in effect for more than 1 year.

22 (4) No such merger shall be effectuated unless in  
23 advance thereof the plan and agreement therefor have been  
24 filed with the office ~~department~~ and approved by it. The  
25 office ~~department~~ shall give such approval unless it finds  
26 such plan or agreement:

27 (a) Is inequitable to the policyholders of any  
28 domestic insurer involved; or

29 (b) Would substantially reduce the security of and  
30 service to be rendered to policyholders of the domestic  
31 insurer in this state and elsewhere.

1           Section 1287. Section 628.481, Florida Statutes, is  
2 amended to read:

3           628.481 Bulk reinsurance; stock insurers.--

4           (1) A domestic stock insurer may reinsure all or  
5 substantially all of its insurance in force or a major class  
6 thereof, with another insurer by an agreement of bulk  
7 reinsurance; but no such agreement shall become effective  
8 unless filed with the office ~~department~~ and approved by it in  
9 writing.

10           (2) The office ~~department~~ shall approve such agreement  
11 unless it finds that it is inequitable to the stockholders of  
12 the domestic insurer or it would substantially reduce the  
13 protection or service to its policyholders.

14           Section 1288. Section 628.491, Florida Statutes, is  
15 amended to read:

16           628.491 Mergers and consolidations; mutual insurers;  
17 agreement of bulk reinsurance.--

18           (1) A domestic mutual insurer may reinsure all or  
19 substantially all its business in force, or all or  
20 substantially all of a major class thereof, with another  
21 insurer, stock or mutual, by an agreement of bulk reinsurance  
22 after compliance with this section. No such agreement shall  
23 become effective unless filed with the office ~~department~~ and  
24 approved by it.

25           (2) The office ~~department~~ shall approve such agreement  
26 if it finds it to be fair and equitable to each domestic  
27 insurer involved, and that such reinsurance if effectuated  
28 would not substantially reduce the protection or service to  
29 its policyholders.

30           (3) The plan and agreement for such reinsurance must  
31 be approved by vote of not less than two-thirds of each

1 domestic mutual insurer's members voting thereon at meetings  
2 of members called for the purpose, pursuant to such reasonable  
3 notice and procedure as the office ~~department~~ may approve. If  
4 a life insurer, the right to vote may be limited to members  
5 whose policies are other than term or group policies and have  
6 been in effect for more than 1 year.

7 (4) If for reinsurance of a mutual insurer in a stock  
8 insurer, the agreement must provide for payment in cash to  
9 each member of the insurer entitled thereto, as upon  
10 conversion of such insurer pursuant to s. 628.441, of his or  
11 her equity in the business reinsured as determined under a  
12 fair formula approved by the office ~~department~~, which equity  
13 shall be based upon such member's equity in the reserves,  
14 assets (whether or not admitted assets), and surplus, if any,  
15 of the mutual insurer to be taken over by the stock insurer.

16 Section 1289. Section 628.501, Florida Statutes, is  
17 amended to read:

18 628.501 Mutual member's share of assets on  
19 liquidation.--

20 (1) Upon any liquidation of a domestic mutual insurer,  
21 its assets remaining after discharge of its indebtedness,  
22 policy obligations, repayment of contributed or borrowed  
23 surplus, if any, and expenses of administration, shall be  
24 distributed to existing persons who were its members at any  
25 time within 5 years next preceding the date such liquidation  
26 was authorized or ordered, or date of last termination of the  
27 insurer's certificate of authority, whichever date is the  
28 earlier; except, that if the office ~~department~~ has reason to  
29 believe that those in charge of the management of the insurer  
30 have caused or encouraged the reduction of the number of  
31 members of the insurer in anticipation of liquidation and for

1 the purpose of reducing thereby the number of persons who may  
2 be entitled to share in distribution of the insurer's assets,  
3 it may enlarge the 5 years' qualification period above  
4 provided for by such additional period as it may deem to be  
5 reasonable.

6 (2) The distributive share of each such member shall  
7 be in the proportion that the aggregate premiums earned by the  
8 insurer on the policies of the member during the combined  
9 periods of his or her membership bear to the aggregate of all  
10 premiums so earned on the policies of all such members. The  
11 insurer may, and if a life insurer shall, make a reasonable  
12 classification of its policies so held by such members, and a  
13 formula based upon such classification, for determining the  
14 equitable distributive share of each such member. Such  
15 classification and formula shall be subject to the approval of  
16 the office ~~department~~.

17 Section 1290. Subsections (1), (2), and (4) of section  
18 628.511, Florida Statutes, are amended to read:

19 628.511 Book entry accounting system.--

20 (1) The purpose of this section is to authorize  
21 domestic insurers to utilize modern systems for holding and  
22 transferring securities without physical delivery of  
23 securities certificates, subject to appropriate rules of the  
24 commission ~~department~~.

25 (2) The following terms are defined for use in this  
26 section:

27 (a) "Securities" means instruments as defined in s.  
28 678.1021 ~~s. 678.102(1)~~.

29 (b) "Clearing corporation" means a clearing  
30 corporation as defined in s. 678.1021 ~~s. 678.102(3)~~.

31

1 (c) "Direct participant" means a national bank, state  
2 bank or trust company which maintains an account in its name  
3 in a clearing corporation and through which an insurance  
4 company participates in a clearing corporation.

5 (d) "Federal Reserve book-entry system" means the  
6 computerized systems sponsored by the United States Department  
7 of the Treasury and agencies and instrumentalities of the  
8 United States for holding and transferring securities of the  
9 United States Government and such agencies and  
10 instrumentalities, respectively, in Federal Reserve banks  
11 through banks which are members of the Federal Reserve System  
12 or which otherwise have access to such computerized systems.

13 (e) "Member bank" means a national bank, state bank or  
14 trust company which is a member of the Federal Reserve System  
15 and through which an insurer participates in the Federal  
16 Reserve book-entry system.

17 (4) The commission may adopt ~~department is authorized~~  
18 ~~to promulgate~~ rules governing the deposit by insurers of  
19 securities with clearing corporations and in the Federal  
20 Reserve book-entry system.

21 Section 1291. Section 628.520, Florida Statutes, is  
22 amended to read:

23 628.520 Change of domicile of a foreign insurer.--Any  
24 insurer which is organized under the laws of any other state  
25 for the purpose of writing insurance may become a domestic  
26 insurer by complying with all of the requirements of law  
27 relative to the organization and licensing of a domestic  
28 insurer of the same type and by designating its principal  
29 place of business at a place in this state upon approval by  
30 the office ~~department~~. Such domestic insurer shall be entitled  
31 to like certificates and licenses to transact business in this

1 state and shall be subject to the authority and jurisdiction  
2 of this state.

3 Section 1292. Section 628.525, Florida Statutes, is  
4 amended to read:

5 628.525 Change of domicile of a domestic insurer.--Any  
6 domestic insurer may, upon the approval of the office  
7 ~~department~~, transfer its domicile to any other state in which  
8 it is admitted to transact the business of insurance; upon  
9 such a transfer it shall cease to be a domestic insurer and  
10 shall be admitted to this state, if qualified, as a foreign  
11 insurer. The office ~~department~~ shall approve any such  
12 proposed transfer unless it shall determine that such transfer  
13 is not in the interest of the policyholders of this state.

14 Section 1293. Section 628.530, Florida Statutes, is  
15 amended to read:

16 628.530 Effects of redomestication.--The certificate  
17 of authority, agents appointments and licenses, rates, and  
18 other items which the office or department allows, in its  
19 discretion, which are in existence at the time any insurer  
20 licensed to transact the business of insurance in this state  
21 transfers its corporate domicile to this or any other state by  
22 merger, consolidation, merger pursuant to s. 607.1107(5), or  
23 any other lawful method shall continue in full force and  
24 effect upon such transfer if such insurer remains duly  
25 qualified to transact the business of insurance in this state.  
26 All outstanding policies of any transferring insurer shall  
27 remain in full force and effect and need not be endorsed as to  
28 the new name of the company or its new location unless so  
29 ordered by the office ~~department~~. Every transferring insurer  
30 shall file new policy forms with the office ~~department~~ on or  
31 before the effective date of the transfer, but may use

1 existing policy forms with appropriate endorsements if allowed  
2 by, and under such conditions as are approved by, the office  
3 ~~department~~. However, every such transferring insurer shall  
4 notify the office ~~department~~ of the details of the proposed  
5 transfer and shall file promptly any resulting amendments to  
6 corporate documents filed or required to be filed with the  
7 office ~~department~~.

8 Section 1294. Section 628.535, Florida Statutes, is  
9 amended to read:

10 628.535 Authority to adopt ~~promulgate~~ rules.--The  
11 commission may ~~department has authority to~~ adopt rules  
12 pursuant to ss. 120.536(1) and 120.54 to implement the  
13 provisions of this chapter.

14 Section 1295. Subsections (1) and (9) of section  
15 628.6013, Florida Statutes, are amended to read:

16 628.6013 Converted self-insurance fund; trade  
17 association; board of directors.--

18 (1) Any self-insurance fund regulated under the  
19 insurance code other than a commercial self-insurance fund  
20 may, with the approval of a majority of the members of the  
21 fund and after written notice to the sponsoring association  
22 and approved by the office ~~department~~, elect to convert to an  
23 assessable mutual insurer in accordance with part I.

24 (9) A management company may be authorized by the  
25 office ~~department~~ to manage and operate an assessable mutual  
26 insurer only if its owners, partners, stockholders, officers,  
27 or directors, and other persons who directly or indirectly  
28 exercise or have the ability to exercise effective control of  
29 the management company, possess the competency and business  
30 experience to manage and operate an assessable mutual insurer.

31

1           Section 1296. Subsection (2) of section 628.6014,  
2 Florida Statutes, is amended to read:

3           628.6014 Annual reports.--

4           (2) For financial statements filed on or after January  
5 1, 1998, future investment income may only be reported as an  
6 admitted asset by an assessable mutual which reported future  
7 investment income in financial statements filed with the  
8 former Department of Insurance prior to December 31, 1996.

9           Section 1297. Subsections (1) and (4) of section  
10 628.6017, Florida Statutes, are amended to read:

11          628.6017 Converting assessable mutual insurer.--

12          (1) An assessable mutual insurer may become a stock  
13 insurer by filing an application which complies with s.  
14 628.051 and by submitting a plan of conversion which is  
15 approved by the office ~~department~~. The office ~~department~~ shall  
16 not approve any such plan unless the plan:

17           (a) Is equitable to the insurer's members.

18           (b) Is subject to approval by vote of not less than  
19 two-thirds of the insurer's current members voting thereon in  
20 person, by proxy, or by mail at a meeting of members called  
21 for the purpose pursuant to such reasonable notice and  
22 procedure as may be approved by the office ~~department~~. In no  
23 event shall the failure to vote constitute a vote for  
24 approval.

25           (c) Provides for the determination of the membership  
26 interests of each policyholder in the insurer, taking into  
27 account the relative corporate equity of the policyholder,  
28 other than as to unearned premiums and benefit claims under  
29 the policy, under a fair formula approved by the office  
30 ~~department~~.

31

1 (d) Provides for the payment of consideration to each  
2 policyholder in return for his or her membership interests in  
3 the assessable mutual insurer.

4 (e) Provides for the payment of consideration to be  
5 given in exchange for the policyholders' membership interests  
6 in cash, securities of the reorganized insurer, securities of  
7 another company, surplus notes or other evidence of borrowed  
8 surplus, additional insurance, premium credits, additional  
9 benefits, increased dividends, cancellation of future  
10 assessment obligations, or other consideration or any  
11 combination of any such forms of consideration.

12 (f) Provides that persons who had been policyholders  
13 of the insurer within 3 years prior to the date such plan was  
14 submitted to the office ~~department~~ shall participate in the  
15 distribution of consideration to policyholders.

16  
17 When the plan of reorganization becomes effective, the  
18 assessable mutual insurer shall become a stock insurer and the  
19 stock insurer shall be deemed to be a continuation of the  
20 corporate existence of the assessable mutual insurer. The  
21 provisions of s. 628.441 do not apply to the conversion of an  
22 assessable mutual insurer into a stock insurer. The provisions  
23 of s. 628.441 shall not apply to the conversion of an  
24 assessable mutual insurer to a stock insurer.

25 (4) An assessable mutual insurer becoming a stock  
26 insurer or a nonassessable mutual insurer shall not be subject  
27 to s. 627.215 or s. 627.351(5) for 5 years following  
28 authorization of the conversion by the office ~~department~~.  
29 However, the converted stock insurer or nonassessable mutual  
30 insurer shall file all necessary data required by s. 627.215.  
31 Such amounts otherwise subject to s. 627.215(10) shall be

1 maintained as surplus as to policyholders and not be available  
2 for dividends for a period of 5 years.

3 Section 1298. Subsection (2) of section 628.705,  
4 Florida Statutes, is amended to read:

5 628.705 Prohibition of stock transfers.--

6 (2) Voting shares of the capital stock of a subsidiary  
7 insurance company or the intermediate holding company may not  
8 be acquired by any affiliated member of the holding company  
9 system except where the affiliated member of the mutual  
10 holding company system is the majority shareholder. A number  
11 of shares equal to 5 percent of the outstanding voting shares  
12 of the capital stock of one corporate member of the Mutual  
13 Insurance Holding Company System selected by the mutual  
14 insurance holding company may be issued or sold to directors  
15 and officers as part of a plan of compensation, and such  
16 shares shall not be considered part of the majority shares to  
17 be owned by the mutual insurance company under subsection (1).  
18 A number of shares equal to an additional 5 percent of the  
19 outstanding voting shares of the capital stock of one  
20 corporate member of the Mutual Insurance Holding Company  
21 System selected by the mutual insurance holding company may be  
22 issued or sold to employees, which may not include any officer  
23 or director, as part of an employee stock dividend or benefit  
24 plan, and such shares shall not be considered part of the  
25 majority shares to be owned by the mutual insurance company  
26 under subsection (1). Prior to issuance of shares in excess  
27 of the authorized 5 percent to either officers and directors  
28 or employees, pursuant to this section, a fairness opinion  
29 shall be rendered by an independent authority acceptable to  
30 the office ~~department~~ to assure that the long term interests  
31 of the shareholders and policyholders are adequately

1 protected. The office ~~department~~ shall approve or disapprove  
2 the transaction within 30 days after receipt of the fairness  
3 opinion. Nothing in this section prohibits any officer or  
4 director from purchasing shares of stock at market value which  
5 are not part of a plan of compensation, in accordance with the  
6 requirements of s. 628.461, and, if such stock is not  
7 regularly traded on a national stock exchange, the officer or  
8 director purchasing the shares of stock is responsible for  
9 establishing its market value.

10 Section 1299. Subsection (2) of section 628.707,  
11 Florida Statutes, is amended to read:

12 628.707 Applicability of general corporation  
13 statutes.--The applicable statutes of this state relating to  
14 the powers and procedures of domestic private corporations  
15 formed for profit shall apply to domestic mutual insurance  
16 holding companies, except:

17 (2) The articles of incorporation of the mutual  
18 insurance holding company, and any amendment to such articles  
19 or restatement of such articles shall be subject to the  
20 approval of the office ~~department~~ for compliance with the  
21 provisions of this act prior to filing with the Department of  
22 State, and shall contain the name of the mutual insurance  
23 holding company, which shall include the word "Mutual."

24 Section 1300. Subsections (3), (4), and (5) of section  
25 628.711, Florida Statutes, are amended to read:

26 628.711 Plan of reorganization.--

27 (3) Following the adoption of a plan of  
28 reorganization, and prior to the meeting of the mutual  
29 insurance company members to approve the plan, the mutual  
30 insurance company shall submit to the office ~~department~~ the  
31 following:

- 1 (a) The plan of reorganization, as adopted.
- 2 (b) The form of notice to be sent to the mutual  
3 insurance company members, informing them of their right to  
4 vote on the plan of reorganization.
- 5 (c) The form of proxy statement to be sent to the  
6 mutual insurance company members, informing them of their  
7 right to vote by proxy on the plan of reorganization, and  
8 describing the plan.
- 9 (d) The form of proxy to be sent to the mutual  
10 insurance company members to solicit their vote on the plan of  
11 reorganization.
- 12 (e) Proposed articles of incorporation, merger, or  
13 consolidation, restatements of or amendments to articles of  
14 incorporation or bylaws, and plans of merger or consolidation,  
15 with respect to each entity to be organized, reorganized, or  
16 otherwise subject to such action under the plan of  
17 reorganization.
- 18 (f) A proposed business plan for the 3 years following  
19 the date of the reorganization.
- 20 (g) An audited financial statement prepared on a  
21 statutory basis consistent with the Florida Insurance Code,  
22 including an actuarial opinion for the most recent calendar  
23 year ended, or a copy thereof, if the statement was previously  
24 filed with the office ~~department~~.
- 25 (4) The office ~~department~~ may hold a public hearing to  
26 allow public comment on the plan of reorganization. Any  
27 hearing must be held within 30 days after receipt by the  
28 office ~~department~~ of a completed plan of reorganization. The  
29 office ~~department~~ may not approve a plan of reorganization  
30 unless it finds that it is fair and equitable to the members  
31 of the mutual insurance company. Ninety days after filing, the

1 plan of reorganization shall be deemed approved unless it has  
2 previously been approved or disapproved by the office  
3 ~~department~~. The office ~~department~~ shall inform the mutual  
4 insurer of the specific reasons for the disapproval of any  
5 plan of reorganization.

6 (5)(a) A plan of reorganization adopted by the board  
7 of directors of the applicant may be:

8 1. Amended by the board of directors of the applicant  
9 in response to the comments or recommendations of the office  
10 ~~department~~, or any other state or federal agency or  
11 governmental entity, before any solicitation of proxies from  
12 members of the mutual insurance company to vote on the plan of  
13 reorganization, or at any time with the consent of the office  
14 ~~department~~, except that any material amendment after the  
15 members' approval shall require the members' approval; or

16 2. Terminated by the board of directors of the  
17 applicant at any time before members of the mutual insurance  
18 company vote on the plan of reorganization and, otherwise, at  
19 any time with the consent of the office ~~department~~.

20 (b) The plan of reorganization is approved upon the  
21 affirmative vote of at least a majority of the votes cast by  
22 members of the mutual insurance company, notwithstanding  
23 quorum or voting action requirements otherwise applicable to  
24 the mutual insurance company to the contrary.

25 (c) Within 30 days after members have approved the  
26 plan of reorganization, the applicant must file with the  
27 office ~~department~~ the minutes of the meeting at which the plan  
28 of reorganization was approved.

29 Section 1301. Section 628.713, Florida Statutes, is  
30 amended to read:

31

1           628.713 Dividends.--A mutual insurance holding company  
2 shall not be authorized to pay dividends or make distributions  
3 to mutual insurance holding company members except as may be  
4 expressly approved by the office ~~department~~. Neither the  
5 adoption nor the implementation of a plan of reorganization  
6 shall be deemed to give rise to any obligation by or on behalf  
7 of a mutual insurance company to make any distribution or  
8 payment to any member or policyholder, or to any other person,  
9 fund, or entity of any nature whatsoever, in connection with  
10 the ownership, control, benefits, policies, purpose, or nature  
11 of the mutual insurance company or otherwise, including, but  
12 not limited to, requirements imposed by the conversion and  
13 bulk reinsurance provisions of ss. 628.441 and 628.491.

14           Section 1302. Section 628.715, Florida Statutes, is  
15 amended to read:

16           628.715 Merger and acquisitions.--Subject to  
17 applicable requirements of this chapter, a mutual insurance  
18 holding company may:

19           (1)(a) Merge or consolidate with, or acquire the  
20 assets of, a mutual insurance holding company licensed  
21 pursuant to this act or any similar entity organization  
22 pursuant to laws of any other state;

23           (b) Either alone or together with one or more  
24 intermediate stock holding companies, or other subsidiaries,  
25 directly or indirectly acquire the stock of a stock insurance  
26 company or a mutual insurance company that reorganizes under  
27 this act or the law of its state of organization;

28           (c) Together with one or more of its stock insurance  
29 company subsidiaries, acquire the assets of a stock insurance  
30 company or a mutual insurance company;

31

1           (d) Acquire a stock insurance company through the  
2 merger of such stock insurance subsidiary with a stock  
3 insurance company or interim stock insurance company  
4 subsidiary of the mutual insurance holding company;

5           (e) Acquire the stock or assets of any other person to  
6 the same extent as would be permitted for any not-for-profit  
7 corporation under chapter 617 or, if the mutual insurance  
8 holding company writes insurance, a mutual insurance company;

9           (f) Jointly, with a domestic or foreign mutual  
10 insurance company which redomesticates pursuant to s. 628.520,  
11 file an application with the office ~~department~~, pursuant to  
12 the provisions of this part, to merge the domestic or foreign  
13 mutual insurance company policyholder's membership interests  
14 into the mutual insurance holding company. The reorganizing  
15 mutual insurance company may merge with the mutual insurance  
16 holding company's stock subsidiary or continue its corporate  
17 existence as a domestic stock insurance company subsidiary.  
18 The members of the foreign mutual insurance company may  
19 approve in a contemporaneous vote both the redomestication  
20 plan and the agreement for merger and reorganization; or

21           (g) Merge or consolidate with, or acquire the assets  
22 of, a domestic or foreign reciprocal insurance company, a  
23 group self-insurance fund, or any other similar entity.

24           (2) A reorganization pursuant to this section is  
25 subject to the applicable procedures prescribed by the laws of  
26 this state applying to corporations formed for profit, except  
27 as otherwise provided in this subsection.

28           (a) The plan and agreement for merger shall be  
29 submitted to and approved by a majority of the members,  
30 policyholders, or subscribers of each domestic mutual  
31 insurance holding company, mutual insurance company, stock

1 insurance company, or domestic or foreign reciprocal insurance  
2 company, involved in the merger who vote either in person or  
3 by proxy thereon at meetings called for the purposes pursuant  
4 to such reasonable notice and procedure as has been approved  
5 by the office ~~department~~.

6 (b) No such merger shall be effectuated unless in  
7 advance thereof, the plan and agreement therefor have been  
8 filed with the office ~~department~~ and approved by it after a  
9 public hearing, which shall be held within 90 days after  
10 receipt by the office ~~department~~ of such plan and agreement.  
11 The office ~~department~~ may retain outside consultants to  
12 evaluate the merger. The domestic mutual insurance holding  
13 company shall pay reasonable costs associated with retaining  
14 such consultants. Such payments shall be made directly to the  
15 consultant. The office ~~department~~ shall give such approval  
16 unless it finds such plan or agreement:

17 1. Is inequitable to the policyholders of any domestic  
18 insurer involved in the merger or the members of any domestic  
19 mutual insurance holding company involved in the merger; or

20 2. Would substantially reduce the security of and  
21 service to be rendered to policyholders of a domestic insurer  
22 in this state.

23 (c) All of the initial shares of the capital stock of  
24 the reorganized subsidiary insurance company shall be issued  
25 either to the mutual insurance holding company, or to an  
26 intermediate holding company which is wholly owned by the  
27 mutual insurance holding company. The membership interests of  
28 the policyholders of the reorganized insurance company shall  
29 become membership interests in the mutual insurance holding  
30 company. Policyholders of the reorganized insurance company  
31 shall be members of the mutual insurance holding company in

1 accordance with the articles of incorporation and bylaws of  
2 the mutual insurance holding company. The mutual insurance  
3 holding company shall at all times own a majority of the  
4 voting shares of the capital stock of the reorganized  
5 subsidiary insurance company.

6 (d) For property and casualty insurers, the rights of  
7 the members of the merging entities under s. 628.729, for a  
8 period of 3 years after the merger, shall be the proportionate  
9 share of the total surplus of the merging entities as  
10 determined by the percentage of the surplus contributed by  
11 each of the merging entities to the total surplus of the  
12 surviving entity on the date of the merger.

13 Section 1303. Section 628.717, Florida Statutes, is  
14 amended to read:

15 628.717 Filing of articles of incorporation.--

16 (1) No mutual insurance holding company shall be  
17 formed unless its articles of incorporation are approved by  
18 the office ~~department~~ prior to filing the same with and  
19 approval by the Department of State as provided by law.

20 (2) The office ~~department~~ shall promptly examine the  
21 articles of incorporation; and, if it finds that the articles  
22 of incorporation comply with law, the office ~~department~~ shall  
23 endorse its approval upon each of the originals, place one on  
24 file in its office, and return the remaining sets to the  
25 incorporators. The incorporators shall promptly file such  
26 endorsed articles of incorporation with the Department of  
27 State. The articles of incorporation shall be effective when  
28 filed with and approved by the Department of State.

29 Section 1304. Subsection (2) of section 628.719,  
30 Florida Statutes, is amended to read:

31 628.719 Amendment of articles of incorporation.--

1           (2)(a) Upon adoption of an amendment, the mutual  
2 insurance holding company shall make under its corporate seal  
3 a certificate thereof, setting forth the amendment and the  
4 date and manner of the adoption thereof, which certificate  
5 shall be executed by the mutual insurance holding company's  
6 president or vice president and secretary or assistant  
7 secretary and acknowledged before an officer authorized to  
8 take acknowledgments. The mutual insurance holding company  
9 shall deliver the originals of the certificate to the office  
10 ~~department~~.

11           (b) The office ~~department~~ shall promptly examine the  
12 certificate of amendment, and, if the office ~~department~~ finds  
13 that the certificate and the amendment comply with law, the  
14 office ~~department~~ shall endorse its approval upon each of the  
15 originals, place one on file in its office, and return the  
16 remaining sets to the mutual insurance holding company. The  
17 mutual insurance holding company shall promptly file such  
18 endorsed certificates of amendment with the Department of  
19 State. The amendment shall be effective when filed with and  
20 approved by the Department of State.

21           Section 1305. Subsection (3) of section 628.721,  
22 Florida Statutes, is amended to read:

23           628.721 Bylaws.--

24           (3) The mutual insurance holding company shall file  
25 within 30 days with the office ~~department~~ a copy, certified by  
26 the mutual insurance holding company's secretary, of its  
27 bylaws and of every modification thereof or addition thereto.  
28 The office ~~department~~ shall promptly disapprove any bylaw  
29 provision deemed by it to be unlawful, unreasonable,  
30 inadequate, unfair, or detrimental to the proper interests or  
31 protection of the mutual insurance holding company's members

1 or any class thereof. The insurer shall not, after receiving  
2 written notice of such disapproval and during the existence  
3 thereof, effectuate any bylaw provision disapproved.

4 Section 1306. Section 628.725, Florida Statutes, is  
5 amended to read:

6 628.725 Notice of change of director or officer.--A  
7 mutual insurance holding company shall give the office  
8 ~~department~~ written notice of any change of personnel among the  
9 directors or principal officers of the mutual insurance  
10 holding company within 45 days after such change. The written  
11 notice shall include all information necessary to allow the  
12 office ~~department~~ to determine that the mutual insurance  
13 holding company's subsidiary stock insurers will be in  
14 compliance with s. 624.404(3) and, at a minimum, shall contain  
15 information similar to the information required by s.  
16 628.051(2)(b), (c), and (d) for directors of insurance  
17 companies.

18 Section 1307. Subsection (1) of section 628.729,  
19 Florida Statutes, is amended to read:

20 628.729 Member's share of assets on voluntary  
21 dissolution.--

22 (1) Upon any voluntary dissolution of a domestic  
23 mutual insurance holding company, its assets remaining after  
24 discharge of its indebtedness, if any, and expenses of  
25 administration, shall be distributed to existing persons who  
26 were its members at any time within the 3-year period  
27 preceding the date such liquidation was authorized or ordered,  
28 or date of last termination of the insurer's certificate of  
29 authority, whichever date is earlier; except, if the office  
30 ~~department~~ has reason to believe that those in charge of the  
31 management of the mutual insurance holding company have caused

1 or encouraged the reduction of the number of members of the  
2 insurer in anticipation of liquidation and for the purpose of  
3 reducing thereby the number of persons who may be entitled to  
4 share in distribution of the insurer's assets, the office  
5 ~~department~~ may enlarge the 3-year qualification period by such  
6 additional time as the office ~~department~~ may deem to be  
7 reasonable.

8 Section 1308. Section 628.730, Florida Statutes, is  
9 amended to read:

10 628.730 Merger with intermediate holding company.--

11 (1) A mutual insurance holding company may, pursuant  
12 to a plan and agreement of merger approved by the office  
13 ~~department~~, in accordance with s. 628.715(2)(b), merge into  
14 its intermediate holding company. The surviving intermediate  
15 holding company shall assume all of the assets and liabilities  
16 of the mutual insurance holding company, and all of the stock  
17 of the intermediate holding company owned by the mutual  
18 insurance holding company immediately prior to the merger  
19 shall be distributed to existing persons who were members of  
20 the mutual insurance holding company at any time within the  
21 3-year period preceding the date of such merger.

22 (2) The distributive share of each such member shall  
23 be determined by a formula based upon such reasonable  
24 classifications of members as the office ~~department~~ may  
25 approve.

26 (3) For purposes of creating a public market for the  
27 shares of the intermediate holding company, the mutual  
28 insurance holding company may, immediately prior to the  
29 merger, sell or cause the intermediate holding company to sell  
30 to the public up to 25 percent of its capital stock

31

1 representing no more than 25 percent of the voting stock of  
2 the intermediate holding company.

3 (4) The office ~~department~~ shall hold a public hearing  
4 to allow public comment on the plan and agreement of merger.  
5 The hearing must be held within 90 days after receipt of the  
6 office ~~department~~ of the proposed plan and agreement of  
7 merger.

8 (5) The plan and agreement of merger shall be  
9 submitted to the members of the mutual holding company for  
10 their approval and shall take effect only if approved by a  
11 majority of the members of the mutual insurance holding  
12 company who vote either in person or by proxy on such merger  
13 at a meeting called for the purpose of voting on such merger,  
14 pursuant to reasonable notice and procedures as approved by  
15 the office ~~department~~.

16 Section 1309. Section 628.733, Florida Statutes, is  
17 amended to read:

18 628.733 Converting mutual insurance holding company.--

19 (1) A mutual insurance holding company may become a  
20 stock holding company under such plan and procedure as may be  
21 approved by the office ~~department~~.

22 (2) The office ~~department~~ shall not approve any such  
23 plan and procedure unless:

24 (a) The plan and procedure is subject to approval by  
25 vote of not less than a majority of the company's current  
26 members voting thereon in person, by proxy, or by mail at a  
27 meeting of members called for the purpose pursuant to such  
28 reasonable notice and procedure as may be approved by the  
29 office ~~department~~.

30 (b) The corporate equity of each member is  
31 determinable under a fair formula approved by the office

1 ~~department~~, which equity shall be based upon not more than the  
2 company's net assets.

3 (c) The persons entitled to participate in the  
4 distribution of stock shall include all current members and  
5 all existing persons who had been members within 3 years prior  
6 to the date such plan was submitted to the office ~~department~~.

7 (d) The plan calls for the distribution to each person  
8 as specified in paragraph (c) of capital stock or other  
9 property of the stock holding company, using each person's  
10 equity as determined under paragraph (b).

11 (e) The plan gives to each member as specified in  
12 paragraph (c) a preemptive right to acquire his or her  
13 proportionate part of all of the proposed capital stock of the  
14 new stock holding company, within a designated reasonable  
15 period, and to apply upon the purchase thereof the amount of  
16 his equity as determined under paragraph (b).

17 (f) Shares are so offered to policyholders at a price  
18 not greater than to be thereafter offered to others.

19 (g) The plan provides for payment of cash to each  
20 member not electing to apply his or her equity towards the  
21 purchase price of stock to which he or she is preemptively  
22 entitled. The amount so paid shall be not less than 50 percent  
23 of the amount of his or her equity not so used for the  
24 purchase of stock. Such cash payment together with stock so  
25 purchased, if any, shall constitute full payment and discharge  
26 of the member's corporate equity in such mutual insurance  
27 holding company.

28 Section 1310. Section 628.801, Florida Statutes, is  
29 amended to read:

30 628.801 Insurance holding companies; registration;  
31 regulation.--Every insurer which is authorized to do business

1 in this state and which is a member of an insurance holding  
2 company shall register with the office ~~department~~ and be  
3 subject to regulation with respect to its relationship to such  
4 holding company as provided by rule or statute. The commission  
5 ~~department~~ shall adopt rules establishing the information and  
6 form required for registration and the manner in which  
7 registered insurers and their affiliates shall be regulated.  
8 The rules shall apply to domestic insurers, foreign insurers,  
9 and commercially domiciled insurers, except a foreign insurer  
10 domiciled in states that are accredited by the National  
11 Association of Insurance Commissioners by December 31, 1995.  
12 Except to the extent of any conflict with this code, the rules  
13 must include all requirements and standards of ss. 4 and 5 of  
14 the Insurance Holding Company System Regulatory Act and the  
15 Insurance Holding Company System Model Regulation of the  
16 National Association of Insurance Commissioners, as the  
17 Regulatory Act and the Model Regulation existed on January 1,  
18 1997, and may include a prohibition on oral contracts between  
19 affiliated entities. Upon request, the office ~~department~~ may  
20 waive filing requirements under this section for a domestic  
21 insurer that is the subsidiary of an insurer that is in full  
22 compliance with the insurance holding company registration  
23 laws of its state of domicile, which state is accredited by  
24 the National Association of Insurance Commissioners.

25 Section 1311. Subsection (1) of section 628.802,  
26 Florida Statutes, is amended to read:

27 628.802 Injunction.--

28 (1) Whenever it appears to the office ~~department~~ that  
29 any insurer or any director, officer, or employee thereof, or  
30 appears to the department that any agent thereof has committed  
31 or is about to commit a violation of this part or of any rule

1 or order issued by the commission, office, or department  
2 pursuant to this part, the office or department may apply to  
3 the circuit court in and for Leon County for an order  
4 enjoining the insurer, director, officer, employee, or agent  
5 from violating or continuing to violate this part or the rule  
6 or order and for other equitable relief as the nature of the  
7 case and the interest of the insurer's policyholders,  
8 creditors, and shareholders or the public may require.

9 Section 1312. Section 628.803, Florida Statutes, is  
10 amended to read:

11 628.803 Sanctions.--

12 (1) Any company failing, without just cause, to file  
13 any registration statement or certificate of exemption  
14 required to be filed pursuant to commission ~~department~~ rules  
15 relating to this part shall, in addition to other penalties  
16 prescribed under the Florida Insurance Code, be subject to pay  
17 a penalty of \$100 for each day's delay, not to exceed a total  
18 of \$10,000.

19 (2) Every director or officer of an insurance holding  
20 company system who knowingly violates or participates in, or  
21 who knowingly directs any of the officers or agents of the  
22 company to engage in transactions or make investments which  
23 have not been properly filed or approved or which violate  
24 commission ~~department~~ rules relating to this part, shall pay,  
25 in their individual capacity, a civil forfeiture of not more  
26 than \$5,000 per violation. In determining the amount of the  
27 civil forfeiture, the office ~~department~~ shall take into  
28 account the appropriateness of the forfeiture with respect to  
29 the gravity of the violation, and the history of previous  
30 violations.

31

1           (3) Whenever it appears to the office ~~department~~ that  
2 any insurer subject to this part or any director, officer,  
3 employee, or agent thereof has engaged in any transaction or  
4 entered into a contract which violates commission ~~department~~  
5 rules relating to this part, the office ~~department~~ may order  
6 the insurer to cease and desist immediately any further  
7 activity under that transaction or contract. The office  
8 ~~department~~ may also order the insurer to void any such  
9 transaction or contract and restore the status quo if this  
10 action is in the best interest of the policyholders,  
11 creditors, or public.

12           (4) Any officer, director, or employee of an insurance  
13 holding company system who willfully and knowingly subscribes  
14 to, or makes or causes to be made, any false statements, false  
15 reports, or false filings with the intent to deceive the  
16 office ~~department~~ in the performance of its duties under this  
17 part is guilty of a felony of the third degree, punishable as  
18 provided in s. 775.082, s. 775.083, or s. 775.084.

19           Section 1313. Subsections (1) and (3) of section  
20 628.905, Florida Statutes, are amended to read:

21           628.905 Licensing; authority.--

22           (1) Any captive insurer, when permitted by its charter  
23 or articles of incorporation, may apply to the office  
24 ~~department~~ for a license to provide commercial property,  
25 commercial casualty, and commercial marine insurance coverage  
26 other than workers' compensation and employer's liability  
27 insurance coverage, except that an industrial insured captive  
28 insurer may apply for a license to provide workers'  
29 compensation and employer's liability insurance as set forth  
30 in subsection (6).

31

1           (3) In addition to information otherwise required by  
2 this code, each applicant captive insurer shall file with the  
3 office ~~department~~ evidence of the adequacy of the loss  
4 prevention program of its insureds.

5           Section 1314. Subsection (2) of section 628.911,  
6 Florida Statutes, is amended to read:

7           628.911 Reports and statements.--

8           (2) A captive insurer shall, within 60 days after the  
9 end of its fiscal year and as often as the office ~~department~~  
10 may deem necessary, submit to the office ~~department~~ a report  
11 of its financial condition verified by oath of two of its  
12 executive officers. The commission ~~department~~ may adopt  
13 ~~promulgate~~ by rule the form in which captive insurers shall  
14 report.

15           Section 1315. Subsections (1), (2), and (3) of section  
16 628.913, Florida Statutes, are amended to read:

17           628.913 Reinsurance.--

18           (1)(a) A ceding captive insurer may reinsure all or  
19 any part of any particular risk or class of risks with:

20           1. An assuming insurer authorized by the office  
21 ~~department~~ to transact such line of insurance or reinsurance  
22 in this state. Subject to the other requirements of this code,  
23 credit may be taken for reinsurance with an authorized  
24 insurer.

25           2. An assuming insurer approved by the office  
26 ~~department~~ to transact such line of reinsurance in this state.  
27 The office ~~department~~ shall approve only solvent insurers  
28 meeting the criteria established for authorized insurers in  
29 this state. From time to time, the office ~~department~~ shall  
30 publish a list of insurers approved pursuant to this  
31 subsection. Subject to the other requirements of this code,

1 credit may be taken for reinsurance with an approved  
2 reinsurer.

3           3. An assuming underwriting member of an insurance  
4 exchange domiciled in any other state or jurisdiction in the  
5 United States provided the insurance exchange presents to the  
6 office ~~department~~ for its approval, and maintains,  
7 satisfactory evidence that such assuming underwriting member  
8 maintains the standards and meets the financial requirements  
9 applicable to an authorized insurer. Subject to the other  
10 provisions of this code, credit may be taken for reinsurance  
11 with members approved under this subsection by the office  
12 ~~department~~.

13           4. A group of individual unincorporated alien insurers  
14 which maintains funds in an amount not less than \$50 million  
15 held in trust for United States policyholders and  
16 beneficiaries in a bank or trust company that is subject to  
17 supervision by any state of the United States or that is a  
18 member of the Federal Reserve System and which group satisfies  
19 the office ~~department~~ by annually filing evidence that it can  
20 meet its obligations under its reinsurance agreements. Subject  
21 to the other provisions of this code, credit may be taken for  
22 reinsurance with groups approved under this subsection by the  
23 office ~~department~~.

24           (b) Credit in accounting and financial statements on  
25 account of reinsurance ceded to an unauthorized or unapproved  
26 reinsurer may be allowed only:

27           1. When it is demonstrated by the ceding captive  
28 insurer to the satisfaction of the office ~~department~~ that such  
29 reinsurer maintains the standards and meets the financial  
30 requirements applicable to an authorized insurer;

31

1           2. To the extent of deposits by, or funds withheld  
2 from, such reinsurer pursuant to express provision therefor in  
3 the reinsurance contract as security for the payment of the  
4 obligations thereunder if such deposits or funds are held  
5 subject to withdrawal by, and under the control of, the ceding  
6 captive insurer or such deposits or funds are placed in trust  
7 for such purposes in a bank which is a member of the Federal  
8 Reserve System if withdrawals from the trust cannot be made  
9 without the consent of the ceding captive insurer. The funds  
10 withheld may be cash or securities which are qualified as  
11 admitted assets under part II of chapter 625 and which have a  
12 market value equal to or greater than the credit taken; or

13           3. To the extent that the amount of a clean and  
14 irrevocable letter of credit, issued for a term of not less  
15 than 1 year and in conformity with the requirements set forth  
16 in this subparagraph, equals or exceeds the liability of an  
17 unauthorized or unapproved reinsurer for unearned premiums,  
18 outstanding losses, and an adequate reserve for incurred but  
19 not reported losses under a specific reinsurance agreement.  
20 The requirements are that such a clean and irrevocable letter  
21 of credit be issued under arrangements satisfactory to the  
22 office ~~department~~ as constituting security to the ceding  
23 captive insurer substantially equal to that of a deposit under  
24 subparagraph 2. and that the letter be issued by a banking  
25 institution which is a member of the Federal Reserve System  
26 and which has financial standing satisfactory to the office  
27 ~~commissioner~~.

28           (2) The office ~~department~~ shall disallow any credit  
29 which it finds would be contrary to the proper interests of  
30 the policyholders or stockholders of a ceding captive insurer.

31

1           (3) No credit may be allowed for reinsurance in an  
2 unauthorized or unapproved assuming insurer unless such  
3 insurer designates the Chief Financial Officer ~~commissioner~~ or  
4 a person resident in the United States as agent for service of  
5 process in any action arising out of, or in connection with,  
6 such reinsurance.

7           Section 1316. Section 628.917, Florida Statutes, is  
8 amended to read:

9           628.917 Insolvency and liquidation.--In the event that  
10 a captive insurer is insolvent as defined in chapter 631, the  
11 office ~~department~~ shall liquidate the captive insurer pursuant  
12 to the provisions of part I of chapter 631; except that the  
13 office ~~department~~ shall make no attempt to rehabilitate such  
14 insurer.

15           Section 1317. Section 629.081, Florida Statutes, is  
16 amended to read:

17           629.081 Organization of reciprocal insurer.--

18           (1) Twenty-five or more persons domiciled in this  
19 state may organize a domestic reciprocal insurer and make  
20 application to the office ~~department~~ for a certificate of  
21 authority to transact insurance.

22           (2) The proposed attorney shall fulfill the  
23 requirements of and shall execute and file with the office  
24 ~~department~~, when applying for a certificate of authority, a  
25 declaration setting forth:

26           (a) The name of the insurer;

27           (b) The location of the insurer's principal office,  
28 which shall be the same as that of the attorney and shall be  
29 maintained within this state;

30           (c) The kinds of insurance proposed to be transacted;

31

1           (d) The names and addresses of the original  
2 subscribers;

3           (e) The designation and appointment of the proposed  
4 attorney and a copy of the power of attorney;

5           (f) The names and addresses of the officers and  
6 directors of the attorney, if a corporation, or of its  
7 members, if other than a corporation;

8           (g) The powers of the subscribers' advisory committee,  
9 and the names and terms of office of the members thereof;

10           (h) That all moneys paid to the reciprocal shall,  
11 after deducting therefrom any sum payable to the attorney, be  
12 held in the name of the insurer and for the purposes specified  
13 in the subscribers' agreement;

14           (i) A copy of the subscribers' agreement;

15           (j) A statement that each of the original subscribers  
16 has in good faith applied for insurance of a kind proposed to  
17 be transacted, and that the insurer has received from each  
18 such subscriber the full premium or premium deposit required  
19 for the policy applied for, for a term of not less than 6  
20 months at an adequate rate theretofore filed with and approved  
21 by the office ~~department~~;

22           (k) A statement of the financial condition of the  
23 insurer, a schedule of its assets, and a statement that the  
24 surplus as required by s. 629.071 is on hand; and

25           (l) A copy of each policy, endorsement, and  
26 application form it then proposes to issue or use.

27

28 Such declaration shall be acknowledged by the attorney before  
29 an officer authorized to take acknowledgments.

30           Section 1318. Subsection (4) of section 629.101,  
31 Florida Statutes, is amended to read:

1           629.101 Power of attorney.--

2           (4) The terms of any power of attorney or agreement  
3 collateral thereto shall be reasonable and equitable, and no  
4 such power or agreement shall be used or be effective in this  
5 state unless filed with the office ~~department~~.

6           Section 1319. Subsection (1) and (3) of section  
7 629.121, Florida Statutes, are amended to read:

8           629.121 Attorney's bond.--

9           (1) Concurrently with the filing of the declaration  
10 provided for in s. 629.081, the attorney of a domestic  
11 reciprocal insurer shall file with the office ~~department~~ a  
12 bond in favor of this state for the benefit of all persons  
13 damaged as a result of breach by the attorney of the  
14 conditions of his or her bond as set forth in subsection (2).  
15 The bond shall be executed by the attorney and by an  
16 authorized corporate surety and shall be subject to the  
17 approval of the office ~~department~~.

18           (3) The bond shall provide that it is not subject to  
19 cancellation unless 30 days' advance notice in writing of  
20 cancellation is given both the attorney and the office  
21 ~~department~~.

22           Section 1320. Section 629.131, Florida Statutes, is  
23 amended to read:

24           629.131 Deposit in lieu of bond.--In lieu of the bond  
25 required under s. 629.121, the attorney may maintain on  
26 deposit with ~~through the office of the~~ department a like  
27 amount in value of securities qualified for deposit under s.  
28 625.52 and subject to the same conditions as the bond.

29           Section 1321. Section 629.161, Florida Statutes, is  
30 amended to read:

31

1           629.161 Contributions to insurer.--The attorney or  
2 other parties may advance to a domestic reciprocal insurer  
3 upon reasonable terms such funds as it may require from time  
4 to time in its operations. Sums so advanced shall not be  
5 treated as a liability of the insurer and, except upon  
6 liquidation of the insurer, shall not be withdrawn or repaid  
7 except out of the insurer's realized earned surplus in excess  
8 of its minimum required surplus. No such withdrawal or  
9 repayment shall be made without the advance approval of the  
10 office ~~department~~. This section does not apply as to bank  
11 loans or to loans made upon security.

12           Section 1322. Subsection (2) of section 629.171,  
13 Florida Statutes, is amended to read:

14           629.171 Annual statement.--

15           (2) The statement shall be supplemented by such  
16 information as may be required by the office ~~department~~  
17 relative to the affairs and transactions of the attorney  
18 insofar as they relate to the reciprocal insurer.

19           Section 1323. Section 629.181, Florida Statutes, is  
20 amended to read:

21           629.181 Financial condition; method of  
22 determining.--In determining the financial condition of a  
23 reciprocal insurer, the office ~~department~~ shall apply the  
24 following rules:

25           (1) The surplus deposits of subscribers shall be  
26 allowed as assets, except that any premium deposits delinquent  
27 for 90 days shall first be charged against such surplus  
28 deposit.

29           (2) An assessment levied upon subscribers, but not  
30 collected, shall not be allowed as an asset.

31

1           (3) The contingent liability of subscribers shall not  
2 be allowed as an asset.

3           Section 1324. Subsection (1) of section 629.231,  
4 Florida Statutes, is amended to read:

5           629.231 Assessments.--

6           (1) Assessments may from time to time be levied upon  
7 subscribers of a domestic reciprocal insurer liable therefor  
8 under the terms of their policies by the attorney upon  
9 approval in advance by the subscribers' advisory committee and  
10 the office department, or by the department as receiver in  
11 liquidation of the insurer.

12           Section 1325. Section 629.241, Florida Statutes, is  
13 amended to read:

14           629.241 Time limit for assessments.--Every subscriber  
15 of a domestic reciprocal insurer having contingent liability  
16 shall be liable for, and shall pay his or her share of, any  
17 assessment, as computed and limited in accordance with this  
18 chapter, if:

19           (1) While his or her policy is in force or within 4  
20 years after its termination, the subscriber is notified by  
21 either the attorney or the office department of its intentions  
22 to levy such assessment; or

23           (2) An order to show cause why a receiver,  
24 conservator, rehabilitator, or liquidator of the insurer  
25 should not be appointed is issued while the subscriber's  
26 policy is in force or within 4 years after its termination.

27           Section 1326. Section 629.261, Florida Statutes, is  
28 amended to read:

29           629.261 Nonassessable policies.--

30           (1) If a reciprocal insurer has a surplus as to  
31 policyholders required of a domestic stock insurer authorized

1 to transact like kinds of insurance, upon application of the  
2 attorney and as approved by the subscribers' advisory  
3 committee the office ~~department~~ shall issue its certificate  
4 authorizing the insurer to extinguish the contingent liability  
5 of subscribers under its policies then in force in this state  
6 and to omit provisions imposing contingent liability in all  
7 policies delivered or issued for delivery in this state for so  
8 long as all such surplus remains unimpaired.

9 (2) Upon impairment of such surplus, the office  
10 ~~department~~ shall forthwith revoke the certificate. Such  
11 revocation shall not render subject to contingent liability  
12 any policy then in force and for the remainder of the period  
13 for which the premium has theretofore been paid; but, after  
14 such revocation, no policy shall be issued or renewed without  
15 providing for contingent assessment liability of the  
16 subscriber.

17 (3) The office ~~department~~ shall not authorize a  
18 domestic reciprocal insurer so to extinguish the contingent  
19 liability of any of its subscribers or in any of its policies  
20 to be issued, unless it qualifies to and does extinguish such  
21 liability of all its subscribers and in all such policies for  
22 all kinds of insurance transacted by it; except that, if  
23 required by the laws of another state in which the insurer is  
24 transacting insurance as an authorized insurer, the insurer  
25 may issue policies providing for the contingent liability of  
26 such of its subscribers as may acquire such policies in such  
27 state, and need not extinguish the contingent liability  
28 applicable to policies theretofore in force in such state.

29 Section 1327. Section 629.281, Florida Statutes, is  
30 amended to read:

31

1           629.281 Subscribers' share in assets.--Upon the  
2 liquidation of a domestic reciprocal insurer, its assets  
3 remaining after discharge of its indebtedness and policy  
4 obligations, the return of any contributions of the attorney  
5 or other persons to its surplus made as provided in s.  
6 629.161, and the return of any unused premium, savings, or  
7 credits then standing on subscribers' accounts shall be  
8 distributed to its subscribers who were such within the 12  
9 months prior to the last termination of its certificate of  
10 authority, according to such reasonable formula as the office  
11 approves ~~department may approve~~.

12           Section 1328. Subsections (1) and (3) of section  
13 629.291, Florida Statutes, are amended to read:

14           629.291 Merger or conversion.--

15           (1) A domestic reciprocal insurer, upon affirmative  
16 vote of not less than two-thirds of its subscribers who vote  
17 on such merger pursuant to due notice and the approval of the  
18 office ~~department~~ of the terms therefor, may merge with  
19 another reciprocal insurer or be converted to a stock or  
20 mutual insurer.

21           (3) The office ~~department~~ shall not approve any plan  
22 for such merger or conversion which is inequitable to  
23 subscribers or which, if for conversion to a stock insurer,  
24 does not give each subscriber preferential right to acquire  
25 stock of the proposed insurer proportionate to his or her  
26 interest in the reciprocal insurer, as determined in  
27 accordance with s. 629.281, and a reasonable length of time  
28 within which to exercise such right.

29           Section 1329. Subsections (2) and (3) of section  
30 629.301, Florida Statutes, are amended to read:

31           629.301 Impaired reciprocal insurers.--

1           (2) If the attorney fails to make up such deficiency  
2 or to make the assessment within 30 days after the office  
3 ~~department~~ orders him or her to do so, or if the deficiency is  
4 not fully made up within 60 days after the date the assessment  
5 was made, the insurer shall be deemed insolvent and shall be  
6 proceeded against as authorized by this code.

7           (3) If liquidation of such an insurer is ordered, an  
8 assessment shall be levied upon the subscribers for such an  
9 amount, subject to limits as provided by this chapter, as the  
10 office ~~department~~ determines to be necessary to discharge all  
11 liabilities of the insurer, exclusive of any funds contributed  
12 by the attorney or other persons, but including the reasonable  
13 cost of the liquidation.

14           Section 1330. Section 629.401, Florida Statutes, is  
15 amended to read:

16           629.401 Insurance exchange.--

17           (1) There may be created one or more insurance  
18 exchanges, with one or more offices each, subject to such  
19 rules as are adopted ~~may be promulgated~~ by the commission  
20 ~~commissioner~~. For the purposes of this section, the term  
21 "exchange" applies to any such insurance exchange proposed or  
22 created under this section. The purposes of the exchange are:

23           (a) To provide a facility for the underwriting of:

24           1. Reinsurance of all kinds of insurance.

25           2. Direct insurance of all kinds on risks located  
26 entirely outside the United States.

27           3. Surplus lines insurance for risks located in this  
28 state eligible for export under s. 626.916 or s. 626.917 and  
29 placed through a licensed Florida surplus lines agent subject  
30 to compliance with the provisions of ss. 626.921, 626.922,  
31 626.923, 626.924, 626.929, 626.9295, 626.930, and 626.931.

1 With respect to compliance with s. 626.924, the required  
2 legend may refer to any coverage provided for by a security  
3 fund established under paragraph (3)(d).

4 4. Surplus lines insurance in any other state subject  
5 to the applicable surplus lines laws of such other state for  
6 risks located entirely outside of this state.

7 (b) To manage the facility authorized by this section,  
8 in accordance with rules adopted ~~promulgated~~ by the commission  
9 ~~commissioner~~.

10 (c) In no event shall the exchange be considered to be  
11 an underwriter or broker with respect to any contract of  
12 insurance or reinsurance written by a member of the exchange,  
13 and the exchange shall not incur any liability therefor.

14 (2) The operation of this subsection shall become  
15 effective with respect to any exchange only after a  
16 determination by the office ~~Insurance Commissioner and~~  
17 ~~Treasurer~~ that the exchange may operate in an economic and  
18 beneficial manner. A committee shall be appointed to write the  
19 constitution and bylaws of the proposed exchange, to make such  
20 other recommendations as may be necessary to assure maximum  
21 coordination of the operations of the exchange with existing  
22 insurance industry operations, and to assure maximum economic  
23 benefits to the state from the operations of the exchange. The  
24 committee shall consist of 13 members, 6 to be appointed by  
25 the Chief Financial Officer ~~Insurance Commissioner and~~  
26 ~~Treasurer~~, 2 each to be appointed by the Speaker of the House  
27 of Representatives and the President of the Senate, 1 each to  
28 be appointed by the minority leader of the House of  
29 Representatives and the minority leader of the Senate, and 1  
30 to be the Chief Financial Officer ~~Insurance Commissioner and~~  
31 ~~Treasurer~~ or his or her designated representative. The chair

1 shall be elected by a majority of the committee. The committee  
2 shall transmit such proposed constitution and bylaws and such  
3 other recommendations to the office ~~Insurance Commissioner and~~  
4 ~~Treasurer~~ and to the Legislature no later than 5 days prior to  
5 the adjournment of a regular annual legislative session or no  
6 later than 5 days prior to the commencement of any special or  
7 organizational legislative session. Subject to the disapproval  
8 of the constitution and bylaws by either house of the  
9 Legislature by resolution before the end of such legislative  
10 session, the exchange shall have full authority to function  
11 pursuant to its constitution and bylaws 60 days after the end  
12 of the session. The initial board of governors of the exchange  
13 shall consist of 14 members, 3 appointed by the Chief  
14 Financial Officer ~~Insurance Commissioner and Treasurer~~, 3 by  
15 the Speaker of the House of Representatives, 3 by the  
16 President of the Senate, 1 by the minority leader of the House  
17 of Representatives, 1 by the minority leader of the Senate,  
18 and 3 by the Governor, to serve until the first election  
19 pursuant to the constitution or bylaws.

20 (3) The constitution and bylaws of the exchange shall  
21 provide for, but shall not be limited to:

22 (a) The selection of 13 governors, at least 7 of whom  
23 shall be appointed by and serve at the pleasure of the Chief  
24 Financial Officer ~~Insurance Commissioner~~. Five of the  
25 governors appointed by the Chief Financial Officer ~~Insurance~~  
26 ~~Commissioner~~ shall not be members of the exchange. One of the  
27 remaining two governors appointed by the Chief Financial  
28 Officer ~~Insurance Commissioner~~ shall be a broker member, and  
29 one shall be a representative of an underwriting member. The  
30 remainder of the governors shall be elected by the membership  
31 of the exchange in accordance with the constitution and

1 bylaws, except that at least five governors shall be elected  
2 by the underwriting members of the exchange.

3 (b) The location of the principal offices of the  
4 exchange and the principal offices of its members to be within  
5 this state for the purpose of the transaction of the type of  
6 business described in subsection (1). A principal office shall  
7 be one where officers and qualified personnel who are engaged  
8 in the administration, underwriting, claims, policyholders'  
9 service, marketing, accounting, recordkeeping, and all  
10 supportive services shall be located.

11 (c) The submission by members and all applicants for  
12 membership on the exchange of such financial information as  
13 may be required by the office ~~commissioner~~.

14 (d)1. The establishment by the exchange of a security  
15 fund in such form and amount as approved by the office  
16 ~~commissioner~~.

17 2. With respect to contracts of insurance written or  
18 renewed on or after July 2, 1987:

19 a. The security fund shall pay that amount of each  
20 covered claim which is determined to be payable in accordance  
21 with the constitution and bylaws and is in excess of \$100 and  
22 less than \$300,000, except that the fund shall not be  
23 obligated to a policyholder or claimant in an amount in excess  
24 of the obligation of the insolvent underwriting member under  
25 the policy from which the claim arises.

26 b. The security fund shall have no obligation and  
27 shall make no payment of any obligation arising under any such  
28 contract or with respect to any contract of reinsurance  
29 written or renewed on or after July 2, 1987, to the extent the  
30 payment or payments exceed, either individually or in the  
31 aggregate, 10 percent of the insolvent underwriting member's

1 surplus as to policyholders as reflected on the most recent  
2 sworn annual statement of the insolvent underwriting member  
3 filed with the office ~~department~~ prior to issuance of such  
4 contract.

5 c. For the purposes of this subparagraph, each  
6 reinsurance treaty and each contract of insurance inuring to  
7 the benefit of multiple parties shall constitute only one  
8 contract, and covered claims include unpaid claims, including  
9 claims of unearned premiums, which arise out of and are within  
10 the coverage and are not in excess of the applicable limits of  
11 an insurance policy issued by an insolvent underwriting member  
12 through the facilities of the exchange.

13 (e) The voting power of members who are underwriting  
14 syndicates.

15 (f) The voting power and other rights granted under  
16 the provisions of the not-for-profit corporation law, chapter  
17 617, to participate in the conduct and management of the  
18 affairs of the exchange, by brokers, agents, and  
19 intermediaries transacting business on the exchange, each of  
20 whom shall be considered "members" only under the provisions  
21 of such law.

22 (g) The rights and duties of exchange members, which  
23 may include, but shall not be limited to, the manner and form  
24 of conducting business, financial stability, dues, membership  
25 fees, mandatory arbitration, and all other matters necessary  
26 or appropriate to conduct any business permitted herein.

27  
28 Any amendments to the constitution and bylaws shall be subject  
29 to the approval of the office ~~commissioner~~.

30 (4) Any insurance exchange formed under the provisions  
31 of this section shall not be subject to any state or local

1 taxes or fees measured by income, premiums, or gross receipts;  
2 except that for purposes of taxation under s. 624.509, direct  
3 premiums written, procured, or received by a member or members  
4 through the exchange on risks located in this state shall be  
5 construed to be written, procured, or received by the  
6 exchange, and the premium tax due on said premium shall be  
7 reported and paid by the exchange.

8 (5) The exchange shall reimburse the office ~~department~~  
9 for any expenses incurred by the office ~~department~~ relating to  
10 the regulation of the exchange and its members.

11 (6)(a)1. The provisions of ss. 625.012 and 625.031  
12 shall be applicable to the underwriting members of an exchange  
13 in the same manner as those sections apply to domestic  
14 insurers authorized to do business in this state.

15 2. The provisions of ss. 625.302-625.338 shall be  
16 applicable to the underwriting members of an exchange in the  
17 same manner as those sections apply to domestic insurers  
18 authorized to transact business in this state.

19 (b) In addition to the insurance laws specified in  
20 paragraph (a), the office ~~department~~ shall regulate the  
21 exchange pursuant to the following powers, rights, and duties:

22 1. General examination powers.--The office ~~department~~  
23 shall examine the affairs, transactions, accounts, records,  
24 and assets of any security fund, exchange, members, and  
25 associate brokers as often as it deems advisable. The  
26 examination may be conducted by the accredited examiners of  
27 the office ~~department~~ at the offices of the entity or person  
28 being examined. The office ~~department~~ shall examine in like  
29 manner each prospective member or associate broker applying  
30 for membership in an exchange.

31

1           2. Office ~~Departmental~~ approval and applications of  
2 underwriting members.--No underwriting member shall commence  
3 operation without the approval of the office ~~department~~.

4 Before commencing operation, an underwriting member shall  
5 provide a written application containing:

6           a. Name, type, and purpose of the underwriting member.

7           b. Name, residence address, business background, and  
8 qualifications of each person associated or to be associated  
9 in the formation or financing of the underwriting member.

10           c. Full disclosure of the terms of all understandings  
11 and agreements existing or proposed among persons so  
12 associated relative to the underwriting member, or the  
13 formation or financing thereof, accompanied by a copy of each  
14 such agreement or understanding.

15           d. Full disclosure of the terms of all understandings  
16 and agreements existing or proposed for management or  
17 exclusive agency contracts.

18           3. Investigation of underwriting member  
19 applications.--In connection with any proposal to establish an  
20 underwriting member, the office ~~department~~ shall make an  
21 investigation of:

22           a. The character, reputation, financial standing, and  
23 motives of the organizers, incorporators, or subscribers  
24 organizing the proposed underwriting member.

25           b. The character, financial responsibility, insurance  
26 experience, and business qualifications of its proposed  
27 officers.

28           c. The character, financial responsibility, business  
29 experience, and standing of the proposed stockholders and  
30 directors, or owners.

31

1           4. Notice of management changes.--An underwriting  
2 member shall promptly give the office department written  
3 notice of any change among the directors or principal officers  
4 of the underwriting member within 30 days after such change.  
5 The office department shall investigate the new directors or  
6 principal officers of the underwriting member. The office's  
7 ~~department's~~ investigation shall include an investigation of  
8 the character, financial responsibility, insurance experience,  
9 and business qualifications of any new directors or principal  
10 officers. As a result of the investigation, the office  
11 ~~department~~ may require the underwriting member to replace any  
12 new directors or principal officers.

13           5. Alternate financial statement.--In lieu of any  
14 financial examination, the office department may accept an  
15 audited financial statement.

16           6. Correction and reconstruction of records.--If the  
17 office department finds any accounts or records to be  
18 inadequate, or inadequately kept or posted, it may employ  
19 experts to reconstruct, rewrite, post, or balance them at the  
20 expense of the person or entity being examined if such person  
21 or entity has failed to maintain, complete, or correct such  
22 records or accounts after the office department has given him  
23 or her or it notice and reasonable opportunity to do so.

24           7. Obstruction of examinations.--Any person or entity  
25 who or which willfully obstructs the office department or its  
26 examiner in an examination is guilty of a misdemeanor of the  
27 second degree, punishable as provided in s. 775.082 or s.  
28 775.083.

29           8. Filing of annual statement.--Each underwriting  
30 member shall file with the office department a full and true  
31 statement of its financial condition, transactions, and

1 | affairs. The statement shall be filed on or before March 1 of  
2 | each year, or within such extension of time as the office  
3 | ~~department~~ for good cause grants, and shall be for the  
4 | preceding calendar year. The statement shall contain  
5 | information generally included in insurer financial statements  
6 | prepared in accordance with generally accepted insurance  
7 | accounting principles and practices and in a form generally  
8 | utilized by insurers for financial statements, sworn to by at  
9 | least two executive officers of the underwriting member. The  
10 | form of the financial statements shall be the approved form of  
11 | the National Association of Insurance Commissioners or its  
12 | successor organization. The commission ~~department~~ may by rule  
13 | require each insurer to submit any part of the information  
14 | contained in the financial statement in a computer-readable  
15 | form compatible with the office's ~~department's~~ electronic data  
16 | processing system. In addition to information furnished in  
17 | connection with its annual statement, an underwriting member  
18 | must furnish to the office ~~department~~ as soon as reasonably  
19 | possible such information about its transactions or affairs as  
20 | the office ~~department~~ requests in writing. All information  
21 | furnished pursuant to the office's ~~department's~~ request must  
22 | be verified by the oath of two executive officers of the  
23 | underwriting member.

24 |         9. Record maintenance.--Each underwriting member shall  
25 | have and maintain its principal place of business in this  
26 | state and shall keep therein complete records of its assets,  
27 | transactions, and affairs in accordance with such methods and  
28 | systems as are customary for or suitable to the kind or kinds  
29 | of insurance transacted.

30 |         10. Examination of agents.--If the department has  
31 | reason to believe that any agent, as defined in s. 626.015 or

1 s. 626.914, has violated or is violating any provision of the  
2 insurance law, or upon receipt of a written complaint signed  
3 by any interested person indicating that any such violation  
4 may exist, the department shall conduct such examination as it  
5 deems necessary of the accounts, records, documents, and  
6 transactions pertaining to or affecting the insurance affairs  
7 of such agent.

8 11. Written reports of office ~~department~~.--The office  
9 ~~department~~ or its examiner shall make a full and true written  
10 report of any examination. The report shall contain only  
11 information obtained from examination of the records,  
12 accounts, files, and documents of or relative to the person or  
13 entity examined or from testimony of individuals under oath,  
14 together with relevant conclusions and recommendations of the  
15 examiner based thereon. The office ~~department~~ shall furnish a  
16 copy of the report to the person or entity examined not less  
17 than 30 days prior to filing the report in its office. If such  
18 person or entity so requests in writing within such 30-day  
19 period, the office ~~department~~ shall grant a hearing with  
20 respect to the report and shall not file the report until  
21 after the hearing and after such modifications have been made  
22 therein as the office ~~department~~ deems proper.

23 12. Admissibility of reports.--The report of an  
24 examination when filed shall be admissible in evidence in any  
25 action or proceeding brought by the office ~~department~~ against  
26 the person or entity examined, or against his or her or its  
27 officers, employees, or agents. The office ~~department~~ or its  
28 examiners may at any time testify and offer other proper  
29 evidence as to information secured or matters discovered  
30 during the course of an examination, whether or not a written  
31

1 report of the examination has been either made, furnished, or  
2 filed in the office department.

3 13. Publication of reports.--After an examination  
4 report has been filed, the office department may publish the  
5 results of any such examination in one or more newspapers  
6 published in this state whenever it deems it to be in the  
7 public interest.

8 14. Consideration of examination reports by entity  
9 examined.--After the examination report of an underwriting  
10 member has been filed, an affidavit shall be filed with the  
11 office department, not more than 30 days after the report has  
12 been filed, on a form furnished by the office department and  
13 signed by the person or a representative of any entity  
14 examined, stating that the report has been read and that the  
15 recommendations made in the report will be considered within a  
16 reasonable time.

17 15. Examination costs.--Each person or entity examined  
18 by the office department shall pay to the office department  
19 the expenses incurred in such examination.

20 16. Exchange costs.--An exchange shall reimburse the  
21 office department for any expenses incurred by it relating to  
22 the regulation of the exchange and its members, except as  
23 specified in subparagraph 15.

24 17. Powers of examiners.--Any examiner appointed by  
25 the office department, as to the subject of any examination,  
26 investigation, or hearing being conducted by him or her, may  
27 administer oaths, examine and cross-examine witnesses, and  
28 receive oral and documentary evidence, and shall have the  
29 power to subpoena witnesses, compel their attendance and  
30 testimony, and require by subpoena the production of books,  
31 papers, records, files, correspondence, documents, or other

1 evidence which the examiner deems relevant to the inquiry. If  
2 any person refuses to comply with any such subpoena or to  
3 testify as to any matter concerning which he or she may be  
4 lawfully interrogated, the Circuit Court of Leon County or the  
5 circuit court of the county wherein such examination,  
6 investigation, or hearing is being conducted, or of the county  
7 wherein such person resides, on the office's ~~department's~~  
8 application may issue an order requiring such person to comply  
9 with the subpoena and to testify; and any failure to obey such  
10 an order of the court may be punished by the court as a  
11 contempt thereof. Subpoenas shall be served, and proof of such  
12 service made, in the same manner as if issued by a circuit  
13 court. Witness fees and mileage, if claimed, shall be allowed  
14 the same as for testimony in a circuit court.

15       18. False testimony.--Any person willfully testifying  
16 falsely under oath as to any matter material to any  
17 examination, investigation, or hearing shall upon conviction  
18 thereof be guilty of perjury and shall be punished  
19 accordingly.

20       19. Self-incrimination.--

21       a. If any person asks to be excused from attending or  
22 testifying or from producing any books, papers, records,  
23 contracts, documents, or other evidence in connection with any  
24 examination, hearing, or investigation being conducted by the  
25 office ~~department~~ or its examiner, on the ground that the  
26 testimony or evidence required of the person may tend to  
27 incriminate him or her or subject him or her to a penalty or  
28 forfeiture, and the person notwithstanding is directed to give  
29 such testimony or produce such evidence, he or she shall, if  
30 so directed by the office ~~department~~ and the Department of  
31 Legal Affairs, nonetheless comply with such direction; but the

1 person shall not thereafter be prosecuted or subjected to any  
2 penalty or forfeiture for or on account of any transaction,  
3 matter, or thing concerning which he or she may have so  
4 testified or produced evidence, and no testimony so given or  
5 evidence so produced shall be received against him or her upon  
6 any criminal action, investigation, or proceeding; except that  
7 no such person so testifying shall be exempt from prosecution  
8 or punishment for any perjury committed by him or her in such  
9 testimony, and the testimony or evidence so given or produced  
10 shall be admissible against him or her upon any criminal  
11 action, investigation, or proceeding concerning such perjury,  
12 nor shall he or she be exempt from the refusal, suspension, or  
13 revocation of any license, permission, or authority conferred,  
14 or to be conferred, pursuant to the insurance law.

15       b. Any such individual may execute, acknowledge, and  
16 file with in the office ~~of the department~~ a statement  
17 expressly waiving such immunity or privilege in respect to any  
18 transaction, matter, or thing specified in such statement, and  
19 thereupon the testimony of such individual or such evidence in  
20 relation to such transaction, matter, or thing may be received  
21 or produced before any judge or justice, court, tribunal,  
22 grand jury, or otherwise; and if such testimony or evidence is  
23 so received or produced, such individual shall not be entitled  
24 to any immunity or privileges on account of any testimony so  
25 given or evidence so produced.

26       20. Penalty for failure to testify.--Any person who  
27 refuses or fails, without lawful cause, to testify relative to  
28 the affairs of any member, associate broker, or other person  
29 when subpoenaed and requested by the office ~~department~~ to so  
30 testify, as provided in subparagraph 17., shall, in addition  
31 to the penalty provided in subparagraph 17., be guilty of a

1 | misdemeanor of the second degree, punishable as provided in s.  
2 | 775.082 or s. 775.083.

3 |           21. Name selection.--No underwriting member shall be  
4 | formed or authorized to transact insurance in this state under  
5 | a name which is the same as that of any authorized insurer or  
6 | is so nearly similar thereto as to cause or tend to cause  
7 | confusion or under a name which would tend to mislead as to  
8 | the type of organization of the insurer. Before incorporating  
9 | under or using any name, the underwriting syndicate or  
10 | proposed underwriting syndicate shall submit its name or  
11 | proposed name to the office ~~department~~ for the approval of the  
12 | office ~~department~~.

13 |           22. Capitalization.--An underwriting member approved  
14 | on or after July 2, 1987, shall provide an initial paid-in  
15 | capital and surplus of \$3 million and thereafter shall  
16 | maintain a minimum policyholder surplus of \$2 million in order  
17 | to be permitted to write insurance. Underwriting members  
18 | approved prior to July 2, 1987, shall maintain a minimum  
19 | policyholder surplus of \$1 million. After June 29, 1988,  
20 | underwriting members approved prior to July 2, 1987, must  
21 | maintain a minimum policyholder surplus of \$1.5 million to  
22 | write insurance. After June 29, 1989, underwriting members  
23 | approved prior to July 2, 1987, must maintain a minimum  
24 | policyholder surplus of \$1.75 million to write insurance.  
25 | After December 30, 1989, all underwriting members, regardless  
26 | of the date they were approved, must maintain a minimum  
27 | policyholder surplus of \$2 million to write insurance. Except  
28 | for that portion of the paid-in capital and surplus which  
29 | shall be maintained in a security fund of an exchange, the  
30 | paid-in capital and surplus shall be invested by an  
31 | underwriting member in a manner consistent with ss.

1 625.301-625.340. The portion of the paid-in capital and  
2 surplus in any security fund of an exchange shall be invested  
3 in a manner limited to investments for life insurance  
4 companies under the Florida insurance laws.

5 23. Limitations on coverage written.--

6 a. Limit of risk.--No underwriting member shall expose  
7 itself to any loss on any one risk in an amount exceeding 10  
8 percent of its surplus to policyholders. Any risk or portion  
9 of any risk which shall have been reinsured in an assuming  
10 reinsurer authorized or approved to do such business in this  
11 state shall be deducted in determining the limitation of risk  
12 prescribed in this section.

13 b. Restrictions on premiums written.--If the office  
14 ~~department~~ has reason to believe that the underwriting  
15 member's ratio of actual or projected annual gross written  
16 premiums to policyholder surplus exceeds 8 to 1 or the  
17 underwriting member's ratio of actual or projected annual net  
18 premiums to policyholder surplus exceeds 4 to 1, the office  
19 ~~department~~ may establish maximum gross or net annual premiums  
20 to be written by the underwriting member consistent with  
21 maintaining the ratios specified in this sub-subparagraph.

22 (I) Projected annual net or gross premiums shall be  
23 based on the actual writings to date for the underwriting  
24 member's current calendar year, its writings for the previous  
25 calendar year, or both. Ratios shall be computed on an  
26 annualized basis.

27 (II) For purposes of this sub-subparagraph, the term  
28 "gross written premiums" means direct premiums written and  
29 reinsurance assumed.

30 c. Surplus as to policyholders.--For the purpose of  
31 determining the limitation on coverage written, surplus as to

1 policyholders shall be deemed to include any voluntary  
2 reserves, or any part thereof, which are not required by or  
3 pursuant to law and shall be determined from the last sworn  
4 statement of such underwriting member with the office  
5 ~~department~~, or by the last report or examination filed by the  
6 office ~~department~~, whichever is more recent at the time of  
7 assumption of such risk.

8           24. Unearned premium reserves.--All unearned premium  
9 reserves for business written on the exchange shall be  
10 calculated on a monthly or more frequent basis or on such  
11 other basis as determined by the office ~~department~~; except  
12 that all premiums on any marine or transportation insurance  
13 trip risk shall be deemed unearned until the trip is  
14 terminated.

15           25. Loss reserves.--All underwriting members of an  
16 exchange shall maintain loss reserves, including a reserve for  
17 incurred but not reported claims. The reserves shall be  
18 subject to review by the office ~~department~~, and, if loss  
19 experience shows that an underwriting member's loss reserves  
20 are inadequate, the office ~~department~~ shall require the  
21 underwriting member to maintain loss reserves in such  
22 additional amount as is needed to make them adequate.

23           26. Distribution of profits.--An underwriting member  
24 shall not distribute any profits in the form of cash or other  
25 assets to owners except out of that part of its available and  
26 accumulated surplus funds which is derived from realized net  
27 operating profits on its business and realized capital gains.  
28 In any one year such payments to owners shall not exceed 30  
29 percent of such surplus as of December 31 of the immediately  
30 preceding year, unless otherwise approved by the office  
31 ~~department~~. No distribution of profits shall be made that

1 would render an underwriting member either impaired or  
2 insolvent.

3           27. Stock dividends.--A stock dividend may be paid by  
4 an underwriting member out of any available surplus funds in  
5 excess of the aggregate amount of surplus advanced to the  
6 underwriting member under subparagraph 29.

7           28. Dividends from earned surplus.--A dividend  
8 otherwise lawful may be payable out of an underwriting  
9 member's earned surplus even though the total surplus of the  
10 underwriting member is then less than the aggregate of its  
11 past contributed surplus resulting from issuance of its  
12 capital stock at a price in excess of the par value thereof.

13           29. Borrowing of money by underwriting members.--

14           a. An underwriting member may borrow money to defray  
15 the expenses of its organization, provide it with surplus  
16 funds, or for any purpose of its business, upon a written  
17 agreement that such money is required to be repaid only out of  
18 the underwriting member's surplus in excess of that stipulated  
19 in such agreement. The agreement may provide for interest not  
20 exceeding 15 percent simple interest per annum. The interest  
21 shall or shall not constitute a liability of the underwriting  
22 member as to its funds other than such excess of surplus, as  
23 stipulated in the agreement. No commission or promotion  
24 expense shall be paid in connection with any such loan. The  
25 use of any surplus note and any repayments thereof shall be  
26 subject to the approval of the office ~~department~~.

27           b. Money so borrowed, together with any interest  
28 thereon if so stipulated in the agreement, shall not form a  
29 part of the underwriting member's legal liabilities except as  
30 to its surplus in excess of the amount thereof stipulated in  
31 the agreement, nor be the basis of any setoff; but until

1 repayment, financial statements filed or published by an  
2 underwriting member shall show as a footnote thereto the  
3 amount thereof then unpaid, together with any interest thereon  
4 accrued but unpaid.

5           30. Liquidation, rehabilitation, and  
6 restrictions.--The office ~~department~~, upon a showing that a  
7 member or associate broker of an exchange has met one or more  
8 of the grounds contained in part I of chapter 631, may  
9 restrict sales by type of risk, policy or contract limits,  
10 premium levels, or policy or contract provisions; increase  
11 surplus or capital requirements of underwriting members; issue  
12 cease and desist orders; suspend or restrict a member's or  
13 associate broker's right to transact business; place an  
14 underwriting member under conservatorship or rehabilitation;  
15 or seek an order of liquidation as authorized by part I of  
16 chapter 631.

17           31. Prohibited conduct.--The following acts by a  
18 member, associate broker, or affiliated person shall  
19 constitute prohibited conduct:

20           a. Fraud.

21           b. Fraudulent or dishonest acts committed by a member  
22 or associate broker prior to admission to an exchange, if the  
23 facts and circumstances were not disclosed to the office  
24 ~~department~~ upon application to become a member or associate  
25 broker.

26           c. Conduct detrimental to the welfare of an exchange.

27           d. Unethical or improper practices or conduct,  
28 inconsistent with just and equitable principles of trade as  
29 set forth in, but not limited to, ss. 626.951-626.9641 and  
30 626.973.

31

1 e. Failure to use due diligence to ascertain the  
2 insurance needs of a client or a principal.

3 f. Misstatements made under oath or upon an  
4 application for membership on an exchange.

5 g. Failure to testify or produce documents when  
6 requested by the office ~~department~~.

7 h. Willful violation of any law of this state.

8 i. Failure of an officer or principal to testify under  
9 oath concerning a member, associate broker, or other person's  
10 affairs as they relate to the operation of an exchange.

11 j. Violation of the constitution and bylaws of the  
12 exchange.

13 32. Penalties for participating in prohibited  
14 conduct.--

15 a. The office ~~department~~ may order the suspension of  
16 further transaction of business on the exchange of any member  
17 or associate broker found to have engaged in prohibited  
18 conduct. In addition, any member or associate broker found to  
19 have engaged in prohibited conduct may be subject to  
20 reprimand, censure, and/or a fine not exceeding \$25,000  
21 imposed by the office ~~department~~.

22 b. Any member which has an affiliated person who is  
23 found to have engaged in prohibited conduct shall be subject  
24 to involuntary withdrawal or in addition thereto may be  
25 subject to suspension, reprimand, censure, and/or a fine not  
26 exceeding \$25,000.

27 33. Reduction of penalties.--Any suspension,  
28 reprimand, censure, or fine may be remitted or reduced by the  
29 office ~~department~~ on such terms and conditions as are deemed  
30 fair and equitable.

31

1           34. Other offenses.--Any member or associate broker  
2 that is suspended shall be deprived, during the period of  
3 suspension, of all rights and privileges of a member or of an  
4 associate broker and may be proceeded against by the office  
5 ~~department~~ for any offense committed either before or after  
6 the date of suspension.

7           35. Reinstatement.--Any member or associate broker  
8 that is suspended may be reinstated at any time on such terms  
9 and conditions as the office ~~department~~ may specify.

10           36. Remittance of fines.--Fines imposed under this  
11 section shall be remitted to the office ~~department~~ and shall  
12 be paid into the Insurance ~~Commissioner's~~ Regulatory Trust  
13 Fund.

14           37. Failure to pay fines.--When a member or associate  
15 broker has failed to pay a fine for 15 days after it becomes  
16 payable, such member or associate broker shall be suspended,  
17 unless the office ~~department~~ has granted an extension of time  
18 to pay such fine.

19           38. Changes in ownership or assets.--In the event of a  
20 major change in the ownership or a major change in the assets  
21 of an underwriting member, the underwriting member shall  
22 report such change in writing to the office ~~department~~ within  
23 30 days of the effective date thereof. The report shall set  
24 forth the details of the change. Any change in ownership or  
25 assets of more than 5 percent shall be considered a major  
26 change.

27           39. Retaliation.--

28           a. When by or pursuant to the laws of any other state  
29 or foreign country any taxes, licenses, or other fees, in the  
30 aggregate, and any fines, penalties, deposit requirements, or  
31 other material obligations, prohibitions, or restrictions are

1 or would be imposed upon an exchange or upon the agents or  
2 representatives of such exchange which are in excess of such  
3 taxes, licenses, and other fees, in the aggregate, or which  
4 are in excess of such fines, penalties, deposit requirements,  
5 or other obligations, prohibitions, or restrictions directly  
6 imposed upon similar exchanges or upon the agents or  
7 representatives of such exchanges of such other state or  
8 country under the statutes of this state, so long as such laws  
9 of such other state or country continue in force or are so  
10 applied, the same taxes, licenses, and other fees, in the  
11 aggregate, or fines, penalties, deposit requirements, or other  
12 material obligations, prohibitions, or restrictions of  
13 whatever kind shall be imposed by the office ~~department~~ upon  
14 the exchanges, or upon the agents or representatives of such  
15 exchanges, of such other state or country doing business or  
16 seeking to do business in this state.

17         b. Any tax, license, or other obligation imposed by  
18 any city, county, or other political subdivision or agency of  
19 a state, jurisdiction, or foreign country on an exchange, or  
20 on the agents or representatives on an exchange, shall be  
21 deemed to be imposed by such state, jurisdiction, or foreign  
22 country within the meaning of sub-subparagraph a.

23         40. Agents.--

24         a. Agents as defined in ss. 626.015 and 626.914 who  
25 are broker members or associate broker members of an exchange  
26 shall be allowed only to place on an exchange the same kind or  
27 kinds of business that the agent is licensed to place pursuant  
28 to Florida law. Direct Florida business as defined in s.  
29 626.916 or s. 626.917 shall be written through a broker member  
30 who is a surplus lines agent as defined in s. 626.914. The  
31 activities of each broker member or associate broker with

1 regard to an exchange shall be subject to all applicable  
2 provisions of the insurance laws of this state, and all such  
3 activities shall constitute transactions under his or her  
4 license as an insurance agent for purposes of the Florida  
5 insurance law.

6           b. Premium payments and other requirements.--If an  
7 underwriting member has assumed the risk as to a surplus lines  
8 coverage and if the premium therefor has been received by the  
9 surplus lines agent who placed such insurance, then in all  
10 questions thereafter arising under the coverage as between the  
11 underwriting member and the insured, the underwriting member  
12 shall be deemed to have received the premium due to it for  
13 such coverage; and the underwriting member shall be liable to  
14 the insured as to losses covered by such insurance, and for  
15 unearned premiums which may become payable to the insured upon  
16 cancellation of such insurance, whether or not in fact the  
17 surplus lines agent is indebted to the underwriting member  
18 with respect to such insurance or for any other cause.

19           41. Improperly issued contracts, riders, and  
20 endorsements.--

21           a. Any insurance policy, rider, or endorsement issued  
22 by an underwriting member and otherwise valid which contains  
23 any condition or provision not in compliance with the  
24 requirements of this section shall not be thereby rendered  
25 invalid, except as provided in s. 627.415, but shall be  
26 construed and applied in accordance with such conditions and  
27 provisions as would have applied had such policy, rider, or  
28 endorsement been in full compliance with this section. In the  
29 event an underwriting member issues or delivers any policy for  
30 an amount which exceeds any limitations otherwise provided in  
31 this section, the underwriting member shall be liable to the

1 insured or his or her beneficiary for the full amount stated  
2 in the policy in addition to any other penalties that may be  
3 imposed.

4           b. Any insurance contract delivered or issued for  
5 delivery in this state governing a subject or subjects of  
6 insurance resident, located, or to be performed in this state  
7 which, pursuant to the provisions of this section, the  
8 underwriting member may not lawfully insure under such a  
9 contract shall be cancelable at any time by the underwriting  
10 member, any provision of the contract to the contrary  
11 notwithstanding; and the underwriting member shall promptly  
12 cancel the contract in accordance with the request of the  
13 office ~~department~~ therefor. No such illegality or  
14 cancellation shall be deemed to relieve the underwriting  
15 syndicate of any liability incurred by it under the contract  
16 while in force or to prohibit the underwriting syndicate from  
17 retaining the pro rata earned premium thereon. This provision  
18 does not relieve the underwriting syndicate from any penalty  
19 otherwise incurred by the underwriting syndicate.

20           42. Satisfaction of judgments.--

21           a. Every judgment or decree for the recovery of money  
22 heretofore or hereafter entered in any court of competent  
23 jurisdiction against any underwriting member shall be fully  
24 satisfied within 60 days from and after the entry thereof or,  
25 in the case of an appeal from such judgment or decree, within  
26 60 days from and after the affirmance of the judgment or  
27 decree by the appellate court.

28           b. If the judgment or decree is not satisfied as  
29 required under sub-subparagraph a., and proof of such failure  
30 to satisfy is made by filing with the office ~~department~~ a  
31 certified transcript of the docket of the judgment or the

1 decree together with a certificate by the clerk of the court  
2 wherein the judgment or decree remains unsatisfied, in whole  
3 or in part, after the time provided in sub-subparagraph a.,  
4 the office ~~department~~ shall forthwith prohibit the  
5 underwriting member from transacting business. The office  
6 ~~department~~ shall not permit such underwriting member to write  
7 any new business until the judgment or decree is wholly paid  
8 and satisfied and proof thereof is filed with the office  
9 ~~department~~ under the official certificate of the clerk of the  
10 court wherein the judgment was recovered, showing that the  
11 judgment or decree is satisfied of record, and until the  
12 expenses and fees incurred in the case are also paid by the  
13 underwriting syndicate.

14           43. Tender and exchange offers.--No person shall  
15 conclude a tender offer or an exchange offer or otherwise  
16 acquire 5 percent or more of the outstanding voting securities  
17 of an underwriting member or controlling company or purchase 5  
18 percent or more of the ownership of an underwriting member or  
19 controlling company unless such person has filed with, and  
20 obtained the approval of, the office ~~department~~ and sent to  
21 such underwriting member a statement setting forth:

22           a. The identity of, and background information on,  
23 each person by whom, or on whose behalf, the acquisition is to  
24 be made; and, if the acquisition is to be made by or on behalf  
25 of a corporation, association, or trust, the identity of and  
26 background information on each director, officer, trustee, or  
27 other natural person performing duties similar to those of a  
28 director, officer, or trustee for the corporation,  
29 association, or trust.

30           b. The source and amount of the funds or other  
31 consideration used, or to be used, in making the acquisition.

1           c. Any plans or proposals which such person may have  
2 to liquidate such member, to sell its assets, or to merge or  
3 consolidate it.

4           d. The percentage of ownership which such person  
5 proposes to acquire and the terms of the offer or exchange, as  
6 the case may be.

7           e. Information as to any contracts, arrangements, or  
8 understandings with any party with respect to any securities  
9 of such member or controlling company, including, but not  
10 limited to, information relating to the transfer of any  
11 securities, option arrangements, or puts or calls or the  
12 giving or withholding of proxies, naming the party with whom  
13 such contract, arrangements, or understandings have been  
14 entered and giving the details thereof.

15           f. The office ~~department~~ may disapprove any  
16 acquisition subject to the provisions of this subparagraph by  
17 any person or any affiliated person of such person who:

18           (I) Willfully violates this subparagraph;

19           (II) In violation of an order of the office ~~department~~  
20 issued pursuant to sub-subparagraph j., fails to divest  
21 himself or herself of any stock obtained in violation of this  
22 subparagraph, or fails to divest himself or herself of any  
23 direct or indirect control of such stock, within 25 days after  
24 such order; or

25           (III) In violation of an order issued by the office  
26 ~~department~~ pursuant to sub-subparagraph j., acquires  
27 additional stock of the underwriting member or controlling  
28 company, or direct or indirect control of such stock, without  
29 complying with this subparagraph.

30           g. The person or persons filing the statement required  
31 by this subparagraph have the burden of proof. The office

1 ~~department~~ shall approve any such acquisition if it finds, on  
2 the basis of the record made during any proceeding or on the  
3 basis of the filed statement if no proceeding is conducted,  
4 that:

5 (I) Upon completion of the acquisition, the  
6 underwriting member will be able to satisfy the requirements  
7 for the approval to write the line or lines of insurance for  
8 which it is presently approved;

9 (II) The financial condition of the acquiring person  
10 or persons will not jeopardize the financial stability of the  
11 underwriting member or prejudice the interests of its  
12 policyholders or the public;

13 (III) Any plan or proposal which the acquiring person  
14 has, or acquiring persons have, made:

15 (A) To liquidate the insurer, sell its assets, or  
16 merge or consolidate it with any person, or to make any other  
17 major change in its business or corporate structure or  
18 management; or

19 (B) To liquidate any controlling company, sell its  
20 assets, or merge or consolidate it with any person, or to make  
21 any major change in its business or corporate structure or  
22 management which would have an effect upon the underwriting  
23 member

24  
25 is fair and free of prejudice to the policyholders of the  
26 underwriting member or to the public;

27 (IV) The competence, experience, and integrity of  
28 those persons who will control directly or indirectly the  
29 operation of the underwriting member indicate that the  
30 acquisition is in the best interest of the policyholders of  
31 the underwriting member and in the public interest;

1           (V) The natural persons for whom background  
2 information is required to be furnished pursuant to this  
3 subparagraph have such backgrounds as to indicate that it is  
4 in the best interests of the policyholders of the underwriting  
5 member, and in the public interest, to permit such persons to  
6 exercise control over such underwriting member;

7           (VI) The officers and directors to be employed after  
8 the acquisition have sufficient insurance experience and  
9 ability to assure reasonable promise of successful operation;

10           (VII) The management of the underwriting member after  
11 the acquisition will be competent and trustworthy and will  
12 possess sufficient managerial experience so as to make the  
13 proposed operation of the underwriting member not hazardous to  
14 the insurance-buying public;

15           (VIII) The management of the underwriting member after  
16 the acquisition will not include any person who has directly  
17 or indirectly through ownership, control, reinsurance  
18 transactions, or other insurance or business relations  
19 unlawfully manipulated the assets, accounts, finances, or  
20 books of any insurer or underwriting member or otherwise acted  
21 in bad faith with respect thereto;

22           (IX) The acquisition is not likely to be hazardous or  
23 prejudicial to the underwriting member's policyholders or the  
24 public; and

25           (X) The effect of the acquisition of control would not  
26 substantially lessen competition in insurance in this state or  
27 would not tend to create a monopoly therein.

28           h. No vote by the stockholder of record, or by any  
29 other person, of any security acquired in contravention of the  
30 provisions of this subparagraph is valid. Any acquisition of  
31 any security contrary to the provisions of this subparagraph

1 is void. Upon the petition of the underwriting member or  
2 controlling company, the circuit court for the county in which  
3 the principal office of such underwriting member is located  
4 may, without limiting the generality of its authority, order  
5 the issuance or entry of an injunction or other order to  
6 enforce the provisions of this subparagraph. There shall be a  
7 private right of action in favor of the underwriting member or  
8 controlling company to enforce the provisions of this  
9 subparagraph. No demand upon the office ~~department~~ that it  
10 perform its functions shall be required as a prerequisite to  
11 any suit by the underwriting member or controlling company  
12 against any other person, and in no case shall the office  
13 ~~department~~ be deemed a necessary party to any action by such  
14 underwriting member or controlling company to enforce the  
15 provisions of this subparagraph. Any person who makes or  
16 proposes an acquisition requiring the filing of a statement  
17 pursuant to this subparagraph, or who files such a statement,  
18 shall be deemed to have thereby designated the Chief Financial  
19 Officer ~~Insurance Commissioner, or his or her assistant or~~  
20 ~~deputy or another person in charge of his or her office,~~ as  
21 such person's agent for service of process under this  
22 subparagraph and shall thereby be deemed to have submitted  
23 himself or herself to the administrative jurisdiction of the  
24 office ~~department~~ and to the jurisdiction of the circuit  
25 court.

26 i. Any approval by the office ~~department~~ under this  
27 subparagraph does not constitute a recommendation by the  
28 office ~~department~~ for an acquisition, tender offer, or  
29 exchange offer. It is unlawful for a person to represent that  
30 the office's ~~department's~~ approval constitutes a  
31 recommendation. A person who violates the provisions of this

1 sub-subparagraph is guilty of a felony of the third degree,  
2 punishable as provided in s. 775.082, s. 775.083, or s.  
3 775.084. The statute-of-limitations period for the  
4 prosecution of an offense committed under this  
5 sub-subparagraph is 5 years.

6 j. Upon notification to the office ~~department~~ by the  
7 underwriting member or a controlling company that any person  
8 or any affiliated person of such person has acquired 5 percent  
9 or more of the outstanding voting securities of the  
10 underwriting member or controlling company without complying  
11 with the provisions of this subparagraph, the office  
12 ~~department~~ shall order that the person and any affiliated  
13 person of such person cease acquisition of any further  
14 securities of the underwriting member or controlling company;  
15 however, the person or any affiliated person of such person  
16 may request a proceeding, which proceeding shall be convened  
17 within 7 days after the rendering of the order for the sole  
18 purpose of determining whether the person, individually or in  
19 connection with any affiliated person of such person, has  
20 acquired 5 percent or more of the outstanding voting  
21 securities of an underwriting member or controlling company.  
22 Upon the failure of the person or affiliated person to request  
23 a hearing within 7 days, or upon a determination at a hearing  
24 convened pursuant to this sub-subparagraph that the person or  
25 affiliated person has acquired voting securities of an  
26 underwriting member or controlling company in violation of  
27 this subparagraph, the office ~~department~~ may order the person  
28 and affiliated person to divest themselves of any voting  
29 securities so acquired.

30 k.(I) The office ~~department~~ shall, if necessary to  
31 protect the public interest, suspend or revoke the certificate

1 of authority of any underwriting member or controlling  
2 company:

3 (A) The control of which is acquired in violation of  
4 this subparagraph;

5 (B) That is controlled, directly or indirectly, by any  
6 person or any affiliated person of such person who, in  
7 violation of this subparagraph, has obtained control of an  
8 underwriting member or controlling company; or

9 (C) That is controlled, directly or indirectly, by any  
10 person who, directly or indirectly, controls any other person  
11 who, in violation of this subparagraph, acquires control of an  
12 underwriting member or controlling company.

13 (II) If any underwriting member is subject to  
14 suspension or revocation pursuant to sub-sub-subparagraph (I),  
15 the underwriting member shall be deemed to be in such  
16 condition, or to be using or to have been subject to such  
17 methods or practices in the conduct of its business, as to  
18 render its further transaction of insurance presently or  
19 prospectively hazardous to its policyholders, creditors, or  
20 stockholders or to the public.

21 1.(I) For the purpose of this sub-sub-subparagraph,  
22 the term "affiliated person" of another person means:

23 (A) The spouse of such other person;

24 (B) The parents of such other person and their lineal  
25 descendants and the parents of such other person's spouse and  
26 their lineal descendants;

27 (C) Any person who directly or indirectly owns or  
28 controls, or holds with power to vote, 5 percent or more of  
29 the outstanding voting securities of such other person;

30  
31

1 (D) Any person 5 percent or more of the outstanding  
2 voting securities of which are directly or indirectly owned or  
3 controlled, or held with power to vote, by such other person;

4 (E) Any person or group of persons who directly or  
5 indirectly control, are controlled by, or are under common  
6 control with such other person; or any officer, director,  
7 partner, copartner, or employee of such other person;

8 (F) If such other person is an investment company, any  
9 investment adviser of such company or any member of an  
10 advisory board of such company;

11 (G) If such other person is an unincorporated  
12 investment company not having a board of directors, the  
13 depositor of such company; or

14 (H) Any person who has entered into an agreement,  
15 written or unwritten, to act in concert with such other person  
16 in acquiring or limiting the disposition of securities of an  
17 underwriting member or controlling company.

18 (II) For the purposes of this section, the term  
19 "controlling company" means any corporation, trust, or  
20 association owning, directly or indirectly, 25 percent or more  
21 of the voting securities of one or more underwriting members.

22 m. The commission may ~~department is authorized to~~  
23 adopt, amend, or repeal rules that are necessary to implement  
24 the provisions of this subparagraph, pursuant to chapter 120.

25 44. Background information.--The information as to the  
26 background and identity of each person about whom information  
27 is required to be furnished pursuant to sub-subparagraph 43.a.  
28 shall include, but shall not be limited to:

29 a. Such person's occupations, positions of employment,  
30 and offices held during the past 10 years.

31

1           b. The principal business and address of any business,  
2 corporation, or other organization in which each such office  
3 was held or in which such occupation or position of employment  
4 was carried on.

5           c. Whether, at any time during such 10-year period,  
6 such person was convicted of any crime other than a traffic  
7 violation.

8           d. Whether, during such 10-year period, such person  
9 has been the subject of any proceeding for the revocation of  
10 any license and, if so, the nature of such proceeding and the  
11 disposition thereof.

12           e. Whether, during such 10-year period, such person  
13 has been the subject of any proceeding under the federal  
14 Bankruptcy Act or whether, during such 10-year period, any  
15 corporation, partnership, firm, trust, or association in which  
16 such person was a director, officer, trustee, partner, or  
17 other official has been subject to any such proceeding, either  
18 during the time in which such person was a director, officer,  
19 trustee, partner, or other official, or within 12 months  
20 thereafter.

21           f. Whether, during such 10-year period, such person  
22 has been enjoined, either temporarily or permanently, by a  
23 court of competent jurisdiction from violating any federal or  
24 state law regulating the business of insurance, securities, or  
25 banking, or from carrying out any particular practice or  
26 practices in the course of the business of insurance,  
27 securities, or banking, together with details of any such  
28 event.

29           45. Security fund.--All underwriting members shall be  
30 members of the security fund of any exchange.

31

1           46. Underwriting member defined.--Whenever the term  
2 "underwriting member" is used in this subsection, it shall be  
3 construed to mean "underwriting syndicate."

4           47. Offsets.--Any action, requirement, or constraint  
5 imposed by the office ~~department~~ shall reduce or offset  
6 similar actions, requirements, or constraints of any exchange.

7           48. Restriction on member ownership.--

8           a. Investments existing prior to July 2, 1987.--The  
9 investment in any member by brokers, agents, and  
10 intermediaries transacting business on the exchange, and the  
11 investment in any such broker, agent, or intermediary by any  
12 member, directly or indirectly, shall in each case be limited  
13 in the aggregate to less than 20 percent of the total  
14 investment in such member, broker, agent, or intermediary, as  
15 the case may be. After December 31, 1987, the aggregate  
16 percent of the total investment in such member by any broker,  
17 agent, or intermediary and the aggregate percent of the total  
18 investment in any such broker, agent, or intermediary by any  
19 member, directly or indirectly, shall not exceed 15 percent.  
20 After June 30, 1988, such aggregate percent shall not exceed  
21 10 percent and after December 31, 1988, such aggregate percent  
22 shall not exceed 5 percent.

23           b. Investments arising on or after July 2, 1987.--The  
24 investment in any underwriting member by brokers, agents, or  
25 intermediaries transacting business on the exchange, and the  
26 investment in any such broker, agent, or intermediary by any  
27 underwriting member, directly or indirectly, shall in each  
28 case be limited in the aggregate to less than 5 percent of the  
29 total investment in such underwriting member, broker, agent,  
30 or intermediary.

31

1           49. "Underwriting manager" defined.--"Underwriting  
2 manager" as used in this subparagraph includes any person,  
3 partnership, corporation, or organization providing any of the  
4 following services to underwriting members of the exchange:

5           a. Office management and allied services, including  
6 correspondence and secretarial services.

7           b. Accounting services, including bookkeeping and  
8 financial report preparation.

9           c. Investment and banking consultations and services.

10           d. Underwriting functions and services including the  
11 acceptance, rejection, placement, and marketing of risk.

12           50. Prohibition of underwriting manager

13 investment.--Any direct or indirect investment in any  
14 underwriting manager by a broker member or any affiliated  
15 person of a broker member or any direct or indirect investment  
16 in a broker member by an underwriting manager or any  
17 affiliated person of an underwriting manager is prohibited.

18 "Affiliated person" for purposes of this subparagraph is  
19 defined in subparagraph 43.

20           51. An underwriting member may not accept reinsurance  
21 on an assumed basis from an affiliate or a controlling  
22 company, nor may a broker member or management company place  
23 reinsurance from an affiliate or controlling company of theirs  
24 with an underwriting member. "Affiliate and controlling  
25 company" for purposes of this subparagraph is defined in  
26 subparagraph 43.

27           52. Premium defined.--"Premium" is the consideration  
28 for insurance, by whatever name called. Any "assessment" or  
29 any "membership," "policy," "survey," "inspection," "service"  
30 fee or charge or similar fee or charge in consideration for an  
31 insurance contract is deemed part of the premium.

1           53. Rules.--The commission ~~department~~ shall adopt  
2 ~~promulgate~~ rules necessary for or as an aid to the  
3 effectuation of any provision of this section.

4           (7) The performance of the contractual obligations of  
5 the exchange or its members entered into pursuant to  
6 subsection (1) shall not be covered by any of the Florida  
7 state security or guaranty funds.

8           Section 1331. Section 629.520, Florida Statutes, is  
9 amended to read:

10           629.520 Authority of a limited reciprocal  
11 insurer.--The authority of any limited reciprocal insurer to  
12 accept new business or renewals shall not continue beyond  
13 October 1, 1992; however, such limited reciprocal insurer  
14 shall continue to service its obligations previously incurred  
15 or with the approval of the office ~~department~~, arrange for the  
16 transfer of these obligations to an authorized insurer. All  
17 power of the office ~~department~~ with respect to limited  
18 reciprocal insurers shall continue undiminished. This section  
19 does not affect any other power of the office ~~department~~ or  
20 any other function of the office ~~department~~.

21           Section 1332. Subsection (1) of section 630.021,  
22 Florida Statutes, is amended to read:

23           630.021 Required deposit of assets.--

24           (1) An alien insurer may use Florida as a state of  
25 entry to transact insurance in the United States by making and  
26 maintaining in this state a deposit of assets in trust with a  
27 solvent bank or trust company or savings and loan association  
28 approved by the office ~~department~~.

29           Section 1333. Section 630.031, Florida Statutes, is  
30 amended to read:

31

1           630.031 Existing trusts.--All trusts of trusteeed  
2 assets heretofore created and now existing shall be continued  
3 under the instruments creating them, unless inconsistent with  
4 the provisions of this chapter. No amendment of the deed of  
5 trust under which such assets are so held shall be effective  
6 unless approved by the office ~~department~~ in accordance with  
7 the provisions of this chapter.

8           Section 1334. Section 630.051, Florida Statutes, is  
9 amended to read:

10           630.051 Trust agreement; approval; amendment.--

11           (1) The deposit referred to in s. 630.021 shall be  
12 made under a written trust agreement between the insurer and  
13 the trustee, consistent with the provisions of this chapter;  
14 and the agreement and any amendments thereto shall be  
15 authenticated in such form and manner as the office ~~department~~  
16 may designate or approve.

17           (2) The agreement shall not be effective until filed  
18 with and approved in writing by the office ~~department~~. If the  
19 office ~~department~~ finds that the trust agreement is sufficient  
20 in form and in conformity with law, that the trustee or  
21 trustees are eligible as such, and that the trust agreement is  
22 adequate to protect the interests of the beneficiaries of the  
23 trust, it shall give its written approval thereof. If the  
24 office ~~department~~ finds that any of the above-mentioned  
25 requisites do not exist, it shall refuse to approve the trust  
26 agreement.

27           (3) If after a trust agreement has become effective  
28 the office ~~department~~ finds that the requisites for approval  
29 of the agreement no longer exist, it may withdraw its  
30 approval.

31

1           (4) A trust agreement may be amended, but no amendment  
2 shall be effective unless the agreement as so amended is found  
3 by the office ~~department~~ to be consistent with the provisions  
4 of this chapter and the amendment is approved by it.

5           Section 1335. Subsection (2) of section 630.071,  
6 Florida Statutes, is amended to read:

7           630.071 Requirements and contents of trust  
8 agreement.--Trusteed assets of an alien insurer held in this  
9 state under this chapter shall be subject to, and the trust  
10 agreement shall make provisions consistent with, the following  
11 conditions:

12           (2) Substitution of a new trustee or trustees in case  
13 of a vacancy by death, resignation or otherwise may be made,  
14 subject to the office's ~~department's~~ approval.

15           Section 1336. Section 630.081, Florida Statutes, is  
16 amended to read:

17           630.081 Withdrawal of assets, in general.--

18           (1) The trust agreement shall provide, in substance,  
19 that no withdrawals of trusteed assets shall be made by the  
20 insurer or permitted by the trustee or trustees without the  
21 written authorization or approval of the office ~~department~~ in  
22 advance thereof, except as follows:

23           (a) Any or all income, earnings, dividends, or  
24 interest accumulations of the trusteed assets may be paid over  
25 to the United States manager of the insurer upon request of  
26 the insurer or the manager.

27           (b) For substitution, coincidentally with such  
28 withdrawal, of other securities or assets of value at least  
29 equal in amount to those being withdrawn, if such substituted  
30 securities or assets are likewise such as are eligible for  
31 investment of the funds of domestic insurers under part II of

1 chapter 625; and if such withdrawal is requested in writing by  
2 the insurer's United States manager pursuant to general or  
3 specific written authority previously given or delegated by  
4 the insurer's board of directors or other similar governing  
5 body, and a copy of such authority has been filed with the  
6 trustee or trustees.

7 (c) For the purpose of making deposits required by law  
8 in any state in which the insurer is or thereafter becomes an  
9 authorized insurer, for the protection of the insurer's  
10 policyholders or policyholders and creditors in such state or  
11 in the United States, if such withdrawal does not reduce the  
12 insurer's deposit in this state to an amount less than the  
13 minimum deposit required under s. 624.412. The trustee or  
14 trustees shall transfer any assets so withdrawn, and in the  
15 amount so required to be deposited in the other state,  
16 directly to the depository required to receive such deposit in  
17 such other state, as certified in writing by the public  
18 official having supervision of insurance in the other state.

19 (d) For the purpose of transferring the trusteed  
20 assets to an official liquidator, conservator, or  
21 rehabilitator pursuant to the order of a court of competent  
22 jurisdiction.

23 (2) The office ~~department~~ shall so authorize or  
24 approve withdrawal of only such assets as are in excess of the  
25 amount of assets required to be so held in trust under s.  
26 630.021, or as may otherwise be consistent with the provisions  
27 of this chapter.

28 (3) If at any time the insurer becomes insolvent, or  
29 if its assets held in the United States are less in amount  
30 than as required under s. 624.412(1), upon determination  
31 thereof the office ~~department~~ shall in writing order the

1 trustee to suspend the right of the insurer or any other  
2 person to withdraw assets as otherwise authorized under  
3 paragraphs (1)(a), (b), and (c); and the trustee shall comply  
4 with such order until the further order of the office  
5 ~~department~~.

6 (4) In the case of withdrawal of trusteed assets  
7 deposited in another state in which the insurer is authorized  
8 to do business, it shall be sufficient if the trust agreement  
9 requires similar written approval of the insurance supervisory  
10 official of such state in lieu of any required approval of the  
11 office ~~department~~. In all such cases, the insurer shall notify  
12 the office ~~department~~ in writing of the nature and extent of  
13 such withdrawal.

14 Section 1337. Section 630.091, Florida Statutes, is  
15 amended to read:

16 630.091 Statement of trustee.--

17 (1) The trustee or trustees of trusteed assets shall  
18 from time to time file with the office ~~department~~ statements,  
19 in such form as it may designate and request in writing,  
20 certifying the character of such assets and the amounts  
21 thereof.

22 (2) If the trustee or trustees fail to file any such  
23 statement after request therefor and expiration of a  
24 reasonable time thereafter, the office ~~department~~ may suspend  
25 or revoke the certificate of authority of the insurer.

26 Section 1338. Section 630.101, Florida Statutes, is  
27 amended to read:

28 630.101 Examination of assets.--The office ~~department~~  
29 may from time to time examine trusteed assets of any insurer  
30 in accordance with the same conditions and procedures

31

1 governing the examination of insurers in general under part II  
2 of chapter 624.

3 Section 1339. Section 630.131, Florida Statutes, is  
4 amended to read:

5 630.131 Domestication procedure.--

6 (1) Upon compliance with ss. 630.131-630.161, any  
7 alien insurer authorized to do business in this state which  
8 owns beneficially, directly or indirectly, all of the  
9 outstanding capital stock of a domestic insurer may, with the  
10 prior written approval of the office ~~department~~ and subject to  
11 the final approval of the office ~~department~~, domesticate its  
12 United States branch, if entered through this state, by  
13 entering into an agreement in writing with the domestic  
14 insurer providing for the acquisition by the domestic insurer  
15 of all the liabilities of the United States branch for no  
16 consideration other than the assumption of such liabilities;  
17 except that the agreement may further provide for additional  
18 consideration payable by the issuance by the acquiring  
19 domestic insurer of shares of its capital stock.

20 (2) Such shares of capital stock of the acquiring  
21 domestic insurer, or voting trust certificates representing  
22 such shares, as are held among the trustee assets of the  
23 United States branch of the alien insurer or are held in a  
24 trust created by the alien insurer and of which the alien  
25 insurer is a beneficiary shall be deemed to be shares held  
26 beneficially, but indirectly, by an alien insurer.

27 (3) The acquisition of assets and assumption of  
28 liabilities of the United States branch by the domestic  
29 insurer shall be effected by the filing with the office  
30 ~~department~~ of an instrument of transfer and assumption in form  
31

1 satisfactory to the office ~~department~~ and executed by the  
2 alien insurer and the domestic insurer.

3 (4) A domestic insurer may either be authorized to  
4 transact insurance in this state prior to entering into such  
5 domestication agreement or may, if the office ~~department~~ so  
6 approves, be authorized effective with the consummation of the  
7 domestication agreement in accordance with the provisions of  
8 s. 630.161.

9 Section 1340. Section 630.151, Florida Statutes, is  
10 amended to read:

11 630.151 Office ~~Departmental~~ approval of domestication  
12 agreement.--An executed counterpart of the domestication  
13 agreement, together with certified copies of the corporate  
14 proceedings of the domestic insurer and the alien insurer,  
15 approving, adopting, and authorizing the execution of the  
16 domestication agreement, shall be submitted to the office  
17 ~~department~~ for its approval. The office ~~department~~ shall  
18 thereupon consider the agreement; and, if it finds that the  
19 same is in accordance with the provisions hereof and that the  
20 interests of policyholders and creditors of the United States  
21 branch of the alien insurer are not materially adversely  
22 affected, it may approve the domestication agreement and  
23 authorize the consummation thereof in compliance with the  
24 provisions of s. 630.161.

25 Section 1341. Section 630.161, Florida Statutes, is  
26 amended to read:

27 630.161 Consummation of domestication; transfer of  
28 assets and deposits.--

29 (1) Upon the filing with the office ~~department~~ of a  
30 certified copy of the instrument of transfer and assumption  
31 pursuant to which a domestic insurer succeeds to the business

1 and assets of the United States branch of an alien insurer and  
2 assumes all its liabilities as provided by ss.  
3 630.131-630.161, the domestication of the United States branch  
4 shall be deemed to be effective; and thereupon all the rights,  
5 franchises, and interests of the United States branch in and  
6 to every species of property, real, personal, and mixed, and  
7 things in action thereunto belonging shall be deemed as  
8 transferred to and vested in the domestic insurer, and  
9 simultaneously therewith the domestic insurer shall be deemed  
10 to have assumed all of the liabilities of the United States  
11 branch.

12 (2) All deposits of the United States branch held by  
13 the department, or state officers or other state regulatory  
14 agencies pursuant to requirements of state laws, shall be  
15 deemed to be held as security that the domestic insurer will  
16 fully perform its assumption as direct liabilities of all the  
17 liabilities to policyholders or policyholders and creditors  
18 within the United States of the United States branch; and such  
19 deposits shall be deemed to be assets of the domestic insurer  
20 and shall be reported as such in the annual financial  
21 statements and other reports which the domestic insurer may be  
22 required to file. Upon the ultimate release by any such state  
23 officer or agency of any such deposits, the securities and  
24 cash constituting such released deposit shall be delivered and  
25 paid over to the domestic insurer as the lawful successor in  
26 interest to the United States branch.

27 (3) Contemporaneously with the consummation of the  
28 domestication of the United States branch, notwithstanding any  
29 provision of the statutes to the contrary, the department  
30 shall transfer to the insurer the securities deposited by the  
31 United States branch in compliance with the provisions of this

1 law, and the department shall consent that the trustee of the  
2 trustee assets deposited by the United States branch in  
3 compliance with the provisions of this law shall withdraw from  
4 the trustee assets and transfer and deliver over to the  
5 domestic insurer all assets held by such trustee.

6 Section 1342. Subsection (3) of section 631.021,  
7 Florida Statutes, is amended to

8 631.021 Jurisdiction of delinquency proceeding; venue;  
9 change of venue; exclusiveness of remedy; appeal.--

10 (3) A delinquency proceeding pursuant to this chapter  
11 constitutes the sole and exclusive method of liquidating,  
12 rehabilitating, reorganizing, or conserving an insurer. No  
13 court shall entertain a petition for the commencement of such  
14 a proceeding unless the petition has been filed in the name of  
15 the state on the relation of the office ~~department~~. The  
16 Florida Insurance Guaranty Association, Incorporated, the  
17 Florida Workers' Compensation Insurance Guaranty Association,  
18 Incorporated, and the Florida Life and Health Guaranty  
19 Association, Incorporated, shall be given reasonable written  
20 notice by the office ~~department~~ of all hearings which pertain  
21 to an adjudication of insolvency of a member insurer.

22 Section 1343. Section 631.025, Florida Statutes, is  
23 amended to read:

24 631.025 Persons subject to this part.--Delinquency  
25 proceedings authorized by this part may be initiated against  
26 any insurer, as defined in s. 631.011(15), if the statutory  
27 grounds are present as to that insurer, and the court may  
28 exercise jurisdiction over any person required to cooperate  
29 with the department and office pursuant to s. 631.391 and over  
30 all persons made subject to the court's jurisdiction by other  
31

1 provisions of law. Such persons include, but are not limited  
2 to:

3 (1) A person transacting, or that has transacted,  
4 insurance business in or from this state and against whom  
5 claims arising from that business may exist now or in the  
6 future.

7 (2) A person purporting to transact an insurance  
8 business in this state and any person who acts as an insurer,  
9 transacts insurance, or otherwise engages in insurance  
10 activities in or from this state, with or without a  
11 certificate of authority or proper authority from the office  
12 ~~department~~, against whom claims arising from that business may  
13 exist now or in the future.

14 (3) An insurer with policyholders resident in this  
15 state.

16 (4) All other persons organized or in the process of  
17 organizing with the intent to transact an insurance business  
18 in this state.

19 Section 1344. Section 631.031, Florida Statutes, is  
20 amended to read:

21 631.031 Commencement of delinquency proceeding.--The  
22 office ~~department~~ may commence any such proceeding by  
23 application to the court for an order directing the insurer to  
24 show cause why the office ~~department~~ should not have the  
25 relief prayed for. On the return of such order to show cause,  
26 and after a full hearing, the court shall either deny the  
27 application or grant the application, together with such other  
28 relief as the nature of the case and the interests of the  
29 policyholders, creditors, stockholders, members, subscribers,  
30 or public may require. The office ~~department~~ may also commence  
31 any such proceeding by application to the court by petition

1 for the entry of a consent order of conservation,  
2 rehabilitation, or liquidation.

3 Section 1345. Subsections (2), (3), (4), and (5) of  
4 section 631.041, Florida Statutes, are amended to read:

5 631.041 Automatic stay; relief from stay;  
6 injunctions.--

7 (2) Upon written request of a person or entity subject  
8 to the stay against obtaining or enforcing a judgment against  
9 an insurer or affiliate provided in paragraph (1)(b) the  
10 court, with notice to the office and department and upon  
11 hearing, may grant relief from the stay provided the movant,  
12 who has the burden of proof, establishes by clear and  
13 convincing evidence that the judgment is not voidable or void  
14 by a receiver and that property from which the judgment would  
15 be satisfied does not constitute premium funds or another  
16 asset which belongs to the insurer.

17 (3) Upon application by the office or department  
18 pursuant to this part for an order to show cause or upon  
19 petition, or at any time thereafter, the court may without  
20 notice issue an injunction restraining the insurer and its  
21 officers, directors, stockholders, members, subscribers, and  
22 agents and all other persons from the transaction of its  
23 business or the waste or disposition of its property until the  
24 further order of the court.

25 (4) The court may without notice at any time during a  
26 proceeding under this chapter issue such other injunctions or  
27 orders as may be deemed necessary to prevent interference with  
28 the office or department or the proceeding; waste of the  
29 assets of the insurer; the commencement or prosecution of any  
30 actions; the obtaining of preferences, judgments, attachments,  
31

1 or other liens; or the making of any levy against the insurer  
2 or against its assets or any part thereof.

3 (5) Notwithstanding any other provision of law, no  
4 bond shall be required of the office or department as a  
5 prerequisite for the issuance of any injunction or restraining  
6 order pursuant to this section.

7 Section 1346. Subsections (1) and (4) of section  
8 631.042, Florida Statutes, are amended to read:

9 631.042 Extension of time.--

10 (1) With respect to any action by or against an  
11 insurer, no statute of limitations or defense of laches shall  
12 run between the date the office ~~department~~ files a petition  
13 for a delinquency proceeding against an insurer and the date  
14 the court enters an order granting or denying that petition.  
15 If the petition is denied, any action against the insurer that  
16 might have been commenced when the petition was filed may be  
17 commenced no later than 60 days after the order denying such  
18 relief or the remaining unexpired time under the applicable  
19 statute of limitations or defense of laches that was available  
20 on the day the petition was filed, whichever is longer.

21 (4) For actions not covered by subsection (2), if any  
22 unexpired time period is fixed by any agreement or in any  
23 proceeding for doing any act for the benefit of the estate,  
24 the receiver shall have 180 days, or for good cause shown more  
25 than 180 days as allowed by the court, from the date the court  
26 enters the order granting the office's ~~department's~~ petition  
27 for a delinquency proceeding.

28 Section 1347. Section 631.051, Florida Statutes, is  
29 amended to read:

30 631.051 Grounds for rehabilitation; domestic  
31 insurers.--The office ~~department~~ may petition for an order

1 directing it to rehabilitate a domestic insurer or an alien  
2 insurer domiciled in this state on any one or more of the  
3 following grounds, that the insurer:  
4       (1) Is impaired or insolvent;  
5       (2) Has failed to comply with an order of the office  
6 ~~department~~ to make good an impairment of capital or surplus or  
7 both;  
8       (3) Is found by the office ~~department~~ to be in such  
9 condition or is using or has been subject to such methods or  
10 practices in the conduct of its business, as to render its  
11 further transaction of insurance presently or prospectively  
12 hazardous to its policyholders, creditors, stockholders, or  
13 the public;  
14       (4) Has failed, or its parent corporation, subsidiary,  
15 or affiliated person controlled by either the insurer or the  
16 parent corporation has failed, to submit its books, documents,  
17 accounts, records, and affairs pertaining to the insurer to  
18 the reasonable inspection or examination of the office  
19 ~~department~~ or its authorized representative; or any individual  
20 exercising any executive authority in the affairs of the  
21 insurer, or parent corporation, or subsidiary, or affiliated  
22 person has refused to be examined under oath by the office  
23 ~~department~~ or its authorized representative, whether within  
24 this state or otherwise, concerning the pertinent affairs of  
25 the insurer, or parent corporation or subsidiary or affiliated  
26 person; or if examined under oath refuses to divulge pertinent  
27 information reasonably known to her or him; or officers,  
28 directors, agents, employees, or other representatives of the  
29 insurer or parent corporation, subsidiary, or affiliated  
30 person have failed to comply promptly with the reasonable  
31 requests of the office ~~department~~ or its authorized

1 representative for the purposes of, and during the conduct of,  
2 any such examination;

3 (5) Has concealed or removed records or assets or  
4 otherwise violated s. 628.271 or s. 628.281;

5 (6) Through its board of directors or governing body  
6 is deadlocked in the management of the insurer's affairs and  
7 that the members of a mutual, reciprocal, or any other type of  
8 organization or stockholders are unable to break the deadlock  
9 and that irreparable injury to the insurer, its creditors, its  
10 policyholders, its members or subscribers, or the public is  
11 threatened by reason thereof;

12 (7) Has transferred or attempted to transfer  
13 substantially its entire property or business, or has entered  
14 into any transaction the effect of which is to merge  
15 substantially its entire property or business into that of any  
16 other insurer or entity without having first obtained the  
17 written approval of the office ~~department~~ under the provisions  
18 of s. 628.451, s. 628.461, or s. 628.4615, as the case may be;

19 (8) Has willfully violated its charter or certificate  
20 of incorporation or any law of this state;

21 (9) Is in such a position that control of it, whether  
22 by stock ownership or otherwise, and whether direct or  
23 indirect, is in one or more persons found by the office  
24 ~~department~~ after notice and hearing to be dishonest or  
25 untrustworthy; or that the insurer has failed, upon order of  
26 the office ~~department~~ and expiration of such reasonable time  
27 for such removal as the office ~~department~~ shall specify in the  
28 order, to remove any person who in fact has executive  
29 authority, directly or indirectly, in the insurer, whether as  
30 an officer, director, manager, agent, employee, or otherwise,  
31 and if such person has been found by the office ~~department~~

1 after notice and hearing, to be incompetent, dishonest,  
2 untrustworthy, or so lacking in insurance company managerial  
3 experience as to be hazardous to the insurance-buying public;

4 (10) Has been or is the subject of an application for  
5 the appointment of a receiver, trustee, custodian, or  
6 sequestrator of the insurer or its property otherwise than  
7 pursuant to the provisions of this code, but only if such an  
8 appointment has been made or is imminent;

9 (11) Has consented to such an order through a majority  
10 of its directors, stockholders, members, or subscribers;

11 (12) Has failed to pay a final judgment rendered  
12 against it in this state upon any insurance contract issued or  
13 assumed by it, within 60 days after the judgment became final,  
14 within 60 days after the time for taking an appeal has  
15 expired, or within 30 days after dismissal of an appeal before  
16 final determination, whichever date is the later;

17 (13) Has been the victim of embezzlement, wrongful  
18 sequestration, conversion, diversion, or encumbering of its  
19 assets; forgery or fraud affecting it; or other illegal  
20 conduct in, by, or with respect to it, which if established  
21 would threaten its solvency; or that the office ~~department~~ has  
22 reasonable cause to so believe any of the foregoing has  
23 occurred or may occur;

24 (14) Is engaging in a systematic practice of reaching  
25 settlements with and obtaining releases from policyholders or  
26 third-party claimants and then unreasonably delaying payment  
27 of, or failing to pay, the agreed-upon settlements; or

28 (15) Within the previous 12 months has systematically  
29 attempted to compromise with creditors on the ground that it  
30 is financially unable to pay its claims in full.

31

1           Section 1348. Section 631.0515, Florida Statutes, is  
2 amended to read:

3           631.0515 Appointment of receiver; insurance holding  
4 company.--A delinquency proceeding pursuant to this chapter  
5 constitutes the sole and exclusive method of dissolving,  
6 liquidating, rehabilitating, reorganizing, conserving, or  
7 appointing a receiver of a Florida corporation which is not  
8 insolvent as defined by s. 607.01401(16); which through its  
9 shareholders, board of directors, or governing body is  
10 deadlocked in the management of its affairs; and which  
11 directly or indirectly owns all of the stock of a Florida  
12 domestic insurer. The office ~~department~~ may petition for an  
13 order directing the department ~~it~~ to rehabilitate such  
14 corporation if the interests of policyholders or the public  
15 will be harmed as a result of the deadlock. The department  
16 shall use due diligence to resolve the deadlock. Whether or  
17 not the office ~~department~~ petitions for an order, the circuit  
18 court shall not have jurisdiction pursuant to s. 607.271, s.  
19 607.274, or s. 607.277 to dissolve, liquidate, or appoint  
20 receivers with respect to, a Florida corporation which  
21 directly or indirectly owns all of the stock of a Florida  
22 domestic insurer and which is not insolvent as defined by s.  
23 607.01401(16).

24           Section 1349. Section 631.061, Florida Statutes, is  
25 amended to read:

26           631.061 Grounds for liquidation.--The office  
27 ~~department~~ may apply to the court for an order appointing the  
28 department ~~it~~ as receiver (if its appointment as receiver is  
29 not then in effect) and directing the department ~~it~~ to  
30 liquidate the business of a domestic insurer or of the United  
31 States branch of an alien insurer having trusted assets in

1 this state, regardless of whether or not there has been a  
2 prior order directing it to rehabilitate such insurer, upon  
3 any of the grounds specified in s. 631.051, or if such  
4 insurer:

5 (1) Is or is about to become insolvent.

6 (2) Is an insolvent insurer and has commenced or is  
7 attempting to commence voluntary liquidation or dissolution  
8 except under this code.

9 (3) Has not completed its organization and obtained a  
10 certificate of authority as an insurer within the time allowed  
11 therefor under any applicable law.

12 Section 1350. Section 631.071, Florida Statutes, is  
13 amended to read:

14 631.071 Grounds for conservation; foreign  
15 insurers.--The office ~~department~~ may apply to the court for an  
16 order appointing the department ~~it~~ as receiver or ancillary  
17 receiver, and directing it to conserve the assets within this  
18 state, of a foreign insurer upon any of the following grounds:

19 (1) Upon any of the grounds specified in s. 631.051 or  
20 s. 631.061, or

21 (2) Upon the ground that its property has been  
22 sequestered in its domiciliary sovereignty or in any other  
23 sovereignty.

24 Section 1351. Section 631.081, Florida Statutes, is  
25 amended to read:

26 631.081 Grounds for conservation; alien insurers.--The  
27 office ~~department~~ may apply to the court for an order  
28 appointing the department ~~it~~ as receiver or ancillary  
29 receiver, and directing it to conserve the assets within this  
30 state, of any alien insurer upon any of the following grounds:

31

1           (1) Upon any of the grounds specified in s. 631.051 or  
2 s. 631.061;

3           (2) Upon the ground that the insurer has failed to  
4 comply, within the time designated by the office ~~department~~,  
5 with an order made by it to make good an impairment of its  
6 trusted funds; or

7           (3) Upon the ground that the property of the insurer  
8 has been sequestered in its domiciliary sovereignty or  
9 elsewhere.

10           Section 1352. Section 631.091, Florida Statutes, is  
11 amended to read:

12           631.091 Grounds for ancillary liquidation; foreign  
13 insurers.--The office ~~department~~ may apply to the circuit  
14 court for an order appointing the department ~~it~~ as ancillary  
15 receiver of, and directing it to liquidate the business and  
16 assets of, a foreign insurer which has assets, business, or  
17 claims in this state upon the appointment in the domiciliary  
18 state of such insurer of a receiver, liquidator, conservator,  
19 rehabilitator, or other officer by whatever name called for  
20 the purpose of liquidating the business of such insurer.

21           Section 1353. Subsection (3) of section 631.111,  
22 Florida Statutes, is amended to read:

23           631.111 Order of liquidation; domestic insurers.--

24           (3) The department or office may apply for and secure  
25 an order dissolving the corporate existence of a domestic  
26 insurer upon the ~~its~~ application for an order of liquidation  
27 of such insurer or at any time after such order has been  
28 granted.

29           Section 1354. Subsection (1) of section 631.152,  
30 Florida Statutes, is amended to read:

31

1           631.152 Conduct of delinquency proceeding; foreign  
2 insurers.--

3           (1) Whenever under this chapter an ancillary receiver  
4 is to be appointed in a delinquency proceeding for an insurer  
5 not domiciled in this state, the court shall appoint the  
6 department as ancillary receiver. The office ~~department~~ shall  
7 file a petition requesting the appointment on the grounds set  
8 forth in s. 631.091:

9           (a) If it finds that there are sufficient assets of  
10 the insurer located in this state to justify the appointment  
11 of an ancillary receiver, or

12           (b) If 10 or more persons resident in this state  
13 having claims against such insurer file a petition with the  
14 office ~~department~~ requesting the appointment of such ancillary  
15 receiver.

16           Section 1355. Paragraph (d) of subsection (6) of  
17 section 631.154, Florida Statutes, is amended to read:

18           631.154 Funds, assets, or other property in the  
19 possession of third person.--

20           (6) Should the receiver be successful in establishing  
21 its claim or any part thereof, the receiver shall be entitled  
22 to recover judgment for the following:

23           (d) All costs, investigative and other expenses,  
24 including, but not limited to, those for department and office  
25 staff, incurred in the recovery of the property, assets, or  
26 funds, and reasonable attorney's fees. Department and office  
27 staff costs and expenses include staff salaries.

28  
29 It is the intent of this section that a person found to be  
30 holding receivership assets fully reimburse the receiver for  
31 any and all efforts made to recover those assets.

1           Section 1356. Section 631.221, Florida Statutes, is  
2 amended to read:

3           631.221 Deposit of moneys collected.--The moneys  
4 collected by the department in a proceeding under this chapter  
5 shall be deposited in a qualified public depository as defined  
6 in s. 280.02, which depository with regards to such funds  
7 shall conform to and be bound by all the provisions of chapter  
8 280, or invested with the Chief Financial Officer State  
9 ~~Treasurer~~ pursuant to chapter 18. For the purpose of  
10 accounting for the assets and transactions of the estate, the  
11 receiver shall use such accounting books, records, and systems  
12 as the court directs after it hears and considers the  
13 recommendations of the receiver.

14           Section 1357. Section 631.231, Florida Statutes, is  
15 amended to read:

16           631.231 Exemption from fees.--The department or office  
17 shall not be required to pay any fee to any public officer in  
18 this state for filing, recording, issuing a transcript or  
19 certificate, or authenticating any paper or instrument  
20 pertaining to the exercise by the department or office of any  
21 of the powers or duties conferred upon it under this chapter,  
22 whether or not such paper or instrument be executed by the  
23 department or office or their ~~its~~ employees or attorneys of  
24 record and whether or not it is connected with the  
25 commencement of any action or proceeding by or against the  
26 department or office, or with the subsequent conduct of such  
27 action or proceeding.

28           Section 1358. Section 631.361, Florida Statutes, is  
29 amended to read:

30           631.361 Seizure under court order.--  
31

1           (1) Upon filing by the office ~~department~~ in the  
2 circuit court in and for Leon County of its verified petition  
3 alleging any ground for a formal delinquency proceeding  
4 against an insurer under this chapter, alleging that the  
5 interests of the insurer's policyholders, claimants, or  
6 creditors or the public will be endangered or jeopardized by  
7 delay, and setting forth the order deemed necessary by the  
8 office ~~department~~, the court may, ex parte and without notice  
9 or hearing, issue forthwith the requested order. The requested  
10 order may:

11           (a) Direct the department to take possession and  
12 control of all or part of the property, books, documents,  
13 accounts, and other records of the insurer and the premises  
14 occupied by it for transaction of its business and premium  
15 funds and other property of the insurer held by an affiliate;  
16 and

17           (b) Until further order of court, enjoin the insurer  
18 and any affiliate and their officers, directors, managers,  
19 agents, and employees from removal, concealment, or other  
20 disposition of the insurer's property, books, records, or  
21 accounts and from transaction of the insurer's business except  
22 with the department's written consent.

23           (2) The court's order shall be for such duration  
24 specified in the order as the court deems necessary to enable  
25 the office and department to ascertain the insurer's  
26 condition. Upon motion of any party or affected person, or  
27 upon its own motion, the court may hold such hearings as it  
28 deems desirable, after such notice as it deems appropriate,  
29 and may extend, shorten, or modify the terms of the order. The  
30 court shall vacate the seizure order if the office ~~department~~  
31 fails to commence a formal proceeding under this chapter after

1 having had a reasonable opportunity to do so, and a seizure  
2 order is automatically vacated by issuance of the court's  
3 order pursuant to a formal delinquency proceeding under this  
4 chapter.

5 (3) Entry of a seizure order under this section shall  
6 not constitute an anticipatory breach of any contract of the  
7 insurer.

8 Section 1359. Section 631.371, Florida Statutes, is  
9 amended to read:

10 631.371 Seizure under order of the office  
11 ~~department~~.--

12 (1) Upon the office's ~~department~~ filing a verified  
13 petition with any circuit judge of the proper judicial circuit  
14 as required by s. 631.021(2), which states that it believes  
15 that the interest of policyholders, the insurer, claimants,  
16 creditors, or the public will be endangered or jeopardized and  
17 that prima facie grounds exist for rehabilitation,  
18 liquidation, or conservation of an insurer under s. 631.051,  
19 s. 631.061, or s. 631.131, the office ~~department~~ may request a  
20 seizure order and shall be entitled to an ex parte hearing  
21 forthwith and an appropriate seizure order from the judge or  
22 court in the interest of protecting the public and such  
23 insurer and its policyholders, claimants, or creditors. After  
24 a diligent effort is made to be heard by the judges of the  
25 circuit and such judges or the court fails or refuses to hear  
26 such petition for any reason, the office ~~department~~ shall then  
27 file a duplicate original of said petition and exhibits, if  
28 any, in the Circuit Court of Leon County along with an  
29 affidavit which shall state that a diligent effort was made to  
30 obtain such initial hearing in the judicial circuit where such  
31 hearing was sought and that the request to be heard was

1 refused or that a hearing was not granted and the reasons  
2 therefor, if known. Upon compliance with the above and if said  
3 affidavit further states that the office ~~department~~ believes  
4 that irreparable harm will result to the public and the  
5 insurer and its policyholders, creditors, or claimants as a  
6 result of further delay, it may thereafter issue a seizure  
7 order on any ground that would justify court seizure under s.  
8 631.361. Such seizure order may contain any or all the  
9 provisions of s. 631.361(1). The office ~~department~~ shall  
10 retain possession and control until the order is vacated or is  
11 replaced by an order of court pursuant to subsection (2) or  
12 subsection (3) or pursuant to a formal delinquency proceeding  
13 under this chapter.

14 (2) The office ~~department~~ may, at any time after  
15 seizure under its order, report its actions to the proper  
16 court; and, in the event that the insurer, for any reason,  
17 fails to avail itself of the judicial review provided for by  
18 law, then the office ~~department~~ shall forthwith report its  
19 actions to the proper court. The office ~~department~~ may request  
20 the court to substitute its order for the office's  
21 ~~department's~~ or it may seek any other order which it deems  
22 appropriate.

23 (3) Every law enforcement officer of this state  
24 authorized by law shall assist the office ~~department~~ in making  
25 and enforcing any such seizure, and every such officer shall  
26 furnish it with such deputies, patrolmen, patrolwomen, or  
27 officers as are necessary to assist it in execution of its  
28 order.

29 (4) Entry of a seizure order under this section shall  
30 not constitute an anticipatory breach of any contract of the  
31 insurer.

1           Section 1360. Section 631.391, Florida Statutes, is  
2 amended to read:

3           631.391 Cooperation of officers and employees.--

4           (1) Any officer, director, manager, trustee, agent,  
5 adjuster, employee, or independent contractor of any insurer  
6 or affiliate and any other person who possesses any executive  
7 authority over, or who exercises any control over, any segment  
8 of the affairs of the insurer or affiliate shall fully  
9 cooperate with the department and office in any proceeding  
10 under this chapter or any investigation preliminary or  
11 incidental to the proceeding. An order of rehabilitation or  
12 liquidation which results in the discharge or suspension of  
13 any of the persons listed above does not operate to release  
14 such person from the duty to cooperate with the department and  
15 office as set out herein. To "cooperate" includes, but is not  
16 limited to, the following:

17           (a) To reply promptly in writing to any inquiry from  
18 the department or office requesting such a reply;

19           (b) Promptly to make available and deliver to the  
20 department or office any books, accounts, documents, other  
21 records, information, data processing software, or property of  
22 or pertaining to the insurer and in her or his possession,  
23 custody, or control; or

24           (c) Promptly to provide access to all data processing  
25 records in hard copy and in electronic form and to data  
26 processing facilities and services.

27           (2) No person shall obstruct or interfere with the  
28 department or office in the conduct of any delinquency  
29 proceeding or any investigation preliminary or incidental  
30 thereto.

31

1           (3) This section does not prohibit any person from  
2 seeking legal relief from a court when aggrieved by the  
3 petition for liquidation or other delinquency proceeding or by  
4 other orders.

5           (4) Any person referred to in subsection (1) who fails  
6 to cooperate with the department or office, or any other  
7 person who obstructs or interferes with the department or  
8 office, in the conduct of any delinquency proceeding or any  
9 investigation preliminary or incidental thereto, is guilty of  
10 a misdemeanor of the first degree, punishable as provided in  
11 s. 775.082 or by fine of not more than \$10,000.

12           (5) Refusal by any person referred to in subsection  
13 (1) to provide records upon the request of the department or  
14 office is grounds for revocation of any insurance-related  
15 license, including, but not limited to, agent and third-party  
16 administrator licenses.

17           Section 1361. Section 631.392, Florida Statutes, is  
18 amended to read:

19           631.392 Immunity.--There shall be no liability on the  
20 part of, and no cause of action of any nature shall arise  
21 against, the Chief Financial Officer, Insurance Commissioner  
22 ~~or~~ the department, the office, or any of their its employees  
23 or agents for any action taken by them in the performance of  
24 their powers and duties under this chapter.

25           Section 1362. Section 631.398, Florida Statutes, is  
26 amended to read:

27           631.398 Prevention of insolvencies.--To aid in the  
28 detection and prevention of insurer insolvencies or  
29 impairments:

30           (1) Any member insurer; agent, employee, or member of  
31 the board of directors; or representative of any insurance

1 guaranty association may make reports and recommendations to  
2 the department or office upon any matter germane to the  
3 solvency, liquidation, rehabilitation, or conservation of any  
4 member insurer or germane to the solvency of any company  
5 seeking to do an insurance business in this state. Such  
6 reports and recommendations are confidential and exempt from  
7 the provisions of s. 119.07(1) until the termination of a  
8 delinquency proceeding.

9 (2) The office ~~department~~ shall:

10 (a) Report to the board of directors of the  
11 appropriate insurance guaranty association when it has  
12 reasonable cause to believe from any examination, whether  
13 completed or in process, of any member insurer that such  
14 insurer may be an impaired or insolvent insurer.

15 (b) Seek the advice and recommendations of the board  
16 of directors of the appropriate insurance guaranty association  
17 concerning any matter affecting the duties and  
18 responsibilities of the office ~~department~~ in relation to the  
19 financial condition of member companies and companies seeking  
20 admission to transact insurance business in this state.

21 (3) The office and department jointly shall, no later  
22 than the conclusion of any domestic insurer insolvency  
23 proceeding, prepare a summary report containing such  
24 information as is in their ~~its~~ possession relating to the  
25 history and causes of such insolvency, including a statement  
26 of the business practices of such insurer which led to such  
27 insolvency.

28 Section 1363. Section 631.54, Florida Statutes, is  
29 amended to read:

30 631.54 Definitions.--As used in this part:

31

1           (1) "Account" means any one of the three accounts  
2 created by s. 631.55.

3           (2) "Association" means the Florida Insurance Guaranty  
4 Association, Incorporated.

5           (3) "Covered claim" means an unpaid claim, including  
6 one of unearned premiums, which arises out of, and is within  
7 the coverage, and not in excess of, the applicable limits of  
8 an insurance policy to which this part applies, issued by an  
9 insurer, if such insurer becomes an insolvent insurer after  
10 October 1, 1970, and the claimant or insured is a resident of  
11 this state at the time of the insured event or the property  
12 from which the claim arises is permanently located in this  
13 state. "Covered claim" shall not include any amount due any  
14 reinsurer, insurer, insurance pool, or underwriting  
15 association, as subrogation, contribution, indemnification, or  
16 otherwise. Member insurers shall have no right of subrogation  
17 against the insured of any insolvent member.

18           ~~(4) "Department" means the Department of Insurance.~~

19           (4)~~(5)~~ "Expenses in handling claims" means allocated  
20 and unallocated expenses, including, but not limited to,  
21 general administrative expenses and those expenses which  
22 relate to the investigation, adjustment, defense, or  
23 settlement of specific claims under, or arising out of, a  
24 specific policy.

25           (5)~~(6)~~ "Insolvent insurer" means a member insurer  
26 authorized to transact insurance in this state, either at the  
27 time the policy was issued or when the insured event occurred,  
28 and against which an order of liquidation with a finding of  
29 insolvency has been entered by a court of competent  
30 jurisdiction if such order has become final by the exhaustion  
31 of appellate review.

1           ~~(6)(7)~~ "Member insurer" means any person who writes  
2 any kind of insurance to which this part applies under s.  
3 631.52, including the exchange of reciprocal or interinsurance  
4 contracts, and is licensed to transact insurance in this  
5 state.

6           ~~(7)(8)~~ "Net direct written premiums" means direct  
7 gross premiums written in this state on insurance policies to  
8 which this part applies, less return premiums thereon and  
9 dividends paid or credited to policyholders on such direct  
10 business. "Net direct written premiums" does not include  
11 premiums on contracts between insurers or reinsurers.

12           ~~(8)(9)~~ "Person" means individuals, children, firms,  
13 associations, joint ventures, partnerships, estates, trusts,  
14 business trusts, syndicates, fiduciaries, corporations, and  
15 all other groups or combinations.

16           Section 1364. Subsection (1) of section 631.55,  
17 Florida Statutes, is amended to read:

18           631.55 Creation of the association.--

19           (1) There is created a nonprofit corporation to be  
20 known as the "Florida Insurance Guaranty Association,  
21 Incorporated." All insurers defined as member insurers in s.  
22 631.54(6)~~s. 631.54(7)~~ shall be members of the association as  
23 a condition of their authority to transact insurance in this  
24 state, and, further, as a condition of such authority, an  
25 insurer shall agree to reimburse the association for all claim  
26 payments the association makes on said insurer's behalf if  
27 such insurer is subsequently rehabilitated. The association  
28 shall perform its functions under a plan of operation  
29 established and approved under s. 631.58 and shall exercise  
30 its powers through a board of directors established under s.  
31 631.56. The corporation shall have all those powers granted

1 or permitted nonprofit corporations, as provided in chapter  
2 applies.

3 Section 1365. Subsection (1) of section 631.56,  
4 Florida Statutes, is amended to read:

5 631.56 Board of directors.--

6 (1) The board of directors of the association shall  
7 consist of not less than five or more than nine persons  
8 serving terms as established in the plan of operation. The  
9 department shall approve and appoint to the board persons  
10 recommended by the member insurers. In the event the  
11 department finds that any recommended person does not meet the  
12 qualifications for service on the board, the department shall  
13 request the member insurers to recommend another person. Each  
14 member shall serve for a 4-year term and may be reappointed.  
15 Vacancies on the board shall be filled for the remaining  
16 period of the term in the same manner as initial appointments.  
17 ~~if no members are selected by November 30, 1970, the~~  
18 ~~department may appoint the initial members of the board of~~  
19 ~~directors.~~

20 Section 1366. Subsections (1) and (3) of section  
21 631.57, Florida Statutes, are amended to read:

22 631.57 Powers and duties of the association.--

23 (1) The association shall:

24 (a)1. Be obligated to the extent of the covered claims  
25 existing:

26 a. Prior to adjudication of insolvency and arising  
27 within 30 days after the determination of insolvency;

28 b. Before the policy expiration date if less than 30  
29 days after the determination; or

30  
31

1           c. Before the insured replaces the policy or causes  
2 its cancellation, if she or he does so within 30 days of the  
3 determination.

4           2. The obligation under subparagraph 1. shall include  
5 only that amount of each covered claim which is in excess of  
6 \$100 and is less than \$300,000, except with respect to  
7 policies covering condominium associations or homeowners'  
8 associations, which associations have a responsibility to  
9 provide insurance coverage on residential units within the  
10 association, the obligation shall include that amount of each  
11 covered property insurance claim which is less than \$100,000  
12 multiplied by the number of condominium units or other  
13 residential units; however, as to homeowners' associations,  
14 this subparagraph applies only to claims for damage or loss to  
15 residential units and structures attached to residential  
16 units.

17           3. In no event shall the association be obligated to a  
18 policyholder or claimant in an amount in excess of the  
19 obligation of the insolvent insurer under the policy from  
20 which the claim arises.

21  
22 ~~The foregoing notwithstanding, the association shall have no~~  
23 ~~obligation to pay covered claims to be paid from the proceeds~~  
24 ~~of bonds issued under s. 166.111(2). However, the association~~  
25 ~~shall cause assessments to be made under paragraph (3)(e) for~~  
26 ~~such covered claims, and such assessments shall be assigned~~  
27 ~~and pledged under paragraph (3)(e) to or on behalf of the~~  
28 ~~issuer of such bonds for the benefit of the holders of such~~  
29 ~~bonds. The association shall administer any such covered~~  
30 ~~claims and present valid covered claims for payment in~~

31

1 ~~accordance with the provisions of the assistance program in~~  
2 ~~connection with which such bonds have been issued.~~

3 (b) Be deemed the insurer to the extent of its  
4 obligation on the covered claims, and, to such extent, shall  
5 have all rights, duties, defenses, and obligations of the  
6 insolvent insurer as if the insurer had not become insolvent.  
7 In no event shall the association be liable for any penalties  
8 or interest.

9 (3)(a) To the extent necessary to secure the funds for  
10 the respective accounts for the payment of covered claims and  
11 also to pay the reasonable costs to administer the same, the  
12 office department, upon certification of the board of  
13 directors, shall levy assessments in the proportion that each  
14 insurer's net direct written premiums in this state in the  
15 classes protected by the account bears to the total of said  
16 net direct written premiums received in this state by all such  
17 insurers for the preceding calendar year for the kinds of  
18 insurance included within such account. Assessments shall be  
19 remitted to and administered by the board of directors in the  
20 manner specified by the approved plan. Each insurer so  
21 assessed shall have at least 30 days' written notice as to the  
22 date the assessment is due and payable. Every assessment  
23 shall be made as a uniform percentage applicable to the net  
24 direct written premiums of each insurer in the kinds of  
25 insurance included within the account in which the assessment  
26 is made. The assessments levied against any insurer shall not  
27 exceed in any one year more than 2 percent of that insurer's  
28 net direct written premiums in this state for the kinds of  
29 insurance included within such account during the calendar  
30 year next preceding the date of such assessments.

31

1 (b) If sufficient funds from such assessments,  
2 together with funds previously raised, are not available in  
3 any one year in the respective account to make all the  
4 payments or reimbursements then owing to insurers, the funds  
5 available shall be prorated and the unpaid portion shall be  
6 paid as soon thereafter as funds become available.

7 (c) Assessments shall be included as an appropriate  
8 factor in the making of rates.

9 (d) No state funds of any kind shall be allocated or  
10 paid to said association or any of its accounts.

11 ~~(e)1.a. In addition to assessments otherwise~~  
12 ~~authorized in paragraph (a), as a temporary measure related to~~  
13 ~~insolvencies caused by Hurricane Andrew, and to the extent~~  
14 ~~necessary to secure the funds for the account specified in s.~~  
15 ~~631.55(2)(c), or to retire indebtedness, including, without~~  
16 ~~limitation, the principal, redemption premium, if any, and~~  
17 ~~interest on, and related costs of issuance of, bonds issued~~  
18 ~~under s. 166.111(2), and the funding of any reserves and other~~  
19 ~~payments required under the bond resolution or trust indenture~~  
20 ~~pursuant to which such bonds have been issued, the department,~~  
21 ~~upon certification of the board of directors, shall levy~~  
22 ~~assessments upon insurers holding a certificate of authority~~  
23 ~~as follows:~~

24 ~~(I) Except as provided in sub-sub-subparagraph (II),~~  
25 ~~the assessments payable under this paragraph by any insurer~~  
26 ~~shall not exceed in any 1 year more than 2 percent of that~~  
27 ~~insurer's direct written premiums, net of refunds, in this~~  
28 ~~state during the preceding calendar year for the kinds of~~  
29 ~~insurance within the account specified in s. 631.55(2)(c).~~

30 ~~(II) If the amount levied under sub-sub-subparagraph~~  
31 ~~(I) is less than 2 percent of the insurer's direct written~~

1 ~~premiums, net of refunds, in this state during calendar year~~  
2 ~~1991 for the kinds of insurance within the account specified~~  
3 ~~in s. 631.55(2)(c), in addition to and separate from such~~  
4 ~~assessment, the assessment shall also include the difference~~  
5 ~~between the amount calculated based on calendar year 1991 and~~  
6 ~~the amount determined under sub-sub-subparagraph (I). If this~~  
7 ~~sub-sub-subparagraph is held invalid, the invalidity shall not~~  
8 ~~affect other provisions of this section, and to this end the~~  
9 ~~provisions of this section are declared severable.~~

10 ~~(III) In addition to any other insurers subject to~~  
11 ~~this subparagraph, this subparagraph also applies to any~~  
12 ~~insurer that held a certificate of authority on August 24,~~  
13 ~~1992. If this sub-sub-subparagraph is held invalid, the~~  
14 ~~invalidity shall not affect other provisions of this section,~~  
15 ~~and to this end the provisions of this section are declared~~  
16 ~~severable.~~

17 ~~b. Any assessments authorized under this paragraph~~  
18 ~~shall be levied by the department upon insurers referred to in~~  
19 ~~sub-subparagraph a., upon certification as to the need~~  
20 ~~therefor by the board of directors, in 1992 and in each year~~  
21 ~~that bonds issued under s. 166.111(2) are outstanding, in such~~  
22 ~~amounts up to such 2 percent limit as required in order to~~  
23 ~~provide for the full and timely payment of the principal of,~~  
24 ~~redemption premium, if any, and interest on, and related costs~~  
25 ~~of, issuance of bonds issued under s. 166.111(2). The~~  
26 ~~assessments provided for in this paragraph are hereby assigned~~  
27 ~~and pledged to a municipality issuing bonds under s.~~  
28 ~~166.111(2)(b), for the benefit of the holders of such bonds,~~  
29 ~~in order to enable such municipality to provide for the~~  
30 ~~payment of the principal of, redemption premium, if any, and~~  
31 ~~interest on such bonds, the cost of issuance of such bonds,~~

1 ~~and the funding of any reserves and other payments required~~  
2 ~~under the bond resolution or trust indenture pursuant to which~~  
3 ~~such bonds have been issued, without the necessity of any~~  
4 ~~further action by the association, the department, or any~~  
5 ~~other party. To the extent that bonds are issued under s.~~  
6 ~~166.111(2), the proceeds of assessments levied under this~~  
7 ~~paragraph shall be remitted directly to and administered by~~  
8 ~~the trustee appointed for such bonds.~~

9 ~~c. Assessments under this paragraph shall be payable~~  
10 ~~in 12 monthly installments with the first installment being~~  
11 ~~due and payable at the end of the month after an assessment is~~  
12 ~~levied, and subsequent installments being due not later than~~  
13 ~~the end of each succeeding month.~~

14 ~~d. The association shall issue a monthly report on the~~  
15 ~~status of the use of the bond proceeds as related to~~  
16 ~~insolvencies caused by Hurricane Andrew. The report must~~  
17 ~~contain the number of claims paid and the amount of claims~~  
18 ~~paid. The association shall also include an analysis of the~~  
19 ~~revenue generated from the additional assessment levied under~~  
20 ~~this subsection. The report must be sent to the Legislature~~  
21 ~~and the Insurance Commissioner monthly.~~

22 ~~2. In order to assure that insurers paying assessments~~  
23 ~~levied under this paragraph continue to charge rates that are~~  
24 ~~neither inadequate nor excessive, within 90 days after being~~  
25 ~~notified of such assessments, each insurer that is to be~~  
26 ~~assessed pursuant to this paragraph shall make a rate filing~~  
27 ~~for coverage included within the account specified in s.~~  
28 ~~631.55(2)(c) and for which rates are required to be filed~~  
29 ~~under s. 627.062. If the filing reflects a rate change that,~~  
30 ~~as a percentage, is equal to the difference between the rate~~  
31 ~~of such assessment and the rate of the previous year's~~

1 ~~assessment under this paragraph, the filing shall consist of a~~  
2 ~~certification so stating and shall be deemed approved when~~  
3 ~~made, subject to the department's continuing authority to~~  
4 ~~require actuarial justification as to the adequacy of any rate~~  
5 ~~at any time. Any rate change of a different percentage shall~~  
6 ~~be subject to the standards and procedures of s. 627.062.~~

7 Section 1367. Section 631.59, Florida Statutes, is  
8 amended to read:

9 631.59 Duties and powers of department and office of  
10 ~~insurance~~.--

11 (1) The department shall:

12 (a) Notify the association of the existence of an  
13 insolvent insurer not later than 3 days after it receives  
14 notice of the determination of the insolvency; and

15 (b) Upon request of the board of directors, provide  
16 the association with a statement of the net direct written  
17 premiums of each member insurer.

18 (2) The department may+

19 ~~(a)~~ require that the association notify the insureds  
20 of the insolvent insurer and any other interested parties of  
21 the determination of insolvency and of their rights under this  
22 part. Such notification shall be by mail at their last known  
23 addresses, when available, but if sufficient information for  
24 notification by mail is not available, notice by publication  
25 in a newspaper of general circulation shall be sufficient.

26 ~~(3)(b)~~ The office may:

27 (a) Suspend or revoke the certificate of authority to  
28 transact insurance in this state of any member insurer which  
29 fails to pay an assessment when due or fails to comply with  
30 the plan of operation. As an alternative, the office  
31 ~~department~~ may levy a fine on any member insurer which fails

1 to pay an assessment when due. Such fine may not exceed 5  
2 percent of the unpaid assessment per month, except that no  
3 fine shall be less than \$100 per month.

4 (b)~~(c)~~ Revoke the designation of any servicing  
5 facility if it finds claims are being handled  
6 unsatisfactorily.

7 Section 1368. Section 631.62, Florida Statutes, is  
8 amended to read:

9 631.62 Prevention of insolvencies.--To aid in the  
10 detection and prevention of insurer insolvencies:

11 (1) It shall be the duty of the board of directors,  
12 upon majority vote, to notify the office ~~department~~ of any  
13 information indicating any member insurer may be insolvent or  
14 in a financial condition hazardous to the policyholders or the  
15 public.

16 (2) The board of directors may, upon majority vote,  
17 request that the office ~~department~~ order an examination of any  
18 member insurer which the board in good faith believes may be  
19 in a financial condition hazardous to the policyholders or the  
20 public. Within 30 days of the receipt of such request, the  
21 office ~~department~~ shall begin such examination. The  
22 examination may be conducted as a National Association of  
23 Insurance Commissioners examination or may be conducted by  
24 such persons as the office ~~department~~ designates. The cost of  
25 such examination shall be paid by the association and the  
26 examination report shall be treated as are other examination  
27 reports pursuant to s. 624.319. In no event shall such  
28 examination report be released to the board of directors prior  
29 to its release to the public. The office ~~department~~ shall  
30 notify the board of directors when the examination is  
31 completed. The request for an examination shall be kept on

1 file by the office ~~department~~; such request is confidential  
2 and exempt from the provisions of s. 119.07(1) until the  
3 examination report is released to the public.

4 (3) The board of directors may, upon majority vote,  
5 make reports and recommendations to the department or office  
6 upon any matter germane to the solvency, liquidation,  
7 rehabilitation, or conservation of any member insurer. Such  
8 reports and recommendations are confidential and exempt from  
9 the provisions of s. 119.07(1) until the termination of a  
10 delinquency proceeding.

11 (4) The board of directors may, upon majority vote,  
12 make recommendations to the office ~~department~~ for the  
13 detection and prevention of insurer insolvencies.

14 Section 1369. Section 631.66, Florida Statutes, is  
15 amended to read:

16 631.66 Immunity.--There shall be no liability on the  
17 part of, and no cause of action of any nature shall arise  
18 against, any member insurer, the association or its agents or  
19 employees, the board of directors, or the department or office  
20 or their ~~its~~ representatives for any action taken by them in  
21 the performance of their powers and duties under this part.  
22 Such immunity shall extend to the participation in any  
23 organization of one or more other state associations of  
24 similar purposes and to any such organization and its agents  
25 or employees.

26 Section 1370. Section 631.714, Florida Statutes, is  
27 amended to read:

28 631.714 Definitions.--As used in this part, the term:

29 (1) "Account" means any of the three accounts created  
30 in s. 631.715.

31

1           (2) "Association" means the Florida Life and Health  
2 Insurance Guaranty Association created in s. 631.715.

3           (3) "Contractual obligation" means any obligation  
4 under covered policies.

5           (4) "Covered policy" means any policy or contract set  
6 out in s. 631.713 and reduced to written, printed, or other  
7 tangible form.

8           ~~(5) "Department" means the Department of Insurance.~~

9           (5)~~(6)~~ "Impaired insurer" means a member insurer  
10 deemed by the department to be potentially unable to fulfill  
11 its contractual obligations and not an insolvent insurer.

12           (6)~~(7)~~ "Insolvent insurer" means a member insurer  
13 authorized to transact insurance in this state, either at the  
14 time the policy was issued or when the insured event occurred,  
15 and against which an order of liquidation with a finding of  
16 insolvency has been entered by a court of competent  
17 jurisdiction, if such order has become final by the exhaustion  
18 of appellate review.

19           (7)~~(8)~~ "Member insurer" means any person licensed to  
20 transact in this state any kind of insurance as set out in s.  
21 631.713.

22           (8)~~(9)~~ "Premium" means any direct gross insurance  
23 premium and any annuity consideration written on covered  
24 policies, less return premium and consideration thereon and  
25 dividends paid or credited to policyholders on such direct  
26 business. "Premium" does not include premium and  
27 consideration on contracts between insurers and reinsurers.

28           (9)~~(10)~~ "Person" means any individual, corporation,  
29 partnership, association, or voluntary organization.

30           (10)~~(11)~~ "Resident" means any person who resides in  
31 this state at the time a member insurer is determined to be an

1 impaired or insolvent insurer and to whom contractual  
2 obligations are owed by such impaired or insolvent member  
3 insurer.

4 Section 1371. Subsections (2) and (3) of section  
5 631.72, Florida Statutes, are amended to read:

6 631.72 Premium or income tax credits for assessments  
7 paid.--

8 (2) If a member insurer ceases doing business in this  
9 state and surrenders to the office ~~department~~ its certificate  
10 of authority to transact insurance in this state, all  
11 uncredited assessments may be credited as provided in this  
12 section against either its premium or corporate income tax  
13 liabilities imposed pursuant to ss. 624.509 and 220.11 for the  
14 year it ceases doing business.

15 (3) Any sums acquired by refund pursuant to s.  
16 631.718(6) from the association which have theretofore been  
17 written off by contributing insurers and offset against  
18 premium or corporate income taxes as provided in subsection  
19 (1) and which are not needed for purposes of this part shall  
20 be paid by the insurer to the Department of Revenue for  
21 deposit with the Chief Financial Officer ~~Treasurer~~ to the  
22 credit of the General Revenue Fund.

23 Section 1372. Section 631.722, Florida Statutes, is  
24 amended to read:

25 631.722 Powers and duties of department and office.--

26 (1) The office ~~department~~ shall:

27 (a) Upon request of the board of directors, provide  
28 the association with a statement of the premiums in each of  
29 the appropriate states for each member insurer.

30 (b) When an impairment is declared and the amount of  
31 the impairment is determined, serve a demand upon the impaired

1 insurer to make good the impairment within a reasonable time.  
2 Notice to the impaired insurer shall constitute notice to its  
3 shareholders, if any. The failure of the insurer to promptly  
4 comply with such demand shall not excuse the association from  
5 the performance of its powers and duties under this part.

6 (2)~~(c)~~ The department shall, in any liquidation or  
7 rehabilitation proceeding involving a domestic insurer, be  
8 appointed as the liquidator or rehabilitator. If a foreign or  
9 alien member insurer is subject to a liquidation proceeding in  
10 its domiciliary jurisdiction or state of entry, the department  
11 shall be appointed conservator.

12 (3)~~(2)~~ The office department may suspend or revoke,  
13 after notice and hearing, the certificate of authority to  
14 transact insurance in this state of any member insurer that  
15 fails to pay an assessment when due or fails to comply with  
16 the approved plan of operation of the association. As an  
17 alternative, the office department may levy a forfeiture on  
18 any member insurer that fails to pay an assessment when due.  
19 Such forfeiture shall not exceed 5 percent of the unpaid  
20 assessment per month, but no forfeiture shall be less than  
21 \$100 per month.

22 (4)~~(3)~~ Any action of the board of directors or of the  
23 association may be appealed to the office department by any  
24 member insurer if such appeal is taken within 30 days of the  
25 action being appealed. If a member company is appealing an  
26 assessment, the amount assessed shall be paid to the  
27 association and available to meet association obligations  
28 during the pendency of the appeal. If the appeal on the  
29 assessment is upheld, the amount paid in error or excess shall  
30 be returned to the member company. Any final action or order  
31

1 of the office ~~department~~ shall be subject to judicial review  
2 in a court of competent jurisdiction.

3 ~~(5)(4)~~ The liquidator, rehabilitator, or conservator  
4 of any impaired insurer may notify all interested persons of  
5 the effect of this part.

6 Section 1373. Section 631.723, Florida Statutes, is  
7 amended to read:

8 631.723 Prevention of insolvencies.--To aid in the  
9 detection and prevention of insurer insolvencies or  
10 impairments:

11 (1) The board of directors may, upon majority vote,  
12 make reports and recommendations to the department or office  
13 upon any matter germane to the solvency, liquidation,  
14 rehabilitation, or conservation of any member insurer or  
15 germane to the solvency of any company seeking to do an  
16 insurance business in this state. Such reports and  
17 recommendations are confidential and exempt from the  
18 provisions of s. 119.07(1) until the termination of a  
19 delinquency proceeding.

20 (2) It is the duty of the board of directors, upon a  
21 majority vote, to notify the office ~~department~~ of any  
22 information indicating that any member insurer may be an  
23 impaired or insolvent insurer.

24 (3) The board of directors may, upon majority vote,  
25 request that the office ~~department~~ order an examination of any  
26 member insurer which the board in good faith believes may be  
27 an impaired or insolvent insurer. Within 30 days of the  
28 receipt of such a request, the office ~~department~~ shall begin  
29 such an examination. The examination may be conducted as a  
30 National Association of Insurance Commissioners examination or  
31 may be conducted by such persons as the office ~~Insurance~~

1 ~~Commissioner~~ designates. The cost of such examination shall  
2 be paid by the association, and the examination report shall  
3 be treated in a manner similar to other examination reports  
4 pursuant to s. 624.319. In no event may such examination  
5 report be released to the board of directors before its  
6 release to the public, but this does not preclude the office  
7 ~~department~~ from complying with s. 631.398(2). The office  
8 ~~department~~ shall notify the board of directors when the  
9 examination is completed. The request for an examination  
10 shall be kept on file by the office ~~department~~; such request  
11 is confidential and exempt from the provisions of s. 119.07(1)  
12 until the examination report is released to the public.

13 (4) The board of directors may, upon majority vote,  
14 make recommendations to the office ~~department~~ for the  
15 detection and prevention of insurer insolvencies.

16 Section 1374. Section 631.727, Florida Statutes, is  
17 amended to read:

18 631.727 Immunity.--There shall be no liability on the  
19 part of, and no cause of action of any nature shall arise  
20 against, any member insurer or its agents or employees, the  
21 association or its agents or employees, members of the board  
22 of directors, or the department or office or their ~~its~~  
23 representatives for any action taken by them in the  
24 performance of their powers and duties under this part. Such  
25 immunity shall extend to the participation in any organization  
26 of one or more other state associations of similar purposes  
27 and to any such organization and its agents or employees.

28 Section 1375. Section 631.813, Florida Statutes, is  
29 amended to read:

30 631.813 Application of part.--This part shall apply to  
31 HMO contractual obligations to residents of Florida by HMOs

1 possessing a valid certificate of authority issued ~~by the~~  
2 ~~Florida Department of Insurance~~ as provided by part I of  
3 chapter 641. The provisions of this part shall not apply to  
4 persons participating in medical assistance programs under the  
5 Medicaid program.

6 Section 1376. Section 631.814, Florida Statutes, is  
7 amended to read:

8 631.814 Definitions.--As used in this part, the term:

9 (1) "Plan" means the Florida Health Maintenance  
10 Organization Consumer Assistance Plan created by this part.

11 (2) "Board" means the board of directors of the plan.

12 (3) "Contractual obligations" means any obligation  
13 under covered health care policies.

14 (4) "Covered policy" means any policy or contract  
15 issued by an HMO for health care services.

16 (5) "Date of insolvency" means the effective date of  
17 an order of liquidation entered by a court of competent  
18 jurisdiction.

19 ~~(6) "Department" means the Florida Department of~~  
20 ~~Insurance.~~

21 (6)~~(7)~~ "Health care services" means comprehensive  
22 health care services as defined in s. 641.19.

23 (7)~~(8)~~ "HMO" means a health maintenance organization  
24 possessing a valid certificate of authority issued by the  
25 department pursuant to part I of chapter 641.

26 (8)~~(9)~~ "Insolvent HMO" means an HMO against which an  
27 order of rehabilitation or liquidation has been entered by a  
28 court of competent jurisdiction, with the department appointed  
29 as receiver, even if such order has not become final by the  
30 exhaustion of appellate reviews.

31

1           (9)~~(10)~~ "Person" means any individual, corporation,  
2 partnership, association, or voluntary organization.

3           (10)~~(11)~~ "Subscriber" means any resident of this state  
4 who is enrolled for benefits provided by an HMO and who makes  
5 premium payments or for whom premium payments are made.

6           Section 1377. Section 631.821, Florida Statutes, is  
7 amended to read:

8           631.821 Powers and duties of the department and  
9 office.--

10           (1) The office ~~department~~ may suspend or revoke, after  
11 notice and hearing, the certificate of authority of a member  
12 HMO that fails to pay an assessment when due, fails to comply  
13 with the approved plan of operation of the plan, or fails  
14 either to timely comply with or to timely appeal pursuant to  
15 subsection (2) its appointment under s. 631.818(2).

16           (2) Any action of the board of directors of the plan  
17 may be appealed to the department by any member HMO if such  
18 appeal is taken within 21 days of the action being appealed;  
19 however, the HMO must comply with such action pending  
20 exhaustion of appeal ~~under s. 631.818(2)~~. Any appeal shall be  
21 promptly determined by the department, and final action or  
22 order of the department shall be subject to judicial review in  
23 a court of competent jurisdiction.

24           (3) The department may~~+~~

25           ~~(a)~~ require that the plan notify the subscriber of the  
26 insolvent HMO and any other interested parties of the  
27 determination of insolvency and of their rights under this  
28 part. Such notification shall be by mail at their last known  
29 addresses, when available, but if sufficient information for  
30 notification by mail is not available, notice by publication  
31 in a newspaper of general circulation shall be sufficient.

1           (4)~~(b)~~ The office may revoke the designation of any  
2 servicing facility or administrator if it finds claims are  
3 being handled unsatisfactorily.

4           Section 1378. Section 631.825, Florida Statutes, is  
5 amended to read:

6           631.825 Immunity.--There shall be no liability on the  
7 part of, and no cause of action of any nature shall arise  
8 against, any member HMO or its agents or employees, the plan  
9 or its agents or employees, members of the board of directors,  
10 or the department or office or their ~~its~~ representatives for  
11 any action taken by them in the performance of their powers  
12 and duties under this part.

13           Section 1379. Section 631.904, Florida Statutes, is  
14 amended to read:

15           631.904 Definitions.--As used in this part, the term:

16           (1) "Corporation" means the Florida Workers'  
17 Compensation Insurance Guaranty Association, Incorporated.

18           (2) "Covered claim" means an unpaid claim, including a  
19 claim for return of unearned premiums, which arises out of, is  
20 within the coverage of, and is not in excess of the applicable  
21 limits of, an insurance policy to which this part applies,  
22 which policy was issued by an insurer and which claim is made  
23 on behalf of a claimant or insured who was a resident of this  
24 state at the time of the injury. The term "covered claim" does  
25 not include any amount sought as a return of premium under any  
26 retrospective rating plan; any amount due any reinsurer,  
27 insurer, insurance pool, or underwriting association, as  
28 subrogation recoveries or otherwise; or any return of premium  
29 resulting from a policy that was not in force on the date of  
30 the final order of liquidation. Member insurers have no right  
31 of subrogation against the insured of any insolvent insurer.

1 This provision shall be applied retroactively to cover claims  
2 of an insolvent self-insurance fund resulting from accidents  
3 or losses incurred prior to January 1, 1994, regardless of the  
4 date the ~~Department of Insurance filed a~~ petition in circuit  
5 court was filed alleging insolvency and the date the court  
6 entered an order appointing a receiver.

7 ~~(3) "Department" means the Department of Insurance.~~

8 (3)~~(4)~~ "Insolvency" means that condition in which all  
9 of the assets of the insurer, if made immediately available,  
10 would not be sufficient to discharge all of its liabilities or  
11 that condition in which the insurer is unable to pay its debts  
12 as they become due in the usual course of business. When the  
13 context of any provision of this part so indicates, insolvency  
14 also includes impairment of surplus or impairment of capital.

15 (4)~~(5)~~ "Insolvent insurer" means an insurer that was  
16 authorized to transact insurance in this state, either at the  
17 time the policy was issued or when the insured event occurred,  
18 and against which an order of liquidation with a finding of  
19 insolvency has been entered by a court of competent  
20 jurisdiction if such order has become final by the exhaustion  
21 of appellate review.

22 (5)~~(6)~~ "Insurer" means an insurance carrier or  
23 self-insurance fund authorized to insure under chapter 440.  
24 For purposes of this act, "insurer" does not include a  
25 qualified local government self-insurance fund, as defined in  
26 s. 624.4622, or an individual self-insurer as defined in s.  
27 440.385.

28 (6)~~(7)~~ "Self-insurance fund" means a group  
29 self-insurance fund authorized under s. 624.4621, a commercial  
30 self-insurance fund writing workers' compensation insurance  
31 authorized under s. 624.462, or an assessable mutual insurer

1 authorized under s. 628.6011. For purposes of this act,  
2 "self-insurance fund" does not include a qualified local  
3 government self-insurance fund, as defined in s. 624.4622, or  
4 an individual self-insurer as defined in s. 440.385.

5 Section 1380. Subsection (1) of section 631.911,  
6 Florida Statutes, is amended to read:

7 631.911 Creation of the Florida Workers' Compensation  
8 Insurance Guaranty Association, Incorporated; merger; effect  
9 of merger.--

10 (1)(a) The Florida Self-Insurance Fund Guaranty  
11 Association established in former part V of chapter 631 and  
12 the workers' compensation insurance account, which includes  
13 excess workers' compensation insurance, established in former  
14 s. 631.55(2)(a) shall be merged, ~~effective October 1, 1997, or~~  
15 ~~as provided in paragraph (b),~~ in accordance with the plan of  
16 operation adopted by the interim board of directors. The  
17 successor nonprofit corporation shall be known as the "Florida  
18 Workers' Compensation Insurance Guaranty Association,  
19 Incorporated."

20 ~~(b) The merger may be effected prior to October 1,~~  
21 ~~1997, if:~~

22 ~~1. The interim board of directors of the Workers'~~  
23 ~~Compensation Insurance Guaranty Association provides the~~  
24 ~~Department of Insurance with written notice of its intent to~~  
25 ~~effectuate the merger as of a date certain and its functional~~  
26 ~~readiness to initiate operations, such notice setting forth~~  
27 ~~the plan or summary thereof for effecting the merger; and,~~

28 ~~2. The department, upon review of the plan or summary~~  
29 ~~thereof, determines the Workers' Compensation Insurance~~  
30 ~~Guaranty Association is functionally ready to initiate~~  
31 ~~operations and so certifies to the interim board of directors.~~

1           ~~(c) Prior to the effective date of the merger, the~~  
2 ~~Florida Self-Insurance Fund Guaranty Association shall be the~~  
3 ~~entity responsible for the claims of insolvent self-insurance~~  
4 ~~funds resulting from accidents or losses incurred prior to~~  
5 ~~January 1, 1994, regardless of the date the Department of~~  
6 ~~Insurance filed a petition in circuit court alleging~~  
7 ~~insolvency and the date the court entered an order appointing~~  
8 ~~a receiver.~~

9           (b)(d) Upon the effective date of the merger:

10           1. The Florida Self-Insurance Fund Guaranty  
11 Association and the workers' compensation insurance account  
12 within the Florida Insurance Guaranty Association cease to  
13 exist and are succeeded by the Florida Workers' Compensation  
14 Insurance Guaranty Association.

15           2. Title to all assets of any description, all real  
16 estate and other property, or any interest therein, owned by  
17 each party to the merger is vested in the successor  
18 corporation without reversion or impairment.

19           3. The successor corporation shall be responsible and  
20 liable for all the liabilities and obligations of each party  
21 to the merger.

22           4. Any claim existing or action or proceeding pending  
23 by or against any party to the merger may be continued as if  
24 the merger did not occur or the successor corporation may be  
25 substituted in the proceeding for the corporation or account  
26 which ceased existence.

27           5. Neither the rights of creditors nor any liens upon  
28 the property of any party to the merger shall be impaired by  
29 such merger.

30           6. Outstanding assessments levied by the Florida  
31 Self-Insurance Guaranty Association or the Florida Insurance

1 Guaranty Association on behalf of the workers' compensation  
2 insurance account remain in full force and effect and shall be  
3 paid when due.

4 Section 1381. Subsections (1) and (3) of section  
5 631.912, Florida Statutes, are amended to read:

6 631.912 Board of directors.--

7 (1) The board of directors of the corporation shall  
8 consist of 11 persons, 1 of whom is the insurance consumer  
9 advocate appointed under s. 627.0613 or designee and 1 of whom  
10 is designated by the Chief Financial Officer Insurance  
11 ~~Commissioner~~. The department shall appoint to the board 6  
12 persons selected by private carriers from among the 20  
13 workers' compensation insurers with the largest amount of net  
14 direct written premium as determined by the department, and 3  
15 persons selected by the self-insurance funds. At least two of  
16 the private carriers shall be foreign carriers authorized to  
17 do business in this state. The board shall elect a chairperson  
18 from among its members. The Chief Financial Officer  
19 ~~commissioner~~ may remove any board member for cause. Each board  
20 member shall serve for a 4-year term and may be reappointed,  
21 ~~except that four members of the initial board shall have~~  
22 ~~2-year terms so as to stagger the periods of service.~~ A  
23 vacancy on the board shall be filled for the remaining period  
24 of the term in the same manner by which the original  
25 appointment was made.

26 ~~(3) Effective upon this act becoming a law, the~~  
27 ~~persons on the board of directors created pursuant to s.~~  
28 ~~627.311(4)(a) who evidence a willingness to serve in writing,~~  
29 ~~shall serve as an interim board of directors of the~~  
30 ~~corporation until the initial board of directors has been~~  
31 ~~appointed for the corporation in accordance with the~~

1 ~~provisions of subsection (1). The interim board of directors~~  
2 ~~shall serve for a period not to exceed 6 months. The initial~~  
3 ~~meeting shall be called by the commissioner within 30 days~~  
4 ~~after this act becomes a law. The interim board of directors~~  
5 ~~shall establish a process for the selection of persons to~~  
6 ~~serve on the board of the Florida Workers' Compensation~~  
7 ~~Insurance Guaranty Association in accordance with the terms of~~  
8 ~~subsection (1). The board of directors shall adopt an interim~~  
9 ~~plan of operation to effect the merger in s. 631.911 and avoid~~  
10 ~~any interruption of benefit payments to injured workers. When~~  
11 ~~necessary and upon approval of the chairs of their respective~~  
12 ~~board of directors, the Florida Self-Insurance Fund Guaranty~~  
13 ~~Association and the Florida Insurance Guaranty Association~~  
14 ~~shall provide staff support to the interim board of directors.~~  
15 ~~The board shall submit the interim plan to the commissioner,~~  
16 ~~who shall approve or disapprove the plan within 30 days after~~  
17 ~~receipt.~~

18           Section 1382. Section 631.917, Florida Statutes, is  
19 amended to read:

20           631.917 Prevention of insolvencies.--To aid in the  
21 detection and prevention of insolvencies or impairments:

22           (1)(a) The board may make reasonable and lawful  
23 investigation into the practices of any third-party  
24 administrator or service company for a self-insurance fund  
25 declared insolvent by the court.

26           (b) If the results of an investigation reasonably lead  
27 to a finding that certain actions taken or not taken by those  
28 handling, processing, or preparing covered claims for payment  
29 or other benefit pursuant to any workers' compensation  
30 insurance policy contributed to the insolvency of an insurer,  
31

1 such information may, in the discretion of the board, be  
2 provided to the department or office in an expedited manner.

3 (2) The board of directors may make reports and  
4 recommendations to the department or office upon any matter  
5 germane to the solvency, liquidation, rehabilitation, or  
6 conservation of any member insurer or germane to the solvency  
7 of any insurer seeking to do insurance business in this state.

8 (3) The board of directors, in its discretion, may  
9 notify the office ~~department~~ of any information indicating  
10 that any member insurer may be an impaired or insolvent  
11 insurer.

12 (4) The board of directors, in its discretion, may  
13 request that the office ~~department~~ order an examination of any  
14 member insurer which the board in good faith believes may be  
15 an impaired or insolvent insurer. Within 30 days after  
16 receipt of such a request, the office ~~department~~ shall begin  
17 such an examination. The examination may be conducted as a  
18 National Association of Insurance Commissioners examination or  
19 may be conducted by such persons as the office ~~Insurance~~  
20 ~~Commissioner~~ designates. The cost of such examination shall  
21 be paid by the corporation, and the examination report shall  
22 be treated in a manner similar to other examination reports  
23 pursuant to s. 624.319. In no event may such examination  
24 report be released to the board of directors before its  
25 release to the public, but this requirement does not preclude  
26 the office ~~department~~ from complying with s. 631.398(2). The  
27 office ~~department~~ shall notify the board of directors when the  
28 examination is completed. The request for an examination  
29 shall be kept on file by the office ~~department~~.

30 (5) The board is authorized to assist and aid the  
31 department or office, in any manner consistent with existing

1 laws and this chapter, in the department's or office's  
2 investigation or referral for prosecution of those whose  
3 action or inaction may have contributed to the impairment or  
4 insolvency of the insurer.

5 (6) The board may make recommendations to the office  
6 ~~department~~ for the detection and prevention of insurer  
7 insolvencies.

8 Section 1383. Section 631.918, Florida Statutes, is  
9 amended to read:

10 631.918 Immunity.--There is no liability on the part  
11 of, and a cause of action may not arise against, the  
12 corporation, its agents or employees, or members of its board  
13 of directors, or the department or office or their ~~its~~ agents  
14 or employees, for any action taken by them in the performance  
15 of their powers and duties under this section, unless such  
16 action is found to be a violation of antitrust laws, was in  
17 bad faith, or was undertaken with malicious purpose or in a  
18 manner exhibiting wanton and willful disregard of human  
19 rights, safety, or property.

20 Section 1384. Section 631.931, Florida Statutes, is  
21 amended to read:

22 631.931 Reports and recommendations by board; public  
23 records exemption.--Reports and recommendations made by the  
24 Board of Directors of the Florida Workers' Compensation  
25 Insurance Guaranty Association ~~to the Department of Insurance~~  
26 under s. 631.917 upon any matter germane to the solvency,  
27 liquidation, rehabilitation, or conservation of any member  
28 insurer are confidential and exempt from the provisions of s.  
29 119.07(1) and s. 24(a), Art. I of the State Constitution until  
30 the termination of a delinquency proceeding.

31

1           Section 1385. Subsections (2), (3), (4), and (5) of  
2 section 632.611, Florida Statutes, are amended to read:

3           632.611 Organization.--A domestic society organized on  
4 or after June 24, 1986, shall be formed as follows:

5           (2) Such articles of incorporation; duly certified  
6 copies of the society's bylaws and rules; copies of all  
7 proposed forms of certificates, applications therefor, and  
8 circulars to be issued by the society; and a bond, conditioned  
9 upon the return to the applicants of the advanced payments if  
10 the organization is not completed within 1 year, shall be  
11 filed with the office ~~department~~, which may require such  
12 further information as it deems necessary. The bond with  
13 sureties approved by the office ~~department~~ shall be in such  
14 amount, not less than \$300,000 nor more than \$1.5 million, as  
15 required by the office ~~department~~. All documents filed are to  
16 be in the English language. If the purposes of the society  
17 conform to the requirements of this chapter and all provisions  
18 of the law have been complied with, the office ~~department~~  
19 shall so certify, retain, and file the articles of  
20 incorporation and shall furnish the incorporators a  
21 preliminary certificate authorizing the society to solicit  
22 members as hereinafter provided.

23           (3) No preliminary certificate granted under the  
24 provisions of this section shall be valid after 1 year from  
25 its date or after such further period, not exceeding 1 year,  
26 as may be authorized by the office ~~department~~ upon cause  
27 shown. The articles of incorporation and all other proceedings  
28 thereunder shall become null and void in 1 year from the date  
29 of the preliminary certificate, or at the expiration of the  
30 extended period, unless the society shall have completed its  
31

1 organization and received a certificate of authority to do  
2 business as hereinafter provided.

3 (4) Upon receipt of a preliminary certificate of  
4 authority from the office ~~department~~, the society may solicit  
5 members for the purpose of completing its organization, shall  
6 collect from each applicant the amount of not less than one  
7 regular monthly premium in accordance with its table of rates,  
8 and shall issue to each such applicant a receipt for the  
9 amount so collected. No society shall incur any liability  
10 other than for the return of such advance premium, nor issue  
11 any certificate, nor pay, allow, or offer or promise to pay or  
12 allow, any benefit, to any person until:

13 (a) Actual bona fide applications for benefits have  
14 been secured on not less than 500 applicants, and any  
15 necessary evidence of insurability has been furnished to and  
16 approved by the society;

17 (b) At least 10 subordinate lodges have been  
18 established into which the 500 applicants have been admitted;

19 (c) There has been submitted to the office ~~department~~,  
20 under oath of the president or secretary, or corresponding  
21 officer of the society, a list of such applicants, giving  
22 their names, addresses, date each was admitted, name and  
23 number of the subordinate lodge of which each applicant is a  
24 member, amount of benefits to be granted and the premiums  
25 therefor; and

26 (d) It shall have been shown to the office ~~department~~,  
27 by sworn statement of the treasurer or corresponding officer  
28 of such society, that at least 500 applicants have each paid  
29 in cash at least one regular monthly premium as herein  
30 provided, which premiums in the aggregate shall amount to at  
31 least \$150,000. Such advance premiums shall be held in trust

1 during the period of organization and if the society has not  
2 qualified for a certificate of authority within 1 year, as  
3 herein provided, such premiums shall be returned to said  
4 applicants.

5 (5) The office ~~department~~ may make such examination  
6 and require such further information as it deems advisable.  
7 Upon presentation of satisfactory evidence that the society  
8 has complied with all the provisions of law, the office  
9 ~~department~~ shall issue to the society a certificate of  
10 authority to that effect and to the effect that the society is  
11 authorized to transact business pursuant to the provisions of  
12 this chapter. The certificate of authority shall be prima  
13 facie evidence of the existence of the society at the date of  
14 such certificate. The office ~~department~~ shall cause a record  
15 of such certificate of authority to be made. A certified copy  
16 of such record may be given in evidence with like effect as  
17 the original certificate of authority.

18 Section 1386. Subsections (2), (3), and (4) of section  
19 632.612, Florida Statutes, are amended to read:

20 632.612 Amendments to laws.--

21 (2) No amendment to the laws of any domestic society  
22 shall take effect unless approved by the office ~~department~~,  
23 which shall approve such amendment if it finds that the  
24 amendment has been duly adopted and is not inconsistent with  
25 any requirement of the laws of this state or with the  
26 character, objects, and purposes of the society. Unless the  
27 office ~~department~~ shall disapprove any such amendment within  
28 90 days after the filing of same, the amendment shall be  
29 considered approved. The approval or disapproval of the  
30 office ~~department~~ shall be in writing and mailed to the  
31 secretary or corresponding officer of the society at its

1 principal office. In case the office ~~department~~ disapproves  
2 the amendment, the reasons therefor shall be stated in the  
3 written notice.

4 (3) Within 90 days from the approval thereof by the  
5 office ~~department~~, all such amendments or a synopsis thereof  
6 shall be furnished to all members of the society either by  
7 mail or by publication in full in the official publication of  
8 the society. The affidavit of any officer of the society or of  
9 anyone authorized by it to mail any amendments or a synopsis  
10 thereof, stating facts which show that same have been duly  
11 addressed and mailed, shall be prima facie evidence that such  
12 amendments or a synopsis thereof have been furnished the  
13 addressee.

14 (4) Every foreign or alien society authorized to do  
15 business in this state shall file with the office ~~department~~ a  
16 duly certified copy of all amendments of, or additions to, its  
17 laws within 90 days after the enactment of same.

18 Section 1387. Section 632.614, Florida Statutes, is  
19 amended to read:

20 632.614 Reinsurance.--

21 (1) A domestic society may, by a reinsurance  
22 agreement, cede any individual risk or risks in whole or in  
23 part to an insurer, other than another fraternal benefit  
24 society, having the power to make such reinsurance and  
25 authorized to do business in this state, or if not so  
26 authorized, to an insurer which is approved by the office  
27 ~~department~~. However, no domestic society may reinsure 75  
28 percent or more of its insurance in force without the written  
29 permission of the office ~~department~~. The domestic society may  
30 take credit for the reserves on such ceded risks to the extent  
31 reinsured, but no credit shall be allowed as an admitted asset

1 or as a deduction from liability, to a ceding society for  
2 reinsurance made, ceded, renewed, or otherwise becoming  
3 effective after the effective date of this act, unless the  
4 reinsurance is payable by the assuming insurer on the basis of  
5 the liability of the ceding society under the contract or  
6 contracts reinsured without diminution because of the  
7 insolvency of the ceding society.

8 (2) Notwithstanding the limitation in subsection (1),  
9 a society may reinsure the risks of another society in a  
10 consolidation or merger approved by the office ~~department~~  
11 under s. 632.615.

12 Section 1388. Subsections (1) and (2) of section  
13 632.615, Florida Statutes, are amended to read:

14 632.615 Consolidations and mergers.--

15 (1) A domestic society may not consolidate or merge  
16 with any other insurer other than another society. It may  
17 consolidate or merge with another society by complying with  
18 the provisions of this section. It shall file with the office  
19 ~~department~~:

20 (a) A certified copy of the written contract  
21 containing in full the terms and conditions of the  
22 consolidation or merger;

23 (b) A sworn statement by the president and secretary  
24 or corresponding officers of each society showing the  
25 financial condition thereof on a date fixed by the office  
26 ~~department~~ but not earlier than December 31 next preceding the  
27 date of the contract;

28 (c) A certificate of such officers, duly verified by  
29 their respective oaths, that the consolidation or merger has  
30 been approved by a two-thirds vote of the supreme governing  
31 body of each society, such vote being conducted at a regular

1 or special meeting of each such body, or, if the society's  
2 laws so permit, by mail; and

3 (d) Evidence that at least 60 days prior to the action  
4 of the supreme governing body of each society, the text of the  
5 contract has been furnished to all members of each society  
6 either by mail or by publication in full in the official  
7 publication of each society.

8 (2) If the office ~~department~~ finds that the contract  
9 is in conformity with the provisions of this section, that the  
10 financial statements are correct, and that the consolidation  
11 or merger is just and equitable to the members of each  
12 society, the office ~~department~~ shall approve the contract and  
13 issue a certificate to such effect. Upon such approval, the  
14 contract shall be in full force and effect unless any society  
15 which is a party to the contract is incorporated under the  
16 laws of any other state or territory. In such event the  
17 consolidation or merger shall not become effective unless and  
18 until it has been approved as provided by the laws of such  
19 state or territory and a certificate of such approval filed  
20 with the office ~~department~~ or, if the laws of such state or  
21 territory contain no such provision, then the consolidation or  
22 merger shall not become effective unless and until it has been  
23 approved by the insurance supervisory official of such state  
24 or territory and a certificate of such approval filed with the  
25 office ~~department~~.

26 Section 1389. Section 632.616, Florida Statutes, is  
27 amended to read:

28 632.616 Conversion of fraternal benefit society into  
29 mutual life insurance company.--Any domestic fraternal benefit  
30 society may be converted and licensed as a mutual life  
31 insurance company by compliance with all the requirements of

1 chapter 628. A plan of conversion shall be prepared in  
2 writing by the board of directors setting forth in full the  
3 terms and conditions of conversion. The affirmative vote of  
4 two-thirds of all members of the supreme governing body at a  
5 regular or special meeting shall be necessary for the approval  
6 of such plan. No such conversion shall take effect unless and  
7 until approved by the office ~~department~~, which may give such  
8 approval if it finds that the proposed change is in conformity  
9 with the requirements of law and not prejudicial to the  
10 certificateholders of the society.

11 Section 1390. Subsection (6) of section 632.621,  
12 Florida Statutes, is amended to read:

13 632.621 The benefit contract.--

14 (6) No certificate shall be delivered or issued for  
15 delivery in this state unless a copy of the form has been  
16 filed with the office ~~department~~ in the manner provided for  
17 like policies issued by life insurers in this state. Every  
18 life, accident, health, or disability insurance certificate  
19 and every annuity certificate issued on or after one year from  
20 June 24, 1986, shall meet the standard contract provision  
21 requirements not inconsistent with this chapter for like  
22 policies issued by life insurers in this state, except that a  
23 society may provide for a grace period for payment of premiums  
24 of 1 full month in its certificates. The certificate shall  
25 also contain a provision stating the amount of premiums which  
26 are payable under the certificate and a provision reciting or  
27 setting forth the substance of any sections of the society's  
28 laws or rules in force at the time of issuance of the  
29 certificate which, if violated, will result in the termination  
30 or reduction of benefits payable under the certificate. If  
31 the laws of the society provide for expulsion or suspension of

1 a member, the certificate shall also contain a provision that  
2 any member so expelled or suspended, except for nonpayment of  
3 a premium or within the contestable period for material  
4 misrepresentation in the application for membership or  
5 insurance, shall have the privilege of maintaining the  
6 certificate in force by continuing payment of the required  
7 premium.

8 Section 1391. Subsection (2) of section 632.622,  
9 Florida Statutes, is amended to read:

10 632.622 Nonforfeiture benefits, cash surrender values,  
11 certificate loans, and other options.--

12 (2) For certificates issued on or after October 1,  
13 1982, reserves shall be computed utilizing the appropriate  
14 mortality tables approved by the office ~~department~~ for  
15 policies containing life insurance benefits made applicable to  
16 life insurers under s. 625.121.

17 Section 1392. Subsection (3) of section 632.627,  
18 Florida Statutes, is amended to read:

19 632.627 Valuation.--

20 (3) The office ~~department~~ may, in its discretion,  
21 accept other standards for valuation if it finds that the  
22 reserves produced thereby will not be less in the aggregate  
23 than reserves computed in accordance with the minimum  
24 valuation standard herein prescribed. The office ~~department~~  
25 may, in its discretion, vary the standards of mortality  
26 applicable to all benefit contracts on substandard lives or  
27 other extra hazardous lives by any society authorized to do  
28 business in this state.

29 Section 1393. Section 632.628, Florida Statutes, is  
30 amended to read:

31 632.628 Reports.--

1           (1) Reports shall be filed in accordance with the  
2 provisions of this section. Every society transacting  
3 business in this state shall annually, on or before March 1,  
4 unless for cause shown such time has been extended by the  
5 office ~~department~~, file with the office ~~department~~ a true  
6 statement of its financial condition, transactions, and  
7 affairs for the preceding calendar year and pay a fee for  
8 filing same, as provided in s. 624.501(4). The statement  
9 shall be in general form and context as approved by the  
10 National Association of Insurance Commissioners for fraternal  
11 benefits societies and as supplemented by additional  
12 information required by the office ~~department~~.

13           (2) As part of the annual statement herein required,  
14 each society shall, on or before March 1, file with the office  
15 ~~department~~ a valuation of its certificates in force on  
16 December 31 last preceding, provided the office ~~department~~  
17 may, in its discretion for cause shown, extend the time for  
18 filing such valuation for not more than 2 calendar months.  
19 Such valuation shall be done in accordance with the standards  
20 specified in s. 632.627. Such valuation and underlying data  
21 shall be certified by a qualified actuary or, at the expense  
22 of the society, verified by the actuary of the insurance  
23 ~~regulatory agency department of insurance~~ of the state of  
24 domicile of the society.

25           (3) A society neglecting to file the annual statement  
26 in the form and within the time provided by this section shall  
27 be subject to an administrative fine in an amount up to \$100  
28 for each day during which such neglect continues, and, upon  
29 notice by the office ~~department~~ to that effect, its authority  
30 to do business in this state shall cease while such default  
31 continues.

1           (4) The office ~~department~~ shall deposit all fees  
2 received under this section to the credit of the Insurance  
3 ~~Commissioner's~~ Regulatory Trust Fund.

4           Section 1394. Section 632.629, Florida Statutes, is  
5 amended to read:

6           632.629 Annual license.--

7           (1) A fraternal benefit society may not transact  
8 business in this state unless authorized therefor under a  
9 subsisting license issued to the society by the office  
10 ~~department~~.

11           (2) A license issued or renewed under this chapter  
12 shall continue in force as long as the society is entitled  
13 thereto under this chapter and until suspended or revoked by  
14 the office ~~department~~ or terminated at the request of the  
15 society, provided:

16           (a) The society pays, prior to June 1, the annual  
17 license tax provided for in s. 624.501(3); and

18           (b) The office ~~department~~ is satisfied that the  
19 society has met the applicable requirements of the Florida  
20 Insurance Code.

21           (3) If the license is not continued by the society,  
22 the license shall expire at midnight on May 31 following  
23 failure of the society to continue it. The office ~~department~~  
24 shall promptly notify the society of the impending expiration  
25 of its license.

26           (4) The office ~~department~~ may reinstate a license  
27 which the society has inadvertently permitted to expire, after  
28 the society has fully cured all its failures which resulted in  
29 the expiration and upon payment by the society of the fee for  
30 reinstatement in the amount provided in s. 624.501(1)(b).  
31 Otherwise, the society shall be granted another license only

1 after filing application therefor and meeting all other  
2 requirements for an original license in this state.

3 (5) A duly certified copy or duplicate of such license  
4 shall be prima facie evidence that the licensee is a fraternal  
5 benefit society within the meaning of this chapter.

6 Section 1395. Section 632.631, Florida Statutes, is  
7 amended to read:

8 632.631 Examination of societies; no adverse  
9 publications.--

10 (1) The office ~~department~~, or any person it may  
11 appoint, may examine any domestic, foreign, or alien society  
12 transacting or applying for admission to transact business in  
13 this state in the same manner as authorized for examination of  
14 domestic, foreign, or alien insurers. Requirements of notice  
15 and an opportunity to respond before findings are made public  
16 as provided in the laws regulating insurers shall also be  
17 applicable to the examination of societies.

18 (2) The expense of each examination and of each  
19 valuation, including compensation and actual expense of  
20 examiners, shall be paid by the society examined or whose  
21 certificates are valued, upon statements furnished by the  
22 office ~~department~~.

23 Section 1396. Section 632.632, Florida Statutes, is  
24 amended to read:

25 632.632 Foreign or alien society; admission.--No  
26 foreign or alien society shall transact business in this state  
27 without a license issued by the office ~~department~~. Any such  
28 society desiring admission to this state shall have the  
29 qualifications required of domestic societies organized under  
30 this chapter. Any such society may be licensed to transact  
31 business in this state upon filing with the office ~~department~~:

1           (1) A duly certified copy of its articles of  
2 incorporation;

3           (2) A copy of its bylaws, certified by its secretary  
4 or corresponding officer;

5           (3) A power of attorney to the office ~~department~~;

6           (4) A copy of its most recent annual statement  
7 certified under oath by its president and secretary or  
8 corresponding officers in a form prescribed by the commission  
9 ~~department~~;

10           (5) A copy of an examination report conducted within  
11 the most recent 3-year period by the supervising insurance  
12 official of its home state or other state, territory,  
13 province, or country, satisfactory to the office ~~department~~;

14           (6) Certification from the proper official of its home  
15 state, territory, province, or country that the society is  
16 legally incorporated and licensed to transact business  
17 therein;

18           (7) Copies of its certificate forms; and

19           (8) Such other information as the office ~~department~~  
20 may deem necessary;

21

22 and upon a showing satisfactory to the office ~~department~~ that  
23 its assets are invested in accordance with the provisions of  
24 this chapter.

25           Section 1397. Section 632.633, Florida Statutes, is  
26 amended to read:

27           632.633 Additional grounds for suspension, revocation,  
28 or denial of certificate of authority; receivership;  
29 insolvency.--

30           (1) In addition to the grounds set forth in s.  
31 624.418, the office ~~department~~ may, in its discretion,

1 suspend, revoke, or deny the certificate of authority of a  
2 society, if it finds that the society:  
3 (a) Has exceeded its powers;  
4 (b) Has failed to comply with any provision of this  
5 chapter;  
6 (c) Is not fulfilling its contracts in good faith;  
7 (d) Has a membership of less than 400 after an  
8 existence of 1 year or more; or  
9 (e) Is conducting business fraudulently or in a manner  
10 hazardous to its members, creditors, the public, or the  
11 business.  
12 (2) In addition to the grounds set forth in s.  
13 626.9571, whenever the office ~~department~~ has reason to believe  
14 that any society is operating in violation of this chapter or  
15 of any provision of the Florida Insurance Code applicable to  
16 societies, the provisions of ss. 626.9571, 626.9581, 626.9591,  
17 and 626.9601 shall apply.  
18 (3) Any rehabilitation, liquidation, conservation, or  
19 dissolution of a society shall be conducted under the  
20 supervision of the department. The department and office  
21 shall have all the powers with respect to such rehabilitation,  
22 liquidation, conservation, or dissolution that are granted to  
23 the department and office under the laws governing the  
24 rehabilitation, liquidation, conservation, or dissolution of  
25 life insurance companies.  
26 Section 1398. Subsection (5) of section 632.637,  
27 Florida Statutes, is amended to read:  
28 632.637 Exemption of certain societies.--  
29 (5) The office ~~department~~ may require from any society  
30 or association, by examination or otherwise, such information  
31 as will enable the office ~~department~~ to determine whether such

1 society or association is exempt from the provisions of this  
2 chapter.

3 Section 1399. Subsection (1) of section 633.01,  
4 Florida Statutes, is amended to read:

5 633.01 State Fire Marshal; powers and duties; rules.--

6 (1) The Chief Financial Officer is ~~head of the~~  
7 ~~Department of Insurance shall be~~ designated as "State Fire  
8 Marshal." The State Fire Marshal has authority to adopt rules  
9 pursuant to ss. 120.536(1) and 120.54 to implement the  
10 provisions of this chapter conferring powers or duties upon  
11 the department. Rules shall be in substantial conformity with  
12 generally accepted standards of firesafety; shall take into  
13 consideration the direct supervision of children in  
14 nonresidential child care facilities; and shall balance and  
15 temper the need of the State Fire Marshal to protect all  
16 Floridians from fire hazards with the social and economic  
17 inconveniences that may be caused or created by the rules. The  
18 department shall adopt the Florida Fire Prevention Code and  
19 the Life Safety Code.

20 Section 1400. Subsection (1) of section 633.022,  
21 Florida Statutes, is amended to read:

22 633.022 Uniform firesafety standards.--The Legislature  
23 hereby determines that to protect the public health, safety,  
24 and welfare it is necessary to provide for firesafety  
25 standards governing the construction and utilization of  
26 certain buildings and structures. The Legislature further  
27 determines that certain buildings or structures, due to their  
28 specialized use or to the special characteristics of the  
29 person utilizing or occupying these buildings or structures,  
30 should be subject to firesafety standards reflecting these  
31 special needs as may be appropriate.

1           (1) The department ~~of Insurance~~ shall establish  
2 uniform firesafety standards that apply to:

3           (a) All new, existing, and proposed state-owned and  
4 state-leased buildings.

5           (b) All new, existing, and proposed hospitals, nursing  
6 homes, assisted living facilities, adult family-care homes,  
7 correctional facilities, public schools, transient public  
8 lodging establishments, public food service establishments,  
9 elevators, migrant labor camps, mobile home parks, lodging  
10 parks, recreational vehicle parks, recreational camps,  
11 residential and nonresidential child care facilities,  
12 facilities for the developmentally disabled, motion picture  
13 and television special effects productions, and self-service  
14 gasoline stations, of which standards the State Fire Marshal  
15 is the final administrative interpreting authority.

16  
17 In the event there is a dispute between the owners of the  
18 buildings specified in paragraph (b) and a local authority  
19 requiring a more stringent uniform firesafety standard for  
20 sprinkler systems, the State Fire Marshal shall be the final  
21 administrative interpreting authority and the State Fire  
22 Marshal's interpretation regarding the uniform firesafety  
23 standards shall be considered final agency action.

24           Section 1401. Subsection (4) of section 633.025,  
25 Florida Statutes, is amended to read:

26           633.025 Minimum firesafety standards.--

27           (4) Such codes shall be minimum codes and a  
28 municipality, county, or special district with firesafety  
29 responsibilities may adopt more stringent firesafety  
30 standards, subject to the requirements of this subsection.  
31 Such county, municipality, or special district may establish

1 alternative requirements to those requirements which are  
2 required under the minimum firesafety standards on a  
3 case-by-case basis, in order to meet special situations  
4 arising from historic, geographic, or unusual conditions, if  
5 the alternative requirements result in a level of protection  
6 to life, safety, or property equal to or greater than the  
7 applicable minimum firesafety standards. For the purpose of  
8 this subsection, the term "historic" means that the building  
9 or structure is listed on the National Register of Historic  
10 Places of the United States Department of the Interior.

11 (a) The local governing body shall determine,  
12 following a public hearing which has been advertised in a  
13 newspaper of general circulation at least 10 days before the  
14 hearing, if there is a need to strengthen the requirements of  
15 the minimum firesafety code adopted by such governing body.  
16 The determination must be based upon a review of local  
17 conditions by the local governing body, which review  
18 demonstrates that local conditions justify more stringent  
19 requirements than those specified in the minimum firesafety  
20 code for the protection of life and property or justify  
21 requirements that meet special situations arising from  
22 historic, geographic, or unusual conditions.

23 (b) Such additional requirements shall not be  
24 discriminatory as to materials, products, or construction  
25 techniques of demonstrated capabilities.

26 (c) Paragraphs (a) and (b) apply solely to the local  
27 enforcing agency's adoption of requirements more stringent  
28 than those specified in the Florida Fire Prevention Code and  
29 the Life Safety Code that have the effect of amending building  
30 construction standards. Upon request, the enforcing agency  
31 shall provide a person making application for a building

1 permit, or any state agency or board with construction-related  
2 regulation responsibilities, a listing of all such  
3 requirements and codes.

4 (d) A local government which adopts amendments to the  
5 minimum firesafety code must provide a procedure by which the  
6 validity of such amendments may be challenged by any  
7 substantially affected party to test the amendment's  
8 compliance with the provisions of this section.

9 1. Unless the local government agrees to stay  
10 enforcement of the amendment, or other good cause is shown,  
11 the challenging party shall be entitled to a hearing on the  
12 challenge within 45 days.

13 2. For purposes of such challenge, the burden of proof  
14 shall be on the challenging party, but the amendment shall not  
15 be presumed to be valid or invalid.

16  
17 This subsection gives local government the authority to  
18 establish firesafety codes that exceed the minimum firesafety  
19 codes and standards adopted by the State Fire Marshal. The  
20 Legislature intends that local government give proper public  
21 notice and hold public hearings before adopting more stringent  
22 firesafety codes and standards. A substantially affected  
23 person may appeal, to the department ~~of Insurance~~, the local  
24 government's resolution of the challenge, and the department  
25 shall determine if the amendment complies with this section.  
26 Actions of the department are subject to judicial review  
27 pursuant to s. 120.68. The department shall consider reports  
28 of the Florida Building Commission, pursuant to part VII of  
29 chapter 553, when evaluating building code enforcement.

30 Section 1402. Paragraph (a) of subsection (1) of  
31 section 633.052, Florida Statutes, is amended to read:

1           633.052 Ordinances relating to firesafety;  
2 definitions; penalties.--

3           (1) As used in this section:

4           (a) A "firesafety inspector" is an individual  
5 certified by the Division of State Fire Marshal ~~of the~~  
6 ~~Department of Insurance~~, officially assigned the duties of  
7 conducting firesafety inspections of buildings and facilities  
8 on a recurring or regular basis, investigating civil  
9 infractions relating to firesafety, and issuing citations  
10 pursuant to this section on behalf of the state or any county,  
11 municipality, or special district with firesafety  
12 responsibilities.

13           Section 1403. Subsection (7) of section 633.061,  
14 Florida Statutes, is amended to read:

15           633.061 Fire suppression equipment; license to install  
16 or maintain.--

17           (7) The fees collected for any such licenses and  
18 permits and the filing fees for license and permit examination  
19 are hereby appropriated for the use of the State Fire Marshal  
20 in the administration of this chapter and shall be deposited  
21 in the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

22           Section 1404. Subsections (4) and (7) of section  
23 633.081, Florida Statutes, are amended to read:

24           633.081 Inspection of buildings and equipment; orders;  
25 firesafety inspection training requirements; certification;  
26 disciplinary action.--The State Fire Marshal and her or his  
27 agents shall, at any reasonable hour, when the department has  
28 reasonable cause to believe that a violation of this chapter  
29 or s. 509.215, or a rule promulgated thereunder, or a minimum  
30 firesafety code adopted by a local authority, may exist,  
31 inspect any and all buildings and structures which are subject

1 to the requirements of this chapter or s. 509.215 and rules  
2 promulgated thereunder. The authority to inspect shall extend  
3 to all equipment, vehicles, and chemicals which are located  
4 within the premises of any such building or structure.

5 (4) A firefighter certified pursuant to s. 633.35 may  
6 conduct firesafety inspections, under the supervision of a  
7 certified firesafety inspector, while on duty as a member of a  
8 fire department company conducting inservice firesafety  
9 inspections without being certified as a firesafety inspector,  
10 if such firefighter has satisfactorily completed an inservice  
11 fire department company inspector training program of at least  
12 24 hours' duration as provided by rule of the department ~~of~~  
13 ~~insurance~~.

14 (7) The department ~~of insurance~~ shall provide by rule  
15 for the certification of firesafety inspectors.

16 Section 1405. Section 633.111, Florida Statutes, is  
17 amended to read:

18 633.111 State Fire Marshal to keep records of fires;  
19 reports of agents.--The State Fire Marshal shall keep in her  
20 or his office a record of all fires occurring in this state  
21 upon which she or he had caused an investigation to be made  
22 and all facts concerning the same. These records, obtained or  
23 prepared by the State Fire Marshal pursuant to her or his  
24 investigation, include documents, papers, letters, maps,  
25 diagrams, tapes, photographs, films, sound recordings, and  
26 evidence. These records are confidential and exempt from the  
27 provisions of s. 119.07(1) until the investigation is  
28 completed or ceases to be active. For purposes of this  
29 section, an investigation is considered "active" while such  
30 investigation is being conducted by the department with a  
31 reasonable, good faith belief that it may lead to the filing

1 of administrative, civil, or criminal proceedings. An  
2 investigation does not cease to be active if the department is  
3 proceeding with reasonable dispatch, and there is a good faith  
4 belief that action may be initiated by the department or other  
5 administrative or law enforcement agency. Further, these  
6 documents, papers, letters, maps, diagrams, tapes,  
7 photographs, films, sound recordings, and evidence relative to  
8 the subject of an investigation shall not be subject to  
9 subpoena until the investigation is completed or ceases to be  
10 active, unless the State Fire Marshal consents. These records  
11 shall be made daily from the reports furnished the State Fire  
12 Marshal by her or his agents or others. Whenever the State  
13 Fire Marshal releases an investigative report, any person  
14 requesting a copy of the report shall pay in advance, and the  
15 State Fire Marshal shall collect in advance, notwithstanding  
16 the provisions of s. 624.501(19)(a) and (b), a fee of \$10 for  
17 the copy of the report, which fee shall be deposited into the  
18 Insurance ~~Commissioner's~~ Regulatory Trust Fund. The State Fire  
19 Marshal may release the report without charge to any state  
20 attorney or to any law enforcement agency or fire department  
21 assisting in the investigation.

22 Section 1406. Subsection (1) of section 633.161,  
23 Florida Statutes, is amended to read:

24 633.161 Violations; orders to cease and desist,  
25 correct hazardous conditions, preclude occupancy, or vacate;  
26 enforcement; penalties.--

27 (1) If it is determined by the department ~~of Insurance~~  
28 that a violation specified in this subsection exists, the  
29 State Fire Marshal or her or his deputy may issue and deliver  
30 to the person committing the violation an order to cease and  
31 desist from such violation, to correct any hazardous

1 condition, to preclude occupancy of the affected building or  
2 structure, or to vacate the premises of the affected building  
3 or structure. Such violations are:

4 (a) Except as set forth in paragraph (b), a violation  
5 of any provision of this chapter, of any rule adopted pursuant  
6 thereto, of any applicable uniform firesafety standard adopted  
7 pursuant to s. 633.022 which is not adequately addressed by  
8 any alternative requirements adopted on a local level, or of  
9 any minimum firesafety standard adopted pursuant to s.  
10 394.879.

11 (b) A substantial violation of an applicable minimum  
12 firesafety standard adopted pursuant to s. 633.025 which is  
13 not reasonably addressed by any alternative requirement  
14 imposed at the local level, or an unreasonable interpretation  
15 of an applicable minimum firesafety standard, and which  
16 violation or interpretation clearly constitutes a danger to  
17 lifesafety.

18 (c) A building or structure which is in a dilapidated  
19 condition and as a result thereof creates a danger to life,  
20 safety, or property.

21 (d) A building or structure which contains explosive  
22 matter or flammable liquids or gases constituting a danger to  
23 life, safety, or property.

24 Section 1407. Subsection (5) of section 633.162,  
25 Florida Statutes, is amended to read:

26 633.162 Fire suppression system contractors;  
27 disciplinary action.--

28 (5) In addition, the department ~~of Insurance~~ shall not  
29 issue a new license or permit if it finds that the  
30 circumstance or circumstances for which the license or permit  
31

1 was previously revoked or suspended still exist or are likely  
2 to recur.

3 Section 1408. Section 633.30, Florida Statutes, is  
4 amended to read:

5 633.30 Standards for firefighting; definitions.--As  
6 used in this chapter, the term:

7 (1) "Firefighter" means any person initially employed  
8 as a full-time professional firefighter by any employing  
9 agency, as defined herein, whose primary responsibility is the  
10 prevention and extinguishment of fires, the protection and  
11 saving of life and property, and the enforcement of municipal,  
12 county, and state fire prevention codes, as well as of any law  
13 pertaining to the prevention and control of fires.

14 (2) "Employing agency" means any municipality or  
15 county, the state, or any political subdivision of the state,  
16 including authorities and special districts, employing  
17 firefighters as defined in subsection (1).

18 (3) "Department" means the Department of Financial  
19 Services Insurance.

20 (4) "Council" means the Firefighters Employment,  
21 Standards, and Training Council.

22 (5) "Division" means the Division of State Fire  
23 Marshal of the Department of Financial Services Insurance.

24 Section 1409. Subsection (1) of section 633.31,  
25 Florida Statutes, is amended to read:

26 633.31 Firefighters Employment, Standards, and  
27 Training Council.--

28 (1) There is created within the department ~~of~~  
29 ~~insurance~~ a Firefighters Employment, Standards, and Training  
30 Council of 13 members. Two members shall be fire chiefs  
31 appointed by the Florida Fire Chiefs Association, two members

1 shall be firefighters who are not officers, appointed by the  
2 Florida Professional Firefighters Association, two members  
3 shall be firefighter officers who are not fire chiefs,  
4 appointed by the State Fire Marshal, one member appointed by  
5 the Florida League of Cities, one member appointed by the  
6 Florida Association of Counties, one member appointed by the  
7 Florida Association of Special Districts, one member appointed  
8 by the Florida Fire Marshal's Association, and one member  
9 appointed by the State Fire Marshal, and one member shall be a  
10 director or instructor of a state-certified firefighting  
11 training facility appointed by the State Fire Marshal. To be  
12 eligible for appointment as a fire chief member, firefighter  
13 officer member, firefighter member, or a director or  
14 instructor of a state-certified firefighting facility, a  
15 person shall have had at least 4 years' experience in the  
16 firefighting profession. The remaining member, who shall be  
17 appointed by the State Fire Marshal, shall not be a member or  
18 representative of the firefighting profession or of any local  
19 government. Members shall serve only as long as they continue  
20 to meet the criteria under which they were appointed, or  
21 unless a member has failed to appear at three consecutive and  
22 properly noticed meetings unless excused by the chair.

23 Section 1410. Section 633.353, Florida Statutes, is  
24 amended to read:

25 633.353 Falsification of qualifications.--Any person  
26 who willfully and knowingly falsifies the qualifications of a  
27 new employee to the Bureau of Fire Standards and Training of  
28 ~~the division of State Fire Marshal of the Department of~~  
29 ~~insurance~~ is guilty of a misdemeanor of the second degree,  
30 punishable as provided in s. 775.082 or s. 775.083.

31

1           Section 1411. Subsection (1) of section 633.382,  
2 Florida Statutes, is amended to read:

3           633.382 Firefighters; supplemental compensation.--

4           (1) DEFINITIONS.--As used in this section, the term:

5           ~~(a) "Division" means the Division of State Fire~~  
6 ~~Marshal of the Department of Insurance created and existing~~  
7 ~~under the provisions of this chapter.~~

8           (a)~~(b)~~ "Employing agency" means any municipality or  
9 any county, the state, or any political subdivision of the  
10 state, including authorities and special districts employing  
11 firefighters.

12           (b)~~(c)~~ "Firefighter" means any person who meets the  
13 definition of the term "firefighter" in s. 633.30(1) who is  
14 certified in compliance with s. 633.35 and who is employed  
15 solely within the fire department of the employing agency or  
16 is employed by the division.

17           Section 1412. Section 633.43, Florida Statutes, is  
18 amended to read:

19           633.43 Florida State Fire College established.--There  
20 is hereby established a state institution to be known as the  
21 Florida State Fire College, to be located at or near Ocala,  
22 Marion County. The institution shall be operated by the  
23 Division of State Fire Marshal of the department ~~of Insurance.~~

24           Section 1413. Subsections (1), (2), (3), (7), (8),  
25 (9), and (10) of section 633.445, Florida Statutes, are  
26 amended to read:

27           633.445 State Fire Marshal Scholarship Grant  
28 Program.--

29           (1) All payments, gifts, or grants received pursuant  
30 to this section shall be deposited in the State Treasury to  
31 the credit of the Insurance ~~Commissioner's~~ Regulatory Trust

1 Fund for the State Fire Marshal Scholarship Grant Program.  
2 Such funds shall provide, from grants to the state from moneys  
3 raised from public and private sources, scholarships for  
4 qualified applicants to the Florida State Fire College as  
5 created by s. 633.43.

6 (2) The Chief Financial Officer ~~Comptroller~~ shall  
7 authorize expenditures from the Insurance ~~Commissioner's~~  
8 Regulatory Trust Fund upon receipt of vouchers approved by the  
9 division ~~State Fire Marshal~~. All moneys collected from public  
10 and private sources pursuant to this section shall be  
11 deposited into the trust fund. Any balance in the trust fund  
12 at the end of any fiscal year shall remain therein and shall  
13 be available for carrying out the purposes of the fund in the  
14 ensuing year.

15 (3) All funds deposited into the Insurance  
16 ~~Commissioner's~~ Regulatory Trust Fund shall be invested  
17 pursuant to s. 17.61 ~~s. 18.125~~. Interest income accruing to  
18 moneys so invested shall increase the total funds available  
19 for the purposes for which the trust fund is created.

20 (7) The criteria and procedures for establishing  
21 standards of eligibility shall be recommended by the council  
22 to the department ~~of Insurance~~. The council shall recommend to  
23 the department ~~of Insurance~~ a rating system upon which to base  
24 the approval of scholarship grants. However, to be eligible to  
25 receive a scholarship pursuant to this section, an applicant  
26 must:

27 (a) Be a full-time employee or volunteer of a local  
28 municipal, county, regional or district firefighter unit;

29 (b) Have graduated from high school, have earned an  
30 equivalency diploma issued by the Department of Education  
31

1 pursuant to s. 1003.435, or have earned an equivalency diploma  
2 issued by the United States Armed Forces Institute;

3 (c) Be accepted for full-time enrollment, with the  
4 intent to maintain such enrollment at the Florida State Fire  
5 College;

6 (d) Have the firefighter unit by whom the applicant is  
7 employed or for which the applicant is a volunteer, recommend  
8 her or him and certify that, because of financial need, the  
9 scholarship is necessary for her or him to attend the State  
10 Fire College; and

11 (e) Agree that she or he intends to return to duty  
12 with the firefighter unit by whom she or he was recommended,  
13 or, by agreement with such unit, that she or he will remain in  
14 some capacity relating to the firefighting profession for a  
15 period of at least 1 year.

16 (8) The department ~~of Insurance~~ may adopt rules to  
17 implement this section, including rules detailing the  
18 eligibility standards and an approval rating system which are  
19 based on financial need, need for additional certified  
20 firefighters from the applicant's community, and the  
21 applicant's employment record.

22 (9) After selection and approval of an applicant for a  
23 grant by the council, payment in the applicant's name for  
24 scholarship funds shall be transmitted from the Insurance  
25 ~~Commissioner's~~ Regulatory Trust Fund by the Chief Financial  
26 Officer ~~Comptroller~~ upon receipt of vouchers authorized by the  
27 division ~~State Fire Marshal~~. If a recipient terminates her or  
28 his enrollment during the course of her or his curriculum at  
29 the State Fire College, unless excused by the council and  
30 allowed to resume training at a later time, any unused portion  
31 of the scholarship funds shall be refunded to the trust fund.

1 A recipient who terminates her or his enrollment is not liable  
2 for any portion of a scholarship.

3 (10) The council may accept payments, gifts, and  
4 grants of money from any federal agency, private agency,  
5 county, city, town, corporation, partnership, or individual  
6 for deposit in the Insurance ~~Commissioner's~~ Regulatory Trust  
7 Fund to implement this section and for authorized expenses  
8 incurred by the council in performing its duties.

9 Section 1414. Subsection (1) of section 633.45,  
10 Florida Statutes, is amended to read:

11 633.45 Division of State Fire Marshal; powers,  
12 duties.--

13 (1) The division ~~of State Fire Marshal of the~~  
14 ~~Department of Insurance~~ shall:

15 (a) Establish uniform minimum standards for the  
16 employment and training of firefighters.

17 (b) Establish minimum curriculum requirements for  
18 schools operated by or for any employing agency for the  
19 specific purpose of training firefighter recruits or  
20 firefighters.

21 (c) Approve institutions, instructors, and facilities  
22 for school operation by or for any employing agency for the  
23 specific purpose of training firefighters and firefighter  
24 recruits.

25 (d) Specify, by rule, standards for the approval,  
26 denial of approval, probation, and revocation of approval of  
27 institutions, instructors, and facilities for training  
28 firefighters and firefighter recruits; including a rule that  
29 an instructor must complete 40 hours of continuing education  
30 every 3 years in order to maintain the approval of the  
31 department.

1           (e) Issue certificates of competency to persons who,  
2 by reason of experience and completion of basic inservice  
3 training, advanced education, or specialized training, are  
4 especially qualified for particular aspects or classes of  
5 firefighter duties.

6           (f) Establish minimum training qualifications for  
7 persons serving as firesafety coordinators for their  
8 respective departments of state government and certify all  
9 persons who satisfy such qualifications.

10          (g) Establish a uniform lesson plan to be followed by  
11 firesafety instructors in the training of state employees in  
12 firesafety and emergency evacuation procedures.

13          (h) Have complete jurisdiction over, and complete  
14 management and control of, the Florida State Fire College and  
15 be invested with full power and authority to make all rules  
16 and regulations necessary for the governance of said  
17 institution.

18          (i) Appoint a superintendent of the Florida State Fire  
19 College and such other instructors, experimental helpers, and  
20 laborers as may be necessary and remove the same as in its  
21 judgment and discretion may be best, fix their compensation,  
22 and provide for their payment.

23          (j) Have full management, possession, and control of  
24 the lands, buildings, structures, and property belonging to  
25 the Florida State Fire College.

26          (k) Provide for the courses of study and curriculum of  
27 the Florida State Fire College.

28          (l) Make rules and regulations for the admission of  
29 trainees to the Florida State Fire College.

30  
31

1           (m) Visit and inspect the Florida State Fire College  
2 and every department thereof and provide for the proper  
3 keeping of accounts and records thereof.

4           (n) Make and prepare all necessary budgets of  
5 expenditures for the enlargement, proper furnishing,  
6 maintenance, support, and conduct of the Florida State Fire  
7 College.

8           (o) Select and purchase all property, furniture,  
9 fixtures, and paraphernalia necessary for the Florida State  
10 Fire College.

11           (p) Build, construct, change, enlarge, repair, and  
12 maintain any and all buildings or structures of the Florida  
13 State Fire College that may at any time be necessary for said  
14 institution and purchase and acquire all lands and property  
15 necessary for same, of every nature and description  
16 whatsoever.

17           (q) Care for and maintain the Florida State Fire  
18 College and do and perform every other matter or thing  
19 requisite to the proper management, maintenance, support, and  
20 control of said institution, necessary or requisite to carry  
21 out fully the purpose of this act and for raising it to, and  
22 maintaining it at, the proper efficiency and standard as  
23 required in and by the provisions of ss. 633.43-633.49.

24           Section 1415. Section 633.46, Florida Statutes, is  
25 amended to read:

26           633.46 Fees.--The division may fix and collect  
27 admission fees and other fees which it deems necessary to be  
28 charged for training given. All fees so collected shall be  
29 deposited in the Insurance ~~Commissioner's~~ Regulatory Trust  
30 Fund.

31

1           Section 1416. Section 633.461, Florida Statutes, is  
2 amended to read:

3           633.461 Use of Insurance ~~Commissioner's~~ Regulatory  
4 Trust Fund.--The funds received from the Insurance  
5 ~~Commissioner's~~ Regulatory Trust Fund shall be used by the  
6 staff of the Florida State Fire College to provide all  
7 necessary services, training, equipment, and supplies to carry  
8 out the college's responsibilities, including, but not limited  
9 to, the State Fire Marshal Scholarship Grant Program and the  
10 procurement of training films, videotapes, audiovisual  
11 equipment, and other useful information on fire, firefighting,  
12 and fire prevention, including public fire service information  
13 packages.

14           Section 1417. Section 633.47, Florida Statutes, is  
15 amended to read:

16           633.47 Procedure for making expenditures.--No moneys  
17 shall be spent for and on behalf of the Florida State Fire  
18 College except upon a written voucher drawn by the division,  
19 stating the nature of the expenditures and the person to whom  
20 the same shall be made payable, which voucher shall be  
21 submitted to the Chief Financial Officer ~~Comptroller~~ and  
22 audited for approval by her or him; upon such approval, the  
23 Chief Financial Officer ~~Comptroller~~ shall draw a warrant ~~upon~~  
24 ~~the Treasurer~~ for the payment thereof, filing the original  
25 voucher in her or his office.

26           Section 1418. Section 633.50, Florida Statutes, is  
27 amended to read:

28           633.50 Division powers and duties; Florida State Fire  
29 College.--

30           (1) The division ~~of State Fire Marshal of the~~  
31 ~~Department of Insurance~~, in performing its duties related to

1 the Florida State Fire College, specified in ss.

2 633.43-633.49, shall:

3 (a) Enter into agreements with public or private  
4 school districts, community colleges, junior colleges, or  
5 universities to carry out its duties and responsibilities.

6 (b) Review and approve budget requests for the fire  
7 college educational program.

8 (c) Prepare the legislative budget request for the  
9 Florida State Fire College education program. The  
10 superintendent is responsible for all expenditures pursuant to  
11 appropriations.

12 (d) Implement procedures to obtain appropriate  
13 entitlement funds from federal and state grants to supplement  
14 the annual legislative appropriation. Such funds must be used  
15 expressly for the fire college educational programs.

16 (e) Develop a staffing and funding formula for the  
17 Florida State Fire College. The formula shall include  
18 differential funding levels for various types of programs,  
19 shall be based on the number of full-time equivalent students  
20 and information obtained from scheduled attendance counts  
21 taken the first day of each program, and shall provide the  
22 basis for the legislative budget request. As used in this  
23 section, a full-time equivalent student is equal to a minimum  
24 of 900 hours in a technical certificate program and 400 hours  
25 in a degree-seeking program. The funding formula shall be as  
26 prescribed pursuant to s. 1011.62, shall include procedures to  
27 document daily attendance, and shall require that attendance  
28 records be retained for audit purposes.

29 (2) Funds generated by the formula per full-time  
30 equivalent student may not exceed the level of state funding  
31 per full-time equivalent student generated through the Florida

1 Education Finance Program or the State Community College  
2 Program Fund for students enrolled in comparable education  
3 programs provided by public school districts and community  
4 colleges. Funds appropriated for education and operational  
5 costs shall be deposited in the Insurance ~~Commissioner's~~  
6 Regulatory Trust Fund to be used solely for purposes specified  
7 in s. 633.461 and may not be transferred to any other budget  
8 entity for purposes other than education.

9 Section 1419. Subsection (2) of section 633.524,  
10 Florida Statutes, is amended to read:

11 633.524 Certificate fees; use and deposit of collected  
12 funds.--

13 (2) All moneys collected by the State Fire Marshal  
14 pursuant to this chapter are hereby appropriated for the use  
15 of the State Fire Marshal in the administration of this  
16 chapter and shall be deposited in the Insurance ~~Commissioner's~~  
17 Regulatory Trust Fund.

18 Section 1420. Section 633.802, Florida Statutes, is  
19 amended to read:

20 633.802 Definitions.--Unless the context clearly  
21 requires otherwise, the following definitions shall apply to  
22 ss. 633.801-633.821:

23 ~~(1) "Department" means the Department of Insurance.~~

24 ~~(2) "Division" means the Division of State Fire  
25 Marshal of the department.~~

26 (1)~~(3)~~ "Firefighter employee" means any person engaged  
27 in any employment, public or private, as a firefighter under  
28 any appointment or contract of hire or apprenticeship, express  
29 or implied, oral or written, whether lawfully or unlawfully  
30 employed, responding to or assisting with fire or medical

31

1 emergencies, whether or not the firefighter is on duty, except  
2 those appointed under s. 590.02(1)(d).

3 (2)~~(4)~~ "Firefighter employer" means the state and all  
4 political subdivisions of this state, all public and  
5 quasi-public corporations in this state, and every person  
6 carrying on any employment for this state, political  
7 subdivisions of this state, and public and quasi-public  
8 corporations in this state which employs firefighters, except  
9 those appointed under s. 590.02(1)(d).

10 (3)~~(5)~~ "Firefighter employment" or "employment" means  
11 any service performed by a firefighter employee for the  
12 firefighter employer.

13 (4)~~(6)~~ "Firefighter place of employment" or "place of  
14 employment" means the physical location at which the  
15 firefighter is employed.

16 Section 1421. Section 633.811, Florida Statutes, is  
17 amended to read:

18 633.811 Firefighter employer penalties.--If any  
19 firefighter employer violates or fails or refuses to comply  
20 with ss. 633.801-633.821, or with any rule adopted by the  
21 division under such sections in accordance with chapter 120  
22 for the prevention of injuries, accidents, or occupational  
23 diseases or with any lawful order of the division in  
24 connection with ss. 633.801-633.821, or fails or refuses to  
25 furnish or adopt any safety device, safeguard, or other means  
26 of protection prescribed by division rule under ss.  
27 633.801-633.821 for the prevention of accidents or  
28 occupational diseases, the division may assess against the  
29 firefighter employer a civil penalty of not less than \$100 nor  
30 more than \$5,000 for each day the violation, omission,  
31 failure, or refusal continues after the firefighter employer

1 has been given written notice of such violation, omission,  
2 failure, or refusal. The total penalty for each violation  
3 shall not exceed \$50,000. The division shall adopt rules  
4 requiring penalties commensurate with the frequency or  
5 severity of safety violations. A hearing shall be held in the  
6 county in which the violation, omission, failure, or refusal  
7 is alleged to have occurred, unless otherwise agreed to by the  
8 firefighter employer and authorized by the division. All  
9 penalties assessed and collected under this section shall be  
10 deposited in the Insurance ~~Commissioner's~~ Regulatory Trust  
11 Fund.

12 Section 1422. Section 633.814, Florida Statutes, is  
13 amended to read:

14 633.814 Expenses of administration.--The amounts that  
15 are needed to administer ss. 633.801-633.821 shall be  
16 disbursed from the Insurance ~~Commissioner's~~ Regulatory Trust  
17 Fund.

18 Section 1423. Section 634.011, Florida Statutes, is  
19 amended to read:

20 634.011 Definitions.--As used in this part, the term:

21 (1) "Acquisition cost" means all costs specifically  
22 associated with acquiring new business, including, but not  
23 limited to, underwriting costs, commissions, contingent fees,  
24 and cost of sales material.

25 (2) "Additive product" means any fuel supplement, oil  
26 supplement, or any other supplement product added to a motor  
27 vehicle for the purpose of increasing or enhancing the  
28 performance or improving the longevity of such motor vehicle.

29 (3) "Affiliate" means any entity which exercises  
30 control over or is controlled by the motor vehicle service  
31 agreement company or insurer, directly or indirectly, through:

- 1           (a) Equity ownership of voting securities;  
2           (b) Common managerial control; or  
3           (c) Collusive participation by the management of the  
4 motor vehicle service agreement company or insurer and  
5 affiliate in the management of the motor vehicle service  
6 agreement company or insurer or the affiliate.

7           ~~(4)~~ "Department" means the Department of Insurance.

8           (4)~~(5)~~ "Gross premium written" means the total amount  
9 of premiums paid by the agreement holder, inclusive of  
10 commissions, for those agreements which are in force.

11           (5)~~(6)~~ "Insurer" means any property or casualty  
12 insurer duly authorized to transact such business in this  
13 state.

14           (6)~~(7)~~ "Motor vehicle" means:

15           (a) A self-propelled device operated solely or  
16 primarily upon roadways to transport people or property, or  
17 the component part of such a self-propelled device, except  
18 such term does not include any self-propelled vehicle, or  
19 component part of such vehicle, which:

20           1. Has a gross vehicle weight rating of 10,000 pounds  
21 or more, and is not a recreational vehicle as defined by s.  
22 320.01(1)(b);

23           2. Is designed to transport more than 10 passengers,  
24 including the driver; or

25           3. Is used in the transportation of materials found to  
26 be hazardous for the purposes of the Hazardous Materials  
27 Transportation Act, as amended, 49 U.S.C. ss. 1801 et seq.; or

28           (b) A self-propelled device operated solely or  
29 primarily upon water for noncommercial, personal use, the  
30 engine of such a vehicle, or a trailer or other device used to  
31 transport such vehicle or device.

1           (7)~~(8)~~ "Motor vehicle service agreement" or "service  
2 agreement" means any contract or agreement indemnifying the  
3 service agreement holder for the motor vehicle listed on the  
4 service agreement and arising out of the ownership, operation,  
5 and use of the motor vehicle against loss caused by failure of  
6 any mechanical or other component part, or any mechanical or  
7 other component part that does not function as it was  
8 originally intended; however, nothing in this part shall  
9 prohibit or affect the giving, free of charge, of the usual  
10 performance guarantees by manufacturers or dealers in  
11 connection with the sale of motor vehicles. Transactions  
12 exempt under s. 624.125 are expressly excluded from this  
13 definition and are exempt from the provisions of this part.  
14 The term "motor vehicle service agreement" includes any  
15 contract or agreement that provides:

16           (a) For the coverage or protection defined in this  
17 subsection and which is issued or provided in conjunction with  
18 an additive product applied to the motor vehicle that is the  
19 subject of such contract or agreement; or

20           (b) For payment of vehicle protection expenses.

21           1.a. "Vehicle protection expenses" means expenses  
22 incurred by the service agreement holder for loss or damage to  
23 a covered vehicle, including, but not limited to, applicable  
24 deductibles under a motor vehicle insurance policy; temporary  
25 vehicle rental expenses; expenses for a replacement vehicle  
26 that is at least the same year, make, and model of the stolen  
27 motor vehicle; sales taxes or registration fees for a  
28 replacement vehicle that is at least the same year, make, and  
29 model of the stolen vehicle; or other incidental expenses  
30 specified in the agreement.

31

1           b. "Vehicle protection product" means a product or  
2 system installed or applied to a motor vehicle or designed to  
3 prevent the theft of the motor vehicle or assist in the  
4 recovery of the stolen motor vehicle.

5           2. Vehicle protection expenses shall be payable in the  
6 event of loss or damage to the vehicle as a result of the  
7 failure of the vehicle protection product to prevent the theft  
8 of the motor vehicle or to assist in the recovery of the  
9 stolen motor vehicle. Vehicle protection expenses covered  
10 under the agreement shall be clearly stated in the service  
11 agreement form.

12           3. Motor vehicle service agreements providing for the  
13 payment of vehicle protection expenses shall:

14           a. Reimburse a service agreement holder for the  
15 following expenses, at a minimum: deductibles applicable to  
16 comprehensive coverage under the service agreement holder's  
17 motor vehicle insurance policy; temporary vehicle rental  
18 expenses; sales taxes and registration fees on a replacement  
19 vehicle that is at least the same year, make, and model of the  
20 stolen motor vehicle; and the difference between the benefits  
21 paid to the service agreement holder for the stolen vehicle  
22 under the service agreement holder's comprehensive coverage  
23 and the actual cost of a replacement vehicle that is at least  
24 the same year, make, and model of the stolen motor vehicle; or

25           b. Pay a preestablished flat amount to the service  
26 agreement holder.

27  
28 Payments shall not duplicate any benefits or expenses paid to  
29 the service agreement holder by the insurer providing  
30 comprehensive coverage under a motor vehicle insurance policy  
31 covering the stolen motor vehicle.

1           ~~(8)(9)~~ "Motor vehicle service agreement company" or  
2 "service agreement company" means any corporation, sole  
3 proprietorship, or partnership (other than an authorized  
4 insurer) issuing motor vehicle service agreements.

5           ~~(9)(10)~~ "Net assets" means the amount by which the  
6 total statutory assets exceed total liability, except that  
7 assets pledged to secure debts not reflected on the books of  
8 the service agreement company shall not be included in net  
9 assets.

10           ~~(10)(11)~~ "Person" shall have the same meaning as  
11 defined in s. 624.04.

12           ~~(11)(12)~~ "Premium" means the total amount paid by the  
13 agreement holder. No "assessment" or any "membership fee,"  
14 "policy fee," "survey fee," "inspection fee," "service fee,"  
15 "finance fee," or similar fee shall be charged by the service  
16 agreement company.

17           ~~(12)(13)~~ "Rate" means the unit charge by which the  
18 measure of exposure in a service agreement is multiplied to  
19 determine the premium.

20           ~~(13)(14)~~ "Salesperson" means any dealership,  
21 corporation, partnership, or sole proprietorship employed or  
22 otherwise retained by an insurer or motor vehicle service  
23 agreement company for the purpose of selling or issuing motor  
24 vehicle service agreements or for the purpose of soliciting or  
25 retaining other salespersons.

26           ~~(14)(15)~~ "Unearned premium" means that portion of the  
27 gross written premium which has not been earned on a straight  
28 pro rata basis.

29           ~~(15)(16)~~ "Unearned premium reserve" means unencumbered  
30 assets equal to 50 percent of the unearned premium.

31

1            ~~(16)(17)~~ "Unearned gross written premium" means that  
2 portion of the gross written premium which has not been  
3 amortized or earned on a pro rata basis.

4            Section 1424. Section 634.021, Florida Statutes, is  
5 amended to read:

6            634.021 Powers of department, commission, and office;  
7 rules.--The office ~~department~~ shall administer this act and  
8 the commission may to that end it has authority to adopt rules  
9 pursuant to ss. 120.536(1) and 120.54 to implement the  
10 provisions of this act related to motor vehicle agreement  
11 companies and motor vehicle service agreements. The department  
12 shall administer this act and may adopt rules pursuant to ss.  
13 120.536(1) and 120.54 to implement provisions of this act  
14 related to sales representatives.

15            Section 1425. Section 634.031, Florida Statutes, is  
16 amended to read:

17            634.031 License required.--

18            (1) A person may not transact, administer, or market,  
19 attempt to transact, administer, or market, or in any manner  
20 hold itself out as transacting, administering, or marketing  
21 the service agreement business, on behalf of herself or  
22 himself or itself, in this state or from this state unless it  
23 is authorized to do so under a subsisting license issued to it  
24 by the office ~~department~~. The company shall pay to the office  
25 ~~department~~ an annual nonrefundable license fee for the  
26 license.

27            (2) No person shall, from offices or by personnel or  
28 facilities in this state, solicit applications or otherwise  
29 transact service agreement sales in another state or country  
30 unless it holds a subsisting license issued to it by the  
31

1 ~~office department~~ authorizing it to transact the same kind or  
2 kinds of service agreement business in this state.

3 (3) No person shall transact, administer, or market  
4 service agreements unless it holds a subsisting license issued  
5 by the ~~office department~~ authorizing it to transact the same  
6 kind or kinds of service agreement business in this state.

7 (4) The ~~office department~~ may, pursuant to s. 120.569,  
8 in its discretion and without advance notice or hearing issue  
9 an immediate final order to cease and desist to any person or  
10 entity which violates this section. The Legislature finds that  
11 a violation of this section constitutes an imminent and  
12 immediate threat to the public health, safety, and welfare of  
13 the residents of this state.

14 Section 1426. Section 634.041, Florida Statutes, is  
15 amended to read:

16 634.041 Qualifications for license.--To qualify for  
17 and hold a license to issue service agreements in this state,  
18 a service agreement company must be in compliance with this  
19 part, with applicable rules of the ~~commission department~~, with  
20 related sections of the Florida Insurance Code, and with its  
21 charter powers and must comply with the following:

22 (1) Any service agreement company applying for a  
23 license must be a solvent corporation formed under the laws of  
24 this state or of another state or district of the United  
25 States and must meet minimum requirements under this section.

26 (2) The service agreement company must furnish the  
27 ~~office department~~ with evidence satisfactory to the ~~office~~  
28 ~~department~~ that the management of the company is competent and  
29 trustworthy and can successfully and lawfully manage its  
30 affairs.

31

1           (3) The service agreement company must make the  
2 deposit required under s. 634.052.

3           (4) A service agreement company may not be licensed to  
4 transact service agreement business in this state unless it  
5 maintains the required reserves and the required ratio of  
6 liquid assets to the required reserves.

7           (5) A service agreement company may not be licensed to  
8 transact service agreement business in this state if, during  
9 the 3 years immediately preceding its application for a  
10 license, it has violated any requirement of this part or a  
11 rule adopted thereunder.

12           (6) In order to obtain or maintain a license, a  
13 service agreement company must have and maintain minimum net  
14 assets of \$500,000. However, a service agreement company that  
15 maintains a gross written premium of less than \$750,000 at all  
16 times, that has been licensed in Florida for more than 5  
17 years, and that has never had an administrative complaint  
18 filed by the office ~~department~~ against its operations under  
19 this part may reach this net asset requirement in equal  
20 increments over a 5-year period beginning on October 1, 1991.

21           (7) All assets used to maintain the minimum net asset  
22 requirement must be maintained in the United States.

23           (8)(a) A service agreement company must establish and  
24 maintain an unearned premium reserve in accordance with the  
25 following:

26           1. It must consist of unencumbered assets equal to a  
27 minimum of 50 percent of the unearned gross written premium on  
28 each service agreement and must amortize this reserve pro rata  
29 over the duration of the service agreement. Such assets must  
30 be held in the form of cash or invested in securities for  
31 investment under ss. 625.301-625.340.

1           2. In addition to the net asset requirements set forth  
2 in subsection (6), a company utilizing the 50-percent reserve  
3 must not allow its ratio of gross written premium in force to  
4 net assets to exceed 10 to 1. For companies that have  
5 utilized both contractual liability insurance and the  
6 50-percent reserve, this ratio must be calculated based only  
7 on that portion of gross written premium in force which is  
8 covered by the 50-percent reserve.

9           3. A company that uses an unearned premium reserve  
10 must deposit with the department securities of the type  
11 eligible for deposit by insurers under s. 625.52 equal to 15  
12 percent of the unearned premium reserve. This reserve deposit  
13 may be included as an asset for calculating the requirement of  
14 subparagraph 1. A request for release of the reserve deposit  
15 may be made quarterly only after the office ~~department~~ has  
16 approved the company's current quarterly or annual financial  
17 statement and a statement sworn to by two officers of the  
18 company, verifying that the release will not reduce the  
19 reserve deposit to less than 15 percent of the unearned  
20 premium reserve.

21           (b) A service agreement company does not have to  
22 establish and maintain an unearned premium reserve if it  
23 purchases and maintains contractual liability insurance in  
24 accordance with the following:

25           1. The insurance covers 100 percent of its claim  
26 exposure and is obtained from an insurer approved by the  
27 office ~~department~~ which holds a certificate of authority to do  
28 business within this state.

29           2. If the service agreement company does not meet its  
30 contractual obligations, the contractual liability insurance  
31 policy binds its issuer to pay or cause to be paid to the

1 service agreement holder all legitimate claims and  
2 cancellation refunds for all service agreements issued by the  
3 service agreement company while the policy was in effect.  
4 This requirement also applies to those service agreements for  
5 which no premium has been remitted to the insurer.

6           3. If the issuer of the contractual liability policy  
7 is fulfilling the service agreements covered by the  
8 contractual liability policy and the service agreement holder  
9 cancels the service agreement, the issuer must make a full  
10 refund of unearned premium to the consumer, subject to the  
11 cancellation fee provisions of s. 634.121(5). The sales  
12 representative and agent must refund to the contractual  
13 liability policy issuer their unearned pro rata commission.

14           4. The policy may not be canceled, terminated, or  
15 nonrenewed by the insurer or the service agreement company  
16 unless a 90-day written notice thereof has been given to the  
17 office ~~department~~ by the insurer before the date of the  
18 cancellation, termination, or nonrenewal.

19           5. The service agreement company must provide the  
20 office ~~department~~ with the claims statistics.

21  
22 All funds or premiums remitted to an insurer by a motor  
23 vehicle service agreement company under this part shall remain  
24 in the care, custody, and control of the insurer and shall be  
25 counted as an asset of the insurer; provided, however, this  
26 requirement does not apply when the insurer and the motor  
27 vehicle service agreement company are affiliated companies and  
28 members of an insurance holding company system. If the motor  
29 vehicle service agreement company chooses to comply with this  
30 paragraph but also maintains a reserve to pay claims, such  
31 reserve shall only be considered an asset of the covered motor

1 vehicle service agreement company and may not be  
2 simultaneously counted as an asset of any other entity.

3 (9) In meeting the requirements of this part, a  
4 service agreement company may not utilize both the 50-percent  
5 reserve and contractual liability insurance simultaneously.  
6 However, a company may have contractual liability coverage on  
7 service agreements previously sold and sell new service  
8 agreements covered by the 50-percent reserve, and the converse  
9 of this is also allowed. A service agreement company must be  
10 able to distinguish how each individual service agreement is  
11 covered.

12 (10) In addition to information called for and  
13 furnished with its annual statement, a service agreement  
14 company must furnish to the office ~~department~~, as soon as  
15 reasonably possible, any information as to its transactions or  
16 affairs that the office ~~department~~ requests in writing. All  
17 information furnished pursuant to the request of the office  
18 ~~department~~ must be verified by the oath of two executive  
19 officers of the service agreement company.

20 (11) A service agreement company offering service  
21 agreements providing vehicle protection expenses may meet the  
22 requirements for this part only by maintaining contractual  
23 liability insurance in accordance with paragraph (8)(b), which  
24 insurance must be issued by an insurance company not  
25 affiliated with the service agreement company, unless the  
26 insurance company had issued a contractual liability insurance  
27 policy to a service agreement company on or before January 1,  
28 2002. Service agreements providing vehicle protection  
29 expenses may be sold only to a service agreement holder that  
30 has in-force comprehensive motor vehicle insurance coverage  
31 for the vehicle to be covered by the service agreement.

1           Section 1427. Section 634.044, Florida Statutes, is  
2 amended to read:

3           634.044 Assets and liabilities.--

4           (1) ASSETS.--In any determination of the financial  
5 condition of a service agreement company, there shall be  
6 allowed as assets only those assets that are owned by the  
7 service agreement company and which assets consist of:

8           (a) Cash in the possession of the service agreement  
9 company, or in transit under its control, including the true  
10 balance of any deposit in a solvent bank, savings and loan  
11 association, or trust company which is domiciled in the United  
12 States.

13           (b) Investments, securities, properties, and loans  
14 acquired or held in accordance with this part, and in  
15 connection therewith the following items:

16           1. Interest due or accrued on any bond or evidence of  
17 indebtedness which is not in default and which is not valued  
18 on a basis including accrued interest.

19           2. Declared and unpaid dividends on stock and shares,  
20 unless the amount of the dividends has otherwise been allowed  
21 as an asset.

22           3. Interest due or accrued upon a collateral loan  
23 which is not in default in an amount not to exceed 1 year's  
24 interest thereon.

25           4. Interest due or accrued on deposits or certificates  
26 of deposit in solvent banks, savings and loan associations,  
27 and trust companies domiciled in the United States, and  
28 interest due or accrued on other assets, if such interest is  
29 in the judgment of the office ~~department~~ a collectible asset.

30           5. Interest due or accrued on current mortgage loans,  
31 in an amount not exceeding in any event the amount, if any, of

1 the excess of the value of the property less delinquent taxes  
2 thereon over the unpaid principal; but in the property less  
3 delinquent taxes thereon over the unpaid principal; but in no  
4 event shall interest accrued for a period in excess of 90 days  
5 be allowed as an asset.

6           6. Rent due or accrued on real property if such rent  
7 is not in arrears for more than 3 months. However, in no  
8 event shall rent accrued for a period in excess of 90 days be  
9 allowed as an asset.

10           7. The unaccrued portion of taxes paid prior to the  
11 due date on real property.

12           (c) Furniture, fixtures, furnishings, vehicles, and  
13 equipment, if the original cost of each item is at least \$200,  
14 which cost shall be amortized in full over a period not to  
15 exceed 5 calendar years, unless otherwise approved by the  
16 office ~~department~~.

17           (d) Part inventories maintained for the purpose of  
18 servicing products warranted. Part inventories must be listed  
19 at cost. Service agreement companies are required to maintain  
20 records to support valuation of part inventories.

21           (e) The liquidation value of prepaid expenses.

22           (f) Other assets or receivables, not inconsistent with  
23 the provisions of this section, deemed by the office  
24 ~~department~~ to be available for the payment of losses and  
25 claims, at values to be determined by the office ~~department~~.

26

27 The office ~~department~~, upon determining that a service  
28 agreement company's asset has not been evaluated according to  
29 applicable law or that it does not qualify as an asset, shall  
30 require the service agreement company to properly reevaluate  
31 the asset or replace the asset with an asset suitable to the

1 ~~office department~~ within 30 days of written notification by  
2 the office department of this determination, if the removal of  
3 the asset from the organization's assets would impair the  
4 company's solvency.

5 (2) ASSETS NOT ALLOWED.--In addition to assets  
6 impliedly excluded by the provisions of subsection (1), the  
7 following assets expressly shall not be allowed as assets in  
8 any determination of the financial condition of a service  
9 agreement company:

10 (a) Goodwill, agreement holder lists, patents, trade  
11 names, agreements not to compete, and other like intangible  
12 assets.

13 (b) Any note or account receivable from or advances to  
14 officers, directors, or controlling stockholders, whether  
15 secured or not, and advances to employees, agents, or other  
16 persons on personal security only.

17 (c) Stock of the service agreement company owned by it  
18 directly or owned by it through any entity in which the  
19 organization owns or controls, directly or indirectly, more  
20 than 25 percent of the ownership interest.

21 (d) Leasehold improvements, stationery, and  
22 literature, except that leasehold improvements made prior to  
23 October 1, 1991, shall be allowed as an asset and shall be  
24 amortized over the shortest of the following periods:

- 25 1. The life of the lease.
- 26 2. The useful life of the improvements.
- 27 3. The 3-year period following October 1, 1991.

28 (e) Furniture, fixtures, furnishings, vehicles, and  
29 equipment, other than those items authorized under paragraph  
30 (1)(c).

31

1 (f) Notes or other evidences of indebtedness which are  
2 secured by mortgages or deeds of trust which are in default  
3 and beyond the express period specified in the instrument for  
4 curing the default.

5 (g) Bonds in default for more than 60 days.

6 (h) Deferred costs other than the liquidation value of  
7 prepaid expenses except for those companies that reserve 100  
8 percent of gross written premium.

9 (i) Any note, account receivable, advance, or other  
10 evidence of indebtedness, or investment in:

11 1. The parent of the service agreement company;

12 2. Any entity directly or indirectly controlled by the  
13 service agreement company parent;

14 3. An affiliate of the parent or the service agreement  
15 company; however, receivables from the parent or affiliated  
16 companies shall be considered an admitted asset of the company  
17 when the office department is satisfied that the repayment of  
18 receivables, loans, and advances from the parent or the  
19 affiliated company are guaranteed by an organization in  
20 accordance with s. 634.045; or

21 4. Officers, directors, shareholders, employees, or  
22 salespersons of the service agreement company; however,  
23 premium receivables under 45 days old may be considered an  
24 admitted asset.

25  
26 The office department may, however, allow all or a portion of  
27 such asset, at values to be determined by the office  
28 department, if deemed by the office department to be available  
29 for the payment of losses and claims.

30 (3) LIABILITIES.--In any determination of the  
31 financial condition of a service agreement company,

1 liabilities to be charged against its assets shall include,  
2 but not be limited to:

3 (a) The amount, in conformity with generally accepted  
4 accounting principles, necessary to pay all of its unpaid  
5 losses and claims incurred for or on behalf of an agreement  
6 holder, on or prior to the end of the reporting period,  
7 whether reported or unreported.

8 (b) Taxes, expenses, and other obligations due or  
9 accrued at the date of the statement.

10 (c) Reserve for unearned premiums.

11

12 The office ~~department~~, upon determining that the service  
13 agreement company has failed to report liabilities that should  
14 have been reported, shall require a correct report which  
15 reflects the proper liabilities to be submitted by the service  
16 agreement company to the office ~~department~~ within 10 working  
17 days of receipt of written notification.

18 Section 1428. Subsections (2) and (4) of section  
19 634.045, Florida Statutes, are amended to read:

20 634.045 Guarantee agreements.--In order to include  
21 receivables from affiliated companies as assets under s.  
22 634.041, the motor vehicle service agreement company shall  
23 provide a written guarantee to assure repayment of all  
24 receivables, loans, and advances from affiliated companies,  
25 provided that the written guarantee is made by a guaranteeing  
26 organization which:

27 (2) Submits a guarantee that is approved by the office  
28 ~~department~~ as meeting the requirements of this part, provided  
29 that the written guarantee contains a provision which requires  
30 that the guarantee be irrevocable unless the guaranteeing  
31 organization can demonstrate to the office ~~department~~ that the

1 cancellation of the guarantee will not result in the net  
2 assets of the motor vehicle service agreement company falling  
3 below its minimum net asset requirement and the office  
4 ~~department~~ approves cancellation of the guarantee.

5 (4) Submits annually, within 3 months after the end of  
6 its fiscal year, an audited financial statement certified by  
7 an independent certified public accountant, prepared in  
8 accordance with generally accepted accounting principles. The  
9 office department may, as it deems necessary, require  
10 quarterly financial statements from the guaranteeing  
11 organization.

12 Section 1429. Section 634.052, Florida Statutes, is  
13 amended to read:

14 634.052 Required deposit.--

15 (1) To assure the faithful performance of its  
16 obligations to its members or subscribers, each motor vehicle  
17 service agreement company shall, prior to issuance of its  
18 license by the office department, deposit with the department  
19 securities of the type eligible for deposit by insurers under  
20 s. 625.52 and having at all times a market value of not less  
21 than \$200,000; however, service agreement companies  
22 maintaining an unearned gross written premium of less than  
23 \$750,000 shall have on deposit with the department \$100,000.  
24 After 1 year from the date of initial licensure, a service  
25 agreement company may file a request for the release of a  
26 portion of the deposit and thereafter requests may be made  
27 quarterly. A request may be granted only after the office  
28 ~~department~~ has received and approved the company's current  
29 quarterly or annual financial statement. However, at no time  
30 shall the deposit be less than \$100,000.

31

1           (2) In addition to the deposits otherwise required  
2 pursuant to this section, the office ~~department~~ may, after  
3 notice and hearing, require any company for good cause shown  
4 to deposit and maintain deposited in trust for the protection  
5 of the contract holders and creditors of the company, for such  
6 time as the office ~~department~~ deems necessary, securities  
7 eligible for such deposit under s. 625.52 having a value of  
8 not less than the amount which the office ~~department~~  
9 determines is necessary, which amount shall be neither less  
10 than \$100,000, nor more than \$500,000, depending on the  
11 obligation of the company in this state.

12           (3) The state shall be responsible for the safekeeping  
13 of all securities deposited with the department under this  
14 act. Such securities shall not, on account of being in this  
15 state, be subject to taxation, but shall be held exclusively  
16 and solely to guarantee the faithful performance by the  
17 company of its obligations to its members or subscribers.

18           (4) The depositing company shall, during its solvency,  
19 have the right to exchange or substitute other securities of  
20 like quality and value for securities so on deposit, to  
21 receive the interest and other income accruing on such  
22 securities, and to inspect the deposit at all reasonable  
23 times.

24           (5) Such deposit shall be maintained unimpaired as  
25 long as the company continues in business or from offices in  
26 this state. Whenever the company ceases to do business in or  
27 from offices in this state and furnishes to the office  
28 ~~department~~ proof satisfactory to it that it has discharged or  
29 otherwise adequately provided for all its obligations to its  
30 members or subscribers in this state, the office and  
31 department shall release the deposited securities to the

1 parties entitled thereto, on presentation of the receipts of  
2 the department for such securities.

3 Section 1430. Section 634.053, Florida Statutes, is  
4 amended to read:

5 634.053 Levy upon deposit limited.--A judgment  
6 creditor or other claimant of a motor vehicle service  
7 agreement company does not have the right to levy upon any of  
8 the assets or securities held in this state as a deposit under  
9 s. 634.052. However, to pay any unpaid obligation to this  
10 state, the office ~~department~~ may levy upon any of the assets  
11 of a motor vehicle service agreement company found to be  
12 insolvent or found to be bankrupt by any court.

13 Section 1431. Subsections (1), (2), and (4) of section  
14 634.061, Florida Statutes, are amended to read:

15 634.061 Application for and issuance of license.--

16 (1) A sworn application for a license as a motor  
17 vehicle service agreement company shall be made to and filed  
18 with the office ~~department~~ on forms as prescribed by the  
19 commission and furnished by the office ~~it~~.

20 (2) In addition to information relative to its  
21 qualifications as called for under s. 634.041, the application  
22 shall show:

23 (a) The location of the applicant's home office.

24 (b) The name and residence address of each director,  
25 officer, and 10-percent or greater stockholder of the  
26 applicant.

27 (c) Other pertinent information as required by the  
28 commission or office ~~department~~.

29 (4) Upon completion of the application for license,  
30 the office ~~department~~ shall examine the same and make such  
31 further investigation of the applicant as it deems advisable.

1 If it finds that the applicant is qualified therefor under  
2 this part, it shall issue to the applicant a license as a  
3 motor vehicle service agreement company. If the office  
4 ~~department~~ does not so find, it shall refuse to issue the  
5 license.

6 Section 1432. Subsections (1), (2), (3), and (5) of  
7 section 634.081, Florida Statutes, are amended to read:

8 634.081 Suspension or revocation of license;  
9 grounds.--

10 (1) The office ~~department~~ may, in its discretion,  
11 suspend or revoke the license of any motor vehicle service  
12 agreement company if it finds that the company has violated  
13 any lawful order of the office ~~department~~ or any provision of  
14 this part.

15 (2) The office ~~department~~ shall suspend or revoke the  
16 license of a motor vehicle service agreement company if it  
17 finds that the company:

18 (a) Is impaired or insolvent as defined in s. 631.011  
19 or in unsound condition, or in a condition, or using methods  
20 and practices in the conduct of its business, as to render its  
21 further transaction of service agreements in this state  
22 hazardous or injurious to its service agreement holders or to  
23 the public.

24 (b) Has refused to be examined or to produce its  
25 accounts, records, and files for examination, or if any of its  
26 officers have refused to give information with respect to its  
27 affairs or to perform any other legal obligation as to the  
28 examination, when required by the office ~~department~~.

29 (c) Has failed to pay any fees, taxes, or other  
30 assessments within 90 days after their due date.

31

1           (d) Has failed to pay any final judgment rendered  
2 against it in this state within 90 days after the judgment  
3 became final.

4           (e) With a frequency as to indicate its general  
5 business practice in this state, has without just cause  
6 refused to pay proper claims arising under its service  
7 agreements, or without just cause compels service agreement  
8 holders to accept less than the amount due them or to employ  
9 attorneys or to bring suit against the service agreement  
10 company to secure full payment or settlement of proper claims.

11           (f) Is affiliated with, or under the same general  
12 management or interlocking directorate or ownership of,  
13 another motor vehicle service agreement company or person who  
14 transacts service agreements in or from this state without a  
15 subsisting license.

16           (g) Fails to affirm or deny coverage of a claim upon  
17 written request of the agreement holder within a reasonable  
18 time after notification of the claim.

19           (h) Fails to promptly provide a reasonable explanation  
20 in writing if requested by the agreement holder of the basis  
21 in the service agreement in relation to the facts or  
22 applicable law for denial of a claim or for the offer of a  
23 compromise settlement.

24           (3) The office ~~department~~ may, in its discretion,  
25 suspend the license of any motor vehicle service agreement  
26 company as to which a proceeding for receivership,  
27 conservatorship, or rehabilitation or other delinquency  
28 proceeding has been commenced against it or its affiliate in  
29 any state.

30           (5) The office ~~department~~ shall suspend or revoke the  
31 license of a company if it finds that the ratio of gross

1 written premiums written to net assets exceeds 10 to 1 unless  
2 the company has in excess of \$750,000 in net assets and is  
3 utilizing contractual liability insurance which cedes 100  
4 percent of the service agreement company's claims liabilities  
5 to the contractual liability insurer or is utilizing  
6 contractual liability insurance which reimburses the service  
7 agreement company for 100 percent of its paid claims.  
8 However, if a service agreement company has been licensed by  
9 the office ~~department~~ in excess of 10 years, is in compliance  
10 with all applicable provisions of this part, and has net  
11 assets at all times in excess of \$3 million that comply with  
12 the provisions of part II of chapter 625, such company may not  
13 exceed a ratio of gross written premiums written to net assets  
14 of 15 to 1.

15 Section 1433. Paragraph (b) of subsection (3) of  
16 section 634.095, Florida Statutes, is amended to read:

17 634.095 Prohibited acts.--Any service agreement  
18 company or salesperson that engages in one or more of the  
19 following acts is, in addition to any applicable denial,  
20 suspension, revocation, or refusal to renew or continue any  
21 appointment or license, guilty of a misdemeanor of the second  
22 degree, punishable as provided in s. 775.082 or s. 775.083:

23 (3) Issuing or causing to be issued any advertisement  
24 which:

25 (b) In any respect is in violation of or does not  
26 comply with this part, applicable provisions of the Florida  
27 Insurance Code, or applicable rule of the commission  
28 ~~department~~.

29 Section 1434. Section 634.101, Florida Statutes, is  
30 amended to read:

31

1           634.101 Order, notice of suspension or revocation of  
2 license; effect; publication.--

3           (1) Suspension or revocation of the license of a  
4 company shall be by the order of the office ~~department~~ mailed  
5 to the company by registered or certified mail. The office  
6 ~~department~~ shall promptly also give notice of such suspension  
7 or revocation to the salespersons of the company in this state  
8 of record with ~~in the office of~~ the department. The company  
9 shall not solicit or write any new service agreements in this  
10 state during the period of any such suspension or revocation,  
11 nor after such revocation renew any business previously  
12 written.

13           (2) In its discretion, the office ~~department~~ may cause  
14 notice of any such revocation to be published in one or more  
15 newspapers of general circulation published in this state.

16           (3) When the license is surrendered or revoked, the  
17 service agreement company shall proceed immediately, following  
18 the effective date of the surrender or order of revocation, to  
19 conclude its affairs transacted under this part. The service  
20 agreement company shall not solicit, negotiate, advertise, or  
21 effectuate new or renewal of service agreements. The office  
22 ~~department~~ retains jurisdiction over the service agreement  
23 company as it may find to be in the best interest of the  
24 insured until all contracts have been fulfilled, canceled, or  
25 expired.

26           Section 1435. Section 634.111, Florida Statutes, is  
27 amended to read:

28           634.111 Duration of suspension; obligations of company  
29 during suspension period; reinstatement.--

30           (1) The suspension of the license of a company shall  
31 be for such period not to exceed 1 year as is fixed by the

1 ~~office department~~ in the order of suspension, unless the  
2 ~~office department~~ shortens or rescinds such suspension or the  
3 order upon which the suspension is based is modified,  
4 rescinded, or reversed.

5 (2) During the period of suspension, the company shall  
6 file its annual statement and quarterly reports, pay fees, pay  
7 licenses, and pay taxes as required under this chapter as if  
8 the license had continued in full force.

9 (3) Upon expiration of the suspension period, if  
10 within such period the license has not otherwise terminated,  
11 the license of the company shall be reinstated automatically  
12 unless the ~~office department~~ finds that the causes of the  
13 suspension have not been removed or that the company is  
14 otherwise not in compliance with the requirements of this  
15 chapter. The ~~office department~~ shall give the company notice  
16 of any such finding not less than 30 days in advance of the  
17 expiration of the suspension period. If not so automatically  
18 reinstated, the license shall be deemed to have expired as of  
19 the end of the suspension period or upon failure of the  
20 company to continue the license during the suspension period,  
21 whichever event first occurs.

22 (4) Upon reinstatement of the license of a company or  
23 reinstatement of the certificate of authority of an insurer  
24 following suspension, the authority of its salespersons in  
25 this state to represent the company or insurer shall likewise  
26 be reinstated. The ~~office department~~ shall promptly notify the  
27 company or insurer and its salespersons of record in this  
28 state of such reinstatement.

29 Section 1436. Subsections (1), (2), (3), and (7) of  
30 section 634.121, Florida Statutes, are amended to read:

31

1           634.121 Filing of forms, required procedures,  
2 provisions.--

3           (1) A service agreement form or related form may not  
4 be issued or used in this state unless it has been filed with  
5 and approved by the office ~~department~~. Upon application for a  
6 license, the office ~~department~~ shall require the applicant to  
7 submit for approval each brochure, pamphlet, circular, form  
8 letter, advertisement, or other sales literature or  
9 advertising communication addressed or intended for  
10 distribution. The office ~~department~~ shall disapprove any  
11 document which is untrue, deceptive, or misleading or which  
12 contains misrepresentations or omissions of material facts.

13           (a) After an application has been approved, a licensee  
14 is not required to submit brochures or advertisement to the  
15 office ~~department~~ for approval; however, a licensee may not  
16 have published, and a person may not publish, any brochure or  
17 advertisement which is untrue, deceptive, or misleading or  
18 which contains misrepresentations or omissions of material  
19 fact.

20           (b) For purposes of this section, brochures and  
21 advertising includes, but is not limited to, any report,  
22 circular, public announcement, certificate, or other printed  
23 matter or advertising material which is designed or used to  
24 solicit or induce any persons to enter into any motor vehicle  
25 service agreement.

26           (c) The office ~~department~~ shall disapprove any service  
27 agreement form providing vehicle protection expenses which  
28 does not clearly indicate the method for calculating the  
29 benefit to be paid or provided to the service agreement  
30 holder. All service agreement forms providing vehicle  
31 protection expenses shall clearly indicate the term of the

1 service agreement, whether new or used cars are eligible for  
2 the vehicle protection product, and that the service agreement  
3 holder may not make any claim against the Florida Insurance  
4 Guarantee Association for vehicle protection expenses. The  
5 service agreement shall be provided to a service agreement  
6 holder on a form that provides only vehicle protection  
7 expenses. A service agreement form providing vehicle  
8 protection expenses must state that the service agreement  
9 holder must have in force at the time of loss comprehensive  
10 motor vehicle insurance coverage as a condition precedent to  
11 requesting payment of vehicle protection expenses.

12 (2) Every filing required under this section must be  
13 made not less than 30 days in advance of issuance or use. At  
14 the expiration of 30 days from the date of filing, a form so  
15 filed becomes approved unless prior thereto it has been  
16 affirmatively disapproved by written notice of the office  
17 ~~department~~. The office ~~department~~ may extend by not more than  
18 an additional 15 days the period within which it may  
19 affirmatively approve or disapprove any form by giving notice  
20 of extension before the expiration of the initial 30-day  
21 period. At the expiration of any period as so extended and in  
22 the absence of prior affirmative disapproval, the form becomes  
23 approved.

24 (3) Before the sale of any service agreement, written  
25 notice must be given to the prospective purchaser by the  
26 service agreement company or its agent or salesperson, on an  
27 office-approved ~~a department-approved~~ form, that purchase of  
28 the service agreement is not required in order to purchase or  
29 obtain financing for a motor vehicle.

30 (7) If a service agreement company violates any lawful  
31 order of the office ~~department~~ or fails to meet its

1 contractual obligations under this part, upon notice from the  
2 office department, the sales representative or agent must  
3 refund to the service agreement holder the unearned pro rata  
4 commission, unless the sales representative or agent has made  
5 other arrangements, satisfactory to the office department,  
6 with the service agreement holder.

7 Section 1437. Section 634.1213, Florida Statutes, is  
8 amended to read:

9 634.1213 Grounds for disapproval.--The office  
10 ~~department~~ may disapprove any service agreement form or  
11 service agreement company sales brochures filed under s.  
12 634.121, or withdraw any previous approval thereof, if the  
13 form or brochure:

14 (1) Is in any respect in violation of or does not  
15 comply with this part, any applicable provision of the Florida  
16 Insurance Code, or any applicable rule of the commission  
17 ~~department~~.

18 (2) Contains or incorporates by reference when such  
19 incorporation is otherwise permissible, any inconsistent,  
20 ambiguous, or misleading clauses, or exceptions and conditions  
21 which deceptively affect the risk purported to be assumed in  
22 the general coverage of the service agreement.

23 (3) Has any title, heading, or other indication of its  
24 provisions which is misleading.

25 (4) Is printed or otherwise reproduced in such manner  
26 as to render any material provision of the form substantially  
27 illegible.

28 (5) Contains any provision which is unfair or  
29 inequitable or which encourages misrepresentation.

30  
31

1           (6) Contains any provision which makes it difficult to  
2 determine the actual insurer or service agreement company  
3 issuing the form.

4           (7) Contains any provision for reducing claim payments  
5 due to depreciation of parts, except for marine engines.

6           Section 1438. Section 634.1216, Florida Statutes, is  
7 amended to read:

8           634.1216 Rate filings.--Each insurer and each motor  
9 vehicle service agreement company shall file with the office  
10 ~~department~~ the rates, rating schedules, or rating manuals  
11 used, including all modifications of rates and premiums, to be  
12 paid by the service agreement holder. Every filing shall  
13 state the proposed effective date thereon. The filing shall  
14 be made not less than 30 days before its effective date.

15           Section 1439. Section 634.137, Florida Statutes, is  
16 amended to read:

17           634.137 Financial and statistical reporting  
18 requirements.--

19           (1) Each service agreement company shall submit to the  
20 office ~~department~~ financial reports on forms prescribed by the  
21 commission and furnished by the office ~~department~~ as follows:

22           (a) Reports for a period ending December 31 are due by  
23 March 1.

24           (b) Reports for a period ending March 31 are due by  
25 May 15.

26           (c) Reports for a period ending June 30 are due by  
27 August 15.

28           (d) Reports for a period ending September 30 are due  
29 by November 15.

30           (2) Any motor vehicle service agreement company  
31 engaged in the business of issuing service agreements in this

1 state must transmit the following information, based on  
2 Florida data, to the office ~~department~~ each year with the  
3 annual report of the company:  
4 (a) Net assets.  
5 (b) Premiums written.  
6 (c) Premiums earned.  
7 (d) Unearned premium reserve.  
8 (e) Percent of claim exposure for which contractual  
9 liability insurance has been obtained.  
10 (f) Incurred claims, not including claims incurred but  
11 not reported.  
12 (g) Claims incurred but not reported.  
13 (h) Loss reserve for all claims except those incurred  
14 but not reported.  
15 (i) Reserves for claims incurred but not reported.  
16 (j) Number and dollar amount of claims paid.  
17 (k) Itemized acquisition costs.  
18 (l) Net gain or loss from operations before income  
19 taxes.  
20 (m) Net investment income from all reserves.  
21 (n) Net investment income from surplus.  
22 (o) Ratio of claims paid to premium earned.  
23 (p) Ratio of all claims incurred to premium earned  
24 plus investment income from all reserves.  
25 (q) Number of claims resisted.  
26 (r) Any additional information that the commission  
27 ~~department~~ requires in order to evaluate the financial  
28 condition or trade practices of companies issuing service  
29 agreements in this state.  
30 (3) Any service agreement company that does not file  
31 an annual statement in the form and within the time provided

1 by this section shall forfeit up to \$100 for each day during  
2 which the default continues, and, upon notice by the office  
3 ~~department~~, the authority of the company to do business in  
4 this state shall cease while the default continues. The  
5 office ~~department~~ shall deposit all sums collected under this  
6 subsection in the Insurance ~~Commissioner's~~ Regulatory Trust  
7 Fund.

8 (4) The office ~~department~~ shall provide a summary of  
9 the information provided pursuant to subsection (2) in its  
10 annual report.

11 (5) The commission ~~department~~ may by rule require each  
12 motor vehicle service agreement company to submit to the  
13 office ~~department~~, as the commission ~~department~~ may designate,  
14 all or part of the information contained in the financial  
15 reports required by this section in a computer-readable form  
16 compatible with the electronic data processing system  
17 specified by the office ~~department~~.

18 Section 1440. Section 634.141, Florida Statutes, is  
19 amended to read:

20 634.141 Examination of companies.--Motor vehicle  
21 service agreement companies licensed under this part shall be  
22 subject to periodic examination by the office ~~department~~ in  
23 the same manner and subject to the same terms and conditions  
24 as applies to insurers under part II of chapter 624. The  
25 commission ~~department~~ may by rule establish provisions whereby  
26 a company may be exempted from examination.

27 Section 1441. Section 634.151, Florida Statutes, is  
28 amended to read:

29 634.151 Service of process; appointment of  
30 commissioner as process agent.--

31

1           (1) Each company applying for authority to transact  
2 business in this state, whether domestic or foreign, shall  
3 file with the office department its appointment of the Chief  
4 Financial Officer ~~Insurance Commissioner and Treasurer~~ and her  
5 or his successors in office, on a form as furnished by the  
6 office department, as its attorney to receive service of all  
7 legal process issued against it in any civil action or  
8 proceeding in this state and agreeing that process so served  
9 shall be valid and binding upon the company. The appointment  
10 shall be irrevocable, shall bind the company and any successor  
11 in interest as to the assets or liabilities of the company,  
12 and shall remain in effect as long as there is outstanding in  
13 this state any obligation or liability of the company  
14 resulting from its service agreement transactions therein.

15           (2) At the time of such appointment of the Chief  
16 Financial Officer ~~Insurance Commissioner and Treasurer~~ as its  
17 process agent the company shall file with the department a  
18 designation of the name and address of the person to whom  
19 process against it served upon the Chief Financial Officer  
20 ~~Insurance Commissioner and Treasurer~~ is to be forwarded. The  
21 company may change the designation at any time by a new  
22 filing.

23           Section 1442. Section 634.161, Florida Statutes, is  
24 amended to read:

25           634.161 Service of process; method.--

26           (1) Service of process upon the Chief Financial  
27 Officer ~~Insurance Commissioner and Treasurer~~ as process agent  
28 of the company shall be made by serving copies in triplicate  
29 of the process upon the Chief Financial Officer ~~Insurance~~  
30 ~~Commissioner and Treasurer or upon her or his assistant,~~  
31 ~~deputy, or other person in charge of her or his office.~~ Upon

1 receiving such service, the Chief Financial Officer ~~Insurance~~  
2 ~~Commissioner and Treasurer~~ shall file one copy with the  
3 department, return one copy with her or his admission of  
4 service, and promptly forward one copy of the process by  
5 registered or certified mail to the person last designated by  
6 the company to receive the same, as provided under s. 634.151.

7 (2) Process served upon the Chief Financial Officer  
8 ~~Insurance Commissioner and Treasurer~~ and copy thereof  
9 forwarded as in this section provided shall for all purposes  
10 constitute valid and binding service thereof upon the company.

11 Section 1443. Subsections (2) and (10) of section  
12 634.181, Florida Statutes, are amended to read:

13 634.181 Grounds for compulsory refusal, suspension, or  
14 revocation of license or appointment of salespersons.--The  
15 department shall deny, suspend, revoke, or refuse to renew or  
16 continue the license or appointment of any such salesperson if  
17 it finds that as to the salesperson any one or more of the  
18 following applicable grounds exist:

19 (2) If the license or appointment is willfully used,  
20 or to be used, to circumvent any of the requirements or  
21 prohibitions of this part, any applicable provision of the  
22 Florida Insurance Code, or rule of the department or  
23 commission.

24 (10) Willful failure to comply with, or willful  
25 violation of any proper order of the department or office, or  
26 willful violation of any provision of this part, or of any  
27 applicable provision of the insurance code, or applicable rule  
28 of the department or commission.

29 Section 1444. Subsection (3) of section 634.191,  
30 Florida Statutes, is amended to read:

31

1           634.191 Grounds for discretionary refusal, suspension,  
2 or revocation of license or appointment of salespersons.--The  
3 department may, in its discretion, deny, suspend, revoke, or  
4 refuse to renew or continue the license or appointment of any  
5 salesperson if it finds that as to the salesperson any one or  
6 more of the following applicable grounds exist under  
7 circumstances for which such denial, suspension, revocation,  
8 or refusal is not mandatory under s. 634.181:

9           (3) Has violated any lawful order or rule of the  
10 department or commission.

11           Section 1445. Section 634.211, Florida Statutes, is  
12 amended to read:

13           634.211 Administrative fine in lieu of suspension or  
14 revocation of license or appointment.--

15           (1) If the department or office finds that one or more  
16 grounds exist for the suspension, revocation, or refusal to  
17 renew or continue any license or appointment issued under this  
18 part, the department or office may, in its discretion, in lieu  
19 of such suspension, revocation, or refusal, on a first offense  
20 and except where such suspension, revocation, or refusal is  
21 mandatory, impose upon the licensee or appointee an  
22 administrative penalty in an amount of up to \$500 per  
23 violation, or if the department or office has found willful  
24 misconduct or willful violation on the part of the licensee or  
25 appointee, an administrative fine of up to \$1,000 per  
26 violation. The administrative penalty may, in the department's  
27 or office's discretion, be augmented in amount by an amount  
28 equal to any commissions received by or accruing to the credit  
29 of the licensee or appointee in connection with any  
30 transaction as to which the grounds for suspension,  
31 revocation, or refusal related.

1           (2) The department or office may allow the licensee or  
2 appointee a reasonable period, not to exceed 30 days, within  
3 which to pay to the department or office the amount of the  
4 penalty so imposed. If the licensee or appointee fails to pay  
5 the penalty in its entirety to the department or office ~~at its~~  
6 ~~office at Tallahassee~~ within the period so allowed, the  
7 license and appointment of the licensee or appointee shall  
8 stand suspended, revoked, or renewal or continuation refused,  
9 as the case may be, upon expiration of such period.

10           Section 1446. Section 634.221, Florida Statutes, is  
11 amended to read:

12           634.221 Disposition of taxes and fees.--All license  
13 taxes, taxes on premiums and assessments, registration fees,  
14 and administrative fines and penalties collected under this  
15 act from motor vehicle service agreement companies shall be  
16 deposited to the credit of the Insurance ~~Commissioner's~~  
17 Regulatory Trust Fund.

18           Section 1447. Section 634.231, Florida Statutes, is  
19 amended to read:

20           634.231 Insurance business not authorized.--Nothing in  
21 the Florida Insurance Code or in this part shall be deemed to  
22 authorize any motor vehicle service agreement company to  
23 transact any insurance business other than that of motor  
24 vehicle service agreement as herein defined or otherwise to  
25 engage in any other type of insurance unless the company is  
26 authorized under a certificate of authority issued by the  
27 office ~~department~~ under the provisions of the Florida  
28 Insurance Code.

29           Section 1448. Section 634.242, Florida Statutes, is  
30 amended to read:

31

1           634.242 Injunctive proceedings.--In addition to the  
2 penalties and other enforcement provisions of this part, if  
3 any person violates s. 634.031 or s. 634.171 or any rule  
4 adopted pursuant thereto, the department or office may resort  
5 to a proceeding for injunction in the circuit court of the  
6 county where such person resides or has her or his or its  
7 principal place of business, and therein apply for such  
8 temporary and permanent orders as the department or office may  
9 deem necessary to restrain such person from engaging in any  
10 such activity, until such person has complied with such  
11 provision or rule.

12           Section 1449. Section 634.253, Florida Statutes, is  
13 amended to read:

14           634.253 Delinquency proceedings.--

15           (1) If any of the grounds for rehabilitation,  
16 liquidation, conservation, reorganization, seizure, or summary  
17 proceedings of an insurer as set forth in ss. 631.051,  
18 631.061, and 631.071 exist as to a company, the office  
19 ~~department~~ may petition for an appropriate court order or may  
20 pursue such other relief as is afforded in part I of chapter  
21 631.

22           (2) In the event an order of rehabilitation,  
23 liquidation, conservation, reorganization, seizure, or summary  
24 proceedings has been entered against a company, the department  
25 and office shall be vested with all of the powers and duties  
26 they have ~~it has~~ under the provisions of part I of chapter 631  
27 in regard to delinquency proceedings of insurance companies.

28           Section 1450. Section 634.261, Florida Statutes, is  
29 amended to read:

30           634.261 Voluntary compliance in lieu of suspension or  
31 revocation.--The department or office may terminate an

1 investigation or an action upon acceptance of the written  
2 assurance of a company or salesperson of voluntary compliance  
3 with this part. An acceptance of assurance may be conditioned  
4 on a commitment to reimburse agreement purchasers or to take  
5 other appropriate corrective action. An assurance is not  
6 evidence of a prior violation of this part. However, unless an  
7 assurance has been rescinded by agreement of the parties or  
8 voided by a court for good cause, the subsequent failure to  
9 comply with the terms of an assurance is prima facie evidence  
10 of a violation of this part. No such assurance shall act as a  
11 limitation upon any action or remedy available to a person  
12 aggrieved by a violation of this part.

13 Section 1451. Subsections (7) and (13) of section  
14 634.282, Florida Statutes, are amended to read:

15 634.282 Unfair methods of competition and unfair or  
16 deceptive acts or practices defined.--The following methods,  
17 acts, or practices are defined as unfair methods of  
18 competition and unfair or deceptive acts or practices:

19 (7) UNLAWFUL REBATES.--Except as otherwise expressly  
20 provided by law, or in an applicable filing with the office  
21 ~~department~~, knowingly:

22 (a) Permitting, or offering to make, or making, any  
23 contract or agreement as to such contract other than as  
24 plainly expressed in the motor vehicle service agreement  
25 issued thereon;

26 (b) Paying, allowing, or giving, or offering to pay,  
27 allow, or give, directly or indirectly, as inducement to such  
28 motor vehicle service agreement, any unlawful rebate of  
29 premiums payable on the agreement, any special favor or  
30 advantage in the benefits thereon, or any valuable  
31 consideration or inducement not specified in the agreement;

1 (c) Giving, selling, or purchasing, or offering to  
2 give, sell, or purchase, as an inducement to such motor  
3 vehicle service agreement or in connection therewith, any  
4 stocks, bonds, or other securities of any insurance company,  
5 service agreement company, or other corporation, association,  
6 or partnership, or any dividends or profits accrued thereon,  
7 or anything of value not specified in the motor vehicle  
8 service agreement.

9 (13) ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED  
10 CHARGES FOR MOTOR VEHICLE SERVICE AGREEMENTS.--

11 (a) Knowingly collecting any sum as a premium or  
12 charge for a motor vehicle service agreement, which is not  
13 then provided, or is not in due course to be provided, subject  
14 to acceptance of the risk by a service agreement company or an  
15 insurer, by a motor vehicle service agreement issued by a  
16 service agreement company or an insurer as permitted by this  
17 part.

18 (b) Knowingly collecting as a premium or charge for a  
19 motor vehicle service agreement any sum in excess of or less  
20 than the premium or charge applicable to such motor vehicle  
21 service agreement, in accordance with the applicable  
22 classifications and rates as filed with the office ~~department~~,  
23 and as specified in the motor vehicle service agreement.

24  
25 No provision of this section shall be deemed to prohibit a  
26 service agreement company or a licensed insurer from giving to  
27 service agreement holders, prospective service agreement  
28 holders, and others for the purpose of advertising, any  
29 article of merchandise having a value of not more than \$25.

30 Section 1452. Section 634.283, Florida Statutes, is  
31 amended to read:

1           634.283 Power of department and office to examine and  
2 investigate.--The department and office may, within their  
3 respective regulatory jurisdictions, examine and investigate  
4 the affairs of every person involved in the business of motor  
5 vehicle service agreements in this state in order to determine  
6 whether such person has been or is engaged in any unfair  
7 method of competition or in any unfair or deceptive act or  
8 practice prohibited by s. 634.2815, and each shall have the  
9 powers and duties specified in ss. 634.284-634.289 in  
10 connection therewith.

11           Section 1453. Section 634.284, Florida Statutes, is  
12 amended to read:

13           634.284 Prohibited practices; hearings; procedure;  
14 service of process.--

15           (1) Whenever the department or office has reason to  
16 believe that any person has engaged, or is engaging, in this  
17 state in any unfair method of competition or any unfair or  
18 deceptive act or practice as defined in s. 634.282, or is  
19 engaging in the business of motor vehicle service agreements  
20 without being properly licensed as required by this part, and  
21 that a proceeding by the department or office in respect  
22 thereto would be in the interest of the public, the department  
23 or office shall conduct or cause to have conducted a hearing  
24 in accordance with chapter 120.

25           (2) The department or office, a duly empowered hearing  
26 officer, or an administrative law judge shall, during the  
27 conduct of such hearing, have those powers enumerated in s.  
28 120.569; however, the penalty for failure to comply with a  
29 subpoena or with an order directing discovery is limited to a  
30 fine not to exceed \$1,000 per violation.

31

1           (3) A statement of charges, notice, or order under  
2 this part may be served by anyone duly authorized by the  
3 department or office, either in the manner provided by law for  
4 service of process in civil actions or by certifying and  
5 mailing a copy thereof to the person affected by such  
6 statement, notice, order, or other process at her or his  
7 residence or principal office or place of business. The  
8 verified return by the person so serving such statement,  
9 notice, order, or other process, setting forth the manner of  
10 the service, is proof of the same; and the return postcard  
11 receipt for such statement, notice, order, or other process,  
12 certified and mailed as provided in this subsection, is proof  
13 of service of the same.

14           Section 1454. Section 634.285, Florida Statutes, is  
15 amended to read:

16           634.285 Cease and desist and penalty orders.--After  
17 the hearing provided for in s. 634.284, the department or  
18 office shall enter a final order in accordance with s.  
19 120.569. If it is determined that the person charged has  
20 engaged in an unfair or deceptive act or practice or the  
21 unlawful transaction of a service agreement business, the  
22 department or office also shall issue an order requiring the  
23 violator to cease and desist from engaging in such method of  
24 competition, act, or practice or the unlawful transaction of  
25 service agreement business. Further, the department or office  
26 may, at its discretion, order any one or more of the following  
27 penalties:

28           (1) The suspension or revocation of such person's  
29 license, or eligibility for any license, if the person knew,  
30 or reasonably should have known, that she or he was in  
31 violation of this part.

1           (2) If it is determined that the person charged has  
2 provided or offered to provide motor vehicle service  
3 agreements without proper licensure, the imposition of an  
4 administrative penalty not to exceed \$1,000 for each service  
5 agreement contract offered or effectuated.

6           Section 1455. Section 634.286, Florida Statutes, is  
7 amended to read:

8           634.286 Appeals from orders of the department or  
9 office.--Any person subject to an order of the department or  
10 office under s. 634.285 may obtain a review of such order by  
11 filing an appeal therefrom in accordance with the provisions  
12 and procedures for appeal from the orders of the department or  
13 office in general under s. 120.68.

14           Section 1456. Section 634.287, Florida Statutes, is  
15 amended to read:

16           634.287 Penalty for violation of cease and desist  
17 order.--Any person who violates a cease and desist order of  
18 the department or office under s. 634.285 while such order is  
19 in effect, after notice and hearing as provided in s. 634.284,  
20 is subject, at the discretion of the department or office, to  
21 any one or more of the following penalties:

22           (1) A monetary penalty of not more than \$50,000 as to  
23 all matters determined in such hearing.

24           (2) The suspension or revocation of such person's  
25 license or eligibility to hold a license.

26           Section 1457. Section 634.288, Florida Statutes, is  
27 amended to read:

28           634.288 Civil liability.--The provisions of this part  
29 are cumulative to rights under the general civil and common  
30 law, and no action of the department or office will abrogate  
31 such rights to damages or other relief in any court.

1           Section 1458. Section 634.289, Florida Statutes, is  
2 amended to read:

3           634.289 Rules.--The department or commission may adopt  
4 rules, in accordance with chapter 120, to identify specific  
5 methods of competition or acts or practices that are  
6 prohibited by s. 634.282, but these rules shall not enlarge  
7 upon or extend the provisions of that section.

8           Section 1459. Section 634.301, Florida Statutes, is  
9 amended to read:

10           634.301 Definitions.--As used in this part, the term:

11           ~~(1) "Department" means the Department of Insurance.~~

12           (1)~~(2)~~ "Gross written premiums" means the total amount  
13 of premiums, paid for the entire period of the home warranty,  
14 inclusive of commissions, for which the association is  
15 obligated under home warranties issued.

16           (2)~~(3)~~ "Home improvement" means major remodeling,  
17 enclosure of a garage, addition of a room, addition of a pool,  
18 and other like items that add value to the residential  
19 property. The term does not include normal maintenance for  
20 items such as painting, reroofing, and other like items  
21 subject to normal wear and tear.

22           (3)~~(4)~~ "Home warranty" or "warranty" means any  
23 contract or agreement:

24           (a) Offered in connection with the sale of residential  
25 property;

26           (b) Offered in connection with a loan of \$5,000 or  
27 more which is secured by residential property that is the  
28 subject of the warranty, but not in connection with the sale  
29 of such property; or

30           (c) Offered in connection with a home improvement of  
31 \$7,500 or more for residential property that is the subject of

1 the warranty, but not in connection with the sale of such  
2 property;  
3  
4 whereby a person undertakes to indemnify the warranty holder  
5 against the cost of repair or replacement, or actually  
6 furnishes repair or replacement, of any structural component  
7 or appliance of a home, necessitated by wear and tear or an  
8 inherent defect of any such structural component or appliance  
9 or necessitated by the failure of an inspection to detect the  
10 likelihood of any such loss. However, this part does not  
11 prohibit the giving of usual performance guarantees by either  
12 the builder of a home or the manufacturer or seller of an  
13 appliance, as long as no identifiable charge is made for such  
14 guarantee. This part does not permit the provision of  
15 indemnification against consequential damages arising from the  
16 failure of any structural component or appliance of a home,  
17 which practice constitutes the transaction of insurance  
18 subject to all requirements of the insurance code. This part  
19 does not apply to service contracts entered into between  
20 consumers and nonprofit organizations or cooperatives the  
21 members of which consist of condominium associations and  
22 condominium owners and which perform repairs and maintenance  
23 for appliances or maintenance of the residential property.  
24 (4)~~(5)~~ "Home warranty association" means any  
25 corporation or any other organization, other than an  
26 authorized insurer, issuing home warranties.  
27 (5)~~(6)~~ "Impaired" means having liabilities in excess  
28 of assets.  
29 (6)~~(7)~~ "Insolvent" means the inability of a  
30 corporation to pay its debts as they become due in the usual  
31 course of its business.

1           (7)~~(8)~~ "Insurance code" means the Florida Insurance  
2 Code.  
3           (8)~~(9)~~ "Insurer" means any property or casualty  
4 insurer duly authorized to transact such business in this  
5 state.  
6           (9)~~(10)~~ "Listing period" means the period of time  
7 residential property is listed for sale with a licensed real  
8 estate broker, beginning on the date the residence is first  
9 listed for sale and ending on either the date the sale of the  
10 residence is closed, the date the residence is taken off the  
11 market, or the date the listing contract with the real estate  
12 broker expires.  
13           (10)~~(11)~~ "Net assets" means the amount by which the  
14 total statutory assets of an association exceed the total  
15 liabilities of the association.  
16           (11)~~(12)~~ "Person" includes an individual, company,  
17 corporation, association, insurer, agent, and every other  
18 legal entity.  
19           (12)~~(13)~~ "Premium" means the total consideration  
20 received, or to be received, by an insurer or home warranty  
21 association for or related to the issuance and delivery of any  
22 binder or warranty, including any charges designated as  
23 assessments or fees for policies, surveys, inspections, or  
24 service or any other charges.  
25           (13)~~(14)~~ "Sales representative" means any person with  
26 whom an insurer or home inspection or warranty association has  
27 a contract and who is utilized by such insurer or association  
28 for the purpose of selling or issuing home warranties. The  
29 term includes all employees of an insurer or association  
30 engaged directly in the sale or issuance of home warranties.  
31

1           ~~(14)(15)~~ "Structural component" means the roof,  
2 plumbing system, electrical system, foundation, basement,  
3 walls, ceilings, or floors of a home.

4           Section 1460. Section 634.302, Florida Statutes, is  
5 amended to read:

6           634.302 Powers of department, commission, and office;  
7 rules.--The office ~~department~~ shall administer this part, and  
8 ~~the commission may, to that end, it has authority to~~ adopt  
9 rules pursuant to ss. 120.536(1) and 120.54 to implement the  
10 provisions of this part related to home warranty associations  
11 and home warranties. The department shall administer this part  
12 and may adopt rules pursuant to ss. 120.536(1) and 120.54 to  
13 implement provisions of this part related to sales  
14 representatives. Such rules by the commission or department  
15 ~~may include rules that~~ identify specific methods of  
16 competition or acts or practices that are prohibited by s.  
17 634.336, but ~~the rules~~ shall not enlarge upon or extend the  
18 provisions of that section.

19           Section 1461. Subsection (1) of section 634.303,  
20 Florida Statutes, is amended to read:

21           634.303 License required.--

22           (1) No person in this state shall provide or offer to  
23 provide home warranties unless authorized therefor under a  
24 subsisting license issued by the office ~~department~~. The home  
25 warranty association shall pay to the office ~~department~~ a  
26 license tax of \$200 for such license for each license year, or  
27 part thereof, the license is in force.

28           Section 1462. Section 634.304, Florida Statutes, is  
29 amended to read:

30  
31

1           634.304 Qualifications for license.--The office  
2 ~~department~~ may not issue or renew a license to any home  
3 warranty association unless the association:

4           (1) Is a solvent corporation formed under the laws of  
5 this state or of another state, district, territory, or  
6 possession of the United States.

7           (2) Furnishes the office ~~department~~ with evidence  
8 satisfactory to it that the management of the association is  
9 competent and trustworthy and can successfully manage the  
10 affairs of the association in compliance with law.

11           (3) Proposes to use and uses in its business a name,  
12 together with a trademark or emblem, if any, which is  
13 distinctive and not so similar to the name or trademark of any  
14 other association, corporation, or organization already doing  
15 business in this state as will tend to mislead or confuse the  
16 public.

17           (4) Meets the deposit requirements under s. 634.305.

18           (5) Is otherwise in compliance with this part.

19           Section 1463. Subsections (1), (2), and (6) of section  
20 634.305, Florida Statutes, are amended to read:

21           634.305 Required deposit or bond.--

22           (1) To assure the faithful performance of its  
23 obligations to its members or subscribers in the event of  
24 insolvency, every home warranty association shall, before the  
25 issuance of its license by the office ~~department~~, deposit with  
26 the department securities of the type eligible for deposit by  
27 insurers under s. 625.52, which securities shall have at all  
28 times a market value of not less than \$100,000.

29           (2) In lieu of any deposit of securities required  
30 under subsection (1), the association may:

31

1 (a) Deposit with the department securities of the type  
2 eligible for deposit by insurers under s. 625.52, which  
3 securities shall have at all times a market value of not less  
4 than \$25,000; and

5 (b) File with the office ~~department~~ a surety bond in  
6 the amount of \$75,000. The bond shall be one issued by an  
7 authorized surety insurer, shall be for the same purpose as  
8 the deposit in lieu of which it is filed, and shall be subject  
9 to the approval of the office ~~department~~. The bond shall  
10 guarantee that the home warranty association will faithfully  
11 and truly perform all the conditions of any home warranty  
12 contract. No such bond may be canceled or subject to  
13 cancellation unless at least 60 days' advance notice thereof  
14 in writing is filed with the office ~~department~~. In the event  
15 that notice of termination of the bond is filed with the  
16 office ~~department~~, the home warranty association insured  
17 thereunder shall, within 30 days of the filing of notice of  
18 termination, provide the office ~~department~~ with a replacement  
19 bond meeting the requirements of this part or deposit  
20 additional securities as required under subsection (1). The  
21 cancellation of a bond will not relieve the obligation of the  
22 issuer of the bond for claims arising out of contracts issued  
23 before cancellation of the bond unless a replacement bond or  
24 securities are filed pursuant to this section. In no event  
25 may the liability of the issuer under the bond exceed the face  
26 amount of the bond. If within 30 days of filing the notice of  
27 termination no replacement bond or additional security is  
28 provided, the office ~~department~~ shall suspend the license of  
29 the association until the deposit requirements are satisfied.

30 (6) Such deposit or bond shall be maintained  
31 unimpaired as long as the association continues in business in

1 this state. Whenever the association ceases to do business in  
2 this state and furnishes the office ~~department~~ proof  
3 satisfactory to the office ~~department~~ that it has discharged  
4 or otherwise adequately provided for all its obligations to  
5 its members or subscribers in this state, the office and  
6 department shall release the deposited securities to the  
7 parties entitled thereto, on presentation of the receipts of  
8 the department for such securities, or shall release any bond  
9 filed with it pursuant to this section.

10 Section 1464. Section 634.306, Florida Statutes, is  
11 amended to read:

12 634.306 Application for and issuance of license.--

13 (1) An application for license as a home warranty  
14 association must be made to and must be filed with the office  
15 ~~department~~ on printed forms prescribed by the commission and  
16 furnished by the office ~~it~~.

17 (2) In addition to information relative to its  
18 qualifications as required under s. 634.304, the application  
19 must show:

20 (a) The location of the applicant's home office.

21 (b) The name and residence address of each director or  
22 officer of the applicant and the name and residence address of  
23 each shareholder who owns or controls 10 percent or more  
24 shares of the applicant.

25 (c) Such other pertinent information as is required by  
26 the office or commission ~~department~~.

27 (3) The application must be accompanied by:

28 (a) A copy of the applicant's articles of  
29 incorporation, certified by the public official having custody  
30 of the original, and a copy of the applicant's bylaws,  
31 certified by the applicant's secretary.

1 (b) A copy of the most recent financial statement of  
2 the applicant, verified under oath of at least two of its  
3 principal officers.

4 (c) A license fee in the amount of \$200, as required  
5 under s. 634.303.

6 (4) Upon completion of the application for license,  
7 the office ~~department~~ shall examine the application and make  
8 any further investigation of the applicant as it deems  
9 advisable. If it finds that the applicant is qualified  
10 therefor, the office ~~department~~ shall issue to the applicant a  
11 license as a home warranty association. If the office  
12 ~~department~~ does not so find, it shall refuse to issue the  
13 license and shall give the applicant written notice of such  
14 refusal, setting forth the grounds therefor.

15 Section 1465. Section 634.307, Florida Statutes, is  
16 amended to read:

17 634.307 License expiration; renewal.--Each license as  
18 a home warranty association issued under this part shall  
19 expire on June 1 next following the date of issuance. If the  
20 association is then qualified therefor under the provisions of  
21 this part, its license may be renewed annually, upon its  
22 request and upon payment to the office ~~department~~ of the  
23 license tax in the amount of \$200, in advance, for each such  
24 license year.

25 Section 1466. Subsections (3) and (4) of section  
26 634.3077, Florida Statutes, are amended to read:

27 634.3077 Financial requirements.--

28 (3) An association shall not be required to set up an  
29 unearned premium reserve if it has purchased contractual  
30 liability insurance which demonstrates to the satisfaction of  
31 the office ~~department~~ that 100 percent of its claim exposure

1 is covered by such insurance. Such contractual liability  
2 insurance shall be obtained from an insurer that holds a  
3 certificate of authority to do business within the state or  
4 from an insurer approved by the office ~~department~~ as  
5 financially capable of meeting the obligations incurred  
6 pursuant to the policy. For purposes of this subsection, the  
7 contractual liability policy shall contain the following  
8 provisions:

9 (a) In the event that the home warranty association is  
10 unable to fulfill its obligation under its contracts issued in  
11 this state for any reason, including insolvency, bankruptcy,  
12 or dissolution, the contractual liability insurer will pay  
13 losses and unearned premiums under such plans directly to  
14 persons making claims under such contracts.

15 (b) The insurer issuing the policy shall assume full  
16 responsibility for the administration of claims in the event  
17 of the inability of the association to do so.

18 (c) The policy may not be canceled or not renewed by  
19 either the insurer or the association unless 60 days' written  
20 notice thereof has been given to the office ~~department~~ by the  
21 insurer before the date of such cancellation or nonrenewal.

22 (4) An association that purchases contractual  
23 liability insurance on the warranties that it issues shall  
24 provide the office ~~department~~ with claim statistics required  
25 to be filed by associations not purchasing such insurance.

26 Section 1467. Section 634.3078, Florida Statutes, is  
27 amended to read:

28 634.3078 Assets and liabilities.--

29 (1) ASSETS.--In any determination of the financial  
30 condition of a home warranty association, there shall be  
31

1 allowed as assets only those assets that are owned by the home  
2 warranty association company and which assets consist of:

3 (a) Cash in the possession of the home warranty  
4 association, or in transit under its control, including the  
5 true balance of any deposit in a solvent bank, savings and  
6 loan association, or trust company that is domiciled in the  
7 United States.

8 (b) Investments, securities, properties, and loans  
9 acquired or held in accordance with this part and, in  
10 connection therewith, the following items:

11 1. Interest due or accrued on any bond or evidence of  
12 indebtedness which is not in default and which is not valued  
13 on a basis including accrued interest.

14 2. Declared and unpaid dividends on stock and shares,  
15 unless the amount of the dividends has otherwise been allowed  
16 as an asset.

17 3. Interest due or accrued upon a collateral loan that  
18 is not in default in an amount not to exceed 1 year's interest  
19 thereon.

20 4. Interest due or accrued on deposits or certificates  
21 of deposit in solvent banks, savings and loan associations,  
22 and trust companies domiciled in the United States, and  
23 interest due or accrued on other assets, if such interest is  
24 in the judgment of the office ~~department~~ a collectible asset.

25 5. Interest due or accrued on current mortgage loans,  
26 in an amount not exceeding the amount, if any, of the excess  
27 of the value of the property less delinquent taxes thereon  
28 over the unpaid principal; but interest accrued for a period  
29 in excess of 90 days may not be allowed as an asset.

30 6. Rent due or accrued on real property if such rent  
31 is not in arrears for more than 3 months. However, rent

1 accrued for a period in excess of 90 days may not be allowed  
2 as an asset.

3 7. The unaccrued portion of taxes paid prior to the  
4 due date on real property.

5 (c) Furniture, fixtures, furnishings, vehicles, and  
6 equipment, if the original cost of each item is at least \$200,  
7 which cost shall be amortized in full over a period not to  
8 exceed 5 calendar years, unless otherwise approved by the  
9 office department.

10 (d) Part inventories maintained for the purpose of  
11 servicing products warranted. Part inventories must be listed  
12 at cost. Home warranty associations companies are required to  
13 maintain records to support valuation of part inventories.

14 (e) The liquidation value of prepaid expenses.

15 (f) Other assets or receivables, not inconsistent with  
16 the provisions of this section, deemed by the office  
17 ~~department~~ to be available for the payment of losses and  
18 claims, at values to be determined by the office department.

19  
20 The office department, upon determining that a home warranty  
21 association's asset has not been evaluated according to  
22 applicable law or that it does not qualify as an asset, shall  
23 require the home warranty association to properly reevaluate  
24 the asset or replace the asset with an asset suitable to the  
25 office department within 30 days after written notification by  
26 the office department of this determination, if the removal of  
27 the asset from the organization's assets would impair the  
28 company's solvency.

29 (2) ASSETS NOT ALLOWED.--In addition to assets  
30 impliedly excluded by the provisions of subsection (1), the  
31 following assets expressly shall not be allowed as assets in

1 any determination of the financial condition of a home  
2 warranty association:

3 (a) Goodwill, agreement holder lists, patents, trade  
4 names, agreements not to compete, and other like intangible  
5 assets.

6 (b) Any note or account receivable from or advances to  
7 officers, directors, or controlling stockholders, whether  
8 secured or not, and advances to employees, agents, or other  
9 persons on personal security only.

10 (c) Stock of the home warranty association owned by it  
11 directly or owned by it through any entity in which the  
12 organization owns or controls, directly or indirectly, more  
13 than 25 percent of the ownership interest.

14 (d) Leasehold improvements, stationery, and  
15 literature, except that leasehold improvements made prior to  
16 October 1, 2001, shall be allowed as an asset and shall be  
17 amortized over the shortest of the following periods:

- 18 1. The life of the lease.
- 19 2. The useful life of the improvements.
- 20 3. The 3-year period following October 1, 2001.

21 (e) Furniture, fixtures, furnishings, vehicles, and  
22 equipment, other than those items authorized under paragraph  
23 (1)(c).

24 (f) Notes or other evidences of indebtedness which are  
25 secured by mortgages or deeds of trust which are in default  
26 and beyond the express period specified in the instrument for  
27 curing the default.

28 (g) Bonds in default for more than 60 days.

29 (h) Deferred costs other than the liquidation value of  
30 prepaid expenses except for those companies that reserve 100  
31 percent of gross written premium.

1           (i) Any note, account receivable, advance, or other  
2 evidence of indebtedness, or investment in:  
3           1. The parent of the home warranty association;  
4           2. Any entity directly or indirectly controlled by the  
5 home warranty association's parent;  
6           3. An affiliate of the parent or the home warranty  
7 association; or  
8           4. Officers, directors, shareholders, employees, or  
9 salespersons of the home warranty association; however,  
10 premium receivables under 45 days old may be considered an  
11 admitted asset.

12  
13 The office department may, however, allow all or a portion of  
14 such asset, at values to be determined by the office  
15 ~~department~~, if deemed by the office department to be available  
16 for the payment of losses and claims.

17           (3) LIABILITIES.--In any determination of the  
18 financial condition of a home warranty association,  
19 liabilities to be charged against its assets shall include,  
20 but not be limited to:

21           (a) The amount, in conformity with generally accepted  
22 accounting principles, necessary to pay all of its unpaid  
23 losses and claims incurred for or on behalf of an agreement  
24 holder, on or prior to the end of the reporting period,  
25 whether reported or unreported.

26           (b) Taxes, expenses, and other obligations due or  
27 accrued at the date of the statement.

28           (c) Reserve for unearned premiums.

29  
30 The office department, upon determining that the home warranty  
31 association has failed to report liabilities that should have

1 | been reported, shall require a correct report which reflects  
2 | the proper liabilities to be submitted by the home warranty  
3 | association to the office ~~department~~ within 10 working days  
4 | after receipt of written notification.

5 |         Section 1468. Subsections (1), (2), and (3) of section  
6 | 634.308, Florida Statutes, are amended to read:

7 |         634.308 Grounds for suspension or revocation of  
8 | license.--

9 |         (1) The license of any home warranty association may  
10 | be revoked or suspended, or the office ~~department~~ may refuse  
11 | to renew any such license, if it is determined that:

12 |         (a) The association has violated any lawful rule or  
13 | order of the commission or office ~~department~~ or any provision  
14 | of this part.

15 |         (b) The association has not maintained a funded,  
16 | unearned premium reserve account as required by s.  
17 | 634.3077(1).

18 |         (c) The association has not maintained, at a minimum,  
19 | net assets as required by s. 634.3077(2).

20 |         (2) The license of any home warranty association shall  
21 | be suspended, revoked, or not renewed if it is determined that  
22 | such association:

23 |         (a) Is in unsound financial condition or is in such  
24 | condition or is using such methods and practices in the  
25 | conduct of its business as to render its further transaction  
26 | of warranties in this state hazardous or injurious to its  
27 | warranty holders or to the public.

28 |         (b) Has refused to be examined or to produce its  
29 | accounts, records, and files for examination, or if any of its  
30 | officers have refused to give information with respect to its  
31 | affairs or have refused to perform any other legal obligation

1 as to such examination, when required by the office  
2 ~~department~~.

3 (c) Has failed to pay any final judgment rendered  
4 against it in this state within 60 days after the judgment  
5 became final.

6 (d) Has, without just cause, refused to pay proper  
7 claims arising under its warranties or, without just cause,  
8 has compelled warranty holders to accept less than the amount  
9 due them or to employ attorneys, or to bring suit against the  
10 association, to secure full payment or settlement of such  
11 claims.

12 (e) Is affiliated with, and under the same general  
13 management, interlocking directorate, or ownership as, another  
14 home warranty association which transacts direct warranties in  
15 this state without having a license therefor.

16 (f) Has issued warranty contracts which renewal  
17 contracts provide that the cost of renewal exceeds the  
18 then-current cost for new warranty contracts or impose a fee  
19 for inspection of the premises.

20 (3) The office ~~department~~ may, pursuant to s. 120.60,  
21 in its discretion and without advance notice or hearing  
22 thereon, immediately suspend the license of any home warranty  
23 association if it finds that one or more of the following  
24 circumstances exist:

25 (a) The association is insolvent or impaired.

26 (b) The reserve account or net asset ratio requirement  
27 of s. 634.3077 is not being maintained.

28 (c) A proceeding for receivership, conservatorship or  
29 rehabilitation or any other delinquency proceeding regarding  
30 the association has been commenced in any state.

31

1           (d) The financial condition or business practices of  
2 the association otherwise pose an imminent threat to the  
3 public health, safety, or welfare of the residents of this  
4 state.

5           Section 1469. Section 634.310, Florida Statutes, is  
6 amended to read:

7           634.310 Order, notice of suspension or revocation of  
8 license; effect; publication.--

9           (1) A suspension or revocation of the license of a  
10 home warranty association shall be effected by order mailed to  
11 the association by registered or certified mail. The office  
12 ~~department~~ also shall promptly give notice of such suspension  
13 or revocation to the sales representatives of the association  
14 in this state who are of record with ~~in the office of the~~  
15 department. The association may not solicit or write any new  
16 warranties in this state during the period of any such  
17 suspension or revocation.

18           (2) In its discretion, the office ~~department~~ may cause  
19 notice of any such revocation or suspension to be published in  
20 one or more newspapers of general circulation published in  
21 this state.

22           Section 1470. Subsection (4) of section 634.311,  
23 Florida Statutes, is amended to read:

24           634.311 Duration of suspension; obligations of  
25 association during suspension period; reinstatement.--

26           (4) Upon reinstatement of the license of an  
27 association, or reinstatement of the certificate of authority  
28 of an insurer, following suspension, the authority of the  
29 sales representatives of the association in this state to  
30 represent the association or insurer shall likewise be

31

1 reinstated. The office ~~department~~ shall promptly notify the  
2 association.

3 Section 1471. Section 634.3112, Florida Statutes, is  
4 amended to read:

5 634.3112 Administrative fine in lieu of suspension or  
6 revocation of license of association.--

7 (1) If it is found that one or more grounds exist for  
8 the suspension, revocation, or refusal to renew the license of  
9 any association issued under this part, the office ~~department~~  
10 may, in lieu of such revocation or suspension, impose a fine  
11 upon the association.

12 (2) With respect to any nonwillful violation, such  
13 fine may not exceed \$500 per violation. In no event may such  
14 fine exceed an aggregate amount of \$5,000 for all nonwillful  
15 violations arising out of the same action. When an  
16 association discovers a nonwillful violation, the association  
17 shall correct the violation and, if restitution is due, make  
18 restitution to all affected persons. Such restitution shall  
19 include interest at 12 percent per year from either the date  
20 of the violation or the date of inception of the affected  
21 person's policy, at the option of the association.

22 (3) With respect to any knowing and willful violation  
23 of a lawful order or rule of the office or commission  
24 ~~department~~ or a provision of this part, the office ~~department~~  
25 may impose a fine upon the association in an amount not to  
26 exceed \$2,500 for each such violation. In no event may such  
27 fine exceed an aggregate amount of \$25,000 for all knowing and  
28 willful violations arising out of the same action. In  
29 addition to such fines, an association shall make restitution  
30 when due in accordance with the provisions of subsection (2).

31

1           (4) The failure of an association to make restitution  
2 when due, as required under this section, constitutes a  
3 willful violation of this code. However, if an insurer in  
4 good faith is uncertain as to whether any restitution is due  
5 or as to the amount of such restitution, it shall promptly  
6 notify the office ~~department~~ of the circumstances, and the  
7 failure to make restitution pending a determination thereof  
8 will not constitute a violation of this part.

9           Section 1472. Subsections (1), (2), and (3) of section  
10 634.312, Florida Statutes, are amended to read:

11           634.312 Filing, approval of forms.--

12           (1) No warranty form or related form shall be issued  
13 or used in this state unless it has been filed with and  
14 approved by the office ~~department~~. Also upon application for a  
15 license, the office ~~department~~ shall require the applicant to  
16 submit for approval each brochure, pamphlet, circular, form  
17 letter, advertisement, or other sales literature or  
18 advertising communication addressed or intended for  
19 distribution. Approval of the application constitutes approval  
20 of such documents, unless the applicant has consented  
21 otherwise in writing. The office ~~department~~ shall disapprove  
22 any document which is untrue, deceptive, or misleading or  
23 which contains misrepresentations or omissions of material  
24 facts.

25           (a) After an application has been approved, a licensee  
26 is not required to submit brochures or advertisement to the  
27 office ~~department~~ for approval; however, a licensee may not  
28 have published, and a person may not publish, any brochure or  
29 advertisement which is untrue, deceptive, or misleading or  
30 which contains misrepresentations or omissions of material  
31 fact.

1 (b) For purposes of this section, brochures and  
2 advertising includes, but is not limited to, any report,  
3 circular, public announcement, certificate, or other printed  
4 matter or advertising material which is designed or used to  
5 solicit or induce any persons to enter into any home warranty  
6 agreement.

7 (2) Every such filing shall be made not less than 30  
8 days in advance of issuance or use. At the expiration of 30  
9 days from date of filing, a form so filed shall be deemed  
10 approved unless prior thereto it has been affirmatively  
11 approved or disapproved by written order of the office  
12 ~~department~~.

13 (3) The office ~~department~~ shall not approve any such  
14 form which allows for more than nine annual renewals or which  
15 renewal contracts provide that the cost of renewal exceeds the  
16 then-current cost for new warranty contracts or impose a fee  
17 for inspection of the premises.

18 Section 1473. Section 634.3123, Florida Statutes, is  
19 amended to read:

20 634.3123 Grounds for disapproval of forms.--The office  
21 ~~department~~ shall disapprove any form filed under s. 634.312 or  
22 withdraw any previous approval if the form:

23 (1) Is in violation of or does not comply with this  
24 part.

25 (2) Contains or incorporates by reference, when such  
26 incorporation is otherwise permissible, any inconsistent,  
27 ambiguous, or misleading clauses or exceptions or conditions  
28 which deceptively affect the risk purported to be assumed in  
29 the general coverage of the contract.

30 (3) Has any title, heading, or other indication of its  
31 provisions which is misleading.

1           (4) Is printed or otherwise reproduced in such a  
2 manner as to render any material provision of the form  
3 illegible.

4           (5) Provides that the cost of renewal exceeds the  
5 then-current cost for new warranty contracts or impose a fee  
6 for inspection of the premises.

7           Section 1474. Section 634.3126, Florida Statutes, is  
8 amended to read:

9           634.3126 Rate filings.--Each insurer and home warranty  
10 association shall file with the office ~~department~~ for  
11 informational purposes the rate to be charged for each  
12 warranty and the premium, including all modifications of rates  
13 and premiums. Each filing shall state the proposed effective  
14 date.

15           Section 1475. Section 634.313, Florida Statutes, is  
16 amended to read:

17           634.313 Tax on premiums; annual statement; reports.--

18           (1) In addition to paying the license taxes provided  
19 for in this part for home warranty associations and license  
20 taxes provided in the insurance code as to insurers, each such  
21 association and each such insurer must, annually on or before  
22 March 1, file with the office ~~department~~ its annual statement,  
23 in the form prescribed by the commission ~~department~~, showing  
24 all premiums received by it in connection with the issuance of  
25 warranties in this state during the preceding calendar year  
26 and using accounting principles that will enable the office  
27 ~~department~~ to ascertain whether the reserve required by s.  
28 634.3077 has been maintained. Each annual statement must  
29 contain a balance sheet listing all assets and liabilities; a  
30 statement of operations and retained earnings; and a schedule  
31 used to report all claims statistics. The annual statement

1 must be completed using generally accepted accounting  
2 principles except as otherwise provided in this part.

3 Further, each association and each insurer must pay to the  
4 Chief Financial Officer ~~Treasurer~~ a tax in an amount equal to  
5 2 percent of the amount of such premiums so received.

6 (2) Premiums received by insurers and taxed under this  
7 section are not subject to any premium tax provided for in the  
8 insurance code.

9 (3) Any association or insurer neglecting to file the  
10 annual statement in the form and within the time provided by  
11 this section shall forfeit up to \$100 for each day during  
12 which such neglect continues; and, upon notice by the office  
13 ~~department~~ to that effect, its authority to do business in  
14 this state shall cease while such default continues. The  
15 office ~~department~~ shall deposit all sums collected by it under  
16 this section to the credit of the Insurance ~~Commissioner's~~  
17 Regulatory Trust Fund.

18 (4) In addition to an annual statement, the office  
19 ~~department~~ may require of licensees, under oath and in the  
20 form prescribed by it, such additional regular or special  
21 reports as it may deem necessary to the proper supervision of  
22 licensees under this part.

23 (5) The commission ~~department~~ may by rule require each  
24 home warranty association to submit to the office ~~department~~,  
25 as the commission ~~department~~ may designate, all or part of the  
26 information contained in the financial reports required by  
27 this section in a computer-readable form compatible with the  
28 electronic data processing system specified by the office  
29 ~~department~~.

30 Section 1476. Section 634.314, Florida Statutes, is  
31 amended to read:

1           634.314 Examination of associations.--Home warranty  
2 associations licensed under this part shall be subject to  
3 periodic examinations by the office ~~department~~, in the same  
4 manner and subject to the same terms and conditions as apply  
5 to insurers under part II of chapter 624 of the insurance  
6 code.

7           Section 1477. Subsection (10) of section 634.320,  
8 Florida Statutes, is amended to read:

9           634.320 Grounds for compulsory refusal, suspension, or  
10 revocation of license or appointment of sales  
11 representatives.--The department shall deny, suspend, revoke,  
12 or refuse to renew or continue the license or appointment of  
13 any sales representative if it is found that any one or more  
14 of the following grounds applicable to the sales  
15 representative exist:

16           (10) Willful failure to comply with, or willful  
17 violation of, any proper order or rule of the department or  
18 commission or willful violation of any provision of this part.

19           Section 1478. Subsection (3) of section 634.321,  
20 Florida Statutes, is amended to read:

21           634.321 Grounds for discretionary refusal, suspension,  
22 or revocation of license or appointment of sales  
23 representatives.--The department may, in its discretion, deny,  
24 suspend, revoke, or refuse to renew or continue the license or  
25 appointment of any sales representative if it is found that  
26 any one or more of the following grounds applicable to the  
27 sales representative exist under circumstances for which such  
28 denial, suspension, revocation, or refusal is not mandatory  
29 under s. 634.320:

30           (3) Violation of any lawful order or rule of the  
31 department or commission.

1           Section 1479. Section 634.324, Florida Statutes, is  
2 amended to read:

3           634.324 Disposition of taxes and fees.--All license  
4 taxes, taxes on premiums, license and appointment fees, and  
5 administrative fines and penalties collected under this part  
6 from home warranty associations and sales representatives  
7 shall be deposited to the credit of the Insurance  
8 ~~Commissioner's~~ Regulatory Trust Fund.

9           Section 1480. Section 634.325, Florida Statutes, is  
10 amended to read:

11           634.325 Insurance business not authorized.--Nothing in  
12 the Florida Insurance Code or in this part shall be deemed to  
13 authorize any home warranty association to transact any  
14 insurance business other than that of home warranty as herein  
15 defined or otherwise to engage in any other type of insurance  
16 unless the association is authorized under a certificate of  
17 authority issued by the office ~~department~~ under the provisions  
18 of the Florida Insurance Code.

19           Section 1481. Section 634.327, Florida Statutes, is  
20 amended to read:

21           634.327 Applicability to warranty on new home.--This  
22 part shall not apply to any program offering a warranty on a  
23 new home which is underwritten by an insurer licensed to do  
24 business in the state when the insurance policy underwriting  
25 such program has been filed with and approved by the office  
26 ~~Department of Insurance~~ as required by law.

27           Section 1482. Subsections (3) and (4) of section  
28 634.3284, Florida Statutes, are amended to read:

29           634.3284 Civil remedy.--

30           (3) As a condition precedent to bringing an action  
31 under this section, the office ~~department~~ and the insurer

1 shall be given written notice of the violation. The notice  
2 shall state with specificity the facts which allegedly  
3 constitute the violation and the law upon which the plaintiff  
4 is relying and shall state that such notice is given in order  
5 to perfect the right to pursue the civil remedy authorized by  
6 this section. No action will lie if, within 30 days  
7 thereafter, the damages are paid or the circumstances giving  
8 rise to the violation are corrected.

9 (4) This section shall not be construed to authorize a  
10 class action suit against a home warranty association or a  
11 civil action against the department or office or their,~~its~~  
12 employees, or the Chief Financial Officer ~~Insurance~~  
13 ~~Commissioner.~~

14 Section 1483. Subsection (8) of section 634.336,  
15 Florida Statutes, is amended to read:

16 634.336 Unfair methods of competition and unfair or  
17 deceptive acts or practices defined.--The following methods,  
18 acts, or practices are defined as unfair methods of  
19 competition and unfair or deceptive acts or practices:

20 (8) COERCION OF DEBTORS.--When a home warranty is sold  
21 as authorized by s. 634.301(3)(b)~~s. 634.301(4)(b)~~:

22 (a) Requiring, as a condition precedent or condition  
23 subsequent to the lending of the money or the extension of the  
24 credit or any renewal thereof, that the person to whom such  
25 credit is extended purchase a home warranty; or

26 (b) Failing to provide the advice required by s.  
27 634.344; or

28 (c) Failing to comply with the provisions of s.  
29 634.345.

30 Section 1484. Section 634.337, Florida Statutes, is  
31 amended to read:

1           634.337 Power of department and office to examine and  
2 investigate.--The department and office have ~~has~~ the power,  
3 within their respective regulatory jurisdictions, to examine  
4 and investigate the affairs of every person involved in the  
5 business of home warranty in this state in order to determine  
6 whether such person has been or is engaged in any unfair  
7 method of competition or in any unfair or deceptive act or  
8 practice prohibited by s. 634.335, and each shall have the  
9 powers and duties specified in ss. 634.338-634.342 in  
10 connection therewith.

11           Section 1485. Section 634.338, Florida Statutes, is  
12 amended to read:

13           634.338 Prohibited practices; hearings; procedure;  
14 service of process.--

15           (1) Whenever the department or office has reason to  
16 believe that any person has engaged, or is engaging, in this  
17 state in any unfair method of competition or any unfair or  
18 deceptive act or practice as defined in s. 634.336, or is  
19 engaging in the business of home warranty without being  
20 properly licensed as required by this part, and that a  
21 proceeding by the department or office in respect thereto  
22 would be in the interest of the public, the department or  
23 office shall conduct or cause to have conducted a hearing in  
24 accordance with chapter 120.

25           (2) The department or office, a duly empowered hearing  
26 officer, or an administrative law judge shall, during the  
27 conduct of such hearing, have those powers enumerated in s.  
28 120.569; however, the penalty for failure to comply with a  
29 subpoena or with an order directing discovery is limited to a  
30 fine not to exceed \$1,000 per violation.

31

1           (3) A statement of charges, notice, or order under  
2 this part may be served by anyone duly authorized by the  
3 department or office, either in the manner provided by law for  
4 service of process in civil actions or by certifying and  
5 mailing a copy thereof to the person affected by such  
6 statement, notice, order, or other process at her or his or  
7 its residence or principal office or place of business. The  
8 verified return by the person so serving such statement,  
9 notice, order, or other process, setting forth the manner of  
10 the service is proof of the same; and the return postcard  
11 receipt for such statement, notice, order, or other process,  
12 certified and mailed as provided in this subsection, is proof  
13 of service of the same.

14           Section 1486. Section 634.339, Florida Statutes, is  
15 amended to read:

16           634.339 Cease and desist and penalty orders.--After  
17 the hearing provided for in s. 634.338, the department or  
18 office shall enter a final order in accordance with s.  
19 120.569. If it is determined that the person charged has  
20 engaged in an unfair or deceptive act or practice or the  
21 unlawful transaction of home warranty business, the department  
22 or office also shall issue an order requiring the violator to  
23 cease and desist from engaging in such method of competition,  
24 act, or practice or the unlawful transaction of home warranty  
25 business. Further, the department or office may, at its  
26 discretion, order any one or more of the following penalties:

27           (1) The suspension or revocation of such person's  
28 license, or eligibility for any license, if the person knew,  
29 or reasonably should have known, that she or he was in  
30 violation of this part.

31

1           (2) If it is determined that the person charged has  
2 provided or offered to provide home warranties without proper  
3 licensure, the imposition of an administrative penalty not to  
4 exceed \$1,000 for each home warranty contract offered or  
5 effectuated.

6           Section 1487. Section 634.34, Florida Statutes, is  
7 amended to read:

8           634.34 Appeals from orders of the department or  
9 office.--Any person subject to an order of the department or  
10 office under s. 634.339 may obtain a review of such order by  
11 filing an appeal therefrom in accordance with the provisions  
12 and procedures for appeal from the orders of the department or  
13 office in general under s. 120.68.

14           Section 1488. Section 634.341, Florida Statutes, is  
15 amended to read:

16           634.341 Penalty for violation of cease and desist  
17 order.--Any person who violates a cease and desist order of  
18 the department or office under s. 634.339 while such order is  
19 in effect, after notice and hearing as provided in s. 634.338,  
20 is subject, at the discretion of the department or office, to  
21 any one or more of the following penalties:

22           (1) A monetary penalty of not more than \$25,000 as to  
23 all matters determined in such hearing.

24           (2) The suspension or revocation of such person's  
25 license or eligibility to hold a license.

26           Section 1489. Section 634.342, Florida Statutes, is  
27 amended to read:

28           634.342 Injunctive proceedings.--In addition to the  
29 penalties and other enforcement provisions of this part, in  
30 the event any person violates s. 634.303 or s. 634.318 or any  
31 rule adopted or promulgated pursuant thereto, the department

1 or office is authorized to resort to a proceeding for  
2 injunction in the circuit court of the county where such  
3 person resides or has her or his principal place of business,  
4 and therein apply for such temporary and permanent orders as  
5 the department or office may deem necessary to restrain such  
6 person from engaging in any such activities, until such person  
7 has complied with such provision or rule.

8 Section 1490. Section 634.343, Florida Statutes, is  
9 amended to read:

10 634.343 Civil liability.--The provisions of this part  
11 are cumulative to rights under the general civil and common  
12 law, and no action of the department or office will abrogate  
13 such rights to damages or other relief in any court.

14 Section 1491. Section 634.344, Florida Statutes, is  
15 amended to read:

16 634.344 Coercion of debtor prohibited.--

17 (1) When a home warranty is sold as authorized by s.  
18 634.301(3)(b) ~~s. 634.301(4)(b)~~, no person may require, as a  
19 condition precedent or condition subsequent to the lending of  
20 the money or the extension of the credit or any renewal  
21 thereof, that the person to whom such money or credit is  
22 extended purchase a home warranty.

23 (2) When a home warranty is purchased in connection  
24 with the lending of money as authorized by s. 634.301(3)(b) ~~s.~~  
25 ~~634.301(4)(b)~~, the insurer or home warranty association or the  
26 sales representative of the insurer or home warranty  
27 association shall advise the borrower or purchaser in writing  
28 that Florida law prohibits the lender from requiring the  
29 purchase of a home warranty as a condition precedent or  
30 condition subsequent to the making of the loan.

31

1           Section 1492. Section 634.345, Florida Statutes, is  
2 amended to read:

3           634.345 Buyer's right to cancel.--Every warranty sold  
4 in connection with a loan as authorized by s. 634.301(3)(b) ~~s.~~  
5 ~~634.301(4)(b)~~ shall contain a provision providing that the  
6 purchaser or borrower may cancel the warranty within 10 days  
7 of purchase without penalty and, upon such cancellation, the  
8 insurer or home warranty association shall promptly refund the  
9 premium paid. This provision may be included in the warranty  
10 or by rider or endorsement thereto.

11           Section 1493. Section 634.348, Florida Statutes, is  
12 amended to read:

13           634.348 Investigatory records.--All active examination  
14 or investigatory records of the department or office made or  
15 received pursuant to this part are confidential and exempt  
16 from the provisions of s. 119.07(1) until such investigation  
17 is completed or ceases to be active. For the purposes of this  
18 section, an investigation is considered "active" while the  
19 investigation is being conducted by the department or office  
20 with a reasonable, good faith belief that it may lead to the  
21 filing of administrative, civil, or criminal proceedings. An  
22 investigation does not cease to be active if the department or  
23 office is proceeding with reasonable dispatch, and there is  
24 good faith belief that action may be initiated by the  
25 department or office or other administrative or law  
26 enforcement agency.

27           Section 1494. Section 634.401, Florida Statutes, is  
28 amended to read:

29           634.401 Definitions.--As used in this part, the term:

30           (1) "Consumer product" means tangible property  
31 primarily used for personal, family, or household purposes.

1           ~~(2)~~ "Department" means the Department of Insurance.  
2           (2)~~(3)~~ "Gross income" means the total amount of  
3 revenue received in connection with business-related activity.  
4           (3)~~(4)~~ "Gross written premiums" means the total amount  
5 of premiums, paid or to be paid by the consumer for the entire  
6 period of the service warranty inclusive of commissions, for  
7 which the association is obligated under service warranties  
8 issued.  
9           (4)~~(5)~~ "Impaired" means having liabilities in excess  
10 of assets.  
11           (5)~~(6)~~ "Indemnify" means to undertake repair or  
12 replacement of a consumer product, in return for the payment  
13 of a segregated premium, when such consumer product suffers  
14 operational failure.  
15           (6)~~(7)~~ "Insolvent" means unable to pay debts as they  
16 become due in the usual course of business.  
17           (7)~~(8)~~ "Insurance code" means the Florida Insurance  
18 Code as defined in s. 624.01.  
19           (8)~~(9)~~ "Insurer" means any property or casualty  
20 insurer duly authorized to transact such business in this  
21 state.  
22           (9)~~(10)~~ "Net assets" means total statutory assets in  
23 excess of liabilities, except that assets pledged to secure  
24 debts not reflected on the books of the service warranty  
25 association shall not be included in net assets.  
26           (10)~~(11)~~ "Person" includes an individual, company,  
27 corporation, association, insurer, agent, and any other legal  
28 entity.  
29           (11)~~(12)~~ "Premium" means the total amount paid by the  
30 consumer, including any charges designated as assessments or  
31

1 fees for membership, policy, survey, inspection, finance,  
2 service, or other charges by the association.

3 (12)~~(13)~~ "Sales representative" means any person,  
4 retail store, corporation, partnership, or sole proprietorship  
5 utilized by an insurer or service warranty association for the  
6 purpose of selling or issuing service warranties. However, in  
7 the case of service warranty associations selling service  
8 warranties from one or more business locations, the person in  
9 charge of each location may be considered the sales  
10 representative.

11 (13)~~(14)~~ "Service warranty" means any warranty,  
12 guaranty, extended warranty or extended guaranty, maintenance  
13 service contract greater than 1 year in length or which does  
14 not meet the exemption in paragraph (a), contract agreement,  
15 or other written promise to indemnify against the cost of  
16 repair or replacement of a consumer product in return for the  
17 payment of a segregated charge by the consumer; however:

18 (a) Maintenance service contracts written for 1 year  
19 or less which do not contain provisions for indemnification  
20 and which do not provide a discount to the consumer for any  
21 combination of parts and labor in excess of 20 percent during  
22 the effective period of such contract, motor vehicle service  
23 agreements, transactions exempt under s. 624.125, and home  
24 warranties subject to regulation under parts I and II of this  
25 chapter are excluded from this definition; and

26 (b) The term "service warranty" does not include  
27 service contracts between consumers and condominium  
28 associations.

29 (14)~~(15)~~ "Service warranty association" or  
30 "association" means any person, other than an authorized  
31 insurer, issuing service warranties.

1           (15)~~(16)~~ "Warrantor" means any person engaged in the  
2 sale of service warranties and deriving not more than 50  
3 percent of its gross income from the sale of service  
4 warranties.

5           (16)~~(17)~~ "Warranty seller" means any person engaged in  
6 the sale of service warranties and deriving more than 50  
7 percent of its gross income from the sale of service  
8 warranties.

9           (17)~~(18)~~ "Manufacturer" means any entity or its  
10 affiliate which:

11           (a) Derives a majority of its revenues from products  
12 manufactured, built, assembled, constructed, or produced under  
13 a product name wholly controlled by the applicant or an  
14 affiliate thereof;

15           (b) Issues service warranties only for consumer  
16 products manufactured, built, assembled, constructed, or  
17 produced under a product name wholly controlled by the  
18 applicant or an affiliate thereof;

19           (c) Is listed and traded on a recognized stock  
20 exchange, is listed in NASDAQ (National Association of  
21 Security Dealers Automated Quotation system) and publicly  
22 traded in the over-the-counter securities markets, is required  
23 to file either of Forms 10-K, 10-Q, or 20-G with the United  
24 States Securities and Exchange Commission, or whose American  
25 Depository Receipts are listed on a recognized stock exchange  
26 and publicly traded;

27           (d) Maintains outstanding debt obligations, if any,  
28 rated in the top four rating categories by a recognized rating  
29 service;

30           (e) Has and maintains at all times, a minimum net  
31 worth of at least \$10 million as evidenced by certified

1 financial statements prepared by an independent certified  
2 public accountant in accordance with generally accepted  
3 accounting principles; and

4 (f) Is authorized to do business in this state.

5 (18)~~(19)~~ "Affiliate" means any entity which exercises  
6 control over or is controlled by, the service warranty  
7 association or insurer, directly or indirectly, through:

8 (a) Equity ownership of voting securities;

9 (b) Common managerial control; or

10 (c) Collusive participation by the management of the  
11 service warranty association or insurer or the affiliate.

12 Section 1495. Section 634.402, Florida Statutes, is  
13 amended to read:

14 634.402 Powers of department, commission, and office;  
15 rules.--The office ~~department~~ shall administer this part, and  
16 the commission may ~~to that end it has authority to~~ adopt rules  
17 pursuant to ss. 120.536(1) and 120.54 to implement the  
18 provisions of this part related to service warranty  
19 associations and service warranties. The department shall  
20 administer this part and may adopt rules pursuant to ss.  
21 120.536(1) and 120.54 to implement provisions of this part  
22 related to sales representatives. Such rules by the commission  
23 or department may identify specific methods of competition or  
24 acts or practices that are prohibited by s. 634.436, but shall  
25 not enlarge upon or extend the provisions of that section.

26 Section 1496. Subsections (1) and (3) of section  
27 634.403, Florida Statutes, are amended to read:

28 634.403 License required.--

29 (1) No person in this state shall provide or offer to  
30 provide service warranties unless authorized therefor under a  
31 subsisting license issued by the office ~~department~~. The

1 service warranty association shall pay to the office  
2 ~~department~~ a license fee of \$200 for such license for each  
3 license year, or part thereof, the license is in force.

4 (3) The office ~~department~~ may, pursuant to s. 120.569,  
5 in its discretion and without advance notice and hearing,  
6 issue an immediate final order to cease and desist to any  
7 person or entity which violates this section. The Legislature  
8 finds that a violation of this section constitutes an imminent  
9 and immediate threat to the public health, safety, and welfare  
10 of the residents of this state.

11 Section 1497. section 634.404, Florida Statutes, is  
12 amended to read:

13 634.404 Qualifications for license.--The office  
14 ~~department~~ may not issue or allow a service warranty  
15 association to maintain a license unless the association:

16 (1) Is a warrantor with minimum net assets of \$25,000  
17 or a warranty seller with minimum net assets of \$300,000.

18 (2) Furnishes the office ~~department~~ with evidence  
19 satisfactory to it that the management of the association is  
20 competent and trustworthy and can successfully manage the  
21 affairs of the association in compliance with law.

22 (3) Proposes to use and uses in its business a name,  
23 together with a trademark or emblem, if any, which is  
24 distinctive and not so similar to the name or trademark of any  
25 other person already doing business in this state as will tend  
26 to mislead or confuse the public.

27 (4) Makes the deposit or files the bond required under  
28 s. 634.405.

29 (5) Is formed under the laws of this state or another  
30 state, district, territory, or possession of the United  
31 States, if the association is other than a natural person.

1           (6) In lieu of the provisions of subsections (1)-(5)  
2 of this section and s. 634.407, a manufacturer or affiliate as  
3 defined in this part is eligible for licensure as a service  
4 warranty association under the provisions of this part and  
5 shall complete an application evidencing its qualifications as  
6 set forth in this section. The application for license as a  
7 service warranty association from a manufacturer or affiliate  
8 shall be made to, and filed with, the office ~~department~~ on  
9 printed forms as promulgated by the commission ~~department~~ to  
10 be specifically and exclusively applicable to qualifying  
11 manufacturers.

12           (a) The commission ~~department~~ may require that the  
13 applicant show:

- 14           1. The state of the applicant's incorporation;
- 15           2. The location of the applicant's home office; and
- 16           3. The names and business addresses of the applicant's  
17 board of directors and managing executive officer.

18           (b) The ~~department shall require that the~~ application,  
19 when filed, must be accompanied by:

- 20           1. A copy of the applicant's articles of  
21 incorporation, certified by the public official having custody  
22 of the original, and a copy of the applicant's bylaws,  
23 certified by the applicant's corporate secretary;
- 24           2. Evidence that the applicant has complied with all  
25 applicable statutory requirements regarding registering to do  
26 business in this state; and
- 27           3. A license fee in the amount of \$500.

28           (c) Upon submission of the application for license,  
29 the office ~~department~~ shall examine the application to  
30 determine its compliance with applicable sections of this  
31

1 part. Applicants shall be advised of any inadequate responses  
2 or missing information.

3 (d) Information as required in this section shall be  
4 updated as to changes thereto no less than two times annually,  
5 once at the time of the submission of the service warranty  
6 association's submission of its annual report, and the second  
7 time, no later than September 30 of each year.

8 Section 1498. Section 634.405, Florida Statutes, is  
9 amended to read:

10 634.405 Required deposit or bond.--

11 (1) To assure the faithful performance of its  
12 obligations to its members or subscribers in the event of  
13 insolvency, each service warranty association shall, before  
14 the issuance of its license by the office ~~department~~ and  
15 during such time as the association may have premiums in force  
16 in this state, deposit and maintain with the department  
17 securities of the type eligible for deposit by insurers under  
18 s. 625.52. Whenever the market value of the securities  
19 deposited with the department is less than 95 percent of the  
20 amount required, the association shall deposit additional  
21 securities or otherwise increase the deposit to the amount  
22 required. Such securities shall have at all times a market  
23 value as follows:

24 (a) Warrantors.--

25 1. Any warrantor which:

26 a. Was licensed under this part before October 1,  
27 1983;

28 b. Was transacting service warranty business in this  
29 state before June 14, 1978;

30 c. Has continuously transacted service warranty  
31 business in this state since June 14, 1978; and

1           d. Has not during any year since June 14, 1978,  
2 written more than \$100,000 of gross written premiums,  
3  
4 shall place and maintain in trust with the department an  
5 amount equal to 50 percent of the gross written premiums in  
6 force.

7           2. A warrantor which has \$300,000 or less of gross  
8 written premiums in this state and to which the provisions of  
9 subparagraph 1. do not apply shall place and maintain in trust  
10 with the department an amount not less than \$50,000. A new  
11 warrantor, before the issuance of its license and before  
12 receiving any premiums, shall place and maintain in trust with  
13 the department the amount of \$50,000.

14           3. A warrantor which has more than \$300,000 but less  
15 than \$750,000 of gross written premiums in this state shall  
16 place and maintain in trust with the department an amount not  
17 less than \$75,000.

18           4. A warrantor which has \$750,000 or more of gross  
19 written premiums in this state shall place and maintain in  
20 trust with the department an amount equal to \$100,000.

21           5. All warrantors, upon receipt of written notice from  
22 the office ~~department~~, shall have 30 calendar days in which to  
23 make additional deposits.

24           (b) Warranty sellers.--A warranty seller shall, before  
25 the issuance of its license, place in trust with the  
26 department an amount not less than \$100,000.

27           (2) In lieu of any deposit of securities required  
28 under subsection (1) and subject to the approval of the office  
29 ~~department~~, the service warranty association may file with the  
30 office ~~department~~ a surety bond issued by an authorized surety  
31 insurer. The bond shall be for the same purpose as the deposit

1 in lieu of which it is filed. The office ~~department~~ may not  
2 approve any bond under the terms of which the protection  
3 afforded against insolvency is not equivalent to the  
4 protection afforded by those securities provided for in  
5 subsection (1). When a bond is deposited in lieu of the  
6 required securities, no warranties may be written which  
7 provide coverage for a time period beyond the duration of such  
8 bond. The bond shall guarantee that the service warranty  
9 association will faithfully and truly perform all the  
10 conditions of any service warranty contract. No such bond may  
11 be canceled or subject to cancellation unless at least 60  
12 days' advance notice thereof, in writing, is filed with the  
13 office ~~department~~. In the event that notice of termination of  
14 the bond is filed with the office ~~department~~, the service  
15 warranty association insured thereunder shall, within 30 days  
16 of the filing of notice of termination, provide the office  
17 ~~department~~ with a replacement bond meeting the requirements of  
18 this part or deposit additional securities as required under  
19 subsection (1). The cancellation of a bond will not relieve  
20 the obligation of the issuer of the bond for claims arising  
21 out of contracts issued before cancellation of the bond unless  
22 a replacement bond or securities are filed. In no event may  
23 the liability of the issuer under the bond exceed the face  
24 amount of the bond. If within 30 days of filing the notice of  
25 termination no replacement bond or additional security is  
26 provided, the office ~~department~~ shall suspend the license of  
27 the association until the deposit requirements are satisfied.

28 (3) Securities and bonds posted by an association  
29 pursuant to this section are for the benefit of, and subject  
30 to action thereon in the event of insolvency or impairment of  
31 any association or insurer by, any person or persons

1 sustaining an actionable injury due to the failure of the  
2 association to faithfully perform its obligations to its  
3 warranty holders.

4 (4) The state is responsible for the safekeeping of  
5 all securities deposited with the department under this part.  
6 Such securities are not, on account of being in this state,  
7 subject to taxation, but shall be held exclusively and solely  
8 to guarantee the faithful performance by the association of  
9 its obligations to its members or subscribers.

10 (5) The depositing association shall, during its  
11 solvency, have the right to exchange or substitute other  
12 securities of like quality and value for securities on  
13 deposit, to receive the interest and other income accruing to  
14 such securities, and to inspect the deposit at all reasonable  
15 times.

16 (6) Such deposit or bond shall be maintained  
17 unimpaired as long as the association continues in business in  
18 this state. Whenever the association ceases to do business in  
19 this state and furnishes the office ~~department~~ proof  
20 satisfactory to the office ~~department~~ that it has discharged  
21 or otherwise adequately provided for all its obligations to  
22 its members or subscribers in this state, the office and  
23 department shall release the deposited securities to the  
24 parties entitled thereto, on presentation of the receipts of  
25 the department for such securities, or shall release any bond  
26 filed with it in lieu of such deposit.

27 (7) Any business, or its affiliate, whose primary  
28 source of income is the sale of goods to the final consumer  
29 and derives more than 50 percent of its revenue through such  
30 sales and maintains a net worth of \$100 million, as evidenced  
31 by either filing a form 10-K or other similar statement with

1 the Securities and Exchange Commission or which has an annual  
2 financial statement that is audited and certified by an  
3 independent public accounting firm, shall be presumed to have  
4 complied with this subsection if such forms or statement are  
5 filed with the office ~~department~~.

6 Section 1499. Subsections (2), (3), (6), and (7) of  
7 section 634.406, Florida Statutes, are amended to read:

8 634.406 Financial requirements.--

9 (2) An association utilizing an unearned premium  
10 reserve shall deposit with the department a reserve deposit  
11 equal to 10 percent of the gross written premium received on  
12 all warranty contracts in force. Such reserve deposit shall  
13 be of a type eligible for deposit by insurers under s. 625.52.  
14 Request for release of all or part of the reserve deposit may  
15 be made quarterly and only after the office ~~department~~ has  
16 received and approved the association's current financial  
17 statements, as well as a statement sworn to by two officers of  
18 the association verifying such release will not reduce the  
19 reserve deposit to less than 10 percent of the gross written  
20 premium. The reserve deposit required under this part shall be  
21 included in calculating the reserve required by subsection  
22 (1). The deposit required in s. 634.405(1)(b) shall be  
23 included in calculating the reserve requirements of this  
24 section.

25 (3) An association will not be required to establish  
26 an unearned premium reserve if it has purchased contractual  
27 liability insurance which demonstrates to the satisfaction of  
28 the office ~~department~~ that 100 percent of its claim exposure  
29 is covered by such policy. The contractual liability insurance  
30 shall be obtained from an insurer that holds a certificate of  
31 authority to do business within the state. For the purposes of

1 this subsection, the contractual liability policy shall  
2 contain the following provisions:

3 (a) In the event that the service warranty association  
4 does not fulfill its obligation under contracts issued in this  
5 state for any reason, including insolvency, bankruptcy, or  
6 dissolution, the contractual liability insurer will pay losses  
7 and unearned premium refunds under such plans directly to the  
8 person making a claim under the contract.

9 (b) The insurer issuing the contractual liability  
10 policy shall assume full responsibility for the administration  
11 of claims in the event of the inability of the association to  
12 do so.

13 (c) The policy may not be canceled or not renewed by  
14 either the insurer or the association unless 60 days' written  
15 notice thereof has been given to the office ~~department~~ by the  
16 insurer before the date of such cancellation or nonrenewal.

17 (d) The contractual liability insurance policy shall  
18 insure all service warranty contracts which were issued while  
19 the policy was in effect whether or not the premium has been  
20 remitted to the insurer.

21 (e) In the event the issuer of the contractual  
22 liability policy is fulfilling the service warranty covered by  
23 policy and in the event the service warranty holder cancels  
24 the service warranty, it is the responsibility of the  
25 contractual liability policy issuer to effectuate a full  
26 refund of unearned premium to the consumer. This refund shall  
27 be subject to the cancellation fee provisions of s.  
28 634.414(3). The salesperson or agent shall refund to the  
29 contractual liability policy issuer the unearned pro rata  
30 commission.

31

1 (f) An association may not utilize both the unearned  
2 premium reserve and contractual liability insurance  
3 simultaneously. However, an association shall be allowed to  
4 have contractual liability coverage on service warranties  
5 previously sold and sell new service warranties covered by the  
6 unearned premium reserve, and the converse of this shall also  
7 be allowed. An association must be able to distinguish how  
8 each individual service warranty is covered.

9 (6) An association which holds a license under this  
10 part and which does not hold any other license under this  
11 chapter may allow its premiums to exceed the ratio to net  
12 assets limitations of this section if the association meets  
13 all of the following:

14 (a) Maintains net assets of at least \$750,000.

15 (b) Utilizes a contractual liability insurance policy  
16 approved by the office ~~department~~ which reimburses the service  
17 warranty association for 100 percent of its claims liability.

18 (c) The insurer issuing the contractual liability  
19 insurance policy:

20 1. Maintains a policyholder surplus of at least \$100  
21 million.

22 2. Is rated "A" or higher by A.M. Best Company or an  
23 equivalent rating by another national rating service  
24 acceptable to the office ~~department~~.

25 3. Is in no way affiliated with the warranty  
26 association.

27 4. In conjunction with the warranty association's  
28 filing of the quarterly and annual reports, provides, on a  
29 form prescribed by the commission ~~department~~, a statement  
30 certifying the gross written premiums in force reported by the  
31 warranty association and a statement that all of the warranty

1 association's gross written premium in force is covered under  
2 the contractual liability policy, whether or not it has been  
3 reported.

4 (7) ~~The department shall require that~~ A contractual  
5 liability policy must insure 100 percent of an association's  
6 claims exposure under all of the association's service  
7 warranty contracts, wherever written, unless all of the  
8 following are satisfied:

9 (a) The contractual liability policy contains a clause  
10 that specifically names the service warranty contract holders  
11 as sole beneficiaries of the contractual liability policy and  
12 claims are paid directly to the person making a claim under  
13 the contract;

14 (b) The contractual liability policy meets all other  
15 requirements of this part, including subsection (3) of this  
16 section, which are not inconsistent with this subsection;

17 (c) The association has been in existence for at least  
18 5 years or the association is a wholly owned subsidiary of a  
19 corporation that has been in existence and has been licensed  
20 as a service warranty association in the state for at least 5  
21 years, and:

22 1. Is listed and traded on a recognized stock  
23 exchange; is listed in NASDAQ (National Association of  
24 Security Dealers Automated Quotation system) and publicly  
25 traded in the over-the-counter securities market; is required  
26 to file either of Forms 10-K, 100, or 20-G with the United  
27 States Securities and Exchange Commission; or has American  
28 Depository Receipts listed on a recognized stock exchange and  
29 publicly traded or is the wholly owned subsidiary of a  
30 corporation that is listed and traded on a recognized stock  
31 exchange; is listed in NASDAQ (National Association of

1 Security Dealers Automated Quotation system) and publicly  
2 traded in the over-the-counter securities market; is required  
3 to file Form 10-K, Form 100, or Form 20-G with the United  
4 States Securities and Exchange Commission; or has American  
5 Depository Receipts listed on a recognized stock exchange and  
6 is publicly traded;

7           2. Maintains outstanding debt obligations, if any,  
8 rated in the top four rating categories by a recognized rating  
9 service;

10           3. Has and maintains at all times a minimum net worth  
11 of not less than \$10 million as evidenced by audited financial  
12 statements prepared by an independent certified public  
13 accountant in accordance with generally accepted accounting  
14 principles and submitted to the office ~~department~~ annually;  
15 and

16           4. Is authorized to do business in this state; and

17           (d) The insurer issuing the contractual liability  
18 policy:

19           1. Maintains and has maintained for the preceding 5  
20 years, policyholder surplus of at least \$100 million and is  
21 rated "A" or higher by A.M. Best Company or has an equivalent  
22 rating by another rating company acceptable to the office  
23 ~~department~~;

24           2. Holds a certificate of authority to do business in  
25 this state and is approved to write this type of coverage; and

26           3. Acknowledges to the office ~~department~~ quarterly  
27 that it insures all of the association's claims exposure under  
28 contracts delivered in this state.

29

30 If all the preceding conditions are satisfied, then the scope  
31 of coverage under a contractual liability policy shall not be

1 required to exceed an association's claims exposure under  
2 service warranty contracts delivered in this state.

3 Section 1500. Section 634.4061, Florida Statutes, is  
4 amended to read:

5 634.4061 Assets and liabilities.--

6 (1) ASSETS.--In any determination of the financial  
7 condition of a service warranty association, there shall be  
8 allowed as assets only those assets that are owned by the  
9 service warranty association and which assets consist of:

10 (a) Cash in the possession of the service warranty  
11 association, or in transit under its control, including the  
12 true balance of any deposit in a solvent bank, savings and  
13 loan association, or trust company which is domiciled in the  
14 United States.

15 (b) Investments, securities, properties, and loans  
16 acquired or held in accordance with this part, and in  
17 connection therewith the following items:

18 1. Interest due or accrued on any bond or evidence of  
19 indebtedness which is not in default and which is not valued  
20 on a basis including accrued interest.

21 2. Declared and unpaid dividends on stock and shares,  
22 unless the amount of the dividends has otherwise been allowed  
23 as an asset.

24 3. Interest due or accrued upon a collateral loan  
25 which is not in default in an amount not to exceed 1 year's  
26 interest thereon.

27 4. Interest due or accrued on deposits or certificates  
28 of deposit in solvent banks, savings and loan associations,  
29 and trust companies domiciled in the United States, and  
30 interest due or accrued on other assets, if such interest is  
31 in the judgment of the office ~~department~~ a collectible asset.

1           5. Interest due or accrued on current mortgage loans,  
2 in an amount not exceeding in any event the amount, if any, of  
3 the excess of the value of the property less delinquent taxes  
4 thereon over the unpaid principal; but in no event shall  
5 interest accrued for a period in excess of 90 days be allowed  
6 as an asset.

7           6. Rent due or accrued on real property if such rent  
8 is not in arrears for more than 3 months. However, in no  
9 event shall rent accrued for a period in excess of 90 days be  
10 allowed as an asset.

11           7. The unaccrued portion of taxes paid prior to the  
12 due date on real property.

13           (c) Furniture, fixtures, furnishings, vehicles, and  
14 equipment, if the original cost of each item is at least \$200,  
15 which cost shall be amortized in full over a period not to  
16 exceed 5 calendar years, unless otherwise approved by the  
17 office ~~department~~.

18           (d) Part inventories maintained for the purpose of  
19 servicing products warranted. Part inventories must be listed  
20 at cost. Associations are required to maintain records to  
21 support valuation of parts inventories.

22           (e) The liquidation value of prepaid expenses.

23           (f) Other assets, not inconsistent with the provisions  
24 of this section, deemed by the office ~~department~~ to be  
25 available for the payment of losses and claims, at values to  
26 be determined by it.

27  
28 The office ~~department~~, upon determining that a service  
29 warranty association's asset has not been evaluated according  
30 to applicable law or that it does not qualify as an asset,  
31 shall require the service warranty association to properly

1 reevaluate the asset or replace the asset with an asset  
2 suitable to the office department within 30 days of written  
3 notification by the office department of this determination,  
4 if the removal of the asset from the organization's assets  
5 would impair the company's solvency.

6 (2) ASSETS NOT ALLOWED.--In addition to assets  
7 impliedly excluded by the provisions of subsection (1), the  
8 following assets expressly shall not be allowed as assets in  
9 any determination of the financial condition of a service  
10 warranty association:

11 (a) Goodwill, agreement holder lists, patents, trade  
12 names, agreements not to compete, and other like intangible  
13 assets.

14 (b) Any note or account receivable from or advances to  
15 officers, directors, or controlling stockholders, whether  
16 secured or not, and advances to employees, agents, or other  
17 persons on personal security only.

18 (c) Stock of the service warranty association owned by  
19 it directly or owned by it through any entity in which the  
20 organization owns or controls, directly or indirectly, more  
21 than 25 percent of the ownership interest.

22 (d) Leasehold improvements, stationery, and  
23 literature, except that leasehold improvements made prior to  
24 October 1, 1991, shall be allowed as an asset and shall be  
25 amortized over the shortest of the following periods:

- 26 1. The life of the lease.
- 27 2. The useful life of the improvements.
- 28 3. The 3-year period following October 1, 1991.

29 (e) Furniture, fixtures, furnishings, vehicles, and  
30 equipment, other than those items authorized under paragraph  
31 (1)(c).

1 (f) Notes or other evidences of indebtedness which are  
2 secured by mortgages or deeds of trust which are in default  
3 and beyond the express period specified in the instrument for  
4 curing the default.

5 (g) Bonds in default for more than 60 days.

6 (h) Deferred costs other than the liquidation value of  
7 prepaid expenses.

8 (i) Any note, account receivable, advance, or other  
9 evidence of indebtedness, or investment in:

10 1. The parent of the service warranty association;

11 2. Any entity directly or indirectly controlled by the  
12 service warranty association parent; or

13 3. An affiliate of the parent or the service warranty  
14 association; however, receivables from the parent or  
15 affiliated companies shall be considered an admitted asset of  
16 the company when the office department is satisfied that the  
17 repayment of receivables, loans, and advances from the parent  
18 or the affiliated company are guaranteed by an organization in  
19 accordance with s. 634.4065.

20 4. Officers, directors, shareholders, employees, or  
21 salespersons of the association. However, premium receivables  
22 under 45 days old may be considered an admitted asset.

23

24 The office department may, however, allow all or a portion of  
25 such asset, at values to be determined by the office  
26 department, if deemed by the office department to be available  
27 for the payment losses and claims.

28 (3) LIABILITIES.--In any determination of the  
29 financial condition of a service warranty association,  
30 liabilities to be charged against its assets shall include,  
31 but not be limited to:

1 (a) The amount, in conformity with generally accepted  
2 accounting principles, necessary to pay all of its unpaid  
3 losses and claims incurred for or on behalf of an agreement  
4 holder, on or prior to the end of the reporting period,  
5 whether reported or unreported.

6 (b) Taxes, expenses, and other obligations due or  
7 accrued at the date of the statement.

8 (c) Reserve for unearned premiums.

9  
10 The office ~~department~~, upon determining that the service  
11 warranty association has failed to report liabilities that  
12 should have been reported, shall require a correct report  
13 which reflects the proper liabilities to be submitted by the  
14 service warranty association to the office ~~department~~ within  
15 10 working days of receipt of written notification.

16 Section 1501. Subsections (2) and (4) of section  
17 634.4065, Florida Statutes, are amended to read:

18 634.4065 Guarantee agreements.--In order to include  
19 receivables from affiliated companies as assets under s.  
20 634.401(9)~~s. 634.401(10)~~, the service warranty association  
21 may provide a written guarantee to assure repayment of all  
22 receivables, loans, and advances from affiliated companies,  
23 provided that the written guarantee is made by a guaranteeing  
24 organization which:

25 (2) Submits a guarantee that is approved by the office  
26 ~~department~~ as meeting the requirements of this part, provided  
27 that the written guarantee contains a provision which requires  
28 that the guarantee be irrevocable unless the guaranteeing  
29 organization can demonstrate to the office ~~department~~ that the  
30 cancellation of the guarantee will not result in the net  
31 assets of the service warranty association falling below its

1 minimum net assets requirement and the office ~~department~~  
2 approves cancellation of the guarantee.

3 (4) Submits annually, within 3 months after the end of  
4 its fiscal year, an audited financial statement certified by  
5 an independent certified public accountant, prepared in  
6 accordance with generally accepted accounting principles. The  
7 office ~~department~~ may, as it deems necessary, require  
8 quarterly financial statements from the guaranteeing  
9 organization.

10 Section 1502. Section 634.407, Florida Statutes, is  
11 amended to read:

12 634.407 Application for and issuance of license.--

13 (1) An application for license as a service warranty  
14 association shall be made to, and filed with, the office  
15 ~~department~~ on printed forms as prescribed by the commission  
16 and furnished by the office ~~it~~.

17 (2) In addition to information relative to its  
18 qualifications as required under s. 634.404, the commission  
19 ~~department~~ may require that the application show:

20 (a) The location of the applicant's home office.

21 (b) The name and residence address of each director,  
22 officer, and 10-percent or greater stockholder of the  
23 applicant.

24 (c) Such other pertinent information as may be  
25 required by the commission ~~department~~.

26 (3) The commission ~~department~~ may require that the  
27 application, when filed, be accompanied by:

28 (a) A copy of the applicant's articles of  
29 incorporation, certified by the public official having custody  
30 of the original, and a copy of the applicant's bylaws,  
31 certified by the applicant's secretary.

1 (b) A copy of the most recent financial statement of  
2 the applicant, verified under oath of at least two of its  
3 principal officers.

4 (c) A license fee in the amount of \$200, as required  
5 under s. 634.403.

6 (4) Upon completion of the application for license,  
7 the office ~~department~~ shall examine the application and make  
8 such further investigation of the applicant as it deems  
9 advisable. If it finds that the applicant is qualified  
10 therefor, the office ~~department~~ shall issue to the applicant a  
11 license as a service warranty association. If the office  
12 ~~department~~ does not find the applicant to be qualified, it  
13 shall refuse to issue the license and shall give the applicant  
14 written notice of such refusal, setting forth the grounds  
15 therefor.

16 Section 1503. Subsections (1), (2), and (3) of section  
17 634.409, Florida Statutes, are amended to read:

18 634.409 Grounds for suspension or revocation of  
19 license.--

20 (1) The license of any service warranty association  
21 may be revoked or suspended, or the office ~~department~~ may  
22 refuse to renew any such license, if it is determined that the  
23 association has violated any lawful rule or order of the  
24 commission or office ~~department~~ or any provision of this part.

25 (2) The license of any service warranty association  
26 shall be suspended or revoked if it is determined that such  
27 association:

28 (a) Is in an unsound financial condition, or is in  
29 such condition as would render its further transaction of  
30 service warranties in this state hazardous or injurious to its  
31 warranty holders or to the public.

1           (b) Has refused to be examined or to produce its  
2 accounts, records, and files for examination, or if any of its  
3 officers have refused to give information with respect to its  
4 affairs or have refused to perform any other legal obligation  
5 as to such examination, when required by the office  
6 ~~department~~.

7           (c) Has failed to pay any final judgment rendered  
8 against it in this state within 60 days after the judgment  
9 became final.

10          (d) Has, without just cause, refused to pay proper  
11 claims arising under its service warranties or, without just  
12 cause, has compelled warranty holders to accept less than the  
13 amount due them, or to employ attorneys, or to bring suit  
14 against the association to secure full payment or settlement  
15 of such claims.

16          (e) Is affiliated with, and under the same general  
17 management or interlocking directorate or ownership as,  
18 another service warranty association which transacts direct  
19 warranties in this state without having a license therefor.

20          (f) Is using such methods or practices in the conduct  
21 of its business as would render its further transaction of  
22 service warranties in this state hazardous or injurious to its  
23 warranty holders or to the public.

24          (3) The office ~~department~~ may, pursuant to s. 120.60,  
25 in its discretion and without advance notice or hearing  
26 thereon, immediately suspend the license of any service  
27 warranty association if it finds that one or more of the  
28 following circumstances exist:

29           (a) The association is insolvent or impaired as  
30 defined in s. 631.011.

31

1 (b) The association's reserve account required by s.  
2 634.406(1) is not being maintained.

3 (c) A proceeding for receivership, conservatorship, or  
4 rehabilitation or any other delinquency proceeding regarding  
5 the association has been commenced in any state.

6 (d) The financial condition or business practices of  
7 the association otherwise pose an imminent threat to the  
8 public health, safety, or welfare of the residents of this  
9 state.

10 (e) The association fails to affirm or deny coverage  
11 of claims upon the written request of the agreement holder  
12 within a reasonable time after notification of the claim.

13 (f) The association fails to promptly provide a  
14 reasonable explanation in writing to the agreement holder of  
15 the basis in the service agreement, in relation to the facts  
16 or applicable law, for denial of a claim or for the offer of a  
17 compromise settlement.

18 Section 1504. Section 634.411, Florida Statutes, is  
19 amended to read:

20 634.411 Order; notice of suspension or revocation of  
21 license; effect; publication.--

22 (1) Suspension or revocation of a service warranty  
23 association's license shall be by order of the office  
24 ~~department~~ mailed to the association by registered or  
25 certified mail. The office ~~department~~ shall also promptly give  
26 notice of such suspension or revocation to the association's  
27 sales representatives in this state which are of record with  
28 the department ~~in the department's office~~. The association  
29 shall not solicit or write any new service warranties in this  
30 state during the period of any such suspension or revocation.

31

1           (2) In its discretion, the office ~~department~~ may cause  
2 notice of any such revocation or suspension to be published in  
3 one or more newspapers of general circulation published in  
4 this state.

5           (3) When the license is surrendered, nonrenewed, or  
6 revoked, the association shall proceed, immediately following  
7 the effective date of the surrender, nonrenewal, or order of  
8 revocation, to conclude the affairs transacted under this  
9 part. The association shall not solicit, negotiate, advertise,  
10 or effectuate new or renewal service warranty contracts. The  
11 office ~~department~~ retains jurisdiction over the association as  
12 it may find to be in the best interest of the contract holders  
13 until all contracts have been fulfilled, canceled, or expired.

14           Section 1505. Section 634.413, Florida Statutes, is  
15 amended to read:

16           634.413 Administrative fine in lieu of suspension or  
17 revocation.--If the office ~~department~~ finds that one or more  
18 grounds exist for the discretionary revocation or suspension  
19 of a certificate of authority issued under this part, the  
20 office ~~department~~ may, in lieu of such suspension or  
21 revocation, impose a fine upon the insurer or service warranty  
22 association in an amount not to exceed \$1,000 per violation;  
23 however, if it is found that an insurer or service warranty  
24 association has knowingly and willfully violated a lawful rule  
25 or order of the commission or office ~~department~~ or a provision  
26 of this part, the office ~~department~~ may impose a fine upon the  
27 insurer or association in an amount not to exceed \$10,000 for  
28 each violation.

29           Section 1506. Subsections (1) and (2) of section  
30 634.414, Florida Statutes, are amended to read:

31           634.414 Filing; approval of forms.--

1           (1) No service warranty form or related form shall be  
2 issued or used in this state unless it has been filed with and  
3 approved by the office ~~department~~. Upon application for a  
4 license, the office ~~department~~ shall require the applicant to  
5 submit for approval each brochure, pamphlet, circular, form  
6 letter, advertisement, or other sales literature or  
7 advertising communication addressed or intended for  
8 distribution. The office ~~department~~ shall disapprove any  
9 document which is untrue, deceptive, or misleading or which  
10 contains misrepresentations or omissions of material facts.

11           (a) After an application has been approved, a licensee  
12 is not required to submit brochures or advertisement to the  
13 office ~~department~~ for approval; however, a licensee may not  
14 have published, and a person may not publish, any brochure or  
15 advertisement which is untrue, deceptive, or misleading or  
16 which contains misrepresentations or omissions of material  
17 fact.

18           (b) For purposes of this section, brochures and  
19 advertising includes, but is not limited to, any report,  
20 circular, public announcement, certificate, or other printed  
21 matter or advertising material which is designed or used to  
22 solicit or induce any persons to enter into any service  
23 warranty agreement.

24           (2) Each filing shall be made not less than 30 days in  
25 advance of its issuance or use. At the expiration of 30 days  
26 from date of filing, a form so filed shall be deemed approved  
27 unless prior thereto it has been affirmatively disapproved by  
28 written order of the office ~~department~~.

29           Section 1507. Section 634.4145, Florida Statutes, is  
30 amended to read:

31

1           634.4145 Grounds for disapproval of forms.--The office  
2 ~~department~~ shall disapprove any form filed under s. 634.414 if  
3 the form:

- 4           (1) Violates this part;
- 5           (2) Is misleading in any respect;
- 6           (3) Is reproduced so that any material provision is  
7 substantially illegible; or
- 8           (4) Contains provisions which are unfair or  
9 inequitable or which encourage misrepresentation.

10           Section 1508. Section 634.415, Florida Statutes, is  
11 amended to read:

12           634.415 Tax on premiums; annual statement; reports;  
13 quarterly statements.--

14           (1) In addition to the license fees provided in this  
15 part for service warranty associations and license taxes as  
16 provided in the insurance code as to insurers, each such  
17 association and insurer shall, annually on or before March 1,  
18 file with the office ~~department~~ its annual statement, in the  
19 form prescribed by the commission ~~department~~, showing all  
20 premiums or assessments received by it in connection with the  
21 issuance of service warranties in this state during the  
22 preceding calendar year and using accounting principles which  
23 will enable the office ~~department~~ to ascertain whether the  
24 financial requirements set forth in s. 634.406 have been  
25 satisfied.

26           (2) The gross amount of premiums and assessments is  
27 subject to the sales tax imposed by s. 212.0506.

28           (3) The office ~~department~~ may levy a fine of up to  
29 \$100 a day for each day an association neglects to file the  
30 annual statement in the form and within the time provided by  
31 this part. The amount of the fine shall be established by

1 rules adopted ~~promulgated~~ by the commission ~~department~~. The  
2 office ~~department~~ shall deposit all sums collected by it under  
3 this section to the credit of the Insurance ~~Commissioner's~~  
4 Regulatory Trust Fund.

5 (4) In addition to an annual statement, the office  
6 ~~department~~ may require of licensees, under oath and in the  
7 form prescribed by it, quarterly statements or special reports  
8 which it deems necessary to the proper supervision of  
9 licensees under this part. For manufacturers as defined in s.  
10 634.401, the office ~~department~~ shall require only the annual  
11 audited financial statements of the warranty operations and  
12 corporate reports as filed by the manufacturer with the  
13 Securities and Exchange Commission, provided that the office  
14 ~~department~~ may require additional reporting by manufacturers  
15 upon a showing by the office ~~department~~ that annual reporting  
16 is insufficient to protect the interest of purchasers of  
17 service warranty agreements in this state or fails to provide  
18 sufficient proof of the financial status required by this  
19 part.

20 (5) The office ~~department~~ may suspend or revoke the  
21 license of a service warranty association failing to file its  
22 annual statement or quarterly report when due.

23 (6) The commission ~~department~~ may by rule require each  
24 service warranty association to submit to the office  
25 ~~department~~, as the commission ~~department~~ may designate, all or  
26 part of the information contained in the financial statements  
27 and reports required by this section in a computer-readable  
28 form compatible with the electronic data processing system  
29 specified by the office ~~department~~.

30 Section 1509. Section 634.416, Florida Statutes, is  
31 amended to read:

1           634.416 Examination of associations.--  
2           (1) Service warranty associations licensed under this  
3 part are subject to periodic examination by the office  
4 ~~department~~, in the same manner and subject to the same terms  
5 and conditions that apply to insurers under part II of chapter  
6 624. However, the rate charged a service warranty association  
7 by the office ~~department~~ for examination may be adjusted to  
8 reflect the amount collected for the Form 10-K filing fee as  
9 provided in this section. On or before May 1 of each year, an  
10 association may submit to the office ~~department~~ the Form 10-K,  
11 as filed with the United States Securities and Exchange  
12 Commission pursuant to the Securities Exchange Act of 1934, as  
13 amended. Upon receipt and review of the most current Form  
14 10-K, the office ~~department~~ may waive the examination  
15 requirement; if the office ~~department~~ determines not to waive  
16 the examination, such examination will be limited to that  
17 examination necessary to ensure compliance with this part. The  
18 Form 10-K shall be accompanied by a filing fee of \$2,000 to be  
19 deposited into the Insurance ~~Commissioner's~~ Regulatory Trust  
20 Fund.  
21           (2) The office ~~department~~ is not required to examine  
22 an association that has less than \$20,000 in gross written  
23 premiums as reflected in its most recent annual statement. The  
24 office ~~department~~ may examine such an association if it has  
25 reason to believe that the association may be in violation of  
26 this part or is otherwise in an unsound financial condition.  
27 If the office ~~department~~ examines an association that has less  
28 than \$20,000 in gross written premiums, the examination fee  
29 may not exceed 5 percent of the gross written premiums of the  
30 association.  
31

1           Section 1510. Subsection (10) of section 634.422,  
2 Florida Statutes, is amended to read:

3           634.422 Grounds for compulsory refusal, suspension, or  
4 revocation of license or appointment of sales  
5 representatives.--The department shall deny, suspend, revoke,  
6 or refuse to renew or continue the license or appointment of  
7 any sales representative if it is found that any one or more  
8 of the following grounds applicable to the sales  
9 representative exist:

10           (10) Willful failure to comply with, or willful  
11 violation of, any proper order or rule of the department or  
12 commission, or willful violation of any provision of this  
13 part.

14           Section 1511. Subsection (3) of section 634.423,  
15 Florida Statutes, is amended to read:

16           634.423 Grounds for discretionary refusal, suspension,  
17 or revocation of license or appointment of sales  
18 representatives.--The department may deny, suspend, revoke, or  
19 refuse to renew or continue the license or appointment of any  
20 sales representative if it is found that any one or more of  
21 the following grounds applicable to the sales representative  
22 exist under circumstances for which such denial, suspension,  
23 revocation, or refusal is not mandatory under s. 634.422:

24           (3) Violation of any lawful order or rule of the  
25 department or commission.

26           Section 1512. Subsection (2) of section 634.426,  
27 Florida Statutes, is amended to read:

28           634.426 Administrative fine in lieu of suspension or  
29 revocation of license or appointment.--

30           (2) The order may allow the licensee or appointee a  
31 reasonable period, not to exceed 30 days, within which to pay

1 to the department or office the amount of the penalty so  
2 imposed. If the licensee or appointee fails to pay the  
3 penalty in its entirety to the department or office ~~at its~~  
4 ~~office in Tallahassee~~ within the period so allowed, the  
5 license and appointment of the licensee or appointee shall  
6 stand suspended or revoked or renewal or continuation may be  
7 refused, as the case may be, upon expiration of such period  
8 and without any further proceedings.

9 Section 1513. Section 634.427, Florida Statutes, is  
10 amended to read:

11 634.427 Disposition of taxes and fees.--All license  
12 fees, taxes on premiums, registration fees, and administrative  
13 fines and penalties collected under this part from service  
14 warranty associations and sales representatives shall be  
15 deposited to the credit of the Insurance ~~Commissioner's~~  
16 Regulatory Trust Fund.

17 Section 1514. Section 634.428, Florida Statutes, is  
18 amended to read:

19 634.428 Insurance business not authorized.--Nothing in  
20 the Florida Insurance Code or in this part shall be deemed to  
21 authorize any service warranty association to transact any  
22 insurance business other than that of service warranty as  
23 herein defined or otherwise to engage in any other type of  
24 insurance unless the association is authorized under a  
25 certificate of authority issued by the office ~~department~~ under  
26 the provisions of the Florida Insurance Code.

27 Section 1515. Subsection (2) of section 634.430,  
28 Florida Statutes, is amended to read:

29 634.430 Dissolution or liquidation.--

30 (2) The department and office shall be notified of the  
31 commencement of voluntary dissolution proceedings of a

1 manufacturer licensed under this part. As to the warranty  
2 operations of a manufacturer in this state, the department  
3 shall supervise the voluntary dissolution and shall require  
4 protection of the interests of the department, office, and  
5 consumers who have been issued service warranties by the  
6 manufacturer by the continuation of deposits or bonds as  
7 required by this part until that time as all warranties issued  
8 by the manufacturer are no longer in effect or all outstanding  
9 warranties have been assigned to another association approved  
10 by the department and office. The notification as provided  
11 herein shall be made by the manufacturer within 30 days of the  
12 commencement of any legal action for dissolution.

13 Section 1516. Subsections (3) and (4) of section  
14 634.433, Florida Statutes, are amended to read:

15 634.433 Civil remedy.--

16 (3) As a condition precedent to bringing an action  
17 under this section, the office ~~department~~ and the insurer  
18 shall be given written notice of the violation. The notice  
19 shall state with specificity the facts which allegedly  
20 constitute the violation and the law upon which the plaintiff  
21 is relying and shall state that such notice is given in order  
22 to perfect the right to pursue the civil remedy authorized by  
23 this section. No action will lie if, within 30 days  
24 thereafter, the damages are paid or the circumstances giving  
25 rise to the violation are corrected.

26 (4) This section shall not be construed to authorize a  
27 class action suit against a service warranty association or a  
28 civil action against the department, the office, their ~~its~~  
29 employees, or the Chief Financial Officer ~~Insurance~~  
30 Commissioner.

31

1           Section 1517. Section 634.437, Florida Statutes, is  
2 amended to read:

3           634.437 Power of department and office to examine and  
4 investigate.--The department and office have ~~has~~ the power,  
5 within their respective regulatory jurisdictions,to examine  
6 and investigate the affairs of every person involved in the  
7 business of service warranty in this state in order to  
8 determine whether such person has been or is engaged in any  
9 unfair method of competition or in any unfair or deceptive act  
10 or practice prohibited by s. 634.435, and each shall have the  
11 powers and duties specified in ss. 634.438-634.442 in  
12 connection therewith.

13           Section 1518. Section 634.438, Florida Statutes, is  
14 amended to read:

15           634.438 Prohibited practices; hearings; procedure;  
16 service of process.--

17           (1) Whenever the department or office has reason to  
18 believe that any person has engaged, or is engaging, in this  
19 state in any unfair method of competition or any unfair or  
20 deceptive act or practice as defined in s. 634.436, or is  
21 engaging in the business of service warranty without being  
22 properly licensed as required by this part, and that a  
23 proceeding by the department or office in respect thereto  
24 would be in the interest of the public, the department or  
25 office shall conduct or cause to have conducted a hearing in  
26 accordance with chapter 120.

27           (2) The department or office, a duly empowered hearing  
28 officer, or an administrative law judge shall, during the  
29 conduct of such hearing, have those powers enumerated in s.  
30 120.569; however, the penalty for failure to comply with a  
31

1 subpoena or with an order directing discovery is limited to a  
2 fine not to exceed \$1,000 per violation.

3 (3) A statement of charges, notice, or order under  
4 this part may be served by anyone duly authorized by the  
5 department or office, either in the manner provided by law for  
6 service of process in civil actions or by certifying and  
7 mailing a copy thereof to the person affected by such  
8 statement, notice, order, or other process at her or his or  
9 its residence or principal office or place of business. The  
10 verified return by the person so serving such statement,  
11 notice, order, or other process, setting forth the manner of  
12 the service, is proof of the same; and the return postcard  
13 receipt for such statement, notice, order, or other process,  
14 certified and mailed as provided in this subsection, is proof  
15 of service of the same.

16 Section 1519. Section 634.439, Florida Statutes, is  
17 amended to read:

18 634.439 Cease and desist and penalty orders.--After  
19 the hearing provided for in s. 634.438, the department or  
20 office shall enter a final order in accordance with s.  
21 120.569. If it is determined that the person charged has  
22 engaged in an unfair or deceptive act or practice or the  
23 unlawful transaction of service warranty business, the  
24 department or office also shall issue an order requiring the  
25 violator to cease and desist from engaging in such method of  
26 competition, act, or practice or the unlawful transaction of  
27 service warranty business. Further, the department or office  
28 may, at its discretion, order any one or more of the following  
29 penalties:

30 (1) The suspension or revocation of such person's  
31 license, or eligibility for any license, if the person knew,

1 or reasonably should have known, she or he was in violation of  
2 this part.

3 (2) If it is determined that the person charged has  
4 provided or offered to provide service warranties without  
5 proper licensure, the imposition of an administrative penalty  
6 not to exceed \$1,000 for each service warranty contract  
7 offered or effectuated.

8 Section 1520. Section 634.44, Florida Statutes, is  
9 amended to read:

10 634.44 Appeals from orders of the department or  
11 office.--Any person subject to an order of the department or  
12 office under s. 634.439 may obtain a review of such order by  
13 filing an appeal therefrom in accordance with the provisions  
14 and procedures for appeal from the orders of the department or  
15 office in general under s. 120.68.

16 Section 1521. Section 634.441, Florida Statutes, is  
17 amended to read:

18 634.441 Penalty for violation of cease and desist  
19 order.--Any person who violates a cease and desist order of  
20 the department or office under s. 634.439 while such order is  
21 in effect, after notice and hearing as provided in s. 634.438,  
22 is subject, at the discretion of the department or office, to  
23 any one or more of the following penalties:

24 (1) A monetary penalty of not more than \$50,000 as to  
25 all matters determined in such hearing.

26 (2) The suspension or revocation of such person's  
27 license or eligibility to hold a license.

28 Section 1522. Section 634.442, Florida Statutes, is  
29 amended to read:

30 634.442 Injunctive proceedings.--In addition to the  
31 penalties and other enforcement provisions of this part, if

1 any person violates s. 634.403 or s. 634.420 or any rule  
2 adopted pursuant thereto, the department or office may resort  
3 to a proceeding for injunction in the circuit court of the  
4 county where such person resides or has her or his or its  
5 principal place of business, and therein apply for such  
6 temporary and permanent orders as the department or office  
7 deems ~~may deem~~ necessary to restrain such person from engaging  
8 in any such activities, until such person has complied with  
9 such provision or rule.

10 Section 1523. Section 634.443, Florida Statutes, is  
11 amended to read:

12 634.443 Civil liability.--The provisions of this part  
13 are cumulative to rights under the general civil and common  
14 law, and no action of the department or office will abrogate  
15 such rights to damages or other relief in any court.

16 Section 1524. Section 634.444, Florida Statutes, is  
17 amended to read:

18 634.444 Investigatory records.--All active examination  
19 or investigatory records of the department or office made or  
20 received pursuant to this part are confidential and exempt  
21 from the provisions of s. 119.07(1) until such investigation  
22 is completed or ceases to be active. For the purposes of this  
23 section, an investigation is considered "active" while the  
24 investigation is being conducted by the department or office  
25 with a reasonable, good faith belief that it may lead to the  
26 filing of administrative, civil, or criminal proceedings. An  
27 investigation does not cease to be active if the department or  
28 office is proceeding with reasonable dispatch, and there is  
29 good faith belief that action may be initiated by the  
30 department or office or other administrative law enforcement  
31 agency.

1           Section 1525. Subsection (3) of section 635.011,  
2 Florida Statutes, is amended to read:

3           635.011 Definitions.--As used in this chapter, the  
4 term:

5           ~~(3) "Department" means the Department of Insurance of~~  
6 ~~this state.~~

7           Section 1526. Subsection (1) of section 635.031,  
8 Florida Statutes, is amended to read:

9           635.031 Additional limitations.--In addition to laws  
10 otherwise applicable, mortgage guaranty insurers are subject  
11 to the following limitations:

12           (1) No such insurer may retain risk as to any one  
13 subject of insurance in any amount exceeding 10 percent of its  
14 surplus as to policyholders. In determining the amount of  
15 risk retained, applicable reinsurance in any assuming insurer  
16 authorized to transact insurance in this state or approved by  
17 the office ~~department~~ shall be deducted from the total direct  
18 risk insured.

19           Section 1527. Subsection (2) of section 635.041,  
20 Florida Statutes, is amended to read:

21           635.041 Contingency reserve.--

22           (2) Subject to approval by the insurance department of  
23 the insurer's state of domicile and upon 30 days' prior notice  
24 to the office ~~Department of Insurance of this state~~, the  
25 contingency reserve shall be available for loss payments only  
26 when the insurer's incurred losses in any one calendar year  
27 exceed 35 percent of the corresponding earned premiums.

28           Section 1528. Subsection (3) of section 635.042,  
29 Florida Statutes, is amended to read:

30           635.042 Minimum surplus requirement.--

31

1           (3) If a mortgage guaranty insurer is not in  
2 compliance with this section, the office ~~department~~ may take  
3 any action against the insurer that the office ~~department~~ may  
4 take against an insurer that is not in compliance with s.  
5 624.408.

6           Section 1529. Subsections (1) and (2) of section  
7 635.071, Florida Statutes, are amended to read:

8           635.071 Filings, approval of forms; rate filings.--

9           (1) No policy form or related form may be issued or  
10 used in this state unless it has been filed with and approved  
11 by the office ~~department~~ as provided by laws applicable to  
12 casualty or surety insurance.

13           (2) Each insurer shall file with the office ~~department~~  
14 for informational purposes the rate to be charged and the  
15 premium to be paid by the policyholder, including all  
16 modifications of rates and premiums.

17           Section 1530. Section 635.081, Florida Statutes, is  
18 amended to read:

19           635.081 Administration and enforcement.--The  
20 commission may ~~department has authority to~~ adopt rules  
21 pursuant to ss. 120.536(1) and 120.54 to implement the  
22 provisions of this chapter and shall have the same powers of  
23 administration and enforcement of the provisions of this  
24 chapter as it has with respect to casualty or surety insurers  
25 in general under the Florida Insurance Code.

26           Section 1531. Section 636.003, Florida Statutes, is  
27 amended to read:

28           636.003 Definitions.--As used in this act, the term:

29           (1) "Capitation" means the fixed amount paid by a  
30 prepaid limited health service organization to a health care  
31 provider under contract with the prepaid limited health

1 service organization in exchange for the rendering of covered  
2 limited health services.

3 ~~(2) "Commissioner" means the Commissioner of~~  
4 ~~Insurance.~~

5 ~~(3) "Department" means the Department of Insurance.~~

6 (2)~~(4)~~ "Enrollee" means an individual, including  
7 dependents, who is entitled to limited health services  
8 pursuant to a contract, or any other evidence of coverage,  
9 with an entity authorized to provide or arrange for such  
10 services under this act.

11 (3)~~(5)~~ "Evidence of coverage" means the certificate,  
12 agreement, membership card, or contract issued pursuant to  
13 this act setting forth the coverage to which an enrollee is  
14 entitled.

15 (4)~~(6)~~ "Insolvent" means that all the statutory assets  
16 of the prepaid limited health service organization, if made  
17 immediately available, would not be sufficient to discharge  
18 all of its statutory liabilities or that the prepaid limited  
19 health service organization is unable to pay its debts as they  
20 become due in the usual course of business.

21 (5)~~(7)~~ "Limited health service" means ambulance  
22 services, dental care services, vision care services, mental  
23 health services, substance abuse services, chiropractic  
24 services, podiatric care services, and pharmaceutical  
25 services. "Limited health service" does not include inpatient,  
26 hospital surgical services, or emergency services except as  
27 such services are provided incident to the limited health  
28 services set forth in this subsection.

29 (6)~~(8)~~ "Prepaid limited health service contract" means  
30 any contract entered into by a prepaid limited health service  
31 organization with a subscriber or group of subscribers to

1 provide limited health services in exchange for a prepaid per  
2 capita or prepaid aggregate fixed sum.

3 (7)~~(9)~~ "Prepaid limited health service organization"  
4 means any person, corporation, partnership, or any other  
5 entity which, in return for a prepayment, undertakes to  
6 provide or arrange for, or provide access to, the provision of  
7 a limited health service to enrollees through an exclusive  
8 panel of providers. Prepaid limited health service  
9 organization does not include:

10 (a) An entity otherwise authorized pursuant to the  
11 laws of this state to indemnify for any limited health  
12 service;

13 (b) A provider or entity when providing limited health  
14 services pursuant to a contract with a prepaid limited health  
15 service organization, a health maintenance organization, a  
16 health insurer, or a self-insurance plan; or

17 (c) Any person who, in exchange for fees, dues,  
18 charges or other consideration, provides access to a limited  
19 health service provider without assuming any responsibility  
20 for payment for the limited health service or any portion  
21 thereof.

22 (8)~~(10)~~ "Provider" means, but is not limited to, any  
23 physician, dentist, health facility, or other person or  
24 institution which is duly licensed in this state to deliver  
25 limited health services.

26 (9)~~(11)~~ "Qualified independent actuary" means an  
27 actuary who is a member of the American Academy of Actuaries  
28 or the Society of Actuaries and has experience in establishing  
29 rates for limited health services and who has no financial or  
30 employment interest in the prepaid limited health service  
31 organization.

1           (10)~~(12)~~ "Reporting period" means the annual  
2 accounting period or fiscal year, or any part thereof, of the  
3 prepaid limited health service organization. The calendar year  
4 shall be the fiscal year for each such organization other than  
5 those holding an existing certificate of authority as of  
6 October 1, 1993.

7           (11)~~(13)~~ "Subscriber" means an individual who has  
8 contracted, or arranged, or on whose behalf a contract or  
9 arrangement has been entered into, with a prepaid limited  
10 health service organization for health care services or other  
11 persons who also receive health care services as a result of  
12 the contract.

13           (12)~~(14)~~ "Surplus" means total statutory assets in  
14 excess of total liabilities, except that assets pledged to  
15 secure debts not reflected on the books of the prepaid limited  
16 health service organization shall not be included in surplus.  
17 Surplus includes capital stock, capital in excess of par,  
18 other contributed capital, retained earnings, and surplus  
19 notes.

20           (13)~~(15)~~ "Surplus notes" means debt which has been  
21 subordinated to all claims of subscribers and general  
22 creditors of the organization and the debt instrument shall so  
23 state.

24           (14)~~(16)~~ "Statutory accounting principles" means  
25 generally accepted accounting principles, except as modified  
26 by this act.

27           (15)~~(17)~~ "Qualified employee" means an employee of the  
28 organization:

29           (a) Who has a minimum of 5 years of experience in rate  
30 determinations for prepaid health services, and who  
31 demonstrates through filings with the office ~~department~~ that

1 the person is in fact qualified under the terms of this act;  
2 or

3 (b) Who is a member of the American Academy of  
4 Actuaries or the Society of Actuaries and has experience in  
5 establishing rates for limited health service.

6 Section 1532. Section 636.006, Florida Statutes, is  
7 amended to read:

8 636.006 Insurance business not authorized.--Nothing in  
9 the Florida Insurance Code or this act authorizes any prepaid  
10 limited health service organization to transact any insurance  
11 business other than that specifically authorized by this act,  
12 or otherwise to engage in any other type of insurance unless  
13 it is authorized under a certificate of authority issued by  
14 the office ~~department~~ under the provisions of the Florida  
15 Insurance Code.

16 Section 1533. Section 636.007, Florida Statutes, is  
17 amended to read:

18 636.007 Certificate of authority required.--A person,  
19 corporation, partnership, or other entity may not operate a  
20 prepaid limited health service organization in this state  
21 without obtaining and maintaining a certificate of authority  
22 from the office ~~department~~ pursuant to this act. A political  
23 subdivision of this state which is operating an emergency  
24 medical services system and offers a prepaid ambulance service  
25 plan as a part of its emergency medical services system shall  
26 be exempt from the provisions of this act and all other  
27 provisions of the insurance code. An insurer, while authorized  
28 to transact health insurance in this state, or a health  
29 maintenance organization possessing a valid certificate of  
30 authority in this state, may also provide services under this  
31

1 act without additional qualification or authority, but shall  
2 be otherwise subject to the applicable provisions of this act.

3 Section 1534. Section 636.008, Florida Statutes, is  
4 amended to read:

5 636.008 Application for certificate of  
6 authority.--Before any entity may operate a prepaid limited  
7 health service organization, it must obtain a certificate of  
8 authority from the office ~~department~~. An application for a  
9 certificate of authority to operate a prepaid limited health  
10 service organization must be filed with the office ~~department~~  
11 on a form prescribed by the commission ~~department~~. Such  
12 application must be sworn to by an officer or authorized  
13 representative of the applicant and be accompanied by the  
14 following:

15 (1) A copy of the applicant's basic organizational  
16 document, including the articles of incorporation, articles of  
17 association, partnership agreements, trust agreement, or other  
18 applicable documents and all amendments to such documents.

19 (2) A copy of all bylaws, rules, and regulations, or  
20 similar documents, if any, regulating the conduct of the  
21 applicant's internal affairs.

22 (3) A list of the names, addresses, official  
23 positions, and biographical information of the individuals who  
24 are responsible for conducting the applicant's affairs,  
25 including, but not limited to, all members of the board of  
26 directors, board of trustees, executive committee, or other  
27 governing board or committee, the officers, contracted  
28 management company personnel, and any person or entity owning  
29 or having the right to acquire 10 percent or more of the  
30 voting securities of the applicant. Such listing must fully  
31 disclose the extent and nature of any contracts or

1 arrangements between any individual who is responsible for  
2 conducting the applicant's affairs and the prepaid limited  
3 health service organization, including any possible conflicts  
4 of interest.

5 (4) A complete biographical statement, on forms  
6 prescribed by the commission ~~department~~, an independent  
7 investigation report, and a set of fingerprints, as provided  
8 in chapter 624, with respect to each individual identified  
9 under subsection (3).

10 (5) A statement generally describing the applicant,  
11 its facilities and personnel, and the limited health service  
12 or services to be offered.

13 (6) A copy of the form of all contracts made or to be  
14 made between the applicant and any providers regarding the  
15 provision of limited health services to enrollees.

16 (7) A copy of the form of any contract made or  
17 arrangement to be made between the applicant and any person  
18 listed in subsection (3).

19 (8) A copy of the form of any contract made or to be  
20 made between the applicant and any person, corporation,  
21 partnership, or other entity for the performance on the  
22 applicant's behalf of any function, including, but not limited  
23 to, marketing, administration, enrollment, investment  
24 management, and subcontracting for the provision of limited  
25 health services to enrollees.

26 (9) A copy of the form of any prepaid limited health  
27 service contract which is to be issued to employers, unions,  
28 trustees, individuals, or other organizations and a copy of  
29 any form of evidence of coverage to be issued to subscribers.

30  
31

1           (10) A copy of the applicant's most recent financial  
2 statements audited by an independent certified public  
3 accountant.

4           (11) A copy of the applicant's financial plan,  
5 including a 3-year projection of anticipated operating  
6 results, a statement of the sources of funding, and provisions  
7 for contingencies, for which projection all material  
8 assumptions shall be disclosed.

9           (12) A schedule of rates and charges for each contract  
10 to be used which contains an opinion from a qualified  
11 independent actuary or a qualified employee that the rates are  
12 not inadequate, excessive, or discriminatory. If a prepaid  
13 limited health service organization does not employ or  
14 otherwise retain the services of an independent actuary, the  
15 chief executive officer of the prepaid limited health service  
16 organization must review and sign the certification indicating  
17 her or his agreement with its conclusions. If the office  
18 ~~department~~ determines that, based upon documents filed with  
19 the office ~~department~~, the qualified employee is not  
20 qualified, the organization shall retain the services of a  
21 qualified independent actuary.

22           (13) A description of the proposed method of  
23 marketing.

24           (14) A description of the subscriber complaint  
25 procedures to be established and maintained as required under  
26 s. 636.038.

27           (15) A description of how the applicant will comply  
28 with s. 636.046.

29           (16) The fee for issuance of a certificate of  
30 authority as provided in s. 636.057.

31

1           (17) Such other information as the commission or  
2 office department may reasonably require to make the  
3 determinations required by this act.

4  
5 The office department shall issue a certificate of authority  
6 which shall expire on June 1 each year and which the office  
7 department shall renew if the applicant pays the license fees  
8 provided in s. 636.057 and if the office department is  
9 satisfied that the organization is in compliance with this  
10 act.

11           Section 1535. Section 636.009, Florida Statutes, is  
12 amended to read:

13           636.009 Issuance of certificate of authority;  
14 denial.--

15           (1) Following receipt of an application filed pursuant  
16 to s. 636.008, the office department shall review such  
17 application and notify the applicant of any deficiencies  
18 contained therein. The office department shall issue a  
19 certificate of authority to an applicant who has filed a  
20 completed application in conformity with s. 636.008, upon  
21 payment of the fees specified by s. 636.057 and upon the  
22 office department being satisfied that the following  
23 conditions are met:

24           (a) The requirements of s. 636.008 have been  
25 fulfilled.

26           (b) The entity is actuarially sound.

27           (c) The entity has met the applicable minimum surplus  
28 requirements specified in s. 636.045.

29           (d) The procedures for offering limited health  
30 services and offering and terminating contracts to subscribers  
31 will not unfairly discriminate on the basis of age, sex, race,

1 | handicap, health, or economic status. However, this paragraph  
2 | does not prohibit reasonable underwriting classifications for  
3 | the purposes of establishing contract rates, nor does it  
4 | prohibit prospective experience rating.

5 |         (e) The entity furnished evidence of adequate  
6 | insurance coverage, including, but not limited to, general  
7 | liability or professional liability coverage, or an adequate  
8 | plan for self-insurance to respond to claims for injuries  
9 | arising out of the furnishing covered services.

10 |         (f) The ownership, control, and management of the  
11 | entity are competent and trustworthy and possess managerial  
12 | experience that would make the proposed operation beneficial  
13 | to the subscribers. The office ~~department~~ shall not grant or  
14 | continue authority to transact the business of a prepaid  
15 | limited health service organization in this state at any time  
16 | during which the office ~~department~~ has good reason to believe  
17 | that the ownership, control, or management of the organization  
18 | includes any person whose business operations are or have been  
19 | marked by business practices or conduct that is to the  
20 | detriment of the public, stockholders, investors, or  
21 | creditors.

22 |         (g) The entity has demonstrated compliance with s.  
23 | 636.047 by obtaining a blanket fidelity bond in the amount of  
24 | at least \$50,000, issued by a licensed insurance carrier in  
25 | this state, that will reimburse the entity in the event that  
26 | anyone handling the funds of the entity either misappropriates  
27 | or absconds with the funds. All employees handling the funds  
28 | must be covered by the blanket fidelity bond. However, the  
29 | fidelity bond need not cover an individual who owns 100  
30 | percent of the stock of the organization if such stockholder  
31 | maintains total control of the organization's financial

1 assets, books and records, and fidelity bond coverage is not  
2 available for such individual. An agent licensed under the  
3 provisions of the Florida Insurance Code may, either directly  
4 or indirectly, represent the prepaid limited health service  
5 organization in the solicitation, negotiation, effectuation,  
6 procurement, receipt, delivery, or forwarding of any  
7 subscriber's contract, or collect or forward any consideration  
8 paid by the subscriber to the prepaid limited health service  
9 organization. The licensed agent shall not be required to post  
10 the bond required by this subsection.

11 (h) The prepaid limited health service organization  
12 has a grievance procedure that will facilitate the resolution  
13 of subscriber grievances and that includes both formal and  
14 informal steps available within the organization.

15 (i) The applicant is financially responsible and may  
16 reasonably be expected to meet its obligations to enrollees  
17 and to prospective enrollees. In making this determination,  
18 the office ~~department~~ may consider:

19 1. The financial soundness of the applicant's  
20 arrangements for limited health services and the minimum  
21 standard rates, deductibles, copayments, and other patient  
22 charges used in connection therewith.

23 2. The adequacy of surplus, other sources of funding,  
24 and provisions for contingencies.

25 3. The manner in which the requirements of s. 636.046  
26 have been fulfilled.

27 (j) The agreements with providers for the provision of  
28 limited health services contain the provisions required by s.  
29 636.035.

30 (k) Any deficiencies identified by the office  
31 ~~department~~ have been corrected.

1 (1) All requirements of this chapter have been met.

2 (2) If the certificate of authority is denied, the  
3 office ~~department~~ shall notify the applicant and shall specify  
4 the reasons for denial in the notice.

5 Section 1536. Section 636.015, Florida Statutes, is  
6 amended to read:

7 636.015 Language used in contracts and advertisements;  
8 translations.--

9 (1)(a) All contracts or forms must be printed in  
10 English.

11 (b) If the negotiations leading up to the effectuation  
12 of a prepaid limited health service organization contract are  
13 conducted in a language other than English, the prepaid  
14 limited health service organization must supply to the member  
15 a written translation of the contract, which translation  
16 accurately reflects the substance of the contract and is in  
17 the language used to negotiate the contract. The written  
18 translation must be affixed to, and shall become a part of,  
19 the contract or form, including a certification that the  
20 written translation is identical to the English version. Any  
21 such translation must be furnished to the office ~~department~~ as  
22 part of the filing of the prepaid limited health services  
23 contract form. No translation of a prepaid limited health  
24 services contract form may be approved by the office  
25 ~~department~~ unless the translation accurately reflects the  
26 substance of the prepaid limited health services contract form  
27 in translation.

28 (2) The text of all advertisements by a prepaid  
29 limited health service organization, if printed or broadcast  
30 in a language other than English, also must be available in  
31 English and must be furnished to the office ~~department~~ upon

1 request. As used in this subsection, the term "advertisement"  
2 means any advertisement, circular, pamphlet, brochure, or  
3 other printed material disclosing or disseminating advertising  
4 material or information by a prepaid limited health service  
5 organization to prospective or existing subscribers and  
6 includes any radio or television transmittal of an  
7 advertisement or information.

8 Section 1537. Paragraph (a) of subsection (1) of  
9 section 636.016, Florida Statutes, is amended to read:

10 636.016 Prepaid limited health service contracts.--For  
11 any entity licensed prior to October 1, 1993, all subscriber  
12 contracts in force at such time shall be in compliance with  
13 this section upon renewal of such contract.

14 (1) Any entity issued a certificate of authority and  
15 otherwise in compliance with this act may enter into contracts  
16 in this state to provide an agreed-upon set of limited health  
17 services to subscribers in exchange for a prepaid per capita  
18 sum or a prepaid aggregate fixed sum.

19 (a) The office ~~department~~ shall disapprove any form  
20 filed under this subsection, or withdraw any previous approval  
21 thereof, if the form:

22 1. Is in any respect in violation of, or does not  
23 comply with, any provision of this act or rule adopted  
24 thereunder.

25 2. Contains or incorporates by reference, where such  
26 incorporation is otherwise permissible, any inconsistent,  
27 ambiguous, or misleading clauses or exceptions and conditions  
28 which deceptively affect the risk purported to be assumed in  
29 the general coverage of the contract.

30 3. Has any title, heading, or other indication of its  
31 provisions which is misleading.

1           4. Is printed or otherwise reproduced in such a manner  
2 as to render any material provision of the form substantially  
3 illegible.

4           5. Contains provisions which are unfair, inequitable,  
5 or contrary to the public policy of this state or which  
6 encourage misrepresentation.

7           6. Charges rates that are determined by the office  
8 ~~department~~ to be inadequate, excessive, or unfairly  
9 discriminatory, or if the rating methodology followed by the  
10 prepaid limited health service organization is determined by  
11 the office ~~department~~ to be inconsistent with the provisions  
12 of s. 636.017.

13           Section 1538. Section 636.017, Florida Statutes, is  
14 amended to read:

15           636.017 Rates and charges.--

16           (1) The rates charged by any prepaid limited health  
17 service organization to its subscribers shall not be  
18 excessive, inadequate, or unfairly discriminatory. The  
19 commission or office ~~department~~ may require whatever  
20 information it deems necessary to determine that a rate or  
21 proposed rate meets the requirements of this section.

22           (2) In determining whether a rate is in compliance  
23 with subsection (1), the office ~~department~~ must take into  
24 consideration the limited services provided, the method in  
25 which the services are provided, and the method of provider  
26 payment. This section may not be construed as authorizing the  
27 commission ~~department~~ to establish by rule minimum loss ratios  
28 for prepaid limited health service organizations' rates.

29           Section 1539. Section 636.018, Florida Statutes, is  
30 amended to read:

31

1           636.018 Changes in rates and benefits; material  
2 modifications; addition of limited health services.--

3           (1)(a) No prepaid limited health services contract,  
4 certificate of coverage, application, enrollment form, rider,  
5 endorsement, and applicable rates to be charged may be  
6 delivered in this state unless the forms and rates have been  
7 filed with the office ~~department~~ by or on behalf of the  
8 prepaid limited health service organization and have been  
9 approved by the office ~~department~~. Every form filed shall be  
10 identified by a unique form number placed in the lower left  
11 corner of each form. If a prepaid limited health service  
12 organization desires to amend any contract with its  
13 subscribers or any certificate or member handbook, or desires  
14 to change any rate charged for the contract or to change any  
15 basic prepaid limited health services contract, certificate,  
16 grievance procedure, or member handbook form, or application  
17 form where written application is required and is to be made a  
18 part of the contract, or printed amendment, addendum, rider,  
19 or endorsement form or form renewal certificate, it must file  
20 such changes 30 days prior to the effective date of the  
21 proposed change. At least 30 days' written notice must be  
22 provided to the subscriber before application of any approved  
23 change in rates. In the case of a group enrollee, there may  
24 be a contractual agreement with the prepaid limited health  
25 service organization to have the contract holder provide the  
26 required notice to the individual enrollees of the group. Any  
27 proposed change must contain information as required by s.  
28 636.017.

29           (b) The prepaid limited health service organization's  
30 certification must be prepared by an independent actuary or a  
31 qualified employee. The chief executive officer of the

1 prepaid limited health service organization must review and  
2 sign the certification indicating her or his agreement with  
3 its conclusions. Following receipt of notice of any  
4 disapproval or withdrawal of approval, no prepaid limited  
5 health service organization may issue or use any form  
6 disapproved by the office ~~department~~ or as to which the office  
7 ~~department~~ has withdrawn approval.

8 (2) If such filings are disapproved, the office  
9 ~~department~~ shall notify the prepaid limited health service  
10 organization and shall specify the reasons for disapproval in  
11 the notice. The prepaid limited health service organization  
12 has 21 days from the date of receipt of notice to request a  
13 hearing before the office ~~department~~ pursuant to chapter 120.

14 Section 1540. Subsection (2) of section 636.025,  
15 Florida Statutes, is amended to read:

16 636.025 Validity of noncomplying contracts.--

17 (2) Any prepaid limited health services contract  
18 delivered or issued for delivery in this state covering a  
19 subscriber, which subscriber pursuant to the provisions of  
20 this act the organization may not lawfully cover under the  
21 contract, is cancelable at any time by the organization, any  
22 provision of the contract to the contrary notwithstanding, and  
23 the organization must promptly cancel the contract in  
24 accordance with the request of the office ~~department~~ therefor.  
25 No such illegality or cancellation may be deemed to relieve  
26 the organization of any liability incurred by it under the  
27 contract while in force or to prohibit the organization from  
28 retaining the pro rata earned premium or rate thereon. This  
29 subsection does not relieve the organization from any penalty  
30 otherwise incurred by the organization under this act for any  
31 such violation.

1           Section 1541. Subsection (3) of section 636.029,  
2 Florida Statutes, is amended to read:

3           636.029 Construction and relationship with other  
4 laws.--

5           (3) The department and office are ~~is~~ vested with all  
6 powers granted to it under the insurance code with respect to  
7 the investigation of any violation of this act within their  
8 respective regulatory jurisdictions.

9           Section 1542. Section 636.036, Florida Statutes, is  
10 amended to read:

11           636.036 Administrative, provider, and management  
12 contracts.--

13           (1) The office ~~department~~ may require a prepaid  
14 limited health service organization to submit any contract for  
15 administrative services, contract with a provider physician,  
16 contract for management services, or contract with an  
17 affiliated entity to the office ~~department~~ if the office  
18 ~~department~~ has information that the prepaid limited health  
19 service organization has entered into a contract which  
20 requires it to pay a fee which is unreasonably high in  
21 relation to the service provided.

22           (2) After review of a contract, the office ~~department~~  
23 may order the prepaid limited health service organization to  
24 cancel the contract if it determines that the fees to be paid  
25 by the prepaid limited health service organization under the  
26 contract are so unreasonably high as compared with similar  
27 contracts entered into by the prepaid limited health service  
28 organization in similar circumstances that the contract is  
29 detrimental to the subscribers, stockholders, investors, or  
30 creditors of the prepaid limited health service organization.

31

1           (3) All contracts for administrative services,  
2 management services, or provider services or contracts with  
3 affiliated entities, entered into or renewed by a prepaid  
4 limited health service organization on or after October 1,  
5 1993, must contain a provision that the contract will be  
6 canceled upon issuance of an order by the office ~~department~~  
7 pursuant to this section.

8           Section 1543. Section 636.037, Florida Statutes, is  
9 amended to read:

10           636.037 Contract providers.--Each prepaid limited  
11 health service organization must, upon the request of the  
12 office ~~department~~, file financial statements for all contract  
13 providers of limited health care services who have assumed  
14 through capitation or other means more than 10 percent of the  
15 health care risks of the prepaid limited health service  
16 organization.

17           Section 1544. Section 636.038, Florida Statutes, is  
18 amended to read:

19           636.038 Complaint system; annual report.--

20           (1) Every prepaid limited health service organization  
21 must establish and maintain a complaint system providing  
22 reasonable procedures for resolving written complaints  
23 initiated by enrollees and providers. This section does not  
24 preclude an enrollee or a provider from filing a complaint  
25 with the department or office or limit the department's or  
26 office's ability to investigate such complaints.

27           (2) Every prepaid limited health service organization  
28 shall report annually to the department and office the total  
29 number of grievances handled, a categorization of the cases  
30 underlying the grievances, and the final disposition of the  
31 grievances.

1           Section 1545. Section 636.039, Florida Statutes, is  
2 amended to read:

3           636.039 Examination by the office ~~department~~.--The  
4 office ~~department~~ shall examine the affairs, transactions,  
5 accounts, business records, and assets of any prepaid limited  
6 health service organization, in the same manner and subject to  
7 the same terms and conditions that apply to insurers under  
8 part II of chapter 624, as often as it deems it expedient for  
9 the protection of the people of this state, but not less  
10 frequently than once every 3 years. In lieu of making its own  
11 financial examination, the office ~~department~~ may accept an  
12 independent certified public accountant's audit report  
13 prepared on a statutory accounting basis consistent with this  
14 act. However, except when the medical records are requested  
15 and copies furnished pursuant to s. 456.057, medical records  
16 of individuals and records of physicians providing service  
17 under contract to the prepaid limited health service  
18 organization are not subject to audit, but may be subject to  
19 subpoena by court order upon a showing of good cause. For the  
20 purpose of examinations, the office ~~department~~ may administer  
21 oaths to and examine the officers and agents of a prepaid  
22 limited health service organization concerning its business  
23 and affairs. The expenses of examination of each prepaid  
24 limited health service organization by the office ~~department~~  
25 are subject to the same terms and conditions as apply to  
26 insurers under part II of chapter 624. Expenses of all  
27 examinations of a prepaid limited health service organization  
28 may never exceed a maximum of \$20,000 for any 1-year period.

29           Section 1546. Section 636.043, Florida Statutes, is  
30 amended to read:

31

1           636.043 Annual, quarterly, and miscellaneous  
2 reports.--

3           (1) Each prepaid limited health service organization  
4 must file with the office ~~department~~ annually, within 3 months  
5 after the end of its fiscal year, a report verified by the  
6 oath of at least two officers covering the preceding calendar  
7 year. Any organization licensed prior to October 1, 1993,  
8 shall not be required to file a financial statement, as  
9 required by paragraph (2)(a), based on statutory accounting  
10 principles until the first annual report for fiscal years  
11 ending after December 31, 1994.

12           (2) Such report must be on forms prescribed by the  
13 commission ~~department~~ and must include:

14           (a)1. A statutory financial statement of the  
15 organization prepared in accordance with statutory accounting  
16 principles, including its balance sheet, income statement, and  
17 statement of changes in cash flow for the preceding year,  
18 certified by an independent certified public accountant, or a  
19 consolidated audited financial statement of its parent company  
20 prepared on the basis of statutory accounting principles,  
21 certified by an independent certified public accountant,  
22 attached to which must be consolidating financial statements  
23 of the parent company, including the prepaid limited health  
24 service organization.

25           2. Any entity subject to this chapter may make written  
26 application to the office ~~department~~ for approval to file  
27 audited financial statements prepared in accordance with  
28 generally accepted accounting principles in lieu of statutory  
29 financial statements. The office ~~department~~ shall approve the  
30 application if it finds it to be in the best interest of the  
31 subscribers. An application for exemption is required each

1 year and must be filed with the office ~~department~~ at least 2  
2 months prior to the end of the fiscal year for which the  
3 exemption is being requested.

4 (b) A list of the names and residence addresses of all  
5 persons responsible for the conduct of its affairs, together  
6 with a disclosure of the extent and nature of any contracts or  
7 arrangements between such persons and the prepaid limited  
8 health service organization, including any possible conflicts  
9 of interest.

10 (c) The number of prepaid limited health services  
11 contracts, issued and outstanding, and the number of prepaid  
12 limited health services contracts terminated.

13 (d) The number and amount of damage claims for medical  
14 injury initiated against the prepaid limited health service  
15 organization, and if known, any of the providers engaged by it  
16 during the reporting year, broken down into claims with and  
17 without formal legal process, and the disposition, if any, of  
18 each such claim.

19 (e) An actuarial report certified by a qualified  
20 independent actuary or qualified employee that:

21 1. The prepaid limited health service organization is  
22 actuarially sound, which certification shall consider the  
23 rates, benefits, and expenses of, and any other funds  
24 available for, the payment of obligations of the organization.

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

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

30  
31

1           (f) Such other information relating to the performance  
2 of the prepaid limited health service organization as is  
3 reasonably required by the commission or office ~~department~~.

4           (3) Every prepaid limited health service organization  
5 which fails to file an annual report or quarterly report in  
6 the form and within the time required by this section shall  
7 forfeit up to \$500 for each day for the first 10 days during  
8 which the neglect continues and shall forfeit up to \$1,000 for  
9 each day after the first 10 days during which the neglect  
10 continues; and, upon notice by the office ~~department~~ to that  
11 effect, the organization's authority to enroll new subscribers  
12 or to do business in this state ceases while such default  
13 continues. The office ~~department~~ shall deposit all sums  
14 collected by it under this section to the credit of the  
15 Insurance ~~Commissioner's~~ Regulatory Trust Fund. The office  
16 ~~department~~ may not collect more than \$50,000 for each report.

17           (4) Each authorized prepaid limited health service  
18 organization must file a quarterly report for each calendar  
19 quarter within 45 days after the end of the quarter. The  
20 report shall contain:

21           (a) A financial statement prepared in accordance with  
22 statutory accounting principles. Any entity licensed before  
23 October 1, 1993, shall not be required to file a financial  
24 statement based on statutory accounting principles until the  
25 first quarterly filing after the entity files its annual  
26 financial statement based on statutory accounting principles  
27 as required by subsection (1).

28           (b) A listing of providers.

29           (c) Such other information relating to the performance  
30 of the prepaid limited health service organization as is  
31 reasonably required by the commission or office ~~department~~.

1           (5) The office ~~department~~ may require monthly reports  
2 if the financial condition of the prepaid limited health  
3 service organization has deteriorated from previous periods or  
4 if the financial condition of the organization is such that it  
5 may be hazardous to subscribers if not monitored more  
6 frequently.

7           (6) Each authorized prepaid limited health service  
8 organization shall retain an independent certified public  
9 accountant, hereinafter referred to as "CPA," who agrees by  
10 written contract with the prepaid limited health service  
11 organization to comply with the provisions of this act. The  
12 contract must state that:

13           (a) The CPA will provide to the prepaid limited health  
14 service organization audited statutory financial statements  
15 consistent with this act.

16           (b) Any determination by the CPA that the prepaid  
17 limited health service organization does not meet minimum  
18 surplus requirements as set forth in this act will be stated  
19 by the CPA, in writing, in the audited financial statement.

20           (c) The completed workpapers and any written  
21 communications between the CPA and the prepaid limited health  
22 service organization relating to the audit of the prepaid  
23 limited health service organization will be made available for  
24 review on a visual-inspection-only basis by the office  
25 ~~department~~ at the offices of the prepaid limited health  
26 service organization, at the office ~~department~~, or at any  
27 other reasonable place as mutually agreed between the office  
28 ~~department~~ and the prepaid limited health service  
29 organization. The CPA must retain for review the workpapers  
30 and written communications for a period of not less than 6  
31 years.

1           Section 1547. Subsection (2) of section 636.045,  
2 Florida Statutes, is amended to read:

3           636.045 Minimum surplus requirements.--

4           (2) The office ~~department~~ may not issue a certificate  
5 of authority unless the prepaid limited health service  
6 organization has a minimum surplus in an amount of \$150,000 or  
7 10 percent of liabilities, whichever is the greater amount.

8           Section 1548. Subsections (1) and (2) of section  
9 636.046, Florida Statutes, are amended to read:

10          636.046 Insolvency protection.--

11          (1) Except as required in subsection (2), each prepaid  
12 limited health service organization must deposit with the  
13 department cash or securities of the type eligible under s.  
14 641.35 which must have at all times a market value in the  
15 amount set forth in this subsection. The amount of the deposit  
16 shall be reviewed annually or more often as the office  
17 ~~department~~ deems necessary. The market value of the deposit  
18 must be \$50,000.

19          (2)(a) If securities or assets deposited by a prepaid  
20 limited health service organization under this act are subject  
21 to material fluctuations in market value, the office  
22 ~~department~~ may in its discretion require the organization to  
23 deposit and maintain on deposit additional securities or  
24 assets in an amount as may be reasonably necessary to assure  
25 that the deposit will at all times have a market value of not  
26 less than the amount specified under this section.

27          (b) If for any reason the market value of assets and  
28 securities of a prepaid limited health service organization  
29 held on deposit under this act falls below the amount  
30 required, the organization must promptly deposit other or  
31 additional assets or securities eligible for deposit

1 sufficient to cure the deficiency. If the prepaid limited  
2 health service organization has failed to cure the deficiency  
3 within 30 days after receipt of notice by certified mail from  
4 the office ~~department~~, the office ~~department~~ may revoke the  
5 certificate of authority of the prepaid limited health service  
6 organization.

7 (c) A prepaid limited health service organization may,  
8 at its option, deposit assets or securities in an amount  
9 exceeding its deposit required or otherwise permitted under  
10 this act for the purpose of absorbing fluctuations in the  
11 value of securities and assets deposited and to facilitate the  
12 exchange and substitution of securities and assets. During  
13 the solvency of the prepaid limited health service  
14 organization any excess must be released to the organization  
15 upon its request. During the insolvency of the prepaid  
16 limited health service organization, any excess deposit may be  
17 released only as provided in s. 625.62.

18 Section 1549. Section 636.047, Florida Statutes, is  
19 amended to read:

20 636.047 Officers' and employees' fidelity bond.--

21 (1) A prepaid limited health service organization must  
22 maintain in force a fidelity bond in its own name on its  
23 officers and employees, in an amount not less than \$50,000 or  
24 in any other amount prescribed by the commission ~~department~~.  
25 Except as otherwise provided by this subsection, the bond must  
26 be issued by an insurance company that is licensed to do  
27 business in this state.

28 (2) In lieu of the bond specified in subsection (1), a  
29 prepaid limited health service organization may deposit with  
30 the department cash or securities or other investments of the  
31 types set forth in s. 636.042. Such a deposit must be

1 maintained in joint custody with the department ~~commissioner~~  
2 in the amount and subject to the same conditions required for  
3 a bond under this subsection.

4 Section 1550. Section 636.048, Florida Statutes, is  
5 amended to read:

6 636.048 Suspension or revocation of certificate of  
7 authority; suspension of enrollment of new subscribers; terms  
8 of suspension.--

9 (1) The office ~~department~~ may suspend the authority of  
10 a prepaid limited health service organization to enroll new  
11 subscribers or revoke any certificate issued to a prepaid  
12 limited health service organization or order compliance within  
13 30 days, if it finds that any of the following conditions  
14 exist:

15 (a) The organization is not operating in compliance  
16 with this act.

17 (b) The plan is no longer actuarially sound or the  
18 organization does not have the minimum surplus as required by  
19 this act.

20 (c) The organization has advertised, merchandised, or  
21 attempted to merchandise its services in such a manner as to  
22 misrepresent its services or capacity for service or has  
23 engaged in deceptive, misleading, or unfair practices with  
24 respect to advertising or merchandising.

25 (d) The organization is insolvent.

26 (e) The prepaid limited health service organization is  
27 operating significantly in contravention of its basic  
28 organizational document or in a manner contrary to that  
29 described in and reasonably inferred from any other  
30 information submitted pursuant to ss. 636.008 and 636.009,  
31

1 unless amendments to such submissions have been filed with and  
2 approved by the office ~~department~~.

3 (f) The prepaid limited health service organization is  
4 unable to fulfill its obligations to furnish limited health  
5 services.

6 (g) The prepaid limited health service organization  
7 has no subscribers 12 months after the issuance of the  
8 certificate of authority.

9 (h) The continued operation of the prepaid limited  
10 health service organization would be hazardous to its  
11 enrollees.

12 (2) If the office ~~department~~ has cause to believe that  
13 grounds for the suspension or revocation of a certificate of  
14 authority exist, it shall notify the prepaid limited health  
15 service organization in writing specifically stating the  
16 grounds for suspension or revocation and shall pursue a  
17 hearing on the matter in accordance with the provisions of  
18 chapter 120.

19 (3) When the certificate of authority of a prepaid  
20 limited health service organization is surrendered or revoked,  
21 such organization must proceed, immediately following the  
22 effective date of the order of revocation, to wind up its  
23 affairs transacted under the certificate of authority. It may  
24 not engage in any further advertising, solicitation, or  
25 renewal of contracts. The office ~~department~~ may, by written  
26 order, permit such further operation of the organization as it  
27 finds to be in the best interest of enrollees, so that  
28 enrollees will be afforded the greatest practical opportunity  
29 to obtain continuing limited health services.

30 (4) The office ~~department~~ shall, in its order  
31 suspending the authority of a prepaid limited health service

1 organization to enroll new subscribers, specify the period  
2 during which the suspension is to be in effect and the  
3 conditions, if any, which must be met by the prepaid limited  
4 health service organization prior to reinstatement of its  
5 authority to enroll new subscribers. The order of suspension  
6 is subject to rescission or modification by further order of  
7 the office ~~department~~ prior to the expiration of the  
8 suspension period. Reinstatement may not be made unless  
9 requested by the prepaid limited health service organization;  
10 however, the office ~~department~~ may not grant reinstatement if  
11 it finds that the circumstances for which the suspension  
12 occurred still exist or are likely to recur.

13 Section 1551. Section 636.049, Florida Statutes, is  
14 amended to read:

15 636.049 Administrative penalty in lieu of suspension  
16 or revocation.--In lieu of suspending or revoking a  
17 certificate of authority, or when no penalty is specifically  
18 provided, whenever any prepaid limited health service  
19 organization or other person, corporation, partnership, or  
20 entity subject to this act has been found to have violated any  
21 provision of this act, the office or department, within its  
22 respective regulatory jurisdiction, may:

23 (1) Issue and cause to be served upon the  
24 organization, person, or entity charged with the violation a  
25 copy of such findings and an order requiring such  
26 organization, person, or entity to cease and desist from  
27 engaging in the act or practice which constitutes the  
28 violation.

29 (2) Impose a monetary penalty of not less than \$100  
30 for each violation, but not to exceed an aggregate penalty of  
31 \$100,000.

1           Section 1552. Section 636.052, Florida Statutes, is  
2 amended to read:

3           636.052 Civil remedy.--In any civil action brought to  
4 enforce the terms and conditions of a prepaid limited health  
5 service organization contract, the prevailing party is  
6 entitled to recover reasonable attorney's fees and court  
7 costs. This section does not authorize a civil action against  
8 the office or department, its employees, ~~or the commissioner~~  
9 or against the Agency for Health Care Administration, its  
10 employees, or the director of that agency.

11           Section 1553. Section 636.053, Florida Statutes, is  
12 amended to read:

13           636.053 Injunction.--In addition to the penalties and  
14 other enforcement provisions of this act, the office  
15 ~~department~~ is vested with the power to seek both temporary and  
16 permanent injunctive relief when:

17           (1) A prepaid limited health service organization is  
18 being operated by any person or entity without a subsisting  
19 certificate of authority.

20           (2) Any person, entity, or prepaid limited health  
21 service organization has engaged in any activity prohibited by  
22 this act or any rule adopted pursuant thereto.

23           (3) Any prepaid limited health service organization,  
24 person, or entity is renewing, issuing, or delivering a  
25 prepaid limited health services contract without a subsisting  
26 certificate of authority.

27  
28 The office's or department's authority to seek injunctive  
29 relief is not conditioned on having conducted any proceeding  
30 pursuant to chapter 120.

31

1           Section 1554. Section 636.055, Florida Statutes, is  
2 amended to read:

3           636.055 Levy upon deposit limited.--No judgment  
4 creditor or other claimant, other than the office ~~department~~,  
5 of a prepaid limited health service organization shall have  
6 the right to levy upon any of the assets or securities held in  
7 this state as a deposit under s. 636.046.

8           Section 1555. Subsection (1) of section 636.056,  
9 Florida Statutes, is amended to read:

10           636.056 Rehabilitation, conservation, liquidation, or  
11 reorganization; exclusive methods of remedy.--

12           (1) A delinquency proceeding under part I of chapter  
13 631 or supervision ~~by the department~~ pursuant to ss.  
14 624.80-624.87 constitute the sole and exclusive means of  
15 liquidating, reorganizing, rehabilitating, or conserving a  
16 prepaid limited health service organization.

17           Section 1556. Section 636.057, Florida Statutes, is  
18 amended to read:

19           636.057 Fees.--Every prepaid limited health service  
20 organization subject to this act must pay to the office  
21 ~~department~~ the following fees:

22           (1) For filing an application for a certificate of  
23 authority or amendment thereto: \$500.

24           (2) For filing each annual report: \$200.

25           (3) For each renewal of certificate of authority:  
26 \$500.

27           Section 1557. Section 636.058, Florida Statutes, is  
28 amended to read:

29           636.058 Investigative power of department and  
30 office.--The department and office, within their respective  
31 regulatory jurisdictions, have ~~has~~ the power to examine and

1 investigate the affairs of every person, entity, or prepaid  
2 limited health service organization in order to determine  
3 whether the person, entity, or prepaid limited health service  
4 organization is operating in accordance with the provisions of  
5 this act or has been or is engaged in any unfair method of  
6 competition or in any unfair or deceptive act or practice  
7 prohibited by s. 641.3903. The office ~~department~~ also has the  
8 powers enumerated in ss. 641.3907, 641.3909, and 641.3913.

9 Section 1558. Section 636.062, Florida Statutes, is  
10 amended to read:

11 636.062 Appeals from the office or department.--Any  
12 person, entity, or prepaid limited health service organization  
13 subject to an order of the office or department under s.  
14 641.3909 or s. 641.3913 may obtain a review of the order by  
15 filing an appeal therefrom in accordance with the provisions  
16 and procedures for appeal under s. 120.68.

17 Section 1559. Section 636.063, Florida Statutes, is  
18 amended to read:

19 636.063 Civil liability.--The provisions of this act  
20 are cumulative to rights under the general civil and common  
21 law, and no action of the office or department abrogates such  
22 rights to damage or other relief in any court.

23 Section 1560. Subsection (3) of section 636.064,  
24 Florida Statutes, is amended to read:

25 636.064 Confidentiality.--

26 (3) Any information obtained or produced by the  
27 department or office pursuant to an examination or  
28 investigation is confidential and exempt from the provisions  
29 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
30 until the examination report has been filed pursuant to s.  
31 624.319 or until such investigation is completed or ceases to

1 be active. For purposes of this subsection, an investigation  
2 is considered "active" while such investigation is being  
3 conducted by the department or office with a reasonable, good  
4 faith belief that it may lead to the filing of administrative,  
5 civil, or criminal proceedings. An investigation does not  
6 cease to be active if the department or office is proceeding  
7 with reasonable dispatch and there is a good faith belief that  
8 action may be initiated by the department or office or other  
9 administrative or law enforcement agency. Except for active  
10 criminal intelligence or criminal investigative information,  
11 as defined in s. 119.011; personal financial and medical  
12 information; information that would defame or cause  
13 unwarranted damage to the good name or reputation of an  
14 individual; information that would impair the safety and  
15 financial soundness of the licensee or affiliated party;  
16 proprietary financial information; or information that would  
17 reveal the identity of a confidential source, all information  
18 obtained by the department or office pursuant to an  
19 examination or investigation shall be available after the  
20 examination report has been filed or the investigation is  
21 completed or ceases to be active.

22 Section 1561. Section 636.067, Florida Statutes, is  
23 amended to read:

24 636.067 Rules.--The commission may ~~department has~~  
25 ~~authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54  
26 to implement the provisions of this act. A violation of any  
27 such rule subjects the violator to the provisions of s.  
28 636.048.

29 Section 1562. Section 641.185, Florida Statutes, is  
30 amended to read:

31

1           641.185 Health maintenance organization subscriber  
2 protections.--

3           (1) With respect to the provisions of this part and  
4 part III, the principles expressed in the following statements  
5 shall serve as standards to be followed by the commission, the  
6 office, the department, ~~of Insurance~~ and the Agency for Health  
7 Care Administration in exercising their powers and duties, in  
8 exercising administrative discretion, in administrative  
9 interpretations of the law, in enforcing its provisions, and  
10 in adopting rules:

11           (a) A health maintenance organization shall ensure  
12 that the health care services provided to its subscribers  
13 shall be rendered under reasonable standards of quality of  
14 care which are at a minimum consistent with the prevailing  
15 standards of medical practice in the community pursuant to ss.  
16 641.495(1) and 641.51.

17           (b) A health maintenance organization subscriber  
18 should receive quality health care from a broad panel of  
19 providers, including referrals, preventive care pursuant to s.  
20 641.402(1), emergency screening and services pursuant to ss.  
21 641.31(12) and 641.513, and second opinions pursuant to s.  
22 641.51.

23           (c) A health maintenance organization subscriber  
24 should receive assurance that the health maintenance  
25 organization has been independently accredited by a national  
26 review organization pursuant to s. 641.512, and is financially  
27 secure as determined by the state pursuant to ss. 641.221,  
28 641.225, and 641.228.

29           (d) A health maintenance organization subscriber  
30 should receive continuity of health care, even after the  
31

1 provider is no longer with the health maintenance organization  
2 pursuant to s. 641.51(8).

3 (e) A health maintenance organization subscriber  
4 should receive timely, concise information regarding the  
5 health maintenance organization's reimbursement to providers  
6 and services pursuant to ss. 641.31 and 641.31015 and should  
7 receive prompt payment from the organization pursuant to s.  
8 641.3155.

9 (f) A health maintenance organization subscriber  
10 should receive the flexibility to transfer to another Florida  
11 health maintenance organization, regardless of health status,  
12 pursuant to ss. 641.228, 641.3104, 641.3107, 641.3111,  
13 641.3921, and 641.3922.

14 (g) A health maintenance organization subscriber  
15 should be eligible for coverage without discrimination against  
16 individual participants and beneficiaries of group plans based  
17 on health status pursuant to s. 641.31073.

18 (h) A health maintenance organization that issues a  
19 group health contract must: provide coverage for preexisting  
20 conditions pursuant to s. 641.31071; guarantee renewability of  
21 coverage pursuant to s. 641.31074; provide notice of  
22 cancellation pursuant to s. 641.3108; provide extension of  
23 benefits pursuant to s. 641.3111; provide for conversion on  
24 termination of eligibility pursuant to s. 641.3921; and  
25 provide for conversion contracts and conditions pursuant to s.  
26 641.3922.

27 (i) A health maintenance organization subscriber  
28 should receive timely and, if necessary, urgent grievances and  
29 appeals within the health maintenance organization pursuant to  
30 ss. 641.228, 641.31(5), 641.47, and 641.511.

31

1 (j) A health maintenance organization should receive  
2 timely and, if necessary, urgent review by an independent  
3 state external review organization for unresolved grievances  
4 and appeals pursuant to s. 408.7056.

5 (k) A health maintenance organization subscriber shall  
6 be given written notice at least 30 days in advance of a rate  
7 change pursuant to s. 641.31(3)(b). In the case of a group  
8 member, there may be a contractual agreement with the health  
9 maintenance organization to have the employer provide the  
10 required notice to the individual members of the group  
11 pursuant to s. 641.31(3)(b).

12 (l) A health maintenance organization subscriber shall  
13 be given a copy of the applicable health maintenance contract,  
14 certificate, or member handbook specifying: all the  
15 provisions, disclosure, and limitations required pursuant to  
16 s. 641.31(1) and (4); the covered services, including those  
17 services, medical conditions, and provider types specified in  
18 ss. 641.31, 641.31094, 641.31095, 641.31096, 641.51(11), and  
19 641.513; and where and in what manner services may be obtained  
20 pursuant to s. 641.31(4).

21 (2) This section shall not be construed as creating a  
22 civil cause of action by any subscriber or provider against  
23 any health maintenance organization.

24 Section 1563. Section 641.19, Florida Statutes, is  
25 amended to read:

26 641.19 Definitions.--As used in this part, the term:

27 (1) "Affiliate" means any entity that ~~which~~ exercises  
28 control over or is controlled by the health maintenance  
29 organization, directly or indirectly, through:

30 (a) Equity ownership of voting securities;

31 (b) Common managerial control; or

1 (c) Collusive participation by the management of the  
2 health maintenance organization and affiliate in the  
3 management of the health maintenance organization or the  
4 affiliate.

5 (2) "Agency" means the Agency for Health Care  
6 Administration.

7 (3) "Capitation" means the fixed amount paid by an HMO  
8 to a health care provider under contract with the health  
9 maintenance organization in exchange for the rendering of  
10 covered medical services.

11 (4) "Comprehensive health care services" means  
12 services, medical equipment, and supplies furnished by a  
13 provider, which may include, but which are not limited to,  
14 medical, surgical, and dental care; psychological, optometric,  
15 optic, chiropractic, podiatric, nursing, physical therapy, and  
16 pharmaceutical services; health education, preventive medical,  
17 rehabilitative, and home health services; inpatient and  
18 outpatient hospital services; extended care; nursing home  
19 care; convalescent institutional care; technical and  
20 professional clinical pathology laboratory services;  
21 laboratory and ambulance services; appliances, drugs,  
22 medicines, and supplies; and any other care, service, or  
23 treatment of disease, or correction of defects for human  
24 beings.

25 (5) "Copayment" means a specific dollar amount, except  
26 as otherwise provided for by statute, that the subscriber must  
27 pay upon receipt of covered health care services. Copayments  
28 may not be established in an amount that will prevent a person  
29 from receiving a covered service or benefit as specified in  
30 the subscriber contract approved by the office department.

31 ~~(6) "Department" means the Department of Insurance.~~

1           (6)~~(7)~~ "Emergency medical condition" means:

2           (a) A medical condition manifesting itself by acute  
3 symptoms of sufficient severity, which may include severe pain  
4 or other acute symptoms, such that the absence of immediate  
5 medical attention could reasonably be expected to result in  
6 any of the following:

7           1. Serious jeopardy to the health of a patient,  
8 including a pregnant woman or a fetus.

9           2. Serious impairment to bodily functions.

10           3. Serious dysfunction of any bodily organ or part.

11           (b) With respect to a pregnant woman:

12           1. That there is inadequate time to effect safe  
13 transfer to another hospital prior to delivery;

14           2. That a transfer may pose a threat to the health and  
15 safety of the patient or fetus; or

16           3. That there is evidence of the onset and persistence  
17 of uterine contractions or rupture of the membranes.

18           (7)~~(8)~~ "Emergency services and care" means medical  
19 screening, examination, and evaluation by a physician, or, to  
20 the extent permitted by applicable law, by other appropriate  
21 personnel under the supervision of a physician, to determine  
22 if an emergency medical condition exists and, if it does, the  
23 care, treatment, or surgery for a covered service by a  
24 physician necessary to relieve or eliminate the emergency  
25 medical condition, within the service capability of a  
26 hospital.

27           (8)~~(9)~~ "Entity" means any legal entity with continuing  
28 existence, including, but not limited to, a corporation,  
29 association, trust, or partnership.

30           (9)~~(10)~~ "Geographic area" means the county or  
31 counties, or any portion of a county or counties, within which

1 the health maintenance organization provides or arranges for  
2 comprehensive health care services to be available to its  
3 subscribers.

4 (10)~~(11)~~ "Guaranteeing organization" is an  
5 organization that ~~which~~ is domiciled in the United States;  
6 that ~~which~~ has authorized service of process against it; and  
7 that ~~which~~ has appointed the Chief Financial Officer ~~Insurance~~  
8 ~~Commissioner and Treasurer~~ as its agent for service of process  
9 issuing upon any cause of action arising in this state, based  
10 upon any guarantee entered into under this part.

11 (11)~~(12)~~ "Health maintenance contract" means any  
12 contract entered into by a health maintenance organization  
13 with a subscriber or group of subscribers to provide  
14 comprehensive health care services in exchange for a prepaid  
15 per capita or prepaid aggregate fixed sum.

16 (12)~~(13)~~ "Health maintenance organization" means any  
17 organization authorized under this part which:

18 (a) Provides emergency care, inpatient hospital  
19 services, physician care including care provided by physicians  
20 licensed under chapters 458, 459, 460, and 461, ambulatory  
21 diagnostic treatment, and preventive health care services;

22 (b) Provides, either directly or through arrangements  
23 with other persons, health care services to persons enrolled  
24 with such organization, on a prepaid per capita or prepaid  
25 aggregate fixed-sum basis;

26 (c) Provides, either directly or through arrangements  
27 with other persons, comprehensive health care services which  
28 subscribers are entitled to receive pursuant to a contract;

29 (d) Provides physician services, by physicians  
30 licensed under chapters 458, 459, 460, and 461, directly  
31 through physicians who are either employees or partners of

1 such organization or under arrangements with a physician or  
2 any group of physicians; and  
3 (e) If offering services through a managed care  
4 system, then the managed care system must be a system in which  
5 a primary physician licensed under chapter 458 or chapter 459  
6 and chapters 460 and 461 is designated for each subscriber  
7 upon request of a subscriber requesting service by a physician  
8 licensed under any of those chapters, and is responsible for  
9 coordinating the health care of the subscriber of the  
10 respectively requested service and for referring the  
11 subscriber to other providers of the same discipline when  
12 necessary. Each female subscriber may select as her primary  
13 physician an obstetrician/gynecologist who has agreed to serve  
14 as a primary physician and is in the health maintenance  
15 organization's provider network.

16 (13)~~(14)~~ "Insolvent" or "insolvency" means that all  
17 the statutory assets of the health maintenance organization,  
18 if made immediately available, would not be sufficient to  
19 discharge all of its liabilities or that the health  
20 maintenance organization is unable to pay its debts as they  
21 become due in the usual course of business. In the event that  
22 all the assets of the health maintenance organization, if made  
23 immediately available, would not be sufficient to discharge  
24 all of its liabilities, but the organization has a written  
25 guarantee of the type and subject to the same provisions as  
26 outlined in s. 641.225, the organization shall not be  
27 considered insolvent unless it is unable to pay its debts as  
28 they become due in the usual course of business.

29 (14)~~(15)~~ "Provider" means any physician, hospital, or  
30 other institution, organization, or person that furnishes  
31

1 health care services and is licensed or otherwise authorized  
2 to practice in the state.

3 (15)~~(16)~~ "Reporting period" means the annual calendar  
4 year accounting period or any part thereof.

5 (16)~~(17)~~ "Statutory accounting principles" means  
6 accounting principles as defined in the National Association  
7 of Insurance Commissioners Accounting Practices and Procedures  
8 Manual as of 2002 ~~effective January 1, 2001~~.

9 (17)~~(18)~~ "Subscriber" means an entity or individual  
10 who has contracted, or on whose behalf a contract has been  
11 entered into, with a health maintenance organization for  
12 health care services or other persons who also receive health  
13 care services as a result of the contract.

14 (18)~~(19)~~ "Surplus" means total statutory assets in  
15 excess of total liabilities, except that assets pledged to  
16 secure debts not reflected on the books of the health  
17 maintenance organization shall not be included in surplus.  
18 Surplus includes capital stock, capital in excess of par,  
19 other contributed capital, retained earnings, and surplus  
20 notes.

21 (19)~~(20)~~ "Uncovered expenditures" means the cost of  
22 health care services that are covered by a health maintenance  
23 organization, for which a subscriber would also be liable in  
24 the event of the insolvency of the organization.

25 (20)~~(21)~~ "Health care risk contract" means a contract  
26 under which an individual or entity receives consideration or  
27 other compensation in an amount greater than 1 percent of the  
28 health maintenance organization's annual gross written premium  
29 in exchange for providing to the health maintenance  
30 organization a provider network or other services, which may  
31 include administrative services. The 1-percent threshold shall

1 be calculated on a contract-by-contract basis for each such  
2 individual or entity and not in the aggregate for all health  
3 care risk contracts.

4 Section 1564. Section 641.2017, Florida Statutes, is  
5 amended to read:

6 641.2017 Insurance business not authorized.--Nothing  
7 in the Florida Insurance Code or this part shall be deemed to  
8 authorize any health maintenance organization to transact any  
9 insurance business other than that of health maintenance  
10 organization type insurance or otherwise to engage in any  
11 other type of insurance unless it is authorized under a  
12 certificate of authority issued by the office ~~department~~ under  
13 the provisions of the Florida Insurance Code. However, a  
14 health maintenance organization may by contract:

15 (1) Enter into arrangements whereby the expected cost  
16 of health care services provided directly or through  
17 arrangements with other persons by the health maintenance  
18 organization is self-funded by the person contracting with the  
19 health maintenance organization, but the health maintenance  
20 organization assumes the risks that costs will exceed that  
21 amount on a prepaid per capita or prepaid aggregate fixed-sum  
22 basis; or

23 (2) Enter into arrangements whereby the cost of health  
24 care services provided directly or through arrangements with  
25 other persons by the health maintenance organization is  
26 self-funded by the person contracting with the health  
27 maintenance organization.

28 Section 1565. Subsections (1) and (2) of section  
29 641.2018, Florida Statutes, are amended to read:

30 641.2018 Limited coverage for home health care  
31 authorized.--

1           (1) Notwithstanding other provisions of this chapter,  
2 a health maintenance organization may issue a contract that  
3 limits coverage to home health care services only. The  
4 organization and the contract shall be subject to all of the  
5 requirements of this part that do not require or otherwise  
6 apply to specific benefits other than home care services. To  
7 this extent, all of the requirements of this part apply to any  
8 organization or contract that limits coverage to home care  
9 services, except the requirements for providing comprehensive  
10 health care services as provided in ss. 641.19(4), (11), and  
11 ~~(12), and (13)~~, and 641.31(1), except ss. 641.31(9), (12),  
12 (17), (18), (19), (20), (21), and (24) and 641.31095.

13           (2) Notwithstanding the other provisions of this  
14 chapter, a health maintenance organization may apply for and  
15 obtain a certificate of authority from the office ~~department~~  
16 pursuant to this part and a health care provider certificate  
17 pursuant to part III, which certificate limits the authority  
18 of the organization to the issuance of contracts that limit  
19 coverage to home health care services pursuant to subsection  
20 (1). In addition to all applicable requirements of this part,  
21 as specified in subsection (1), all of the requirements of  
22 part III apply to an organization applying for such a limited  
23 certificate, except to the extent that such requirements  
24 directly conflict with the limited nature of the coverage  
25 provided.

26           Section 1566. Subsections (1) and (2) of section  
27 641.21, Florida Statutes, are amended to read:

28           641.21 Application for certificate.--

29           (1) Before any entity may operate a health maintenance  
30 organization, it shall obtain a certificate of authority from  
31 the office ~~department~~. The office ~~department~~ shall accept and

1 shall begin its review of an application for a certificate of  
2 authority anytime after an organization has filed an  
3 application for a health care provider certificate pursuant to  
4 part III of this chapter. However, the office may ~~department~~  
5 ~~shall~~ not issue a certificate of authority to any applicant  
6 which does not possess a valid health care provider  
7 certificate issued by the agency. Each application for a  
8 certificate shall be on such form as the commission ~~department~~  
9 shall prescribe, shall be verified by the oath of two officers  
10 of the corporation and properly notarized, and shall be  
11 accompanied by the following:

12 (a) A copy of the articles of incorporation and all  
13 amendments thereto;

14 (b) A copy of the bylaws, rules and regulations, or  
15 similar form of document, if any, regulating the conduct of  
16 the affairs of the applicant;

17 (c) A list of the names, addresses, and official  
18 capacities with the organization of the persons who are to be  
19 responsible for the conduct of the affairs of the health  
20 maintenance organization, including all officers, directors,  
21 and owners of in excess of 5 percent of the common stock of  
22 the corporation. Such persons shall fully disclose to the  
23 office ~~department~~ and the directors of the health maintenance  
24 organization the extent and nature of any contracts or  
25 arrangements between them and the health maintenance  
26 organization, including any possible conflicts of interest;

27 (d) A complete biographical statement on forms  
28 prescribed by the commission ~~department~~, and an independent  
29 investigation report and fingerprints obtained pursuant to  
30 chapter 624, of all of the individuals referred to in  
31 paragraph (c);

1 (e) A statement generally describing the health  
2 maintenance organization, its operations, and its grievance  
3 procedures;

4 (f) Forms of all health maintenance contracts,  
5 certificates, and member handbooks the applicant proposes to  
6 offer the subscribers, showing the benefits to which they are  
7 entitled, together with a table of the rates charged, or  
8 proposed to be charged, for each form of such contract. A  
9 certified actuary shall:

10 1. Certify that the rates are neither inadequate nor  
11 excessive nor unfairly discriminatory;

12 2. Certify that the rates are appropriate for the  
13 classes of risks for which they have been computed; and

14 3. File an adequate description of the rating  
15 methodology showing that such methodology follows consistent  
16 and equitable actuarial principles;

17 (g) A statement describing with reasonable certainty  
18 the geographic area or areas to be served by the health  
19 maintenance organization;

20 (h) As to any applicant whose business plan indicates  
21 that it will receive Medicaid funds, a list of all contracts  
22 and agreements and any information relative to any payment or  
23 agreement to pay, directly or indirectly, a consultant fee, a  
24 broker fee, a commission, or other fee or charge related in  
25 any way to the application for a certificate of authority or  
26 the issuance of a certificate of authority, including, but not  
27 limited to, the name of the person or entity paying the fee;  
28 the name of the person or entity receiving the fee; the date  
29 of payment; and a brief description of the work performed.  
30 The contract, agreement, and related information shall, if  
31 requested, be provided to the office ~~department~~.

1 (i) An audited financial statement prepared on the  
2 basis of statutory accounting principles and certified by an  
3 independent certified public accountant, except that surplus  
4 notes acceptable to the office ~~department~~ and meeting the  
5 requirements of this act shall be included in the calculation  
6 of surplus; and

7 (j) Such additional reasonable data, financial  
8 statements, and other pertinent information as the  
9 commissioner or office requires ~~department may require~~ with  
10 respect to the determination that the applicant can provide  
11 the services to be offered.

12 (2) After submission of the application for a  
13 certificate of authority, the entity may engage in initial  
14 group marketing activities solely with respect to employers,  
15 representatives of labor unions, professional associations,  
16 and trade associations, so long as it does not enter into,  
17 issue, deliver, or otherwise effectuate health maintenance  
18 contracts, effectuate or bind coverage or benefits, provide  
19 health care services, or collect premiums or charges until it  
20 has been issued a certificate of authority by the office  
21 ~~department~~. Any such activities, oral or written, shall  
22 include a statement that the entity does not possess a valid  
23 certificate of authority and cannot enter into health  
24 maintenance contracts until such time as it has been issued a  
25 certificate of authority by the office ~~department~~.

26 Section 1567. Section 641.215, Florida Statutes, is  
27 amended to read:

28 641.215 Conditions precedent to issuance or  
29 maintenance of certificate of authority; effect of bankruptcy  
30 proceedings.--

31

1           (1) As a condition precedent to the issuance or  
2 maintenance of a certificate of authority, a health  
3 maintenance organization insurer must file or have on file  
4 with the office ~~department~~:

5           (a) An acknowledgment that a delinquency proceeding  
6 pursuant to part I of chapter 631, or supervision by the  
7 office ~~department~~ pursuant to ss. 624.80-624.87, constitutes  
8 the sole and exclusive method for the liquidation,  
9 rehabilitation, reorganization, or conservation of a health  
10 maintenance organization.

11           (b) A waiver of any right to file or be subject to a  
12 bankruptcy proceeding.

13           (2) The commencement of a bankruptcy proceeding either  
14 by or against a health maintenance organization shall, by  
15 operation of law:

16           (a) Terminate the health maintenance organization's  
17 certificate of authority.

18           (b) Vest in the office ~~department~~ for the use and  
19 benefit of the subscribers of the health maintenance  
20 organization the title to any deposits of the insurer held by  
21 the department.

22  
23 If the proceeding is initiated by a party other than the  
24 health maintenance organization, the operation of subsection  
25 (2) shall be stayed for a period of 60 days following the date  
26 of commencement of the proceeding.

27           Section 1568. Section 641.22, Florida Statutes, is  
28 amended to read:

29           641.22 Issuance of certificate of authority.--The  
30 office ~~department~~ shall issue a certificate of authority to  
31 any entity filing a completed application in conformity with

1 s. 641.21, upon payment of the prescribed fees and upon the  
2 office's ~~department's~~ being satisfied that:

3 (1) As a condition precedent to the issuance of any  
4 certificate, the entity has obtained a health care provider  
5 certificate from the Agency for Health Care Administration  
6 pursuant to part III of this chapter.

7 (2) The health maintenance organization is actuarially  
8 sound.

9 (3) The entity has met the applicable requirements  
10 specified in s. 641.225.

11 (4) The procedures for offering comprehensive health  
12 care services and offering and terminating contracts to  
13 subscribers will not unfairly discriminate on the basis of  
14 age, sex, race, health, or economic status. However, this  
15 section does not prohibit reasonable underwriting  
16 classifications for the purposes of establishing contract  
17 rates, nor does it prohibit experience rating.

18 (5) The entity furnishes evidence of adequate  
19 insurance coverage or an adequate plan for self-insurance to  
20 respond to claims for injuries arising out of the furnishing  
21 of comprehensive health care.

22 (6) The ownership, control, and management of the  
23 entity is competent and trustworthy and possesses managerial  
24 experience that would make the proposed health maintenance  
25 organization operation beneficial to the subscribers. The  
26 office ~~department~~ shall not grant or continue authority to  
27 transact the business of a health maintenance organization in  
28 this state at any time during which the office ~~department~~ has  
29 good reason to believe that:

30 (a) The ownership, control, or management of the  
31 organization includes any person:

- 1           1. Who is incompetent or untrustworthy;
- 2           2. Who is so lacking in health maintenance
- 3 organization expertise as to make the operation of the health
- 4 maintenance organization hazardous to potential and existing
- 5 subscribers;
- 6           3. Who is so lacking in health maintenance
- 7 organization experience, ability, and standing as to
- 8 jeopardize the reasonable promise of successful operation;
- 9           4. Who is affiliated, directly or indirectly, through
- 10 ownership, control, reinsurance transactions, or other
- 11 business relations, with any person whose business operations
- 12 are or have been marked by business practices or conduct that
- 13 is to the detriment of the public, stockholders, investors, or
- 14 creditors; or
- 15           5. Whose business operations are or have been marked
- 16 by business practices or conduct that is to the detriment of
- 17 the public, stockholders, investors, or creditors;
- 18           (b) Any person, including any stock subscriber,
- 19 stockholder, or incorporator, who exercises or has the ability
- 20 to exercise effective control of the organization, or who
- 21 influences or has the ability to influence the transaction of
- 22 the business of the health maintenance organization, does not
- 23 possess the financial standing and business experience for the
- 24 successful operation of the health maintenance organization;
- 25           (c) Any person, including any stock subscriber,
- 26 stockholder, or incorporator, who exercises or has the ability
- 27 to exercise effective control of the organization, or who
- 28 influences or has the ability to influence the transaction of
- 29 the business of the health maintenance organization, has been
- 30 found guilty of, or has pled guilty or no contest to, any
- 31 felony or crime punishable by imprisonment of 1 year or more

1 under the laws of the United States or any state thereof or  
2 under the laws of any other country, which involves moral  
3 turpitude, without regard to whether a judgment or conviction  
4 has been entered by the court having jurisdiction in such  
5 case. However, in the case of a health maintenance  
6 organization operating under a subsisting certificate of  
7 authority, the health maintenance organization shall remove  
8 any such person immediately upon discovery of the conditions  
9 set forth in this paragraph when applicable to such person or  
10 under the order of the office ~~department~~, and the failure to  
11 so act by the organization is grounds for revocation or  
12 suspension of the health maintenance organization's  
13 certificate of authority; or

14 (d) Any person, including any stock subscriber,  
15 stockholder, or incorporator, who exercises or has the ability  
16 to exercise effective control of the organization, or who  
17 influences or has the ability to influence the transaction of  
18 the business of the health maintenance organization, is now or  
19 was in the past affiliated, directly or indirectly, through  
20 ownership interest of 10 percent or more, control, or  
21 reinsurance transactions, with any business, corporation, or  
22 other entity that has been found guilty of or has pleaded  
23 guilty or nolo contendere to any felony or crime punishable by  
24 imprisonment for 1 year or more under the laws of the United  
25 States, any state, or any other country, regardless of  
26 adjudication. In the case of a health maintenance organization  
27 operating under a subsisting certificate of authority, the  
28 health maintenance organization shall immediately remove such  
29 person or immediately notify the office ~~department~~ of such  
30 person upon discovery of the conditions set forth in this  
31 paragraph, either when applicable to such person or upon order

1 of the office ~~department~~. The failure to remove such person,  
2 provide such notice, or comply with such order constitutes  
3 grounds for suspension or revocation of the health maintenance  
4 organization's certificate of authority.

5 (7) The entity has a blanket fidelity bond in the  
6 amount of \$100,000, issued by a licensed insurance carrier in  
7 this state, that will reimburse the entity in the event that  
8 anyone handling the funds of the entity either misappropriates  
9 or absconds with the funds. All employees handling the funds  
10 shall be covered by the blanket fidelity bond. An agent  
11 licensed under the provisions of the Florida Insurance Code  
12 may either directly or indirectly represent the health  
13 maintenance organization in the solicitation, negotiation,  
14 effectuation, procurement, receipt, delivery, or forwarding of  
15 any health maintenance organization subscriber's contract or  
16 collect or forward any consideration paid by the subscriber to  
17 the health maintenance organization; and the licensed agent  
18 shall not be required to post the bond required by this  
19 subsection.

20 (8) The entity has filed with the office ~~department~~,  
21 and obtained approval from the office ~~department~~ of, all  
22 reinsurance contracts as provided in s. 641.285.

23 (9) The health maintenance organization has a  
24 grievance procedure that will facilitate the resolution of  
25 subscriber grievances and that includes both formal and  
26 informal steps available within the organization.

27 Section 1569. Subsections (2) and (4), and paragraphs  
28 (b) and (d) of subsection (6) of section 641.225, Florida  
29 Statutes, are amended to read:

30 641.225 Surplus requirements.--

31

1           (2) The office ~~department~~ shall not issue a  
2 certificate of authority, except as provided in subsection  
3 (3), unless the health maintenance organization has a minimum  
4 surplus in an amount which is the greater of:

5           (a) Ten percent of their total liabilities based on  
6 their startup projection as set forth in this part;

7           (b) Two percent of their total projected premiums  
8 based on their startup projection as set forth in this part;  
9 or

10           (c) \$1,500,000, plus all startup losses, excluding  
11 profits, projected to be incurred on their startup projection  
12 until the projection reflects statutory net profits for 12  
13 consecutive months.

14           (4) The commission ~~department~~ may adopt rules to set  
15 uniform standards and criteria for the early warning that the  
16 continued operation of any health maintenance organization  
17 might be hazardous to its subscribers, creditors, or the  
18 general public, and to set standards for evaluating the  
19 financial condition of any health maintenance organization.

20           (6) In lieu of having any minimum surplus, the health  
21 maintenance organization may provide a written guarantee to  
22 assure payment of covered subscriber claims and all other  
23 liabilities of the health maintenance organization, provided  
24 that the written guarantee is made by a guaranteeing  
25 organization which:

26           (b) Submits a guarantee that is approved by the office  
27 ~~department~~ as meeting the requirements of this part, provided  
28 that the written guarantee contains a provision which requires  
29 that the guarantee be irrevocable unless the guaranteeing  
30 organization can demonstrate to the office ~~department~~ that the  
31 cancellation of the guarantee will not result in the

1 insolvency of the health maintenance organization and the  
2 office department approves cancellation of the guarantee.

3 (d) Submits annually, within 3 months after the end of  
4 its fiscal year, an audited financial statement certified by  
5 an independent certified public accountant, prepared in  
6 accordance with generally accepted accounting principles. The  
7 office department may, as it deems necessary, require  
8 quarterly financial statements from the guaranteeing  
9 organization.

10 Section 1570. Subsection (1) of section 641.227,  
11 Florida Statutes, is amended to read:

12 641.227 Rehabilitation Administrative Expense Fund.--

13 (1) The office department shall not issue or permit to  
14 exist a certificate of authority to operate a health  
15 maintenance organization in this state unless the organization  
16 has deposited with the department \$10,000 in cash for use in  
17 the Rehabilitation Administrative Expense Fund as established  
18 in subsection (2).

19 Section 1571. Subsections (1) and (3) of section  
20 641.228, Florida Statutes, are amended to read:

21 641.228 Florida Health Maintenance Organization  
22 Consumer Assistance Plan.--

23 (1) The office department shall not issue a  
24 certificate to any health maintenance organization after July  
25 1, 1989, until the applicant health maintenance organization  
26 has paid in full its special assessment as set forth in s.  
27 631.819(2)(a).

28 (3) The office department may suspend or revoke the  
29 certificate of authority of any health maintenance  
30 organization which does not timely pay its assessment to the  
31

1 Florida Health Maintenance Organization Consumer Assistance  
2 Plan.

3 Section 1572. Section 641.23, Florida Statutes, is  
4 amended to read:

5 641.23 Revocation or cancellation of certificate of  
6 authority; suspension of enrollment of new subscribers; terms  
7 of suspension.--

8 (1) The maintenance of a valid and current health care  
9 provider certificate issued pursuant to part III of this  
10 chapter is a condition of the maintenance of a valid and  
11 current certificate of authority issued by the office  
12 ~~department~~ to operate a health maintenance organization.  
13 Denial or revocation of a health care provider certificate  
14 shall be deemed to be an automatic and immediate cancellation  
15 of a health maintenance organization's certificate of  
16 authority. At the discretion of the office ~~Department of~~  
17 ~~Insurance~~, nonrenewal of a health care provider certificate  
18 may be deemed to be an automatic and immediate cancellation of  
19 a health maintenance organization's certificate of authority  
20 if the Agency for Health Care Administration notifies the  
21 office ~~Department of Insurance~~, in writing, that the health  
22 care provider certificate will not be renewed.

23 (2) The office ~~department~~ may suspend the authority of  
24 a health maintenance organization to enroll new subscribers or  
25 revoke any certificate issued to a health maintenance  
26 organization, or order compliance within 30 days, if it finds  
27 that any of the following conditions exists:

28 (a) The organization is not operating in compliance  
29 with this part;

30  
31

1           (b) The plan is no longer actuarially sound or the  
2 organization does not have the minimum surplus as required by  
3 this part;

4           (c) The existing contract rates are excessive,  
5 inadequate, or unfairly discriminatory;

6           (d) The organization has advertised, merchandised, or  
7 attempted to merchandise its services in such a manner as to  
8 misrepresent its services or capacity for service or has  
9 engaged in deceptive, misleading, or unfair practices with  
10 respect to advertising or merchandising; or

11           (e) The organization is insolvent.

12           (3) Whenever the financial condition of the health  
13 maintenance organization is such that, if not modified or  
14 corrected, its continued operation would result in impairment  
15 or insolvency, the office ~~department~~ may order the health  
16 maintenance organization to file with the office ~~department~~  
17 and implement a corrective action plan designed to do one or  
18 more of the following:

19           (a) Reduce the total amount of present potential  
20 liability for benefits by reinsurance or other means.

21           (b) Reduce the volume of new business being accepted.

22           (c) Reduce the expenses of the health maintenance  
23 organization by specified methods.

24           (d) Suspend or limit the writing of new business for a  
25 period of time.

26           (e) Require an increase in the health maintenance  
27 organization's net worth.

28

29 If the health maintenance organization fails to submit a plan  
30 within 30 days of the office's ~~department's~~ order or submits a  
31 plan which is insufficient to correct the health maintenance

1 organization's financial condition, the office ~~department~~ may  
2 order the health maintenance organization to implement one or  
3 more of the corrective actions listed in this subsection.

4 (4) The office ~~department~~ shall, in its order  
5 suspending the authority of a health maintenance organization  
6 to enroll new subscribers, specify the period during which the  
7 suspension is to be in effect and the conditions, if any,  
8 which must be met by the health maintenance organization prior  
9 to reinstatement of its authority to enroll new subscribers.  
10 The order of suspension is subject to rescission or  
11 modification by further order of the office ~~department~~ prior  
12 to the expiration of the suspension period. Reinstatement  
13 shall not be made unless requested by the health maintenance  
14 organization; however, the office ~~department~~ shall not grant  
15 reinstatement if it finds that the circumstances for which the  
16 suspension occurred still exist or are likely to recur.

17 (5) The commission ~~department~~ shall adopt ~~promulgate~~  
18 rules establishing an actuarially sound medical loss ratio for  
19 Medicaid. In determining the appropriate medical loss ratio,  
20 the commission ~~department~~ shall consider factors, including  
21 but not limited to, plan age, plan structure, geographic  
22 service area, product mix, provider network, medical  
23 inflation, provider services, other professional services, out  
24 of network referrals and expenditures, in and out of network  
25 emergency room expenditures, inpatient expenditures, other  
26 medical expenditures, incentive pool adjustments, copayments,  
27 coordination of benefits, subrogation, and any other expenses  
28 associated with the delivery of medical benefits. The  
29 commission ~~department~~ shall utilize assistance from the Agency  
30 for Health Care Administration, the State University System,  
31 an independent actuary, and representatives from health

1 maintenance organizations in developing the rule for  
2 appropriate medical loss ratios.

3 (6) The office ~~department~~ shall calculate and publish  
4 at least annually the medical loss ratios of all licensed  
5 health maintenance organizations. The publication shall  
6 include an explanation of what the medical loss ratio means  
7 and shall disclose that the medical loss ratio is not a direct  
8 reflection of quality, but must be looked at along with  
9 patient satisfaction and other standards that define quality.

10 Section 1573. Subsections (1), (2), and (3) of section  
11 641.234, Florida Statutes, are amended to read:

12 641.234 Administrative, provider, and management  
13 contracts.--

14 (1) The office ~~department~~ may require a health  
15 maintenance organization to submit any contract for  
16 administrative services, contract with a provider other than  
17 an individual physician, contract for management services, and  
18 contract with an affiliated entity to the office ~~department~~.

19 (2) After review of a contract the office ~~department~~  
20 may order the health maintenance organization to cancel the  
21 contract in accordance with the terms of the contract and  
22 applicable law if it determines:

23 (a) That the fees to be paid by the health maintenance  
24 organization under the contract are so unreasonably high as  
25 compared with similar contracts entered into by the health  
26 maintenance organization or as compared with similar contracts  
27 entered into by other health maintenance organizations in  
28 similar circumstances that the contract is detrimental to the  
29 subscribers, stockholders, investors, or creditors of the  
30 health maintenance organization; or

31

1 (b) That the contract is with an entity that is not  
2 licensed under state statutes, if such license is required, or  
3 is not in good standing with the applicable regulatory agency.

4 (3) All contracts for administrative services,  
5 management services, provider services other than individual  
6 physician contracts, and with affiliated entities entered into  
7 or renewed by a health maintenance organization on or after  
8 October 1, 1988, shall contain a provision that the contract  
9 shall be canceled upon issuance of an order by the office  
10 ~~department~~ pursuant to this section.

11 Section 1574. Section 641.2342, Florida Statutes, is  
12 amended to read:

13 641.2342 Contract providers.--Each health maintenance  
14 organization shall file, upon the request of the office  
15 ~~department~~, financial statements for all contract providers of  
16 comprehensive health care services who have assumed, through  
17 capitation or other means, more than 10 percent of the health  
18 care risks of the health maintenance organization. However,  
19 this provision shall not apply to any individual physician.

20 Section 1575. Section 641.25, Florida Statutes, is  
21 amended to read:

22 641.25 Administrative penalty in lieu of suspension or  
23 revocation.--If the office ~~department~~ finds that one or more  
24 grounds exist for the revocation or suspension of a  
25 certificate issued under this part, the office ~~department~~ may,  
26 in lieu of revocation or suspension, impose a fine upon the  
27 health maintenance organization. With respect to any  
28 nonwillful violation, the fine must not exceed \$2,500 per  
29 violation. Such fines may not exceed an aggregate amount of  
30 \$25,000 for all nonwillful violations arising out of the same  
31 action. With respect to any knowing and willful violation of

1 a lawful order or rule of the office or commission ~~department~~  
2 or a provision of this part, the office ~~department~~ may impose  
3 upon the organization a fine in an amount not to exceed  
4 \$20,000 for each such violation. Such fines may not exceed an  
5 aggregate amount of \$250,000 for all knowing and willful  
6 violations arising out of the same action. The commission  
7 ~~department~~ must adopt by rule ~~by January 1, 1997,~~ penalty  
8 categories that specify varying ranges of monetary fines for  
9 willful violations and for nonwillful violations.

10 Section 1576. Subsection (2) of section 641.255,  
11 Florida Statutes, is amended to read:

12 641.255 Acquisition, merger, or consolidation.--

13 (2) In addition to the requirements set forth in ss.  
14 628.451, 628.4615, and 628.471, each party to any transaction  
15 involving any licensee which, as indicated in its most recent  
16 quarterly or annual statement, derives income from Medicaid  
17 funds shall in the filing made with the office ~~department~~  
18 identify:

19 (a) Any person who has received any payment from  
20 either party or any person on that party's behalf; or

21 (b) The existence of any agreement entered into by  
22 either party or by any person on that party's behalf to pay a  
23 consultant fee, a broker fee, a commission, or other fee or  
24 charge,

25  
26 which in any way relates to the acquisition, merger, or  
27 consolidation. The commission ~~department~~ may adopt a form to  
28 be made part of the application which is to be sworn to by an  
29 officer of the entity which made or will make the payment. The  
30 form shall include the name of the person or entity paying the  
31 fee; the name of the person or entity receiving the fee; the

1 date of payment; and a brief description of the work  
2 performed.

3 Section 1577. Section 641.26, Florida Statutes, is  
4 amended to read:

5 641.26 Annual and quarterly reports.--

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

17 (a) A financial statement of the health maintenance  
18 organization filed on a computer diskette using a format  
19 acceptable to the office ~~department~~.

20 (b) A financial statement of the health maintenance  
21 organization filed on forms acceptable to the office  
22 ~~department~~.

23 (c) An audited financial statement of the health  
24 maintenance organization, including its balance sheet and a  
25 statement of operations for the preceding year certified by an  
26 independent certified public accountant, prepared in  
27 accordance with statutory accounting principles.

28 (d) The number of health maintenance contracts issued  
29 and outstanding and the number of health maintenance contracts  
30 terminated.

31

1 (e) The number and amount of damage claims for medical  
2 injury initiated against the health maintenance organization  
3 and any of the providers engaged by it during the reporting  
4 year, broken down into claims with and without formal legal  
5 process, and the disposition, if any, of each such claim.

6 (f) An actuarial certification that:

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

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

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

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

18 (g) A report prepared by the certified public  
19 accountant and filed with the office ~~department~~ describing  
20 material weaknesses in the health maintenance organization's  
21 internal control structure as noted by the certified public  
22 accountant during the audit. The report must be filed with  
23 the annual audited financial report as required in paragraph  
24 (c). The health maintenance organization shall provide a  
25 description of remedial actions taken or proposed to correct  
26 material weaknesses, if the actions are not described in the  
27 independent certified public accountant's report.

28 (h) Such other information relating to the performance  
29 of health maintenance organizations as is required by the  
30 commission or office ~~department~~.

31

1           (2) The office ~~department~~ may require updates of the  
2 actuarial certification as to a particular health maintenance  
3 organization if the office ~~department~~ has reasonable cause to  
4 believe that such reserves are understated to the extent of  
5 materially misstating the financial position of the health  
6 maintenance organization. Workpapers in support of the  
7 statement of the updated actuarial certification must be  
8 provided to the office ~~department~~ upon request.

9           (3) Every health maintenance organization shall file  
10 quarterly, for the first three calendar quarters of each year,  
11 an unaudited financial statement of the organization as  
12 described in paragraphs (1)(a) and (b). The statement for the  
13 quarter ending March 31 shall be filed on or before May 15,  
14 the statement for the quarter ending June 30 shall be filed on  
15 or before August 15, and the statement for the quarter ending  
16 September 30 shall be filed on or before November 15. The  
17 quarterly report shall be verified by the oath of two officers  
18 of the organization, properly notarized.

19           (4) Any health maintenance organization that neglects  
20 to file an annual report or quarterly report in the form and  
21 within the time required by this section shall forfeit up to  
22 \$1,000 for each day for the first 10 days during which the  
23 neglect continues and shall forfeit up to \$2,000 for each day  
24 after the first 10 days during which the neglect continues;  
25 and, upon notice by the office ~~department~~ to that effect, the  
26 organization's authority to enroll new subscribers or to do  
27 business in this state shall cease while such default  
28 continues. The office ~~department~~ shall deposit all sums  
29 collected by it under this section to the credit of the  
30 Insurance ~~Commissioner's~~ Regulatory Trust Fund. The office

31

1 ~~department~~ shall not collect more than \$100,000 for each  
2 report.

3 (5) Each authorized health maintenance organization  
4 shall retain an independent certified public accountant,  
5 referred to in this section as "CPA," who agrees by written  
6 contract with the health maintenance organization to comply  
7 with the provisions of this part.

8 (a) The CPA shall provide to the HMO audited financial  
9 statements consistent with this part.

10 (b) Any determination by the CPA that the health  
11 maintenance organization does not meet minimum surplus  
12 requirements as set forth in this part shall be stated by the  
13 CPA, in writing, in the audited financial statement.

14 (c) The completed work papers and any written  
15 communications between the CPA firm and the health maintenance  
16 organization relating to the audit of the health maintenance  
17 organization shall be made available for review on a  
18 visual-inspection-only basis by the office ~~department~~ at the  
19 offices of the health maintenance organization, at the office  
20 ~~department~~, or at any other reasonable place as mutually  
21 agreed between the office ~~department~~ and the health  
22 maintenance organization. The CPA must retain for review the  
23 work papers and written communications for a period of not  
24 less than 6 years.

25 (d) The CPA shall provide to the office ~~department~~ a  
26 written report describing material weaknesses in the health  
27 maintenance organization's internal control structure as noted  
28 during the audit.

29 (6) To facilitate uniformity in financial statements  
30 and to facilitate office ~~department~~ analysis, the commission  
31 ~~department~~ may by rule adopt the form for financial statements

1 of a health maintenance organization, including supplements as  
2 approved by the National Association of Insurance  
3 Commissioners in 1995, and may adopt subsequent amendments  
4 thereto if the methodology remains substantially consistent,  
5 and may by rule require each health maintenance organization  
6 to submit to the office ~~department~~ all or part of the  
7 information contained in the annual statement in a  
8 computer-readable form compatible with the electronic data  
9 processing system specified by the office ~~department~~.

10 (7) In addition to information called for and  
11 furnished in connection with its annual or quarterly  
12 statements, the health maintenance organization shall furnish  
13 to the office ~~department~~ as soon as reasonably possible such  
14 information as to its material transactions which, in the  
15 office's ~~department's~~ opinion, may have a material adverse  
16 effect on the health maintenance organization's financial  
17 condition, as the office requests ~~department may request~~ in  
18 writing. All such information furnished pursuant to the  
19 office's ~~department's~~ request must be verified by the oath of  
20 two executive officers of the health maintenance organization.

21 (8) Each health maintenance organization shall file  
22 one copy of its annual statement convention blank in  
23 electronic form, along with such additional filings as  
24 prescribed by the commission ~~department~~ for the preceding  
25 calendar year or quarter, with the National Association of  
26 Insurance Commissioners. Each health maintenance organization  
27 shall pay fees assessed by the National Association of  
28 Insurance Commissioners to cover costs associated with the  
29 filing and analysis of the documents by the National  
30 Association of Insurance Commissioners.

31

1           Section 1578. Section 641.27, Florida Statutes, is  
2 amended to read:

3           641.27 Examination by the department.--

4           (1) The office ~~department~~ shall examine the affairs,  
5 transactions, accounts, business records, and assets of any  
6 health maintenance organization as often as it deems it  
7 expedient for the protection of the people of this state, but  
8 not less frequently than once every 3 years. In lieu of  
9 making its own financial examination, the office ~~department~~  
10 may accept an independent certified public accountant's audit  
11 report prepared on a statutory accounting basis consistent  
12 with this part. However, except when the medical records are  
13 requested and copies furnished pursuant to s. 456.057, medical  
14 records of individuals and records of physicians providing  
15 service under contract to the health maintenance organization  
16 shall not be subject to audit, although they may be subject to  
17 subpoena by court order upon a showing of good cause. For the  
18 purpose of examinations, the office ~~department~~ may administer  
19 oaths to and examine the officers and agents of a health  
20 maintenance organization concerning its business and affairs.  
21 The examination of each health maintenance organization by the  
22 office ~~department~~ shall be subject to the same terms and  
23 conditions as apply to insurers under chapter 624. In no  
24 event shall expenses of all examinations exceed a maximum of  
25 \$20,000 for any 1-year period. Any rehabilitation,  
26 liquidation, conservation, or dissolution of a health  
27 maintenance organization shall be conducted under the  
28 supervision of the department, which shall have all power with  
29 respect thereto granted to it under the laws governing the  
30 rehabilitation, liquidation, reorganization, conservation, or  
31 dissolution of life insurance companies.

1           (2) The office ~~department~~ may contract, at reasonable  
2 fees for work performed, with qualified, impartial outside  
3 sources to perform audits or examinations or portions thereof  
4 pertaining to the qualification of an entity for issuance of a  
5 certificate of authority or to determine continued compliance  
6 with the requirements of this part, in which case the payment  
7 must be made directly to the contracted examiner by the health  
8 maintenance organization examined, in accordance with the  
9 rates and terms agreed to by the office ~~department~~ and the  
10 examiner. Any contracted assistance shall be under the direct  
11 supervision of the office ~~department~~. The results of any  
12 contracted assistance shall be subject to the review of, and  
13 approval, disapproval, or modification by, the office  
14 ~~department~~.

15           Section 1579. Section 641.28, Florida Statutes, is  
16 amended to read:

17           641.28 Civil remedy.--In any civil action brought to  
18 enforce the terms and conditions of a health maintenance  
19 organization contract, the prevailing party is entitled to  
20 recover reasonable attorney's fees and court costs. This  
21 section shall not be construed to authorize a civil action  
22 against the commission, office, or department, their ~~its~~  
23 employees, or the Chief Financial Officer ~~Insurance~~  
24 Commissioner or against the Agency for Health Care  
25 Administration, its employees, or the director of the agency.

26           Section 1580. Section 641.281, Florida Statutes, is  
27 amended to read:

28           641.281 Injunction.--In addition to the penalties and  
29 other enforcement provisions of this part, the office and  
30 department, within the scope of their regulatory  
31

1 jurisdictions, are ~~is~~ vested with the power to seek both  
2 temporary and permanent injunctive relief when:

3 (1) A health maintenance organization is being  
4 operated by any person or entity without a subsisting  
5 certificate of authority.

6 (2) Any person, entity, or health maintenance  
7 organization has engaged in any activity prohibited by this  
8 part or any rule adopted pursuant thereto.

9 (3) Any health maintenance organization, person, or  
10 entity is renewing, issuing, or delivering a health  
11 maintenance contract or contracts without a subsisting  
12 certificate of authority.

13

14 The office's and department's authority to seek injunctive  
15 relief shall not be conditioned on having conducted any  
16 proceeding pursuant to chapter 120.

17 Section 1581. Section 641.284, Florida Statutes, is  
18 amended to read:

19 641.284 Liquidation, rehabilitation, reorganization,  
20 and conservation; exclusive methods of remedy.--A delinquency  
21 proceeding under part I of chapter 631, or supervision by the  
22 office ~~department~~ under ss. 624.80-624.87, constitute the sole  
23 and exclusive means of liquidating, reorganizing,  
24 rehabilitating, or conserving a health maintenance  
25 organization.

26 Section 1582. Subsections (1), (2), and (3) of section  
27 641.285, Florida Statutes, are amended to read:

28 641.285 Insolvency protection.--

29 (1) Each health maintenance organization shall deposit  
30 with the department cash or securities of the type eligible  
31 under s. 625.52, which shall have at all times a market value

1 in the amount set forth in this subsection. The amount of the  
2 deposit shall be reviewed annually, or more often, as the  
3 office ~~department~~ deems necessary. The market value of the  
4 deposit shall be a minimum of \$300,000.

5 (2) If securities or assets deposited by a health  
6 maintenance organization under this part are subject to  
7 material fluctuations in market value, the office ~~department~~  
8 may, in its discretion, require the organization to deposit  
9 and maintain on deposit additional securities or assets in an  
10 amount as may be reasonably necessary to assure that the  
11 deposit will at all times have a market value of not less than  
12 the amount specified under this section. If for any reason the  
13 market value of assets and securities of a health maintenance  
14 organization held on deposit in this state under this code  
15 falls below the amount required, the organization shall  
16 promptly deposit other or additional assets or securities  
17 eligible for deposit sufficient to cure the deficiency. If the  
18 health maintenance organization has failed to cure the  
19 deficiency within 30 days after receipt of notice thereof by  
20 registered or certified mail from the office ~~department~~, the  
21 office ~~department~~ may revoke the certificate of authority of  
22 the health maintenance organization.

23 (3) Whenever the office ~~department~~ determines that the  
24 financial condition of a health maintenance organization has  
25 deteriorated to the point that the policyholders' or  
26 subscribers' best interests are not being preserved by the  
27 activities of a health maintenance organization, the office  
28 ~~department~~ may require such health maintenance organization to  
29 deposit and maintain deposited in trust with the department  
30 for the protection of the health maintenance organization's  
31 policyholders, subscribers, and creditors, for such time as

1 the office ~~department~~ deems necessary, securities eligible for  
2 such deposit under s. 625.52 having a market value of not less  
3 than the amount that the office ~~department~~ determines is  
4 necessary, which amount must not be less than \$100,000 or  
5 greater than \$2 million. The deposit required under this  
6 subsection is in addition to any other deposits required of a  
7 health maintenance organization pursuant to subsections (1)  
8 and (2).

9 Section 1583. Section 641.29, Florida Statutes, is  
10 amended to read:

11 641.29 Fees.--Every health maintenance organization  
12 shall pay to the office ~~department~~ the following fees:

13 (1) For filing a copy of its application for a  
14 certificate of authority or amendment thereto, a nonrefundable  
15 fee in the amount of \$1,000.

16 (2) For filing each annual report, which must be filed  
17 on computer diskettes, \$150.

18 Section 1584. Paragraph (b) of subsection (4) of  
19 section 641.3007, Florida Statutes, is amended to read:

20 641.3007 HIV infection and AIDS for contract

21 (4) UTILIZATION OF MEDICAL TESTS.--

22 (b) Prior to testing, the health maintenance  
23 organization must disclose its intent to test the person for  
24 the HIV infection or for a specific sickness or medical  
25 condition derived therefrom and must obtain the person's  
26 written informed consent to administer the test. Written  
27 informed consent shall include a fair explanation of the test,  
28 including its purpose, potential uses, and limitations, and  
29 the meaning of its results and the right to confidential  
30 treatment of information. Use of a form approved by the

31

1 ~~office department~~ shall raise a conclusive presumption of  
2 informed consent.

3 Section 1585. Section 641.305, Florida Statutes, is  
4 amended to read:

5 641.305 Language used in contracts and advertisements;  
6 translations.--

7 (1)(a) All health maintenance contracts or forms shall  
8 be printed in English.

9 (b) If the negotiations by a health maintenance  
10 organization with a member leading up to the effectuation of a  
11 health maintenance contract are conducted in a language other  
12 than English, the health maintenance organization shall supply  
13 to the member a written translation of the contract, which  
14 translation accurately reflects the substance of the contract  
15 and is in the language used to negotiate the contract. The  
16 written translation shall be affixed to and shall become a  
17 part of the contract or form. Any such translation shall be  
18 furnished to the ~~office department~~ as part of the filing of  
19 the health maintenance contract form. No translation of a  
20 health maintenance contract form shall be approved by the  
21 department unless the translation accurately reflects the  
22 substance of the health maintenance contract form in  
23 translation.

24 (2) The text of all advertisements by a health  
25 maintenance organization, if printed or broadcast in a  
26 language other than English, also shall be available in  
27 English and shall be furnished to the ~~office department~~ upon  
28 request. As used in this subsection, the term "advertisement"  
29 means any advertisement, circular, pamphlet, brochure, or  
30 other printed material disclosing or disseminating advertising  
31 material or information by a health maintenance organization

1 to prospective or existing subscribers and includes any radio  
2 or television transmittal of an advertisement or information.

3 Section 1586. Subsections (2), (3), (5), and (12) and  
4 paragraphs (c) and (e) of subsection (38) of section 641.31,  
5 Florida Statutes, are amended to read:

6 641.31 Health maintenance contracts.--

7 (2) The rates charged by any health maintenance  
8 organization to its subscribers shall not be excessive,  
9 inadequate, or unfairly discriminatory or follow a rating  
10 methodology that is inconsistent, indeterminate, or ambiguous  
11 or encourages misrepresentation or misunderstanding. The  
12 commission ~~department~~, in accordance with generally accepted  
13 actuarial practice as applied to health maintenance  
14 organizations, may define by rule what constitutes excessive,  
15 inadequate, or unfairly discriminatory rates and may require  
16 whatever information it deems necessary to determine that a  
17 rate or proposed rate meets the requirements of this  
18 subsection.

19 (3)(a) If a health maintenance organization desires to  
20 amend any contract with its subscribers or any certificate or  
21 member handbook, or desires to change any basic health  
22 maintenance contract, certificate, grievance procedure, or  
23 member handbook form, or application form where written  
24 application is required and is to be made a part of the  
25 contract, or printed amendment, addendum, rider, or  
26 endorsement form or form of renewal certificate, it may do so,  
27 upon filing with the office ~~department~~ the proposed change or  
28 amendment. Any proposed change shall be effective  
29 immediately, subject to disapproval by the office ~~department~~.  
30 Following receipt of notice of such disapproval or withdrawal  
31 of approval, no health maintenance organization shall issue or

1 use any form disapproved by the office ~~department~~ or as to  
2 which the office ~~department~~ has withdrawn approval.

3 (b) Any change in the rate is subject to paragraph (d)  
4 and requires at least 30 days' advance written notice to the  
5 subscriber. In the case of a group member, there may be a  
6 contractual agreement with the health maintenance organization  
7 to have the employer provide the required notice to the  
8 individual members of the group.

9 (c) The office ~~department~~ shall disapprove any form  
10 filed under this subsection, or withdraw any previous approval  
11 thereof, if the form:

12 1. Is in any respect in violation of, or does not  
13 comply with, any provision of this part or rule adopted  
14 thereunder.

15 2. Contains or incorporates by reference, where such  
16 incorporation is otherwise permissible, any inconsistent,  
17 ambiguous, or misleading clauses or exceptions and conditions  
18 which deceptively affect the risk purported to be assumed in  
19 the general coverage of the contract.

20 3. Has any title, heading, or other indication of its  
21 provisions which is misleading.

22 4. Is printed or otherwise reproduced in such a manner  
23 as to render any material provision of the form substantially  
24 illegible.

25 5. Contains provisions which are unfair, inequitable,  
26 or contrary to the public policy of this state or which  
27 encourage misrepresentation.

28 6. Excludes coverage for human immunodeficiency virus  
29 infection or acquired immune deficiency syndrome or contains  
30 limitations in the benefits payable, or in the terms or  
31 conditions of such contract, for human immunodeficiency virus

1 infection or acquired immune deficiency syndrome which are  
2 different than those which apply to any other sickness or  
3 medical condition.

4 (d) Any change in rates charged for the contract must  
5 be filed with the office ~~department~~ not less than 30 days in  
6 advance of the effective date. At the expiration of such 30  
7 days, the rate filing shall be deemed approved unless prior to  
8 such time the filing has been affirmatively approved or  
9 disapproved by order of the office ~~department~~. The approval of  
10 the filing by the office ~~department~~ constitutes a waiver of  
11 any unexpired portion of such waiting period. The office  
12 ~~department~~ may extend by not more than an additional 15 days  
13 the period within which it may so affirmatively approve or  
14 disapprove any such filing, by giving notice of such extension  
15 before expiration of the initial 30-day period. At the  
16 expiration of any such period as so extended, and in the  
17 absence of such prior affirmative approval or disapproval, any  
18 such filing shall be deemed approved.

19 (e) It is not the intent of this subsection to  
20 restrict unduly the right to modify rates in the exercise of  
21 reasonable business judgment.

22 (5) Every subscriber shall receive a clear and  
23 understandable description of the method of the health  
24 maintenance organization for resolving subscriber grievances,  
25 and the method shall be set forth in the contract,  
26 certificate, and member handbook. The organization shall also  
27 furnish, at the time of initial enrollment and when necessary  
28 due to substantial changes to the grievance process a separate  
29 and additional communication prepared or approved by the  
30 office ~~department~~ notifying the contract holder of a group

31

1 contract or subscriber of an individual contract of their  
2 rights and responsibilities under the grievance process.

3 (12) Each health maintenance contract, certificate, or  
4 member handbook shall state that emergency services and care  
5 shall be provided to subscribers in emergency situations not  
6 permitting treatment through the health maintenance  
7 organization's providers, without prior notification to and  
8 approval of the organization. Not less than 75 percent of the  
9 reasonable charges for covered services and supplies shall be  
10 paid by the organization, up to the subscriber contract  
11 benefit limits. Payment also may be subject to additional  
12 applicable copayment provisions, not to exceed \$100 per claim.  
13 The health maintenance contract, certificate, or member  
14 handbook shall contain the definitions of "emergency services  
15 and care" and "emergency medical condition" as specified in s.  
16 641.19(6) and (7)~~s. 641.19(7) and (8)~~, shall describe  
17 procedures for determination by the health maintenance  
18 organization of whether the services qualify for reimbursement  
19 as emergency services and care, and shall contain specific  
20 examples of what does constitute an emergency. In providing  
21 for emergency services and care as a covered service, a health  
22 maintenance organization shall be governed by s. 641.513.

23 (38)

24 (c) Premiums paid in for the point-of-service riders  
25 may not exceed 15 percent of total premiums for all health  
26 plan products sold by the health maintenance organization  
27 offering the rider. If the premiums paid for point-of-service  
28 riders exceed 15 percent, the health maintenance organization  
29 must notify the office ~~department~~ and, once this fact is  
30 known, must immediately cease offering such a rider until it  
31 is in compliance with the rider premium cap.

1           (e) The term "point of service" may not be used by a  
2 health maintenance organization except with riders permitted  
3 under this section or with forms approved by the office  
4 ~~department~~ in which a point-of-service product is offered with  
5 an indemnity carrier.

6           Section 1587. Subsection (2) of section 641.3105,  
7 Florida Statutes, is amended to read:

8           641.3105 Validity of noncomplying contracts.--

9           (2) Any health maintenance contract delivered or  
10 issued for delivery in this state covering a subscriber, which  
11 subscriber, pursuant to the provisions of this part, the  
12 organization may not lawfully cover under the contract, shall  
13 be cancelable at any time by the organization, any provision  
14 of the contract to the contrary notwithstanding; and the  
15 organization shall promptly cancel the contract in accordance  
16 with the request of the office ~~department~~ therefor. No such  
17 illegality or cancellation shall be deemed to relieve the  
18 organization of any liability incurred by it under the  
19 contract while in force or to prohibit the organization from  
20 retaining the pro rata earned premium or rate thereon. This  
21 provision does not relieve the organization from any penalty  
22 otherwise incurred by the organization under this part on  
23 account of any such violation.

24           Section 1588. Subsection (5), paragraph (b) of  
25 subsection (7), paragraphs (a) and (e) of subsection (8),  
26 paragraph (c) of subsection (9), and paragraph (b) of  
27 subsection (10) of section 641.31071, Florida Statutes, are  
28 amended to read:

29           641.31071 Preexisting conditions.--  
30  
31

1           (5)(a) The term "creditable coverage" means, with  
2 respect to an individual, coverage of the individual under any  
3 of the following:

4           1. A group health plan, as defined in s. 2791 of the  
5 Public Health Service Act.

6           2. Health insurance coverage consisting of medical  
7 care, provided directly, through insurance or reimbursement or  
8 otherwise, and including terms and services paid for as  
9 medical care, under any hospital or medical service policy or  
10 certificate, hospital or medical service plan contract, or  
11 health maintenance contract offered by a health insurance  
12 issuer.

13           3. Part A or part B of Title XVIII of the Social  
14 Security Act.

15           4. Title XIX of the Social Security Act, other than  
16 coverage consisting solely of benefits under s. 1928.

17           5. Chapter 55 of Title 10, United States Code.

18           6. A medical care program of the Indian Health Service  
19 or of a tribal organization.

20           7. The Florida Comprehensive Health Association or  
21 another state health benefit risk pool.

22           8. A health plan offered under chapter 89 of Title 5,  
23 United States Code.

24           9. A public health plan as defined by rule of the  
25 commission ~~department~~. To the greatest extent possible, such  
26 rules must be consistent with regulations adopted by the  
27 United States Department of Health and Human Services.

28           10. A health benefit plan under s. 5(e) of the Peace  
29 Corps Act (22 U.S.C. s. 2504(e)).

30  
31

1 (b) Creditable coverage does not include coverage that  
2 consists solely of one or more or any combination thereof of  
3 the following excepted benefits:

4 1. Coverage only for accident, or disability income  
5 insurance, or any combination thereof.

6 2. Coverage issued as a supplement to liability  
7 insurance.

8 3. Liability insurance, including general liability  
9 insurance and automobile liability insurance.

10 4. Workers' compensation or similar insurance.

11 5. Automobile medical payment insurance.

12 6. Credit-only insurance.

13 7. Coverage for onsite medical clinics.

14 8. Other similar insurance coverage, specified in  
15 rules adopted by the commission ~~department~~, under which  
16 benefits for medical care are secondary or incidental to other  
17 insurance benefits. To the greatest extent possible, such  
18 rules must be consistent with regulations adopted by the  
19 United States Department of Health and Human Services.

20 (c) The following benefits are not subject to the  
21 creditable coverage requirements, if offered separately;

22 1. Limited scope dental or vision benefits.

23 2. Benefits or long-term care, nursing home care, home  
24 health care, community-based care, or any combination of  
25 these.

26 3. Such other similar, limited benefits as are  
27 specified in rules adopted by the commission ~~department~~. To  
28 the greatest extent possible, such rules must be consistent  
29 with regulations adopted by the United States Department of  
30 Health and Human Services.

31

1 (d) The following benefits are not subject to  
2 creditable coverage requirements if offered as independent,  
3 noncoordinated benefits:

- 4 1. Coverage only for a specified disease or illness.
- 5 2. Hospital indemnity or other fixed indemnity  
6 insurance.

7 (e) Benefits provided through Medicare supplemental  
8 health insurance, as defined under s. 1882(g)(1) of the Social  
9 Security Act, coverage supplemental to the coverage provided  
10 under chapter 55 of Title 10, United States Code, and similar  
11 supplemental coverage provided to coverage under a group  
12 health plan are not considered creditable coverage if offered  
13 as a separate insurance policy.

14 (7)

15 (b) A health maintenance organization may elect to  
16 count as creditable coverage, coverage of benefits within each  
17 of several classes or categories of benefits specified in  
18 rules adopted by the commission ~~department~~ rather than as  
19 provided under paragraph (a). Such election shall be made on a  
20 uniform basis for all participants and beneficiaries. Under  
21 such election, a health maintenance organization shall count a  
22 period of creditable coverage with respect to any class or  
23 category of benefits if any level of benefits is covered  
24 within such class or category.

25 (8)(a) Periods of creditable coverage with respect to  
26 an individual shall be established through presentation of  
27 certifications described in this subsection or in such other  
28 manner as may be specified in rules adopted by the commission  
29 ~~department~~.

30 (e) The commission ~~department~~ shall adopt rules to  
31 prevent an insurer's or health maintenance organization's

1 failure to provide information under this subsection with  
2 respect to previous coverage of an individual from adversely  
3 affecting any subsequent coverage of the individual under  
4 another group health plan or health maintenance organization  
5 coverage.

6 (9)

7 (c) As an alternative to the method authorized by  
8 paragraph (a), a health maintenance organization may address  
9 adverse selection in a method approved by the office  
10 ~~department~~.

11 (10)

12 (b) The commission ~~department~~ shall adopt rules that  
13 provide a process whereby individuals who need to establish  
14 creditable coverage for periods before July 1, 1996, and who  
15 would have such coverage credited but for paragraph (a), may  
16 be given credit for creditable coverage for such periods  
17 through the presentation of documents or other means.

18 Section 1589. Paragraph (b) of subsection (3) of  
19 section 641.31074, Florida Statutes, is amended to read:

20 641.31074 Guaranteed renewability of coverage.--

21 (3)

22 (b)1. In any case in which a health maintenance  
23 organization elects to discontinue offering all coverage in  
24 the small group market or the large group market, or both, in  
25 this state, coverage may be discontinued by the insurer only  
26 if:

27 a. The health maintenance organization provides notice  
28 to the office ~~department~~ and to each contract holder, and  
29 participants and beneficiaries covered under such coverage, of  
30 such discontinuation at least 180 days prior to the date of  
31 the nonrenewal of such coverage; and

1           b. All health insurance issued or delivered for  
2 issuance in this state in such market is discontinued and  
3 coverage under such health insurance coverage in such market  
4 is not renewed.

5           2. In the case of a discontinuation under subparagraph  
6 1. in a market, the health maintenance organization may not  
7 provide for the issuance of any health maintenance  
8 organization contract coverage in the market in this state  
9 during the 5-year period beginning on the date of the  
10 discontinuation of the last insurance contract not renewed.

11           Section 1590. Subsection (2) of section 641.315,  
12 Florida Statutes, is amended to read:

13           641.315 Provider contracts.--

14           (2)(a) For all provider contracts executed after  
15 October 1, 1991, and within 180 days after October 1, 1991,  
16 for contracts in existence as of October 1, 1991:

17           1. The contracts must require the provider to give 60  
18 days' advance written notice to the health maintenance  
19 organization and the office ~~department~~ before canceling the  
20 contract with the health maintenance organization for any  
21 reason; and

22           2. The contract must also provide that nonpayment for  
23 goods or services rendered by the provider to the health  
24 maintenance organization is not a valid reason for avoiding  
25 the 60-day advance notice of cancellation.

26           (b) All provider contracts must provide that the  
27 health maintenance organization will provide 60 days' advance  
28 written notice to the provider and the office ~~department~~  
29 before canceling, without cause, the contract with the  
30 provider, except in a case in which a patient's health is  
31 subject to imminent danger or a physician's ability to

1 practice medicine is effectively impaired by an action by the  
2 Board of Medicine or other governmental agency.

3 Section 1591. Subsections (4) and (5) of section  
4 641.3154, Florida Statutes, are amended to read:

5 641.3154 Organization liability; provider billing  
6 prohibited.--

7 (4) A provider or any representative of a provider,  
8 regardless of whether the provider is under contract with the  
9 health maintenance organization, may not collect or attempt to  
10 collect money from, maintain any action at law against, or  
11 report to a credit agency a subscriber of an organization for  
12 payment of services for which the organization is liable, if  
13 the provider in good faith knows or should know that the  
14 organization is liable. This prohibition applies during the  
15 pendency of any claim for payment made by the provider to the  
16 organization for payment of the services and any legal  
17 proceedings or dispute resolution process to determine whether  
18 the organization is liable for the services if the provider is  
19 informed that such proceedings are taking place. It is  
20 presumed that a provider does not know and should not know  
21 that an organization is liable unless:

22 (a) The provider is informed by the organization that  
23 it accepts liability;

24 (b) A court of competent jurisdiction determines that  
25 the organization is liable;

26 (c) The office ~~department~~ or agency makes a final  
27 determination that the organization is required to pay for  
28 such services subsequent to a recommendation made by the  
29 Statewide Provider and Subscriber Assistance Panel pursuant to  
30 s. 408.7056; or

31

1 (d) The agency issues a final order that the  
2 organization is required to pay for such services subsequent  
3 to a recommendation made by a resolution organization pursuant  
4 to s. 408.7057.

5 (5) An organization, the office, and the department  
6 shall report any suspected violation of this section by a  
7 health care practitioner to the Department of Health and by a  
8 facility to the agency, which shall take such action as  
9 authorized by law.

10 Section 1592. Subsection (12) of section 641.3155,  
11 Florida Statutes, is amended to read:

12 641.3155 Prompt payment of claims.--

13 (12) A permissible error ratio of 5 percent is  
14 established for health maintenance organizations' claims  
15 payment violations of paragraphs (3)(a), (b), (c), and (e) and  
16 (4)(a), (b), (c), and (e). If the error ratio of a particular  
17 insurer does not exceed the permissible error ratio of 5  
18 percent for an audit period, no fine shall be assessed for the  
19 noted claims violations for the audit period. The error ratio  
20 shall be determined by dividing the number of claims with  
21 violations found on a statistically valid sample of claims for  
22 the audit period by the total number of claims in the sample.  
23 If the error ratio exceeds the permissible error ratio of 5  
24 percent, a fine may be assessed according to s. 624.4211 for  
25 those claims payment violations which exceed the error ratio.  
26 Notwithstanding the provisions of this section, the office  
27 ~~department~~ may fine a health maintenance organization for  
28 claims payment violations of paragraphs (3)(e) and (4)(e)  
29 which create an uncontestable obligation to pay the claim.  
30 The office ~~department~~ shall not fine organizations for  
31

1 | violations which the office ~~department~~ determines were due to  
2 | circumstances beyond the organization's control.

3 |         Section 1593. Subsection (4), (6), and (7) of section  
4 | 641.316, Florida Statutes, are amended to read:

5 |             641.316 Fiscal intermediary services.--

6 |             (4) A fiscal intermediary services organization, as  
7 | described in subsection (3), shall secure and maintain a  
8 | surety bond on file with the office ~~department~~, naming the  
9 | intermediary as principal. The bond must be obtained from a  
10 | company authorized to write surety insurance in the state, and  
11 | the office ~~department~~ shall be obligee on behalf of itself and  
12 | third parties. The penal sum of the bond may not be less than  
13 | 5 percent of the funds handled by the intermediary in  
14 | connection with its fiscal and fiduciary services during the  
15 | prior year or \$250,000, whichever is less. The minimum bond  
16 | amount must be \$10,000. The condition of the bond must be that  
17 | the intermediary shall register with the office ~~department~~ and  
18 | shall not misappropriate funds within its control or custody  
19 | as a fiscal intermediary or fiduciary. The aggregate liability  
20 | of the surety for any and all breaches of the conditions of  
21 | the bond may not exceed the penal sum of the bond. The bond  
22 | must be continuous in form, must be renewed annually by a  
23 | continuation certificate, and may be terminated by the surety  
24 | upon its giving 30 days' written notice of termination to the  
25 | office ~~department~~.

26 |             (6) Any fiscal intermediary services organization,  
27 | other than a fiscal intermediary services organization owned,  
28 | operated, or controlled by a hospital licensed under chapter  
29 | 395, an insurer licensed under chapter 624, a third-party  
30 | administrator licensed under chapter 626, a prepaid limited  
31 | health service organization licensed under chapter 636, a

1 health maintenance organization licensed under this chapter,  
2 or physician group practices as defined in s. 456.053(3)(h),  
3 must register with the office ~~department~~ and meet the  
4 requirements of this section. In order to register as a fiscal  
5 intermediary services organization, the organization must  
6 comply with ss. 641.21(1)(c) and (d) and 641.22(6). Should the  
7 office ~~department~~ determine that the fiscal intermediary  
8 services organization does not meet the requirements of this  
9 section, the registration shall be denied. In the event that  
10 the registrant fails to maintain compliance with the  
11 provisions of this section, the office ~~department~~ may revoke  
12 or suspend the registration. In lieu of revocation or  
13 suspension of the registration, the office ~~department~~ may levy  
14 an administrative penalty in accordance with s. 641.25.

15 (7) The commission ~~department~~ shall adopt rules  
16 necessary to administer this section.

17 Section 1594. Subsections (1), (2), (3), and (4),  
18 paragraph (b) of subsection (6), subsection (8), paragraph (c)  
19 of subsection (10), subsections (11) and (12), paragraph (a)  
20 of subsection (14), and subsections (15), (16), and (17) of  
21 section 641.35, Florida Statutes, are amended to read:

22 641.35 Assets, liabilities, and investments.--

23 (1) ASSETS.--In any determination of the financial  
24 condition of a health maintenance organization, there shall be  
25 allowed as "assets" only those assets that are owned by the  
26 health maintenance organization and that consist of:

27 (a) Cash or cash equivalents in the possession of the  
28 health maintenance organization, or in transit under its  
29 control, including the true balance of any deposit in a  
30 solvent bank, savings and loan association, or trust company  
31 which is domiciled in the United States. Cash equivalents are

1 short-term, highly liquid investments, with original  
2 maturities of 3 months or less, which are both readily  
3 convertible to known amounts of cash and so near their  
4 maturity that they present insignificant risk of changes in  
5 value because of changes in interest rates.

6 (b) Investments, securities, properties, and loans  
7 acquired or held in accordance with this part, and in  
8 connection therewith the following items:

9 1. Interest due or accrued on any bond or evidence of  
10 indebtedness which is not in default and which is not valued  
11 on a basis including accrued interest.

12 2. Declared and unpaid dividends on stock and shares,  
13 unless the amount of the dividends has otherwise been allowed  
14 as an asset.

15 3. Interest due or accrued upon a collateral loan  
16 which is not in default in an amount not to exceed 1 year's  
17 interest thereon.

18 4. Interest due or accrued on deposits or certificates  
19 of deposit in solvent banks, savings and loan associations,  
20 and trust companies domiciled in the United States, and  
21 interest due or accrued on other assets, if such interest is  
22 in the judgment of the office ~~department~~ a collectible asset.

23 5. Interest due or accrued on current mortgage loans,  
24 in an amount not exceeding in any event the amount, if any, of  
25 the excess of the value of the property less delinquent taxes  
26 thereon over the unpaid principal; but in no event shall  
27 interest accrued for a period in excess of 90 days be allowed  
28 as an asset.

29 (c) Premiums in the course of collection, not more  
30 than 3 months past due, less commissions payable thereon. The  
31 foregoing limitation shall not apply to premiums payable

1 directly or indirectly by any governmental body in the United  
2 States or by any of their instrumentalities.

3 (d) The full amount of reinsurance recoverable from a  
4 solvent reinsurer, which reinsurance is authorized under s.  
5 624.610.

6 (e) Pharmaceutical and medical supply inventories.

7 (f) Goodwill created by acquisitions and mergers  
8 occurring on or after January 1, 2001.

9 (g) Loans or advances by a health maintenance  
10 organization to its parent or principal owner if approved by  
11 the office ~~department~~.

12 (h) Other assets, not inconsistent with the provisions  
13 of this section, deemed by the office ~~department~~ to be  
14 available for the payment of losses and claims, at values to  
15 be determined by it.

16  
17 The office ~~department~~, upon determining that a health  
18 maintenance organization's asset has not been evaluated  
19 according to applicable law or that it does not qualify as an  
20 asset, shall require the health maintenance organization to  
21 properly reevaluate the asset or replace the asset with an  
22 asset suitable to the office ~~department~~ within 30 days of  
23 receipt of written notification by the office ~~department~~ of  
24 this determination, if the removal of the asset from the  
25 organization's assets would impair the organization's  
26 solvency.

27 (2) ASSETS NOT ALLOWED.--In addition to assets  
28 impliedly excluded by the provisions of subsection (1), the  
29 following assets expressly shall not be allowed as assets in  
30 any determination of the financial condition of a health  
31 maintenance organization:

1 (a) Subscriber lists, patents, trade names, agreements  
2 not to compete, and other like intangible assets.

3 (b) Any note or account receivable from or advances to  
4 officers, directors, or controlling stockholders, whether  
5 secured or not, and advances to employees, agents, or other  
6 persons on personal security only, other than those  
7 transactions authorized under paragraph (1)(g).

8 (c) Stock of the health maintenance organization owned  
9 by it directly or owned by it through any entity in which the  
10 organization owns or controls, directly or indirectly, more  
11 than 25 percent of the ownership interest.

12 (d) Leasehold improvements, nonmedical libraries,  
13 stationery, literature, and nonmedical supply inventories,  
14 except that leasehold improvements made prior to October 1,  
15 1985, shall be allowed as an asset and shall be amortized over  
16 the shortest of the following periods:

- 17 1. The life of the lease.
- 18 2. The useful life of the improvements.
- 19 3. The 3-year period following October 1, 1985.

20 (e) Furniture, fixtures, furnishings, vehicles,  
21 medical libraries, and equipment.

22 (f) Notes or other evidences of indebtedness which are  
23 secured by mortgages or deeds of trust which are in default  
24 and beyond the express period specified in the instrument for  
25 curing the default.

26 (g) Bonds in default for more than 60 days.

27 (h) Prepaid and deferred expenses.

28 (i) Any note, account receivable, advance, or other  
29 evidence of indebtedness, or investment in:

- 30 1. The parent of the health maintenance organization;

31

1           2. Any entity directly or indirectly controlled by the  
2 health maintenance organization parent; or

3           3. An affiliate of the parent or the health  
4 maintenance organization,

5  
6 except as allowed in subsections (1), (11), and (12). The  
7 office department may, however, allow all or a portion of such  
8 asset, at values to be determined by the office department, if  
9 deemed by the office department to be available for the  
10 payment of losses and claims.

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

14           (a) The amount, estimated consistently with the  
15 provisions of this part, necessary to pay all of its unpaid  
16 losses and claims incurred for or on behalf of a subscriber,  
17 on or prior to the end of the reporting period, whether  
18 reported or unreported, including contract and premium  
19 deficiency reserves. If a health maintenance organization,  
20 through a health care risk contract, transfers to any entity  
21 the obligation to pay any provider for any claim arising from  
22 services provided to or for the benefit of any subscriber, the  
23 liabilities of the health maintenance organization under this  
24 section shall include the amount of those losses and claims to  
25 the extent that the provider has not received payment. No  
26 liability need be established if the entity has provided to  
27 the health maintenance organization a financial instrument  
28 acceptable to the office department securing the obligations  
29 under the contract or if the health maintenance organization  
30 has in place an escrow or withhold agreement approved by the  
31 office department which assures full payment of those claims.

1 Financial instruments may include irrevocable, clean, and  
2 evergreen letters of credit. As used in this paragraph, the  
3 term "entity" does not include this state, the United States,  
4 or an agency thereof or an insurer or health maintenance  
5 organization authorized in this state.

6 (b) The amount equal to the unearned portions of the  
7 gross premiums charged on health maintenance contracts in  
8 force.

9 (c) Taxes, expenses, and other obligations due or  
10 accrued at the date of the statement.

11

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

18 (4) INVESTMENTS GENERALLY.--Health maintenance  
19 organizations may invest their funds only in accordance with  
20 the provisions of this part. Notwithstanding the provisions of  
21 this part, however, the office ~~department~~ may, after notice  
22 and hearing, order a health maintenance organization to limit  
23 or withdraw from certain investments or to discontinue certain  
24 investment practices, to the extent that the office ~~department~~  
25 finds the investment practices hazardous to the financial  
26 condition of the organization. At any such hearing, the  
27 office ~~department~~ shall have the burden of presenting a prima  
28 facie case that the investment or investment practices are  
29 hazardous to the financial condition of the organization. If  
30 the office ~~department~~ presents such a prima facie case, then  
31 it shall be the organization's burden to demonstrate that the

1 investment or investment practices are not hazardous to the  
2 financial condition of the organization.

3 (6) GENERAL QUALIFICATIONS.--

4 (b) No security or investment shall be eligible for  
5 purchase at a price above its market value unless it is  
6 approved by the office ~~department~~.

7 (8) EXCESSIVE COMMISSIONS AND CERTAIN INTERESTS  
8 PROHIBITED.--

9 (a) No health maintenance organization shall pay any  
10 commission or brokerage for the purchase or sale of property,  
11 whether real or personal, in excess of that usual and  
12 customary at the time and in the locality where the purchases  
13 or sales are made. Information regarding payments of  
14 commissions and brokerage shall be maintained from the date of  
15 the most recent examination by the office ~~department~~ pursuant  
16 to s. 641.27 until the date of completion of the following  
17 examination.

18 (b) No health maintenance organization shall knowingly  
19 invest in or loan upon any property, directly or indirectly,  
20 whether real or personal, in which any officer or director of  
21 the organization has a financial interest, nor shall any  
22 organization make a loan of any kind to any officer or  
23 director of the organization, except that:

24 1. This paragraph shall not apply to loans in  
25 circumstances in which the financial interest of the officer  
26 or director is only nominal, trifling, or so remote as not to  
27 give rise to a conflict of interest; and

28 2. In any case, the office ~~department~~ may approve a  
29 transaction between an organization and its officers or  
30 directors under this paragraph if it is satisfied that:

31

1           a. The transaction is entered into in good faith for  
2 the advantage and benefit of the organization,

3           b. The amount of the proposed investment or loan does  
4 not violate any other provision of this part or exceed the  
5 reasonable, normal value of the property or the interest which  
6 the company proposed to acquire,

7           c. The transaction is otherwise fair and reasonable,  
8 and

9           d. The transaction will not adversely affect, to any  
10 substantial degree, the liquidity of the organization's  
11 investments or its ability thereafter to comply with  
12 requirements of this part or the payment of its claims and  
13 obligations.

14           (10) PROPERTY USED IN THE HEALTH MAINTENANCE  
15 ORGANIZATION'S BUSINESS.--Real estate, including leasehold  
16 estates, for the convenient accommodation of the  
17 organization's business operations, including home office,  
18 branch administrative offices, hospitals, medical clinics,  
19 medical professional buildings, and any other facility to be  
20 used in the provision of health care services, or real estate  
21 for rental to any health care provider under contract with the  
22 organization to provide health care services which shall be  
23 used in the provision of health care services to members of  
24 the organization by that provider, is acceptable as an  
25 investment on the following conditions:

26           (c) The greater of the admitted value of the asset, as  
27 determined by statutory accounting principles, or, if approved  
28 by the office ~~department~~, the health maintenance  
29 organization's equity in the real estate plus all encumbrances  
30 on the real estate owned by the organization under this  
31 subsection, when added to the value of all personal and mixed

1 property used in the organization's business, shall not exceed  
2 75 percent of its admitted assets unless, with the permission  
3 of the office department, it finds that the percentage of its  
4 admitted assets is insufficient to provide convenient  
5 accommodation for the organization's business and the  
6 operations of the organization would not otherwise be  
7 impaired.

8 (11) INVESTMENTS IN ADMINISTRATIVE AND MANAGEMENT  
9 SERVICE ENTITIES AND OTHER HEALTH CARE PROVIDERS.--A health  
10 maintenance organization may invest directly or indirectly in  
11 real estate, common and preferred stocks, bonds or debentures,  
12 including convertible debentures, or other evidences of debts  
13 of or equity in an entity if the entity is owned by or, with  
14 the approval of the office department, under contract to the  
15 organization to provide management services, administrative  
16 services, or health care services for the organization, on the  
17 following conditions:

18 (a) Investments authorized under this subsection shall  
19 not exceed 50 percent of admitted assets, and these  
20 investments shall be included in the calculation of the  
21 overall limitation in paragraph (10)(c) relating to all real  
22 and personal property.

23 (b) Investments may qualify under this section only  
24 insofar as a provider of management, administrative, or health  
25 care service relationship as defined herein exists. Upon  
26 cessation of such relationship, each investment shall be  
27 subject to the rules applicable to an investment of that type  
28 and must qualify under the appropriate limitation or, failing  
29 that, become ineligible and subject to disposal under  
30 subsection (17).

31

1           (12) EXCHANGES OF FACILITIES OR ASSETS.--Health care  
2 or administrative service entities, if subsidiaries of or  
3 under contract to the health maintenance organization to  
4 provide administrative or health care services to the  
5 organization's members, may exchange facilities or similar  
6 assets to be used in the organization's business for stock of  
7 the organization. However, any exchange involving an entity  
8 under contract with the health maintenance organization must  
9 have the approval of the office ~~department~~ prior to the  
10 exchange. These facilities or assets shall be valued in  
11 accordance with statutory accounting principles.

12           (14) SPECIAL LIMITATION INVESTMENTS.--

13           (a) After satisfying the requirements of this part,  
14 any funds of the health maintenance organization may be  
15 invested in the following investments, subject to a cost  
16 limitation of 10 percent of its admitted assets in each  
17 category of investment:

18           1. Anticipation obligations of political subdivisions  
19 of a state.--Anticipation obligations of any political  
20 subdivision of any state of the United States, including, but  
21 not limited to, bond anticipation notes, tax anticipation  
22 notes, preliminary loan anticipation notes, revenue  
23 anticipation notes, and construction anticipation notes, for  
24 the payment of money within 12 months from the issuance of the  
25 obligation, on the following conditions:

26           a. The anticipation notes are a direct obligation of  
27 the issuer under conditions set forth in subsection (9).

28           b. The political subdivision is not in default in the  
29 payment of the principal or interest on any of its direct  
30 general obligations or any obligation guaranteed by such  
31 political subdivision.

1           c. The anticipated funds are specifically pledged to  
2 secure the obligations.

3           2. Revenue obligations of state or municipal public  
4 utilities.--Obligations of any state of the United States, a  
5 political subdivision thereof, or a public instrumentality of  
6 any one or more of the foregoing for the payment of money, on  
7 the following conditions:

8           a. The obligations are payable from revenues or  
9 earnings of a public utility of such state, political  
10 subdivision, or public instrumentality which are specifically  
11 pledged therefor.

12           b. The law under which the obligations are issued  
13 requires that such rates for service shall be charged and  
14 collected at all times so as to produce sufficient revenue or  
15 earning, together with any other revenues or moneys pledged,  
16 to pay all operating and maintenance charges of the public  
17 utility and all principal and interest on such charges.

18           c. No prior or parity obligations payable from the  
19 revenues or earnings of that public utility are in default at  
20 the date of such investment.

21           3. Other revenue obligations.--Obligations of any  
22 state of the United States, a political subdivision thereof,  
23 or a public instrumentality of any of the foregoing for the  
24 payment of money, on the following conditions:

25           a. The obligations are payable from revenues or  
26 earnings, excluding revenues or earnings from public  
27 utilities, specifically pledged therefor by such state,  
28 political subdivision, or public instrumentality.

29           b. No prior or parity obligation of the same issuer  
30 payable from revenues or earnings from the same source has  
31 been in default as to principal or interest during the 5 years

1 next preceding the date of the investment, but the issuer need  
2 not have been in existence for that period, and obligations  
3 acquired under this paragraph may be newly issued.

4 4. Corporate stocks.--Stocks, common or preferred, of  
5 any corporation created or existing under the laws of the  
6 United States or any state thereof. The organization may  
7 invest in stocks, common or preferred, of any corporation  
8 created or existing under the laws of any foreign country if  
9 such stocks are listed and traded on a national securities  
10 exchange in the United States or, in the alternative, if such  
11 investment in stocks of any corporation created or existing  
12 under the laws of any foreign country are first approved by  
13 the office ~~department~~. Investment in common stock of any one  
14 corporation shall not exceed 3 percent of the health  
15 maintenance organization's admitted assets.

16 (15) INVESTMENT OF EXCESS FUNDS.--

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

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

22 2. In such other investments not specifically  
23 authorized by this part, provided such investments do not  
24 exceed the lesser of 5 percent of the health maintenance  
25 organization's admitted assets or 25 percent of the amount by  
26 which a health maintenance organization's surplus exceeds its  
27 statutorily required minimum surplus. A health maintenance  
28 organization may exceed the limitations of this subparagraph  
29 only with the prior written approval of the office ~~department~~.

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

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

4           2. Make any investment prohibited by this code.

5           (16) PROHIBITED INVESTMENTS AND INVESTMENT  
6 UNDERWRITING.--

7           (a) In addition to investments excluded pursuant to  
8 other provisions of this act, a health maintenance  
9 organization shall not directly or indirectly invest in or  
10 lend its funds upon the security of:

11           1. Issued shares of its own capital stock, except in  
12 connection with a plan approved by the office ~~department~~ for  
13 purchase of the shares by the organization's officers,  
14 employees, or agents. However, no such stock shall constitute  
15 an asset of the organization in any determination of its  
16 financial condition.

17           2. Except with the consent of the office ~~department~~,  
18 securities issued by any corporation or enterprise the  
19 controlling interest of which is, or will after such  
20 acquisition by the organization be, held directly or  
21 indirectly by the organization or any combination of the  
22 organization and its directors, officers, parent corporation,  
23 subsidiaries, or controlling stockholders. Investments in  
24 health care providers under subsections (11) and (12) shall  
25 not be subject to this provision.

26           3. Any note or other evidence of indebtedness of any  
27 director, officer, or controlling stockholder of the health  
28 maintenance organization.

29           (b) No health maintenance organization shall  
30 underwrite or participate in the underwriting of an offering  
31 of securities or property by any other person.

1 (17) TIME LIMIT FOR DISPOSAL OF INELIGIBLE PROPERTY  
2 AND SECURITIES; EFFECT OF FAILURE TO DISPOSE.--

3 (a) Any property or securities lawfully acquired by a  
4 health maintenance organization which it could not otherwise  
5 have invested in or loaned its funds upon at the time of such  
6 acquisition shall be disposed of within 6 months from the date  
7 of acquisition, unless within such period the security has  
8 attained to the standard of eligibility; except that any  
9 security or property acquired under any agreement of merger or  
10 consolidation may be retained for a longer period if so  
11 provided in the plan for such merger or consolidation, as  
12 approved by the office ~~department~~. Upon application by the  
13 organization and proof to the office ~~department~~ that forced  
14 sale of any such property or security would materially injure  
15 the interests of the health maintenance organization, the  
16 office ~~department~~ shall extend the disposal period for an  
17 additional reasonable time.

18 (b) Notwithstanding the provisions of paragraph (a),  
19 any ineligible property or securities shall not be allowed as  
20 an asset of the organization.

21 Section 1595. Section 641.36, Florida Statutes, is  
22 amended to read:

23 641.36 Adoption of rules; penalty for violation.--The  
24 commission ~~department~~ shall adopt rules necessary to carry out  
25 the provisions of this part. The office ~~department~~ shall  
26 collect and make available all health maintenance organization  
27 rules adopted by the commission ~~department~~. Any violation of  
28 a rule adopted under this section shall subject the violating  
29 entity to the provisions of s. 641.23.

30 Section 1596. Subsections (1), (2), and (5) of section  
31 641.365, Florida Statutes, are amended to read:

1           641.365 Dividends.--

2           (1)(a) A health maintenance organization shall not pay  
3 any dividend or distribute cash or other property to  
4 stockholders except out of that part of its available and  
5 accumulated surplus funds which is derived from realized net  
6 operating profits on its business and net realized capital  
7 gains.

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

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

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

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

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

30           2. The health maintenance organization will have  
31 surplus equal to or exceeding 115 percent of the minimum

1 required statutory surplus after the dividend or distribution  
2 is made.

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

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

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

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

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

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

29           (c) History of capital contributions.

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

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

4           (5) The office ~~department~~ may revoke or suspend the  
5 certificate of authority of a health maintenance organization  
6 which has declared or paid such an illegal dividend.

7           Section 1597. Section 641.385, Florida Statutes, is  
8 amended to read:

9           641.385 Order to discontinue certain advertising.--If  
10 in the opinion of the office ~~department~~ any advertisement by a  
11 health maintenance organization violates any of the provisions  
12 of this part, the department may enter an immediate order  
13 requiring that the use of the advertisement be discontinued.  
14 If requested by the health maintenance organization, the  
15 office ~~department~~ shall conduct a hearing within 10 days of  
16 the entry of such order. If, after the hearing or by  
17 agreement with the health maintenance organization, a final  
18 determination is made that the advertising was in fact  
19 violative of any provision of this part, the office ~~department~~  
20 may, in lieu of revocation of the certificate of authority,  
21 require the publication of a corrective advertisement; impose  
22 an administrative penalty of up to \$10,000; and, in the case  
23 of an initial solicitation, require that the health  
24 maintenance organization, prior to accepting any application  
25 received in response to the advertisement, provide an  
26 acceptable clarification of the advertisement to each  
27 individual applicant.

28           Section 1598. Subsection (1) of section 641.39001,  
29 Florida Statutes, is amended to read:

30  
31

1           641.39001 Soliciting or accepting new or renewal  
2 health maintenance contracts by insolvent or impaired health  
3 maintenance organization prohibited; penalty.--

4           (1) Whether or not delinquency proceedings as to a  
5 health maintenance organization have been or are to be  
6 initiated, a director or officer of a health maintenance  
7 organization, except with the written permission of the office  
8 ~~Department of Insurance~~, may not authorize or permit the  
9 health maintenance organization to solicit or accept new or  
10 renewal health maintenance contracts or provider contracts in  
11 this state after the director or officer knew, or reasonably  
12 should have known, that the health maintenance organization  
13 was insolvent or impaired. As used in this section, the term  
14 "impaired" means that the health maintenance organization does  
15 not meet the requirements of s. 641.225.

16           Section 1599. Subsections (6) and (10) of section  
17 641.3903, Florida Statutes, are amended to read:

18           641.3903 Unfair methods of competition and unfair or  
19 deceptive acts or practices defined.--The following are  
20 defined as unfair methods of competition and unfair or  
21 deceptive acts or practices:

22           (6) FAILURE TO MAINTAIN COMPLAINT-HANDLING  
23 PROCEDURES.--Failure of any person to maintain a complete  
24 record of all the complaints received since the date of the  
25 most recent examination of the health maintenance organization  
26 by the office ~~department~~. For the purposes of this  
27 subsection, the term "complaint" means any written  
28 communication primarily expressing a grievance and requesting  
29 a remedy to the grievance.

30           (10) ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED  
31 CHARGES FOR HEALTH MAINTENANCE COVERAGE.--

1 (a) Knowingly collecting any sum as a premium or  
2 charge for health maintenance coverage which is not then  
3 provided or is not in due course to be provided, subject to  
4 acceptance of the risk by the health maintenance organization,  
5 by a health maintenance contract issued by a health  
6 maintenance organization as permitted by this part.

7 (b) Knowingly collecting as a premium or charge for  
8 health maintenance coverage any sum in excess of or less than  
9 the premium or charge applicable to health maintenance  
10 coverage, in accordance with the applicable classifications  
11 and rates as filed with the office ~~department~~, and as  
12 specified in the health maintenance contract.

13 Section 1600. Section 641.3905, Florida Statutes, is  
14 amended to read:

15 641.3905 General powers and duties of the department  
16 and office.--In addition to the powers and duties set forth in  
17 s. 624.307, the department and office shall each have the  
18 power within its respective regulatory jurisdiction to examine  
19 and investigate the affairs of every person, entity, or health  
20 maintenance organization in order to determine whether the  
21 person, entity, or health maintenance organization is  
22 operating in accordance with the provisions of this part or  
23 has been or is engaged in any unfair method of competition or  
24 in any unfair or deceptive act or practice prohibited by s.  
25 641.3901, and each shall have the powers and duties specified  
26 in ss. 641.3907-641.3913 in connection therewith.

27 Section 1601. Section 641.3907, Florida Statutes, is  
28 amended to read:

29 641.3907 Defined unfair practices; hearings,  
30 witnesses, appearances, production of books, and service of  
31 process.--

1           (1) Whenever the department or office has reason to  
2 believe that any person, entity, or health maintenance  
3 organization has engaged, or is engaging, in this state in any  
4 unfair method of competition or any unfair or deceptive act or  
5 practice as defined in s. 641.3903 or is operating a health  
6 maintenance organization without a certificate of authority as  
7 required by this part and that a proceeding by it in respect  
8 thereto would be to the interest of the public, the department  
9 or office shall conduct or cause to have conducted a hearing  
10 in accordance with chapter 120.

11           (2) The department or office, a duly empowered hearing  
12 officer, or an administrative law judge shall, during the  
13 conduct of such hearing, have those powers enumerated in s.  
14 120.569; however, the penalties for failure to comply with a  
15 subpoena or with an order directing discovery shall be limited  
16 to a fine not to exceed \$1,000 per violation.

17           (3) Statements of charges, notices, and orders under  
18 this part may be served by anyone duly authorized by the  
19 department or office, either in the manner provided by law for  
20 service of process in civil actions or by certifying and  
21 mailing a copy thereof to the person, entity, or health  
22 maintenance organization affected by the statement, notice,  
23 order, or other process at her or his or its residence or  
24 principal office or place of business. The verified return by  
25 the person so serving such statement, notice, order, or other  
26 process, setting forth the manner of the service, shall be  
27 proof of the same, and the return postcard receipt for such  
28 statement, notice, order, or other process, certified and  
29 mailed as aforesaid, shall be proof of service of the same.

30           Section 1602. Section 641.3909, Florida Statutes, is  
31 amended to read:

1           641.3909 Cease and desist and penalty orders.--After  
2 the hearing provided in s. 641.3907, the department or office  
3 shall enter a final order in accordance with s. 120.569. If it  
4 is determined that the person, entity, or health maintenance  
5 organization charged has engaged in an unfair or deceptive act  
6 or practice or the unlawful operation of a health maintenance  
7 organization without a subsisting certificate of authority,  
8 the department or office shall also issue an order requiring  
9 the violator to cease and desist from engaging in such method  
10 of competition, act, or practice or unlawful operation of a  
11 health maintenance organization. Further, if the act or  
12 practice constitutes a violation of s. 641.3155, s. 641.3901,  
13 or s. 641.3903, the department or office may, at its  
14 discretion, order any one or more of the following:

15           (1) Suspension or revocation of the health maintenance  
16 organization's certificate of authority if it knew, or  
17 reasonably should have known, it was in violation of this  
18 part.

19           (2) If it is determined that the person or entity  
20 charged has engaged in the business of operating a health  
21 maintenance organization without a certificate of authority,  
22 an administrative penalty not to exceed \$1,000 for each health  
23 maintenance contract offered or effectuated.

24           Section 1603. Section 641.3911, Florida Statutes, is  
25 amended to read:

26           641.3911 Appeals from the department or office.--Any  
27 person, entity, or health maintenance organization subject to  
28 an order of the department or office under s. 641.3909 or s.  
29 641.3913 may obtain a review of the order by filing an appeal  
30 therefrom in accordance with the provisions and procedures for  
31 appeal under s. 120.68.

1           Section 1604. Section 641.3913, Florida Statutes, is  
2 amended to read:

3           641.3913 Penalty for violation of cease and desist  
4 orders.--Any person, entity, or health maintenance  
5 organization which violates a cease and desist order of the  
6 department or office under s. 641.3909 while such order is in  
7 effect, after notice and hearing as provided in s. 641.3907,  
8 shall be subject, at the discretion of the department or  
9 office, to any one or more of the following:

10           (1) A monetary penalty of not more than \$200,000 as to  
11 all matters determined in such hearing.

12           (2) Suspension or revocation of the health maintenance  
13 organization's certificate of authority.

14           Section 1605. Section 641.3917, Florida Statutes, is  
15 amended to read:

16           641.3917 Civil liability.--The provisions of this part  
17 are cumulative to rights under the general civil and common  
18 law, and no action of the department or office shall abrogate  
19 such rights to damage or other relief in any court.

20           Section 1606. Subsections (3), (10), and (14) of  
21 section 641.3922, Florida Statutes, are amended to read:

22           641.3922 Conversion contracts; conditions.--Issuance  
23 of a converted contract shall be subject to the following  
24 conditions:

25           (3) CONVERSION PREMIUM.--The premium for the converted  
26 contract shall be determined in accordance with premium rates  
27 applicable to the age and class of risk of each person to be  
28 covered under the converted contract and to the type and  
29 amount of coverage provided. However, the premium for the  
30 converted contract may not exceed 200 percent of the standard  
31 risk rate, as established by the office ~~department~~ under s.

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**CODING:**Words ~~stricken~~ are deletions; words underlined are additions.

1 627.6675(3). The mode of payment for the converted contract  
2 shall be quarterly or more frequently at the option of the  
3 organization, unless otherwise mutually agreed upon between  
4 the subscriber and the organization.

5 (10) ALTERNATE PLANS.--The health maintenance  
6 organization shall offer a standard health benefit plan as  
7 established pursuant to s. 627.6699(12). The health  
8 maintenance organization may, at its option, also offer  
9 alternative plans for group health conversion in addition to  
10 those required by this section, provided any alternative plan  
11 is approved by the office department or is a converted policy,  
12 approved under s. 627.6675 and issued by an insurance company  
13 authorized to transact insurance in this state. Approval by  
14 the office department of an alternative plan shall be based on  
15 compliance by the alternative plan with the provisions of this  
16 part and the rules promulgated thereunder, applicable  
17 provisions of the Florida Insurance Code and rules promulgated  
18 thereunder, and any other applicable law.

19 (14) NOTIFICATION.--A notification of the conversion  
20 privilege shall be included in each health maintenance  
21 contract and in any certificate or member's handbook. The  
22 organization shall mail an election and premium notice form,  
23 including an outline of coverage, on a form approved by the  
24 office department, within 14 days after any individual who is  
25 eligible for a converted health maintenance contract gives  
26 notice to the organization that the individual is considering  
27 applying for the converted contract or otherwise requests such  
28 information. The outline of coverage must contain a  
29 description of the principal benefits and coverage provided by  
30 the contract and its principal exclusions and limitations,  
31 including, but not limited to, deductibles and coinsurance.

1           Section 1607. Section 641.402, Florida Statutes, is  
2 amended to read:

3           641.402 Definitions.--As used in this part, the term:

4           (1) "Basic services" includes any of the following:  
5 emergency care, physician care other than hospital inpatient  
6 physician services, ambulatory diagnostic treatment, and  
7 preventive health care services.

8           ~~(2) "Department" means the Department of Insurance.~~

9           (2)~~(3)~~ "Guaranteeing organization" means an  
10 organization that ~~which~~ is domiciled in the United States;  
11 that ~~which~~ has authorized service of process against it; and  
12 that ~~which~~ has appointed the Chief Financial Officer Insurance  
13 ~~Commissioner and Treasurer~~ as its agent for service of process  
14 in connection with any cause of action arising in this state,  
15 based upon any guarantee entered into under this part.

16           (3)~~(4)~~ "Insolvent" or "insolvency" means the inability  
17 of a prepaid health clinic to discharge its liabilities as  
18 they become due in the normal course of business.

19           (4)~~(5)~~ "Prepaid health clinic" means any organization  
20 authorized under this part which provides, either directly or  
21 through arrangements with other persons, basic services to  
22 persons enrolled with such organization, on a prepaid per  
23 capita or prepaid aggregate fixed-sum basis, including those  
24 basic services which subscribers might reasonably require to  
25 maintain good health. However, no clinic that ~~which~~ provides  
26 or contracts for, either directly or indirectly, inpatient  
27 hospital services, hospital inpatient physician services, or  
28 indemnity against the cost of such services shall be a prepaid  
29 health clinic.

30           (5)~~(6)~~ "Prepaid health clinic contract" means any  
31 contract entered into by a prepaid health clinic with a

1 subscriber or group of subscribers to provide any of the basic  
2 services in exchange for a prepaid per capita or prepaid  
3 aggregate fixed sum.

4 (6)~~(7)~~ "Provider" means any physician or person other  
5 than a hospital that furnishes health care services and is  
6 licensed or authorized to practice in this state.

7 (7)~~(8)~~ "Reporting period" means the particular span of  
8 time by or for which accounts are redeemed on an annualized  
9 basis.

10 (8)~~(9)~~ "Subscriber" means an individual who has  
11 contracted, or on whose behalf a contract has been entered  
12 into, with a prepaid health clinic for health care services.

13 (9)~~(10)~~ "Surplus" means total unencumbered assets in  
14 excess of total liabilities. Surplus includes capital stock,  
15 capital in excess of par, and retained earnings and may  
16 include surplus notes.

17 (10)~~(11)~~ "Surplus notes" means debt that ~~which~~ has  
18 been guaranteed by the United States Government or its  
19 agencies or debt that ~~which~~ has been subordinated to all  
20 claims of subscribers and general creditors of the prepaid  
21 health clinic.

22 Section 1608. Section 641.403, Florida Statutes, is  
23 amended to read:

24 641.403 Rulemaking authority.--The commission may  
25 ~~Department of Insurance has authority to~~ adopt rules pursuant  
26 to ss. 120.536(1) and 120.54 to implement the provisions of  
27 this part.

28 Section 1609. Section 641.405, Florida Statutes, is  
29 amended to read:

30 641.405 Application for certificate of authority to  
31 operate prepaid health clinic.--

1           (1) No person may operate a prepaid health clinic  
2 without first obtaining a certificate of authority from the  
3 office ~~department~~. The office ~~department~~ shall not issue a  
4 certificate of authority to any applicant which does not  
5 possess a valid Health Care Provider Certificate issued by the  
6 Agency for Health Care Administration.

7           (2) Each application for a certificate of authority  
8 shall be on such form as the commission ~~department~~ prescribes,  
9 and such application shall be accompanied by:

10           (a) A copy of the basic organizational document of the  
11 applicant, if any, such as the articles of incorporation,  
12 articles of association, partnership agreement, trust  
13 agreement, or other applicable document, and all amendments to  
14 such document.

15           (b) A copy of the constitution, bylaws, rules and  
16 regulations, or similar form of document, if any, regulating  
17 the conduct of the affairs of the applicant.

18           (c) A list of the names, addresses, and official  
19 capacities with the applicant of the persons who are to be  
20 responsible for the conduct of the affairs of the clinic,  
21 including all members of the governing body, the officers and  
22 directors in the case of a corporation, and the partners or  
23 associates in the case of a partnership or association. Such  
24 persons shall fully disclose to the office ~~department~~ and the  
25 governing body of the clinic the extent and nature of any  
26 contracts or arrangements between them and the clinic,  
27 including any possible conflicts of interest.

28           (d) A statement generally describing the clinic and  
29 its operations.

30           (e) Each form of prepaid health clinic contract that  
31 the applicant proposes to offer the subscribers, showing for

1 each form of contract the benefits to which the subscribers  
2 are entitled, together with a table of the rates charged, or  
3 proposed to be charged.

4 (f) A copy of the applicant's Health Care Provider  
5 Certificate from the Agency for Health Care Administration,  
6 issued pursuant to part III of this chapter.

7 (g) A financial statement prepared on the basis of  
8 generally accepted accounting principles, except that surplus  
9 notes acceptable to the office ~~department~~ may be included in  
10 the calculation of surplus.

11 Section 1610. Section 641.406, Florida Statutes, is  
12 amended to read:

13 641.406 Issuance of certificate of authority.--The  
14 office ~~department~~ shall issue a certificate of authority for a  
15 prepaid health clinic to any applicant filing a properly  
16 completed application in conformity with s. 641.405, upon  
17 payment of the prescribed fees and upon the office's  
18 ~~department's~~ being satisfied that:

19 (1) As a condition precedent to the issuance of any  
20 certificate, the applicant has obtained a Health Care Provider  
21 Certificate from the Agency for Health Care Administration  
22 pursuant to part III of this chapter.

23 (2) The proposed rates are actuarially sound for the  
24 benefits provided, including administrative costs.

25 (3) The applicant has met the minimum surplus  
26 requirements of s. 641.407.

27 (4) The procedures for offering basic services and  
28 offering and terminating contracts to subscribers will not  
29 unfairly discriminate on the basis of age, health, or economic  
30 status. However, this subsection does not prohibit reasonable  
31

1 underwriting classifications for the purposes of establishing  
2 contract rates, nor does it prohibit experience rating.

3 (5) The procedures for offering basic services and  
4 offering and terminating contracts to subscribers will not  
5 discriminate on the basis of sex, race, or national origin.

6 (6) The applicant furnishes evidence of adequate  
7 insurance coverage or an adequate plan for self-insurance to  
8 respond to claims for injuries arising out of the furnishing  
9 of basic services.

10 (7) The ownership, control, or management of the  
11 applicant is competent and trustworthy and possesses  
12 managerial experience that would make the proposed clinic  
13 operation beneficial to the subscribers. The office ~~department~~  
14 shall not grant or continue authority to transact the business  
15 of a prepaid health clinic in this state at any time during  
16 which the office ~~department~~ has good reason to believe that  
17 the ownership, control, or management of the clinic is under  
18 the control of any person whose business operations are or  
19 have been marked by business practices or conduct that is to  
20 the detriment of the public, stockholders, investors, or  
21 creditors; by the improper manipulation of assets or of  
22 accounts; or by bad faith.

23 (8) The application and the applicant are in  
24 conformity with all requirements of this part.

25 Section 1611. Section 641.4065, Florida Statutes, is  
26 amended to read:

27 641.4065 Insurance business not authorized.--Nothing  
28 in the Florida Insurance Code or this part shall be deemed to  
29 authorize any prepaid health clinic to transact any insurance  
30 business other than that issuing prepaid health clinic  
31 contracts or otherwise to engage in any other type of

1 insurance unless it is authorized under a certificate of  
2 authority issued by the office ~~department~~ under the provisions  
3 of the Florida Insurance Code.

4 Section 1612. Subsection (2) of section 641.407,  
5 Florida Statutes, is amended to read:

6 641.407 Minimum surplus.--

7 (2) In lieu of having any minimum surplus, the prepaid  
8 health clinic may provide a written guaranty to assure payment  
9 of covered subscriber claims if the guaranteeing organization  
10 has been in operation for at least 3 years and has a surplus,  
11 not including land, buildings, and equipment, equal to the  
12 product of 2 times the amount of the required statutory  
13 surplus. Such guaranteeing organization and such written  
14 guaranty must be acceptable to, and approved by, the office  
15 ~~department~~. The office ~~department~~ shall consider the  
16 likelihood of the payment of subscriber claims in granting or  
17 withholding such approval.

18 Section 1613. Section 641.409, Florida Statutes, is  
19 amended to read:

20 641.409 Insolvency protection.--

21 (1) Every prepaid health clinic shall comply with one  
22 of the following paragraphs:

23 (a) The prepaid health clinic shall secure insurance  
24 to the satisfaction of the office ~~department~~ to protect  
25 subscribers in the event the prepaid health clinic is unable  
26 to meet its obligations to subscribers under the terms of any  
27 prepaid health clinic contract issued to a subscriber.

28 (b) The prepaid health clinic shall file with the  
29 office ~~department~~ a surety bond issued by an authorized surety  
30 insurer. The bond shall be for the same purpose as the  
31 insurance in lieu of which the bond is filed. The office

1 ~~department~~ shall not approve any bond under the terms of which  
2 the protection afforded against insolvency is not equivalent  
3 to the protection afforded by such insurance. The bond shall  
4 guarantee that the prepaid health clinic will faithfully and  
5 truly perform all the conditions of any prepaid health clinic  
6 contract. No such bond shall be canceled or subject to  
7 cancellation unless at least 60 days' notice of the  
8 cancellation, in writing, is filed with the office ~~department~~.  
9 In the event that the notice of termination of the bond is  
10 filed with the office ~~department~~, the prepaid health clinic  
11 insured under the bond shall, within 30 days of the filing of  
12 the notice of termination, provide the office ~~department~~ with  
13 a replacement bond meeting the requirements of this part or  
14 secure insurance as required by paragraph (a). The  
15 cancellation of a bond does not relieve the obligation of the  
16 issuer of the bond for claims arising out of contracts issued  
17 prior to the cancellation of the bond unless a replacement  
18 bond or insurance is secured. In no event shall the issuer's  
19 aggregate liability under the bond exceed the face amount of  
20 the bond. If, within 30 days of filing the notice of  
21 termination, a replacement bond or insurance has not been  
22 secured and filed with the office ~~department~~, the office  
23 ~~department~~ shall suspend the certificate of the prepaid health  
24 clinic until the deposit requirements are satisfied. Whenever  
25 the prepaid health clinic ceases to do business in this state  
26 and furnishes to the office ~~department~~ satisfactory proof that  
27 it has discharged or otherwise adequately provided for all of  
28 its obligations to its subscribers, the office ~~department~~  
29 shall release any bond filed by the prepaid health clinic.  
30 (2) In determining the sufficiency of the insurance  
31 required under paragraph (1)(a) or the surety bond required

1 under paragraph (1)(b), the office ~~department~~ may consider the  
2 number of subscribers, the basic services included in  
3 subscriber contracts, and the cost of providing such basic  
4 services to subscribers in the geographic area served.

5 (3) Every prepaid health clinic shall deposit with the  
6 department a cash deposit in the amount of \$30,000 to  
7 guarantee that the obligations to the subscribers will be  
8 performed.

9 Section 1614. Section 641.41, Florida Statutes, is  
10 amended to read:

11 641.41 Annual report of prepaid health clinic;  
12 administrative penalty.--

13 (1) Each prepaid health clinic shall file a report  
14 with the office ~~department~~, annually on or before March 1, or  
15 within 3 months of the end of the reporting period of the  
16 clinic, or within such extension of time for the filing of the  
17 report as the office ~~department~~, for good cause, may grant.  
18 The report of the prepaid health clinic must be filed on forms  
19 prescribed by the commission ~~department~~ and must be verified  
20 under oath by two executive officers of the clinic or, if the  
21 clinic is not a corporation, verified under oath by two  
22 persons who are principal managing directors of the affairs of  
23 the clinic. The report of the clinic shall show the condition  
24 of the clinic on the last day of the immediately preceding  
25 reporting period. Such report shall include:

26 (a) A financial statement of the clinic, including its  
27 balance sheet and a statement of operations for the preceding  
28 year;

29 (b) A list of the name and residence address of every  
30 person responsible for the conduct of the affairs of the  
31 clinic, together with a disclosure of the extent and nature of

1 any contract or arrangement between such person and the  
2 clinic, including any possible conflicts of interest;

3 (c) The number of prepaid health clinic contracts  
4 issued and outstanding, and the number of prepaid health  
5 clinic contracts terminated and a compilation of the reasons  
6 for such terminations;

7 (d) Such statistical information as is requested by  
8 the commission or office ~~department~~, which information shows  
9 the rates of the clinic for all basic services provided under  
10 prepaid health clinic contracts;

11 (e) The number and amount of damage claims for medical  
12 injury initiated against the clinic and any of the providers  
13 engaged by it during the reporting year, broken down into  
14 claims with and without formal legal process, and the  
15 disposition, if any, of each such claim; and

16 (f) Such other information relating to the performance  
17 of the clinic as is required by the commission or office  
18 ~~department~~.

19 (2) Any clinic which neglects to file the annual  
20 report in the form and within the time required by this  
21 section is subject to an administrative penalty, not to exceed  
22 \$100 for each day during which the neglect continues; and,  
23 upon notice by the office ~~department~~ to that effect, the  
24 authority of the clinic to do business in this state shall  
25 cease while such default continues.

26 Section 1615. Section 641.412, Florida Statutes, is  
27 amended to read:

28 641.412 Fees.--

29 (1) Every prepaid health clinic shall pay to the  
30 office ~~department~~ the following fees:

31

1           (a) For filing a copy of its application for a  
2 certificate of authority or an amendment to such certificate,  
3 a nonrefundable fee in the amount of \$150.

4           (b) For filing each annual report, a fee in the amount  
5 of \$150.

6           (2) The fees charged under this section shall be  
7 distributed as follows:

8           (a) One-third of the total amount of fees shall be  
9 distributed to the Agency for Health Care Administration; and

10           (b) Two-thirds of the total amount of fees shall be  
11 distributed to the office ~~Department of Insurance~~.

12           Section 1616. Section 641.418, Florida Statutes, is  
13 amended to read:

14           641.418 Examination of prepaid health clinic by the  
15 office ~~department~~.--The office ~~department~~ shall examine the  
16 affairs, transactions, accounts, business records, and assets  
17 of any prepaid health clinic as often as the office ~~department~~  
18 deems it expedient for the protection of the people of this  
19 state. Every clinic shall submit its books and records and  
20 take other appropriate action as may be necessary to  
21 facilitate an examination. However, medical records of  
22 individuals and records of physicians providing services under  
23 contracts to the clinic are not subject to audit, although  
24 such records may be subject to subpoena by court order upon a  
25 showing of good cause. For the purpose of examinations, the  
26 office ~~department~~ may administer oaths to and examine the  
27 officers and agents of a clinic concerning its business and  
28 affairs. The expenses for the examination of each clinic by  
29 the office ~~department~~ are subject to the same terms and  
30 conditions that apply to insurers under part II of chapter  
31

1 624. In no event shall the expenses of all examinations exceed  
2 the maximum amount of \$15,000 per year.

3 Section 1617. Subsections (2), (3), (5), and (7) of  
4 section 641.42, Florida Statutes, is amended to read:

5 641.42 Prepaid health clinic contracts.--

6 (2) The rates charged by any clinic to its subscribers  
7 shall not be excessive, inadequate, or unfairly  
8 discriminatory. The commission ~~department~~, in accordance with  
9 generally accepted actuarial practice, may define by rule what  
10 constitutes excessive, inadequate, or unfairly discriminatory  
11 rates and may require whatever information the commission  
12 ~~department~~ deems necessary to determine that a rate or  
13 proposed rate meets the requirements of this subsection.

14 (3) No clinic shall issue or agree to issue any  
15 prepaid health clinic contract to a subscriber unless the  
16 contract has first been filed with, and approved by, the  
17 office ~~department~~.

18 (5) Every subscriber shall receive a clear and  
19 understandable description of the method of the clinic for  
20 resolving subscriber grievances; such method shall be set  
21 forth in the contract and shall be approved by the office  
22 ~~department~~ on the basis of its underlying fairness.

23 (7)(a) If a clinic desires to amend any contract with  
24 any of its subscribers or desires to change any rate charged  
25 for the contract, the clinic may do so, upon filing with the  
26 office ~~department~~ the proposed amendment or change in rates.

27 (b) No prepaid health clinic contract form or  
28 application form when written application is required and is  
29 to be made a part of the policy or contract, or no printed  
30 amendment, addendum, rider, or endorsement form or form of  
31 renewal certificate, shall be delivered or issued for delivery

1 in this state, unless the form has been filed with the office  
2 ~~department at its offices in Tallahassee~~ by or in behalf of  
3 the clinic which proposes to use such form and has been  
4 approved by the office ~~department~~. Every such filing shall be  
5 made not less than 30 days in advance of any such use or  
6 delivery. At the expiration of such 30 days, the form so filed  
7 shall be deemed approved unless prior to the end of the 30  
8 days the form has been affirmatively approved or disapproved  
9 by the office ~~department~~. The approval of any such form by the  
10 office ~~department~~ constitutes a waiver of any unexpired  
11 portion of such waiting period. The office ~~department~~ may  
12 extend by not more than an additional 15 days the period  
13 within which the office ~~department~~ may so affirmatively  
14 approve or disapprove any such form, by giving notice of such  
15 extension before the expiration of the initial 30-day period.  
16 At the expiration of any such period as so extended, and in  
17 the absence of such prior affirmative approval or disapproval,  
18 such form shall be deemed approved. The office ~~department~~ may,  
19 for cause, withdraw a previous approval. No clinic shall issue  
20 or use any form which has been disapproved by the office  
21 ~~department~~ or any form for which the office ~~department~~ has  
22 withdrawn approval.

23 (c) The office ~~department~~ shall disapprove any form  
24 filed under this subsection, or withdraw any previous approval  
25 of the form, only if the form:

26 1. Is in any respect in violation of, or does not  
27 comply with, any provision of this part or rule adopted under  
28 this part.

29 2. Contains or incorporates by reference, where such  
30 incorporation is otherwise permissible, any inconsistent,  
31 ambiguous, or misleading clauses, or exceptions and conditions

1 which deceptively affect the risk purported to be assumed in  
2 the general coverage of the contract.

3 3. Has a misleading title, misleading heading, or  
4 other indication of the provisions of the form which is  
5 misleading.

6 4. Is printed or otherwise reproduced in such manner  
7 as to render any material provision of the form substantially  
8 illegible.

9 5. Provides benefits which are unreasonable in  
10 relation to the rate charged or contains provisions which are  
11 unfair, inequitable, or contrary to the public policy of this  
12 state or encourage misrepresentation.

13 (d) In determining whether the benefits are reasonable  
14 in relation to the rate charged, the office ~~department~~, in  
15 accordance with reasonable actuarial techniques, shall  
16 consider:

17 1. Past loss experience and prospective loss  
18 experience.

19 2. Allocation of expenses.

20 3. Risk and contingency margins, along with  
21 justification of such margins.

22 4. Acquisition costs.

23 5. Other factors deemed appropriate by the office  
24 ~~department~~, based on sound actuarial techniques.

25 Section 1618. Section 641.421, Florida Statutes, is  
26 amended to read:

27 641.421 Language used in contracts and advertisements;  
28 translations.--

29 (1)(a) All prepaid health clinic contracts or forms  
30 shall be printed in English.

31

1 (b) If the negotiations by a prepaid health clinic  
2 with a subscriber leading up to the effectuation of a prepaid  
3 health clinic contract are conducted in a language other than  
4 English, the prepaid health clinic shall supply to the  
5 subscriber a written translation of the contract, which  
6 translation accurately reflects the substance of the contract  
7 and is in the language used to negotiate the contract. Any  
8 such translation shall be furnished to the office ~~department~~  
9 as part of the filing of the prepaid health clinic contract  
10 form and shall be approved by the office ~~department~~ prior to  
11 use. No translation of a prepaid health clinic contract form  
12 shall be approved by the office ~~department~~ unless the  
13 translation accurately reflects the substance of the prepaid  
14 health clinic contract form in translation. When a translation  
15 of a prepaid health clinic contract is used, the translation  
16 shall clearly and conspicuously state on its face and in the  
17 language of the translation:

18  
19 READ THIS FIRST

20 This is a translation of the document that you are  
21 about to sign.  
22

23 (2) All advertisements by a prepaid health clinic, if  
24 printed or broadcast in a language other than English, also  
25 shall be available in English and shall be furnished to the  
26 office ~~department~~ upon request. As used in this subsection,  
27 the term "advertisement" means any advertisement, circular,  
28 pamphlet, brochure, or other printed material disclosing or  
29 disseminating advertising material or information by a clinic  
30 to prospective or existing subscribers and includes any radio  
31 or television transmittal of an advertisement or information.

1           Section 1619. Subsection (2) of section 641.424,  
2 Florida Statutes, is amended to read:

3           641.424 Validity of noncomplying contracts.--

4           (2) Any contract delivered or issued for delivery in  
5 this state covering a subscriber resident, located, or to be  
6 performed in this state, which subscriber, pursuant to the  
7 provisions of this part, the clinic may not lawfully provide  
8 under such a contract, is cancelable at any time by the  
9 clinic, any provision of the contract to the contrary  
10 notwithstanding; and the clinic shall promptly cancel the  
11 contract in accordance with the request of the office  
12 ~~department~~ for such cancellation. No such illegality or  
13 cancellation shall be deemed to relieve the clinic of any  
14 liability incurred by the clinic under the contract while the  
15 contract was in force or to prohibit the clinic from retaining  
16 the pro rata earned premium on the contract. This provision  
17 does not relieve the clinic from any penalty otherwise  
18 incurred by the clinic under this part on account of any such  
19 violation.

20           Section 1620. Section 641.437, Florida Statutes, is  
21 amended to read:

22           641.437 Investigatory power of office ~~department~~.--The  
23 office ~~department~~ has the power to examine and investigate the  
24 affairs of every person, entity, or prepaid health clinic in  
25 order to determine whether the person, entity, or prepaid  
26 health clinic is operating in accordance with the provisions  
27 of this part or has been or is engaged in any unfair method of  
28 competition or any unfair or deceptive act or practice  
29 prohibited by s. 641.44.

30           Section 1621. Section 641.443, Florida Statutes, is  
31 amended to read:

1           641.443 Temporary restraining orders.--

2           (1) The office ~~department~~ is vested with the power to  
3 seek a temporary restraining order:

4           (a) On behalf of the office ~~department~~ or on behalf of  
5 a subscriber or subscribers of a prepaid health clinic that is  
6 being operated by a person or entity without a subsisting  
7 certificate of authority; or

8           (b) On behalf of the office ~~department~~ or on behalf of  
9 a subscriber or subscribers to whom a prepaid health clinic,  
10 person, or entity is issuing, delivering, or renewing prepaid  
11 health clinic contracts without an existing certificate of  
12 authority.

13           (2) The office ~~department~~ and the Agency for Health  
14 Care Administration are each vested with the power to seek a  
15 temporary restraining order on their behalf or on behalf of a  
16 subscriber or subscribers of a prepaid health clinic that is  
17 being operated in violation of any provision of this part or  
18 any rule promulgated under this part, or any other applicable  
19 law or rule.

20           Section 1622. Section 641.444, Florida Statutes, is  
21 amended to read:

22           641.444 Injunction.--In addition to the penalties and  
23 other enforcement provisions of this part, if a person,  
24 entity, or prepaid health clinic has engaged in any activity  
25 prohibited by this part or any rule adopted pursuant to this  
26 part, the office ~~department~~ may resort to a proceeding for  
27 injunction in the circuit court of the county where such  
28 person, entity, or prepaid health clinic is located or has her  
29 or his or its principal place of business; and the office  
30 ~~department~~ may apply in such court for such temporary and  
31 permanent orders as the office ~~department~~ may deem necessary

1 to restrain the person, entity, or prepaid health clinic from  
2 engaging in any such activity, until the person, entity, or  
3 prepaid health clinic complies with the provisions and rules.

4 Section 1623. Section 641.445, Florida Statutes, is  
5 amended to read:

6 641.445 Defined practices; hearings, witnesses,  
7 appearances, production of books, and service of process.--

8 (1) Whenever the office ~~department~~ has reason to  
9 believe that a person, entity, or prepaid health clinic has  
10 engaged, or is engaging, in this state in any unfair method of  
11 competition or any unfair or deceptive act or practice as  
12 defined in s. 641.441, or is operating a prepaid health clinic  
13 without a certificate of authority as required by this part or  
14 otherwise operating in violation of any provision of this part  
15 or rule adopted pursuant to this part, and that a proceeding  
16 by the office ~~department~~ in respect thereto would be in the  
17 interest of the public, the office ~~department~~ shall conduct,  
18 or cause to have conducted, a hearing in accordance with  
19 chapter 120.

20 (2) The office ~~department~~, a duly empowered hearing  
21 officer, or an administrative law judge shall, during the  
22 conduct of such hearing, have those powers enumerated in s.  
23 120.569; however, the penalty for the failure to comply with a  
24 subpoena or with an order directing discovery is limited to a  
25 fine not to exceed \$1,000 per violation.

26 (3) A statement of charges, notice, or order under  
27 this part may be served by anyone duly authorized by the  
28 office ~~department~~, either in the manner provided by law for  
29 service of process in civil actions or by certifying and  
30 mailing a copy of the statement of charges, notice, or order  
31 to the person, entity, or prepaid health clinic affected by

1 the statement, notice, or order or other process at his or her  
2 or its residence or principal office or place of business.  
3 The verified return by the person so serving such statement,  
4 notice, or order or other process, setting forth the manner of  
5 the service, is proof of such service; and the return postcard  
6 receipt for such statement, notice, or order or other process,  
7 certified and mailed as provided in this subsection, is proof  
8 of the service of the statement, notice, or order or other  
9 process.

10 Section 1624. Section 641.446, Florida Statutes, is  
11 amended to read:

12 641.446 Cease and desist and penalty orders.--After  
13 the hearing provided in s. 641.445, the office ~~department~~  
14 shall enter a final order in accordance with s. 120.569. If it  
15 is determined that the person, entity, or prepaid health  
16 clinic charged has engaged in an unfair or deceptive act or  
17 practice or the unlawful operation of a prepaid health clinic,  
18 the office ~~department~~ also shall issue an order requiring the  
19 violator to cease and desist from engaging in such method of  
20 competition, act, or practice or unlawful operation of a  
21 prepaid health clinic. Furthermore, the office ~~department~~ may,  
22 at its discretion, order any one or more of the following:

23 (1) The suspension or revocation of the certificate of  
24 authority of the prepaid health clinic if it knew, or  
25 reasonably should have known, that it was in violation of this  
26 part.

27 (2) If it is determined that the person or entity  
28 charged has engaged in the business of operating a prepaid  
29 health clinic without a certificate of authority, an  
30 administrative penalty not to exceed \$1,000 for each prepaid  
31 health clinic contract offered or effectuated.

1           Section 1625. Section 641.447, Florida Statutes, is  
2 amended to read:

3           641.447 Appeal from ~~departmental~~ order.--Any person,  
4 entity, or prepaid health clinic that is subject to an order  
5 of the office ~~department~~ under s. 641.446 may obtain a review  
6 of the order by filing an appeal from the order in accordance  
7 with the provisions and procedures for appeal under s. 120.68.

8           Section 1626. Section 641.448, Florida Statutes, is  
9 amended to read:

10           641.448 Penalty for violation of cease and desist  
11 order.--Any person, entity, or prepaid health clinic that  
12 violates a cease and desist order of the office ~~department~~  
13 under s. 641.446 while such order is in effect, after notice  
14 and hearing as provided in s. 641.445, is subject, at the  
15 discretion of the office ~~department~~, to any one or more of the  
16 following:

17           (1) A monetary penalty of not more than \$50,000 as to  
18 all matters determined in such hearing.

19           (2) The suspension or revocation of the certificate of  
20 authority of the prepaid health clinic.

21           Section 1627. Section 641.45, Florida Statutes, is  
22 amended to read:

23           641.45 Revocation or cancellation of certificate of  
24 authority; suspension of authority to enroll new subscribers;  
25 terms of suspension.--

26           (1) The maintenance of a valid and current Health Care  
27 Provider Certificate issued pursuant to part III of this  
28 chapter is a condition of the maintenance of a valid and  
29 current certificate of authority issued by the office  
30 ~~department~~ to operate a prepaid health clinic. Revocation or  
31 nonrenewal of a Health Care Provider Certificate shall be

1 deemed to be an automatic and immediate cancellation of a  
2 prepaid health clinic's certificate of authority.

3 (2) The office ~~department~~ may suspend the authority of  
4 a clinic to enroll new subscribers or revoke any certificate  
5 of authority issued to a prepaid health clinic, or order  
6 compliance within 60 days, if the office ~~department~~ finds that  
7 any of the following conditions exist:

8 (a) The clinic is not operating in compliance with  
9 this part or any rule promulgated under this part.

10 (b) The plan is no longer actuarially sound or the  
11 clinic does not have the minimum surplus as required by this  
12 part.

13 (c) The existing contract rates are excessive,  
14 inadequate, or unfairly discriminatory.

15 (d) The clinic has advertised, merchandised, or  
16 attempted to merchandise its services in such a manner as to  
17 misrepresent its services or capacity for services or has  
18 engaged in deceptive, misleading, or unfair practices with  
19 respect to advertising or merchandising.

20 (e) The organization is insolvent.

21 (f) The clinic has not complied with the grievance  
22 procedures for subscribers that are set forth in any prepaid  
23 health clinic contract.

24 (g) The clinic has not fully satisfied a judgment  
25 against the clinic within 10 days of the entry of the judgment  
26 by any court in the state or, in the case of an appeal from  
27 such judgment, has not fully satisfied the judgment within 60  
28 days after affirmance of the judgment by the appellate court.

29 (3) The office ~~department~~ shall, in its order  
30 suspending the authority of a clinic to enroll new  
31 subscribers, specify the period during which the suspension is

1 to be in effect and the conditions, if any, which must be met  
2 by the clinic prior to reinstatement of its authority to  
3 enroll new subscribers. The order of suspension is subject to  
4 rescission or modification by further order of the office  
5 ~~department~~ prior to the expiration of the suspension period.  
6 Reinstatement shall not be made unless requested by the  
7 clinic; however, the office ~~department~~ shall not grant  
8 reinstatement if it finds that the circumstances for which the  
9 suspension occurred still exist or are likely to recur.

10 Section 1628. Section 641.452, Florida Statutes, is  
11 amended to read:

12 641.452 Administrative penalty in lieu of suspension  
13 or revocation of certificate of authority.--The office  
14 ~~department~~ may, in lieu of suspension or revocation of a  
15 certificate of authority, levy an administrative penalty in an  
16 amount not more than \$10,000 for each violation by a prepaid  
17 health clinic. In levying such fine, the office ~~department~~  
18 shall consider the number of members and total revenues of the  
19 clinic and whether the violation was committed knowingly and  
20 willfully.

21 Section 1629. Section 641.453, Florida Statutes, is  
22 amended to read:

23 641.453 Civil liability.--The provisions of this part  
24 are cumulative to the rights under the general civil law and  
25 common law, and no action of the office ~~department~~ shall  
26 abrogate such rights to damages or other relief in any court.

27 Section 1630. Section 641.454, Florida Statutes, is  
28 amended to read:

29 641.454 Civil action to enforce prepaid health clinic  
30 contract; attorney's fees; court costs.--In any civil action  
31 brought to enforce the terms and conditions of a prepaid

1 health clinic contract, the prevailing party is entitled to  
2 recover reasonable attorney's fees and court costs. This  
3 section shall not be construed to authorize a civil action  
4 against the commission or office department, or their its  
5 ~~employees, or the Insurance Commissioner and Treasurer~~ or  
6 against the Agency for Health Care Administration, the  
7 employees of the Agency for Health Care Administration, or the  
8 Secretary of Health Care Administration.

9 Section 1631. Section 641.455, Florida Statutes, is  
10 amended to read:

11 641.455 Disposition of moneys collected under this  
12 part.--Fees, administrative penalties, examination expenses,  
13 and other sums collected by the office department under this  
14 part shall be deposited to the credit of the Insurance  
15 ~~Commissioner's~~ Regulatory Trust Fund; however, fees,  
16 examination expenses, and other sums collected by, or  
17 allocated to, the Agency for Health Care Administration under  
18 this part shall be deposited to the credit of the General  
19 Revenue Fund.

20 Section 1632. Section 641.457, Florida Statutes, is  
21 amended to read:

22 641.457 Exemption for certain operational prepaid  
23 health clinics.--The provisions of this part do not apply to  
24 those prepaid health clinics providing the services defined in  
25 ss. 641.40 through 641.459, which clinics have been  
26 continuously engaged in providing such services since January  
27 1, 1947, provided that any prepaid health clinic claiming an  
28 exemption under this section notified ~~notifies~~ the former  
29 Department of Insurance of its claim on or before January 1,  
30 1985. This exemption will terminate upon a change in  
31 controlling ownership of the organization.

1           Section 1633. Section 641.48, Florida Statutes, is  
2 amended to read:

3           641.48 Purpose and application of part.--The purpose  
4 of this part is to ensure that health maintenance  
5 organizations and prepaid health clinics deliver high-quality  
6 health care to their subscribers. To achieve this purpose,  
7 this part requires all such organizations to obtain a health  
8 care provider certificate from the agency as a condition  
9 precedent to obtaining a certificate of authority to do  
10 business in Florida from the office ~~Department of Insurance~~,  
11 under part I or part II of this chapter.

12           Section 1634. Subsection (2) of section 641.49,  
13 Florida Statutes, is amended to read:

14           641.49 Certification of health maintenance  
15 organization and prepaid health clinic as health care  
16 providers; application procedure.--

17           (2) The office ~~Department of Insurance~~ shall not issue  
18 a certificate of authority under part I or part II of this  
19 chapter to any applicant which does not possess a valid health  
20 care provider certificate issued by the agency under this  
21 part.

22           Section 1635. Subsection (4) of section 641.495,  
23 Florida Statutes, is amended to read:

24           641.495 Requirements for issuance and maintenance of  
25 certificate.--

26           (4) The organization shall ensure that the health care  
27 services it provides to subscribers, including physician  
28 services as required by s. 641.19(12)(d) and (e)~~s.~~  
29 ~~641.19(13)(d) and (e)~~, are accessible to the subscribers, with  
30 reasonable promptness, with respect to geographic location,  
31 hours of operation, provision of after-hours service, and

1 staffing patterns within generally accepted industry norms for  
2 meeting the projected subscriber needs. The health maintenance  
3 organization must provide treatment authorization 24 hours a  
4 day, 7 days a week. Requests for treatment authorization may  
5 not be held pending unless the requesting provider  
6 contractually agrees to take a pending or tracking number.

7 Section 1636. Subsections (7), (8), and (11) of  
8 section 641.511, Florida Statutes, are amended to read:

9 641.511 Subscriber grievance reporting and resolution  
10 requirements.--

11 (7) Each organization shall send to the agency a copy  
12 of its quarterly grievance reports submitted to the office  
13 ~~Department of Insurance~~ pursuant to s. 408.7056(12).

14 (8) The agency shall investigate all reports of  
15 unresolved quality of care grievances received from:

16 (a) Annual and quarterly grievance reports submitted  
17 by the organization to the office ~~Department of Insurance~~.

18 (b) Review requests of subscribers whose grievances  
19 remain unresolved after the subscriber has followed the full  
20 grievance procedure of the organization.

21 (11) Each organization, as part of its contract with  
22 any provider, must require the provider to post a consumer  
23 assistance notice prominently displayed in the reception area  
24 of the provider and clearly noticeable by all patients. The  
25 consumer assistance notice must state the addresses and  
26 toll-free telephone numbers of the Agency for Health Care  
27 Administration, the Statewide Provider and Subscriber  
28 Assistance Program, and the Department of Financial Services  
29 ~~Insurance~~. The consumer assistance notice must also clearly  
30 state that the address and toll-free telephone number of the  
31 organization's grievance department shall be provided upon

1 request. The agency may adopt ~~is authorized to promulgate~~  
2 rules to implement this section.

3 Section 1637. Subsections (1), (3), and (6) of section  
4 641.512, Florida Statutes, are amended to read:

5 641.512 Accreditation and external quality assurance  
6 assessment.--

7 (1)(a) To promote the quality of health care services  
8 provided by health maintenance organizations and prepaid  
9 health clinics in this state, the office ~~department~~ shall  
10 require each health maintenance organization and prepaid  
11 health clinic to be accredited within 1 year of the  
12 organization's receipt of its certificate of authority and to  
13 maintain accreditation by an accreditation organization  
14 approved by the office ~~department~~, as a condition of doing  
15 business in the state.

16 (b) In the event that no accreditation organization  
17 can be approved by the office ~~department~~, the office  
18 ~~department~~ shall require each health maintenance organization  
19 and prepaid health clinic to have an external quality  
20 assurance assessment performed by a review organization  
21 approved by the office ~~department~~, as a condition of doing  
22 business in the state. The assessment shall be conducted  
23 within 1 year of the organization's receipt of its certificate  
24 of authority and every 2 years thereafter, or when the office  
25 ~~department~~ deems additional assessments necessary.

26 (3) A representative of the office ~~department~~ shall  
27 accompany the accreditation or review organization throughout  
28 the accreditation or assessment process, but shall not  
29 participate in the final accreditation or assessment  
30 determination. The accreditation or review organization shall  
31 monitor and evaluate the quality and appropriateness of

1 patient care, the organization's pursuance of opportunities to  
2 improve patient care and resolve identified problems, and the  
3 effectiveness of the internal quality assurance program  
4 required for health maintenance organization and prepaid  
5 health clinic certification pursuant to s. 641.49(3)(p).

6 (6) The accreditation or review organization shall  
7 issue a written report of its findings to the health  
8 maintenance organization's or prepaid health clinic's board of  
9 directors. A copy of the report shall be submitted to the  
10 office ~~department~~ by the organization within 30 business days  
11 of its receipt by the health maintenance organization or  
12 prepaid health clinic.

13 Section 1638. Section 641.52, Florida Statutes, is  
14 amended to read:

15 641.52 Revocation of certificate; suspension of new  
16 enrollment; suspension of the health care provider  
17 certificate; administrative fine; notice of action to the  
18 office ~~Department of Insurance~~; penalty for use of unlicensed  
19 providers.--

20 (1) The agency may suspend the authority of an  
21 organization to enroll new subscribers or revoke the health  
22 care provider certificate of any organization, or order  
23 compliance within a time certain, if it finds that any of the  
24 following conditions exist:

25 (a) The organization is in substantial violation of  
26 its contracts.

27 (b) The organization is unable to fulfill its  
28 obligations under outstanding contracts entered into with its  
29 subscribers.

30 (c) The organization knowingly utilizes a provider who  
31 is furnishing or has furnished health care services and who

1 does not have a subsisting license or other authority to  
2 practice or furnish health care services in this state.

3 (d) The organization no longer meets the requirements  
4 for the certificate as originally issued.

5 (e) The organization has violated any lawful rule or  
6 order of the agency or any provision of this part.

7 (f) The organization has refused to be examined or to  
8 produce its accounts, records, and files for examination or to  
9 perform any other legal obligation as to such examination,  
10 when required by the agency.

11 (g) The organization has not, after given reasonable  
12 notice, maintained accreditation or received favorable  
13 external quality assurance reviews under s. 641.512 or,  
14 following an investigation under s. 641.515, has been  
15 determined to not materially meet requirements under this  
16 part.

17 (2) Revocation of an organization's certificate shall  
18 be for a period of 2 years. After 2 years, the organization  
19 may apply for a new certificate by compliance with all  
20 application requirements applicable to first-time applicants.

21 (3) Suspension of an organization's authority to  
22 enroll new subscribers shall be for such period, not to exceed  
23 1 year, as is fixed by the agency. The agency shall, in its  
24 order suspending the authority of an organization to enroll  
25 new subscribers, specify the period during which the  
26 suspension is to be in effect and the conditions, if any,  
27 which must be met by the organization prior to reinstatement  
28 of its authority to enroll new subscribers. The order of  
29 suspension is subject to rescission or modification by further  
30 order of the agency prior to the expiration of the suspension  
31 period. Authority to enroll new subscribers shall not be

1 reinstated unless requested by the organization; however, the  
2 agency may not grant reinstatement if it finds that the  
3 circumstances for which the suspension of authority to enroll  
4 new subscribers occurred still exist or are likely to recur.

5 (4) The agency may suspend the health care provider  
6 certificate issued to an organization. The agency shall, in  
7 its order suspending the health care provider certificate,  
8 specify the period during which the suspension is to be in  
9 effect and the conditions, if any, which must be met by the  
10 organization for reinstatement. Upon expiration of the  
11 suspension period, the organization's certificate  
12 automatically reinstates unless the agency finds that the  
13 causes of the suspension have not been removed or that the  
14 organization is otherwise not in compliance with this part.  
15 If the agency makes such a finding, the health care provider  
16 certificate shall not be reinstated and is considered to have  
17 expired as of the end of the suspension period.

18 (5) If the agency finds that one or more grounds exist  
19 for the revocation or suspension of a certificate issued under  
20 this part, the agency may, in lieu of such revocation or  
21 suspension, impose a fine upon the organization. With respect  
22 to any nonwillful violation, the fine may not exceed \$2,500  
23 per violation. Such fines may not exceed an aggregate amount  
24 of \$25,000 for all nonwillful violations arising out of the  
25 same action. With respect to any knowing and willful  
26 violation of a lawful order or rule of the agency or a  
27 provision of this part, the agency may impose a fine upon the  
28 organization in an amount not to exceed \$20,000 for each such  
29 violation. Such fines may not exceed an aggregate amount of  
30 \$250,000 for all knowing and willful violations arising out of  
31 the same action. The agency shall, by January 1, 1997, adopt

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

1 by rule penalty categories that specify varying ranges of  
2 fines for willful violations and for nonwillful violations.

3 (6) The agency shall immediately notify the office  
4 ~~Department of Insurance~~ whenever it issues an administrative  
5 complaint or an order or otherwise initiates legal proceedings  
6 resulting in or which may result in suspension or revocation  
7 of an organization's health care provider certificate or  
8 suspension of new enrollment.

9 (7) Any organization that knowingly utilizes the  
10 services of a provider who is not licensed or otherwise  
11 authorized by law to provide such services is guilty of a  
12 felony of the third degree, punishable as provided in s.  
13 775.082, s. 775.083, or s. 775.084.

14 Section 1639. Subsection (2) of section 641.54,  
15 Florida Statutes, is amended to read:

16 641.54 Information disclosure.--

17 (2) The list shall be made available, upon request, to  
18 the office ~~department~~. The list shall also be made available,  
19 upon request:

20 (a) With respect to negotiation, application, or  
21 effectuation of a group health maintenance contract, to the  
22 employer or other person who will hold the contract on behalf  
23 of the subscriber group. The list may be restricted to  
24 include only physicians and hospitals in the group's  
25 geographic area.

26 (b) With respect to an individual health maintenance  
27 contract or any contract offered to a person who is entitled  
28 to have payments for health care costs made under Medicare, to  
29 the person considering or making application to, or under  
30 contract with, the health maintenance organization. The list  
31

1 may be restricted to include only physicians and hospitals in  
2 the person's geographic area.

3 Section 1640. Subsection (4) of section 641.55,  
4 Florida Statutes, is amended to read:

5 641.55 Internal risk management program.--

6 (4) The Agency for Health Care Administration shall  
7 adopt rules necessary to carry out the provisions of this  
8 section, including rules governing the establishment of  
9 required internal risk management programs to meet the needs  
10 of individual organizations and each specific organization  
11 type governed by this part. The office ~~Department of~~  
12 ~~insurance~~ shall assist the agency in preparing these rules.  
13 Each internal risk management program shall include the use of  
14 incident reports to be filed with the risk manager. The risk  
15 manager shall have free access to all organization or provider  
16 medical records. The incident reports shall be considered to  
17 be a part of the workpapers of the attorney defending the  
18 organization in litigation relating thereto and shall be  
19 subject to discovery, but not be admissible as evidence in  
20 court, nor shall any person filing an incident report be  
21 subject to civil suit by virtue of the incident report and the  
22 matters it contains. As a part of each internal risk  
23 management program, the incident reports shall be utilized to  
24 develop categories of incidents which identify problem areas.  
25 Once identified, procedures must be adjusted to correct these  
26 problem areas.

27  
28 The gross data compiled under this section or s. 395.0197  
29 shall be furnished by the agency upon request to organizations  
30 to be utilized for risk management purposes. The agency shall  
31

1 adopt rules necessary to carry out the provisions of this  
2 section.

3 Section 1641. Subsection (2) of section 641.58,  
4 Florida Statutes, is amended to read:

5 641.58 Regulatory assessment; levy and amount; use of  
6 funds; tax returns; penalty for failure to pay.--

7 (2) The office ~~Department of Insurance~~ shall determine  
8 the amount of gross premiums for the purposes of the  
9 regulatory assessment, and then the agency shall determine on  
10 or before December 1 of each year the regulatory assessment  
11 percentage necessary to be imposed for that calendar year,  
12 payable on or before the following April 1, as herein  
13 prescribed, to provide the funds appropriated to the agency to  
14 carry out the provisions of subsection (4).

15 Section 1642. Section 642.015, Florida Statutes, is  
16 amended to read:

17 642.015 Definitions.--As used in ss. 642.011-642.049,  
18 the term:

19 ~~(1) "Department" means the Department of Insurance.~~

20 (1)~~(2)~~ "Gross written premiums" means the total amount  
21 of premiums paid by the consumer for the entire period of the  
22 legal expense insurance contract, including commissions.

23 ~~(3) "Insurance code" means the Florida Insurance Code  
24 as provided in s. 624.01.~~

25 (2)~~(4)~~ "Insurer" means any person authorized to  
26 conduct a life or casualty insurance business in this state or  
27 a legal expense insurance corporation authorized under ss.  
28 642.011-642.049.

29 (3)~~(5)~~ "Legal expense insurance" means a contractual  
30 obligation to provide specific legal services, or to reimburse  
31 for specific legal expenses, in consideration of a specified

1 payment for an interval of time, regardless of whether the  
2 payment is made by the beneficiaries individually or by a  
3 third person for them, but does not include the provision of,  
4 or reimbursement for, legal services incidental to other  
5 insurance coverages.

6 Section 1643. Section 642.017, Florida Statutes, is  
7 amended to read:

8 642.017 Exemptions.--The provisions of the Florida  
9 Insurance Code ~~and ss. 642.011-642.049~~ do not apply to:

10 (1) Retainer contracts made by attorneys at law with  
11 individual clients with fees based on estimates of the nature  
12 and amount of services to be provided to the specific client  
13 and similar contracts made with a group of clients involved in  
14 the same or closely related legal matters.

15 (2) Any lawyer referral service authorized by The  
16 Florida Bar.

17 (3) The furnishing of legal assistance by labor unions  
18 or other employee organizations to their members in matters  
19 relating to employment or occupation.

20 (4) The furnishing of legal assistance to members, or  
21 their dependents, by a church, cooperative, educational  
22 institution, credit union, or organization of employees, in  
23 which the organization contracts directly with a lawyer or law  
24 firm for the provision of legal services and the  
25 administration and marketing of such legal services are  
26 conducted wholly by the organization.

27 (5) Employee welfare benefit plans to the extent that  
28 state laws are superseded by the Employee Retirement Income  
29 Security Act of 1974, 29 U.S.C. s. 1144, provided evidence of  
30 exemption from state laws is shown to the office ~~department~~.

31

1           Section 1644. Section 642.021, Florida Statutes, is  
2 amended to read:

3           642.021 Certificate of authority.--

4           (1) It is unlawful for any person to engage in a legal  
5 expense insurance business in this state without a valid  
6 certificate of authority issued by the office ~~department~~,  
7 pursuant to ss. 642.011-642.049, except that a domestic,  
8 foreign, or alien insurer authorized to transact life or  
9 casualty insurance in this state may transact legal expense  
10 insurance provided it complies with the applicable provisions  
11 of ss. 642.011-642.049. A certificate of authority under ss.  
12 642.011-642.049 may be issued only to a legal expense  
13 insurance corporation.

14           (2) The corporation shall file with the office  
15 ~~department~~ an application for a certificate of authority upon  
16 a form adopted by the commission and ~~to be~~ furnished by the  
17 office ~~department~~, which shall include or have attached the  
18 following:

19           (a) The names, addresses, and occupations of all  
20 directors and officers and of each shareholder who owns or  
21 controls 10 percent or more of the shares of the applicant  
22 corporation.

23           (b) A certified copy of the corporate articles and  
24 bylaws and, for the 3 most recent years, the annual statements  
25 and reports of the corporation.

26           (c) Each agreement relating to the corporation to  
27 which any director or officer, or any shareholder who owns or  
28 controls 10 percent or more of the shares of the corporation,  
29 is a party.

30           (d) A statement of the amount and sources of the funds  
31 available for organization expenses and the proposed

1 arrangements for reimbursement and compensation of  
2 incorporators or other persons.

3 (e) A statement of compensation to be provided  
4 directors and officers.

5 (f) The forms to be used for any proposed contracts  
6 between the corporation and participating attorneys or between  
7 the corporation and corporations which perform administration,  
8 marketing, or management services and the forms relating to  
9 the provision of services to insureds.

10 (g) The plan for conducting the insurance business,  
11 which plan shall include all of the following:

12 1. The geographical area in which business is intended  
13 to be conducted in the first 5 years.

14 2. The types of insurance intended to be written in  
15 the first 5 years, including specification whether and to what  
16 extent indemnity rather than service benefits are to be  
17 provided.

18 3. The proposed marketing methods.

19 (h) A current statement of the assets and liabilities  
20 of the corporate applicant.

21 (i) Forms of all legal service contracts the applicant  
22 proposes to offer showing the rates to be charged for each  
23 form of contract.

24 (j) Such other documents and information as the  
25 commission or office ~~department~~ may reasonably require.

26 (3) Copies of the documents filed pursuant to  
27 paragraphs (f) and (i) of subsection (2) shall be filed with  
28 The Florida Bar within 5 days after filing with the office  
29 ~~department~~.

30  
31

1           (4) The office ~~department~~ shall issue a certificate of  
2 authority only to a legal expense insurance corporation,  
3 provided it is satisfied that:

4           (a) All requirements of law have been met;

5           (b) All natural persons who are directors and  
6 officers, and each shareholder who owns or controls 10 percent  
7 or more of the shares of the applicant corporation, are  
8 trustworthy and collectively have the competence and  
9 experience to engage in the particular insurance business  
10 proposed; and

11           (c) The business plan is consistent with the interests  
12 of potential insureds and of the public.

13           Section 1645. Section 642.022, Florida Statutes, is  
14 amended to read:

15           642.022 Insurance business not authorized.--Nothing in  
16 the Florida Insurance Code or this chapter shall be deemed to  
17 authorize any legal expense corporation to transact any  
18 insurance business other than that of legal expense insurance  
19 or to otherwise engage in any other type of insurance unless  
20 it is authorized under a certificate of authority issued by  
21 the office ~~department~~ under the provisions of the Florida  
22 Insurance Code.

23           Section 1646. Subsections (2), (5), (6), and (7) of  
24 section 642.023, Florida Statutes, are amended to read:

25           642.023 Required deposit or bond.--

26           (2) In lieu of any deposit of securities required  
27 under subsection (1) and subject to the approval of the office  
28 ~~department~~, a legal service insurance corporation may file  
29 with the office ~~department~~ a surety bond issued by an  
30 authorized surety insurer. The bond shall be for the same  
31 purpose as the deposit in lieu of which it is filed. The

1 ~~office department~~ may not approve any bond under the terms of  
2 which the protection afforded against insolvency is not  
3 equivalent to the protection afforded by those securities  
4 provided for in subsection (1).

5 (5) Such deposit or bond shall be maintained  
6 unimpaired as long as the legal expense insurance corporation  
7 continues to do business in this state. Whenever the  
8 corporation ceases to do business in this state and furnishes  
9 proof satisfactory to the office department that it has  
10 discharged or otherwise adequately provided for all its  
11 obligations to its insureds in this state, the office and  
12 department shall release the deposited securities to the  
13 parties entitled thereto, on presentation of the receipts of  
14 the department for such securities, or shall release the bond  
15 filed with it in lieu of such deposit.

16 (6) The office department, upon written request of the  
17 legal expense insurance corporation, may reduce the amount of  
18 deposit or bond required under subsection (1) if it finds that  
19 the policyholders and certificateholders of the corporation  
20 are adequately protected by:

21 (a) The terms and number of existing contracts with  
22 subscribers;

23 (b) Financial guarantees of financially sound public  
24 or private organizations or agencies;

25 (c) Other reliable financial guarantees; or

26 (d) Plan attorney agreements that provide for full  
27 plan benefits to subscribers without additional payments by  
28 the subscribers if the plan terminates.

29 (7) The office department may at any time enter an  
30 order modifying the amount of the deposit or bond specified  
31 under subsection (1) or subsection (2) if it finds that there

1 has been a substantial change in the facts on which the  
2 determination was based.

3 Section 1647. Subsections (2), (3), and (4) of section  
4 642.025, Florida Statutes, are amended to read:

5 642.025 Policy and certificate forms.--

6 (2) No policy or certificate of legal expense  
7 insurance may be issued in this state unless a copy of the  
8 form has been filed with and approved by the office ~~department~~  
9 pursuant to s. 627.410.

10 (3) The office ~~department~~ shall not approve any policy  
11 or certificate form which does not meet the following  
12 requirements:

13 (a) Policies shall contain a list and description of  
14 the legal services to be supplied or the legal matters for  
15 which expenses are to be reimbursed and any limits on the  
16 amounts to be reimbursed.

17 (b) Policies and certificates shall indicate the name  
18 of the insurer and the full address of its principal place of  
19 business.

20 (c) Certificates issued under group policies shall  
21 contain a full statement of the benefits provided and  
22 exceptions thereto but may summarize the other terms of the  
23 master policy.

24 (d) Policies providing for legal services to be  
25 supplied by a limited number of attorneys who have executed  
26 provider contracts with the insurer, whether the attorney in  
27 an individual case is to be selected by the insured or by the  
28 insurer, shall provide for alternative benefits if the insured  
29 is unable to find a participating attorney willing to perform  
30 the services or the attorney selected by the insurer is  
31 disqualified or otherwise unable to perform the services. The

1 alternative benefit may consist of furnishing the services of  
2 an attorney selected and paid by the insurer or paying the fee  
3 of an attorney selected by the insured. The policy shall also  
4 provide a procedure that includes impartial review for  
5 settling disagreements concerning the grounds for demanding an  
6 alternative benefit.

7 (e) No policy, except one issued by a mutual or  
8 reciprocal insurance company, may provide for assessments on  
9 policyholders or for reduction of benefits for the purpose of  
10 maintaining the insurer's solvency.

11 (f) Policies shall contain a statement that the  
12 subscriber has a right to file a complaint with The Florida  
13 Bar concerning attorney conduct pursuant to the plan.

14 (g) Policies shall contain a statement that the  
15 individual beneficiary has the right to retain, at his or her  
16 own expense, except when the policy provides otherwise, any  
17 attorney authorized to practice law in this state.

18 (4) The office ~~department~~ may disapprove a policy or  
19 certificate form if it finds that the form:

20 (a) Is unfair, unfairly discriminatory, misleading, or  
21 ambiguous or encourages misrepresentation or misunderstanding  
22 of the contract;

23 (b) Provides coverage or benefits or contains other  
24 provisions that would endanger the solvency of the insurer; or

25 (c) Is contrary to law.

26 Section 1648. Section 642.027, Florida Statutes, is  
27 amended to read:

28 642.027 Premium rates.--No policy of legal expense  
29 insurance may be issued in this state unless the premium rates  
30 for the insurance have been filed with and approved by the  
31 office ~~department~~. Premium rates shall be established and

1 justified in accordance with generally accepted insurance  
2 principles, including, but not limited to, the experience or  
3 judgment of the insurer making the rate filing or actuarial  
4 computations. The office ~~department~~ may disapprove rates that  
5 are excessive, inadequate, or unfairly discriminatory. Rates  
6 are not unfairly discriminatory because they are averaged  
7 broadly among persons insured under group, blanket, or  
8 franchise policies. The office ~~department~~ may require the  
9 submission of any other information reasonably necessary in  
10 determining whether to approve or disapprove a filing made  
11 under this section or s. 642.025.

12 Section 1649. Section 642.029, Florida Statutes, is  
13 amended to read:

14 642.029 Contracts by insurers.--

15 (1) Contracts made between the insurer and  
16 participating attorneys, management contracts, or contracts  
17 with providers of other services covered by the legal expense  
18 insurance policy shall be filed with and approved by the  
19 office ~~department~~.

20 (2) An insurer shall annually report to the office  
21 ~~department~~ the number and geographical distribution of  
22 attorneys and providers of other services covered by the legal  
23 expense insurance policy with whom it maintains contractual  
24 relations and the nature of the relations. The office  
25 ~~department~~ may require more frequent reports from an insurer  
26 or group of insurers.

27 Section 1650. Section 642.0301, Florida Statutes, is  
28 amended to read:

29 642.0301 Filing, license, statement, and miscellaneous  
30 fees.--

31

1           (1) Every legal expense insurance corporation must pay  
2 to the office ~~department~~ the following fees:  
3           (a) Certificate of authority of legal expense  
4 insurance corporation. Filing application for original  
5 certificate of authority, including all accompanying  
6 documents, filing fee.....\$250  
7           (b) Annual license fee for legal expense insurance  
8 corporations.....\$300  
9           (c) Statements of legal expense insurance corporation:  
10           1. Annual statement.....\$100  
11           2. Quarterly statement.....\$25  
12           (2) For any service not described in subsection (1),  
13 the fee is that prescribed in s. 624.501.  
14           Section 1651. Section 642.0331, Florida Statutes, is  
15 amended to read:  
16           642.0331 Grounds for suspension or revocation of  
17 certificate.--  
18           (1) The certificate of authority of an insurer,  
19 whether issued pursuant to this chapter or the insurance code,  
20 may be revoked or suspended, or the office ~~department~~ may  
21 refuse to renew a certificate of authority, if the office  
22 ~~department~~ determines that the insurer:  
23           (a) Has violated any lawful rule or order of the  
24 commission or office ~~department~~ or any provision of this  
25 chapter.  
26           (b) Is in an unsound financial condition which would  
27 render its further transaction of business in this state  
28 hazardous or injurious to its policyholders, its  
29 certificateholders, or the public.  
30           (c) Is using such methods or practices in the conduct  
31 of its business so as to render its further transaction of

1 business in this state hazardous or injurious to its  
2 policyholders, its certificateholders, or the public.

3 (d) Has refused to be examined or to produce its  
4 accounts, records, or files for examination, or if any of its  
5 officers have refused to give information with respect to its  
6 affairs or have refused to perform any other legal obligation  
7 as to such examination, when required by the office  
8 ~~department~~.

9 (e) Has failed to pay any final judgment rendered  
10 against it in this state within 60 days after the judgment  
11 became final.

12 (f) Without just cause has refused to pay proper  
13 claims or perform services arising under its policies or  
14 contracts; without just cause has compelled policyholders or  
15 certificateholders to accept less than the amount due them; or  
16 has employed attorneys, or has brought suit against the  
17 association, to secure full payment or settlement of such  
18 claims.

19 (g) Is affiliated with, and under the same general  
20 management or interlocking directorate or ownership as,  
21 another insurer which transacts business in this state without  
22 having a certificate of authority.

23 (2) The office ~~department~~ may, pursuant to s. 120.60,  
24 in its discretion and without advance notice or hearing  
25 thereon, immediately suspend the certificate of any insurer,  
26 whether such certificate was issued pursuant to this chapter  
27 or the insurance code, if it finds that one or more of the  
28 following circumstances exist:

29 (a) The insurer is insolvent or impaired.

30 (b) The deposit required by s. 642.023 is not being  
31 maintained.

1 (c) Proceedings for receivership, conservatorship, or  
2 rehabilitation or other delinquency proceedings regarding the  
3 insurer have been commenced in any state.

4 (d) The financial condition or business practices of  
5 the insurer otherwise pose an imminent threat to the public  
6 health, safety, or welfare of the residents of this state.

7 Section 1652. Section 642.0334, Florida Statutes, is  
8 amended to read:

9 642.0334 Order; notice of suspension or revocation of  
10 certificate; effect; publication.--

11 (1) Suspension or revocation of a certificate of  
12 authority of an insurer shall be by order of the office  
13 ~~department~~ mailed to the corporation by registered or  
14 certified mail. The office ~~department~~ also shall promptly give  
15 notice of such suspension or revocation to the sales  
16 representatives in this state of the corporation who are of  
17 record in the office of the office ~~department~~. The insurer  
18 shall not solicit or write any new contracts in this state  
19 during the period of any such suspension or revocation.

20 (2) In its discretion, the office ~~department~~ may cause  
21 notice of the revocation or suspension to be published in one  
22 or more newspapers of general circulation published in this  
23 state.

24 Section 1653. Subsections (1), (3), and (4) of section  
25 642.0338, Florida Statutes, are amended to read:

26 642.0338 Administrative fine in lieu of suspension or  
27 revocation.--

28 (1) If the office ~~department~~ finds that one or more  
29 grounds exist for the revocation or suspension of a  
30 certificate of authority issued under this chapter, the office  
31

1 ~~department~~ may, in lieu of such suspension or revocation,  
2 impose a fine upon the insurer.

3 (3) With respect to any knowing and willful violation  
4 of an order or rule of the office or commission ~~department~~ or  
5 a provision of this chapter, the office ~~department~~ may impose  
6 a fine upon the insurer in an amount not to exceed \$5,000 for  
7 each such violation. In no event shall such fine exceed an  
8 aggregate amount of \$25,000 for all knowing and willful  
9 violations arising out of the same action. In addition to  
10 such fines, such insurer shall make restitution when due in  
11 accordance with the provisions of subsection (2).

12 (4) The failure of an insurer to make restitution when  
13 due as required under this section constitutes a willful  
14 violation of this chapter. However, if an insurer in good  
15 faith is uncertain as to whether any restitution is due or as  
16 to the amount of such restitution, it shall promptly notify  
17 the office ~~department~~ of the circumstances, and the failure to  
18 make restitution pending a determination thereof will not  
19 constitute a violation of this chapter.

20 Section 1654. Subsection (10) of section 642.041,  
21 Florida Statutes, is amended to read:

22 642.041 Grounds for compulsory refusal, suspension, or  
23 revocation of license or appointment of contracting sales  
24 representatives.--The department shall, pursuant to the  
25 insurance code, deny, suspend, revoke, or refuse to renew or  
26 continue the license or appointment of any sales  
27 representative or the license or appointment of any general  
28 lines agent if it finds that, as to the sales representative  
29 or general lines agent, any one or more of the following  
30 applicable grounds exist:

31

1           (10) Willful failure to comply with, or willful  
2 violation of, any proper order or rule of the office,  
3 commission, or department or willful violation of any  
4 provision of ss. 642.011-642.049.

5           Section 1655. Subsection (3) of section 642.043,  
6 Florida Statutes, is amended to read:

7           642.043 Grounds for discretionary refusal, suspension,  
8 or revocation of license or appointment of sales  
9 representatives.--The department may, in its discretion, deny,  
10 suspend, revoke, or refuse to renew or continue the license or  
11 appointment of any sales representative if it finds that, as  
12 to the representative, any one or more of the following  
13 applicable grounds exist under circumstances for which such  
14 denial, suspension, revocation, or refusal is not mandatory  
15 under s. 642.041:

16           (3) Violation of any lawful order or rule of the  
17 office, commission, or department.

18           Section 1656. Subsection (2) of section 642.047,  
19 Florida Statutes, is amended to read:

20           642.047 Administrative fine in lieu of suspension or  
21 revocation of license or appointment.--

22           (2) The order may allow the licensee or appointee a  
23 reasonable period not to exceed 30 days, within which to pay  
24 to the department or office the amount of the penalty so  
25 imposed. If the licensee or appointee fails to pay the  
26 penalty in its entirety to the department or office ~~at its~~  
27 ~~office in Tallahassee~~ within the period so allowed, the  
28 license or appointment of the licensee or appointee shall  
29 stand suspended or revoked, or renewal or continuation may be  
30 refused, as the case may be, upon expiration of such period  
31 and without any further proceedings.

1           Section 1657. Subsections (3) and (4) of section  
2 642.0475, Florida Statutes, are amended to read:

3           642.0475 Civil remedy.--

4           (3) As a condition precedent to bringing an action  
5 under this section, the office ~~department~~ and the person  
6 against whom the action is to be brought shall be given notice  
7 of the violation. The notice shall state with specificity the  
8 facts which allegedly constitute the violation and the law  
9 which the plaintiff is relying upon. No action shall lie if,  
10 within 30 days thereafter, the damages are paid or the  
11 circumstances giving rise to the violation are corrected.

12           (4) This section shall not be construed to authorize a  
13 class action suit against a legal expense insurance  
14 corporation or a civil action against the department,  
15 commission, or office or their ~~its employees, or the Insurance~~  
16 ~~Commissioner.~~

17           Section 1658. Section 648.25, Florida Statutes, is  
18 amended to read:

19           648.25 Definitions.--As used in this chapter, the  
20 term:

21           (1) "Bail bond agency" means:

22           (a) The building where a licensee maintains an office  
23 and where all records required by ss. 648.34 and 648.36 are  
24 maintained; or

25           (b) An entity that:

26           1. Charges a fee or premium to release an accused  
27 defendant or detainee from jail; or

28           2. Engages in or employs others to engage in any  
29 activity that may be performed only by a licensed and  
30 appointed bail bond agent.

31

1           (2) "Bail bond agent" means a limited surety agent or  
2 a professional bail bond agent as hereafter defined.

3           ~~(3) "Department" means the Department of Insurance.~~

4           (3)~~(4)~~ "Managing general agent" means any individual,  
5 partnership, association, or corporation appointed or employed  
6 by an insurer to supervise or manage the bail bond business  
7 written in this state by limited surety agents appointed by  
8 the insurer.

9           (4)~~(5)~~ "Insurer" means any domestic, foreign, or alien  
10 surety company which has been authorized to transact surety  
11 business in this state.

12           (5)~~(6)~~ "Limited surety agent" means any individual  
13 appointed by an insurer by power of attorney to execute or  
14 countersign bail bonds in connection with judicial proceedings  
15 who receives or is promised money or other things of value  
16 therefor.

17           (6)~~(7)~~ "Primary bail bond agent" means a licensed bail  
18 bond agent who is responsible for the overall operation and  
19 management of a bail bond agency location and whose  
20 responsibilities include hiring and supervising all  
21 individuals within that location. A bail bond agent may be  
22 designated as primary bail bond agent for only one bail bond  
23 agency location.

24           (7)~~(8)~~ "Professional bail bond agent" means any person  
25 who pledges United States currency, United States postal money  
26 orders, or cashier's checks as security for a bail bond in  
27 connection with a judicial proceeding and receives or is  
28 promised therefor money or other things of value.

29           (8)~~(9)~~ "Temporary bail bond agent" means a person  
30 employed by a bail bond agent or agency, insurer, or managing  
31 general agent, and such licensee has the same authority as a

1 licensed bail bond agent, including presenting defendants in  
2 court; apprehending, arresting, and surrendering defendants to  
3 the proper authorities, while accompanied by a supervising  
4 bail bond agent or an agent from the same agency; and keeping  
5 defendants under necessary surveillance. However, a temporary  
6 licensee may not execute or sign bonds, handle collateral  
7 receipts, or deliver bonds to appropriate authorities. A  
8 temporary licensee may not operate an agency or branch agency  
9 separate from the location of the supervising bail bond agent,  
10 managing general agent, or insurer by whom the licensee is  
11 employed. This does not affect the right of a bail bond agent  
12 or insurer to hire counsel or to obtain the assistance of law  
13 enforcement officers.

14 Section 1659. Section 648.26, Florida Statutes, is  
15 amended to read:

16 648.26 Department of Financial Services ~~Insurance~~;  
17 administration.--

18 (1) The department shall administer the provisions of  
19 this chapter as provided in this chapter.

20 (a) The department has authority to adopt rules  
21 pursuant to ss. 120.536(1) and 120.54 to implement the  
22 provisions of this chapter conferring powers or duties upon  
23 it.

24 (b) The department may employ and discharge such  
25 employees, examiners, counsel, and other assistants as shall  
26 be deemed necessary, and it shall prescribe their duties;  
27 their compensation shall be the same as other state employees  
28 receive for similar services.

29 (2) The department shall adopt a seal by which its  
30 proceedings are authenticated. Any written instrument  
31 purporting to be a copy of any action, proceeding, or finding

1 of fact by the department, or any record of the department  
2 authenticated by the seal, shall be accepted by all the courts  
3 of this state as prima facie evidence of the contents thereof.

4 (3) The papers, documents, reports, or any other  
5 investigatory records of the department are confidential and  
6 exempt from the provisions of s. 119.07(1) until such  
7 investigation is completed or ceases to be active. For the  
8 purpose of this section, an investigation is considered  
9 "active" while the investigation is being conducted by the  
10 department with a reasonable, good faith belief that it may  
11 lead to the filing of administrative, civil, or criminal  
12 proceedings. An investigation does not cease to be active if  
13 the department is proceeding with reasonable dispatch and  
14 there is good faith belief that action may be initiated by the  
15 department or other administrative or law enforcement agency.

16 Section 1660. Subsection (2) of section 648.33,  
17 Florida Statutes, is amended to read:

18 648.33 Bail bond rates.--

19 (2) It is unlawful for a bail bond agent to execute a  
20 bail bond without charging a premium therefor, and the premium  
21 rate may not exceed or be less than the premium rate as filed  
22 with and approved by the office ~~department~~.

23 Section 1661. Subsection (3) of section 648.34,  
24 Florida Statutes, is amended to read:

25 648.34 Bail bond agents; qualifications.--

26 (3) The department may collect a fee necessary to  
27 cover the cost of a character and credit report made by an  
28 established and reputable independent reporting service. The  
29 fee shall be deposited to the credit of the Insurance  
30 ~~Commissioner's~~ Regulatory Trust Fund. Any information so  
31

1 furnished is confidential and exempt from the provisions of s.  
2 119.07(1).

3 Section 1662. Section 648.35, Florida Statutes, is  
4 amended to read:

5 648.35 Professional bail bond agent;  
6 qualifications.--In addition to the qualifications prescribed  
7 in s. 648.34, to qualify as a professional bail bond agent an  
8 applicant shall:

9 (1) File with his or her application for licensure and  
10 with each application for renewal or continuation of his or  
11 her appointment a detailed financial statement under oath; and

12 (2) File with his or her application for licensure the  
13 rating plan proposed for use in writing bail bonds. Such  
14 rating plan must be approved by the office ~~department~~ prior to  
15 issuance of the license.

16 Section 1663. Subsection (5) of section 648.355,  
17 Florida Statutes, is amended to read:

18 648.355 Temporary limited license as limited surety  
19 agent or professional bail bond agent; pending examination.--

20 (5) The department may collect a fee necessary to  
21 cover the cost of a character and credit report made by an  
22 established and reputable independent reporting service. The  
23 fee shall be deposited to the credit of the Insurance  
24 ~~Commissioner's~~ Regulatory Trust Fund.

25 Section 1664. Section 648.365, Florida Statutes, is  
26 amended to read:

27 648.365 Statistical reporting requirements; penalty  
28 for failure to comply.--

29 (1) Each insurer and each bail bond agent who writes  
30 bail bonds in this state, shall maintain and transmit the  
31 following information, based on their Florida bail bond

1 business, to the department or office when requested and shall  
2 report the information separately for each company represented  
3 but only insurers shall report the information specified in  
4 paragraphs (a), (l), and (m):

5 (a) Commissions paid.

6 (b) The number of, and the total dollar amount of,  
7 bonds executed.

8 (c) The number of, and the total dollar amount of,  
9 bonds declared forfeited.

10 (d) The number of, and the total dollar amount of,  
11 forfeitures discharged, remitted, or otherwise recovered prior  
12 to payment for any reason.

13 (e) The number of, and the total dollar amount of,  
14 forfeitures discharged, remitted, or otherwise recovered prior  
15 to payment due to the apprehension of the defendant by the  
16 bail bond agent.

17 (f) The number of, and the total dollar amount of,  
18 judgments entered.

19 (g) The number of, and the total dollar amount of,  
20 forfeitures paid and subsequently recovered from the court by  
21 discharge or remission or otherwise.

22 (h) A list of every outstanding or unpaid forfeiture,  
23 estreature, and judgment, with the case number and the name of  
24 the court in which such forfeiture, estreature, or judgment is  
25 recorded and the name of each agency or firm that employs the  
26 bail bond agent.

27 (i) The number of, and the total dollar amount of,  
28 bonds for which collateral was accepted.

29 (j) The actual realized value of collateral converted,  
30 excluding the cost of converting the collateral.

31 (k) The cost of converting collateral.

- 1           (1) The underwriting gain or loss.  
2           (m) The net investment gain or loss allocated to the  
3 flow of funds associated with Florida business.  
4           (n) Such additional information as the department or  
5 office may require in order to:  
6           1. Evaluate the reasonableness of rates or assure that  
7 such rates are not excessive or unfairly discriminatory.  
8           2. Evaluate the financial condition or trade practices  
9 of bail bond agents and sureties executing bail bonds.  
10          3. Evaluate the performance of the commercial bail  
11 bond industry in accordance with appropriate criminal justice  
12 system goals and standards.

13

14 Each bail bond agent shall submit a copy of such information  
15 to each insurer he or she represents.

16          (2) Any person who intentionally fails to provide the  
17 information in this section when requested by the department  
18 or office, intentionally provides incorrect or misleading  
19 information, or intentionally omits any required information  
20 commits a misdemeanor of the first degree, punishable as  
21 provided in s. 775.082 or s. 775.083.

22          Section 1665. Subsections (1) and (2) of section  
23 648.386, Florida Statutes, are amended to read:

24          648.386 Qualifications for prelicensing and continuing  
25 education schools and instructors.--

26          (1) SCHOOLS AND CURRICULUM FOR PRELICENSING  
27 SCHOOLS.--In order to be considered for approval and  
28 certification as an approved limited surety agent and  
29 professional bail bond agent prelicensing school, such entity  
30 must:

31

1           (a)1. Offer a minimum of two 120-hour  
2 classroom-instruction basic certification courses in the  
3 criminal justice system per calendar year unless a reduced  
4 number of course offerings per calendar year is warranted in  
5 accordance with rules promulgated by the department; or

6           2. Offer a department-approved correspondence course  
7 pursuant to department rules.

8           (b) Submit a prelicensing course curriculum to the  
9 department ~~of Insurance~~ for approval.

10           (c) If applicable, offer prelicensing classes which  
11 are taught by instructors approved by the department.

12           (2) SCHOOLS AND CURRICULUM FOR CONTINUING EDUCATION  
13 SCHOOLS.--In order to be considered for approval and  
14 certification as an approved limited surety agent and  
15 professional bail bond agent continuing education school, such  
16 entity must:

17           (a) Provide a minimum of three continuing education  
18 classes per calendar year.

19           (b) Submit a course curriculum to the department ~~of~~  
20 ~~Insurance~~ for approval.

21           (c) Offer continuing education classes which are  
22 comprised of a minimum of 2 hours of approved coursework and  
23 are taught by an approved supervising instructor or guest  
24 lecturer approved by the entity or the supervising instructor.

25           Section 1666. Paragraph (j) of subsection (1) of  
26 section 648.44, Florida Statutes, is amended to read:

27           648.44 Prohibitions; penalty.--

28           (1) A bail bond agent or temporary bail bond agent may  
29 not:

30           (j) Accept anything of value from a principal for  
31 providing a bail bond except the premium and transfer fee

1 authorized by the office ~~department~~, except that the bail bond  
2 agent may accept collateral security or other indemnity from  
3 the principal or another person in accordance with the  
4 provisions of s. 648.442, together with documentary stamp  
5 taxes, if applicable. No fees, expenses, or charges of any  
6 kind shall be permitted to be deducted from the collateral  
7 held or any return premium due, except as authorized by this  
8 chapter or rule of the department or commission. A bail bond  
9 agent may, upon written agreement with another party, receive  
10 a fee or compensation for returning to custody an individual  
11 who has fled the jurisdiction of the court or caused the  
12 forfeiture of a bond.

13 Section 1667. Subsection (10) of section 648.442,  
14 Florida Statutes, is amended to read:

15 648.442 Collateral security.--

16 (10) An indemnity agreement may not be entered into  
17 between a principal and either a surety or any agent of the  
18 surety, and an application may not be accepted either by a  
19 bail bond agent engaged in the bail bond business or by a  
20 surety company for a bail bond in which an indemnity agreement  
21 is required between a principal and either a surety or any  
22 agent of such surety, unless the indemnity agreement reads as  
23 follows: "For good and valuable consideration, the undersigned  
24 principal agrees to indemnify and hold harmless the surety  
25 company or its agent for all losses not otherwise prohibited  
26 by law or by rules of the Department of Financial Services  
27 ~~Insurance~~."

28 Section 1668. Paragraph (a) of subsection (3) of  
29 section 648.571, Florida Statutes, is amended to read:

30 648.571 Failure to return collateral; penalty.--

31

1           (3)(a) Fees or charges other than those provided in  
2 this chapter or by rule of the department or commission may  
3 not be deducted from the collateral due.

4           Section 1669. Subsection (4) of section 650.06,  
5 Florida Statutes, is amended to read:

6           650.06 Social Security Contribution Trust Fund.--

7           (4) The Chief Financial Officer ~~Treasurer of the state~~  
8 shall be ex officio treasurer and custodian of the Social  
9 Security Contribution Trust Fund and shall administer such  
10 fund in accordance with the provisions of this chapter and the  
11 directions of the state agency. The Chief Financial Officer  
12 ~~Treasurer~~ shall pay all warrants drawn ~~by the Comptroller~~ upon  
13 the fund in accordance with the provisions of this section and  
14 with such regulations as the state agency may prescribe  
15 pursuant thereto.

16           Section 1670. Section 651.011, Florida Statutes, is  
17 amended to read:

18           651.011 Definitions.--For the purposes of this  
19 chapter, the term:

20           (1) "Advisory council" means the Continuing Care  
21 Advisory Council established by s. 651.121.

22           (2) "Continuing care" or "care" means furnishing  
23 pursuant to a contract shelter and either nursing care or  
24 personal services as defined in s. 400.402, whether such  
25 nursing care or personal services are provided in the facility  
26 or in another setting designated by the contract for  
27 continuing care, to an individual not related by consanguinity  
28 or affinity to the provider furnishing such care, upon payment  
29 of an entrance fee. Other personal services provided shall be  
30 designated in the continuing care contract. Contracts to  
31 provide continuing care include agreements to provide care for

1 any duration, including contracts that are terminable by  
2 either party.

3 ~~(3) "Department" means the Department of Insurance of~~  
4 ~~this state.~~

5 (3)~~(4)~~ "Entrance fee" means an initial or deferred  
6 payment of a sum of money or property made as full or partial  
7 payment to assure the resident a place in a facility. An  
8 accommodation fee, admission fee, or other fee of similar form  
9 and application shall be considered to be an entrance fee.

10 (4)~~(5)~~ "Facility" means a place in which it is  
11 undertaken to provide continuing care.

12 (5)~~(6)~~ "Licensed" means that the provider has obtained  
13 a certificate of authority from the department.

14 (6)~~(7)~~ "Provider" means the owner or operator, whether  
15 a natural person, partnership or other unincorporated  
16 association, however organized, trust, or corporation, of an  
17 institution, building, residence, or other place, whether  
18 operated for profit or not, which owner or operator undertakes  
19 to provide continuing care for a fixed or variable fee, or for  
20 any other remuneration of any type, whether fixed or variable,  
21 for the period of care, payable in a lump sum or lump sum and  
22 monthly maintenance charges or in installments, but does not  
23 mean any entity that has existed and continuously operated a  
24 facility located on no less than 63 acres in this state  
25 providing residential lodging to members and their spouses for  
26 at least 66 years on or before July 1, 1989, and such facility  
27 has the residential capacity of 500 persons, is directly or  
28 indirectly owned or operated by a nationally recognized  
29 fraternal organization, is not open to the public, and accepts  
30 only its members and their spouses as residents at such a  
31 facility.

1           (7)~~(8)~~ "Records" means the permanent financial,  
2 directory, and personnel information and data maintained by a  
3 provider pursuant to this chapter.

4           (8)~~(9)~~ "Resident" means a purchaser of or a nominee  
5 of, or a subscriber to, a continuing care agreement. Such an  
6 agreement may not be construed to give the resident a part  
7 ownership of the facility in which the resident is to reside,  
8 unless expressly provided for in the agreement.

9           (9)~~(10)~~ "Generally accepted accounting principles"  
10 means those accounting principles and practices adopted by the  
11 Financial Accounting Standards Board and the American  
12 Institute of Certified Public Accountants, including Statement  
13 of Position 90-8 with respect to any full year to which the  
14 statement applies.

15           (10)~~(11)~~ "Insolvency" means the condition in which the  
16 provider is unable to pay its obligations as they come due in  
17 the normal course of business.

18           (11)~~(12)~~ "Advertising" means the dissemination of any  
19 written, visual, or electronic information by a provider, or  
20 any person affiliated with or controlled by a provider, to  
21 potential residents or their representatives for the purpose  
22 of inducing such persons to subscribe to or enter into a  
23 contract to reside in a continuing care community covered by  
24 this act.

25           Section 1671. Section 651.012, Florida Statutes, is  
26 amended to read:

27           651.012 Exempted facility; written disclosure of  
28 exemption.--Any facility exempted under ss. 632.637(1)(e) and  
29 651.011(6)~~651.011(7)~~ must provide written disclosure of such  
30 exemption to each person admitted to the facility after  
31 October 1, 1996. This disclosure must be written using

1 language likely to be understood by the person and must  
2 briefly explain the provisions of ss. 632.637(1)(e) and  
3 651.011(6)~~651.011(7)~~.

4 Section 1672. Subsection (2) of section 651.013,  
5 Florida Statutes, is amended to read:

6 651.013 Chapter exclusive; applicability of other  
7 laws.--

8 (2) In addition to other applicable provisions cited  
9 in this chapter, the office ~~department~~ has the authority  
10 granted under ss. 624.302-624.305, 624.308-624.312,  
11 624.319(1)-(3), 624.320-624.321, 624.324, and 624.34 of the  
12 Florida Insurance Code to regulate providers of continuing  
13 care.

14 Section 1673. Section 651.014, Florida Statutes, is  
15 amended to read:

16 651.014 Insurance business not authorized.--Nothing in  
17 the Florida Insurance Code or this chapter shall be deemed to  
18 authorize any provider of a continuing care facility to  
19 transact any insurance business other than that of continuing  
20 care insurance or otherwise to engage in any other type of  
21 insurance unless it is authorized under a certificate of  
22 authority issued by the office ~~department~~ under the provisions  
23 of the Florida Insurance Code.

24 Section 1674. Section 651.015, Florida Statutes, is  
25 amended to read:

26 651.015 Administration; forms; fees; rules;  
27 fines.--The administration of this chapter is vested in the  
28 commission, office, and department, which shall:

29 (1) Prepare and furnish all forms necessary under the  
30 provisions of this chapter in relation to applications for  
31 provisional certificates of authority, certificates of

1 authority or renewals thereof, statements, examinations, and  
2 other required reports. The office ~~department~~ is authorized to  
3 accept any application statement, report, or information  
4 submitted electronically or by facsimile to comply with  
5 requirements in this chapter or rules adopted under this  
6 section. The commission ~~department~~ may adopt rules to  
7 implement the provisions of this subsection.

8 (2) Collect in advance, and the applicant shall pay in  
9 advance, the following fees:

10 (a) At the time of filing an application for a  
11 certificate of authority, an application fee in the amount of  
12 \$75 for each facility.

13 (b) At the time of filing the annual report required  
14 by s. 651.026, a fee in the amount of \$100 for each year or  
15 part thereof for each facility.

16 (c) A late fee not to exceed \$50 a day for each day of  
17 noncompliance.

18 (d) A fee to cover the actual cost of a credit report  
19 and fingerprint processing.

20 (e) At the time of filing an application for a  
21 provisional certificate of authority, a fee in the amount of  
22 \$50.

23 (3) Adopt rules pursuant to ss. 120.536(1) and 120.54  
24 to implement the provisions of this chapter.

25 (4) Impose administrative fines and penalties pursuant  
26 to this chapter.

27 (5) Deposit all fees and fines collected under the  
28 provisions of this chapter into the Insurance ~~Commissioner's~~  
29 Regulatory Trust Fund.

30 Section 1675. Section 651.018, Florida Statutes, is  
31 amended to read:

1           651.018 Administrative supervision.--The office  
2 ~~department~~ may place a facility in administrative supervision  
3 pursuant to part VI of chapter 624.

4           Section 1676. Section 651.019, Florida Statutes, is  
5 amended to read:

6           651.019 New financing, additional financing, or  
7 refinancing.--

8           (1) After issuance of a certificate of authority, the  
9 provider shall submit to the office ~~department~~ a general  
10 outline, including intended use of proceeds, with respect to  
11 any new financing, additional financing, or refinancing at  
12 least 30 days before the closing date of such financing  
13 transaction.

14           (2) The provider shall furnish any information the  
15 office ~~department~~ may reasonably request in connection with  
16 any new financing, additional financing, or refinancing,  
17 including, but not limited to, the financing agreements and  
18 any related documents, escrow or trust agreements, and  
19 statistical or financial data. The provider shall also submit  
20 to the office ~~department~~ copies of executed financing  
21 documents within 30 days after the closing date.

22           Section 1677. Section 651.021, Florida Statutes, is  
23 amended to read:

24           651.021 Certificate of authority required.--

25           (1) No person may engage in the business of providing  
26 continuing care or issuing continuing care agreements or  
27 construct a facility for the purpose of providing continuing  
28 care in this state without a certificate of authority therefor  
29 obtained from the office ~~department~~ as provided in this  
30 chapter. This subsection shall not be construed to prohibit  
31 preparation of the construction site or construction of a

1 model residence unit for marketing purposes, or both. The  
2 ~~office department~~ may allow the purchase of an existing  
3 building for the purpose of providing continuing care if the  
4 ~~office department~~ determines that the purchase is not being  
5 made for the purpose of circumventing the prohibitions  
6 contained in this section.

7 (2)(a) Before commencement of construction or  
8 marketing for any expansion of a certificated facility  
9 equivalent to the addition of at least 20 percent of existing  
10 units, written approval must be obtained from the office  
11 ~~department~~. This provision does not apply to construction for  
12 which a certificate of need from the Agency for Health Care  
13 Administration is required.

14 (b) The application for such approval shall be on  
15 forms adopted by the commission and provided by the office  
16 ~~department~~. The application shall include the feasibility  
17 study required by s. 651.022(3) or s. 651.023(1)(b) and such  
18 other information as required by s. 651.023.

19 (c) In determining whether an expansion should be  
20 approved, the office department shall utilize the criteria  
21 provided in ss. 651.022(6) and 651.023(2).

22 Section 1678. Subsection (2), paragraph (i) of  
23 subsection (3), and subsections (5), (6), (7), and (8) of  
24 section 651.022, Florida Statutes, are amended to read:

25 651.022 Provisional certificate of authority;  
26 application.--

27 (2) The application for a provisional certificate of  
28 authority shall be on a form prescribed by the commission  
29 ~~department~~ and shall contain the following information:

30 (a) If the applicant or provider is a corporation, a  
31 copy of the articles of incorporation and bylaws; if the

1 applicant or provider is a partnership or other unincorporated  
2 association, a copy of the partnership agreement, articles of  
3 association, or other membership agreement; and, if the  
4 applicant or provider is a trust, a copy of the trust  
5 agreement or instrument.

6 (b) The full names, residences, and business addresses  
7 of:

8 1. The proprietor, if the applicant or provider is an  
9 individual.

10 2. Every partner or member, if the applicant or  
11 provider is a partnership or other unincorporated association,  
12 however organized, having fewer than 50 partners or members,  
13 together with the business name and address of the partnership  
14 or other organization.

15 3. The principal partners or members, if the applicant  
16 or provider is a partnership or other unincorporated  
17 association, however organized, having 50 or more partners or  
18 members, together with the business name and business address  
19 of the partnership or other organization. If such  
20 unincorporated organization has officers and a board of  
21 directors, the full name and business address of each officer  
22 and director may be set forth in lieu of the full name and  
23 business address of its principal members.

24 4. The corporation and each officer and director  
25 thereof, if the applicant or provider is a corporation.

26 5. Every trustee and officer, if the applicant or  
27 provider is a trust.

28 6. The manager, whether an individual, corporation,  
29 partnership, or association.

30  
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1           7. Any stockholder holding at least a 10-percent  
2 interest in the operations of the facility in which the care  
3 is to be offered.

4           8. Any person whose name is required to be provided in  
5 the application under the provisions of this paragraph and who  
6 owns any interest in or receives any remuneration from, either  
7 directly or indirectly, any professional service firm,  
8 association, trust, partnership, or corporation providing  
9 goods, leases, or services to the facility for which the  
10 application is made, with a real or anticipated value of \$500  
11 or more, and the name and address of the professional service  
12 firm, association, trust, partnership, or corporation in which  
13 such interest is held. The applicant shall describe such  
14 goods, leases, or services and the probable cost to the  
15 facility or provider and shall describe why such goods,  
16 leases, or services should not be purchased from an  
17 independent entity.

18           9. Any person, corporation, partnership, association,  
19 or trust owning land or property leased to the facility, along  
20 with a copy of the lease agreement.

21           10. Any affiliated parent or subsidiary corporation or  
22 partnership.

23           (c)1. Evidence that the applicant is reputable and of  
24 responsible character. If the applicant is a firm,  
25 association, organization, partnership, business trust,  
26 corporation, or company, the form shall require evidence that  
27 the members or shareholders are reputable and of responsible  
28 character, and the person in charge of providing care under a  
29 certificate of authority shall likewise be required to produce  
30 evidence of being reputable and of responsible character.

31

1           2. Evidence satisfactory to the office ~~department~~ of  
2 the ability of the applicant to comply with the provisions of  
3 this chapter and with rules adopted by the commission  
4 ~~department~~ pursuant to this chapter.

5           3. A statement of whether a person identified in the  
6 application for a provisional certificate of authority or the  
7 administrator or manager of the facility, if such person has  
8 been designated, or any such person living in the same  
9 location:

10           a. Has been convicted of a felony or has pleaded nolo  
11 contendere to a felony charge, or has been held liable or has  
12 been enjoined in a civil action by final judgment, if the  
13 felony or civil action involved fraud, embezzlement,  
14 fraudulent conversion, or misappropriation of property.

15           b. Is subject to a currently effective injunctive or  
16 restrictive order or federal or state administrative order  
17 relating to business activity or health care as a result of an  
18 action brought by a public agency or department, including,  
19 without limitation, an action affecting a license under  
20 chapter 400.

21  
22 The statement shall set forth the court or agency, the date of  
23 conviction or judgment, and the penalty imposed or damages  
24 assessed, or the date, nature, and issuer of the order. Before  
25 determining whether a provisional certificate of authority is  
26 to be issued, the office ~~department~~ may make an inquiry to  
27 determine the accuracy of the information submitted pursuant  
28 to subparagraphs 1. and 2.

29           (d) The agreements for continuing care to be entered  
30 into between the provider and residents which meet the minimum  
31 requirements of s. 651.055 and which include a statement

1 describing the procedures required by law relating to the  
2 release of escrowed entrance fees. Such statement may be  
3 furnished through an addendum.

4 (e) Any advertisement or other written material  
5 proposed to be used in the solicitation of residents.

6 (f) Such other reasonable data, financial statements,  
7 and pertinent information as the commission or office  
8 ~~department~~ may reasonably require with respect to the provider  
9 or the facility, including the most recent audited financial  
10 statements of comparable facilities currently or previously  
11 owned, managed, or developed by the applicant or its  
12 principal, to assist in determining the financial viability of  
13 the project and the management capabilities of its managers  
14 and owners.

15 (3) In addition to the information required in  
16 subsection (2), an applicant for a provisional certificate of  
17 authority shall submit a market feasibility study. The market  
18 feasibility study shall include at least the following  
19 information:

20 (i) The application for a provisional certificate of  
21 authority shall be accompanied by the forms of the continuing  
22 care residency and reservation contracts and escrow agreements  
23 proposed to be used by the provider in the furnishing of care.  
24 If the office ~~department~~ finds that the continuing care  
25 contracts and escrow agreements comply with ss. 651.023(1)(c),  
26 651.033, and 651.055, it shall approve them. Thereafter, no  
27 other form of contract or agreement may be used by the  
28 provider until it has been submitted to the office ~~department~~  
29 and approved.

30 (5)(a) Within 30 days after receipt of an application  
31 for a provisional certificate of authority, the office

1 ~~department~~ shall examine the application and shall notify the  
2 applicant in writing, specifically setting forth and  
3 specifically requesting any additional information the office  
4 ~~department~~ is permitted by law to require. If the application  
5 submitted is determined by the office ~~department~~ to be  
6 substantially incomplete so as to require substantial  
7 additional information, including biographical information,  
8 the office ~~department~~ may return the application to the  
9 applicant with a written notice that the application as  
10 received is substantially incomplete and, therefore,  
11 unacceptable for filing without further action required by the  
12 office ~~department~~. Any filing fee received shall be refunded  
13 to the applicant.

14 (b) Within 15 days after receipt of all of the  
15 requested additional information, the office ~~department~~ shall  
16 notify the applicant in writing that all of the requested  
17 information has been received and the application is deemed to  
18 be complete as of the date of the notice. Failure to so notify  
19 the applicant in writing within the 15-day period shall  
20 constitute acknowledgment by the office ~~department~~ that it has  
21 received all requested additional information, and the  
22 application shall be deemed to be complete for purposes of  
23 review upon the date of the filing of all of the requested  
24 additional information.

25 (6) Within 45 days from the date an application is  
26 deemed to be complete, as set forth in paragraph (5)(b), the  
27 office ~~department~~ shall complete its review and shall issue a  
28 provisional certificate of authority to the applicant based  
29 upon its review and a determination that the application meets  
30 all requirements of law and that the feasibility study was  
31 based on sufficient data and reasonable assumptions and that

1 the applicant will be able to provide continuing care as  
2 proposed and meet all financial obligations related to its  
3 operations, including the financial requirements of this  
4 chapter to provide continuing care as proposed. If the  
5 application is denied, the office ~~department~~ shall notify the  
6 applicant in writing, citing the specific failures to meet the  
7 provisions of this chapter. Such denial shall entitle the  
8 applicant to a hearing pursuant to the provisions of chapter  
9 120.

10 (7) The issuance of a provisional certificate of  
11 authority entitles the applicant to collect entrance fees and  
12 reservation deposits from prospective residents. All or any  
13 part of an entrance fee or deposit collected shall be placed  
14 in an escrow account or on deposit with the department,  
15 pursuant to s. 651.033, until a certificate of authority is  
16 issued by the office ~~department~~.

17 (8) The office ~~department~~ shall not approve any  
18 application which includes in the plan of financing any  
19 encumbrance of the operating reserves required by this  
20 chapter.

21 Section 1679. Section 651.023, Florida Statutes, is  
22 amended to read:

23 651.023 Certificate of authority; application.--

24 (1) After issuance of a provisional certificate of  
25 authority, the office ~~department~~ shall issue to the holder of  
26 such provisional certificate of authority a certificate of  
27 authority; provided, however, that no certificate of authority  
28 shall be issued until the holder of such provisional  
29 certificate of authority provides the office ~~department~~ with  
30 the following information:

31

1 (a) Any material change in status with respect to the  
2 information required to be filed under s. 651.022(2) in the  
3 application for a provisional certificate of authority.

4 (b) A feasibility study prepared by an independent  
5 consultant which contains all of the information required by  
6 s. 651.022(3) and contains financial forecasts or projections  
7 prepared in accordance with standards promulgated by the  
8 American Institute of Certified Public Accountants or  
9 financial forecasts or projections prepared in accordance with  
10 standards for feasibility studies or continuing care  
11 retirement communities promulgated by the Actuarial Standards  
12 Board. The study must also contain an independent evaluation  
13 and examination opinion, or a comparable opinion acceptable to  
14 the office ~~department~~, by the consultant who prepared the  
15 study, of the underlying assumptions used as a basis for the  
16 forecasts or projections in the study and that the assumptions  
17 are reasonable and proper and that the project as proposed is  
18 feasible. The study shall take into account project costs,  
19 actual marketing results to date and marketing projections,  
20 resident fees and charges, competition, resident contract  
21 provisions, and any other factors which affect the feasibility  
22 of operating the facility.

23 (c) Subject to the requirements of subsection (2), a  
24 provider may submit an application for a certificate of  
25 authority and any required exhibits upon submission of proof  
26 that the project has a minimum of 30 percent of the units  
27 reserved for which the provider is charging an entrance fee;  
28 however, this provision shall not apply to an application for  
29 a certificate of authority for the acquisition of a facility  
30 for which a certificate of authority was issued prior to  
31 October 1, 1983, to a provider who subsequently becomes a

1 debtor in a case under the United States Bankruptcy Code, 11  
2 U.S.C. ss. 101 et seq., or to a provider for which the  
3 department has been appointed receiver pursuant to the  
4 provisions of part II of chapter 631.

5 (d) Proof that commitments have been secured for both  
6 construction financing and long-term financing or a documented  
7 plan acceptable to the office ~~department~~ has been adopted by  
8 the applicant for long-term financing.

9 (e) Proof that all conditions of the lender have been  
10 satisfied to activate the commitment to disburse funds other  
11 than the obtaining of the certificate of authority, the  
12 completion of construction, or the closing of the purchase of  
13 realty or buildings for the facility.

14 (f) Proof that the aggregate amount of entrance fees  
15 received by or pledged to the applicant, plus anticipated  
16 proceeds from any long-term financing commitment, plus funds  
17 from all other sources in the actual possession of the  
18 applicant, equal not less than 100 percent of the aggregate  
19 cost of constructing or purchasing, equipping, and furnishing  
20 the facility plus 100 percent of the anticipated startup  
21 losses of the facility.

22 (g) Complete audited financial statements of the  
23 applicant, prepared by an independent certified public  
24 accountant in accordance with generally accepted accounting  
25 principles, as of the date the applicant commenced business  
26 operations or for the fiscal year that ended immediately  
27 preceding the date of application, whichever is later, and  
28 complete unaudited quarterly financial statements attested to  
29 by the applicant subsequent to the date of the last audit.

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1 (h) Proof that the applicant has complied with the  
2 escrow requirements of subsection (3) or subsection (5) and  
3 will be able to comply with s. 651.035.

4 (i) Such other reasonable data, financial statements,  
5 and pertinent information as the commission or office  
6 ~~department~~ may require with respect to the applicant or the  
7 facility, to determine the financial status of the facility  
8 and the management capabilities of its managers and owners.

9 (j) Within 30 days of the receipt of the information  
10 required under paragraphs (a)-(h), the office ~~department~~ shall  
11 examine such information and shall notify the provider in  
12 writing, specifically requesting any additional information  
13 the office ~~department~~ is permitted by law to require. Within  
14 15 days after receipt of all of the requested additional  
15 information, the office ~~department~~ shall notify the provider  
16 in writing that all of the requested information has been  
17 received and the application is deemed to be complete as of  
18 the date of the notice. Failure to so notify the applicant in  
19 writing within the 15-day period shall constitute  
20 acknowledgment by the office ~~department~~ that it has received  
21 all requested additional information, and the application  
22 shall be deemed to be complete for purposes of review upon the  
23 date of the filing of all of the required additional  
24 information.

25 (k) Within 45 days after an application is deemed  
26 complete as set forth in paragraph (j), and upon completion of  
27 the remaining requirements of this section, the office  
28 ~~department~~ shall complete its review and shall issue, or deny,  
29 to the holder of a provisional certificate of authority a  
30 certificate of authority. If a certificate of authority is  
31 denied, the office ~~department~~ shall notify the holder of the

1 provisional certificate of authority in writing, citing the  
2 specific failures to satisfy the provisions of this chapter.  
3 If denied, the holder of the provisional certificate of  
4 authority shall be entitled to an administrative hearing  
5 pursuant to chapter 120.

6           (2)(a) The office ~~department~~ shall issue a certificate  
7 of authority upon its determination that the applicant meets  
8 all requirements of law and has submitted all of the  
9 information required by this section, that all escrow  
10 requirements have been satisfied, and that the fees prescribed  
11 in s. 651.015(2) have been paid. Notwithstanding satisfaction  
12 of the 30-percent minimum reservation requirement of paragraph  
13 (1)(c), no certificate of authority shall be issued until the  
14 project has a minimum of 50 percent of the units reserved for  
15 which the provider is charging an entrance fee, and proof  
16 thereof is provided to the office ~~department~~.

17           (b) In order for a unit to be considered reserved  
18 under this section, the provider must collect a minimum  
19 deposit of 10 percent of the then-current entrance fee for  
20 that unit, and must assess a forfeiture penalty of 2 percent  
21 of the entrance fee due to termination of the reservation  
22 contract after 30 days for any reason other than the death or  
23 serious illness of the resident, the failure of the provider  
24 to meet its obligations under the reservation contract, or  
25 other circumstances beyond the control of the resident that  
26 equitably entitle the resident to a refund of the resident's  
27 deposit. The reservation contract shall state the cancellation  
28 policy and the terms of the continuing care contract to be  
29 entered into.

30           (3) No more than 25 percent of the moneys paid for all  
31 or any part of an initial entrance fee may be included or

1 pledged for the construction or purchase of the facility, or  
2 included or pledged as security for long-term financing. The  
3 term "initial entrance fee" means the total entrance fee  
4 charged by the facility to the first occupant of a unit. A  
5 minimum of 75 percent of the moneys paid for all or any part  
6 of an initial entrance fee collected shall be placed in an  
7 escrow account or on deposit with the department as prescribed  
8 in s. 651.033.

9 (4) The provider shall be entitled to secure release  
10 of the moneys held in escrow within 7 days after receipt by  
11 the office ~~department~~ of an affidavit from the provider, along  
12 with appropriate copies to verify, and notification to the  
13 escrow agent by certified mail, that the following conditions  
14 have been satisfied:

15 (a) A certificate of occupancy has been issued.

16 (b) Payment in full has been received for no less than  
17 70 percent of the total units of a phase or of the total of  
18 the combined phases constructed.

19 (c) The consultant who prepared the feasibility study  
20 required by this section or a substitute approved by the  
21 office ~~department~~ certifies that there has been no material  
22 adverse change in status with regard to the feasibility study,  
23 with such statement dated not more than 12 months from the  
24 date of filing for office ~~department~~ approval. If a material  
25 adverse change should exist at the time of submission, then  
26 sufficient information acceptable to the office ~~department~~ and  
27 the feasibility consultant shall be submitted which remedies  
28 the adverse condition.

29 (d) Proof that commitments have been secured or a  
30 documented plan adopted by the applicant has been approved by  
31 the office ~~department~~ for long-term financing.

1 (e) Proof that the provider has sufficient funds to  
2 meet the requirements of s. 651.035, which may include funds  
3 deposited in the initial entrance fee account.

4 (f) Proof as to the intended application of the  
5 proceeds upon release and proof that the entrance fees when  
6 released will be applied as represented to the office  
7 ~~department~~.

8  
9 Notwithstanding any provision of chapter 120, no person, other  
10 than the provider, the escrow agent, and the office  
11 ~~department~~, shall have a substantial interest in any office  
12 ~~departmental~~ decision regarding release of escrow funds in any  
13 proceedings under chapter 120 or this chapter regarding  
14 release of escrow funds.

15 (5) In lieu of the provider fulfilling the  
16 requirements in subsection (3) and paragraphs (4)(b) and (d),  
17 the office ~~department~~ may authorize the release of escrowed  
18 funds to retire all outstanding debts on the facility and  
19 equipment upon application of the provider and upon the  
20 provider's showing that the provider will grant to the  
21 residents a first mortgage on the land, buildings, and  
22 equipment that constitute the facility, and that the provider  
23 satisfies the requirements of paragraphs (4)(a), (c), and (e).  
24 Such mortgage shall secure the refund of the entrance fee in  
25 the amount required by this chapter. The granting of such  
26 mortgage shall be subject to the following:

27 (a) The first mortgage shall be granted to an  
28 independent trust which is beneficially held by the residents.  
29 The document creating the trust shall contain a provision that  
30 it agrees to an annual audit and will furnish to the office  
31 ~~department~~ all information the office ~~department~~ may

1 reasonably require. The mortgage may secure payment on bonds  
2 issued to the residents or trustee. Such bonds shall be  
3 redeemable after termination of the residency contract in the  
4 amount and manner required by this chapter for the refund of  
5 an entrance fee.

6 (b) Before granting a first mortgage to the residents,  
7 all construction shall be substantially completed and  
8 substantially all equipment shall be purchased. No part of  
9 the entrance fees may be pledged as security for a  
10 construction loan or otherwise used for construction expenses  
11 before the completion of construction.

12 (c) If the provider is leasing the land or buildings  
13 used by the facility, the leasehold interest shall be for a  
14 term of at least 30 years.

15 (6) The timeframes provided under s. 651.022(5) and  
16 (6) apply to applications submitted under s. 651.021(2). The  
17 office ~~department~~ may not issue a certificate of authority  
18 under this chapter to any facility which does not have a  
19 component which is to be licensed pursuant to part II or part  
20 III of chapter 400 or which will not offer personal services  
21 or nursing services through written contractual agreement. Any  
22 written contractual agreement must be disclosed in the  
23 continuing care contract and is subject to the provisions of  
24 s. 651.1151, relating to administrative, vendor, and  
25 management contracts.

26 (7) The office ~~department~~ shall not approve an  
27 application which includes in the plan of financing any  
28 encumbrance of the operating reserves required by this  
29 chapter.

30 Section 1680. Section 651.0235, Florida Statutes, is  
31 amended to read:

1           651.0235 Validity of provisional certificates of  
2 authority and certificates of authority.--

3           (1) The provisional certificate of authority and  
4 certificate of authority shall be valid for as long as the  
5 office ~~department~~ determines that the provider continues to  
6 meet the requirements of this chapter.

7           (2) If the provider fails to meet the requirements of  
8 this chapter for a provisional certificate of authority or a  
9 certificate of authority, the office ~~department~~ may notify the  
10 provider of any deficiencies and require the provider to  
11 correct such deficiencies within a period to be determined by  
12 the office ~~department~~. If such deficiencies are not corrected  
13 within 20 days after the notice to the provider, or within  
14 less time at the discretion of the office ~~department~~, the  
15 office ~~department~~ shall notify the advisory council, which may  
16 assist the facility in formulating a remedial plan to be  
17 submitted to the office ~~department~~ no later than 60 days from  
18 the date of notification. The time period granted to correct  
19 deficiencies may be extended upon submission of a plan for  
20 corrective action approved by the office ~~department~~. If such  
21 deficiencies have not been cleared by the expiration of such  
22 time period, as extended, the office ~~department~~ shall petition  
23 for a delinquency proceeding or pursue such other relief as is  
24 provided for under this chapter, as the circumstances may  
25 require.

26           (3) The office ~~Department of Insurance~~ shall notify  
27 the Agency for Health Care Administration of any facility for  
28 which a provisional certificate of authority or certificate of  
29 authority is no longer valid.

30           Section 1681. Section 651.026, Florida Statutes, is  
31 amended to read:

1           651.026 Annual reports.--

2           (1) Annually, on or before May 1, the provider shall  
3 file an annual report and such other information and data  
4 showing its condition as of the last day of the preceding  
5 calendar year, except as provided in subsection (5). If the  
6 office ~~department~~ does not receive the required information on  
7 or before May 1, a late fee may be charged pursuant to s.  
8 651.015(2)(c). The office ~~department~~ may approve an extension  
9 of up to 30 days.

10           (2) The annual report shall be in such form as the  
11 commission ~~department~~ prescribes and shall contain at least  
12 the following:

13           (a) Any change in status with respect to the  
14 information required to be filed under s. 651.022(2).

15           (b) Financial statements audited by an independent  
16 certified public accountant, which shall contain, for two or  
17 more periods if the facility has been in existence that long,  
18 the following:

19           1. An accountant's opinion and, in accordance with  
20 generally accepted accounting principles:

- 21           a. A balance sheet;  
22           b. A statement of income and expenses;  
23           c. A statement of equity or fund balances; and  
24           d. A statement of changes in cash flows; and

25           2. Notes to the financial statements considered  
26 customary or necessary to full disclosure or adequate  
27 understanding of the financial statements, financial  
28 condition, and operation.

29           (c) The following financial information:  
30  
31

1           1. A detailed listing of the assets maintained in the  
2 liquid reserve as required in s. 651.035 and in accordance  
3 with part II of chapter 625;

4           2. A schedule giving additional information relating  
5 to property, plant, and equipment having an original cost of  
6 at least \$25,000, so as to show in reasonable detail with  
7 respect to each separate facility original costs, accumulated  
8 depreciation, net book value, appraised value or insurable  
9 value and date thereof, insurance coverage, encumbrances, and  
10 net equity of appraised or insured value over encumbrances.  
11 Any property not used in continuing care shall be shown  
12 separately from property used in continuing care;

13           3. The level of participation in Medicare or Medicaid  
14 programs, or both;

15           4. A statement of all fees required of residents,  
16 including, but not limited to, a statement of the entrance fee  
17 charged, the monthly service charges, the proposed application  
18 of the proceeds of the entrance fee by the provider, and the  
19 plan by which the amount of the entrance fee is determined if  
20 the entrance fee is not the same in all cases; and

21           5. Any change or increase in fees when the provider  
22 changes either the scope of, or the rates for, care or  
23 services, regardless of whether the change involves the basic  
24 rate or only those services available at additional costs to  
25 the resident.

26           6.a. If the provider has more than one certificated  
27 facility, it shall submit a statement of operations for each  
28 facility as supplemental information to the audited financial  
29 statements required as part of the annual report.

30           b. If the provider has operations that are not Florida  
31 certificated facilities, the provider shall also submit as

1 supplemental information to the audited financial statements,  
2 balance sheets, statements of changes in equity, and  
3 statements of cash flows for each Florida certificated  
4 facility.

5 (d) Such other reasonable data, financial statements,  
6 and pertinent information as the commission or office  
7 ~~department~~ may require with respect to the provider or the  
8 facility, or its directors, trustees, members, branches,  
9 subsidiaries, or affiliates, to determine the financial status  
10 of the facility and the management capabilities of its  
11 managers and owners.

12 (e) Each facility shall file with the office  
13 ~~department~~ annually, together with the annual report required  
14 by this section, a computation of its minimum liquid reserve  
15 calculated in accordance with s. 651.035 on a form prescribed  
16 by the commission ~~department~~.

17 (3) The commission ~~department~~ shall adopt by rule  
18 meaningful measures of assessing the financial viability of a  
19 provider. The rule may include the following factors:

- 20 (a) Debt service coverage ratios.  
21 (b) Current ratios.  
22 (c) Adjusted current ratios.  
23 (d) Cash flows.  
24 (e) Occupancy rates.  
25 (f) Other measures, ratios, or trends.  
26 (g) Other factors as may be appropriate.

27 (4) If the provider is an individual, the annual  
28 statement shall be sworn to by him or her; if a limited  
29 partnership, by the general partner; if a partnership other  
30 than a limited partnership, by all the partners; if any other  
31 unincorporated association, by all its members or officers and

1 directors; if a trust, by all its trustees and officers; and,  
2 if a corporation, by the president and secretary thereof.

3 (5) A provider may declare at the time of application  
4 a fiscal year other than the calendar year, and may use such  
5 fiscal year for its accounting period. A provider may  
6 subsequently adopt a fiscal year upon providing the office  
7 ~~department~~ with a copy of the Internal Revenue Service  
8 approval of such change, if such approval is required. The  
9 annual report filing with the office ~~department~~ must be made  
10 within 120 days of the last day of the fiscal year of the  
11 provider.

12 (6) The workpapers, account analyses, descriptions of  
13 basic assumptions, and other information necessary for a full  
14 understanding of the annual statement of a provider as filed  
15 with the office ~~department~~ shall be made available for visual  
16 inspection by the office ~~department~~ at the facility or, if the  
17 office ~~department~~ requests, at another agreed-upon site.  
18 Photocopies may not be made unless consented to by the  
19 provider.

20 (7) A filing fee in the amount of \$100 shall accompany  
21 each annual report required by this section.

22 (8) All financial reports and any supplemental  
23 financial information submitted to the office ~~department~~ shall  
24 be prepared in conformity with generally accepted accounting  
25 principles.

26 Section 1682. Section 651.0261, Florida Statutes, is  
27 amended to read:

28 651.0261 Quarterly statements.--If the office  
29 ~~department~~ finds, pursuant to rules of the commission  
30 ~~department~~, that such information is needed to properly  
31 monitor the financial condition of a provider or facility or

1 is otherwise needed to protect the public interest, the office  
2 ~~department~~ may require the provider to file, within 45 days  
3 after the end of each fiscal quarter, a quarterly unaudited  
4 financial statement of the provider or of the facility in the  
5 form prescribed by the commission ~~department~~ by rule.

6 Section 1683. Section 651.028, Florida Statutes, is  
7 amended to read:

8 651.028 Accredited facilities.--If a provider is  
9 accredited by a process found by the office ~~department~~ to be  
10 acceptable and substantially equivalent to the provisions of  
11 this chapter, the office ~~department~~ may, pursuant to rule of  
12 the commission, waive any requirements of this chapter with  
13 respect to the provider if the office ~~department~~ finds that  
14 such waivers are not inconsistent with the security  
15 protections intended by this chapter.

16 Section 1684. Section 651.033, Florida Statutes, is  
17 amended to read:

18 651.033 Escrow accounts.--

19 (1) When funds are required to be deposited in an  
20 escrow account pursuant to s. 651.022, s. 651.023, s. 651.035,  
21 or s. 651.055:

22 (a) The escrow account shall be established in a  
23 Florida bank, Florida savings and loan association, or Florida  
24 trust company acceptable to the office ~~department~~ or on  
25 deposit with the department; and the funds deposited therein  
26 shall be kept and maintained in an account separate and apart  
27 from the provider's business accounts.

28 (b) An escrow agreement shall be entered into between  
29 the bank, savings and loan association, or trust company and  
30 the provider of the facility; the agreement shall state that  
31 its purpose is to protect the resident or the prospective

1 resident; and, upon presentation of evidence of compliance  
2 with applicable portions of this chapter, or upon order of a  
3 court of competent jurisdiction, the escrow agent shall  
4 release and pay over the funds, or portions thereof, together  
5 with any interest accrued thereon or earned from investment of  
6 the funds, to the provider or resident as directed.

7 (c) Any agreement establishing an escrow account  
8 required under the provisions of this chapter shall be subject  
9 to approval by the office ~~department~~. The agreement shall be  
10 in writing and shall contain, in addition to any other  
11 provisions required by law, a provision whereby the escrow  
12 agent agrees to abide by the duties imposed under this  
13 section.

14 (d) All funds deposited in an escrow account, if  
15 invested, shall be invested as set forth in part II of chapter  
16 625; however, such investment shall not diminish the funds  
17 held in escrow below the amount required by this chapter. All  
18 funds deposited in an escrow account shall not be subject to  
19 any charges by the escrow agent except escrow agent fees  
20 associated with administering the accounts, or subject to any  
21 liens, judgments, garnishments, creditor's claims, or other  
22 encumbrances against the provider or facility except as  
23 provided in s. 651.035(2).

24 (e) At the request of either the provider or the  
25 office ~~department~~, the escrow agent shall issue a statement  
26 indicating the status of the escrow account.

27 (2) In addition, the escrow agreement shall provide  
28 that the escrow agent or another person designated to act in  
29 the escrow agent's place and the provider, except as otherwise  
30 provided in s. 651.035, shall notify the office ~~department~~ in  
31 writing at least 10 days before the withdrawal of any portion

1 of any funds required to be escrowed under the provisions of  
2 s. 651.035. However, in the event of an emergency and upon  
3 petition by the provider, the office ~~department~~ may waive the  
4 10-day notification period and allow a withdrawal of up to 10  
5 percent of the required minimum liquid reserve. The office  
6 ~~department~~ shall have 3 working days to deny the petition for  
7 the emergency 10-percent withdrawal. If the office ~~department~~  
8 fails to deny the petition within 3 working days, the petition  
9 shall be deemed to have been granted by the office ~~department~~.  
10 For the purpose of this section, "working day" means each day  
11 that is not a Saturday, Sunday, or legal holiday as defined by  
12 Florida law. Also for the purpose of this section, the day the  
13 petition is received by the office ~~department~~ shall not be  
14 counted as one of the 3 days.

15 (3) In addition, when entrance fees are required to be  
16 deposited in an escrow account pursuant to s. 651.022, s.  
17 651.023, or s. 651.055:

18 (a) The provider shall deliver to the resident a  
19 written receipt. The receipt shall show the payor's name and  
20 address, the date, the price of the care contract, and the  
21 amount of money paid. A copy of each receipt together with the  
22 funds shall be deposited with the escrow agent or as provided  
23 in paragraph (c). The escrow agent shall release such funds to  
24 the provider upon the expiration of 7 days after the date of  
25 receipt of the funds by the escrow agent if the provider,  
26 operating under a certificate of authority issued by the  
27 office ~~department~~, has met the requirements of s. 651.023(4).  
28 However, if the resident rescinds the contract within the  
29 7-day period, the escrow agent shall release the escrowed fees  
30 to the resident.

31

1 (b) At the request of an individual resident of a  
2 facility, the escrow agent shall issue a statement indicating  
3 the status of the resident's portion of the escrow account.

4 (c) At the request of an individual resident of a  
5 facility, the provider may hold the check for the 7-day period  
6 and shall not deposit it during this time period. If the  
7 resident rescinds the contract within the 7-day period, the  
8 check shall be immediately returned to the resident. Upon the  
9 expiration of the 7 days, the provider shall deposit the  
10 check.

11 (4) Any fees of \$1,500 or less which are assessed with  
12 respect to prospective residents to have their names placed on  
13 a facility's waiting list shall not be subject to the escrow  
14 provisions of this section.

15 (5) When funds are required to be deposited in an  
16 escrow account pursuant to s. 651.022, s. 651.023, or s.  
17 651.035, the following shall apply:

18 (a) The escrow agreement shall require that the escrow  
19 agent furnish the provider with a quarterly statement  
20 indicating the amount of any disbursements from or deposits to  
21 the escrow account and the condition of the account during the  
22 period covered by the statement. The agreement shall require  
23 that the statement be furnished to the provider by the escrow  
24 agent on or before the 10th day of the month following the end  
25 of the quarter for which the statement is due. If the escrow  
26 agent does not provide the quarterly statement to the provider  
27 on or before the 10th day of the month following the month for  
28 which the statement is due, the office ~~department~~ may, in its  
29 discretion, levy against the escrow agent a fine not to exceed  
30 \$25 a day for each day of noncompliance with the provisions of  
31 this subsection.

1 (b) If the escrow agent does not provide the quarterly  
2 statement to the provider on or before the 10th day of the  
3 month following the quarter for which the statement is due,  
4 the provider shall, on or before the 15th day of the month  
5 following the quarter for which the statement is due, send a  
6 written request for the statement to the escrow agent by  
7 certified mail return receipt requested.

8 (c) On or before the 20th day of the month following  
9 the quarter for which the statement is due, the provider shall  
10 file with the office ~~department~~ a copy of the escrow agent's  
11 statement or, if the provider has not received the escrow  
12 agent's statement, a copy of the written request to the escrow  
13 agent for the statement.

14 (d) The office ~~department~~ may, in its discretion, in  
15 addition to any other penalty that may be provided for under  
16 this chapter, levy a fine against the provider not to exceed  
17 \$25 a day for each day the provider fails to comply with the  
18 provisions of this subsection.

19 (e) Funds held on deposit with the department are  
20 exempt from the reporting requirements of this subsection.

21 Section 1685. Paragraphs (b) and (c) of subsection  
22 (2), paragraph (b) of subsection (4) and subsections (5), (6),  
23 (7), and (8) of section 651.035, Florida Statutes, are amended  
24 to read:

25 651.035 Minimum liquid reserve requirements.--

26 (2)

27 (b) A provider which has outstanding indebtedness  
28 which requires what is normally referred to as a "debt service  
29 reserve" to be held in escrow pursuant to a trust indenture or  
30 mortgage lien on the facility and for which the debt service  
31 reserve may only be used to pay principal and interest

1 payments on the debt which the debtor is obligated to pay, and  
2 which may include taxes and insurance, may include such debt  
3 service reserve in its computation of its minimum liquid  
4 reserve to satisfy this subsection, provided that the provider  
5 furnishes to the office ~~Department of Insurance~~ a copy of the  
6 agreement under which such debt service is held, together with  
7 a statement of the amount being held in escrow for the debt  
8 service reserve, certified by the lender or trustee and the  
9 provider to be correct. The trustee shall provide the office  
10 ~~department~~ with any information concerning the debt service  
11 reserve account upon request of the provider or the office  
12 ~~department~~.

13 (c) Each provider shall maintain in escrow an  
14 operating reserve in an amount equal to 30 percent of the  
15 total operating expenses projected in the feasibility study  
16 required by s. 651.023 for the first 12 months of operation.  
17 Thereafter, each provider shall maintain in escrow an  
18 operating reserve in an amount equal to 15 percent of the  
19 total operating expenses in the annual report filed pursuant  
20 to s. 651.026. Where a provider has been in operation for more  
21 than 12 months, the total annual operating expenses shall be  
22 determined by averaging the total annual operating expenses  
23 reported to the office ~~department~~ by the number of annual  
24 reports filed with the office ~~department~~ within the immediate  
25 preceding 3-year period subject to adjustment in the event  
26 there is a change in the number of facilities owned. For  
27 purposes of this subsection, total annual operating expenses  
28 shall include all expenses of the facility except:  
29 depreciation and amortization; interest, insurance and taxes  
30 included in subsection (1); extraordinary expenses which are  
31 adequately explained and documented in accordance with

1 generally accepted accounting principles; liability insurance  
2 premiums in excess of those paid in calendar year 1999; and  
3 changes in the obligation to provide future services to  
4 current residents. For providers initially licensed during or  
5 after calendar year 1999, liability insurance shall be  
6 included in the total operating expenses in an amount not to  
7 exceed the premium paid during the first 12 months of facility  
8 operation. Beginning January 1, 1993, the operating reserves  
9 required under this subsection shall be in an unencumbered  
10 account held in escrow for the benefit of the residents. Such  
11 funds may not be encumbered or subject to any liens or charges  
12 by the escrow agent or judgments, garnishments, or creditors'  
13 claims against the provider or facility. However, if a  
14 facility had a lien, mortgage, trust indenture, or similar  
15 debt instrument in place prior to January 1, 1993, which  
16 encumbered all or any part of the reserves required by this  
17 subsection and such funds were used to meet the requirements  
18 of this subsection, then such arrangement may be continued,  
19 unless a refinancing or acquisition has occurred, and the  
20 provider shall be in compliance with this subsection.

21 (4)

22 (b) In facilities which have voluntarily and  
23 permanently discontinued marketing continuing care contracts,  
24 the office department may allow a reduced debt service reserve  
25 as required in subsection (1) based upon the ratio of  
26 residents under continuing care contracts to those residents  
27 who do not hold such contracts if the office department finds  
28 that such reduction is not inconsistent with the security  
29 protections intended by this chapter. In making this  
30 determination, the office department may consider such factors  
31 as the financial condition of the facility, the provisions of

1 the outstanding continuing care contracts, the ratio of  
2 residents under continuing care agreements to those residents  
3 who do not hold a continuing care contract, current occupancy  
4 rates, previous sales and marketing efforts, life expectancy  
5 of the remaining contract holders, and the written policies of  
6 the board of directors of the provider or a similar board.

7 (5) When principal and interest payments are paid to a  
8 trust which is beneficially held by the residents as described  
9 in s. 651.023(5), the office ~~department~~ may waive all or any  
10 portion of the escrow requirements for mortgage principal and  
11 interest contained in subsection (1) if the office ~~department~~  
12 finds that such waiver is not inconsistent with the security  
13 protections intended by this chapter.

14 (6) The office ~~department~~, upon approval of a plan for  
15 fulfilling the requirements of this section and upon  
16 demonstration by the facility of an annual increase in liquid  
17 reserves, may extend the time for compliance.

18 (7)(a) A provider may satisfy the minimum liquid  
19 reserve requirements of this section by acquiring from a  
20 financial institution, as specified in paragraph (b), a clean,  
21 unconditional irrevocable letter of credit in an amount equal  
22 to the requirements of this section. The letter of credit  
23 shall be issued by a financial institution participating in  
24 the State of Florida Treasury Certificate of Deposit Program,  
25 and the letter of credit shall be subject to the approval of  
26 the office ~~department~~ prior to issuance and prior to any  
27 renewal or modification thereof. At a minimum, the letter of  
28 credit shall provide for:

29 1. Ninety days' prior written notice to both the  
30 provider and the office ~~department~~ of the financial  
31

1 institution's determination not to renew or extend the term of  
2 the letter of credit.

3           2. Unless otherwise arranged by the provider to the  
4 satisfaction of the office ~~department~~, deposit by the  
5 financial institution of such letter of credit funds in an  
6 account designated by the office ~~department~~ no later than 30  
7 days prior to the expiration of the letter of credit.

8           3. Deposit by the financial institution of such letter  
9 of credit funds in an account designated by the office  
10 ~~department~~ no later than 4 business days following written  
11 instructions from the office ~~department~~ that, in the sole  
12 judgment of the office ~~department~~, funding of the minimum  
13 liquid reserve is required.

14           (b) The terms of such letter of credit shall be  
15 approved by the office ~~department~~ and the long-term debt of  
16 the financial institution providing such letter of credit  
17 shall be rated in one of their top three long-term debt rating  
18 categories by either Moody's Investors Service, Standard &  
19 Poor's Corporation, or a recognized securities rating agency  
20 acceptable to the office ~~department~~.

21           (c) The letter of credit shall name the office  
22 ~~department~~ as beneficiary.

23           (d) Notwithstanding any other provision of this  
24 section, a provider utilizing a letter of credit pursuant to  
25 this subsection shall, at all times, have and maintain in  
26 escrow an operating cash reserve equal to 2 months' operating  
27 expenses as determined pursuant to s. 651.026.

28           (e) In the event the issuing financial institution no  
29 longer participates in the State of Florida Treasury  
30 Certificate of Deposit Program, such financial institution  
31 shall deposit as collateral with the department ~~State of~~

1 ~~Florida Treasury~~ eligible securities, as prescribed by s.  
2 625.52, having a market value equal to or greater than 100  
3 percent of the stated amount of the letter of credit.

4 (8)(a) Each fiscal year, a provider may withdraw up to  
5 33 percent of the total renewal and replacement reserve  
6 available. The reserve available is equal to the market value  
7 of the invested reserves at the end of the provider's prior  
8 fiscal year. The withdrawal is to be used for capital items or  
9 major repairs, and before any funds are eligible for  
10 withdrawal, the provider must obtain written permission from  
11 the office ~~department~~ by submitting the following information:

12 1. The amount of the withdrawal and the intended use  
13 of the proceeds.

14 2. A board resolution and sworn affidavit signed by  
15 two officers or general partners of the provider which  
16 indicates approval of the withdrawal and use of the funds.

17 3. Proof that the provider has met all funding  
18 requirements for the operating, debt service, and renewal and  
19 replacement reserves computed for the previous fiscal year.

20 4. Anticipated payment schedule for refunding the  
21 renewal and replacement reserve fund.

22 (b) Within 30 days after the withdrawal of funds from  
23 the renewal and replacement reserve fund, the provider must  
24 begin refunding the reserve account in equal monthly payments  
25 which allow for a complete funding of such withdrawal within  
26 36 months. If the payment schedule required under subparagraph  
27 (a)4. has changed, the provider must update the office  
28 ~~department~~ with the new payment schedule. If the provider  
29 fails to make a required monthly payment or the payment is  
30 late, the provider must notify the office ~~department~~ within 5  
31 days after the due date of the payment. No additional

1 withdrawals from the renewal and replacement reserve will be  
2 allowed until all scheduled payments are current.

3 Section 1686. Section 651.051, Florida Statutes, is  
4 amended to read:

5 651.051 Maintenance of assets and records in  
6 state.--No records or assets may be removed from this state by  
7 a provider unless the office ~~department~~ consents to such  
8 removal in writing before such removal. Such consent shall be  
9 based upon the provider's submitting satisfactory evidence  
10 that the removal will facilitate and make more economical the  
11 operations of the provider and will not diminish the service  
12 or protection thereafter to be given the provider's residents  
13 in this state. Prior to such removal, the provider shall give  
14 notice to the president or chair of the facility's residents'  
15 council. If such removal is part of a cash management system  
16 which has been approved by the office ~~department~~, disclosure  
17 of the system shall meet the notification requirements.

18 Section 1687. Subsection (1) of section 651.055,  
19 Florida Statutes, is amended to read:

20 651.055 Contracts; right to rescind.--

21 (1) Each continuing care contract and each addendum to  
22 such contract shall be submitted to and approved by the office  
23 ~~department~~ prior to its use in this state. Thereafter, no  
24 other form of contract shall be used by the provider unless it  
25 has been submitted to and approved by the office ~~department~~.  
26 Each contract shall:

27 (a) Provide for the continuing care of only one  
28 resident, or for two persons occupying space designed for  
29 double occupancy, under appropriate regulations established by  
30 the provider and shall list all properties transferred and  
31 their market value at the time of transfer, including

1 donations, subscriptions, fees, and any other amounts paid or  
2 payable by, or on behalf of, the resident or residents.

3 (b) Specify all services which are to be provided by  
4 the provider to each resident, including, in detail, all items  
5 which each resident will receive, whether the items will be  
6 provided for a designated time period or for life, and whether  
7 the services will be available on the premises or at another  
8 specified location. The provider shall indicate which services  
9 or items are included in the contract for continuing care and  
10 which services or items are made available at or by the  
11 facility at extra charge. Such items shall include, but are  
12 not limited to, food, shelter, personal services or nursing  
13 care, drugs, burial, and incidentals.

14 (c) Describe the terms and conditions under which a  
15 contract for continuing care may be canceled by the provider  
16 or by a resident and the conditions, if any, under which all  
17 or any portion of the entrance fee will be refunded in the  
18 event of cancellation of the contract by the provider or by  
19 the resident, including the effect of any change in the health  
20 or financial condition of a person between the date of  
21 entering a contract for continuing care and the date of  
22 initial occupancy of a living unit by that person.

23 (d) Describe the health and financial conditions  
24 required for a person to be accepted as a resident and to  
25 continue as a resident, once accepted, including the effect of  
26 any change in the health or financial condition of a person  
27 between the date of entering into a continuing care contract  
28 and the date of taking occupancy in a unit.

29 (e) Describe the circumstances under which the  
30 resident will be permitted to remain in the facility in the  
31

1 event of financial difficulties of the resident. The stated  
2 policy may not be less than the terms stated in s. 651.061.

3 (f) State the fees that will be charged if the  
4 resident marries while at the designated facility, the terms  
5 concerning the entry of a spouse to the facility, and the  
6 consequences if the spouse does not meet the requirements for  
7 entry.

8 (g) Provide that the contract may be canceled upon the  
9 giving of written notice of cancellation of at least 30 days  
10 by the provider, the resident, or the person who provided the  
11 transfer of property or funds for the care of such resident;  
12 however, if a contract is canceled because there has been a  
13 good faith determination that a resident is a danger to  
14 himself or herself or others, only such notice as is  
15 reasonable under the circumstances shall be required.

16 1. The contract shall further provide in clear and  
17 understandable language, in print no smaller than the largest  
18 type used in the body of the contract, the terms governing the  
19 refund of any portion of the entrance fee.

20 2. For a resident whose contract with the facility  
21 provides that the resident does not receive a transferable  
22 membership or ownership right in the facility, and who has  
23 occupied his or her unit, the refund shall be calculated on a  
24 pro rata basis with the facility retaining no more than 2  
25 percent per month of occupancy by the resident and no more  
26 than a 4-percent fee for processing. Such refund shall be paid  
27 no later than 120 days after the giving of notice of intention  
28 to cancel.

29 3. If the contract provides for the facility to retain  
30 no more than 1 percent per month of occupancy by the resident,  
31 it may provide that such refund will be paid from the proceeds

1 of the next entrance fees received by the provider for units  
2 for which there are no prior claims by any resident until paid  
3 in full or, if the provider has discontinued marketing  
4 continuing care contracts, within 200 days after the date of  
5 notice.

6 4. Unless the provisions of subsection (5) apply, for  
7 any prospective resident, regardless of whether or not such a  
8 resident receives a transferable membership or ownership right  
9 in the facility, who cancels the contract prior to occupancy  
10 of the unit, the refund shall be the entire amount paid toward  
11 the entrance fee, less a processing fee not to exceed 4  
12 percent of the entire entrance fee, but in no event shall such  
13 processing fee exceed the amount paid by the prospective  
14 resident. Such refund shall be paid no later than 60 days  
15 after the giving of notice of intention to cancel. For a  
16 resident who has occupied his or her unit and who has received  
17 a transferable membership or ownership right in the facility,  
18 the foregoing refund provisions shall not apply but shall be  
19 deemed satisfied by the acquisition or receipt of a  
20 transferable membership or an ownership right in the facility.  
21 The provider shall not charge any fee for the transfer of  
22 membership or sale of an ownership right.

23 (h) State the terms under which a contract is canceled  
24 by the death of the resident. These terms may contain a  
25 provision that, upon the death of a resident, the entrance fee  
26 of such resident shall be considered earned and shall become  
27 the property of the provider. When the unit is shared, the  
28 conditions with respect to the effect of the death or removal  
29 of one of the residents shall be included in the contract.

30 (i) Describe the policies which may lead to changes in  
31 monthly recurring and nonrecurring charges or fees for goods

1 and services received. The contract shall provide for advance  
2 notice to the resident, of not less than 60 days, before any  
3 change in fees or charges or the scope of care or services may  
4 be effective, except for changes required by state or federal  
5 assistance programs.

6 (j) Provide that charges for care paid in one lump sum  
7 shall not be increased or changed during the duration of the  
8 agreed upon care, except for changes required by state or  
9 federal assistance programs.

10 (k) Specify whether or not the facility is, or is  
11 affiliated with, a religious, nonprofit, or proprietary  
12 organization or management entity; the extent to which the  
13 affiliate organization will be responsible for the financial  
14 and contractual obligations of the provider; and the  
15 provisions of the federal Internal Revenue Code, if any, under  
16 which the provider or affiliate is exempt from the payment of  
17 federal income tax.

18 Section 1688. Subsection (3) of section 651.083,  
19 Florida Statutes, is amended to read:

20 651.083 Residents' rights.--

21 (3) Any violation of the residents' rights set forth  
22 in subsection (1) constitutes grounds for disciplinary action  
23 by the office ~~department~~ under ss. 651.106 and 651.108.

24 Section 1689. Subsection (1) of section 651.085,  
25 Florida Statutes, is amended to read:

26 651.085 Quarterly meetings between residents and the  
27 governing body of the provider; resident representation before  
28 the governing body of the provider.--

29 (1) The governing body of a provider, or the  
30 designated representative of the provider, shall hold  
31 quarterly meetings with the residents of the continuing care

1 facility for the purpose of free discussion of subjects  
2 including, but not limited to, income, expenditures, and  
3 financial trends and problems as they apply to the facility,  
4 as well as a discussion on proposed changes in policies,  
5 programs, and services. Upon request of the residents'  
6 organization, a member of the governing body of the provider,  
7 such as a board member, a general partner, or a principal  
8 owner shall attend such meetings. Residents shall be entitled  
9 to at least 7 days' advance notice of each quarterly meeting.  
10 An agenda and any materials that will be distributed by the  
11 governing body or representative of the provider shall be  
12 posted in a conspicuous place at the facility and shall be  
13 available upon request to residents of the facility. The  
14 office ~~department~~ shall request verification from a facility  
15 that quarterly meetings are held and open to all residents  
16 when it receives a complaint from the residents' council that  
17 a facility is not in compliance with the provisions of this  
18 subsection. In addition, a facility shall report to the office  
19 ~~department~~ in the annual report required under s. 651.026 the  
20 dates on which quarterly meetings were held during the  
21 reporting period.

22 Section 1690. Section 651.091, Florida Statutes, is  
23 amended to read:

24 651.091 Availability, distribution, and posting of  
25 reports and records; requirement of full disclosure.--

26 (1) Each continuing care facility shall maintain as  
27 public information, available upon request, records of all  
28 cost and inspection reports pertaining to that facility that  
29 have been filed with or issued by any governmental agency. A  
30 copy of each such report shall be retained in such records for  
31 not less than 5 years from the date the report is filed or

1 issued. Each facility shall also maintain as public  
2 information, available upon request, all annual statements  
3 that have been filed with the office ~~department~~.

4 (2) Every continuing care facility shall:

5 (a) Display the certificate of authority in a  
6 conspicuous place inside the facility.

7 (b) Post in a prominent position in the facility so as  
8 to be accessible to all residents and to the general public a  
9 concise summary of the last examination report issued by the  
10 office ~~department~~, with references to the page numbers of the  
11 full report noting any deficiencies found by the office  
12 ~~department~~, and the actions taken by the provider to rectify  
13 such deficiencies, indicating in such summary where the full  
14 report may be inspected in the facility.

15 (c) Post in a prominent position in the facility so as  
16 to be accessible to all residents and to the general public a  
17 summary of the latest annual statement, indicating in the  
18 summary where the full annual statement may be inspected in  
19 the facility. A listing of any proposed changes in policies,  
20 programs, and services shall also be posted.

21 (d) Distribute a copy of the full annual statement to  
22 the president or chair of the residents' council within 30  
23 days after the filing of the annual report with the office  
24 ~~department~~, and designate a staff person to provide  
25 explanation thereof.

26 (e) Notify the residents' council of any plans filed  
27 with the office ~~department~~ to obtain new financing, additional  
28 financing, or refinancing for the facility and of any  
29 applications to the office ~~department~~ for any expansion of the  
30 facility.

31

1           (3) Before entering into a contract to furnish  
2 continuing care, the provider undertaking to furnish the care,  
3 or the agent of the provider, shall make full disclosure, and  
4 provide copies of the disclosure documents to the prospective  
5 resident or his or her legal representative, of the following  
6 information:

7           (a) The contract to furnish continuing care.

8           (b) The summary listed in paragraph (2)(b).

9           (c) All ownership interests and lease agreements,  
10 including information specified in s. 651.022(2)(b)8.

11           (d) In keeping with the intent of this subsection  
12 relating to disclosure, the provider shall make available for  
13 review, master plans approved by the provider's governing  
14 board and any plans for expansion or phased development, to  
15 the extent that the availability of such plans will not put at  
16 risk real estate, financing, acquisition, negotiations, or  
17 other implementation of operational plans and thus jeopardize  
18 the success of negotiations, operations, and development.

19           (e) Copies of the rules and regulations of the  
20 facility and an explanation of the responsibilities of the  
21 resident.

22           (f) The policy of the facility with respect to  
23 admission to and discharge from the various levels of health  
24 care offered by the facility.

25           (g) The amount and location of any reserve funds  
26 required by this chapter, and the name of the person or entity  
27 having a claim to such funds in the event of a bankruptcy,  
28 foreclosure, or rehabilitation proceeding.

29           (h) A copy of the resident's rights as described in s.  
30 651.083.

31

1 A true and complete copy of the full disclosure document to be  
2 used shall be filed with the office ~~department~~ prior to its  
3 use. A resident or prospective resident or his or her legal  
4 representative shall be permitted to inspect the full reports  
5 referred to in paragraph (2)(b); the charter or other  
6 agreement or instrument required to be filed with the office  
7 ~~department~~ pursuant to s. 651.022(2), together with all  
8 amendments thereto; and the bylaws of the corporation or  
9 association, if any. Upon request, copies of the reports and  
10 information shall be provided to the individual requesting  
11 them if the individual agrees to pay a reasonable charge to  
12 cover copying costs.

13 Section 1691. Subsections (1) and (2) of section  
14 651.095, Florida Statutes, are amended to read:

15 651.095 Advertisements; requirements; penalties.--

16 (1) Upon application for a provisional certificate of  
17 authority, the office ~~department~~ shall require the applicant  
18 to submit for approval all advertising. Approval of the  
19 application constitutes approval of the advertising, unless  
20 the office ~~department~~ has otherwise notified the applicant.  
21 The office ~~department~~ shall disapprove any document which is a  
22 violation of any provision of part IX of chapter 626.

23 (2) After an application has been approved, a provider  
24 is not required to submit new advertising to the office  
25 ~~department~~ for approval; however, a provider may not use, and  
26 may not have published, and a person may not use or may not  
27 have published, any advertisement which is a violation of any  
28 provision of part IX of chapter 626 or which has previously  
29 been disapproved by the office ~~department~~.

30 Section 1692. Section 651.105, Florida Statutes, is  
31 amended to read:

1           651.105 Examination and inspections.--

2           (1) The office ~~department~~ may at any time, and shall  
3 at least once every 3 years, examine the business of any  
4 applicant for a certificate of authority and any provider  
5 engaged in the execution of care contracts or engaged in the  
6 performance of obligations under such contracts, in the same  
7 manner as is provided for examination of insurance companies  
8 pursuant to s. 624.316. Such examinations shall be made by a  
9 representative or examiner designated by the office  
10 ~~department~~, whose compensation will be fixed by the office  
11 ~~department~~ pursuant to s. 624.320. Routine examinations may be  
12 made by having the necessary documents submitted to the office  
13 ~~department~~; and, for this purpose, financial documents and  
14 records conforming to commonly accepted accounting principles  
15 and practices, as required under s. 651.026, will be deemed  
16 adequate. The final written report of each such examination  
17 shall be filed with ~~in~~ the office ~~of the department~~ and, when  
18 so filed, will constitute a public record. Any provider being  
19 examined shall, upon request, give reasonable and timely  
20 access to all of its records. The representative or examiner  
21 designated by the office ~~department~~ may at any time examine  
22 the records and affairs and inspect the physical property of  
23 any provider, whether in connection with a formal examination  
24 or not.

25           (2) Any duly authorized officer, employee, or agent of  
26 the office ~~department~~ may, upon presentation of proper  
27 identification, have access to, and inspect, any records, with  
28 or without advance notice, to secure compliance with, or to  
29 prevent a violation of, any provision of this chapter.

30           (3) Reports of the results of such financial  
31 examinations must be kept on file by the office ~~department~~.

1 Any investigatory records, reports, or documents held by the  
2 office ~~department~~ are confidential and exempt from the  
3 provisions of s. 119.07(1), until the investigation is  
4 completed or ceases to be active. For the purpose of this  
5 section, an investigation is active while it is being  
6 conducted by the office ~~department~~ with a reasonable, good  
7 faith belief that it could lead to the filing of  
8 administrative, civil, or criminal proceedings. An  
9 investigation does not cease to be active if the office  
10 ~~department~~ is proceeding with reasonable dispatch and has a  
11 good faith belief that action could be initiated by the office  
12 ~~department~~ or other administrative or law enforcement agency.

13 (4) The office ~~department~~ shall notify the provider in  
14 writing of all deficiencies in its compliance with the  
15 provisions of this chapter and the rules adopted pursuant to  
16 this chapter and shall set a reasonable length of time for  
17 compliance by the provider. In addition, the office ~~department~~  
18 shall require corrective action or request a corrective action  
19 plan from the provider which plan demonstrates a good faith  
20 attempt to remedy the deficiencies by a specified date. If the  
21 provider fails to comply within the established length of  
22 time, the office ~~department~~ may initiate action against the  
23 provider in accordance with the provisions of this chapter.

24 Section 1693. Section 651.106, Florida Statutes, is  
25 amended to read:

26 651.106 Grounds for discretionary refusal, suspension,  
27 or revocation of certificate of authority.--The office  
28 ~~department~~, in its discretion, may deny, suspend, or revoke  
29 the provisional certificate of authority or the certificate of  
30 authority of any applicant or provider if it finds that any

31

1 one or more of the following grounds applicable to the  
2 applicant or provider exist:

3 (1) Failure by the provider to continue to meet the  
4 requirements for the authority originally granted.

5 (2) Failure by the provider to meet one or more of the  
6 qualifications for the authority specified by this chapter.

7 (3) Material misstatement, misrepresentation, or fraud  
8 in obtaining the authority, or in attempting to obtain the  
9 same.

10 (4) Demonstrated lack of fitness or trustworthiness.

11 (5) Fraudulent or dishonest practices of management in  
12 the conduct of business.

13 (6) Misappropriation, conversion, or withholding of  
14 moneys.

15 (7) Failure to comply with, or violation of, any  
16 proper order or rule of the office or commission ~~department~~ or  
17 violation of any provision of this chapter.

18 (8) The insolvent condition of the provider or the  
19 provider's being in such condition or using such methods and  
20 practices in the conduct of its business as to render its  
21 further transactions in this state hazardous or injurious to  
22 the public.

23 (9) Refusal by the provider to be examined or to  
24 produce its accounts, records, and files for examination, or  
25 refusal by any of its officers to give information with  
26 respect to its affairs or to perform any other legal  
27 obligation under this chapter when required by the office  
28 ~~department~~.

29 (10) Failure by the provider to comply with the  
30 requirements of s. 651.026 or s. 651.033.

31

1           (11) Failure by the provider to maintain escrow  
2 accounts or funds as required by this chapter.

3           (12) Failure by the provider to meet the requirements  
4 of this chapter for disclosure of information to residents  
5 concerning the facility, its ownership, its management, its  
6 development, or its financial condition or failure to honor  
7 its continuing care contracts.

8           (13) Any cause for which issuance of the license could  
9 have been refused had it then existed and been known to the  
10 office ~~department~~.

11           (14) Having been found guilty of, or having pleaded  
12 guilty or nolo contendere to, a felony in this state or any  
13 other state, without regard to whether a judgment or  
14 conviction has been entered by the court having jurisdiction  
15 of such cases.

16           (15) In the conduct of business under the license,  
17 engaging in unfair methods of competition or in unfair or  
18 deceptive acts or practices prohibited under part IX of  
19 chapter 626.

20           (16) A pattern of bankrupt enterprises.

21  
22 Revocation of a certificate of authority under this section  
23 does not relieve a provider from the provider's obligation to  
24 residents under the terms and conditions of any continuing  
25 care contract between the provider and residents or the  
26 provisions of this chapter. The provider shall continue to  
27 file its annual statement and pay license fees to the office  
28 ~~department~~ as required under this chapter as if the  
29 certificate of authority had continued in full force, but the  
30 provider shall not issue any new continuing care contracts.  
31 The office ~~department~~ may seek an action in the circuit court

1 of Leon County to enforce the office's ~~department's~~ order and  
2 the provisions of this section.

3 Section 1694. Subsections (1) and (3) of section  
4 651.107, Florida Statutes, are amended to read:

5 651.107 Duration of suspension; obligations during  
6 suspension period; reinstatement.--

7 (1) Suspension of a certificate of authority shall be  
8 for such period, not to exceed 1 year, as is fixed by the  
9 office ~~department~~ in the order of suspension, unless the  
10 office ~~department~~ shortens or rescinds such suspension or the  
11 order of suspension is modified, rescinded, or reversed.

12 (3) Upon expiration of the suspension period, if  
13 within such period the certificate of authority has not  
14 otherwise terminated, the provider's certificate of authority  
15 shall automatically be reinstated unless the office ~~department~~  
16 finds that the causes for the suspension have not been removed  
17 or that the provider is otherwise not in compliance with the  
18 requirements of this chapter. If not so automatically  
19 reinstated, the certificate of authority shall be deemed to be  
20 revoked as of the end of the suspension period or upon failure  
21 of the provider to continue the certificate during the  
22 suspension period, whichever event first occurs.

23 Section 1695. Section 651.108, Florida Statutes, is  
24 amended to read:

25 651.108 Administrative fines.--

26 (1) If the office ~~department~~ finds that one or more  
27 grounds exist for the discretionary revocation or suspension  
28 of a certificate of authority issued under this chapter, the  
29 office ~~department~~, in lieu of such revocation or suspension,  
30 may impose a fine upon the provider in an amount not to exceed  
31 \$1,000 per violation.

1           (2) If it is found that the provider has knowingly and  
2 willfully violated a lawful order of the office department or  
3 a provision of this chapter, the office department may impose  
4 a fine in an amount not to exceed \$10,000 for each such  
5 violation.

6           Section 1696. Subsections (1) and (2) of section  
7 651.1081, Florida Statutes, are amended to read:

8           651.1081 Remedies available in cases of unlawful  
9 sale.--

10          (1) Upon a determination by the office department that  
11 a provider is or has been violating the provisions of this  
12 chapter, the office department may order the provider to cease  
13 sales and make a rescission offer to the resident in  
14 accordance with the provisions of this section.

15          (2) Upon such order by the office department, every  
16 unlawful sale made in violation of this chapter may be  
17 rescinded at the election of the resident without penalty.

18          Section 1697. Subsections (1), (2), and (3) of section  
19 651.111, Florida Statutes, are amended to read:

20          651.111 Requests for inspections.--

21          (1) Any interested party may request an inspection of  
22 the records and related financial affairs of a provider  
23 providing care in accordance with the provisions of this  
24 chapter by transmitting to the office department notice of an  
25 alleged violation of applicable requirements prescribed by  
26 statute or by rule, specifying to a reasonable extent the  
27 details of the alleged violation, which notice shall be signed  
28 by the complainant.

29          (2) The substance of the complaint shall be given to  
30 the provider no earlier than the time of the inspection.  
31 Unless the complainant specifically requests otherwise,

1 neither the substance of the complaint which is provided to  
2 the provider nor any copy of the complaint or any record which  
3 is published, released, or otherwise made available to the  
4 provider shall disclose the name of any person mentioned in  
5 the complaint except the name of any duly authorized officer,  
6 employee, or agent of the office ~~department~~ conducting the  
7 investigation or inspection pursuant to this chapter.

8 (3) Upon receipt of a complaint, the office ~~department~~  
9 shall make a preliminary review; and, unless the office  
10 ~~department~~ determines that the complaint is without any  
11 reasonable basis, the office ~~department~~ shall make an  
12 inspection. The complainant shall be advised, within 30 days  
13 after the receipt of the complaint by the office ~~department~~,  
14 of the proposed course of action of the office ~~department~~.

15 Section 1698. Section 651.114, Florida Statutes, is  
16 amended to read:

17 651.114 Delinquency proceedings; remedial rights.--

18 (1) Upon determination by the office ~~department~~ that a  
19 provider is not in compliance with this chapter, the office  
20 ~~department~~ may notify the chair of the advisory council, who  
21 may assist the office ~~department~~ in formulating a corrective  
22 action plan.

23 (2) A provider shall make available to the advisory  
24 council, no later than 30 days after being requested to do so  
25 by the advisory council, a plan for obtaining compliance or  
26 solvency.

27 (3) The council shall, no later than 30 days after  
28 notification:

29 (a) Consider and evaluate the plan submitted by the  
30 provider.

31

1 (b) Discuss the problem and solutions with the  
2 provider.

3 (c) Conduct such other business as is necessary.

4 (d) Report its findings and recommendations to the  
5 office ~~department~~, which may require additional modification  
6 of the plan.

7 (4)(a) Upon approval of a plan by the office  
8 ~~department~~, the provider shall submit monthly a progress  
9 report to the council or the office ~~department~~, or both, in a  
10 manner prescribed by the office ~~department~~.

11 (b) After a period of 3 months, or at any earlier time  
12 deemed necessary, the council shall evaluate the progress by  
13 the provider and shall advise the office ~~department~~ of its  
14 findings.

15 (5) Should the office ~~department~~ find that sufficient  
16 grounds exist for rehabilitation, liquidation, conservation,  
17 reorganization, seizure, or summary proceedings of an insurer  
18 as set forth in ss. 631.051, 631.061, and 631.071, the office  
19 ~~department~~ may petition for an appropriate court order or may  
20 pursue such other relief as is afforded in part I of chapter  
21 631. Before invoking its powers under part I of chapter 631,  
22 the office ~~department~~ shall notify the chair of the advisory  
23 council.

24 (6) In the event an order of rehabilitation,  
25 liquidation, conservation, reorganization, seizure, or summary  
26 proceeding has been entered against a provider, the department  
27 and office are ~~is~~ vested with all of the powers and duties  
28 they have ~~it has~~ under the provisions of part I of chapter 631  
29 in regard to delinquency proceedings of insurance companies.

30 (7) If the financial condition of the continuing care  
31 facility or provider is such that, if not modified or

1 corrected, its continued operation would result in insolvency,  
2 the office ~~department~~ may direct the provider to formulate and  
3 file with the office ~~department~~ a corrective action plan. If  
4 the provider fails to submit a plan within 30 days after the  
5 office's ~~department's~~ directive or submits a plan that is  
6 insufficient to correct the condition, the office ~~department~~  
7 may specify a plan and direct the provider to implement the  
8 plan.

9 (8)(a) The rights of the office ~~department~~ described  
10 in this section shall be subordinate to the rights of a  
11 trustee or lender pursuant to the terms of a resolution,  
12 ordinance, loan agreement, indenture of trust, mortgage,  
13 lease, security agreement, or other instrument creating or  
14 securing bonds or notes issued to finance a facility, and the  
15 office ~~department~~, subject to the provisions of paragraph (c),  
16 shall not exercise its remedial rights provided under this  
17 section and ss. 651.018, 651.106, 651.108, and 651.116 with  
18 respect to a facility that is subject to a lien, mortgage,  
19 lease, or other encumbrance or trust indenture securing bonds  
20 or notes issued in connection with the financing of the  
21 facility, if the trustee or lender, by inclusion or by  
22 amendment to the loan documents or by a separate contract with  
23 the office ~~department~~, agrees that the rights of residents  
24 under a continuing care contract will be honored and will not  
25 be disturbed by a foreclosure or conveyance in lieu thereof as  
26 long as the resident:

- 27 1. Is current in the payment of all monetary  
28 obligations required by the continuing care contract;  
29 2. Is in compliance and continues to comply with all  
30 provisions of the resident's continuing care contract; and  
31

1           3. Has asserted no claim inconsistent with the rights  
2 of the trustee or lender.

3           (b) Nothing in this subsection requires a trustee or  
4 lender to:

5           1. Continue to engage in the marketing or resale of  
6 new continuing care contracts;

7           2. Pay any rebate of entrance fees as may be required  
8 by a resident's continuing care contract as of the date of  
9 acquisition of the facility by the trustee or lender and until  
10 expiration of the period described in paragraph (d);

11           3. Be responsible for any act or omission of any owner  
12 or operator of the facility arising prior to the acquisition  
13 of the facility by the trustee or lender; or

14           4. Provide services to the residents to the extent  
15 that the trustee or lender would be required to advance or  
16 expend funds that have not been designated or set aside for  
17 such purposes.

18           (c) Should the office ~~department~~ determine, at any  
19 time during the suspension of its remedial rights as provided  
20 in paragraph (a), that the trustee or lender is not in  
21 compliance with the provisions of paragraph (a), or that a  
22 lender or trustee has assigned or has agreed to assign all or  
23 a portion of a delinquent or defaulted loan to a third party  
24 without the office's ~~department's~~ written consent, the office  
25 ~~department~~ shall notify the trustee or lender in writing of  
26 its determination, setting forth the reasons giving rise to  
27 the determination and specifying those remedial rights  
28 afforded to the office ~~department~~ which the office ~~department~~  
29 shall then reinstate.

30           (d) Upon acquisition of a facility by a trustee or  
31 lender and evidence satisfactory to the office ~~department~~ that

1 the requirements of paragraph (a) have been met, the office  
2 ~~department~~ shall issue a 90-day temporary certificate of  
3 authority granting the trustee or lender the authority to  
4 engage in the business of providing continuing care and to  
5 issue continuing care contracts subject to the office's  
6 ~~department's~~ right to immediately suspend or revoke the  
7 temporary certificate of authority if the office ~~department~~  
8 determines that any of the grounds described in s. 651.106  
9 apply to the trustee or lender or that the terms of the  
10 agreement used as the basis for the issuance of the temporary  
11 certificate of authority by the office ~~department~~ have not  
12 been or are not being met by the trustee or lender since the  
13 date of acquisition.

14 Section 1699. Section 651.1151, Florida Statutes, is  
15 amended to read:

16 651.1151 Administrative, vendor, and management  
17 contracts.--

18 (1) The office ~~department~~ may require a provider to  
19 submit any contract for administrative, vendor, or management  
20 services if the office ~~department~~ has information and belief  
21 that a provider has entered into a contract with an affiliate,  
22 an entity controlled by the provider, or an entity controlled  
23 by an affiliate of the provider, which has not been disclosed  
24 to the office ~~department~~ or which contract requires the  
25 provider to pay a fee that is unreasonably high in relation to  
26 the service provided.

27 (2) After review of the contract, the office  
28 ~~department~~ may order the provider to cancel the contract in  
29 accordance with the terms of the contract and applicable law  
30 if it determines that the fees to be paid are so unreasonably  
31 high as compared with similar contracts entered into by other

1 providers in similar circumstances that the contract is  
2 detrimental to the facility or its residents.

3 (3) Any contract with an affiliate, an entity  
4 controlled by the provider, or an entity controlled by an  
5 affiliate of the provider for administrative, vendor, or  
6 management services entered into or renewed after October 1,  
7 1991, shall contain a provision that the contract shall be  
8 canceled upon issuance of an order by the office ~~department~~  
9 pursuant to this section. A copy of the current management  
10 services contract, pursuant to this section, if any, must be  
11 on file in the marketing office or other accessible area to  
12 residents and the appropriate resident organizations.

13 (4) Any action of the office ~~department~~ under this  
14 section is subject to review pursuant to the procedures  
15 provided in chapter 120.

16 Section 1700. Subsection (12) of section 651.118,  
17 Florida Statutes, is amended to read:

18 651.118 Agency for Health Care Administration;  
19 certificates of need; sheltered beds; community beds.--

20 (12) A facility that is under administrative  
21 supervision for financial problems pursuant to s. 651.018 may  
22 petition the Agency for Health Care Administration for the  
23 conversion of sheltered beds to community nursing home beds in  
24 accordance with the corrective action plan approved by the  
25 office ~~department~~. The agency shall, upon petition by the  
26 facility and through an expedited review, issue a certificate  
27 of need converting the sheltered nursing home beds to  
28 community nursing home beds.

29 Section 1701. Section 52 of chapter 2001-45, Laws of  
30 Florida, is amended to read:

31

1           Section 52. Notwithstanding the establishment of need  
2 as provided for in chapter 408, Florida Statutes, no  
3 certificate of need for additional community nursing home beds  
4 shall be approved by the agency until July 1, 2006. The  
5 Legislature finds that the continued growth in the Medicaid  
6 budget for nursing home care has constrained the ability of  
7 the state to meet the needs of its elderly residents through  
8 the use of less restrictive and less institutional methods of  
9 long-term care. It is therefore the intent of the Legislature  
10 to limit the increase in Medicaid nursing home expenditures in  
11 order to provide funds to invest in long-term care that is  
12 community-based and provides supportive services in a manner  
13 that is both more cost-effective and more in keeping with the  
14 wishes of the elderly residents of this state. This moratorium  
15 on certificates of need shall not apply to sheltered nursing  
16 home beds in a continuing care retirement community certified  
17 by the former Department of Insurance or by the Office of  
18 Insurance Regulation pursuant to chapter 651, Florida  
19 Statutes.

20           Section 1702. Section 651.119, Florida Statutes, is  
21 amended to read:

22           651.119 Assistance to persons affected by closure due  
23 to liquidation or pending liquidation.--

24           (1) If a facility closes and ceases to operate as a  
25 result of liquidation or pending liquidation and residents are  
26 forced to relocate, the department shall become a creditor of  
27 the facility for the purpose of providing moving expenses for  
28 displaced residents and such other care or services as is made  
29 possible by the unencumbered assets of the facility. To the  
30 extent that another provider provides, as approved by the  
31 office ~~department~~, direct assistance to such residents, the

1 cost of such direct assistance shall be offset against  
2 reserves pursuant to subsection (4). The department shall  
3 provide proportional reimbursements of such costs to the  
4 respective providers from such unencumbered assets.

5 (2) If the moneys and direct assistance made available  
6 under subsection (1) are not sufficient to cover moving costs,  
7 the office ~~department~~ may seek voluntary contributions from  
8 the reserves maintained by providers under s. 651.035 in  
9 amounts approved by the office ~~department~~ to provide for the  
10 moving expenses of the residents in moving to another  
11 residence within the state.

12 (3) If the moneys and direct assistance provided under  
13 subsections (1) and (2) are not sufficient to provide for the  
14 moving expenses of displaced residents in moving to other  
15 residences within the state, the office ~~department~~ may levy  
16 pro rata assessments on the reserves of providers maintained  
17 under s. 651.035 for such moving expenses of any displaced  
18 resident who lacks sufficient assets to pay for such moving  
19 expenses. The assessments for such moving expenses on any  
20 particular provider may not exceed for any 12-month period an  
21 aggregate of 1 percent of the unencumbered portion of the  
22 reserves maintained by the provider under s. 651.035. If the  
23 office ~~department~~ determines that payment of an assessment  
24 under this subsection would impair the financial standing of a  
25 facility or its residents, the office ~~department~~ may waive or  
26 temporarily defer all or part of the assessment with respect  
27 to that provider. The office ~~department~~ shall apply any moneys  
28 voluntarily paid by a provider under subsection (1) or  
29 subsection (2) to satisfaction of assessments under this  
30 subsection.

31

1           (4) The office ~~department~~ shall permanently reduce the  
2 reserves required of a provider under s. 651.035 to the extent  
3 of the provider's costs under subsection (1), voluntary  
4 contributions under subsection (2), and assessments under  
5 subsection (3). However, the office ~~department~~ shall  
6 thereafter raise the reserve requirements of a provider to the  
7 extent of reimbursements paid to the provider under subsection  
8 (1) unless such increase would raise the reserve requirement  
9 above the amount required under s. 651.035.

10           (5) No payment, contribution, or assessment may be  
11 paid by a provider under this section if the release of funds  
12 from the reserves of the provider would violate a bond or  
13 lending commitment or covenant.

14           (6) Moneys received under this section for the support  
15 of residents shall be kept in a separate fund maintained and  
16 administered by the department. The Continuing Care Advisory  
17 Council shall monitor the collection and use of such funds and  
18 shall advise the office or ~~department~~ on plans for resident  
19 relocation. The council shall seek the assistance of providers  
20 licensed under this chapter and other service providers in  
21 locating alternative housing and care arrangements.

22           (7) For the purposes of this section, "moving  
23 expenses" means transportation expenses and the cost of  
24 packing and relocating personal belongings.

25           Section 1703. Subsections (1), (3), and (5) of section  
26 651.121, Florida Statutes, are amended to read:

27           651.121 Advisory council.--

28           (1) The Continuing Care Advisory Council to the office  
29 ~~department of Insurance~~ is created to consist of 10 members  
30 who are residents of this state appointed by the Governor and  
31 geographically representative of this state. Three members

1 shall be administrators of facilities which hold valid  
2 certificates of authority under this chapter and shall have  
3 been actively engaged in the offering of continuing care  
4 agreements in this state for 5 years before appointment. The  
5 remaining members shall include:

6 (a) A representative of the business community whose  
7 expertise is in the area of management.

8 (b) A representative of the financial community who is  
9 not a facility owner or administrator.

10 (c) A certified public accountant.

11 (d) An attorney.

12 (e) Three residents who hold continuing care  
13 agreements with a facility certified in this state.

14 (3) The council members shall serve without pay, but  
15 shall be reimbursed for per diem and travel expenses by the  
16 office ~~department~~ in accordance with s. 112.061.

17 (5) The council shall:

18 (a) Meet at least once a year and, at such annual  
19 meeting, elect a chair from their number and elect or appoint  
20 a secretary, each of whom shall hold office for 1 year and  
21 thereafter until a successor is elected and qualified.

22 (b) Hold other meetings at such times and places as  
23 the office ~~department~~ or the chair of the council may direct.

24 (c) Keep a record of its proceedings. The books and  
25 records of the council shall be prima facie evidence of all  
26 matters reported therein and, except for proceedings conducted  
27 under s. 651.018, shall be open to inspection at all times.

28 (d) Act in an advisory capacity to the office  
29 ~~department~~.

30 (e) Recommend to the office ~~department~~ needed changes  
31 in statutes and rules.

1           (f) Upon the request of the office ~~department~~, assist,  
2 with any corrective action, rehabilitation or cessation of  
3 business plan of a provider.

4           Section 1704. Section 651.123, Florida Statutes, is  
5 amended to read:

6           651.123 Alternative dispute resolution.--The  
7 commission ~~department~~ shall, by rule, adopt alternative  
8 procedures for resolution of disputes between residents and  
9 providers. The rules shall provide for an informal, nonbinding  
10 mediation process, and for binding arbitration when mediation  
11 fails to resolve a dispute, and shall provide minimum  
12 qualifications for arbitrators substantially similar to other  
13 arbitration programs under the Florida Insurance Code. The  
14 rules shall specify the types of disputes that are subject to  
15 mediation or arbitration, and shall provide that disputes over  
16 increases in monthly maintenance fees are not subject to  
17 mediation or arbitration. Arbitration is available only if  
18 all parties agree in advance to be bound by the result.

19           Section 1705. Subsections (2), (3), and (4) of section  
20 651.125, Florida Statutes, are amended to read:

21           651.125 Criminal penalties; injunctive relief.--

22           (2) The state attorney for a circuit shall, upon  
23 application of the office ~~department~~ or its authorized  
24 representative, institute and conduct the prosecution of an  
25 action for violation, within such circuit, of any provision of  
26 this chapter.

27           (3) The office ~~department~~ may bring an action to  
28 enjoin a violation, threatened violation, or continued  
29 violation of this chapter in the circuit court in and for the  
30 county in which the violation occurred, is occurring, or is  
31 about to occur.

1           (4) Any action brought by the office ~~department~~  
2 against a provider shall not abate by reason of a sale or  
3 other transfer of ownership of the facility used to provide  
4 care, which provider is a party to the action, except with the  
5 express written consent of the director of the office  
6 ~~Treasurer and Insurance Commissioner.~~

7           Section 1706. Section 651.134, Florida Statutes, is  
8 amended to read:

9           651.134 Investigatory records.--Any active  
10 investigatory record of the office ~~department~~ made or received  
11 under this chapter, and any active examination record  
12 necessary to complete an active investigation, is confidential  
13 and exempt from s. 119.07(1) until such investigation is  
14 completed or ceases to be active. For the purpose of this  
15 section, an investigation is active while it is being  
16 conducted by the office ~~department~~ with a reasonable, good  
17 faith belief that it could lead to the filing of  
18 administrative, civil, or criminal proceedings. An  
19 investigation does not cease to be active if the office  
20 ~~department~~ is proceeding with reasonable dispatch and has a  
21 good faith belief that action could be initiated by the office  
22 ~~department~~ or other administrative or law enforcement agency.

23           Section 1707. Subsection (1) and paragraph (j) of  
24 subsection (2) of section 655.001, Florida Statutes, are  
25 amended to read:

26           655.001 Purpose; application.--The purposes of the  
27 financial institutions codes are to:

28           (1) Provide general regulatory powers to be exercised  
29 by the Financial Services Commission and the Office of  
30 Financial Institutions and Securities Regulation ~~Department of~~  
31 ~~Banking and Finance~~ in relation to the regulation of financial

1 institutions. The financial institutions codes apply to all  
2 state-authorized or state-chartered financial institutions and  
3 to the enforcement of all laws relating to state-authorized or  
4 state-chartered financial institutions.

5 (2) Provide for and promote:

6 (j) The delegation to the commission ~~department~~ of  
7 adequate rulemaking power and to the office adequate  
8 administrative discretion, subject to the provisions of the  
9 financial institutions codes and to the purposes and policies  
10 stated in this section, in order that the supervision and  
11 regulation of financial institutions may be flexible and  
12 readily responsive to changes in economic conditions, in  
13 technology, and in financial institution practices.

14 Section 1708. Paragraphs (e), (i), (m), (q), and (r)  
15 of subsection (1) of section 655.005, Florida Statutes, are  
16 amended, and paragraph (s) is added to that subsection, to  
17 read:

18 655.005 Definitions.--

19 (1) As used in the financial institutions codes,  
20 unless the context otherwise requires, the term:

21 (e) "Commission" means the Financial Services  
22 Commission ~~"Department" means the Department of Banking and~~  
23 ~~Finance.~~

24 (i) "Financial institution-affiliated party" means:

25 1. Any director, officer, employee, or controlling  
26 stockholder (other than a financial institution holding  
27 company) of, or agent for, a financial institution,  
28 subsidiary, or service corporation;

29 2. Any other person who has filed or is required to  
30 file a change-of-control notice with the appropriate state or  
31 federal regulatory agency;

1           3. Any stockholder (other than a financial institution  
2 holding company), any joint venture partner, or any other  
3 person as determined by the office ~~department~~ who participates  
4 in the conduct of the affairs of a financial institution,  
5 subsidiary, or service corporation; or

6           4. Any independent contractor (including any attorney,  
7 appraiser, consultant, or accountant) who knowingly or  
8 recklessly participates in:

9           a. Any violation of any law or regulation;

10           b. Any breach of fiduciary duty; or

11           c. Any unsafe and unsound practice,

12  
13 which caused or is likely to cause more than a minimal  
14 financial loss to, or a significant adverse effect on, the  
15 financial institution, subsidiary, or service corporation.

16           (m) "Main office" or "principal office" of a financial  
17 institution means the main business office designated or  
18 provided for in the articles of incorporation or bylaws of a  
19 financial institution at such identified location as has been  
20 or is hereafter approved by the Office of Financial  
21 Institutions and Securities Regulation ~~department~~, in the case  
22 of a state financial institution, or by the appropriate  
23 federal regulatory agency, in the case of a federal financial  
24 institution; and, with respect to the trust department of a  
25 bank or association that has trust powers, each of these terms  
26 means the office or place of business of the trust department  
27 at such identified location, which need not be the same  
28 location as the main office of the bank or association  
29 exclusive of the trust department, as has been or is hereafter  
30 approved by the Office of Financial Institutions and  
31 Securities Regulation ~~department~~, in the case of a state bank

1 or association that has a trust department, or by the  
2 appropriate federal regulatory agency, in the case of a  
3 national bank or federal association that has a trust  
4 department. "Main office" or "principal office" of a trust  
5 company means the office designated or provided for as such in  
6 its articles of incorporation, at such identified location as  
7 has been or is hereafter approved by the relevant chartering  
8 authority.

9 (q) "Subsidiary" means any organization permitted by  
10 the office ~~department~~ which is controlled by a financial  
11 institution.

12 (r) "Unsafe or unsound practice" means any practice or  
13 conduct found by the office ~~department~~ to be contrary to  
14 generally accepted standards applicable to the specific  
15 financial institution, or a violation of any prior order of a  
16 state or federal regulatory agency, which practice, conduct,  
17 or violation creates the likelihood of loss, insolvency, or  
18 dissipation of assets or otherwise prejudices the interest of  
19 the specific financial institution or its depositors or  
20 members. In making this determination, the office ~~department~~  
21 must consider the size and condition of the financial  
22 institution, the gravity of the violation, and the prior  
23 conduct of the person or institution involved.

24 (s) "Office" means the Office of Financial  
25 Institutions and Securities Regulation.

26 Section 1709. Section 655.012, Florida Statutes, is  
27 amended to read:

28 655.012 General supervisory powers ~~of the department;~~  
29 rulemaking; seal.--

30  
31

1           (1) In addition to other powers conferred by the  
2 financial institutions codes, the office department shall  
3 have:

4           (a)(1) General supervision over all state financial  
5 institutions, their subsidiaries, and service corporations.

6           (b)(2) Access to all books and records of all persons  
7 over whom the office department exercises general supervision  
8 as is necessary for the performance of the duties and  
9 functions of the office department prescribed by the financial  
10 institutions codes.

11           (c)(3) Power to issue orders and declaratory  
12 statements, disseminate information, and otherwise exercise  
13 its discretion to effectuate the purposes, policies, and  
14 provisions of the financial institutions codes.

15           (2) In addition to other powers conferred by the  
16 financial institutions codes, the commission shall have the  
17 power ~~and~~ to adopt rules pursuant to ss. 120.536(1) and 120.54  
18 to implement the provisions of such codes.

19           (3) The office shall have an official seal by which  
20 its proceedings are authenticated.

21           Section 1710. Section 655.015, Florida Statutes, is  
22 amended to read:

23           655.015 Construction; standards to be observed by  
24 commission and office department.--

25           (1) The financial institutions codes shall be  
26 liberally construed and applied to promote their purposes and  
27 policies.

28           (2) The purposes and policies as stated in s. 655.001  
29 constitute standards to be observed by the commission and  
30 office department in the exercise of their ~~its~~ discretionary  
31 powers under the financial institutions codes, in the adoption

1 of rules, in the issuance of orders and declaratory  
2 statements, in the examination and supervision of financial  
3 institutions, and in all matters of construction and  
4 application of the financial institutions codes required for  
5 any determination or action ~~by the department~~.

6 (3) The headings, captions, and catchlines at the  
7 beginning of sections, subsections, and paragraphs are for  
8 convenience only, do not constitute any part of the statutes  
9 comprising the financial institutions codes, do not constitute  
10 a complete index of the financial institutions codes, are not  
11 indicative of the intent of the financial institutions codes,  
12 and may not be used in construing or interpreting the  
13 financial institutions codes.

14 Section 1711. Section 655.016, Florida Statutes, is  
15 amended to read:

16 655.016 Liability when acting upon rule, order, or  
17 declaratory statement ~~issued by department~~.--No person acting,  
18 or who has acted, in good faith reliance upon a rule, order,  
19 or declaratory statement issued by the commission or office  
20 ~~department~~ shall be subject to any criminal, civil, or  
21 administrative liability for such action, notwithstanding a  
22 subsequent decision by a court of competent jurisdiction  
23 invalidating the rule, order, or declaratory statement. In  
24 the case of an order or a declaratory statement which is not  
25 of general application, no person other than the person to  
26 whom the order or declaratory statement was issued is entitled  
27 to rely upon it, except upon material facts or circumstances  
28 which are substantially the same as those upon which the order  
29 or declaratory statement was based.

30 Section 1712. Section 655.031, Florida Statutes, is  
31 amended to read:

1           655.031 Administrative enforcement guidelines.--

2           (1) In imposing any administrative remedy or penalty  
3 provided for in the financial institutions codes, the office  
4 ~~department~~ shall take into account the appropriateness of the  
5 penalty with respect to the size of the financial resources  
6 and good faith of the person charged, the gravity of the  
7 violation, the history of previous violations, and such other  
8 matters as justice may require.

9           (2) All administrative proceedings under ss. 655.033  
10 and 655.037 shall be conducted in accordance with chapter 120.  
11 Any service required or authorized to be made by the office  
12 ~~department~~ under the financial institutions codes may be made  
13 by certified mail, return receipt requested, delivered to  
14 addressee only; by personal delivery; or in accordance with  
15 chapter 48. The service provided for hereunder is effective  
16 from the date of delivery.

17           Section 1713. Section 655.032, Florida Statutes, is  
18 amended to read:

19           655.032 Investigations, subpoenas, hearings, and  
20 witnesses.--

21           (1) The office ~~department~~ may make investigations,  
22 within or outside this state, which it deems necessary to  
23 determine whether a person has violated or is about to violate  
24 any provision of the financial institutions codes or of the  
25 rules adopted by the commission ~~department~~ pursuant to such  
26 codes.

27           (2)(a) In the course of or in connection with an  
28 investigation by the office ~~department~~ pursuant to the  
29 provisions of subsection (1) or an investigation or  
30 examination in connection with any application to the office  
31 ~~department~~ for the organization or establishment of a state

1 financial institution or a branch thereof, and in connection  
2 with an examination of a state financial institution,  
3 subsidiary, or service corporation by the office ~~department~~,  
4 the office ~~department~~, or any of its officers holding no  
5 lesser title and position than examiner in charge or attorney  
6 at law, shall have the power:

7 1. To administer oaths and affirmations;

8 2. To take or cause to be taken testimony and  
9 depositions; and

10 3. To issue, revoke, quash, or modify subpoenas and  
11 subpoenas duces tecum under the seal of the office ~~department~~  
12 or to cause any such subpoena or subpoena duces tecum to be  
13 issued by any county court judge or clerk of the circuit court  
14 or county court to require persons to be or appear before the  
15 office ~~department~~ at a time and place to be therein named and  
16 to bring such books, records, and documents for inspection as  
17 may be therein designated. Such subpoenas may be served by a  
18 representative of the office ~~department~~ or may be served as  
19 otherwise provided for by law for the service of subpoenas.

20 (b) In connection with any such investigation or  
21 examination, the office ~~department~~ may permit a person to file  
22 a statement in writing, under oath or otherwise as the office  
23 ~~department~~ determines, as to facts and circumstances specified  
24 by the office ~~department~~.

25 (3)(a) In the event of noncompliance with a subpoena  
26 issued or caused to be issued by the office ~~department~~  
27 pursuant to this section, the office ~~department~~ may petition  
28 the circuit court of the county in which the person subpoenaed  
29 resides or has its principal place of business for an order  
30 requiring the subpoenaed person to appear and testify and to  
31 produce such books, records, and documents as are specified in

1 such subpoena duces tecum. The office ~~department~~ is entitled  
2 to the summary procedure provided in s. 51.011, and the court  
3 shall advance the cause on its calendar.

4 (b) A copy of the petition shall be served upon the  
5 person subpoenaed by any person authorized by this section to  
6 serve subpoenas, who shall make and file with the court an  
7 affidavit showing the time, place, and date of service.

8 (c) At any hearing on any such petition, the person  
9 subpoenaed, or any person whose interests will be  
10 substantially affected by the investigation, examination, or  
11 subpoena, may appear and object to the subpoena and to the  
12 granting of the petition. The court may make any order which  
13 justice requires to protect a party or other person and his or  
14 her personal and property rights, including, but not limited  
15 to, protection from annoyance, embarrassment, oppression, or  
16 undue burden or expense.

17 (d) Failure to comply with an order granting, in whole  
18 or in part, a petition for enforcement of a subpoena is a  
19 contempt of court.

20 (4) Witnesses shall be entitled to the same fees and  
21 mileage to which they might be entitled by law for attending  
22 as witnesses in the circuit court, except that no fees or  
23 mileage shall be allowed in the case of testimony of a  
24 financial institution-affiliated party if such testimony is  
25 taken at the principal office of the state financial  
26 institution, subsidiary, or service corporation or at the  
27 residence of the financial institution-affiliated party.

28 (5) Reasonable and necessary expenses incurred by the  
29 office ~~department~~ and payable to persons in investigations may  
30 be assessed against such an applicant, state financial  
31 institution, subsidiary, service corporation, or financial

1 institution-affiliated party on the basis of actual costs  
2 incurred. Assessable expenses include, but are not limited to:  
3 expenses for interpreters; expenses for communications;  
4 expenses for legal representation; expenses for economic,  
5 legal, or other research, analyses, and testimony; and fees  
6 and expenses for witnesses. The failure to reimburse the  
7 office ~~department~~ is a ground for denial of the application or  
8 for revocation of any approval thereof.

9 Section 1714. Section 655.0321, Florida Statutes, is  
10 amended to read:

11 655.0321 Restricted access to certain hearings,  
12 proceedings, and related documents.--The office ~~department~~  
13 shall consider the public purposes specified in s.  
14 119.14(4)(b) in determining whether the hearings and  
15 proceedings conducted pursuant to s. 655.033 for the issuance  
16 of cease and desist orders and s. 655.037 for the issuance of  
17 suspension or removal orders shall be closed and exempt from  
18 the provisions of s. 286.011, and whether related documents  
19 shall be confidential and exempt from the provisions of s.  
20 119.07(1).

21 Section 1715. Subsections (1), (3), and (4) of section  
22 655.0322, Florida Statutes, are amended to read:

23 655.0322 Prohibited acts and practices; criminal  
24 penalties.--

25 (1) As used in this section, the term "financial  
26 institution" means a financial institution as defined in s.  
27 655.50 which includes a state trust company, state or national  
28 bank, state or federal association, state or federal savings  
29 bank, state or federal credit union, Edge Act or agreement  
30 corporation, international bank agency, representative office  
31 or administrative office or other business entity as defined

1 by the commission ~~department~~ by rule, whether organized under  
2 the laws of this state, the laws of another state, or the laws  
3 of the United States, which institution is located in this  
4 state.

5 (3) It is unlawful for any financial  
6 institution-affiliated party to:

7 (a) Knowingly receive or possess himself or herself of  
8 any of its property otherwise than in payment of a just  
9 demand, and, with intent to deceive or defraud, to omit to  
10 make or cause to be made a full and true entry thereof in its  
11 books and accounts, or concur in omitting to make any material  
12 entry thereof;

13 (b) Embezzle, abstract, or misapply any money,  
14 property, or thing of value of the financial institution,  
15 subsidiary, or service corporation with intent to deceive or  
16 defraud such financial institution, subsidiary, or service  
17 corporation;

18 (c) Knowingly make, draw, issue, put forth, or assign  
19 any certificate of deposit, draft, order, bill of exchange,  
20 acceptance, note, debenture, bond or other obligation,  
21 mortgage, judgment, or decree without authority from the board  
22 of directors of such financial institution;

23 (d) Make any false entry in any book, report, or  
24 statement of such financial institution, subsidiary, or  
25 service corporation with intent to deceive or defraud such  
26 financial institution or another person, firm, or corporation,  
27 or with intent to deceive the office ~~department~~, any other  
28 appropriate federal regulatory agency, or any authorized  
29 representative appointed to examine the affairs of such  
30 financial institution, subsidiary, or service corporation; or  
31

1           (e) Deliver or disclose to the office ~~department~~ or  
2 any of its employees any examination report, report of  
3 condition, report of income and dividends, internal audit,  
4 account, statement, or document known by him or her to be  
5 fraudulent or false as to any material matter.

6  
7 Any person who violates this subsection is guilty of a felony  
8 of the third degree, punishable as provided in s. 775.082, s.  
9 775.083, or s. 775.084.

10           (4) It is unlawful for any financial  
11 institution-affiliated party to knowingly place among the  
12 assets of such financial institution, subsidiary, or service  
13 corporation any note, obligation, or security which the  
14 financial institution, subsidiary, or service corporation does  
15 not own or which to the individual's knowledge is fraudulent  
16 or otherwise worthless or for any such individual to represent  
17 to the office ~~department~~ that any note, obligation, or  
18 security carried as an asset of such financial institution,  
19 subsidiary, or service corporation is the property of the  
20 financial institution, subsidiary, or service corporation and  
21 is genuine if it is known to such individual that such  
22 representation is false or that such note, obligation, or  
23 security is fraudulent or otherwise worthless. Any person who  
24 violates this subsection is guilty of a felony of the third  
25 degree, punishable as provided in s. 775.082, s. 775.083, or  
26 s. 775.084.

27           Section 1716. Subsections (1), (3), and (6) of section  
28 655.033, Florida Statutes, are amended to read:

29           655.033 Cease and desist orders.--

30           (1) The office ~~department~~ may issue and serve upon any  
31 state financial institution, subsidiary, or service

1 corporation, or upon any financial institution-affiliated  
2 party, a complaint stating charges whenever the office  
3 ~~department~~ has reason to believe that such state financial  
4 institution, subsidiary, service corporation, financial  
5 institution-affiliated party, or individual named therein is  
6 engaging in or has engaged in conduct that is:

7 (a) An unsafe or unsound practice;

8 (b) A violation of any law relating to the operation  
9 of a financial institution;

10 (c) A violation of any rule of the commission  
11 ~~department~~;

12 (d) A violation of any order of the office ~~department~~;

13 (e) A breach of any written agreement with the office  
14 ~~department~~;

15 (f) A prohibited act or practice pursuant to s.  
16 655.0322; or

17 (g) A willful failure to provide information or  
18 documents to the office ~~department~~ or any appropriate federal  
19 agency, or any of its representatives, upon written request.

20 (3) If no hearing is requested within the time allowed  
21 by ss. 120.569 and 120.57, or if a hearing is held and the  
22 office ~~department~~ finds that any of the charges are true, the  
23 office ~~department~~ may enter an order directing the state  
24 financial institution, subsidiary, service corporation,  
25 financial institution-affiliated party, or the individual  
26 named therein to cease and desist from engaging in the conduct  
27 complained of and to take corrective action.

28 (6) Whenever the office ~~department~~ finds that conduct  
29 described in subsection (1) is likely to cause insolvency,  
30 substantial dissipation of assets or earnings of the state  
31 financial institution, subsidiary, or service corporation or

1 substantial prejudice to the depositors, members, or  
2 shareholders, it may issue an emergency cease and desist order  
3 requiring the state financial institution, subsidiary, service  
4 corporation, or financial institution-affiliated party to  
5 immediately cease and desist from engaging in the conduct  
6 complained of and to take corrective action. The emergency  
7 order is effective immediately upon service of a copy of the  
8 order upon the state financial institution, subsidiary,  
9 service corporation, or financial institution-affiliated party  
10 and remains effective for 90 days. If the office ~~department~~  
11 begins nonemergency cease and desist proceedings under  
12 subsection (1), the emergency order remains effective until  
13 the conclusion of the proceedings under ss. 120.569 and  
14 120.57. Any emergency order entered under this subsection is  
15 confidential and exempt from s. 119.07(1) until the emergency  
16 order is made permanent, unless the office ~~department~~ finds  
17 that such confidentiality will result in substantial risk of  
18 financial loss to the public.

19 Section 1717. Section 655.034, Florida Statutes, is  
20 amended to read:

21 655.034 Injunctions.--Whenever a violation of the  
22 financial institutions codes is threatened or impending and  
23 such violation will cause substantial injury to a state  
24 financial institution or to the depositors, members,  
25 creditors, or stockholders thereof, the circuit court has  
26 jurisdiction to hear any complaint filed by the office  
27 ~~department~~ and, upon proper showing, to issue an injunction  
28 restraining such violation or granting other such appropriate  
29 relief.

30 Section 1718. Section 655.037, Florida Statutes, is  
31 amended to read:

1           655.037 Removal of a financial institution-affiliated  
2 party by the office ~~department~~.--

3           (1) The office ~~department~~ may issue and serve upon any  
4 financial institution-affiliated party and upon the state  
5 financial institution, subsidiary, or service corporation  
6 involved, a complaint stating charges whenever the office  
7 ~~department~~ has reason to believe that the financial  
8 institution-affiliated party is engaging or has engaged in  
9 conduct that is:

10           (a) An unsafe or unsound practice;

11           (b) A prohibited act or practice;

12           (c) A willful violation of any law relating to  
13 financial institutions;

14           (d) A violation of any other law involving fraud or  
15 moral turpitude which constitutes a felony;

16           (e) A violation of s. 655.50, relating to the Florida  
17 Control of Money Laundering in Financial Institutions Act;  
18 chapter 896, relating to offenses related to financial  
19 transactions; or any similar state or federal law;

20           (f) A willful violation of any rule of the commission  
21 ~~department~~;

22           (g) A willful violation of any order of the office  
23 ~~department~~;

24           (h) A willful breach of any written agreement with the  
25 office ~~department~~; or

26           (i) An act of commission or omission or a practice  
27 which is a breach of trust or a breach of fiduciary duty.

28           (2) The complaint must contain the statement of facts  
29 and notice of opportunity for a hearing pursuant to ss.  
30 120.569 and 120.57.

31

1           (3) If no hearing is requested within the time allowed  
2 by ss. 120.569 and 120.57, or if a hearing is held and the  
3 office department finds that any of the charges in the  
4 complaint are true and that the state financial institution  
5 has suffered or will likely suffer loss or other damage or  
6 that the interests of the depositors, members, or shareholders  
7 could be seriously prejudiced by reason of such violation or  
8 practice or breach of fiduciary duty or that the financial  
9 institution-affiliated party has received financial gain by  
10 reason of such violation, practice, or breach of fiduciary  
11 duty, and that such violation, practice, or breach of  
12 fiduciary duty is one involving personal dishonesty on the  
13 part of such financial institution-affiliated party or a  
14 continuing disregard for the safety or soundness of the state  
15 financial institution, subsidiary, or service corporation, the  
16 office department may enter an order removing the financial  
17 institution-affiliated party or restricting or prohibiting  
18 participation by such financial institution-affiliated party  
19 in the affairs of that particular state financial institution,  
20 subsidiary, or service corporation or any other state  
21 financial institution, subsidiary, or service corporation.

22           (4) If the financial institution-affiliated party  
23 fails to respond to the complaint within the time allowed in  
24 ss. 120.569 and 120.57, such failure constitutes a default and  
25 justifies the entry of an order of removal.

26           (5) A contested or default order of removal is  
27 effective when reduced to writing and served on the state  
28 financial institution, subsidiary, or service corporation and  
29 the financial institution-affiliated party. An uncontested  
30 order of removal is effective as agreed.

31

1           (6)(a) The chief executive officer, or the person  
2 holding the equivalent office, of a state financial  
3 institution shall promptly notify the office ~~department~~ if he  
4 or she has actual knowledge that any financial  
5 institution-affiliated party is charged with a felony in a  
6 state or federal court.

7           (b) Whenever any financial institution-affiliated  
8 party is charged with a felony in a state or federal court, or  
9 in the courts of any foreign country with which the United  
10 States maintains diplomatic relations, and such charge alleges  
11 violation of any law involving fraud, currency transaction  
12 reporting, money laundering, theft, or moral turpitude and the  
13 charge under such foreign law is equivalent to a felony charge  
14 under state or federal law, the office ~~department~~ may enter an  
15 emergency order suspending such financial  
16 institution-affiliated party or restricting or prohibiting  
17 participation by such financial institution-affiliated party  
18 in the affairs of that particular state financial institution,  
19 subsidiary, or service corporation or any other financial  
20 institution, subsidiary, or service corporation, upon service  
21 of the order upon the state financial institution, subsidiary,  
22 or service corporation and the financial  
23 institution-affiliated party so charged. The order shall  
24 contain notice of opportunity for a hearing pursuant to ss.  
25 120.569 and 120.57, where the financial institution-affiliated  
26 party may request a postsuspension hearing to show that  
27 continued service to or participation in the affairs of the  
28 state financial institution, subsidiary, or service  
29 corporation does not pose a threat to the interests of the  
30 state financial institution's depositors, members, or  
31 stockholders, or threaten to impair public confidence in the

1 state financial institution. In accordance with applicable  
2 commission ~~departmental~~ rules, the office ~~department~~ shall  
3 notify the financial institution-affiliated party whether the  
4 order suspending or prohibiting the financial  
5 institution-affiliated party from participation in the affairs  
6 of a state financial institution, subsidiary, or service  
7 corporation will be rescinded or otherwise modified. The  
8 emergency order will remain in effect, unless otherwise  
9 modified by the office ~~department~~, until the criminal charge  
10 is disposed of. The acquittal of the financial  
11 institution-affiliated party charged, or the final, unappealed  
12 dismissal of all charges against such person, will dissolve  
13 the emergency order, but will not prohibit the office  
14 ~~department~~ from instituting proceedings under subsection (1).  
15 If the financial institution-affiliated party charged is  
16 convicted or pleads guilty or nolo contendere, whether or not  
17 an adjudication of guilt is entered by the court, the  
18 emergency order becomes final.

19 (7) Any financial institution-affiliated party removed  
20 from office pursuant to this section is not eligible for  
21 reelection to such position or to any official position in any  
22 financial institution in this state except with the written  
23 consent of the office ~~department~~. Any financial  
24 institution-affiliated party who is removed, restricted, or  
25 prohibited from participation in the affairs of a state  
26 financial institution pursuant to this section may petition  
27 the office ~~department~~ for modification or termination of any  
28 such removal, restriction, or prohibition.

29 (8) The resignation, termination of employment or  
30 participation, or separation from a state financial  
31 institution, subsidiary, or service corporation of the

1 financial institution-affiliated party does not affect the  
2 jurisdiction and authority of the office ~~department~~ to issue  
3 any notice and proceed under this section against such  
4 financial institution-affiliated party, if such notice is  
5 served before the end of the 6-year period beginning on the  
6 date such person ceases to be such a financial  
7 institution-affiliated party with respect to such state  
8 financial institution, subsidiary, or service corporation.

9 Section 1719. Section 655.0385, Florida Statutes, is  
10 amended to read:

11 655.0385 Disapproval of directors and executive  
12 officers.--

13 (1) Each state financial institution shall notify the  
14 office ~~department~~ of the proposed appointment of any  
15 individual to the board of directors or the employment of any  
16 individual as an executive officer or equivalent position at  
17 least 60 days before such appointment or employment becomes  
18 effective, if the state financial institution:

19 (a) Has been chartered for less than 2 years;

20 (b) Has undergone a change in control or conversion  
21 within the preceding 2 years. The office ~~department~~ may exempt  
22 a financial institution from this paragraph if it operates in  
23 a safe and sound manner;

24 (c) Is not in compliance with the minimum capital  
25 requirements applicable to such financial institution; or

26 (d) Is otherwise operating in an unsafe and unsound  
27 condition, as determined by the office ~~department~~, on the  
28 basis of such financial institution's most recent report of  
29 condition or report of examination.

30 (2) A state financial institution may not appoint any  
31 individual to the board of directors, or employ any individual

1 as an executive officer or equivalent position, if the office  
2 ~~department~~ issues a notice of disapproval with respect to that  
3 person.

4 (3) The office ~~department~~ shall issue a notice of  
5 disapproval if the competence, experience, character, or  
6 integrity of the individual to be appointed or employed  
7 indicates that it is not in the best interests of the  
8 depositors, the members, or the public to permit the  
9 individual to be employed by or associated with the state  
10 financial institution.

11 (4) The commission ~~department~~ may adopt rules to  
12 implement this section.

13 Section 1720. Subsection (2) of section 655.0386,  
14 Florida Statutes, is amended to read:

15 655.0386 Transactions with financial  
16 institution-affiliated parties.--

17 (2) DISCLOSURE OF PERSONAL INTEREST.--Without  
18 limitation by any of the specific provisions of this section,  
19 the commission or office ~~department~~ may require the disclosure  
20 by financial institution-affiliated parties of their personal  
21 interests, directly or indirectly, in any business or  
22 transactions on behalf of or involving the state financial  
23 institution, subsidiary, or service corporation and of their  
24 control of or active participation in enterprises having  
25 activities related to the business of the state financial  
26 institution, subsidiary, or service corporation.

27 Section 1721. Section 655.0391, Florida Statutes, is  
28 amended to read:

29 655.0391 Retention of supervision by office  
30 ~~department~~.--A state financial institution may not cause to be  
31 performed, by contract or otherwise, any financial-institution

1 services for itself, whether at or away from its main or  
2 branch office or on or off its premises, unless assurances  
3 satisfactory to the office ~~department~~ are furnished to the  
4 office ~~department~~ by both the state financial institution and  
5 the person performing such services that the performance  
6 thereof will be subject to regulation and examination by the  
7 office ~~department~~ to the same extent as if such services were  
8 being performed by the state financial institution itself on  
9 its own premises.

10 Section 1722. Section 655.041, Florida Statutes, is  
11 amended to read:

12 655.041 Administrative fines; enforcement.--

13 (1) The office ~~department~~ may, by complaint, initiate  
14 a proceeding pursuant to chapter 120 to impose an  
15 administrative fine against any person found to have violated  
16 any provision of the financial institutions codes or a cease  
17 and desist order of the office ~~department~~ or any written  
18 agreement with the office ~~department~~. No such proceeding  
19 shall be initiated and no fine shall accrue pursuant to this  
20 section until after such person has been notified in writing  
21 of the nature of the violation and has been afforded a  
22 reasonable period of time, as set forth in the notice, to  
23 correct the violation and has failed to do so.

24 (2) Any such fine may not exceed \$2,500 a day for each  
25 violation except as provided in this section.

26 (a) If the office ~~department~~ determines that any such  
27 person has recklessly violated any provision of the financial  
28 institutions codes or a cease and desist order of the office  
29 ~~department~~ or any written agreement with the office  
30 ~~department~~, which violation results in more than a minimal  
31 loss to a financial institution, subsidiary, or service

1 corporation, or a pecuniary benefit to such person, the office  
2 ~~department~~ may impose a fine not exceeding \$10,000 a day for  
3 each day the violation continues.

4 (b) If the office ~~department~~ determines that any such  
5 person has knowingly violated any provision of the financial  
6 institutions codes or a cease and desist order of the office  
7 ~~department~~ or any written agreement with the office  
8 ~~department~~, which violation results in more than a minimal  
9 loss to a financial institution, subsidiary, or service  
10 corporation, or a pecuniary benefit to such a person, the  
11 office ~~department~~ may impose a fine not exceeding the lesser  
12 of \$500,000 per day or 1 percent of the total assets in the  
13 case of a financial institution, or \$50,000 per day in any  
14 other case for each day the violation continues.

15 (c) The office ~~department~~ may by complaint impose an  
16 administrative fine, not exceeding \$10,000 a day, upon any  
17 financial institution-affiliated party, and upon a state  
18 financial institution, subsidiary, service corporation, or  
19 affiliate, who refuses to permit an examiner to examine a  
20 state financial institution, subsidiary, or service  
21 corporation, who refuses to permit an examiner to review the  
22 books and records of an affiliate, or who refuses to give an  
23 examiner any information required in the course of any  
24 examination or review of the books and records.

25 (3) Any administrative fine levied by the office  
26 ~~department~~ may be enforced by the office ~~department~~ by  
27 appropriate proceedings in the circuit court of the county in  
28 which such person resides or in which the principal office of  
29 a state financial institution is located. In any  
30 administrative or judicial proceeding arising under this  
31 section, a party may elect to correct the violation asserted

1 by the office ~~department~~ and, upon doing so, any fine ceases  
2 to accrue; however, an election to correct the violation does  
3 not render any administrative or judicial proceeding moot.

4 Section 1723. Section 655.043, Florida Statutes, is  
5 amended to read:

6 655.043 Articles of incorporation; amendments;  
7 approval.--A bank, trust company, or association may not amend  
8 its articles of incorporation without the written approval of  
9 the office ~~department~~.

10 Section 1724. Subsections (1) and (2) of section  
11 655.044, Florida Statutes, are amended to read:

12 655.044 Accounting practices; bad debts ineligible to  
13 be carried as assets.--

14 (1) Except as otherwise provided by law, a state  
15 financial institution shall observe generally accepted  
16 accounting principles and practices. The commission  
17 ~~department~~ may authorize by rule exceptions to such accounting  
18 practices as necessary.

19 (2) A state financial institution, subsidiary, or  
20 service corporation may not carry as an asset any note,  
21 obligation, or security which it does not own absolutely or  
22 which is known by the state financial institution to be  
23 fraudulent or otherwise worthless; and a state financial  
24 institution may not carry as an asset, in any report to the  
25 office ~~department~~ or in any published report, any note or  
26 other obligation which is past due or upon which no interest  
27 has been paid for 1 year or longer or which has been  
28 determined by the office ~~department~~ to be a loss. However,  
29 past due paper may be carried to the extent of the reasonable  
30 value of any lien or other collateral given to secure such  
31 obligation; and, if the obligation is in the process of

1 collection, it may be carried at its reasonable value as  
2 determined by the board of directors. The office department  
3 may order the revision of any value so determined hereunder.

4 Section 1725. Section 655.045, Florida Statutes, is  
5 amended to read:

6 655.045 Examinations, reports, and internal audits;  
7 penalty.--

8 (1)(a) The office department shall conduct an  
9 examination of the condition of each state financial  
10 institution during each 18-month period, beginning July 1,  
11 1981. The office department may accept an examination made by  
12 the appropriate federal regulator, insuring or guaranteeing  
13 corporation, or agency with respect to the condition of the  
14 state financial institution or may make a joint or concurrent  
15 examination with the appropriate federal regulator, insuring  
16 or guaranteeing corporation, or agency. However, at least  
17 once during each 36-month period beginning on July 3, 1992,  
18 the office department shall conduct an examination of each  
19 state financial institution in such a manner as to allow the  
20 preparation of a complete examination report not subject to  
21 the right of any federal or other non-Florida entity to limit  
22 access to the information contained therein. If, as a part of  
23 an examination or investigation of a state financial  
24 institution, subsidiary, or service corporation, the office  
25 ~~department~~ has reason to believe that an affiliate is engaged  
26 in an unsafe or unsound practice or that the affiliate has a  
27 negative impact on the state financial institution,  
28 subsidiary, or service corporation, then the office department  
29 may review such books and records as are reasonably related to  
30 the examination or investigation. The office department may  
31 furnish a copy of all examinations or reviews made of such

1 financial institutions or their affiliates to the state or  
2 federal financial institution regulators participating in the  
3 examination of a bank holding company; an association holding  
4 company; or any of their subsidiaries, service corporations,  
5 or affiliates; an insuring or guaranteeing corporation or  
6 agency or its representatives; or state financial institution  
7 regulators participating in the examination of a holding  
8 company or its subsidiaries.

9 (b) The office ~~department~~ may recover the costs of  
10 examination and supervision of a state financial institution,  
11 subsidiary, or service corporation that is determined by the  
12 office ~~department~~ to be engaged in an unsafe or unsound  
13 practice. The office ~~department~~ may also recover the costs of  
14 any review conducted pursuant to paragraph (a) of any  
15 affiliate of a state financial institution determined by the  
16 office ~~department~~ to have contributed to an unsafe or unsound  
17 practice at a state financial institution, subsidiary, or  
18 service corporation.

19 (c) For the purposes of this section, the term "costs"  
20 means the salary and travel expenses directly attributable to  
21 the field staff examining the state financial institution,  
22 subsidiary, or service corporation, and the travel expenses of  
23 any supervisory staff required as a result of examination  
24 findings. The mailing of any costs incurred under this  
25 subsection must be postmarked not later than 30 days after the  
26 date of receipt of a notice stating that such costs are due.  
27 The office ~~department~~ may levy a late payment of up to \$100  
28 per day or part thereof that a payment is overdue, unless it  
29 is excused for good cause. However, for intentional late  
30 payment of costs, the office ~~department~~ may levy an

31

1 administrative fine of up to \$1,000 per day for each day the  
2 payment is overdue.

3 (d) The office ~~department~~ may require an audit of any  
4 state financial institution, subsidiary, or service  
5 corporation by an independent certified public accountant  
6 approved by the office ~~department~~ whenever the office  
7 ~~department~~, after conducting an examination of such state  
8 financial institution, subsidiary, or service corporation, or  
9 after accepting an examination of such state financial  
10 institution by the appropriate state or federal regulatory  
11 agency, determines that such an audit is necessary in order to  
12 ascertain the condition of the financial institution,  
13 subsidiary, or service corporation. The cost of such audit  
14 shall be paid by the state financial institution, subsidiary,  
15 or state service corporation.

16 (2)(a) ~~The department shall require~~ Each state  
17 financial institution, subsidiary, or service corporation  
18 shall to submit a report, at least four times each calendar  
19 year, as of such dates as the commission or office determines  
20 ~~department may determine~~. Such report must include such  
21 information as the commission ~~department~~ by rule requires for  
22 that type of institution.

23 (b) The office ~~department~~ shall levy an administrative  
24 fine of up to \$100 per day for each day the report is past  
25 due, unless it is excused for good cause. However, for  
26 intentional late filing of the report required under paragraph  
27 (a), the office ~~department~~ shall levy an administrative fine  
28 of up to \$1,000 per day for each day the report is past due.

29 (3)(a) ~~The department shall require~~ The board of  
30 directors of each state financial institution or, in the case  
31 of a credit union, the supervisory committee or audit

1 committee shall ~~to~~ perform or cause to be performed, within  
2 each calendar year, an internal audit of each state financial  
3 institution, subsidiary, or service corporation and to file a  
4 copy of the report and findings of such audit with the office  
5 ~~department~~ on a timely basis. Such internal audit must  
6 include such information as the commission ~~department~~ by rule  
7 requires for that type of institution.

8 (b) With the approval of the office ~~department~~, the  
9 board of directors or, in the case of a credit union, the  
10 supervisory committee may elect, in lieu of such periodic  
11 audits, to adopt and implement an adequate continuous audit  
12 system and procedure which must include full, adequate, and  
13 continuous written reports to, and review by, the board of  
14 directors or, in the case of a credit union, the supervisory  
15 committee, together with written statements of the actions  
16 taken thereon and reasons for omissions to take actions, all  
17 of which shall be noted in the minutes and filed among the  
18 records of the board of directors or, in the case of a credit  
19 union, the supervisory committee. If at any time such  
20 continuous audit system and procedure, including the reports  
21 and statements, becomes inadequate, in the judgment of the  
22 office ~~department~~, the state financial institution shall  
23 promptly make such changes as may be required by the office  
24 ~~department~~ to cause the same to accomplish the purpose of this  
25 section.

26 (4) A copy of the report of each examination must be  
27 furnished to the financial institution examined. Such report  
28 of examination shall be presented to the board of directors at  
29 its next regular or special meeting.

30 Section 1726. Section 655.047, Florida Statutes, is  
31 amended to read:

1           655.047 Assessments; financial institutions.--

2           (1) Each state financial institution shall pay to the  
3 ~~office department~~ a semiannual assessment based on the total  
4 assets as shown on the statement of condition of the financial  
5 institution on the last business day in December and the last  
6 business day in June of each year.

7           (2) The mailing of a semiannual assessment must be  
8 postmarked on or before January 31 and July 31 of each year.  
9 The ~~office department~~ may levy a late payment penalty of up to  
10 \$100 per day or part thereof that a semiannual assessment  
11 payment is overdue, unless it is excused for good cause.  
12 However, for intentional late payment of a semiannual  
13 assessment, the ~~office department~~ shall levy an administrative  
14 fine of up to \$1,000 a day for each day the semiannual  
15 assessment is overdue.

16           (3) The assessments required by this section cover the  
17 6-month period following the first day of the month in which  
18 they are due. The ~~office department~~ may prorate the amount of  
19 the semiannual assessment; however, no portion of a semiannual  
20 assessment is refundable.

21           Section 1727. Section 655.049, Florida Statutes, is  
22 amended to read:

23           655.049 Deposit of fees and assessments.--The  
24 assessments, application fees, late payment penalties, civil  
25 penalties, administrative fines, and other fees or penalties  
26 provided for in the financial institutions codes shall, in all  
27 cases, be paid directly to the ~~office department~~, which shall  
28 deposit all thereof in the Financial Institutions' Regulatory  
29 Trust Fund, which fund shall be used by the ~~office department~~  
30 to pay its costs for administration of the financial  
31 institutions codes. The ~~office department~~ shall determine and

1 report to the Legislature whether the fees and assessments  
2 provided in the financial institutions codes and assessed  
3 against and collected from the financial institutions that are  
4 subject to the financial institutions codes support the  
5 office's ~~department's~~ expenditures. The Financial  
6 Institutions' Regulatory Trust Fund is subject to the service  
7 charge imposed pursuant to chapter 215.

8 Section 1728. Section 655.057, Florida Statutes, is  
9 amended to read:

10 655.057 Records; limited restrictions upon public  
11 access.--

12 (1) Except as otherwise provided in this section and  
13 except for such portions thereof which are otherwise public  
14 record, all records and information relating to an  
15 investigation by the office ~~department~~ are confidential and  
16 exempt from the provisions of s. 119.07(1) until such  
17 investigation is completed or ceases to be active. For  
18 purposes of this subsection, an investigation is considered  
19 "active" while such investigation is being conducted by the  
20 office ~~department~~ with a reasonable, good faith belief that it  
21 may lead to the filing of administrative, civil, or criminal  
22 proceedings. An investigation does not cease to be active if  
23 the office ~~department~~ is proceeding with reasonable dispatch,  
24 and there is a good faith belief that action may be initiated  
25 by the office ~~department~~ or other administrative or law  
26 enforcement agency. After an investigation is completed or  
27 ceases to be active, portions of such records relating to the  
28 investigation shall be confidential and exempt from the  
29 provisions of s. 119.07(1) to the extent that disclosure  
30 would:

31

- 1           (a) Jeopardize the integrity of another active  
2 investigation;
- 3           (b) Impair the safety and soundness of the financial  
4 institution;
- 5           (c) Reveal personal financial information;
- 6           (d) Reveal the identity of a confidential source;
- 7           (e) Defame or cause unwarranted damage to the good  
8 name or reputation of an individual or jeopardize the safety  
9 of an individual; or
- 10          (f) Reveal investigative techniques or procedures.
- 11          (2) Except as otherwise provided in this section and  
12 except for such portions thereof which are public record,  
13 reports of examinations, operations, or condition, including  
14 working papers, or portions thereof, prepared by, or for the  
15 use of, the office ~~department~~ or any state or federal agency  
16 responsible for the regulation or supervision of financial  
17 institutions in this state are confidential and exempt from  
18 the provisions of s. 119.07(1). However, such reports or  
19 papers or portions thereof may be released to:
- 20           (a) The financial institution under examination;
- 21           (b) Any holding company of which the financial  
22 institution is a subsidiary;
- 23           (c) Proposed purchasers if necessary to protect the  
24 continued financial viability of the financial institution,  
25 upon prior approval by the board of directors of such  
26 institution;
- 27           (d) Persons proposing in good faith to acquire a  
28 controlling interest in or to merge with the financial  
29 institution, upon prior approval by the board of directors of  
30 such financial institution;
- 31

1 (e) Any officer, director, committee member, employee,  
2 attorney, auditor, or independent auditor officially connected  
3 with the financial institution, holding company, proposed  
4 purchaser, or person seeking to acquire a controlling interest  
5 in or merge with the financial institution; or

6 (f) A fidelity insurance company, upon approval of the  
7 financial institution's board of directors. However, a  
8 fidelity insurance company may receive only that portion of an  
9 examination report relating to a claim or investigation being  
10 conducted by such fidelity insurance company.

11 (g) Examination, operation, or condition reports of a  
12 financial institution shall be released by the office  
13 ~~department~~ within 1 year after the appointment of a  
14 liquidator, receiver, or conservator to such financial  
15 institution. However, any portion of such reports which  
16 discloses the identities of depositors, bondholders, members,  
17 borrowers, or stockholders, other than directors, officers, or  
18 controlling stockholders of the institution, shall remain  
19 confidential and exempt from the provisions of s. 119.07(1).

20  
21 Any confidential information or records obtained from the  
22 office ~~department~~ pursuant to this paragraph shall be  
23 maintained as confidential and exempt from the provisions of  
24 s. 119.07(1).

25 (3) The provisions of this section do not prevent or  
26 restrict:

27 (a) Publishing reports required to be submitted to the  
28 office ~~department~~ pursuant to s. 655.045(2)(a) or required by  
29 applicable federal statutes or regulations to be published.

30 (b) Furnishing records or information to any other  
31 state, federal, or foreign agency responsible for the

1 regulation or supervision of financial institutions, including  
2 Federal Home Loan Banks.

3 (c) Furnishing records or information, in the case of  
4 a credit union, to the Florida Credit Union Guaranty  
5 Corporation, Inc.

6 (d) Disclosing or publishing summaries of the  
7 condition of financial institutions and general economic and  
8 similar statistics and data, provided that the identity of a  
9 particular financial institution is not disclosed.

10 (e) Reporting any suspected criminal activity, with  
11 supporting documents and information, to appropriate law  
12 enforcement and prosecutorial agencies.

13 (f) Furnishing information upon request to the Chief  
14 Financial Officer or the Division of Treasury of the  
15 Department of Financial Services ~~State Treasurer~~ regarding the  
16 financial condition of any financial institution that is, or  
17 has applied to be, designated as a qualified public depository  
18 pursuant to chapter 280.

19  
20 Any confidential information or records obtained from the  
21 office ~~department~~ pursuant to this subsection shall be  
22 maintained as confidential and exempt from the provisions of  
23 s. 119.07(1).

24 (4)(a) Orders of courts or of administrative law  
25 judges for the production of confidential records or  
26 information shall provide for inspection in camera by the  
27 court or the administrative law judge and, after the court or  
28 administrative law judge has made a determination that the  
29 documents requested are relevant or would likely lead to the  
30 discovery of admissible evidence, said documents shall be  
31 subject to further orders by the court or the administrative

1 law judge to protect the confidentiality thereof. Any order  
2 directing the release of information shall be immediately  
3 reviewable, and a petition by the office ~~department~~ for review  
4 of such order shall automatically stay further proceedings in  
5 the trial court or the administrative hearing until the  
6 disposition of such petition by the reviewing court. If any  
7 other party files such a petition for review, it will operate  
8 as a stay of such proceedings only upon order of the reviewing  
9 court.

10 (b) Confidential records and information furnished  
11 pursuant to a legislative subpoena shall be kept confidential  
12 by the legislative body or committee which received the  
13 records or information, except in a case involving  
14 investigation of charges against a public official subject to  
15 impeachment or removal, and then disclosure of such  
16 information shall be only to the extent determined by the  
17 legislative body or committee to be necessary.

18 (5) Every credit union and mutual association shall  
19 maintain, in the principal office where its business is  
20 transacted, full and correct records of the names and  
21 residences of all the members of the credit union or mutual  
22 association. Such records shall be subject to the inspection  
23 of all the members of the credit union or mutual association,  
24 and the officers authorized to assess taxes under state  
25 authority, during business hours of each business day. A  
26 current list of members shall be made available to the  
27 office's ~~department's~~ examiners for their inspection and, upon  
28 the request of the office ~~department~~, shall be submitted to  
29 the office ~~department~~. Except as otherwise provided in this  
30 subsection, the list of the members of the credit union or  
31

1 mutual association is confidential and exempt from the  
2 provisions of s. 119.07(1).

3 (6) Every bank, trust company, and stock association  
4 shall maintain, in the principal office where its business is  
5 transacted, full and complete records of the names and  
6 residences of all the shareholders of the bank, trust company,  
7 or stock association and the number of shares held by each.  
8 Such records shall be subject to the inspection of all the  
9 shareholders of the bank, trust company, or stock association,  
10 and the officers authorized to assess taxes under state  
11 authority, during business hours of each banking day. A  
12 current list of shareholders shall be made available to the  
13 office's ~~department's~~ examiners for their inspection and, upon  
14 the request of the office ~~department~~, shall be submitted to  
15 the office ~~department~~. Except as otherwise provided in this  
16 subsection, any portion of this list which reveals the  
17 identities of the shareholders is confidential and exempt from  
18 the provisions of s. 119.07(1).

19 (7) Materials supplied to the office ~~department~~ or to  
20 employees of any financial institution by other governmental  
21 agencies, federal or state, or the Florida Credit Union  
22 Guaranty Corporation, Inc., shall remain the property of the  
23 submitting agency or the corporation, and any document request  
24 must be made to the appropriate agency. Any confidential  
25 documents supplied to the office ~~department~~ or to employees of  
26 any financial institution by other governmental agencies,  
27 federal or state, or by the Florida Credit Union Guaranty  
28 Corporation, Inc., shall be confidential and exempt from the  
29 provisions of s. 119.07(1). Such information shall be made  
30 public only with the consent of such agency or the  
31 corporation.

1           (8) Examination reports, investigatory records,  
2 applications, and related information compiled by the office  
3 ~~department~~, or photographic copies thereof, shall be retained  
4 by the office ~~department~~ for a period of at least 10 years.

5           (9) A copy of any document on file with the office  
6 ~~department~~ which is certified by the office ~~department~~ as  
7 being a true copy may be introduced in evidence as if it were  
8 the original. The commission ~~department~~ shall establish a  
9 schedule of fees for preparing true copies of documents.

10           (10) Any person who willfully discloses information  
11 made confidential by this section is guilty of a felony of the  
12 third degree, punishable as provided in s. 775.082, s.  
13 775.083, or s. 775.084.

14           Section 1729. Subsection (1) of section 655.059,  
15 Florida Statutes, is amended to read:

16           655.059 Access to books and records; confidentiality;  
17 penalty for disclosure.--

18           (1) The books and records of a financial institution  
19 are confidential and shall be made available for inspection  
20 and examination only:

21           (a) To the office ~~department~~ or its duly authorized  
22 representative;

23           (b) To any person duly authorized to act for the  
24 financial institution;

25           (c) To any federal or state instrumentality or agency  
26 authorized to inspect or examine the books and records of an  
27 insured financial institution;

28           (d) With respect to an international banking  
29 corporation, to the home-country supervisor of the  
30 corporation, provided:

31

1           1. The supervisor provides advance notice to the  
2 office department that the supervisor intends to examine the  
3 Florida office of the corporation.

4           2. The supervisor confirms to the office department  
5 that the purpose of the examination is to ensure the safety  
6 and soundness of the corporation.

7           3. The books and records pertaining to customer  
8 deposit, investment, and custodial accounts are not disclosed  
9 to the supervisor.

10          4. At any time during the conduct of the examination,  
11 the office department reserves the right to have an examiner  
12 present or to participate jointly in the examination.

13  
14 For purposes of this paragraph, "home-country supervisor"  
15 means the governmental entity in the corporation's home  
16 country with responsibility for the supervision and regulation  
17 of the corporation;—

18           (e) As compelled by a court of competent jurisdiction;

19           (f) As compelled by legislative subpoena as provided  
20 by law, in which case the provisions of s. 655.057 apply;

21           (g) Pursuant to a subpoena, to any federal or state  
22 law enforcement or prosecutorial instrumentality authorized to  
23 investigate suspected criminal activity;

24           (h) As authorized by the board of directors of the  
25 financial institution; or

26           (i) As provided in subsection (2).

27          Section 1730. Section 655.061, Florida Statutes, is  
28 amended to read:

29          655.061 Competitive equality with federally organized  
30 or chartered financial institutions.--Subject to the prior  
31 approval of the office department pursuant to commission rule

1 | or office order of general application, state financial  
2 | institutions subject to the financial institutions codes may  
3 | make any loan or investment or exercise any power which they  
4 | could make or exercise if incorporated or operating in this  
5 | state as a federally chartered or regulated financial  
6 | institution of the same type and are entitled to all  
7 | privileges and protections granted federally chartered or  
8 | regulated financial institutions of the same type under  
9 | federal statutes and regulations. The provisions of this  
10 | section take precedence over, and must be given effect over,  
11 | any other general or specific provisions of the financial  
12 | institutions codes to the contrary. In issuing an order or  
13 | rule under this section, the office or commission ~~department~~  
14 | shall consider the importance of maintaining a competitive  
15 | dual system of financial institutions and whether such an  
16 | order or rule is in the public interest.

17 |         Section 1731. Section 655.071, Florida Statutes, is  
18 | amended to read:

19 |             655.071 International banking facilities; definitions;  
20 | notice before establishment.--

21 |             (1) "International banking facility" means a set of  
22 | asset and liability accounts segregated on the books and  
23 | records of a banking organization, as that term is defined in  
24 | s. 199.023, that includes only international banking facility  
25 | deposits, borrowings, and extensions of credit, as those terms  
26 | shall be defined by the commission ~~department~~ pursuant to  
27 | subsection (2).

28 |             (2) The commission ~~department~~ shall by rule define the  
29 | terms "deposit," "borrowing," and "extension of credit" as  
30 | they relate to the activities of international banking  
31 | facilities. These definitions shall take into account all

1 transactions in which international banking facilities are  
2 permitted to engage by regulations of the Board of Governors  
3 of the Federal Reserve System, as from time to time amended.  
4 When adopting ~~promulgating~~ such rules, the commission  
5 ~~department~~ shall also consider the public interest, including  
6 the need to maintain a sound and competitive banking system,  
7 as well as the purpose of this act, which is to create an  
8 environment conducive to the conduct of an international  
9 banking business in the state.

10 (3) Before establishing an international banking  
11 facility, a state-chartered or state-licensed banking  
12 organization shall notify the office ~~department~~ in the manner  
13 prescribed by rule of the commission ~~department~~.

14 Section 1732. Subsections (1) and (2) of section  
15 655.411, Florida Statutes, are amended to read:

16 655.411 Conversion of charter.--

17 (1) Any financial entity may apply to the office  
18 ~~department~~ for permission to convert its charter without a  
19 change of business form or convert its charter in order to do  
20 business as another type of financial entity in accordance  
21 with the following procedures:

22 (a) The board of directors must approve a plan of  
23 conversion by a vote of a majority of all the directors. The  
24 plan must include a statement of:

25 1. The type of financial entity which would result if  
26 the application were approved and the proposed name under  
27 which it would do business.

28 2. The method and schedule for terminating any  
29 activities and disposing of any assets or liabilities which  
30 would not conform to the requirements applicable to the  
31 resulting financial entity.

1           3. The competitive impact of such change, including  
2 any effect on the availability of particular financial  
3 services in the market area served by the financial entity.

4           4. Such financial data as may be required to determine  
5 compliance with the capital, reserve, and liquidity  
6 requirements applicable to the resulting financial entity.

7           5. Such other information as the commission ~~department~~  
8 may by rule require.

9           (b) Following approval by the board of directors, the  
10 conversion plan, together with a certified copy of the  
11 authorizing resolution adopted by the board, must be submitted  
12 to the office ~~department~~ for approval before being submitted  
13 to the members or stockholders of the financial entity. The  
14 application for conversion must be in the such form prescribed  
15 by the commission, ~~and~~ contain such additional information as  
16 the commission or office ~~department~~ reasonably requires, and  
17 ~~must~~ be accompanied by a filing fee in accordance with s.  
18 657.066(4) or s. 658.73. Additionally, the office ~~department~~  
19 is authorized to assess any financial entity, applying to  
20 convert pursuant to this section, a nonrefundable examination  
21 fee to cover the actual costs of any examination required as a  
22 part of the application process.

23           (c) The office ~~department~~ shall approve the plan if it  
24 finds that:

25           1. The resulting financial entity would have an  
26 adequate capital structure with regard to its activities and  
27 its deposit liabilities.

28           2. The proposed conversion would not cause a  
29 substantially adverse effect on the financial condition of any  
30 financial entity already established in the primary service  
31 area.

1           3. The officers and directors have sufficient  
2 experience, ability, and standing to indicate reasonable  
3 promise for successful operation of the resulting financial  
4 entity.

5           4. The schedule for termination of any nonconforming  
6 activities and disposition of any nonconforming assets and  
7 liabilities is reasonably prompt, and the plan for such  
8 termination and disposition does not include any unsafe or  
9 unsound practice.

10           5. None of the officers or directors has been  
11 convicted of, or pled guilty or nolo contendere to, a  
12 violation of s. 655.50, relating to the Florida Control of  
13 Money Laundering in Financial Institutions Act; chapter 896,  
14 relating to offenses related to financial transactions; or any  
15 similar state or federal law.

16  
17 If the office ~~department~~ disapproves the plan, it shall state  
18 its objections and give an opportunity to the parties to amend  
19 the plan to overcome such objections. The office ~~department~~  
20 may deny an application by any financial entity which is  
21 subject to a cease and desist order or other supervisory  
22 restriction or order imposed by any state or federal  
23 supervisory authority, insurer, or guarantor.

24           (d) If the office ~~department~~ approves the plan, it may  
25 be submitted to the members or stockholders at an annual  
26 meeting or at any special meeting called to consider such  
27 action. Upon a favorable vote of a majority of the total  
28 number of votes eligible to be cast or, in the case of a  
29 credit union, a majority of the members present at the  
30 meeting, the plan is adopted. Copies of the minutes of the  
31 proceedings of such meeting of the members or stockholders,

1 verified by the affidavit of an officer, as established in the  
2 bylaws of the financial institution, must be filed with the  
3 office ~~department~~ within 10 days after such meeting. Such  
4 verified copies of the proceedings of such meeting are  
5 presumptive evidence of the holding and action of such  
6 meeting. If the members or stockholders approve the plan of  
7 conversion, the directors shall then execute new articles of  
8 incorporation or amendments to existing articles and two  
9 copies of the new bylaws. The directors shall insert in the  
10 articles of incorporation the following: "This ...(bank,  
11 association, etc.)... is incorporated by conversion from a  
12 ...(national bank, state association, etc.)...."

13 (e) If the members or stockholders adopt the plan of  
14 conversion, the financial entity shall apply to the  
15 appropriate insurer for a commitment for insurance of accounts  
16 for the shares and deposits of the resulting financial entity.

17 (f) The plan shall not take effect until the office  
18 ~~department~~ has received notice that the commitment for  
19 insurance of accounts has been given by the insurer. Upon  
20 receipt of such notice, the office ~~department~~ shall issue a  
21 new charter to the financial entity authorizing it to transact  
22 business pursuant to applicable law.

23 (2) The commission ~~department~~ may provide by rule for  
24 any additional procedures to be followed by any national or  
25 federal financial entity seeking to convert its charter  
26 pursuant to this section.

27 Section 1733. Subsection (1) of section 655.412,  
28 Florida Statutes, is amended to read:

29 655.412 Merger and consolidation.--

30 (1) With the approval of the office ~~department~~, any  
31 capital stock financial institution may be merged into or

1 consolidated with another capital stock financial institution  
2 or a mutual financial institution. The provisions of ss.  
3 658.41-658.45 govern any merger or consolidation pursuant to  
4 this subsection; and, for this purpose, references therein to  
5 banks and trust companies are deemed to refer to capital stock  
6 financial institutions.

7 Section 1734. Section 655.414, Florida Statutes. is  
8 amended to read:

9 655.414 Acquisition of assets; assumption of  
10 liabilities.--With prior approval of the office department and  
11 upon such conditions as the commission department prescribes  
12 by rule, any financial entity may acquire all or substantially  
13 all of the assets of, or assume the liabilities of, any other  
14 financial entity in accordance with the procedures and subject  
15 to the following conditions and limitations:

16 (1) ADOPTION OF A PLAN.--The board of directors of the  
17 acquiring or assuming financial entity and the board of  
18 directors of the transferring financial entity must adopt, by  
19 a majority vote, a plan for such acquisition, assumption, or  
20 sale on such terms as are mutually agreed upon. The plan must  
21 include:

22 (a) The names and types of financial entities  
23 involved.

24 (b) A statement setting forth the material terms of  
25 the proposed acquisition, assumption, or sale, including the  
26 plan for disposition of all assets and liabilities not subject  
27 to the plan.

28 (c) A provision for liquidation of the transferring  
29 financial entity upon execution of the plan.

30 (d) A statement that the entire transaction is subject  
31 to written approval of the office department and approval of

1 the members or stockholders of the transferring financial  
2 entity.

3 (e) If a stock financial institution is the  
4 transferring financial entity and the proposed sale is not to  
5 be for cash, a clear and concise statement that dissenting  
6 stockholders of such financial entity are entitled to the  
7 rights set forth in s. 658.44(4) and (5).

8 (f) The proposed effective date of such acquisition,  
9 assumption, or sale and such other information and provisions  
10 as may be necessary to execute the transaction or as may be  
11 required by the office ~~department~~.

12 (2) APPROVAL OF OFFICE ~~DEPARTMENT~~.--Following approval  
13 by the board of directors of each participating financial  
14 entity, the plan, together with certified copies of the  
15 authorizing resolutions adopted by the boards and a completed  
16 application with a nonrefundable filing fee, must be forwarded  
17 to the office ~~department~~ for its approval or disapproval. The  
18 office ~~department~~ shall approve the plan of acquisition,  
19 assumption, or sale if it appears that:

20 (a) The resulting financial entity would have an  
21 adequate capital structure in relation to its activities and  
22 its deposit liabilities;

23 (b) The plan is fair to all parties; and

24 (c) The plan is not contrary to the public interest.

25  
26 If the office ~~department~~ disapproves the plan, it shall state  
27 its objections and give an opportunity to the parties to amend  
28 the plan to overcome such objections.

29 (3) VOTE OF MEMBERS OR STOCKHOLDERS.--If the office  
30 ~~department~~ approves the plan, it may be submitted to the  
31 members or stockholders of the transferring financial entity

1 at an annual meeting or at any special meeting called to  
2 consider such action. Upon a favorable vote of 51 percent or  
3 more of the total number of votes eligible to be cast or, in  
4 the case of a credit union, 51 percent or more of the members  
5 present at the meeting, the plan is adopted.

6 (4) ADOPTED PLAN; CERTIFICATE; ABANDONMENT.--

7 (a) If the plan is adopted by the members or  
8 stockholders of the transferring financial entity, the  
9 president or vice president and the cashier, manager, or  
10 corporate secretary of such financial entity shall submit the  
11 adopted plan to the office ~~department~~, together with a  
12 certified copy of the resolution of the members or  
13 stockholders approving it.

14 (b) Upon receipt of the certified copies and evidence  
15 that the participating financial entities have complied with  
16 all applicable federal law and regulations, the office  
17 ~~department~~ shall certify, in writing, to the participants that  
18 the plan has been approved.

19 (c) Notwithstanding approval of the members or  
20 stockholders or certification by the office ~~department~~, the  
21 board of directors of the transferring financial entity may,  
22 in its discretion, abandon such a transaction without further  
23 action or approval by the members or stockholders, subject to  
24 the rights of third parties under any contracts relating  
25 thereto.

26 (5) FEDERALLY CHARTERED INSTITUTION AS A  
27 PARTICIPANT.--If one of the participants in a transaction  
28 under this section is a federally chartered financial entity,  
29 all participants must also comply with such requirements as  
30 may be imposed by federal law for such an acquisition,  
31 assumption, or sale and provide evidence of such compliance to

1 the office ~~department~~ as a condition precedent to the issuance  
2 of a certificate authorizing the transaction; however, if the  
3 purchasing or assuming financial entity is a federally  
4 chartered financial entity, approval of the office ~~department~~  
5 is not required.

6 (6) STOCK INSTITUTION ACQUIRING MUTUAL INSTITUTION.--A  
7 mutual financial institution may not sell all or substantially  
8 all of its assets to a stock financial entity until it has  
9 first converted into a capital stock financial institution in  
10 accordance with s. 665.033(1) and (2). For this purpose,  
11 references in s. 665.033(1) and (2) to associations are deemed  
12 to refer also to credit unions; but, in the case of a credit  
13 union, the provision therein concerning proxy statements does  
14 not apply.

15 Section 1735. Section 655.416, Florida Statutes, is  
16 amended to read:

17 655.416 Book value of assets.--Upon the effective date  
18 of a merger, consolidation, conversion, or acquisition  
19 pursuant to ss. 655.41-655.419, an asset may not be carried on  
20 the books of the resulting financial entity at a valuation  
21 higher than that at which it was carried on the books of a  
22 participating or converting financial entity at the time of  
23 its last examination by a state or federal examiner before the  
24 effective date of such merger, consolidation, conversion, or  
25 acquisition, without written approval from the office  
26 ~~department~~.

27 Section 1736. Subsections (3) and (4) of section  
28 655.418, Florida Statutes, are amended to read:

29 655.418 Nonconforming activities; cessation.--If, as a  
30 result of a merger, consolidation, conversion, or acquisition  
31 pursuant to ss. 655.41-655.419, the resulting financial entity

1 is to be of a different type or of a different character than  
2 any one or all of the participating or converting financial  
3 entities, such resulting financial entity will be subject to  
4 the following conditions and limitations:

5 (3) COMPLIANCE WITH LENDING AND INVESTMENT  
6 LIMITATIONS.--If, as a result of such merger, consolidation,  
7 conversion, or acquisition, the resulting financial entity  
8 will exceed any lending, investment, or other limitations  
9 imposed by law, the financial entity shall conform to such  
10 limitations within such period of time as is established by  
11 the office ~~department~~.

12 (4) DIVESTITURE.--The office ~~department~~ may, as a  
13 condition to such merger, consolidation, conversion, or  
14 acquisition, require a nonconforming activity to be divested  
15 in accordance with such additional requirements as it  
16 considers appropriate under the circumstances.

17 Section 1737. Subsection (2), paragraph (f) of  
18 subsection (3), paragraph (a) of subsection (4), and  
19 subsections (5), (6), (7), (8), and (9) of section 655.50,  
20 Florida Statutes, are amended to read:

21 655.50 Florida Control of Money Laundering in  
22 Financial Institutions Act; reports of transactions involving  
23 currency or monetary instruments; when required; purpose;  
24 definitions; penalties.--

25 (2) It is the purpose of this section to require  
26 submission to the office ~~department~~ of certain reports and  
27 maintenance of certain records of transactions involving  
28 currency or monetary instruments when such reports and records  
29 deter the use of financial institutions to conceal the  
30 proceeds of criminal activity and have a high degree of  
31

1 usefulness in criminal, tax, or regulatory investigations or  
2 proceedings.

3 (3) As used in this section, the term:

4 (f) "Report" means a report of each deposit,  
5 withdrawal, exchange of currency, or other payments or  
6 transfer, by, through, or to that financial institution, that  
7 involves a transaction required or authorized to be reported  
8 by this section, and includes the electronic submission of  
9 such information in the manner provided for by rule of the  
10 commission ~~department~~.

11 (4)(a) Every financial institution shall keep a record  
12 of each financial transaction occurring in this state known to  
13 it to involve currency or other monetary instrument, as the  
14 commission ~~department~~ prescribes by rule, of a value in excess  
15 of \$10,000, to involve the proceeds of specified unlawful  
16 activity, or to be designed to evade the reporting  
17 requirements of this section, chapter 896, or any similar  
18 state or federal law and shall maintain appropriate procedures  
19 to ensure compliance with this section, chapter 896, and any  
20 other similar state or federal law.

21 (5)(a) Each financial institution shall file a report  
22 with the office ~~department~~ of the record required under  
23 paragraphs (4)(a) and (b) and any record maintained pursuant  
24 to paragraph (4)(c). Each record filed pursuant to subsection  
25 (4) must be filed at such time and contain such information as  
26 the commission ~~department~~ requires by rule.

27 (b) The timely filing of the report required by 31  
28 U.S.C. s. 5313 with the appropriate federal agency is deemed  
29 compliance with the reporting requirements of this subsection  
30 unless the reports are not regularly and comprehensively  
31 transmitted by the federal agency to the office ~~department~~.

1           (6) Each financial institution shall maintain a record  
2 of each designation of a person granted exemption under the  
3 authority of 31 U.S.C. s. 5313, including any name, address,  
4 and taxpayer identification number of the exempt person, as  
5 well as the name and address of the financial institution and  
6 the signature of the financial institution official  
7 designating the exempt person. Such record of exemptions shall  
8 be made available to the office ~~department~~ for inspection and  
9 copying and shall be submitted to the office ~~department~~ within  
10 15 days after request.

11           (7) All reports and records filed with the office  
12 ~~department~~ pursuant to this section are confidential and  
13 exempt from s. 119.07(1). However, the office ~~department~~  
14 shall provide any report filed pursuant to this section, or  
15 information contained therein, to federal, state, and local  
16 law enforcement and prosecutorial agencies, and any federal or  
17 state agency responsible for the regulation or supervision of  
18 financial institutions.

19           (8)(a) The office ~~department~~ shall retain a copy of  
20 all reports received under subsection (4) for a minimum of 5  
21 calendar years after receipt of the report. However, if a  
22 report or information contained in a report is known by the  
23 office ~~department~~ to be the subject of an existing criminal  
24 proceeding, the report shall be retained for a minimum of 10  
25 calendar years after receipt of the report.

26           (b) Each financial institution shall maintain for a  
27 minimum of 5 calendar years full and complete records of all  
28 financial transactions, including all records required by 31  
29 C.F.R. parts 103.33 and 103.34.

30           (c) The financial institution shall retain a copy of  
31 all reports filed with the office ~~department~~ under subsection

1 (4) for a minimum of 5 calendar years after submission of the  
2 report. However, if a report or information contained in a  
3 report is known by the financial institution to be the subject  
4 of an existing criminal proceeding, the report shall be  
5 retained for a minimum of 10 calendar years after submission  
6 of the report.

7 (d) The financial institution shall retain a copy of  
8 all records of exemption for each designation of exempt person  
9 made pursuant to subsection (6) for a minimum of 5 calendar  
10 years after termination of exempt status of such customer.  
11 However, if it is known by the financial institution that the  
12 customer or the transactions of the customer are the subject  
13 of an existing criminal proceeding, the records shall be  
14 retained for a minimum of 10 calendar years after termination  
15 of exempt status of such customer.

16 (9) In addition to any other power conferred upon it  
17 to enforce and administer this chapter and the financial  
18 institutions codes, the office ~~department~~ may:

19 (a) Bring an action in any court of competent  
20 jurisdiction to enforce or administer this section. In such  
21 action, the office ~~department~~ may seek award of any civil  
22 penalty authorized by law and any other appropriate relief at  
23 law or equity.

24 (b) Pursuant to s. 655.033, issue and serve upon a  
25 person an order requiring such person to cease and desist and  
26 take corrective action whenever the office ~~department~~ finds  
27 that such person is violating, has violated, or is about to  
28 violate any provision of this section, chapter 896, or any  
29 similar state or federal law; any rule or order adopted under  
30 this section, chapter 896, or any similar state or federal  
31 law; or any written agreement related to this section, chapter

1 896, or any similar state or federal law and entered into with  
2 the office department.

3 (c) Pursuant to s. 655.037, issue and serve upon any  
4 person an order of removal whenever the office department  
5 finds that such person is violating, has violated, or is about  
6 to violate any provision of this section, chapter 896, or any  
7 similar state or federal law; any rule or order adopted under  
8 this section, chapter 896, or any similar state or federal  
9 law; or any written agreement related to this section, chapter  
10 896, or any similar state or federal law and entered into with  
11 the office department.

12 (d) Impose and collect an administrative fine against  
13 any person found to have violated any provision of this  
14 section, chapter 896, or any similar state or federal law; any  
15 rule or order adopted under this section, chapter 896, or any  
16 similar state or federal law; or any written agreement related  
17 to this section, chapter 896, or any similar state or federal  
18 law and entered into with the office department, in an amount  
19 not exceeding \$10,000 a day for each willful violation or \$500  
20 a day for each negligent violation.

21 Section 1738. Section 655.60, Florida Statutes, is  
22 amended to read:

23 655.60 Appraisals.--

24 (1) The office department is authorized to cause to be  
25 made appraisals of real estate or other property held by any  
26 state financial institution, subsidiary, or service  
27 corporation or securing the assets of the state financial  
28 institution, subsidiary, or service corporation when specific  
29 facts or information with respect to real estate or other  
30 property held, secured loans, or lending, or when in its  
31 opinion the state financial institution's policies, practices,

1 operating results, and trends give evidence that the state  
2 financial institution's appraisals or evaluations of ability  
3 to make payments may be excessive, that lending or investment  
4 may be of a marginal nature, that appraisal policies and loan  
5 practices may not conform with generally accepted and  
6 established professional standards, or that real estate or  
7 other property held by the state financial institution,  
8 subsidiary, or service corporation or assets secured by real  
9 estate or other property are overvalued. In lieu of causing  
10 such appraisals to be made, the office ~~department~~ may accept  
11 any appraisal caused to be made by an appropriate state or  
12 federal regulatory agency or other insuring agency or  
13 corporation of a state financial institution. Unless  
14 otherwise ordered by the office ~~department~~, an appraisal of  
15 real estate or other property pursuant to this section must be  
16 made by a licensed or certified appraiser or appraisers  
17 selected by the office ~~department~~, and the cost of such  
18 appraisal shall be paid promptly by such state financial  
19 institution, subsidiary, or service corporation directly to  
20 such appraiser or appraisers upon receipt by the state  
21 financial institution of a statement of such cost bearing the  
22 written approval of the office ~~department~~. A copy of the  
23 report of each appraisal caused to be made by the office  
24 ~~department~~ pursuant to this section shall be furnished to the  
25 state financial institution, subsidiary, or service  
26 corporation within a reasonable time, not exceeding 60 days,  
27 following the completion of such appraisal and may be  
28 furnished to the insuring agency or corporation or federal or  
29 state regulatory agency.

30 (2) A state financial institution may not make loans  
31 based on the security of real estate unless appraisal

1 standards and policies have been previously established by the  
2 board of directors. Such standards must be in written form  
3 and include, without limitation, information required by rules  
4 of the commission ~~department~~.

5 (3) If any appraisal required pursuant to this section  
6 discloses that any asset of a state financial institution,  
7 subsidiary, or service corporation is overvalued on its books,  
8 the office ~~department~~ may require the state financial  
9 institution, subsidiary, or service corporation to charge off  
10 such asset or portion thereof pursuant to s. 655.044.

11 Section 1739. Section 655.762, Florida Statutes, is  
12 amended to read:

13 655.762 Sale of assets.--A state financial institution  
14 may sell any asset in the ordinary course of business or with  
15 the approval of the office ~~department~~ in any other  
16 circumstances.

17 Section 1740. Subsection (6) of section 655.89,  
18 Florida Statutes, is amended to read:

19 655.89 Legal holidays; business days; business and  
20 transactions.--

21 (6) With prior written approval of the office  
22 ~~department~~, an institution may designate another day or other  
23 days on which the institution may be closed and which day or  
24 days will not be considered business days.

25 Section 1741. Paragraph (a) of subsection (1) of  
26 section 655.90, Florida Statutes, is amended to read:

27 655.90 Closing during emergencies and other special  
28 days.--

29 (1) DEFINITIONS.--As used in this section, the term:

30 (a) "Commissioner" means the director of the Office of  
31 Financial Institutions and Securities Regulation ~~officer of~~

1 ~~this state designated by law as the head of the Department of~~  
2 ~~Banking and Finance and any other person lawfully exercising~~  
3 ~~such powers, whether as a deputy to such officer, as a~~  
4 ~~director, bureau chief, or financial administrator of or~~  
5 ~~within such department, or otherwise.~~

6 Section 1742. Subsection (3) of section 655.922,  
7 Florida Statutes, is amended to read:

8 655.922 Banking business by unauthorized persons; use  
9 of name.--

10 (3) Any court, in a proceeding brought by the office  
11 ~~department~~, by any financial institution the principal place  
12 of business of which is in this state, or by any other person  
13 residing, or whose principal place of business is located, in  
14 this state and whose interests are substantially affected  
15 thereby, may enjoin any person from violating any of the  
16 provisions of this section. For the purposes of this  
17 subsection, the interests of a trade organization or  
18 association are deemed to be substantially affected if the  
19 interests of any of its members are so affected. In addition,  
20 the office ~~department~~ may issue and serve upon any person who  
21 violates any of the provisions of this section a complaint  
22 seeking a cease and desist order in accordance with the  
23 procedures and in the manner prescribed by s. 655.033.

24 Section 1743. Subsection (1) of section 655.942,  
25 Florida Statutes, is amended to read:

26 655.942 Standards of conduct; institutions.--

27 (1) A financial institution that ~~which~~ is licensed or  
28 authorized to do business pursuant to the financial  
29 institutions codes, or its officers, directors, or employees  
30 may not make or grant any loan or gratuity to any employee of  
31

1 the office ~~department~~ who has authority to examine or  
2 otherwise supervise such financial institution.

3 Section 1744. Section 655.943, Florida Statutes, is  
4 amended to read:

5 655.943 Applications; verification.--All information  
6 required by the financial institutions codes or rule of the  
7 commission ~~department~~ to be furnished in conjunction with  
8 applications to form, acquire or acquire assets of, merge, or  
9 change control of a financial institution must be verified by  
10 the office ~~department~~ by all reasonable means available. The  
11 office ~~department~~ shall conduct a detailed review of all  
12 financial information provided by an applicant, including a  
13 review of assets totaling 5 percent or more of the applicant's  
14 net worth.

15 Section 1745. Subsection (1), paragraph (b) of  
16 subsection (2), and paragraph (a) of subsection (4) of section  
17 655.948, Florida Statutes, are amended to read:

18 655.948 Significant events; notice required.--

19 (1) Unless exempted by the office ~~department~~ pursuant  
20 to subsection (4), every financial institution shall notify  
21 the office ~~department~~ of the occurrence of any of the events  
22 listed in subsection (2) by filing with the office ~~department~~  
23 a disclosure in a form to be specified by the commission  
24 ~~department~~. The form shall include the number and caption of  
25 all applicable events, along with a summary of each. Completed  
26 forms shall be certified for authenticity and accuracy by the  
27 chief executive officer of the financial institution.

28 (2) Events for which disclosure forms must be filed  
29 and the filing schedule for each are as follows:

30 (b) Every financial institution shall notify the  
31 office ~~department~~ within 30 days of the existence of any asset

1 which is defined as a nonaccrual asset and which is in excess  
2 of 15 percent of total assets.

3 (4)(a) The office department must exempt a financial  
4 institution from any of the provisions of this section if the  
5 office department determines that such financial institution  
6 is operating in a safe and sound manner pursuant to commission  
7 ~~departmental~~ rules relating to safe and sound operations. The  
8 commission department, ~~prior to granting any such exemption,~~  
9 shall adopt rules defining the term "safe and sound" and  
10 explicitly stating the criteria which shall constitute  
11 operating in a safe and sound manner.

12 Section 1746. Section 655.949, Florida Statutes, is  
13 amended to read:

14 655.949 ~~Department~~ Personnel; qualifications.--~~Before~~  
15 ~~January 1, 1993,~~The office department shall establish and  
16 publish educational, professional, and other appropriate  
17 qualifications for each position in the office department and  
18 ~~the Office of the Comptroller~~ authorized to participate in the  
19 regulation of financial institutions, including positions with  
20 the authority to overrule the actions or decisions of  
21 professional examiners or legal staff in their exercise of  
22 their duties under the financial institutions codes ~~excepting~~  
23 ~~the position of assistant comptroller~~. Such qualifications  
24 shall contain at a minimum sufficient experience and expertise  
25 in the regulation of financial institutions as to clearly  
26 justify the exercise of authority to overrule the actions or  
27 decisions of professional examiners or legal staff.

28 Section 1747. Section 655.963, Florida Statutes, is  
29 amended to read:

30 655.963 Access devices.--Customers receiving access  
31 devices shall be furnished by the respective issuers thereof

1 with such information regarding safety precautions as the  
2 commission ~~department~~ may require by rule. This information  
3 shall be furnished by personally delivering or mailing the  
4 information to each customer whose mailing address as to the  
5 account to which the access device relates is in this state.  
6 Such information shall be furnished with respect to access  
7 devices issued on or after October 1, 1994, at or before the  
8 time the customer is furnished with his or her access device.  
9 With respect to a customer to whom an "accepted access  
10 device," as defined in Federal Reserve Board Regulation E, 12  
11 C.F.R. part 205, has been issued prior to October 1, 1994, the  
12 information shall be delivered on or before 6 months from  
13 October 1, 1994. Only one notice need be furnished per  
14 household, and if access devices are furnished to more than  
15 one customer for a single account or set of accounts or on the  
16 basis of a single application or other request for access  
17 devices, only a single notice need be furnished in  
18 satisfaction of the notification responsibilities as to those  
19 customers. The information may be included with other  
20 disclosures related to the access device furnished to the  
21 customer, such as with any initial or periodic disclosure  
22 statement furnished pursuant to the Electronic Fund Transfer  
23 Act.

24 Section 1748. Section 657.002, Florida Statutes, is  
25 amended to read:

26 657.002 Definitions.--As used in this part:

27 (1) "Capital" means shares, deposits, and equity.

28 (2) "Central credit union" means a credit union the  
29 membership of which includes, but is not limited to, other  
30 credit unions, members of credit unions, credit union

31

1 employees, employees of organizations serving credit unions,  
2 and the families of such members.

3 (3) "Corporate credit union" means any central credit  
4 union organized pursuant to any state or federal act for the  
5 purpose of serving other credit unions.

6 (4) "The corporation" means the Florida Credit Union  
7 Guaranty Corporation, Inc.

8 (5) "Correspondent" means that person designated on an  
9 application to organize a credit union as the person to whom  
10 all correspondence regarding the application should be sent.

11 (6) "Credit union" means any cooperative society  
12 organized pursuant to this part.

13 ~~(7) "Department" means the Department of Banking and~~  
14 ~~Finance.~~

15 (7)~~(8)~~ "Deposits" means that portion of the capital  
16 paid into the credit union by members on which a contractual  
17 rate of interest will be paid.

18 (8)~~(9)~~ "Equity" means undivided earnings, reserves,  
19 and allowance for loan losses.

20 (9)~~(10)~~ "Foreign credit union" means a credit union  
21 organized and operating under the laws of another state.

22 (10)~~(11)~~ "Immediate family" means parents, children,  
23 spouse, or surviving spouse of the member, or any other  
24 relative by blood, marriage, or adoption.

25 (11)~~(12)~~ "Limited field of membership" means the  
26 defined group of persons designated as eligible for membership  
27 in the credit union who:

28 (a) Have a similar profession, occupation, or formal  
29 association with an identifiable purpose; or

30 (b) Reside within an identifiable neighborhood,  
31 community, rural district, or county; or

1 (c) Are employed by a common employer; or  
2 (d) Are employed by the credit union; and  
3  
4 members of the immediate family of persons within such group.

5 (12)~~(13)~~ "Shares" means that portion of the capital  
6 paid into the credit union by members on which dividends may  
7 be paid.

8 (13)~~(14)~~ "Unimpaired capital" means capital which is  
9 not impaired by losses that exceed applicable reserves.

10 Section 1749. Section 657.005, Florida Statutes, is  
11 amended to read:

12 657.005 Notice of intent to organize; investigation ~~by~~  
13 ~~department~~; application for authority to organize a credit  
14 union.--

15 (1) The proposed organizers of the proposed credit  
16 union shall file with the office ~~department~~ a notice of intent  
17 to organize, upon such form as the commission ~~department~~ may,  
18 by rule, prescribe.

19 (2) Any five or more residents of this state who  
20 represent a limited field of membership may apply to the  
21 office ~~department~~ for permission to organize a credit union.  
22 The fact that individuals within the proposed limited field of  
23 membership have credit union services available to them  
24 through another limited field of membership shall not preclude  
25 the granting of a certificate of authorization to engage in  
26 the business of a credit union.

27 (3) The application shall be submitted to the office  
28 ~~department~~ on forms and in the manner prescribed by rules  
29 adopted by the commission ~~department~~ and shall be accompanied  
30 by a nonrefundable filing fee of \$250. Such application shall  
31 include:

1           (a) The proposed name and the proposed location where  
2 the proposed credit union is to have its principal place of  
3 business.

4           (b) Designation of the par value of each share of the  
5 credit union.

6           (c) Designation of at least five persons who agree to  
7 serve on the board of directors, and at least three other  
8 persons who agree to serve on the supervisory committee or  
9 audit committee, with a signed agreement to serve in these  
10 capacities until the first annual meeting or until the  
11 election of their successors, whichever is later, executed by  
12 those who so agree.

13           (d) Any information required by the commission or  
14 office ~~department~~ to be submitted to the corporation or  
15 insuring agency.

16           (e) Bylaws of the credit union, which bylaws shall be  
17 in the form and substance as required by the commission  
18 ~~department~~.

19           (4) The office ~~department~~ shall have the power of  
20 investigation to the extent necessary to make the finding  
21 required under this section.

22           (5) The application shall be approved if the office  
23 ~~department~~ determines that:

24           (a) There is a showing of sufficient interest on the  
25 part of the proposed limited field of membership;

26           (b) The qualifications of the proposed board of  
27 directors and committee members are such as to indicate a  
28 reasonable likelihood that the affairs of the proposed credit  
29 union will be administered consistently with sound financial  
30 and credit union practices;

31

1 (c) The organization of the credit union would benefit  
2 its members; and

3 (d) The limited field of membership is of sufficient  
4 financial viability to indicate reasonable promise of  
5 successful operation of the proposed credit union. In  
6 determining the financial viability of the proposed limited  
7 field of membership and chances for reasonable promise of  
8 success of the proposed credit union, the office ~~department~~  
9 shall consider:

10 1. The size of the proposed limited field of  
11 membership, excluding potential members based upon familial  
12 relationships; and

13 2. Any other evidence that tends to indicate the  
14 reasonable promise of success of the proposed credit union.

15 (6) If the organization of a proposed credit union  
16 would result in an overlapping limited field of membership,  
17 the office ~~department~~ may disapprove the application if it  
18 finds that the formation of the proposed credit union will  
19 result in a substantial, adverse financial impact to an  
20 existing credit union having the same or substantially the  
21 same limited field of membership.

22 (7) Concurrently with submission of the application to  
23 the office ~~department~~, the applicant shall apply for insurance  
24 of accounts with the National Credit Union Administration.

25 (8) The applicant shall not accept any payments for  
26 credit to share or deposit accounts, or commence business  
27 operations as a credit union, until the certificate of  
28 authorization and the insurance certificate have been  
29 delivered to the credit union.

30 (9) The office ~~department~~ shall perform a preopening  
31 examination to verify good faith compliance with all the

1 requirements of law. If the office ~~department~~ finds that such  
2 requirements have been met, it shall issue and deliver the  
3 certificate of authorization to transact business. Any credit  
4 union which fails to open for business within 6 months after  
5 the issuance of such certificate will forfeit its existence as  
6 a credit union, and the certificate of authorization shall be  
7 revoked. For good cause shown, the office ~~department~~ may  
8 extend the opening date for an additional 6 months on its own  
9 motion or at the request of the credit union. Amounts  
10 credited on share accounts, less expenditures authorized by  
11 law, shall be returned pro rata to the respective account  
12 holders.

13 (10) All preopening costs and expenses in connection  
14 with the organization of the credit union and preparation for  
15 opening for business may be paid only from funds provided by  
16 the organizers or a sponsor and may be reimbursed by the  
17 credit union only out of undivided earnings, after provision  
18 has been made for reserves and dividends. However, the credit  
19 union may reimburse, as an operating expense, for forms and  
20 supplies, insurance, rent, and other expenses applicable to or  
21 consumed in the period after opening in accordance with rules  
22 adopted by the commission ~~department~~.

23 (11) The commission shall adopt and the office  
24 ~~department~~ shall provide a form certificate of authorization  
25 and bylaws consistent with this chapter which shall be used by  
26 applicants for credit unions.

27 Section 1750. Section 657.0061, Florida Statutes, is  
28 amended to read:

29 657.0061 Amendments to bylaws.--

30 (1) All bylaw amendments must be submitted to the  
31 office ~~department~~. The office ~~department~~ shall approve or

1 disapprove bylaw amendments within 60 days after receipt. The  
2 office ~~department~~ shall approve the proposed bylaw amendment  
3 unless it finds that the amendment:

4 (a) Is not in the best interest of the membership;

5 (b) Is not in accord with sound credit union

6 practices; or

7 (c) Exposes the assets of the credit union to  
8 unnecessary risks.

9 (2) The commission ~~department~~ may, by rule, allow  
10 certain bylaw amendments that are ministerial in nature to  
11 become effective immediately upon filing with the office  
12 ~~department~~.

13 Section 1751. Paragraph (a) of subsection (2) and  
14 subsections (5) and (6) of section 657.008, Florida Statutes,  
15 are amended to read:

16 657.008 Place of doing business.--

17 (2)(a) With 30 days ~~days~~ prior written notification  
18 to the office ~~department~~, a credit union may maintain branches  
19 at locations other than its main office or relocate branches  
20 previously established if the maintenance of such branches is  
21 determined by the board of directors to be reasonably  
22 necessary to furnish service to its members.

23 (5) A credit union may change its principal place of  
24 business within this state upon approval by the office  
25 ~~department~~.

26 (6)(a) The office ~~department~~ may authorize foreign  
27 credit unions to establish branches in Florida if all of the  
28 following criteria are met:

29 1. The state in which the foreign credit union's home  
30 office is located permits Florida credit unions to do business  
31 in the state under restrictions that are no greater than those

1 placed upon a domestic credit union doing business in that  
2 state. For this purpose, such restrictions shall include, but  
3 are not limited to, any fees, bonds, or other charges levied  
4 on domestic credit unions doing business in that state.

5         2. The deposits of such foreign credit union and its  
6 proposed Florida branch will be insured or guaranteed by an  
7 insurer or guarantor acceptable to the office ~~department~~.  
8 Insurance or guarantee of accounts comparable to that provided  
9 by the Florida Credit Union Guaranty Corporation is deemed to  
10 be acceptable; however, acceptance of insurance or guarantee  
11 of accounts by any insuring or guaranteeing agencies or  
12 companies shall be subject to a determination by the office  
13 ~~department~~ that the insuring or guaranteeing agency or company  
14 is in sound financial condition and that its reserves with  
15 respect to its insured or guaranteed accounts are no less than  
16 those of the Florida Credit Union Guaranty Corporation.

17         3. The credit union's field of membership is so  
18 limited as to be within that meaning of that term as defined  
19 in s. 657.002.

20         (b) Every foreign credit union operating in Florida  
21 shall keep the office ~~department~~ informed of every location at  
22 which it is operating.

23         (c) If the office ~~department~~ has reason to believe  
24 that a foreign credit union is operating a branch in this  
25 state in an unsafe and unsound manner, it shall have the right  
26 to examine such branch. If, upon examination, the office  
27 ~~department~~ finds that such branch is operating in an unsafe  
28 and unsound manner, it shall require the branch office to make  
29 appropriate modifications to bring such branch operations into  
30 compliance with generally accepted credit union operation in  
31 this state. Such foreign credit union shall reimburse the

1 ~~office department~~ for the full cost of this examination. Costs  
2 shall include examiner salaries, per diem, and travel  
3 expenses.

4 (d) Any foreign credit union operating in this state  
5 shall in any connection therewith be subject to suit in the  
6 courts of this state, by this state and the citizens of this  
7 state.

8 Section 1752. Subsection (3) and paragraphs (a) and  
9 (e) of subsection (7) of section 657.021, Florida Statutes,  
10 are amended to read:

11 657.021 Board of directors; executive committee.--

12 (3) Each director, upon assuming office, shall  
13 acknowledge that he or she is familiar with his or her  
14 responsibilities as a director and that he or she will  
15 diligently and honestly administer the affairs of such credit  
16 union and will not knowingly violate, or willfully permit to  
17 be violated, any of the provisions of the financial  
18 institution's codes or pertinent rules of the commission  
19 ~~department~~. The signed copy of such oath shall be filed with  
20 the office department within 30 days after election.

21 (7) The board of directors must exercise the following  
22 duties which are nondelegable:

23 (a) Require any officer or employee who has custody of  
24 or handles funds to give bond with good and sufficient surety  
25 in an amount and character determined by the board of  
26 directors in compliance with rules adopted by the commission  
27 ~~department~~.

28 (e) Adequately provide for reserves as required by  
29 this part or by rules or order of the commission or office  
30 ~~department~~ or as otherwise determined necessary by the board.

31

1           Section 1753. Subsections (3) and (4) of section  
2 657.026, Florida Statutes, are amended to read:

3           657.026 Supervisory or audit committee.--

4           (3) The supervisory or audit committee shall:

5           (a) Make or cause to be made a comprehensive annual  
6 audit of the credit union, in accordance with the rules of the  
7 commission ~~department~~.

8           (b) Make or cause to be made such supplementary audits  
9 or examinations as it deems necessary or as are requested by  
10 the board of directors or the office ~~department~~.

11           (c) Submit a report of every required audit or  
12 examination within a reasonable time to the board of directors  
13 with a copy to the office ~~department~~ and, depending upon which  
14 organization is applicable, a copy to the corporation or the  
15 National Credit Union Administration.

16           (d) Make a summary report, to the membership at the  
17 annual meeting, of any audits or examinations conducted during  
18 the preceding year.

19           (4) The supervisory or audit committee shall notify  
20 the board of directors, the office ~~department~~, and, as  
21 applicable, either the corporation or the National Credit  
22 Union Administration of any violation of this part, any  
23 violation of the certificate of authorization or bylaws of the  
24 credit union, or any practice of the credit union deemed by  
25 the supervisory or audit committee to be unsafe, unsound, or  
26 unauthorized.

27  
28 For the purposes of this subsection, two-thirds of the members  
29 of the supervisory or audit committee constitutes a quorum.

30           Section 1754. Subsections (3) and (6) of section  
31 657.028, Florida Statutes, are amended to read:

1           657.028 Activities of directors, officers, committee  
2 members, employees, and agents.--

3           (3) A person may not serve as an officer, director, or  
4 committee member of a credit union if she or he:

5           (a) Has been convicted of a felony or of an offense  
6 involving dishonesty, a breach of trust, a violation of this  
7 chapter, or fraud, except with the prior approval of the  
8 office ~~department~~ upon a showing of rehabilitation;

9           (b) Has been adjudicated bankrupt within the previous  
10 7 years;

11           (c) Has been removed by any regulatory agency as a  
12 director, officer, committee member, or employee of any  
13 financial institution, except with the prior approval of the  
14 office ~~department~~ upon a showing of rehabilitation and upon  
15 showing of ability to be bondable;

16           (d) Has performed acts of fraud or dishonesty, or has  
17 failed to perform duties, resulting in a loss which was  
18 subject to a paid claim under a fidelity bond, except with the  
19 prior approval of the office ~~department~~ upon a showing of  
20 rehabilitation and upon showing of ability to be bondable; or

21           (e) Has been found guilty of a violation of s. 655.50,  
22 relating to the Florida Control of Money Laundering in  
23 Financial Institutions Act; chapter 896, relating to offenses  
24 related to financial transactions; or any similar state or  
25 federal law.

26           (6) Within 30 days after election or appointment, a  
27 record of the names and addresses of the members of the board,  
28 members of committees, and all officers of the credit union  
29 shall be filed with the office ~~department~~ on forms prescribed  
30 by the commission ~~department~~.

31

1           Section 1755. Subsections (19), (26), (27), and (29)  
2 of section 657.031, Florida Statutes, are amended to read:

3           657.031 Powers.--A credit union shall have the power  
4 to:

5           (19) Perform tasks and render any services requested  
6 by the Federal Government or by this state or any agency,  
7 political subdivision, or municipality thereof, if approved by  
8 the office ~~department~~.

9           (26) Participate in systems which allow the transfer,  
10 withdrawal, or deposit of funds of credit unions or credit  
11 union members by automated or electronic means and hold  
12 membership in entities established to promote and effectuate  
13 these systems, provided such participation is not inconsistent  
14 with those rules of the commission ~~department~~ adopted to  
15 further service to the members and to protect members' funds  
16 against unreasonable risks.

17           (27) Issue credit cards and debit cards to allow  
18 members to obtain access to their shares, deposits, and  
19 extensions of credit, provided such issuance is not  
20 inconsistent with the rules of the commission ~~department~~. The  
21 commission ~~department~~ may, by rule, allow the use of devices  
22 similar to credit cards and debit cards to allow members to  
23 obtain access to their shares, deposits, and extensions of  
24 credit.

25           (29) Exercise such incidental powers as are necessary  
26 or requisite to effectively carry out the purposes for which  
27 it is organized, provided such exercise is approved by rule or  
28 order of the commission or office ~~department~~.

29           Section 1756. Subsection (3) of section 657.033,  
30 Florida Statutes, is amended to read:

31           657.033 Accounts.--

1           (3) A credit union may receive deposits from its  
2 members and contract to pay interest thereon, subject to  
3 conditions the board of directors establishes and subject to  
4 rules of the commission ~~department~~.

5           Section 1757. Section 657.0335, Florida Statutes, is  
6 amended to read:

7           657.0335 Additional power to restrict withdrawals.--In  
8 extraordinary circumstances external to the operations of the  
9 credit union which threaten the continued existence and  
10 operation of the credit union, the office ~~department~~ may  
11 restrict withdrawals for a period not to exceed 60 days.

12           Section 1758. Subsections (6) and (12) of section  
13 657.038, Florida Statutes, are amended to read:

14           657.038 Loan powers.--

15           (6) Loans secured by mortgages on real property must  
16 be made in accordance with written policies of the board of  
17 directors and rules of the commission ~~department~~.

18           (12) The commission ~~department~~ may adopt rules to  
19 provide for minimum documentation and safe lending procedures  
20 necessary to protect the members' funds.

21           Section 1759. Paragraph (i) of subsection (1),  
22 paragraph (a) of subsection (2), paragraph (b) of subsection  
23 (5), and subsections (6) and (7) of section 657.042, Florida  
24 Statutes, are amended to read:

25           657.042 Investment powers and limitations.--A credit  
26 union may invest its funds subject to the following  
27 definitions, restrictions, and limitations:

28           (1) INVESTMENTS NOT SUBJECT TO LIMITATIONS.--There is  
29 no limitation with respect to the capital of the investing  
30 credit union on the following investments:

31

1           (i) Stock of the Federal National Mortgage  
2 Association, or any other similar entity designated by the  
3 office department, designed to promote investment in  
4 residential mortgages, which may be purchased and retained as  
5 required in connection with mortgage transactions with the  
6 association or entity.

7           (2) INVESTMENTS SUBJECT TO LIMITATION OF 25 PERCENT OF  
8 CAPITAL OF THE CREDIT UNION.--Up to 25 percent of the capital  
9 of the credit union may be invested in:

10           (a) The shares or deposit accounts in any one  
11 corporate credit union or other insured financial depository  
12 institution. The credit union may exceed the 25-percent  
13 investment limitation in the corporate credit union, subject  
14 to the prior written approval of the office department.

15           (5) INVESTMENTS IN REAL ESTATE AND EQUIPMENT FOR THE  
16 CREDIT UNION.--

17           (b) The limitations provided by this subsection may be  
18 exceeded with the prior written approval of the office  
19 department. The office department shall grant such approval if  
20 it is satisfied that:

21           1. The proposed investment is necessary.  
22           2. The amount thereof is commensurate with the size  
23 and needs of the credit union.  
24           3. The investment will be beneficial to the members.

25           (6) INVESTMENTS SUBJECT TO ~~DEPARTMENT~~ APPROVAL.--A  
26 credit union may invest its funds in such other investments,  
27 including the capital stock of other financial institutions,  
28 as the commission or office department approves by rule or  
29 order.

30           (7) SPECIAL PROVISIONS.--

31

1 (a) None of the bonds or other obligations described  
2 in this section shall be eligible for investment by credit  
3 unions in any amount unless current as to all payments of  
4 principal and interest and unless rated in one of the four  
5 highest classifications, or, in the case of commercial paper,  
6 unless it is of prime quality and of the highest letter and  
7 numerical rating, as established by a nationally recognized  
8 investment rating service, or any comparable rating as  
9 determined by the office ~~department~~.

10 (b) With prior approval of the office ~~department~~, any  
11 investment permitted in this section may also be made  
12 indirectly by investment in a trust or mutual, the investments  
13 of which are limited as set forth in this section, provided  
14 that the credit union must maintain a current file on each  
15 investment which contains sufficient information to determine  
16 whether the investment complies with the requirements of this  
17 section. If the investment fails to comply with the  
18 requirements of this section, the credit union must divest  
19 itself of its investment, unless otherwise approved by the  
20 office ~~department~~.

21 Section 1760. Subsections (1), (2), (3), (5), (6),  
22 (7), and (8) of section 657.043, Florida Statutes, are amended  
23 to read:

24 657.043 Reserves.--

25 (1) TRANSFERS TO REGULAR RESERVE.--Immediately before  
26 paying each dividend, the total of all income for the period  
27 shall be determined. From this amount, there shall be set  
28 aside sums as a regular reserve in accordance with the  
29 following schedule:

30 (a) A credit union shall set aside:

31

1           1. Five percent of the total of all income for the  
2 period, until the regular reserve equals 6 percent of the risk  
3 assets, then,

4           2. Two percent of the total of all income for the  
5 period, until the regular reserve equals 8 percent of the risk  
6 assets.

7           (b) Whenever the ratio of regular reserves to risk  
8 assets falls below the stated percent, it shall be replenished  
9 by regular contributions as provided in paragraph (a).

10           (c) The office ~~department~~ may decrease the reserve  
11 requirements set forth in this subsection when in its opinion  
12 such a decrease is necessary to preserve the fiscal soundness  
13 of the credit union.

14           (2) ALLOWANCE FOR LOAN LOSSES ACCOUNT.--The credit  
15 union shall maintain an account for loan losses. The amount  
16 in the account must equal the board's estimate of losses in  
17 the loan portfolio and be consistent with the rules of the  
18 commission ~~department~~. The account must be provided for,  
19 before paying a dividend, in the manner provided by rule. This  
20 account constitutes part of the regular reserve for the  
21 purpose of determining the ratio of regular reserves to risk  
22 assets.

23           (3) USE OF REGULAR RESERVE.--The regular reserve shall  
24 belong to the credit union and shall be used to meet losses.  
25 In the event of a decrease, the office ~~department~~ may require  
26 additional transfers to the regular reserve above the amount  
27 required by subsection (1) until the decrease has been  
28 restored. The regular reserve may not be decreased without the  
29 prior written approval of the office ~~department~~ or as provided  
30 by rule of the commission.

31

1           (5) ALLOWANCE FOR INVESTMENT LOSSES.--The credit union  
2 may maintain a contra asset account to provide an allowance  
3 for investment losses, which will not be included in the  
4 determination of equity. The account must be maintained  
5 consistent with the rules of the commission ~~department~~.

6           (6) SPECIAL RESERVES.--In addition to such regular  
7 reserve, special reserves shall be established:

8           (a) To protect members against losses resulting from  
9 credit extended or from risk assets when required by rule, or  
10 when found by the office ~~department~~, in any special case, to  
11 be necessary for that purpose; or

12           (b) As authorized by the board of directors.

13           (7) RESERVE FOR CONTINGENCIES.--The board of directors  
14 may, after the regular reserve required by this section and  
15 rules of the commission ~~department~~ has been set aside,  
16 transfer a portion of undivided earnings to an auxiliary  
17 reserve account to provide for additional possible losses and  
18 expenses.

19           (8) RESERVES.--The ratio of equity to total assets for  
20 each credit union must be maintained at not less than 5  
21 percent. At the end of the calendar quarter when this ratio  
22 is determined to be less than 5 percent, the credit union  
23 shall, within 60 days thereafter, prepare and file with the  
24 office ~~department~~ for approval a plan to achieve the minimum  
25 ratio within 4 years, or such longer period of time approved  
26 by the office ~~department~~. Once achieved, each credit union  
27 must maintain a ratio of equity to total assets of not less  
28 than 5 percent, unless otherwise authorized by the office  
29 ~~department~~. The commission ~~department~~, by rule, shall  
30 prescribe the information, types of restrictions and  
31 limitations on operations, reporting requirements, and other

1 criteria that are required to be included in an acceptable  
2 plan. An acceptable plan must recognize the unique  
3 characteristics and risk differences for the individual credit  
4 union.

5 Section 1761. Section 657.053, Florida Statutes, is  
6 amended to read:

7 657.053 Assessments; state credit unions.--Each state  
8 credit union shall pay to the office ~~department~~ a semiannual  
9 assessment equal to \$500 plus 15 cents for each \$1,000 of  
10 total assets. The amounts of all assessments provided for in  
11 this section shall be deemed to be maximum amounts. The  
12 commission ~~department~~ has the authority to establish, by rule,  
13 and from time to time to change, assessments in amounts less  
14 than the maximum amounts stated in this section.

15 Section 1762. Section 657.062, Florida Statutes, is  
16 amended to read:

17 657.062 Assumption of control by guarantor or  
18 insurer.--

19 (1) The office ~~department~~ may direct the corporation  
20 or the National Credit Union Administration, whichever is  
21 applicable, to assume control of the property, assets, and  
22 business of its member credit union and to operate it subject  
23 to the directions of the office ~~department~~:

24 (a) Whenever the office ~~department~~ finds that the  
25 credit union:

26 1. Is engaging or has engaged in an unsafe or unsound  
27 practice;

28 2. Is violating or has violated any provision of this  
29 chapter; or

30  
31

1           3. Is violating or has violated any commission  
2 ~~department~~ rule, office department order, or written agreement  
3 entered into with the office department,  
4  
5 in such a manner that the credit union is threatened with  
6 imminent insolvency.

7           (b) Whenever a majority of the members of the board of  
8 directors of the credit union have been removed by the office  
9 ~~department~~ or shall have resigned.

10           (2) Except when prohibited by federal or state law, in  
11 the event of assumption of control, the guarantor or insurer  
12 may elect the board of directors and the operating committees  
13 and may, without penalty or liability, prepay any deposit  
14 accounts; terminate any contracts or agreements with  
15 employees, independent contractors, or consultants; terminate  
16 any contract or agreement with any person to provide goods,  
17 products, or services if the performance of such contract  
18 would adversely affect the safety or soundness of the credit  
19 unions or if such contract was entered into in violation of s.  
20 657.0315(1); and terminate or assign any lease for property.  
21 The authority of the guarantor or insurer to continue  
22 operation of a credit union shall continue for a period not to  
23 exceed 180 days, unless extended by the office department for  
24 an additional period not to exceed 180 days at the request of  
25 the guarantor or insurer, or unless involuntary liquidation  
26 proceedings have been initiated by the office department. In  
27 the event that the guarantor or insurer does assume control  
28 pursuant to the direction of the office department, a meeting  
29 of the credit union shall be called within 180 days, or within  
30 the period of extension as approved by the office department,  
31 for the specific purpose of electing a new board of directors,

1 who shall take office when the guarantor or insurer surrenders  
2 control, or considering such other recommendations as the  
3 guarantor or insurer and the office ~~department~~ may make.

4 Section 1763. Section 657.063, Florida Statutes, is  
5 amended to read:

6 657.063 Involuntary liquidation.--

7 (1) If the office ~~department~~ finds that any credit  
8 union is bankrupt or insolvent, or is transacting its business  
9 in an unsound, unsafe, or unauthorized manner such that it is  
10 threatened with imminent insolvency, and liquidation is in the  
11 best interest of the members, the office ~~department~~ may, in  
12 its discretion, order the credit union placed in involuntary  
13 liquidation and designate and appoint a liquidator to take  
14 charge of the assets and affairs of the credit union. The  
15 order shall set forth the specific findings and reasons for  
16 the action taken.

17 (2) The liquidator must be appointed by the office  
18 ~~department~~. The corporation or the National Credit Union  
19 Administration, whichever is applicable, must be given the  
20 right of first refusal. The office ~~department~~ may appoint  
21 another entity if refused by the primary guarantor or insurer.

22 (3) Upon appointment and in accordance with the  
23 directions of the office ~~department~~, the liquidator shall take  
24 possession and charge of all of the assets, books, and records  
25 of the credit union and shall take charge of the affairs,  
26 business, and operations of the credit union and shall have  
27 all of the powers of the board of directors, credit committee,  
28 credit manager, and supervisory committee of the credit union.  
29 The liquidator shall continue the business operation of the  
30 credit union for a period not to exceed 180 days, subject to  
31 the direction of the office ~~department~~. The liquidator shall

1 have full authority to make loans and investments and to  
2 permit deposits to or withdrawals from accounts by members,  
3 except that during the period of such operation by the  
4 liquidator, no withdrawal from any account or accounts which  
5 are not fully insured or guaranteed shall be permitted.  
6 Except when prohibited by federal or state law, the liquidator  
7 may, without penalty or liability, prepay any deposit  
8 accounts; terminate any contracts or agreements with  
9 employees, independent contractors, or consultants; terminate  
10 any contract or agreement that was entered into in violation  
11 of s. 657.0315(1) or s. 657.062(2); and terminate or assign  
12 any lease for property. The liquidator shall proceed with a  
13 liquidation of assets by sale or transfer of assets and  
14 conversion of assets into cash or liquid investments in  
15 preparation for distribution to members on account of shares  
16 and deposits. The liquidator shall have specific authority to  
17 sell loan assets. The liquidator may enter into agreements for  
18 the sale or transfer of loans and other assets with the  
19 assumption of outstanding share and deposit accounts, which  
20 assumption constitutes full and complete distribution to  
21 members on account of shares and deposits.

22 (4) On the completion of the liquidation and  
23 certification by the liquidator that the distribution of the  
24 assets of the credit union has been completed, the office  
25 ~~department~~ shall cancel the certificate of authorization of  
26 the credit union. The office ~~department~~ may designate a  
27 custodian to maintain the books and records of the liquidated  
28 credit union.

29 (5) When the liquidating agent of the credit union has  
30 been appointed, the office ~~department~~ may waive or deem  
31 inapplicable the fees required by this chapter and the

1 examination required by s. 655.045(1)(a), provided the  
2 liquidating agent submits periodic reports to the office  
3 ~~department~~ on the status of the liquidation.

4 Section 1764. Subsections (1), (5), (8), and (9) of  
5 section 657.064, Florida Statutes, are amended to read:

6 657.064 Voluntary liquidation.--A credit union may  
7 elect to dissolve voluntarily and liquidate its affairs in the  
8 following manner:

9 (1) Before considering any resolution pertaining to  
10 voluntary liquidation by the board of directors, the credit  
11 union must inform the office ~~department~~ and the corporation or  
12 the National Credit Union Administration, whichever is  
13 applicable, of the time and place of the meeting of the board  
14 of directors. The notification must be transmitted at least 5  
15 days before the board of directors meets.

16 (5) The notice required by subsection (3) shall also  
17 be mailed to the office ~~department~~ within 5 days after the  
18 action of the board of directors. Within 10 days after the  
19 meeting of the membership, the board of directors shall notify  
20 the office ~~department~~ and the corporation or the National  
21 Credit Union Administration, whichever is applicable, in  
22 writing of the action taken by the members.

23 (8) When the liquidating agent of the credit union has  
24 been appointed, the office ~~department~~ may waive or hold  
25 inapplicable the fees required by this chapter and the  
26 examination required by s. 655.045(1)(a), provided the  
27 liquidating agent submits periodic reports to the office  
28 ~~department~~ on the status of the liquidation.

29 (9) Whenever the board of directors or liquidator  
30 determines that all assets from which there is a reasonable  
31 expectancy of realization have been liquidated and distributed

1 to the members, a certificate of dissolution on forms  
2 prescribed by the commission ~~department~~ shall be prepared and  
3 filed with the office ~~department~~ together with all pertinent  
4 books and records of the credit union, and thereupon the  
5 credit union shall be dissolved and its certificate of  
6 authorization canceled. The office ~~department~~ may designate a  
7 custodian to maintain the books and records of the liquidated  
8 credit union.

9 Section 1765. Subsections (2), (4), (5), (6), and (7)  
10 of section 657.065, Florida Statutes, are amended to read:

11 657.065 Merger.--

12 (2) The office ~~department~~ shall approve a merger as  
13 provided in this section if it finds upon the written and  
14 verified application filed by each board of directors that:

15 (a) Notice of intent to merge was given to the members  
16 of the surviving credit union;

17 (b) Notice of the meeting called to consider the  
18 merger was given to the members entitled to vote upon the  
19 question;

20 (c) Such notice disclosed the purpose of the meeting  
21 and properly informed the membership of the merging credit  
22 union that approval of a merger was under consideration;

23 (d) A majority of the votes cast upon the question by  
24 the members of the merging credit union were in favor of the  
25 merger; and

26 (e) The merger will not seriously impair the ongoing  
27 viability of the surviving credit union.

28 (4) The plan of merger shall be transmitted to the  
29 office ~~department~~ for its approval.

30  
31

1           (5) A merger application shall be accompanied by a  
2 nonrefundable fee of \$500. The fee may be waived by the  
3 office ~~department~~ for a merger pursuant to subsection (6).

4           (6) Notwithstanding any other provisions of this  
5 chapter or of chapter 120, a credit union may merge without a  
6 vote of the membership when the office ~~department~~ determines  
7 that the credit union is in danger of insolvency and that the  
8 merger will enable the credit union to avoid liquidation.

9           (7) A merger with a resulting state credit union may  
10 not take place or be effective unless the office ~~department~~  
11 issues a certificate of merger. Upon consummation of the  
12 merger, the certificate of authorization of the merged credit  
13 union shall be returned to the proper authority to be  
14 canceled. Also at consummation, all property and property  
15 rights of, and members' interests in, the merged credit union  
16 vest in the surviving credit union without deed, endorsement,  
17 or other instrument of transfer, and all debts, obligations,  
18 and liabilities of the merged credit union must be assumed by  
19 the surviving credit union under the certificate of  
20 authorization under which the merger was effected. All members  
21 of the surviving credit union have the same rights,  
22 privileges, and responsibilities after the merger is  
23 completed. The certificate of merger must be recorded in the  
24 public records of all counties in which the merging credit  
25 union owned any real property at the effective date of the  
26 merger.

27           Section 1766. Subsection (4) of section 657.066,  
28 Florida Statutes, is amended to read:

29           657.066 Conversion from state credit union to federal  
30 credit union and conversely.--Any credit union organized under  
31 this part may convert into a federal credit union and any

1 federal credit union may convert into a credit union organized  
2 pursuant to this part upon approval of the authority under the  
3 supervision of which the converted credit union will operate  
4 and upon compliance with applicable laws.

5 (4) Upon the written approval of the authority under  
6 the supervision of which the converting credit union is to  
7 operate, the converting credit union shall become a credit  
8 union under this chapter or under the laws of the United  
9 States, as the case may be, and thereupon all assets shall  
10 become the property of the converted credit union, subject to  
11 all existing liabilities against the credit union. All shares  
12 and deposits shall remain intact. Any federal credit union  
13 seeking to convert to a state-chartered credit union shall pay  
14 a nonrefundable filing fee of \$500. The office ~~department~~ may  
15 conduct an examination of any converting federal credit union  
16 before approving the conversion and the converting credit  
17 union shall pay a nonrefundable examination fee as provided in  
18 s. 655.411(1)(b).

19 Section 1767. Subsection (2) of section 657.068,  
20 Florida Statutes, is amended to read:

21 657.068 Central credit unions.--

22 (2) Membership in a central credit union shall be  
23 limited to:

24 (a) Credit unions organized and operating under this  
25 part or any other credit union act;

26 (b) Officers, directors, committee members, and  
27 employees of such credit unions, and officials and employees  
28 of any association of credit unions;

29 (c) Organizations and associations of those persons or  
30 organizations set forth in paragraph (a) or paragraph (b);

31

1 (d) Residents of this state having a limited field of  
2 membership who have applied to the office ~~department~~ to  
3 organize a credit union and have been denied on grounds other  
4 than those set forth in s. 657.005(6);

5 (e) Residents of this state having a limited field of  
6 membership, if their application for membership is approved by  
7 the board of directors of the central credit union and by the  
8 office ~~department~~;

9 (f) Persons in the field of membership of liquidated  
10 credit unions or of credit unions which have entered into or  
11 are about to enter into voluntary or involuntary liquidation  
12 proceedings; and

13 (g) Members of the immediate families of all members  
14 qualified above.

15 Section 1768. Subsection (6) of section 658.12,  
16 Florida Statutes, is amended to read:

17 658.12 Definitions.--Subject to other definitions  
18 contained in the financial institutions codes and unless the  
19 context otherwise requires:

20 (6) "Community" means an incorporated city, town, or  
21 village or, where not within any of the foregoing or if the  
22 office ~~department~~ determines that the area within the  
23 corporate limits of any of the foregoing is inappropriate  
24 under specific circumstances, such trade area or other area,  
25 determined by the office ~~department~~ to be appropriate under  
26 the circumstances, in which are located persons having  
27 generally similar interests, including residential, social, or  
28 business interests or combinations thereof.

29 Section 1769. Section 658.16, Florida Statutes, is  
30 amended to read:

31

1           658.16 Creation of banking or trust corporation.--When  
2 authorized by the office ~~department~~, as provided herein, a  
3 corporation may be formed under the laws of this state for the  
4 purpose of becoming a state bank or a state trust company and  
5 conducting a general banking or trust business.

6           Section 1770. Section 658.165, Florida Statutes, is  
7 amended to read:

8           658.165 Banker's banks; formation; applicability of  
9 financial institutions codes; exceptions.--

10           (1) When authorized by the office ~~department~~, a  
11 corporation may be formed under the laws of this state for the  
12 purpose of becoming a banker's bank. An application for  
13 authority to organize a banker's bank is subject to the  
14 provisions of ss. 658.19, 658.20, and 658.21, except that the  
15 provisions of ss. 658.20(1)(b) and (c) and 658.21(2) do not  
16 apply.

17           (2) A banker's bank chartered pursuant to subsection  
18 (1) shall be subject to the provisions of the financial  
19 institutions codes and rules adopted thereunder; and, except  
20 as otherwise specifically provided herein or by rule or order  
21 of the commission or office ~~department~~, a banker's bank shall  
22 be vested with or subject to the same rights, privileges,  
23 duties, restrictions, penalties, liabilities, conditions, and  
24 limitations that would apply to a state bank.

25           (3) Notwithstanding any other provision of this  
26 chapter, a banker's bank may repurchase, for its own account,  
27 shares of its own capital stock; however, the outstanding  
28 capital stock may not be reduced below the minimum required by  
29 this chapter without the prior approval of the office  
30 ~~department~~.

31

1 (4) A banker's bank may provide services at the  
2 request of financial institutions in organizations that have:

3 (a) Received conditional regulatory approval from the  
4 office ~~department~~ in the case of a state bank or preliminary  
5 approval from the Office of the Comptroller of the Currency in  
6 the case of a national bank.

7 (b) Filed articles of incorporation pursuant to s.  
8 658.23 in the case of a state bank, or filed acceptable  
9 articles of incorporation and an organization certificate in  
10 the case of a national bank.

11 (c) Received capital funds in an amount not less than  
12 the minimum capitalization required in any notice of or order  
13 granting conditional regulatory approval.

14 (5) A banker's bank may provide services to the  
15 organizers of a proposed financial institution that has not  
16 received conditional regulatory approval provided that such  
17 services are limited to the financing of the expenses of  
18 organizing such financial institution and expenses relating to  
19 the acquisition or construction of the institution's proposed  
20 operating facilities and associated fixtures and equipment.

21 (6) If the commission or office ~~department~~ finds that  
22 any provision of this chapter is inconsistent with the purpose  
23 for which a banker's bank is organized and that the welfare of  
24 the public or any financial institution would not be  
25 jeopardized thereby, the commission, it may by rule, or the  
26 office, by order, may exempt a banker's bank from such  
27 provision or limit the application thereof.

28 Section 1771. Section 658.19, Florida Statutes, is  
29 amended to read:

30 658.19 Application for authority to organize a bank or  
31 trust company.--

1           (1) A written application for authority to organize a  
2 banking corporation or a trust company shall be filed with the  
3 office ~~department~~ by the proposed directors and shall include:

4           (a) The name, residence, and occupation of each  
5 proposed director.

6           (b) The proposed corporate name.

7           (c) The total initial capital, the number of shares of  
8 each class of the capital stock to be authorized, and the par  
9 value of the shares of each class.

10           (d) The community, including the street and number, if  
11 available, or, if not available, the area within the  
12 community, where the principal office of the proposed bank or  
13 proposed trust company is to be located.

14           (e) If known, the name and residence of the proposed  
15 president, the proposed chief executive officer if other than  
16 the proposed president and, if the application is for  
17 organization of a trust company or a bank with trust powers,  
18 the name and address of the proposed trust officer.

19           (f) Such detailed financial, business, and  
20 biographical information as the commission or office  
21 ~~department~~ may reasonably require for each proposed director,  
22 president, chief executive officer (if other than the  
23 president), and trust officer (if applicable).

24           (g) A request for trust powers if desired in  
25 connection with an application to organize a bank.

26           (2) The application shall be in such form as the  
27 commission prescribes and contain such additional information  
28 as the commission or office ~~department~~ may reasonably requires  
29 ~~require~~ and shall be accompanied by the required fee, which  
30 shall not be refundable.

31

1           (3) Notwithstanding chapter 120, an application may be  
2 returned to the applicant, on a one-time basis, for correction  
3 of substantial deficiencies and may be resubmitted without  
4 payment of an additional fee if such resubmission takes place  
5 within 60 days after the date the office ~~department~~ returns  
6 the application.

7           Section 1772. Section 658.20, Florida Statutes, is  
8 amended to read:

9           658.20 Investigation by office ~~department~~.--

10           (1) Upon the filing of an application, the office  
11 ~~department~~ shall make an investigation of:

12           (a) The character, reputation, financial standing,  
13 business experience, and business qualifications of the  
14 proposed officers and directors.

15           (b) The need for bank or trust facilities or  
16 additional bank or trust facilities, as the case may be, in  
17 the primary service area where the proposed bank or trust  
18 company is to be located.

19           (c) The ability of the primary service area to support  
20 the proposed bank or trust company and all other existing bank  
21 or trust facilities in the primary service area.

22           (2) The office ~~department~~ is authorized to obtain  
23 criminal record information from the National Crime  
24 Information Center or from the Department of Law Enforcement  
25 as a part of its investigation pursuant to this section.

26           (3) The office ~~department~~ may accept an application  
27 for prior approval of individuals who may become directors and  
28 executive officers of a failing bank, association, or trust  
29 company. Such applications are governed by the application  
30 criteria set forth in paragraph (1)(a) and ss. 658.21(4) and  
31 658.28. The application must be in the form prescribed by the

1 commission and must contain additional information prescribed  
2 by the commission or office department, and must be  
3 accompanied by a nonrefundable, nontransferable filing fee of  
4 \$7,500.

5 Section 1773. Section 658.21, Florida Statutes, is  
6 amended to read:

7 658.21 Approval of application; findings  
8 required.--The office department shall approve the application  
9 if it finds that:

10 (1) Local conditions indicate reasonable promise of  
11 successful operation for the proposed state bank or trust  
12 company. In determining whether an applicant meets the  
13 requirements of this subsection, the office department shall  
14 consider all materially relevant factors, including:

15 (a) The purpose, objectives, and business philosophy  
16 of the proposed state bank or trust company.

17 (b) The projected financial performance of the  
18 proposed bank or trust company.

19 (c) The feasibility of the proposed bank or trust  
20 company, as stated in the business plan, particularly with  
21 respect to asset and liability growth and management.

22 (2) The proposed capitalization is in such amount as  
23 the office department deems adequate, but in no case may the  
24 total capital accounts at opening for a bank be less than \$6  
25 million if the proposed bank is to be located in any county  
26 which is included in a metropolitan statistical area, or \$4  
27 million if the proposed bank is to be located in any other  
28 county. The total capital accounts at opening for a trust  
29 company may not be less than \$2 million. Of total capital  
30 accounts at opening, as noted in the application or amendments  
31 or changes to the application, at least 25 percent of the

1 capital shall be directly owned or controlled by the  
2 organizing directors of the bank. Directors of banks owned by  
3 single-bank holding companies shall have direct ownership or  
4 control of at least 25 percent of the bank holding company's  
5 capital accounts. The office ~~department~~ may disallow illegally  
6 obtained currency, monetary instruments, funds, or other  
7 financial resources from the capitalization requirements of  
8 this section.

9 (3) The proposed capital structure is in such form as  
10 the office ~~department~~ may require, but, at a minimum, every  
11 state bank or trust company hereafter organized shall  
12 establish paid-in capital equal in amount to not less than 50  
13 percent of its total capital accounts and a paid-in surplus  
14 equal in amount to not less than 20 percent of its paid-in  
15 capital.

16 (4) The proposed officers have sufficient financial  
17 institution experience, ability, standing, and reputation and  
18 the proposed directors have sufficient business experience,  
19 ability, standing, and reputation to indicate reasonable  
20 promise of successful operation, and none of the proposed  
21 officers or directors has been convicted of, or pled guilty or  
22 nolo contendere to, any violation of s. 655.50, relating to  
23 the Florida Control of Money Laundering in Financial  
24 Institutions Act; chapter 896, relating to offenses related to  
25 financial institutions; or any similar state or federal law.  
26 At least two of the proposed directors who are not also  
27 proposed officers shall have had at least 1 year direct  
28 experience as an executive officer, regulator, or director of  
29 a financial institution within 3 years of the date of the  
30 application. However, if the applicant demonstrates that at  
31 least one of the proposed directors has very substantial

1 experience as an executive officer, director, or regulator of  
2 a financial institution more than 3 years before the date of  
3 the application, the office ~~department~~ may modify the  
4 requirement and allow only one director to have direct  
5 financial institution experience within the last 3 years. The  
6 proposed president or chief executive officer shall have had  
7 at least 1 year of direct experience as an executive officer,  
8 director, or regulator of a financial institution within the  
9 last 3 years.

10 (5) The corporate name of the proposed state bank or  
11 trust company is approved by the office ~~department~~.

12 (6) Provision has been made for suitable quarters at  
13 the location in the application.

14 Section 1774. Section 658.22, Florida Statutes, is  
15 amended to read:

16 658.22 Coordination with federal agencies.--Upon  
17 approval by the office ~~department~~ of the application for  
18 authority to organize a state bank, the office ~~department~~  
19 shall forward a copy of its final order to the appropriate  
20 federal regulatory agencies. The failure of an applicant to  
21 apply for membership in the Federal Reserve System or apply  
22 for the insurance of accounts by the Federal Deposit Insurance  
23 Corporation within 3 months after approval by the office  
24 ~~department~~ or a final order by the Federal Deposit Insurance  
25 Corporation denying an applicant's application for insurance  
26 of accounts, terminates and revokes the final order issued by  
27 the office ~~department~~ approving the application.

28 Section 1775. Section 658.23, Florida Statutes, is  
29 amended to read:

30  
31

1           658.23 Submission of articles of incorporation;  
2 contents; form; approval; filing; commencement of corporate  
3 existence; bylaws.--

4           (1) Within 3 months after approval by the office  
5 ~~department~~ and the appropriate federal regulatory agency, the  
6 applicant shall submit its duly executed articles of  
7 incorporation to the office ~~department~~, together with the  
8 filing fee due the Department of State under s. 607.0122.

9           (2) The articles of incorporation shall contain:

10           (a) The name of the proposed bank or trust company.

11           (b) The general nature of the business to be  
12 transacted or a statement that the corporation may engage in  
13 any activity or business permitted by law. Such statement  
14 shall authorize all such activities and business by the  
15 corporation.

16           (c) The amount of capital stock authorized, showing  
17 the maximum number of shares of par value common stock and of  
18 preferred stock, and of every kind, class, or series of each,  
19 together with the distinguishing characteristics and the par  
20 value of all shares.

21           (d) The amount of capital with which the corporation  
22 will begin business, which shall not be less than the amount  
23 required by the office ~~department~~ pursuant to s. 658.21.

24           (e) A provision that the corporation is to have  
25 perpetual existence unless existence is terminated pursuant to  
26 the financial institutions codes.

27           (f) The initial street address of the main office of  
28 the corporation, which shall be in this state.

29           (g) The number of directors, which shall be five or  
30 more, and the names and street addresses of the members of the  
31 initial board of directors.

1 (h) A provision for preemptive rights, if applicable.

2 (i) A provision authorizing the board of directors to  
3 appoint additional directors, pursuant to s. 658.33, if  
4 applicable.

5  
6 The office ~~department~~ shall provide to the proposed directors  
7 form articles of incorporation which shall include only those  
8 provisions required by this section or by chapter 607. The  
9 form articles shall be acknowledged by the proposed directors  
10 and returned to the office ~~department~~ for filing with the  
11 Department of State.

12 (3) Within 30 days of receipt of the executed articles  
13 of incorporation in the form previously approved, and the  
14 required filing fees, the office ~~department~~ shall place the  
15 following legend upon the articles of incorporation and affix  
16 the seal of the office ~~of the Comptroller of Florida~~ thereto.  
17 The legend shall in substance read: "Approved by the Office  
18 of Financial Institutions and Securities Regulation ~~Department~~  
19 ~~of Banking and Finance~~ this .... day of .... ..(herein the  
20 name and signature of the director ~~head~~ of the office  
21 ~~department~~)...." Thereafter, the articles of incorporation  
22 shall be filed with the Department of State.

23 (4) The corporate existence of a banking corporation  
24 or a trust company corporation shall commence on the date the  
25 approved articles of incorporation are filed with the  
26 Department of State, unless otherwise provided in the articles  
27 of incorporation pursuant to s. 607.0203. Thereafter, a  
28 banking corporation or trust company corporation may perform  
29 all acts necessary to perfect its organization, obtain and  
30 equip a place of business, and otherwise prepare to conduct a  
31 general banking business or trust business. However, no

1 banking corporation or trust company corporation shall become  
2 a state bank or a state trust company or transact any banking  
3 business or trust business until it has received a certificate  
4 of authority to transact business as provided in s. 658.25.

5 (5) Unless the articles of incorporation provide  
6 otherwise, the board of directors shall have authority to  
7 adopt or amend bylaws that do not conflict with bylaws that  
8 may have been adopted by the stockholders. The bylaws shall  
9 be for the government of the bank or trust company,  
10 subordinate only to the articles of incorporation and the laws  
11 of the United States and of this state. A current copy of the  
12 bylaws shall be filed with the office ~~department~~ at all times.

13 (6) A bank or trust company may not amend its articles  
14 of incorporation without the prior written approval of the  
15 office ~~department~~.

16 Section 1776. Section 658.235, Florida Statutes, is  
17 amended to read:

18 658.235 Subscriptions for stock; approval of major  
19 shareholders.--

20 (1) Within 6 months after commencement of corporate  
21 existence, and at least 30 days prior to opening, the  
22 directors shall have completed the stock offering and shall  
23 file with the office ~~department~~ a final list of subscribers to  
24 all of the capital stock of the proposed bank or trust company  
25 showing the name and residence of each subscriber and the  
26 amount of stock of every class subscribed for by each.

27 (2) The directors shall also provide such detailed  
28 financial, business, and biographical information as the  
29 commission or office ~~department~~ may reasonably require for  
30 each person who, together with related interests, subscribes  
31 to 10 percent or more of the voting stock or nonvoting stock

1 which is convertible into voting stock of the proposed bank or  
2 trust company. The office ~~department~~ shall make an  
3 investigation of the character, financial responsibility, and  
4 financial standing of each such person in order to determine  
5 whether he or she is likely to control the bank or trust  
6 company in a manner which would jeopardize the interests of  
7 the depositors and creditors of the bank or trust company, the  
8 other stockholders, or the general public. This investigation  
9 shall include a determination of whether any such person has  
10 been convicted of, or pled guilty or nolo contendere to, a  
11 violation of s. 655.50, relating to the Florida Control of  
12 Money Laundering in Financial Institutions Act; chapter 896,  
13 relating to offenses related to financial transactions; or any  
14 similar state or federal law.

15 (3) At the time the shares are issued, the corporation  
16 shall furnish to the office ~~department~~ a final list of  
17 shareholders and an affidavit from the corporation that the  
18 entire capital accounts have been fully and unconditionally  
19 paid in cash and that valid assets representing such total  
20 capital accounts are held by the bank, trust company, or  
21 escrow agent.

22 Section 1777. Section 658.24, Florida Statutes, is  
23 amended to read:

24 658.24 Organizational procedures.--After the corporate  
25 existence of a bank or trust company corporation has commenced  
26 and the stock has been issued, but no less than 30 days prior  
27 to the intended opening date, a shareholders' meeting shall be  
28 held to elect directors already approved by the office  
29 ~~department~~, to approve organizational expenses, and to conduct  
30 such other business relating to the corporation as may be  
31 appropriate. Immediately after the board of directors has been

1 | elected by the shareholders, the board shall meet to adopt  
2 | bylaws, elect officers, and conduct such other business  
3 | relating to the corporation as may be appropriate. Within 10  
4 | days after the shareholders' and directors' meetings, the  
5 | corporation shall file with the office ~~department~~ a copy of  
6 | the minutes of the meetings together with a copy of the bylaws  
7 | that were adopted, a list showing the names and residence  
8 | addresses of the officers elected and the title of each, and a  
9 | detailed accounting of the organization expenses approved by  
10 | the shareholders.

11 |           Section 1778. Subsections (2) and (3) of section  
12 | 658.25, Florida Statutes, are amended to read:

13 |           658.25 Opening for business.--

14 |           (2) At least 30 days prior to its intended opening  
15 | date, the corporation shall notify the office ~~department~~ of  
16 | its proposed opening date and confirm its compliance with all  
17 | conditions imposed in the order or orders issued by the office  
18 | ~~department~~ relating to its organization.

19 |           (3) The office ~~department~~ shall perform a preopening  
20 | examination to verify good faith compliance with all the  
21 | requirements of law and that the bank or trust company  
22 | corporation is ready to engage in a general commercial bank or  
23 | trust business. If the office ~~department~~ finds that such  
24 | requirements have been met, it shall issue a certificate of  
25 | authorization to transact a general commercial bank or trust  
26 | business. Upon the issuance of the certificate of  
27 | authorization, the bank or trust company corporation shall  
28 | become a state bank or a state trust company and the  
29 | certificate shall constitute its charter.

30 |           Section 1779. Subsections (2), (3), and (4) of section  
31 | 658.26, Florida Statutes, are amended to read:

1           658.26 Places of transacting business; branches;  
2 facilities.--

3           (2)(a) In addition, with the approval of the office  
4 ~~department~~ and upon such conditions as the commission or  
5 office department prescribes, any bank or trust company may  
6 establish branches within or outside the state. With the  
7 approval of the office department upon a determination that  
8 the resulting bank or trust company will be of sound financial  
9 condition, any bank or trust company incorporated pursuant to  
10 this chapter may establish branches by merger with any other  
11 bank or trust company.

12           (b) An application for a branch by a bank that does  
13 not meet the requirements for the branch notification process  
14 shall be in writing in such form as the commission department  
15 prescribes and be supported by such information, data, and  
16 records as the commission or office department may require to  
17 make findings necessary for approval. Applications filed  
18 pursuant to this subsection shall not be published in the  
19 Florida Administrative Weekly but shall otherwise be subject  
20 to the provisions of chapter 120. Upon the filing of an  
21 application and a nonrefundable filing fee for the  
22 establishment of any branch permitted by paragraph (a), the  
23 office department shall make an investigation with respect to  
24 compliance with the requirements of paragraph (a) and shall  
25 investigate and consider all factors relevant to such  
26 requirements, including the following:

27           1. The sufficiency of capital accounts in relation to  
28 the deposit liabilities of the bank, or in relation to the  
29 number and valuation of fiduciary accounts of the trust  
30 company, including the proposed branch, and the additional  
31 fixed assets, if any, which are proposed for the branch and

1 its operations, without undue risk to the bank or its  
2 depositors, or undue risk to the trust company or its  
3 fiduciary accounts;

4           2. The sufficiency of earnings and earning prospects  
5 of the bank or trust company to support the anticipated  
6 expenses and any anticipated operating losses of the branch  
7 during its formative or initial years;

8           3. The sufficiency and quality of management available  
9 to operate the branch;

10           4. The name of the proposed branch to determine if it  
11 reasonably identifies the branch as a branch of the main  
12 office and is not likely to unduly confuse the public; and

13           5. Substantial compliance by the applicants with  
14 applicable law governing their operations.

15           (c) As provided by commission ~~departmental~~ rule, a  
16 financial institution operating in a safe and sound manner may  
17 establish a branch by filing a written notice with the office  
18 ~~department~~ at least 30 days before opening that branch. In  
19 such case, the financial institution need not file a branch  
20 application or pay a branch application fee.

21           (3)(a) An office in this state may be relocated with  
22 prior written approval of the office ~~department~~. An  
23 application for relocation shall be in writing in such form as  
24 the commission ~~department~~ prescribes and shall be supported by  
25 such information, data, and records as the commission or  
26 office ~~department~~ may require to make findings necessary for  
27 approval.

28           (b) Applications filed pursuant to this subsection  
29 shall not be published in the Florida Administrative Weekly  
30 but shall otherwise be subject to the provisions of chapter  
31 120. Upon the filing of a relocation application and a

1 nonrefundable filing fee, the office ~~department~~ shall  
2 investigate to determine substantial compliance by the  
3 financial institution with applicable law governing its  
4 operations. Additional investments in land, buildings, leases,  
5 and leasehold improvements resulting from such relocation  
6 shall comply with the limitations imposed by s. 658.67(7)(a).  
7 A main office may not be moved outside this state unless  
8 expressly authorized by the financial institutions codes or by  
9 federal law.

10 (c) A relocation application filed by a state bank or  
11 trust company that is operating in a safe and sound manner  
12 which is not denied within 10 working days after receipt shall  
13 be deemed approved unless the office ~~department~~ notifies the  
14 financial institution in writing that the application was not  
15 complete.

16 (d) In addition to the application required by  
17 paragraph (a), a financial institution whose main office in  
18 this state has been in operation less than 24 months must  
19 provide evidence that the criteria of s. 658.21(1) will be  
20 met.

21 (e) A branch office may be closed with 30 days' prior  
22 written notice to the office ~~department~~. The notice shall  
23 include any information the commission prescribes ~~department~~  
24 ~~may prescribe~~ by rule.

25 (4) With prior written notification to the office  
26 ~~department~~, any bank may operate facilities which are not  
27 physically connected to the main or branch office of the bank,  
28 provided that the facilities are situated on the property of  
29 the main or branch office or property contiguous thereto.  
30 Property which is separated from the main or branch office of  
31 a bank by only a street, and one or more walkways and

1 alleyways are determined to be, for purposes of this  
2 subsection, contiguous to the property of the main or branch  
3 office.

4 Section 1780. Subsections (1), (2), (4), and (5) of  
5 section 658.27, Florida Statutes, are amended to read:

6 658.27 Control of bank or trust company; definitions  
7 and related provisions.--

8 (1) In ss. 658.27-658.29, unless the context clearly  
9 requires otherwise:

10 (a) "Bank holding company" means any business  
11 organization which has or acquires control over any bank or  
12 trust company or over any business organization that is or  
13 becomes a bank holding company by virtue of ss. 658.27-658.29.

14 (b) "Business organization" means a corporation,  
15 association, partnership, or business trust and includes any  
16 similar organization (including a trust company and including  
17 a bank, whether or not authorized to engage in trust business,  
18 but only if such bank is, or by virtue of ss. 658.27-658.29  
19 becomes, a bank holding company), whether created, organized,  
20 or existing under the laws of the United States; this state or  
21 any other state of the United States; or any other country,  
22 government, or jurisdiction. "Business organization" does not  
23 include any corporation the majority of the shares of which  
24 are owned by the United States or by this state. "Business  
25 organization" also includes any other trust, unless by its  
26 terms it must terminate within 25 years or not later than 21  
27 years and 10 months after the death of individuals living on  
28 the effective date of the trust, unless the office ~~department~~  
29 determines, after notice and opportunity for hearing, that a  
30 purpose for the creation of such trust was the evasion of the  
31 provisions of ss. 658.27-658.29.

1 (c) "Edge Act corporation" means a corporation  
2 organized and existing under the provisions of s. 25(a) of the  
3 Federal Reserve Act, 12 U.S.C. ss. 611-632.

4 (d) "Subsidiary," with respect to a specified bank,  
5 trust company, or bank holding company, means:

6 1. Any business organization 25 percent or more of the  
7 voting shares of which, excluding shares owned by the United  
8 States or by any business organization wholly owned by the  
9 United States, are directly or indirectly owned or controlled  
10 by such bank, trust company, or bank holding company or are  
11 held by such bank, trust company, or bank holding company with  
12 power to vote;

13 2. Any business organization the election of a  
14 majority of the directors of which is controlled in any manner  
15 by such bank, trust company, or bank holding company; or

16 3. Any business organization with respect to the  
17 management or policies of which such bank, trust company, or  
18 bank holding company has the power, directly or indirectly, to  
19 exercise a controlling influence, as determined by the office  
20 ~~department~~ after notice and opportunity for hearing.

21 (e) "Successor," with respect to a specified bank  
22 holding company, means any business organization which  
23 acquires directly or indirectly from the bank holding company  
24 shares of any bank or trust company, when and if the  
25 relationship between such business organization and the bank  
26 holding company is such that the transaction effects no  
27 substantial change in the control of the bank or trust company  
28 or beneficial ownership of such shares of such bank or trust  
29 company. The commission ~~department~~ may, by rule, further  
30 define the term "successor" to the extent necessary to prevent  
31 evasion of the purposes of ss. 658.27-658.29. For the

1 purposes of ss. 658.27-658.29, any successor to a bank holding  
2 company shall be deemed to have been a bank holding company  
3 from the date on which the predecessor business organization  
4 became a bank holding company.

5 (2) A business organization has control over a bank or  
6 over any other business organization if:

7 (a) The business organization directly or indirectly  
8 or acting through one or more other persons owns, controls, or  
9 has power to vote 25 percent or more of any class of voting  
10 securities of the bank or other business organization;

11 (b) The business organization controls in any manner  
12 the election of a majority of the directors, trustees, or  
13 other governing body of the bank or other business  
14 organization;

15 (c) The business organization owns, controls, or has  
16 power to vote 10 percent or more of any class of voting  
17 securities of the bank or other business organization and  
18 exercises a controlling influence over the management or  
19 policies of the bank or other business organization; or

20 (d) The office ~~department~~ determines, after notice and  
21 opportunity for hearing, that the business organization  
22 directly or indirectly exercises a controlling influence over  
23 the management or policies of the bank or other business  
24 organization.

25 (4) Shares of any kind or class of voting securities,  
26 and assets, of a bank or business organization which, after  
27 March 28, 1972, the effective date of former s. 659.141(2)(g),  
28 are transferred by any bank holding company, or by any bank or  
29 any business organization which, but for such transfer, would  
30 be a bank holding company, directly or indirectly to any  
31 transferee that is indebted to the transferor, or has one or

1 more officers, directors, trustees, or beneficiaries in common  
2 with or subject to control by the transferor, shall be deemed  
3 to be indirectly owned or controlled by the transferor unless  
4 the office ~~department~~, after opportunity for hearing,  
5 determines that the transferor is not in fact capable of  
6 controlling the transferee.

7 (5) Notwithstanding any other provision of this  
8 section, no bank and no business organization shall be deemed  
9 to own or control voting shares or assets of another bank or  
10 another business organization if:

11 (a) The ownership or control of such shares or assets  
12 is in a fiduciary capacity, except as provided in paragraph  
13 (3)(b) and subsection (4). For the purposes of the preceding  
14 sentence, shares of a bank or a business organization shall  
15 not be deemed to have been acquired in a fiduciary capacity if  
16 the acquiring bank or business organization has sole  
17 discretionary authority to exercise voting rights with respect  
18 thereto, except that this limitation is applicable in the case  
19 of a bank or business organization acquiring such shares prior  
20 to March 28, 1972, the effective date of former s.  
21 659.141(3)(a), only if the bank or business organization has  
22 the right, consistent with its obligations under the  
23 instrument, agreement, or other arrangement establishing the  
24 fiduciary relationship, to divest itself of such voting rights  
25 and fails to exercise that right to divest within 1 year after  
26 that date;

27 (b) The shares are acquired in connection with the  
28 underwriting of securities by a business organization, in good  
29 faith and without any intent or purpose to evade the purposes  
30 of ss. 658.27-658.29, and if such shares are held only for  
31 such period of time, not exceeding 3 months from date of

1 acquisition, as will permit the sale thereof on a reasonable  
2 basis; however, upon application by the underwriting business  
3 organization, and after notice and opportunity for hearing, if  
4 the office ~~department~~ finds that the sale of such shares  
5 within that period of time would create an unreasonable  
6 hardship on the underwriting business organization, that there  
7 is no intent or purpose to evade the purposes of ss.  
8 658.27-658.29 by the continued ownership or control of such  
9 shares by such underwriting business organization, and that an  
10 extension of such period of time would not be detrimental to  
11 the public interest, the office ~~department~~ is authorized to  
12 extend, from time to time, for not more than 1 month at a  
13 time, the 3-month period, but the aggregate of such extensions  
14 shall not exceed 3 months;

15 (c) Control of voting rights of such shares is  
16 acquired in good faith, and without any purpose or intent to  
17 evade the purposes of ss. 658.27-658.29, in the course of  
18 participating in a proxy solicitation by a business  
19 organization formed in good faith, and without any purpose or  
20 intent to evade the purposes of ss. 658.27-658.29, for the  
21 sole purpose of participating in such proxy solicitation, and  
22 such control of voting rights terminates immediately upon the  
23 conclusion of the sole purpose for which such business  
24 organization was formed; or

25 (d) The ownership or control of such shares or assets  
26 is acquired in securing or collecting a debt previously  
27 contracted in good faith, unless the office ~~department~~, after  
28 notice and opportunity for hearing, finds that a purpose of  
29 any part of any transaction was an evasion of the purposes of  
30 ss. 658.27-658.29 and if the ownership or control of such  
31 shares or assets is held only for such reasonable period of

1 time, not exceeding 2 years after the date of acquisition, as  
2 will permit the divestiture thereof on a reasonable basis.  
3 Upon application by the bank or business organization which  
4 acquired such ownership or control in accordance with the  
5 preceding provisions of this paragraph, and after notice and  
6 opportunity for hearing, if the office ~~department~~ finds that  
7 the bank or business organization has made reasonable and good  
8 faith efforts to divest itself of such ownership or control on  
9 a reasonable basis within the 2-year period but has been  
10 unable to do so, that immediate divestiture of such ownership  
11 or control would create an unreasonable hardship on such bank  
12 or business organization, that continuation of such ownership  
13 or control involves no purpose or intent to evade the purposes  
14 of ss. 658.27-658.29, and that an extension of the 2-year  
15 period would not be detrimental to the public interest, the  
16 office ~~department~~ is authorized to extend, from time to time  
17 and for not more than 1 year at a time, the 2-year period, but  
18 the aggregate of all such extensions shall not exceed 3 years.

19 Section 1781. Subsections (1), (2), and (3) of section  
20 658.28, Florida Statutes, are amended to read:

21 658.28 Acquisition of control of a bank or trust  
22 company.--

23 (1) In any case in which a person or a group of  
24 persons, directly or indirectly or acting by or through one or  
25 more persons, proposes to purchase or acquire a controlling  
26 interest in any state bank or state trust company, and thereby  
27 to change the control of that bank or trust company, each  
28 person or group of persons shall first make application to the  
29 office ~~department~~ for a certificate of approval of such  
30 proposed change of control of the bank or trust company. The  
31 application shall contain the name and address, and such other

1 relevant information as the commission or office requires  
2 ~~department may require~~, including information relating to  
3 other and former addresses and the reputation, character,  
4 responsibility, and business affiliations, of the proposed new  
5 owner or each of the proposed new owners of the controlling  
6 interest. The office ~~department~~ shall issue a certificate of  
7 approval only after it has made an investigation and  
8 determined that the proposed new owner or owners of the  
9 interest are qualified by reputation, character, experience,  
10 and financial responsibility to control and operate the bank  
11 or trust company in a legal and proper manner and that the  
12 interests of the other stockholders, if any, and the  
13 depositors and creditors of the bank or trust company and the  
14 interests of the public generally will not be jeopardized by  
15 the proposed change in ownership, controlling interest, or  
16 management. No person who has been convicted of, or pled  
17 guilty or nolo contendere to, a violation of s. 655.50,  
18 relating to the Florida Control of Money Laundering in  
19 Financial Institutions Act; chapter 896, relating to offenses  
20 related to financial transactions; or any similar state or  
21 federal law shall be given a certificate of approval by the  
22 office ~~department~~.

23 (2) For the purposes of this section, the standards,  
24 criteria, and exceptions contained in s. 658.27(2), (3), (4),  
25 and (5) relating to control by a business organization of a  
26 bank or another business organization apply to the persons  
27 mentioned in this section and constitute the standards,  
28 criteria, and exceptions which determine whether any person or  
29 group of persons shall be deemed to be purchasing or  
30 acquiring, or to have purchased or acquired, directly or  
31 indirectly a "controlling interest" in a state bank or a state

1 trust company; but the office ~~department~~ is not limited to  
2 those standards or criteria in determining whether any such  
3 person shall be deemed to be acting by or through one or more  
4 other persons.

5 (3) In any case in which a proposed purchase or  
6 acquisition of voting securities of a state bank or trust  
7 company would give rise to the presumption created under s.  
8 658.27(2)(c), the person or group of persons who propose to  
9 purchase or acquire the voting securities shall first give  
10 written notice of the proposal to the office ~~department~~. Such  
11 notice may present information that the proposed purchase or  
12 acquisition will not result in control. The office ~~department~~  
13 shall afford the person seeking to rebut the presumption an  
14 opportunity to present views in writing or orally before its  
15 designated representatives at an informal conference. If the  
16 office ~~department~~ determines, pursuant to the informal  
17 conference, that the person or group of persons seeking to  
18 rebut the presumption exercises a controlling influence over  
19 the bank, an application for change of control must be filed  
20 pursuant to this section.

21 Section 1782. Section 658.285, Florida Statutes, is  
22 amended to read:

23 658.285 Acquisition or ownership of state banks by  
24 international banking corporations.--An international banking  
25 corporation may, with the approval of the office ~~department~~  
26 pursuant to s. 658.28, acquire control over or organize a  
27 state bank organized under the laws of this state. For the  
28 purposes of this section, the word "bank" shall have the  
29 meaning given in s. 2(c) of the Bank Holding Company Act of  
30 1956, 12 U.S.C. s. 1841(c).

31

1           Section 1783. Subsections (2), (4), (5), (6), (7),  
2 (9), and (10) of section 658.295, Florida Statutes, are  
3 amended to read:

4           658.295 Interstate banking.--

5           (2) DEFINITIONS.--For purposes of this section, the  
6 term:

7           (a) "Acquire," with respect to a company, means to:

8           1. Merge or consolidate with a bank holding company;

9           2. Assume direct or indirect ownership or control of:

10           a. More than 25 percent of any class of voting shares  
11 of a bank holding company or a bank, if the acquiring company  
12 was not a bank holding company prior to such acquisition;

13           b. More than 5 percent of any class of voting shares  
14 of a bank holding company or a bank, if the acquiring company  
15 was a bank holding company prior to such acquisition; or

16           c. All or substantially all of the assets of a bank  
17 holding company or bank, if the acquiring company was a bank  
18 holding company prior to such acquisition; or

19           3. Take any other action that results in the direct or  
20 indirect acquisition of control by a company of a bank holding  
21 company, if the acquiring company was a bank holding company  
22 prior to such acquisition.

23           (b) "Affiliate" has the meaning set forth in s. 2(k)  
24 of the Bank Holding Company Act.

25           (c) "Bank" means an institution as defined in s. 2(c)  
26 of the Bank Holding Company Act.

27           (d) "Bank holding company" has the meaning set forth  
28 in s. 2(a) of the Bank Holding Company Act, and unless the  
29 context requires otherwise, includes any Florida bank holding  
30 company, any out-of-state bank holding company, or any  
31 international banking company.

1           (e) "Banking office" means any bank, branch of a bank,  
2 or other office at which a bank accepts deposits, provided the  
3 term does not include any:

4           1. Unmanned automatic teller machine, point-of-sale  
5 terminal, or other similar unmanned electronic banking  
6 facility at which deposits may be accepted;

7           2. Office located outside the United States; or

8           3. Loan production office, representative office, or  
9 other office at which deposits are not accepted.

10          (f) "Bank Holding Company Act" means the federal Bank  
11 Holding Company Act of 1956, as amended, 12 U.S.C. ss. 1841 et  
12 seq.

13          (g) "Bank regulatory agency" means:

14           1. Any agency of another state with primary  
15 responsibility for chartering and regulating banks;

16           2. The Office of the Comptroller of the Currency, the  
17 Federal Deposit Insurance Corporation, the Board of Governors  
18 of the Federal Reserve System, and any successor to these  
19 agencies; or

20           3. An agency of a country other than the United States  
21 with primary responsibility for chartering and regulating  
22 banks and bank holding companies in such country.

23          (h) "Branch" has the meaning set forth in s. 658.12.

24          (i) "Company" has the meaning set forth in s. 2(b) of  
25 the Bank Holding Company Act, and includes a bank holding  
26 company.

27          (j) "Control" has the meaning set forth in s. 2(a)(2)  
28 of the Bank Holding Company Act.

29          ~~(k) "Department" means the Department of Banking and~~  
30 ~~Finance.~~

31

1           (k)~~(l)~~ "Deposits" means all demand, time, and savings  
2 deposits of individuals, partnerships, corporations, the  
3 United States, and states and political subdivisions in the  
4 United States, as set forth in 12 U.S.C. s. 1813. However,  
5 the term "deposits" does not include deposits of banks or  
6 foreign governments or institutions or deposits held by  
7 foreign banking offices or corporations organized pursuant to  
8 s. 25 or s. 25(a) of the Federal Reserve Act, as amended, 12  
9 U.S.C. ss. 601-604a or 12 U.S.C. ss. 611-631. Pursuant to  
10 rules established by the commission ~~department~~, determinations  
11 of deposits shall be made by reference to the most recently  
12 available consolidated report of condition or similar reports  
13 filed by banks with state or federal regulatory agencies.

14           (l)~~(m)~~ "Depository institution" means any institution  
15 included for any purpose within the definitions of "insured  
16 depository institution" as set forth in 12 U.S.C. s.  
17 1813(c)(2) and (3).

18           (m)~~(n)~~ "Florida bank" means a bank whose home state is  
19 this state.

20           (n)~~(o)~~ "Florida bank holding company" means a bank  
21 holding company that:

22           1. Had its principal place of business in this state  
23 on July 1, 1966, or the date on which it became a bank holding  
24 company, whichever is later.

25           2. Is not controlled by an out-of-state bank holding  
26 company.

27           (o)~~(p)~~ "Home state" means:

28           1. With respect to a state bank, the state by which  
29 the bank is chartered.

30           2. With respect to a national bank, the state in which  
31 the main office of the bank is located.

1           3. With respect to a foreign bank, the state  
2 determined to be the home state of such foreign bank under 12  
3 U.S.C. s. 3103(c).

4           (p)~~(q)~~ "Home state regulator" means, with respect to  
5 an out-of-state bank holding company, the bank regulatory  
6 agency of the state in which such company maintains its  
7 principal place of business.

8           (q)~~(r)~~ "International banking corporation" means an  
9 entity as defined in s. 663.01(6).

10          (r)~~(s)~~ "State bank" means a bank chartered under the  
11 laws of this state.

12          (s)~~(t)~~ "Principal place of business," of a bank  
13 holding company, means the state in which the total deposits  
14 of its subsidiaries were the greatest on July 1, 1966, or on  
15 the date on which the company became a bank holding company,  
16 whichever is later.

17          (t)~~(u)~~ "Out-of-state bank holding company" means a  
18 bank holding company that has its principal place of business  
19 in a state other than this state or the District of Columbia  
20 and, unless the context requires otherwise, includes an  
21 international banking corporation.

22          (u)~~(v)~~ "State" means any state, territory, or other  
23 possession of the United States, including the District of  
24 Columbia.

25          (v)~~(w)~~ "Subsidiary" has the meaning set forth in s.  
26 2(d) of the Bank Holding Company Act.

27          (4) APPLICABLE LAW.--Any out-of-state bank holding  
28 company that controls a Florida bank or a Florida bank holding  
29 company is subject to the laws of this state, and the rules of  
30 the commission ~~department~~, relating to the acquisition,  
31 ownership, and operation of banks and bank holding companies

1 | located in this state which are applicable to Florida bank  
2 | holding companies.

3 |         (5) AUTHORITY TO ENTER INTO COOPERATIVE AGREEMENTS;  
4 | FEES.--In order to carry out the purposes of this section, the  
5 | office ~~department~~ may:

6 |             (a) Enter into cooperative, coordinating, or  
7 | information-sharing agreements with other bank regulatory  
8 | agencies or any organization affiliated with or representing  
9 | one or more bank regulatory agencies to facilitate the  
10 | regulation of banks and bank holding companies doing business  
11 | in this state.

12 |             (b) Accept reports of examinations or investigations  
13 | or other records from other bank regulatory agencies having  
14 | concurrent jurisdiction over a state bank or a bank holding  
15 | company that controls a state bank in lieu of conducting its  
16 | own examinations or investigations.

17 |             (c) Take any action jointly with other bank regulatory  
18 | agencies having concurrent jurisdiction over banks and bank  
19 | holding companies doing business in this state, or take such  
20 | action independently, to carry out its responsibilities.

21 |             (d) Assess supervisory fees that shall be payable by  
22 | Florida banks and Florida bank holding companies in connection  
23 | with the office's ~~department's~~ performance of its duties.  
24 | Such fees may be shared with other bank regulatory agencies or  
25 | any organizations affiliated with or representing one or more  
26 | bank regulatory agencies in accordance with agreements between  
27 | them and the office ~~department~~.

28 |         (6) PERMITTED ACQUISITIONS.--

29 |             (a) Except as otherwise expressly permitted by s. 1841  
30 | of the Bank Holding Company Act, no bank holding company may  
31 |

1 acquire a Florida bank holding company or a Florida bank  
2 without the prior approval of the office ~~department~~.

3 (b) Notwithstanding paragraph (a), prior office  
4 ~~department~~ approval is not required and the standards for  
5 approval in subsection (8) shall be waived by the office  
6 ~~department~~ if the acquisition is made:

7 1. In a transaction arranged by the office ~~department~~  
8 or another bank regulatory agency to prevent insolvency or the  
9 appointment of a liquidator or receiver of the acquired bank;  
10 or

11 2. In a transaction in which a bank forms its own bank  
12 holding company, if the ownership rights of the former bank  
13 shareholders are substantially similar to those of the  
14 shareholders of the new bank holding company.

15 (c) The prohibition in paragraph (a) does not apply if  
16 the acquisition is made solely for the purpose of facilitating  
17 an acquisition of a successor institution as defined in s.  
18 658.40(4).

19 (d) Notwithstanding paragraph (a), to the extent  
20 prohibited or preempted by federal law, or to the extent the  
21 determination of compliance with the conditions imposed in  
22 subsection (8) duplicates a determination made or to be made  
23 by the responsible federal regulatory agency as part of the  
24 federal approval process, prior office ~~department~~ approval of  
25 any application filed by an out-of-state bank or out-of-state  
26 bank holding company to acquire a Florida bank or a Florida  
27 bank holding company is not required when such Florida bank or  
28 all bank subsidiaries of such Florida bank holding company are  
29 national banks.

30 (7) REQUIRED APPLICATION.--

31

1 (a) A company that proposes to make an acquisition  
2 under this section shall:

3 1. File with the office ~~department~~ a copy of the  
4 application that such company has filed with the responsible  
5 federal bank regulatory agency, together with such additional  
6 information as the commission or office requires ~~department~~  
7 ~~may prescribe~~.

8 2. Pay to the office ~~department~~ the required  
9 application fee, pursuant to s. 658.73.

10 (b) To the extent consistent with the effective  
11 discharge of the office's ~~department's~~ responsibilities, the  
12 forms established under this section for application and  
13 reporting shall conform to those established by the Board of  
14 Governors of the Federal Reserve System under the Bank Holding  
15 Company Act.

16 (c) In connection with an application received under  
17 this section, the office ~~department~~ shall:

18 1. Require that prior notice of the application be  
19 published once in a daily newspaper of general circulation in  
20 the county in which the bank to be acquired has its principal  
21 place of business or that a notice of intent have been mailed  
22 via certified mail to each person owning stock in the bank to  
23 be acquired and provide an opportunity for public comment.

24 2. Make the application available for public  
25 inspection to the extent required or permitted under  
26 applicable state or federal law.

27 (d) If the applicant is an out-of-state bank holding  
28 company that is not incorporated under the laws of this state,  
29 it shall submit with the application proof that the applicant  
30 has complied with applicable requirements of chapter 607,  
31

1 together with the filing fee due the Department of State under  
2 s. 607.0122.

3 (9) REPORTS; EXAMINATIONS.--To the extent required  
4 ~~prescribed~~ by the commission or office ~~department~~, each bank  
5 holding company that directly or indirectly controls a state  
6 bank shall submit to the office ~~department~~ financial reports  
7 filed by such company with any bank regulatory agency  
8 concerning state banks located in this state within 15 days  
9 after the filing thereof with such agency. However, any report  
10 prohibited by applicable federal or state law is not required  
11 to be submitted to the office ~~department~~.

12 (10) PENALTIES.--The office ~~department~~ may enforce the  
13 provisions of this section pursuant to the financial  
14 institutions' codes. The office ~~department~~ shall promptly  
15 give notice to the home state regulator of any enforcement  
16 action initiated against an out-of-state bank holding company  
17 and, to the extent practicable, shall consult and cooperate  
18 with the home state regulator in pursuing and resolving said  
19 enforcement action. In the case of an out-of-state holding  
20 company, the office ~~department~~ shall recognize the exclusive  
21 authority of the home state regulator over corporate  
22 governance matters and the primary responsibility of the home  
23 state regulator with respect to safety and soundness matters.

24 Section 1784. Paragraph (g) of subsection (3), and  
25 subsections (4), (6), (8), (9), (11), (12), and (13) of  
26 section 658.2953, Florida Statutes, are amended to read:

27 658.2953 Interstate branching.--

28 (3) LEGISLATIVE INTENT.--The Legislature finds it is  
29 in the interest of the citizens of this state, and declares it  
30 to be the intent of this section, to:

31

1           (g) Provide the commission and office ~~department~~  
2 sufficient powers and responsibilities to carry out such  
3 purposes.

4           (4) DEFINITIONS.--As used in this section, unless a  
5 different meaning is required by the context:

6           (a) "Bank" has the meaning set forth in 12 U.S.C. s.  
7 1813(h), provided the term "bank" does not include any  
8 "foreign bank" as defined in 12 U.S.C. s. 3101(7), except such  
9 term includes any foreign bank organized under the laws of a  
10 territory of the United States, Puerto Rico, Guam, American  
11 Samoa, or the Virgin Islands, the deposits of which are  
12 insured by the Federal Deposit Insurance Corporation.

13           (b) "Bank holding company" has the meaning set forth  
14 in 12 U.S.C. s. 1841(a)(1).

15           (c) "Bank regulatory agency" means:

16           1. Any agency of another state with primary  
17 responsibility for chartering and regulating banks.

18           2. The Office of the Comptroller of the Currency, the  
19 Federal Deposit Insurance Corporation, the Board of Governors  
20 of the Federal Reserve System, and any successor to such  
21 agencies.

22           (d) "Branch" has the meaning set forth in s. 658.12.

23           ~~(e) "Department" means the Department of Banking and~~  
24 ~~Finance.~~

25           (e)(f) "De novo branch" means a branch of a bank  
26 located in a host state which:

27           1. Is originally established by the bank as a branch.

28           2. Does not become a branch of the bank as a result

29 of:

30           a. The acquisition of another bank or a branch of  
31 another bank; or

1           b. The merger, consolidation, or conversion involving  
2 any such bank or branch.

3           (f)~~(g)~~ "Control" shall be construed consistently with  
4 the provisions of 12 U.S.C. s. 1841(a)(2).

5           (g)~~(h)~~ "Failing financial entity" means an  
6 out-of-state state bank that has been determined by its home  
7 state regulator or the appropriate federal regulatory agency  
8 to be imminently insolvent or to require immediate action to  
9 prevent its probable failure.

10           (h)~~(i)~~ "Home state" means:

11           1. With respect to a state bank, the state by which  
12 the bank is chartered.

13           2. With respect to a national bank, the state in which  
14 the main office of the bank is located.

15           3. With respect to a foreign bank, the state  
16 determined to be the home state of such foreign bank under 12  
17 U.S.C. s. 3103(c).

18           (i)~~(j)~~ "Home state regulator" means, with respect to  
19 an out-of-state state bank, the bank's regulatory agency of  
20 the state in which such bank is chartered.

21           (j)~~(k)~~ "Host state" means a state, other than the home  
22 state of a bank, in which the bank maintains or seeks to  
23 establish and maintain a branch.

24           (k)~~(l)~~ "Insured depository institution" has the  
25 meaning set forth in 12 U.S.C. s. 1813(c)(2) and (3).

26           (l)~~(m)~~ "Interstate merger transaction" means the  
27 merger or consolidation of banks with different home states,  
28 and the conversion of branches of any bank involved in the  
29 merger or consolidation into branches of the resulting bank.

30           (m)~~(n)~~ "Out-of-state bank" means a bank whose home  
31 state is a state other than this state.

1           (n)~~(o)~~ "Out-of-state state bank" means a bank  
2 chartered under the laws of any state other than this state.

3           (o)~~(p)~~ "Resulting bank" means a bank that has resulted  
4 from an interstate merger transaction under this section.

5           (p)~~(q)~~ "State" means any state of the United States,  
6 the District of Columbia, any territory of the United States,  
7 Puerto Rico, Guam, American Samoa, the Trust Territory of the  
8 Pacific Islands, the Virgin Islands, and the Northern Mariana  
9 ~~Marian~~ Islands.

10           (q)~~(r)~~ "Florida bank" means a bank whose home state is  
11 this state.

12           (r)~~(s)~~ "State bank" means a bank chartered under the  
13 laws of this state.

14           (6) AUTHORITY OF STATE BANKS TO ESTABLISH INTERSTATE  
15 BRANCHES BY MERGER.--~~Beginning May 31, 1997,~~With the prior  
16 written approval of the office ~~department~~, a state bank may  
17 establish, maintain, and operate one or more branches in a  
18 state other than this state pursuant to an interstate merger  
19 transaction in which the state bank is the resulting bank. No  
20 later than the date on which the required application for the  
21 interstate merger transaction is filed with the responsible  
22 federal bank regulatory agency, the applicant state bank shall  
23 file an application on a form prescribed by the commission  
24 ~~department~~ accompanied by the required fee pursuant to s.  
25 658.73. The applicant shall also comply with the provisions of  
26 ss. 658.40-658.45.

27           (8) NOTICE AND FILING REQUIREMENTS.--Any out-of-state  
28 bank that will be the resulting bank pursuant to an interstate  
29 merger transaction involving a Florida bank shall notify the  
30 office ~~department~~ of the proposed merger within 15 days after  
31 the date on which it files an application for an interstate

1 merger transaction with the appropriate federal regulatory  
2 agency.

3 (9) EXAMINATIONS; PERIODIC REPORTS; COOPERATIVE  
4 AGREEMENTS; ASSESSMENT OF FEES.--

5 (a) The office ~~department~~ may examine any Florida  
6 branch of an out-of-state state bank which the office  
7 ~~department~~ deems necessary for the purpose of determining  
8 whether the branch is being operated in compliance with the  
9 laws of this state and in accordance with safe and sound  
10 banking practices.

11 (b) The office ~~department~~ may enter into cooperative,  
12 coordinating or information-sharing agreements with other bank  
13 regulatory agencies or any organization affiliated with or  
14 representing one or more bank regulatory agencies to  
15 facilitate the regulation of out-of-state state branches doing  
16 business in this state.

17 (c) The office ~~department~~ may accept reports of  
18 examinations or investigations, or other records from other  
19 regulatory agencies having concurrent jurisdiction over a  
20 state bank or a bank holding company that controls  
21 out-of-state state banks that operate branches in this state  
22 in lieu of conducting its own examinations or investigations.

23 (d) The office ~~department~~ may assess supervisory and  
24 examination fees that shall be payable by state banks and  
25 out-of-state state bank holding companies doing business in  
26 this state in connection with the office's ~~department's~~  
27 performance of its duties under this section and as prescribed  
28 by the commission ~~department~~. Such fees may be shared with  
29 other bank regulatory agencies or any organizations affiliated  
30 with or representing one or more bank regulatory agencies in  
31

1 accordance with agreements between them and the office  
2 ~~department~~.

3 (11) ENFORCEMENT.--

4 (a) If the office ~~department~~ determines that a branch  
5 maintained by an out-of-state state bank in this state is  
6 being operated in violation of any provision of law of this  
7 state, or that such branch is being operated in an unsafe and  
8 unsound manner, the office ~~department~~ may take all such  
9 enforcement actions as it would be empowered to take if the  
10 branch were a state bank, provided that the office ~~department~~  
11 shall promptly give notice to the home state regulator of each  
12 enforcement action taken against an out-of-state state bank  
13 and, to the extent practicable, shall consult and cooperate  
14 with the home state regulator in pursuing and resolving said  
15 enforcement action.

16 (b) The office ~~department~~ may take any action jointly  
17 with other regulatory agencies having concurrent jurisdiction  
18 over out-of-state banks and bank holding companies that  
19 operate branches in this state, or take such action  
20 independently, to carry out its responsibilities.

21 (12) NOTICE OF SUBSEQUENT MERGER.--

22 (a) Each out-of-state state bank that has established  
23 and maintains a branch in this state pursuant to this section  
24 shall give at least 30 days' prior written notice to the  
25 office ~~department~~ of any merger, consolidation, or other  
26 transaction that would cause a change of control pursuant to  
27 home state or federal law with respect to such bank or any  
28 bank holding company that controls such bank.

29 (b) Notwithstanding any other provisions of the  
30 financial institutions' codes or of chapter 120, in the case  
31 of a failing financial entity, the office ~~department~~ shall

1 have the power, with the concurrence of the appropriate  
2 regulatory agency, to issue an emergency order authorizing:  
3 1. The merger or interstate merger transaction of any  
4 such failing financial entity with a state bank or bank  
5 holding company that controls a state bank;  
6 2. Any bank to acquire assets and assume liabilities  
7 of the Florida branches of any such failing financial entity;  
8 3. The conversion of any such failing financial entity  
9 into a state bank or trust company;  
10 4. The chartering of a new state bank to acquire the  
11 Florida branches of any such failing financial entity; or  
12 5. The chartering of a new state trust company to  
13 acquire assets and assume liabilities and rights, powers, and  
14 responsibilities as fiduciary of such failing financial  
15 entity.

16 (13) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.--  
17 (a) With the prior approval of the office department,  
18 any state bank may establish and maintain a de novo branch or  
19 acquire a branch in a state other than this state.  
20 (b) A state bank desiring to establish and maintain a  
21 branch in another state pursuant to s. 658.26 shall pay the  
22 branch application fee set forth in s. 658.73. In acting on  
23 the application, the office department shall consider the  
24 views of the appropriate bank regulatory agencies.

25 Section 1785. Paragraph (d) of subsection (1) and  
26 subsection (4) of section 658.296, Florida Statutes, are  
27 amended to read:  
28 658.296 Control of deposit-taking institutions.--  
29 (1) As used in this section, unless the context  
30 clearly requires otherwise:  
31

1           (d) "Control" has the meaning set forth in s. 2(a)(2)  
2 and (3) of the federal Bank Holding Company Act of 1956, as  
3 amended, 12 U.S.C. s. 1841(a)(2) and (3), except that the  
4 reference therein to "the Board" shall be deemed to refer to  
5 the office department.

6           (4) The office department shall have the power to  
7 enforce the prohibitions of this section by seeking to enjoin  
8 any violation, by issuing cease and desist orders, by imposing  
9 administrative fines, or by any other remedies that are  
10 provided by law.

11           Section 1786. Section 658.32, Florida Statutes, is  
12 amended to read:

13           658.32 Annual meetings.--Unless otherwise approved by  
14 the office department, the annual meeting of stockholders of a  
15 state bank or trust company shall be held on such day in the  
16 first 4 months of each year as is specified therefor in the  
17 articles of incorporation or in the bylaws of the corporation;  
18 however, when the day fixed in the articles of incorporation  
19 or in the bylaws for the regular annual meeting of the  
20 stockholders falls on a legal holiday, the annual meeting of  
21 stockholders shall be held on the next following day which is  
22 not a legal holiday.

23           Section 1787. Subsections (3), (4), and (5) of section  
24 658.33, Florida Statutes, are amended to read:

25           658.33 Directors, number, qualifications; officers.--

26           (3) Within 30 days following the annual meeting or any  
27 other meeting at which directors or officers are elected, the  
28 bank or trust company must submit to the office department the  
29 names and residence addresses of those persons on a form  
30 adopted by the commission and provided by the office  
31 department.

1           (4) Each director, upon assuming office, must  
2 acknowledge that he or she is familiar with his or her  
3 responsibilities as a director and that he or she will  
4 diligently and honestly administer the affairs of the bank or  
5 trust company and will not knowingly violate, or willfully  
6 permit to be violated, any of the provisions of the financial  
7 institutions codes or pertinent rules of the commission  
8 ~~department~~. The signed copy of such oath must be filed with  
9 the office ~~department~~ within 30 days after election.

10           (5) The president or chief executive officer of a bank  
11 or trust company must have had at least 1 year of direct  
12 experience as an executive officer, director, or regulator of  
13 a financial institution within the last 3 years. This  
14 requirement may be waived by the office ~~department~~ after  
15 considering the overall experience and expertise of the  
16 proposed officer.

17           Section 1788. Subsections (3) and (4) of section  
18 658.34, Florida Statutes, are amended to read:

19           658.34 Shares of capital stock.--

20           (3) With the approval of the office ~~department~~, a bank  
21 or trust company may issue preferred stock of one or more  
22 classes in an amount and with a par value as approved by the  
23 office ~~department~~.

24           (4) With the approval of the office ~~department~~, a bank  
25 or trust company may issue less than all the number of shares  
26 of any of its capital stock authorized by its articles of  
27 incorporation. Such authorized but unissued shares may be  
28 issued only for the following purposes:

29           (a) To provide for stock options as provided in s.  
30 658.35.

31

1 (b) To declare or pay a stock dividend; however, any  
2 such stock dividend must comply with the provisions of this  
3 section and s. 658.37.

4 (c) To increase the capital of the bank or trust  
5 company, with the approval of the office ~~department~~.

6 Section 1789. Subsection (1) of section 658.35,  
7 Florida Statutes, is amended to read:

8 658.35 Share options; warrants.--

9 (1) After obtaining the approval of the majority of  
10 the board of directors, the majority of the holders of common  
11 stock of the bank, and the office ~~department~~ and after  
12 complying with the provisions of s. 607.0624, any bank or  
13 trust company may, for the purpose of providing share options  
14 for or issuing warrants to one or more of its directors,  
15 officers, or employees, hold authorized but unissued, or  
16 purchase or otherwise acquire and hold, shares of its own  
17 capital stock in an amount not to exceed 20 percent of the  
18 total number of shares outstanding.

19 Section 1790. Section 658.36, Florida Statutes, is  
20 amended to read:

21 658.36 Changes in capital.--

22 (1) No state bank or trust company shall reduce its  
23 outstanding capital stock without first obtaining the approval  
24 of the office ~~department~~, and such approval shall be withheld  
25 if the reduction will cause the outstanding capital stock to  
26 be less than the minimum required pursuant to the financial  
27 institutions codes.

28 (2) Any state bank or trust company may, with the  
29 approval of the office ~~department~~, provide for an increase in  
30 its capital stock.

31

1           Section 1791. Section 658.37, Florida Statutes, is  
2 amended to read:

3           658.37 Dividends and surplus.--The directors of any  
4 bank or trust company, after charging off bad debts,  
5 depreciation, and other worthless assets if any, and making  
6 provision for reasonably anticipated future losses on loans  
7 and other assets, may quarterly, semiannually, or annually  
8 declare a dividend of so much of the aggregate of the net  
9 profits of that period combined with its retained net profits  
10 of the preceding 2 years as they shall judge expedient, and,  
11 with the approval of the office ~~department~~, any bank or trust  
12 company may declare a dividend from retained net profits which  
13 accrued prior to the preceding 2 years, but each bank or trust  
14 company shall, before the declaration of a dividend on its  
15 common stock, carry 20 percent of its net profits for such  
16 preceding period as is covered by the dividend to its surplus  
17 fund, until the same shall at least equal the amount of its  
18 common and preferred stock then issued and outstanding. No  
19 bank or trust company shall declare any dividend at any time  
20 at which its net income from the current year combined with  
21 the retained net income from the preceding 2 years is a loss  
22 or which would cause the capital accounts of the bank or trust  
23 company to fall below the minimum amount required by law,  
24 regulation, order, or any written agreement with the office  
25 ~~department~~ or a state or federal regulatory agency. A bank or  
26 trust company may, however, split up or divide the issued  
27 shares of capital stock into a greater number of shares  
28 without increasing or decreasing the capital accounts of the  
29 bank or trust company, and such shall not be construed to be a  
30 dividend within the meaning of this section.

31

1           Section 1792. Section 658.39, Florida Statutes, is  
2 amended to read:

3           658.39 Stockholders; examination of records.--No bank,  
4 trust company, or financial institution-affiliated party shall  
5 permit any stockholder, other than a qualified director,  
6 officer, or employee thereof, to have access to, or to examine  
7 or inspect, any of the books or records of such bank or trust  
8 company other than its general statement of condition of its  
9 general assets and liabilities, the quarterly reports of  
10 condition and quarterly reports of income required to be  
11 submitted to the office ~~department~~ pursuant to s. 655.045, and  
12 a list of shareholders as provided in s. 655.057.

13           Section 1793. Subsection (4) of section 658.40,  
14 Florida Statutes, is amended to read:

15           658.40 Definitions for merger and consolidation.--As  
16 used in the provisions of this code relating to the merger and  
17 consolidation of banks and trust companies, unless the context  
18 requires otherwise:

19           (4) "Successor institution" means a banking  
20 corporation or a trust company organized under the laws of  
21 this state to which the office ~~department~~ has not issued a  
22 certificate of authorization, as provided in s. 658.25, to  
23 conduct a banking business or trust business, the sole purpose  
24 of the organization of which is to facilitate a plan of  
25 merger, reorganization, or consolidation.

26           Section 1794. Subsection (1) of section 658.41,  
27 Florida Statutes, is amended to read:

28           658.41 Merger; resulting state or national bank.--

29           (1) Upon filing of an application with the office  
30 ~~department~~ by the constituent banks or trust companies, and  
31 upon approval by the office ~~department~~, banks and state trust

1 companies may be merged with a resulting state bank or state  
2 trust company, as prescribed in this code, except that the  
3 action by a constituent national bank shall be taken in the  
4 manner prescribed by, and shall be subject to, any limitations  
5 or requirements imposed by any law of the United States  
6 applicable thereto, which shall also govern the rights of its  
7 dissenting shareholders; and the terms and provisions of the  
8 plan of merger and merger agreement required by s. 658.42, as  
9 they relate to a constituent national bank, shall conform with  
10 such federal laws. The application shall be accompanied by a  
11 plan of merger and merger agreement as provided in s. 658.42.

12 Section 1795. Paragraphs (d) and (f) of subsection (1)  
13 and subsection (2) of section 658.42, Florida Statutes, are  
14 amended to read:

15 658.42 Plan of merger and merger agreement.--

16 (1) If the resulting bank or trust company will be a  
17 state bank or a state trust company, the constituent banks or  
18 trust companies shall adopt a plan of merger and merger  
19 agreement stating the method, terms, and conditions of the  
20 merger, including the rights of the stockholders of each  
21 constituent bank or trust company and all agreements  
22 concerning the merger. The board of directors of each  
23 constituent bank or trust company shall, by a majority of the  
24 entire board, approve the plan of merger and merger agreement  
25 which shall contain:

26 (d) A statement that the plan and agreement are  
27 subject to approval by the office ~~department~~ and by the  
28 stockholders of each constituent bank or trust company.

29 (f) Such additional provisions not contrary to law as  
30 may be agreed upon by the constituent banks and trust  
31 companies and such other provisions as the office ~~department~~

1 requires to enable it to discharge its duties with respect to  
2 the merger.

3 (2) In connection with the organization of a successor  
4 institution, a showing and finding of public convenience and  
5 advantage for the organization of a new state bank or state  
6 trust company is not required; and the commission ~~department~~  
7 shall adopt special rules relating to the formation,  
8 organization, approval, and chartering of successor  
9 institutions which omit or waive such of the provisions of ss.  
10 658.16-658.26 as are not essential to safeguard the public  
11 interest and the safety and soundness of state banks and state  
12 trust companies, but no certificate of authorization to  
13 conduct a banking business or trust business shall be issued  
14 to a successor institution unless a certificate of merger, as  
15 provided in s. 658.45, is issued pursuant to the plan of  
16 merger and merger agreement. However, nothing in this  
17 subsection shall be construed as waiving or otherwise  
18 impairing the public-interest requirement in s. 658.43(3)(d).

19 Section 1796. Section 658.43, Florida Statutes, is  
20 amended to read:

21 658.43 Approval by office ~~department~~; valuation of  
22 assets; emergency action.--

23 (1) After approval by the board of directors of each  
24 constituent bank or trust company, the plan of merger and  
25 merger agreement shall be submitted to the office ~~department~~  
26 for approval, together with a certified copy of the  
27 authorizing resolutions of the board of directors of each  
28 constituent state bank or state trust company showing approval  
29 by a majority of the entire board of directors of each such  
30 state bank or state trust company, and evidence of proper  
31

1 action by the board of directors of any constituent national  
2 bank.

3 (2) Without approval by the office ~~department~~, no  
4 asset shall be carried on the books of the resulting state  
5 bank or state trust company at a valuation higher than that on  
6 the books of the constituent bank or trust company at the time  
7 of the last examination by a state or national bank or trust  
8 company examiner before the effective date of the merger.

9 (3) The office ~~department~~ shall approve the plan of  
10 merger and merger agreement if it appears that:

11 (a) The resulting state bank or state trust company  
12 meets all the requirements of state law as to the formation of  
13 a new state bank or state trust company, except that this  
14 provision shall not apply to the establishment of branches by  
15 merger as provided in s. 658.26.

16 (b) The agreement provides an adequate capital  
17 structure, including surplus, of the resulting state bank or  
18 state trust company in relation to its activities which are to  
19 continue or are to be undertaken, and also in relation to its  
20 deposit liabilities in the case of a resulting state bank.

21 (c) The valuation is fair.

22 (d) The merger is not contrary to the public interest.

23

24 If the office ~~department~~ disapproves a plan of merger or  
25 merger agreement, it shall state its objections and, the  
26 provisions of chapter 120 notwithstanding, give an opportunity  
27 to the constituent banks, trust companies, or banks and trust  
28 companies to amend the plan of merger and merger agreement to  
29 obviate such objections.

30 (4) If the resulting state bank is not to have trust  
31 powers, the office ~~department~~ shall not approve a merger until

1 adequate provision has been made for successors to fiduciary  
2 positions held by any constituent trust company or any  
3 constituent bank.

4 (5) Approval by the office ~~department~~, by final order  
5 or otherwise, of a plan of merger or merger agreement shall be  
6 deemed subject to approval of the plan of merger and merger  
7 agreement by the stockholders of each constituent bank or  
8 trust company as provided in s. 658.44(1) and shall also be  
9 deemed subject to approval of the merger and the plan of  
10 merger and merger agreement by each appropriate federal  
11 regulatory agency. Unless all such approvals have been  
12 obtained and proper evidence thereof submitted to the office  
13 ~~department~~ within 6 months after the approval by the office  
14 ~~department~~, the approval by the office ~~department~~ of the plan  
15 of merger and merger agreement shall be deemed to be revoked  
16 and terminated; however, the office ~~department~~ on its own  
17 motion, or at the request of the constituent banks or trust  
18 companies for good cause shown, may extend the time for a  
19 period not exceeding 6 months.

20 (6) No merger with a resulting state bank or trust  
21 company shall take place or be effective without the issuance  
22 by the office ~~department~~ of a certificate of merger.

23 (7) Notwithstanding any other provisions of the  
24 financial institutions codes or of chapter 120, if the office  
25 ~~department~~ or the appropriate federal regulatory agency finds  
26 that immediate action is necessary in order to prevent the  
27 probable failure of one or more banks, associations, or trust  
28 companies, which in this subsection may be referred to as a  
29 "failing financial entity," the office ~~department~~ shall have  
30 the power, with the concurrence of the appropriate federal  
31 regulatory agency in the case of any bank or association the

1 deposits of which are insured by the Federal Deposit Insurance  
2 Corporation, to issue an emergency order authorizing:  
3       (a) The merger of any such failing financial entity  
4 with a state bank;  
5       (b) The merger of any such failing financial entity  
6 with a state trust company;  
7       (c) Any state bank to acquire assets and assume  
8 liabilities of any such failing financial entity, including  
9 all rights, powers, and responsibilities as fiduciary in  
10 instances where the failing financial institution is actively  
11 engaged in the exercise of trust powers;  
12       (d) Any state trust company to acquire assets and  
13 assume liabilities of any such failing trust company and  
14 rights, powers, and responsibilities as fiduciary of such  
15 failing trust company;  
16       (e) The conversion of any such failing financial  
17 entity into a state bank or trust company;  
18       (f) The chartering of a new state bank or state  
19 association to acquire assets and assume liabilities of any  
20 such failing financial entity and to assume rights, powers,  
21 and responsibilities as fiduciary in cases where such failing  
22 financial entity is engaged in the exercise of trust powers;  
23 or  
24       (g) The chartering of a new state trust company to  
25 acquire assets and assume liabilities and rights, powers, and  
26 responsibilities as fiduciary of such failing trust company.  
27  
28 Any such finding by the office ~~department~~ shall be based upon  
29 reports furnished to it by a state bank, association, or trust  
30 company examiner or by a federal bank or association examiner  
31 or upon other evidence from which it is reasonable to conclude

1 that any such bank, association, or trust company is insolvent  
2 or is threatened with imminent insolvency. The office  
3 ~~department~~ may disallow illegally obtained currency, monetary  
4 instruments, funds, or other financial resources from the  
5 capitalization requirements of this section. The stockholders  
6 of a failing bank, association, or trust company that is  
7 acquired by another bank or trust company pursuant to this  
8 subsection shall be entitled to the same procedural rights and  
9 to compensation for the remaining value of their shares as is  
10 provided for dissenters in s. 658.44, except that they shall  
11 have no right to vote against the transaction. Any transaction  
12 authorized by this subsection may be accomplished through the  
13 organization of a successor institution.

14 Section 1797. Subsections (1), (5), and (9) of section  
15 658.44, Florida Statutes, are amended to read:

16 658.44 Approval by stockholders; rights of dissenters;  
17 preemptive rights.--

18 (1) The office ~~department~~ shall not issue a  
19 certificate of merger to a resulting state bank or trust  
20 company unless the plan of merger and merger agreement, as  
21 adopted by a majority of the entire board of directors of each  
22 constituent bank or trust company, and as approved by each  
23 appropriate federal regulatory agency and by the office  
24 ~~department~~, has been approved:

25 (a) By the stockholders of each constituent national  
26 bank as provided by, and in accordance with the procedures  
27 required by, the laws of the United States applicable thereto,  
28 and

29 (b) After notice as hereinafter provided, by the  
30 affirmative vote or written consent of the holders of at least  
31 a majority of the shares entitled to vote thereon of each

1 constituent state bank or state trust company, unless any  
2 class of shares of any constituent state bank or state trust  
3 company is entitled to vote thereon as a class, in which event  
4 as to such constituent state bank or state trust company the  
5 plan of merger and merger agreement shall be approved by the  
6 stockholders upon receiving the affirmative vote or written  
7 consent of the holders of a majority of the shares of each  
8 class of shares entitled to vote thereon as a class and of the  
9 total shares entitled to vote thereon. Such vote of  
10 stockholders of a constituent state bank or state trust  
11 company shall be at an annual or special meeting of  
12 stockholders or by written consent of the stockholders without  
13 a meeting as provided in s. 607.0704.

14

15 Approval by the stockholders of a constituent bank or trust  
16 company of a plan of merger and merger agreement shall  
17 constitute the adoption by the stockholders of the articles of  
18 incorporation of the resulting state bank or state trust  
19 company as set forth in the plan of merger and merger  
20 agreement.

21 (5) The value of dissenting shares of each constituent  
22 state bank or state trust company, the owners of which have  
23 not accepted an offer for such shares made pursuant to  
24 subsection (3), shall be determined as of the effective date  
25 of the merger by three appraisers, one to be selected by the  
26 owners of at least two-thirds of such dissenting shares, one  
27 to be selected by the board of directors of the resulting  
28 state bank, and the third to be selected by the two so chosen.  
29 The value agreed upon by any two of the appraisers shall  
30 control and be final and binding on all parties. If, within  
31 90 days from the effective date of the merger, for any reason

1 one or more of the appraisers is not selected as herein  
2 provided, or the appraisers fail to determine the value of  
3 such dissenting shares, the office ~~department~~ shall cause an  
4 appraisal of such dissenting shares to be made which will be  
5 final and binding on all parties. The expenses of appraisal  
6 shall be paid by the resulting state bank or trust company.

7 (9) After approval of the plan of merger and merger  
8 agreement by the stockholders as provided in subsection (1),  
9 there shall be filed with the office ~~department~~, within 30  
10 days after the time limit in s. 658.43(5), a fully executed  
11 counterpart of the plan of merger and merger agreement as so  
12 approved if it differs in any respect from any fully executed  
13 counterpart thereof theretofore filed with the office  
14 ~~department~~, and copies of the resolutions approving the same  
15 by the stockholders of each constituent bank or trust company,  
16 certified by the president, or chief executive officer if  
17 other than the president, and the cashier or corporate  
18 secretary of each constituent bank or trust company,  
19 respectively, with the corporate seal impressed thereon.

20 Section 1798. Subsections (1) and (4) of section  
21 658.45, Florida Statutes, are amended to read:

22 658.45 Certificate of merger and effective date;  
23 effect on charters and powers.--

24 (1) Promptly upon compliance with the provisions of s.  
25 658.44(9), the office ~~department~~ shall issue to the resulting  
26 bank a certificate of merger setting forth the name of each  
27 constituent bank and trust company, the name of the resulting  
28 bank or trust company, and the effective date of the merger  
29 which, unless the office ~~department~~ for good cause determines  
30 otherwise, shall be the date requested by the resulting bank  
31 if such request was made at the time of compliance with the

1 requirements of s. 658.44(9), but not later than 3 months  
2 after the date of such compliance. On the effective date of  
3 the merger, the charters and franchises of the constituent  
4 banks and trust companies, other than the resulting bank or  
5 trust company, shall be deemed terminated and surrendered. The  
6 certificate of merger shall be conclusive evidence of the  
7 merger and of the correctness of all proceedings therefor in  
8 all courts and places and may be recorded in any office for  
9 the recording of deeds.

10 (4)(a) If the resulting state bank is to have trust  
11 powers and if one or more of the parties to the merger is a  
12 state trust company or a bank having an existing trust  
13 department operating pursuant to trust powers theretofore  
14 granted by the office ~~department~~, in the case of a constituent  
15 state bank, or by the appropriate federal regulatory  
16 authority, in the case of a constituent national bank, such  
17 trust powers shall pass to the resulting state bank; and it  
18 shall have and may exercise trust powers in the same manner  
19 and to the same extent as the constituent banks or trust  
20 companies to which such trust powers were originally issued,  
21 and no application to have or to continue to have or exercise  
22 trust powers shall be required. However, if the name of the  
23 resulting state bank differs from that of a constituent state  
24 trust company or a constituent bank having trust powers, the  
25 office ~~department~~ shall issue a certificate to the resulting  
26 state bank showing its right to exercise the trust powers  
27 theretofore granted to the constituent banks or trust  
28 companies. All fiduciary relationships and capacities of all  
29 the constituent banks and trust companies shall, by operation  
30 of law, pass to and be assumed by the resulting bank having  
31 trust powers, in the same manner and to the same extent as

1 such fiduciary capacities and relationships were held by any  
2 constituent bank or trust company.

3 (b) Upon the merger of two or more state trust  
4 companies, the resulting state trust company shall continue to  
5 have and exercise the trust powers of the constituent trust  
6 companies, and no application to have or to continue to  
7 exercise trust powers shall be required. However, if the name  
8 of the resulting state trust company differs from that of any  
9 of the constituent trust companies, the office ~~department~~  
10 shall issue a certificate to the resulting state trust company  
11 showing its right to exercise the trust powers theretofore  
12 granted to the constituent trust companies. All fiduciary  
13 relationships and capacities of the constituent state trust  
14 companies shall pass to and be assumed by the resulting state  
15 trust company by operation of law.

16 Section 1799. Paragraph (b) of subsection (1),  
17 paragraph (e) of subsection (5), and subsection (9) of section  
18 658.48, Florida Statutes, are amended to read:

19 658.48 Loans.--A state bank may make loans and  
20 extensions of credit, with or without security, subject to the  
21 following limitations and provisions:

22 (1) LOANS; GENERAL LIMITATIONS.--

23 (b) The commission ~~department~~ may provide by rule for  
24 securities margin requirements.

25 (5) SPECIAL PROVISIONS.--

26 (e) Loans based upon the security of real estate  
27 mortgages shall be documented as first liens, except that  
28 liens other than first liens may be taken:

- 29 1. To protect a loan previously made in good faith;  
30 2. To further secure a loan otherwise amply and  
31 entirely secured;

1           3. As additional security for Federal Housing  
2 Administration Title 1 loans or loans made with participation  
3 or guaranty by the Small Business Administration;

4           4. To secure a loan not in excess of 15 percent of the  
5 capital accounts of the bank; or

6           5. As provided by rules of the commission ~~department~~.

7           (9) When a bank's capital has been diminished by  
8 losses so that its ability to honor legally binding written  
9 loan commitments is impaired, the office ~~department~~ may  
10 approve limited expansion of the lending limitations set forth  
11 in this section.

12           Section 1800. Subsection (2) and paragraph (i) of  
13 subsection (3) of section 658.53, Florida Statutes, are  
14 amended to read:

15           658.53 Borrowing; limits of indebtedness.--

16           (2) A state bank may at any time, pursuant to action  
17 taken by its board of directors, and after obtaining the  
18 written approval of the office ~~department~~ and the approval of  
19 stockholders holding not less than two-thirds of the  
20 outstanding stock of the bank entitled to vote, evidenced  
21 either in a writing signed by the stockholders or by vote at a  
22 legally called and held meeting of the stockholders, issue and  
23 sell convertible and nonconvertible capital notes and  
24 convertible and nonconvertible capital debentures having a  
25 final maturity of not more than 25 years from the date of  
26 issue, in such amounts and under such terms and conditions as  
27 shall be approved by the office ~~department~~. If deemed  
28 necessary by the office ~~department~~, reasonable provisions for  
29 the amortization of the principal amount thereof may be  
30 required. The principal amount of the capital notes and  
31 capital debentures is subject to the limitations imposed by

1 | this chapter on indebtedness of state banks and trust  
2 | companies. Capital notes and capital debentures issued  
3 | pursuant to the provisions of this subsection, and the claims  
4 | of holders thereof, shall be subordinate to the claims of  
5 | depositors and all other creditors of the issuing state bank,  
6 | regardless of whether the claims of, or the liability of the  
7 | issuing bank to, the depositors arose before or after the  
8 | issuance of such capital notes or debentures, but shall be  
9 | superior to the claims of shareholders for dividends, reserve  
10 | profits, or other claims on account of shares of capital stock  
11 | held by them. The holders of the capital notes and the  
12 | holders of the capital debentures shall not be held  
13 | individually responsible as such holders for any debts,  
14 | contracts, or engagements of the issuing state bank and shall  
15 | not be liable for assessments.

16 |         (3) No state bank or trust company shall at any time  
17 | be indebted, or in any way liable, to an amount exceeding the  
18 | amount of its unimpaired capital stock plus 50 percent of the  
19 | amount of its unimpaired surplus fund and unimpaired undivided  
20 | profits fund, except on account of demands of the nature  
21 | following:

22 |             (i) Liabilities incurred for moneys borrowed from a  
23 | bank when such borrowing is made with the express written  
24 | approval of the office ~~department~~.

25 |         Section 1801. Subsections (6), (7), and (8), paragraph  
26 | (c) of subsection (9), paragraph (a) of subsection (10), and  
27 | subsection (11) of section 658.67, Florida Statutes, are  
28 | amended to read:

29 |             658.67 Investment powers and limitations.--A bank may  
30 | invest its funds, and a trust company may invest its corporate  
31 |

1 funds, subject to the following definitions, restrictions, and  
2 limitations:

3 (6) INVESTMENTS IN CORPORATIONS.--Up to an aggregate  
4 of 10 percent of the total assets of a bank may be invested in  
5 the stock, obligations, or other securities of subsidiary  
6 corporations or other corporations or entities, except that  
7 during the first 3 years of existence of a bank, such  
8 investments are limited to 5 percent of the total assets. Any  
9 bank whose aggregate investment on June 30, 1992, exceeds the  
10 limitation in this subsection has 5 years within which to  
11 achieve compliance; additional time may be approved by the  
12 office department if the office department finds that  
13 compliance with this subsection will result in more than a  
14 minimal loss to the bank. The commission department may, by  
15 rule, further limit any type of investment made pursuant to  
16 this subsection if it finds that such investment would  
17 constitute an unsafe or unsound practice.

18 (7) INVESTMENTS IN REAL ESTATE AND EQUIPMENT.--A bank  
19 or trust company may invest in real estate and equipment to  
20 the extent hereinafter defined:

21 (a)1. Up to 60 percent of the capital accounts of the  
22 bank or trust company may be invested in the direct ownership  
23 of, or in leasehold interests in, land and buildings utilized  
24 or to be utilized by the bank or trust company in the  
25 transaction of its business. This limitation applies to  
26 assets subject to a lease agreement which is required to be  
27 capitalized under criteria issued by the Financial Accounting  
28 Standards Board. In lieu of such investment in real estate,  
29 with the prior written approval of the office department, up  
30 to 60 percent of the capital accounts of the bank or trust  
31 company may be invested in the stock of a corporation which

1 owns the land and buildings within which the business of the  
2 bank or trust company is or will be transacted.

3 2. The real estate investment limitations provided by  
4 this subsection may not be exceeded except with the prior  
5 written approval of the office ~~department~~.

6 (b) A bank or trust company may own or lease  
7 furniture, fixtures, machinery, and equipment such as may be  
8 necessary to the transaction of its business.

9 (8) INVESTMENTS IN PERSONAL PROPERTY.--A bank or trust  
10 company may own or lease personal property acquired upon the  
11 specific request and for the use of a customer and may incur  
12 such additional obligations as may be incident to becoming an  
13 owner and lessor of such property. In addition, a bank or  
14 trust company may purchase leases as provided by rules of the  
15 commission ~~department~~.

16 (9) ACQUISITIONS OF PROPERTY AS SECURITY.--A bank or  
17 trust company may acquire property of any kind to secure,  
18 protect, or satisfy a loan or investment previously made in  
19 good faith, and such property shall be entered on the books of  
20 the bank or trust company and held and disposed of subject to  
21 the following conditions and limitations:

22 (c) Unless an extension of time is approved in writing  
23 by the office ~~department~~, real estate shall be sold or charged  
24 off within 5 years of the date of acquisition, and personal  
25 property shall be sold or charged off within 6 months of the  
26 date of acquisition.

27 (10) SPECIAL PROVISIONS.--

28 (a) None of the bonds or other obligations described  
29 in this section shall be eligible for investment in any amount  
30 unless current as to all payments of principal and interest  
31 and unless rated in one of the four highest classifications,

1 or, in the case of commercial paper, unless it is of prime  
2 quality and of the highest letter and numerical rating, as  
3 established by a nationally recognized rating service or any  
4 comparable rating as determined by the office ~~department~~.  
5 Bonds or other obligations which are unrated shall not be  
6 eligible for investment unless otherwise supported as to  
7 investment quality and marketability by a credit rating file  
8 compiled and maintained in current status by the purchasing  
9 bank or trust company.

10 (11) OTHER INVESTMENTS; SUBJECT TO ~~DEPARTMENTAL~~  
11 APPROVAL.--A bank or trust company may make such other  
12 investments as the commission ~~department~~ approves by rule.

13 Section 1802. Section 658.68, Florida Statutes, is  
14 amended to read:

15 658.68 Liquidity.--

16 (1) A state bank must maintain a daily liquidity  
17 position equal to at least 15 percent of its total transaction  
18 accounts and 8 percent of its total nontransaction accounts,  
19 less those deposits of public funds for which security has  
20 been pledged as provided by law. Bank assets eligible to meet  
21 the liquidity requirement are cash on hand, demand deposits  
22 due from correspondent banks, and other investments and  
23 short-term marketable securities as determined by rule of the  
24 commission ~~department~~.

25 (2) Whenever a state bank fails to demonstrate  
26 compliance with subsection (1), the bank shall not further  
27 diminish its liquidity by making any new loans or discounts  
28 otherwise than by discounting or purchasing bills of exchange  
29 payable at sight, nor by paying any dividends of its profits  
30 until compliance with the liquidity requirement of either has  
31 been met. The office ~~department~~ may notify any bank whose

1 liquidity is below the amount required to be maintained to  
2 make good such liquidity, and if the bank fails within 30 days  
3 thereafter to achieve its liquidity requirement, the office  
4 ~~department~~ may determine the bank insolvent and may appoint a  
5 liquidator to wind up the business as provided in ss.  
6 658.79-658.96.

7 Section 1803. Section 658.73, Florida Statutes, is  
8 amended to read:

9 658.73 Fees and assessments.--

10 (1) Each state bank and state trust company shall pay  
11 to the office ~~department~~ examination fees and assessments as  
12 follows:

13 (a) A semiannual fee of \$2,500; and

14 (b) A semiannual assessment, each in such amount as  
15 may be determined by the commission ~~department~~, by rule, but  
16 not exceeding 15 cents for each \$1,000 of total assets as  
17 shown on the statement of condition of the bank or trust  
18 company as of the last business day in June and the last  
19 business day in December in each year. In its determination,  
20 the commission ~~department~~ may consider examination fees and  
21 application fees received from banks and trust companies in  
22 setting the semiannual assessment for purposes of meeting the  
23 cost of regulation of banks and trust companies subject to  
24 this chapter.

25 (2) Applications filed with the office ~~department~~  
26 shall be accompanied by payment of the following nonrefundable  
27 fees:

28 (a) Fifteen thousand dollars for each application for  
29 authority to organize a new state bank or state trust company.  
30  
31

1           (b) Two thousand five hundred dollars for each  
2 application by an existing bank or association for trust  
3 powers.

4           (c) Seven thousand five hundred dollars for each  
5 application for authority to acquire a controlling interest in  
6 a state bank or state trust company; however, if more than one  
7 bank or trust company is being acquired in any such  
8 application, the fee shall be increased by \$3,500 for each  
9 additional bank or trust company. However, in no event shall  
10 the fee exceed \$15,000.

11           (d) Seven thousand five hundred dollars for each  
12 application for conversion of a national bank to a state bank.

13           (e) One thousand five hundred dollars for each  
14 application to establish a branch by any other state bank or  
15 state trust company that does not qualify for the branch  
16 notification process.

17           (f) One thousand five hundred dollars for each  
18 application for authority to establish a trust service office  
19 of a state trust company or of a trust department of a state  
20 bank or association, and a like amount for each application by  
21 a bank or association with trust powers which is not a state  
22 bank or state association for authority to establish a trust  
23 service office at a state bank, state association, or state  
24 credit union.

25           (g) Seven thousand five hundred dollars for each  
26 application for a merger or consolidation; however, if three  
27 or more banks or trust companies are involved in any such  
28 application, the fee shall be \$3,500 for each involved  
29 institution. However, in no event shall the fee exceed  
30 \$15,000.

31

1           (h) Two thousand five hundred dollars to establish a  
2 successor institution.

3           (i) Seven hundred fifty dollars for each application  
4 by a state bank or trust company not operating in a safe and  
5 sound manner for relocation of its main office.

6           (j) Two thousand five hundred dollars for each  
7 application for the purchase of assets and the assumption of  
8 liabilities.

9           (3) If, as a result of any application filed with the  
10 office department, the ~~office department~~ determines that an  
11 examination is necessary to assess the financial condition of  
12 any financial institution, the applying financial institution  
13 shall pay to the office department a nonrefundable examination  
14 fee, pursuant to s. 655.045(1).

15           (4) Each state bank and state trust company shall pay  
16 to the office department \$25 for each "certificate of good  
17 standing" certifying that a state-chartered financial  
18 institution is licensed to conduct business in this state  
19 under the financial institutions codes. All such requests  
20 shall be in writing. The office department shall waive this  
21 fee when the request is by a state or federal regulatory  
22 agency or law enforcement agency.

23           (5) The amounts of all fees and assessments provided  
24 for in this section shall be deemed to be maximum amounts; and  
25 the commission department has the authority to establish, by  
26 rule, and from time to time to change, fees and assessments in  
27 amounts less than the maximum amounts stated in this section.

28           Section 1804. Section 658.79, Florida Statutes, is  
29 amended to read:

30           658.79 Taking possession of insolvent state banks or  
31 trust companies.--Whenever the office department has reason to

1 conclude, based upon the reports furnished to it by a state  
2 bank or trust company examiner or upon other satisfactory  
3 evidence, that any state bank or trust company:

- 4 (1) Is insolvent or imminently insolvent; or  
5 (2) Is transacting its business in an unsound, unsafe,  
6 or unauthorized manner such that it is threatened with  
7 imminent insolvency,

8  
9 the office ~~department~~ may, in its discretion, forthwith  
10 designate and appoint a liquidator or receiver to take charge  
11 of the assets and affairs of such bank or trust company and  
12 require of him or her such bond and security as the office  
13 ~~department~~ deems proper, not exceeding double the amount that  
14 may come into his or her hands. The office ~~department~~ may  
15 enlist the services of any state or local law enforcement  
16 agency in taking possession and securing the assets of the  
17 bank or trust company.

18 Section 1805. Section 658.80, Florida Statutes, is  
19 amended to read:

20 658.80 Appointment of receiver or liquidator.--

21 (1) Upon taking possession of a state bank or trust  
22 company pursuant to s. 658.79, the office ~~department~~ shall  
23 appoint either a receiver to conserve the assets of the  
24 institution or a liquidator to liquidate the assets of the  
25 institution and wind up its affairs.

26 (2) The Federal Deposit Insurance Corporation or any  
27 appropriate federal agency shall be appointed by the office  
28 ~~department~~ as receiver or liquidator of any state bank, the  
29 deposits of which are to any extent insured by the  
30 corporation, and which shall have been closed by the office  
31 ~~department~~. Upon appointment, the corporation may act without

1 bond as receiver or liquidator and shall have and possess all  
2 the powers and privileges provided by the laws of this state  
3 with respect to a receiver or liquidator, respectively, of  
4 such institution, its depositors and other creditors. If the  
5 corporation declines to accept the tendered appointment, the  
6 office ~~department~~ may appoint and thereafter dismiss or  
7 replace such other receiver or liquidator as deemed necessary  
8 or advisable.

9           Section 1806. Section 658.81, Florida Statutes, is  
10 amended to read:

11           658.81 Office ~~Department~~ action; notice and court  
12 confirmation.--The office ~~department~~, immediately upon  
13 appointing such liquidator or receiver, shall serve notice  
14 upon any other person having the charge or management of any  
15 such bank or trust company, informing him or her of its action  
16 in appointing such liquidator or receiver and notifying him or  
17 her that the office ~~department~~ will apply on a date named  
18 therein, not to exceed 10 days from the date of service of  
19 such notice, to a circuit judge in the court circuit in which  
20 the principal office of such bank or trust company is located  
21 for an order confirming its action. A copy of such  
22 application together with a notice of hearing thereon shall be  
23 served on the person receiving the above notice prior to the  
24 time set for such hearing. Such proceedings shall be given  
25 precedence over other cases pending in such court and shall in  
26 every way be expedited. Upon the office's ~~department's~~  
27 showing at the hearing on such application that such bank or  
28 trust company is insolvent or threatened with imminent  
29 insolvency, the court shall enter an order confirming the  
30 action of the office ~~department~~ and the appointment of such  
31 liquidator or receiver; otherwise, the court shall enter an

1 order dismissing the liquidator or receiver, and such  
2 liquidator or receiver shall relinquish his or her control  
3 over the assets and affairs of such bank or trust company.

4 Section 1807. Subsections (2) and (3) of section  
5 658.82, Florida Statutes, are amended to read:

6 658.82 Receiver; powers and duties.--

7 (2) Any other receiver appointed pursuant to s. 658.80  
8 shall be subject to the supervision of the office ~~department~~  
9 and shall have the power to:

10 (a) Take possession of the books, records, and assets  
11 of every description of the bank or trust company and sue for  
12 and collect all debts, dues, and claims belonging to the bank  
13 or trust company;

14 (b) Operate the business of the bank or trust company  
15 pursuant to the authority granted by its articles of  
16 incorporation and the laws of this state in an effort to  
17 manage and conserve the assets of the bank or trust company  
18 and place such bank or trust company in a sound, safe, and  
19 solvent condition;

20 (c) Sue for and defend, compromise, and settle all  
21 claims involving the bank or trust company;

22 (d) Subject to approval by the circuit court, sell any  
23 or all real and personal property of the bank or trust company  
24 and sell or compound all bad or doubtful debts;

25 (e) Pay all expenses of the receivership, which  
26 expenses shall be a first charge against the assets of the  
27 bank or trust company;

28 (f) Borrow such sum of money as may be necessary or  
29 expedient to protect and conserve the assets and business of  
30 the bank or trust company and, in connection therewith, to  
31

1 secure such borrowings by the pledge, hypothecation, or  
2 mortgage of the assets of the bank or trust company; and  
3 (g) If necessary to pay the debts of such bank or  
4 trust company, sue for and enforce the individual liability of  
5 the stockholders.

6 (3) Within 30 days of her or his appointment, the  
7 receiver shall file a statement of condition of the bank or  
8 trust company with the office ~~department~~, in addition to such  
9 other interim reports as the office ~~department~~ may require.  
10 Upon receipt of the report of condition, the office ~~department~~  
11 may:

12 (a) Upon a finding that the bank or trust company is  
13 in a safe, sound, and solvent condition, surrender possession  
14 of such bank or trust company bank to its directors for the  
15 purpose of permitting the bank or trust company to resume  
16 business on such terms and conditions as the office ~~department~~  
17 shall prescribe;

18 (b) Appoint a liquidator to immediately liquidate the  
19 assets of the bank or trust company and wind up its affairs;

20 (c) Grant a further period of time to the receiver to  
21 rehabilitate the affairs of the bank or trust company; or

22 (d) Appoint a new receiver.

23 Section 1808. Subsections (2) and (3) of section  
24 658.83, Florida Statutes, are amended to read:

25 658.83 Liquidator; powers and duties.--

26 (2) Any other liquidator appointed pursuant to s.  
27 658.80 shall, subject to the supervision of the office  
28 ~~department~~, have the power to:

29 (a) Take possession of the books, records, and assets  
30 of every description of the bank or trust company and sue for  
31

1 and collect all debts, dues, and claims belonging to the bank  
2 or trust company;

3 (b) Sue for and defend, compromise, and settle all  
4 claims involving the bank or trust company;

5 (c) Subject to approval by the circuit court, sell any  
6 or all of the real and personal property of the bank or trust  
7 company and sell or compound all bad or doubtful debts;

8 (d) Pay all expenses incurred in the liquidation  
9 process, which expenses shall be a first charge against the  
10 assets of the bank or trust company and shall be fully paid  
11 before any final distribution or payment of dividends to  
12 creditors, shareholders, or stockholders;

13 (e) Borrow such sum of money as may be necessary or  
14 expedient in aiding in the liquidation of the bank or trust  
15 company and, in connection therewith, to secure such  
16 borrowings by the pledge, hypothecation, or mortgage of the  
17 assets of the bank or trust company; and

18 (f) If necessary to pay the debts of such bank or  
19 trust company, sue for and enforce the individual liability of  
20 the stockholders.

21 (3) Such liquidator shall pay all moneys received to  
22 the Chief Financial Officer ~~Treasurer~~ to be held as a special  
23 deposit for the use and benefit of the creditors subject to  
24 the order of the office ~~department~~ and also shall make reports  
25 quarterly, or when called upon, to the office ~~department~~ of  
26 all her or his acts and proceedings.

27 Section 1809. Subsection (3) of section 658.84,  
28 Florida Statutes, is amended to read:

29 658.84 Transfers by banks and other acts in  
30 contemplation of insolvency.--

31

1           (3) Except in any action brought by the office  
2 ~~department~~, no attachment, injunction, or execution shall be  
3 enforced against such financial institution or any of its  
4 property before final judgment in any suit, action, or  
5 proceeding in any state or federal court.

6           Section 1810. Section 658.90, Florida Statutes, is  
7 amended to read:

8           658.90 Receivers or liquidators under supervision of  
9 office ~~department~~.--The provisions of ss. 658.79-658.96 shall  
10 apply to all receivers or liquidators of any bank or trust  
11 company heretofore appointed by the order of any circuit  
12 court, and all such receivers or liquidators, both those  
13 hereunder and those hereafter appointed by the circuit court,  
14 shall at all times be under the supervision and control of the  
15 office ~~department~~ and subject at all times to summary  
16 discharge and dismissal by it. Any vacancy in such  
17 receivership may be filled by the office ~~department~~ at any  
18 time.

19           Section 1811. Section 658.94, Florida Statutes, is  
20 amended to read:

21           658.94 Prima facie evidence.--The general ledger, list  
22 of claimants, examiner's final report made at the time of the  
23 failure of the bank or trust company, and such other records  
24 of the office's ~~department's~~ office relating to any closed  
25 bank or trust company, or any duly authenticated copy thereof,  
26 shall be prima facie evidence of the subject matter therein  
27 set forth.

28           Section 1812. Section 658.95, Florida Statutes, is  
29 amended to read:

30           658.95 Voluntary liquidation.--Any bank or trust  
31 company may go into liquidation and be closed by a vote of its

1 stockholders owning two-thirds of its stock. Whenever a vote  
2 is taken to go into liquidation, the board of directors shall  
3 cause this fact to be certified to the office ~~department~~ and  
4 publication thereof to be made for a period of 2 months in a  
5 newspaper of general circulation located in the county in  
6 which the bank or trust company is closing up its affairs and  
7 notifying its creditors to present their claims against the  
8 bank or trust company for payment.

9 Section 1813. Section 658.96, Florida Statutes, is  
10 amended to read:

11 658.96 Procedure in voluntary liquidation.--When a  
12 bank or trust company decides to go into voluntary  
13 liquidation, the president and cashier, or other appropriate  
14 officers, shall, before beginning publication of the notice  
15 required by law, furnish the office ~~department~~ with a full and  
16 complete detailed statement of the affairs of the bank or  
17 trust company and shall thereafter forward to the office  
18 ~~department~~ on the first Monday in each month a like detailed  
19 statement until all of the liabilities of the bank or trust  
20 company shall have been settled in full, provided that, if the  
21 office ~~department~~ is not satisfied with the report of any bank  
22 or trust company intending to go into voluntary liquidation,  
23 or if at any time it is not satisfied with the progress of  
24 such liquidation, it shall have full authority to proceed  
25 under s. 658.80, or otherwise, as the law directs.

26 Section 1814. Subsections (3), (5), and (6) of section  
27 658.995, Florida Statutes, are amended to read:

28 658.995 Credit Card Bank Act.--

29 (3) Subject to the provisions of this section and to  
30 the approval of the office ~~department~~, any domestic lender,  
31 foreign lender, or business organization may organize, own,

1 and control a credit card bank on the terms and conditions  
2 provided in this section:

3 (a) If the credit card bank is to be organized under  
4 the laws of this state, such bank shall be organized as  
5 provided in this section;

6 (b) In connection with the application to organize or  
7 to control a credit card bank, the applicant shall pay to the  
8 office ~~department~~ a filing fee as provided in s. 658.73 for  
9 the formation of a bank or trust company;

10 (c) The shares of a credit card bank shall be owned  
11 solely by a domestic lender, a foreign lender, or a business  
12 organization;

13 (d) The credit card bank shall accept deposits only at  
14 a single location in this state;

15 (e) The credit card bank shall at all times maintain  
16 capital stock and paid-in surplus as required by regulatory  
17 policies of the commission and office ~~department~~ but in no  
18 event less than \$4 million;

19 (f) The credit card bank may engage only in the  
20 business of soliciting, processing, and making loans pursuant  
21 to credit card accounts and conducting such other activities  
22 as may be necessarily incident thereto;

23 (g) The credit card bank may not accept demand  
24 deposits or deposits that the depositor has the ability to  
25 withdraw by check or similar means for payment to third  
26 parties or others;

27 (h) The credit card bank may accept savings or time  
28 deposits of only \$100,000 or more;

29 (i) The credit card bank must, prior to opening,  
30 obtain and thereafter maintain insurance of its deposits by  
31 the Federal Deposit Insurance Corporation; and

1           (j) The credit card bank may not engage in the  
2 business of making commercial loans.

3           (5) All credit card banks organized under the laws of  
4 this state shall be subject to the supervision, regulation,  
5 and examination of the office ~~department~~, and the office  
6 ~~department~~ shall have all enforcement powers with respect  
7 thereto as are provided in the financial institutions codes.

8           (6) The commission may adopt ~~department shall have the~~  
9 ~~power to promulgate rules and regulations~~ implementing the  
10 provisions of this section.

11           Section 1815. Section 660.26, Florida Statutes, is  
12 amended to read:

13           660.26 Trust department licensing.--

14           (1) When authorized by the office ~~department~~ as  
15 provided in this section, a state bank or association may  
16 establish a trust department for the purpose of conducting  
17 trust business.

18           (2) A written application for trust powers shall be  
19 filed with the office ~~department~~ in such form as the  
20 commission prescribes and containing such information as the  
21 commission and office ~~department may~~ reasonably require. The  
22 application shall be accompanied by the required nonrefundable  
23 fee.

24           (3) Upon the filing of an application, the office  
25 ~~department~~ shall investigate and consider:

26           (a) The general character and management ability of  
27 the principal executive officers of the applicant bank or  
28 association.

29           (b) The quality of the supervision to be given to the  
30 fiduciary activities, including the qualifications,  
31

1 experience, and character of the proposed principal officers  
2 of the trust department.

3 (c) The general condition of the applicant bank or  
4 association, and the sufficiency of earnings and earning  
5 prospects of the applicant bank or association, including the  
6 proposed trust department, to support the anticipated expenses  
7 and any anticipated operating losses of the trust department  
8 during its formative or initial years.

9 (d) Any other matters relevant to the application and  
10 the establishment and operation of the proposed trust  
11 department.

12 (4) Expenses necessarily incurred by the office  
13 ~~department~~ in the conduct of investigations required by this  
14 section shall, in the case of applications which require  
15 investigations by the office ~~department~~ outside the state, be  
16 assessed against the applicant bank or association on an  
17 actual-cost-incurred basis and shall be in addition to other  
18 fees required by law. Failure to promptly reimburse the  
19 office ~~department~~ upon its demand shall be grounds for denial  
20 of such application or revocation of any approval thereof.

21 (5) The office ~~department~~ shall approve the  
22 application if it finds that:

23 (a) The general condition of the applicant bank or  
24 association is sufficient to support the proposed trust  
25 department.

26 (b) The earnings and earning prospects of the  
27 applicant bank or association, including the earning prospects  
28 of the proposed trust department, are sufficient to support  
29 the anticipated expenses and any anticipated operating losses  
30 of the trust department during its formative or initial years.

31

1 (c) The capital structure of the bank or association  
2 is adequate to support the trust department.

3 (d) The proposed trust officers have or will be  
4 supplied with sufficient trust and related investment,  
5 financial, and managerial experience, ability, and standing to  
6 operate the trust department.

7 (e) Provision has been made for the trust department  
8 to occupy suitable quarters at the location specified in the  
9 application.

10 (6) If applicable federal law requires the approval of  
11 a federal regulatory agency for the establishment of a trust  
12 department by the applicant bank or association, approval by  
13 the office ~~department~~, by final order or otherwise, shall be  
14 deemed subject to approval by such federal regulatory agency,  
15 and a final order of denial by such federal regulatory agency  
16 will terminate and revoke the final or other order issued by  
17 the office ~~department~~ approving the application.

18 (7) Upon approval of an application by the office  
19 ~~department~~ and such federal regulatory agency, if required,  
20 the office ~~department~~ shall issue and deliver to the applicant  
21 a certificate or other document granting trust powers to the  
22 applicant and authorizing it to establish a trust department  
23 and engage in trust business.

24 Section 1816. Section 660.265, Florida Statutes, is  
25 amended to read:

26 660.265 Examination fees.--Each state trust company  
27 and each state bank or association exercising trust powers  
28 shall pay to the office ~~department~~, within 30 days after an ~~a~~  
29 ~~departmental~~ examination pursuant to s. 655.045, a fee for the  
30 costs of the examination by the office ~~department~~ pursuant to  
31 s. 655.045. For the purposes of this section, the term

1 "costs" means the salary and travel expenses of field staff  
2 which are directly attributable to its examination of the  
3 financial institution and the travel expenses of any  
4 supervisory or support staff required as a result of  
5 examination findings.

6 Section 1817. Section 660.27, Florida Statutes, is  
7 amended to read:

8 660.27 Deposit of securities with Chief Financial  
9 Officer ~~Treasurer~~.--

10 (1) Before transacting any trust business in this  
11 state, every trust company and every state or national bank or  
12 state or federal association having trust powers shall give  
13 satisfactory security by the deposit or pledge of security of  
14 the kind or type provided in this section having at all times  
15 a market value in an amount equal to 25 percent of the issued  
16 and outstanding capital stock of such trust company, bank, or  
17 state or federal stock association or, in the case of a  
18 federal mutual association, an equivalent amount determined by  
19 the office ~~department~~, or the sum of \$25,000, whichever is  
20 greater. However, the value of the security deposited or  
21 pledged pursuant to the provisions of this section shall not  
22 be required to exceed \$500,000. Any notes, mortgages, bonds,  
23 or other securities, other than shares of stock, eligible for  
24 investment by a state bank, state association, or state trust  
25 company, or eligible for investment by fiduciaries, shall be  
26 accepted as satisfactory security for the purposes of this  
27 section.

28 (2) The trust company, bank, or association shall  
29 provide to the Chief Financial Officer ~~Treasurer~~ the  
30 following:

31

1 (a) Written information which includes full legal  
2 name; federal employer identification number; principal place  
3 of business; amount of capital stock; and amount of required  
4 collateral.

5 (b) The required information listed in paragraph (a)  
6 shall be provided annually as of September 30 and shall be due  
7 November 15.

8 (3) The Chief Financial Officer ~~Treasurer~~ shall  
9 determine whether the security deposited or pledged pursuant  
10 to this section, or tendered for such deposit or pledge, is of  
11 the kind or type permitted, and has a market value in the  
12 amount required, by subsection (1). The security required by  
13 this section shall be deposited with or to the credit of, or  
14 pledged to, the Chief Financial Officer ~~Treasurer~~ for the  
15 account of each state or national bank, state or federal  
16 association, or trust company depositing or pledging the same  
17 and shall be used, if at all, by the liquidator of such bank,  
18 association, or trust company with first priority being given  
19 to claims on account of the trust business or fiduciary  
20 functions of such bank, association, or trust company or,  
21 prior to liquidation, for the payment of any judgment or  
22 decree which may be rendered against such bank, association,  
23 or trust company in connection with its trust business or its  
24 fiduciary functions if such judgment or decree is not  
25 otherwise paid by, or out of other assets of, such bank,  
26 association, or trust company.

27 (4) Any security of any kind which has been deposited  
28 or pledged as provided in this section may at any time, by or  
29 upon the direction of such bank, association, or trust company  
30 which deposited or pledged such security, be withdrawn and  
31 released from such pledge provided that simultaneously

1 therewith satisfactory security as provided in this section,  
2 in such amount, if any, as may be necessary in order to comply  
3 with the requirements of this section, is substituted for the  
4 security so withdrawn and released.

5 (5) With the approval of the Chief Financial Officer  
6 ~~Treasurer~~, each trust company, bank, or association as pledgor  
7 may deposit eligible collateral with a custodian. This  
8 custodian shall not be affiliated or related to the trust  
9 company, bank, or association. Collateral must be deposited  
10 using the collateral agreements and provisions as set forth in  
11 s. 280.041(2) and (3).

12 Section 1818. Section 660.28, Florida Statutes, is  
13 amended to read:

14 660.28 Exemption from bond and other security as  
15 fiduciary.--A trust company or trust department maintaining  
16 security with the Chief Financial Officer ~~Treasurer~~ as  
17 required by s. 660.27 shall not be required by the state or  
18 any of its political subdivisions or by a court of this state  
19 to furnish any bond or other security as a condition of, or in  
20 connection with, acting in any fiduciary capacity which such  
21 trust company or trust department is lawfully permitted to  
22 accept or assume.

23 Section 1819. Section 660.33, Florida Statutes, is  
24 amended to read:

25 660.33 Trust service offices.--

26 (1) In addition to its principal office and any branch  
27 trust company authorized under s. 660.32, a trust company or a  
28 trust department with its principal place of doing business in  
29 this state may maintain one or more trust service offices at  
30 the location of any bank, association, or credit union which  
31 is organized under the laws of this state or under the laws of

1 the United States with its principal place of doing business  
2 in this state. However, a trust service office may be  
3 established only after the trust company or the trust  
4 department has secured the consent of a majority of the  
5 stockholders or members entitled to vote on such proposal at a  
6 meeting of stockholders or members, and of a majority of the  
7 board of directors, of the bank, association, or credit union  
8 at which a trust service office is proposed to be maintained,  
9 and after a certificate of authorization has been issued to  
10 the trust company or the trust department by the office  
11 ~~department~~.

12 (2)(a) An application for approval to establish a  
13 trust service office shall be in such form as the commission  
14 prescribes and contain such information as the commission or  
15 office department ~~may~~ reasonably requires ~~require~~ and be  
16 accompanied by the required nonrefundable fee.

17 (b) The office department shall issue a certificate  
18 approving the establishment of a trust service office by a  
19 trust company or a trust department if the office department  
20 determines that:

21 1. The trust company or trust department has complied  
22 with the applicable capital requirements;

23 2. Provision has been made for suitable quarters and  
24 staffing for the trust service office; and

25 3. If the trust service office is to be established at  
26 a bank or association without existing trust powers or at a  
27 credit union, the establishment of the proposed trust service  
28 office will not unduly injure any existing trust companies or  
29 trust departments in the community where the trust service  
30 office is to be located.

31

1           (3) The trust company or trust department shall have  
2 the power to conduct any trust business at a trust service  
3 office which it is permitted to conduct at its principal  
4 office unless limited by the provisions of any agreement  
5 between the bank, association, or credit union and the trust  
6 company or trust department.

7           (4)(a) Unless an election has been made pursuant to  
8 paragraph (b), when a trust service office is established by a  
9 trust company or a trust department at the location of a bank  
10 or association which has trust powers, the bank or association  
11 may retain and continue to exercise its trust powers following  
12 the establishment of the trust service office.

13           (b) If the bank or association and the trust company  
14 or trust department so elect in the application for approval  
15 to establish a trust service office at the location of a bank  
16 or association that has trust powers, and if the office  
17 ~~department~~ is satisfied that the interests of beneficiaries of  
18 the estates, trusts, and other fiduciary relationships being  
19 serviced will be adequately protected, the office ~~department~~  
20 shall issue an order authorizing the following:

21           1. The trust company or trust department, upon  
22 complying with all applicable requirements of law, shall be  
23 substituted for, succeed to, and replace the bank or  
24 association as fiduciary. The trust company or trust  
25 department, as the successor fiduciary, shall thereupon  
26 succeed to all the powers, rights, duties, and privileges of  
27 the bank or association as fiduciary of all such estates,  
28 trusts, guardianships, and other fiduciary relationships in  
29 which the bank or association is serving to which the trust  
30 company or trust department shall have been lawfully  
31 substituted.

1           2. During the time the trust company or trust  
2 department maintains a trust service office at the location of  
3 the bank or association, the trust company or trust department  
4 shall be deemed to be named the fiduciary in all instruments  
5 in which the bank or association is named the fiduciary, even  
6 if the bank or association is not serving as fiduciary at the  
7 time the trust service office is established, in the manner,  
8 to the extent, and with the same effect as though there had  
9 been a merger of the bank and the trust company or trust  
10 department.

11           3. Upon complying with all requirements of law with  
12 respect thereto, the bank or association shall be relieved  
13 from all of its fiduciary duties in connection with all  
14 fiduciary accounts and relationships with respect to which the  
15 trust company or trust department has been substituted as  
16 fiduciary or with respect to which it has resigned and been  
17 relieved as provided by law, and, upon being so relieved of  
18 all its fiduciary duties, the bank or association, although  
19 retaining its trust powers in an inactive status unless it  
20 surrenders them as provided by law, shall not thereafter  
21 exercise its trust powers so long as there is a trust service  
22 office transacting business at the bank or association. The  
23 substitution of the trust company or trust department for the  
24 bank or association as fiduciary shall occur and be effective  
25 on the day the trust company or trust department opens the  
26 trust service office for business, or on such later date as  
27 may be specified by court order, or by any written consent or  
28 agreement, which lawfully effectuates the designation, by  
29 substitution or otherwise, of the trust company or trust  
30 department as the fiduciary with respect to any particular  
31 fiduciary account.

1 (c)1. Anything in this section or any other law to the  
2 contrary notwithstanding and subject to compliance with this  
3 subsection, an affiliated trust company or an affiliated  
4 bank's trust department, if authorized to exercise trust  
5 powers in this state, shall be deemed substituted as fiduciary  
6 without further authorization where the successor has an  
7 established trust service office in the predecessor's  
8 principal place of business or any branch of the predecessor  
9 located in this state. The successor may conduct therein any  
10 trust business incidental thereto that it is otherwise  
11 permitted to conduct in this state, but it may not accept  
12 deposits at the offices of the predecessor bank except as  
13 incidental to the trust business.

14 2. To effect the substitution referred to in  
15 subparagraph 1., a predecessor shall enter into an agreement  
16 with the successor that sets forth the fiduciary powers,  
17 rights, privileges, duties, and liabilities of the parties  
18 and, more specifically, those to which the successor will  
19 succeed, including, but not limited to, those described in  
20 subparagraph 7. The agreement will be approved by the boards  
21 of directors of the predecessor, successor, and parent  
22 corporations. The agreement shall then be filed with the  
23 office ~~department~~. The effective date of the agreement shall  
24 be the date on which the office ~~department~~ approves the  
25 agreement under subparagraph 6. unless another, later date is  
26 specified in the agreement, which other date shall be no later  
27 than 75 days after the date on which the agreement is filed  
28 with the office ~~department~~ under this subparagraph; however,  
29 no such agreement may take effect without approval by the  
30 office ~~department~~.

31

1           3.a. Not sooner than 30 days before or later than 30  
2 days after the date on which the agreement is filed with the  
3 office ~~department~~ under subparagraph 2., the predecessor and  
4 successor shall cause notice of the filing of such agreement  
5 with the office ~~department~~, along with the procedure for  
6 objection thereto as hereinafter provided, to be published in  
7 a newspaper of general circulation in the county in which the  
8 predecessor's principal place of business is located and file  
9 a copy of such written notice in any applicable  
10 court-administered fiduciary proceeding, including, but not  
11 limited to, probate and guardianship proceedings, and  
12 additionally, they shall serve written notice upon the  
13 following:

14           (I) Each cofiduciary that serves with the predecessor;

15           (II) Each surviving grantor of a revocable trust;

16           (III) Each person who alone or in conjunction with  
17 others has the power to remove the predecessor;

18           (IV) Each principal for whom the predecessor serves as  
19 agent or custodian;

20           (V) Each guardian of the person for whom the  
21 predecessor serves as guardian of the property for their ward;

22           (VI) Each beneficiary or the beneficiary's legal or  
23 natural guardian, when applicable, currently receiving or  
24 entitled as a matter of right to receive a current mandatory  
25 or discretionary distribution, as opposed to a remainder  
26 distribution, of principal or income from a trust, estate, or  
27 other fund with respect to which a substitution of fiduciary  
28 under this subsection is to be effected. However, when  
29 applicable and in lieu thereof, such service will be made upon  
30 the sole holder or a majority of the coholders of a general or  
31 limited power of appointment, including one in the form of a

1 power of amendment, or revocation, in which case they shall be  
2 deemed to act for any beneficiary who may take by virtue of  
3 the exercise or failure to exercise the power;

4 (VII) Upon any other person or entity required by the  
5 court in any referenced court-administered fiduciary  
6 proceeding; and

7 (VIII) In the case of a trust described in the  
8 Internal Revenue Code of 1986 s. 401(a) as it may from time to  
9 time hereafter be amended, upon the employer or employee  
10 organization or both responsible for the maintenance of such  
11 trust.

12 b. Service of such written notice will not be required  
13 upon the persons or entities listed in sub-subparagraph a.  
14 when the documents or other writings that created the  
15 fiduciary relationship permit a substitution of fiduciaries.

16 c. Service of written notice shall be made upon the  
17 persons or entities listed in sub-subparagraph a. in the  
18 manner provided for the service of formal notice under the  
19 applicable Florida Probate Rules. Service of written notice by  
20 mail shall be completed upon receipt or refusal of the notice  
21 by the persons or entities listed in sub-subparagraph a. If  
22 such written notice is made by mail or delivery, proof of  
23 mailing or delivery shall be by verified statement of the  
24 person mailing or delivering the written notice, and there  
25 shall be attached to the verified statement the signed  
26 receipt, appropriate affidavit of delivery by the person  
27 effecting such delivery, or other evidence satisfactory to the  
28 office ~~department~~ or to a court of competent jurisdiction that  
29 notice was given properly to or refused by the addressee or  
30 agent of the addressee. The original of such proof shall be  
31 filed with the office ~~department~~ with copies to the file or

1 the account maintained by the predecessor or successor and to  
2 the court in any court-administered fiduciary administration.  
3 4. Within 60 days after the date on which newspaper  
4 notice is published under subparagraph 3., after any date of a  
5 signed or refused receipt pertaining to the written notice by  
6 mail under subparagraph 3., after any date of delivery as set  
7 forth in the affidavit referenced in subparagraph 3., or after  
8 the date on which service is otherwise accomplished, the  
9 latest date being operative, but not thereafter, the persons  
10 or entities listed in subparagraph 3. or the court in a  
11 court-administered fiduciary proceeding on its own motion may  
12 object to such substitution of fiduciaries by serving written  
13 notice, executed by the persons, entities, or court, upon the  
14 predecessor, successor, and office ~~department~~. Such notice  
15 shall be served in the same manner as provided for service of  
16 the original notice upon interested persons or entities in  
17 subparagraph 3. Execution of such notice shall be in the same  
18 manner as is required for the execution and recordation of  
19 deeds to real property in this state except that notice by a  
20 court may be signed by the judge. If such notice of objection  
21 is executed by all of the cofiduciaries that serve with the  
22 predecessor, by each surviving grantor of a revocable trust,  
23 by all of the persons that have the power to remove the  
24 predecessor as fiduciary, by all of the principals for whom  
25 the predecessor serves as agent or custodian, by the guardian  
26 of the person for whom the predecessor serves as guardian of  
27 the property for their ward, by all of the beneficiaries  
28 currently receiving or entitled as a matter of right to  
29 receive a current mandatory or discretionary distribution, as  
30 opposed to a remainder distribution, of principal or income,  
31 or by the sole holder or a majority of the coholders of a

1 general or limited power of appointment including one in the  
2 form of a power of amendment or revocation, the successor will  
3 not be substituted for the predecessor and the predecessor  
4 will remain or be reinstated as fiduciary but only as to the  
5 fiduciary relationship that is the subject of such objection.  
6 Reinstatement shall take effect immediately upon receipt of  
7 such notice by the predecessor, successor, and office  
8 ~~department~~. If the notice of objection is executed by less  
9 than all of the persons or entities of any category specified  
10 in this subparagraph, or if entered by the court of a  
11 court-administered fiduciary proceeding on its own motion,  
12 then, with regard to the fiduciary relationship that is the  
13 subject of such notice of objection, the predecessor and  
14 successor may elect to do either of the following:

15       a. File a subsequent agreement with the office  
16 ~~department~~, with copies of such agreement to be mailed to all  
17 of the specified persons or entities, which states that the  
18 successor will not be substituted for the predecessor as to  
19 that fiduciary relationship, and such agreement shall cause  
20 the predecessor to remain or be reinstated, instanter, as  
21 fiduciary in that fiduciary relationship. The filing of such  
22 subsequent agreement with the office ~~department~~ does not  
23 prejudice the predecessor or the successor from filing another  
24 agreement that affects such fiduciary relationship under  
25 subparagraph 2.; or

26       b. File a petition with the court having jurisdiction  
27 of any court-administered fiduciary proceeding or commence a  
28 civil action in a court of competent jurisdiction as to any  
29 other applicable fiduciary relationship. The court shall then  
30 determine whether such substitution is appropriate and whether  
31 it is in the best interest of those specifically interested in

1 the premises. The court shall then enter judgment accordingly  
2 and specify the party to serve thereafter as the fiduciary.  
3 The predecessor, the successor, the office ~~department~~, and  
4 those for whom the fiduciary relationship is the subject of  
5 the civil action and upon whom service of written notice was  
6 required under subparagraph 3. shall be necessary parties in  
7 any civil action that concerns an objection to the  
8 substitution. Any such petition or separate civil action must  
9 be filed within 60 days after service of the notice of  
10 objection. Failure to do so will be deemed to be an agreement  
11 pursuant to sub-subparagraph a., and the alternative provided  
12 in sub-subparagraph a. will be deemed to have been selected  
13 automatically.

14           5. At any time while a civil action is pending  
15 pursuant to sub-subparagraph 4.b., the predecessor and  
16 successor may file a subsequent agreement with the office  
17 ~~department~~ in the same manner set forth under alternative  
18 sub-subparagraph 4.a. and file a copy of the same along with a  
19 withdrawal of the petition or a voluntary dismissal with the  
20 court in which the petition was filed or the civil action is  
21 pending. Such filing will have the same force and effect as  
22 set forth under sub-subparagraph 4.a.; however, it shall be  
23 without prejudice to the right of the predecessor or successor  
24 to file another agreement that affects such fiduciary  
25 relationship under subparagraph 2.

26           6. Within 30 days after the date on which a fiduciary  
27 agreement is filed with the office ~~department~~ under  
28 subparagraph 2., the office ~~department~~ shall approve the  
29 agreement if it finds both that the successor is:

30           a. Legally authorized to exercise trust powers in this  
31 state; and

1           b. Has otherwise met the requirements for the  
2 establishment of a trust service office at the predecessor's  
3 principal place of business or branch.

4           7. Upon the effective date of an agreement filed under  
5 subparagraph 2. and regardless of any petition filed or any  
6 civil action pending pursuant to subparagraph 4., the  
7 successor will be deemed substituted for the predecessor as  
8 fiduciary without further authorization of any kind such that  
9 the successor shall succeed to and be substituted for the  
10 predecessor as to all fiduciary powers, rights, privileges,  
11 duties, and liabilities of the predecessor in its capacity as  
12 fiduciary for all estate, trust, guardianship, agency, and  
13 custodial accounts and any other fiduciary relationship for  
14 which the predecessor is then, or but for such agreement would  
15 be, serving as fiduciary, except as may be otherwise specified  
16 in such agreement and in any subsequent agreement filed with  
17 the office ~~department~~ under subparagraph 4. or subparagraph 5.  
18 The successor shall also be deemed the fiduciary in all  
19 writings, including, but not limited to, wills, trusts, deeds,  
20 policies of insurance, stock certificates, court orders, and  
21 similar documents and instruments which name or have named the  
22 predecessor as fiduciary and which were signed before or after  
23 the effective date of such agreement except as may be  
24 otherwise specified in such agreement and any subsequent  
25 agreement filed with the office ~~department~~ under subparagraph  
26 4. or subparagraph 5. This section does not absolve or  
27 discharge any predecessor exercising trust powers from  
28 liability arising out of any breach of its fiduciary duties or  
29 obligations which occurred before the effective date of such  
30 agreement.

31           8. As used herein:

1           a. Trust companies, banks, or associations are  
2 "affiliated" if they are connected through stock ownership  
3 with a common parent corporation that is a registered  
4 multibank or multiassociation holding company and such parent  
5 owns directly stock that possesses at least 80 percent of the  
6 total voting power of the stock of such trust company, bank,  
7 or association and has a value equal to at least 80 percent of  
8 the total value of the stock of such trust company, bank, or  
9 association.

10           b. The term "predecessor" refers to an affiliated  
11 trust company or affiliated bank's or affiliated association's  
12 trust department for the position of which in its trust  
13 relations the successor is substituted.

14           c. The term "successor" refers to an affiliated trust  
15 company or affiliated bank's or affiliated association's trust  
16 department which is substituted for a predecessor in the  
17 predecessor's trust relationships including all powers,  
18 duties, and responsibilities associated therewith.

19           (d) When a trust service office is established at a  
20 bank or association that has retained its trust powers in an  
21 active status, the trust company or trust department may at  
22 any time be substituted as fiduciary as provided in paragraph  
23 (b) by filing an election with the office ~~department~~. The  
24 election to substitute the trust company or trust department  
25 for the bank or association as fiduciary must contain the  
26 consent of a majority of the stockholders or members entitled  
27 to vote on such proposal at a meeting of stockholders or  
28 members and of a majority of the board of directors, of the  
29 bank or association at which the trust service office has been  
30 established.

31

1           (e) This subsection shall not affect any substitution  
2 of fiduciaries made under former s. 659.061(6) prior to May  
3 31, 1976.

4           (5) Nothing in the financial institutions codes shall  
5 be construed to prohibit a person from serving in a dual  
6 capacity as an officer or director of a bank, association, or  
7 credit union at which a trust service office is located and an  
8 officer or director of the trust company or trust department  
9 which has a trust service office at that bank, association, or  
10 credit union.

11           (6) A trust company or trust department may terminate  
12 a trust service office only with the prior approval of the  
13 office ~~department~~, which shall only grant its approval after  
14 being satisfied that the interests of all beneficiaries of the  
15 estates, trusts, and other fiduciary relationships being  
16 serviced by the trust company or trust department as fiduciary  
17 at that trust service office will be adequately protected.  
18 Upon termination of the trust service office, the trust  
19 company or trust department shall continue to exercise its  
20 fiduciary powers, rights, duties, and privileges as fiduciary  
21 of the estates, trusts, and other fiduciary relationships  
22 which, at the time of such termination, were being serviced at  
23 that trust service office and shall continue to be deemed the  
24 named fiduciary of all instruments naming the bank or  
25 association as fiduciary which became effective and operative  
26 prior to the termination of the trust service office. However,  
27 any beneficiary of an estate or trust being serviced at the  
28 trust service office at the time of the termination of the  
29 trust service office may petition the court of competent  
30 jurisdiction in the county where, at the time of such  
31 termination, the trust service office was located for removal

1 of the trust company or the trust department as fiduciary and  
2 for appointment of a successor fiduciary. The court shall  
3 grant the petition upon being satisfied that such action is in  
4 the best interests of the beneficiaries of the trust or  
5 estate.

6 (7) A trust service office as provided for in this  
7 section is a special service facility and is not a branch or a  
8 branch office of a trust company or a trust department.

9 Section 1820. Subsection (2) of section 660.40,  
10 Florida Statutes, is amended to read:

11 660.40 Self dealing.--

12 (2) Assets of a fiduciary account held by a trust  
13 company or a trust department shall not be sold or  
14 transferred, by loan or otherwise, to the trust company or the  
15 bank or association of which the trust department is a part or  
16 to its directors, officers, or employees except:

17 (a) When lawfully authorized by the governing  
18 instrument or by court order;

19 (b) As provided in ss. 660.42-660.45;

20 (c) With the approval of, or when required by, the  
21 office ~~department~~ in order to prevent loss to a fiduciary  
22 account in any case where the trust company or the trust  
23 department has incurred a liability in the handling of the  
24 assets of the fiduciary account.

25 Section 1821. Section 660.47, Florida Statutes, is  
26 amended to read:

27 660.47 Surrender of fiduciary powers.--Any state bank  
28 or association which has been granted trust powers and which  
29 desires to surrender such rights shall file with the office  
30 ~~department~~ a certified copy of the resolution of its board of  
31 directors signifying such desire. Upon receipt of such

1 resolution, the office ~~department~~ shall make an investigation,  
2 and when it is satisfied that the trust department has been  
3 discharged from all fiduciary duties which it has undertaken,  
4 it shall issue a certificate to such bank or association  
5 certifying that it is no longer authorized to exercise trust  
6 powers.

7 Section 1822. Subsection (1) of section 660.48,  
8 Florida Statutes, is amended to read:

9 660.48 Receivership or voluntary liquidation.--

10 (1) If a liquidator or receiver is appointed for a  
11 trust company or a state bank or association having a trust  
12 department, the liquidator or receiver shall, pursuant to the  
13 instructions of the office ~~department~~ and the orders of any  
14 court and the federal regulatory agency having jurisdiction,  
15 proceed to close such fiduciary accounts as can be closed  
16 promptly and transfer all other fiduciary accounts to  
17 substitute fiduciaries.

18 Section 1823. Subsection (1) of section 663.02,  
19 Florida Statutes, is amended to read:

20 663.02 Applicability of state banking laws.--

21 (1) International banking corporations having offices  
22 in this state shall be subject to all the provisions of the  
23 financial institutions codes and chapter 655 as though such  
24 international banking corporations were state banks, except  
25 where it may appear, from the context or otherwise, that such  
26 provisions are clearly applicable only to banks or trust  
27 companies organized under the laws of this state or the United  
28 States. Without limiting the foregoing general provisions, it  
29 is the intent of the Legislature that the following provisions  
30 shall be applicable to such banks or corporations: s. 655.031,  
31 relating to administrative enforcement guidelines; s. 655.032,

1 relating to investigations, subpoenas, hearings, and  
2 witnesses; s. 655.0321, relating to hearings, proceedings, and  
3 related documents and restricted access thereto; s. 655.033,  
4 relating to cease and desist orders; s. 655.037, relating to  
5 removal by the office ~~department~~ of an officer, director,  
6 committee member, employee, or other person; s. 655.041,  
7 relating to administrative fines and enforcement; and s.  
8 658.49, relating to loans by banks not exceeding \$50,000.  
9 International banking corporations shall not have the powers  
10 conferred on domestic banks by the provisions of s. 658.60,  
11 relating to deposits of public funds. International banking  
12 corporations shall not be subject to the provisions of s.  
13 658.68, relating to liquidity. The provisions of chapter 687,  
14 relating to interest and usury, shall apply to all loans not  
15 subject to s. 658.49.

16 Section 1824. Subsections (2), (3), and (4) of section  
17 663.04, Florida Statutes, are amended to read:

18 663.04 Requirements for carrying on banking  
19 business.--No international banking corporation shall transact  
20 a banking business, or maintain in this state any office for  
21 carrying on such business, or any part thereof, unless such  
22 corporation has:

23 (2) Furnished to the office ~~department~~ such proof as  
24 to the nature and character of its business and as to its  
25 financial condition as the commission or office requires  
26 ~~department may require~~.

27 (3) Filed with the office ~~department~~ a certified copy  
28 of that information required to be supplied to the Department  
29 of State by those provisions of chapter 607 which are  
30 applicable to foreign corporations.

31

1           (4) Received a license duly issued to it by the office  
2 ~~department~~.

3           Section 1825. Subsections (1), (2), (3), (4), (5),  
4 (6), and (9) of section 663.05, Florida Statutes, are amended  
5 to read:

6           663.05 Application for license; approval or  
7 disapproval.--

8           (1) Every international banking corporation, before  
9 being licensed by the office ~~department~~ to maintain any office  
10 in this state, shall subscribe and acknowledge, and submit to  
11 the office ~~department~~, an application which shall contain:

12           (a) The name of the international banking corporation.

13           (b) The proposed location by street and post office  
14 address and county where its business is to be transacted in  
15 this state and the name of the person who shall be in charge  
16 of the business and affairs of the office.

17           (c) The location where its initial registered office  
18 will be located in this state.

19           (d) The total amount of the capital accounts of the  
20 international banking corporation.

21           (e) A complete and detailed statement of its financial  
22 condition as of a date within 180 days prior to the date of  
23 such application, except that the office ~~department~~ in its  
24 discretion may, when necessary or expedient, accept such  
25 statement of financial condition as of a date within 240 days  
26 prior to the date of such application. The office ~~department~~  
27 in its discretion may, when necessary or expedient, require an  
28 independent opinion audit or the equivalent satisfactory to  
29 the office ~~department~~.

30           (f) A listing of any occasion within the preceding  
31 10-year period in which either the international banking

1 corporation or any of its directors, executive officers, or  
2 principal shareholders has been convicted of, or pled guilty  
3 or nolo contendere to, any offense with respect to which the  
4 penalties include the possibility of imprisonment for 1 year  
5 or more, or to any offense involving money laundering or  
6 otherwise related to the operation of a financial institution.

7 (2) The office ~~department~~ shall disallow any illegally  
8 obtained currency, monetary instruments, funds, or other  
9 financial resources from the capitalization requirements of  
10 this section, and the existence of such illegally obtained  
11 resources shall be grounds for denial of the application for  
12 license.

13 (3) At the time an application is submitted to the  
14 office ~~department~~, the international banking corporation shall  
15 also submit a duly authenticated copy of its articles of  
16 incorporation and a copy of its bylaws, or an equivalent  
17 thereof satisfactory to the office ~~department~~. Such  
18 corporation shall also submit a certificate issued by the  
19 banking or supervisory authority of the country in which the  
20 international banking corporation is chartered stating that  
21 the international banking corporation is duly organized and  
22 licensed and lawfully existing in good standing and listing  
23 any instance in which the international banking corporation  
24 has been convicted of, or pled guilty or nolo contendere to, a  
25 violation of any currency transaction reporting or money  
26 laundering law which may exist in that country.

27 (4) Application shall be made on a form prescribed by  
28 the commission ~~department~~ and shall contain such information  
29 as the commission or office requires ~~department may require~~.

30 (5) The office ~~department~~ may, in its discretion,  
31 approve or disapprove the application, but it shall not

1 approve the application unless, in its opinion, the applicant  
2 meets each and every requirement of this part and any other  
3 applicable provision of the financial institutions codes. The  
4 office ~~department~~ shall approve the application only if it has  
5 determined that the directors, executive officers, and  
6 principal shareholders of the international banking  
7 corporation are qualified by reason of their financial  
8 ability, reputation, and integrity and have sufficient banking  
9 and other business experience to indicate that they will  
10 manage and direct the affairs of the international banking  
11 corporation in a safe, sound, and lawful manner. In the  
12 processing of applications, the time limitations under the  
13 Administrative Procedure Act shall not apply as to approval or  
14 disapproval of the application.

15 (6) The office ~~department~~ shall not issue a license to  
16 an international banking corporation unless:

17 (a) It is chartered in a jurisdiction in which any  
18 bank having its principal place of business in this state may  
19 establish similar facilities or exercise similar powers; or

20 (b) Federal law permits the appropriate federal  
21 regulatory authority to issue a comparable license to the  
22 international banking corporation.

23 (9) The commission ~~department~~ shall establish, by  
24 rule, the general principles which shall determine the  
25 adequacy of supervision of an international banking  
26 corporation's foreign establishments. These principles shall  
27 be based upon the need for cooperative supervisory efforts and  
28 consistent regulatory guidelines and shall address, at a  
29 minimum, the capital adequacy, asset quality, management,  
30 earnings, liquidity, internal controls, audits, and foreign  
31 exchange operations and positions of the international banking

1 corporation. This subsection shall not require examination by  
2 the home-country regulatory authorities of any office of an  
3 international banking corporation in this state. The  
4 commission ~~department~~ may also establish, by rule, other  
5 standards for approval of an application for a license as  
6 considered necessary to ensure the safe and sound operations  
7 of the international bank office in this state.

8 Section 1826. Subsections (2), (3), and (4) of section  
9 663.055, Florida Statutes, are amended to read:

10 663.055 Capital requirements.--

11 (2) Notwithstanding the provisions of paragraph  
12 (1)(a), the office ~~department~~ may approve an application for a  
13 license to establish an international bank agency, an  
14 international branch, or an international administrative  
15 office if:

16 (a) The international banking corporation is licensed  
17 to receive deposits from the general public in the country  
18 where it is organized and licensed and to engage in such other  
19 activities as are usual in connection with the business of  
20 banking in such country;

21 (b) The office ~~department~~ receives a certificate that  
22 is issued by the banking or supervisory authority of the  
23 country in which the international banking corporation is  
24 organized and licensed and states that the international  
25 banking corporation is duly organized and licensed and  
26 lawfully existing in good standing, and is empowered to  
27 conduct a banking business; and

28 (c) The international banking corporation has been in  
29 the business of banking for at least 10 years and is ranked by  
30 the banking or supervisory authority of the country in which  
31 it is organized and licensed as one of the five largest banks

1 in that country in terms of domestic deposits, as of the date  
2 of its most recent statement of financial condition. However,  
3 in no event shall the office ~~department~~ approve an application  
4 under this subsection for any international banking  
5 corporation with capital accounts of less than \$10 million.

6 (3) The office ~~department~~ may specify such other  
7 conditions as it determines appropriate, considering the  
8 public interest, the need to maintain a sound and competitive  
9 banking system, and the preservation of an environment  
10 conducive to the conduct of an international banking business  
11 in this state. In translating the capital accounts of an  
12 international banking corporation, the office ~~department~~ may  
13 consider monetary corrections accounts that reflect results  
14 consistent with the requirements of generally accepted  
15 accounting principles in the United States.

16 (4) For the purpose of this part, the capital accounts  
17 of an international banking corporation shall be determined in  
18 accordance with rules adopted by the commission ~~department~~.  
19 In adopting such rules, the commission ~~department~~ shall  
20 consider similar rules adopted by bank regulatory agencies in  
21 the United States and the need to provide reasonably  
22 consistent regulatory requirements for international banking  
23 corporations which will maintain the safe and sound condition  
24 of international banking corporations doing business in this  
25 state.

26 Section 1827. Subsections (1), (2), (3), and (4) of  
27 section 663.06, Florida Statutes, are amended to read:

28 663.06 Licenses; permissible activities.--

29 (1) An international banking corporation licensed to  
30 operate an office in this state may engage in the business  
31 authorized by this part at the office specified in such

1 license for an indefinite period. An international banking  
2 corporation may operate more than one international bank  
3 agency, international branch, or international representative  
4 office, each at a different place of business, provided that  
5 each office shall be separately licensed. No license to  
6 operate an international bank office is transferable or  
7 assignable. However, the location of an international bank  
8 office may be changed after notification of the office  
9 ~~department~~. Every such license shall be, at all times,  
10 conspicuously displayed in the place of business specified  
11 therein.

12 (2) An international banking corporation which  
13 proposes to terminate the operations of its international bank  
14 agency, international branch, international representative  
15 office, or international administrative office shall surrender  
16 its license to the office ~~department~~ and comply with such  
17 procedures as the commission ~~department~~ may prescribe by rule.

18 (3) An international bank agency, international  
19 branch, international representative office, or international  
20 administrative office license may be suspended or revoked by  
21 the office ~~department~~, with or without examination, upon its  
22 determination that the international banking corporation does  
23 not meet all requirements for original licensing. The  
24 commission ~~department~~ may by rule prescribe additional  
25 conditions or standards under which the license of an  
26 international bank agency, international branch, international  
27 representative office, or international administrative office  
28 may be suspended or revoked.

29 (4) In the event any such license is surrendered by  
30 the international banking corporation or is suspended or  
31 revoked by the office ~~department~~, all rights and privileges of

1 the international banking corporation to transact the business  
2 thus licensed shall cease. The commission ~~department~~ shall, by  
3 rule, prescribe procedures for the surrender of a license and  
4 for the orderly cessation of business by an international  
5 banking corporation in a manner which is not harmful to the  
6 interests of its customers or of the public.

7 Section 1828. Section 663.061, Florida Statutes, is  
8 amended to read:

9 663.061 International bank agencies; permissible  
10 activities.--

11 (1) An international bank agency licensed under this  
12 part may make any loan, extension of credit, or investment  
13 which it could make if incorporated and operating as a bank  
14 organized under the laws of this state. An international bank  
15 agency may act as custodian and may furnish investment  
16 management, and investment advisory services authorized under  
17 rules adopted by the commission ~~department~~, to nonresident  
18 entities or persons whose principal places of business or  
19 domicile are outside the United States and to resident  
20 entities or persons with respect to international or foreign  
21 investments. An international banking corporation which has  
22 an international bank agency licensed under the terms of this  
23 part shall be exempt from the registration requirements of s.  
24 517.12.

25 (2) An international bank agency may not receive  
26 deposits in this state except:

27 (a) Deposits from nonresident entities or persons  
28 whose principal places of business or domicile are outside the  
29 United States.

30 (b) Interbank deposits; interbank borrowing, or  
31 similar interbank obligations.

1           (c) International banking facility deposits as defined  
2 pursuant to s. 655.071. An international bank agency may  
3 maintain in this state, for the account of others, credit  
4 balances necessarily incidental to, or arising out of, the  
5 exercise of its lawful powers. Such credit balances may be  
6 disbursed by check or other draft; however, the commission  
7 ~~department~~ shall, by rule, provide appropriate limitations  
8 upon third-party disbursements to ensure that credit balances  
9 are not functionally equivalent to demand deposits. In  
10 establishing the limitations, the commission ~~department~~ may  
11 provide that such disbursement may not exceed an average of 20  
12 checks or drafts per day.

13           (3) Notwithstanding any provision of this chapter or  
14 chapter 658 to the contrary, an international banking  
15 corporation licensed under this part to operate an  
16 international bank agency may, if authorized by rule of the  
17 commission ~~department~~, make any loan or investment or exercise  
18 any power which it could make or exercise if it were operating  
19 in this state as a federal agency under federal law. The  
20 commission ~~department~~ shall, when adopting ~~promulgating~~ such  
21 rules, consider the public interest and convenience and the  
22 need to maintain a sound and competitive state banking system.  
23 Unless otherwise provided by statute, an international bank  
24 agency may not exercise any powers that a federal agency is  
25 not authorized to exercise.

26           (4) Notwithstanding the provisions of subsection (1),  
27 any international banking corporation organized and existing  
28 under the laws of any other state and licensed to operate an  
29 international bank agency may engage only in those activities  
30 permissible for an Edge Act corporation organized under s.

31

1 25(a) of the Federal Reserve Act, as amended, 12 U.S.C. ss.  
2 611-632.

3 (5) With the prior authorization of the office  
4 ~~department~~ pursuant to s. 660.26, an international bank agency  
5 may accept appointments as trustee by nonresident persons or  
6 entities and may exercise trust powers with respect to such  
7 fiduciary accounts. Except for the foregoing limitation, the  
8 trust activities of an international bank agency shall be  
9 subject to the same requirements and may be conducted in the  
10 same manner as the trust business of a state trust company or  
11 state bank with trust powers.

12 Section 1829. Section 663.064, Florida Statutes, is  
13 amended to read:

14 663.064 International branches; permissible  
15 activities; requirements.--An international banking  
16 corporation that meets the requirements of ss. 663.04 and  
17 663.05 may, with the approval of the office ~~department~~,  
18 establish one or more branches in this state to the extent  
19 permitted to banks from other states. An international branch  
20 shall have the same rights and privileges as a federally  
21 licensed international branch. The operations of an  
22 international branch shall be conducted pursuant to  
23 requirements ~~rules~~ determined by the office ~~department~~ as  
24 necessary to ensure compliance with the provisions of the  
25 financial institutions codes, including. ~~These rules shall~~  
26 ~~include~~ requirements for the maintenance of accounts and  
27 records separate from those of the international banking  
28 corporation of which it is a branch. An application to  
29 establish an international branch shall be made pursuant to s.  
30 658.26.

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1           Section 1830. Section 663.065, Florida Statutes, is  
2 amended to read:

3           663.065 State-chartered investment companies;  
4 formation; permissible activities; restrictions.--

5           (1) With the approval of the office ~~department~~, a  
6 Florida corporation may be formed for the purpose of engaging  
7 in international banking, lending, and other financial  
8 activities. A state-chartered investment company established  
9 pursuant to this section shall engage directly in only those  
10 activities permissible for an Edge Act corporation organized  
11 under s. 25(a) of the Federal Reserve Act, as amended.

12           (2) Subject to the prior approval of the office  
13 ~~department~~ and to such limitations as the commission  
14 prescribes ~~department shall prescribe~~ by rule, a  
15 state-chartered investment company may invest in the shares of  
16 and may own or control an Edge Act corporation or an  
17 international banking corporation and may establish and  
18 operate branches, representative offices, and similar banking  
19 facilities in foreign countries.

20           (3) An application for approval to organize a  
21 state-chartered investment company shall be subject to the  
22 provisions of chapter 655 relating to the organization of de  
23 novo financial institutions and to rules adopted by the  
24 commission ~~department~~ as necessary to ensure that the proposed  
25 state-chartered investment company will be operated in a safe  
26 and lawful manner, except that the applicant is not required  
27 to become a member of the Federal Reserve System or the  
28 Federal Deposit Insurance Corporation. State-chartered  
29 investment companies shall be subject to the examination and  
30 supervision of the office ~~department~~ and are subject to the

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1 financial institutions codes to the same extent as  
2 international banking corporations pursuant to s. 663.02.

3 Section 1831. Section 663.07, Florida Statutes, is  
4 amended to read:

5 663.07 Asset maintenance or capital equivalency.--

6 (1) Each international bank agency and international  
7 branch shall:

8 (a) Maintain with one or more banks in this state, in  
9 such amounts as the office ~~department~~ specifies, evidence of  
10 dollar deposits or investment securities of the type that may  
11 be held by a state bank for its own account pursuant to s.  
12 658.67. The aggregate amount of dollar deposits and  
13 investment securities for an international bank agency or  
14 international branch shall, at a minimum, equal the greater  
15 of:

16 1. Four million dollars; or

17 2. Seven percent of the total liabilities of the  
18 international bank agency or international branch excluding  
19 accrued expenses and amounts due and other liabilities to  
20 affiliated branches, offices, agencies, or entities; or

21 (b) Maintain other appropriate reserves, taking into  
22 consideration the nature of the business being conducted by  
23 the international bank agency or international branch.

24

25 The commission ~~department~~ shall prescribe, by rule, the  
26 deposit, safekeeping, pledge, withdrawal, recordkeeping, and  
27 other arrangements for funds and securities maintained under  
28 this subsection. The deposits and securities used to satisfy  
29 the capital equivalency requirements of this subsection shall  
30 be held, to the extent feasible, in one or more state or

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1 national banks located in this state or in a federal reserve  
2 bank.

3 (2) If on the last business day of any month, the  
4 monthly average capital equivalency ratio is less than 7  
5 percent, the international bank agency or international branch  
6 shall increase its deposits or investment securities with a  
7 depository bank within 7 days of the end of the month in which  
8 the deficiency occurred.

9 (3) In lieu of the requirements of subsection (1), the  
10 commission ~~department~~ may, by rule, permit an international  
11 bank agency or international branch to hold, in this state,  
12 assets which bear such relationships as the commission  
13 ~~department shall~~ by rule prescribes ~~prescribe~~ to the aggregate  
14 liabilities of the international bank agency or international  
15 branch payable in this state or resulting from its operations.  
16 The amount of such assets shall be equal to at least \$4  
17 million or 107 percent of the amount of such liabilities,  
18 whichever is greater; however, the office ~~department~~ by order  
19 may reduce the required amount of assets to not less than 100  
20 percent of the amount of such liabilities. When issuing any  
21 such order, the office ~~department~~ shall take into account the  
22 objective of maintaining a sound banking system in this state.  
23 The assets shall be maintained as cash on hand; as deposits or  
24 placements with other banks, including the total amount of any  
25 reserves deposited at a federal reserve bank; as cash items in  
26 process of collection; as earning assets such as federal funds  
27 sold, bonds, notes, debentures, drafts, bills of exchange,  
28 acceptances, loan participation certificates, or other  
29 evidences of indebtedness payable in the United States or in  
30 United States funds or in funds freely convertible into United  
31 States funds; in such other form as the commission specifies

1 ~~department may specify~~ by rule; or in any combination of the  
2 foregoing.

3 (4) If on the last business day of any month, the  
4 monthly average asset maintenance ratio is less than 107  
5 percent, the international bank agency or international branch  
6 shall correct the deficiency by accumulating within the first  
7 7 business days of the end of the month sufficient eligible  
8 assets to increase the average eligible assets to 107 percent  
9 of the average liabilities requiring cover.

10 (5) The term "assets" as used in this section excludes  
11 accrued income and amounts due from other offices or branches  
12 of, and wholly owned, except for a nominal number of  
13 directors' shares, subsidiaries of the international banking  
14 corporation in question. The term "liabilities" as used in  
15 this section excludes accrued expenses and amounts due and  
16 other liabilities to branches, offices, agencies, and wholly  
17 owned, except for a nominal number of directors' shares,  
18 subsidiaries of the international banking corporation in  
19 question, and such other liabilities as the commission  
20 specifies ~~department may specify~~ by rule. International  
21 banking facility deposits, borrowings, and extensions of  
22 credit are excluded from the total liabilities and total  
23 assets of an international bank agency or international branch  
24 unless the office ~~department~~ determines that inclusion of  
25 international banking facility deposits, borrowings, and  
26 extensions of credit is necessary to ensure the maintenance of  
27 a sound financial condition, protect depositors, creditors,  
28 and the public interest, and maintain public confidence in the  
29 business of the international bank agency or international  
30 branch.

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1           (6) For the purposes of this section, the office  
2 ~~department~~ shall value marketable securities at book value;  
3 shall have the right to determine the value of any  
4 nonmarketable bond, note, debenture, draft, bill of exchange,  
5 or other evidence of indebtedness or of any other obligation  
6 held by or owed to the international banking corporation in  
7 this state; and, in determining the amount of assets for the  
8 purpose of computing the above ratio of assets to liabilities,  
9 shall have the power to exclude any particular assets.

10           (7) Notwithstanding the limitations of s. 658.67, the  
11 commission ~~department~~ may by rule authorize, and may specify  
12 conditions and limits on, the use of securities issued by  
13 foreign governments or government-sponsored entities, or by an  
14 international banking corporation for the purpose of  
15 satisfying the capital equivalency or asset maintenance  
16 requirements of this section. However, any such securities  
17 shall be payable in funds freely convertible into United  
18 States funds, and the amount of such securities deposited or  
19 held for the purposes of this section shall not exceed 25  
20 percent of the required amount.

21           (8) Regardless of whether an international bank agency  
22 or international branch complies with the requirements of this  
23 section pursuant to subsection (1) or subsection (3), if, by  
24 reason of the existence, or the potential occurrence, of  
25 unusual or extraordinary circumstances, the office ~~department~~  
26 finds it necessary or desirable for maintaining a sound  
27 financial condition, protecting creditors and the public  
28 interest, and maintaining public confidence in the business of  
29 the international bank agency or international branch it may  
30 by order require such international bank agency or  
31 international branch to deposit cash or eligible securities

1 with a bank or trust company located in this state, or to hold  
2 in this state assets acceptable to the office ~~department~~ in an  
3 aggregate amount that bears such relationship as the office  
4 ~~department~~ prescribes to the aggregate liabilities of the  
5 international bank agency or international branch.

6 (9) Each international bank agency shall file such  
7 reports with the office ~~department~~ as the commission  
8 ~~department~~, by rule, requires to determine compliance with the  
9 provisions of this section.

10 Section 1832. Section 663.08, Florida Statutes, is  
11 amended to read:

12 663.08 Certification of capital accounts.--Before  
13 opening an office in this state, and annually thereafter so  
14 long as a bank office is maintained in this state, an  
15 international banking corporation licensed pursuant to ss.  
16 663.01-663.14 shall certify to the office ~~department~~ the  
17 amount of its capital accounts, expressed in the currency of  
18 the jurisdiction of its incorporation. The dollar equivalent  
19 of these amounts, as determined by the office ~~department~~,  
20 shall be deemed to be the amount of its capital accounts.

21 Section 1833. Subsections (1) and (3) of section  
22 663.083, Florida Statutes, are amended to read:

23 663.083 Lending limits.--

24 (1) The commission ~~department~~ shall by rule prescribe  
25 the limits of drafts or bills of exchange which an  
26 international bank agency or branch may accept relative to the  
27 capital accounts of the international banking corporation.  
28 These limits shall take into account all transactions which  
29 are included and excluded in computing the lending limit for  
30 acceptances of a federal agency in the case of an

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1 international bank agency, or a federal branch in the case of  
2 an international branch, licensed under federal banking law.

3 (3) Any limitation in this section based on the  
4 capital accounts of an international banking corporation shall  
5 refer, with respect to an international bank agency or  
6 international branch in this state, to the dollar equivalent  
7 of the capital accounts of the international banking  
8 corporation, as determined by the office ~~department~~. If the  
9 international banking corporation has more than one  
10 international bank agency or international branch in this  
11 state, the business transacted by all such agencies or  
12 branches shall be aggregated in determining compliance with a  
13 limitation or restriction in this section.

14 Section 1834. Section 663.09, Florida Statutes, is  
15 amended to read:

16 663.09 Reports; records.--

17 (1) Every international banking corporation doing  
18 business in this state shall, at such times and in such form  
19 as the commission prescribes ~~department shall prescribe~~, make  
20 written reports in the English language to the office  
21 ~~department~~, under the oath of one of its officers, managers,  
22 or agents transacting business in this state, showing the  
23 amount of its assets and liabilities and containing such other  
24 matters as the commission or office requires ~~department shall~~  
25 ~~prescribe~~. An international banking corporation that  
26 maintains two or more offices may consolidate such information  
27 in one report unless the office ~~department~~ otherwise requires  
28 for purposes of its supervision of the condition and  
29 operations of each such office. The late filing of such  
30 reports shall be subject to the imposition of the  
31 administrative fine prescribed by s. 655.045(2)(b). If any

1 such international banking corporation shall fail to make any  
2 such report, as directed by the office ~~department~~, or if any  
3 such report shall contain any false statement knowingly made,  
4 the same shall be grounds for revocation of the license of the  
5 international banking corporation.

6 (2) The international banking corporation of each  
7 state-licensed international bank agency or international  
8 branch shall perform or cause to be performed an audit of such  
9 international bank agency or international branch. The  
10 commission ~~department~~ shall, by rule, prescribe the minimum  
11 audit procedures including the audit reporting requirements  
12 which would satisfy the provisions of this subsection.

13 (3) Each international banking corporation which  
14 operates an office licensed under this part shall cause to be  
15 kept, at a location accepted by the office ~~department~~:

16 (a) Correct and complete books and records of account  
17 of the business operations transacted by such office. All  
18 policies and procedures governing the operations of such  
19 office, as well as any existing general ledger or subsidiary  
20 accounts, shall be maintained in the English language. The  
21 office ~~department~~ may require that any other document not  
22 written in the English language which the office ~~department~~  
23 deems necessary for the purposes of its regulatory and  
24 supervisory functions be translated into English at the  
25 expense of the international banking corporation.

26 (b) Current copies of the charter and bylaws of the  
27 international banking corporation, relative to the operations  
28 of the office, and minutes of the proceedings of its  
29 directors, officers, or committees relative to the business of  
30 the office. Such records shall be kept pursuant to s. 655.91  
31 and shall be made available to the office ~~department~~, upon

1 request, at any time during regular business hours of the  
2 office. Any failure to keep such records as aforesaid or any  
3 refusal to produce such records upon request by the office  
4 ~~department~~ shall be grounds for suspension or revocation of  
5 any license issued under this part.

6 (4) In addition to any other reports it may be  
7 required to make, an international banking corporation which  
8 maintains an international bank agency or international branch  
9 in this state shall make reports to the office ~~department~~ in  
10 such form and at such times as the commission ~~department~~  
11 prescribes by rule concerning the management, asset quality,  
12 capital adequacy, and liquidity of the international banking  
13 corporation.

14 Section 1835. Subsections (1), (2), and (3) of section  
15 663.10, Florida Statutes, are amended to read:

16 663.10 Conversion of license.--

17 (1) An international banking corporation desiring to  
18 convert its existing federal agency or federal branch or Edge  
19 Act corporation into an international bank agency or  
20 international branch, or an Edge Act corporation which desires  
21 to convert to a state-chartered investment company shall  
22 submit to the office ~~department~~ an application, on a form  
23 adopted by the commission and provided by the office ~~the~~  
24 ~~department shall provide~~, accompanied by a filing fee as  
25 prescribed by s. 663.12. An examination and investigation may  
26 be conducted to the extent determined necessary by the office  
27 ~~department~~. The cost of any such examination shall be paid by  
28 the applicant.

29 (2) Nothing in the laws of this state shall restrict  
30 the right of a state-licensed international branch agency,  
31 international branch, or international representative office

1 or a state-chartered investment company to convert to a  
2 federal license or charter upon compliance with the laws of  
3 the United States. Upon completion of any such conversion, the  
4 state license shall be surrendered to the office ~~department~~.

5 (3) An international banking corporation desiring to  
6 convert any existing international banking office to an  
7 international banking office of a different type shall submit  
8 to the office ~~department~~ an application on a form adopted by  
9 the commission and provided by the office ~~the department shall~~  
10 ~~provide~~ which shall be accompanied by all of the information  
11 and documents that are required of applicants for a license of  
12 the type being sought together with the filing fee required by  
13 s. 663.12.

14 Section 1836. Section 663.11, Florida Statutes, is  
15 amended to read:

16 663.11 Dissolution.--In the event an international  
17 banking corporation which is licensed to maintain an office in  
18 this state is dissolved, or its authority or existence is  
19 otherwise terminated or canceled in the jurisdiction of its  
20 incorporation, a certificate of the official who is  
21 responsible for records of banking corporations of the  
22 jurisdiction of incorporation of such international banking  
23 corporation, attesting to the occurrence of any such event, or  
24 a certified copy of an order or decree of a court of such  
25 jurisdiction, directing the dissolution of such international  
26 banking corporation, the termination of its existence, or the  
27 cancellation of its authority, shall be delivered by the  
28 corporation or its surviving officers and directors to the  
29 office ~~department~~. The filing of the certificate, order, or  
30 decree shall have the same effect as the revocation of the  
31

1 license of such international banking corporation as provided  
2 in s. 663.06.

3 Section 1837. Section 663.12, Florida Statutes, is  
4 amended to read:

5 663.12 Fees; assessments; fines.--

6 (1) Each application for a license under the  
7 provisions of this part shall be accompanied by a  
8 nonrefundable filing fee payable to the office ~~department~~ in  
9 the following amount:

10 (a) Ten thousand dollars for establishing a  
11 state-chartered investment company.

12 (b) Ten thousand dollars for establishing an  
13 international bank agency or branch.

14 (c) Five thousand dollars for establishing an  
15 international administrative office.

16 (d) Five thousand dollars for establishing an  
17 international representative office.

18 (e) Two thousand dollars annually for operating an  
19 international representative office or international  
20 administrative office.

21 (f) An amount equal to the initial filing fee for an  
22 application to convert from one type of license to another.  
23 The commission ~~department~~ may increase the filing fee for any  
24 type of license to an amount established by rule and  
25 calculated in a manner so as to cover the direct and indirect  
26 cost of processing such applications.

27 (2) Each international bank agency, international  
28 branch, and state-chartered investment company shall pay to  
29 the office ~~department~~ a semiannual assessment, payable on or  
30 before January 31 and July 31 of each year, in an amount  
31 determined by rule by the commission ~~department~~ and calculated

1 in a manner so as to recover the costs of the office  
2 ~~department~~ incurred in connection with the supervision of  
3 international banking activities licensed under this part.  
4 These rules shall provide for uniform rates of assessment for  
5 all licenses of the same type, shall provide for declining  
6 rates of assessment in relation to the total assets of the  
7 licensee held in the state, but shall not, in any event,  
8 provide for rates of assessment which exceed the rate  
9 applicable to state banks pursuant to s. 658.73, unless the  
10 rate of assessment would result in a semiannual assessment of  
11 less than \$1,000. For the purposes of this subsection, the  
12 total assets of an international bank agency, international  
13 branch, or state-chartered investment company shall include  
14 amounts due the agency or branch or state investment company  
15 from other offices, branches, or subsidiaries of the  
16 international banking corporations or other corporations of  
17 which the agency, branch, or state-chartered investment  
18 company is a part or from entities related to that  
19 international banking corporation.

20 (3) Each international banking corporation which  
21 maintains an office licensed under the provisions of this part  
22 and each state-chartered investment company shall pay to the  
23 office ~~department~~ examination fees which shall be determined  
24 by the commission ~~department~~ by rule and calculated in a  
25 manner so as to be equal to the actual cost of each examiner's  
26 participation in the examination, as measured by the  
27 examiner's pay scale, plus any other expenses directly  
28 incurred in the examination, but in no event shall such fee be  
29 less than \$200 per day for each examiner participating in the  
30 examination.

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1           (4) An international bank agency or international  
2 branch shall pay to the office ~~department~~ a fine if the agency  
3 or branch fails to correct any asset maintenance or capital  
4 equivalency deficiency within 7 days following the end of the  
5 month in which the deficiency occurs. The fine shall be equal  
6 to the amount of the asset maintenance or capital equivalency  
7 deficiency at the end of the month in which the deficiency  
8 occurs, multiplied by 500 basis points above the Federal  
9 Reserve Board's daily discount rate at the end of the month in  
10 which the deficiency occurred, for each day of the deficiency.  
11 The minimum fine shall be \$1,000.

12           Section 1838. Section 663.13, Florida Statutes, is  
13 amended to read:

14           663.13 Rules; exemption from statement of estimated  
15 regulatory costs requirements.--In addition to any other  
16 rulemaking authority it has under the financial institutions  
17 codes, the commission may adopt ~~department is authorized to~~  
18 ~~promulgate~~ reasonable rules that ~~which~~ it deems advisable for  
19 the administration of international banking corporations under  
20 this part, in the interest of protecting depositors,  
21 creditors, borrowers, or the public interest and in the  
22 interest of maintaining a sound banking system in this state.  
23 Because of the difficulty in obtaining economic data with  
24 regard to such banks, no statement of estimated regulatory  
25 costs shall be required in connection with these rules.

26           Section 1839. Section 663.14, Florida Statutes, is  
27 amended to read:

28           663.14 Foreign travel expenses.--If domestic or  
29 foreign travel is deemed necessary by the office ~~department~~ to  
30 effectuate the purposes of this part, representatives of the  
31 office ~~department~~ shall be reimbursed for actual, reasonable,

1 and necessary expenses incurred in such domestic or foreign  
2 travel.

3 Section 1840. Subsections (2), (7), and (8) of section  
4 663.16, Florida Statutes, are amended to read:

5 663.16 Definitions; ss. 663.17-663.181.--As used in  
6 ss. 663.17-663.181, the term:

7 (2) "Claims" means debts, obligations, deposits, and  
8 other similar items that the office ~~department~~ takes  
9 possession of pursuant to s. 663.17(1).

10 (7) "Control" means any person or group of persons  
11 acting in concert, directly or indirectly, owning,  
12 controlling, or holding the power to vote more than 50 percent  
13 of the voting stock of a company, or having the ability in any  
14 manner to elect a majority of directors of a corporation, or  
15 otherwise exercising a controlling influence over the  
16 management and policies of a corporation as determined by the  
17 office ~~department~~.

18 (8) "Qualified financial contract" means any  
19 securities contract, commodity contract, forward contract,  
20 including spot and forward foreign exchange, repurchase  
21 agreement, swap agreement, or any similar agreement, any  
22 option to enter into any such agreement, including any  
23 combination of the foregoing, and any master agreement for  
24 such agreements. Such master agreement, together with all  
25 supplements thereto, shall be treated as one qualified  
26 financial contract, provided that such contract, option, or  
27 agreement, or combination of contracts, options, or agreements  
28 is reflected in the books, accounts, or records of the  
29 international banking corporation or a party provides evidence  
30 of such agreement. The commission ~~department~~ may define, by  
31 rule, securities contract, commodity contract, forward

1 contract, repurchase agreement, or swap agreement, and the  
2 commission, by rule, or the office, by order,~~may, by rule or~~  
3 ~~order,~~determine any other agreement to be a qualified  
4 financial contract for the purpose of this subsection. The  
5 commission ~~department~~ may prescribe such rules relating to  
6 qualified financial contracts and netting thereof as the  
7 commission ~~department~~ deems appropriate.

8 Section 1841. Section 663.17, Florida Statutes, is  
9 amended to read:

10 663.17 Liquidation; possession of business and  
11 property; inventory of assets; wages; depositing collected  
12 assets; appointing agents; appointment of judges.--

13 (1) The office ~~department~~ may, at its discretion, take  
14 possession of the business and property in this state of any  
15 international banking corporation that has been licensed to  
16 operate in this state upon finding that the corporation's  
17 international bank agency operating in this state has violated  
18 any law, has neglected or refused to comply with the terms of  
19 a duly issued order of the office ~~department~~, is insolvent or  
20 imminently insolvent, or is transacting business in an  
21 unsound, unsafe, or unauthorized manner such that the  
22 corporation is threatened with imminent insolvency, or that  
23 the corporation is in liquidation at its domicile or  
24 elsewhere. Title to such business and property shall vest by  
25 operation of law in the office ~~department~~ upon taking  
26 possession. Thereafter, the office ~~department~~ shall liquidate  
27 or otherwise deal with such business and property in  
28 accordance with the provisions of this part, chapter 658, and  
29 any other provision relating to the liquidation of banking  
30 corporations. The office ~~department~~ may deal with such  
31 business and property and prosecute and defend any and all

1 actions relating to the liquidation. Only the claims of  
2 creditors of the international banking corporation arising out  
3 of transactions those creditors had with the international  
4 banking corporation's international bank agency or agencies  
5 located in this state shall be accepted by the office  
6 ~~department~~ for payment out of the business and property which  
7 it has taken possession of in this state. Acceptance or  
8 rejection of such claims by the office ~~department~~ shall not  
9 prejudice any creditor's rights to otherwise share in other  
10 assets of the international banking corporation. The following  
11 claims shall not be accepted by the office ~~department~~ for  
12 payment out of the business and property in the office's  
13 ~~department's~~ possession in this state:

14 (a) Claims which would not represent an enforceable  
15 legal obligation against an international bank agency if such  
16 agency were a separate and independent legal entity.

17 (b) Amounts due and other liabilities to other  
18 offices, agencies, and branches of and affiliates of such  
19 international banking corporation.

20 (2) Whenever all accepted claims, together with  
21 interest on such claims, and the expenses of the liquidation  
22 have been paid in full or properly provided for, the office  
23 ~~department~~, upon the order of a court of competent  
24 jurisdiction, shall transfer the remaining assets to the  
25 principal office of such international banking corporation, or  
26 to the duly appointed domiciliary liquidator or receiver of  
27 such corporation. Dividends and other amounts that remain  
28 unclaimed or unpaid and are in the possession of the office  
29 ~~department~~ for 6 months after such transfer shall be deposited  
30 by the office ~~department~~ as provided by law.

31

1           (3) When the office ~~department~~ takes possession of the  
2 property and business of any international banking  
3 corporation, the office ~~department~~ shall:

4           (a) Give notice of such fact to all corporations,  
5 unincorporated associations, partnerships, governmental  
6 entities, and other entities and individuals known by the  
7 office ~~department~~ to hold any assets of such corporation. No  
8 corporation, unincorporated association, partnership,  
9 governmental entity, or other entity or individual having  
10 notice or knowledge that the office ~~department~~ has taken  
11 possession of such corporation shall have a lien or charge for  
12 any payment, advance, or clearance thereafter made against any  
13 of the assets of such corporation for liability thereafter  
14 incurred.

15           (b) Upon written demand of the office ~~department~~, any  
16 corporation, unincorporated association, partnership,  
17 governmental entity, or other entity or individual holding  
18 assets of such corporation shall deliver such assets to the  
19 office ~~department~~ and shall be discharged from liability with  
20 respect to any claim upon such assets; provided, such demand  
21 shall not affect the right of a secured creditor with a  
22 perfected security interest, or other valid lien or security  
23 interest enforceable against third parties, to retain  
24 collateral, including any right of such secured creditor under  
25 any security agreement related to a qualified financial  
26 contract to retain collateral and apply such collateral in  
27 accordance with the provisions of the financial institutions  
28 codes.

29           (c) Nothing in paragraphs (a) and (b) shall affect any  
30 right of setoff permitted under applicable law; provided, in  
31 connection with the liquidation of an international bank

1 agency of any other international banking corporation pursuant  
2 to this part, no entity or individual may set off the business  
3 and property in this state of an international banking  
4 corporation being liquidated under this subsection, against  
5 the liabilities of such corporation other than those that  
6 arise out of transactions engaged in by such entity or  
7 individual with such international bank agency. For purposes  
8 of this paragraph, liabilities shall be deemed to include, in  
9 the case of qualified financial contracts, the lesser of the  
10 two amounts calculated with respect to any such qualified  
11 financial contract pursuant to s. 663.172(3), and this  
12 paragraph shall not be deemed to authorize setoff except as  
13 otherwise permissible under applicable law.

14 (4) Any international banking corporation of which the  
15 office ~~department~~ has taken possession or which is operating  
16 under restrictions imposed by duly constituted authority may  
17 be permitted to resume business subject to the office's  
18 ~~department's~~ discretion and any conditions that ~~which~~ the  
19 office ~~department~~ may impose.

20 (5) After the office ~~department~~ takes possession of  
21 and determines to liquidate the property and business of any  
22 international banking corporation, the office ~~department~~ shall  
23 make an inventory, in duplicate, of the assets of such  
24 corporation. One copy of such inventory shall be filed with  
25 the ~~in an~~ office ~~of the~~ ~~department~~ and one copy shall be filed  
26 with a court of competent jurisdiction in the county in which  
27 the principal office of such corporation is located.

28 (6) Notwithstanding s. 658.84, all wages actually  
29 owing to the employees of an international banking corporation  
30 for services rendered within 3 months prior to the date  
31 possession was taken by the office ~~department~~, and not

1 exceeding \$2,000 to each employee, shall be paid prior to the  
2 payment of any other debt or claim, and, in the discretion of  
3 the office ~~department~~, may be paid as soon as practicable  
4 after taking possession, except that at all times the office  
5 ~~department~~ shall reserve such funds as will, in the office's  
6 ~~department's~~ opinion, be sufficient for the expenses of  
7 administration.

8 (7) The office ~~department~~ is authorized, upon taking  
9 possession of any international banking corporation, to  
10 liquidate the affairs of such corporation and to do all acts  
11 and to make such expenditures as in the office's ~~department's~~  
12 judgment are necessary to conserve the assets and business of  
13 the corporation. The office ~~department~~ shall proceed to  
14 collect the debts due to the corporation. The office  
15 ~~department~~ may, upon an order of a court of competent  
16 jurisdiction, sell, assign, compromise, or otherwise dispose  
17 of all bad or doubtful debts held by, and compromise claims  
18 against, such corporation, other than deposit claims,  
19 provided, whenever the principal amount of any such debt or  
20 claim owed by or owing to such corporation does not exceed  
21 \$50,000, the office ~~department~~ may sell, assign, compromise,  
22 or otherwise dispose of such debt or claim upon such terms as  
23 the office ~~department~~ may deem to be in the best interests of  
24 such corporation wherever situated. When the real property of  
25 an international banking corporation, to be disposed of  
26 pursuant to this subsection, is located in a county in this  
27 state other than a county in which an application to the court  
28 for leave to dispose is made, the office ~~department~~ shall file  
29 a certified copy of the order of such court authorizing such  
30 disposal in the office of the clerk of the county in which  
31 such real property is located.

1           (8) Moneys collected by the office ~~department~~ in  
2 liquidating an international banking corporation shall be:

3           (a) Deposited on demand, time or otherwise, in one or  
4 more banks, associations, or trust companies organized under  
5 the laws of this state and, in the case of insolvency or  
6 voluntary or involuntary liquidation of the depository, such  
7 deposits shall be entitled to priority of payment equally with  
8 any other priority given under the financial institutions  
9 codes;

10           (b) Deposited on demand, time or otherwise, in one or  
11 more national banks with a principal office located in this  
12 state and with total assets exceeding \$1 billion; or

13           (c) Invested in obligations of the United States, or  
14 obligation for which the full faith and credit of the United  
15 States is pledged to provide for the payment of interest and  
16 principal.

17           (9) The office ~~department~~ may appoint one or more  
18 persons as agent or agents to assist in the liquidation of the  
19 business and affairs of any international banking corporation  
20 in the office's ~~department's~~ possession. The office ~~department~~  
21 shall file a certificate of such appointment in the  
22 headquarters of the office ~~one of the department's offices~~ and  
23 shall file a certified copy of such certificate with a court  
24 of competent jurisdiction in the county in which the principal  
25 office of such corporation is located in this state. The  
26 office ~~department~~ may employ such counsel and expert  
27 assistants under such titles that the office ~~department~~ shall  
28 assign to them, and may retain such officers or employees of  
29 such corporation as the office ~~department~~ deems necessary in  
30 the liquidation and distribution of the corporation's assets.  
31 The office ~~department~~ may require such security as it may deem

1 proper from the agents and assistants appointed pursuant to  
2 the provisions of this subsection.

3 (10) When the office ~~department~~ has taken possession  
4 of and is liquidating the business and property in this state  
5 of any international banking corporation under the provisions  
6 of this part, the office ~~department~~ shall be entitled to the  
7 appointment of a single judge to supervise the liquidation in  
8 the judicial circuit in which the principal office of such  
9 corporation is located. Such judge shall have the power to  
10 order expedited or simplified procedures or order a reference  
11 whenever necessary to resolve a matter in such liquidation.

12 (11) The compensation of agents and any other  
13 employees appointed by the office ~~department~~ to assist in the  
14 liquidation of an international bank agency, the distribution  
15 of its assets, or the expenses of supervision, shall be paid  
16 out of the assets of the agency in the hands of the office  
17 ~~department~~. Expenses of liquidation and approved claims for  
18 fees and assessments due the office ~~department~~ shall be given  
19 first priority among unsecured creditors.

20 Section 1842. Section 663.171, Florida Statutes, is  
21 amended to read:

22 663.171 Liquidation; repudiation of contracts.--

23 (1) Except as otherwise provided in this section, when  
24 the office ~~department~~ has taken possession of the business and  
25 property in this state of an international banking  
26 corporation, the office ~~department~~ may assume or repudiate any  
27 contract, including an unexpired lease, of the corporation:

28 (a) To which such corporation is a party.

29 (b) The performance of which the office ~~department~~, in  
30 its discretion, determines to be burdensome.

31

1           (c) The repudiation of which the office department, in  
2 its discretion, determines will promote the orderly  
3 administration of the corporation's affairs.

4           (2) After the expiration of 90 days after the date the  
5 office department takes possession of an international banking  
6 corporation, any party to a contract with such corporation may  
7 demand in writing that the office department assume or  
8 repudiate such contract. If the office department has not  
9 assumed or repudiated the contract within 15 calendar days  
10 after the date of receipt of such demand, the affected party  
11 may bring an action in a court of competent jurisdiction in  
12 the county in which the principal office of the corporation is  
13 located to obtain an order requiring the office department to  
14 assume or repudiate the contract. If the office department has  
15 not assumed or repudiated the contract by at least 1 month  
16 before the last date for filing claims against the  
17 corporation, such contract shall be deemed repudiated.

18           (3) Notwithstanding subsection (2), with respect to an  
19 unexpired lease of the corporation for rental of real property  
20 under which the corporation was a lessee, if the office  
21 ~~department~~ remains in possession of the leasehold, the office  
22 ~~department~~ shall not be required to assume or repudiate such  
23 lease and may continue in possession of such leasehold for the  
24 remainder of the term of the lease in accordance with the  
25 terms of the lease; provided, if the office department later  
26 repudiates the lease before the end of the lease term, any  
27 amounts that may be due the lessor with respect to such lease  
28 shall be calculated as provided by law.

29           (4) Notwithstanding any other provision of this  
30 section relating to liquidating an international banking  
31 corporation, the office department shall not assume or

1 repudiate any qualified financial contract that the  
2 international bank agency entered into which is subject to a  
3 multibranch or multiagency netting agreement or arrangement  
4 that provides for netting present or future payment  
5 obligations or payment entitlements, including termination or  
6 closeout values relating to the obligations or entitlements,  
7 among the parties to the contract and agreement or arrangement  
8 and the office ~~department~~ may, but shall not be required to,  
9 assume or repudiate any other qualified financial contract an  
10 international bank agency entered into; provided, upon the  
11 repudiation of any qualified financial contract or the  
12 termination or liquidation of any qualified financial contract  
13 in accordance with its terms, the liability of the office  
14 ~~department~~ under such qualified financial contract shall be  
15 determined in accordance with s. 663.172.

16 Section 1843. Section 663.172, Florida Statutes, is  
17 amended to read:

18 663.172 Liability on repudiation or termination of  
19 contracts.--

20 (1) Except as otherwise provided in this section, upon  
21 the repudiation or termination of any contract pursuant to s.  
22 663.171, the liability of the office ~~department~~ shall be  
23 limited to the actual direct compensatory damages of the  
24 parties to the contract, determined as of the date the office  
25 ~~department~~ took possession of the international banking  
26 corporation. The office ~~department~~ shall not be liable for any  
27 future wages other than severance payments, to the extent such  
28 payments are reasonable standards, or for payments for future  
29 service, costs of cover, or any consequential, punitive, or  
30 exemplary damages, damages for lost profits or lost  
31 opportunity, or damages for pain and suffering.

1           (2) Except as otherwise provided in this section, the  
2 liability of the office ~~department~~, upon the repudiation of  
3 any qualified financial contract or in connection with the  
4 termination or liquidation of any qualified financial contract  
5 in accordance with the terms of such contract, shall be  
6 limited as provided in subsection (1), except compensatory  
7 damages shall be deemed to include normal and reasonable costs  
8 of cover or other reasonable measures of damages used among  
9 participants in the market for qualified financial contract  
10 claims, calculated as of the date of repudiation or the date  
11 of the termination of such qualified financial contract in  
12 accordance with the terms of the contract. Upon the  
13 repudiation of any qualified financial contract or in  
14 connection with the termination or liquidation of any  
15 qualified financial contract in accordance with the terms of  
16 such contract, the office ~~department~~ shall be entitled to  
17 damages and such damages shall be paid to the office  
18 ~~department~~ upon written demand from the office ~~department~~ to  
19 the other party or parties to the contract.

20           (3) In the case of the liquidation of an international  
21 bank agency of an international banking corporation by the  
22 office ~~department~~, with respect to qualified financial  
23 contracts subject to netting agreements or arrangements that  
24 provide for netting present or future payment obligations or  
25 payment entitlements, including termination or closeout values  
26 relating to the obligations or entitlements, among the parties  
27 to the contracts and agreements or arrangements, the liability  
28 of the office ~~department~~ to any party to any such qualified  
29 financial contract upon the repudiation or in any connection  
30 with the termination or liquidation of such qualified  
31

1 financial contract in accordance with the terms of such  
2 contract shall be limited to the lesser of:  
3 (a) The global net payment obligation; or  
4 (b) The branch-to-agency or agency-to-agency net  
5 payment obligation.  
6 (4) The liability of the office ~~department~~ to a party  
7 under this section shall be reduced by any amount otherwise  
8 paid or received by the party with respect to the global net  
9 payment obligation pursuant to such qualified financial  
10 contract which, if added to the liability of the office  
11 ~~department~~ under subsection (1), would exceed the global net  
12 payment obligation. The liability of the office ~~department~~  
13 under this section to a party to a qualified financial  
14 contract also shall be reduced by the fair market value or the  
15 amount of any proceeds of collateral that secures and has been  
16 applied to satisfy the obligations of the international  
17 banking corporation to the party pursuant to such qualified  
18 financial contract. If netting under the applicable netting  
19 agreement or arrangement results in a branch-to-agency net  
20 payment entitlement, notwithstanding any provision in any such  
21 contract that purports to effect a forfeiture of such  
22 entitlement, the office ~~department~~ may make written demand for  
23 and shall be entitled to receive from the party to such  
24 contract an amount not to exceed the lesser of the global net  
25 payment entitlement or the branch-to-agency net payment  
26 entitlement.  
27 (5) The liability of a party under this section shall  
28 be reduced by any amount otherwise paid to or received by the  
29 office ~~department~~ or any other liquidator or receiver of the  
30 international banking corporation with respect to the global  
31 net payment entitlement pursuant to such qualified financial

1 contract which, if added to the liability of the party under  
2 this section, would exceed the global net payments  
3 entitlement. The liability of a party under this section to  
4 the office ~~department~~ pursuant to such qualified financial  
5 contract also shall be reduced by the fair market value of the  
6 amount of any proceeds of the collateral that secures and has  
7 been applied to satisfy the obligations of the party to the  
8 international banking corporation pursuant to such qualified  
9 financial contract.

10 Section 1844. Section 663.173, Florida Statutes, is  
11 amended to read:

12 663.173 Qualified financial contract; net obligation  
13 and net entitlement.--A party to a qualified financial  
14 contract with an international banking corporation, possession  
15 of which has been taken by the office ~~department~~ pursuant to  
16 s. 663.17, which party has a perfected security interest in  
17 collateral or other valid lien or security interest in  
18 collateral enforceable against third parties pursuant to a  
19 security arrangement related to such qualified financial  
20 contract, may retain all such collateral and, upon repudiation  
21 or termination of such qualified financial contract in  
22 accordance with the terms of the contract, may apply such  
23 collateral in satisfaction of any claims secured by the  
24 collateral provided the total amount so applied to such claims  
25 shall in no event exceed the global net payment obligation, if  
26 any.

27 Section 1845. Section 663.174, Florida Statutes, is  
28 amended to read:

29 663.174 Repudiation; lease, lessee, or lessor; real or  
30 personal property.--

31

1           (1) If the office ~~department~~ repudiates a lease of an  
2 international banking corporation, the real or personal  
3 property under which the corporation was a lessee, the lessor  
4 under such lease shall be entitled to file a claim with the  
5 office ~~department~~ for the lesser of:

6           (a) The amount designated as liquidated damages  
7 contained in the lease between the corporation and the lessor;

8           (b) The amount equal to 1 year's rent under the terms  
9 of the repudiated lease; or

10          (c) An amount equal to the rent for the remaining term  
11 of the lease.

12          (2) If the office ~~department~~ repudiates the lease of  
13 an international banking corporation for the rental of real  
14 property under which the corporation was the lessor and the  
15 lease was not in default at the time of the repudiation, the  
16 lessee under such lease may:

17          (a) Treat the lease as terminated by such repudiation  
18 and vacate the premises; or

19          (b) Remain in possession of the leasehold interest for  
20 the balance of the term of the lease, and for any renewal or  
21 extension of such term that is enforceable by such lessee  
22 under applicable noninsolvency law, unless the lessee defaults  
23 under the terms of the lease after the date of such  
24 repudiation. If the lessee remains in possession of the  
25 leasehold interest, the lessee shall continue to pay to the  
26 office ~~department~~ the contractual rent pursuant to the terms  
27 of the lease after the date of the repudiation of such lease  
28 and may offset against such rent payment any damages which may  
29 accrue due to nonperformance of any obligation of the  
30 corporation under the lease after the date of repudiation.

31

1 The office ~~department~~ shall not be liable to the lessee for  
2 any damages arising after such date as a result of the  
3 repudiation other than the amount of any offset allowed under  
4 this paragraph. Nothing in this subsection prohibits the  
5 office ~~department~~ from entering into a new contract with the  
6 lessee for the rental of the leasehold which was the subject  
7 of the repudiated lease.

8 (3) Except as otherwise provided, notwithstanding any  
9 provision in an unexpired lease or other contract or in  
10 applicable law, a contract or unexpired lease of an  
11 international banking corporation may not be terminated or  
12 modified by any party other than the office ~~department~~ without  
13 the concurrence of the office ~~department~~, and any right or  
14 obligation under such contract or lease may not be terminated  
15 or modified, at any time after the office ~~department~~ has taken  
16 possession, solely pursuant to a provision in such contract or  
17 lease purporting to allow termination or modification upon the  
18 office's ~~department's~~ taking possession or upon the insolvency  
19 or liquidation or deterioration of the financial condition of  
20 the corporation.

21 (4) Nothing in this section affects the right of a  
22 party to contract with an international banking corporation to  
23 seek performance of such contract or damages under such  
24 contract in any other jurisdiction; provided, the office  
25 ~~department~~ shall not be liable for the performance of such  
26 contract or damages under such contract in any other  
27 jurisdiction.

28 (5) The rights granted in this section are in addition  
29 to any other rights available to the office ~~department~~ under  
30 common law or any other law.

31

1           Section 1846. Section 663.175, Florida Statutes, is  
2 amended to read:

3           663.175 Liquidation; continuation, stay, and  
4 injunction.--

5           (1) Except as provided in this section, the office's  
6 ~~department's~~ taking of possession of any international banking  
7 corporation and the liquidation of the corporation shall  
8 operate as a stay of and as an injunction against, as of the  
9 date the office ~~department~~ takes possession of the corporation  
10 and applicable to all persons or entities:

11           (a) The commencement or continuation, including the  
12 issuance or employment of process, of a judicial,  
13 administrative, or other action or proceeding against the  
14 corporation that was or could have been commenced before the  
15 taking of possession, or to cover a claim against the  
16 corporation that arose before the taking of possession.

17           (b) The enforcement against the corporation, or the  
18 business and property of the corporation in this state, of a  
19 judgment obtained before the taking of possession.

20           (c) Any act to obtain possession of property of the  
21 corporation or of property from the corporation or to exercise  
22 control over property of the corporation.

23           (d) Any act to create, perfect, or enforce any lien  
24 against property of the corporation.

25           (e) Any act to create, perfect, or enforce against  
26 property of the corporation any lien to the extent that such  
27 lien secures a claim that arose before the taking of  
28 possession.

29           (f) Any act to collect, assess, or recover a claim  
30 against the corporation and the liquidation of the corporation

31

1 does not operate as a stay of or as an injunction against the  
2 claim.

3 (2) The office's ~~department's~~ taking of possession of  
4 an international banking corporation and the liquidation of  
5 the corporation does not operate as a stay of or as an  
6 injunction against:

7 (a)1. The filing of a claim in the liquidation of the  
8 corporation;

9 2. The making of a demand upon the office ~~department~~  
10 to assume or repudiate a contract of the corporation;

11 3. The exercise of any setoff otherwise permissible  
12 under applicable law except limited by s. 663.17;

13 4. The right of any secured creditor with a perfected  
14 security interest or other valid lien or security interest  
15 enforceable against third parties to retain collateral,  
16 including any right of such secured creditor under any  
17 security agreement related to a qualified financial contract  
18 as defined in s. 663.17 to retain collateral and to apply such  
19 collateral in accordance with s. 663.173;

20 5. Any automatic termination in accordance with the  
21 terms of any qualified financial contract or any right to  
22 cause the termination or liquidation of any qualified  
23 financial contract, as defined in this part in accordance with  
24 the terms of such contract;

25 6. Any right to offset or net out any termination  
26 value, payment amount, or other transfer obligation arising  
27 under or in connection with one or more such qualified  
28 financial contracts; or

29 7. The commencement of an action under s. 663.181 or  
30 any other action relating to the liquidation of the  
31

1 corporation before the court of competent jurisdiction  
2 overseeing the liquidation of the corporation.

3 (b) The commencement or continuation of a criminal  
4 action or proceeding against the corporation.

5 (c) The commencement or continuation of an action or  
6 proceeding pursuant to a governmental unit's police or  
7 regulatory power.

8 (d) The enforcement of a judgment, other than money  
9 judgment, obtained in an action or proceeding by a  
10 governmental unit to enforce such governmental unit's police  
11 or regulatory power.

12 (e) The issuance to the corporation by a governmental  
13 unit of a notice of tax deficiency.

14 (f) The commencement or continuation of a judicial  
15 action or proceeding by a secured creditor with a perfected  
16 security interest, or other valid lien or security interest  
17 enforceable against third parties, including any right of such  
18 secured creditor under any security arrangement related to a  
19 qualified financial contract to enforce such interest or lien.

20 (3) Except as otherwise provided in this section:

21 (a) The staying or enjoining of an act against  
22 property of an international banking corporation under this  
23 section shall continue until such property is no longer the  
24 property of the office ~~department~~ in possession of the  
25 corporation.

26 (b) The staying or enjoining of any other act under  
27 this section shall continue until the office ~~department~~ has  
28 concluded liquidating the corporation.

29 (4) For good cause shown, on request of a party in  
30 interest and after notice and hearing, a court of competent  
31 jurisdiction overseeing the liquidation of an international

1 banking corporation may grant relief from a stay or injunction  
2 provided under this section, including, but not limited to,  
3 terminating, annulling, modifying, or conditioning such stay  
4 or injunction.

5 (5) In the case of any willful violation of a stay or  
6 injunction provided in this section by any person who has  
7 knowledge of the office's ~~department's~~ taking of possession of  
8 an international banking corporation that is the subject of  
9 the stay or injunction, the office ~~department~~ shall recover  
10 actual damages, including costs and fees and, in appropriate  
11 circumstances, may recover punitive damages.

12 Section 1847. Section 663.176, Florida Statutes, is  
13 amended to read:

14 663.176 Liquidation; notice of possession.--When the  
15 office ~~department~~ has taken possession of an international  
16 banking corporation and has determined to liquidate the  
17 corporation's affairs, the office ~~department~~ shall notify all  
18 persons who may have claims against the corporation to present  
19 such claims to the office ~~department~~ and make proper proof of  
20 such claims within 4 months after the date of such notice and  
21 at a place specified in the notice; provided, if the office  
22 ~~department~~ finds that a shorter period than 4 months will  
23 afford a reasonable time for presenting claims and making  
24 proof of such claims, the office ~~department~~ may specify such  
25 shorter period which shall in no event be less than 30 days.  
26 In any event, the office ~~department~~ shall specify in such  
27 notice the last day for processing claims and for making proof  
28 of such claims. The office ~~department~~ shall cause such notice  
29 to be mailed to all persons whose names appear as creditors  
30 upon the books of the corporation. Such notice to persons  
31 appearing as depositors shall be mailed to the address

1 appearing upon the deposit records or ledger of the  
2 corporation. The office ~~department~~ shall also cause such  
3 notice to be published biweekly in such newspaper or  
4 newspapers as the office ~~department~~ may direct in the county  
5 where the principal office of the corporation in the state is  
6 located and, in the office's ~~department's~~ discretion,  
7 elsewhere for publication 3 consecutive months, the first to  
8 be published more than 90 days before the last day fixed in  
9 such notice for presenting proof of claims. However, if the  
10 notice requires claims to be presented within less than 4  
11 months, the office ~~department~~ shall cause such notice to be  
12 published weekly in such newspaper or newspapers as the office  
13 ~~department~~ may direct for 3 consecutive weeks, the first  
14 publication to be published more than 21 days before the last  
15 day fixed in such notice for presenting claims. Such notice  
16 shall specify that all persons having claims for priority of  
17 payment shall make demand in writing for priority in the proof  
18 of their claims. The office ~~department~~ shall have no power to  
19 accept any claim presented after the date specified in such  
20 notice as the last date for presenting claims.

21 Section 1848. Section 663.177, Florida Statutes, is  
22 amended to read:

23 663.177 Disposition of property held as bailee or  
24 depository; opening of safe-deposit boxes; disposal of  
25 contents.--

26 (1) The office ~~department~~ may, after it has taken  
27 possession of the business and property of an international  
28 banking corporation, send a written notice by registered mail  
29 to each person claiming, or appearing upon the books of the  
30 corporation, to be:

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1           (a) The owner of any personal property in the custody  
2 or possession of the corporation, as bailee or depositary for  
3 hire or otherwise, including the contents of any safe, vault,  
4 or box opened after taking possession of such property for  
5 nonpayment of any rent; or

6           (b) The lessee of any safe, vault, or box, to such  
7 person's last address appearing on the books of the  
8 international banking corporation or the last known address if  
9 no address appears on such books, notifying such person to  
10 remove all such property or the contents of any such safe,  
11 vault, or box, within a period stated in such notice which  
12 period shall be not less than 60 days after the date of such  
13 notice. The contract of bailment or of deposit for hire, or  
14 lease of safe, vault, or box, if any, between the person to  
15 whom such notice is mailed and the corporation shall cease  
16 upon the date for removal fixed in such notice. Such persons  
17 shall have a claim against the corporation for the amount of  
18 unearned rent or charges, if any, paid by such person from the  
19 date fixed in such notice, if the property or contents are  
20 removed on or before such date, or from the date of actual  
21 removal, if the property or contents are removed after such  
22 date.

23           (2) If such property or contents are not removed, and  
24 all rent or storage and other charges accrued up to that time,  
25 if any, are not paid, within the time fixed by such notice,  
26 the office ~~department~~ may cause such property to be  
27 inventoried, or such safe, vault, or box, or any package,  
28 parcel, or receptacle in the custody or possession of the  
29 corporation as bailee or depositary for hire or otherwise, to  
30 be opened and the contents, if any, to be removed and  
31 inventoried. Such property or contents shall be sealed by a

1 notary public in a package distinctly marked by the office  
2 ~~department~~ with the name of the person in whose name such  
3 property or such safe, vault, box, package, parcel, or  
4 receptacle is recorded upon the books of the corporation, and  
5 a copy of such inventory shall be certified and attached to  
6 such package by such notary public. The package shall be kept  
7 in a place that the office ~~department~~ determines at the  
8 expense and risk of the person in whose name it is recorded  
9 until delivered to such person or until sold, destroyed, or  
10 otherwise disposed of. Such package may, pending final  
11 disposition of its contents, be opened by the office  
12 ~~department~~ for inspection or appraisal or to enable the office  
13 ~~department~~ to exercise any powers conferred or duties imposed  
14 by this part. Whenever such package is opened, the office  
15 ~~department~~ shall endorse on the outside of the package the  
16 date of opening and resealing and shall prepare an affidavit  
17 which shall be attached to the package showing the reason for  
18 opening and the articles, if any, removed from the package or  
19 placed or replaced in the package.

20 (3) At any time prior to the sale, destruction, or  
21 other disposition of the contents of the package, the person  
22 in whose name the package is recorded may require the delivery  
23 of the package upon the payment of all rental or storage  
24 charges accrued, and all other charges or expenses paid or  
25 incurred to the date of delivery with respect to such package  
26 or contents of the package including the cost of inventorying  
27 or of opening and inventorying, the fees of the notary public,  
28 the cost of preparing and mailing the notice, and advertising,  
29 if any.

30 (4) After the expiration of 1 year after the mailing  
31 of the notice required in subsection (1), the office

1 ~~department~~ may apply to a court of competent jurisdiction for  
2 an order authorizing the office ~~department~~ to sell, destroy,  
3 or otherwise dispose of the contents of such package.  
4 Whenever, pursuant to the provisions of this subsection, the  
5 office ~~department~~ is given the power to sell the contents of  
6 any package, such power to sell shall be deemed a power to  
7 sell in satisfaction of a lien for nonpayment of rental or  
8 storage charges accrued, and all other charges and expenses  
9 paid or incurred to the date of sale with respect to such  
10 package and the contents of the package, including charges and  
11 expenses described in subsection (3).

12 (5) The provisions of this section do not affect or  
13 preclude any other remedy, by action or otherwise, for the  
14 enforcement of claims or rights of the office ~~department~~, or  
15 of an international banking corporation of which the office  
16 ~~department~~ is in possession, against the person in whose name  
17 any property or any safe, vault, box, package, parcel, or  
18 receptacle is recorded, or affect or bar the right of the  
19 office ~~department~~ or the corporation to recover, before sale,  
20 any debt or claim due to the office ~~department~~ or the  
21 corporation, or, after sale, so much of the debt or claim as  
22 is not paid by the proceeds of the sale.

23 Section 1849. Section 663.178, Florida Statutes, is  
24 amended to read:

25 663.178 Claims; valuation; priority; listing; filing;  
26 objection; endorsement; adverse interest.--

27 (1) Proof of claim shall consist of a written  
28 statement under oath signed by the claimant or his or her  
29 attorney in fact and shall be in such form as the office  
30 ~~department~~ requires.

31

1           (2) The office ~~department~~ shall not accept a claim  
2 based on an agreement with an international banking  
3 corporation unless the agreement is reflected on the accounts,  
4 books, or records of the corporation or a creditor provides  
5 documentary evidence of such agreement. The commission  
6 ~~department~~ may adopt any rules determined necessary to  
7 implement this section.

8           (3) No claim or account of any secured claimant or  
9 creditor shall be accepted at a sum greater than the  
10 difference between the face value of the claim or account and  
11 the value of the security itself as of the commencement of the  
12 liquidation unless the claimant or creditor, prior to the  
13 expiration of the time fixed by the office ~~department~~ for the  
14 presentation of claims, surrenders his or her security to the  
15 office ~~department~~, in which event the claim or account may be  
16 accepted in its full face amount.

17           (4) The office ~~department~~ shall not determine  
18 priorities in accepting or rejecting claims and the acceptance  
19 by the office ~~department~~ of a claim in which priority of  
20 payment is demanded shall not entitle the claimant to  
21 priority. Accepted claims in which priority of payment is  
22 demanded shall be presented to a court of competent  
23 jurisdiction on notice to the claimant for determination as to  
24 the priority of payment of such claims. Except as otherwise  
25 provided in ss. 663.17-663.181, all claims entitled to  
26 priority of payment shall be paid ratably and proportionately.

27           (5) The office ~~department~~ shall prepare in duplicate a  
28 complete list of all claims presented, specifying the name of  
29 the claimant, the nature of the claim, and the amount of such  
30 claim. Such list shall also contain a statement of accounts  
31 payable as shown by the books and records of the corporation

1 and as to which no claims have been presented, specifying the  
2 name of each person to whom such account appears to be  
3 payable, the nature of the debt, and the amount of such claim.  
4 Within 60 days after the last date fixed in the notice to  
5 creditors to present and make proof of claims, the office  
6 ~~department~~ shall file one copy of such list in one of its  
7 offices for public inspection and shall file one copy with a  
8 court of competent jurisdiction in the county in which the  
9 principal office of the corporation is located.

10 (6) Within 40 days after the office ~~department~~ has  
11 filed in its headquarters ~~office~~ a copy of the list of claims  
12 required by subsection (5), objections to any claim presented  
13 or to any account appearing on such list may be made by any  
14 party interested by filing such objections with the office  
15 ~~department~~, in writing, signed by the objector, and verified.  
16 Unless the office ~~department~~ rejects any claim or accounts to  
17 which objections have been filed with it, the office  
18 ~~department~~ shall, within 60 days after the time to file such  
19 objections has expired, apply to a court of competent  
20 jurisdiction, upon notice to the objector, for an order  
21 directing the office ~~department~~ as to the disposition of such  
22 claim or account. The court may then dispose of such  
23 objections or may order a reference for that purpose.

24 (7) The office ~~department~~ shall, not later than 60  
25 days after the time has expired to file objections to claims  
26 presented, accept or reject, in whole or in part, every filed  
27 claim, except claims as to which objections are still pending  
28 before a court, and shall accept or reject, in whole or in  
29 part, every account payable as shown by the books and records  
30 and as to which no claim has been presented, except accounts  
31 as to which objections are still pending before a court.

1 Whenever the office ~~department~~ accepts a portion of a claim or  
2 account and rejects the remainder, the portion accepted and  
3 the portion rejected shall, for the purpose of this section,  
4 each be deemed separate claims or accounts.

5 (8) Every claim or account payable accepted by the  
6 office ~~department~~ shall be endorsed as "accepted" and be filed  
7 so endorsed. If the office ~~department~~ is unable, from the  
8 books, accounts, or records of an international banking  
9 corporation, to determine the ownership of a claim or account  
10 payable or if for any other reason the office ~~department~~  
11 doubts the validity of any claim or account payable, the  
12 office ~~department~~ shall reject such claim or account payable  
13 and shall endorse the claim or account payable as "rejected"  
14 and file it as so endorsed. The office ~~department~~ shall mail  
15 notice of such acceptance or rejection within 14 calendar days  
16 after the office ~~department~~ has accepted or rejected all  
17 claims filed. If a proof of claim has been filed, such notice  
18 need be mailed only to the address appearing on such claim  
19 and, if no proof of claim has been filed, the notice need be  
20 mailed only to the address appearing upon the books of the  
21 corporation. If the office ~~department~~ is unable from the proof  
22 of claim or the books and records of the corporation to  
23 identify a name or address, such notice of rejection need not  
24 be given.

25 (9) Within 30 days after the office ~~department~~ has  
26 accepted or rejected all claims filed, and all accounts  
27 payable as shown by the books and records as to which no  
28 claims have been presented, the office ~~department~~ shall make a  
29 list of all such claims and accounts accepted or rejected by  
30 the office ~~department~~ for public inspection and file one copy  
31 of such list with the ~~in an~~ office ~~of the~~ department and one

1 copy with a court of competent jurisdiction in the county in  
2 which the principal Florida office of such corporation is  
3 located.

4 (10) When the office ~~department~~ has accepted a filed  
5 claim and has filed such claim, endorsed as "accepted," the  
6 claimant, unless priority of payment has been demanded and  
7 such claim is entitled by law to priority of payment, shall be  
8 entitled to share ratably with other general creditors in the  
9 distribution of the proceeds of the liquidation of the assets  
10 of the international banking corporation; provided, any  
11 accepted claim or claims for taxes owed to any taxing  
12 authority shall be paid in full, to the extent that assets of  
13 the corporation are available, prior to the payment of any  
14 other accepted claim pursuant to this section. If the claimant  
15 has demanded priority of payment, the receipt and acceptance  
16 of ratable dividends shall be without prejudice to the right  
17 of such priority of payment.

18 (11) Any person who fails to demand in writing  
19 priority of payment as specified in the notice to file claims  
20 shall be deemed to have waived and abandoned any right to such  
21 priority of payment. Any person who fails to demand in writing  
22 priority of payment as provided in this section is not  
23 entitled to maintain any action or proceeding for any priority  
24 of payment. In any action or proceeding for priority of  
25 payment, the claimant shall allege and prove that the claim  
26 upon which the action is instituted was filed and demand for  
27 priority of payment was made in writing.

28 (12) Within 6 months after the date the office  
29 ~~department~~ files the list of claims and accounts payable which  
30 are accepted or rejected by the office ~~department~~, a claimant  
31 whose claim has been filed and has not been accepted by the

1 office department, or any person whose account payable as  
2 shown by the books and records as to which no claim has been  
3 presented, has not been accepted by the office department, may  
4 institute and maintain an action against the international  
5 banking corporation. Such action may be maintained only in a  
6 court of competent jurisdiction in the county in which the  
7 principal Florida office of such international banking  
8 corporation is located.

9 (13) A lien shall not attach to any property or assets  
10 of an international banking corporation as a result of any  
11 judicial process after the office department has taken  
12 possession of the assets of the corporation.

13 (14) No action shall be maintained against an  
14 international banking corporation while the office department  
15 is in possession of the affairs and business of the  
16 corporation unless brought within the period of limitation  
17 specified in s. 663.17. In any action instituted against such  
18 corporation while the office department is in possession of  
19 the corporation's property and business, the plaintiff shall  
20 be required to allege and prove that the claim upon which the  
21 action is instituted was filed and that such claim has not  
22 been accepted or, in the case of an action upon an account as  
23 to which no claim has been presented, the plaintiff shall be  
24 required to allege and prove that such account appeared upon  
25 the books and records and that such account has not been  
26 accepted.

27 (15) Notice to the office department of an adverse  
28 interest in a claim or account payable accepted by the office  
29 ~~department~~ to the credit of any person shall not require the  
30 office department to recognize such adverse claimant unless  
31 the adverse claimant also:

1           (a) Procures a restraining order, injunction, or other  
2 appropriate process against the office ~~department~~ from a court  
3 of competent jurisdiction in a cause instituted by the office  
4 ~~department~~ in which the person to whose credit such claim or  
5 account payable was accepted or his or her executor or  
6 administrator is made a party and served with summons; or

7           (b) Executes to the office ~~department~~, in a form and  
8 with sureties acceptable to the office ~~department~~, a bond  
9 indemnifying the office ~~department~~ from any and all liability,  
10 loss, damage, cost, and expenses for and on account of the  
11 payment of dividends.

12           (16) In any action or proceeding against the office  
13 ~~department~~ to recover dividends accepted, if there is any  
14 person who is not a party to the action who makes such a  
15 claim, the court in which the action or proceeding is pending  
16 may, on the motion of the office ~~department~~, make an order  
17 amending the proceedings making such person a party to such  
18 action or proceeding and the court shall thereafter proceed to  
19 determine the rights and interests of the parties to such  
20 funds. The remedy provided in this section is in addition to  
21 and not exclusive of that provided in any other interpleader.

22           Section 1850. Section 663.18, Florida Statutes, is  
23 amended to read:

24           663.18 Fees.--The office ~~department~~ is not required to  
25 pay any fee to any clerk, sheriff, register, or other public  
26 officer for entering, filing, docketing, registering,  
27 recording, executing, or issuing a copy, transcript, extract,  
28 or certificate of, or authenticating or exemplifying, any  
29 paper, record, or instrument pertaining to the exercise by the  
30 office ~~department~~ of any powers conferred or duties imposed  
31 upon the office ~~department~~ by the provisions of this part,

1 whether or not such paper, record, or instrument is executed  
2 by the office ~~department~~ and whether or not it is connected  
3 with an action. The term "action" is construed as including a  
4 special proceeding in any action.

5 Section 1851. Section 663.181, Florida Statutes, is  
6 amended to read:

7 663.181 Manner and time within which taking possession  
8 may be tested.--At any time within 10 days after the office  
9 ~~department~~ has taken possession of the property and business  
10 of an international banking corporation, such corporation may  
11 apply to a court of competent jurisdiction in the county in  
12 which its principal office is located in this state for an  
13 order requiring the office ~~department~~ to show cause why the  
14 office ~~department~~ should not be enjoined from continuing such  
15 possession. The court may, upon good cause shown, direct the  
16 office ~~department~~ to refrain from such proceedings and to  
17 surrender such possession.

18 Section 1852. Paragraph (c) of subsection (1) of  
19 section 663.301, Florida Statutes, is amended to read:

20 663.301 Definitions.--

21 (1) As used in this part:

22 (c) "Regional development bank" means a for-profit  
23 banking institution:

24 1. Which is listed in the International Monetary  
25 Fund's Directory of Regional Economic Organizations and  
26 Intergovernmental Commodity and Development Organizations;

27 2. Which is otherwise afforded special privileges,  
28 including favorable tax treatment, under the laws of the  
29 jurisdiction in which it is organized;

30  
31

1           3. Which has as its principal objective the extending  
2 of credit for international development purposes including  
3 short-term financial transactions; and

4           4. Which has at least 50 percent of its shares of  
5 voting stock owned by central banks or other government-owned  
6 financial institutions from at least five foreign countries  
7 and one or more financing affiliates of the International Bank  
8 for Reconstruction and Development, or which satisfies such  
9 other ownership requirements as the commission ~~department~~ may  
10 specify by rule. When adopting any such rule, the commission  
11 ~~department~~ shall take into account the objective of ensuring  
12 the multinational control of international development banks.

13           Section 1853. Paragraph (a) of subsection (1) of  
14 section 663.302, Florida Statutes, is amended to read:

15           663.302 Applicability of state banking laws.--

16           (1)(a) International development banks shall be  
17 subject to the following provisions of chapter 655 as though  
18 such international development banks were state banks:

19           1. Section 655.005, relating to definitions.

20           2. Section 655.012, relating to general supervisory  
21 powers of the office ~~department~~.

22           3. Section 655.016, relating to liability.

23           4. Section 655.031, relating to administrative  
24 enforcement guidelines.

25           5. Section 655.032, relating to investigations; etc.

26           6. Section 655.0321, relating to hearings and  
27 proceedings.

28           7. Section 655.033, relating to cease and desist  
29 orders.

30           8. Section 655.034, relating to injunctions.

31

1           9. Section 655.037, relating to removal of financial  
2 institution-affiliated party.

3           10. Section 655.041, relating to administrative fines.

4           11. Section 655.043, relating to articles of  
5 incorporation.

6           12. Section 655.044, relating to accounting practices.

7           13. Section 655.045, relating to examinations,  
8 reports, and internal audits.

9           14. Section 655.049, relating to deposit of fees and  
10 assessments.

11           15. Section 655.057, relating to records.

12           16. Section 655.071, relating to international banking  
13 facilities.

14           17. Section 655.50, relating to reports of  
15 transactions involving currency.

16           Section 1854. Section 663.303, Florida Statutes, is  
17 amended to read:

18           663.303 Creation of an international development  
19 bank.--When authorized by the office ~~department~~ as provided  
20 herein, a corporation may be formed under the laws of this  
21 state for the purpose of becoming an international development  
22 bank and engaging in activities authorized by this part.

23           Section 1855. Section 663.304, Florida Statutes, is  
24 amended to read:

25           663.304 Application for authority to organize an  
26 international development bank.--

27           (1) A written application for authority to organize an  
28 international development bank shall be filed with the office  
29 ~~department~~ by the proposed incorporator and shall include:

30           (a) The name, residence, and occupation of each  
31 incorporator and proposed director.

1 (b) The proposed corporate name and evidence of  
2 reservation of the proposed corporate name with the Department  
3 of State.

4 (c) The total initial capital and the number of shares  
5 of capital stock to be authorized.

6 (d) The location, by street and post-office address  
7 and county, of the principal office of the proposed  
8 international development bank.

9 (e) If known, the name and residence of the proposed  
10 president and the proposed chief executive officer, if other  
11 than the proposed president.

12 (f) Such detailed financial, business, and  
13 biographical information as the commission or office  
14 ~~department~~ may reasonably require for each proposed director  
15 and for the proposed president and the proposed chief  
16 executive officer, if other than the president.

17 (2) The application shall be in such form as adopted  
18 by the commission and shall contain such additional  
19 information as the commission or office ~~department~~ may require  
20 and shall be accompanied by a nonrefundable filing fee of  
21 \$2,500.

22 Section 1856. Section 663.305, Florida Statutes, is  
23 amended to read:

24 663.305 Investigation by the office ~~department~~.--Upon  
25 the filing of an application, the office ~~department~~ shall make  
26 an investigation of such matters as it may deem appropriate,  
27 including the character, reputation, financial standing,  
28 business experience, and business qualifications of the  
29 proposed officers and directors.

30 Section 1857. Section 663.306, Florida Statutes, is  
31 amended to read:

1           663.306 Decision by office ~~department~~.--The office  
2 ~~department~~ may, in its discretion, approve or disapprove the  
3 application, but it shall not approve the application unless  
4 it finds that:

5           (1) International business in this state will be  
6 promoted by the establishment of the proposed international  
7 development bank.

8           (2) The proposed capital structure is adequate, but in  
9 no case may the paid-in capital stock be:

10           (a) Less than \$400,000 in the case of an international  
11 development bank organized under chapter 617 as a corporation  
12 not for profit; or

13           (b) The amount required for a state bank in the case  
14 of an international development bank organized under chapter  
15 607 as a corporation for profit.

16

17 The office ~~department~~ may disallow any illegally obtained  
18 currency, monetary instruments, funds, or other financial  
19 resources from the capitalization requirements of this  
20 section.

21           (3) The proposed officers and directors have  
22 sufficient experience, ability, standing, and reputation to  
23 indicate reasonable promise of successful operation and none  
24 of the proposed officers or directors have been convicted of,  
25 or pled guilty or nolo contendere to, a violation of s.  
26 655.50, relating to the Florida Control of Money Laundering in  
27 Financial Institutions Act; chapter 896, relating to offenses  
28 related to financial transactions; or any similar state or  
29 federal law.

30           (4) Provision has been made for suitable quarters at  
31 the location designated in the application.

1           Section 1858. Subsection (2) of section 663.308,  
2 Florida Statutes, is amended to read:

3           663.308 Place of transacting business; branches.--

4           (2) An international development bank may establish  
5 branches in foreign countries with the approval of the  
6 appropriate governmental authorities in such foreign  
7 countries. An international development bank shall give the  
8 office ~~department~~ written notice of its intention to establish  
9 a branch in a foreign country at least 30 days prior to the  
10 establishment of such branch.

11           Section 1859. Subsection (1) of section 663.309,  
12 Florida Statutes, is amended to read:

13           663.309 Permissible activities; prohibited  
14 activities.--

15           (1) An international development bank shall have the  
16 authority:

17           (a) To make loans or otherwise extend credit to  
18 foreign business enterprises and foreign governments and to  
19 issue and confirm letters of credit, create bankers  
20 acceptances, and provide guarantees for the purpose of  
21 providing financing to foreign business enterprises and  
22 foreign governments;

23           (b) To provide financing in connection with  
24 import-export transactions to the extent permissible for an  
25 Edge Act corporation organized under s. 25(a) of the Federal  
26 Reserve Act, as amended, 12 U.S.C. ss. 611-632;

27           (c) To invest funds as provided in s. 663.315;

28           (d) To borrow funds as provided in s. 663.316;

29           (e) To take deposits from financial institutions,  
30 foreign not-for-profit foundations, foreign business  
31 enterprises, and organizations which qualify under s. 501(c)

1 of the Internal Revenue Code and which had at the end of their  
2 last fiscal year no less than \$10 million in assets;

3 (f) To maintain for the account of others credit  
4 balances necessarily incidental to, or arising out of, the  
5 exercise of its lawful powers. Such credit balances may be  
6 disbursed by check or draft; however, the commission  
7 ~~department~~ shall by rule provide appropriate limitations upon  
8 such disbursements to ensure that credit balances are not  
9 functionally equivalent to demand deposits;

10 (g) To exercise such other incidental powers as shall  
11 be reasonably necessary to carry out the authority granted in  
12 this part.

13 Section 1860. Subsection (3) of section 663.311,  
14 Florida Statutes, is amended to read:

15 663.311 Shares of stock.--

16 (3) With the approval of the office ~~department~~, an  
17 international development bank may issue less than all of the  
18 number of shares of capital stock authorized by its articles  
19 of incorporation; provided that such authorized but unissued  
20 shares may be issued only to increase the capital of the  
21 international development bank with the approval of the office  
22 ~~department~~.

23 Section 1861. Section 663.312, Florida Statutes, is  
24 amended to read:

25 663.312 Changes in capital.--

26 (1) No international development bank shall reduce its  
27 outstanding capital stock without first obtaining the approval  
28 of the office ~~department~~, and such approval shall be withheld  
29 if the reduction would cause the outstanding capital stock to  
30 be less than the minimum required pursuant to s. 663.306(2) or  
31 if the reduction would cause the international development

1 bank's capital accounts to be less than the minimum required  
2 by s. 663.316(2).

3 (2) An international development bank may, with the  
4 approval of the office ~~department~~, provide for an increase in  
5 its capital.

6 Section 1862. Subsection (2) of section 663.316,  
7 Florida Statutes, is amended to read:

8 663.316 Borrowing; capital accounts.--

9 (2) An international development bank shall have  
10 capital accounts in an amount equal to not less than 8 percent  
11 of its aggregate deposits. However, the commission ~~department~~  
12 by rule may increase the required amount of capital accounts  
13 to not more than 10 percent of such aggregate deposits. When  
14 adopting ~~promulgating~~ any such rule, the commission ~~department~~  
15 shall take into account the objective of protecting the  
16 interests of depositors and of maintaining a sound banking  
17 system in this state.

18 Section 1863. Section 663.319, Florida Statutes. is  
19 amended to read:

20 663.319 Rules; exemption from statement of estimated  
21 regulatory costs requirements.--In addition to any other  
22 rulemaking authority it has under the financial institutions  
23 codes, the commission may adopt ~~department is authorized to~~  
24 ~~promulgate~~ rules for the administration of regional  
25 development banks. Because of the difficulty in obtaining  
26 economic data with regard to such banks, no statement of  
27 estimated regulatory costs shall be required in connection  
28 with these rules.

29 Section 1864. Subsection (6) of section 665.012,  
30 Florida Statutes, is amended to read:

31

1           665.012 Definitions.--When used in this chapter, the  
2 following words and phrases have the following meanings,  
3 except to the extent that any such word or phrase specifically  
4 is qualified by its context:

5           (6) "Liquid assets" means:

6           (a) Cash on hand;

7           (b) Cash on deposit in federal home loan banks,  
8 federal reserve banks, state banks performing similar reserve  
9 functions, or financial depository institutions, which is  
10 withdrawable upon not more than 30 days' notice and which is  
11 not pledged as security for indebtedness, except that any  
12 deposits in a financial depository institution under the  
13 control or in the possession of any supervisory authority  
14 shall not be considered as liquid assets;

15           (c) Obligations of, or obligations which are fully  
16 guaranteed as to principal and interest by, the United States  
17 or this state; and

18           (d) Such other assets as may be approved by the office  
19 ~~department~~ which are accepted as liquid assets for federally  
20 insured associations by the appropriate federal regulatory  
21 agency.

22           Section 1865. Subsections (4), (24), (35), (38), and  
23 (42) of section 665.013, Florida Statutes, are amended to  
24 read:

25           665.013 Applicability of chapter 658.--The following  
26 sections of chapter 658, relating to banks and trust  
27 companies, are applicable to an association to the same extent  
28 as if the association were a "bank" operating thereunder:

29           (4) Section 658.20, relating to investigation by  
30 office ~~department~~.

31

1           (24) Section 658.43, relating to approval by office  
2 ~~department~~, valuation of assets; emergency action.

3           (35) Section 658.73, relating to fees and assessments.  
4 The commission ~~department~~ shall, by rule, adopt a separate  
5 semiannual fee and semiannual assessment for associations. In  
6 its determination, the commission ~~department~~ shall consider  
7 the housing finance role of such associations in addition to  
8 the cost of regulation of associations and the collection of  
9 fees from such associations.

10           (38) Section 658.81, relating to office ~~department~~  
11 action; notice and court confirmation.

12           (42) Section 658.90, relating to receivers or  
13 liquidators under supervision of office ~~department~~.

14           Section 1866. Subsections (1) and (2) of section  
15 665.0315, Florida Statutes, are amended to read:

16           665.0315 Reorganization, merger, or consolidation with  
17 a foreign association.--

18           (1) An association shall have power to reorganize or  
19 merge or consolidate with a foreign association, as defined in  
20 s. 665.1001, subject to the approval of the office ~~department~~.

21           (2) If the resulting or surviving association is to be  
22 a foreign association, the office ~~department~~ shall not approve  
23 the proposed transaction unless:

24           (a) The laws of the state in which the foreign  
25 association has its principal place of business permit  
26 associations in that state to reorganize, merge, or  
27 consolidate with Florida associations in transactions in which  
28 the resulting or surviving association is a Florida  
29 association; and

30           (b) The constituent Florida association has been in  
31 existence and continuously operating for more than 2 years.

1           Section 1867. Subsections (1), (2), (3), and (5), of  
2 section 665.033, Florida Statutes, are amended to read:

3           665.033 Conversion of state or federal mutual  
4 association to capital stock association.--

5           (1) CONVERSION INTO CAPITAL STOCK ASSOCIATION.--Any  
6 state or federal mutual association may apply to the office  
7 ~~department~~ for permission to convert itself into an  
8 association operated under the provisions of this chapter in  
9 accordance with the following procedures:

10           (a) The board of directors shall approve a plan of  
11 conversion by resolution adopted by a majority vote of all the  
12 directors. The plan shall include, among other terms:

13           1. Financial statements of the association as of the  
14 last day of the month preceding adoption of the plan.

15           2. Such financial data as may be required to determine  
16 compliance with applicable regulatory requirements respecting  
17 financial condition.

18           3. A provision that each savings account holder of the  
19 mutual association will receive a withdrawable account in the  
20 capital stock association equal in amount to his or her  
21 withdrawable account in the mutual association.

22           4. A provision that each member of record will be  
23 entitled to receive rights to purchase voting common stock.

24           5. Pro forma financial statements of the association  
25 as a capital stock association, which shall include data  
26 required to determine compliance with applicable regulatory  
27 requirements respecting financial condition.

28           6. With particularity, the business purpose to be  
29 accomplished by the conversion.

30           7. Such other information as the commission requires  
31 ~~department may, by rule, require.~~

1           (b) The plan of conversion shall be executed by a  
2 majority of the board of directors and submitted to the office  
3 ~~department~~ for approval prior to any vote on conversion by the  
4 members.

5           (c) The office ~~department~~ may approve or disapprove  
6 the plan in its discretion, but it shall not approve the plan  
7 unless it finds that the association will comply sufficiently  
8 with the requirements of the financial institutions codes  
9 after conversion to entitle it to become an association  
10 operating under the financial institutions codes and the rules  
11 of the commission ~~department~~. The office ~~department~~ may deny  
12 any application from any federal association that is subject  
13 to any cease and desist order or other supervisory restriction  
14 or order imposed by any state or the federal supervisory  
15 authority, or insurer, or guarantor or that has been convicted  
16 of, or pled guilty or nolo contendere to, a violation of s.  
17 655.50, relating to the Florida Control of Money Laundering in  
18 Financial Institutions Act; chapter 896, relating to offenses  
19 related to financial transactions; or any similar state or  
20 federal law.

21           (d) If the office ~~department~~ approves the plan of  
22 conversion, the question of such conversion may be submitted  
23 to the members at a meeting of voting members called to  
24 consider such action. A vote of 51 percent or more of the  
25 total number of votes eligible to be cast, unless federal law  
26 permits a lesser percentage of votes for a federal mutual  
27 association to convert, in which case that percentage shall  
28 control, shall be required for approval. Notice of the  
29 meeting, giving the time, place, and purpose thereof, together  
30 with a proxy statement and proxy form covering all matters to  
31 be brought before the meeting, shall be mailed at least 30

1 days prior thereto to the office ~~department~~ for review and to  
2 each voting member at his or her last address as shown on the  
3 books of the association.

4 (2) MINUTES OF MEETING.--Copies of the minutes of the  
5 meeting of members, verified by the affidavit of the secretary  
6 or assistant secretary of the association, shall be filed with  
7 the office ~~department~~ and with the appropriate federal  
8 regulatory agency, within a reasonable time after the meeting.  
9 When so filed, the verified copies of the minutes are  
10 presumptive evidence of the holding of the meeting and of the  
11 action taken.

12 (3) FILING OF ARTICLES OF INCORPORATION AND COMMITMENT  
13 FOR INSURANCE OF ACCOUNTS.--The directors of the association  
14 shall have executed and filed with the office ~~department~~  
15 proposed articles of incorporation as provided for in s.  
16 658.23, together with the application for conversion and a  
17 firm commitment for, or evidence of, insurance of deposits and  
18 other accounts of a withdrawable type. The articles shall  
19 contain a statement that the association resulted from the  
20 conversion of a state or federal mutual association to a  
21 capital stock association. Approval by the office ~~department~~  
22 shall be affixed to the articles of incorporation. An  
23 authenticated copy of the articles of incorporation shall be  
24 filed with the Department of State and one copy of the  
25 articles of incorporation and the certificate of incorporation  
26 shall be returned to the association. The association shall  
27 cease to be a mutual association at the time and on the date  
28 specified in the approved articles of incorporation.

29 (5) FEE.--The application for conversion from a state  
30 or federal mutual to a state capital stock association shall  
31 be accompanied by a nonrefundable filing fee of \$7,500.

1 Additionally, the office ~~department~~ is authorized to assess  
2 any association, applying to convert pursuant to this section,  
3 a nonrefundable examination fee to cover the actual costs of  
4 any examination required as part of the application process.

5 Section 1868. Section 665.0335, Florida Statutes, is  
6 amended to read:

7 665.0335 Supervisory case; emergency conversion,  
8 reorganization, merger; consolidation; acquisition of  
9 assets.--

10 (1) The office ~~department~~ may determine that a state  
11 or federal association is a supervisory case if it finds that:

12 (a) The association is in an impaired condition; or

13 (b) The association is in imminent danger of being in  
14 an impaired condition.

15

16 Any such finding by the office ~~department~~ shall be based upon  
17 reports furnished to it by a state or federal savings and loan  
18 association examiner or upon other evidence from which it is  
19 reasonable to conclude that the association is a supervisory  
20 case.

21 (2) Notwithstanding any other provision of this  
22 chapter or chapter 120, if the office ~~department~~ finds that  
23 immediate action is necessary to protect the interests of  
24 depositors and reduce the potential for claims against the  
25 insurance fund, or in order to prevent the probable failure of  
26 a state or federal association which is a supervisory case,  
27 the office ~~may department shall have the power,~~ with the  
28 concurrence of the appropriate federal regulatory agency in  
29 the case of any association the deposits of which are  
30 federally insured, ~~to~~ issue an emergency order authorizing:

31

1           (a) The conversion of such association from a state to  
2 a federal charter, or vice versa, without change of business  
3 form;

4           (b) The reorganization, merger, or consolidation of  
5 such state or federal association with another state or  
6 federal association;

7           (c) The conversion of such state or federal  
8 association into a state or federal capital stock association;  
9 or

10          (d) Any state or federal association to acquire the  
11 assets of, and assume the liabilities of, such failing  
12 association.

13          Section 1869. Paragraphs (a) and (b) of subsection  
14 (1), subsection (2), paragraph (e) of subsection (4), and  
15 paragraphs (a) and (c) of subsection (5) of section 665.034,  
16 Florida Statutes, are amended to read:

17          665.034 Acquisition of assets of or control over an  
18 association.--

19           (1)(a) In any case in which a person or group of  
20 persons propose to purchase or acquire voting common stock of  
21 any capital stock association, which purchase or acquisition  
22 would cause such person or group of persons to have control,  
23 as defined herein, of that association, such person or group  
24 of persons must first make application to the office  
25 ~~department~~ for a certificate of approval of such purchase or  
26 acquisition.

27           (b) An application for control shall be in such form  
28 and request such information as the commission requires  
29 ~~department may, by rule, require.~~

30  
31

1           (2) The office ~~department~~ shall issue the certificate  
2 of approval only after it has made an investigation and  
3 determined that:

4           (a) The proposed new owner or owners of voting capital  
5 stock are qualified by character, experience, and financial  
6 responsibility to control the association in a legal and  
7 proper manner and none of the proposed new owners have been  
8 convicted of, or pled guilty or nolo contendere to, a  
9 violation of s. 655.50, relating to the Florida Control of  
10 Money Laundering in Financial Institutions Act; chapter 896,  
11 relating to offenses related to financial transactions; or any  
12 similar state or federal law.

13           (b) The interests of the public generally will not be  
14 jeopardized by the proposed purchase or acquisition of voting  
15 capital stock.

16           (4) For purposes of this section, a person or group of  
17 persons shall be deemed to have control of an association if  
18 such person or group of persons:

19           (e) In any case in which a proposed purchase or  
20 acquisition of voting securities of an association would give  
21 rise to the presumption created under paragraph (d), the  
22 person or group of persons who propose to purchase or acquire  
23 the voting securities shall first give written notice of the  
24 proposal to the office ~~department~~. Such notice may present  
25 information that the proposed purchase or acquisition will not  
26 result in control. The office ~~department~~ shall afford the  
27 person seeking to rebut the presumption an opportunity to  
28 present views in writing or orally before its designated  
29 representatives at an informal conference.

30           (5)(a) A foreign association, as defined in s.  
31 665.1001, whether controlled directly or indirectly by another

1 business organization, may acquire a Florida association,  
2 subject to approval by the office ~~department~~. The office  
3 ~~department~~ shall not approve the proposed acquisition unless:

4 1. The laws of the state in which the foreign  
5 association has its principal place of business permit  
6 associations in that state to be acquired by Florida  
7 associations; and

8 2. The Florida association which is to be acquired has  
9 been in existence and continuously operating for more than 2  
10 years.

11 (c) A foreign association which has a subsidiary  
12 association in Florida is authorized to acquire a Florida  
13 association upon approval by the office ~~department~~ pursuant to  
14 the laws and rules which are applicable to the acquisition of  
15 a Florida association by an association having its principal  
16 place of business in this state, but such acquired association  
17 shall not be considered a Florida association for purposes of  
18 this subsection or s. 665.0315.

19 Section 1870. Section 665.0345, Florida Statutes, is  
20 amended to read:

21 665.0345 Regulatory supervision of foreign  
22 associations.--The office may ~~department is authorized to~~  
23 enter into cooperative agreements with other regulatory  
24 agencies to facilitate the regulation of foreign associations  
25 doing business in this state. The office ~~department~~ may accept  
26 reports of examinations and other records from such other  
27 agencies in lieu of conducting its own examinations of foreign  
28 associations. The office ~~department~~ may take any action  
29 jointly with other regulatory agencies having concurrent  
30 jurisdiction over associations doing business in this state or  
31

1 may take such actions independently in order to carry out its  
2 responsibilities.

3 Section 1871. Section 665.0711, Florida Statutes, is  
4 amended to read:

5 665.0711 Loans.--As an annual average, based on  
6 monthly computations, at least 50 percent of assets other than  
7 liquid assets of an association shall be invested in either  
8 real estate loans or interests therein on home property or  
9 primarily residential property for terms not in excess of 40  
10 years or for such additional terms as may be provided by rule.  
11 Recognizing that associations are chartered to serve the  
12 convenience and needs of the communities in which they are  
13 chartered to do business, that the convenience and needs of  
14 communities include the need for credit services as well as  
15 deposit services, and that associations have a continuing and  
16 affirmative obligation to help meet the credit needs of the  
17 local communities in which they are chartered, at least 40  
18 percent of the assets required to be invested by this section  
19 shall be secured by property within this state, unless a lower  
20 percentage is established by the commission or office  
21 ~~department~~ pursuant to s. 655.061, except that loans insured  
22 or guaranteed in whole or in part by the United States are not  
23 subject to this restriction.

24 Section 1872. Subsection (3) and paragraph (a) of  
25 subsection (4) of section 665.1001, Florida Statutes, are  
26 amended to read:

27 665.1001 Foreign associations.--

28 (3) ACTION BY OFFICE ~~DEPARTMENT~~.--The office  
29 ~~department~~ is authorized, empowered, and directed to obtain an  
30 injunction or to take any other action necessary to prevent  
31

1 any foreign association from doing any business of an  
2 association in this state.

3 (4) ACTIVITIES NOT CONSIDERED "DOING BUSINESS."--For  
4 the purposes of this section and any other law of this state  
5 prohibiting, limiting, or regulating the doing of business in  
6 this state by foreign associations or foreign corporations of  
7 any type, any federal association, the principal office of  
8 which is located outside this state, and any foreign  
9 association which is subject to state or federal supervision,  
10 or both, which by law are subject to periodic examination by  
11 such supervisory authority and to a requirement of periodic  
12 audit, shall not be considered to be doing business in this  
13 state by reason of engaging in any of the following  
14 activities:

15 (a) The purchase, acquisition, holding, sale,  
16 assignment, transfer, collecting, and enforcement of  
17 obligations or any interest therein secured by real estate  
18 mortgages or other instruments in the nature of a mortgage,  
19 covering real property located in this state, or the  
20 foreclosure of such instruments, or the acquisition of title  
21 to such property by foreclosure, or otherwise, as a result of  
22 default under such instruments, or the holding, protection,  
23 rental, maintenance, and operation of the property so  
24 acquired, or the disposition thereof; provided such  
25 associations shall not hold, own, or operate such property for  
26 a period exceeding 5 years without securing the approval of  
27 the office ~~department~~.

28 Section 1873. Paragraph (d) of subsection (5) of  
29 section 667.002, Florida Statutes, is amended to read:

30 667.002 Definitions.--Except to the extent  
31 specifically qualified by context, when used in this chapter:

1           (5) "Liquid assets" means:

2           (d) Such other assets as ~~may be~~ approved by the office  
3 ~~department~~ which are accepted as liquid assets for federally  
4 insured savings banks by the appropriate federal regulatory  
5 agency.

6           Section 1874. Subsections (4), (26), (40), and (44) of  
7 section 667.003, Florida Statutes, are amended to read:

8           667.003 Applicability of chapter 658.--Any state  
9 savings bank is subject to all the provisions, and entitled to  
10 all the privileges, of the financial institutions codes except  
11 where it appears, from the context or otherwise, that such  
12 provisions clearly apply only to banks or trust companies  
13 organized under the laws of this state or the United States.  
14 Without limiting the foregoing general provisions, it is the  
15 intent of the Legislature that the following provisions apply  
16 to a savings bank to the same extent as if the savings bank  
17 were a "bank" operating under such provisions:

18           (4) Section 658.20, relating to investigation by  
19 office ~~department~~.

20           (26) Section 658.43, relating to approval by office  
21 ~~department~~; valuation of assets; emergency action.

22           (40) Section 658.81, relating to office ~~department~~  
23 action; notice and court confirmation.

24           (44) Section 658.90, relating to receivers or  
25 liquidators under supervision of office ~~department~~.

26           Section 1875. Subsections (1) and (2) of section  
27 667.005, Florida Statutes, are amended to read:

28           667.005 Reorganization, merger, or consolidation with  
29 a foreign savings bank.--

30           (1) A savings bank shall have the power to reorganize,  
31 merge, or consolidate with a foreign savings bank, as defined

1 in s. 667.013, subject to the approval of the office  
2 ~~department~~.

3 (2) If the resulting or surviving savings bank is to  
4 be a foreign savings bank, the office ~~department~~ shall not  
5 approve the proposed transaction unless:

6 (a) The laws of the state in which the foreign savings  
7 bank has its principal place of business permit savings banks  
8 in that state to reorganize, merge, or consolidate with  
9 Florida savings banks in transactions in which the resulting  
10 or surviving savings bank is a Florida savings bank.

11 (b) The constituent Florida savings bank has been in  
12 existence and continuously operating for more than 2 years.

13 Section 1876. Subsections (1), (2), (3), and (5) of  
14 section 667.006, Florida Statutes, are amended to read:

15 667.006 Conversion of state or federal mutual savings  
16 bank or state or federal mutual association to capital stock  
17 savings bank.--

18 (1) CONVERSION INTO CAPITAL STOCK SAVINGS BANK.--Any  
19 state or federal mutual savings bank or state or federal  
20 mutual association may apply to the office ~~department~~ for  
21 permission to convert itself into a capital stock savings bank  
22 operated under the provisions of this chapter in accordance  
23 with the following procedures:

24 (a) The board of directors shall approve a plan of  
25 conversion by resolution adopted by a majority vote of all the  
26 directors. The plan shall include, but not be limited to:

27 1. Financial statements of the savings bank as of the  
28 last day of the month preceding adoption of the plan.

29 2. Such financial data as may be required to determine  
30 compliance with applicable regulatory requirements respecting  
31 financial condition.

1           3. A provision that each savings account holder of the  
2 mutual savings bank will receive a withdrawable account in the  
3 capital stock savings bank equal in amount to his or her  
4 withdrawable account in the mutual savings bank.

5           4. A provision that each member of record will be  
6 entitled to receive rights to purchase voting common stock.

7           5. Pro forma financial statements of the savings bank  
8 as a capital stock savings bank, which shall include data  
9 required to determine compliance with applicable regulatory  
10 requirements respecting financial condition.

11           6. With particularity, the business purpose to be  
12 accomplished by the conversion.

13           7. Such other information as the commission requires  
14 ~~department may require~~ by rule.

15           (b) The plan of conversion shall be executed by a  
16 majority of the board of directors and submitted to the office  
17 ~~department~~ for approval prior to any vote on conversion by the  
18 members.

19           (c) The office ~~department~~ may approve or disapprove  
20 the plan in its discretion, but it shall not approve the plan  
21 unless it finds that the savings bank will comply sufficiently  
22 with the requirements of the financial institutions codes  
23 after conversion to entitle it to become a savings bank  
24 operating under the financial institutions codes and the rules  
25 of the commission ~~department~~. The office ~~department~~ may deny  
26 any application from any federal savings bank that is subject  
27 to any cease and desist order or other supervisory restriction  
28 or order imposed by any state or the federal supervisory  
29 authority, or insurer, or guarantor or that has been convicted  
30 of, or pled guilty or nolo contendere to, a violation of s.  
31 655.50, relating to the Florida Control of Money Laundering in

1 Financial Institutions Act; chapter 896, relating to offenses  
2 related to financial transactions; or any similar state or  
3 federal law.

4 (d) If the office ~~department~~ approves the plan of  
5 conversion, the question of such conversion may be submitted  
6 to the members at a meeting of voting members called to  
7 consider such action. A vote of 51 percent or more of the  
8 total number of votes eligible to be cast shall be required  
9 for approval, unless federal law permits a lesser percentage  
10 of votes for a federal mutual savings bank to convert, in  
11 which case that percentage shall control. Notice of the  
12 meeting, giving the time, place, and purpose thereof, together  
13 with a proxy statement and proxy form covering all matters to  
14 be brought before the meeting, shall be mailed at least 30  
15 days prior to the meeting to the office ~~department~~ for review  
16 and to each voting member at his or her last address as shown  
17 on the books of the savings bank.

18 (2) MINUTES OF MEETING.--Copies of the minutes of the  
19 meeting of members, verified by the affidavit of the secretary  
20 or assistant secretary of the savings bank, shall be filed  
21 with the office ~~department~~ and with the appropriate federal  
22 regulatory agency, within a reasonable time after the meeting.  
23 When so filed, the verified copies of the minutes are  
24 presumptive evidence of the holding of the meeting and of the  
25 action taken.

26 (3) FILING OF ARTICLES OF INCORPORATION AND COMMITMENT  
27 FOR INSURANCE OF ACCOUNTS.--The directors of the savings bank  
28 shall have executed and filed with the office ~~department~~  
29 proposed articles of incorporation as provided in s. 658.23,  
30 together with the application for conversion and a firm  
31 commitment for, or evidence of, insurance of deposits and

1 other accounts of a withdrawable type. The articles shall  
2 contain a statement that the savings bank resulted from the  
3 conversion of a state or federal mutual savings bank to a  
4 capital stock savings bank. Approval by the office ~~department~~  
5 shall be affixed to the articles of incorporation. A copy of  
6 the articles of incorporation shall be filed with the  
7 Department of State, and one copy of the articles of  
8 incorporation and the certificate of incorporation shall be  
9 returned to the savings bank. The savings bank shall cease to  
10 be a mutual savings bank at the time and on the date specified  
11 in the approved articles of incorporation.

12 (5) FEE.--The application for conversion from a state  
13 or federal mutual to a state capital stock savings bank shall  
14 be accompanied by a nonrefundable filing fee of \$7,500.  
15 Additionally, the office ~~may department is authorized to~~  
16 assess any savings bank applying to convert pursuant to this  
17 section a nonrefundable examination fee to cover the actual  
18 costs of any examination required as part of the application  
19 process.

20 Section 1877. Section 667.007, Florida Statutes, is  
21 amended to read:

22 667.007 Supervisory case; emergency conversion,  
23 reorganization, merger; consolidation; acquisition of  
24 assets.--

25 (1) The office ~~department~~ may determine that a state  
26 or federal savings bank is a supervisory case if it finds  
27 that:

- 28 (a) The savings bank is insolvent; or  
29 (b) The savings bank is imminently insolvent.

30  
31

1 Any such finding by the office ~~department~~ shall be based upon  
2 reports furnished to it by a state or federal regulatory  
3 agency or upon other evidence from which it is reasonable to  
4 conclude that the savings bank is a supervisory case.

5 (2) Notwithstanding any other provision of this  
6 chapter or chapter 120, if the office ~~department~~ finds that  
7 immediate action is necessary to protect the interests of  
8 depositors and reduce the potential for claims against the  
9 insurance fund, or in order to prevent the probable failure of  
10 a state or federal savings bank which is a supervisory case,  
11 the office may ~~department shall have the power~~, with the  
12 concurrence of the appropriate federal regulatory agency in  
13 the case of any savings bank the deposits of which are  
14 federally insured, ~~to~~ issue an emergency order authorizing:

15 (a) The conversion of such savings bank from a state  
16 to a federal charter, or vice versa, without change of  
17 business form;

18 (b) The reorganization, merger, or consolidation of  
19 such state or federal savings bank with another state or  
20 federal savings bank;

21 (c) The conversion of such state or federal savings  
22 bank into a state or federal capital stock savings bank; or

23 (d) Any state or federal savings bank to acquire the  
24 assets of, and assume the liabilities of, such failing savings  
25 bank.

26 Section 1878. Subsections (1) and (2), paragraph (d)  
27 of subsection (4), and paragraph (a) of subsection (5) of  
28 section 667.008, Florida Statutes, are amended to read:

29 667.008 Acquisition of assets of or control over a  
30 savings bank.--

31

1           (1)(a) In any case in which a person or group of  
2 persons proposes to purchase or acquire voting common stock of  
3 any capital stock savings bank, which purchase or acquisition  
4 would cause such person or group of persons to have control,  
5 as defined herein, of that savings bank, such person or group  
6 of persons must first make application to the office  
7 ~~department~~ for a certificate of approval of such purchase or  
8 acquisition.

9           (b) An application for control shall be in such form  
10 and request such information as the commission requires  
11 ~~department may require~~ by rule.

12           (c) The application for control shall be accompanied  
13 by a nonrefundable filing fee of \$7,500; however, if more than  
14 one savings bank is being acquired in any such application,  
15 the fee shall be increased by \$3,000 for each additional  
16 savings bank.

17           (2) The office ~~department~~ shall issue the certificate  
18 of approval only after it has made an investigation and  
19 determined that:

20           (a) The proposed new owner or owners of voting capital  
21 stock are qualified by character, experience, and financial  
22 responsibility to control the savings bank in a legal and  
23 proper manner and none of the proposed new owners have been  
24 convicted of, or pled guilty or nolo contendere to, a  
25 violation of s. 655.50, relating to the Florida Control of  
26 Money Laundering in Financial Institutions Act; chapter 896,  
27 relating to offenses related to financial transactions; or any  
28 similar state or federal law.

29           (b) The interests of the public generally will not be  
30 jeopardized by the proposed purchase or acquisition of voting  
31 capital stock.

1           (4) For purposes of this section, a person or group of  
2 persons shall be deemed to have control of a savings bank if  
3 such person or group of persons:

4           (d) Owns, controls, or has power to vote 10 percent or  
5 more of any class of voting securities of the savings bank, if  
6 no other person or group of persons owns, controls, or has  
7 power to vote a greater proportion of that class of voting  
8 securities. In any case in which a proposed purchase or  
9 acquisition of voting securities of a savings bank would give  
10 rise to the presumption created under this paragraph, the  
11 person or group of persons who proposes to purchase or acquire  
12 the voting securities shall first give written notice of the  
13 proposal to the office ~~department~~. Such notice may present  
14 information that the proposed purchase or acquisition will not  
15 result in control. The office ~~department~~ shall afford the  
16 person seeking to rebut the presumption an opportunity to  
17 present views in writing or orally before its designated  
18 representatives at an informal conference.

19           (5)(a) A foreign savings bank, as defined in s.  
20 667.013, whether controlled directly or indirectly by another  
21 business organization, may acquire a Florida savings bank,  
22 subject to approval by the office ~~department~~. The office  
23 ~~department~~ shall not approve the proposed acquisition unless:

24           1. The laws of the state in which the foreign savings  
25 bank has its principal place of business permit savings banks  
26 in that state to be acquired by Florida savings banks.

27           2. The Florida savings bank which is to be acquired  
28 has been in existence and continuously operating for more than  
29 2 years.

30  
31

1           Section 1879. Subsection (2) and paragraph (a) of  
2 subsection (3) of section 667.013, Florida Statutes, are  
3 amended to read:

4           667.013 Foreign savings banks.--

5           (2) ACTION BY OFFICE ~~DEPARTMENT~~.--The office  
6 ~~department~~ is authorized, empowered, and directed to obtain an  
7 injunction or to take any other action necessary to prevent  
8 any foreign savings bank from unlawfully doing any business of  
9 a savings bank in this state.

10           (3) ACTIVITIES NOT CONSIDERED "DOING BUSINESS."--For  
11 the purposes of this section and any other law of this state  
12 prohibiting, limiting, or regulating the doing of business in  
13 this state by foreign savings banks or foreign corporations of  
14 any type, any federal savings bank, the principal office of  
15 which is located outside this state, and any foreign savings  
16 bank which is subject to state or federal supervision, or  
17 both, which by law are subject to periodic examination by such  
18 supervisory authority and to a requirement of periodic audit,  
19 shall not be considered to be doing business in this state by  
20 reason of engaging in any of the following activities:

21           (a) The purchase, acquisition, holding, sale,  
22 assignment, transfer, collecting, and enforcement of  
23 obligations or any interest therein secured by real estate  
24 mortgages or other instruments in the nature of a mortgage,  
25 covering real property located in this state, or the  
26 foreclosure of such instruments, or the acquisition of title  
27 to such property by foreclosure, or otherwise, as a result of  
28 default under such instruments, or the holding, protection,  
29 rental, maintenance, and operation of the property so  
30 acquired, or the disposition thereof, provided such savings  
31 banks shall not hold, own, or operate such property for a

1 period exceeding 5 years without securing the approval of the  
2 office department.

3 Section 1880. Subsection (2) of section 687.13,  
4 Florida Statutes, is amended to read:

5 687.13 International transactions.--

6 (2) The provisions of this chapter shall not apply to  
7 any international banking facility "deposit," "borrowing," or  
8 "extension of credit," as those terms are defined by the  
9 commission ~~Department of Banking and Finance~~ pursuant to s.  
10 655.071.

11 Section 1881. Subsection (3) of section 687.14,  
12 Florida Statutes, is amended, and subsection (6) is added to  
13 that section, to read:

14 687.14 Definitions.--As used in this act, unless the  
15 context otherwise requires:

16 (3) "Commission" means the Financial Services  
17 Commission ~~"Department"~~ means the ~~Department of Banking and~~  
18 ~~Finance~~.

19 (6) "Office" means the Office of Financial  
20 Institutions and Securities Regulation of the commission.

21 Section 1882. Subsection (3) of section 687.141,  
22 Florida Statutes, is amended to read:

23 687.141 Loan brokers; prohibited acts.--No loan broker  
24 shall:

25 (3) Make or use any false or deceptive representation  
26 in its business dealings or to the office department or  
27 conceal a material fact from the office department.

28 Section 1883. Section 687.143, Florida Statutes, is  
29 amended to read:

30 687.143 Loan brokers; investigations; cease and desist  
31 orders; administrative fines.--

1           (1) The office ~~department~~ may investigate the actions  
2 of any person for compliance with this act.

3           (2) The office ~~department~~ may order a loan broker to  
4 cease and desist whenever the office ~~department~~ determines  
5 that the loan broker has violated or is violating or will  
6 violate any provision of this act, any rule of the commission,  
7 ~~or order of promulgated by the office department, or any~~  
8 written agreement entered into with the office ~~department~~.

9           (3) The office ~~department~~ may impose and collect an  
10 administrative fine against any person found to have violated  
11 any provision of this act, any rule of the commission, or  
12 ~~order of promulgated by the office department, or any~~ written  
13 agreement entered into with the office ~~department~~ in any  
14 amount not to exceed \$5,000 for each such violation. All  
15 fines collected hereunder shall be deposited in the Bureau  
16 ~~Division~~ of Financial Investigations Administrative Trust  
17 Fund.

18           Section 1884. Section 687.144, Florida Statutes, is  
19 amended to read:

20           687.144 Investigations; examinations; subpoenas;  
21 hearings; witnesses.--

22           (1) The office ~~department~~ may make investigations and  
23 examinations upon reasonable suspicion within or outside of  
24 this state as it deems necessary to determine whether a person  
25 has violated or is about to violate any provision of this act  
26 or any rule or order promulgated thereunder.

27           (2) The office ~~department~~ may gather evidence in the  
28 matter. The office ~~department~~ may administer oaths, examine  
29 witnesses, and issue subpoenas.

30           (3) Subpoenas for witnesses whose evidence is deemed  
31 material to any investigation or examination may be issued by

1 the office ~~department~~ under the seal of the office ~~department~~  
2 commanding such witnesses to be or appear before the office  
3 ~~department~~ at a time and place to be therein named and to  
4 bring such books, records, and documents as may be specified  
5 or to submit such books, records, and documents to inspection.  
6 Such subpoenas may be served by an authorized representative  
7 of the office ~~department~~.

8 (4)(a) In the event of substantial noncompliance with  
9 a subpoena or subpoena duces tecum issued by the office  
10 ~~department~~, the office ~~department~~ may petition the circuit  
11 court of the county in which the person subpoenaed resides or  
12 has its principal place of business for an order requiring the  
13 person to appear and fully comply with the subpoena. The  
14 court may grant injunctive relief restraining the violation of  
15 this act and may grant such other relief, including, but not  
16 limited to, the restraint, by injunction or appointment of a  
17 receiver, of any transfer, pledge, assignment, or other  
18 disposition of such person's assets or any concealment,  
19 alteration, destruction, or other disposition of subpoenaed  
20 books, records, or documents, as the court deems appropriate,  
21 until such person has fully complied with such subpoena or  
22 subpoena duces tecum and the office ~~department~~ has completed  
23 its investigation or examination. The office ~~department~~ is  
24 entitled to the summary procedure provided in s. 51.011, and  
25 the court shall advance the cause on its calendar. Costs  
26 incurred by the office ~~department~~ to obtain an order granting,  
27 in whole or in part, such petition for enforcement of a  
28 subpoena or subpoena duces tecum shall be taxed against the  
29 subpoenaed person, and failure to comply with such order shall  
30 be a contempt of court.

31

1           (b) When it shall appear to the office ~~department~~ that  
2 the compliance with a subpoena or subpoena duces tecum issued  
3 by the office ~~department~~ is essential to an investigation or  
4 examination, the office ~~department~~, in addition to the other  
5 remedies provided for in this act, may, by verified petition  
6 setting forth the facts, apply to the circuit court of the  
7 county in which the subpoenaed person resides or has its  
8 principal place of business for a writ of ne exeat. The court  
9 may thereupon direct the issuance of the writ against the  
10 subpoenaed person requiring sufficient bond conditioned on  
11 compliance with the subpoena or subpoena duces tecum. The  
12 court shall cause to be endorsed on the writ a suitable amount  
13 of bond on payment of which the person named in the writ shall  
14 be freed, having a due regard to the nature of the case.

15           (5) Witnesses shall be entitled to the same fees and  
16 mileage as they may be entitled by law for attending as  
17 witnesses in the circuit court, except where such examination  
18 or investigation is held at the place of business or residence  
19 of the witness.

20           (6) The material compiled by the office ~~department~~ in  
21 an investigation or examination under this act is confidential  
22 until the investigation or examination is complete. The  
23 investigation or examination is not deemed complete if the  
24 office ~~department~~ has submitted the material or any part of it  
25 to any law enforcement agency or other regulatory agency for  
26 further investigation or for the filing of a criminal or civil  
27 prosecution and such investigation and prosecution has not  
28 been completed or becomes inactive.

29           Section 1885. Section 687.145, Florida Statutes, is  
30 amended to read:

31           687.145 Injunction to restrain violations.--

1           (1) Whenever the office ~~department~~ determines, from  
2 evidence satisfactory to it, that any person has engaged, is  
3 engaged, or is about to engage in an act or practice  
4 constituting a violation of this act or a rule or order  
5 promulgated thereunder, the office ~~department~~ may bring action  
6 in the name and on behalf of the state against such person and  
7 any other person concerned in or in any way participating in  
8 or about to participate in such practice or engaging therein  
9 or doing any act or acts in furtherance thereof or in  
10 violation of this act to enjoin the person or persons from  
11 continuing the violation or acts in furtherance thereof. In  
12 such court proceedings, the office ~~department~~ may apply for  
13 and on due showing be entitled to have issued, the court's  
14 subpoena requiring the appearance of any defendant and his or  
15 her employees or agents, and the production of documents,  
16 books, and records that may appear necessary for the hearing  
17 of such petition, to testify or give evidence concerning the  
18 acts or conduct or things complained of in such application  
19 for injunction.

20           (2) In addition to all other means provided by law for  
21 the enforcement of any temporary restraining order, temporary  
22 injunction, or permanent injunction issued in such court  
23 proceedings, the court shall have the power and jurisdiction,  
24 upon application of the office ~~department~~, to impound and to  
25 appoint a receiver or administrator for the property, assets,  
26 and business of the defendant, including, but not limited to,  
27 the books, records, documents, and papers appertaining  
28 thereto. Such receiver or administrator, when appointed and  
29 qualified, shall have all powers and duties as to custody,  
30 collection, administration, winding up, and liquidation of  
31 said property and business as shall from time to time be

1 conferred upon him or her by the court. In such action, the  
2 court may issue orders and decrees staying all pending suits  
3 and enjoining any further suits affecting the receiver's or  
4 administrator's custody or possession of the said property,  
5 assets, and business or, in its discretion, may, with the  
6 consent of the presiding judge of the circuit, require that  
7 all such suits be assigned to the circuit court judge  
8 appointing the said receiver or administrator.

9 (3) In addition to any other remedies provided by this  
10 act, the office ~~department~~ may apply to the court hearing this  
11 matter for an order of restitution whereby the defendants in  
12 such action shall be ordered to make restitution of those sums  
13 shown by the office ~~department~~ to have been obtained by them  
14 in violation of any of the provisions of this act. Such  
15 restitution shall, at the option of the court, be payable to  
16 the administrator or receiver appointed pursuant to this  
17 section or directly to the persons whose assets were obtained  
18 in violation of this act.

19 Section 1886. Section 687.148, Florida Statutes, is  
20 amended to read:

21 687.148 Duties and powers of the commission and office  
22 ~~department~~.--

23 (1) The office ~~is department~~ shall be responsible for  
24 the administration and enforcement of this act.

25 (2) The commission ~~department~~ may adopt such rules as  
26 it may deem necessary in the administration of this act and  
27 not inconsistent therewith.

28 Section 1887. Subsection (4) of section 697.05,  
29 Florida Statutes, is amended to read:

30  
31

1           697.05 Balloon mortgages; scope of law; definition;  
2 requirements as to contents; penalties for violations;  
3 exemptions.--

4           (4) This section does not apply to the following:

5           (a) Any mortgage in effect prior to January 1, 1960;

6           (b) Any first mortgage, excluding a mortgage in favor  
7 of a home improvement contractor defined in s. 520.61(13) ~~s.~~  
8 ~~520.61(12)~~the execution of which is required solely by the  
9 terms of a home improvement contract which is governed by the  
10 provisions of ss. 520.60-520.98;

11           (c) Any mortgage created for a term of 5 years or  
12 more, excluding a mortgage in favor of a home improvement  
13 contractor defined in s. 520.61(13) ~~s. 520.61(12)~~the  
14 execution of which is required solely by the terms of a home  
15 improvement contract which is governed by the provisions of  
16 ss. 520.60-520.98;

17           (d) Any mortgage, the periodic payments on which are  
18 to consist of interest payments only, with the entire original  
19 principal sum to be payable upon maturity;

20           (e) Any mortgage securing an extension of credit in  
21 excess of \$500,000;

22           (f) Any mortgage granted in a transaction covered by  
23 the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq.,  
24 in which each mortgagor thereunder is furnished a Truth in  
25 Lending Disclosure Statement that satisfies the requirements  
26 of the federal Truth in Lending Act; or

27           (g) Any mortgage granted by a purchaser to a seller  
28 pursuant to a written agreement to buy and sell real property  
29 which provides that the final payment of said mortgage debt  
30 will exceed the periodic payments thereon.

31

1           Section 1888. Paragraph (c) of subsection (3) of  
2 section 713.596, Florida Statutes, is amended to read:

3           713.596 Molder's liens.--

4           (3) SALE.--

5           (c)1. The proceeds of the sale must be paid first to  
6 any holder of a security interest perfected in this state. Any  
7 excess must be paid to the molder holding the lien created by  
8 this section. Any remaining amount is to be paid to the  
9 customer, if the customer's address is known, or to the Chief  
10 Financial Officer ~~State Treasurer~~ for deposit in the General  
11 Revenue Fund if the customer's address is unknown to the  
12 molder at the time of the sale.

13           2. A sale may not be made under this section if it  
14 would be in violation of any right of a customer under federal  
15 patent or copyright law.

16           Section 1889. Subsection (4) of section 716.02,  
17 Florida Statutes, is amended to read:

18           716.02 Escheat of funds in the possession of federal  
19 agencies.--All property within the provisions of subsections  
20 (1), (2), (3), (4) and (5), are declared to have escheated, or  
21 to escheat, including all principal and interest accruing  
22 thereon, and to have become the property of the state.

23           (4) In the event any money is due to any resident of  
24 this state as a refund, rebate or tax rebate from the United  
25 States Commissioner of Internal Revenue, the United States  
26 Treasurer, or other governmental agency or department, which  
27 said resident will, or is likely to have her or his rights to  
28 apply for and secure such refund or rebate barred by any  
29 statute of limitations or, in any event, has failed for a  
30 period of 1 year after said resident could have filed a claim  
31 for said refund or rebate, the Department of Financial

1 Services ~~Banking and Finance~~ is hereby appointed agent of such  
2 resident to demand, file and apply for said refund or rebate,  
3 and is hereby appointed to do any act which a natural person  
4 could do to recover such ~~said~~ money, and it is hereby declared  
5 that when the department files such ~~said~~ application or any  
6 other proceeding to secure such ~~said~~ refund or rebate, its  
7 agency is coupled with an interest in the money sought and  
8 money recovered.

9           Section 1890. Section 716.03, Florida Statutes, is  
10 amended to read:

11           716.03 Department to institute proceedings to recover  
12 escheated property.--When there exists, or may exist,  
13 escheated funds or property under this chapter, the Department  
14 of Financial Services ~~Banking and Finance~~ shall demand or  
15 institute proceedings in the name of the state for an  
16 adjudication that an escheat to the state of such funds or  
17 property has occurred; and shall take appropriate action to  
18 recover such funds or property.

19           Section 1891. Section 716.04, Florida Statutes, is  
20 amended to read:

21           716.04 Jurisdiction.--Whenever the Department of  
22 Financial Services ~~Banking and Finance~~ is of the opinion an  
23 escheat has occurred, or shall occur, of any money or other  
24 property deposited in the custody of, or under the control of,  
25 any court of the United States, in and for any district within  
26 the state, or in the custody of any depository, registry or  
27 clerk or other officer of such court, or the treasury of the  
28 United States, it shall cause to be filed a complaint in the  
29 Circuit Court of Leon County, or in any other court of  
30 competent jurisdiction, to ascertain if any escheat has  
31 occurred, and to cause said court to enter a judgment or

1 decree of escheat in favor of the state, with costs,  
2 disbursements, and attorney fee.

3 Section 1892. Section 716.05, Florida Statutes, is  
4 amended to read:

5 716.05 Money recovered to be paid into State  
6 Treasury.--When any funds or property which has escheated  
7 within the meaning of this chapter has been recovered by the  
8 Department of Financial Services ~~Banking and Finance~~, the  
9 department shall first pay all costs incident to the  
10 collection and recovery of such funds or property and shall  
11 promptly deposit the remaining balance of such funds or  
12 property with the Chief Financial Officer ~~Treasurer of the~~  
13 ~~state~~, to be distributed in accordance with law.

14 Section 1893. Section 716.06, Florida Statutes, is  
15 amended to read:

16 716.06 Public records.--All records in the office of  
17 the Chief Financial Officer ~~State Treasurer~~ or the Department  
18 of Financial Services ~~Banking and Finance~~ relating to federal  
19 funds, pursuant to this chapter, shall be public records.

20 Section 1894. Section 716.07, Florida Statutes, is  
21 amended to read:

22 716.07 Recovery of escheated property by claimant.--

23 (1) Any person who claims any property, funds, or  
24 money delivered to the ~~State~~ Treasurer or Chief Financial  
25 Officer under this chapter, shall, within 5 years from the  
26 date of receipt of such ~~said~~ property, funds, or money, file a  
27 verified claim with the Chief Financial Officer ~~State~~  
28 ~~Treasurer~~, setting forth the facts upon which such ~~said~~ party  
29 claims to be entitled to recover such ~~said~~ money or property.  
30 ~~The State Treasurer, within 5 days after receipt of such~~  
31 ~~claim, shall submit said verified claim or a verified copy~~

1 ~~thereof, to the Department of Banking and Finance.~~All claims  
2 made for recovery of property, funds, or money, not filed  
3 within 5 years from the date that such said property, funds,  
4 or money is received by the Chief Financial Officer State  
5 Treasurer, shall be forever barred, and the Chief Financial  
6 Officer Treasurer of the state shall be without power to  
7 consider or determine any claims so made by any claimant after  
8 5 years from the date that the property, funds, or money was  
9 received by the Chief Financial Officer State Treasurer.

10 (2) The Chief Financial Officer Comptroller shall  
11 approve or disapprove the claim. If the claim is approved,  
12 the funds, money, or property of the claimant, less any  
13 expenses and costs which shall have been incurred by the state  
14 in securing the possession of said property, as provided by  
15 this chapter, shall be delivered to the claimant by the Chief  
16 Financial Officer State Treasurer upon warrant issued  
17 according to law and her or his receipt taken therefor. If  
18 the court finds, upon any judicial review, that the claimant  
19 is entitled to the property, money, or funds claimed, and  
20 shall render judgment in her or his or its favor, declaring  
21 that the claimant is entitled to such said property, funds, or  
22 money, then upon presentation of said judgment or a certified  
23 copy thereof to the Chief Financial Officer State Comptroller,  
24 the Chief Financial Officer said Comptroller shall draw her or  
25 his warrant for the amount of money stated in such said  
26 judgment, without interest or cost to the state, less any sum  
27 paid by the state as costs or expenses in securing possession  
28 of such said property, funds, or money. When payment has been  
29 made to any claimant, no action thereafter shall be maintained  
30 by any other claimant against the state or any officer

31

1 | thereof, for or on account of such ~~said~~ money, property, or  
2 | funds.

3 |           Section 1895. Subsection (6) of section 717.101,  
4 | Florida Statutes, is amended to read:

5 |           717.101 Definitions.--As used in this chapter, unless  
6 | the context otherwise requires:

7 |           (6) "Department" means the Department of Financial  
8 | Services ~~Banking and Finance~~.

9 |           Section 1896. Subsection (8) of section 717.117,  
10 | Florida Statutes, is amended to read:

11 |           717.117 Report of unclaimed property.--

12 |           (8) Social security numbers and financial account  
13 | numbers contained in reports required under this section, held  
14 | by the department of ~~Banking and Finance~~, are confidential and  
15 | exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
16 | Constitution. Notwithstanding this exemption, social security  
17 | numbers shall be released, for the limited purpose of locating  
18 | owners of abandoned or unclaimed property, to an attorney,  
19 | Florida-certified public accountant, private investigator who  
20 | is duly licensed in this state, or a private investigative  
21 | agency licensed under chapter 493 and registered with the  
22 | department of ~~Banking and Finance~~ under this chapter. This  
23 | exemption applies to social security numbers and financial  
24 | account numbers held by the department of ~~Banking and Finance~~  
25 | before, on, or after the effective date of this exemption.  
26 | This subsection is subject to the Open Government Sunset  
27 | Review Act of 1995 in accordance with s. 119.15, and shall  
28 | stand repealed October 2, 2007, unless reviewed and saved from  
29 | repeal through reenactment by the Legislature.

30 |           Section 1897. Subsection (1) of section 717.135,  
31 | Florida Statutes, is amended to read:

1           717.135 Agreement to locate reported property.--

2           (1) All agreements between an owner's representative  
3 and an owner for compensation to recover or assist in the  
4 recovery of property reported to the department under s.  
5 717.117 shall either:

6           (a) Limit the fees for services for each owner  
7 contract to \$25 for all contracts relating to unclaimed  
8 property with a dollar value below \$250. For all contracts  
9 relating to unclaimed property with a dollar value of \$250 and  
10 above, fees shall be limited to 15 percent on property held by  
11 the department for 24 months or less and 25 percent on  
12 property held by the department for more than 24 months. Fees  
13 for cash accounts shall be based on the value of the property  
14 at the time the agreement for recovery is signed by the  
15 apparent owner. Fees for accounts containing securities or  
16 other intangible ownership interests, which securities or  
17 interests are not converted to cash, shall be based on the  
18 purchase price of the security as quoted on a national  
19 exchange or other market on which the ownership interest is  
20 regularly traded at the time the securities or other ownership  
21 interest is remitted to the owner or the owner's  
22 representative. Fees for tangible property or safe-deposit box  
23 accounts shall be based on the value of the tangible property  
24 or contents of the safe-deposit box at the time the ownership  
25 interest is transferred or remitted to the owner or the  
26 owner's representative; or

27           (b) Disclose that the property is held by the  
28 Department of Financial Services ~~Banking and Finance~~ pursuant  
29 to this chapter, the person or name of the entity that held  
30 the property prior to the property becoming unclaimed, the  
31 date of the holder's last contact with the owner, if known,

1 and the approximate value of the property, and identify which  
2 of the following categories of unclaimed property the owner's  
3 representative is seeking to recover:

- 4 1. Cash accounts.
- 5 2. Stale dated checks.
- 6 3. Life insurance or annuity contract assets.
- 7 4. Utility deposits.
- 8 5. Securities or other interests in business  
9 associations.
- 10 6. Wages.
- 11 7. Accounts receivable.
- 12 8. Contents of safe-deposit boxes.

13  
14 However, this section shall not apply to contracts made in  
15 connection with guardianship proceedings or the probate of an  
16 estate.

17 Section 1898. Section 717.138, Florida Statutes, is  
18 amended to read:

19 717.138 Rulemaking authority.--The department of  
20 ~~Banking and Finance~~ shall administer and provide for the  
21 enforcement of this chapter. The department has authority to  
22 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement  
23 the provisions of this chapter. The department may adopt rules  
24 to allow for electronic filing of fees, forms, and reports  
25 required by this chapter.

26 Section 1899. Paragraph (d) of subsection (1) of  
27 section 718.501, Florida Statutes, is amended to read:

28 718.501 Powers and duties of Division of Florida Land  
29 Sales, Condominiums, and Mobile Homes.--

30 (1) The Division of Florida Land Sales, Condominiums,  
31 and Mobile Homes of the Department of Business and

1 Professional Regulation, referred to as the "division" in this  
2 part, in addition to other powers and duties prescribed by  
3 chapter 498, has the power to enforce and ensure compliance  
4 with the provisions of this chapter and rules promulgated  
5 pursuant hereto relating to the development, construction,  
6 sale, lease, ownership, operation, and management of  
7 residential condominium units. In performing its duties, the  
8 division has the following powers and duties:

9 (d) Notwithstanding any remedies available to unit  
10 owners and associations, if the division has reasonable cause  
11 to believe that a violation of any provision of this chapter  
12 or rule promulgated pursuant hereto has occurred, the division  
13 may institute enforcement proceedings in its own name against  
14 any developer, association, officer, or member of the board of  
15 administration, or its assignees or agents, as follows:

16 1. The division may permit a person whose conduct or  
17 actions may be under investigation to waive formal proceedings  
18 and enter into a consent proceeding whereby orders, rules, or  
19 letters of censure or warning, whether formal or informal, may  
20 be entered against the person.

21 2. The division may issue an order requiring the  
22 developer, association, officer, or member of the board of  
23 administration, or its assignees or agents, to cease and  
24 desist from the unlawful practice and take such affirmative  
25 action as in the judgment of the division will carry out the  
26 purposes of this chapter. Such affirmative action may include,  
27 but is not limited to, an order requiring a developer to pay  
28 moneys determined to be owed to a condominium association.

29 3. The division may bring an action in circuit court  
30 on behalf of a class of unit owners, lessees, or purchasers  
31 for declaratory relief, injunctive relief, or restitution.

1           4. The division may impose a civil penalty against a  
2 developer or association, or its assignee or agent, for any  
3 violation of this chapter or a rule promulgated pursuant  
4 hereto. The division may impose a civil penalty individually  
5 against any officer or board member who willfully and  
6 knowingly violates a provision of this chapter, a rule adopted  
7 pursuant hereto, or a final order of the division. The term  
8 "willfully and knowingly" means that the division informed the  
9 officer or board member that his or her action or intended  
10 action violates this chapter, a rule adopted under this  
11 chapter, or a final order of the division and that the officer  
12 or board member refused to comply with the requirements of  
13 this chapter, a rule adopted under this chapter, or a final  
14 order of the division. The division, prior to initiating  
15 formal agency action under chapter 120, shall afford the  
16 officer or board member an opportunity to voluntarily comply  
17 with this chapter, a rule adopted under this chapter, or a  
18 final order of the division. An officer or board member who  
19 complies within 10 days is not subject to a civil penalty. A  
20 penalty may be imposed on the basis of each day of continuing  
21 violation, but in no event shall the penalty for any offense  
22 exceed \$5,000. By January 1, 1998, the division shall adopt,  
23 by rule, penalty guidelines applicable to possible violations  
24 or to categories of violations of this chapter or rules  
25 adopted by the division. The guidelines must specify a  
26 meaningful range of civil penalties for each such violation of  
27 the statute and rules and must be based upon the harm caused  
28 by the violation, the repetition of the violation, and upon  
29 such other factors deemed relevant by the division. For  
30 example, the division may consider whether the violations were  
31 committed by a developer or owner-controlled association, the

1 size of the association, and other factors. The guidelines  
2 must designate the possible mitigating or aggravating  
3 circumstances that justify a departure from the range of  
4 penalties provided by the rules. It is the legislative intent  
5 that minor violations be distinguished from those which  
6 endanger the health, safety, or welfare of the condominium  
7 residents or other persons and that such guidelines provide  
8 reasonable and meaningful notice to the public of likely  
9 penalties that may be imposed for proscribed conduct. This  
10 subsection does not limit the ability of the division to  
11 informally dispose of administrative actions or complaints by  
12 stipulation, agreed settlement, or consent order. All amounts  
13 collected shall be deposited with the Chief Financial Officer  
14 ~~Treasurer~~ to the credit of the Division of Florida Land Sales,  
15 Condominiums, and Mobile Homes Trust Fund. If a developer  
16 fails to pay the civil penalty, the division shall thereupon  
17 issue an order directing that such developer cease and desist  
18 from further operation until such time as the civil penalty is  
19 paid or may pursue enforcement of the penalty in a court of  
20 competent jurisdiction. If an association fails to pay the  
21 civil penalty, the division shall thereupon pursue enforcement  
22 in a court of competent jurisdiction, and the order imposing  
23 the civil penalty or the cease and desist order will not  
24 become effective until 20 days after the date of such order.  
25 Any action commenced by the division shall be brought in the  
26 county in which the division has its executive offices or in  
27 the county where the violation occurred.

28 Section 1900. Paragraph (d) of subsection (1) of  
29 section 719.501, Florida Statutes, is amended to read:

30 719.501 Powers and duties of Division of Florida Land  
31 Sales, Condominiums, and Mobile Homes.--

1           (1) The Division of Florida Land Sales, Condominiums,  
2 and Mobile Homes of the Department of Business and  
3 Professional Regulation, referred to as the "division" in this  
4 part, in addition to other powers and duties prescribed by  
5 chapter 498, has the power to enforce and ensure compliance  
6 with the provisions of this chapter and rules promulgated  
7 pursuant hereto relating to the development, construction,  
8 sale, lease, ownership, operation, and management of  
9 residential cooperative units. In performing its duties, the  
10 division shall have the following powers and duties:

11           (d) Notwithstanding any remedies available to unit  
12 owners and associations, if the division has reasonable cause  
13 to believe that a violation of any provision of this chapter  
14 or rule promulgated pursuant hereto has occurred, the division  
15 may institute enforcement proceedings in its own name against  
16 a developer, association, officer, or member of the board, or  
17 its assignees or agents, as follows:

18           1. The division may permit a person whose conduct or  
19 actions may be under investigation to waive formal proceedings  
20 and enter into a consent proceeding whereby orders, rules, or  
21 letters of censure or warning, whether formal or informal, may  
22 be entered against the person.

23           2. The division may issue an order requiring the  
24 developer, association, officer, or member of the board, or  
25 its assignees or agents, to cease and desist from the unlawful  
26 practice and take such affirmative action as in the judgment  
27 of the division will carry out the purposes of this chapter.  
28 Such affirmative action may include, but is not limited to, an  
29 order requiring a developer to pay moneys determined to be  
30 owed to a condominium association.

31

1           3. The division may bring an action in circuit court  
2 on behalf of a class of unit owners, lessees, or purchasers  
3 for declaratory relief, injunctive relief, or restitution.

4           4. The division may impose a civil penalty against a  
5 developer or association, or its assignees or agents, for any  
6 violation of this chapter or a rule promulgated pursuant  
7 hereto. The division may impose a civil penalty individually  
8 against any officer or board member who willfully and  
9 knowingly violates a provision of this chapter, a rule adopted  
10 pursuant to this chapter, or a final order of the division.  
11 The term "willfully and knowingly" means that the division  
12 informed the officer or board member that his or her action or  
13 intended action violates this chapter, a rule adopted under  
14 this chapter, or a final order of the division, and that the  
15 officer or board member refused to comply with the  
16 requirements of this chapter, a rule adopted under this  
17 chapter, or a final order of the division. The division, prior  
18 to initiating formal agency action under chapter 120, shall  
19 afford the officer or board member an opportunity to  
20 voluntarily comply with this chapter, a rule adopted under  
21 this chapter, or a final order of the division. An officer or  
22 board member who complies within 10 days is not subject to a  
23 civil penalty. A penalty may be imposed on the basis of each  
24 day of continuing violation, but in no event shall the penalty  
25 for any offense exceed \$5,000. By January 1, 1998, the  
26 division shall adopt, by rule, penalty guidelines applicable  
27 to possible violations or to categories of violations of this  
28 chapter or rules adopted by the division. The guidelines must  
29 specify a meaningful range of civil penalties for each such  
30 violation of the statute and rules and must be based upon the  
31 harm caused by the violation, the repetition of the violation,

1 and upon such other factors deemed relevant by the division.  
2 For example, the division may consider whether the violations  
3 were committed by a developer or owner-controlled association,  
4 the size of the association, and other factors. The guidelines  
5 must designate the possible mitigating or aggravating  
6 circumstances that justify a departure from the range of  
7 penalties provided by the rules. It is the legislative intent  
8 that minor violations be distinguished from those which  
9 endanger the health, safety, or welfare of the cooperative  
10 residents or other persons and that such guidelines provide  
11 reasonable and meaningful notice to the public of likely  
12 penalties that may be imposed for proscribed conduct. This  
13 subsection does not limit the ability of the division to  
14 informally dispose of administrative actions or complaints by  
15 stipulation, agreed settlement, or consent order. All amounts  
16 collected shall be deposited with the Chief Financial Officer  
17 ~~Treasurer~~ to the credit of the Division of Florida Land Sales,  
18 Condominiums, and Mobile Homes Trust Fund. If a developer  
19 fails to pay the civil penalty, the division shall thereupon  
20 issue an order directing that such developer cease and desist  
21 from further operation until such time as the civil penalty is  
22 paid or may pursue enforcement of the penalty in a court of  
23 competent jurisdiction. If an association fails to pay the  
24 civil penalty, the division shall thereupon pursue enforcement  
25 in a court of competent jurisdiction, and the order imposing  
26 the civil penalty or the cease and desist order shall not  
27 become effective until 20 days after the date of such order.  
28 Any action commenced by the division shall be brought in the  
29 county in which the division has its executive offices or in  
30 the county where the violation occurred.

31

1           Section 1901. Subsection (3) of section 721.24,  
2 Florida Statutes, is amended to read:

3           721.24 Firesafety.--

4           (3) The Division of State Fire Marshal of the  
5 Department of Financial Services ~~Insurance~~ may prescribe  
6 uniform standards for firesafety equipment for timeshare units  
7 of timeshare plans for which the construction contracts were  
8 let before October 1, 1983. An entire building shall be  
9 equipped as outlined, except that the approved sprinkler  
10 system may be delayed by the Division of State Fire Marshal  
11 until October 1, 1991, on a schedule for complete compliance  
12 in accordance with rules adopted by the Division of State Fire  
13 Marshal, which schedule shall include a provision for a 1-year  
14 extension which may be granted not more than three times for  
15 any individual requesting an extension. The entire system  
16 must be installed and operational by October 1, 1994. The  
17 Division of State Fire Marshal shall not grant an extension  
18 for the approved sprinkler system unless a written request for  
19 the extension and a construction work schedule is submitted.  
20 The Division of State Fire Marshal may grant an extension upon  
21 demonstration that compliance with this section by the date  
22 required would impose an extreme hardship and a  
23 disproportionate financial impact. Any establishment that has  
24 been granted an extension by the Division of State Fire  
25 Marshal shall post, in a conspicuous place on the premises, a  
26 public notice stating that the establishment has not yet  
27 installed the approved sprinkler system required by law.

28           Section 1902. Paragraph (e) of subsection (5) of  
29 section 721.26, Florida Statutes, is amended to read:

30           721.26 Regulation by division.--The division has the  
31 power to enforce and ensure compliance with the provisions of

1 this chapter, except for parts III and IV, using the powers  
2 provided in this chapter, as well as the powers prescribed in  
3 chapters 498, 718, and 719. In performing its duties, the  
4 division shall have the following powers and duties:

5 (5) Notwithstanding any remedies available to  
6 purchasers, if the division has reasonable cause to believe  
7 that a violation of this chapter, or of any division rule or  
8 order promulgated or issued pursuant to this chapter, has  
9 occurred, the division may institute enforcement proceedings  
10 in its own name against any regulated party, as such term is  
11 defined in this subsection:

12 (e)1. The division may impose a penalty against any  
13 regulated party for a violation of this chapter or any rule  
14 adopted thereunder. A penalty may be imposed on the basis of  
15 each day of continuing violation, but in no event may the  
16 penalty for any offense exceed \$10,000. All accounts  
17 collected shall be deposited with the Chief Financial Officer  
18 ~~Treasurer~~ to the credit of the Division of Florida Land Sales,  
19 Condominiums, and Mobile Homes Trust Fund.

20 2.a. If a regulated party fails to pay a penalty, the  
21 division shall thereupon issue an order directing that such  
22 regulated party cease and desist from further operation until  
23 such time as the penalty is paid; or the division may pursue  
24 enforcement of the penalty in a court of competent  
25 jurisdiction.

26 b. If an association or managing entity fails to pay a  
27 civil penalty, the division may pursue enforcement in a court  
28 of competent jurisdiction.

29 Section 1903. Paragraph (e) of subsection (5) of  
30 section 723.006, Florida Statutes, is amended to read:

31

1           723.006 Powers and duties of division.--In performing  
2 its duties, the division has the following powers and duties:

3           (5) Notwithstanding any remedies available to mobile  
4 home owners, mobile home park owners, and homeowners'  
5 associations, if the division has reasonable cause to believe  
6 that a violation of any provision of this chapter or any rule  
7 promulgated pursuant hereto has occurred, the division may  
8 institute enforcement proceedings in its own name against a  
9 developer, mobile home park owner, or homeowners' association,  
10 or its assignee or agent, as follows:

11           (e)1. The division may impose a civil penalty against  
12 a mobile home park owner or homeowners' association, or its  
13 assignee or agent, for any violation of this chapter, a  
14 properly promulgated park rule or regulation, or a rule or  
15 regulation promulgated pursuant hereto. A penalty may be  
16 imposed on the basis of each separate violation and, if the  
17 violation is a continuing one, for each day of continuing  
18 violation, but in no event may the penalty for each separate  
19 violation or for each day of continuing violation exceed  
20 \$5,000. All amounts collected shall be deposited with the  
21 Chief Financial Officer ~~Treasurer~~ to the credit of the  
22 Division of Florida Land Sales, Condominiums, and Mobile Homes  
23 Trust Fund.

24           2. If a violator fails to pay the civil penalty, the  
25 division shall thereupon issue an order directing that such  
26 violator cease and desist from further violation until such  
27 time as the civil penalty is paid or may pursue enforcement of  
28 the penalty in a court of competent jurisdiction. If a  
29 homeowners' association fails to pay the civil penalty, the  
30 division shall thereupon pursue enforcement in a court of  
31 competent jurisdiction, and the order imposing the civil

1 penalty or the cease and desist order shall not become  
2 effective until 20 days after the date of such order. Any  
3 action commenced by the division shall be brought in the  
4 county in which the division has its executive offices or in  
5 which the violation occurred.

6 Section 1904. Subsections (2) and (3) and paragraph  
7 (a) of subsection (5) of section 732.107, Florida Statutes,  
8 are amended to read:

9 732.107 Escheat.--

10 (2) Property that escheats shall be sold as provided  
11 in the Florida Probate Rules and the proceeds paid to the  
12 Chief Financial Officer ~~Treasurer~~ of the state and deposited  
13 in the State School Fund.

14 (3) At any time within 10 years after the payment to  
15 the Chief Financial Officer ~~Treasurer~~, a person claiming to be  
16 entitled to the proceeds may reopen the administration to  
17 assert entitlement to the proceeds. If no claim is timely  
18 asserted, the state's rights to the proceeds shall become  
19 absolute.

20 (5)(a) If a person entitled to the proceeds assigns  
21 the rights to receive payment to an attorney,  
22 Florida-certified public accountant, or private investigative  
23 agency which is duly licensed to do business in this state  
24 pursuant to a written agreement with that person, the  
25 Department of Financial Services ~~Banking and Finance~~ is  
26 authorized to make distribution in accordance with the  
27 assignment.

28 Section 1905. Subsections (1), (2), and (3) and  
29 paragraph (a) of subsection (5) of section 733.816, Florida  
30 Statutes, are amended to read:

31

1           733.816 Disposition of unclaimed property held by  
2 personal representatives.--

3           (1) In all cases in which there is unclaimed property  
4 in the hands of a personal representative that cannot be  
5 distributed or paid because of the inability to find the  
6 lawful owner or because no lawful owner is known or because  
7 the lawful owner refuses to accept the property after a  
8 reasonable attempt to distribute it and after notice to that  
9 lawful owner, the court shall order the personal  
10 representative to sell the property and deposit the proceeds  
11 and cash already in hand, after retaining those amounts  
12 provided for in subsection (4), with the clerk and receive a  
13 receipt, and the clerk shall deposit the funds in the registry  
14 of the court to be disposed of as follows:

15           (a) If the value of the funds is \$500 or less, the  
16 clerk shall post a notice for 30 days at the courthouse door  
17 giving the amount involved, the name of the personal  
18 representative, and the other pertinent information that will  
19 put interested persons on notice.

20           (b) If the value of the funds is over \$500, the clerk  
21 shall publish the notice once a month for 2 consecutive months  
22 in a newspaper of general circulation in the county.

23  
24 After the expiration of 6 months from the posting or first  
25 publication, the clerk shall deposit the funds with the Chief  
26 Financial Officer ~~State Treasurer~~ after deducting the clerk's  
27 fees and the costs of publication.

28           (2) Upon receipt of the funds, the Chief Financial  
29 Officer ~~State Treasurer~~ shall deposit them to the credit of  
30 the State School Fund, to become a part of the school fund.  
31 All interest and all income that may accrue from the money

1 while so deposited shall belong to the fund. The funds so  
2 deposited shall constitute and be a permanent appropriation  
3 for payments by the Chief Financial Officer ~~State Treasurer~~ in  
4 obedience to court orders entered as provided by subsection  
5 (3).

6 (3) Within 10 years from the date of deposit with the  
7 Chief Financial Officer ~~State Treasurer~~, on written petition  
8 to the court that directed the deposit of the funds and  
9 informal notice to the Department of Legal Affairs, and after  
10 proof of entitlement, any person entitled to the funds before  
11 or after payment to the Chief Financial Officer ~~State~~  
12 ~~Treasurer~~ and deposit as provided by subsection (1) may obtain  
13 a court order directing the payment of the funds to that  
14 person. All funds deposited with the Chief Financial Officer  
15 ~~State Treasurer~~ and not claimed within 10 years from the date  
16 of deposit shall escheat to the state for the benefit of the  
17 State School Fund.

18 (5)(a) If a person entitled to the funds assigns the  
19 right to receive payment or part payment to an attorney or  
20 private investigative agency which is duly licensed to do  
21 business in this state pursuant to a written agreement with  
22 that person, the Department of Financial Services ~~Banking and~~  
23 ~~Finance~~ is authorized to make distribution in accordance with  
24 the assignment.

25 Section 1906. Paragraphs (a), (b), and (c) of  
26 subsection (2) of section 744.534, Florida Statutes, are  
27 amended to read:

28 744.534 Disposition of unclaimed funds held by  
29 guardian.--

30 (2)(a) In those cases in which it is appropriate for  
31 the guardianship to terminate pursuant to s. 744.521 and in

1 which property in the hands of a guardian cannot be  
2 distributed to the ward or the ward's estate solely because  
3 the guardian is unable to locate the ward through diligent  
4 search, the court shall order the guardian of the property to  
5 sell the property of the ward and deposit the proceeds and  
6 cash already on hand after retaining those amounts provided  
7 for in paragraph (e) with the clerk of the court exercising  
8 jurisdiction over the guardianship and receive a receipt. The  
9 clerk shall deposit the funds in the registry of the court, to  
10 be disposed of as follows:

11           1. If the value of the funds is \$50 or less, the clerk  
12 shall post a notice for 30 days at the courthouse door giving  
13 the amount involved, the name of the ward, and other pertinent  
14 information that will put interested persons on notice.

15           2. If the value of the funds is over \$50, the clerk  
16 shall publish the notice once a month for 2 consecutive months  
17 in a newspaper of general circulation in the county.

18           3. After the expiration of 6 months from the posting  
19 or first publication, the clerk shall deposit the funds with  
20 the Chief Financial Officer ~~State Treasurer~~ after deducting  
21 his or her fees and the costs of publication.

22           (b) Upon receipt of the funds, the Chief Financial  
23 Officer ~~State Treasurer~~ shall deposit them to the credit of  
24 public guardianship. All interest and all income that may  
25 accrue from the money while so deposited shall belong to the  
26 fund. The funds so deposited shall constitute and be a  
27 permanent appropriation for payments by the Chief Financial  
28 Officer ~~State Treasurer~~ in obedience to court orders entered  
29 as provided by paragraph (c).

30           (c) Within 5 years from the date of deposit with the  
31 Chief Financial Officer ~~State Treasurer~~, on written petition

1 to the court that directed the deposit of the funds and  
2 informal notice to the Department of Legal Affairs, and after  
3 proof of his or her right to them, any person entitled to the  
4 funds, before or after payment to the Chief Financial Officer  
5 ~~State Treasurer~~ and deposit as provided for in paragraph (a),  
6 may obtain a court order directing the payment of the funds to  
7 him or her. All funds deposited with the Chief Financial  
8 Officer ~~State Treasurer~~ and not claimed within 5 years from  
9 the date of deposit shall escheat to the state to be deposited  
10 in the Department of Elderly Affairs Administrative Trust Fund  
11 to be used solely for the benefit of public guardianship as  
12 determined by the Statewide Public Guardianship Office  
13 established in part IX of this chapter.

14 Section 1907. Paragraphs (b), (c), (d), (e), and (g)  
15 of subsection (3) of section 766.105, Florida Statutes, are  
16 amended to read:

17 766.105 Florida Patient's Compensation Fund.--

18 (3) THE FUND.--

19 (b) Fund administration and operation.--

20 1. The fund shall operate subject to the supervision  
21 and approval of a board of governors consisting of a  
22 representative of the insurance industry appointed by the  
23 Chief Financial Officer ~~Insurance Commissioner~~, an attorney  
24 appointed by The Florida Bar, a representative of physicians  
25 appointed by the Florida Medical Association, a representative  
26 of physicians' insurance appointed by the Chief Financial  
27 Officer ~~Insurance Commissioner~~, a representative of  
28 physicians' self-insurance appointed by the Chief Financial  
29 Officer ~~Insurance Commissioner~~, two representatives of  
30 hospitals appointed by the Florida Hospital Association, a  
31 representative of hospital insurance appointed by the Chief

1 Financial Officer ~~Insurance Commissioner~~, a representative of  
2 hospital self-insurance appointed by the Chief Financial  
3 Officer ~~Insurance Commissioner~~, a representative of the  
4 osteopathic physicians' or podiatric physicians' insurance or  
5 self-insurance appointed by the Chief Financial Officer  
6 ~~Insurance Commissioner~~, and a representative of the general  
7 public appointed by the Chief Financial Officer ~~Insurance~~  
8 ~~Commissioner~~. The board of governors shall, during the first  
9 meeting after June 30 of each year, choose one of its members  
10 to serve as chair of the board and another member to serve as  
11 vice chair of the board. The members of the board shall be  
12 appointed to serve terms of 4 years, except that the initial  
13 appointments of a representative of the general public by the  
14 Chief Financial Officer ~~Insurance Commissioner~~, an attorney by  
15 The Florida Bar, a representative of physicians by the Florida  
16 Medical Association, and one of the two representatives of the  
17 Florida Hospital Association shall be for terms of 3 years;  
18 thereafter, such representatives shall be appointed for terms  
19 of 4 years. Subsequent to initial appointments for 4-year  
20 terms, the representative of the osteopathic physicians' or  
21 podiatric physicians' insurance or self-insurance appointed by  
22 the Chief Financial Officer ~~Insurance Commissioner~~ and the  
23 representative of hospital self-insurance appointed by the  
24 Chief Financial Officer ~~Insurance Commissioner~~ shall be  
25 appointed for 2-year terms; thereafter, such representatives  
26 shall be appointed for terms of 4 years. Each appointed member  
27 may designate in writing to the chair an alternate to act in  
28 the member's absence or incapacity. A member of the board, or  
29 the member's alternate, may be reimbursed from the assets of  
30 the fund for expenses incurred by him or her as a member, or  
31 alternate member, of the board and for committee work, but he

1 or she may not otherwise be compensated by the fund for his or  
2 her service as a board member or alternate.

3 2. There shall be no liability on the part of, and no  
4 cause of action of any nature shall arise against, the fund or  
5 its agents or employees, professional advisers or consultants,  
6 members of the board of governors or their alternates, or the  
7 Department of Financial Services or the Office of Insurance  
8 Regulation of the Financial Services Commission ~~Insurance~~ or  
9 their ~~its~~ representatives for any action taken by them in the  
10 performance of their powers and duties pursuant to this  
11 section.

12 (c) Powers of the fund.--The fund has the power to:

13 1. Sue and be sued, and appear and defend, in all  
14 actions and proceedings in its name to the same extent as a  
15 natural person.

16 2. Adopt, change, amend, and repeal a plan of  
17 operation, not inconsistent with law, for the regulation and  
18 administration of the affairs of the fund. The plan and any  
19 changes thereto shall be filed with the Office of Insurance  
20 Regulation of the Financial Services Commission ~~Insurance~~  
21 ~~Commissioner~~ and are all subject to its ~~his or her~~ approval  
22 before implementation by the fund. All fund members, board  
23 members, and employees shall comply with the plan of  
24 operation.

25 3. Have and exercise all powers necessary or  
26 convenient to effect any or all of the purposes for which the  
27 fund is created.

28 4. Enter into such contracts as are necessary or  
29 proper to carry out the provisions and purposes of this  
30 section.

31

1           5. Employ or retain such persons as are necessary to  
2 perform the administrative and financial transactions and  
3 responsibilities of the fund and to perform other necessary or  
4 proper functions unless prohibited by law.

5           6. Take such legal action as may be necessary to avoid  
6 payment of improper claims.

7           7. Indemnify any employee, agent, member of the board  
8 of governors or his or her alternate, or person acting on  
9 behalf of the fund in an official capacity, for expenses,  
10 including attorney's fees, judgments, fines, and amounts paid  
11 in settlement actually and reasonably incurred by him or her  
12 in connection with any action, suit, or proceeding, including  
13 any appeal thereof, arising out of his or her capacity in  
14 acting on behalf of the fund, if he or she acted in good faith  
15 and in a manner he or she reasonably believed to be in, or not  
16 opposed to, the best interests of the fund and, with respect  
17 to any criminal action or proceeding, he or she had reasonable  
18 cause to believe his or her conduct was lawful.

19           (d) Fees and assessments.--Each health care provider,  
20 as set forth in subsection (2), electing to comply with  
21 paragraph (2)(b) for a given fiscal year shall pay the fees  
22 and any assessments established under this section relative to  
23 such fiscal year, for deposit into the fund. Those entering  
24 the fund after the fiscal year has begun shall pay a prorated  
25 share of the yearly fees for a prorated membership.  
26 Actuarially sound membership fees payable annually,  
27 semiannually, or quarterly with appropriate service charges  
28 shall be established by the fund before January 1 of each  
29 fiscal year, based on the following considerations:

30  
31

1           1. Past and prospective loss and expense experience in  
2 different types of practice and in different geographical  
3 areas within the state;

4           2. The prior claims experience of the members covered  
5 under the fund; and

6           3. Risk factors for persons who are retired,  
7 semiretired, or part-time professionals.

8  
9 Such fees shall be based on not more than three geographical  
10 areas, not necessarily contiguous, with five categories of  
11 practice and with categories which contemplate separate risk  
12 ratings for hospitals, for health maintenance organizations,  
13 for ambulatory surgical facilities, and for other medical  
14 facilities. The fund is authorized to adjust the fees of an  
15 individual member to reflect the claims experience of such  
16 member. Each fiscal year of the fund shall operate  
17 independently of preceding fiscal years. Participants shall  
18 only be liable for assessments for claims from years during  
19 which they were members of the fund; in cases in which a  
20 participant is a member of the fund for less than the total  
21 fiscal year, a member shall be subject to assessments for that  
22 year on a pro rata basis determined by the percentage of  
23 participation for the year. The fund shall submit to the  
24 Office of Insurance Regulation ~~Insurance Commissioner~~ the  
25 classifications and membership fees to be charged, and the  
26 Office of Insurance Regulation ~~Insurance Commissioner~~ shall  
27 review such fees and shall approve them if they comply with  
28 all the requirements of this section and fairly reflect the  
29 considerations provided for in this section. If the  
30 classifications or membership fees do not comply with this  
31 section, the Office of Insurance Regulation ~~Insurance~~

1 ~~Commissioner~~ shall set classifications or membership fees  
2 which do comply and which give due recognition to all  
3 considerations provided for in this section. Nothing  
4 contained herein shall be construed as imposing liability for  
5 payment of any part of a fund deficit on the Joint  
6 Underwriting Association authorized by s. 627.351(4) or its  
7 member insurers. If the fund determines that the amount of  
8 money in an account for a given fiscal year is in excess of or  
9 not sufficient to satisfy the claims made against the account,  
10 the fund shall certify the amount of the projected excess or  
11 insufficiency to the Office of Insurance Regulation ~~Insurance~~  
12 ~~Commissioner~~ and request the office ~~Insurance Commissioner~~ to  
13 levy an assessment against or refund to all participants in  
14 the fund for that fiscal year, prorated, based on the number  
15 of days of participation during the year in question. The  
16 Office of Insurance Regulation ~~Insurance Commissioner~~ shall  
17 approve the request of the fund to refund to, or levy any  
18 assessment against, the participants, provided the refund or  
19 assessment fairly reflects the same considerations and  
20 classifications upon which the membership fees were based. The  
21 assessment shall be in an amount sufficient to satisfy reserve  
22 requirements for known claims, including expenses to satisfy  
23 the claims, made against the account for a given fiscal year.  
24 In any proceeding to challenge the amount of the refund or  
25 assessment, it is to be presumed that the amount of refund or  
26 assessment requested by the fund is correct, if the fund  
27 demonstrates that it has used reasonable claims handling and  
28 reserving procedures. Additional assessments may be certified  
29 and levied in accordance with this paragraph as necessary for  
30 any fiscal year. If a fund member objects to his or her  
31 assessment, he or she shall, as a condition precedent to

1 bringing legal action contesting the assessment, pay the  
2 assessment, under protest, to the fund. The fund may borrow  
3 money needed for current operations, if necessary to pay  
4 claims and related expenses, fees, and costs timely for a  
5 given fiscal year, from an account for another fiscal year  
6 until such time as sufficient funds have been obtained through  
7 the assessment process. Any such money, together with  
8 interest at the mean interest rate earned on the investment  
9 portfolio of the fund, shall be repaid from the next  
10 assessment for the given fiscal year. If any assessments are  
11 levied in accordance with this subsection as a result of  
12 claims in excess of \$500,000 per occurrence, and such  
13 assessments are a result of the liability of certain  
14 individuals and entities specified in paragraph (2)(e), only  
15 hospitals shall be subject to such assessments. Before  
16 approving the request of the fund to charge membership fees,  
17 issue refunds, or levy assessments, the Office of Insurance  
18 Regulation ~~Insurance Commissioner~~ shall publish notice of the  
19 request in the Florida Administrative Weekly. Pursuant to  
20 chapter 120, any party substantially affected may request an  
21 appropriate proceeding. Any petition for such a proceeding  
22 shall be filed with the Office of Insurance Regulation  
23 ~~Department of Insurance~~ within 21 days after the date of  
24 publication of the notice in the Florida Administrative  
25 Weekly.

26 (e) Fund accounting and audit.--

27 1. Money shall be withdrawn from the fund only upon a  
28 voucher as authorized by the board of governors.

29 2. All books, records, and audits of the fund shall be  
30 open for reasonable inspection to the general public, except  
31 that a claim file in possession of the fund, fund members, and

1 their insurers is confidential and exempt from the provisions  
2 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
3 until termination of litigation or settlement of the claim,  
4 although medical records and other portions of the claim file  
5 may remain confidential and exempt as otherwise provided by  
6 law. Any book, record, document, audit, or asset acquired by,  
7 prepared for, or paid for by the fund is subject to the  
8 authority of the board of governors, which shall be  
9 responsible therefor.

10           3. Persons authorized to receive deposits, issue  
11 vouchers, or withdraw or otherwise disburse any fund moneys  
12 shall post a blanket fidelity bond in an amount reasonably  
13 sufficient to protect fund assets. The cost of such bond shall  
14 be paid from the fund.

15           4. Annually, the fund shall furnish, upon request,  
16 audited financial reports to any fund participant and to the  
17 Office of Insurance Regulation ~~Department of Insurance~~ and the  
18 Joint Legislative Auditing Committee. The reports shall be  
19 prepared in accordance with accepted accounting procedures and  
20 shall include income and such other information as may be  
21 required by the Office of Insurance Regulation ~~Department of~~  
22 ~~Insurance~~ or the Joint Legislative Auditing Committee.

23           5. Any money held in the fund shall be invested in  
24 interest-bearing investments by the board of governors of the  
25 fund as administrator. However, in no case may any such money  
26 be invested in the stock of any insurer participating in the  
27 Joint Underwriting Association authorized by s. 627.351(4) or  
28 in the parent company of, or company owning a controlling  
29 interest in, such insurer. All income derived from such  
30 investments shall be credited to the fund.

31

1           6. Any health care provider participating in the fund  
2 may withdraw from such participation only at the end of a  
3 fiscal year; however, such health care provider shall remain  
4 subject to any assessment or any refund pertaining to any year  
5 in which such member participated in the fund.

6           (g) Risk management program.--The fund shall establish  
7 a risk management program as part of its administrative  
8 functions. All health care providers, as defined in  
9 subparagraphs (1)(b)1., 5., 6., and 7., participating in the  
10 fund shall comply with the provisions of the risk management  
11 program established by the fund. The risk management program  
12 shall include the following components:

13           1. The investigation and analysis of the frequency and  
14 causes of general categories and specific types of adverse  
15 incidents causing injury to patients;

16           2. The development of appropriate measures to minimize  
17 the risk of injuries and adverse incidents to patients;

18           3. The analysis of patient grievances which relate to  
19 patient care and the quality of medical services;

20           4. The development and implementation of an incident  
21 reporting system based upon the affirmative duty of all health  
22 care providers and all agents and employees of health care  
23 providers and health care facilities to report injuries and  
24 incidents; and

25           5. Auditing of participating health care providers to  
26 assure compliance with the provisions of the risk management  
27 program.

28  
29 The fund shall establish a schedule of fee surcharges which it  
30 shall levy upon participating health care providers found to  
31 be in violation of the provisions of the risk management

1 program. Such schedule shall be subject to approval by the  
2 Office of Insurance Regulation ~~department~~ and shall provide an  
3 escalating scale of surcharges based upon the frequency and  
4 severity of the incidents in violation of the risk management  
5 program. No health care provider shall be required to pay a  
6 surcharge if it has corrected all violations of the provisions  
7 of the risk management program and established an affirmative  
8 program to remain in compliance by the time its next fee or  
9 assessment is due.

10 Section 1908. Subsection (7) of section 766.1115,  
11 Florida Statutes, is amended to read:

12 766.1115 Health care providers; creation of agency  
13 relationship with governmental contractors.--

14 (7) RISK MANAGEMENT REPORT.--The Division of Risk  
15 Management of the Department of Financial Services ~~Insurance~~  
16 shall annually compile a report of all claims statistics for  
17 all entities participating in the risk management program  
18 administered by the division, which shall include the number  
19 and total of all claims pending and paid, and defense and  
20 handling costs associated with all claims brought against  
21 contract providers under this section. This report shall be  
22 forwarded to the department and included in the annual report  
23 submitted to the Legislature pursuant to this section.

24 Section 1909. Subsections (2) and (5), paragraph (a)  
25 of subsection (6), subsection (7), and paragraph (c) of  
26 subsection (9) of section 766.314, Florida Statutes, are  
27 amended to read:

28 766.314 Assessments; plan of operation.--

29 (2) The assessments and appropriations dedicated to  
30 the plan shall be administered by the Florida Birth-Related  
31

1 Neurological Injury Compensation Association established in s.  
2 766.315, in accordance with the following requirements:

3 (a) On or before July 1, 1988, the directors of the  
4 association shall submit to the Department of Insurance for  
5 review a plan of operation which shall provide for the  
6 efficient administration of the plan and for prompt processing  
7 of claims against and awards made on behalf of the plan. The  
8 plan of operation shall include provision for:

- 9 1. Establishment of necessary facilities;
- 10 2. Management of the funds collected on behalf of the  
11 plan;
- 12 3. Processing of claims against the plan;
- 13 4. Assessment of the persons and entities listed in  
14 subsections (4) and (5) to pay awards and expenses, which  
15 assessments shall be on an actuarially sound basis subject to  
16 the limits set forth in subsections (4) and (5); and
- 17 5. Any other matters necessary for the efficient  
18 operation of the birth-related neurological injury  
19 compensation plan.

20 ~~(b) The plan of operation shall be subject to approval~~  
21 ~~by the Department of Insurance after consultation with~~  
22 ~~representatives of state agencies which collect revenue~~  
23 ~~pursuant to this section and interested individuals and~~  
24 ~~organizations. If the Department of Insurance disapproves all~~  
25 ~~or any part of the plan of operation, the directors shall~~  
26 ~~within 30 days submit for review an appropriate revised plan~~  
27 ~~of operation. If the directors fail to do so, the Department~~  
28 ~~of Insurance shall promulgate a plan of operation. The plan~~  
29 ~~of operation approved or promulgated by the Department of~~  
30 ~~Insurance shall become effective and operational upon order of~~  
31 ~~the Department of Insurance.~~

1           **(b)**~~(c)~~ Amendments to the plan of operation may be made  
2 by the directors of the plan, subject to the approval of the  
3 Office of Insurance Regulation of the Financial Services  
4 Commission ~~Department of Insurance~~.

5           (5)(a) Beginning January 1, 1990, the persons and  
6 entities listed in paragraphs (4)(b) and (c), except those  
7 persons or entities who are specifically excluded from said  
8 provisions, as of the date determined in accordance with the  
9 plan of operation, taking into account persons licensed  
10 subsequent to the payment of the initial assessment, shall pay  
11 an annual assessment in the amount equal to the initial  
12 assessments provided in paragraphs (4)(b) and (c). On January  
13 1, 1991, and on each January 1 thereafter, the association  
14 shall determine the amount of additional assessments necessary  
15 pursuant to subsection (7), in the manner required by the plan  
16 of operation, subject to any increase determined to be  
17 necessary by the Office of Insurance Regulation ~~Department of~~  
18 ~~Insurance~~ pursuant to paragraph (7)(b). On July 1, 1991, and  
19 on each July 1 thereafter, the persons and entities listed in  
20 paragraphs (4)(b) and (c), except those persons or entities  
21 who are specifically excluded from said provisions, shall pay  
22 the additional assessments which were determined on January 1.  
23 Beginning January 1, 1990, the entities listed in paragraph  
24 (4)(a), including those licensed on or after October 1, 1988,  
25 shall pay an annual assessment of \$50 per infant delivered  
26 during the prior calendar year. The additional assessments  
27 which were determined on January 1, 1991, pursuant to the  
28 provisions of subsection (7) shall not be due and payable by  
29 the entities listed in paragraph (4)(a) until July 1.

30           (b) If the assessments collected pursuant to  
31 subsection (4) and the appropriation of funds provided by s.

1 76, chapter 88-1, Laws of Florida, as amended by s. 41,  
2 chapter 88-277, Laws of Florida, to the plan from the  
3 Insurance ~~Commissioner's~~ Regulatory Trust Fund are  
4 insufficient to maintain the plan on an actuarially sound  
5 basis, there is hereby appropriated for transfer to the  
6 association from the Insurance ~~Commissioner's~~ Regulatory Trust  
7 Fund an additional amount of up to \$20 million.

8 (c)1. Taking into account the assessments collected  
9 pursuant to subsection (4) and appropriations from the  
10 Insurance ~~Commissioner's~~ Regulatory Trust Fund, if required to  
11 maintain the plan on an actuarially sound basis, the Office of  
12 Insurance Regulation ~~Department of Insurance~~ shall require  
13 each entity licensed to issue casualty insurance as defined in  
14 s. 624.605(1)(b), (k), and (q) to pay into the association an  
15 annual assessment in an amount determined by the office  
16 ~~department~~ pursuant to paragraph (7)(a), in the manner  
17 required by the plan of operation.

18 2. All annual assessments shall be made on the basis  
19 of net direct premiums written for the business activity which  
20 forms the basis for each such entity's inclusion as a funding  
21 source for the plan in the state during the prior year ending  
22 December 31, as reported to the Office of Insurance Regulation  
23 ~~Department of Insurance~~, and shall be in the proportion that  
24 the net direct premiums written by each carrier on account of  
25 the business activity forming the basis for its inclusion in  
26 the plan bears to the aggregate net direct premiums for all  
27 such business activity written in this state by all such  
28 entities.

29 3. No entity listed in this paragraph shall be  
30 individually liable for an annual assessment in excess of 0.25  
31 percent of that entity's net direct premiums written.

1           4. Casualty insurance carriers shall be entitled to  
2 recover their initial and annual assessments through a  
3 surcharge on future policies, a rate increase applicable  
4 prospectively, or a combination of the two.

5           (6)(a) The association shall make all assessments  
6 required by this section, except initial assessments of  
7 physicians licensed on or after October 1, 1988, which  
8 assessments will be made by the Department of Business and  
9 Professional Regulation, and except assessments of casualty  
10 insurers pursuant to subparagraph (5)(c)1., which assessments  
11 will be made by the Office of Insurance Regulation ~~Department~~  
12 ~~of Insurance~~. Beginning October 1, 1989, for any physician  
13 licensed between October 1 and December 31 of any year, the  
14 Department of Business and Professional Regulation shall make  
15 the initial assessment plus the assessment for the following  
16 calendar year. The Department of Business and Professional  
17 Regulation shall provide the association, with such frequency  
18 as determined to be necessary, a listing, in a  
19 computer-readable form, of the names and addresses of all  
20 physicians licensed under chapter 458 or chapter 459.

21           (7)(a) The Office of Insurance Regulation ~~Department~~  
22 ~~of Insurance~~ shall undertake an actuarial investigation of the  
23 requirements of the plan based on the plan's experience in the  
24 first year of operation and any additional relevant  
25 information, including without limitation the assets and  
26 liabilities of the plan. Pursuant to such investigation, the  
27 Office of Insurance Regulation ~~Department of Insurance~~ shall  
28 establish the rate of contribution of the entities listed in  
29 paragraph (5)(c) for the tax year beginning January 1, 1990.  
30 Following the initial valuation, the Office of Insurance  
31 Regulation ~~Department of Insurance~~ shall cause an actuarial

1 valuation to be made of the assets and liabilities of the plan  
2 no less frequently than biennially. Pursuant to the results of  
3 such valuations, the Office of Insurance Regulation ~~Department~~  
4 ~~of Insurance~~ shall prepare a statement as to the contribution  
5 rate applicable to the entities listed in paragraph (5)(c).  
6 However, at no time shall the rate be greater than 0.25  
7 percent of net direct premiums written.

8 (b) If the Office of Insurance Regulation ~~Department~~  
9 ~~of Insurance~~ finds that the plan cannot be maintained on an  
10 actuarially sound basis based on the assessments and  
11 appropriations listed in subsections (4) and (5), the office  
12 ~~department~~ shall increase the assessments specified in  
13 subsection (4) on a proportional basis as needed.

14 (9)

15 (c) In the event the total of all current estimates  
16 equals 80 percent of the funds on hand and the funds that will  
17 become available to the association within the next 12 months  
18 from all sources described in subsections (4) and (5) and  
19 paragraph (7)(a), the association shall not accept any new  
20 claims without express authority from the Legislature. Nothing  
21 herein shall preclude the association from accepting any claim  
22 if the injury occurred 18 months or more prior to the  
23 effective date of this suspension. Within 30 days of the  
24 effective date of this suspension, the association shall  
25 notify the Governor, the Speaker of the House of  
26 Representatives, the President of the Senate, the Office of  
27 Insurance Regulation ~~Department of Insurance~~, the Agency for  
28 Health Care Administration, the Department of Health, and the  
29 Department of Business and Professional Regulation of this  
30 suspension.

31

1           Section 1910. Paragraph (c) of subsection (1),  
2 subsection (2), and paragraph (d) of subsection (5) of section  
3 766.315, Florida Statutes, are amended to read:

4           766.315 Florida Birth-Related Neurological Injury  
5 Compensation Association; board of directors.--

6           (1)

7           (c) The directors shall be appointed by the Chief  
8 Financial Officer ~~Insurance Commissioner~~ as follows:

- 9           1. One citizen representative.
- 10          2. One representative of participating physicians.
- 11          3. One representative of hospitals.
- 12          4. One representative of casualty insurers.
- 13          5. One representative of physicians other than  
14 participating physicians.

15          (2)(a) The Chief Financial Officer ~~Insurance~~  
16 ~~Commissioner~~ may select the representative of the  
17 participating physicians from a list of at least three names  
18 to be recommended by the Florida Obstetric and Gynecologic  
19 Society; the representative of hospitals from a list of at  
20 least three names to be recommended by the Florida Hospital  
21 Association; the representative of casualty insurers from a  
22 list of at least three names, one of which is recommended by  
23 the American Insurance Association, one by the Alliance of  
24 American Insurers, and one by the National Association of  
25 Independent Insurers; and the representative of physicians  
26 other than participating physicians from a list of three names  
27 to be recommended by the Florida Medical Association and a  
28 list of three names to be recommended by the Florida  
29 Osteopathic Medical Association. In no case shall the Chief  
30 Financial Officer ~~Insurance Commissioner~~ be bound to make any  
31

1 appointment from among the nominees of such respective  
2 associations.

3 (b) The Chief Financial Officer ~~Insurance Commissioner~~  
4 shall promptly notify the appropriate medical association upon  
5 the occurrence of any vacancy, and like nominations may be  
6 made for the filling of the vacancy.

7 (5)

8 (d) Annually, the association shall furnish audited  
9 financial reports to any plan participant upon request, to the  
10 Office of Insurance Regulation of the Financial Services  
11 Commission ~~Department of Insurance~~, and to the Joint  
12 Legislative Auditing Committee. The reports must be prepared  
13 in accordance with accepted accounting procedures and must  
14 include such information as may be required by the Office of  
15 Insurance Regulation ~~Department of Insurance~~ or the Joint  
16 Legislative Auditing Committee. At any time determined to be  
17 necessary, the Office of Insurance Regulation ~~Department of~~  
18 ~~Insurance~~ or the Joint Legislative Auditing Committee may  
19 conduct an audit of the plan.

20 Section 1911. Subsection (3), paragraphs (a) and (d)  
21 of subsection (6), and subsection (7) of section 768.28,  
22 Florida Statutes, are amended to read:

23 768.28 Waiver of sovereign immunity in tort actions;  
24 recovery limits; limitation on attorney fees; statute of  
25 limitations; exclusions; indemnification; risk management  
26 programs.--

27 (3) Except for a municipality and the Florida Space  
28 Authority, the affected agency or subdivision may, at its  
29 discretion, request the assistance of the Department of  
30 Financial Services ~~Insurance~~ in the consideration, adjustment,  
31 and settlement of any claim under this act.

1           (6)(a) An action may not be instituted on a claim  
2 against the state or one of its agencies or subdivisions  
3 unless the claimant presents the claim in writing to the  
4 appropriate agency, and also, except as to any claim against a  
5 municipality or the Florida Space Authority, presents such  
6 claim in writing to the Department of Financial Services  
7 ~~insurance~~, within 3 years after such claim accrues and the  
8 Department of Financial Services ~~insurance~~ or the appropriate  
9 agency denies the claim in writing; except that, if such claim  
10 is for contribution pursuant to s. 768.31, it must be so  
11 presented within 6 months after the judgment against the  
12 tortfeasor seeking contribution has become final by lapse of  
13 time for appeal or after appellate review or, if there is no  
14 such judgment, within 6 months after the tortfeasor seeking  
15 contribution has either discharged the common liability by  
16 payment or agreed, while the action is pending against her or  
17 him, to discharge the common liability.

18           (d) For purposes of this section, complete, accurate,  
19 and timely compliance with the requirements of paragraph (c)  
20 shall occur prior to settlement payment, close of discovery or  
21 commencement of trial, whichever is sooner; provided the  
22 ability to plead setoff is not precluded by the delay. This  
23 setoff shall apply only against that part of the settlement or  
24 judgment payable to the claimant, minus claimant's reasonable  
25 attorney's fees and costs. Incomplete or inaccurate  
26 disclosure of unpaid adjudicated claims due the state, its  
27 agency, officer, or subdivision, may be excused by the court  
28 upon a showing by the preponderance of the evidence of the  
29 claimant's lack of knowledge of an adjudicated claim and  
30 reasonable inquiry by, or on behalf of, the claimant to obtain  
31 the information from public records. Unless the appropriate

1 agency had actual notice of the information required to be  
2 disclosed by paragraph (c) in time to assert a setoff, an  
3 unexcused failure to disclose shall, upon hearing and order of  
4 court, cause the claimant to be liable for double the original  
5 undisclosed judgment and, upon further motion, the court shall  
6 enter judgment for the agency in that amount. The failure of  
7 the Department of Financial Services Insurance or the  
8 appropriate agency to make final disposition of a claim within  
9 6 months after it is filed shall be deemed a final denial of  
10 the claim for purposes of this section. For purposes of this  
11 subsection, in medical malpractice actions, the failure of the  
12 Department of Financial Services Insurance or the appropriate  
13 agency to make final disposition of a claim within 90 days  
14 after it is filed shall be deemed a final denial of the claim.  
15 The provisions of this subsection do not apply to such claims  
16 as may be asserted by counterclaim pursuant to s. 768.14.

17 (7) In actions brought pursuant to this section,  
18 process shall be served upon the head of the agency concerned  
19 and also, except as to a defendant municipality or the Florida  
20 Space Authority, upon the Department of Financial Services  
21 ~~Insurance~~; and the department or the agency concerned shall  
22 have 30 days within which to plead thereto.

23 Section 1912. Subsection (5) of section 790.001,  
24 Florida Statutes, is amended to read:

25 790.001 Definitions.--As used in this chapter, except  
26 where the context otherwise requires:

27 (5) "Explosive" means any chemical compound or mixture  
28 that has the property of yielding readily to combustion or  
29 oxidation upon application of heat, flame, or shock, including  
30 but not limited to dynamite, nitroglycerin, trinitrotoluene,  
31 or ammonium nitrate when combined with other ingredients to

1 form an explosive mixture, blasting caps, and detonators; but  
2 not including:

3 (a) Shotgun shells, cartridges, or ammunition for  
4 firearms;

5 (b) Fireworks as defined in s. 791.01;

6 (c) Smokeless propellant powder or small arms  
7 ammunition primers, if possessed, purchased, sold,  
8 transported, or used in compliance with s. 552.241;

9 (d) Black powder in quantities not to exceed that  
10 authorized by chapter 552, or by any rules adopted ~~or~~  
11 ~~regulations promulgated~~ thereunder by the Department of  
12 Financial Services Insurance, when used for, or intended to be  
13 used for, the manufacture of target and sporting ammunition or  
14 for use in muzzle-loading flint or percussion weapons.

15

16 The exclusions contained in paragraphs (a)-(d) do not apply to  
17 the term "explosive" as used in the definition of "firearm" in  
18 subsection (6).

19 Section 1913. Section 790.1612, Florida Statutes, is  
20 amended to read:

21 790.1612 Authorization for governmental manufacture,  
22 possession, and use of destructive devices.--The governing  
23 body of any municipality or county and the Division of State  
24 Fire Marshal of the Department of Financial Services Insurance  
25 have the power to authorize the manufacture, possession, and  
26 use of destructive devices as defined in s. 790.001(4).

27 Section 1914. Subsection (2) of section 791.01,  
28 Florida Statutes, is amended to read:

29 791.01 Definitions.--As used in this chapter, the  
30 term:

31

1           (2) "Division" means the Division of the State Fire  
2 Marshal of the Department of Financial Services ~~Insurance~~.

3           Section 1915. Paragraph (b) of subsection (3) of  
4 section 791.015, Florida Statutes, is amended to read:

5           791.015 Registration of manufacturers, distributors,  
6 wholesalers, and retailers of sparklers.--

7           (3) FEES.--

8           (b) Revenue from registration fee payments shall be  
9 deposited in the Insurance ~~Commissioner's~~ Regulatory Trust  
10 Fund for the purposes of implementing the registration and  
11 testing provisions of this chapter.

12          Section 1916. Section 817.16, Florida Statutes, is  
13 amended to read:

14          817.16 False reports, etc., by officers of banks,  
15 trust companies, etc., ~~under supervision of Department of~~  
16 ~~Banking and Finance~~ with intent to defraud.--Any officer,  
17 director, agent or clerk of any bank, trust company, building  
18 and loan association, small loan licensee, credit union, or  
19 other corporation under the supervision of the Office of  
20 Financial Institutions and Securities Regulation of the  
21 Financial Services Commission or formerly the Department of  
22 Banking and Finance, who willfully and knowingly subscribes or  
23 exhibits any false paper with intent to deceive any person  
24 authorized to examine as to the records of such bank, trust  
25 company, building and loan association, small loan licensee,  
26 credit union, or other corporation under the supervision of  
27 the Office of Financial Institution and Securities Regulation  
28 or formerly the Department of Banking and Finance, or  
29 willfully and knowingly subscribes to or makes any false  
30 reports to the Office of Financial Institutions and Securities  
31 Regulation or subscribed to or made any such false report to

1 the Department of Banking and Finance or causes to be  
2 published any false report, shall be guilty of a felony of the  
3 third degree, punishable as provided s. 775.082 or s. 775.083.

4 Section 1917. Paragraph (b) of subsection (1),  
5 paragraph (b) of subsection (2), and subsection (10) of  
6 section 817.234, Florida Statutes, are amended to read:

7 817.234 False and fraudulent insurance claims.--

8 (1)

9 (b) All claims and application forms shall contain a  
10 statement that is approved by the Office of Insurance  
11 Regulation of the Financial Services Commission which  
12 ~~Department of Insurance that~~ clearly states in substance the  
13 following: "Any person who knowingly and with intent to  
14 injure, defraud, or deceive any insurer files a statement of  
15 claim or an application containing any false, incomplete, or  
16 misleading information is guilty of a felony of the third  
17 degree." This paragraph shall not apply to reinsurance  
18 contracts, reinsurance agreements, or reinsurance claims  
19 transactions.

20 (2)

21 (b) In addition to any other provision of law,  
22 systematic upcoding by a provider, as defined in s. 641.19(14)  
23 ~~s. 641.19(15)~~, with the intent to obtain reimbursement  
24 otherwise not due from an insurer is punishable as provided in  
25 s. 641.52(5).

26 (10) As used in this section, the term "insurer" means  
27 any insurer, health maintenance organization, self-insurer,  
28 self-insurance fund, or other similar entity or person  
29 regulated under chapter 440 or chapter 641 or by the Office of  
30 Insurance Regulation ~~Department of Insurance~~ under the Florida  
31 Insurance Code.

1           Section 1918. Section 817.2341, Florida Statutes, is  
2 amended to read:

3           817.2341 False or misleading statements or supporting  
4 documents; penalty.--

5           (1) Any person who willfully files with the department  
6 or office, or who willfully signs for filing with the  
7 department or office, a materially false or materially  
8 misleading financial statement or document in support of such  
9 statement required by law or rule, with intent to deceive and  
10 with knowledge that the statement or document is materially  
11 false or materially misleading, commits a felony of the third  
12 degree, punishable as provided in s. 775.082, s. 775.083, or  
13 s. 775.084.

14           (2)(a) Any person who makes a false entry of a  
15 material fact in any book, report, or statement relating to a  
16 transaction of an insurer or entity organized pursuant to  
17 chapter 624 or chapter 641, intending to deceive any person  
18 about the financial condition or solvency of the insurer or  
19 entity, commits a felony of the third degree, punishable as  
20 provided in s. 775.082, s. 775.083, or s. 775.084.

21           (b) If the false entry of a material fact is made with  
22 the intent to deceive any person as to the impairment of  
23 capital, as defined in s. 631.011(12), of the insurer or  
24 entity or is the significant cause of the insurer or entity  
25 being placed in conservation, rehabilitation, or liquidation  
26 by a court, the person commits a felony of the first degree,  
27 punishable as provided in s. 775.082, s. 775.083, or s.  
28 775.084.

29           (3)(a) Any person who knowingly makes a material false  
30 statement or report to the department or office or any agent  
31 of the department or office, or knowingly and materially

1 overvalues any property in any document or report prepared to  
2 be presented to the department or office or any agent of the  
3 department or office, commits a felony of the third degree,  
4 punishable as provided in s. 775.082, s. 775.083, or s.  
5 775.084.

6 (b) If the material false statement or report or the  
7 material overvaluation is made with the intent to deceive any  
8 person as to the impairment of capital, as defined in s.  
9 631.011(12), of an insurer or entity organized pursuant to  
10 chapter 624 or chapter 641, or is the significant cause of the  
11 insurer or entity being placed in receivership by a court, the  
12 person commits a felony of the first degree, punishable as  
13 provided in s. 775.082, s. 775.083, or s. 775.084.

14 (4) As used in this section, the term:

15 (a) "Department" means the Department of Financial  
16 Services.

17 (b) "Office" means the Office of Insurance Regulation  
18 of the Financial Services Commission.

19 Section 1919. Subsection (1) of section 817.50,  
20 Florida Statutes, is amended to read:

21 817.50 Fraudulently obtaining goods, services, etc.,  
22 from a health care provider.--

23 (1) Whoever shall, willfully and with intent to  
24 defraud, obtain or attempt to obtain goods, products,  
25 merchandise, or services from any health care provider in this  
26 state, as defined in s. 641.19(14)~~s. 641.19(15)~~, commits a  
27 misdemeanor of the second degree, punishable as provided in s.  
28 775.082 or s. 775.083.

29 Section 1920. Section 839.06, Florida Statutes, is  
30 amended to read:

31

1           839.06 Collectors not to deal in warrants, etc. ;  
2 removal.--No tax collector of any county shall, either  
3 directly or indirectly, purchase or receive in exchange any  
4 Chief Financial Officer's or the former Comptroller's  
5 warrants, county orders, jurors' certificates or school  
6 district orders for a less amount than expressed on the face  
7 of such orders or demand, and any such person so offending  
8 shall, for each offense, be deemed guilty of a misdemeanor of  
9 the first degree, punishable as provided in s. 775.083, and be  
10 removed from office.

11           Section 1921. Paragraph (d) of subsection (5) and  
12 paragraph (c) of subsection (13) of section 849.086, Florida  
13 Statutes, are amended to read:

14           849.086 Cardrooms authorized.--

15           (5) LICENSE REQUIRED; APPLICATION; FEES.--No person  
16 may operate a cardroom in this state unless such person holds  
17 a valid cardroom license issued pursuant to this section.

18           (d) The annual cardroom license fee shall be \$1,000  
19 for the first table and \$500 for each additional table to be  
20 operated at the cardroom. This license fee shall be deposited  
21 by the division with the Chief Financial Officer ~~Treasurer~~ to  
22 the credit of the Pari-mutuel Wagering Trust Fund.

23           (13) TAXES AND OTHER PAYMENTS.--

24           (c) Payment of the admission tax and gross receipts  
25 tax imposed by this section shall be paid to the division. The  
26 division shall deposit these sums with the Chief Financial  
27 Officer ~~Treasurer~~, one-half being credited to the Pari-mutuel  
28 Wagering Trust Fund and one-half being credited to the General  
29 Revenue Fund. The cardroom licensee shall remit to the  
30 division payment for the admission tax, the gross receipts  
31 tax, and the licensee fees. Such payments shall be remitted

1 to the division on the fifth day of each calendar month for  
2 taxes and fees imposed for the preceding month's cardroom  
3 activities. Licensees shall file a report under oath by the  
4 fifth day of each calendar month for all taxes remitted during  
5 the preceding calendar month. Such report shall, under oath,  
6 indicate the total of all admissions, the cardroom activities  
7 for the preceding calendar month, and such other information  
8 as may be prescribed by the division.

9 Section 1922. Section 849.33, Florida Statutes, is  
10 amended to read:

11 849.33 Judgment and collection of money;  
12 execution.--Any judgment recovered in such a suit shall  
13 adjudge separately the amounts recovered for the use of the  
14 state, and the plaintiff shall not have execution therefor,  
15 and such amounts shall not be paid to the plaintiff, but shall  
16 be payable to the state attorney, who shall promptly transmit  
17 the sums collected by him or her to the Chief Financial  
18 Officer ~~State Treasurer~~. The state attorney shall diligently  
19 seek the collection of such amounts and may cause a separate  
20 execution to issue for the collection thereof.

21 Section 1923. Subsection (1) of section 860.154,  
22 Florida Statutes, is amended to read:

23 860.154 Florida Motor Vehicle Theft Prevention  
24 Authority.--

25 (1) There is ~~hereby~~ established within the Department  
26 of Legal Affairs the Florida Motor Vehicle Theft Prevention  
27 Authority, which shall exercise its powers, duties, and  
28 responsibilities independently of the department. The  
29 purposes, powers, and duties of the authority shall be vested  
30 in and exercised by a board of directors. There shall be nine  
31 members of the board, consisting of the Chief Financial

1 ~~Officer~~ ~~commissioner of the Department of Insurance~~ or his or  
2 her ~~the commissioner's~~ designee; the executive director of the  
3 Department of Highway Safety and Motor Vehicles; the executive  
4 director of the Department of Law Enforcement; six additional  
5 members, each of whom shall be appointed by the Attorney  
6 General: a state attorney or city or county executive, a chief  
7 executive law enforcement official, a sheriff, one  
8 representative of companies authorized to sell motor vehicle  
9 insurance, one representative of insurers authorized to write  
10 motor vehicle insurance in this state, and one representative  
11 of purchasers of motor vehicle insurance in this state who is  
12 not employed by or connected with the business of insurance.

13 Section 1924. Subsection (7) of section 860.157,  
14 Florida Statutes, is amended to read:

15 860.157 Powers and duties of the authority.--The  
16 authority shall have the following powers, duties, and  
17 responsibilities:

18 (7) To report annually, on or before January 1, to the  
19 Governor, Attorney General, Chief Financial Officer ~~Insurance~~  
20 ~~Commissioner~~, President of the Senate, Speaker of the House of  
21 Representatives, Minority Leader of the House of  
22 Representatives, Minority Leader of the Senate, and  
23 appropriate committee chairs in the House of Representatives  
24 and the Senate, and, upon request, to members of the general  
25 public on the authority's activities in the preceding year.

26 Section 1925. Subsections (1) and (2) of section  
27 896.102, Florida Statutes, are amended to read:

28 896.102 Currency more than \$10,000 received in trade  
29 or business; report required; noncompliance penalties.--

30 (1) All persons engaged in a trade or business, except  
31 for those financial institutions that report to the Office of

1 Financial Institutions and Securities Regulation ~~Comptroller~~  
2 pursuant to s. 655.50, who receive more than \$10,000 in  
3 currency, including foreign currency, in one transaction, or  
4 who receive this amount through two or more related  
5 transactions, must complete and file with the Department of  
6 Revenue the information required pursuant to 26 U.S.C. s.  
7 6050I., concerning returns relating to currency received in  
8 trade or business. Any person who willfully fails to comply  
9 with the reporting requirements of this subsection is guilty  
10 of a misdemeanor of the first degree, punishable as provided  
11 in s. 775.082, or by a fine not exceeding \$250,000 or twice  
12 the value of the amount of the currency transaction involved,  
13 whichever is greater, or by both such imprisonment and fine.  
14 For a second or subsequent conviction of a violation of the  
15 provisions of this subsection, the maximum fine that may be  
16 imposed is \$500,000 or quintuple the value of the amount of  
17 the currency transaction involved, whichever is greater.

18 (2) The Department of Revenue shall enforce compliance  
19 with the provisions of subsection (1) and is to be the  
20 custodian of all information and documents filed pursuant to  
21 subsection (1). Such information and documents are  
22 confidential and exempt from the provisions of s. 119.07(1)  
23 and s. 24(a), Art. I of the State Constitution; however, the  
24 department must provide any report filed under this section,  
25 or information contained therein, to federal, state, and local  
26 law enforcement and prosecutorial agencies, ~~and~~ to the  
27 Department of Financial Services, and to the Office of  
28 Financial Institutions and Securities Regulation ~~Banking and~~  
29 ~~Finance~~, and the information is subject to disclosure pursuant  
30 to subpoena as provided in s. 213.053(8).

31

1           Section 1926. Subsection (5) of section 896.104,  
2 Florida Statutes, is amended to read:

3           896.104 Structuring transactions to evade reporting or  
4 registration requirements prohibited.--

5           (5) INFERENCE.--Proof that a person engaged for  
6 monetary consideration in the business of a funds transmitter  
7 as defined in s. 560.103(10)~~s. 560.103(9)~~and who is  
8 transporting more than \$10,000 in currency, or foreign  
9 equivalent, without being registered as a money transmitter or  
10 designated as an authorized vendor under the provisions of  
11 chapter 560, gives rise to an inference that the  
12 transportation was done with knowledge of the registration  
13 requirements of chapter 560 and the reporting requirements of  
14 this chapter.

15           Section 1927. Subsection (2) of section 903.09,  
16 Florida Statutes, is amended to read:

17           903.09 Justification of sureties.--

18           (2) A bond agent, as defined in s. 648.25(2) ~~s.~~  
19 ~~648.25(1)~~, shall justify her or his suretyship by attaching a  
20 copy of the power of attorney issued by the company to the  
21 bond or by attaching to the bond United States currency, a  
22 United States postal money order, or a cashier's check in the  
23 amount of the bond; but the United States currency, United  
24 States postal money order, or cashier's check cannot be used  
25 to secure more than one bond. Nothing herein shall prohibit  
26 two or more qualified sureties from each posting any portion  
27 of a bond amount, and being liable for only that amount, so  
28 long as the total posted by all cosureties is equal to the  
29 amount of bond required.

30           Section 1928. Section 903.101, Florida Statutes, is  
31 amended to read:

1           903.101 Sureties; licensed persons; to have equal  
2 access.--Subject to rules adopted ~~regulations promulgated~~ by  
3 the Department of Financial Services and by the Financial  
4 Services Commission ~~insurance~~, every surety who meets the  
5 requirements of ss. 903.05, 903.06, 903.08, and 903.09, and  
6 every person who is currently licensed by the Department of  
7 Financial Services ~~insurance~~ and registered as required by s.  
8 648.42 shall have equal access to the jails of this state for  
9 the purpose of making bonds.

10           Section 1929. Subsection (1) of section 903.27,  
11 Florida Statutes, is amended to read:

12           903.27 Forfeiture to judgment.--

13           (1) If the forfeiture is not paid or discharged by  
14 order of a court of competent jurisdiction within 60 days and  
15 the bond is secured other than by money and bonds authorized  
16 in s. 903.16, the clerk of the circuit court for the county  
17 where the order was made shall enter a judgment against the  
18 surety for the amount of the penalty and issue execution.  
19 Within 10 days, the clerk shall furnish the Department of  
20 Financial Services and the Office of Insurance Regulation of  
21 the Financial Services Commission ~~insurance~~ with a certified  
22 copy of the judgment docket and shall furnish the surety  
23 company at its home office a copy of the judgment, which shall  
24 include the power of attorney number of the bond and the name  
25 of the executing agent. If the judgment is not paid within 35  
26 days, the clerk shall furnish the Department of Financial  
27 Services, the Office of Insurance Regulation, ~~insurance~~ and  
28 the sheriff of the county in which the bond was executed, or  
29 the official responsible for operation of the county jail, if  
30 other than the sheriff, two copies of the judgment and a  
31 certificate stating that the judgment remains unsatisfied.

1 When and if the judgment is properly paid or an order to  
2 vacate the judgment has been entered by a court of competent  
3 jurisdiction, the clerk shall immediately notify the sheriff,  
4 or the official responsible for the operation of the county  
5 jail, if other than the sheriff, and the Department of  
6 Financial Services and the Office of Insurance Regulation  
7 ~~insurance~~, if the department and office had been previously  
8 notified of nonpayment, of such payment or order to vacate the  
9 judgment. The clerk shall also immediately prepare and record  
10 in the public records a satisfaction of the judgment or record  
11 the order to vacate judgment. If the defendant is returned to  
12 the county of jurisdiction of the court, whenever a motion to  
13 set aside the judgment is filed, the operation of this section  
14 is tolled until the court makes a disposition of the motion.

15 Section 1930. Paragraph (a) and (b) of subsection (5)  
16 of section 925.037, Florida Statutes, are amended to read:

17 925.037 Reimbursement of counties for fees paid to  
18 appointed counsel; circuit conflict committees.--

19 (5)(a) The clerk of the circuit court in each county  
20 shall submit to the Justice Administrative Commission a  
21 statement of conflict counsel fees at least annually. Such  
22 statement shall identify total expenditures incurred by the  
23 county on fees of counsel appointed by the court pursuant to  
24 this section where such fees are taxed against the county by  
25 judgment of the court. On the basis of such statement of  
26 expenditures, the Justice Administrative Commission shall pay  
27 state conflict case appropriations to the county. The  
28 statement of conflict counsel fees shall be on a form  
29 prescribed by the Justice Administrative Commission in  
30 consultation with the Legislative Committee on  
31 Intergovernmental Relations and the Chief Financial Officer

1 ~~Comptroller~~. Such form also shall provide for the separate  
2 reporting of total expenditures made by the county on attorney  
3 fees in cases in which other counsel were appointed by the  
4 court where the public defender was unable to accept the case  
5 as a result of a stated lack of resources. To facilitate such  
6 expenditure identification and reporting, the public defender,  
7 within 7 days of the appointment of such counsel by the court,  
8 shall report to the clerk of circuit court case-related  
9 information sufficient to permit the clerk to identify  
10 separately county expenditures on fees of such counsel. No  
11 county shall be required to submit any additional information  
12 to the commission on an annual or other basis in order to  
13 document or otherwise verify the expenditure information  
14 provided on the statement of conflict counsel fees form,  
15 except as provided in paragraph (c).

16 (b) Before September 30 of each year, the clerk of the  
17 circuit court in each county shall submit to the Justice  
18 Administrative Commission a report of conflict counsel  
19 expenses and costs for the previous local government fiscal  
20 year. Such report shall identify expenditures incurred by the  
21 county on expenses and costs of counsel appointed by the court  
22 pursuant to this section where such expenses and costs are  
23 taxed against the county by judgment of the court. Such report  
24 of expenditures shall be on a form prescribed by the  
25 commission in consultation with the Legislative Committee on  
26 Intergovernmental Relations and the Chief Financial Officer  
27 ~~Comptroller~~, provided that such form shall at a minimum  
28 separately identify total county expenditures for witness fees  
29 and expenses, court reporter fees and costs, and defense  
30 counsel travel and per diem. Such form also shall provide for  
31 the separate reporting of total county expenditures on

1 attorney expenses and costs in cases in which other counsel  
2 were appointed by the court where the public defender was  
3 unable to accept the case as a result of a stated lack of  
4 resources. To facilitate such expenditure identification and  
5 reporting, the public defender, within 7 days of the  
6 appointment of such counsel by the court, shall report to the  
7 clerk of the circuit court case-related information sufficient  
8 to permit the clerk to identify separately county expenditures  
9 on expenses and costs of such counsel. No county shall be  
10 required to submit any additional information to the Justice  
11 Administrative Commission on an annual or other basis in order  
12 to document or otherwise verify the expenditure information  
13 provided on the report of conflict counsel expenses and costs  
14 form, except as provided in paragraph (c).

15 Section 1931. Paragraph (b) of subsection (8) of  
16 section 932.7055, Florida Statutes, is amended to read:

17 932.7055 Disposition of liens and forfeited  
18 property.--

19 (8)

20 (b) The Department of Law Enforcement shall submit an  
21 annual report to the criminal justice committees of the House  
22 of Representatives and of the Senate compiling the information  
23 and data related in the semiannual reports submitted by the  
24 law enforcement agencies. The annual report shall also  
25 contain a list of law enforcement agencies which have failed  
26 to meet the reporting requirements and a summary of any action  
27 which has been taken against the noncomplying agency by the  
28 Office of the Chief Financial Officer ~~Comptroller~~.

29 Section 1932. Section 932.707, Florida Statutes, is  
30 amended to read:

31

1           932.707 Penalty for noncompliance with reporting  
2 requirements.--Any seizing agency which fails to comply with  
3 the reporting requirements as described in s. 932.7055(8)(a),  
4 is subject to a civil fine of \$5,000 payable to the General  
5 Revenue Fund. However, such agency will not be subject to the  
6 fine if, within 60 days of receipt of written notification  
7 from the Department of Law Enforcement of the noncompliance  
8 with the reporting requirements of the Florida Contraband  
9 Forfeiture Act, the agency substantially complies with said  
10 requirements. The Department of Law Enforcement shall submit  
11 any substantial noncompliance to the Office of the Chief  
12 Financial Officer ~~Comptroller~~, which shall be responsible for  
13 the enforcement of this section.

14           Section 1933. Subsection (1) of section 938.27,  
15 Florida Statutes, is amended to read:

16           938.27 Judgment for costs on conviction.--

17           (1) In all criminal cases the costs of prosecution,  
18 including investigative costs incurred by law enforcement  
19 agencies, by fire departments for arson investigations, and by  
20 investigations of the ~~Division of Financial Investigations of~~  
21 ~~the~~ Department of Financial Services or the Office of  
22 Financial Institutions and Securities Regulation of the  
23 Financial Services Commission ~~Banking and Finance~~, if  
24 requested and documented by such agencies, shall be included  
25 and entered in the judgment rendered against the convicted  
26 person.

27           Section 1934. Section 939.13, Florida Statutes, is  
28 amended to read:

29           939.13 Power of Chief Financial Officer  
30 ~~Comptroller~~.--The Chief Financial Officer ~~Comptroller~~ may  
31 audit and approve or disapprove any claim or any item thereof

1 against the state for costs, fees or expenses of criminal  
2 cases prosecuted in the name of the state, and for which the  
3 state is liable, if the Chief Financial Officer ~~Comptroller~~ is  
4 satisfied that the same is legal, just, necessary and correct  
5 or otherwise, and may prescribe forms and methods for the  
6 same. The Chief Financial Officer ~~Comptroller~~ shall not  
7 dispense with any of the requirements of law relative to the  
8 auditing and payment of such accounts, but may prescribe  
9 additional requirements.

10 Section 1935. Paragraph (h) of subsection (1) of  
11 section 943.031, Florida Statutes, is amended to read:

12 943.031 Florida Violent Crime and Drug Control  
13 Council.--The Legislature finds that there is a need to  
14 develop and implement a statewide strategy to address violent  
15 criminal activity and drug control efforts by state and local  
16 law enforcement agencies, including investigations of illicit  
17 money laundering. In recognition of this need, the Florida  
18 Violent Crime and Drug Control Council is created within the  
19 department. The council shall serve in an advisory capacity to  
20 the department.

21 (1) MEMBERSHIP.--The council shall consist of 14  
22 members, as follows:

23 (h) The Chief Financial Officer ~~Comptroller~~, or a  
24 designate.

25  
26 The Governor, when making appointments under this subsection,  
27 must take into consideration representation by geography,  
28 population, ethnicity, and other relevant factors to ensure  
29 that the membership of the council is representative of the  
30 state at large. Designates appearing on behalf of a council  
31 member who is unable to attend a meeting of the council are

1 empowered to vote on issues before the council to the same  
2 extent the designating council member is so empowered.

3 Section 1936. Subsection (2) of section 943.032,  
4 Florida Statutes, is amended to read:

5 943.032 Financial Crime Analysis Center and Financial  
6 Transaction Database.--

7 (2) The department shall compile information and data  
8 available from financial transaction reports required to be  
9 submitted by state or federal law that are provided to the  
10 Department of Financial Services, to the Office of Financial  
11 Institutions and Securities Regulation of the Financial  
12 Services Commission ~~Banking and Finance~~, to the Department of  
13 Revenue, or to which the department otherwise has access.  
14 Information and data so received shall be utilized by the  
15 department in the Financial Transaction Database. The  
16 department shall implement a system utilizing the database  
17 that allows data review and processing to reveal patterns,  
18 trends, and correlations that are indicative of money  
19 laundering or other financial transactions indicative of  
20 criminal activity. The department shall, in consultation with  
21 the Department of Financial Services, the Office of Financial  
22 Institutions and Securities Regulation of the Financial  
23 Services Commission, ~~Banking and Finance~~ and the Department of  
24 Revenue, establish the methods and parameters by which  
25 information and data received by such agencies ~~the Department~~  
26 ~~of Banking and Finance or the Department of Revenue~~ are  
27 transferred to the department for inclusion in the database.  
28 Information developed in or through the use of the database  
29 shall be made available to law enforcement agencies and  
30 prosecutors in this state in a manner defined by the  
31 department and as allowed by state or federal law or

1 regulation. All information contained in the database shall  
2 be considered "active criminal intelligence" or "active  
3 criminal investigative information" as defined in s. 119.011.

4 Section 1937. Subsections (3) and (4) of section  
5 944.516, Florida Statutes, are amended to read:

6 944.516 Money or other property received for personal  
7 use or benefit of inmate; deposit; disposition of unclaimed  
8 trust funds.--The Department of Corrections shall protect the  
9 financial interest of the state with respect to claims which  
10 the state may have against inmates in state institutions under  
11 its supervision and control and shall administer money and  
12 other property received for the personal benefit of such  
13 inmates. In carrying out the provisions of this section, the  
14 department may delegate any of its enumerated powers and  
15 duties affecting inmates of an institution to the warden or  
16 regional director who shall personally, or through designated  
17 employees of his or her personal staff under his or her direct  
18 supervision, exercise such powers or perform such duties.

19 (3) Moneys received by the department in payment of  
20 claims of the state against inmates shall be transmitted to  
21 the Chief Financial Officer ~~Treasurer~~ for deposit into the  
22 General Revenue Fund.

23 (4) Upon the death of any inmate in an institution  
24 affected by the provisions of this section, any unclaimed  
25 money held for the inmate in trust by the department or by the  
26 Chief Financial Officer ~~Treasurer~~ shall be applied first to  
27 the payment of any unpaid state claim against the inmate, and  
28 any balance remaining unclaimed for a period of 1 year shall  
29 escheat to the state as unclaimed funds held by fiduciaries.

30 Section 1938. Section 946.33, Florida Statutes, is  
31 amended to read:

1           946.33 Disbursements from fund.--The funds in the  
2 Correctional Work Program Trust Fund shall be deposited in the  
3 State Treasury and paid out only on warrants drawn by the  
4 Chief Financial Officer ~~Comptroller~~, duly approved by the  
5 Department of Corrections. The department shall maintain all  
6 necessary records and accounts relative to such funds.

7           Section 1939. Subsection (2) of section 946.509,  
8 Florida Statutes, is amended to read:

9           946.509 Insurance of property leased or acquired by  
10 the corporation.--

11           (2) Coverage under the State Risk Management Trust  
12 Fund of property leased to or otherwise acquired by the  
13 corporation shall be secured and maintained through the  
14 existing policy and account of the Department of Corrections  
15 with the Division of Risk Management of the Department of  
16 Financial Services ~~Insurance~~. All matters, including premium  
17 calculations, assessments and payments, retrospective premium  
18 adjustments, reporting requirements, and other requirements,  
19 concerning coverage of such property under the State Risk  
20 Management Trust Fund shall be conducted as if all such  
21 property were owned solely by the department. Except as  
22 required by chapter 284, if the corporation finds that it is  
23 more economical to do so, the corporation may secure private  
24 insurance coverage on all or a portion of the activities of or  
25 properties used by the corporation. If coverage through the  
26 State Risk Management Trust Fund is not secured, the  
27 corporation must present documentation of insurance coverage  
28 to the Division of Risk Management equal to the coverage that  
29 could otherwise be provided by the State Risk Management Trust  
30 Fund.

31

1           Section 1940. Section 946.5095, Florida Statutes, is  
2 amended to read:

3           946.5095 Elimination of hazardous  
4 conditions.--Pursuant to the applicable provisions of part I  
5 of chapter 284, whenever state-insured property leased to or  
6 otherwise held by the corporation is inspected by the Division  
7 of Risk Management of the Department of Financial Services and  
8 any condition is found to exist which, in the opinion of the  
9 division, is hazardous from the standpoint of destruction by  
10 fire or other insurable causes, the corporation shall either  
11 promptly repair the property to eliminate any observed hazard  
12 or otherwise promptly remove the hazardous condition at its  
13 own expense.

14           Section 1941. Section 946.510, Florida Statutes, is  
15 amended to read:

16           946.510 Insurance by Division of Risk  
17 Management.--Pursuant to the applicable provisions of chapter  
18 284, the Division of Risk Management of the Department of  
19 Financial Services ~~Insurance~~ is authorized to insure the  
20 corporation under the same general terms and conditions as the  
21 Department of Corrections was insured by the division prior to  
22 the corporation leasing the correctional work programs as  
23 authorized by this chapter.

24           Section 1942. Section 946.517, Florida Statutes, is  
25 amended to read:

26           946.517 Corporation records.--Corporation records are  
27 public records; however, proprietary confidential business  
28 information shall be confidential and exempt from the  
29 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
30 Constitution. However, the Legislature, the Chief Financial  
31 Officer ~~Comptroller~~, and the Governor, pursuant to their

1 oversight and auditing functions, shall have access to all  
2 proprietary confidential business information upon request and  
3 without subpoena and shall retain the confidentiality of  
4 information so received. "Proprietary confidential business  
5 information" means information regardless of form or  
6 characteristics, that is owned or controlled by the  
7 corporation; is intended to be and is treated by the  
8 corporation as private and the disclosure of the information  
9 would cause harm to the corporation's business operations; has  
10 not been disclosed unless disclosed pursuant to a statutory  
11 provision, an order of a court or administrative body, a  
12 legislative proceeding pursuant to s. 5, Art. III of the State  
13 Constitution, or a private agreement that provides that the  
14 information may be released to the public; and, which is  
15 information regarding:

16 (1) Internal auditing controls and reports of internal  
17 auditors.

18 (2) Matters reasonably encompassed in privileged  
19 attorney-client communications.

20 (3) Security measures, systems, or procedures.

21 (4) Information concerning bids or other contractual  
22 data, banking records, and credit agreements, the disclosure  
23 of which would impair the efforts of the corporation to  
24 contract for goods or services on favorable terms.

25 (5) Information relating to private contractual data,  
26 the disclosure of which would impair the competitive interest  
27 of the provider of the information.

28 (6) Corporate officer, employee personnel, or inmate  
29 worker information unrelated to compensation, duties,  
30 qualifications, or responsibilities.

31

1           Section 1943. Subsections (1) and (2) of section  
2 946.522, Florida Statutes, are amended to read:

3           946.522 Prison Industries Trust Fund.--

4           (1) The Prison Industries Trust Fund is created, to be  
5 administered by the Department of Financial Services ~~Banking~~  
6 ~~and Finance~~. The trust fund shall consist of moneys authorized  
7 to be deducted pursuant to 18 U.S.C. s. 1761(c) and the  
8 applicable federal guidelines, to be appropriated by the  
9 Legislature, and moneys deposited by the corporation  
10 authorized under this part to manage and operate correctional  
11 work programs. The appropriated funds shall be used by the  
12 corporation for purposes of construction or renovation of its  
13 facilities or for the expansion or establishment of  
14 correctional work programs as described in this part or for  
15 prison industries enhancement (PIE) programs as authorized  
16 under s. 946.523.

17           (2) The funds must be deposited in the State Treasury  
18 and may be paid out only on warrants drawn by the Chief  
19 Financial Officer ~~Comptroller~~ upon receipt of a corporate  
20 resolution that has been duly authorized by the board of  
21 directors of the corporation authorized under this part to  
22 manage and operate correctional work programs. The corporation  
23 shall maintain all necessary records and accounts relative to  
24 such funds.

25           Section 1944. Paragraph (f) of subsection (3) of  
26 section 946.525, Florida Statutes, is amended to read:

27           946.525 Participation by the corporation in the state  
28 group health insurance and prescription drug programs.--

29           (3) If the Department of Management Services  
30 determines that the corporation is eligible to enroll, the  
31 corporation must agree to the following terms and conditions:

1 (f) If the corporation fails to make the payments  
2 required by this section to fully reimburse the state, the  
3 Department of Revenue or the Department of Financial Services  
4 ~~Banking and Finance~~ shall, upon the request of the Department  
5 of Management Services, deduct the amount owed by the employer  
6 from any funds to be distributed by it to the corporation. The  
7 amounts so deducted shall be transferred to the Department of  
8 Management Services for further distribution to the trust  
9 funds in accordance with this chapter.

10 Section 1945. Subsection (1) of section 947.12,  
11 Florida Statutes, is amended to read:

12 947.12 Members, employees, expenses.--

13 (1) The members of the commission and its employees  
14 shall be reimbursed for travel expenses as provided in s.  
15 112.061. All bills for expenses shall be properly receipted,  
16 audited, and approved and forwarded to the Chief Financial  
17 Officer ~~Comptroller~~ and shall be paid in a manner and form as  
18 the bills for the expenses of the several departments of the  
19 state government are paid. All expenses, including salaries  
20 and other compensation, shall be paid from the General Revenue  
21 Fund and within the appropriation as fixed therefor by the  
22 Legislature. Such expenses shall be paid by the Chief  
23 Financial Officer ~~Treasurer~~ upon proper warrants ~~issued by the~~  
24 ~~Comptroller of the state~~, drawn upon vouchers and requisitions  
25 approved by the commission, ~~and signed by the Comptroller.~~

26 Section 1946. Subsection (8) of section 950.002,  
27 Florida Statutes, is amended to read:

28 950.002 County work camps.--

29 (8) Pursuant to the applicable provisions of chapter  
30 284, the Division of Risk Management of the Department of  
31 Financial Services ~~Insurance~~ is authorized to insure any

1 county work camp facility established pursuant to this act  
2 under the same general terms and conditions as the Department  
3 of Corrections is insured by the division for any of its  
4 comparable work camps.

5 Section 1947. Paragraph (b) of subsection (1) of  
6 section 957.04, Florida Statutes, is amended to read:

7 957.04 Contract requirements.--

8 (1) A contract entered into under this chapter for the  
9 operation of private correctional facilities shall maximize  
10 the cost savings of such facilities and shall:

11 (b) Indemnify the state and the department, including  
12 their officials and agents, against any and all liability,  
13 including, but not limited to, civil rights liability. Proof  
14 of satisfactory insurance is required in an amount to be  
15 determined by the commission, following consultation with the  
16 Division of Risk Management of the Department of Financial  
17 Services ~~Insurance~~. Not less than 30 days prior to the  
18 release of each request for proposals by the commission, the  
19 commission shall request the written recommendation of the  
20 division regarding indemnification of the state and the  
21 department under this paragraph. Within 15 days after such  
22 request, the division shall provide a written recommendation  
23 to the commission regarding the amount and manner of such  
24 indemnification. The commission shall adopt the division's  
25 recommendation unless, based on substantial competent  
26 evidence, the commission determines a different amount and  
27 manner of indemnification is sufficient.

28 Section 1948. Paragraph (a) of subsection (6) and  
29 subsection (8) of section 985.406, Florida Statutes, are  
30 amended to read:

31

1           985.406 Juvenile justice training academies  
2 established; Juvenile Justice Standards and Training  
3 Commission created; Juvenile Justice Training Trust Fund  
4 created.--

5           (6) SCHOLARSHIPS AND STIPENDS.--

6           (a) By rule, the commission shall establish criteria  
7 to award scholarships or stipends to qualified juvenile  
8 justice personnel who are residents of the state who want to  
9 pursue a bachelor's or associate in arts degree in juvenile  
10 justice or a related field. The department shall handle the  
11 administration of the scholarship or stipend. The Department  
12 of Education shall handle the notes issued for the payment of  
13 the scholarships or stipends. All scholarship and stipend  
14 awards shall be paid from the Juvenile Justice Training Trust  
15 Fund upon vouchers approved by the Department of Education and  
16 properly certified by the Chief Financial Officer ~~Comptroller~~.  
17 Prior to the award of a scholarship or stipend, the juvenile  
18 justice employee must agree in writing to practice her or his  
19 profession in juvenile justice or a related field for 1 month  
20 for each month of grant or to repay the full amount of the  
21 scholarship or stipend together with interest at the rate of 5  
22 percent per annum over a period not to exceed 10 years.  
23 Repayment shall be made payable to the state for deposit into  
24 the Juvenile Justice Training Trust Fund.

25           (8) PARTICIPATION OF CERTAIN PROGRAMS IN THE STATE  
26 RISK MANAGEMENT TRUST FUND.--Pursuant to s. 284.30, the  
27 Division of Risk Management of the Department of Financial  
28 Services ~~Insurance~~ is authorized to insure a private agency,  
29 individual, or corporation operating a state-owned training  
30 school under a contract to carry out the purposes and  
31 responsibilities of any program of the department. The

1 coverage authorized herein shall be under the same general  
2 terms and conditions as the department is insured for its  
3 responsibilities under chapter 284.

4 Section 1949. Section 985.409, Florida Statutes, is  
5 amended to read:

6 985.409 Participation of certain programs in the State  
7 Risk Management Trust Fund.--Pursuant to s. 284.30, the  
8 Division of Risk Management of the Department of Financial  
9 Services ~~Insurance~~ is authorized to insure a private agency,  
10 individual, or corporation operating a state-owned training  
11 school under a contract to carry out the purposes and  
12 responsibilities of any program of the department. The  
13 coverage authorized herein shall be under the same general  
14 terms and conditions as the department is insured for its  
15 responsibilities under chapter 284.

16 Section 1950. Paragraph (g) of subsection (6) of  
17 section 1000.05, Florida Statutes, is amended to read:

18 1000.05 Discrimination against students and employees  
19 in the Florida K-20 public education system prohibited;  
20 equality of access required.--

21 (6) The functions of the Office of Equal Educational  
22 Opportunity of the Department of Education shall include, but  
23 are not limited to:

24 (g) Reporting to the Commissioner of Education any  
25 district school board, community college board of trustees, or  
26 state university board of trustees found to be out of  
27 compliance with rules of the State Board of Education adopted  
28 as required by paragraph (f) or paragraph (3)(d). To penalize  
29 the board, the State Board of Education shall:

30 1. Declare the educational agency ineligible for  
31 competitive state grants.

1           2. Notwithstanding the provisions of s. 216.192,  
2 direct the Chief Financial Officer ~~Comptroller~~ to withhold  
3 general revenue funds sufficient to obtain compliance from the  
4 educational agency.

5  
6 The educational agency shall remain ineligible and the funds  
7 shall not be paid until the agency comes into compliance or  
8 the State Board of Education approves a plan for compliance.

9           Section 1951. Paragraph (b) of subsection (4) of  
10 section 1001.23, Florida Statutes, is amended to read:

11           1001.23 Specific powers and duties of the Department  
12 of Education.--In addition to all other duties assigned to it  
13 by law or by rule of the State Board of Education, the  
14 department shall:

15           (4) After complying with the provisions of s. 257.37,  
16 the Department of Education may:

17           (b) Destroy general correspondence that is over 3  
18 years old; records of bills, accounts, vouchers, and  
19 requisitions that are over 5 years old and copies of which  
20 have been filed with the Chief Financial Officer ~~Comptroller~~;  
21 and other records, papers, and documents over 3 years old that  
22 do not serve as part of an agreement or understanding and do  
23 not have value as permanent records.

24           Section 1952. Paragraph (b) of subsection (4) of  
25 section 1002.36, Florida Statutes, is amended to read:

26           1002.36 Florida School for the Deaf and the Blind.--

27           (4) BOARD OF TRUSTEES.--

28           (b) The board of trustees shall elect a chair  
29 annually. The trustees shall be reimbursed for travel expenses  
30 as provided in s. 112.061, the accounts of which shall be paid  
31

1 by the Chief Financial Officer ~~Treasurer~~ upon itemized  
2 vouchers duly approved by the chair.

3 Section 1953. Paragraph (g) of subsection (6) of  
4 section 1002.38, Florida Statutes, is amended to read:

5 1002.38 Opportunity Scholarship Program.--

6 (6) OPPORTUNITY SCHOLARSHIP FUNDING AND PAYMENT.--

7 (g) Upon proper documentation reviewed and approved by  
8 the Department of Education, the Chief Financial Officer  
9 ~~Comptroller~~ shall make opportunity scholarship payments in  
10 four equal amounts no later than September 1, November 1,  
11 February 1, and April 1 of each academic year in which the  
12 opportunity scholarship is in force. The initial payment shall  
13 be made after Department of Education verification of  
14 admission acceptance, and subsequent payments shall be made  
15 upon verification of continued enrollment and attendance at  
16 the private school. Payment must be by individual warrant made  
17 payable to the student's parent and mailed by the Department  
18 of Education to the private school of the parent's choice, and  
19 the parent shall restrictively endorse the warrant to the  
20 private school.

21 Section 1954. Paragraph (f) of subsection (6) of  
22 section 1002.39, Florida Statutes, is amended to read:

23 1002.39 The John M. McKay Scholarships for Students  
24 with Disabilities Program.--There is established a program  
25 that is separate and distinct from the Opportunity Scholarship  
26 Program and is named the John M. McKay Scholarships for  
27 Students with Disabilities Program, pursuant to this section.

28 (6) SCHOLARSHIP FUNDING AND PAYMENT.--

29 (f) Upon proper documentation reviewed and approved by  
30 the Department of Education, the Chief Financial Officer  
31 ~~Comptroller~~ shall make scholarship payments in four equal

1 amounts no later than September 1, November 1, February 1, and  
2 April 15 of each academic year in which the scholarship is in  
3 force. The initial payment shall be made after Department of  
4 Education verification of admission acceptance, and subsequent  
5 payments shall be made upon verification of continued  
6 enrollment and attendance at the private school. Payment must  
7 be by individual warrant made payable to the student's parent  
8 and mailed by the Department of Education to the private  
9 school of the parent's choice, and the parent shall  
10 restrictively endorse the warrant to the private school for  
11 deposit into the account of the private school.

12 Section 1955. Paragraph (b) of subsection (3) of  
13 section 1003.48, Florida Statutes, is amended to read:

14 1003.48 Instruction in operation of motor vehicles.--  
15 (3)

16 (b) For the purpose of financing the Driver Education  
17 Program in the secondary schools, there shall be levied an  
18 additional 50 cents per year to the driver's license fee  
19 required by s. 322.21. The additional fee shall be promptly  
20 remitted to the Department of Highway Safety and Motor  
21 Vehicles, which shall transmit the fee to the Chief Financial  
22 Officer ~~Treasurer~~ to be deposited in the General Revenue Fund.

23 Section 1956. Subsection (1) of section 1004.30,  
24 Florida Statutes, is amended to read:

25 1004.30 University health services support  
26 organization; confidentiality of information.--

27 (1) All meetings of a governing board of a university  
28 health services support organization and all university health  
29 services support organization records shall be open and  
30 available to the public in accordance with s. 286.011 and s.  
31 24(b), Art. I of the State Constitution and chapter 119 and s.

1 24(a), Art. I of the State Constitution, respectively, unless  
2 made confidential or exempt by law. Records required by the  
3 Department of Financial Services or the Office of Insurance  
4 Regulation of the Financial Services Commission ~~Insurance~~ to  
5 discharge their ~~its~~ duties shall be made available to the  
6 department upon request.

7 Section 1957. Subsection (1) of section 1004.725,  
8 Florida Statutes, is amended to read:

9 1004.725 Expenditures for self-insurance services;  
10 special account.--

11 (1) The community college boards of trustees, singly  
12 or collectively, are authorized to contract with an  
13 administrator or service company approved ~~by the Department of~~  
14 ~~Insurance~~ pursuant to chapter 626 to provide self-insurance  
15 services, including, but not limited to, the evaluation,  
16 settlement, and payment of self-insurance claims on behalf of  
17 the board of trustees or a consortium of boards of trustees.

18 Section 1958. Paragraph (c) of subsection (2) of  
19 section 1006.29, Florida Statutes, is amended to read:

20 1006.29 State instructional materials committees.--

21 (2)

22 (c) The district school board shall be reimbursed for  
23 the actual cost of substitute teachers for each workday that a  
24 member of its instructional staff is absent from his or her  
25 assigned duties for the purpose of rendering service to the  
26 state instructional materials committee. In addition,  
27 committee members shall be reimbursed for travel expenses and  
28 per diem in accordance with s. 112.061 for actual service in  
29 meetings of committees called by the commissioner. Payment of  
30 such travel expenses shall be made ~~by the Treasurer~~ from the  
31 appropriation for the administration of the instructional

1 materials program, on warrants to be drawn by the Chief  
2 Financial Officer ~~Comptroller~~ upon requisition approved by the  
3 commissioner.

4 Section 1959. Subsection (3) of section 1006.33,  
5 Florida Statutes, is amended to read:

6 1006.33 Bids or proposals; advertisement and its  
7 contents.--

8 (3) The department shall require each publisher or  
9 manufacturer of instructional materials who submits a bid  
10 under this part to deposit with the department such sum of  
11 money or certified check as may be determined by the  
12 department, the amount to be not less than \$500 and not more  
13 than \$2,500, according to the number of instructional  
14 materials covered by the bid, which deposit shall be forfeited  
15 to the state and placed in the General Revenue Fund if the  
16 bidder making the deposit fails or refuses to execute the  
17 contract and bond within 30 days after receipt of the contract  
18 in case his or her bid or proposal is accepted. The  
19 commissioner shall, upon determining that the deposit is  
20 correct and proper, transmit the deposit to the Chief  
21 Financial Officer ~~Treasurer~~, who shall deposit the funds for  
22 credit to the Textbook Bid Trust Fund and issue his or her  
23 official receipt.

24 Section 1960. Subsections (5) and (6) of section  
25 1006.34, Florida Statutes, are amended to read:

26 1006.34 Powers and duties of the commissioner and the  
27 department in selecting and adopting instructional  
28 materials.--

29 (5) RETURN OF DEPOSITS.--

30 (a) The successful bidder shall be notified by  
31 registered mail of the award of contract and shall, within 30

1 days after receipt of the contract, execute the proper  
2 contract and post the required bond. When the bond and  
3 contract have been executed, the department shall notify the  
4 Chief Financial Officer ~~Comptroller~~ and request that a warrant  
5 be issued against the Textbook Bid Trust Fund payable to the  
6 successful bidder in the amount deposited pursuant to this  
7 part. The Chief Financial Officer ~~Comptroller~~ shall issue and  
8 forward the warrant to the department for distribution to the  
9 bidder.

10 (b) At the same time or prior thereto, the department  
11 shall inform the Chief Financial Officer ~~Comptroller~~ of the  
12 names of the unsuccessful bidders. Upon receipt of such  
13 notice, the Chief Financial Officer ~~Comptroller~~ shall issue  
14 warrants against the Textbook Bid Trust Fund payable to the  
15 unsuccessful bidders in the amounts deposited pursuant to this  
16 part and shall forward the warrants to the department for  
17 distribution to the unsuccessful bidders.

18 (c) One copy of each contract and an original of each  
19 bid, whether accepted or rejected, shall be preserved with the  
20 department for at least 3 years after the termination of the  
21 contract.

22 (6) DEPOSITS FORFEITED.--If any successful bidder  
23 fails or refuses to execute contract and bond within 30 days  
24 after receipt of the contract, the cash deposit shall be  
25 forfeited to the state and placed by the Chief Financial  
26 Officer ~~Treasurer~~ in the General Revenue Fund.

27 Section 1961. Subsection (3) of section 1006.39,  
28 Florida Statutes, is amended to read:

29 1006.39 Production and dissemination of educational  
30 materials and products by department.--

31

1           (3) All proceeds from the sale of educational  
2 materials and products shall be remitted to the Chief  
3 Financial Officer ~~Treasurer~~ and shall be kept in a separate  
4 fund to be known as the "Educational Media and Technology  
5 Trust Fund" and, when properly budgeted as approved by the  
6 Legislature and the Executive Office of the Governor, used to  
7 pay the cost of producing and disseminating educational  
8 materials and products.

9           Section 1962. Subsection (4) of section 1008.33,  
10 Florida Statutes, is amended to read:

11           1008.33 Authority to enforce public school  
12 improvement.--It is the intent of the Legislature that all  
13 public schools be held accountable for students performing at  
14 acceptable levels. A system of school improvement and  
15 accountability that assesses student performance by school,  
16 identifies schools in which students are not making adequate  
17 progress toward state standards, institutes appropriate  
18 measures for enforcing improvement, and provides rewards and  
19 sanctions based on performance shall be the responsibility of  
20 the State Board of Education.

21           (4) The State Board of Education may require the  
22 Department of Education or Chief Financial Officer ~~Comptroller~~  
23 to withhold any transfer of state funds to the school district  
24 if, within the timeframe specified in state board action, the  
25 school district has failed to comply with the action ordered  
26 to improve the district's low-performing schools. Withholding  
27 the transfer of funds shall occur only after all other  
28 recommended actions for school improvement have failed to  
29 improve performance. The State Board of Education may impose  
30 the same penalty on any district school board that fails to  
31

1 develop and implement a plan for assistance and intervention  
2 for low-performing schools as specified in s. 1001.42(16)(c).

3 Section 1963. Subsection (2) of section 1009.265,  
4 Florida Statutes, is amended to read:

5 1009.265 State employee fee waivers.--

6 (2) The Chief Financial Officer ~~Comptroller~~, in  
7 cooperation with the community colleges and state  
8 universities, shall identify and implement ways to ease the  
9 administrative burden to community colleges and state  
10 universities, including, but not limited to, providing easier  
11 access to verify state employment.

12 Section 1964. Section 1009.54, Florida Statutes, is  
13 amended to read:

14 1009.54 Critical Teacher Shortage Program.--There is  
15 created the Critical Teacher Shortage Program. Funds  
16 appropriated by the Legislature for the program shall be  
17 deposited in the State Student Financial Assistance Trust  
18 Fund. The Chief Financial Officer ~~Comptroller~~ shall authorize  
19 expenditures from the trust fund upon receipt of vouchers  
20 approved by the Department of Education for the critical  
21 teacher shortage programs established in s. 1009.57, s.

22 1009.58, or s. 1009.59. The Chief Financial Officer  
23 ~~Comptroller~~ shall also authorize expenditures from the trust  
24 fund for the "Chappie" James Most Promising Teacher  
25 Scholarship Loan Program and the Critical Teacher Shortage  
26 Scholarship Loan Program recipients who participated in these  
27 programs prior to July 1, 1993, provided that such students  
28 continue to meet the renewal eligibility requirements that  
29 were in effect at the time that their original awards were  
30 made. Students who participated in the "Chappie" James Most  
31 Promising Teacher Scholarship Loan Program prior to July 1,

1 1993, shall not have their awards reduced as a result of the  
2 addition of new students to the program. All scholarship loan  
3 repayments pursuant to s. 1009.57 shall be deposited into the  
4 State Student Financial Assistance Trust Fund. Any remaining  
5 balance at the end of any fiscal year that has been allocated  
6 to the program shall remain in the trust fund and be available  
7 for the individual programs in future years.

8 Section 1965. Subsection (4) of section 1009.56,  
9 Florida Statutes, is amended to read:

10 1009.56 Seminole and Miccosukee Indian Scholarships.--

11 (4) The amount of the scholarship shall be determined  
12 by the Seminole Tribe of Florida or the Miccosukee Tribe of  
13 Indians of Florida, for its respective applicants, within the  
14 amount of funds appropriated for this purpose. The amount  
15 shall be prorated accordingly for part-time students. At the  
16 beginning of each semester or quarter, the department shall  
17 certify the name of each scholarship holder eligible to  
18 receive funds for that registration period to the Chief  
19 Financial Officer ~~Comptroller~~, who shall draw a warrant in  
20 favor of each scholarship recipient. Each recipient shall be  
21 eligible to have the scholarship renewed from year to year,  
22 provided all academic and other requirements of the college or  
23 university and rules established by the State Board of  
24 Education are met.

25 Section 1966. Subsection (5) of section 1009.66,  
26 Florida Statutes, is amended to read:

27 1009.66 Nursing Student Loan Forgiveness Program.--

28 (5) There is created the Nursing Student Loan  
29 Forgiveness Trust Fund to be administered by the Department of  
30 Health pursuant to this section and s. 1009.67 and department  
31 rules. The Chief Financial Officer ~~Comptroller~~ shall authorize

1 expenditures from the trust fund upon receipt of vouchers  
2 approved by the Department of Health. All moneys collected  
3 from the private health care industry and other private  
4 sources for the purposes of this section shall be deposited  
5 into the Nursing Student Loan Forgiveness Trust Fund. Any  
6 balance in the trust fund at the end of any fiscal year shall  
7 remain therein and shall be available for carrying out the  
8 purposes of this section and s. 1009.67.

9           Section 1967. Effective July 1, 2003, subsection (7)  
10 of section 1009.66, Florida Statutes, as amended by chapters  
11 2002-400 and 2002-402, Laws of Florida, is amended to read:

12           1009.66 Nursing Student Loan Forgiveness Program.--

13           (7)(a) Funds contained in the Nursing Student Loan  
14 Forgiveness Trust Fund which are to be used for loan  
15 forgiveness for those nurses employed by hospitals, birth  
16 centers, and nursing homes must be matched on a  
17 dollar-for-dollar basis by contributions from the employing  
18 institutions, except that this provision shall not apply to  
19 state-operated medical and health care facilities, public  
20 schools, county health departments, federally sponsored  
21 community health centers, teaching hospitals as defined in s.  
22 408.07, family practice teaching hospitals as defined in s.  
23 395.805, or specialty hospitals for children as used in s.  
24 409.9119. An estimate of the annual trust fund dollars shall  
25 be made at the beginning of the fiscal year based on historic  
26 expenditures from the trust fund. Applicant requests shall be  
27 reviewed on a quarterly basis, and applicant awards shall be  
28 based on the following priority of employer until all such  
29 estimated trust funds are awarded: state-operated medical and  
30 health care facilities; public schools; county health  
31 departments; federally sponsored community health centers;

1 teaching hospitals as defined in s. 408.07; family practice  
2 teaching hospitals as defined in s. 395.805; specialty  
3 hospitals for children as used in s. 409.9119; and other  
4 hospitals, birth centers, and nursing homes.

5 (b) All Nursing Student Loan Forgiveness Trust Fund  
6 moneys shall be invested pursuant to s. 17.61 ~~s. 18.125~~.  
7 Interest income accruing to that portion of the trust fund not  
8 matched shall increase the total funds available for loan  
9 forgiveness and scholarships. Pledged contributions shall not  
10 be eligible for matching prior to the actual collection of the  
11 total private contribution for the year.

12 Section 1968. Subsections (2) and (3) of section  
13 1009.72, Florida Statutes, are amended to read:

14 1009.72 Jose Marti Scholarship Challenge Grant  
15 Program.--

16 (2) Funds appropriated by the Legislature for the  
17 program shall be deposited in the State Student Financial  
18 Assistance Trust Fund. The Chief Financial Officer ~~Comptroller~~  
19 shall authorize expenditures from the trust fund upon receipt  
20 of vouchers approved by the Department of Education. All  
21 moneys collected from private sources for the purposes of this  
22 section shall be deposited into the trust fund. Any balance in  
23 the trust fund at the end of any fiscal year that has been  
24 allocated to the program shall remain therein and shall be  
25 available for carrying out the purposes of the program.

26 (3) The Legislature shall designate funds to be  
27 transferred to the trust fund for the program from the General  
28 Revenue Fund. Such funds shall be divided into challenge  
29 grants to be administered by the Department of Education. All  
30 appropriated funds deposited into the trust fund for the  
31 program shall be invested pursuant to the provisions of s.

1 17.61 ~~s. 18.125~~. Interest income accruing to that portion of  
2 the funds that are allocated to the program in the trust fund  
3 and not matched shall increase the total funds available for  
4 the program.

5 Section 1969. Subsections (2) and (3) of section  
6 1009.73, Florida Statutes, are amended to read:

7 1009.73 Mary McLeod Bethune Scholarship Program.--

8 (2) Funds appropriated by the Legislature for the  
9 program shall be deposited in the State Student Financial  
10 Assistance Trust Fund. The Chief Financial Officer ~~Comptroller~~  
11 shall authorize expenditures from the trust fund upon receipt  
12 of vouchers approved by the Department of Education. The  
13 Department of Education shall receive all moneys collected  
14 from private sources for the purposes of this section and  
15 shall deposit such moneys into the trust fund. Notwithstanding  
16 the provisions of s. 216.301 and pursuant to s. 216.351, any  
17 balance in the trust fund at the end of any fiscal year that  
18 has been allocated to the program shall remain in the trust  
19 fund and shall be available for carrying out the purposes of  
20 the program.

21 (3) The Legislature shall appropriate moneys to the  
22 trust fund for the program from the General Revenue Fund. Such  
23 moneys shall be applied to scholarships to be administered by  
24 the Department of Education. All moneys deposited into the  
25 trust fund for the program shall be invested pursuant to the  
26 provisions of s. 17.61 ~~s. 18.125~~. Interest income accruing to  
27 the program shall be expended to increase the total moneys  
28 available for scholarships.

29 Section 1970. Section 1009.765, Florida Statutes, is  
30 amended to read:

31

1           1009.765 Ethics in Business scholarships for community  
2 colleges and independent postsecondary educational  
3 institutions.--When the Department of Insurance or the Office  
4 of Insurance Regulation of the Financial Services Commission  
5 receives a \$6 million settlement as specified in the Consent  
6 Order of the Treasurer and Insurance Commissioner, case number  
7 18900-96-c, that portion of the \$6 million not used to satisfy  
8 the requirements of section 18 of the Consent Order must be  
9 transferred from the Insurance ~~Commissioner's~~ Regulatory Trust  
10 Fund to the State Student Financial Assistance Trust Fund is  
11 appropriated from the State Student Financial Assistance Trust  
12 Fund to provide Ethics in Business scholarships to students  
13 enrolled in public community colleges and independent  
14 postsecondary educational institutions eligible to participate  
15 in the William L. Boyd, IV, Florida Resident Access Grant  
16 Program under s. 1009.89. The funds shall be allocated to  
17 institutions for scholarships in the following ratio:  
18 Two-thirds for community colleges and one-third for eligible  
19 independent institutions. The Department of Education shall  
20 administer the scholarship program for students attending  
21 community colleges and independent institutions. These funds  
22 must be allocated to institutions that provide an equal amount  
23 of matching funds generated by private donors for the purpose  
24 of providing Ethics in Business scholarships. Public funds may  
25 not be used to provide the match, nor may funds collected for  
26 other purposes. Notwithstanding any other provision of law,  
27 the State Board of Administration shall have the authority to  
28 invest the funds appropriated under this section. The  
29 Department of Education may adopt rules for administration of  
30 the program.  
31

1           Section 1971. Subsection (8) of section 1009.77,  
2 Florida Statutes, is amended to read:

3           1009.77 Florida Work Experience Program.--

4           (8) Funds appropriated by the Legislature for the  
5 Florida Work Experience Program shall be deposited in the  
6 State Student Financial Assistance Trust Fund. The Chief  
7 Financial Officer ~~Comptroller~~ shall authorize expenditures  
8 from the trust fund upon receipt of vouchers approved by the  
9 Department of Education. Any balance therein at the end of any  
10 fiscal year that has been allocated to the program shall  
11 remain therein and shall be available for carrying out the  
12 purposes of the program.

13           Section 1972. Paragraph (d) of subsection (5) of  
14 section 1009.971, Florida Statutes, is amended to read:

15           1009.971 Florida Prepaid College Board.--

16           (5) FLORIDA PREPAID COLLEGE BOARD; CONTRACTUAL  
17 SERVICES.--The board shall solicit proposals and contract,  
18 pursuant to s. 287.057, for:

19           (d) Investment managers to provide investment  
20 portfolios for the prepaid program or the savings program.  
21 Investment managers shall be limited to authorized insurers as  
22 defined in s. 624.09, banks as defined in s. 658.12,  
23 associations as defined in s. 665.012, authorized Securities  
24 and Exchange Commission investment advisers, and investment  
25 companies as defined in the Investment Company Act of 1940.  
26 All investment managers shall have their principal place of  
27 business and corporate charter located and registered in the  
28 United States. In addition, each investment manager shall  
29 agree to meet the obligations of the board to qualified  
30 beneficiaries if moneys in the fund fail to offset the  
31 obligations of the board as a result of imprudent investing by

1 such provider. Each authorized insurer shall evidence superior  
2 performance overall on an acceptable level of surety in  
3 meeting its obligations to its policyholders and other  
4 contractual obligations. Only qualified public depositories  
5 approved by the Chief Financial Officer ~~Insurance Commissioner~~  
6 ~~and Treasurer~~ shall be eligible for board consideration. Each  
7 investment company shall provide investment plans as specified  
8 within the request for proposals.

9  
10 The goals of the board in procuring such services shall be to  
11 provide all purchasers and benefactors with the most secure,  
12 well-diversified, and beneficially administered prepaid  
13 program or savings program possible, to allow all qualified  
14 firms interested in providing such services equal  
15 consideration, and to provide such services to the state at no  
16 cost and to the purchasers and benefactors at the lowest cost  
17 possible. Evaluations of proposals submitted pursuant to this  
18 subsection shall include, but not be limited to, fees and  
19 other costs that are charged to purchasers or benefactors that  
20 affect account values, or that impact the operational costs of  
21 the prepaid program or the savings program; past experience  
22 and past performance in providing the required services;  
23 financial history and current financial strength and capital  
24 adequacy to provide the required services; and capabilities  
25 and experience of the proposed personnel that will provide the  
26 required services.

27 Section 1973. Subsection (4) of section 1009.972,  
28 Florida Statutes, is amended to read:

29 1009.972 Florida Prepaid College Trust Fund.--

30 (4) Any balance contained within the trust fund, and  
31 within each fund in the trust fund, at the end of a fiscal

1 year shall remain therein and shall be available for carrying  
2 out the purposes of each respective program and the  
3 direct-support organization established pursuant to s.  
4 1009.983. Moneys contained within the trust fund shall be  
5 exempt from the investment requirements of s. 17.57 ~~s. 18.10~~.  
6 All funds deposited in the prepaid fund may be invested  
7 pursuant to s. 215.47. Any funds of a direct-support  
8 organization created pursuant to s. 1009.983 shall be exempt  
9 from the provisions of this section.

10 Section 1974. Subsection (4) of section 1010.56,  
11 Florida Statutes, is amended to read:

12 1010.56 Board of Administration to act as fiscal agent  
13 in issuance and sale of motor vehicle anticipation  
14 certificates.--

15 (4) The proceeds of any sale of original bonds or  
16 original certificates shall be deposited in the State Treasury  
17 to the credit of the particular construction account for which  
18 the original bonds or original certificates were issued and  
19 shall be under the direct control and supervision of the State  
20 Board of Education, and withdrawals from such construction  
21 accounts shall be made only upon warrants signed by the Chief  
22 Financial Officer ~~Comptroller~~ and drawn upon the Treasurer.  
23 Such warrants shall be issued by the Chief Financial Officer  
24 ~~Comptroller~~ only when the vouchers requesting such warrants  
25 are accompanied by the certificates of the State Board of  
26 Education to the effect that such withdrawals are proper  
27 expenditures for the cost of the particular construction  
28 account against which the requested warrants are to be drawn.

29 Section 1975. Section 1010.74, Florida Statutes, is  
30 amended to read:

31

1           1010.74 Educational Certification and Services Trust  
2 Fund.--The proceeds from the collection of certification fees,  
3 fines, penalties, and costs levied pursuant to s. 1012.59  
4 shall be remitted by the Department of Education to the Chief  
5 Financial Officer ~~Treasurer~~ for deposit into and disbursed  
6 from the "Educational Certification and Services Trust Fund"  
7 as re-created by chapter 99-31, Laws of Florida.

8           Section 1976. Section 1010.75, Florida Statutes, is  
9 amended to read:

10           1010.75 Teacher Certification Examination Trust  
11 Fund.--The proceeds for the certification examination fee  
12 levied pursuant to s. 1012.59 shall be remitted by the  
13 Department of Education to the Chief Financial Officer  
14 ~~Treasurer~~ for deposit into and disbursed for the "Teacher  
15 Certification Examination Trust Fund" as re-created by chapter  
16 99-28, Laws of Florida.

17           Section 1977. Subsection (2) of section 1011.10,  
18 Florida Statutes, is amended to read:

19           1011.10 Penalty.--

20           (2) Each member of any district school board voting to  
21 incur an indebtedness against the district school funds in  
22 excess of the expenditure allowed by law, or in excess of any  
23 appropriation as adopted in the original official budget or  
24 amendments thereto, or to approve or pay any illegal charge  
25 against the funds, and any chair of a district school board or  
26 district school superintendent who signs a warrant for payment  
27 of any such claim or bill of indebtedness against any of the  
28 funds shall be personally liable for the amount, and shall be  
29 guilty of malfeasance in office and subject to removal by the  
30 Governor. It shall be the duty of the Auditor General, other  
31 state officials, or independent certified public accountants

1 charged by law with the responsibility for auditing school  
2 accounts, upon discovering any such illegal expenditure or  
3 expenditures in excess of the appropriations in the budget as  
4 officially amended, to certify such fact to the Department of  
5 Financial Services ~~Banking and Finance~~, which thereupon shall  
6 verify such fact and it shall be the duty of the Department of  
7 Financial Services ~~Banking and Finance~~ to advise the  
8 Department of Legal Affairs thereof, and it shall be the duty  
9 of the Department of Legal Affairs to cause to be instituted  
10 and prosecuted, either through its office or through any state  
11 attorney, proceedings at law or in equity against such member  
12 or members of a district school board or district school  
13 superintendent. If either of the officers does not institute  
14 proceedings within 90 days after the audit has been certified  
15 to them by the Department of Financial Services ~~Banking and~~  
16 ~~Finance~~, any taxpayer may institute suit in his or her own  
17 name on behalf of the district.

18 Section 1978. Section 1011.17, Florida Statutes, is  
19 amended to read:

20 1011.17 School funds to be paid to Chief Financial  
21 Officer ~~Treasurer~~ or into depository.--

22 (1) Every tax collector or other person having moneys  
23 which by law go to any district school fund shall at least  
24 once each month pay the same over to the depository or  
25 depositories designated by the district school board for such  
26 purpose, and shall provide said board with confirmation of the  
27 deposit. Every officer having moneys which by law go to any  
28 state school fund shall pay the same to the Chief Financial  
29 Officer ~~Treasurer~~ of the state, and the Chief Financial  
30 Officer ~~Treasurer~~ shall see that these moneys are deposited to  
31 the credit of the proper state school fund.

1           (2) The district school board shall have the authority  
2 to designate that funds due it be placed for investment for  
3 its account with the State Board of Administration rather than  
4 be deposited, and said board may direct those persons having  
5 moneys due it or due any state school fund to pay out such  
6 funds to the State Board of Administration to make authorized  
7 investments for its account.

8           Section 1979. Paragraph (b) of subsection (6) of  
9 section 1011.18, Florida Statutes, is amended to read:

10           1011.18 School depositories; payments into and  
11 withdrawals from depositories.--

12           (6) EXEMPTION FOR SELF-INSURANCE PROGRAMS AND  
13 THIRD-PARTY ADMINISTERED EMPLOYEES' FRINGE BENEFIT PROGRAMS.--

14           (b) The district school board may contract with an  
15 insurance company or professional administrator who holds a  
16 valid certificate of authority issued by the Office of  
17 Insurance Regulation of the Financial Services Commission  
18 ~~Department of Insurance~~ to provide any or all services that a  
19 third-party administrator is authorized by law to perform.  
20 Pursuant to such contract, the district school board may  
21 advance or remit money to the administrator to be deposited in  
22 a designated special checking account for paying claims  
23 against the district school board under its self-insurance  
24 programs, and remitting premiums to the providers of insured  
25 benefits on behalf of the district school board and the  
26 participants in such programs, and otherwise fulfilling the  
27 obligations imposed upon the administrator by law and the  
28 contractual agreements between the district school board and  
29 the administrator. The special checking account shall be  
30 maintained in a designated district school depository. The  
31 district school board may replenish such account as often as

1 necessary upon the presentation by the service organization of  
2 documentation for claims or premiums due paid equal to the  
3 amount of the requested reimbursement. Such replenishment  
4 shall be made by a warrant signed by the chair of the district  
5 school board and countersigned by the district school  
6 superintendent. Such replenishment may be made by electronic,  
7 telephonic, or other medium, and each transfer shall be  
8 confirmed in writing and signed by the district school  
9 superintendent or his or her designee. The provisions of  
10 strict accountability of all funds and an annual audit by an  
11 independent certified public accountant as provided in s.  
12 1001.42(10)(k) shall apply to this subsection.

13 Section 1980. Section 1011.4105, Florida Statutes, is  
14 amended to read:

15 1011.4105 Transition from state accounting system  
16 (FLAIR) to university accounting system.--

17 (1) Universities and colleges under the supervision of  
18 the State Board of Education shall use the state accounting  
19 system (FLAIR) for fiscal year 2002-2003. The universities  
20 shall not be required to provide funds to the Department of  
21 Financial Services ~~Banking and Finance~~ for the utilization of  
22 FLAIR.

23 (2) Beginning with the 2003-2004 fiscal year, any  
24 university may transition from FLAIR to the university's  
25 accounting system.

26 (3) To accomplish the transition from FLAIR to a  
27 university's accounting system, the university board of  
28 trustees must submit to the State Board of Education a plan  
29 developed in cooperation with the ~~State Comptroller~~ (Chief  
30 Financial Officer). The plan must contain the actions the  
31 university will take, or has taken, to implement this

1 transition. The plan must provide time lines for completion of  
2 actions and the target date the university will have  
3 implemented and tested parallel systems with appropriate audit  
4 and internal controls in place that will enable the university  
5 to satisfactorily and timely perform all accounting and  
6 reporting functions required by state and federal law and  
7 rules of the State Board of Education.

8 (4) When a university is ready to transition from  
9 FLAIR to its own system, the State Board of Education shall  
10 verify that the system the university has implemented and  
11 tested is adequate for the university, the university has  
12 appropriate audit and internal controls in place, the  
13 university has the resources required to operate and maintain  
14 the system, and that the university and the ~~State Comptroller~~  
15 ~~(Chief Financial Officer)~~ are prepared to implement the  
16 transition. The State Board of Education shall submit to the  
17 Executive Office of the Governor and the chairs of the  
18 appropriations committees of the Senate and House of  
19 Representatives confirmation of this verification and the date  
20 the transition will be effective. Transition for any  
21 university shall not take place until after the State Board of  
22 Education has submitted this confirmation.

23 (5) The State Board of Education in cooperation with  
24 each university and the Department of Financial Services  
25 ~~Banking and Finance~~ shall develop a plan and establish the  
26 deadline for all universities to have completed the transition  
27 from FLAIR. The board shall submit a copy of this plan to the  
28 Executive Office of the Governor and the chairs of the  
29 appropriations committees of the Senate and House of  
30 Representatives.

31

1           Section 1981. Subsection (2) of section 1011.57,  
2 Florida Statutes, is amended to read:

3           1011.57 Florida School for the Deaf and the Blind;  
4 board of trustees; management flexibility.--

5           (2) Notwithstanding the provisions of s. 216.181 and  
6 pursuant to the provisions of s. 216.351, but subject to any  
7 requirements imposed in the General Appropriations Act, no  
8 lump-sum plan is required to implement the special categories,  
9 program categories, or lump-sum appropriations. Upon release  
10 of the special categories, program categories, or lump-sum  
11 appropriations to the board of trustees, the Chief Financial  
12 Officer ~~Comptroller~~, upon the request of the board of  
13 trustees, shall transfer or reallocate funds to or among  
14 accounts established for disbursement purposes. The board of  
15 trustees shall maintain records to account for the original  
16 appropriation.

17           Section 1982. Subsection (1) of section 1011.94,  
18 Florida Statutes, is amended to read:

19           1011.94 Trust Fund for University Major Gifts.--

20           (1) There is established a Trust Fund for University  
21 Major Gifts. The purpose of the trust fund is to enable each  
22 university and New College to provide donors with an incentive  
23 in the form of matching grants for donations for the  
24 establishment of permanent endowments and sales tax exemption  
25 matching funds received pursuant to s. 212.08(5)(j), which  
26 must be invested, with the proceeds of the investment used to  
27 support libraries and instruction and research programs, as  
28 defined by the State Board of Education. All funds  
29 appropriated for the challenge grants, new donors, major  
30 gifts, sales tax exemption matching funds pursuant to s.  
31 212.08(5)(j), or eminent scholars program must be deposited

1 into the trust fund and invested pursuant to s. 17.61 ~~s.~~  
2 ~~18.125~~ until the State Board of Education allocates the funds  
3 to universities to match private donations. Notwithstanding s.  
4 216.301 and pursuant to s. 216.351, any undisbursed balance  
5 remaining in the trust fund and interest income accruing to  
6 the portion of the trust fund which is not matched and  
7 distributed to universities must remain in the trust fund and  
8 be used to increase the total funds available for challenge  
9 grants. Funds deposited in the trust fund for the sales tax  
10 exemption matching program authorized in s. 212.08(5)(j), and  
11 interest earnings thereon, shall be maintained in a separate  
12 account within the Trust Fund for University Major Gifts, and  
13 may be used only to match qualified sales tax exemptions that  
14 a certified business designates for use by state universities  
15 and community colleges to support research and development  
16 projects requested by the certified business. The State Board  
17 of Education may authorize any university to encumber the  
18 state matching portion of a challenge grant from funds  
19 available under s. 1011.45.

20 Section 1983. Subsection (2) of section 1012.59,  
21 Florida Statutes, is amended to read:

22 1012.59 Certification fees.--

23 (2) The proceeds from the collection of certification  
24 fees, fines, penalties, and costs levied pursuant to this  
25 chapter shall be remitted by the Department of Education to  
26 the Chief Financial Officer ~~Treasurer~~ for deposit into a  
27 separate fund to be known as the "Educational Certification  
28 and Service Trust Fund" and disbursed for the payment of  
29 expenses incurred by the Educational Practices Commission and  
30 in the printing of forms and bulletins and the issuing of  
31 certificates, upon vouchers approved by the department.

1           Section 1984. Subsection (9) of section 1012.79,  
2 Florida Statutes, is amended to read:

3           1012.79 Education Practices Commission;  
4 organization.--

5           (9) The commission shall make such expenditures as may  
6 be necessary in exercising its authority and powers and  
7 carrying out its duties and responsibilities, including  
8 expenditures for personal services, general counsel or access  
9 to counsel, and rent at the seat of government and elsewhere;  
10 for books of reference, periodicals, furniture, equipment, and  
11 supplies; and for printing and binding. The expenditures of  
12 the commission shall be subject to the powers and duties of  
13 the Department of Financial Services ~~Banking and Finance~~ as  
14 provided in s. 17.03.

15           Section 1985. Subsection (3) of section 1013.79,  
16 Florida Statutes, is amended to read:

17           1013.79 University Facility Enhancement Challenge  
18 Grant Program.--

19           (3) There is established the Alec P. Courtelis Capital  
20 Facilities Matching Trust Fund for the purpose of providing  
21 matching funds from private contributions for the development  
22 of high priority instructional and research-related capital  
23 facilities, including common areas connecting such facilities,  
24 within a university. The Legislature shall appropriate funds  
25 to be transferred to the trust fund. The Public Education  
26 Capital Outlay and Debt Service Trust Fund, Capital  
27 Improvement Trust Fund, Division of Sponsored Research Trust  
28 Fund, and Contracts and Grants Trust Fund shall not be used as  
29 the source of the state match for private contributions. All  
30 appropriated funds deposited into the trust fund shall be  
31 invested pursuant to the provisions of s. 17.161 ~~s. 18.125~~.

1 Interest income accruing to that portion of the trust fund  
2 shall increase the total funds available for the challenge  
3 grant program. Interest income accruing from the private  
4 donations shall be returned to the participating foundation  
5 upon completion of the project. The State Board of Education  
6 shall administer the trust fund and all related construction  
7 activities.

8 Section 1986. Sections 17.06, 18.03, 18.09, 18.22,  
9 20.12, 20.13, 440.135, 624.4071, 624.463, 627.0623, 627.3516,  
10 627.7825, 655.019, 657.067, 657.25, 657.251, 657.252, 657.253,  
11 657.254, 657.256, 657.257, 657.258, 657.259, 657.260, 657.261,  
12 657.262, 657.263, 657.264, 657.265, 657.266, 657.267, 657.268,  
13 and 657.269, Florida Statutes, are repealed.

14 Section 1987. In the event of a conflict between this  
15 act and any other legislation enacted during the 2003 Regular  
16 Session, the provisions of this act shall prevail.

17 Section 1988. Except as otherwise provided in this  
18 act, this act takes effect upon becoming a law and operates  
19 retroactively to January 7, 2003.

20  
21 \*\*\*\*\*

22 SENATE SUMMARY

23 Conforms the Florida Statutes to the consolidation of the  
24 functions of the Comptroller and Treasurer into the  
25 constitutional office of Chief Financial Officer and to  
the statutory changes initiated by chapter 2002-404, Laws  
of Florida. (See bill for details.)

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