

By Senator McKay

rb99-4

1 A reviser's bill to be entitled
2 An act relating to the Florida Statutes;
3 amending ss. 618.08, 620.78, 620.782, 620.783,
4 620.7851, 620.786, 620.788, 620.7885, 620.7887,
5 624.01, 624.123, 624.408, 624.439, 624.461,
6 624.502, 624.5092, 624.610, 625.52, 626.041,
7 626.101, 626.9541, 626.9543, 626.973, 627.0612,
8 627.162, 627.4147, 627.5515, 627.6617,
9 627.6699, 627.7295, 627.733, 627.848, 627.912,
10 627.9407, 628.461, 628.4615, 628.6013,
11 628.6016, 628.6017, 628.721, 629.401, 631.0515,
12 631.112, 631.57, 631.914, 633.161, 633.72,
13 641.2018, 641.20185, 641.30, 641.31071,
14 641.459, 641.495, 641.51, 641.512, 641.515,
15 658.2953, 658.90, 660.29, 663.02, 663.16,
16 671.105, 678.1021, 678.5031, 694.14, 697.05,
17 704.05, 713.01, 713.32, 718.103, 718.111,
18 719.106, 719.618, 721.84, 723.085, 734.1025,
19 741.01, 742.107, 743.0645, 743.065, 744.641,
20 744.704, 765.113, 766.1115, 766.207, 766.304,
21 766.316, 772.102, 773.02, 773.05, 775.0877,
22 784.07, 784.075, 790.0655, 794.024, 810.14,
23 812.014, 828.27, 901.15, 914.16, 914.17,
24 918.16, 921.0022, 921.0024, 922.095, 943.0435,
25 943.0585, 943.059, 943.14, 944.10, 944.606,
26 944.801, 948.01, 948.03, 948.08, 957.04,
27 960.003, 984.03, 984.226, 985.04, 985.203,
28 985.227, 985.231, 985.304, 985.31, 985.3141,
29 985.317, 985.401, 985.404, 985.41, 985.413, and
30 985.414, Florida Statutes; reenacting and
31 amending ss. 641.3007 and 985.23, Florida

1 Statutes; and reenacting ss. 624.610(3),
2 626.321(1), 626.730, 626.939, 743.07, 794.011,
3 831.31, 907.041(4), 925.037(5), 984.03(41), and
4 985.311(3), Florida Statutes, pursuant to s.
5 11.242, Florida Statutes; deleting provisions
6 which have expired, have become obsolete, have
7 had their effect, have served their purpose, or
8 have been impliedly repealed or superseded;
9 replacing incorrect cross-references and
10 citations; correcting grammatical,
11 typographical, and like errors; removing
12 inconsistencies, redundancies, and unnecessary
13 repetition in the statutes; improving the
14 clarity of the statutes and facilitating their
15 correct interpretation; and confirming the
16 restoration of provisions unintentionally
17 omitted from republication in the acts of the
18 Legislature during the amendatory process.

19

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

21

22 Section 1. Section 618.08, Florida Statutes, is
23 amended to read:

24 618.08 Corporations may mortgage farm supplies.--A
25 mortgage, executed by a cooperative association, may cover its
26 stock of farm supplies, changing in specifics, which stock
27 mortgagor is permitted to retain in its possession and sell in
28 the usual course of business. The lien of such mortgage shall
29 be lost on all farm supplies sold up to the time of
30 foreclosure, and shall attach to the farm supplies acquired to
31 replenish the stock. No such mortgage shall be invalid as to

1 creditors of the mortgagor because the mortgagor is permitted
2 to retain possession and sell such mortgaged property in the
3 usual course of business; provided, the mortgagor replenishes
4 such property from the proceeds of sale or applies such
5 proceeds in payment of the mortgage debt. In all other
6 respects the laws relating to chattel mortgages shall be
7 applicable to such mortgages. ~~The provisions of this section~~
8 ~~shall not be construed as, in anywise, affecting the Bulk~~
9 ~~Sales Law.~~

10
11 Reviser's note.--Amended to conform to the
12 repeal of sections constituting the Bulk Sales
13 Law by ch. 65-254, Laws of Florida.
14

15 Section 2. Subsections (4), (5), and (6) of section
16 620.78, Florida Statutes, are amended to read:

17 620.78 Registered limited liability partnerships.--

18 (4) A statement of registration or statement of
19 renewal of registration must include either:

20 (a) A copy of an insurance policy demonstrating that
21 the partnership complies with s. 620.7851(1)(a)~~620.82(1)(a)~~;
22 or

23 (b) An affidavit sworn to by a majority in voting
24 interest of the partners or by one or more partners authorized
25 by a majority in voting interest of the partners that the
26 partnership complies with s. 620.7851(1)(b)~~620.82(1)(b)~~.

27 (5) The Department of State shall register any
28 partnership as a registered limited liability partnership, and
29 shall renew the registration of any registered limited
30 liability partnership, that submits a completed statement of
31 registration or statement of renewal of registration

1 accompanied by the required fee. A partnership becomes a
2 registered limited liability partnership at the time of the
3 filing of the initial statement of registration with the
4 department or at any later date or time specified in the
5 statement of registration if, in either case, there has been
6 compliance with the requirements of ss. 620.78-620.789
7 ~~620.78-620.85~~. A partnership continues as a registered
8 limited liability partnership if there has been compliance
9 with the requirements of ss. 620.78-620.789 ~~620.78-620.85~~.
10 (6) Registration is effective for 1 year after the
11 date the statement of registration is filed, unless
12 voluntarily canceled by filing with the Department of State a
13 statement of cancellation of registration under s. 620.781
14 ~~620.785~~. Registration, whether pursuant to an original
15 statement of registration or a statement of renewal of
16 registration as a registered limited liability partnership, is
17 renewed if the partnership files with the Department of State
18 a statement of renewal of registration. An initial statement
19 of renewal of registration expires 1 year after the date an
20 original statement of registration would have expired if the
21 statement of renewal of registration had not been filed; a
22 subsequent statement of renewal of registration expires 1 year
23 after the date the preceding statement of renewal of
24 registration would have expired if such subsequent statement
25 of renewal of registration had not been filed. The status of
26 the registered limited liability partnership shall not be
27 affected by subsequent changes in the information contained in
28 the statement of registration or statement of renewal of
29 registration after its filing.
30
31

1 Reviser's note.--Amended to conform to the
2 redesignation of s. 620.82 as s. 620.7851, s.
3 620.85 as s. 620.789, and s. 620.785 as s.
4 620.781, respectively, by the reviser incident
5 to the compilation of the Florida Statutes
6 1995.

7
8 Section 3. Subsections (3) and (5) of section 620.782,
9 Florida Statutes, are amended to read:

10 620.782 Partner's liability.--

11 (3) Subsection (1) does not affect the individual
12 liability of a partner in a registered limited liability
13 partnership if the registered limited liability partnership is
14 not in compliance with s. 620.7851 ~~620.82~~ at the time of the
15 occurrence giving rise to partnership liability.

16 (5) Sections 620.78-620.789 ~~620.78-620.85~~ do not
17 affect the liability of the registered limited liability
18 partnership when such liability arises out of debts,
19 obligations, or liabilities of the partnership or the acts and
20 omissions of the partners, employees, agents, or other
21 representatives of the partnership which are chargeable to the
22 partnership.

23
24 Reviser's note.--Amended to conform to the
25 redesignation of s. 620.82 as s. 620.7851 and
26 s. 620.85 as s. 620.789, respectively, by the
27 reviser incident to the compilation of the
28 Florida Statutes 1995.

29
30 Section 4. Section 620.783, Florida Statutes, is
31 amended to read:

1 620.783 Liability; governing law.--

2 (1) The liability of partners of a registered limited
3 liability partnership formed and registered under ss.

4 620.78-620.789 ~~620.78-620.85~~ must be determined solely by ss.

5 620.78-620.789 ~~620.78-620.85~~ and the laws of this state.

6 (2) If a conflict arises between the laws of this
7 state and the laws of any other jurisdiction with regard to
8 the liability of a partner of a registered limited liability
9 partnership formed and registered under ss. 620.78-620.789
10 ~~620.78-620.85~~ for the debts, obligations, or liabilities of
11 the partnership or for the errors, omissions, negligence,
12 malpractice, or wrongful acts of another partner, employee,
13 agent, or representative of the partnership, the laws of this
14 state shall govern in determining such liability.

15

16 Reviser's note.--Amended to conform to the
17 redesignation of s. 620.85 as s. 620.789 by the
18 reviser incident to the compilation of the
19 Florida Statutes 1995.

20

21 Section 5. Subsections (1) and (4) of section
22 620.7851, Florida Statutes, are amended to read:

23 620.7851 Insurance of registered limited liability
24 partnerships.--

25 (1) A registered limited liability partnership must:

26 (a) Carry at least the minimum coverage amount of
27 liability insurance that covers the errors, omissions,
28 negligence, malpractice, or wrongful acts for which liability
29 is limited by s. 620.782(1)~~620.79(1)~~ and which liability
30 insurance may not have a deductible or self-insured retention
31 per claim of more than 10 percent of the per-claim policy

1 | limit unless the difference between the maximum permitted
2 | deductible or self-insured retention and the actual deductible
3 | or self-insured retention under the liability insurance is
4 | otherwise funded as provided in paragraph (b); or
5 | (b) Provide at least the minimum coverage amount in
6 | funds specifically designated and segregated for the
7 | satisfaction of judgments against the partnership or its
8 | partners based on the types of errors, omissions, negligence,
9 | incompetence, malpractice, or wrongful acts for which
10 | liability is limited by s. 620.782(1)~~620.79(1)~~. Such funds
11 | must be provided by obtaining or maintaining an unexpired,
12 | irrevocable letter of credit for an amount no less than the
13 | minimum coverage amount. The letter of credit must be payable
14 | to the partnership, or to a paying agent of the partnership,
15 | as beneficiary for payment to creditors under a final judgment
16 | or settlement arising from the types of errors, omissions,
17 | negligence, incompetence, malpractice, or wrongful acts for
18 | which liability is limited by s. 620.782(1)~~620.79(1)~~. The
19 | letter of credit shall be payable upon presentation of a final
20 | judgment indicating liability and awarding damages to be paid
21 | by the partnership or upon presentment of a settlement
22 | agreement signed by all parties to the agreement when the
23 | final judgment or settlement is a result of a claim against
24 | the partnership. The letter of credit must be irrevocable,
25 | nonassignable, and nontransferable, except that the letter of
26 | credit may be replaced by liability insurance that complies
27 | with paragraph (a). Such letter of credit must have been
28 | issued by any bank or savings association organized and
29 | existing under the laws of this state or any bank or savings
30 | association organized under the laws of the United States that
31 | has its principal place of business in this state or has a

1 branch office that is authorized under the laws of this state
2 or of the United States to receive deposits in this state.

3 (4) The minimum coverage amount requirements of this
4 section do not limit the liability of or damages recoverable
5 from a registered limited liability partnership or of any
6 person or entity whose liability is not otherwise limited as
7 provided in ss. 620.78-620.789 ~~620.78-620.85~~.

8
9 Reviser's note.--Amended to conform to the
10 redesignation of s. 620.79 as s. 620.782 and s.
11 620.85 as s. 620.789, respectively, by the
12 reviser incident to the compilation of the
13 Florida Statutes 1995.

14
15 Section 6. Subsection (1) of section 620.786, Florida
16 Statutes, is amended to read:

17 620.786 Effect of statement of registration and
18 renewal thereof.--

19 (1) If a registered limited liability partnership or a
20 foreign registered limited liability partnership dissolves and
21 its business is continued without the termination of the
22 partnership, the registration of the dissolved partnership as
23 a registered limited liability partnership or a foreign
24 registered limited liability partnership remains applicable to
25 the partnership continuing the business, and it is not
26 necessary to make a new filing under s. 620.78 or s. 620.7885
27 ~~620.84~~ until the registration must be renewed or canceled.

28
29 Reviser's note.--Amended to conform to the
30 redesignation of s. 620.84 as s. 620.7885 by

31

1 the reviser incident to the compilation of the
2 Florida Statutes 1995.

3
4 Section 7. Paragraph (b) of subsection (2) and
5 subsection (4) of section 620.788, Florida Statutes, are
6 amended to read:

7 620.788 Domestic limited partnership as a registered
8 limited liability partnership.--

9 (2) A domestic limited partnership is a registered
10 limited liability partnership as well as a domestic limited
11 partnership if it:

12 (b) Complies with s. 620.7851 ~~620.82~~.

13 (4) If a domestic limited partnership is a registered
14 limited liability partnership, s. 620.782 ~~620.79~~ applies to
15 its general partners and to any of its limited partners who,
16 under the provisions of part I, the Florida Revised Uniform
17 Limited Partnership Act, are liable for the debts,
18 obligations, or liabilities of the limited partnership.

19
20 Reviser's note.--Amended to conform to the
21 redesignation of s. 620.82 as s. 620.7851 and
22 s. 620.79 as s. 620.782, respectively, by the
23 reviser incident to the compilation of the
24 Florida Statutes 1995.

25
26 Section 8. Subsection (2) of section 620.7885, Florida
27 Statutes, is amended to read:

28 620.7885 Foreign registered limited liability
29 partnership.--

30 (2) Except as otherwise provided in subsection (3), a
31 foreign registered limited liability partnership must comply

1 with s. 620.78, and the provisions of that section govern the
2 registration, renewal of registration, and amendment of
3 registration of a foreign registered limited liability
4 partnership. For purposes of s. 620.78(4), a foreign
5 registered limited liability partnership that obtains,
6 pursuant to the laws or regulations of another jurisdiction,
7 liability insurance that covers, or funds specifically
8 designated and segregated for the satisfaction of judgments
9 against the partnership or its partners based on, errors,
10 omissions, negligence, incompetence, malpractice, wrongful
11 acts, and such other conduct for which the liability of
12 partners is limited under the law of the jurisdiction in which
13 the foreign registered liability partnership is organized,
14 shall be deemed to comply with s. 620.7851 ~~620.82~~ if the
15 amount thereof is equal to or greater than the minimum
16 coverage amount as defined in s. 620.7851(2)~~620.82(2)~~. A
17 foreign registered limited liability partnership shall be
18 deemed to comply with s. 620.7851(1)(b)~~620.82(1)(b)~~ if the
19 letter of credit is issued by any bank or savings association
20 organized under the laws of the United States or the State of
21 Florida.

22
23 Reviser's note.--Amended to conform to the
24 redesignation of s. 620.82 as s. 620.7851 by
25 the reviser incident to the compilation of the
26 Florida Statutes 1995.

27
28 Section 9. Subsection (1) of section 620.7887, Florida
29 Statutes, is amended to read:

30 620.7887 Cancellation of registration as a foreign
31 registered limited liability partnership.--

1 (1) A foreign registered limited liability partnership
2 registered under s. 620.7885 ~~620.84~~ may cancel its
3 registration to conduct business in this state by filing with
4 the Department of State a statement of cancellation of
5 registration as a foreign registered limited liability
6 partnership executed by a majority in voting interest of the
7 partners or by one or more partners authorized by a majority
8 in voting interest of the partners.

9
10 Reviser's note.--Amended to conform to the
11 redesignation of s. 620.84 as s. 620.7885 by
12 the reviser incident to the compilation of the
13 Florida Statutes 1995.

14
15 Section 10. Section 624.01, Florida Statutes, is
16 amended to read:

17 624.01 Short title.--Chapters 624 through 632, 634,
18 635, ~~637, 638~~, 641, 642, 648, and 651 constitute the "Florida
19 Insurance Code."

20
21 Reviser's note.--Amended to conform to the
22 repeal of chapters 637 and 638 by s. 57, ch.
23 93-148, Laws of Florida.

24
25 Section 11. Subsection (1) of section 624.123, Florida
26 Statutes, 1998 Supplement, is amended to read:

27 624.123 Certain international health insurance
28 policies; exemption from code.--

29 (1) International health insurance policies and
30 applications may be solicited and sold in this state at any
31 international airport to a resident of a foreign country. Such

1 international health insurance policies shall be solicited and
2 sold only by a licensed health insurance agent and
3 underwritten ~~unwritten~~ only by an admitted insurer. For
4 purposes of this subsection:

5 (a) "International airport" means any airport in
6 Florida with United States Customs service, which enplanes
7 more than 1 million passengers per year.

8 (b) "International health insurance policy" means
9 health insurance, as defined in s. 627.6561(5)(a)2., which is
10 offered to an individual, covering only a resident of a
11 foreign country on an annual basis.

12 (c) "Resident of a foreign country" does not include
13 any United States citizen, any natural person maintaining his
14 or her residence in this country, or any natural person
15 staying in this state continuously for more than 120 days.

16

17 Reviser's note.--Amended to improve clarity and
18 facilitate correct interpretation.

19

20 Section 12. Paragraph (b) of subsection (1) of section
21 624.408, Florida Statutes, is amended to read:

22 624.408 Surplus as to policyholders required; new and
23 existing insurers.--

24 (1)

25 (b) For any property and casualty insurer holding a
26 certificate of authority on December 1, 1993, the following
27 amounts apply instead of the \$4 million required by
28 subparagraph (a)5.:

29 ~~1. On December 31, 1994, and until December 30, 1995,~~
30 ~~\$1.65 million.~~

31

1 ~~2. On December 31, 1995, and until December 30, 1996,~~
2 ~~\$1.8 million.~~

3 ~~3. On December 31, 1996, and until December 30, 1997,~~
4 ~~\$1.95 million.~~

5 ~~4. On December 31, 1997, and until December 30, 1998,~~
6 ~~\$2.1 million.~~

7 1.5. On December 31, 1998, and until December 30,
8 1999, \$2.25 million.

9 2.6. On December 31, 1999, and until December 30,
10 2000, \$2.5 million.

11 3.7. On December 31, 2000, and until December 30,
12 2001, \$2.75 million.

13 4.8. On December 31, 2001, and until December 30,
14 2002, \$3 million.

15 5.9. On December 31, 2002, and until December 30,
16 2003, \$3.25 million.

17 6.10. On December 31, 2003, and until December 30,
18 2004, \$3.6 million.

19 7.11. On December 31, 2004, and thereafter, \$4
20 million.

21
22 Reviser's note.--Amended to delete provisions
23 that have served their purpose.
24

25 Section 13. Subsection (4) of section 624.439, Florida
26 Statutes, is amended to read:

27 624.439 Filing of application.--The sponsoring
28 association shall file with the department an application for
29 a certificate of authority upon a form to be furnished by the
30 department, signed under oath by officers of the trust, which
31 shall include or have attached the following:

1 (4) A copy of the policy, contract, certificate,
2 summary plan description, or other evidence of the benefits
3 and coverages provided to covered employees, which shall be in
4 accordance with s. 627.651(4)~~627.651(5)~~, and which shall
5 include a table of the rates charged, or proposed to be
6 charged, for each form of such contract. A qualified actuary
7 shall certify that:

8 (a) The rates are not inadequate.

9 (b) The rates are appropriate for the class of risks
10 for which they have been computed.

11 (c) An adequate description of the rating methodology
12 has been filed with the department and such methodology
13 follows consistent and equitable actuarial principles.

14
15 Reviser's note.--Amended to conform to the
16 redesignation of subunits of s. 627.651 by s.
17 61, ch. 92-318, Laws of Florida.

18
19 Section 14. Section 624.461, Florida Statutes, is
20 amended to read:

21 624.461 Definition.--For the purposes of the Florida
22 Insurance Code, "self-insurance fund" means both commercial
23 self-insurance funds organized under s. 624.462 and group
24 self-insurance funds organized under s. 624.4621. The term
25 "self-insurance fund" does not include a governmental
26 self-insurance pool created under s. 768.28(15)~~768.28(14)~~.

27
28 Reviser's note.--Amended to conform to the
29 redesignation of s. 768.28(14) as s. 768.28(15)
30 by s. 70, ch. 94-209, Laws of Florida.

31

1 Section 15. Section 624.502, Florida Statutes, is
2 amended to read:

3 624.502 Service of process fee.--In all instances as
4 provided in any section of the insurance code and ~~s. ss.~~
5 ~~48.151(3) and 638.161~~ in which service of process is
6 authorized to be made upon the Insurance Commissioner and
7 Treasurer, the plaintiff shall pay to the department a fee of
8 \$15 for such service of process, which fee shall be deposited
9 into the Insurance Commissioner's Regulatory Trust Fund.

10
11 Reviser's note.--Amended to conform to the
12 repeal of chapter 638 by s. 57, ch. 93-148,
13 Laws of Florida.

14
15 Section 16. Subsection (3) of section 624.5092,
16 Florida Statutes, is amended to read:

17 624.5092 Administration of taxes; payments.--

18 (3) This section is applicable to taxes imposed by ss.
19 624.4621 ~~624.5091~~, 624.475, 624.509-624.515, 627.357,
20 629.5011, ~~440.57~~, and 636.066.

21
22 Reviser's note.--Amended to conform to the
23 redesignation of s. 440.57 as s. 624.4621 by s.
24 79, ch. 93-415, Laws of Florida.

25
26 Section 17. Subsection (3) of section 624.610, Florida
27 Statutes, 1998 Supplement, is reenacted and subsection (10) of
28 that section is amended to read:

29 624.610 Reinsurance.--

30 (3)(a) If a ceding insurer reinsures all or any part
31 of any particular risk or class of risks with an approved

1 reinsurer, the ceding insurer may receive credit in accounting
2 and financial statements on account of such reinsurance ceded.

3 An approved reinsurer is:

4 1. An assuming insurer authorized by the department to
5 transact such line of insurance or reinsurance in this state.
6 Subject to the other requirements of this code, credit may be
7 taken for reinsurance with an authorized insurer.

8 2. An assuming insurer approved by the department to
9 transact such line of reinsurance in this state. The
10 department shall approve only solvent insurers meeting the
11 criteria established for authorized insurers in this state.
12 From time to time, the department shall publish a list of
13 insurers approved pursuant to this subsection. Subject to the
14 other requirements of this code, credit may be taken for
15 reinsurance with an approved reinsurer.

16 3. An assuming underwriting member of an insurance
17 exchange domiciled in any other state or jurisdiction in the
18 United States, which insurance exchange was licensed and in
19 operation on or before January 1, 1993, provided the insurance
20 exchange presents to the department for its approval, and
21 maintains, satisfactory evidence that such assuming
22 underwriting member maintains the standards and meets the
23 financial requirements applicable to an authorized insurer.
24 Subject to the other requirements of this section, credit may
25 be taken for reinsurance with members approved under this
26 subsection by the department.

27 4. A group of individual, unincorporated, or
28 incorporated alien insurers which maintains funds in an amount
29 not less than \$50 million held in trust for United States
30 policyholders and beneficiaries in a bank or trust company
31 that is subject to supervision by any state of the United

1 States or that is a member of the Federal Reserve System and
2 which group satisfies the department by annually filing
3 evidence that it can meet its obligations under its
4 reinsurance agreements. Subject to the other requirements of
5 this section, credit may be taken for reinsurance with a group
6 approved under this subsection by the department.

7 (b) Credit in accounting and financial statements on
8 account of reinsurance ceded to a nonapproved reinsurer may be
9 allowed only:

10 1. When it is demonstrated by the ceding insurer to
11 the satisfaction of the department that such reinsurer
12 maintains the standards and meets the financial requirements
13 applicable to an authorized insurer;

14 2. To the extent of deposits by, or funds withheld
15 from, such reinsurer pursuant to express provision therefor in
16 the reinsurance contract as security for the payment of the
17 obligations thereunder if such deposits or funds are held
18 subject to withdrawal by, and under the control of, the ceding
19 insurer or such deposits or funds are placed in trust for such
20 purposes in a bank which is a member of the Federal Reserve
21 System if withdrawals from the trust cannot be made without
22 the consent of the ceding insurer. The funds withheld may be
23 cash or securities which are qualified as admitted assets
24 under part II of chapter 625 and which have a market value
25 equal to or greater than the credit taken; or

26 3. To the extent that the amount of a clean,
27 unconditional, evergreen, and irrevocable letter of credit,
28 issued for a term of not less than 1 year and in conformity
29 with the requirements set forth in this subparagraph, equals
30 or exceeds the liability of an unauthorized or unapproved
31 reinsurer for unearned premiums, outstanding losses, and an

1 adequate reserve for incurred but not reported losses under a
2 specific reinsurance agreement. The requirements are that such
3 a clean and irrevocable letter of credit be issued under
4 arrangements satisfactory to the department as constituting
5 security to the ceding insurer substantially equal to that of
6 a deposit under subparagraph 2. and that the letter be issued
7 by a banking institution which is a member of the Federal
8 Reserve System and which has financial standing satisfactory
9 to the commissioner. The department may adopt rules requiring
10 that the letter adhere in its wording to a format for letters
11 of credit as the format has been or may be adopted or approved
12 by the National Association of Insurance Commissioners.

13 4. When the reinsurance is ceded to a reinsurer which
14 maintains a trust fund, in a bank or trust company that is
15 subject to supervision by any state of the United States or
16 that is a member of the Federal Reserve System, for the
17 payment of the valid claims for business written in the United
18 States. The trust shall consist of a trusteed account in an
19 amount not less than the reinsurer's liabilities attributable
20 to reinsurance by ceding insurers for business written in the
21 United States and, in addition, the reinsurer shall maintain a
22 trusteed surplus of not less than \$20 million. Such trust
23 shall be established in a form approved, and any amendments to
24 the trust approved, by the insurance commissioner where the
25 trust is domiciled, or the insurance commissioner of another
26 state who, pursuant to the terms of the trust agreement, has
27 accepted principal regulatory oversight of the trust. The
28 trust shall remain in effect for as long as the reinsurer has
29 outstanding obligations due under the reinsurance agreements
30 subject to the trust. The trust assets must be in cash or
31 securities which are qualified as admitted assets under part

1 II of chapter 625 and which have a market value of the
2 required liabilities and trusteed surplus. The reinsurer shall
3 report quarterly to the insurance commissioner information
4 substantially the same as that required to be reported on the
5 National Association of Insurance Commissioners Annual
6 Statement form by licensed insurers to enable the insurance
7 commissioner to determine the sufficiency of the trust fund.
8 The trust and the reinsurer shall be subject to examination as
9 determined by the commissioner.

10 5. The credit permitted by subparagraph (a)4. and the
11 credit permitted by subparagraph (b)2. shall not be allowed
12 unless the assuming insurer in substance agrees in the trust
13 agreement to the following conditions:

14 a. Notwithstanding any other provisions in the trust
15 instrument, if the trust fund is inadequate because it
16 contains an amount less than the amount required by the
17 department or, if the grantor of the trust has been declared
18 insolvent or placed into receivership, rehabilitation,
19 liquidation, or similar proceedings under the laws of its
20 state or country of domicile, the trustee shall comply with an
21 order of the commissioner with regulatory oversight over the
22 trust or with an order of a court of competent jurisdiction
23 directing the trustee to transfer to the commissioner with
24 regulatory oversight all of the assets of United States trust
25 beneficiaries.

26 b. The assets shall be distributed by, and claims of
27 United States trust beneficiaries shall be filed with and
28 valued by, the commissioner with regulatory oversight in
29 accordance with the laws of the state in which the trust is
30 domiciled that are applicable to the liquidation of domestic
31 insurance companies.

1 c. If the commissioner with regulatory oversight
2 determines that the assets of the trust fund or any part
3 thereof are not necessary to satisfy the claims for business
4 written in the United States, the assets or any part thereof
5 shall be returned by the commissioner with regulatory
6 oversight to the trustee for distribution in accordance with
7 the trust agreement.

8 d. The grantor shall waive any right otherwise
9 available to it under United States law that is inconsistent
10 with this provision.

11 (c) For the purposes of this subsection only, the term
12 "ceding insurer" shall include any health maintenance
13 organization operating under a certificate of authority issued
14 under part I of chapter 641.

15 (10) Any authorized insurer ceding directly written
16 risks of loss under this section shall within 30 days of
17 receipt of a cover note or similar confirmation of coverage,
18 or in no event no later than 6 months after the effective date
19 of the reinsurance treaty, file with the department one copy
20 of a summary statement containing the following information
21 about each treaty:

22 (a) The contract period;

23 (b) The nature of the reinsured's business;

24 (c) An indication as to whether the treaty is
25 proportional, nonproportional, coinsurance, modified
26 coinsurance, or indemnity, as applicable;

27 (d) The ceding company's loss retention per risk;

28 (e) The reinsured limits;

29 (f) Any special contract restrictions;

30 (g) A schedule of reinsurers assuming the risks of
31 loss;

1 (h) An indication as to whether payments to the
2 assuming insurer are based on written premiums or earned
3 premiums;

4 (i) Identification of any intermediary or broker used
5 in obtaining the reinsurance and the commission paid them if
6 known; and

7 (j) Ceding commissions and allowances.
8

9 The summary statement shall be signed and attested to by
10 either the chief executive officer or the chief financial
11 officer of the reporting insurer. In addition to the summary
12 statement, the Insurance Commissioner may require the filing
13 of any supporting information relating to the ceding of such
14 risks as she or he deems necessary. If the summary statement
15 prepared by the ceding insurer discloses that the net effect
16 of a reinsurance treaty or treaties (or series of treaties
17 with one or more affiliated reinsurers entered into for the
18 purpose of avoiding the following threshold amount) at any
19 time results in an increase of more than 25 percent to the
20 insurer's surplus as to policyholders, then the insurer shall
21 certify in writing to the department that the relevant
22 reinsurance treaty or treaties complies with the accounting
23 requirements contained in any rule promulgated by the
24 department pursuant to subsection (11)~~(10)~~ or subsection
25 (13)~~(12)~~. If such certificate is filed after the summary
26 statement of such reinsurance treaty or treaties, the insurer
27 shall refile the summary statement with the certificate. In
28 any event, the certificate shall state that a copy of the
29 certificate was sent to the reinsurer under the reinsurance
30 treaty. This subsection applies to cessions of directly
31 written risk of loss. This subsection does not apply to

1 contracts of facultative reinsurance or to any ceding insurer
2 with surplus as to policyholder that exceeds \$100 million as
3 of the immediately preceding December 31. Additionally, any
4 ceding insurer otherwise subject to this section with less
5 than \$500,000 in direct premiums written in this state during
6 the preceding calendar year or with less than 1,000
7 policyholders at the end of the preceding calendar year is
8 exempt from the requirements of this subsection. However, any
9 ceding insurer otherwise subject to this section with more
10 than \$250,000 in direct premiums written in this state during
11 the preceding calendar quarter is not exempt from the
12 requirements of this subsection. The Insurance Commissioner
13 may, upon a showing of good cause, waive the requirements of
14 this subsection.

15

16 Reviser's note.--Section 89, ch. 98-199, Laws
17 of Florida, purported to amend and redesignate
18 subsection (2) of s. 624.610 as subsection (3),
19 but failed to republish the subsection to
20 include paragraph (a). In the absence of
21 affirmative evidence that the Legislature
22 intended to repeal paragraph (a), subsection
23 (3) is reenacted to confirm that the omission
24 was not intended. Subsection (10) is amended to
25 conform to the redesignation of subunits of s.
26 624.610 by s. 89, ch. 98-199.

27

28 Section 18. Paragraph (a) of subsection (3) of section
29 625.52, Florida Statutes, is amended to read:

30 625.52 Securities eligible for deposit.--

31

1 (3) To be eligible for deposit under subsection (1),
2 any certificate of deposit must have the following
3 characteristics:

4 (a) The certificate of deposit must be issued by a
5 qualified public depository as defined in s. 280.02(17)
6 ~~280.02(15)~~, and the depository must conform to and be bound by
7 all provisions of chapter 280 with regard to such funds.

8
9 Reviser's note.--Amended to conform to the
10 redesignation of s. 280.02(15) as s. 280.02(16)
11 by s. 4, ch. 96-216, Laws of Florida, and
12 further redesignation of s. 280.02(16) as s.
13 280.02(17) by s. 11, ch. 98-409, Laws of
14 Florida.

15
16 Section 19. Paragraph (b) of subsection (1) of section
17 626.041, Florida Statutes, is amended to read:

18 626.041 "General lines agent" defined.--

19 (1) For the purposes of this code, a "general lines
20 agent" is one so transacting any one or more of the following
21 kinds of insurance:

22 (b) Casualty insurance, including commercial liability
23 insurance underwritten by a risk retention group, a commercial
24 self-insurance fund as defined in s. 624.462, or a workers'
25 compensation self-insurance fund established pursuant to s.
26 624.4621 ~~440.57~~.

27
28 Reviser's note.--Amended to conform to the
29 redesignation of s. 440.57 as s. 624.4621 by s.
30 79, ch. 93-415, Laws of Florida.

31

1 Section 20. Section 626.101, Florida Statutes, is
2 amended to read:

3 626.101 "Adjuster" ~~and "claims investigator"~~
4 defined.--For the purposes of this part, +

5 ~~(1)~~ an "adjuster" means a public adjuster, independent
6 adjuster, or company employee adjuster, as respectively
7 defined in part VI.

8 ~~(2) A "claims investigator" is as defined in s.~~
9 ~~626.857.~~

10
11 Reviser's note.--Amended to conform to the
12 repeal of s. 626.857, which defined claims
13 investigator, by s. 94, ch. 98-199, Laws of
14 Florida.

15
16 Section 21. Subsection (1) of section 626.321, Florida
17 Statutes, 1998 Supplement, is reenacted to read:

18 626.321 Limited licenses.--

19 (1) The department shall issue to a qualified
20 individual, or a qualified individual or entity under
21 paragraphs (c), (d), and (e), a license as agent authorized to
22 transact a limited class of business in any of the following
23 categories:

24 (a) Motor vehicle physical damage and mechanical
25 breakdown insurance.--License covering insurance against only
26 the loss of or damage to any motor vehicle which is designed
27 for use upon a highway, including trailers and semitrailers
28 designed for use with such vehicles. Such license also covers
29 insurance against the failure of an original or replacement
30 part to perform any function for which it was designed. The
31 applicant for such a license shall pass a written examination

1 covering motor vehicle physical damage insurance and
2 mechanical breakdown insurance. No individual while so
3 licensed shall hold a license as an agent or solicitor as to
4 any other or additional kind or class of insurance coverage
5 except as to a limited license for credit life and disability
6 insurances as provided in paragraph (e).

7 (b) Industrial fire insurance or burglary
8 insurance.--License covering only industrial fire insurance or
9 burglary insurance. The applicant for such a license shall
10 pass a written examination covering such insurance. No
11 individual while so licensed shall hold a license as an agent
12 or solicitor as to any other or additional kind or class of
13 insurance coverage except as to life and health insurances.

14 (c) Personal accident insurance.--License covering
15 only policies of personal accident insurance covering the
16 risks of travel, except as provided in subparagraph 2. The
17 license may be issued only:

18 1. To a full-time salaried employee of a common
19 carrier or a full-time salaried employee or owner of a
20 transportation ticket agency and may authorize the sale of
21 such ticket policies only in connection with the sale of
22 transportation tickets, or to the full-time salaried employee
23 of such an agent. No such policy shall be for a duration of
24 more than 48 hours or for the duration of a specified one-way
25 trip or round trip.

26 2. To a full-time salaried employee of a business
27 which offers motor vehicles for rent or lease, or to a
28 business office of a business which offers motor vehicles for
29 rent or lease if insurance sales activities authorized by the
30 license are limited to full-time salaried employees. A
31 business office licensed or a person licensed pursuant to this

1 subparagraph may, as an agent of an insurer, transact
2 insurance that provides coverage for accidental personal
3 injury or death of the lessee and any passenger who is riding
4 or driving with the covered lessee in the rental motor vehicle
5 if the lease or rental agreement is for not more than 30 days,
6 or if the lessee is not provided coverage for more than 30
7 consecutive days per lease period; however, if the lease is
8 extended beyond 30 days, the coverage may be extended one time
9 only for a period not to exceed an additional 30 days.

10 (d) Baggage and motor vehicle excess liability
11 insurance.--

12 1. License covering only insurance of personal effects
13 except as provided in subparagraph 2. The license may be
14 issued only:

15 a. To a full-time salaried employee of a common
16 carrier or a full-time salaried employee or owner of a
17 transportation ticket agency, which person is engaged in the
18 sale or handling of transportation of baggage and personal
19 effects of travelers, and may authorize the sale of such
20 insurance only in connection with such transportation; or

21 b. To the full-time salaried employee of a licensed
22 general lines agent, a full-time salaried employee of a
23 business which offers motor vehicles for rent or lease, or to
24 a business office of a business which offers motor vehicles
25 for rent or lease if insurance sales activities authorized by
26 the license are limited to full-time salaried employees.

27
28 The purchaser of baggage insurance shall be provided written
29 information disclosing that the insured's homeowner's policy
30 may provide coverage for loss of personal effects and that the
31 purchase of such insurance is not required in connection with

1 the purchase of tickets or in connection with the lease or
2 rental of a motor vehicle.

3 2. A business office licensed pursuant to subparagraph
4 1., or a person licensed pursuant to subparagraph 1. who is a
5 full-time salaried employee of a business which offers motor
6 vehicles for rent or lease, may include lessees under a master
7 contract providing coverage to the lessor or may transact
8 excess motor vehicle liability insurance providing coverage in
9 excess of the standard liability limits provided by the lessor
10 in its lease to a person renting or leasing a motor vehicle
11 from the licensee's employer for liability arising in
12 connection with the negligent operation of the leased or
13 rented motor vehicle, provided that the lease or rental
14 agreement is for not more than 30 days; that the lessee is not
15 provided coverage for more than 30 consecutive days per lease
16 period, and, if the lease is extended beyond 30 days, the
17 coverage may be extended one time only for a period not to
18 exceed an additional 30 days; that the lessee is given written
19 notice that his or her personal insurance policy providing
20 coverage on an owned motor vehicle may provide additional
21 excess coverage; and that the purchase of the insurance is not
22 required in connection with the lease or rental of a motor
23 vehicle. The excess liability insurance may be provided to
24 the lessee as an additional insured on a policy issued to the
25 licensee's employer.

26 3. A business office licensed pursuant to subparagraph
27 1., or a person licensed pursuant to subparagraph 1. who is a
28 full-time salaried employee of a business which offers motor
29 vehicles for rent or lease, may, as an agent of an insurer,
30 transact insurance that provides coverage for the liability of
31

1 the lessee to the lessor for damage to the leased or rented
2 motor vehicle if:

3 a. The lease or rental agreement is for not more than
4 30 days; or the lessee is not provided coverage for more than
5 30 consecutive days per lease period, but, if the lease is
6 extended beyond 30 days, the coverage may be extended one time
7 only for a period not to exceed an additional 30 days;

8 b. The lessee is given written notice that his
9 personal insurance policy that provides coverage on an owned
10 motor vehicle may provide such coverage with or without a
11 deductible; and

12 c. The purchase of the insurance is not required in
13 connection with the lease or rental of a motor vehicle.

14 (e) Credit life or disability insurance.--License
15 covering only credit life or disability insurance. The
16 license may be issued only to an individual employed by a life
17 or health insurer as an officer or other salaried or
18 commissioned representative, or to an individual employed by
19 or associated with a lending or financing institution or
20 creditor, and may authorize the sale of such insurance only
21 with respect to borrowers or debtors of such lending or
22 financing institution or creditor. However, only the
23 individual or entity whose tax identification number is used
24 in receiving or is credited with receiving the commission from
25 the sale of such insurance shall be the licensed agent of the
26 insurer. No individual while so licensed shall hold a license
27 as an agent or solicitor as to any other or additional kind or
28 class of life or health insurance coverage. An entity other
29 than a lending or financial institution defined in s. 626.988
30 holding a limited license under this paragraph shall also be
31 authorized to sell credit property insurance.

1 (f) Credit insurance.--License covering only credit
2 insurance, as such insurance is defined in s. 624.605(1)(i),
3 and no individual so licensed shall, during the same period,
4 hold a license as an agent or solicitor as to any other or
5 additional kind of life or health insurance with the exception
6 of credit life or disability insurance as defined in paragraph
7 (e).

8 (g) Credit property insurance.--A license covering
9 only credit property insurance may be issued to any individual
10 except an individual employed by or associated with a lending
11 or financial institution defined in s. 626.988 and authorized
12 to sell such insurance only with respect to a borrower or
13 debtor, not to exceed the amount of the loan.

14 (h) Crop hail and multiple-peril crop
15 insurance.--License covering only crop hail and multiple-peril
16 crop insurance. Notwithstanding any other provision of law,
17 the limited license may be issued to a bona fide salaried
18 employee of an association chartered under the Farm Credit Act
19 of 1971, 12 U.S.C. ss. 2001 et seq., who satisfactorily
20 completes the examination prescribed by the department
21 pursuant to s. 626.241(5). The limited agent must be appointed
22 by, and his or her limited license requested by, a licensed
23 general lines agent. All business transacted by the limited
24 agent shall be in behalf of, in the name of, and countersigned
25 by the agent by whom he or she is appointed. Sections 626.561
26 and 626.748, relating to records, apply to all business
27 written pursuant to this section. The limited licensee may be
28 appointed by and licensed for only one general lines agent or
29 agency.

30 (i) In-transit and storage personal property
31 insurance.--A license covering only the insurance of personal

1 property not held for resale, covering the risks of
2 transportation or storage in rented or leased motor vehicles,
3 trailers, or self-service storage facilities, as the latter
4 are defined in s. 83.803, may be issued, without examination,
5 only to employees or authorized representatives of lessors who
6 rent or lease motor vehicles, trailers, or self-service
7 storage facilities and who are authorized by an insurer to
8 issue certificates or other evidences of insurance to lessees
9 of such motor vehicles, trailers, or self-service storage
10 facilities under an insurance policy issued to the lessor. A
11 person licensed under this paragraph shall give a prospective
12 purchaser of in-transit or storage personal property insurance
13 written notice that his or her homeowner's policy may provide
14 coverage for the loss of personal property and that the
15 purchase of such insurance is not required under the lease
16 terms.

17

18 Reviser's note.--Section 18, ch. 98-199, Laws
19 of Florida, purported to amend subsection (1)
20 of s. 626.321, but failed to republish the
21 subsection to include paragraphs (g), (h), and
22 (i). In the absence of affirmative evidence
23 that the Legislature intended to repeal
24 paragraphs (g), (h), and (i), subsection (1) is
25 reenacted to confirm that the omission was not
26 intended.

27

28 Section 22. Section 626.730, Florida Statutes, 1998
29 Supplement, is reenacted to read:

30 626.730 Purpose of license.--

31

1 (1) The purpose of a license issued under this code to
2 a general lines agent, customer representative, or solicitor
3 is to authorize and enable the licensee actively and in good
4 faith to engage in the insurance business as such an agent,
5 customer representative, or solicitor with respect to the
6 public and to facilitate the public supervision of such
7 activities in the public interest, and not for the purpose of
8 enabling the licensee to receive a rebate of premium in the
9 form of commission or other compensation as an agent, customer
10 representative, or solicitor or enabling the licensee to
11 receive commissions or other compensation based upon insurance
12 solicited or procured by or through him or her upon his or her
13 own interests or those of other persons with whom he or she is
14 closely associated in capacities other than that of insurance
15 agent, customer representative, or solicitor.

16 (2) The department shall not grant, renew, continue,
17 or permit to exist any license or appointment as such agent,
18 customer representative, or solicitor as to any applicant
19 therefor or licensee or appointee thereunder if it finds that
20 the license or appointment has been, is being, or will
21 probably be used by the applicant, licensee, or appointee for
22 the purpose of securing rebates or commissions on "controlled
23 business," that is, on insurance written on his or her own
24 interests or those of his or her family or of any firm,
25 corporation, or association with which he or she is
26 associated, directly or indirectly, or in which he or she has
27 an interest other than as to the insurance thereof.

28 (3) A violation of this section shall be deemed to
29 exist or be probable (as to an applicant for appointment) if
30 the department finds that during any 12-month period aggregate
31 commissions or other compensation accruing in favor of the

1 applicant or licensee or appointee based upon the insurance
2 procured or to be procured (in the case of an applicant for
3 appointment) by or through the licensee or appointee with
4 respect to insurance of his or her own interests or those of
5 his or her family or of any firm, corporation, or association
6 with which he or she is associated or in which he or she is
7 interested, as referred to in subsection (2), have exceeded or
8 will exceed 50 percent of the aggregate amount of commissions
9 and compensation accruing or to accrue in his or her favor
10 during the same period as to all insurance coverages procured
11 or to be procured by or through him or her. Except, any
12 general lines agent who, on July 1, 1959, had aggregate
13 commissions or other compensation on controlled business as
14 defined in this section in excess of the aforesaid 50 percent
15 shall be permitted to continue writing such insurance for the
16 same insured or insureds, so long as the agent continues to
17 hold a general lines agent's license and appointment in good
18 standing to transact the same kinds of insurance so written,
19 until the termination of such license or appointment by
20 failure to renew or continue, suspension, or revocation.

21 (4) This section shall not be deemed to prohibit the
22 licensing under a limited license as to motor vehicle physical
23 damage and mechanical breakdown insurance or the licensing
24 under a limited license for credit property insurance of any
25 person employed by or associated with a motor vehicle sales or
26 financing agency, a retail sales establishment, or a consumer
27 loan office, other than a consumer loan office owned by or
28 affiliated with a financial institution as defined in s.
29 626.988, with respect to insurance of the interest of such
30 agency in a motor vehicle sold or financed by it or in
31 personal property when used as collateral for a loan. This

1 section does not apply with respect to the interest of a real
2 estate mortgagee in or as to insurance covering such interest
3 or in the real estate subject to such mortgage.

4
5 Reviser's note.--Section 36, ch. 98-199, Laws
6 of Florida, purported to amend s. 626.730, but
7 failed to republish the section to include
8 subsections (3) and (4). In the absence of
9 affirmative evidence that the Legislature
10 intended to repeal subsections (3) and (4), s.
11 626.730 is reenacted to confirm that the
12 omission was not intended.

13
14 Section 23. Section 626.939, Florida Statutes, is
15 reenacted to read:

16 626.939 Records produced on order.--

17 (1) Every person by or as to whom insurance is
18 procured or placed in an unauthorized insurer, upon the order
19 of the department, shall produce for examination by the
20 department, or by the authorized representative of the
21 department, all policies and other documents evidencing the
22 insurance and shall disclose to the department the amount of
23 gross premiums paid or agreed to be paid for the insurance.
24 For each refusal to obey such order, such person, upon
25 conviction thereof, shall be liable to a fine of not more than
26 \$500.

27 (2) This section does not apply to life insurance or
28 health insurance.

29
30 Reviser's note.--Section 36, ch. 92-146, Laws
31 of Florida, purported to amend s. 626.939, but

1 failed to republish the section to include
2 subsection (2). In the absence of affirmative
3 evidence that the Legislature intended to
4 repeal subsection (2), s. 626.939 is reenacted
5 to confirm that the omission was not intended.
6

7 Section 24. Paragraphs (g) and (p) of subsection (1)
8 of section 626.9541, Florida Statutes, are amended to read:
9 626.9541 Unfair methods of competition and unfair or
10 deceptive acts or practices defined.--

11 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR
12 DECEPTIVE ACTS.--The following are defined as unfair methods
13 of competition and unfair or deceptive acts or practices:

14 (g) Unfair discrimination.--

15 1. Knowingly making or permitting any unfair
16 discrimination between individuals of the same actuarially
17 supportable class and equal expectation of life, in the rates
18 charged for any life insurance or annuity contract, in the
19 dividends or other benefits payable thereon, or in any other
20 of the terms and conditions of such contract.

21 2. Knowingly making or permitting any unfair
22 discrimination between individuals of the same actuarially
23 supportable class and essentially the same hazard, in the
24 amount of premium, policy fees, or rates charged for any
25 policy or contract of accident, disability, or health
26 insurance, in the benefits payable thereunder, in any of the
27 terms or conditions of such contract, or in any other manner
28 whatever.

29 3. For a health insurer, life insurer, or managed care
30 provider to underwrite a policy, or refuse to issue, reissue,
31 or renew a policy, refuse to pay a claim, cancel or otherwise

1 terminate a policy, or increase rates based solely upon the
2 fact that an insured or applicant who is also the proposed
3 insured has made a claim or sought or should have sought
4 medical or psychological treatment in the past for abuse,
5 protection from abuse, or shelter from abuse, or that a claim
6 was caused in the past by, or might occur as a result of, any
7 future assault, battery, or sexual assault by a family or
8 household member upon another family or household member as
9 defined in s. 741.28(2)~~741.30(1)(b)~~. An insurer may refuse to
10 underwrite, issue, or renew a policy based on the applicant's
11 medical condition, but shall not consider whether such
12 condition was caused by an act of abuse. For purposes of this
13 section, the term "abuse" means the occurrence of one or more
14 of the following acts:

- 15 a. Attempting or committing assault, battery, sexual
16 assault, or sexual battery;
- 17 b. Placing another in fear of imminent serious bodily
18 injury by physical menace;
- 19 c. False imprisonment;
- 20 d. Physically or sexually abusing a minor child; or
- 21 e. An act of domestic violence as defined in s.
22 741.28.

23 (p) Insurance cost specified in "price package".--
24 1. When the premium or charge for insurance of or
25 involving such property or merchandise is included in the
26 overall purchase price or financing of the purchase of
27 merchandise or property, the vendor or lender shall separately
28 state and identify the amount charged and to be paid for the
29 insurance, and the classifications, if any, upon which based;
30 and the inclusion or exclusion of the cost of insurance in
31 such purchase price or financing shall not increase, reduce,

1 or otherwise affect any other factor involved in the cost of
2 the merchandise, property, or financing as to the purchaser or
3 borrower.

4 2. This paragraph does not apply to transactions which
5 are subject to the provisions of part I of chapter 520,
6 entitled "The Motor Vehicle Sales Finance Act."

7 3. This paragraph does not apply to credit life or
8 credit disability insurance which is in compliance with s.
9 627.681(4)~~627.681(3)~~.

10
11 Reviser's note.--Paragraph (1)(g) is amended to
12 conform to the deletion of the definition of
13 "family or household member" from s.
14 741.30(1)(b) by s. 5, ch. 94-134, Laws of
15 Florida, and the addition of the definition in
16 s. 741.28(2) by s. 1, ch. 94-134. Paragraph
17 (1)(p) is amended to conform to the
18 redesignation of s. 627.681(3) as s. 627.681(4)
19 by s. 83, ch. 98-199, Laws of Florida.

20
21 Section 25. Subsection (11) of section 626.9543,
22 Florida Statutes, 1998 Supplement, is amended to read:

23 626.9543 Holocaust victims.--

24 (11) RULES.--The department, by rule, shall provide
25 for the implementation of the provisions of this section by
26 establishing procedures and related forms for facilitating,
27 monitoring, and verifying compliance with this section and for
28 the establishment of ~~for~~ a restitution program for Holocaust
29 victims, survivors, and their heirs and beneficiaries.

1 Reviser's note.--Amended to improve clarity and
2 facilitate correct interpretation.

3
4 Section 26. Paragraph (d) of subsection (3) of section
5 626.973, Florida Statutes, is amended to read:

6 626.973 Fictitious groups.--

7 (3) The restrictions and limitations of this section
8 do not extend to property or casualty insurance issued in this
9 state, provided that:

10 (d) For any personal lines insurance risk, the group
11 is composed of such members and meets the requirements
12 specified in s. 627.552 for employee groups, s. 627.553 for
13 debtor groups, s. 627.554 for labor union groups, s. 627.555
14 for trustee groups, s. 627.556 for credit union groups, s.
15 627.5567 ~~627.572~~ for association groups, and s. 627.654 for
16 labor union and association groups; except that any provision
17 of such sections which precludes individual selection of
18 amounts of insurance shall not be applicable to property or
19 casualty insurance.

20
21 Reviser's note.--Amended to conform to the
22 redesignation of s. 627.572 as s. 627.5567 by
23 s. 52, ch. 92-318, Laws of Florida.

24
25 Section 27. Section 627.0612, Florida Statutes, is
26 amended to read:

27 627.0612 Administrative proceedings in rating
28 determinations.--In any proceeding to determine whether rates,
29 rating plans, or other matters governed by this part comply
30 with the law, the appellate court shall set aside a final
31 order of the department if the department has violated s.

1 120.57(1)(k)~~120.57(1)(i)~~by substituting its findings of fact
2 for findings of an administrative law judge which were
3 supported by competent substantial evidence.

4
5 Reviser's note.--Amended to conform to the
6 redesignation of s. 120.57(1)(i) as s.
7 120.57(1)(k) by s. 5, ch. 98-200, Laws of
8 Florida.

9
10 Section 28. Subsection (6) of section 627.162, Florida
11 Statutes, is amended to read:

12 627.162 Requirements for premium installments;
13 delinquency, collection, and check return charges; attorney's
14 fees.--

15 (6) The term "insurer," for purposes of this section,
16 includes a commercial self-insurance fund as defined in s.
17 624.462, an assessable mutual insurer as defined in s.
18 628.6011, and a group self-insurer's fund as defined in s.
19 624.4621 ~~400.57~~.

20
21 Reviser's note.--Amended to correct an apparent
22 error. Section 440.57 was redesignated as s.
23 624.4621 by s. 79, ch. 93-415, Laws of Florida.

24
25 Section 29. Paragraph (b) of subsection (1) of section
26 627.4147, Florida Statutes, is amended to read:

27 627.4147 Medical malpractice insurance contracts.--

28 (1) In addition to any other requirements imposed by
29 law, each self-insurance policy as authorized under s. 627.357
30 or insurance policy providing coverage for claims arising out
31 of the rendering of, or the failure to render, medical care or

1 services, including those of the Florida Medical Malpractice
2 Joint Underwriting Association, shall include:

3 (b)1. Except as provided in subparagraph 2., a clause
4 authorizing the insurer or self-insurer to determine, to make,
5 and to conclude, without the permission of the insured, any
6 offer of admission of liability and for arbitration pursuant
7 to s. 766.106, settlement offer, or offer of judgment, if the
8 offer is within the policy limits. It is against public
9 policy for any insurance or self-insurance policy to contain a
10 clause giving the insured the exclusive right to veto any
11 offer for admission of liability and for arbitration made
12 pursuant to s. 766.106, settlement offer, or offer of
13 judgment, when such offer is within the policy limits.
14 However, any offer of admission of liability, settlement
15 offer, or offer of judgment made by an insurer or self-insurer
16 shall be made in good faith and in the best interests of the
17 insured.

18 2.a. With respect to dentists licensed under chapter
19 466, a clause clearly stating whether or not the insured has
20 the exclusive right to veto any offer of admission of
21 liability and for arbitration pursuant to s. 766.106,
22 settlement offer, or offer of judgment if the offer is within
23 policy limits. An insurer or self-insurer shall not make or
24 conclude, without the permission of the insured, any offer of
25 admission of liability and for arbitration pursuant to s.
26 766.106, settlement offer, or offer of judgment, if such offer
27 is outside the policy limits. However, any offer for
28 admission of liability and for arbitration made under s.
29 766.106, settlement offer, or offer of judgment made by an
30 insurer or self-insurer shall be made in good faith and in the
31 best interest of the insured.

1 b. If the policy contains a clause stating the insured
2 does not have the exclusive right to veto any offer or
3 admission of liability and for arbitration made pursuant to s.
4 766.106, settlement offer or offer of judgment, the insurer or
5 self-insurer shall provide to the insured or the insured's
6 legal representative by certified mail, return receipt
7 requested, a copy of the final offer of admission of liability
8 and for arbitration made pursuant to s. 766.106, settlement
9 offer or offer of judgment and at the same time such offer is
10 provided to the claimant. A copy of any final agreement
11 reached between the insurer and claimant shall also be
12 provided to the insurer or his or her legal representative by
13 certified mail, return receipt requested not more than 10 days
14 after affecting such agreement.

15
16 Reviser's note.--Amended to provide contextual
17 consistency, improve clarity, and facilitate
18 correct interpretation.

19
20 Section 30. Paragraph (a) of subsection (2) and
21 subsection (6) of section 627.5515, Florida Statutes, are
22 amended to read:

23 627.5515 Out-of-state groups.--

24 (2) This part does not apply to a group life insurance
25 policy issued or delivered outside this state under which a
26 resident of this state is provided coverage if:

27 (a) The policy is issued to an employee group the
28 composition of which is substantially as described in s.
29 627.552; a labor union group the composition of which is
30 substantially as described in s. 627.554; a trustee group the
31 composition of which is substantially as described in s.

1 627.555; a credit union group the composition of which is
2 substantially as described in s. 627.556; an additional group
3 complying with s. 627.5565; an association group the
4 composition of which is substantially as described in s.
5 627.5567 ~~627.572~~; an association group to cover persons
6 associated in any other common group, which common group is
7 formed primarily for purposes other than providing insurance;
8 a group which is established primarily for the purpose of
9 providing group insurance, provided the benefits are
10 reasonable in relation to the premiums charged thereunder and
11 issuance of the group policy has resulted, or will result, in
12 economies of administration; or a group of insurance agents of
13 an insurer, which insurer is the policyholder;

14 (6) Any insurer who provides coverage under
15 certificates of insurance issued to residents of this state
16 shall designate one Florida-licensed resident agent as agent
17 of record for the service of such certificates, unless the
18 policy is issued to a group substantially as described in s.
19 627.552, s. 627.554, s. 627.555, s. 627.556, s. 627.5565, or
20 s. 627.5567 ~~627.572~~.

21
22 Reviser's note.--Amended to conform to the
23 redesignation of s. 627.572 as s. 627.5567 by
24 s. 52, ch. 92-318, Laws of Florida.

25
26 Section 31. Subsection (1) of section 627.6617,
27 Florida Statutes, is amended to read:

28 627.6617 Coverage for home health care services.--

29 (1) Any group health insurance policy providing
30 coverage on an expense-incurred basis shall provide coverage
31 for home health care by a home health care agency licensed

1 pursuant to part IV ~~III~~ of chapter 400. Such coverage may be
2 limited to home health care under a plan of treatment
3 prescribed by a licensed physician. Services may be performed
4 by a registered graduate nurse, a licensed practical nurse, a
5 physical therapist, a speech therapist, an occupational
6 therapist, or a home health aide. Provisions for utilization
7 review may be imposed, provided that similar provisions apply
8 to all other types of health care services.

9
10 Reviser's note.--Amended to conform to the
11 redesignation of parts of chapter 400
12 necessitated by the insertion of a new part I
13 by the reviser incident to the compilation of
14 ch. 93-177, Laws of Florida.

15
16 Section 32. Paragraph (n) of subsection (3), paragraph
17 (b) of subsection (6), and paragraph (b) of subsection (11) of
18 section 627.6699, Florida Statutes, 1998 Supplement, are
19 amended to read:

20 627.6699 Employee Health Care Access Act.--

21 (3) DEFINITIONS.--As used in this section, the term:

22 (n) "Modified community rating" means a method used to
23 develop carrier premiums which spreads financial risk across a
24 large population and allows adjustments for age, gender,
25 family composition, tobacco usage, and geographic area as
26 determined under paragraph (5)(j) ~~(5)(k)~~.

27 (6) RESTRICTIONS RELATING TO PREMIUM RATES.--

28 (b) For all small employer health benefit plans that
29 are subject to this section and are issued by small employer
30 carriers on or after January 1, 1994, premium rates for health
31

1 benefit plans subject to this section are subject to the
2 following:

3 1. Small employer carriers must use a modified
4 community rating methodology in which the premium for each
5 small employer must be determined solely on the basis of the
6 eligible employee's and eligible dependent's gender, age,
7 family composition, tobacco use, or geographic area as
8 determined under paragraph (5)(j) ~~(5)(k)~~.

9 2. Rating factors related to age, gender, family
10 composition, tobacco use, or geographic location may be
11 developed by each carrier to reflect the carrier's experience.
12 The factors used by carriers are subject to department review
13 and approval.

14 3. Small employer carriers may not modify the rate for
15 a small employer for 12 months from the initial issue date or
16 renewal date, unless the composition of the group changes or
17 benefits are changed.

18 4. Carriers participating in the alliance program, in
19 accordance with ss. 408.70-408.706 ~~408.700-408.707~~, may apply
20 a different community rate to business written in that
21 program.

22 (11) SMALL EMPLOYER HEALTH REINSURANCE PROGRAM.--

23 (b)1. The program shall operate subject to the
24 supervision and control of the board.

25 ~~2. Until December 31, 1993, the board shall consist of~~
26 ~~the commissioner or his or her designee, who shall serve as~~
27 ~~chair, and seven additional members appointed by the~~
28 ~~commissioner on or before May 1, 1992, as follows:~~

29 ~~a. One member shall be a representative of the largest~~
30 ~~health insurer in the state, as determined by market share as~~
31 ~~of December 31, 1991.~~

1 ~~b. One member shall be a representative of the largest~~
2 ~~health maintenance organization in the state, as determined by~~
3 ~~market share as of December 31, 1991.~~

4 ~~c. Three members shall be selected from a list of~~
5 ~~individuals recommended by the Health Insurance Association of~~
6 ~~America.~~

7 ~~d. Two members shall be selected from a list of~~
8 ~~individuals recommended by the Florida Insurance Council.~~

9
10 ~~The terms of members appointed under this subparagraph expire~~
11 ~~on December 31, 1993. The appointment of a member under this~~
12 ~~subparagraph does not preclude the commissioner from~~
13 ~~appointing the same person to serve as a member under~~
14 ~~subparagraph 3.~~

15 ~~3. Beginning January 1, 1994, the board shall consist~~
16 ~~of the commissioner or his or her designee, who shall serve as~~
17 ~~chair, and eight additional members who are representatives of~~
18 ~~carriers and are appointed by the commissioner.~~

19 2.4. Effective upon this act becoming a law, the board
20 shall consist of the commissioner or his or her designee, who
21 shall serve as the chairperson, and 13 additional members who
22 are representatives of carriers and insurance agents and are
23 appointed by the commissioner and serve as follows:

24 a. The commissioner shall include representatives of
25 small employer carriers subject to assessment under this
26 subsection. If two or more carriers elect to be risk-assuming
27 carriers, the membership must include at least two
28 representatives of risk-assuming carriers; if one carrier is
29 risk-assuming, one member must be a representative of such
30 carrier. At least one member must be a carrier who is subject
31 to the assessments, but is not a small employer carrier.

1 Subject to such restrictions, at least five members shall be
2 selected from individuals recommended by small employer
3 carriers pursuant to procedures provided by rule of the
4 department. Three members shall be selected from a list of
5 health insurance carriers that issue individual health
6 insurance policies. At least two of the three members selected
7 must be reinsuring carriers. Two members shall be selected
8 from a list of insurance agents who are actively engaged in
9 the sale of health insurance.

10 b. A member appointed under this subparagraph shall
11 serve a term of 4 years and shall continue in office until the
12 member's successor takes office, except that, in order to
13 provide for staggered terms, the commissioner shall designate
14 two of the initial appointees under this subparagraph to serve
15 terms of 2 years and shall designate three of the initial
16 appointees under this subparagraph to serve terms of 3 years.

17 ~~3.5.~~ The commissioner may remove a member for cause.

18 ~~4.6.~~ Vacancies on the board shall be filled in the
19 same manner as the original appointment for the unexpired
20 portion of the term.

21 ~~5.7.~~ The commissioner may require an entity that
22 recommends persons for appointment to submit additional lists
23 of recommended appointees.

24

25 Reviser's note.--Paragraphs (3)(n) and (6)(b)
26 are amended to conform to the redesignation of
27 paragraph (5)(k) as paragraph (5)(j) by s. 15,
28 ch. 97-179, Laws of Florida. Paragraph (6)(b)
29 is further amended to correct an apparent error
30 and facilitate correct interpretation.

31 Information relating to the alliance program

1 can be found in ss. 408.70-408.706. Paragraph
2 (11)(b) is amended to delete language that has
3 served its purpose.

4
5 Section 33. Paragraph (b) of subsection (5) of section
6 627.7295, Florida Statutes, 1998 Supplement, is amended to
7 read:

8 627.7295 Motor vehicle insurance contracts.--
9 (5)

10 (b) To the extent that a licensed general agent's cost
11 of obtaining motor vehicle reports on applicants for motor
12 vehicle insurance is not otherwise compensated, the agent may,
13 in addition to any other fees authorized by law, charge an
14 applicant for motor vehicle insurance a reasonable,
15 nonrefundable fee to reimburse the agent the actual cost of
16 obtaining the report for each licensed driver when the motor
17 vehicle report is obtained by the agent simultaneously with
18 the preparation of the application for use in the calculation
19 of premium or in the proper placement of the risk. The amount
20 of the fee may not exceed the agent's actual cost in obtaining
21 the report which is not otherwise compensated. Actual cost is
22 the cost of obtaining the report on an individual driver basis
23 when so obtained or the pro rata cost per driver when the
24 report is obtained on more than one driver; however, in no
25 case may actual cost include subscription or access fees
26 associated with obtaining motor vehicle reports on-line
27 through ~~through~~ any electronic transmissions program.

28
29 Reviser's note.--Amended to improve clarity and
30 facilitate correct interpretation.

31

1 Section 34. Paragraph (b) of subsection (3) of section
2 627.733, Florida Statutes, 1998 Supplement, is amended to
3 read:

4 627.733 Required security.--

5 (3) Such security shall be provided:

6 (b) By any other method authorized by s. 324.031(2),
7 (3), or (4) and approved by the Department of Highway Safety
8 and Motor Vehicles as affording security equivalent to that
9 afforded by a policy of insurance or by self-insuring as
10 authorized by s. 768.28(15)~~768.28(14)~~. The person filing
11 such security shall have all of the obligations and rights of
12 an insurer under ss. 627.730-627.7405.

13
14 Reviser's note.--Amended to conform to the
15 redesignation of s. 768.28(14) as s. 768.28(15)
16 by s. 70, ch. 94-209, Laws of Florida.

17
18 Section 35. Paragraph (e) of subsection (1) of section
19 627.848, Florida Statutes, is amended to read:

20 627.848 Cancellation of insurance contract upon
21 default.--

22 (1) When a premium finance agreement contains a power
23 of attorney or other authority enabling the premium finance
24 company to cancel any insurance contract listed in the
25 agreement, the insurance contract shall not be canceled unless
26 cancellation is in accordance with the following provisions:

27 (e) Whenever an insurance contract is canceled in
28 accordance with this section, the insurer shall promptly
29 return the unpaid balance due under the finance contract, up
30 to the gross amount available upon the cancellation of the
31 policy, to the premium finance company and any remaining

1 unearned premium to the agent or the insured, or both, for the
2 benefit of the insured or insureds. The insurer shall notify
3 the insured and the agent of the amount of unearned premium
4 returned to the premium finance company and the amount of
5 unearned commission held by the agent. The premium finance
6 company within 15 days shall notify the insured and the agent
7 of the amount of unearned premium. Within 15 days of receipt
8 of notification from the premium finance company, the agent
9 shall return such amount including any unearned commission to
10 the insured or with the written approval of the insured apply
11 such amount to the purchase of other insurance products
12 regulated by the department. The department may adopt rules
13 necessary to implement the provisions of this subsection.

14

15 Reviser's note.--Amended to improve clarity and
16 facilitate correct interpretation.

17

18 Section 36. Subsection (5) of section 627.912, Florida
19 Statutes, 1998 Supplement, is amended to read:

20 627.912 Professional liability claims and actions;
21 reports by insurers.--

22 (5) Any self-insurance program established under s.
23 240.213 shall report in duplicate to the Department of
24 Insurance any claim or action for damages for personal
25 injuries claimed to have been caused by error, omission, or
26 negligence in the performance of professional services
27 provided by the Board of Regents through an employee or agent
28 of the Board of Regents, including practitioners of medicine
29 licensed under chapter 458, practitioners of osteopathic
30 medicine licensed under chapter 459, podiatric physicians
31 ~~podiatrists~~ licensed under chapter 461, and dentists licensed

1 under chapter 466, or based on a claimed performance of
2 professional services without consent if the claim resulted in
3 a final judgment in any amount, or a settlement in any amount.
4 The reports required by this subsection shall contain the
5 information required by subsection (3) and the name, address,
6 and specialty of the employee or agent of the Board of Regents
7 whose performance or professional services is alleged in the
8 claim or action to have caused personal injury.

9
10 Reviser's note.--Amended to provide contextual
11 consistency with s. 627.912(1), which reflects
12 redesignation of podiatrists as podiatric
13 physicians by s. 225, ch. 98-166, Laws of
14 Florida.

15
16 Section 37. Paragraph (c) of subsection (3) of section
17 627.9407, Florida Statutes, 1998 Supplement, is amended to
18 read:

19 627.9407 Disclosure, advertising, and performance
20 standards for long-term care insurance.--

21 (3) RESTRICTIONS.--A long-term care insurance policy
22 may not:

23 (c) Restrict its coverage to care only in a nursing
24 home licensed pursuant to part II † of chapter 400 or provide
25 significantly more coverage for such care than coverage for
26 lower levels of care. The department shall adopt rules
27 defining what constitutes significantly more coverage in
28 nursing homes licensed pursuant to part II † of chapter 400
29 than for lower levels of care.

30
31

1 Reviser's note.--Amended to conform to the
2 redesignation of parts of chapter 400
3 necessitated by the insertion of a new part I
4 by the reviser incident to the compilation of
5 ch. 93-177, Laws of Florida.
6

7 Section 38. Paragraph (a) of subsection (5) of section
8 628.461, Florida Statutes, is amended to read:

9 628.461 Acquisition of controlling stock.--
10 (5)(a) The acquisition of voting securities shall be
11 deemed approved unless the department disapproves the proposed
12 acquisition within 90 days after the statement required by
13 subsection (1) has been filed. The department may on its own
14 initiate, or if requested to do so in writing by a
15 substantially affected party shall conduct, a proceeding to
16 consider the appropriateness of the proposed filing. The
17 90-day time period shall be tolled during the pendency of the
18 proceeding. Any written request for a proceeding must be
19 filed with the department within 10 days of the date notice of
20 the filing is given. During the pendency of the proceeding or
21 review period by the department, any person or affiliated
22 person complying with the filing requirements of this section
23 may proceed and take all steps necessary to conclude the
24 acquisition so long as the acquisition becoming final is
25 conditioned upon obtaining departmental approval. The
26 department shall, however, at any time that it finds an
27 immediate danger to the public health, safety, and welfare of
28 the domestic policyholders exists, immediately order, pursuant
29 to s. 120.569(2)(n)~~120.569(2)(1)~~, the proposed acquisition
30 temporarily disapproved and any further steps to conclude the
31 acquisition ceased.

1 Reviser's note.--Amended to conform to the
2 redesignation of s. 120.569(2)(1) as s.
3 120.569(2)(n) by s. 4, ch. 98-200, Laws of
4 Florida.

5
6 Section 39. Paragraph (a) of subsection (6) of section
7 628.4615, Florida Statutes, is amended to read:

8 628.4615 Specialty insurers; acquisition of
9 controlling stock, ownership interest, assets, or control;
10 merger or consolidation.--

11 (6)(a) The acquisition application shall be reviewed
12 in accordance with chapter 120. The department may on its own
13 initiate, or, if requested to do so in writing by a
14 substantially affected person, shall conduct, a proceeding to
15 consider the appropriateness of the proposed filing. Time
16 periods for purposes of chapter 120 shall be tolled during the
17 pendency of the proceeding. Any written request for a
18 proceeding must be filed with the department within 10 days of
19 the date notice of the filing is given. During the pendency
20 of the proceeding or review period by the department, any
21 person or affiliated person complying with the filing
22 requirements of this section may proceed and take all steps
23 necessary to conclude the acquisition so long as the
24 acquisition becoming final is conditioned upon obtaining
25 departmental approval. The department shall, however, at any
26 time it finds an immediate danger to the public health,
27 safety, and welfare of the insureds exists, immediately order,
28 pursuant to s. 120.569(2)(n)~~120.569(2)(1)~~, the proposed
29 acquisition disapproved and any further steps to conclude the
30 acquisition ceased.

31

1 Reviser's note.--Amended to conform to the
2 redesignation of s. 120.569(2)(1) as s.
3 120.569(2)(n) by s. 4, ch. 98-200, Laws of
4 Florida.

5
6 Section 40. Subsection (2) of section 628.6013,
7 Florida Statutes, is amended to read:

8 628.6013 Converted self-insurance fund; trade
9 association; board of directors.--

10 (2) An assessable mutual insurer formed by the
11 conversion of a commercial self-insurance fund pursuant to s.
12 624.463 or by the conversion of a group self-insurer's fund
13 organized under s. 624.4621 ~~440.57~~ shall be endorsed at the
14 time of conversion by a statewide not-for-profit trade
15 association, industry association, or professional association
16 of employers or professionals which has a constitution or
17 bylaws, which is incorporated under the laws of this state,
18 and which has been organized for purposes other than that of
19 obtaining or providing insurance and operated in good faith
20 for a continuous period of 1 year. The association shall not
21 be liable for any actions of the insurer, nor shall it require
22 the establishment or enforcement of any policy of the insurer.
23 Fees, services, and other aspects of the relationship between
24 the association and the insurer must be reasonable and are
25 subject to contractual agreement.

26
27 Reviser's note.--Amended to conform to the
28 redesignation of s. 440.57 as s. 624.4621 by s.
29 79, ch. 93-415, Laws of Florida.

30
31

1 Section 41. Subsection (1) of section 628.6016,
2 Florida Statutes, is amended to read:

3 628.6016 Applicability of related laws.--In addition
4 to other provisions of the code cited in ss.
5 628.6011-628.6018:

6 (1) Sections 624.155, 624.308, 624.414, 624.415, and
7 624.416(4); ss. 624.418-624.4211, except s. 624.418(2)(f); ss.
8 624.464, 624.468(1), (2), (4), (6), and (11), 624.472,
9 624.473, 624.474, ~~624.478~~, 624.480, 624.482, 624.484, 624.486,
10 and 624.501;

11
12 apply to assessable mutual insurers; however, ss. 628.255,
13 628.411, and 628.421 do not apply. No section of the code not
14 expressly and specifically cited in ss. 628.6011-628.6018
15 applies to assessable mutual insurers. The term "assessable
16 mutual insurer" shall be substituted for the term "commercial
17 self-insurer" as appropriate.

18
19 Reviser's note.--Amended to conform to the
20 repeal of s. 624.478 by s. 2, ch. 98-399, Laws
21 of Florida.

22
23 Section 42. Subsection (2) of section 628.6017,
24 Florida Statutes, is amended to read:

25 628.6017 Converting assessable mutual insurer.--

26 (2) An assessable mutual insurer may become a
27 nonassessable mutual pursuant to s. 628.341 if the assessable
28 mutual insurer's ratio of actual annual written premiums, as
29 adjusted in accordance with subsection (3)~~(2)~~, to current
30 surplus as to policyholders does not exceed 10 to 1 for gross
31

1 written premiums and does not exceed 4 to 1 for net written
2 premiums.

3

4 Reviser's note.--Amended to conform to the
5 redesignation of subsection (2) of s. 628.6017
6 as subsection (3) by s. 3, ch. 94-133, Laws of
7 Florida.

8

9 Section 43. Subsection (3) of section 628.721, Florida
10 Statutes, is amended to read:

11 628.721 Bylaws.--

12 (3) The mutual insurance holding company shall file
13 within 30 days with the department a copy, certified by the
14 mutual insurance holding company's secretary, of its bylaws
15 and of every modification thereof or addition thereto. The
16 department shall promptly disapprove any bylaw provision
17 deemed by it to be unlawful, unreasonable, inadequate, unfair,
18 or detrimental to the proper interests or protection of the
19 mutual insurance holding company's members or any class
20 thereof. The insurer shall not, after receiving written notice
21 of such disapproval and during the existence thereof,
22 effectuate any ~~and~~ bylaw provision disapproved.

23

24 Reviser's note.--Amended to improve clarity and
25 facilitate correct interpretation.

26

27 Section 44. Subparagraph 50. of paragraph (b) of
28 subsection (6) of section 629.401, Florida Statutes, is
29 amended to read:

30 629.401 Insurance exchange.--

31 (6)

1 (b) In addition to the insurance laws specified in
2 paragraph (a), the department shall regulate the exchange
3 pursuant to the following powers, rights, and duties:

4 50. Prohibition of underwriting manager
5 investment.--Any direct or indirect investment in any
6 underwriting manager by a broker member or any affiliated
7 person of a broker member or any direct or indirect investment
8 in a broker member by an underwriting manager or any
9 affiliated person of an underwriting manager is prohibited.
10 "Affiliated person" for purposes of this subparagraph is
11 defined in subparagraph 43. ~~Any direct or indirect investment~~
12 ~~prohibited by this subparagraph which exists prior to July 2,~~
13 ~~1987, shall be dissolved by June 30, 1988.~~

14
15 Reviser's note.--Amended to delete language
16 that has served its purpose.

17
18 Section 45. Section 631.0515, Florida Statutes, is
19 amended to read:

20 631.0515 Appointment of receiver; insurance holding
21 company.--A delinquency proceeding pursuant to this chapter
22 constitutes the sole and exclusive method of dissolving,
23 liquidating, rehabilitating, reorganizing, conserving, or
24 appointing a receiver of a Florida corporation which is not
25 insolvent as defined by s. 607.01401(15)~~607.0140(15)~~; which
26 through its shareholders, board of directors, or governing
27 body is deadlocked in the management of its affairs; and which
28 directly or indirectly owns all of the stock of a Florida
29 domestic insurer. The department may petition for an order
30 directing it to rehabilitate such corporation if the interests
31 of policyholders or the public will be harmed as a result of

1 the deadlock. The department shall use due diligence to
2 resolve the deadlock. Whether or not the department petitions
3 for an order, the circuit court shall not have jurisdiction
4 pursuant to s. 607.271, s. 607.274, or s. 607.277 to dissolve,
5 liquidate, or appoint receivers with respect to, a Florida
6 corporation which directly or indirectly owns all of the stock
7 of a Florida domestic insurer and which is not insolvent as
8 defined by s. 607.01401(15)~~607.0140(15)~~.

9
10 Reviser's note.--Amended to conform to the
11 redesignation of s. 607.0140 as s. 607.01401 by
12 s. 137, ch. 90-179, Laws of Florida.

13
14 Section 46. Section 631.112, Florida Statutes, is
15 amended to read:

16 631.112 Subordination of claims for
17 noncooperation.--If an ancillary receiver or another person
18 performing the duties associated with an ancillary receiver in
19 another state or foreign country fails to transfer to the
20 domiciliary liquidator in this state any assets within her or
21 his control other than special deposits, diminished only by
22 the expenses of the ancillary receivership, if any, the claims
23 filed in the ancillary receivership, other than special
24 deposit claims or secured claims, shall be deemed class 9 &
25 claims as defined in s. 631.271(1)(i)~~631.271(1)(h)~~.

26
27 Reviser's note.--Amended to conform to the
28 redesignation of class 8 claims as class 9
29 claims and s. 631.271(1)(h) as s. 631.271(1)(i)
30 by s. 1, ch. 95-213, Laws of Florida.

31

1 Section 47. Paragraph (e) of subsection (3) of section
2 631.57, Florida Statutes, is amended to read:

3 631.57 Powers and duties of the association.--

4 (3)

5 (e)1.

6 a. In addition to assessments otherwise authorized in
7 paragraph (a), as a temporary measure related to insolvencies
8 caused by Hurricane Andrew, and to the extent necessary to
9 secure the funds for the account specified in s. 631.55(2)(c)
10 ~~631.55(2)(d)~~, or to retire indebtedness, including, without
11 limitation, the principal, redemption premium, if any, and
12 interest on, and related costs of issuance of, bonds issued
13 under s. 166.111(2), and the funding of any reserves and other
14 payments required under the bond resolution or trust indenture
15 pursuant to which such bonds have been issued, the department,
16 upon certification of the board of directors, shall levy
17 assessments upon insurers holding a certificate of authority
18 as follows:

19 (I) Except as provided in sub-sub-subparagraph (II),
20 the assessments payable under this paragraph by any insurer
21 shall not exceed in any 1 year more than 2 percent of that
22 insurer's direct written premiums, net of refunds, in this
23 state during the preceding calendar year for the kinds of
24 insurance within the account specified in s. 631.55(2)(c)
25 ~~631.55(2)(d)~~.

26 (II) If the amount levied under sub-sub-subparagraph
27 (I) is less than 2 percent of the insurer's direct written
28 premiums, net of refunds, in this state during calendar year
29 1991 for the kinds of insurance within the account specified
30 in s. 631.55(2)(c)~~631.55(2)(d)~~, in addition to and separate
31 from such assessment, the assessment shall also include the

1 difference between the amount calculated based on calendar
2 year 1991 and the amount determined under sub-sub-subparagraph
3 (I). If this sub-sub-subparagraph is held invalid, the
4 invalidity shall not affect other provisions of this section,
5 and to this end the provisions of this section are declared
6 severable.

7 (III) In addition to any other insurers subject to
8 this subparagraph, this subparagraph also applies to any
9 insurer that held a certificate of authority on August 24,
10 1992. If this sub-sub-subparagraph is held invalid, the
11 invalidity shall not affect other provisions of this section,
12 and to this end the provisions of this section are declared
13 severable.

14 b. Any assessments authorized under this paragraph
15 shall be levied by the department upon insurers referred to in
16 sub-subparagraph a., upon certification as to the need
17 therefor by the board of directors, in 1992 and in each year
18 that bonds issued under s. 166.111(2) are outstanding, in such
19 amounts up to such 2 percent limit as required in order to
20 provide for the full and timely payment of the principal of,
21 redemption premium, if any, and interest on, and related costs
22 of, issuance of bonds issued under s. 166.111(2). The
23 assessments provided for in this paragraph are hereby assigned
24 and pledged to a municipality issuing bonds under s.
25 166.111(2)(b), for the benefit of the holders of such bonds,
26 in order to enable such municipality to provide for the
27 payment of the principal of, redemption premium, if any, and
28 interest on such bonds, the cost of issuance of such bonds,
29 and the funding of any reserves and other payments required
30 under the bond resolution or trust indenture pursuant to which
31 such bonds have been issued, without the necessity of any

1 further action by the association, the department, or any
2 other party. To the extent that bonds are issued under s.
3 166.111(2), the proceeds of assessments levied under this
4 paragraph shall be remitted directly to and administered by
5 the trustee appointed for such bonds.

6 c. Assessments under this paragraph shall be payable
7 in 12 monthly installments with the first installment being
8 due and payable at the end of the month after an assessment is
9 levied, and subsequent installments being due not later than
10 the end of each succeeding month.

11 d. The association shall issue a monthly report on the
12 status of the use of the bond proceeds as related to
13 insolvencies caused by Hurricane Andrew. The report must
14 contain the number of claims paid and the amount of claims
15 paid. The association shall also include an analysis of the
16 revenue generated from the additional assessment levied under
17 this subsection. The report must be sent to the Legislature
18 and the Insurance Commissioner monthly.

19 2. In order to assure that insurers paying assessments
20 levied under this paragraph continue to charge rates that are
21 neither inadequate nor excessive, within 90 days after being
22 notified of such assessments, each insurer that is to be
23 assessed pursuant to this paragraph shall make a rate filing
24 for coverage included within the account specified in s.
25 631.55(2)(c)~~631.55(2)(d)~~ and for which rates are required to
26 be filed under s. 627.062. If the filing reflects a rate
27 change that, as a percentage, is equal to the difference
28 between the rate of such assessment and the rate of the
29 previous year's assessment under this paragraph, the filing
30 shall consist of a certification so stating and shall be
31 deemed approved when made, subject to the department's

1 continuing authority to require actuarial justification as to
2 the adequacy of any rate at any time. Any rate change of a
3 different percentage shall be subject to the standards and
4 procedures of s. 627.062.

5
6 Reviser's note.--Amended to conform to the
7 redesignation of s. 631.55(2)(d) as s.
8 631.55(2)(c) by s. 18, ch. 97-262, Laws of
9 Florida.

10
11 Section 48. Paragraph (c) of subsection (1) of section
12 631.914, Florida Statutes, is amended to read:

13 631.914 Assessments.--

14 (1)

15 (c)1. Effective July 1, 1999, if assessments otherwise
16 authorized in paragraph (a) are insufficient to make all
17 payments on reimbursements then owing to claimants in a
18 calendar year, then upon certification by the board, the
19 department shall levy additional assessments of up to 1.5
20 percent of the insurer's net direct written premiums in this
21 state during the calendar year next preceding ~~proceeding~~ the
22 date of such assessments against insurers to secure the
23 necessary funds.

24 2. To assure that insurers paying assessments levied
25 under this paragraph continue to charge rates that are neither
26 inadequate nor excessive, each insurer that is to be assessed
27 pursuant to this paragraph, or a licensed rating organization
28 to which the insurer subscribes, may make, within 90 days
29 after being notified of such assessments, a rate filing for
30 workers' compensation coverage pursuant to ss. 627.072 and
31 627.091. If the filing reflects a percentage rate change

1 equal to the difference between the rate of such assessment
2 and the rate of the previous year's assessment under this
3 paragraph, the filing shall consist of a certification so
4 stating and shall be deemed approved when made. Any rate
5 change of a different percentage shall be subject to the
6 standards and procedures of ss. 627.072 and 627.091.

7
8 Reviser's note.--Amended to improve clarity and
9 facilitate correct interpretation.

10
11 Section 49. Paragraph (a) of subsection (2) of section
12 633.161, Florida Statutes, is amended to read:

13 633.161 Cease and desist orders; orders to correct
14 hazardous conditions; orders to vacate; violation;
15 penalties.--

16 (2)(a) If, during the conduct of a firesafety
17 inspection authorized by ss. 633.081 and 633.085, it is
18 determined that a violation described in this section exists
19 which poses an immediate danger to the public health, safety,
20 or welfare, the State Fire Marshal may issue an order to
21 vacate the building in question, which order shall be
22 immediately effective and shall be an immediate final order
23 under s. 120.569(2)(n)~~120.569(2)(l)~~. With respect to a
24 facility under the jurisdiction of a district school board or
25 community college board of trustees, the order to vacate shall
26 be issued jointly by the district superintendent or college
27 president and the State Fire Marshal.

28
29 Reviser's note.--Amended to conform to the
30 redesignation of s. 120.569(2)(l) as s.

1 120.569(2)(n) by s. 4, ch. 98-200, Laws of
2 Florida.

3
4 Section 50. Subsection (2) of section 633.72, Florida
5 Statutes, 1998 Supplement, is amended to read:

6 633.72 Florida Fire Code Advisory Council.--

7 ~~(2) Within 30 days of January 1, 1988, the State Fire~~
8 ~~Marshal shall appoint the members of the advisory council, of~~
9 ~~whom two members shall serve 4-year terms, two members shall~~
10 ~~serve 3-year terms, and three members shall serve 2-year~~
11 ~~terms. Thereafter, Each appointee shall serve a 4-year term.~~
12 No member shall serve more than one term. No member of the
13 council shall be paid a salary as such member, but each shall
14 receive travel and expense reimbursement as provided in s.
15 112.061.

16
17 Reviser's note.--Amended to delete language
18 that has served its purpose.

19
20 Section 51. Subsection (1) of section 641.2018,
21 Florida Statutes, is amended to read:

22 641.2018 Limited coverage for home health care
23 authorized.--

24 (1) Notwithstanding other provisions of this chapter,
25 a health maintenance organization may issue a contract that
26 limits coverage to home health care services only. The
27 organization and the contract shall be subject to all of the
28 requirements of this part that do not require or otherwise
29 apply to specific benefits other than home care services. To
30 this extent, all of the requirements of this part apply to any
31 organization or contract that limits coverage to home care

1 services, except the requirements for providing comprehensive
2 health care services as provided in ss. 641.19(4), (12), and
3 (13)~~641.19(2), (6), and (7)~~, and 641.31(1), except ss.
4 641.31(9), (12), (17), (18), (19), (20), (21), and (24) and
5 641.31095.

6
7 Reviser's note.--Amended to conform to the
8 redesignation of s. 641.19(2), (6), and (7) as
9 s. 641.19(4), (12), and (13) by s. 13, ch.
10 96-199, Laws of Florida.

11
12 Section 52. Section 641.20185, Florida Statutes, is
13 amended to read:

14 641.20185 High-deductible contracts for medical
15 savings accounts.--Notwithstanding the provisions of this ~~the~~
16 part and part III related to the requirement for providing
17 comprehensive coverage, a health maintenance organization may
18 offer a high-deductible contract to employers that establish
19 medical savings accounts, as defined in s. 220(d) of the
20 Internal Revenue Code.

21
22 Reviser's note.--Amended to improve clarity and
23 facilitate correct interpretation.

24
25 Section 53. Subsection (2) of section 641.30, Florida
26 Statutes, is amended to read:

27 641.30 Construction and relationship to other laws.--

28 (2) Except as provided in this part, the Florida
29 Insurance Code does not apply to health maintenance
30 organizations certificated under this part, and health
31 maintenance organizations certificated under this part are not

1 subject to ~~part I~~ or part II ~~III~~ of this chapter. Any person,
2 entity, or health maintenance organization operating without a
3 subsisting certificate of authority in violation of this part
4 or rules promulgated thereunder or renewing, issuing, or
5 delivering health maintenance contracts without a subsisting
6 certificate of authority in violation of this part or rules
7 promulgated thereunder, in addition to being subject to the
8 provisions of this part, is subject to the provisions of the
9 Florida Insurance Code as defined in s. 624.01.

10
11 Reviser's note.--Amended to conform to the
12 redesignation of parts of chapter 641 by the
13 reviser necessitated by the repeal of sections
14 constituting former part I by s. 185, ch.
15 91-108, Laws of Florida.

16
17 Section 54. Section 641.3007, Florida Statutes, is
18 reenacted and amended to read:

19 641.3007 Human immunodeficiency virus infection and
20 acquired immune deficiency syndrome for contract purposes.--

21 (1) PURPOSE.--The purpose of this section is to
22 prohibit unfair practices in a health maintenance organization
23 contract with respect to exposure to the human
24 immunodeficiency virus infection and related matters, and
25 thereby reduce the possibility that a health maintenance
26 organization subscriber or applicant may suffer unfair
27 discrimination when subscribing to or applying for the
28 contractual services of a health maintenance organization.

29 (2) SCOPE.--This section applies to all health
30 maintenance contracts which are issued in this state or which
31 are issued outside this state but cover residents of this

1 state. This section shall not prohibit a health maintenance
2 organization from contesting a contract or claim to the extent
3 allowed by law.

4 (3) DEFINITIONS.--As used in this section:

5 (a) "AIDS" means acquired immune deficiency syndrome.

6 (b) "ARC" means AIDS-related complex.

7 (c) "HIV" means human immunodeficiency virus
8 identified as the causative agent of AIDS.

9 (4) UTILIZATION OF MEDICAL TESTS.--

10 (a) With respect to the issuance of or the
11 underwriting of a health maintenance organization contract
12 regarding exposure to the HIV infection and sickness or
13 medical conditions derived from such infection, a health
14 maintenance organization shall only utilize medical tests
15 which are reliable predictors of risk. A test which is
16 recommended by the Centers for Disease Control and Prevention
17 or by the federal Food and Drug Administration is deemed to be
18 reliable for the purposes of this section. A test which is
19 rejected or not recommended by the Centers for Disease Control
20 and Prevention or the federal Food and Drug Administration is
21 a test which is deemed to be not reliable for the purposes of
22 this section. If a specific Centers for Disease Control and
23 Prevention or federal Food and Drug Administration recommended
24 test indicates the existence or potential existence of
25 exposure by the HIV infection or a sickness or medical
26 condition related to the HIV infection, before relying on a
27 single test result to deny or limit coverage or to rate the
28 coverage, the health maintenance organization shall follow the
29 applicable Centers for Disease Control and Prevention or
30 federal Food and Drug Administration recommended test protocol
31 and shall utilize any applicable Centers for Disease Control

1 and Prevention or federal Food and Drug Administration
2 recommended followup tests or series of tests to confirm the
3 indication.

4 (b) Prior to testing, the health maintenance
5 organization must disclose its intent to test the person for
6 the HIV infection or for a specific sickness or medical
7 condition derived therefrom and must obtain the person's
8 written informed consent to administer the test. Written
9 informed consent shall include a fair explanation of the test,
10 including its purpose, potential uses, and limitations, and
11 the meaning of its results and the right to confidential
12 treatment of information. Use of a form approved by the
13 department shall raise a conclusive presumption of informed
14 consent.

15 (c) An applicant shall be notified of a positive test
16 result by a physician designated by the applicant or, in the
17 absence of such designation, by the Department of Health and
18 Rehabilitative Services. Such notification must include:

19 1. Face-to-face posttest counseling on the meaning of
20 the test results; the possible need for additional testing;
21 and the need to eliminate behavior which might spread the
22 disease to others;

23 2. The availability in the geographic area of any
24 appropriate health care services, including mental health
25 care, and appropriate social and support services;

26 3. The benefits of locating and counseling any
27 individual by whom the infected individual may have been
28 exposed to human immunodeficiency virus and any individual
29 whom the infected individual may have exposed to the virus;
30 and

31

1 4. The availability, if any, of the services of public
2 health authorities with respect to locating and counseling any
3 individual described in subparagraph 3.

4 (d) A medical test for exposure to the HIV infection
5 or for a sickness or medical condition derived from such
6 infection shall only be required of or given to a person if
7 the test is required or given to all subscribers or applicants
8 or if the decision to require the test is based on the
9 person's medical history. Sexual orientation shall not be
10 used in the underwriting process or in the determination of
11 which subscribers or applicants for enrollment shall be tested
12 for exposure to the HIV infection. Neither the marital status,
13 the living arrangements, the occupation, the gender, the
14 beneficiary designation, nor the zip code or other territorial
15 classification of an applicant shall be used to establish the
16 applicant's sexual orientation.

17 (e) A health maintenance organization may inquire
18 whether a person has been tested positive for exposure to the
19 HIV infection or been diagnosed as having AIDS or ARC caused
20 by the HIV infection or other sickness or medical condition
21 derived from such infection. A health maintenance organization
22 shall not inquire whether a person has been tested for or has
23 received a negative result from a specific test for exposure
24 to the HIV infection or for a sickness or medical condition
25 derived from such infection.

26 (f) A health maintenance organization shall maintain
27 strict confidentiality regarding medical test results with
28 respect to the HIV infection or a specific sickness or medical
29 condition derived from such infection. Information regarding
30 specific test results shall not be disclosed outside the
31 health maintenance organization, its employees, its marketing

1 representatives, or its insurance affiliates, except to the
2 person tested and to persons designated in writing by the
3 person tested. Specific test results shall not be furnished to
4 an insurance industry or health maintenance organization data
5 bank if a review of the information would identify the
6 individual and the specific test results.

7 (g) No laboratory may be used by an insurer or
8 insurance support organization for the processing of
9 HIV-related tests unless it is certified by the United States
10 Department of Health and Human Services under the Clinical
11 Laboratories Improvement Act of 1967, permitting testing of
12 specimens obtained in interstate commerce, and subjects itself
13 to ongoing proficiency testing by the College of American
14 Pathologists, the American Association of Bio Analysts, or an
15 equivalent program approved by the Centers for Disease Control
16 and Prevention of the United States Department of Health and
17 Human Services.

18 (5) RESTRICTIONS ON CONTRACT EXCLUSIONS AND
19 LIMITATIONS.--

20 (a) A health maintenance organization contract shall
21 not exclude coverage of a member of a subscriber group because
22 of a positive test result for exposure to the HIV infection or
23 a specific sickness or medical condition derived from such
24 infection, either as a condition for or subsequent to the
25 issuance of the contract, provided that this prohibition shall
26 not apply to persons applying for enrollment where individual
27 underwriting is otherwise allowed by law.

28 (b) No health maintenance organization contract shall
29 exclude or limit coverage for exposure to the HIV infection or
30 a specific sickness or medical condition derived from such
31

1 infection, except as provided in a preexisting condition
2 clause.

3
4 Reviser's note.--Reenacted to conform to the
5 apparent intent of s. 187, ch. 91-108, Laws of
6 Florida, which nullified the scheduled
7 expiration of provisions in chapter 641 in
8 accordance with s. 11.61. Section 641.3007 was
9 scheduled to expire on October 1, 1991,
10 pursuant to s. 54, ch. 88-380, Laws of Florida,
11 which required legislative review, but not
12 specifically pursuant to s. 11.61. Paragraphs
13 (4)(a) and (g) are amended to conform to the
14 redesignation of the Centers for Disease
15 Control as the Centers for Disease Control and
16 Prevention by Pub. L. No. 102-531.

17
18 Section 55. Paragraph (b) of subsection (4) of section
19 641.31071, Florida Statutes, is amended to read:

20 641.31071 Preexisting conditions.--

21 (4)

22 (b) Subparagraphs (a) 1. ~~1.~~ and 2. do not apply to an
23 individual after the end of the first 63-day period during all
24 of which the individual was not covered under any creditable
25 coverage.

26
27 Reviser's note.--Amended to improve clarity and
28 facilitate correct interpretation. Paragraph
29 (4)(b) is not divided into subparagraphs.

30
31

1 Section 56. Subsection (1) of section 641.459, Florida
2 Statutes, is amended to read:

3 641.459 Construction and relationship to other laws.--

4 (1) Except as provided in this part, the Florida
5 Insurance Code, as defined in s. 624.01, does not apply to
6 prepaid health clinics certificated under this part; and
7 prepaid health clinics certificated under this part are not
8 subject to ~~former part I~~ or part I ~~FF~~ of this chapter.

9
10 Reviser's note.--Amended to conform to the
11 redesignation of parts of chapter 641 by the
12 reviser necessitated by the repeal of sections
13 constituting former part I by s. 185, ch.
14 91-108, Laws of Florida.

15
16 Section 57. Subsection (4) of section 641.495, Florida
17 Statutes, 1998 Supplement, is amended to read:

18 641.495 Requirements for issuance and maintenance of
19 certificate.--

20 (4) The organization shall ensure that the health care
21 services it provides to subscribers, including physician
22 services as required by s. 641.19(13)(d) and (e) ~~641.19(7)(d)~~
23 ~~and (e)~~, are accessible to the subscribers, with reasonable
24 promptness, with respect to geographic location, hours of
25 operation, provision of after-hours service, and staffing
26 patterns within generally accepted industry norms for meeting
27 the projected subscriber needs.

28
29 Reviser's note.--Amended to conform to the
30 redesignation of s. 641.19(7)(d) and (e) as s.

31

1 641.19(13)(d) and (e) by s. 13, ch. 96-199,
2 Laws of Florida.

3
4 Section 58. Paragraph (c) of subsection (4) of section
5 641.51, Florida Statutes, is amended to read:

6 641.51 Quality assurance program; second medical
7 opinion requirement.--

8 (4)

9 (c) For second opinions provided by contract
10 physicians the organization is prohibited from charging a fee
11 to the subscriber in an amount in excess of the subscriber
12 fees established by contract for referral contract physicians.
13 The organization shall pay the amount of all charges, which
14 are usual, reasonable, and customary in the community, for
15 second opinion services performed by a physician not under
16 contract with the organization, but may require the subscriber
17 to be responsible for up to 40 percent of such amount. The
18 organization may require that any tests deemed necessary by a
19 noncontract physician shall be conducted by the organization.
20 The organization may deny reimbursement rights granted under
21 this section in the event the subscriber seeks in excess of
22 three such referrals per year if such subsequent referral
23 costs are deemed by the organization to be evidence that the
24 subscriber has unreasonably overutilized the second opinion
25 privilege. A subscriber thus denied reimbursement under this
26 section shall have recourse to grievance procedures as
27 specified in ss. 408.7056 ~~641.311~~, 641.495, and 641.511. The
28 organization's physician's professional judgment concerning
29 the treatment of a subscriber derived after review of a second
30 opinion shall be controlling as to the treatment obligations
31 of the health maintenance organization. Treatment not

1 authorized by the health maintenance organization shall be at
2 the subscriber's expense.

3

4 Reviser's note.--Amended to conform to the
5 redesignation of s. 641.311 as s. 408.7056 by
6 s. 76, ch. 93-129, Laws of Florida.

7

8 Section 59. Subsection (3) of section 641.512, Florida
9 Statutes, is amended to read:

10 641.512 Accreditation and external quality assurance
11 assessment.--

12 (3) A representative of the department shall accompany
13 the accreditation or review organization throughout the
14 accreditation or assessment process, but shall not participate
15 in the final accreditation or assessment determination. The
16 accreditation or review organization shall monitor and
17 evaluate the quality and appropriateness of patient care, the
18 organization's pursuance of opportunities to improve patient
19 care and resolve identified problems, and the effectiveness of
20 the internal quality assurance program required for health
21 maintenance organization and prepaid health clinic
22 certification pursuant to s. 641.49(3)(p)~~641.49(3)(o)~~.

23

24 Reviser's note.--Amended to conform to the
25 redesignation of s. 641.49(3)(o) as s.
26 641.49(3)(p) by s. 31, ch. 96-199, Laws of
27 Florida.

28

29 Section 60. Subsection (1) of section 641.515, Florida
30 Statutes, is amended to read:

31 641.515 Investigation by the agency.--

1 (1) The agency shall investigate further any quality
2 of care issue contained in recommendations and reports
3 submitted pursuant to ss. 408.7056 ~~641.311~~ and 641.511. The
4 agency shall also investigate further any information that
5 indicates that the organization does not meet accreditation
6 standards or the standards of the review organization
7 performing the external quality assurance assessment pursuant
8 to reports submitted under s. 641.512. Every organization
9 shall submit its books and records and take other appropriate
10 action as may be necessary to facilitate an examination. The
11 agency shall have access to the organization's medical records
12 of individuals and records of employed and contracted
13 physicians, with the consent of the subscriber or by court
14 order, as necessary to carry out the provisions of this part.

15
16 Reviser's note.--Amended to conform to the
17 redesignation of s. 641.311 as s. 408.7056 by
18 s. 76, ch. 93-129, Laws of Florida.

19
20 Section 61. Subsection (6) of section 658.2953,
21 Florida Statutes, is amended to read:

22 658.2953 Interstate branching.--

23 (6) AUTHORITY OF STATE BANKS TO ESTABLISH INTERSTATE
24 BRANCHES BY MERGER.--Beginning May 31, 1997, with the prior
25 written approval of the department, a state bank may
26 establish, maintain, and operate one or more branches in a
27 state other than this state pursuant to an interstate merger
28 transaction in which the state bank is the resulting bank. No
29 later than the date on which the required application for the
30 interstate merger transaction is filed with the responsible
31 federal bank regulatory agency, the applicant state bank shall

1 file an application on a form prescribed by the department
2 accompanied by the required fee pursuant to s. 658.73. The
3 applicant shall also comply with the provisions of ss.
4 658.40-658.45. ~~branching.~~

5
6 Reviser's note.--Amended to delete extraneous
7 language at the end of subsection (6) as
8 amended by s. 11, ch. 97-30, Laws of Florida,
9 to improve clarity and facilitate correct
10 interpretation.

11
12 Section 62. Section 658.90, Florida Statutes, is
13 amended to read:

14 658.90 Receivers or liquidators under supervision of
15 department.--The provisions of ss. 658.79-658.96 ~~658.79-658.99~~
16 shall apply to all receivers or liquidators of any bank or
17 trust company heretofore appointed by the order of any circuit
18 court, and all such receivers or liquidators, both those
19 hereunder and those hereafter appointed by the circuit court,
20 shall at all times be under the supervision and control of the
21 department and subject at all times to summary discharge and
22 dismissal by it. Any vacancy in such receivership may be
23 filled by the department at any time.

24
25 Reviser's note.--Amended to conform to the
26 repeal of s. 658.99 by s. 189, ch. 92-303, Laws
27 of Florida.

28
29 Section 63. Section 660.29, Florida Statutes, is
30 amended to read:

1 660.29 Use of personnel and facilities.--To the extent
2 not prohibited by law, the trust department of a bank or
3 association, for or in connection with any of its fiduciary
4 functions or trust business or related activities, may utilize
5 personnel, facilities, and services of the commercial
6 department of that bank or the nontrust departments of that
7 association and of any business organization which is a bank
8 holding company under the provisions of the Bank Holding
9 Company Act of 1956, as amended (12 U.S.C. ss. 1841 et seq.),
10 or a savings and loan holding company of which that bank is a
11 subsidiary as defined in said act or that association is a
12 subsidiary, or of any other such subsidiary of that bank or
13 savings and loan holding company; and, to the same extent, the
14 commercial department of a bank or the nontrust departments of
15 an association or any such bank or savings and loan holding
16 company of which that bank or association is a subsidiary, or
17 any other subsidiary of such bank or savings and loan holding
18 company, for or in connection with any of the business
19 activities or functions of such commercial department or
20 nontrust departments, bank or savings and loan holding
21 company, or other subsidiary, may utilize personnel,
22 facilities, and services of the trust department of such bank
23 or association.

24
25 Reviser's note.--Amended to conform to the
26 complete title of the act.

27
28 Section 64. Subsection (1) of section 663.02, Florida
29 Statutes, is amended to read:

30 663.02 Applicability of state banking laws.--

31

1 (1) International banking corporations having offices
2 in this state shall be subject to all the provisions of the
3 financial institutions codes and chapter 655 as though such
4 international banking corporations were state banks, except
5 where it may appear, from the context or otherwise, that such
6 provisions are clearly applicable only to banks or trust
7 companies organized under the laws of this state or the United
8 States. Without limiting the foregoing general provisions, it
9 is the intent of the Legislature that the following provisions
10 shall be applicable to such banks or corporations: s. 655.031
11 ~~655.021~~, relating to administrative enforcement guidelines; s.
12 655.032 ~~655.025~~, relating to investigations, subpoenas,
13 hearings, and witnesses; s. 655.0321 ~~655.029~~, relating to
14 hearings, proceedings, and related documents and restricted
15 access thereto; s. 655.033, relating to cease and desist
16 orders; s. 655.037, relating to removal by the department of
17 an officer, director, committee member, employee, or other
18 person; s. 655.041, relating to administrative fines and
19 enforcement; and s. 658.49, relating to loans by banks not
20 exceeding \$50,000; ~~s. 658.76, relating to transactions with~~
21 ~~directors; and s. 658.77, relating to prohibited acts and~~
22 ~~practices~~. International banking corporations shall not have
23 the powers conferred on domestic banks by the provisions of s.
24 658.60, relating to deposits of public funds. International
25 banking corporations shall not be subject to the provisions of
26 s. 658.68, relating to liquidity. The provisions of chapter
27 687, relating to interest and usury, shall apply to all loans
28 not subject to s. 658.49.

29

30 Reviser's note.--Amended to conform to the
31 redesignation of s. 655.021 as s. 655.031, s.

1 655.025 as s. 655.032, and s. 655.029 as s.
2 655.0321 by ss. 11, 12, and 13, respectively,
3 ch. 92-303, Laws of Florida. The subsection is
4 further amended to conform to the repeal of ss.
5 658.76 and 658.77 by s. 189, ch. 92-303.
6

7 Section 65. Subsection (9) of section 663.16, Florida
8 Statutes, is amended to read:

9 663.16 Definitions; ss. 663.17-663.181.--As used in
10 ss. 663.17-663.181, the term:

11 (9) "Global ~~payment~~ net payment obligation" means the
12 amount, if any, owed by an international banking corporation
13 as a whole to a party, after giving effect to the netting
14 provisions of a qualified financial contract, with respect to
15 all transactions subject to netting under such qualified
16 financial contract.
17

18 Reviser's note.--Amended to improve clarity and
19 facilitate correct interpretation.
20

21 Section 66. Paragraph (d) of subsection (2) of section
22 671.105, Florida Statutes, 1998 Supplement, is amended to
23 read:

24 671.105 Territorial application of the code; parties'
25 power to choose applicable law.--

26 (2) When one of the following provisions of this code
27 specifies the applicable law, that provision governs; and a
28 contrary agreement is effective only to the extent permitted
29 by the law (including the conflict-of-laws rules) so
30 specified:
31

1 (d) Applicability of the chapter on investment
2 securities. (s. 678.1101 ~~678.1061~~)

3
4 Reviser's note.--Amended to improve clarity and
5 facilitate correct interpretation.

6 Applicability provisions for the chapter on
7 investment securities are found in s. 678.1101,
8 created by s. 1, ch. 98-11, Laws of Florida.

9
10 Section 67. Paragraph (g) of subsection (1) of section
11 678.1021, Florida Statutes, 1998 Supplement, is amended to
12 read:

13 678.1021 Definitions.--

14 (1) In this chapter:

15 (g) "Entitlement holder" means a person identified in
16 the records of a securities intermediary as the person having
17 a security entitlement against the securities intermediary. If
18 a person acquires a security entitlement by virtue of s.
19 678.5011(2)(b) or (c) ~~678.5011(3)(b) or (c)~~, that person is
20 the entitlement holder.

21
22 Reviser's note.--Amended to improve clarity and
23 facilitate correct interpretation. Section
24 678.5011(3) is not divided into paragraphs, and
25 acquisition of a security entitlement is
26 described in s. 678.5011(2).

27
28 Section 68. Subsection (3) of section 678.5031,
29 Florida Statutes, 1998 Supplement, is amended to read:

30 678.5031 Property interest of entitlement holder in
31 financial asset held by securities intermediary.--

1 (3) An entitlement holder's property interest with
2 respect to a particular financial asset under subsection(1)
3 (a) may be enforced against the securities intermediary only
4 by exercise of the entitlement holder's rights under ss.
5 678.5051-678.5081.

6
7 Reviser's note.--Amended to improve clarity and
8 facilitate correct interpretation. Subsection
9 (1) corresponds to (a) in the model act in the
10 Uniform Commercial Code.

11
12 Section 69. Section 694.14, Florida Statutes, is
13 amended to read:

14 694.14 Validation of deeds executed by guardians
15 appointed under Veterans' Guardianship Law.--Any deed of
16 conveyance, executed bona fide and for a valuable
17 consideration authorized and approved by order of the probate
18 court, by any limited guardian who was appointed as guardian
19 under the Veterans' Guardianship Law of Florida and who acted
20 under that law and the order of the probate court in the
21 execution of the deed of conveyance is hereby cured and shall
22 be deemed and taken as if properly executed, notwithstanding
23 the fact that the deed was executed to property that the
24 mentally incompetent veteran did not directly or otherwise
25 acquire with money received by the veteran from the United
26 States Department of Veteran's Affairs ~~Veterans~~
27 ~~Administration~~, and notwithstanding the fact that the
28 conveyance is to property acquired by the mentally incompetent
29 veteran before she or he became a veteran or was declared
30 insane, and notwithstanding the fact that some of the
31 information required by the Veterans' Guardianship Law was not

1 set out in the petition for appointment of the guardian, and
2 notwithstanding the fact that the guardian did not publish the
3 notice of application for an order of sale as required by s.
4 744.631, and notwithstanding any other defect in any part of
5 the guardianship proceeding that resulted in the
6 court-authorized and court-approved proceeding which resulted
7 in the execution of such guardian's deed.

8
9 Reviser's note.--Amended to conform to the
10 redesignation of the Veterans Administration as
11 the United States Department of Veteran's
12 Affairs by Pub. L. No. 102-83, s. 2, (d)(1),
13 105 Stat. 402 (1991).

14
15 Section 70. Paragraphs (b) and (c) of subsection (4)
16 of section 697.05, Florida Statutes, are amended to read:

17 697.05 Balloon mortgages; scope of law; definition;
18 requirements as to contents; penalties for violations;
19 exemptions.--

20 (4) This section does not apply to the following:

21 (b) Any first mortgage, excluding a mortgage in favor
22 of a home improvement contractor defined in s. 520.61(11) the
23 execution of which is required solely by the terms of a home
24 improvement contract which is governed by the provisions of
25 ss. 520.60-520.98 ~~520.60-520.992~~;

26 (c) Any mortgage created for a term of 5 years or
27 more, excluding a mortgage in favor of a home improvement
28 contractor defined in s. 520.61(11) the execution of which is
29 required solely by the terms of a home improvement contract
30 which is governed by the provisions of ss. 520.60-520.98
31 ~~520.60-520.992~~;

1 Reviser's note.--Amended to conform to the
2 repeal of s. 520.992 by s. 31, ch. 87-91, Laws
3 of Florida.

4
5 Section 71. Subsection (2) of section 704.05, Florida
6 Statutes, is amended to read:

7 704.05 Easements and rights of entry.--
8 (2) Any person claiming such a right of entry or
9 easement may preserve and protect the same from extinguishment
10 by the operation of this act by filing a notice in the form
11 and in accordance with the procedures set forth in ss. 712.05
12 and 712.06. ~~If the period for filing the notice would expire~~
13 ~~prior to January 1, 1977, the period shall be extended to~~
14 ~~January 1, 1977.~~

15
16 Reviser's note.--Amended to delete language
17 that has served its purpose.

18
19 Section 72. Subsection (9) of section 713.01, Florida
20 Statutes, 1998 Supplement, is amended to read:

21 713.01 Definitions.--As used in this part, the term:
22 (9) "Engineer" means a person or firm that is
23 authorized to practice engineering pursuant to chapter 471 or
24 a general contractor who provides engineering services under a
25 design-build contract authorized by s. 471.003(2)(i)
26 ~~471.003(2)(j)~~.

27
28 Reviser's note.--Amended to conform to the
29 redesignation of s. 471.003(2)(j) as s.
30 471.003(2)(i) necessitated by the repeal of s.

31

1 471.003(2)(f) by s. 65, ch. 98-287, Laws of
2 Florida.

3
4 Section 73. Section 713.32, Florida Statutes, is
5 amended to read:

6 713.32 Insurance proceeds liable for demands.--The
7 proceeds of any insurance that by the terms of the policy
8 contract are payable to the owner of improved real property or
9 a lienor and actually received or to be received by him or her
10 because of the damage, destruction, or removal by fire or
11 other casualty of an improvement on which lienors have
12 furnished labor or services or materials shall, after the
13 owner or lienor, as the case may be, has been reimbursed
14 therefrom for any premiums paid by him or her, be liable to
15 liens or demands for payment provided by this part to the same
16 extent and in the same manner, order of priority, and
17 conditions as the real property or payments under a direct
18 contract would have been, if the improvement had not been so
19 damaged, destroyed, or removed. The insurer may pay the
20 proceeds of the policy of insurance to the insured named in
21 the policy and thereupon any liability of the insurer under
22 this part shall cease. The named insured who receives any
23 proceeds of the policy shall be deemed a trustee of the
24 proceeds, and the proceeds shall be deemed trust funds for the
25 purposes designated by this section for a period of 1 year
26 from the date of receipt of the proceeds. This section shall
27 not apply to that part of the proceeds of any policy of
28 insurance payable to a person, including a mortgagee, who
29 holds a lien perfected before the recording of the notice of
30 commencement or recommencement.

31

1 Reviser's note.--Amended to improve clarity and
2 facilitate correct interpretation.

3
4 Section 74. Subsection (22) of section 718.103,
5 Florida Statutes, 1998 Supplement, is amended to read:

6 718.103 Definitions.--As used in this chapter, the
7 term:

8 (22) "Residential condominium" means a condominium
9 consisting of condominium units, any of which are intended for
10 use as a private temporary or permanent residence, except that
11 a condominium is not a residential condominium if the use for
12 which the units are intended is primarily commercial or
13 industrial and not more than three units are intended to be
14 used for private residence, and are intended to be used as
15 housing for maintenance, managerial, janitorial, or other
16 operational staff of the condominium. With respect to a
17 condominium that is not a timeshare condominium, a residential
18 unit includes a unit intended as a private temporary or
19 permanent residence as well as a unit not intended for
20 commercial or industrial use. With respect to a timeshare
21 condominium, the timeshare instrument as defined in s.
22 721.05(30)~~721.05(28)~~ shall govern the intended use of each
23 unit in the condominium. If a condominium is a residential
24 condominium but contains units intended to be used for
25 commercial or industrial purposes, then, with respect to those
26 units which are not intended for or used as private
27 residences, the condominium is not a residential condominium.
28 A condominium which contains both commercial and residential
29 units is a mixed-use condominium subject to the requirements
30 of s. 718.404.

31

1 Reviser's note.--Amended to conform to the
2 redesignation of s. 721.05(28) as s. 721.05(29)
3 by s. 2, ch. 95-274, Laws of Florida, and
4 further redesignation as s. 721.05(30) by s. 2,
5 ch. 98-36, Laws of Florida.

6
7 Section 75. Paragraph (b) of subsection (7) of section
8 718.111, Florida Statutes, 1998 Supplement, is amended to
9 read:

10 718.111 The association.--

11 (7) TITLE TO PROPERTY.--

12 (b) Subject to the provisions of s. 718.112(2)(m)
13 ~~718.112(2)(n)~~, the association, through its board, has the
14 limited power to convey a portion of the common elements to a
15 condemning authority for the purposes of providing utility
16 easements, right-of-way expansion, or other public purposes,
17 whether negotiated or as a result of eminent domain
18 proceedings.

19
20 Reviser's note.--Amended to conform to the
21 redesignation of s. 718.112(2)(n) as s.
22 718.112(2)(m) by s. 3, ch. 98-322, Laws of
23 Florida.

24
25 Section 76. Paragraph (e) of subsection (1) of section
26 719.106, Florida Statutes, 1998 Supplement, is amended to
27 read:

28 719.106 Bylaws; cooperative ownership.--

29 (1) MANDATORY PROVISIONS.--The bylaws or other
30 cooperative documents shall provide for the following, and if
31 they do not, they shall be deemed to include the following:

1 (e) Budget procedures.--

2 1. The board of administration shall mail, or hand
3 deliver to each unit owner at the address last furnished to
4 the association, a meeting notice and copies of the proposed
5 annual budget of common expenses to the unit owners not less
6 than 14 days prior to the meeting at which the budget will be
7 considered. Evidence of compliance with this 14-day notice
8 must be made by an affidavit executed by an officer of the
9 association or the manager or other person providing notice of
10 the meeting and filed among the official records of the
11 association. The meeting must be open to the unit owners.

12 2. If an adopted budget requires assessment against
13 the unit owners in any fiscal or calendar year which exceeds
14 115 percent of the assessments for the preceding year, the
15 board upon written application of 10 percent of the voting
16 interests to the board, shall call a special meeting of the
17 unit owners within 30 days, upon not less than 10 days'
18 written notice to each unit owner. At the special meeting,
19 unit owners shall consider and enact a budget. Unless the
20 bylaws require a larger vote, the adoption of the budget
21 requires a vote of not less than a majority of all the voting
22 interests.

23 3. The board of administration may, in any event,
24 propose a budget to the unit owners at a meeting of members or
25 by writing, and if the budget or proposed budget is approved
26 by the unit owners at the meeting or by a majority of all
27 voting interests in writing, the budget is adopted. If a
28 meeting of the unit owners has been called and a quorum is not
29 attained or a substitute budget is not adopted by the unit
30 owners, the budget adopted by the board of directors goes into
31 effect as scheduled.

1 4. In determining whether assessments exceed 115
2 percent of similar assessments for prior years, any authorized
3 provisions for reasonable reserves for repair or replacement
4 of cooperative property, anticipated expenses by the
5 association which are not anticipated to be incurred on a
6 regular or annual basis, or assessments for betterments to the
7 cooperative property must be excluded from computation.
8 However, as long as the developer is in control of the board
9 of administration, the board may not impose an assessment for
10 any year greater than 115 percent of the prior fiscal or
11 calendar year's assessment without approval of a majority of
12 all voting interests.

13

14 Reviser's note.--Amended to improve clarity and
15 facilitate correct interpretation.

16

17 Section 77. Paragraph (a) of subsection (1) of section
18 719.618, Florida Statutes, is amended to read:

19

719.618 Converter reserve accounts; warranties.--

20

(1) When existing improvements are converted to
21 ownership as a residential cooperative, the developer shall
22 establish reserve accounts for capital expenditures and
23 deferred maintenance, or give warranties as provided by
24 subsection (6), or post a surety bond as provided by
25 subsection (7). The developer shall fund the reserve accounts
26 in amounts calculated as follows:

27

(a)1. When the existing improvements include an
28 air-conditioning system serving more than one unit or property
29 which the association is responsible to repair, maintain, or
30 replace, the developer shall fund an air-conditioning reserve
31 account. The amount of the reserve account shall be the

1 product of the estimated current replacement cost of the
2 system, as disclosed and substantiated pursuant to s.
3 719.616(3)(b)~~719.613(3)(b)~~, multiplied by a fraction, the
4 numerator of which shall be the lesser of the age of the
5 system in years or 9, and the denominator of which shall be
6 10. When such air-conditioning system is within 1,000 yards of
7 the seacoast, the numerator shall be the lesser of the age of
8 the system in years or 3, and the denominator shall be 4.

9 2. The developer shall fund a plumbing reserve
10 account. The amount of the funding shall be the product of the
11 estimated current replacement cost of the plumbing component,
12 as disclosed and substantiated pursuant to s. 719.616(3)(b),
13 multiplied by a fraction, the numerator of which shall be the
14 lesser of the age of the plumbing in years or 36, and the
15 denominator of which shall be 40.

16 3. The developer shall fund a roof reserve account.
17 The amount of the funding shall be the product of the
18 estimated current replacement cost of the roofing component,
19 as disclosed and substantiated pursuant to s. 719.616(3)(b),
20 multiplied by a fraction, the numerator of which shall be the
21 lesser of the age of the roof in years or the numerator listed
22 in the following table. The denominator of the fraction shall
23 be determined based on the roof type, as follows:

24

25	Roof Type	Numerator	Denominator
26			
27	a. Built-up roof		
28	without insulation	4	5
29	b. Built-up roof		
30	with insulation	4	5
31	c. Cement tile roof	45	50

1	d. Asphalt shingle roof	14	15
2	e. Copper roof		
3	f. Wood shingle roof	9	10
4	g. All other types	18	20

5

6

7 Reviser's note.--Amended to provide contextual
8 consistency within paragraph (1)(a). Section
9 719.613 does not exist.

10

11 Section 78. Paragraph (b) of subsection (5) of section
12 721.84, Florida Statutes, 1998 Supplement, is amended to read:

13 721.84 Appointment of a registered agent; duties.--

14 (5) A registered agent may resign his agency
15 appointment for any obligor for which he serves as registered
16 agent, provided that:

17 (b) A successor registered agent is appointed and such
18 successor registered agent executes an acceptance of
19 appointment as successor registered agent and satisfies all of
20 the requirements of subsection (1). The resigning registered
21 agent may designate the successor registered agent; however,
22 if the resigning registered agent fails to designate a
23 successor registered agent or the designated successor
24 registered agent fails to accept, the successor registered
25 agent for the affected obligors may be designated by the
26 mortgagee as to the mortgage ~~mortgagee~~ lien and by the
27 association of the timeshare plan as to the assessment lien;
28 and

29

30 Reviser's note.--Amended to improve clarity and
31 facilitate correct interpretation.

1 Section 79. Subsection (1) of section 723.085, Florida
2 Statutes, is amended to read:

3 723.085 Rights of lienholder on mobile homes in rental
4 mobile home parks.--

5 (1) It shall be unlawful for a mobile home park owner
6 to execute on a writ of possession of a mobile home that is
7 either undergoing foreclosure of a lien for unpaid purchase
8 price or first lien, properly noticed pursuant to this act, or
9 that has been foreclosed on by the lienholder, and the
10 lienholder is the titleholder of the mobile home, so long as
11 the lot rental amount is paid in accordance with s. 723.084(6)
12 ~~section 1(5)~~.

13

14 Reviser's note.--Amended to improve clarity and
15 facilitate correct interpretation. The
16 original reference in H.B. 2179 (1992) was to
17 subsection (5) of section 11 of the bill which
18 was subsequently moved to subsection (6) of s.
19 16 of the bill, which became s. 723.084(6).

20

21 Section 80. Subsection (2) of section 734.1025,
22 Florida Statutes, is amended to read:

23 734.1025 Nonresident decedent's estate with property
24 not exceeding \$25,000 in this state; determination of
25 claims.--

26 (2) After complying with the foregoing requirements,
27 the domiciliary personal representative shall cause a notice
28 to be served and published according to the requirements of s.
29 731.111 ~~733.111~~, notifying all persons having claims or
30 demands against the estate to file them.

31

1 Reviser's note.--Amended to improve clarity and
2 facilitate correct interpretation. Section
3 733.111 does not exist, and s. 731.111 concerns
4 notice to creditors.
5

6 Section 81. Subsections (3) and (4) of section 741.01,
7 Florida Statutes, 1998 Supplement, are amended to read:

8 741.01 County court judge or clerk of the circuit
9 court to issue marriage license; fee.--

10 (3) Further, the fee charged for each marriage license
11 issued in the state shall be increased by an additional sum of
12 \$7.50 to be collected upon receipt of the application for the
13 issuance of a marriage license. The clerk shall transfer such
14 funds monthly to the State Treasury for deposit in the
15 Displaced Homemaker Trust Fund created in s. 446.50 ~~410.30~~.

16 (4) An additional fee of \$25 shall be paid to the
17 clerk upon receipt of the application for issuance of a
18 marriage license. The moneys collected shall be forwarded by
19 the clerk to the Supreme Court, monthly, for deposit in the
20 Family Courts Trust Fund ~~or in the Grants and Donations Trust~~
21 ~~Fund, if the Family Courts Trust Fund is not created by~~
22 ~~general law.~~
23

24 Reviser's note.--Subsection (3) is amended to
25 conform to the redesignation of s. 410.30 as s.
26 446.50 by s. 89, ch. 95-418, Laws of Florida.
27 Subsection (4) is amended to conform to the
28 creation of the Family Courts Trust Fund by s.
29 1, ch. 94-223, Laws of Florida.
30
31

1 Section 82. Subsection (4) of section 742.107, Florida
2 Statutes, is amended to read:

3 742.107 Determining paternity of child with mother
4 under 16 years of age when impregnated.--

5 (4) When the information provided by the applicant or
6 recipient who was impregnated while under age 16 indicates
7 that such person is the victim of child abuse as provided in
8 s. 827.04(3)~~827.04(4)~~, the Department of Revenue or the
9 Department of Health and Rehabilitative Services shall notify
10 the county sheriff's office or other appropriate agency or
11 official and provide information needed to protect the child's
12 health or welfare.

13

14 Reviser's note.--Amended to revise the
15 reference to s. 827.04(4) as created by s. 2,
16 ch. 96-215, Laws of Florida, to conform to the
17 redesignation of subunits of s. 827.04 by s.
18 10, ch. 96-322, Laws of Florida.

19

20 Section 83. Subsection (3) of section 743.0645,
21 Florida Statutes, 1998 Supplement, is amended to read:

22 743.0645 Other persons who may consent to medical care
23 or treatment of a minor.--

24 (3) The Department of Children and Family Services or
25 the Department of Juvenile Justice caseworker, juvenile
26 probation officer ~~case manager~~, or person primarily
27 responsible for the case management of the child, the
28 administrator of any facility licensed by the department under
29 s. 393.067, s. 394.875, or s. 409.175, or the administrator of
30 any state-operated or state-contracted delinquency residential
31 treatment facility may consent to the medical care or

1 treatment of any minor committed to it or in its custody under
2 chapter 39, chapter 984, or chapter 985, when the person who
3 has the power to consent as otherwise provided by law cannot
4 be contacted and such person has not expressly objected to
5 such consent. There shall be maintained in the records of the
6 minor documentation that a reasonable attempt was made to
7 contact the person who has the power to consent as otherwise
8 provided by law.

9
10 Reviser's note.--Amended to conform to the
11 redesignation of intake counselor or case
12 manager as juvenile probation officer by ss. 6
13 and 7, ch. 98-207, Laws of Florida.

14
15 Section 84. Subsection (3) of section 743.065, Florida
16 Statutes, is amended to read:

17 743.065 Unwed pregnant minor or minor mother; consent
18 to medical services for minor or minor's child valid.--

19 (3) Nothing in this act shall affect the provisions of
20 s. 390.0111 ~~390.001~~.

21
22 Reviser's note.--Amended to conform to the
23 redesignation of s. 390.001 as s. 390.0111 by
24 s. 2, ch. 97-151, Laws of Florida, and s. 1,
25 ch. 98-1, Laws of Florida.

26
27 Section 85. Section 743.07, Florida Statutes, is
28 reenacted to read:

29 743.07 Rights, privileges, and obligations of persons
30 18 years of age or older.--

31

1 (1) The disability of nonage is hereby removed for all
2 persons in this state who are 18 years of age or older, and
3 they shall enjoy and suffer the rights, privileges, and
4 obligations of all persons 21 years of age or older except as
5 otherwise excluded by the State Constitution immediately
6 preceding the effective date of this section and except as
7 otherwise provided in the Beverage Law.

8 (2) This section shall not prohibit any court of
9 competent jurisdiction from requiring support for a dependent
10 person beyond the age of 18 years when such dependency is
11 because of a mental or physical incapacity which began prior
12 to such person reaching majority or if the person is dependent
13 in fact, is between the ages of 18 and 19, and is still in
14 high school, performing in good faith with a reasonable
15 expectation of graduation before the age of 19.

16 (3) This section shall operate prospectively and not
17 retrospectively, and shall not affect the rights and
18 obligations existing prior to July 1, 1973.

19
20 Reviser's note.--Section 8, ch. 91-246, Laws of
21 Florida, purported to amend s. 743.07, but
22 failed to republish subsections (1) and (3).

23 In the absence of affirmative evidence that the
24 Legislature intended to repeal subsections (1)
25 and (3), s. 743.07 is reenacted to confirm that
26 the omission was not intended.

27
28 Section 86. Section 744.641, Florida Statutes, is
29 amended to read:

30 744.641 Guardian's compensation; bond premiums.--The
31 amount of compensation payable to a guardian shall not exceed

1 5 percent of the income of the ward during any year and may be
2 taken, by the guardian, on a monthly basis. In the event of
3 extraordinary services rendered by such guardian, the court
4 may, upon petition and after hearing on the petition,
5 authorize additional compensation for the extraordinary
6 services, payable from the estate of the ward. Provided that
7 extraordinary services approved by the United States
8 Department of Veteran's Affairs ~~Veterans Administration~~ do not
9 require a court hearing for approval of the fees, but shall
10 require an order authorizing the guardian to withdraw the
11 amount from the guardianship account. No compensation shall be
12 allowed on the corpus of an estate received from a preceding
13 guardian. The guardian may be allowed from the estate of her
14 or his ward reasonable premiums paid by the guardian to any
15 corporate surety upon the guardian's bond.

16

17 Reviser's note.--Amended to conform to the
18 redesignation of the Veterans Administration as
19 the United States Department of Veteran's
20 Affairs by Pub. L. No. 102-83, s. 2, (d)(1),
21 105 Stat. 402 (1991).

22

23 Section 87. Subsection (7) of section 744.704, Florida
24 Statutes, is amended to read:

25 744.704 Powers and duties.--

26 (7) A public guardian shall not commit a ward to a
27 mental health treatment facility, as defined in s. 394.455(30)
28 ~~394.455(29)~~, without an involuntary placement proceeding as
29 provided by law.

30

31

1 Reviser's note.--Amended to improve clarity and
2 facilitate correct interpretation. Section
3 394.455(30) as redesignated by s. 2, ch.
4 96-169, Laws of Florida, defines treatment
5 facility.

6
7 Section 88. Subsection (2) of section 765.113, Florida
8 Statutes, is amended to read:

9 765.113 Restrictions on providing consent.--Unless the
10 principal expressly delegates such authority to the surrogate
11 in writing, or a surrogate or proxy has sought and received
12 court approval pursuant to rule 5.900 of the Florida Probate
13 Rules, a surrogate or proxy may not provide consent for:

14 (2) Withholding or withdrawing life-prolonging
15 procedures from a pregnant patient prior to viability as
16 defined in s. 390.0111(4)~~390.001(5)~~.

17
18 Reviser's note.--Amended to conform to the
19 redesignation of s. 390.001(5) as s.
20 390.0111(4) by s. 2, ch. 97-151, Laws of
21 Florida, and s. 1, ch. 98-1, Laws of Florida.

22
23 Section 89. Subsection (8) of section 766.1115,
24 Florida Statutes, 1998 Supplement, is amended to read:

25 766.1115 Health care providers; creation of agency
26 relationship with governmental contractors.--

27 (8) REPORT TO THE LEGISLATURE.--Annually, ~~beginning~~
28 ~~January 1, 1993,~~the department shall report to the President
29 of the Senate, the Speaker of the House of Representatives,
30 and the minority leaders and relevant substantive committee
31 chairpersons of both houses, summarizing the efficacy of

1 access and treatment outcomes with respect to providing health
2 care services for low-income persons pursuant to this section.

3

4 Reviser's note.--Amended to delete language
5 that has served its purpose.

6

7 Section 90. Subsection (2) of section 766.207, Florida
8 Statutes, is amended to read:

9 766.207 Voluntary binding arbitration of medical
10 negligence claims.--

11 (2) Upon the completion of presuit investigation with
12 preliminary reasonable grounds for a medical negligence claim
13 intact, the parties may elect to have damages determined by an
14 arbitration panel. Such election may be initiated by either
15 party by serving a request for voluntary binding arbitration
16 of damages within 90 days after service of the claimant's
17 notice of intent to initiate litigation upon the defendant.
18 The evidentiary standards for voluntary binding arbitration of
19 medical negligence claims shall be as provided in ss.
20 120.569(2)(g)~~120.569(2)(e)~~ and 120.57(1)(c).

21

22 Reviser's note.--Amended to conform to the
23 redesignation of s. 120.569(2)(e) as s.
24 120.569(2)(g) by s. 4, ch. 98-200, Laws of
25 Florida.

26

27 Section 91. Section 766.304, Florida Statutes, 1998
28 Supplement, is amended to read:

29 766.304 Administrative law judge to determine
30 claims.--The administrative law judge shall hear and determine
31 all claims filed pursuant to ss. 766.301-766.316 and shall

1 exercise the full power and authority granted to her or him in
2 chapter 120, as necessary, to carry out the purposes of such
3 sections. The administrative law judge has exclusive
4 jurisdiction to determine whether a claim filed under this act
5 is compensable. No civil action may be brought until the
6 determinations under s. 766.309 have been made by the
7 administrative law judge. If the administrative law judge
8 determines that the claimant is entitled to compensation from
9 the association, no civil action may be brought or continued
10 in violation of the exclusiveness of remedy provisions of s.
11 766.303. If it is determined that a claim filed under this act
12 is not compensable, neither the doctrine of ~~neither~~ collateral
13 estoppel nor res judicata shall prohibit the claimant from
14 pursuing any and all civil remedies available under common law
15 and statutory law. The findings of fact and conclusions of law
16 of the administrative law judge shall not be admissible in any
17 subsequent proceeding; however, the sworn testimony of any
18 person and the exhibits introduced into evidence in the
19 administrative case are admissible as impeachment in any
20 subsequent civil action only against a party to the
21 administrative proceeding, subject to the Rules of Evidence.
22 An action may not be brought under ss. 766.301-766.316 if the
23 claimant recovers or final judgment is entered. The division
24 may adopt rules to promote the efficient administration of,
25 and to minimize the cost associated with, the prosecution of
26 claims.

27

28 Reviser's note.--Amended to improve clarity and
29 facilitate correct interpretation.

30

31

1 Section 92. Section 766.316, Florida Statutes, 1998
2 Supplement, is amended to read:

3 766.316 Notice to obstetrical patients of
4 participation in the plan.--Each hospital with a participating
5 physician on its staff and each participating physician, other
6 than residents, assistant residents, and interns deemed to be
7 participating physicians under s. 766.314(4)(c), under the
8 Florida Birth-Related Neurological Injury Compensation Plan
9 shall provide notice to the obstetrical patients as to the
10 limited no-fault alternative for birth-related neurological
11 injuries. Such notice shall be provided on forms furnished by
12 the association and shall include a clear and concise
13 explanation of a patient's rights and limitations under the
14 plan. The hospital or the participating physician may elect to
15 have the patient sign a form acknowledging receipt of the
16 notice form. Signature of the patient acknowledging receipt of
17 the notice form raises a rebuttable presumption that the
18 notice requirements of this section have been met. Notice need
19 not be given to a patient when the patient has an emergency
20 medical condition as defined in s. 395.002(9)(b)~~395.002(8)(b)~~
21 or when notice is not practicable.

22
23 Reviser's note.--Amended to conform to the
24 redesignation of subunits of s. 395.002 by s.
25 23, ch. 98-89, Laws of Florida, and s. 37, ch.
26 98-171, Laws of Florida.

27
28 Section 93. Paragraph (a) of subsection (1) of section
29 772.102, Florida Statutes, is amended to read:

30 772.102 Definitions.--As used in this chapter, the
31 term:

- 1 (1) "Criminal activity" means to commit, to attempt to
2 commit, to conspire to commit, or to solicit, coerce, or
3 intimidate another person to commit:
- 4 (a) Any crime which is chargeable by indictment or
5 information under the following provisions:
- 6 1. Section 210.18, relating to evasion of payment of
7 cigarette taxes.
- 8 2. Section 414.39, relating to public assistance
9 fraud.
- 10 3. Section 440.105 or s. 440.106, relating to workers'
11 compensation.
- 12 4. Part IV of chapter 501, relating to telemarketing.
- 13 5. Chapter 517, relating to securities transactions.
- 14 6. Section 550.235, s. 550.3551, or s. 550.3605,
15 relating to dogracing and horseracing.
- 16 7. Chapter 550, relating to jai alai frontons.
- 17 8. Chapter 552, relating to the manufacture,
18 distribution, and use of explosives.
- 19 9. Chapter 562, relating to beverage law enforcement.
- 20 10. Section 624.401, relating to transacting insurance
21 without a certificate of authority, s. 624.437(4)(c)1.,
22 relating to operating an unauthorized multiple-employer
23 welfare arrangement, or s. 626.902(1)(b), relating to
24 representing or aiding an unauthorized insurer.
- 25 11. Chapter 687, relating to interest and usurious
26 practices.
- 27 12. Section 721.08, s. 721.09, or s. 721.13, relating
28 to real estate timeshare plans.
- 29 13. Chapter 782, relating to homicide.
- 30 14. Chapter 784, relating to assault and battery.
- 31 15. Chapter 787, relating to kidnapping.

- 1 16. Chapter 790, relating to weapons and firearms.
- 2 17. Section ~~796.01, s.~~796.03, s. 796.04, s. 796.05,
- 3 or s. 796.07, relating to prostitution.
- 4 18. Chapter 806, relating to arson.
- 5 19. Section 810.02(2)(c), relating to specified
- 6 burglary of a dwelling or structure.
- 7 20. Chapter 812, relating to theft, robbery, and
- 8 related crimes.
- 9 21. Chapter 815, relating to computer-related crimes.
- 10 22. Chapter 817, relating to fraudulent practices,
- 11 false pretenses, fraud generally, and credit card crimes.
- 12 23. Section 827.071, relating to commercial sexual
- 13 exploitation of children.
- 14 24. Chapter 831, relating to forgery and
- 15 counterfeiting.
- 16 25. Chapter 832, relating to issuance of worthless
- 17 checks and drafts.
- 18 26. Section 836.05, relating to extortion.
- 19 27. Chapter 837, relating to perjury.
- 20 28. Chapter 838, relating to bribery and misuse of
- 21 public office.
- 22 29. Chapter 843, relating to obstruction of justice.
- 23 30. Section 847.011, s. 847.012, s. 847.013, s.
- 24 847.06, or s. 847.07, relating to obscene literature and
- 25 profanity.
- 26 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
- 27 or s. 849.25, relating to gambling.
- 28 32. Chapter 893, relating to drug abuse prevention and
- 29 control.
- 30 33. Section 914.22 or s. 914.23, relating to
- 31 witnesses, victims, or informants.

1 34. Section 918.12 or s. 918.13, relating to tampering
2 with jurors and evidence.

3
4 Reviser's note.--Amended to conform to the
5 repeal of s. 796.01 by s. 2, ch. 93-258, Laws
6 of Florida.

7
8 Section 94. Section 773.02, Florida Statutes, is
9 amended to read:

10 773.02 General provisions.--Except as provided in s.
11 773.03 ~~section 3~~, an equine activity sponsor, an equine
12 professional, or any other person, which shall include a
13 corporation or partnership, shall not be liable for an injury
14 to or the death of a participant resulting from the inherent
15 risks of equine activities and, except as provided in s.
16 773.03 ~~section 3~~, no participant nor any participant's
17 representative shall have any claim against or recover from
18 any equine activity sponsor, equine professional, or any other
19 person for injury, loss, damage, or death of the participant
20 resulting from any of the inherent risks of equine activities.

21
22 Reviser's note.--Amended to improve clarity and
23 facilitate correct interpretation. The
24 provisions which became ss. 773.01-773.05 were
25 added to C.S. for S.B. 1658 by Senate amendment
26 at Journal of the Senate 1993, pp. 674-675.
27 Section 3, which became s. 90 of the bill,
28 relating to limitation on liability for equine
29 activity and exceptions to that limitation, was
30 codified as s. 773.03.

31

1 Section 95. Section 773.05, Florida Statutes, is
2 amended to read:

3 773.05 Limitation on liability of persons making land
4 available to public for recreational purposes.--Nothing in ss.
5 773.01-773.05 ~~this act~~ shall be construed to limit in any way
6 the limitation of liability granted to private citizens who
7 allow the public to use their land for recreational purposes,
8 as provided in s. 375.251.

9
10 Reviser's note.--Amended to improve clarity and
11 facilitate correct interpretation. The
12 provisions which became ss. 773.01-773.05 were
13 added to C.S. for S.B. 1658 by Senate amendment
14 at Journal of the Senate 1993, pp. 674-675.

15
16 Section 96. Subsection (1) of section 775.0877,
17 Florida Statutes, is amended to read:

18 775.0877 Criminal transmission of HIV; procedures;
19 penalties.--

20 (1) In any case in which a person has been convicted
21 of or has pled nolo contendere or guilty to, regardless of
22 whether adjudication is withheld, any of the following
23 offenses, or the attempt thereof, which offense or attempted
24 offense involves the transmission of body fluids from one
25 person to another:

- 26 (a) Section 794.011, relating to sexual battery,
27 (b) Section 826.04, relating to incest,
28 (c) Section 800.04(1), (2), and (3), relating to lewd,
29 lascivious, or indecent assault or act upon any person less
30 than 16 years of age,

31

1 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),
2 relating to assault,
3 (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b),
4 relating to aggravated assault,
5 (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c),
6 relating to battery,
7 (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a),
8 relating to aggravated battery,
9 (h) Section 827.03(1), relating to child abuse,
10 (i) Section 827.03(2), relating to aggravated child
11 abuse,
12 (j) Section 825.102(1), relating to abuse of an
13 elderly person or disabled adult,
14 (k) Section 825.102(2), relating to aggravated abuse
15 of an elderly person or disabled adult,
16 (l) Section 827.071, relating to sexual performance by
17 person less than 18 years of age,
18 (m) Sections 796.03, 796.07, and 796.08, relating to
19 prostitution, or
20 (n) Section 381.0041(11)(b), relating to donation of
21 blood, plasma, organs, skin, or other human tissue,
22
23 the court shall order the offender to undergo HIV testing, to
24 be performed under the direction of the Department of Health
25 and Rehabilitative Services in accordance with s. 381.004,
26 unless the offender has undergone HIV testing voluntarily or
27 pursuant to procedures established in s. 381.004(3)(h)6.
28 ~~381.004(3)(i)6.~~ or s. 951.27, or any other applicable law or
29 rule providing for HIV testing of criminal offenders or
30 inmates, subsequent to her or his arrest for an offense
31 enumerated in paragraphs (a)-(n) for which she or he was

1 convicted or to which she or he pled nolo contendere or
2 guilty. The results of an HIV test performed on an offender
3 pursuant to this subsection are not admissible in any criminal
4 proceeding arising out of the alleged offense.

5
6 Reviser's note.--Amended to conform to the
7 redesignation of s. 381.004(3)(i)6. as s.
8 381.004(3)(h)6. by s. 2, ch. 98-171, Laws of
9 Florida.

10
11 Section 97. Subsection (2) of section 784.07, Florida
12 Statutes, 1998 Supplement, is amended to read:

13 784.07 Assault or battery of law enforcement officers,
14 firefighters, emergency medical care providers, public transit
15 employees or agents, or other specified officers;
16 reclassification of offenses; minimum sentences.--

17 (2) Whenever any person is charged with knowingly
18 committing an assault or battery upon a law enforcement
19 officer, a firefighter, an emergency medical care provider, a
20 traffic accident investigation officer as described in s.
21 316.640, a traffic infraction enforcement officer as described
22 in s. 316.640 ~~318.141~~, a parking enforcement specialist as
23 defined in s. 316.640, or a security officer employed by the
24 board of trustees of a community college, while the officer,
25 firefighter, emergency medical care provider, intake officer,
26 traffic accident investigation officer, traffic infraction
27 enforcement officer, parking enforcement specialist, public
28 transit employee or agent, or security officer is engaged in
29 the lawful performance of his or her duties, the offense for
30 which the person is charged shall be reclassified as follows:

31

1 (a) In the case of assault, from a misdemeanor of the
2 second degree to a misdemeanor of the first degree.

3 (b) In the case of battery, from a misdemeanor of the
4 first degree to a felony of the third degree.

5 (c) In the case of aggravated assault, from a felony
6 of the third degree to a felony of the second degree.

7 (d) In the case of aggravated battery, from a felony
8 of the second degree to a felony of the first degree.

9
10 Reviser's note.--Amended to conform to the
11 repeal of s. 318.141, which described traffic
12 infraction enforcement officers, by s. 44, ch.
13 96-350, Laws of Florida, and the addition of
14 the description of a traffic infraction
15 enforcement officer in s. 316.640 by s. 37, ch.
16 96-350.

17
18 Section 98. Section 784.075, Florida Statutes, 1998
19 Supplement, is amended to read:

20 784.075 Battery on detention or commitment facility
21 staff.--A person who commits a battery on a an juvenile
22 probation officer intake counselor or case manager, as defined
23 in s. 984.03(33) or s. 985.03(32)~~984.03(31) or s. 985.03(30)~~,
24 on other staff of a detention center or facility as defined in
25 s. 984.03(19) or s. 985.03(19), or on a staff member of a
26 commitment facility as defined in s. 985.03(46)~~985.03(45)~~,
27 commits a felony of the third degree, punishable as provided
28 in s. 775.082, s. 775.083, or s. 775.084. For purposes of this
29 section, a staff member of the facilities listed includes
30 persons employed by the Department of Juvenile Justice,
31 persons employed at facilities licensed by the Department of

1 Juvenile Justice, and persons employed at facilities operated
2 under a contract with the Department of Juvenile Justice.

3
4 Reviser's note.--Amended to conform to the
5 incorporation into ss. 984.03 and 985.03,
6 through the directive in s. 122, ch. 97-238,
7 Laws of Florida, of the redesignation of intake
8 counselor or case manager as juvenile probation
9 officer by ss. 6 and 7, ch. 98-207, Laws of
10 Florida. The subsections within ss. 984.03 and
11 985.03 were further redesignated by ss. 6 and
12 7, ch. 98-207.

13
14 Section 99. Paragraph (a) of subsection (1) of section
15 790.0655, Florida Statutes, is amended to read:

16 790.0655 Purchase and delivery of handguns; mandatory
17 waiting period; exceptions; penalties.--

18 (1)(a) There shall be a mandatory 3-day waiting
19 period, which shall be 3 days, excluding weekends and legal
20 holidays, between the purchase and the delivery at retail of
21 any handgun. "Purchase" means the transfer of money or other
22 valuable consideration to the retailer. "Handgun" means a
23 firearm capable of being carried and used by one hand, such as
24 a pistol or revolver. "Retailer" means and includes every
25 person engaged in the business of making sales at retail or
26 for distribution, or use, or consumption, or storage to be
27 used or consumed in this state, as defined in s. 212.02(13)
28 ~~212.02(14)~~.

29
30 Reviser's note.--Amended to conform to the
31 redesignation of s. 212.02(14) as s. 212.02(13)

1 necessitated by the repeal of subsection (12)
2 by s. 31, ch. 95-146, Laws of Florida.

3
4 Section 100. Section 794.011, Florida Statutes, is
5 reenacted to read:

6 794.011 Sexual battery.--

7 (1) As used in this chapter:

8 (a) "Consent" means intelligent, knowing, and
9 voluntary consent and does not include coerced submission.
10 "Consent" shall not be deemed or construed to mean the failure
11 by the alleged victim to offer physical resistance to the
12 offender.

13 (b) "Mentally defective" means a mental disease or
14 defect which renders a person temporarily or permanently
15 incapable of appraising the nature of his or her conduct.

16 (c) "Mentally incapacitated" means temporarily
17 incapable of appraising or controlling a person's own conduct
18 due to the influence of a narcotic, anesthetic, or
19 intoxicating substance administered without his or her consent
20 or due to any other act committed upon that person without his
21 or her consent.

22 (d) "Offender" means a person accused of a sexual
23 offense in violation of a provision of this chapter.

24 (e) "Physically helpless" means unconscious, asleep,
25 or for any other reason physically unable to communicate
26 unwillingness to an act.

27 (f) "Retaliation" includes, but is not limited to,
28 threats of future physical punishment, kidnapping, false
29 imprisonment or forcible confinement, or extortion.

30 (g) "Serious personal injury" means great bodily harm
31 or pain, permanent disability, or permanent disfigurement.

1 (h) "Sexual battery" means oral, anal, or vaginal
2 penetration by, or union with, the sexual organ of another or
3 the anal or vaginal penetration of another by any other
4 object; however, sexual battery does not include an act done
5 for a bona fide medical purpose.

6 (i) "Victim" means a person who has been the object of
7 a sexual offense.

8 (j) "Physically incapacitated" means bodily impaired
9 or handicapped and substantially limited in ability to resist
10 or flee.

11 (2)(a) A person 18 years of age or older who commits
12 sexual battery upon, or in an attempt to commit sexual battery
13 injures the sexual organs of, a person less than 12 years of
14 age commits a capital felony, punishable as provided in ss.
15 775.082 and 921.141.

16 (b) A person less than 18 years of age who commits
17 sexual battery upon, or in an attempt to commit sexual battery
18 injures the sexual organs of, a person less than 12 years of
19 age commits a life felony, punishable as provided in s.
20 775.082, s. 775.083, or s. 775.084.

21 (3) A person who commits sexual battery upon a person
22 12 years of age or older, without that person's consent, and
23 in the process thereof uses or threatens to use a deadly
24 weapon or uses actual physical force likely to cause serious
25 personal injury commits a life felony, punishable as provided
26 in s. 775.082, s. 775.083, or s. 775.084.

27 (4) A person who commits sexual battery upon a person
28 12 years of age or older without that person's consent, under
29 any of the following circumstances, commits a felony of the
30 first degree, punishable as provided in s. 775.082, s.
31 775.083, or s. 775.084:

1 (a) When the victim is physically helpless to resist.

2 (b) When the offender coerces the victim to submit by
3 threatening to use force or violence likely to cause serious
4 personal injury on the victim, and the victim reasonably
5 believes that the offender has the present ability to execute
6 the threat.

7 (c) When the offender coerces the victim to submit by
8 threatening to retaliate against the victim, or any other
9 person, and the victim reasonably believes that the offender
10 has the ability to execute the threat in the future.

11 (d) When the offender, without the prior knowledge or
12 consent of the victim, administers or has knowledge of someone
13 else administering to the victim any narcotic, anesthetic, or
14 other intoxicating substance which mentally or physically
15 incapacitates the victim.

16 (e) When the victim is mentally defective and the
17 offender has reason to believe this or has actual knowledge of
18 this fact.

19 (f) When the victim is physically incapacitated.

20 (g) When the offender is a law enforcement officer,
21 correctional officer, or correctional probation officer as
22 defined by s. 943.10(1), (2), (3), (6), (7), (8), or (9), who
23 is certified under the provisions of s. 943.1395 or is an
24 elected official exempt from such certification by virtue of
25 s. 943.253, or any other person in a position of control or
26 authority in a probation, community control, controlled
27 release, detention, custodial, or similar setting, and such
28 officer, official, or person is acting in such a manner as to
29 lead the victim to reasonably believe that the offender is in
30 a position of control or authority as an agent or employee of
31 government.

1 (5) A person who commits sexual battery upon a person
2 12 years of age or older, without that person's consent, and
3 in the process thereof does not use physical force and
4 violence likely to cause serious personal injury commits a
5 felony of the second degree, punishable as provided in s.
6 775.082, s. 775.083, or s. 775.084.

7 (6) The offense described in subsection (5) is
8 included in any sexual battery offense charged under
9 subsection (3) or subsection (4).

10 (7) A person who is convicted of committing a sexual
11 battery on or after October 1, 1992, is not eligible for basic
12 gain-time under s. 944.275. This subsection may be cited as
13 the "Junny Rios-Martinez, Jr. Act of 1992."

14 (8) Without regard to the willingness or consent of
15 the victim, which is not a defense to prosecution under this
16 subsection, a person who is in a position of familial or
17 custodial authority to a person less than 18 years of age and
18 who:

19 (a) Solicits that person to engage in any act which
20 would constitute sexual battery under paragraph (1)(h) commits
21 a felony of the third degree, punishable as provided in s.
22 775.082, s. 775.083, or s. 775.084.

23 (b) Engages in any act with that person while the
24 person is 12 years of age or older but less than 18 years of
25 age which constitutes sexual battery under paragraph (1)(h)
26 commits a felony of the first degree, punishable as provided
27 in s. 775.082, s. 775.083, or s. 775.084.

28 (c) Engages in any act with that person while the
29 person is less than 12 years of age which constitutes sexual
30 battery under paragraph (1)(h), or in an attempt to commit
31 sexual battery injures the sexual organs of such person

1 commits a capital or life felony, punishable pursuant to
2 subsection (2).

3 (9) For prosecution under paragraph (4)(g),
4 acquiescence to a person reasonably believed by the victim to
5 be in a position of authority or control does not constitute
6 consent, and it is not a defense that the perpetrator was not
7 actually in a position of control or authority if the
8 circumstances were such as to lead the victim to reasonably
9 believe that the person was in such a position.

10 (10) Any person who falsely accuses any person listed
11 in paragraph (4)(g) or other person in a position of control
12 or authority as an agent or employee of government of
13 violating paragraph (4)(g) is guilty of a felony of the third
14 degree, punishable as provided in s. 775.082, s. 775.083, or
15 s. 775.084.

16
17 Reviser's note.--Section 3, ch. 93-156, Laws of
18 Florida, purported to amend s. 794.011, but
19 failed to republish the section to include the
20 amendment to subsection (5) by s. 3, ch.
21 92-135, Laws of Florida. In the absence of
22 affirmative evidence that the Legislature
23 intended to repeal the amendment by s. 3, ch.
24 92-135, s. 794.011 is reenacted as amended by
25 s. 3, ch. 92-135, and s. 3, ch. 93-156, to
26 confirm that the omission was not intended.

27
28 Section 101. Subsection (1) of section 794.024,
29 Florida Statutes, is amended to read:

30 794.024 Unlawful to disclose identifying
31 information.--

1 (1) A public employee or officer who has access to the
2 photograph, name, or address of a person who is alleged to be
3 the victim of an offense described in this chapter, chapter
4 800, s. 827.03, s. 827.04, or s. 827.071 may not willfully and
5 knowingly disclose it to a person who is not assisting in the
6 investigation or prosecution of the alleged offense or to any
7 person other than the defendant, the defendant's attorney, or
8 a person specified in an order entered by the court having
9 jurisdiction of the alleged offense, or to organizations
10 authorized to receive such information pursuant to s.
11 119.07(3)(f)~~119.07(3)(h)~~.

12

13 Reviser's note.--Amended to conform to the
14 redesignation of s. 119.07(3)(h) as s.
15 119.07(3)(f) by s. 9, ch. 95-398, Laws of
16 Florida.

17

18 Section 102. Subsection (2) of section 810.14, Florida
19 Statutes, 1998 Supplement, is amended to read:

20 810.14 Voyeurism prohibited; penalties.--

21 (2) A person who violates this section commits a
22 misdemeanor of the first degree for the first violation,
23 punishable as provided in s. 775.082,or s. 775.083,~~or s.~~
24 ~~775.084~~.

25

26 Reviser's note.--Amended to conform to the
27 deletion of all reference to misdemeanors in s.
28 775.084 by s. 6, ch. 88-131, Laws of Florida.

29

30 Section 103. Paragraph (c) of subsection (2) of
31 section 812.014, Florida Statutes, is amended to read:

1 812.014 Theft.--

2 (2)

3 (c) It is grand theft of the third degree and a felony
4 of the third degree, punishable as provided in s. 775.082, s.
5 775.083, or s. 775.084, if the property stolen is:

6 1. Valued at \$300 or more, but less than \$5,000.

7 2. Valued at \$5,000 or more, but less than \$10,000.

8 3. Valued at \$10,000 or more, but less than \$20,000.

9 4. A will, codicil, or other testamentary instrument.

10 5. A firearm.

11 6. A motor vehicle, except as provided in paragraph
12 ~~subparagraph~~ (2)(a).

13 7. Any commercially farmed animal, including any
14 animal of the equine, bovine, or swine class, or other grazing
15 animal, and including aquaculture species raised at a
16 certified aquaculture facility. If the property stolen is
17 aquaculture species raised at a certified aquaculture
18 facility, then a \$10,000 fine shall be imposed.

19 8. Any fire extinguisher.

20 9. Any amount of citrus fruit consisting of 2,000 or
21 more individual pieces of fruit.

22 10. Taken from a designated construction site
23 identified by the posting of a sign as provided for in s.
24 810.09(2)(d).

25

26 Reviser's note.--Amended to improve clarity and
27 facilitate correct interpretation.

28

29 Section 104. Paragraph (f) of subsection (1) and
30 paragraph (f) of subsection (2) of section 828.27, Florida
31 Statutes, are amended to read:

1 828.27 Local animal control or cruelty ordinances;
2 penalty.--
3 (1) As used in this section, the term:
4 (f) "Citation" means a written notice, issued to a
5 person by an officer, that the officer has probable cause to
6 believe that the person has committed a civil infraction in
7 violation of a duly enacted ordinance and that the county
8 court will hear the charge. The citation must contain:
9 1. The date and time of issuance.
10 2. The name and address of the person.
11 3. The date and time the civil infraction was
12 committed.
13 4. The facts constituting probable cause.
14 5. The ordinance violated.
15 6. The name and authority of the officer.
16 7. The procedure for the person to follow in order to
17 pay the civil penalty, to contest the citation, or to appear
18 in court as required under subsection~~(6)~~(5).
19 8. The applicable civil penalty if the person elects
20 to contest the citation.
21 9. The applicable civil penalty if the person elects
22 not to contest the citation.
23 10. A conspicuous statement that if the person fails
24 to pay the civil penalty within the time allowed, or fails to
25 appear in court to contest the citation, the person shall be
26 deemed to have waived his or her right to contest the citation
27 and that, in such case, judgment may be entered against the
28 person for an amount up to the maximum civil penalty.
29 11. A conspicuous statement that if the person is
30 required to appear in court as mandated by subsection~~(6)~~(5),
31

1 he or she does not have the option of paying a fine in lieu of
2 appearing in court.

3 (2) The governing body of a county or municipality is
4 authorized to enact ordinances relating to animal control or
5 cruelty, which ordinances must provide:

6 (f) That, if a person fails to pay the civil penalty,
7 fails to appear in court to contest the citation, or fails to
8 appear in court as required by subsection (6)~~(5)~~, the court
9 may issue an order to show cause upon the request of the
10 governing body of the county or municipality. This order
11 shall require such persons to appear before the court to
12 explain why action on the citation has not been taken. If any
13 person who is issued such order fails to appear in response to
14 the court's directive, that person may be held in contempt of
15 court.

16
17 Reviser's note.--Amended to conform to the
18 redesignation of subsection (5) of s. 828.27 as
19 subsection (6) by s. 6, ch. 94-339, Laws of
20 Florida.

21
22 Section 105. Section 831.31, Florida Statutes, is
23 reenacted to read:

24 831.31 Counterfeit controlled substance; sale,
25 manufacture, delivery, or possession with intent to sell,
26 manufacture, or deliver.--

27 (1) It is unlawful for any person to sell,
28 manufacture, or deliver, or to possess with intent to sell,
29 manufacture, or deliver, a counterfeit controlled substance.
30 Any person who violates this subsection with respect to:

31

1 (a) A controlled substance named or described in s.
2 893.03(1), (2), (3), or (4) is guilty of a felony of the third
3 degree, punishable as provided in s. 775.082, s. 775.083, or
4 s. 775.084.

5 (b) A controlled substance named or described in s.
6 893.03(5) is guilty of a misdemeanor of the second degree,
7 punishable as provided in s. 775.082 or s. 775.083.

8 (2) For purposes of this section, "counterfeit
9 controlled substance" means:

10 (a) A controlled substance named or described in s.
11 893.03 which, or the container or labeling of which, without
12 authorization bears the trademark, trade name, or other
13 identifying mark, imprint, or number, or any likeness thereof,
14 of a manufacturer other than the person who in fact
15 manufactured the controlled substance; or

16 (b) Any substance which is falsely identified as a
17 controlled substance named or described in s. 893.03.

18
19 Reviser's note.--Section 102, ch. 97-264, Laws
20 of Florida, purported to reenact s. 831.31, but
21 failed to republish the reenacted section to
22 include paragraph (1)(b). In the absence of
23 affirmative evidence that the Legislature
24 intended to repeal paragraph (1)(b), s. 831.31
25 is reenacted to confirm that the omission was
26 not intended.

27
28 Section 106. Paragraph (b) of subsection (7) of
29 section 901.15, Florida Statutes, 1998 Supplement, is amended
30 to read:

1 901.15 When arrest by officer without warrant is
2 lawful.--A law enforcement officer may arrest a person without
3 a warrant when:

4 (7) There is probable cause to believe that the person
5 has committed:

6 (b) Child abuse, as defined in s. 827.04(1) and (2)
7 ~~827.04(2) and (3)~~.

8
9 With respect to an arrest for an act of domestic violence, the
10 decision to arrest shall not require consent of the victim or
11 consideration of the relationship of the parties. It is the
12 public policy of this state to strongly discourage arrest and
13 charges of both parties for domestic violence on each other
14 and to encourage training of law enforcement and prosecutors
15 in this area. A law enforcement officer who acts in good faith
16 and exercises due care in making an arrest under this
17 subsection, under s. 741.31(4) or s. 784.047, or pursuant to a
18 foreign order of protection accorded full faith and credit
19 pursuant to s. 741.315, is immune from civil liability that
20 otherwise might result by reason of his or her action.

21
22 Reviser's note.--Amended to conform to the
23 deletion of former s. 827.04(2) and
24 redesignation of former s. 827.04(3) as s.
25 827.04(1) and (2) by s. 10, ch. 96-322, Laws of
26 Florida.

27
28 Section 107. Subsection (4) of section 907.041,
29 Florida Statutes, is reenacted to read:

30 907.041 Pretrial detention and release.--

31 (4) PRETRIAL DETENTION.--

1 (a) As used in this subsection, "dangerous crime"
2 means any of the following:
3 1. Arson;
4 2. Aggravated assault;
5 3. Aggravated battery;
6 4. Illegal use of explosives;
7 5. Child abuse or aggravated child abuse;
8 6. Abuse of an elderly person or disabled adult, or
9 aggravated abuse of an elderly person or disabled adult;
10 7. Hijacking;
11 8. Kidnapping;
12 9. Homicide;
13 10. Manslaughter;
14 11. Sexual battery;
15 12. Robbery;
16 13. Carjacking;
17 14. Lewd, lascivious, or indecent assault or act upon
18 or in presence of a child under the age of 16 years;
19 15. Sexual activity with a child, who is 12 years of
20 age or older but less than 18 years of age, by or at
21 solicitation of person in familial or custodial authority;
22 16. Burglary of a dwelling;
23 17. Stalking and aggravated stalking;
24 18. Act of domestic violence as defined in s. 741.28;
25 and
26 19. Attempting or conspiring to commit any such crime;
27 and home-invasion robbery.
28 (b) The court may order pretrial detention if it finds
29 a substantial probability, based on a defendant's past and
30 present patterns of behavior, the criteria in s. 903.046, and
31 any other relevant facts, that:

1 1. The defendant has previously violated conditions of
2 release and that no further conditions of release are
3 reasonably likely to assure the defendant's appearance at
4 subsequent proceedings;

5 2. The defendant, with the intent to obstruct the
6 judicial process, has threatened, intimidated, or injured any
7 victim, potential witness, juror, or judicial officer, or has
8 attempted or conspired to do so, and that no condition of
9 release will reasonably prevent the obstruction of the
10 judicial process;

11 3. The defendant is charged with trafficking in
12 controlled substances as defined by s. 893.135, that there is
13 a substantial probability that the defendant has committed the
14 offense, and that no conditions of release will reasonably
15 assure the defendant's appearance at subsequent criminal
16 proceedings; or

17 4. The defendant poses the threat of harm to the
18 community. The court may so conclude if it finds that the
19 defendant is presently charged with a dangerous crime, that
20 there is a substantial probability that the defendant
21 committed such crime, that the factual circumstances of the
22 crime indicate a disregard for the safety of the community,
23 and that there are no conditions of release reasonably
24 sufficient to protect the community from the risk of physical
25 harm to persons. In addition, the court must find that at
26 least one of the following conditions is present:

27 a. The defendant has previously been convicted of a
28 crime punishable by death or life imprisonment.

29 b. The defendant has been convicted of a dangerous
30 crime within the 10 years immediately preceding the date of
31 his or her arrest for the crime presently charged.

1 c. The defendant is on probation, parole, or other
2 release pending completion of sentence or on pretrial release
3 for a dangerous crime at the time of the current arrest.

4 (c) When a person charged with a crime for which
5 pretrial detention could be ordered is arrested, the arresting
6 agency shall promptly notify the state attorney of the arrest
7 and shall provide the state attorney with such information as
8 the arresting agency has obtained relative to:

9 1. The nature and circumstances of the offense
10 charged;

11 2. The nature of any physical evidence seized and the
12 contents of any statements obtained from the defendant or any
13 witness;

14 3. The defendant's family ties, residence, employment,
15 financial condition, and mental condition; and

16 4. The defendant's past conduct and present conduct,
17 including any record of convictions, previous flight to avoid
18 prosecution, or failure to appear at court proceedings.

19 (d) When a person charged with a crime for which
20 pretrial detention could be ordered is arrested, the arresting
21 agency may detain such defendant, prior to the filing by the
22 state attorney of a motion seeking pretrial detention, for a
23 period not to exceed 24 hours.

24 (e) The court shall order detention only after a
25 pretrial detention hearing. The hearing shall be held within
26 5 days of the filing by the state attorney of a complaint to
27 seek pretrial detention. The defendant may request a
28 continuance. No continuance shall be for longer than 5 days
29 unless there are extenuating circumstances. The defendant may
30 be detained pending the hearing. The state attorney shall be
31 entitled to one continuance for good cause.

1 (f) The state attorney has the burden of showing the
2 need for pretrial detention.

3 (g) The defendant is entitled to be represented by
4 counsel, to present witnesses and evidence, and to
5 cross-examine witnesses. The court may admit relevant
6 evidence without complying with the rules of evidence, but
7 evidence secured in violation of the United States
8 Constitution or the Constitution of the State of Florida shall
9 not be admissible. No testimony by the defendant shall be
10 admissible to prove guilt at any other judicial proceeding,
11 but such testimony may be admitted in an action for perjury,
12 based upon the defendant's statements made at the pretrial
13 detention hearing, or for impeachment.

14 (h) The pretrial detention order of the court shall be
15 based solely upon evidence produced at the hearing and shall
16 contain findings of fact and conclusions of law to support it.
17 The order shall be made either in writing or orally on the
18 record. The court shall render its findings within 24 hours of
19 the pretrial detention hearing.

20 (i) If ordered detained pending trial pursuant to
21 subparagraph (b)4., the defendant may not be held for more
22 than 90 days. Failure of the state to bring the defendant to
23 trial within that time shall result in the defendant's release
24 from detention, subject to any conditions of release, unless
25 the trial delay was requested or caused by the defendant or
26 his or her counsel.

27 (j) A defendant convicted at trial following the
28 issuance of a pretrial detention order shall have credited to
29 his or her sentence, if imprisonment is imposed, the time the
30 defendant was held under the order, pursuant to s. 921.161.

31

1 (k) The defendant shall be entitled to dissolution of
2 the pretrial detention order whenever the court finds that a
3 subsequent event has eliminated the basis for detention.

4
5 Reviser's note.--Section 7, ch. 93-212, Laws of
6 Florida, purported to amend subsection (4) of
7 s. 907.041, but failed to republish the
8 subsection to include paragraphs (c) through
9 (k). In the absence of affirmative evidence
10 that the Legislature intended to repeal
11 paragraphs (c) through (k), subsection (4) is
12 reenacted to confirm that the omission was not
13 intended.

14
15 Section 108. Section 914.16, Florida Statutes, is
16 amended to read:

17 914.16 Child abuse and sexual abuse of victims under
18 age 16 or persons with mental retardation; limits on
19 interviews.--The chief judge of each judicial circuit, after
20 consultation with the state attorney and the public defender
21 for the judicial circuit, the appropriate chief law
22 enforcement officer, and any other person deemed appropriate
23 by the chief judge, shall provide by order reasonable limits
24 on the number of interviews that a victim of a violation of s.
25 794.011, s. 800.04, or s. 827.03 who is under 16 years of age
26 or a victim of a violation of s. 794.011, s. 800.02, s.
27 800.03, or s. 825.102 who is a person with mental retardation
28 as defined in s. 393.063(44)~~393.063(41)~~ must submit to for
29 law enforcement or discovery purposes. The order shall, to
30 the extent possible, protect the victim from the psychological
31 damage of repeated interrogations while preserving the rights

1 of the public, the victim, and the person charged with the
2 violation.

3
4 Reviser's note.--Amended to conform to the
5 redesignation of s. 393.063(41) as s.
6 393.063(42) by s. 3, ch. 94-154, Laws of
7 Florida; as s. 393.063(43) by s. 1, ch. 95-293,
8 Laws of Florida; and as s. 393.063(44) by s.
9 23, ch. 98-171, Laws of Florida.

10
11 Section 109. Subsection (2) of section 914.17, Florida
12 Statutes, is amended to read:

13 914.17 Appointment of advocate for victims or
14 witnesses who are minors or persons with mental retardation.--

15 (2) An advocate shall be appointed by the court to
16 represent a person with mental retardation as defined in s.
17 393.063(44)~~393.063(41)~~ in any criminal proceeding if the
18 person with mental retardation is a victim of or witness to
19 abuse or neglect, or if the person with mental retardation is
20 a victim of a sexual offense or a witness to a sexual offense
21 committed against a minor or person with mental retardation.
22 The court may appoint an advocate in any other criminal
23 proceeding in which a person with mental retardation is
24 involved as either a victim or a witness. The advocate shall
25 have full access to all evidence and reports introduced during
26 the proceedings, may interview witnesses, may make
27 recommendations to the court, shall be noticed and have the
28 right to appear on behalf of the person with mental
29 retardation at all proceedings, and may request additional
30 examinations by medical doctors, psychiatrists, or

31

1 psychologists. It is the duty of the advocate to perform the
2 following services:

3 (a) To explain, in language understandable to the
4 person with mental retardation, all legal proceedings in which
5 the person shall be involved;

6 (b) To act, as a friend of the court, to advise the
7 judge, whenever appropriate, of the person with mental
8 retardation's ability to understand and cooperate with any
9 court proceedings; and

10 (c) To assist the person with mental retardation and
11 the person's family in coping with the emotional effects of
12 the crime and subsequent criminal proceedings in which the
13 person with mental retardation is involved.

14

15 Reviser's note.--Amended to conform to the
16 redesignation of s. 393.063(41) as s.
17 393.063(42) by s. 3, ch. 94-154, Laws of
18 Florida; as s. 393.063(43) by s. 1, ch. 95-293,
19 Laws of Florida; and as s. 393.063(44) by s.
20 23, ch. 98-171, Laws of Florida.

21

22 Section 110. Section 918.16, Florida Statutes, is
23 amended to read:

24 918.16 Sex offenses; testimony of person under age 16
25 or person with mental retardation; courtroom cleared;
26 exceptions.--In the trial of any case, civil or criminal, when
27 any person under the age of 16 or any person with mental
28 retardation as defined in s. 393.063(44)~~393.063(41)~~ is
29 testifying concerning any sex offense, the court shall clear
30 the courtroom of all persons except parties to the cause and
31 their immediate families or guardians, attorneys and their

1 secretaries, officers of the court, jurors, newspaper
2 reporters or broadcasters, court reporters, and at the request
3 of the victim, victim or witness advocates designated by the
4 state attorney's office.

5
6 Reviser's note.--Amended to conform to the
7 redesignation of s. 393.063(41) as s.
8 393.063(42) by s. 3, ch. 94-154, Laws of
9 Florida; as s. 393.063(43) by s. 1, ch. 95-293,
10 Laws of Florida; and as s. 393.063(44) by s.
11 23, ch. 98-171, Laws of Florida.

12
13 Section 111. Paragraphs (a), (e), (f), and (g) of
14 subsection (3) of section 921.0022, Florida Statutes, 1998
15 Supplement, are amended to read:

16 921.0022 Criminal Punishment Code; offense severity
17 ranking chart.--

18 (3) OFFENSE SEVERITY RANKING CHART

19

20 Florida	Felony	
21 Statute	Degree	Description
		(a) LEVEL 1
24 24.118(3)(a)	3rd	Counterfeit or altered state 25 lottery ticket.
26 212.054(2)(b)	3rd	Discretionary sales surtax; 27 limitations, administration, and 28 collection.
29 212.15(2)(b)	3rd	Failure to remit sales taxes, 30 amount greater than \$300 but less 31 than \$20,000.

1	319.30(5)	3rd	Sell, exchange, give away
2			certificate of title or
3			identification number plate.
4	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an
5			odometer.
6	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell
7			registration license plates or
8			validation stickers.
9	322.212(1)	3rd	Possession of forged, stolen,
10			counterfeit, or unlawfully issued
11			driver's license; possession of
12			simulated identification.
13	322.212(4)	3rd	Supply or aid in supplying
14			unauthorized driver's license or
15			identification card.
16	322.212(5)(a)	3rd	False application for driver's
17			license or identification card.
18	<u>370.13(3)(a)</u> 370.13(4)(a)	3rd	Molest any stone crab trap,
19			line, or buoy which is property
20			of licenseholder.
21	370.135(1)	3rd	Molest any blue crab trap, line,
22			or buoy which is property of
23			licenseholder.
24	372.663(1)	3rd	Poach any alligator or
25			crocodilia.
26	414.39(2)	3rd	Unauthorized use, possession,
27			forgery, or alteration of food
28			stamps, Medicaid ID, value
29			greater than \$200.
30			
31			

1	414.39(3)(a)	3rd	Fraudulent misappropriation of
2			public assistance funds by
3			employee/official, value more
4			than \$200.
5	443.071(1)	3rd	False statement or representation
6			to obtain or increase
7			unemployment compensation
8			benefits.
9	458.327(1)(a)	3rd	Unlicensed practice of medicine.
10	466.026(1)(a)	3rd	Unlicensed practice of dentistry
11			or dental hygiene.
12	509.151(1)	3rd	Defraud an innkeeper, food or
13			lodging value greater than \$300.
14	517.302(1)	3rd	Violation of the Florida
15			Securities and Investor
16			Protection Act.
17	562.27(1)	3rd	Possess still or still apparatus.
18	713.69	3rd	Tenant removes property upon
19			which lien has accrued, value
20			more than \$50.
21	812.014(3)(c)	3rd	Petit theft (3rd conviction);
22			theft of any property not
23			specified in subsection (2).
24	812.081(2)	3rd	Unlawfully makes or causes to be
25			made a reproduction of a trade
26			secret.
27	815.04(4)(a)	3rd	Offense against intellectual
28			property (i.e., computer
29			programs, data).
30	817.52(2)	3rd	Hiring with intent to defraud,
31			motor vehicle services.

1	826.01	3rd	Bigamy.
2	828.122(3)	3rd	Fighting or baiting animals.
3	831.04(1)	3rd	Any erasure, alteration, etc., of
4			any replacement deed, map, plat,
5			or other document listed in s.
6			92.28.
7	831.31(1)(a)	3rd	Sell, deliver, or possess
8			counterfeit controlled
9			substances, all but s. 893.03(5)
10			drugs.
11	832.041(1)	3rd	Stopping payment with intent to
12			defraud \$150 or more.
13	832.05		
14	(2)(b)&(4)(c)	3rd	Knowing, making, issuing
15			worthless checks \$150 or more or
16			obtaining property in return for
17			worthless check \$150 or more.
18	838.015(3)	3rd	Bribery.
19	838.016(1)	3rd	Public servant receiving unlawful
20			compensation.
21	838.15(2)	3rd	Commercial bribe receiving.
22	838.16	3rd	Commercial bribery.
23	843.18	3rd	Fleeing by boat to elude a law
24			enforcement officer.
25	847.011(1)(a)	3rd	Sell, distribute, etc., obscene,
26			lewd, etc., material (2nd
27			conviction).
28	849.01	3rd	Keeping gambling house.
29			
30			
31			

1	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc.,
2			or assist therein, conduct or
3			advertise drawing for prizes, or
4			dispose of property or money by
5			means of lottery.
6	849.23	3rd	Gambling-related machines;
7			"common offender" as to property
8			rights.
9	849.25(2)	3rd	Engaging in bookmaking.
10	860.08	3rd	Interfere with a railroad signal.
11	860.13(1)(a)	3rd	Operate aircraft while under the
12			influence.
13	893.13(2)(a)2.	3rd	Purchase of cannabis.
14	893.13(6)(a)	3rd	Possession of cannabis (more than
15			20 grams).
16	893.13(7)(a)10.	3rd	Affix false or forged label to
17			package of controlled substance.
18	934.03(1)(a)	3rd	Intercepts, or procures any other
19			person to intercept, any wire or
20			oral communication.
21			(e) LEVEL 5
22	316.027(1)(a)	3rd	Accidents involving personal
23			injuries, failure to stop;
24			leaving scene.
25	316.1935(4)	2nd	Aggravated fleeing or eluding.
26	<u>322.34(6)</u> 322.34(3)	3rd	Careless operation of motor
27			vehicle with suspended license,
28			resulting in death or serious
29			bodily injury.
30	327.30(5)	3rd	Vessel accidents involving
31			personal injury; leaving scene.

1	381.0041(11)(b)	3rd	Donate blood, plasma, or organs
2			knowing HIV positive.
3	790.01(2)	3rd	Carrying a concealed firearm.
4	790.162	2nd	Threat to throw or discharge
5			destructive device.
6	790.163	2nd	False report of deadly explosive.
7	790.165(2)	3rd	Manufacture, sell, possess, or
8			deliver hoax bomb.
9	790.221(1)	2nd	Possession of short-barreled
10			shotgun or machine gun.
11	790.23	2nd	Felons in possession of firearms
12			or electronic weapons or devices.
13	806.111(1)	3rd	Possess, manufacture, or dispense
14			fire bomb with intent to damage
15			any structure or property.
16	812.019(1)	2nd	Stolen property; dealing in or
17			trafficking in.
18	812.16(2)	3rd	Owning, operating, or conducting
19			a chop shop.
20	817.034(4)(a)2.	2nd	Communications fraud, value
21			\$20,000 to \$50,000.
22	825.1025(4)	3rd	Lewd or lascivious exhibition in
23			the presence of an elderly person
24			or disabled adult.
25	827.071(4)	2nd	Possess with intent to promote
26			any photographic material, motion
27			picture, etc., which includes
28			sexual conduct by a child.
29	843.01	3rd	Resist officer with violence to
30			person; resist arrest with
31			violence.

1	874.05(2)	2nd	Encouraging or recruiting another
2			to join a criminal street gang;
3			second or subsequent offense.
4	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver
5			cocaine (or other s.
6			893.03(1)(a), (1)(b), (1)(d),
7			(2)(a), or (2)(b) drugs).
8	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver
9			cannabis (or other s.
10			893.03(1)(c), (2)(c), (3), or (4)
11			drugs) within 1,000 feet of a
12			child care facility or school.
13	893.13(1)(d)1.	1st	Sell, manufacture, or deliver
14			cocaine (or other s.
15			893.03(1)(a), (1)(b), (1)(d),
16			(2)(a), or (2)(b) drugs) within
17			200 feet of university or public
18			park.
19	893.13(1)(e)	2nd	Sell, manufacture, or deliver
20			cannabis or other drug prohibited
21			under s. 893.03(1)(c), (2)(c),
22			(3), or (4) within 1,000 feet of
23			property used for religious
24			services or a specified business
25			site.
26	893.13(1)(f)1.	1st	Sell, manufacture, or deliver
27			cocaine (or other s.
28			893.03(1)(a), (1)(b), (1)(d), or
29			(2)(a), or (2)(b) drugs) within
30			200 feet of public housing
31			facility.

1	893.13(4)(b)	2nd	Deliver to minor cannabis (or
2			other s. 893.03(1)(c), (2)(c),
3			(3), or (4) drugs).
4			(f) LEVEL 6
5	316.027(1)(b)	2nd	Accident involving death, failure
6			to stop; leaving scene.
7	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent
8			conviction.
9	775.0875(1)	3rd	Taking firearm from law
10			enforcement officer.
11	<u>775.21(10)</u> 775.21(9)	3rd	Sexual predators; failure to
12			register; failure to renew
13			driver's license or
14			identification card.
15	784.021(1)(a)	3rd	Aggravated assault; deadly weapon
16			without intent to kill.
17	784.021(1)(b)	3rd	Aggravated assault; intent to
18			commit felony.
19	784.041	3rd	Felony battery.
20	784.048(3)	3rd	Aggravated stalking; credible
21			threat.
22	784.048(5)	3rd	Aggravated stalking of person
23			under 16.
24	784.07(2)(c)	2nd	Aggravated assault on law
25			enforcement officer.
26	784.08(2)(b)	2nd	Aggravated assault on a person 65
27			years of age or older.
28	784.081(2)	2nd	Aggravated assault on specified
29			official or employee.
30			
31			

1	784.082(2)	2nd	Aggravated assault by detained
2			person on visitor or other
3			detainee.
4	784.083(2)	2nd	Aggravated assault on code
5			inspector.
6	787.02(2)	3rd	False imprisonment; restraining
7			with purpose other than those in
8			s. 787.01.
9	790.115(2)(d)	2nd	Discharging firearm or weapon on
10			school property.
11	790.161(2)	2nd	Make, possess, or throw
12			destructive device with intent to
13			do bodily harm or damage
14			property.
15	790.164(1)	2nd	False report of deadly explosive
16			or act of arson or violence to
17			state property.
18	790.19	2nd	Shooting or throwing deadly
19			missiles into dwellings, vessels,
20			or vehicles.
21	794.011(8)(a)	3rd	Solicitation of minor to
22			participate in sexual activity by
23			custodial adult.
24	794.05(1)	2nd	Unlawful sexual activity with
25			specified minor.
26	806.031(2)	2nd	Arson resulting in great bodily
27			harm to firefighter or any other
28			person.
29	810.02(3)(c)	2nd	Burglary of occupied structure;
30			unarmed; no assault or battery.
31			

1	812.014(2)(b)	2nd	Property stolen \$20,000 or more,
2			but less than \$100,000, grand
3			theft in 2nd degree.
4	812.13(2)(c)	2nd	Robbery, no firearm or other
5			weapon (strong-arm robbery).
6	817.034(4)(a)1.	1st	Communications fraud, value
7			greater than \$50,000.
8	817.4821(5)	2nd	Possess cloning paraphernalia
9			with intent to create cloned
10			cellular telephones.
11	825.102(1)	3rd	Abuse of an elderly person or
12			disabled adult.
13	825.102(3)(c)	3rd	Neglect of an elderly person or
14			disabled adult.
15	825.1025(3)	3rd	Lewd or lascivious molestation of
16			an elderly person or disabled
17			adult.
18	825.103(2)(c)	3rd	Exploiting an elderly person or
19			disabled adult and property is
20			valued at less than \$20,000.
21	827.03(1)	3rd	Abuse of a child.
22	827.03(3)(c)	3rd	Neglect of a child.
23	827.071(2)&(3)	2nd	Use or induce a child in a sexual
24			performance, or promote or direct
25			such performance.
26	836.05	2nd	Threats; extortion.
27	836.10	2nd	Written threats to kill or do
28			bodily injury.
29	843.12	3rd	Aids or assists person to escape.
30			
31			

1	847.0135(3)	3rd	Solicitation of a child, via a
2			computer service, to commit an
3			unlawful sex act.
4	914.23	2nd	Retaliation against a witness,
5			victim, or informant, with bodily
6			injury.
7	<u>943.0435(9)</u> 943.0435(6)	3rd	Sex offenders; failure to
8			comply with reporting
9			requirements.
10	944.35(3)(a)2.	3rd	Committing malicious battery upon
11			or inflicting cruel or inhuman
12			treatment on an inmate or
13			offender on community
14			supervision, resulting in great
15			bodily harm.
16	944.40	2nd	Escapes.
17	944.46	3rd	Harboring, concealing, aiding
18			escaped prisoners.
19	944.47(1)(a)5.	2nd	Introduction of contraband
20			(firearm, weapon, or explosive)
21			into correctional facility.
22	951.22(1)	3rd	Intoxicating drug, firearm, or
23			weapon introduced into county
24			facility.
25			(g) LEVEL 7
26	316.193(3)(c)2.	3rd	DUI resulting in serious bodily
27			injury.
28	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious
29			bodily injury.
30	409.920(2)	3rd	Medicaid provider fraud.
31			

1	494.0018(2)	1st	Conviction of any violation of
2			ss. 494.001-494.0077 in which the
3			total money and property
4			unlawfully obtained exceeded
5			\$50,000 and there were five or
6			more victims.
7	782.051(3)	2nd	Attempted felony murder of a
8			person by a person other than the
9			perpetrator or the perpetrator of
10			an attempted felony.
11	782.07(1)	2nd	Killing of a human being by the
12			act, procurement, or culpable
13			negligence of another
14			(manslaughter).
15	782.071	3rd	Killing of human being or viable
16			fetus by the operation of a motor
17			vehicle in a reckless manner
18			(vehicular homicide).
19	782.072	3rd	Killing of a human being by the
20			operation of a vessel in a
21			reckless manner (vessel
22			homicide).
23	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
24			causing great bodily harm or
25			disfigurement.
26	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
27			weapon.
28	784.045(1)(b)	2nd	Aggravated battery; perpetrator
29			aware victim pregnant.
30	784.048(4)	3rd	Aggravated stalking; violation of
31			injunction or court order.

1	784.07(2)(d)	1st	Aggravated battery on law
2			enforcement officer.
3	784.08(2)(a)	1st	Aggravated battery on a person 65
4			years of age or older.
5	784.081(1)	1st	Aggravated battery on specified
6			official or employee.
7	784.082(1)	1st	Aggravated battery by detained
8			person on visitor or other
9			detainee.
10	784.083(1)	1st	Aggravated battery on code
11			inspector.
12	790.07(4)	1st	Specified weapons violation
13			subsequent to previous conviction
14			of s. 790.07(1) or (2).
15	790.16(1)	1st	Discharge of a machine gun under
16			specified circumstances.
17	796.03	2nd	Procuring any person under 16
18			years for prostitution.
19	800.04	2nd	Handle, fondle, or assault child
20			under 16 years in lewd,
21			lascivious, or indecent manner.
22	806.01(2)	2nd	Maliciously damage structure by
23			fire or explosive.
24	810.02(3)(a)	2nd	Burglary of occupied dwelling;
25			unarmed; no assault or battery.
26	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
27			unarmed; no assault or battery.
28	810.02(3)(d)	2nd	Burglary of occupied conveyance;
29			unarmed; no assault or battery.
30			
31			

1	812.014(2)(a)	1st	Property stolen, valued at
2			\$100,000 or more; property stolen
3			while causing other property
4			damage; 1st degree grand theft.
5	812.019(2)	1st	Stolen property; initiates,
6			organizes, plans, etc., the theft
7			of property and traffics in
8			stolen property.
9	812.133(2)(b)	1st	Carjacking; no firearm, deadly
10			weapon, or other weapon.
11	825.102(3)(b)	2nd	Neglecting an elderly person or
12			disabled adult causing great
13			bodily harm, disability, or
14			disfigurement.
15	825.1025(2)	2nd	Lewd or lascivious battery upon
16			an elderly person or disabled
17			adult.
18	825.103(2)(b)	2nd	Exploiting an elderly person or
19			disabled adult and property is
20			valued at \$20,000 or more, but
21			less than \$100,000.
22	827.03(3)(b)	2nd	Neglect of a child causing great
23			bodily harm, disability, or
24			disfigurement.
25	<u>827.04(3)</u> 827.04(4)	3rd	Impregnation of a child under 16
26			years of age by person 21 years
27			of age or older.
28	837.05(2)	3rd	Giving false information about
29			alleged capital felony to a law
30			enforcement officer.
31	872.06	2nd	Abuse of a dead human body.

1	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
2			cocaine (or other drug prohibited
3			under s. 893.03(1)(a), (1)(b),
4			(1)(d), (2)(a), or (2)(b)) within
5			1,000 feet of a child care
6			facility or school.
7	893.13(1)(e)	1st	Sell, manufacture, or deliver
8			cocaine or other drug prohibited
9			under s. 893.03(1)(a), (1)(b),
10			(1)(d), (2)(a), or (2)(b), within
11			1,000 feet of property used for
12			religious services or a specified
13			business site.
14	893.13(4)(a)	1st	Deliver to minor cocaine (or
15			other s. 893.03(1)(a), (1)(b),
16			(1)(d), (2)(a), or (2)(b) drugs).
17	893.135(1)(a)1.	1st	Trafficking in cannabis, more
18			than 50 lbs., less than 2,000
19			lbs.
20	893.135		
21	(1)(b)1.a.	1st	Trafficking in cocaine, more than
22			28 grams, less than 200 grams.
23	893.135		
24	(1)(c)1.a.	1st	Trafficking in illegal drugs,
25			more than 4 grams, less than 14
26			grams.
27	893.135		
28	(1)(d)1.	1st	Trafficking in phencyclidine,
29			more than 28 grams, less than 200
30			grams.
31			

1 893.135(1)(e)1. 1st Trafficking in methaqualone, more
2 than 200 grams, less than 5
3 kilograms.
4 893.135(1)(f)1. 1st Trafficking in amphetamine, more
5 than 14 grams, less than 28
6 grams.
7 893.135
8 (1)(g)1.a. 1st Trafficking in flunitrazepam, 4
9 grams or more, less than 14
10 grams.
11
12 Reviser's note.--Paragraph (3)(a) is amended to
13 conform to the redesignation of s. 370.13(4)(a)
14 as s. 370.13(3)(a) necessitated by the repeal
15 of former subsection (2) by s. 18, ch. 98-227,
16 Laws of Florida. Paragraph (3)(e) is amended
17 to conform to the redesignation of s. 322.34(3)
18 as s. 322.34(6) by s. 40, ch. 97-300, Laws of
19 Florida. Paragraph (3)(f) is amended to
20 conform to the redesignation of s. 775.21(9) as
21 s. 775.21(10) by s. 3, ch. 98-81, Laws of
22 Florida, and the redesignation of s.
23 943.0435(6) as s. 943.0435(9) by s. 7, ch.
24 98-81. Paragraph (3)(g) is amended to conform
25 to the creation of s. 827.04(4) by s. 2, ch.
26 96-215, Laws of Florida, and its redesignation
27 as s. 827.04(3) necessitated by the
28 redesignation of subunits by s. 10, ch. 96-322,
29 Laws of Florida.
30
31

1 Section 112. Paragraph (b) of subsection (1) of
2 section 921.0024, Florida Statutes, 1998 Supplement, is
3 amended to read:

4 921.0024 Criminal Punishment Code; worksheet
5 computations; scoresheets.--

6 (1)

7 (b) WORKSHEET KEY:

8
9 Legal status points are assessed when any form of legal status
10 existed at the time the offender committed an offense before
11 the court for sentencing. Four (4) sentence points are
12 assessed for an offender's legal status.

13
14 Community sanction violation points are assessed when a
15 community sanction violation is before the court for
16 sentencing. Six (6) sentence points are assessed for each
17 community sanction violation, and each successive community
18 sanction violation; however, if the community sanction
19 violation includes a new felony conviction before the
20 sentencing court, twelve (12) community sanction violation
21 points are assessed for such violation, and for each
22 successive community sanction violation involving a new felony
23 conviction. Multiple counts of community sanction violations
24 before the sentencing court shall not be a basis for
25 multiplying the assessment of community sanction violation
26 points.

27
28 Prior serious felony points: If the offender has a primary
29 offense or any additional offense ranked in level 8, level 9,
30 or level 10, and one or more prior serious felonies, a single
31 assessment of 30 points shall be added. For purposes of this

1 section, a prior serious felony is an offense in the
2 offender's prior record that is ranked in level 8, level 9, or
3 level 10 under s. 921.0022 or s. 921.0023 and for which the
4 offender is serving a sentence of confinement, supervision, or
5 other sanction or for which the offender's date of release
6 from confinement, supervision, or other sanction, whichever is
7 later, is within 3 years before the date the primary offense
8 or any additional offense was committed.

9
10 Prior capital felony points: If the offender has one or more
11 prior capital felonies in the offender's criminal record,
12 points shall be added to the subtotal sentence points of the
13 offender equal to twice the number of points the offender
14 receives for the primary offense and any additional offense.
15 A prior capital felony in the offender's criminal record is a
16 previous capital felony offense for which the offender has
17 entered a plea of nolo contendere or guilty ~~to~~ or has been
18 found guilty; or a felony in another jurisdiction which is a
19 capital felony in that jurisdiction, or would be a capital
20 felony if the offense were committed in this state.

21
22 Possession of a firearm, semiautomatic firearm, or machine
23 gun: If the offender is convicted of committing or attempting
24 to commit any felony other than those enumerated in s.
25 775.087(2) while having in his possession: a firearm as
26 defined in s. 790.001(6), an additional 18 sentence points are
27 assessed; or if the offender is convicted of committing or
28 attempting to commit any felony other than those enumerated in
29 s. 775.087(3) while having in his possession a semiautomatic
30 firearm as defined in s. 775.087(3) or a machine gun as

31

1 defined in s. 790.001(9), an additional 25 sentence points are
2 assessed.

3

4 Sentencing multipliers:

5

6 Drug trafficking: If the primary offense is drug trafficking
7 under s. 893.135, the subtotal sentence points are multiplied,
8 at the discretion of the court, for a level 7 or level 8
9 offense, by 1.5. The state attorney may move the sentencing
10 court to reduce or suspend the sentence of a person convicted
11 of a level 7 or level 8 offense, if the offender provides
12 substantial assistance as described in s. 893.135(4).

13

14 Law enforcement protection: If the primary offense is a
15 violation of the Law Enforcement Protection Act under s.
16 775.0823(2), the subtotal sentence points are multiplied by
17 2.5. If the primary offense is a violation of s. 775.0823(3),
18 (4), (5), (6), (7), or (8), the subtotal sentence points are
19 multiplied by 2.0. If the primary offense is a violation of s.
20 784.07(3) or s. 775.0875(1), or of the Law Enforcement
21 Protection Act under s. 775.0823(9) or (10), the subtotal
22 sentence points are multiplied by 1.5.

23

24 Grand theft of a motor vehicle: If the primary offense is
25 grand theft of the third degree involving a motor vehicle and
26 in the offender's prior record, there are three or more grand
27 thefts of the third degree involving a motor vehicle, the
28 subtotal sentence points are multiplied by 1.5.

29

30 Criminal street gang member: If the offender is convicted of
31 the primary offense and is found to have been a member of a

1 criminal street gang at the time of the commission of the
2 primary offense pursuant to s. 874.04, the subtotal sentence
3 points are multiplied by 1.5.

4
5 Domestic violence in the presence of a child: If the offender
6 is convicted of the primary offense and the primary offense is
7 a crime of domestic violence, as defined in s. 741.28, which
8 was committed in the presence of a child under 16 years of age
9 who is a family household member as defined in s. 741.28(2)
10 with the victim or perpetrator, the subtotal sentence points
11 are multiplied, at the discretion of the court, by 1.5.

12
13 Reviser's note.--Amended to improve clarity and
14 facilitate correct interpretation.

15
16 Section 113. Section 922.095, Florida Statutes, is
17 amended to read:

18 922.095 Grounds for death warrant.--A person who is
19 convicted and sentenced to death must pursue all possible
20 collateral remedies in state and federal court in a timely
21 manner. If any court refuses to grant relief in a collateral
22 postconviction proceeding, the convicted person has 90 days in
23 which to seek further collateral review. Failure to seek
24 further collateral review within the 90-day period constitutes
25 grounds for issuance of a death warrant under s. 922.052
26 ~~922.09~~ or s. 922.14.

27
28 Reviser's note.--Amended to conform to the
29 redesignation of s. 922.09 as s. 922.052 by s.
30 1, ch. 96-213, Laws of Florida.

31

1 Section 114. Subsection (5) of section 925.037,
2 Florida Statutes, is reenacted to read:

3 925.037 Reimbursement of counties for fees paid to
4 appointed counsel; circuit conflict committees.--

5 (5)(a) The clerk of the circuit court in each county
6 shall submit to the Justice Administrative Commission a
7 statement of conflict counsel fees at least annually. Such
8 statement shall identify total expenditures incurred by the
9 county on fees of counsel appointed by the court pursuant to
10 this section where such fees are taxed against the county by
11 judgment of the court. On the basis of such statement of
12 expenditures, the Justice Administrative Commission shall pay
13 state conflict case appropriations to the county. The
14 statement of conflict counsel fees shall be on a form
15 prescribed by the Justice Administrative Commission in
16 consultation with the Legislative Committee on
17 Intergovernmental Relations and the Comptroller. Such form
18 also shall provide for the separate reporting of total
19 expenditures made by the county on attorney fees in cases in
20 which other counsel were appointed by the court where the
21 public defender was unable to accept the case as a result of a
22 stated lack of resources. To facilitate such expenditure
23 identification and reporting, the public defender, within 7
24 days of the appointment of such counsel by the court, shall
25 report to the clerk of circuit court case-related information
26 sufficient to permit the clerk to identify separately county
27 expenditures on fees of such counsel. No county shall be
28 required to submit any additional information to the
29 commission on an annual or other basis in order to document or
30 otherwise verify the expenditure information provided on the
31

1 statement of conflict counsel fees form, except as provided in
2 paragraph (c).
3 (b) Before September 30 of each year, the clerk of the
4 circuit court in each county shall submit to the Justice
5 Administrative Commission a report of conflict counsel
6 expenses and costs for the previous local government fiscal
7 year. Such report shall identify expenditures incurred by the
8 county on expenses and costs of counsel appointed by the court
9 pursuant to this section where such expenses and costs are
10 taxed against the county by judgment of the court. Such report
11 of expenditures shall be on a form prescribed by the
12 commission in consultation with the Legislative Committee on
13 Intergovernmental Relations and the Comptroller, provided that
14 such form shall at a minimum separately identify total county
15 expenditures for witness fees and expenses, court reporter
16 fees and costs, and defense counsel travel and per diem. Such
17 form also shall provide for the separate reporting of total
18 county expenditures on attorney expenses and costs in cases in
19 which other counsel were appointed by the court where the
20 public defender was unable to accept the case as a result of a
21 stated lack of resources. To facilitate such expenditure
22 identification and reporting, the public defender, within 7
23 days of the appointment of such counsel by the court, shall
24 report to the clerk of the circuit court case-related
25 information sufficient to permit the clerk to identify
26 separately county expenditures on expenses and costs of such
27 counsel. No county shall be required to submit any additional
28 information to the Justice Administrative Commission on an
29 annual or other basis in order to document or otherwise verify
30 the expenditure information provided on the report of conflict
31

1 counsel expenses and costs form, except as provided in
2 paragraph (c).

3 (c) Before September 30 of each year, each county
4 shall submit to the Justice Administrative Commission a
5 statement of compliance from its independent certified public
6 accountant, engaged pursuant to chapter 11, that each of the
7 forms submitted to the Justice Administrative Commission, as
8 provided for in paragraphs (a) and (b), accurately represent
9 county expenditures incurred in public defender
10 conflict-of-interest cases during each reporting period
11 covered by the statements. The statement of compliance also
12 shall state that the expenditures made and reported were in
13 compliance with relevant portions of Florida law. Such
14 statement may be reflected as part of the annual audit. In the
15 event that the statements are found to be accurate and the
16 expenditures noted thereon to have been made in compliance
17 with relevant portions of Florida law, no additional
18 information or documentation shall be required to accompany
19 the standardized statement of compliance submitted to the
20 commission. If the statement of compliance submitted by the
21 independent certified public accountant indicates that one or
22 more of the forms contained inaccurate expenditure information
23 or if expenditures incurred were not in compliance with
24 relevant portions of Florida law, the commission may require
25 the submission of additional information as may be necessary
26 to identify the nature of the problem.

27 (d) Upon the failure of a clerk of the circuit court
28 or county to submit any report or information required by this
29 section, the Justice Administrative Commission may refuse to
30 honor any claim until such clerk or county is determined by
31 the commission to be in compliance with such requirements. In

1 the event that the statement of compliance submitted by a
2 county pursuant to paragraph (c) indicates that the clerk of
3 the circuit court claimed more than was actually expended by
4 the county, the Justice Administrative Commission may require
5 the clerk to submit complete supporting documentation of the
6 county's expenditures on conflict-of-interest cases for the
7 ensuing 3-year period.

8
9 Reviser's note.--Section 8, ch. 96-311, Laws of
10 Florida, purported to amend subsection (5), but
11 failed to republish the subsection to include
12 paragraphs (c) and (d). In the absence of
13 affirmative evidence that the Legislature
14 intended to repeal paragraphs (5)(c) and (d),
15 subsection (5) is reenacted to confirm that the
16 omission was not intended.

17
18 Section 115. Subsection (8) of section 943.0435,
19 Florida Statutes, 1998 Supplement, is amended to read:

20 943.0435 Sexual offenders required to register with
21 the department; penalty.--

22 (8) A sexual offender who indicates his or her intent
23 to reside in another state or jurisdiction and later decides
24 to remain in this state shall, within 48 hours after the date
25 upon which the sexual offender indicated he or she would leave
26 this state, notify the sheriff or department, whichever agency
27 is the agency to which the sexual offender reported the
28 intended change of residence, of his or her intent to remain
29 in this state. If the sheriff is notified by the sexual
30 offender that he or she intends to remain in this state, the
31 sheriff shall promptly report this information to the

1 department. A sexual offender who reports his or her intent to
2 reside in another state or jurisdiction but who remains in
3 this state without reporting to the sheriff or the department
4 in the manner required by this subsection ~~paragraph~~ commits a
5 felony of the second degree, punishable as provided in s.
6 775.082, s. 775.083, or s. 775.084.

7
8 Reviser's note.--Amended to improve clarity and
9 facilitate correct interpretation.

10
11 Section 116. Paragraph (a) of subsection (4) of
12 section 943.0585, Florida Statutes, 1998 Supplement, is
13 amended to read:

14 943.0585 Court-ordered expunction of criminal history
15 records.--The courts of this state have jurisdiction over
16 their own procedures, including the maintenance, expunction,
17 and correction of judicial records containing criminal history
18 information to the extent such procedures are not inconsistent
19 with the conditions, responsibilities, and duties established
20 by this section. Any court of competent jurisdiction may
21 order a criminal justice agency to expunge the criminal
22 history record of a minor or an adult who complies with the
23 requirements of this section. The court shall not order a
24 criminal justice agency to expunge a criminal history record
25 until the person seeking to expunge a criminal history record
26 has applied for and received a certificate of eligibility for
27 expunction pursuant to subsection (2). A criminal history
28 record that relates to a violation of chapter 794, s. 800.04,
29 s. 817.034, s. 827.071, chapter 839, s. 893.135, or a
30 violation enumerated in s. 907.041 may not be expunged,
31 without regard to whether adjudication was withheld, if the

1 defendant was found guilty of or pled guilty or nolo
2 contendere to the offense, or if the defendant, as a minor,
3 was found to have committed, or pled guilty or nolo contendere
4 to committing, the offense as a delinquent act. The court may
5 only order expunction of a criminal history record pertaining
6 to one arrest or one incident of alleged criminal activity,
7 except as provided in this section. The court may, at its sole
8 discretion, order the expunction of a criminal history record
9 pertaining to more than one arrest if the additional arrests
10 directly relate to the original arrest. If the court intends
11 to order the expunction of records pertaining to such
12 additional arrests, such intent must be specified in the
13 order. A criminal justice agency may not expunge any record
14 pertaining to such additional arrests if the order to expunge
15 does not articulate the intention of the court to expunge a
16 record pertaining to more than one arrest. This section does
17 not prevent the court from ordering the expunction of only a
18 portion of a criminal history record pertaining to one arrest
19 or one incident of alleged criminal activity. Notwithstanding
20 any law to the contrary, a criminal justice agency may comply
21 with laws, court orders, and official requests of other
22 jurisdictions relating to expunction, correction, or
23 confidential handling of criminal history records or
24 information derived therefrom. This section does not confer
25 any right to the expunction of any criminal history record,
26 and any request for expunction of a criminal history record
27 may be denied at the sole discretion of the court.

28 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
29 criminal history record of a minor or an adult which is
30 ordered expunged by a court of competent jurisdiction pursuant
31 to this section must be physically destroyed or obliterated by

1 any criminal justice agency having custody of such record;
2 except that any criminal history record in the custody of the
3 department must be retained in all cases. A criminal history
4 record ordered expunged that is retained by the department is
5 confidential and exempt from the provisions of s. 119.07(1)
6 and s. 24(a), Art. I of the State Constitution and not
7 available to any person or entity except upon order of a court
8 of competent jurisdiction. A criminal justice agency may
9 retain a notation indicating compliance with an order to
10 expunge.

11 (a) The person who is the subject of a criminal
12 history record that is expunged under this section or under
13 other provisions of law, including former s. 893.14, former s.
14 901.33, and former s. 943.058, may lawfully deny or fail to
15 acknowledge the arrests covered by the expunged record, except
16 when the subject of the record:

- 17 1. Is a candidate for employment with a criminal
18 justice agency;
- 19 2. Is a defendant in a criminal prosecution;
- 20 3. Concurrently or subsequently petitions for relief
21 under this section or s. 943.059;
- 22 4. Is a candidate for admission to The Florida Bar;
- 23 5. Is seeking to be employed or licensed by or to
24 contract with the Department of Children and Family Services
25 or the Department of Juvenile Justice or to be employed or
26 used by such contractor or licensee in a sensitive position
27 having direct contact with children, the developmentally
28 disabled, the aged, or the elderly as provided in s.
29 110.1127(3), s. 393.063(15)~~393.063(14)~~, s. 394.4572(1), s.
30 397.451, s. 402.302(3)~~402.302(8)~~, s. 402.313(3), s.

31

1 409.175(2)(i), s. 415.102(4), s. 415.1075(4), s. 985.407, or
2 chapter 400; or

3 6. Is seeking to be employed or licensed by the Office
4 of Teacher Education, Certification, Staff Development, and
5 Professional Practices of the Department of Education, any
6 district school board, or any local governmental entity that
7 licenses child care facilities.

8

9 Reviser's note.--Amended to conform to the
10 redesignation of s. 393.063(14) as s.
11 393.063(15) by s. 23, ch. 98-171, Laws of
12 Florida, and s. 402.302(8) as s. 402.302(3) by
13 s. 1, ch. 97-63, Laws of Florida.

14

15 Section 117. Paragraph (a) of subsection (4) of
16 section 943.059, Florida Statutes, 1998 Supplement, is amended
17 to read:

18 943.059 Court-ordered sealing of criminal history
19 records.--The courts of this state shall continue to have
20 jurisdiction over their own procedures, including the
21 maintenance, sealing, and correction of judicial records
22 containing criminal history information to the extent such
23 procedures are not inconsistent with the conditions,
24 responsibilities, and duties established by this section. Any
25 court of competent jurisdiction may order a criminal justice
26 agency to seal the criminal history record of a minor or an
27 adult who complies with the requirements of this section. The
28 court shall not order a criminal justice agency to seal a
29 criminal history record until the person seeking to seal a
30 criminal history record has applied for and received a
31 certificate of eligibility for sealing pursuant to subsection

1 (2). A criminal history record that relates to a violation of
2 chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839,
3 s. 893.135, or a violation enumerated in s. 907.041 may not be
4 sealed, without regard to whether adjudication was withheld,
5 if the defendant was found guilty of or pled guilty or nolo
6 contendere to the offense, or if the defendant, as a minor,
7 was found to have committed or pled guilty or nolo contendere
8 to committing the offense as a delinquent act. The court may
9 only order sealing of a criminal history record pertaining to
10 one arrest or one incident of alleged criminal activity,
11 except as provided in this section. The court may, at its sole
12 discretion, order the sealing of a criminal history record
13 pertaining to more than one arrest if the additional arrests
14 directly relate to the original arrest. If the court intends
15 to order the sealing of records pertaining to such additional
16 arrests, such intent must be specified in the order. A
17 criminal justice agency may not seal any record pertaining to
18 such additional arrests if the order to seal does not
19 articulate the intention of the court to seal records
20 pertaining to more than one arrest. This section does not
21 prevent the court from ordering the sealing of only a portion
22 of a criminal history record pertaining to one arrest or one
23 incident of alleged criminal activity. Notwithstanding any law
24 to the contrary, a criminal justice agency may comply with
25 laws, court orders, and official requests of other
26 jurisdictions relating to sealing, correction, or confidential
27 handling of criminal history records or information derived
28 therefrom. This section does not confer any right to the
29 sealing of any criminal history record, and any request for
30 sealing a criminal history record may be denied at the sole
31 discretion of the court.

1 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
2 criminal history record of a minor or an adult which is
3 ordered sealed by a court of competent jurisdiction pursuant
4 to this section is confidential and exempt from the provisions
5 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
6 and is available only to the person who is the subject of the
7 record, to the subject's attorney, to criminal justice
8 agencies for their respective criminal justice purposes, or to
9 those entities set forth in subparagraphs (a)1., 4., 5., and
10 6. for their respective licensing and employment purposes.

11 (a) The subject of a criminal history record sealed
12 under this section or under other provisions of law, including
13 former s. 893.14, former s. 901.33, and former s. 943.058, may
14 lawfully deny or fail to acknowledge the arrests covered by
15 the sealed record, except when the subject of the record:

- 16 1. Is a candidate for employment with a criminal
17 justice agency;
- 18 2. Is a defendant in a criminal prosecution;
- 19 3. Concurrently or subsequently petitions for relief
20 under this section or s. 943.0585;
- 21 4. Is a candidate for admission to The Florida Bar;
- 22 5. Is seeking to be employed or licensed by or to
23 contract with the Department of Children and Family Services
24 or the Department of Juvenile Justice or to be employed or
25 used by such contractor or licensee in a sensitive position
26 having direct contact with children, the developmentally
27 disabled, the aged, or the elderly as provided in s.
28 110.1127(3), s. 393.063(15)~~393.063(14)~~, s. 394.4572(1), s.
29 397.451, s. 402.302(3)~~402.302(8)~~, s. 402.313(3), s.
30 409.175(2)(i), s. 415.102(4), s. 415.103, s. 985.407, or
31 chapter 400; or

1 6. Is seeking to be employed or licensed by the Office
2 of Teacher Education, Certification, Staff Development, and
3 Professional Practices of the Department of Education, any
4 district school board, or any local governmental entity which
5 licenses child care facilities.

6
7 Reviser's note.--Amended to conform to the
8 redesignation of s. 393.063(14) as s.
9 393.063(15) by s. 23, ch. 98-171, Laws of
10 Florida, and s. 402.302(8) as s. 402.302(3) by
11 s. 1, ch. 97-63, Laws of Florida.

12
13 Section 118. Subsection (6) and paragraph (b) of
14 subsection (7) of section 943.14, Florida Statutes, are
15 amended to read:

16 943.14 Criminal justice training schools; certificates
17 and diplomas; exemptions; injunctive relief; fines.--

18 (6) Criminal justice training schools and courses
19 which are licensed and operated in accordance with the rules
20 of the State Board of Education and the rules of the
21 commission are exempt from the requirements of subsections
22 (1)-(5)~~(1)-(6)~~. However, any school which instructs approved
23 commission courses must meet the requirements of subsections
24 (1)-(5)~~(1)-(6)~~.

25 (7)

26 (b) All other criminal justice sciences or
27 administration courses or subjects which are a part of the
28 curriculum of any accredited college, university, community
29 college, or vocational-technical center of this state, and all
30 full-time instructors of such institutions, are exempt from
31 the provisions of subsections (1)-(5)~~(1)-(6)~~.

1 Reviser's note.--Amended to conform to the
2 redesignation of subsection (6) of s. 943.14 as
3 subsection (5) necessitated by the repeal of
4 former subsection (6) by s. 3, ch. 89-205, Laws
5 of Florida.

6
7 Section 119. Paragraphs (a) and (b) of subsection (4)
8 of section 944.10, Florida Statutes, 1998 Supplement, are
9 amended to read:

10 944.10 Department of Corrections to provide buildings;
11 sale and purchase of land; contracts to provide services and
12 inmate labor.--

13 (4)(a) Notwithstanding s. 253.025 or s. 287.057,
14 whenever the department finds it to be necessary for timely
15 site acquisition, it may contract without the need for
16 competitive selection with one or more appraisers whose names
17 are contained on the list of approved appraisers maintained by
18 the Division of State Lands of the Department of Environmental
19 Protection in accordance with s. 253.025(6)(b)~~253.025(7)(b)~~.
20 In those instances in which the department directly contracts
21 for appraisal services, it must also contract with an approved
22 appraiser who is not employed by the same appraisal firm for
23 review services.

24 (b) Notwithstanding s. 253.025(6)~~253.025(7)~~, the
25 department may negotiate and enter into an option contract
26 before an appraisal is obtained. The option contract must
27 state that the final purchase price cannot exceed the maximum
28 value allowed by law. The consideration for such an option
29 contract may not exceed 10 percent of the estimate obtained by
30 the department or 10 percent of the value of the parcel,
31 whichever amount is greater.

1 Reviser's note.--Amended to conform to the
2 redesignation of s. 253.025(7) as s. 253.025(6)
3 by s. 2, ch. 94-240, Laws of Florida.
4

5 Section 120. Paragraph (b) of subsection (1) of
6 section 944.606, Florida Statutes, 1998 Supplement, is amended
7 to read:

8 944.606 Sexual offenders; notification upon release.--

9 (1) As used in this section:

10 (b) "Sexual offender" means a person who has been
11 convicted of committing, or attempting, soliciting, or
12 conspiring to commit, any of the criminal offenses proscribed
13 in the following statutes in this state or similar offenses in
14 another jurisdiction: s. 787.01 or s. 787.02 ~~782.02~~, where
15 the victim is a minor and the defendant is not the victim's
16 parent; s. 787.025; chapter 794; s. 796.03; s. 800.04; s.
17 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0145;
18 or any similar offense committed in this state which has been
19 redesignated from a former statute number to one of those
20 listed in this subsection, when the department has received
21 verified information regarding such conviction; an offender's
22 computerized criminal history record is not, in and of itself,
23 verified information.

24

25 Reviser's note.--Amended to improve clarity and
26 facilitate correct interpretation. Section
27 782.02 pertains to justifiable use of deadly
28 force, not to criminal offenses. Section
29 787.02 relates to false imprisonment, including
30 false imprisonment of a minor under age 13 with
31 aggravating circumstances, including sexual

1 battery and lewd, lascivious, or indecent
2 assault or acts.

3
4 Section 121. Paragraph (g) of subsection (3) of
5 section 944.801, Florida Statutes, is amended to read:

6 944.801 Education for state prisoners.--

7 (3) The responsibilities of the Correctional Education
8 Program shall be to:

9 (g) Develop and maintain complete and reliable
10 statistics on the number of general educational development
11 (GED) certificates and vocational certificates issued by each
12 institution in each skill area, the change in inmate literacy
13 levels, and the number of inmate admissions to and withdrawals
14 from education courses. The compiled statistics shall be
15 summarized and analyzed in the annual report of correctional
16 education activities required by paragraph (f) ~~(e)~~.

17
18 Reviser's note.--Amended to conform to the
19 redesignation of the paragraphs of s.
20 944.801(3) by s. 2, ch. 96-314, Laws of
21 Florida.

22
23 Section 122. Paragraph (b) of subsection (11) of
24 section 948.01, Florida Statutes, 1998 Supplement, is amended
25 to read:

26 948.01 When court may place defendant on probation or
27 into community control.--

28 (11) The court may also impose a split sentence
29 whereby the defendant is sentenced to a term of probation
30 which may be followed by a period of incarceration or, with
31 respect to a felony, into community control, as follows:

1 (b) If the offender does not meet the terms and
2 conditions of probation or community control, the court may
3 revoke, modify, or continue the probation or community control
4 as provided in s. 948.06. If the probation or community
5 control is revoked, the court may impose any sentence that it
6 could have imposed at the time the offender was placed on
7 probation or community control. The court may not provide
8 credit for time served for any portion of a probation or ~~of~~
9 community control term toward a subsequent term of probation
10 or community control. However, the court may not impose a
11 subsequent term of probation or community control which, when
12 combined with any amount of time served on preceding terms of
13 probation or community control for offenses pending before the
14 court for sentencing, would exceed the maximum penalty
15 allowable as provided in s. 775.082. Such term of
16 incarceration shall be served under applicable law or county
17 ordinance governing service of sentences in state or county
18 jurisdiction. This paragraph does not prohibit any other
19 sanction provided by law.

20

21 Reviser's note.--Amended to improve clarity and
22 facilitate correct interpretation.

23

24 Section 123. Subsection (11) of section 948.03,
25 Florida Statutes, 1998 Supplement, is amended to read:

26 948.03 Terms and conditions of probation or community
27 control.--

28 (11) Any order issued pursuant to subsection (10) ~~(9)~~
29 shall also require the convicted person to reimburse the
30 appropriate agency for the costs of drawing and transmitting
31

1 the blood specimens to the Florida Department of Law
2 Enforcement.

3
4 Reviser's note.--Amended to conform to the
5 redesignation of subsection (9), as created by
6 s. 53, ch. 95-283, Laws of Florida, as
7 subsection (10) necessitated by the creation of
8 new subunits by ss. 53 and 59, ch. 95-283.

9
10 Section 124. Paragraph (d) of subsection (6) of
11 section 948.08, Florida Statutes, is amended to read:

12 948.08 Pretrial intervention program.--
13 (6)

14 (d) Any entity, whether public or private, providing a
15 pretrial substance abuse education and treatment intervention
16 program under this subsection must contract with the county or
17 appropriate governmental entity, and the terms of the contract
18 must include, but need not be limited to, the requirements
19 established for private entities under s. 948.15(3)~~948.15(2)~~.

20
21 Reviser's note.--Amended to conform to the
22 redesignation of s. 948.15(2) as s. 948.15(3)
23 by s. 42, ch. 95-283, Laws of Florida.

24
25 Section 125. Subsections (6) and (7) of section
26 957.04, Florida Statutes, are amended to read:

27 957.04 Contract requirements.--

28 (6) Notwithstanding s. 253.025(7)~~253.025(8)~~, the
29 Board of Trustees of the Internal Improvement Trust Fund need
30 not approve a lease-purchase agreement negotiated by the

31

1 commission if the commission finds that there is a need to
2 expedite the lease-purchase.

3 (7)(a) Notwithstanding s. 253.025 or s. 287.057,
4 whenever the commission finds it to be in the best interest of
5 timely site acquisition, it may contract without the need for
6 competitive selection with one or more appraisers whose names
7 are contained on the list of approved appraisers maintained by
8 the Division of State Lands of the Department of Environmental
9 Protection in accordance with s. 253.025(6)(b)~~253.025(7)(b)~~.
10 In those instances when the commission directly contracts for
11 appraisal services, it shall also contract with an approved
12 appraiser who is not employed by the same appraisal firm for
13 review services.

14 (b) Notwithstanding s. 253.025(6)~~253.025(7)~~, the
15 commission may negotiate and enter into lease-purchase
16 agreements before an appraisal is obtained. Any such agreement
17 must state that the final purchase price cannot exceed the
18 maximum value allowed by law.

19
20 Reviser's note.--Amended to conform to the
21 redesignation of subunits within s. 253.025 by
22 s. 2, ch. 94-240, Laws of Florida.

23
24 Section 126. Paragraph (a) of subsection (5) of
25 section 960.003, Florida Statutes, is amended to read:
26 960.003 Human immunodeficiency virus testing for
27 persons charged with or alleged by petition for delinquency to
28 have committed certain offenses; disclosure of results to
29 victims.--

30 (5) EXCEPTIONS.--The provisions of subsections (2) and
31 (4) do not apply if:

1 (a) The person charged with or convicted of or alleged
2 by petition for delinquency to have committed or been
3 adjudicated delinquent for an offense described in subsection
4 (2) has undergone HIV testing voluntarily or pursuant to
5 procedures established in s. 381.004(3)(h)~~6.381.004(3)(i)6.~~
6 or s. 951.27, or any other applicable law or rule providing
7 for HIV testing of criminal defendants, inmates, or juvenile
8 offenders, subsequent to his or her arrest, conviction, or
9 delinquency adjudication for the offense for which he or she
10 was charged or alleged by petition for delinquency to have
11 committed; and

12
13 Reviser's note.--Amended to conform to the
14 redesignation of s. 381.004(3)(i) as s.
15 381.004(3)(h) by s. 2, ch. 98-171, Laws of
16 Florida.

17
18 Section 127. Paragraph (d) of subsection (29) of
19 section 984.03, Florida Statutes, 1998 Supplement, is amended,
20 and subsection (41) of that section is reenacted, to read:

21 984.03 Definitions.--When used in this chapter, the
22 term:

23 (29) "Habitually truant" means that:

24 (d) The failure or refusal of the parent or legal
25 guardian or the child to participate, or make a good faith
26 effort to participate, in the activities prescribed to remedy
27 the truant behavior, or the failure or refusal of the child to
28 return to school after participation in activities required by
29 this subsection, or the failure of the child to stop the
30 truant behavior after the school administration and the
31 Department of Juvenile Justice have worked with the child as

1 described in s. 232.19(3) and (4) shall be handled as
2 prescribed in s. 232.19.

3 (41) "Parent" means a woman who gives birth to a child
4 and a man whose consent to the adoption of the child would be
5 required under s. 63.062(1)(b). If a child has been legally
6 adopted, the term "parent" means the adoptive mother or father
7 of the child. The term does not include an individual whose
8 parental relationship to the child has been legally
9 terminated, or an alleged or prospective parent, unless the
10 parental status falls within the terms of either s. 39.503 or
11 s. 63.062(1)(b).

12
13 Reviser's note.--Paragraph (29)(d) is amended
14 to conform to the redesignation of s. 232.19(3)
15 as s. 232.19(3) and (4) by s. 9, ch. 97-234,
16 Laws of Florida. Subsection 41 is reenacted to
17 confirm the citation in the subsection to s.
18 39.503 by s. 165, ch. 98-403, Laws of Florida.
19 Section 64, ch. 98-280, Laws of Florida, a
20 reviser's bill, revised the cite in subsection
21 (41) from s. 39.4051(7) to s. 39.4051(1) to
22 conform to the appropriate subsections for the
23 subject matter referenced. Section 64, chapter
24 98-403, transferred s. 39.4051 to s. 39.503.

25
26 Section 128. Subsection (6) of section 984.226,
27 Florida Statutes, 1998 Supplement, is amended to read:
28 984.226 Pilot program for a physically secure
29 facility; contempt of court.--

30 (6) The Juvenile Justice Accountability ~~Advisory~~ Board
31 shall monitor the operation of the pilot program and issue a

1 preliminary evaluation report to the Legislature by December
2 1, 1998. The Department of Juvenile Justice and the Juvenile
3 Justice Accountability ~~Advisory~~ Board shall issue a joint
4 final report to the Legislature, including any proposed
5 legislation, by December 1, 1999.

6
7 Reviser's note.--Amended to conform to the
8 redesignation of the Juvenile Justice Advisory
9 Board as the Juvenile Justice Accountability
10 Board by s. 12, ch. 98-136, Laws of Florida.

11
12 Section 129. Paragraph (a) of subsection (3) and
13 paragraph (a) of subsection (4) of section 985.04, Florida
14 Statutes, 1998 Supplement, are amended to read:

15 985.04 Oaths; records; confidential information.--

16 (3)(a) Except as provided in subsections (2), (4),
17 (5), and (6), and s. 943.053, all information obtained under
18 this part in the discharge of official duty by any judge, any
19 employee of the court, any authorized agent of the Department
20 of Juvenile Justice, the Parole Commission, the Juvenile
21 Justice Accountability ~~Advisory~~ Board, the Department of
22 Corrections, the district juvenile justice boards, any law
23 enforcement agent, or any licensed professional or licensed
24 community agency representative participating in the
25 assessment or treatment of a juvenile is confidential and may
26 be disclosed only to the authorized personnel of the court,
27 the Department of Juvenile Justice and its designees, the
28 Department of Corrections, the Parole Commission, the Juvenile
29 Justice Accountability ~~Advisory~~ Board, law enforcement agents,
30 school superintendents and their designees, any licensed
31 professional or licensed community agency representative

1 participating in the assessment or treatment of a juvenile,
2 and others entitled under this chapter to receive that
3 information, or upon order of the court. Within each county,
4 the sheriff, the chiefs of police, the district school
5 superintendent, and the department shall enter into an
6 interagency agreement for the purpose of sharing information
7 about juvenile offenders among all parties. The agreement must
8 specify the conditions under which summary criminal history
9 information is to be made available to appropriate school
10 personnel, and the conditions under which school records are
11 to be made available to appropriate department personnel. Such
12 agreement shall require notification to any classroom teacher
13 of assignment to the teacher's classroom of a juvenile who has
14 been placed in a community control or commitment program for a
15 felony offense. The agencies entering into such agreement must
16 comply with s. 943.0525, and must maintain the confidentiality
17 of information that is otherwise exempt from s. 119.07(1), as
18 provided by law.

19 (4)(a) Records in the custody of the Department of
20 Juvenile Justice regarding children are not open to inspection
21 by the public. Such records may be inspected only upon order
22 of the Secretary of Juvenile Justice or his or her authorized
23 agent by persons who have sufficient reason and upon such
24 conditions for their use and disposition as the secretary or
25 his or her authorized agent deems proper. The information in
26 such records may be disclosed only to other employees of the
27 Department of Juvenile Justice who have a need therefor in
28 order to perform their official duty; to other persons as
29 authorized by rule of the Department of Juvenile Justice; and,
30 upon request, to the Juvenile Justice Accountability ~~Advisory~~
31 Board and the Department of Corrections. The secretary or his

1 or her authorized agent may permit properly qualified persons
2 to inspect and make abstracts from records for statistical
3 purposes under whatever conditions upon their use and
4 disposition the secretary or his or her authorized agent deems
5 proper, provided adequate assurances are given that children's
6 names and other identifying information will not be disclosed
7 by the applicant.

8
9 Reviser's note.--Amended to conform to the
10 redesignation of the Juvenile Justice Advisory
11 Board as the Juvenile Justice Accountability
12 Board by s. 12, ch. 98-136, Laws of Florida.

13
14 Section 130. Subsections (2) and (3) of section
15 985.203, Florida Statutes, are amended to read:

16 985.203 Right to counsel.--

17 (2) If the parents or legal guardian of an indigent
18 child are not indigent but refuse to employ counsel, the court
19 shall appoint counsel pursuant to s. 27.52(2)(d)~~27.52(2)(e)~~
20 to represent the child at the detention hearing and until
21 counsel is provided. Costs of representation shall be assessed
22 as provided by ss. 27.52(2)(d)~~27.52(2)(e)~~ and 938.29.

23 Thereafter, the court shall not appoint counsel for an
24 indigent child with nonindigent parents or legal guardian but
25 shall order the parents or legal guardian to obtain private
26 counsel. A parent or legal guardian of an indigent child who
27 has been ordered to obtain private counsel for the child and
28 who willfully fails to follow the court order shall be
29 punished by the court in civil contempt proceedings.

30 (3) An indigent child with nonindigent parents or
31 legal guardian may have counsel appointed pursuant to s.

1 27.52(2)(d)~~27.52(2)(e)~~if the parents or legal guardian have
2 willfully refused to obey the court order to obtain counsel
3 for the child and have been punished by civil contempt and
4 then still have willfully refused to obey the court order.
5 Costs of representation shall be assessed as provided by ss.
6 27.52(2)(d)~~27.52(2)(e)~~and 938.29.

7
8 Reviser's note.--Amended to conform to the
9 redesignation of s. 27.52(2)(e) as s.
10 27.52(2)(d) by s. 4, ch. 97-107, Laws of
11 Florida.

12
13 Section 131. Paragraph (b) of subsection (2) and
14 subsection (4) of section 985.227, Florida Statutes, are
15 amended to read:

16 985.227 Prosecution of juveniles as adults by the
17 direct filing of an information in the criminal division of
18 the circuit court; discretionary criteria; mandatory
19 criteria.--

20 (2) MANDATORY DIRECT FILE.--

21 (b) Notwithstanding subsection (1), regardless of the
22 child's age at the time the alleged offense was committed, the
23 state attorney must file an information with respect to any
24 child who previously has been adjudicated for offenses which,
25 if committed by an adult, would be felonies and such
26 adjudications occurred at three or more separate delinquency
27 adjudicatory hearings, and three of which resulted in
28 residential commitments as defined in s. 985.03(46)
29 ~~985.03(45)~~.

30 (4) DIRECT-FILE POLICIES AND GUIDELINES.--Each state
31 attorney shall develop and annually update written policies

1 and guidelines to govern determinations for filing an
2 information on a juvenile, to be submitted to the Executive
3 Office of the Governor, the President of the Senate, the
4 Speaker of the House of Representatives, and the Juvenile
5 Justice Accountability ~~Advisory~~ Board not later than January 1
6 of each year.

7
8 Reviser's note.--Paragraph (2)(b) is amended to
9 conform to the redesignation of s. 985.03(45)
10 as s. 985.03(46) by the reviser incident to the
11 compilation of the 1998 Supplement to the
12 Florida Statutes 1997. Subsection (4) is
13 amended to conform to the redesignation of the
14 Juvenile Justice Advisory Board as the Juvenile
15 Justice Accountability Board by s. 12, ch.
16 98-136, Laws of Florida.

17
18 Section 132. Section 985.23, Florida Statutes, 1998
19 Supplement, is reenacted and amended to read:

20 985.23 Disposition hearings in delinquency
21 cases.--When a child has been found to have committed a
22 delinquent act, the following procedures shall be applicable
23 to the disposition of the case:

24 (1) Before the court determines and announces the
25 disposition to be imposed, it shall:

26 (a) State clearly, using common terminology, the
27 purpose of the hearing and the right of persons present as
28 parties to comment at the appropriate time on the issues
29 before the court;

30
31

1 (b) Discuss with the child his or her compliance with
2 any home release plan or other plan imposed since the date of
3 the offense;

4 (c) Discuss with the child his or her feelings about
5 the offense committed, the harm caused to the victim or
6 others, and what penalty he or she should be required to pay
7 for such transgression; and

8 (d) Give all parties present at the hearing an
9 opportunity to comment on the issue of disposition and any
10 proposed rehabilitative plan. Parties to the case shall
11 include the parents, legal custodians, or guardians of the
12 child; the child's counsel; the state attorney;
13 representatives of the department; the victim if any, or his
14 or her representative; representatives of the school system;
15 and the law enforcement officers involved in the case.

16 (2) The first determination to be made by the court is
17 a determination of the suitability or nonsuitability for
18 adjudication and commitment of the child to the department.
19 This determination shall be based upon the predisposition
20 report which shall include, whether as part of the child's
21 multidisciplinary assessment, classification, and placement
22 process components or separately, evaluation of the following
23 criteria:

24 (a) The seriousness of the offense to the community.
25 If the court determines that the child was a member of a
26 criminal street gang at the time of the commission of the
27 offense, which determination shall be made pursuant to chapter
28 874, the seriousness of the offense to the community shall be
29 given great weight.

30 (b) Whether the protection of the community requires
31 adjudication and commitment to the department.

1 (c) Whether the offense was committed in an
2 aggressive, violent, premeditated, or willful manner.

3 (d) Whether the offense was against persons or against
4 property, greater weight being given to offenses against
5 persons, especially if personal injury resulted.

6 (e) The sophistication and maturity of the child.

7 (f) The record and previous criminal history of the
8 child, including without limitations:

9 1. Previous contacts with the department, the former
10 Department of Health and Rehabilitative Services, the
11 Department of Children and Family Services, the Department of
12 Corrections, other law enforcement agencies, and courts;

13 2. Prior periods of probation or community control;

14 3. Prior adjudications of delinquency; and

15 4. Prior commitments to institutions.

16 (g) The prospects for adequate protection of the
17 public and the likelihood of reasonable rehabilitation of the
18 child if committed to a community services program or
19 facility.

20 (3)(a) If the court determines that the child should
21 be adjudicated as having committed a delinquent act and should
22 be committed to the department, such determination shall be in
23 writing or on the record of the hearing. The determination
24 shall include a specific finding of the reasons for the
25 decision to adjudicate and to commit the child to the
26 department, including any determination that the child was a
27 member of a criminal street gang.

28 (b) If the court determines that commitment to the
29 department is appropriate, the juvenile probation officer
30 shall recommend to the court the most appropriate placement
31 and treatment plan, specifically identifying the

1 restrictiveness level most appropriate for the child. If the
2 court has determined that the child was a member of a criminal
3 street gang, that determination shall be given great weight in
4 identifying the most appropriate restrictiveness level for the
5 child. The court shall consider the department's
6 recommendation in making its commitment decision.

7 (c) The court shall commit the child to the department
8 at the restrictiveness level identified or may order placement
9 at a different restrictiveness level. The court shall state
10 for the record the reasons which establish by a preponderance
11 of the evidence why the court is disregarding the assessment
12 of the child and the restrictiveness level recommended by the
13 department. Any party may appeal the court's findings
14 resulting in a modified level of restrictiveness pursuant to
15 this paragraph.

16 (d) The court may also require that the child be
17 placed in a community control program following the child's
18 discharge from commitment. Community-based sanctions pursuant
19 to subsection (4) may be imposed by the court at the
20 disposition hearing or at any time prior to the child's
21 release from commitment.

22 (e) The court shall be responsible for the
23 fingerprinting of any child at the disposition hearing if the
24 child has been adjudicated or had adjudication withheld for
25 any felony in the case currently before the court.

26 (4) If the court determines not to adjudicate and
27 commit to the department, then the court shall determine what
28 community-based sanctions it will impose in a community
29 control program for the child. Community-based sanctions may
30 include, but are not limited to, participation in substance
31 abuse treatment, restitution in money or in kind, a curfew,

1 revocation or suspension of the driver's license of the child,
2 community service, and appropriate educational programs as
3 determined by the district school board.

4 (5) After appropriate sanctions for the offense are
5 determined, the court shall develop, approve, and order a plan
6 of community control which will contain rules, requirements,
7 conditions, and rehabilitative programs that are designed to
8 encourage responsible and acceptable behavior and to promote
9 both the rehabilitation of the child and the protection of the
10 community.

11 (6) The court may receive and consider any other
12 relevant and material evidence, including other written or
13 oral reports or statements, in its effort to determine the
14 appropriate disposition to be made with regard to the child.
15 The court may rely upon such evidence to the extent of its
16 probative value, even though such evidence may not be
17 technically competent in an adjudicatory hearing.

18 (7) The court shall notify any victim of the offense,
19 if such person is known and within the jurisdiction of the
20 court, of the hearing and shall notify and summon or subpoena,
21 if necessary, the parents, legal custodians, or guardians of
22 the child to attend the disposition hearing if they reside in
23 the state.

24
25 It is the intent of the Legislature that the criteria set
26 forth in subsection (2) are general guidelines to be followed
27 at the discretion of the court and not mandatory requirements
28 of procedure. It is not the intent of the Legislature to
29 provide for the appeal of the disposition made pursuant to
30 this section ~~subsection~~.

31

1 Reviser's note.--Section 18, ch. 98-207, Laws
2 of Florida, purported to amend paragraph
3 (3)(b), but failed to republish the paragraph
4 to include the flush left language at the end
5 of the section. In the absence of affirmative
6 evidence that the Legislature intended to
7 repeal the flush left language, s. 985.23 is
8 reenacted to confirm that the omission was not
9 intended. Section 985.23 is amended to improve
10 clarity.

11
12 Section 133. Paragraph (a) of subsection (1) and
13 subsection (2) of section 985.231, Florida Statutes, 1998
14 Supplement, are amended to read:

15 985.231 Powers of disposition in delinquency cases.--
16 (1)

17 (a) The court that has jurisdiction of an adjudicated
18 delinquent child may, by an order stating the facts upon which
19 a determination of a sanction and rehabilitative program was
20 made at the disposition hearing:

21 1. Place the child in a community control program or
22 an aftercare program under the supervision of an authorized
23 agent of the Department of Juvenile Justice or of any other
24 person or agency specifically authorized and appointed by the
25 court, whether in the child's own home, in the home of a
26 relative of the child, or in some other suitable place under
27 such reasonable conditions as the court may direct. A
28 community control program for an adjudicated delinquent child
29 must include a penalty component such as restitution in money
30 or in kind, community service, a curfew, revocation or
31 suspension of the driver's license of the child, or other

1 nonresidential punishment appropriate to the offense and must
2 also include a rehabilitative program component such as a
3 requirement of participation in substance abuse treatment or
4 in school or other educational program. Upon the
5 recommendation of the department at the time of disposition,
6 or subsequent to disposition pursuant to the filing of a
7 petition alleging a violation of the child's conditions of
8 community control or aftercare supervision, the court may
9 order the child to submit to random testing for the purpose of
10 detecting and monitoring the use of alcohol or controlled
11 substances.

12 a. A restrictiveness level classification scale for
13 levels of supervision shall be provided by the department,
14 taking into account the child's needs and risks relative to
15 community control supervision requirements to reasonably
16 ensure the public safety. Community control programs for
17 children shall be supervised by the department or by any other
18 person or agency specifically authorized by the court. These
19 programs must include, but are not limited to, structured or
20 restricted activities as described in this subparagraph, and
21 shall be designed to encourage the child toward acceptable and
22 functional social behavior. If supervision or a program of
23 community service is ordered by the court, the duration of
24 such supervision or program must be consistent with any
25 treatment and rehabilitation needs identified for the child
26 and may not exceed the term for which sentence could be
27 imposed if the child were committed for the offense, except
28 that the duration of such supervision or program for an
29 offense that is a misdemeanor of the second degree, or is
30 equivalent to a misdemeanor of the second degree, may be for a
31 period not to exceed 6 months. When restitution is ordered by

1 the court, the amount of restitution may not exceed an amount
2 the child and the parent or guardian could reasonably be
3 expected to pay or make. A child who participates in any work
4 program under this part is considered an employee of the state
5 for purposes of liability, unless otherwise provided by law.

6 b. The court may conduct judicial review hearings for
7 a child placed on community control for the purpose of
8 fostering accountability to the judge and compliance with
9 other requirements, such as restitution and community service.
10 The court may allow early termination of community control for
11 a child who has substantially complied with the terms and
12 conditions of community control.

13 c. If the conditions of the community control program
14 or the aftercare program are violated, the agent supervising
15 the program as it relates to the child involved, or the state
16 attorney, may bring the child before the court on a petition
17 alleging a violation of the program. Any child who violates
18 the conditions of community control or aftercare must be
19 brought before the court if sanctions are sought. A child
20 taken into custody under s. 985.207 for violating the
21 conditions of community control or aftercare shall be held in
22 a consequence unit if such a unit is available. The child
23 shall be afforded a hearing within 24 hours after being taken
24 into custody to determine the existence of probable cause that
25 the child violated the conditions of community control or
26 aftercare. A consequence unit is a secure facility
27 specifically designated by the department for children who are
28 taken into custody under s. 985.207 for violating community
29 control or aftercare, or who have been found by the court to
30 have violated the conditions of community control or
31 aftercare. If the violation involves a new charge of

1 delinquency, the child may be detained under s. 985.215 in a
2 facility other than a consequence unit. If the child is not
3 eligible for detention for the new charge of delinquency, the
4 child may be held in the consequence unit pending a hearing
5 and is subject to the time limitations specified in s.
6 985.215. If the child denies violating the conditions of
7 community control or aftercare, the court shall appoint
8 counsel to represent the child at the child's request. Upon
9 the child's admission, or if the court finds after a hearing
10 that the child has violated the conditions of community
11 control or aftercare, the court shall enter an order revoking,
12 modifying, or continuing community control or aftercare. In
13 each such case, the court shall enter a new disposition order
14 and, in addition to the sanctions set forth in this paragraph,
15 may impose any sanction the court could have imposed at the
16 original disposition hearing. If the child is found to have
17 violated the conditions of community control or aftercare, the
18 court may:

19 (I) Place the child in a consequence unit in that
20 judicial circuit, if available, for up to 5 days for a first
21 violation, and up to 15 days for a second or subsequent
22 violation.

23 (II) Place the child on home detention with electronic
24 monitoring. However, this sanction may be used only if a
25 residential consequence unit is not available.

26 (III) Modify or continue the child's community control
27 program or aftercare program.

28 (IV) Revoke community control or aftercare and commit
29 the child to the department.

30 d. Notwithstanding s. 743.07 and paragraph (d), and
31 except as provided in s. 985.31, the term of any order placing

1 a child in a community control program must be until the
2 child's 19th birthday unless he or she is released by the
3 court, on the motion of an interested party or on its own
4 motion.

5 2. Commit the child to a licensed child-caring agency
6 willing to receive the child, but the court may not commit the
7 child to a jail or to a facility used primarily as a detention
8 center or facility or shelter.

9 3. Commit the child to the Department of Juvenile
10 Justice at a restrictiveness level defined in s. 985.03(46)
11 ~~985.03(45)~~. Such commitment must be for the purpose of
12 exercising active control over the child, including, but not
13 limited to, custody, care, training, urine monitoring, and
14 treatment of the child and furlough of the child into the
15 community. Notwithstanding s. 743.07 and paragraph (d), and
16 except as provided in s. 985.31, the term of the commitment
17 must be until the child is discharged by the department or
18 until he or she reaches the age of 21.

19 4. Revoke or suspend the driver's license of the
20 child.

21 5. Require the child and, if the court finds it
22 appropriate, the child's parent or guardian together with the
23 child, to render community service in a public service
24 program.

25 6. As part of the community control program to be
26 implemented by the Department of Juvenile Justice, or, in the
27 case of a committed child, as part of the community-based
28 sanctions ordered by the court at the disposition hearing or
29 before the child's release from commitment, order the child to
30 make restitution in money, through a promissory note cosigned
31 by the child's parent or guardian, or in kind for any damage

1 or loss caused by the child's offense in a reasonable amount
2 or manner to be determined by the court. The clerk of the
3 circuit court shall be the receiving and dispensing agent. In
4 such case, the court shall order the child or the child's
5 parent or guardian to pay to the office of the clerk of the
6 circuit court an amount not to exceed the actual cost incurred
7 by the clerk as a result of receiving and dispensing
8 restitution payments. The clerk shall notify the court if
9 restitution is not made, and the court shall take any further
10 action that is necessary against the child or the child's
11 parent or guardian. A finding by the court, after a hearing,
12 that the parent or guardian has made diligent and good faith
13 efforts to prevent the child from engaging in delinquent acts
14 absolves the parent or guardian of liability for restitution
15 under this subparagraph.

16 7. Order the child and, if the court finds it
17 appropriate, the child's parent or guardian together with the
18 child, to participate in a community work project, either as
19 an alternative to monetary restitution or as part of the
20 rehabilitative or community control program.

21 8. Commit the child to the Department of Juvenile
22 Justice for placement in a program or facility for serious or
23 habitual juvenile offenders in accordance with s. 985.31. Any
24 commitment of a child to a program or facility for serious or
25 habitual juvenile offenders must be for an indeterminate
26 period of time, but the time may not exceed the maximum term
27 of imprisonment that an adult may serve for the same offense.
28 The court may retain jurisdiction over such child until the
29 child reaches the age of 21, specifically for the purpose of
30 the child completing the program.

31

1 9. In addition to the sanctions imposed on the child,
2 order the parent or guardian of the child to perform community
3 service if the court finds that the parent or guardian did not
4 make a diligent and good faith effort to prevent the child
5 from engaging in delinquent acts. The court may also order the
6 parent or guardian to make restitution in money or in kind for
7 any damage or loss caused by the child's offense. The court
8 shall determine a reasonable amount or manner of restitution,
9 and payment shall be made to the clerk of the circuit court as
10 provided in subparagraph 6.

11 10. Subject to specific appropriation, commit the
12 juvenile sexual offender to the Department of Juvenile Justice
13 for placement in a program or facility for juvenile sexual
14 offenders in accordance with s. 985.308. Any commitment of a
15 juvenile sexual offender to a program or facility for juvenile
16 sexual offenders must be for an indeterminate period of time,
17 but the time may not exceed the maximum term of imprisonment
18 that an adult may serve for the same offense. The court may
19 retain jurisdiction over a juvenile sexual offender until the
20 juvenile sexual offender reaches the age of 21, specifically
21 for the purpose of completing the program.

22 (2) Following a delinquency adjudicatory hearing
23 pursuant to s. 985.228 and a delinquency disposition hearing
24 pursuant to s. 985.23 which results in a commitment
25 determination, the court shall, on its own or upon request by
26 the state or the department, determine whether the protection
27 of the public requires that the child be placed in a program
28 for serious or habitual juvenile offenders and whether the
29 particular needs of the child would be best served by a
30 program for serious or habitual juvenile offenders as provided
31

1 in s. 985.31. The determination shall be made pursuant to ss.
2 985.03(48)~~985.03(47)~~ and 985.23(3).

3
4 Reviser's note.--Amended to conform to the
5 redesignation of s. 985.03(45) as s. 985.03(46)
6 and s. 985.03(47) as s. 985.03(48) by the
7 reviser incident to the compilation of the 1998
8 Supplement to the Florida Statutes 1997.

9
10 Section 134. Subsection (7) of section 985.304,
11 Florida Statutes, 1998 Supplement, is amended to read:

12 985.304 Community arbitration.--

13 (7) REVIEW.--Any child or his or her parent or legal
14 custodian or guardian who is dissatisfied with the disposition
15 provided by the community arbitrator or the community
16 arbitration panel may request a review of the disposition to
17 the appropriate juvenile probation officer ~~intake counselor~~
18 within 15 days after the community arbitration hearing. Upon
19 receipt of the request for review, the juvenile probation
20 officer ~~intake counselor~~ shall consult with the state attorney
21 who shall consider the request for review and may file formal
22 juvenile proceedings or take such other action as may be
23 warranted.

24
25 Reviser's note.--Amended to conform to the
26 redesignation of intake counselor or case
27 manager as juvenile probation officer by ss. 6
28 and 7, ch. 98-207, Laws of Florida.

1 Section 135. Paragraph (e) of subsection (3) and
2 paragraph (a) of subsection (4) of section 985.31, Florida
3 Statutes, 1998 Supplement, are amended to read:

4 985.31 Serious or habitual juvenile offender.--

5 (3) PRINCIPLES AND RECOMMENDATIONS OF ASSESSMENT AND
6 TREATMENT.--

7 (e) After a child has been adjudicated delinquent
8 pursuant to s. 985.228, the court shall determine whether the
9 child meets the criteria for a serious or habitual juvenile
10 offender pursuant to s. 985.03(48)~~985.03(47)~~. If the court
11 determines that the child does not meet such criteria, the
12 provisions of s. 985.231(1) shall apply.

13 (4) ASSESSMENTS, TESTING, RECORDS, AND INFORMATION.--

14 (a) Pursuant to the provisions of this section, the
15 department shall implement the comprehensive assessment
16 instrument for the treatment needs of serious or habitual
17 juvenile offenders and for the assessment, which assessment
18 shall include the criteria under s. 985.03(48)~~985.03(47)~~ and
19 shall also include, but not be limited to, evaluation of the
20 child's:

- 21 1. Amenability to treatment.
- 22 2. Proclivity toward violence.
- 23 3. Tendency toward gang involvement.
- 24 4. Substance abuse or addiction and the level thereof.
- 25 5. History of being a victim of child abuse or sexual
26 abuse, or indication of sexual behavior dysfunction.
- 27 6. Number and type of previous adjudications, findings
28 of guilt, and convictions.
- 29 7. Potential for rehabilitation.

30
31

1 Reviser's note.--Amended to conform to the
2 redesignation of s. 985.03(47) as s. 985.03(48)
3 by the reviser incident to the compilation of
4 the 1998 Supplement to the Florida Statutes
5 1997.

6
7 Section 136. Subsection (3) of section 985.311,
8 Florida Statutes, 1998 Supplement, is reenacted to read:
9 985.311 Intensive residential treatment program for
10 offenders less than 13 years of age.--

11 (3) PRINCIPLES AND RECOMMENDATIONS OF ASSESSMENT AND
12 TREATMENT.--

13 (a) Assessment and treatment shall be conducted by
14 treatment professionals with expertise in specific treatment
15 procedures, which professionals shall exercise all
16 professional judgment independently of the department.

17 (b) Treatment provided to children in designated
18 facilities shall be suited to the assessed needs of each
19 individual child and shall be administered safely and
20 humanely, with respect for human dignity.

21 (c) The department may promulgate rules for the
22 implementation and operation of programs and facilities for
23 children who are eligible for an intensive residential
24 treatment program for offenders less than 13 years of age.
25 The department must involve the following groups in the
26 promulgation of rules for services for this population: local
27 law enforcement agencies, the judiciary, school board
28 personnel, the office of the state attorney, the office of the
29 public defender, and community service agencies interested in
30 or currently working with juveniles. When promulgating these
31 rules, the department must consider program principles,

1 components, standards, procedures for intake, diagnostic and
2 assessment activities, treatment modalities, and case
3 management.

4 (d) Any provider who acts in good faith is immune from
5 civil or criminal liability for his or her actions in
6 connection with the assessment, treatment, or transportation
7 of an intensive offender less than 13 years of age under the
8 provisions of this chapter.

9 (e) After a child has been adjudicated delinquent
10 pursuant to s. 985.228(5), the court shall determine whether
11 the child is eligible for an intensive residential treatment
12 program for offenders less than 13 years of age pursuant to s.
13 985.03(7). If the court determines that the child does not
14 meet the criteria, the provisions of s. 985.231(1) shall
15 apply.

16 (f) After a child has been transferred for criminal
17 prosecution, a circuit court judge may direct a juvenile
18 probation officer to consult with designated staff from an
19 appropriate intensive residential treatment program for
20 offenders less than 13 years of age for the purpose of making
21 recommendations to the court regarding the child's placement
22 in such program.

23 (g) Recommendations as to a child's placement in an
24 intensive residential treatment program for offenders less
25 than 13 years of age may be based on a preliminary screening
26 of the child at appropriate sites, considering the child's
27 location while court action is pending, which may include the
28 nearest regional detention center or facility or jail.

29 (h) Based on the recommendations of the
30 multidisciplinary assessment, the juvenile probation officer
31 shall make the following recommendations to the court:

1 1. For each child who has not been transferred for
2 criminal prosecution, the juvenile probation officer shall
3 recommend whether placement in such program is appropriate and
4 needed.

5 2. For each child who has been transferred for
6 criminal prosecution, the juvenile probation officer shall
7 recommend whether the most appropriate placement for the child
8 is a juvenile justice system program, including a child who is
9 eligible for an intensive residential treatment program for
10 offenders less than 13 years of age, or placement in the adult
11 correctional system.

12
13 If treatment provided by an intensive residential treatment
14 program for offenders less than 13 years of age is determined
15 to be appropriate and needed and placement is available, the
16 juvenile probation officer and the court shall identify the
17 appropriate intensive residential treatment program for
18 offenders less than 13 years of age best suited to the needs
19 of the child.

20 (i) The treatment and placement recommendations shall
21 be submitted to the court for further action pursuant to this
22 paragraph:

23 1. If it is recommended that placement in an intensive
24 residential treatment program for offenders less than 13 years
25 of age is inappropriate, the court shall make an alternative
26 disposition pursuant to s. 985.309 or other alternative
27 sentencing as applicable, utilizing the recommendation as a
28 guide.

29 2. If it is recommended that placement in an intensive
30 residential treatment program for offenders less than 13 years
31 of age is appropriate, the court may commit the child to the

1 department for placement in the restrictiveness level
2 designated for intensive residential treatment program for
3 offenders less than 13 years of age.

4 (j) The following provisions shall apply to children
5 in an intensive residential treatment program for offenders
6 less than 13 years of age:

7 1. A child shall begin participation in the reentry
8 component of the program based upon a determination made by
9 the treatment provider and approved by the department.

10 2. A child shall begin participation in the community
11 supervision component of aftercare based upon a determination
12 made by the treatment provider and approved by the department.
13 The treatment provider shall give written notice of the
14 determination to the circuit court having jurisdiction over
15 the child. If the court does not respond with a written
16 objection within 10 days, the child shall begin the aftercare
17 component.

18 3. A child shall be discharged from the program based
19 upon a determination made by the treatment provider with the
20 approval of the department.

21 4. In situations where the department does not agree
22 with the decision of the treatment provider, a reassessment
23 shall be performed, and the department shall utilize the
24 reassessment determination to resolve the disagreement and
25 make a final decision.

26 (k) Any commitment of a child to the department for
27 placement in an intensive residential treatment program for
28 offenders less than 13 years of age shall be for an
29 indeterminate period of time, but the time shall not exceed
30 the maximum term of imprisonment which an adult may serve for
31 the same offense. Any child who has not completed the

1 residential portion of the intensive residential treatment
2 program for offenders less than 13 years of age by his or her
3 fourteenth birthday may be transferred to another program for
4 committed delinquent offenders.

5
6 Reviser's note.--Section 23, ch. 98-207, Laws
7 of Florida, purported to amend subsection (3),
8 but failed to republish the subsection to
9 include paragraphs (j) and (k). In the absence
10 of affirmative evidence that the Legislature
11 intended to repeal paragraphs (j) and (k),
12 subsection (3) is reenacted to confirm that the
13 omission was not intended.

14
15 Section 137. Subsection (2) of section 985.3141,
16 Florida Statutes, 1998 Supplement, is amended to read:
17 985.3141 Escapes from secure detention or residential
18 commitment facility.--An escape from:
19 (2) Any residential commitment facility described in
20 s. 985.03(46)~~985.03(45)~~, maintained for the custody,
21 treatment, punishment, or rehabilitation of children found to
22 have committed delinquent acts or violations of law; or
23
24 constitutes escape within the intent and meaning of s. 944.40
25 and is a felony of the third degree, punishable as provided in
26 s. 775.082, s. 775.083, or s. 775.084.

27
28 Reviser's note.--Amended to conform to the
29 redesignation of s. 985.03(45) as s. 985.03(46)
30 by the reviser incident to the compilation of
31

1 the 1998 Supplement to the Florida Statutes
2 1997.

3
4 Section 138. Subsection (5) of section 985.317,
5 Florida Statutes, 1998 Supplement, is amended to read:
6 985.317 Literacy programs for juvenile offenders.--
7 (5) EVALUATION AND REPORT.--The Juvenile Justice
8 Accountability ~~Advisory~~ Board shall evaluate the literacy
9 program outcomes as part of its annual evaluation of program
10 outcomes under s. 985.401. The department, in consultation
11 with the Department of Education, shall develop and implement
12 an evaluation of the program in order to determine the impact
13 of the programs on recidivism. The department shall submit an
14 annual report on the implementation and progress of the
15 programs to the President of the Senate and the Speaker of the
16 House of Representatives by January 1 of each year.

17
18 Reviser's note.--Amended to conform to the
19 redesignation of the Juvenile Justice Advisory
20 Board as the Juvenile Justice Accountability
21 Board by s. 12, ch. 98-136, Laws of Florida.

22
23 Section 139. Paragraph (b) of subsection (4) of
24 section 985.401, Florida Statutes, 1998 Supplement, is amended
25 to read:
26 985.401 Juvenile Justice Accountability Board.--
27 (4)
28 (b) In developing the standard methodology, the board
29 shall consult with the department, the Office ~~Division~~ of
30 Economic and Demographic Research, contract service providers,
31 and other interested parties. It is the intent of the

1 Legislature that this effort result in consensus
2 recommendations, and, to the greatest extent possible,
3 integrate the goals and legislatively approved measures of
4 performance-based program budgeting provided in chapter
5 94-249, Laws of Florida, the quality assurance program
6 provided in s. 985.412, and the cost-effectiveness model
7 provided in s. 985.404(11). The board shall notify the Office
8 of Program Policy Analysis and Government Accountability of
9 any meetings to develop the methodology.

10
11 Reviser's note.--Amended to conform to the
12 redesignation of the Division of Economic and
13 Demographic Research as the Office of Economic
14 and Demographic Research by Joint Rule 3.1 as
15 revised by S.C.R. 2536, 1998.

16
17 Section 140. Paragraphs (a), (c), (d), and (e) of
18 subsection (11) of section 985.404, Florida Statutes, 1998
19 Supplement, are amended to read:

20 985.404 Administering the juvenile justice
21 continuum.--

22 (11)(a) The Department of Juvenile Justice, in
23 consultation with the Juvenile Justice Accountability ~~Advisory~~
24 Board, the Office ~~Division~~ of Economic and Demographic
25 Research, and contract service providers, shall develop a
26 cost-effectiveness model and apply the model to each
27 commitment program. Program recommitment rates shall be a
28 component of the model. The cost-effectiveness model shall
29 compare program costs to client outcomes and program outputs.
30 It is the intent of the Legislature that continual development
31 efforts take place to improve the validity and reliability of

1 the cost-effectiveness model and to integrate the standard
2 methodology developed under s. 985.401(4) for interpreting
3 program outcome evaluations.

4 (c) Based on reports of the Juvenile Justice
5 Accountability ~~Advisory~~ Board on client outcomes and program
6 outputs and on the department's most recent cost-effectiveness
7 rankings, the department may terminate a program operated by
8 the department or a provider if the program has failed to
9 achieve a minimum threshold of program effectiveness. This
10 paragraph does not preclude the department from terminating a
11 contract as provided under s. 985.412 or as otherwise provided
12 by law or contract, and does not limit the department's
13 authority to enter into or terminate a contract.

14 (d) In collaboration with the Juvenile Justice
15 Accountability ~~Advisory~~ Board, the Office ~~Division~~ of Economic
16 and Demographic Research, and contract service providers, the
17 department shall develop a work plan to refine the
18 cost-effectiveness model so that the model is consistent with
19 the performance-based program budgeting measures approved by
20 the Legislature to the extent the department deems
21 appropriate. The department shall notify the Office of Program
22 Policy Analysis and Government Accountability of any meetings
23 to refine the model.

24 (e) Contingent upon specific appropriation, the
25 department, in consultation with the Juvenile Justice
26 Accountability ~~Advisory~~ Board, the Office ~~Division~~ of Economic
27 and Demographic Research, and contract service providers,
28 shall:

29 1. Construct a profile of each commitment program that
30 uses the results of the quality assurance report required by
31 s. 985.412, the outcome evaluation report compiled by the

1 Juvenile Justice Accountability ~~Advisory~~ Board under s.
2 985.401, the cost-effectiveness report required in this
3 subsection, and other reports available to the department.

4 2. Target, for a more comprehensive evaluation, any
5 commitment program that has achieved consistently high, low,
6 or disparate ratings in the reports required under
7 subparagraph 1.

8 3. Identify the essential factors that contribute to
9 the high, low, or disparate program ratings.

10 4. Use the results of these evaluations in developing
11 or refining juvenile justice programs or program models,
12 client outcomes and program outputs, provider contracts,
13 quality assurance standards, and the cost-effectiveness model.

14

15 Reviser's note.--Amended to conform to the
16 redesignation of the Juvenile Justice Advisory
17 Board as the Juvenile Justice Accountability
18 Board by s. 12, ch. 98-136, Laws of Florida,
19 and the Division of Economic and Demographic
20 Research as the Office of Economic and
21 Demographic Research by Joint Rule 3.1 as
22 revised by S.C.R. 2536, 1998.

23

24 Section 141. Paragraph (b) of subsection (15) of
25 section 985.41, Florida Statutes, 1998 Supplement, is amended
26 to read:

27 985.41 Siting of facilities; study; criteria.--

28 (15)

29 (b) Notwithstanding ss. 255.25(1)(b) and 255.25001(2),
30 the department may enter into lease-purchase agreements to
31 provide juvenile justice facilities for the housing of

1 committed youths contingent upon available funds. The
2 facilities provided through such agreements shall meet the
3 program plan and specifications of the department. The
4 department may enter into such lease agreements with private
5 corporations and other governmental entities. However,
6 notwithstanding the provisions of s. 255.25(3)(a)
7 ~~255.255(3)(a)~~, no such lease agreement may be entered into
8 except upon advertisement for the receipt of competitive bids
9 and award to the lowest and best bidder except when
10 contracting with other governmental entities.

11

12 Reviser's note.--Amended to improve clarity and
13 facilitate correct interpretation. Relevant
14 information relating to lease agreements and
15 competitive bids is found in s. 255.25(3)(a).

16

17 Section 142. Paragraph (d) of subsection (3) of
18 section 985.413, Florida Statutes, 1998 Supplement, is amended
19 to read:

20

985.413 District juvenile justice boards.--

21

(3) DISTRICT JUVENILE JUSTICE BOARDS.--

22

(d) A district juvenile justice board has the purpose,
23 power, and duty to:

24

1. Advise the district juvenile justice manager and
25 the district administrator on the need for and the
26 availability of juvenile justice programs and services in the
27 district.

28

2. Develop a district juvenile justice plan that is
29 based upon the juvenile justice plans developed by each county
30 within the district, and that addresses the needs of each
31 county within the district.

1 3. Develop a district interagency cooperation and
2 information-sharing agreement that supplements county
3 agreements and expands the scope to include appropriate
4 circuit and district officials and groups.

5 4. Coordinate the efforts of the district juvenile
6 justice board with the activities of the Governor's Juvenile
7 Justice and Delinquency Prevention Advisory Committee and
8 other public and private entities.

9 5. Advise and assist the district juvenile justice
10 manager in the provision of optional, innovative delinquency
11 services in the district to meet the unique needs of
12 delinquent children and their families.

13 6. Develop, in consultation with the district juvenile
14 justice manager, funding sources external to the Department of
15 Juvenile Justice for the provision and maintenance of
16 additional delinquency programs and services. The board may,
17 either independently or in partnership with one or more county
18 juvenile justice councils or other public or private entities,
19 apply for and receive funds, under contract or other funding
20 arrangement, from federal, state, county, city, and other
21 public agencies, and from public and private foundations,
22 agencies, and charities for the purpose of funding optional
23 innovative prevention, diversion, or treatment services in the
24 district for delinquent children and children at risk of
25 delinquency, and their families. To aid in this process, the
26 department shall provide fiscal agency services for the
27 councils.

28 7. Educate the community about and assist in the
29 community juvenile justice partnership grant program
30 administered by the Department of Juvenile Justice.

31

1 8. Advise the district health and human services
2 board, the district juvenile justice manager, and the
3 Secretary of Juvenile Justice regarding the development of the
4 legislative budget request for juvenile justice programs and
5 services in the district and the commitment region, and, in
6 coordination with the district health and human services
7 board, make recommendations, develop programs, and provide
8 funding for prevention and early intervention programs and
9 services designed to serve children in need of services,
10 families in need of services, and children who are at risk of
11 delinquency within the district or region.

12 9. Assist the district juvenile justice manager in
13 collecting information and statistical data useful in
14 assessing the need for prevention programs and services within
15 the juvenile justice continuum program in the district.

16 10. Make recommendations with respect to, and monitor
17 the effectiveness of, the judicial administrative plan for
18 each circuit pursuant to Rule 2.050, Florida Rules of Judicial
19 Administration.

20 11. Provide periodic reports to the health and human
21 services board in the appropriate district of the Department
22 of Children and Family Services. These reports must contain,
23 at a minimum, data about the clients served by the juvenile
24 justice programs and services in the district, as well as data
25 concerning the unmet needs of juveniles within the district.

26 12. Provide a written annual report on the activities
27 of the board to the district administrator, the Secretary of
28 Juvenile Justice, and the Juvenile Justice Accountability
29 ~~Advisory~~ Board. The report should include an assessment of the
30 effectiveness of juvenile justice continuum programs and
31 services within the district, recommendations for elimination,

1 modification, or expansion of existing programs, and
2 suggestions for new programs or services in the juvenile
3 justice continuum that would meet identified needs of children
4 and families in the district.

5
6 Reviser's note.--Amended to conform to the
7 redesignation of the Juvenile Justice Advisory
8 Board as the Juvenile Justice Accountability
9 Board by s. 12, ch. 98-136, Laws of Florida.

10
11 Section 143. Paragraph (b) of subsection (2) of
12 section 985.414, Florida Statutes, 1998 Supplement, is amended
13 to read:

14 985.414 County juvenile justice councils.--

15 (2)

16 (b) The duties and responsibilities of a county
17 juvenile justice council include, but are not limited to:

18 1. Developing a county juvenile justice plan based
19 upon utilization of the resources of law enforcement, the
20 school system, the Department of Juvenile Justice, the
21 Department of Children and Family Services, and others in a
22 cooperative and collaborative manner to prevent or discourage
23 juvenile crime and develop meaningful alternatives to school
24 suspensions and expulsions.

25 2. Entering into a written county interagency
26 agreement specifying the nature and extent of contributions
27 each signatory agency will make in achieving the goals of the
28 county juvenile justice plan and their commitment to the
29 sharing of information useful in carrying out the goals of the
30 interagency agreement to the extent authorized by law. The
31 interagency agreement must include as parties, at a minimum,

1 local school authorities or representatives, local law
2 enforcement agencies, state attorneys, public defenders, and
3 local representatives of the Department of Juvenile Justice
4 and the Department of Children and Family Services. The
5 agreement must specify how community entities will cooperate,
6 collaborate, and share information to achieve the goals of the
7 county juvenile justice plan.

8 3. Applying for and receiving public or private
9 grants, to be administered by one of the community partners,
10 that support one or more components of the county juvenile
11 justice plan.

12 4. Designating the county representatives to the
13 district juvenile justice board pursuant to s. 985.413.

14 5. Providing a forum for the presentation of
15 interagency recommendations and the resolution of
16 disagreements relating to the contents of the county
17 interagency agreement or the performance by the parties of
18 their respective obligations under the agreement.

19 6. Assisting and directing the efforts of local
20 community support organizations and volunteer groups in
21 providing enrichment programs and other support services for
22 clients of local juvenile detention centers.

23 7. Providing an annual report and recommendations to
24 the district juvenile justice board, the Juvenile Justice
25 Accountability ~~Advisory~~ Board, and the district juvenile
26 justice manager.

27

28 Reviser's note.--Amended to conform to the
29 redesignation of the Juvenile Justice Advisory
30 Board as the Juvenile Justice Accountability
31 Board by s. 12, ch. 98-136, Laws of Florida.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31