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A bill to be entitled

An act relating to governmental reorganization; revising and conforming provisions of the Florida Statutes to the amendment of Article IV, Section 4 of the State Constitution, in which the functions of the former positions of Comptroller and Treasurer were combined into the office of Chief Financial Officer, and chapter 2002-404, Laws of Florida, which reorganized certain executive-branch duties and functions to implement such constitutional amendment; revising and conforming provisions of the Florida Statutes to the creation of the Department of Financial Services and the Financial Services Commission and the abolition of the Department of Insurance and the Department of Banking and Finance; amending ss. 20.121, 103.091, 110.1127, 112.215, 215.555, 215.559, 391.221, 401.245, 408.05, 408.7056, 440.13, 440.20, 440.24, 440.38, 440.381, 440.385, 440.386, 440.44, 440.52, 440.525, 553.74, .624.05, 624.155, 624.303, 624.305, 624.316, 624.317, 624.404, 624.4072, 624.413, 624.424, 624.476, 624.477, 625.01115, 625.121, 625.151, 625.317, 625.325, and 626.015, F.S., to revise and conform; creating s. 626.016, F.S.; prescribing powers and duties of the Department of Financial Services, Financial Services Commission, and Office of Insurance Regulation; amending ss. 626.025, 626.112, 626.161, 626.171, 626.181, 626.191, 626.201, 626.202, 626.211, 626.221, 626.231, 626.241, 626.251, 626.261, 626.266, 626.271, 626.281, 626.2815, 626.2817, 626.291, 626.292, 626.301, 626.322, 626.361, 626.371, 626.381, 626.431, 626.451, 626.461, 626.471, 626.511, 626.521, 626.541, 626.551, 626.561,



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31 626.591, 626.592, 626.601, 626.611, 626.621, 626.631,
 32 626.641, 626.661, 626.681, 626.691, 626.692, 626.7315,
 33 626.732, 626.742, 626.7451, 626.7454, 626.7491, 626.7492,
 34 626.752, 626.7845, 626.7851, 626.8305, 626.8311, 626.8427,
 35 626.8463, 626.8467, 626.847, 626.8473, 626.8582, 626.8584,
 36 626.859, 626.861, 626.863, 626.865, 626.866, 626.867,
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 38 626.871, 626.872, 626.873, 626.8732, 626.8734, 626.8736,
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 41 626.895, 626.896, 626.897, 626.898, 626.899, 626.901,
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 43 626.916, 626.917, 626.918, 626.919, 626.921, 626.931,
 44 626.932, 626.936, 626.9361, 626.937, 626.938, 626.9511,
 45 626.9541, 626.9543, 626.9545, 626.9551, 626.9561,
 46 626.9571, 626.9581, 626.9591, 626.9601, 626.9611,
 47 626.9621, 626.9631, 626.9641, 626.9651, 626.989, 626.9892,
 48 626.99, 626.9911, 626.9912, 626.9913, 626.9914, 626.9915,
 49 626.9916, 626.9919, 626.9921, 626.9922, 626.99235,
 50 626.99245, 626.9925, 626.9926, 626.9927, 626.99272,
 51 626.99285, 626.99295, 627.0628, 627.0629, 627.311,
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 53 627.4236, 627.6488, 627.6699, 627.7015, 627.745, 628.4615,
 54 628.917, 631.021, 631.025, 631.031, 631.041, 631.042,
 55 631.051, 631.0515, 631.061, 631.071, 631.081, 631.091,
 56 631.111, 631.152, 631.154, 631.221, 631.231, 631.361,
 57 631.371, 631.391, 631.392, 631.398, 631.54, 631.55,
 58 631.56, 631.57, 631.59, 631.60, 631.62, 631.66, 631.714,
 59 631.72, 631.722, 631.723, 631.727, 631.813, 631.814,
 60 631.821, 631.825, 631.904, 631.911, 631.912, 631. 917,



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61 631.918, 631.931, 634.3284, 634.430, 634.433, 636.067,
 62 641.183, 641.185, 641.19, 641.2017, 641.2018, 641.21,
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 64 641.234, 641.2342, 641.25, 641.255, 641.26, 641.27,
 65 641.28, 641.281, 641.284, 641.285, 641.29, 641.3007,
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 68 641.365, 641.385, 641.39001, 641.3903, 641.3905, 641.3907,
 69 641.3909, 641.3911, 641.3913, 641.3917, 641.3922, 641.402,
 70 641.403, 641.,405, 641.406, 641.4065, 641.407, 641.409,
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 75 641.512, 641.52, 641.54, 641.55, 641.58, 642.0475,
 76 651.119, 252.62, 288.778, 288.99, 289.051, 289.081,
 77 289.121, 420.101, 494.00125, 494.00421 517.021, 517.03,
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 80 517.121, 517.131, 517.141, 517.151, 517.161, 517.181,
 81 517.191, 517.201, 517.2015, 517.221, 517.241, 517.301,
 82 517.302 517.313, 517.315, 517.32, 520.996, 520.9965,
 83 537.008, 537.009, 537.011, 537.013, 537.016, 537.017,
 84 559.725, 560.128, 560.129, 560.404, 609.05, and 655.012,
 85 F.S., to revise and conform; protecting the validity of
 86 certain administrative and judicial actions; providing for
 87 substitution of parties; providing for continuation and
 88 effect of certain certificates of authority, forms,
 89 licenses, rates, filings, and actions; providing for
 90 controlling effect; providing an effective date.



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

Section 1. Section 20.121, Florida Statutes, is amended to read:

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

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

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

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

1. The Bureau of Unclaimed Property.

2. The Office of Fiscal Integrity which shall function as a criminal justice agency for purposes of ss. 943.045-943.08 and shall have a separate budget. The office may conduct investigations within or outside this state as the bureau deems necessary to aid in the enforcement of this section. If during an investigation the office has reason to believe that any criminal law of this state has or may have been violated, the office shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.

(b) The Division of State Fire Marshal.

(c) The Division of Risk Management.

(d) The Division of Treasury, which shall include a Bureau of Deferred Compensation responsible for administering the Government Employees Deferred Compensation Plan established



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121 under s. 112.215 for state employees.

122 (e) The Division of Insurance Fraud.

123 (f) The Division of Rehabilitation and Liquidation.

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

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

127 1. The Division of Consumer Services shall perform the
128 following functions concerning products or services regulated by
129 the Department of Financial Services or by either office of the
130 Financial Services Commission:

131 a. Receive inquiries and complaints from consumers;

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

134 c. Provide direct assistance and advocacy for consumers
135 who request such assistance or advocacy;

136 d. With respect to apparent or potential violations of law
137 or applicable rules by a person or entity licensed by the
138 department or by either office of the commission, report such
139 apparent or potential violation to the appropriate division of
140 the department or office of the commission, which may take such
141 further action as it deems appropriate.

142 2. Any person licensed or issued a certificate of
143 authority by the department or by either office of the
144 commission shall respond, in writing, to the Division of
145 Consumer Services within 15 days after receipt of a written
146 request from the division to do so concerning a consumer
147 complaint. Failure to timely respond is subject to an
148 administrative fine by the department or office that issued the
149 license or certificate of authority, as may be imposed for a
150 violation of law.



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151 (i) The Division of Workers' Compensation.
 152 (j) The Division of Administration.
 153 (k) The Division of Legal Services.
 154 (l) The Division of Information Systems.
 155 (m) The Office of Insurance Consumer Advocate.
 156 (3) FINANCIAL SERVICES COMMISSION.--Effective January 7,
 157 2003, there is created within the Department of Financial
 158 Services the Financial Services Commission, composed of the
 159 Governor, the Attorney General, the Chief Financial Officer, and
 160 the Commissioner of Agriculture, which shall for purposes of
 161 this section be referred to as the commission. Commission
 162 members shall serve as agency head of the Financial Services
 163 Commission. The commission shall be a separate budget entity
 164 and shall be exempt from the provisions of s. 20.052. Commission
 165 action shall be by majority vote consisting of at least three
 166 affirmative votes. The commission shall not be subject to
 167 control, supervision, or direction by the Department of
 168 Financial Services in any manner, including purchasing,
 169 transactions involving real or personal property, personnel, or
 170 budgetary matters.
 171 (a) Structure.--The major structural unit of the
 172 commission is the office. Each office shall be headed by a
 173 director. The following offices are established:
 174 1. The Office of Insurance Regulation, which shall be
 175 responsible for all activities concerning insurers and other
 176 risk bearing entities, including licensing, rates, policy forms,
 177 market conduct, claims, adjusters, issuance of certificates of
 178 authority, solvency, viatical settlements, premium financing,
 179 and administrative supervision, as provided under the insurance
 180 code or chapter 636. The head of the Office of Insurance



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181 Regulation is the Director of the Office of Insurance
182 Regulation.

183 2. The Office of Financial Institutions and Securities
184 Regulation, which shall be responsible for all activities of the
185 Financial Services Commission relating to the regulation of
186 banks, credit unions, other financial institutions, finance
187 companies, and the securities industry. The head of the office
188 is the Director of the Office of Financial Institutions and
189 Securities Regulation. The Office of Financial Institutions and
190 Securities Regulation shall include a Bureau of Financial
191 Investigations, which shall function as a criminal justice
192 agency for purposes of ss. 943.045-943.08 and shall have a
193 separate budget. The bureau may conduct investigations within
194 or outside this state as the bureau deems necessary to aid in
195 the enforcement of this section. If, during an investigation,
196 the office has reason to believe that any criminal law of this
197 state has or may have been violated, the office shall refer any
198 records tending to show such violation to state or federal law
199 enforcement or prosecutorial agencies and shall provide
200 investigative assistance to those agencies as required.

201 (b) Organization.--The commission shall establish by rule
202 any additional organizational structure of the offices. It is
203 the intent of the Legislature to provide the commission with the
204 flexibility to organize the offices in any manner they determine
205 appropriate to promote both efficiency and accountability.

206 (c) Powers.--Commission members shall serve as the agency
207 head for purposes of rulemaking under ss. 120.536-120.565 by the
208 commission and all subunits of the commission. Each director is
209 agency head for purposes of final agency action under chapter
210 120 for all areas within the regulatory authority delegated to



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211 the director's office.

212 (d) Appointment and qualifications of directors.--The
213 commission shall appoint or remove each director by a majority
214 vote consisting of at least three affirmative votes, with both
215 the Governor and the Chief Financial Officer on the prevailing
216 side. The minimum qualifications of the directors are as
217 follows:

218 1. Prior to appointment as director, the Director of the
219 Office of Insurance Regulation must have had, within the
220 previous 10 years, at least 5 years of responsible private
221 sector experience working full time in areas within the scope of
222 the subject matter jurisdiction of the Office of Insurance
223 Regulation or at least 5 years of experience as a senior
224 examiner or other senior employee of a state or federal agency
225 having regulatory responsibility over insurers or insurance
226 agencies.

227 2. Prior to appointment as director, the Director of the
228 Office of Financial Institutions and Securities Regulation must
229 have had, within the previous 10 years, at least 5 years of
230 responsible private sector experience working full time in areas
231 within the subject matter jurisdiction of the Office of
232 Financial Institutions and Securities Regulation or at least 5
233 years of experience as a senior examiner or other senior
234 employee of a state or federal agency having regulatory
235 responsibility over financial institutions, finance companies,
236 or securities companies.

237 (e) Administrative support.--The offices shall have a
238 sufficient number of attorneys, examiners, investigators, other
239 professional personnel to carry out their responsibilities and
240 administrative personnel as determined annually in the



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241 appropriations process. The Department of Financial Services
 242 shall provide administrative and information systems support to
 243 the offices.

244 Section 2. Subsection (6) of section 103.091, Florida
 245 Statutes, is amended to read:

246 103.091 Political parties.--

247 ~~(6)(a)1-~~ In addition to the members provided for in
 248 subsection (1), each county executive committee shall include
 249 all members of the Legislature who are residents of the county
 250 and members of their respective political party and who shall be
 251 known as at-large committeemen and committeewomen.

252 (b)2- Each state executive committee shall include, as at-
 253 large committeemen and committeewomen, all members of the United
 254 States Congress representing the State of Florida who are
 255 members of the political party, all statewide elected officials
 256 who are members of the party, and the President of the Senate or
 257 the Minority Leader in the Senate, and the Speaker of the House
 258 of Representatives or the Minority Leader in the House of
 259 Representatives, whichever is a member of the political party,
 260 and 20 members of the Legislature who are members of the
 261 political party. Ten of the legislators shall be appointed with
 262 the concurrence of the state chair of the respective party, as
 263 follows: five to be appointed by the President of the Senate;
 264 five by the Minority Leader in the Senate; five by the Speaker
 265 of the House of Representatives; and five by the Minority Leader
 266 in the House.

267 (c)3- When a political party allows any member of the
 268 state executive committee to have more than one vote per person,
 269 other than by proxy, in a matter coming before the state
 270 executive committee, the 20 members of the Legislature appointed



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271 under subparagraph 2. shall not be appointed to the state
 272 executive committee and the following elected officials who are
 273 members of that political party shall be appointed and shall
 274 have the following votes:

275 ~~1.a.~~ Governor: a number equal to 15 percent of votes cast
 276 by state executive committeemen and committeewomen;

277 ~~2.b.~~ Lieutenant Governor: a number equal to 5 percent of
 278 the votes cast by state executive committeemen and
 279 committeewomen;

280 ~~3.e.~~ Each member of the United States Senate representing
 281 the state: a number equal to 10 percent of the votes cast by
 282 state executive committeemen and committeewomen;

283 ~~d.~~ Secretary of State: a number equal to 5 percent of the
 284 votes cast by state executive committeemen and committeewomen;

285 ~~4.e.~~ Attorney General: a number equal to 5 percent of the
 286 votes cast by state executive committeemen and committeewomen;

287 ~~5.f.~~ Chief Financial Officer ~~Comptroller~~: a number equal
 288 to 5 percent of the votes cast by state executive committeemen
 289 and committeewomen;

290 ~~g.~~ Treasurer: a number equal to 5 percent of the votes
 291 east by state executive committeemen and committeewomen;

292 ~~6.h.~~ Commissioner of Agriculture: a number equal to 5
 293 percent of the votes cast by state executive committeemen and
 294 committeewomen;

295 ~~i.~~ Commissioner of Education: a number equal to 5 percent
 296 of the votes cast by state executive committeemen and
 297 committeewomen;

298 ~~7.j.~~ President of the Senate: a number equal to 10 percent
 299 of the votes cast by state executive committeemen and
 300 committeewomen;



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301 ~~8.k.~~ Minority leader of the Senate: a number equal to 10
302 percent of the votes cast by state executive committeemen and
303 committeewomen;

304 ~~9.l.~~ Speaker of the House of Representatives: a number
305 equal to 10 percent of the votes cast by state executive
306 committeemen and committeewomen;

307 ~~10.m.~~ Minority leader of the House of Representatives: a
308 number equal to 10 percent of the votes cast by state executive
309 committeemen and committeewomen; and

310 ~~11.n.~~ Each member of the United States House of
311 Representatives representing the state: a number equal to 1
312 percent of the votes cast by state executive committeemen and
313 committeewomen.

314 ~~(d)1.4.a.~~ The governing body of each state executive
315 committee as defined by party rule shall include as at-large
316 committeemen and committeewomen all statewide elected officials
317 who are members of such political party; up to four members of
318 the United States Congress representing the state who are
319 members of such political party and who shall be appointed by
320 the state chair on the basis of geographic representation; the
321 permanent presiding officer selected by the members of each
322 house of the Legislature who are members of such political
323 party; and the minority leader selected by the members of each
324 house of the Legislature who are members of such political
325 party.

326 ~~2.b.~~ All members of the governing body shall have one vote
327 per person.

328 Section 3. Paragraph (a) of subsection (2) of section
329 110.1127, Florida Statutes, is amended to read:

330 110.1127 Employee security checks.--



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331 (2)(a) All positions within the Division of Treasury of
 332 the Department of Financial Services ~~Insurance~~ are deemed to be
 333 positions of special trust or responsibility, and a person may
 334 be disqualified for employment in any such position by reason
 335 of:

336 1. The conviction or prior conviction of a crime which is
 337 reasonably related to the nature of the position sought or held
 338 by the individual; or

339 2. The entering of a plea of nolo contendere or, when a
 340 jury verdict of guilty is rendered but adjudication of guilt is
 341 withheld, with respect to a crime which is reasonably related to
 342 the nature of the position sought or held by the individual.

343 Section 4. Subsection (4), paragraph (a) of subsection
 344 (6), paragraphs (a), (d), (f), and(h) of subsection (8),
 345 paragraph (b) of subsection (10), and subsections (11) and (12)
 346 of section 112.215, Florida Statutes, are amended to read:

347 112.215 Government employees; deferred compensation
 348 program.--

349 (4)(a) The Chief Financial Officer ~~Treasurer~~, with the
 350 approval of the State Board of Administration, shall establish
 351 such plan or plans of deferred compensation for state employees,
 352 including all such investment vehicles or products incident
 353 thereto, as may be available through, or offered by, qualified
 354 companies or persons, and may approve one or more such plans for
 355 implementation by and on behalf of the state and its agencies
 356 and employees.

357 (b) If the Chief Financial Officer ~~Treasurer~~ deems it
 358 advisable, he or she shall have the power, with the approval of
 359 the State Board of Administration, to create a trust or other
 360 special funds for the segregation of funds or assets resulting



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361 from compensation deferred at the request of employees of the
362 state or its agencies and for the administration of such
363 program.

364 (c) The Chief Financial Officer ~~Treasurer~~, with the
365 approval of the State Board of Administration, may delegate
366 responsibility for administration of the plan to a person the
367 Chief Financial Officer ~~Treasurer~~ determines to be qualified,
368 compensate such person, and, directly or through such person or
369 pursuant to a collective bargaining agreement, contract with a
370 private corporation or institution to provide such services as
371 may be part of any such plan or as may be deemed necessary or
372 proper by the Chief Financial Officer ~~Treasurer~~ or such person,
373 including, but not limited to, providing consolidated billing,
374 individual and collective recordkeeping and accountings, asset
375 purchase, control, and safekeeping, and direct disbursement of
376 funds to employees or other beneficiaries. The Chief Financial
377 Officer ~~Treasurer~~ may authorize a person, private corporation,
378 or institution to make direct disbursement of funds under the
379 plan to an employee or other beneficiary ~~only upon the order of~~
380 ~~the Comptroller to the Treasurer.~~

381 (d) In accordance with such approved plan, and upon
382 contract or agreement with an eligible employee, deferrals of
383 compensation may be accomplished by payroll deductions made by
384 the appropriate officer or officers of the state, with such
385 funds being thereafter held and administered in accordance with
386 the plan.

387 (6)(a) No deferred compensation plan of the state shall
388 become effective until approved by the State Board of
389 Administration and the Chief Financial Officer ~~Treasurer~~ is
390 satisfied by opinion from such federal agency or agencies as may



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391 be deemed necessary that the compensation deferred thereunder
392 and/or the investment products purchased pursuant to the plan
393 will not be included in the employee's taxable income under
394 federal or state law until it is actually received by such
395 employee under the terms of the plan, and that such compensation
396 will nonetheless be deemed compensation at the time of deferral
397 for the purposes of social security coverage, for the purposes
398 of the state retirement system, and for any other retirement,
399 pension, or benefit program established by law.

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

402 1. One member shall be appointed by the Speaker of the
403 House of Representatives and the President of the Senate jointly
404 and shall be an employee of the legislative branch.

405 2. One member shall be appointed by the Chief Justice of
406 the Supreme Court and shall be an employee of the judicial
407 branch.

408 3. One member shall be appointed by the chair of the
409 Public Employees Relations Commission and shall be a nonexempt
410 public employee.

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

413 a. One member shall be appointed by the Chancellor of the
414 State University System and shall be an employee of the
415 university system.

416 b. One member shall be appointed by the Chief Financial
417 Officer ~~Treasurer~~ and shall be an employee of the Chief
418 Financial Officer ~~Treasurer~~.

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



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421 ~~d. One member shall be appointed by the Comptroller and~~
422 ~~shall be an employee of the Comptroller.~~

423 (d) The council shall meet at the call of its chair, at
424 the request of a majority of its membership, or at the request
425 of the Chief Financial Officer ~~Treasurer~~, but not less than
426 twice a year. The business of the council shall be presented to
427 the council in the form of an agenda. The agenda shall be set
428 by the Chief Financial Officer ~~Treasurer~~ and shall include items
429 of business requested by the council members.

430 (f) The council shall make a report of each meeting to the
431 Chief Financial Officer ~~Treasurer~~, which shall show the names of
432 the members present and shall include a record of its
433 discussions, recommendations, and actions taken. The Chief
434 Financial Officer ~~Treasurer~~ shall keep the records of the
435 proceedings of each meeting on file and shall make the records
436 available to any interested person or group.

437 (h) The advisory council shall provide assistance and
438 recommendations to the Chief Financial Officer ~~Treasurer~~
439 relating to the provisions of the plan, the insurance or
440 investment options to be offered under the plan, and any other
441 contracts or appointments deemed necessary by the council and
442 the Chief Financial Officer ~~Treasurer~~ to carry out the
443 provisions of this act. The Chief Financial Officer ~~Treasurer~~
444 shall inform the council of the manner in which each council
445 recommendation is being addressed. The Chief Financial Officer
446 ~~Treasurer~~ shall provide the council, at least annually, a report
447 on the status of the deferred compensation program, including,
448 but not limited to, information on participant enrollment,
449 amount of compensation deferred, total plan assets, product
450 provider performance, and participant satisfaction with the



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451 program.

452 (10)

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

459 a. All amounts of compensation deferred thereunder;

460 b. All property and rights purchased with such amounts;

461 and

462 c. All income attributable to such amounts, property, or
463 rights.

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

468 (11) With respect to any funds held pursuant to a deferred
469 compensation plan, any plan provider which is a bank or savings
470 association and which provides time deposit accounts and
471 certificates of deposit as an investment product to the plan
472 participants may, with the approval of the State Board of
473 Administration for providers in the state plan, or with the
474 approval of the appropriate official or body designated under
475 subsection (5) for a plan of a county, municipality, other
476 political subdivision, or constitutional county officer, be
477 exempt from the provisions of chapter 280 requiring it to be a
478 qualified public depository, provided:

479 (a) The bank or savings association shall, to the extent
480 that the time deposit accounts or certificates of deposit are



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481 not insured by the Federal Deposit Insurance Corporation or the
 482 Federal Savings and Loan Insurance Corporation, pledge
 483 collateral with the Chief Financial Officer ~~Treasurer~~ for all
 484 state funds held by it under a deferred compensation plan, or
 485 with such other appropriate official for all public funds held
 486 by it under a deferred compensation plan of a county,
 487 municipality, other political subdivision, or constitutional
 488 county officer, in an amount which equals at least 150 percent
 489 of all uninsured deferred compensation funds then held.

490 (b) Said collateral shall be of the kind permitted by s.
 491 280.13 and shall be pledged in the manner provided for by the
 492 applicable provisions of chapter 280.

493

494 The Chief Financial Officer ~~Treasurer~~ shall have all the
 495 applicable powers provided in ss. 280.04, 280.05, and 280.08
 496 relating to the sale or other disposition of the pledged
 497 collateral.

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

501 Section 5. Paragraph (c) of subsection (2), paragraph (d)
 502 of subsection (4), and paragraphs (a), (b), and (c) of
 503 subsection (6) of section 215.555, Florida Statutes, are amended
 504 to read:

505 215.555 Florida Hurricane Catastrophe Fund.--

506 (2) DEFINITIONS.--As used in this section:

507 (c) "Covered policy" means any insurance policy covering
 508 residential property in this state, including, but not limited
 509 to, any homeowner's, mobile home owner's, farm owner's,
 510 condominium association, condominium unit owner's, tenant's, or



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511 apartment building policy, or any other policy covering a
 512 residential structure or its contents issued by any authorized
 513 insurer, including any joint underwriting association or similar
 514 entity created pursuant to law. The term "covered policy"
 515 includes any collateral protection insurance policy covering
 516 personal residences which protects both the borrower's and the
 517 lender's financial interests, in an amount at least equal to the
 518 coverage for the dwelling in place under the lapsed homeowner's
 519 policy, if such policy can be accurately reported as required in
 520 subsection(5). Additionally, covered policies include policies
 521 covering the peril of wind removed from the Florida Residential
 522 Property and Casualty Joint Underwriting Association or from the
 523 Citizens Property Insurance Corporation, created pursuant to s.
 524 627.351(6), or from the Florida Windstorm Underwriting
 525 Association, created pursuant to s. 627.351(2), by an authorized
 526 insurer under the terms and conditions of an executed assumption
 527 agreement between the authorized insurer and ~~either~~ such
 528 association. Each assumption agreement between the ~~either~~
 529 association and such authorized insurer must be approved by the
 530 Florida Department of Insurance or the Office of Insurance
 531 Regulation prior to the effective date of the assumption, and
 532 the Department of Insurance or the Office of Insurance
 533 Regulation must provide written notification to the board within
 534 15 working days after such approval. "Covered policy" does not
 535 include any policy that excludes wind coverage or hurricane
 536 coverage or any reinsurance agreement and does not include any
 537 policy otherwise meeting this definition which is issued by a
 538 surplus lines insurer or a reinsurer.

539 (4) REIMBURSEMENT CONTRACTS.--

540 (d)1. For purposes of determining potential liability and



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541 to aid in the sound administration of the fund, the contract
542 shall require each insurer to report such insurer's losses from
543 each covered event on an interim basis, as directed by the
544 board. The contract shall require the insurer to report to the
545 board no later than December 31 of each year, and quarterly
546 thereafter, its reimbursable losses from covered events for the
547 year. The contract shall require the board to determine and pay,
548 as soon as practicable after receiving these reports of
549 reimbursable losses, the initial amount of reimbursement due and
550 adjustments to this amount based on later loss information. The
551 adjustments to reimbursement amounts shall require the board to
552 pay, or the insurer to return, amounts reflecting the most
553 recent calculation of losses.

554 2. In determining reimbursements pursuant to this
555 subsection, the contract shall provide that the board shall:

556 a. First reimburse insurers writing covered policies,
557 which insurers are in full compliance with this section and have
558 petitioned the Office of Insurance Regulation ~~Department of~~
559 ~~Insurance~~ and qualified as limited apportionment companies under
560 s. 627.351(2)(b)3. The amount of such reimbursement shall be
561 the lesser of \$10 million or an amount equal to 10 times the
562 insurer's reimbursement premium for the current year. The
563 amount of reimbursement paid under this sub-subparagraph may not
564 exceed the full amount of reimbursement promised in the
565 reimbursement contract. This sub-subparagraph does not apply
566 with respect to any contract year in which the year-end
567 projected cash balance of the fund, exclusive of any bonding
568 capacity of the fund, exceeds \$2 billion. Only one member of any
569 insurer group may receive reimbursement under this sub-
570 subparagraph.



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571 b. Next pay to each insurer such insurer's projected
572 payout, which is the amount of reimbursement it is owed, up to
573 an amount equal to the insurer's share of the actual premium
574 paid for that contract year, multiplied by the actual claims-
575 paying capacity available for that contract year; provided,
576 entities created pursuant to s. 627.351 shall be further
577 reimbursed in accordance with sub-subparagraph c.

578 c. Thereafter, establish, based on reimbursable losses,
579 the prorated reimbursement level at the highest level for which
580 any remaining fund balance or bond proceeds are sufficient to
581 reimburse entities created pursuant to s. 627.351 for losses
582 exceeding the amounts payable pursuant to sub-subparagraph b.
583 for the current contract year.

584 (6) REVENUE BONDS.--

585 (a) General provisions.--

586 1. Upon the occurrence of a hurricane and a determination
587 that the moneys in the fund are or will be insufficient to pay
588 reimbursement at the levels promised in the reimbursement
589 contracts, the board may take the necessary steps under
590 paragraph (b) or paragraph (c) for the issuance of revenue bonds
591 for the benefit of the fund. The proceeds of such revenue bonds
592 may be used to make reimbursement payments under reimbursement
593 contracts; to refinance or replace previously existing
594 borrowings or financial arrangements; to pay interest on bonds;
595 to fund reserves for the bonds; to pay expenses incident to the
596 issuance or sale of any bond issued under this section,
597 including costs of validating, printing, and delivering the
598 bonds, costs of printing the official statement, costs of
599 publishing notices of sale of the bonds, and related
600 administrative expenses; or for such other purposes related to



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601 the financial obligations of the fund as the board may
602 determine. The term of the bonds may not exceed 30 years. The
603 board may pledge or authorize the corporation to pledge all or a
604 portion of all revenues under subsection (5) and under
605 subparagraph 3. to secure such revenue bonds and the board may
606 execute such agreements between the board and the issuer of any
607 revenue bonds and providers of other financing arrangements
608 under paragraph (7)(b) as the board deems necessary to evidence,
609 secure, preserve, and protect such pledge. If reimbursement
610 premiums received under subsection (5) or earnings on such
611 premiums are used to pay debt service on revenue bonds, such
612 premiums and earnings shall be used only after the use of the
613 moneys derived from assessments under subparagraph 3. The
614 funds, credit, property, or taxing power of the state or
615 political subdivisions of the state shall not be pledged for the
616 payment of such bonds. The board may also enter into agreements
617 under paragraph (b) or paragraph (c) for the purpose of issuing
618 revenue bonds in the absence of a hurricane upon a determination
619 that such action would maximize the ability of the fund to meet
620 future obligations.

621 2. The Legislature finds and declares that the issuance of
622 bonds under this subsection is for the public purpose of paying
623 the proceeds of the bonds to insurers, thereby enabling insurers
624 to pay the claims of policyholders to assure that policyholders
625 are able to pay the cost of construction, reconstruction,
626 repair, restoration, and other costs associated with damage to
627 property of policyholders of covered policies after the
628 occurrence of a hurricane. Revenue bonds may not be issued under
629 this subsection until validated under chapter 75. The validation
630 of at least the first obligations incurred pursuant to this



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631 subsection shall be appealed to the Supreme Court, to be handled
632 on an expedited basis.

633 3. If the board determines that the amount of revenue
634 produced under subsection (5) is insufficient to fund the
635 obligations, costs, and expenses of the fund and the
636 corporation, including repayment of revenue bonds, the board
637 shall direct the Office of Insurance Regulation ~~Department of~~
638 ~~Insurance~~ to levy an emergency assessment on each insurer
639 writing property and casualty business in this state. Pursuant
640 to the emergency assessment, each such insurer shall pay to the
641 corporation by July 1 of each year an amount set by the board
642 not exceeding 2 percent of its gross direct written premium for
643 the prior year from all property and casualty business in this
644 state except for workers' compensation, except that, if the
645 Governor has declared a state of emergency under s. 252.36 due
646 to the occurrence of a covered event, the amount of the
647 assessment for the contract year may be increased to an amount
648 not exceeding 4 percent of such premium. Any assessment
649 authority not used for the contract year may be used for a
650 subsequent contract year. If, for a subsequent contract year,
651 the board determines that the amount of revenue produced under
652 subsection (5) is insufficient to fund the obligations, costs,
653 and expenses of the fund and the corporation, including
654 repayment of revenue bonds for that contract year, the board
655 shall direct the Office of Insurance Regulation ~~Department of~~
656 ~~Insurance~~ to levy an emergency assessment up to an amount not
657 exceeding the amount of unused assessment authority from a
658 previous contract year or years, plus an additional 2 percent if
659 the Governor has declared a state of emergency under s. 252.36
660 due to the occurrence of a covered event. Any assessment



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661 authority not used for the contract year may be used for a
662 subsequent contract year. As used in this subsection, the term
663 "property and casualty business" includes all lines of business
664 identified on Form 2, Exhibit of Premiums and Losses, in the
665 annual statement required by s. 624.424 and any rules adopted
666 under such section, except for those lines identified as
667 accident and health insurance. The annual assessments under this
668 subparagraph shall continue as long as the revenue bonds issued
669 with respect to which the assessment was imposed are
670 outstanding, unless adequate provision has been made for the
671 payment of such bonds pursuant to the documents authorizing
672 issuance of the bonds. An insurer shall not at any time be
673 subject to aggregate annual assessments under this subparagraph
674 of more than 2 percent of premium, except that in the case of a
675 declared emergency, an insurer shall not at any time be subject
676 to aggregate annual assessments under this subparagraph of more
677 than 6 percent of premium; provided, no more than 4 percent may
678 be assessed for any one contract year. Any rate filing or
679 portion of a rate filing reflecting a rate change attributable
680 entirely to the assessment levied under this subparagraph shall
681 be deemed approved when made, subject to the authority of the
682 Office of Insurance Regulation ~~Department of Insurance~~ to
683 require actuarial justification as to the adequacy of any rate
684 at any time. If the rate filing reflects only a rate change
685 attributable to the assessment under this paragraph, the filing
686 may consist of a certification so stating. The assessments
687 otherwise payable to the corporation pursuant to this
688 subparagraph shall be paid instead to the fund unless and until
689 the Office of Insurance Regulation ~~Department of Insurance~~ has
690 received from the corporation and the fund a notice, which shall



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691 be conclusive and upon which the Office of Insurance Regulation
692 ~~Department of Insurance~~ may rely without further inquiry, that
693 the corporation has issued bonds and the fund has no agreements
694 in effect with local governments pursuant to paragraph (b). On
695 or after the date of such notice and until such date as the
696 corporation has no bonds outstanding, the fund shall have no
697 right, title, or interest in or to the assessments, except as
698 provided in the fund's agreements with the corporation.

699 (b) Revenue bond issuance through counties or
700 municipalities.--

701 1. If the board elects to enter into agreements with local
702 governments for the issuance of revenue bonds for the benefit of
703 the fund, the board shall enter into such contracts with one or
704 more local governments, including agreements providing for the
705 pledge of revenues, as are necessary to effect such issuance.
706 The governing body of a county or municipality is authorized to
707 issue bonds as defined in s. 125.013 or s. 166.101 from time to
708 time to fund an assistance program, in conjunction with the
709 Florida Hurricane Catastrophe Fund, for the purposes set forth
710 in this section or for the purpose of paying the costs of
711 construction, reconstruction, repair, restoration, and other
712 costs associated with damage to properties of policyholders of
713 covered policies due to the occurrence of a hurricane by
714 assuring that policyholders located in this state are able to
715 recover claims under property insurance policies after a covered
716 event.

717 2. In order to avoid needless and indiscriminate
718 proliferation, duplication, and fragmentation of such assistance
719 programs, any local government may provide for the payment of
720 fund reimbursements, regardless of whether or not the losses for



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721 which reimbursement is made occurred within or outside of the
722 territorial jurisdiction of the local government.

723 3. The state hereby covenants with holders of bonds issued
724 under this paragraph that the state will not repeal or abrogate
725 the power of the board to direct the Office of Insurance
726 Regulation ~~Department of Insurance~~ to levy the assessments and
727 to collect the proceeds of the revenues pledged to the payment
728 of such bonds as long as any such bonds remain outstanding
729 unless adequate provision has been made for the payment of such
730 bonds pursuant to the documents authorizing the issuance of such
731 bonds.

732 4. There shall be no liability on the part of, and no
733 cause of action shall arise against any members or employees of
734 the governing body of a local government for any actions taken
735 by them in the performance of their duties under this paragraph.

736 (c) Florida Hurricane Catastrophe Fund Finance
737 Corporation.--

738 1. In addition to the findings and declarations in
739 subsection (1), the Legislature also finds and declares that:

740 a. The public benefits corporation created under this
741 paragraph will provide a mechanism necessary for the cost-
742 effective and efficient issuance of bonds. This mechanism will
743 eliminate unnecessary costs in the bond issuance process,
744 thereby increasing the amounts available to pay reimbursement
745 for losses to property sustained as a result of hurricane
746 damage.

747 b. The purpose of such bonds is to fund reimbursements
748 through the Florida Hurricane Catastrophe Fund to pay for the
749 costs of construction, reconstruction, repair, restoration, and
750 other costs associated with damage to properties of



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751 policyholders of covered policies due to the occurrence of a
752 hurricane.

753 c. The efficacy of the financing mechanism will be
754 enhanced by the corporation's ownership of the assessments, by
755 the insulation of the assessments from possible bankruptcy
756 proceedings, and by covenants of the state with the
757 corporation's bondholders.

758 2.a. There is created a public benefits corporation, which
759 is an instrumentality of the state, to be known as the Florida
760 Hurricane Catastrophe Fund Finance Corporation.

761 b. The corporation shall operate under a five-member board
762 of directors consisting of the Governor or a designee, the Chief
763 Financial Officer ~~Comptroller~~ or a designee, the Attorney
764 General Treasurer or a designee, the director of the Division of
765 Bond Finance of the State Board of Administration, and the
766 senior employee of the State Board of Administration responsible
767 for operations ~~chief operating officer~~ of the Florida Hurricane
768 Catastrophe Fund.

769 c. The corporation has all of the powers of corporations
770 under chapter 607 and under chapter 617, subject only to the
771 provisions of this subsection.

772 d. The corporation may issue bonds and engage in such
773 other financial transactions as are necessary to provide
774 sufficient funds to achieve the purposes of this section.

775 e. The corporation may invest in any of the investments
776 authorized under s. 215.47.

777 f. There shall be no liability on the part of, and no
778 cause of action shall arise against, any board members or
779 employees of the corporation for any actions taken by them in
780 the performance of their duties under this paragraph.



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781 3.a. In actions under chapter 75 to validate any bonds
782 issued by the corporation, the notice required by s. 75.06 shall
783 be published only in Leon County and in two newspapers of
784 general circulation in the state, and the complaint and order of
785 the court shall be served only on the State Attorney of the
786 Second Judicial Circuit.

787 b. The state hereby covenants with holders of bonds of the
788 corporation that the state will not repeal or abrogate the power
789 of the board to direct the Office of Insurance Regulation
790 ~~Department of Insurance~~ to levy the assessments and to collect
791 the proceeds of the revenues pledged to the payment of such
792 bonds as long as any such bonds remain outstanding unless
793 adequate provision has been made for the payment of such bonds
794 pursuant to the documents authorizing the issuance of such
795 bonds.

796 4. The bonds of the corporation are not a debt of the
797 state or of any political subdivision, and neither the state nor
798 any political subdivision is liable on such bonds. The
799 corporation does not have the power to pledge the credit, the
800 revenues, or the taxing power of the state or of any political
801 subdivision. The credit, revenues, or taxing power of the state
802 or of any political subdivision shall not be deemed to be
803 pledged to the payment of any bonds of the corporation.

804 5.a. The property, revenues, and other assets of the
805 corporation; the transactions and operations of the corporation
806 and the income from such transactions and operations; and all
807 bonds issued under this paragraph and interest on such bonds are
808 exempt from taxation by the state and any political subdivision,
809 including the intangibles tax under chapter 199 and the income
810 tax under chapter 220. This exemption does not apply to any tax



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811 imposed by chapter 220 on interest, income, or profits on debt
 812 obligations owned by corporations other than the Florida
 813 Hurricane Catastrophe Fund Finance Corporation.

814 b. All bonds of the corporation shall be and constitute
 815 legal investments without limitation for all public bodies of
 816 this state; for all banks, trust companies, savings banks,
 817 savings associations, savings and loan associations, and
 818 investment companies; for all administrators, executors,
 819 trustees, and other fiduciaries; for all insurance companies and
 820 associations and other persons carrying on an insurance
 821 business; and for all other persons who are now or may hereafter
 822 be authorized to invest in bonds or other obligations of the
 823 state and shall be and constitute eligible securities to be
 824 deposited as collateral for the security of any state, county,
 825 municipal, or other public funds. This sub-subparagraph shall be
 826 considered as additional and supplemental authority and shall
 827 not be limited without specific reference to this sub-
 828 subparagraph.

829 6. The corporation and its corporate existence shall
 830 continue until terminated by law; however, no such law shall
 831 take effect as long as the corporation has bonds outstanding
 832 unless adequate provision has been made for the payment of such
 833 bonds pursuant to the documents authorizing the issuance of such
 834 bonds. Upon termination of the existence of the corporation, all
 835 of its rights and properties in excess of its obligations shall
 836 pass to and be vested in the state.

837 Section 6. Subsection (5) of section 215.559, Florida
 838 Statutes, is amended to read:

839 215.559 Hurricane Loss Mitigation Program.--

840 (5) Except for the program set forth in subsection (3),



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841 the Department of Community Affairs shall develop the programs
842 set forth in this section in consultation with an advisory
843 council consisting of a representative designated by the Chief
844 Financial Officer ~~Department of Insurance~~, a representative
845 designated by the Florida Home Builders Association, a
846 representative designated by the Florida Insurance Council, a
847 representative designated by the Federation of Manufactured Home
848 Owners, a representative designated by the Florida Association
849 of Counties, and a representative designated by the Florida
850 Manufactured Housing Association.

851 Section 7. Subsection (2) of section 391.221, Florida
852 Statutes, is amended to read:

853 391.221 Statewide Children's Medical Services Network
854 Advisory Council.--

855 (2) The council shall be composed of 12 members
856 representing the private health care provider sector, families
857 with children who have special health care needs, the Agency for
858 Health Care Administration, the Office of Insurance Regulation
859 of the Financial Services Commission ~~Department of Insurance~~,
860 the Florida Chapter of the American Academy of Pediatrics, an
861 academic health center pediatric program, and the health
862 insurance industry. Members shall be appointed for 4-year,
863 staggered terms. In no case shall an employee of the Department
864 of Health serve as a member or as an ex officio member of the
865 advisory council. A vacancy shall be filled for the remainder
866 of the unexpired term in the same manner as the original
867 appointment. A member may not be appointed to more than two
868 consecutive terms. However, a member may be reappointed after
869 being off the council for at least 2 years.

870 Section 8. Paragraph (b) of subsection (2) of section



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871 401.245, Florida Statutes, is amended to read:

872 401.245 Emergency Medical Services Advisory Council.--

873 (2)

874 (b) Representation on the Emergency Medical Services
 875 Advisory Council shall include: two licensed physicians who are
 876 "medical directors" as defined in s. 401.23(15) or whose medical
 877 practice is closely related to emergency medical services; two
 878 emergency medical service administrators, one of whom is
 879 employed by a fire service; two certified paramedics, one of
 880 whom is employed by a fire service; two certified emergency
 881 medical technicians, one of whom is employed by a fire service;
 882 one emergency medical services educator; one emergency nurse;
 883 one hospital administrator; one representative of air ambulance
 884 services; one representative of a commercial ambulance operator;
 885 and two laypersons who are in no way connected with emergency
 886 medical services, one of whom is a representative of the
 887 elderly. Ex officio members of the advisory council from state
 888 agencies shall include, but shall not be limited to,
 889 representatives from the Department of Education, the Department
 890 of Management Services, the Office of Insurance Regulation of
 891 the Financial Services Commission ~~Department of Insurance~~, the
 892 Department of Highway Safety and Motor Vehicles, the Department
 893 of Transportation, and the Department of Community Affairs.

894 Section 9. Paragraph (a) of subsection (8) of section
 895 408.05, Florida Statutes, is amended to read:

896 408.05 State Center for Health Statistics.--

897 (8) STATE COMPREHENSIVE HEALTH INFORMATION SYSTEM ADVISORY
 898 COUNCIL.--

899 (a) There is established in the agency the State
 900 Comprehensive Health Information System Advisory Council to



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901 assist the center in reviewing the comprehensive health
 902 information system and to recommend improvements for such
 903 system. The council shall consist of the following members:

904 1. An employee of the Executive Office of the Governor, to
 905 be appointed by the Governor.

906 2. An employee of the Department of Financial Services
 907 ~~Department of Insurance~~, to be appointed by the Chief Financial
 908 Officer ~~Insurance Commissioner~~.

909 3. An employee of the Department of Education, to be
 910 appointed by the Commissioner of Education.

911 4. Ten persons, to be appointed by the Secretary of Health
 912 Care Administration, representing other state and local
 913 agencies, state universities, the Florida Association of
 914 Business/Health Coalitions, local health councils, professional
 915 health-care-related associations, consumers, and purchasers.

916 Section 10. Section 408.7056, Florida Statutes, is amended
 917 to read:

918 408.7056 Statewide Provider and Subscriber Assistance
 919 Program.--

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

921 (a) "Agency" means the Agency for Health Care
 922 Administration.

923 ~~(b) "Department" means the Department of Insurance.~~

924 (b)(e) "Grievance procedure" means an established set of
 925 rules that specify a process for appeal of an organizational
 926 decision.

927 (c)(d) "Health care provider" or "provider" means a state-
 928 licensed or state-authorized facility, a facility principally
 929 supported by a local government or by funds from a charitable
 930 organization that holds a current exemption from federal income



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931 tax under s. 501(c)(3) of the Internal Revenue Code, a licensed
 932 practitioner, a county health department established under part
 933 I of chapter 154, a prescribed pediatric extended care center
 934 defined in s. 400.902, a federally supported primary care
 935 program such as a migrant health center or a community health
 936 center authorized under s. 329 or s. 330 of the United States
 937 Public Health Services Act that delivers health care services to
 938 individuals, or a community facility that receives funds from
 939 the state under the Community Alcohol, Drug Abuse, and Mental
 940 Health Services Act and provides mental health services to
 941 individuals.

942 ~~(d)(e)~~ "Managed care entity" means a health maintenance
 943 organization or a prepaid health clinic certified under chapter
 944 641, a prepaid health plan authorized under s. 409.912, or an
 945 exclusive provider organization certified under s. 627.6472.

946 (e) "Office" means the Office of Insurance Regulation of
 947 the Financial Services Commission.

948 (f) "Panel" means a statewide provider and subscriber
 949 assistance panel selected as provided in subsection (11).

950 (2) The agency shall adopt and implement a program to
 951 provide assistance to subscribers and providers, including those
 952 whose grievances are not resolved by the managed care entity to
 953 the satisfaction of the subscriber or provider. The program
 954 shall consist of one or more panels that meet as often as
 955 necessary to timely review, consider, and hear grievances and
 956 recommend to the agency or the office ~~department~~ any actions
 957 that should be taken concerning individual cases heard by the
 958 panel. The panel shall hear every grievance filed by subscribers
 959 and providers on behalf of subscribers, unless the grievance:

960 (a) Relates to a managed care entity's refusal to accept a



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961 provider into its network of providers;

962 (b) Is part of an internal grievance in a Medicare managed
 963 care entity or a reconsideration appeal through the Medicare
 964 appeals process which does not involve a quality of care issue;

965 (c) Is related to a health plan not regulated by the state
 966 such as an administrative services organization, third-party
 967 administrator, or federal employee health benefit program;

968 (d) Is related to appeals by in-plan suppliers and
 969 providers, unless related to quality of care provided by the
 970 plan;

971 (e) Is part of a Medicaid fair hearing pursued under 42
 972 C.F.R. ss. 431.220 et seq.;

973 (f) Is the basis for an action pending in state or federal
 974 court;

975 (g) Is related to an appeal by nonparticipating providers,
 976 unless related to the quality of care provided to a subscriber
 977 by the managed care entity and the provider is involved in the
 978 care provided to the subscriber;

979 (h) Was filed before the subscriber or provider completed
 980 the entire internal grievance procedure of the managed care
 981 entity, the managed care entity has complied with its timeframes
 982 for completing the internal grievance procedure, and the
 983 circumstances described in subsection (6) do not apply;

984 (i) Has been resolved to the satisfaction of the
 985 subscriber or provider who filed the grievance, unless the
 986 managed care entity's initial action is egregious or may be
 987 indicative of a pattern of inappropriate behavior;

988 (j) Is limited to seeking damages for pain and suffering,
 989 lost wages, or other incidental expenses, including accrued
 990 interest on unpaid balances, court costs, and transportation



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991 costs associated with a grievance procedure;

992 (k) Is limited to issues involving conduct of a health
993 care provider or facility, staff member, or employee of a
994 managed care entity which constitute grounds for disciplinary
995 action by the appropriate professional licensing board and is
996 not indicative of a pattern of inappropriate behavior, and the
997 agency or office ~~department~~ has reported these grievances to the
998 appropriate professional licensing board or to the health
999 facility regulation section of the agency for possible
1000 investigation; or

1001 (l) Is withdrawn by the subscriber or provider. Failure
1002 of the subscriber or the provider to attend the hearing shall be
1003 considered a withdrawal of the grievance.

1004 (3) The agency shall review all grievances within 60 days
1005 after receipt and make a determination whether the grievance
1006 shall be heard. Once the agency notifies the panel, the
1007 subscriber or provider, and the managed care entity that a
1008 grievance will be heard by the panel, the panel shall hear the
1009 grievance either in the network area or by teleconference no
1010 later than 120 days after the date the grievance was filed. The
1011 agency shall notify the parties, in writing, by facsimile
1012 transmission, or by phone, of the time and place of the hearing.
1013 The panel may take testimony under oath, request certified
1014 copies of documents, and take similar actions to collect
1015 information and documentation that will assist the panel in
1016 making findings of fact and a recommendation. The panel shall
1017 issue a written recommendation, supported by findings of fact,
1018 to the provider or subscriber, to the managed care entity, and
1019 to the agency or the office ~~department~~ no later than 15 working
1020 days after hearing the grievance. If at the hearing the panel



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1021 requests additional documentation or additional records, the
1022 time for issuing a recommendation is tolled until the
1023 information or documentation requested has been provided to the
1024 panel. The proceedings of the panel are not subject to chapter
1025 120.

1026 (4) If, upon receiving a proper patient authorization
1027 along with a properly filed grievance, the agency requests
1028 medical records from a health care provider or managed care
1029 entity, the health care provider or managed care entity that has
1030 custody of the records has 10 days to provide the records to the
1031 agency. Failure to provide requested medical records may result
1032 in the imposition of a fine of up to \$500. Each day that
1033 records are not produced is considered a separate violation.

1034 (5) Grievances that the agency determines pose an
1035 immediate and serious threat to a subscriber's health must be
1036 given priority over other grievances. The panel may meet at the
1037 call of the chair to hear the grievances as quickly as possible
1038 but no later than 45 days after the date the grievance is filed,
1039 unless the panel receives a waiver of the time requirement from
1040 the subscriber. The panel shall issue a written recommendation,
1041 supported by findings of fact, to the office ~~department~~ or the
1042 agency within 10 days after hearing the expedited grievance.

1043 (6) When the agency determines that the life of a
1044 subscriber is in imminent and emergent jeopardy, the chair of
1045 the panel may convene an emergency hearing, within 24 hours
1046 after notification to the managed care entity and to the
1047 subscriber, to hear the grievance. The grievance must be heard
1048 notwithstanding that the subscriber has not completed the
1049 internal grievance procedure of the managed care entity. The
1050 panel shall, upon hearing the grievance, issue a written



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1051 emergency recommendation, supported by findings of fact, to the
1052 managed care entity, to the subscriber, and to the agency or the
1053 office ~~department~~ for the purpose of deferring the imminent and
1054 emergent jeopardy to the subscriber's life. Within 24 hours
1055 after receipt of the panel's emergency recommendation, the
1056 agency or office ~~department~~ may issue an emergency order to the
1057 managed care entity. An emergency order remains in force until:

1058 (a) The grievance has been resolved by the managed care
1059 entity;

1060 (b) Medical intervention is no longer necessary; or

1061 (c) The panel has conducted a full hearing under
1062 subsection (3) and issued a recommendation to the agency or the
1063 office ~~department~~, and the agency or office ~~department~~ has
1064 issued a final order.

1065 (7) After hearing a grievance, the panel shall make a
1066 recommendation to the agency or the office ~~department~~ which may
1067 include specific actions the managed care entity must take to
1068 comply with state laws or rules regulating managed care
1069 entities.

1070 (8) A managed care entity, subscriber, or provider that is
1071 affected by a panel recommendation may within 10 days after
1072 receipt of the panel's recommendation, or 72 hours after receipt
1073 of a recommendation in an expedited grievance, furnish to the
1074 agency or office ~~department~~ written evidence in opposition to
1075 the recommendation or findings of fact of the panel.

1076 (9) No later than 30 days after the issuance of the
1077 panel's recommendation and, for an expedited grievance, no later
1078 than 10 days after the issuance of the panel's recommendation,
1079 the agency or the office ~~department~~ may adopt the panel's
1080 recommendation or findings of fact in a proposed order or an



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1081 emergency order, as provided in chapter 120, which it shall
1082 issue to the managed care entity. The agency or office
1083 ~~department~~ may issue a proposed order or an emergency order, as
1084 provided in chapter 120, imposing fines or sanctions, including
1085 those contained in ss. 641.25 and 641.52. The agency or the
1086 office ~~department~~ may reject all or part of the panel's
1087 recommendation. All fines collected under this subsection must
1088 be deposited into the Health Care Trust Fund.

1089 (10) In determining any fine or sanction to be imposed,
1090 the agency and the office ~~department~~ may consider the following
1091 factors:

1092 (a) The severity of the noncompliance, including the
1093 probability that death or serious harm to the health or safety
1094 of the subscriber will result or has resulted, the severity of
1095 the actual or potential harm, and the extent to which provisions
1096 of chapter 641 were violated.

1097 (b) Actions taken by the managed care entity to resolve or
1098 remedy any quality-of-care grievance.

1099 (c) Any previous incidents of noncompliance by the managed
1100 care entity.

1101 (d) Any other relevant factors the agency or office
1102 ~~department~~ considers appropriate in a particular grievance.

1103 (11) The panel shall consist of members employed by the
1104 agency, ~~and~~ members employed by the office ~~department~~, and
1105 members employed by the Department of Financial Services, chosen
1106 by their respective agencies; a consumer appointed by the
1107 Governor; a physician appointed by the Governor, as a standing
1108 member; and physicians who have expertise relevant to the case
1109 to be heard, on a rotating basis. The agency may contract with a
1110 medical director and a primary care physician who shall provide



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1111 additional technical expertise to the panel. The medical
1112 director shall be selected from a health maintenance
1113 organization with a current certificate of authority to operate
1114 in Florida.

1115 (12) Every managed care entity shall submit a quarterly
1116 report to the agency and the office ~~department~~ listing the
1117 number and the nature of all subscribers' and providers'
1118 grievances which have not been resolved to the satisfaction of
1119 the subscriber or provider after the subscriber or provider
1120 follows the entire internal grievance procedure of the managed
1121 care entity. The agency shall notify all subscribers and
1122 providers included in the quarterly reports of their right to
1123 file an unresolved grievance with the panel.

1124 (13) Any information which would identify a subscriber or
1125 the spouse, relative, or guardian of a subscriber and which is
1126 contained in a report obtained by the office ~~Department of~~
1127 ~~Insurance~~ pursuant to this section is confidential and exempt
1128 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the
1129 State Constitution.

1130 (14) A proposed order issued by the agency or office
1131 ~~department~~ which only requires the managed care entity to take a
1132 specific action under subsection (7) is subject to a summary
1133 hearing in accordance with s. 120.574, unless all of the parties
1134 agree otherwise. If the managed care entity does not prevail at
1135 the hearing, the managed care entity must pay reasonable costs
1136 and attorney's fees of the agency or the office ~~department~~
1137 incurred in that proceeding.

1138 (15)(a) Any information which would identify a subscriber
1139 or the spouse, relative, or guardian of a subscriber which is
1140 contained in a document, report, or record prepared or reviewed



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1141 by the panel or obtained by the agency pursuant to this section
 1142 is confidential and exempt from the provisions of s. 119.07(1)
 1143 and s. 24(a), Art. I of the State Constitution.

1144 (b) Meetings of the panel shall be open to the public
 1145 unless the provider or subscriber whose grievance will be heard
 1146 requests a closed meeting or the agency or the office ~~Department~~
 1147 ~~of Insurance~~ determines that information of a sensitive personal
 1148 nature which discloses the subscriber's medical treatment or
 1149 history; or information which constitutes a trade secret as
 1150 defined by s. 812.081; or information relating to internal risk
 1151 management programs as defined in s. 641.55(5)(c), (6), and (8)
 1152 may be revealed at the panel meeting, in which case that portion
 1153 of the meeting during which such sensitive personal information,
 1154 trade secret information, or internal risk management program
 1155 information is discussed shall be exempt from the provisions of
 1156 s. 286.011 and s. 24(b), Art. I of the State Constitution. All
 1157 closed meetings shall be recorded by a certified court reporter.
 1158

1159 This subsection is subject to the Open Government Sunset Review
 1160 Act of 1995 in accordance with s. 119.15, and shall stand
 1161 repealed on October 2, 2003, unless reviewed and saved from
 1162 repeal through reenactment by the Legislature.

1163 Section 11. Subsections (11) and (12) of section 440.13,
 1164 Florida Statutes, are amended to read:

1165 440.13 Medical services and supplies; penalty for
 1166 violations; limitations.--

1167 (11) ~~AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION AND~~
 1168 ~~THE DEPARTMENT OF INSURANCE; JURISDICTION.--~~

1169 (a) The Agency for Health Care Administration may
 1170 investigate health care providers to determine whether providers



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1171 are complying with this chapter and with rules adopted by the
 1172 agency, whether the providers are engaging in overutilization,
 1173 and whether providers are engaging in improper billing
 1174 practices. If the agency finds that a health care provider has
 1175 improperly billed, overutilized, or failed to comply with agency
 1176 rules or the requirements of this chapter it must notify the
 1177 provider of its findings and may determine that the health care
 1178 provider may not receive payment from the carrier or may impose
 1179 penalties as set forth in subsection (8) or other sections of
 1180 this chapter. If the health care provider has received payment
 1181 from a carrier for services that were improperly billed or for
 1182 overutilization, it must return those payments to the carrier.
 1183 The agency may assess a penalty not to exceed \$500 for each
 1184 overpayment that is not refunded within 30 days after
 1185 notification of overpayment by the agency or carrier.

1186 (b) The department shall monitor carriers as provided in
 1187 this chapter and the Office of Insurance Regulation shall and
 1188 audit insurers and group self-insurance funds ~~carriers~~ as
 1189 provided in s. 624.3161, to determine if medical bills are paid
 1190 in accordance with this section and ~~department~~ rules of the
 1191 department and Financial Services Commission, respectively. Any
 1192 employer, if self-insured, or carrier found by the department or
 1193 Office of Insurance Regulation ~~division~~ not to be within 90
 1194 percent compliance as to the payment of medical bills after July
 1195 1, 1994, must be assessed a fine not to exceed 1 percent of the
 1196 prior year's assessment levied against such entity under s.
 1197 440.51 for every quarter in which the entity fails to attain 90-
 1198 percent compliance. The department shall fine or otherwise
 1199 discipline an employer or carrier, pursuant to this chapter, ~~the~~
 1200 ~~insurance code~~, or rules adopted by the department, and the



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1201 Office of Insurance Regulation shall fine or otherwise
 1202 discipline an insurer or group self-insurance fund pursuant to
 1203 the insurance code or rules adopted by the Financial Services
 1204 Commission, for each late payment of compensation that is below
 1205 the minimum 90-percent performance standard. Any carrier that is
 1206 found to be not in compliance in subsequent consecutive quarters
 1207 must implement a medical-bill review program approved by the
 1208 department or office ~~division~~, and an insurer or group self-
 1209 insurance fund ~~the carrier~~ is subject to disciplinary action by
 1210 the Office of Insurance Regulation ~~Department of Insurance~~.

1211 (c) The agency has exclusive jurisdiction to decide any
 1212 matters concerning reimbursement, to resolve any overutilization
 1213 dispute under subsection (7), and to decide any question
 1214 concerning overutilization under subsection (8), which question
 1215 or dispute arises after January 1, 1994.

1216 (d) The following agency actions do not constitute agency
 1217 action subject to review under ss. 120.569 and 120.57 and do not
 1218 constitute actions subject to s. 120.56: referral by the entity
 1219 responsible for utilization review; a decision by the agency to
 1220 refer a matter to a peer review committee; establishment by a
 1221 health care provider or entity of procedures by which a peer
 1222 review committee reviews the rendering of health care services;
 1223 and the review proceedings, report, and recommendation of the
 1224 peer review committee.

1225 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
 1226 REIMBURSEMENT ALLOWANCES.--

1227 (a) A three-member panel is created, consisting of the
 1228 Chief Financial Officer ~~Insurance Commissioner~~, or the Chief
 1229 Financial Officer's ~~Insurance Commissioner's~~ designee, and two
 1230 members to be appointed by the Governor, subject to confirmation



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1231 by the Senate, one member who, on account of present or previous
1232 vocation, employment, or affiliation, shall be classified as a
1233 representative of employers, the other member who, on account of
1234 previous vocation, employment, or affiliation, shall be
1235 classified as a representative of employees. The panel shall
1236 determine statewide schedules of maximum reimbursement
1237 allowances for medically necessary treatment, care, and
1238 attendance provided by physicians, hospitals, ambulatory
1239 surgical centers, work-hardening programs, pain programs, and
1240 durable medical equipment. The maximum reimbursement allowances
1241 for inpatient hospital care shall be based on a schedule of per
1242 diem rates, to be approved by the three-member panel no later
1243 than March 1, 1994, to be used in conjunction with a
1244 precertification manual as determined by the agency. All
1245 compensable charges for hospital outpatient care shall be
1246 reimbursed at 75 percent of usual and customary charges. Until
1247 the three-member panel approves a schedule of per diem rates for
1248 inpatient hospital care and it becomes effective, all
1249 compensable charges for hospital inpatient care must be
1250 reimbursed at 75 percent of their usual and customary charges.
1251 Annually, the three-member panel shall adopt schedules of
1252 maximum reimbursement allowances for physicians, hospital
1253 inpatient care, hospital outpatient care, ambulatory surgical
1254 centers, work-hardening programs, and pain programs. However,
1255 the maximum percentage of increase in the individual
1256 reimbursement allowance may not exceed the percentage of
1257 increase in the Consumer Price Index for the previous year. An
1258 individual physician, hospital, ambulatory surgical center, pain
1259 program, or work-hardening program shall be reimbursed either
1260 the usual and customary charge for treatment, care, and



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1261 attendance, the agreed-upon contract price, or the maximum
1262 reimbursement allowance in the appropriate schedule, whichever
1263 is less.

1264 (b) As to reimbursement for a prescription medication, the
1265 reimbursement amount for a prescription shall be the average
1266 wholesale price times 1.2 plus \$4.18 for the dispensing fee,
1267 except where the carrier has contracted for a lower amount. Fees
1268 for pharmaceuticals and pharmaceutical services shall be
1269 reimbursable at the applicable fee schedule amount. Where the
1270 employer or carrier has contracted for such services and the
1271 employee elects to obtain them through a provider not a party to
1272 the contract, the carrier shall reimburse at the schedule,
1273 negotiated, or contract price, whichever is lower.

1274 (c) Reimbursement for all fees and other charges for such
1275 treatment, care, and attendance, including treatment, care, and
1276 attendance provided by any hospital or other health care
1277 provider, ambulatory surgical center, work-hardening program, or
1278 pain program, must not exceed the amounts provided by the
1279 uniform schedule of maximum reimbursement allowances as
1280 determined by the panel or as otherwise provided in this
1281 section. This subsection also applies to independent medical
1282 examinations performed by health care providers under this
1283 chapter. Until the three-member panel approves a uniform
1284 schedule of maximum reimbursement allowances and it becomes
1285 effective, all compensable charges for treatment, care, and
1286 attendance provided by physicians, ambulatory surgical centers,
1287 work-hardening programs, or pain programs shall be reimbursed at
1288 the lowest maximum reimbursement allowance across all 1992
1289 schedules of maximum reimbursement allowances for the services
1290 provided regardless of the place of service. In determining the



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1291 uniform schedule, the panel shall first approve the data which
1292 it finds representative of prevailing charges in the state for
1293 similar treatment, care, and attendance of injured persons. Each
1294 health care provider, health care facility, ambulatory surgical
1295 center, work-hardening program, or pain program receiving
1296 workers' compensation payments shall maintain records verifying
1297 their usual charges. In establishing the uniform schedule of
1298 maximum reimbursement allowances, the panel must consider:

1299 1. The levels of reimbursement for similar treatment,
1300 care, and attendance made by other health care programs or
1301 third-party providers;

1302 2. The impact upon cost to employers for providing a level
1303 of reimbursement for treatment, care, and attendance which will
1304 ensure the availability of treatment, care, and attendance
1305 required by injured workers;

1306 3. The financial impact of the reimbursement allowances
1307 upon health care providers and health care facilities, including
1308 trauma centers as defined in s. 395.4001, and its effect upon
1309 their ability to make available to injured workers such
1310 medically necessary remedial treatment, care, and attendance.
1311 The uniform schedule of maximum reimbursement allowances must be
1312 reasonable, must promote health care cost containment and
1313 efficiency with respect to the workers' compensation health care
1314 delivery system, and must be sufficient to ensure availability
1315 of such medically necessary remedial treatment, care, and
1316 attendance to injured workers; and

1317 4. The most recent average maximum allowable rate of
1318 increase for hospitals determined by the Health Care Board under
1319 chapter 408.

1320 (d) In addition to establishing the uniform schedule of



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1321 maximum reimbursement allowances, the panel shall:

1322 1. Take testimony, receive records, and collect data to
1323 evaluate the adequacy of the workers' compensation fee schedule,
1324 nationally recognized fee schedules and alternative methods of
1325 reimbursement to certified health care providers and health care
1326 facilities for inpatient and outpatient treatment and care.

1327 2. Survey certified health care providers and health care
1328 facilities to determine the availability and accessibility of
1329 workers' compensation health care delivery systems for injured
1330 workers.

1331 3. Survey carriers to determine the estimated impact on
1332 carrier costs and workers' compensation premium rates by
1333 implementing changes to the carrier reimbursement schedule or
1334 implementing alternative reimbursement methods.

1335 4. Submit recommendations on or before January 1, 2003,
1336 and biennially thereafter, to the President of the Senate and
1337 the Speaker of the House of Representatives on methods to
1338 improve the workers' compensation health care delivery system.

1339
1340 The agency and the department, as requested, ~~division~~ shall
1341 provide data to the panel, including but not limited to,
1342 utilization trends in the workers' compensation health care
1343 delivery system. The agency ~~division~~ shall provide the panel
1344 with an annual report regarding the resolution of medical
1345 reimbursement disputes and any actions pursuant to s. 440.13(8).
1346 The department ~~division~~ shall provide administrative support and
1347 service to the panel to the extent requested by the panel.

1348 Section 12. Paragraph (c) of subsection (8) and
1349 subsections (10), (15), (16), and (17) of section 440.20,
1350 Florida Statutes, are amended to read:



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1351 440.20 Time for payment of compensation; penalties for
1352 late payment.--

1353 (8) In addition to any other penalties provided by this
1354 chapter for late payment, if any installment of compensation is
1355 not paid when it becomes due, the employer, carrier, or
1356 servicing agent shall pay interest thereon at the rate of 12
1357 percent per year from the date the installment becomes due until
1358 it is paid, whether such installment is payable without an order
1359 or under the terms of an order. The interest payment shall be
1360 the greater of the amount of interest due or \$5.

1361 (c) In order to ensure carrier compliance under this
1362 chapter and provisions of the Florida Insurance Code, the office
1363 ~~department~~ shall monitor the performance of carriers by
1364 conducting market conduct examinations, as provided in s.
1365 624.3161, and conducting investigations, as provided in s.
1366 624.317. The department shall establish by rule minimum
1367 performance standards for carriers to ensure that a minimum of
1368 90 percent of all compensation benefits are timely paid. The
1369 department shall fine a carrier as provided in s. 440.13(11)(b)
1370 up to \$50 for each late payment of compensation that is below
1371 the minimum 90 percent performance standard. This paragraph does
1372 not affect the imposition of any penalties or interest due to
1373 the claimant. If a carrier contracts with a servicing agent to
1374 fulfill its administrative responsibilities under this chapter,
1375 the payment practices of the servicing agent are deemed the
1376 payment practices of the carrier for the purpose of assessing
1377 penalties against the carrier.

1378 (10) Whenever the department deems it advisable, it may
1379 require any employer to make a deposit with the Chief Financial
1380 Officer ~~Treasurer~~ to secure the prompt and convenient payments



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1381 of such compensation; and payments therefrom upon any awards
1382 shall be made upon order of the department or judge of
1383 compensation claims.

1384 (15)(a) The office ~~department~~ shall examine on an ongoing
1385 basis claims files in accordance with s. 624.3161 and may impose
1386 fines pursuant to s. 624.310(5) and this chapter in order to
1387 identify questionable claims-handling techniques, questionable
1388 patterns or practices of claims, or a pattern of repeated
1389 unreasonably controverted claims by carriers, as defined in s.
1390 440.02, providing services to employees pursuant to this
1391 chapter. If the office ~~department~~ finds such questionable
1392 techniques, patterns, or repeated unreasonably controverted
1393 claims as constitute a general business practice of a carrier,
1394 as defined in s. 440.02, the office ~~department~~ shall take
1395 appropriate action so as to bring such general business
1396 practices to a halt pursuant to s. 440.38(3) or may impose
1397 penalties pursuant to s. 624.4211. The department and office may
1398 initiate investigations of questionable techniques, patterns,
1399 practices, or repeated unreasonably controverted claims. The
1400 Financial Services Commission ~~department~~ may by rule establish
1401 forms and procedures for corrective action plans and for
1402 auditing carriers.

1403 (b) As to any examination, investigation, or hearing being
1404 conducted under this chapter, the department and office
1405 ~~Insurance Commissioner or his or her designee~~:

1406 1. May administer oaths, examine and cross-examine
1407 witnesses, receive oral and documentary evidence; and

1408 2. Shall have the power to subpoena witnesses, compel
1409 their attendance and testimony, and require by subpoena the
1410 production of books, papers, records, files, correspondence,



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1411 documents, or other evidence which is relevant to the inquiry.

1412 (c) If any person refuses to comply with any such subpoena
1413 or to testify as to any matter concerning which she or he may be
1414 lawfully interrogated, the Circuit Court of Leon County or of
1415 the county wherein such examination, investigation, or hearing
1416 is being conducted, or of the county wherein such person
1417 resides, may, on the application of the department or the
1418 office, issue an order requiring such person to comply with the
1419 subpoena and to testify.

1420 (d) Subpoenas shall be served, and proof of such service
1421 made, in the same manner as if issued by a circuit court.
1422 Witness fees, costs, and reasonable travel expenses, if claimed,
1423 shall be allowed the same as for testimony in a circuit court.

1424 (e) The department shall publish annually a report which
1425 indicates the promptness of first payment of compensation
1426 records of each carrier or self-insurer so as to focus attention
1427 on those carriers or self-insurers with poor payment records for
1428 the preceding year. The department and the office shall take
1429 appropriate steps so as to cause such poor carrier payment
1430 practices to halt pursuant to s. 440.38(3). In addition, the
1431 department shall take appropriate action so as to halt such poor
1432 payment practices of self-insurers. "Poor payment practice"
1433 means a practice of late payment sufficient to constitute a
1434 general business practice.

1435 (f) The Financial Services Commission, in consultation
1436 with the department, shall adopt ~~promulgate~~ rules providing
1437 guidelines to carriers, as defined in s. 440.02, self-insurers,
1438 and employers to indicate behavior that may be construed as
1439 questionable claims-handling techniques, questionable patterns
1440 of claims, repeated unreasonably controverted claims, or poor



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1441 payment practices.

1442 (16) No penalty assessed under this section may be
1443 recouped by any carrier or self-insurer in the rate base, the
1444 premium, or any rate filing. The office ~~Department of Insurance~~
1445 shall enforce this subsection.

1446 (17) The Financial Services Commission ~~department~~ may by
1447 rule establish audit procedures and set standards for the
1448 Automated Carrier Performance System.

1449 Section 13. Subsections (2) and (3) of section 440.24,
1450 Florida Statutes, is amended to read:

1451 440.24 Enforcement of compensation orders; penalties.--

1452 (2) In any case where the employer is insured and the
1453 carrier fails to comply with any compensation order of a judge
1454 of compensation claims or court within 10 days after such order
1455 becomes final, the department shall notify the office of such
1456 failure and the office shall thereupon suspend the license of
1457 such carrier to do an insurance business in this state, until
1458 such carrier has complied with such order.

1459 (3) In any case where the employer is a self-insurer and
1460 fails to comply with any compensation order of a judge of
1461 compensation claims or court within 10 days after such order
1462 becomes final, the department ~~of Insurance~~ may suspend or revoke
1463 any authorization previously given to the employer to be a self-
1464 insurer, and the Florida Self-Insurers Guaranty Association,
1465 Incorporated, may call or sue upon the surety bond or exercise
1466 its rights under the letter of credit deposited by the self-
1467 insurer with the association as a qualifying security deposit as
1468 may be necessary to satisfy the order.

1469 Section 14. Subsections (1), (2), (3), and (4) of section
1470 440.38, Florida Statutes, are amended to read:



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1471 440.38 Security for compensation; insurance carriers and
 1472 self-insurers.--

1473 (1) Every employer shall secure the payment of
 1474 compensation under this chapter:

1475 (a) By insuring and keeping insured the payment of such
 1476 compensation with any stock company or mutual company or
 1477 association or exchange, authorized to do business in the state;

1478 (b) By furnishing satisfactory proof to the Florida Self-
 1479 Insurers Guaranty Association, Incorporated, created in s.
 1480 440.385, that it has the financial strength necessary to ensure
 1481 timely payment of all current and future claims individually and
 1482 on behalf of its subsidiary and affiliated companies with
 1483 employees in this state and receiving an authorization from the
 1484 department of ~~Insurance~~ to pay such compensation directly. The
 1485 association shall review the financial strength of applicants
 1486 for membership, current members, and former members and make
 1487 recommendations to the department of ~~Insurance~~ regarding their
 1488 qualifications to self-insure in accordance with this section
 1489 and ss. 440.385 and 440.386. The department shall act in
 1490 accordance with the recommendations unless it finds by clear and
 1491 convincing evidence that the recommendations are erroneous.

1492 1. As a condition of authorization under paragraph (a),
 1493 the association may recommend that the department of ~~Insurance~~
 1494 require an employer to deposit with the association a qualifying
 1495 security deposit. The association shall recommend the type and
 1496 amount of the qualifying security deposit and shall prescribe
 1497 conditions for the qualifying security deposit, which shall
 1498 include authorization for the association to call the qualifying
 1499 security deposit in the case of default to pay compensation
 1500 awards and related expenses of the association. As a condition



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1501 to authorization to self-insure, the employer shall provide
1502 proof that the employer has provided for competent personnel
1503 with whom to deliver benefits and to provide a safe working
1504 environment. The employer shall also provide evidence that it
1505 carries reinsurance at levels that will ensure the financial
1506 strength and actuarial soundness of such employer in accordance
1507 with rules adopted by the department ~~of Insurance~~. The
1508 department ~~of Insurance~~ may by rule require that, in the event
1509 of an individual self-insurer's insolvency, such qualifying
1510 security deposits and reinsurance policies are payable to the
1511 association. Any employer securing compensation in accordance
1512 with the provisions of this paragraph shall be known as a self-
1513 insurer and shall be classed as a carrier of her or his own
1514 insurance. The employer shall, if requested, provide the
1515 association an actuarial report signed by a member of the
1516 American Academy of Actuaries providing an opinion of the
1517 appropriate present value of the reserves, using a 4-percent
1518 discount rate, for current and future compensation claims. If
1519 any member or former member of the association refuses to timely
1520 provide such a report, the association may obtain an order from
1521 a circuit court requiring the member to produce such a report
1522 and ordering any other relief that the court determines is
1523 appropriate. The association may recover all reasonable costs
1524 and attorney's fees in such proceedings.

1525 2. If the employer fails to maintain the foregoing
1526 requirements, the association shall recommend to the department
1527 ~~of Insurance~~ that the department revoke the employer's authority
1528 to self-insure, unless the employer provides to the association
1529 the certified opinion of an independent actuary who is a member
1530 of the American Academy of Actuaries as to the actuarial present



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1531 value of the employer's determined and estimated future
1532 compensation payments based on cash reserves, using a 4-percent
1533 discount rate, and a qualifying security deposit equal to 1.5
1534 times the value so certified. The employer shall thereafter
1535 annually provide such a certified opinion until such time as the
1536 employer meets the requirements of subparagraph 1. The
1537 qualifying security deposit shall be adjusted at the time of
1538 each such annual report. Upon the failure of the employer to
1539 timely provide such opinion or to timely provide a security
1540 deposit in an amount equal to 1.5 times the value certified in
1541 the latest opinion, the association shall provide that
1542 information to the department ~~of Insurance~~ along with a
1543 recommendation, and the department ~~of Insurance~~ shall then
1544 revoke such employer's authorization to self-insure. Failure to
1545 comply with this subparagraph constitutes an immediate serious
1546 danger to the public health, safety, or welfare sufficient to
1547 justify the summary suspension of the employer's authorization
1548 to self-insure pursuant to s. 120.68.

1549 3. Upon the suspension or revocation of the employer's
1550 authorization to self-insure, the employer shall provide to the
1551 association the certified opinion of an independent actuary who
1552 is a member of the American Academy of Actuaries of the
1553 actuarial present value of the determined and estimated future
1554 compensation payments of the employer for claims incurred while
1555 the member exercised the privilege of self-insurance, using a
1556 discount rate of 4 percent. The employer shall provide such an
1557 opinion at 6-month intervals thereafter until such time as the
1558 latest opinion shows no remaining value of claims. With each
1559 such opinion, the employer shall deposit with the association a
1560 qualifying security deposit in an amount equal to the value



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1561 certified by the actuary. The association has a cause of action
1562 against an employer, and against any successor of the employer,
1563 who fails to timely provide such opinion or who fails to timely
1564 maintain the required security deposit with the association. The
1565 association shall recover a judgment in the amount of the
1566 actuarial present value of the determined and estimated future
1567 compensation payments of the employer for claims incurred while
1568 the employer exercised the privilege of self-insurance, together
1569 with attorney's fees. For purposes of this section, the
1570 successor of an employer means any person, business entity, or
1571 group of persons or business entities, which holds or acquires
1572 legal or beneficial title to the majority of the assets or the
1573 majority of the shares of the employer.

1574 4. A qualifying security deposit shall consist, at the
1575 option of the employer, of:

1576 a. Surety bonds, in a form and containing such terms as
1577 prescribed by the association, issued by a corporation surety
1578 authorized to transact surety business by the department of
1579 ~~Insurance~~, and whose policyholders' and financial ratings, as
1580 reported in A.M. Best's Insurance Reports, Property-Liability,
1581 are not less than "A" and "V", respectively.

1582 b. Irrevocable letters of credit in favor of the
1583 association issued by financial institutions located within this
1584 state, the deposits of which are insured through the Federal
1585 Deposit Insurance Corporation.

1586 5. The qualifying security deposit shall be held by the
1587 association exclusively for the benefit of workers' compensation
1588 claimants. The security shall not be subject to assignment,
1589 execution, attachment, or any legal process whatsoever, except
1590 as necessary to guarantee the payment of compensation under this



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1591 chapter. No surety bond may be terminated, and no letter of
1592 credit may be allowed to expire, without 90 days' prior written
1593 notice to the association and deposit by the self-insuring
1594 employer of some other qualifying security deposit of equal
1595 value within 10 business days after such notice. Failure to
1596 provide such written notice or failure to timely provide
1597 qualifying replacement security after such notice shall
1598 constitute grounds for the association to call or sue upon the
1599 surety bond or to exercise its rights under a letter of credit.
1600 Current self-insured employers must comply with this section on
1601 or before December 31, 2001, or upon the maturity of existing
1602 security deposits, whichever occurs later. The department of
1603 ~~Insurance~~ may specify by rule the amount of the qualifying
1604 security deposit required prior to authorizing an employer to
1605 self-insure and the amount of net worth required for an employer
1606 to qualify for authorization to self-insure;

1607 (c) By entering into a contract with a public utility
1608 under an approved utility-provided self-insurance program as set
1609 forth in s. 624.46225 in effect as of July 1, 1983. The
1610 department ~~division~~ shall adopt rules to implement this
1611 paragraph;

1612 (d) By entering into an interlocal agreement with other
1613 local governmental entities to create a local government pool
1614 pursuant to s. 624.4622;

1615 ~~(e) In accordance with s. 440.135, an employer, other than~~
1616 ~~a local government unit, may elect coverage under the Workers'~~
1617 ~~Compensation Law and retain the benefit of the exclusiveness of~~
1618 ~~liability provided in s. 440.11 by obtaining a 24-hour health~~
1619 ~~insurance policy from an authorized property and casualty~~
1620 ~~insurance carrier or an authorized life and health insurance~~



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1621 ~~carrier, or by participating in a fully or partially self-~~
1622 ~~insured 24-hour health plan that is established or maintained by~~
1623 ~~or for two or more employers, so long as the law of this state~~
1624 ~~is not preempted by the Employee Retirement Income Security Act~~
1625 ~~of 1974, Pub. L. No. 93-406, or any amendment to that law, which~~
1626 ~~policy or plan must provide, for at least occupational injuries~~
1627 ~~and illnesses, medical benefits that are comparable to those~~
1628 ~~required by this chapter. A local government unit, as a single~~
1629 ~~employer, in accordance with s. 440.135, may participate in the~~
1630 ~~24-hour health insurance coverage plan referenced in this~~
1631 ~~paragraph. Disputes and remedies arising under policies issued~~
1632 ~~under this section are governed by the terms and conditions of~~
1633 ~~the policies and under the applicable provisions of the Florida~~
1634 ~~Insurance Code and rules adopted under the insurance code and~~
1635 ~~other applicable laws of this state. The 24-hour health~~
1636 ~~insurance policy may provide for health care by a health~~
1637 ~~maintenance organization or a preferred provider organization.~~
1638 ~~The premium for such 24-hour health insurance policy shall be~~
1639 ~~paid entirely by the employer. The 24-hour health insurance~~
1640 ~~policy may use deductibles and coinsurance provisions that~~
1641 ~~require the employee to pay a portion of the actual medical care~~
1642 ~~received by the employee. If an employer obtains a 24-hour~~
1643 ~~health insurance policy or self-insured plan to secure payment~~
1644 ~~of compensation as to medical benefits, the employer must also~~
1645 ~~obtain an insurance policy or policies that provide indemnity~~
1646 ~~benefits as follows:~~

1647 ~~1. If indemnity benefits are provided only for~~
1648 ~~occupational-related disability, such benefits must be~~
1649 ~~comparable to those required by this chapter.~~

1650 ~~2. If indemnity benefits are provided for both~~



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1651 ~~occupational-related and nonoccupational-related disability,~~
1652 ~~such benefits must be comparable to those required by this~~
1653 ~~chapter, except that they must be based on 60 percent of the~~
1654 ~~average weekly wages.~~

1655 ~~3. The employer shall provide for each of its employees~~
1656 ~~life insurance with a death benefit of \$100,000.~~

1657 ~~4. Policies providing coverage under this subsection must~~
1658 ~~use prescribed and acceptable underwriting standards, forms, and~~
1659 ~~policies approved by the Department of Insurance. If any~~
1660 ~~insurance policy that provides coverage under this section is~~
1661 ~~canceled, terminated, or nonrenewed for any reason, the~~
1662 ~~cancellation, termination, or nonrenewal is ineffective until~~
1663 ~~the self-insured employer or insurance carrier or carriers~~
1664 ~~notify the division and the Department of Insurance of the~~
1665 ~~cancellation, termination, or nonrenewal, and until the division~~
1666 ~~has actually received the notification. The division must be~~
1667 ~~notified of replacement coverage under a workers' compensation~~
1668 ~~and employer's liability insurance policy or plan by the~~
1669 ~~employer prior to the effective date of the cancellation,~~
1670 ~~termination, or nonrenewal; or~~

1671 ~~(e)(f)~~ By entering into a contract with an individual
1672 self-insurer under an approved individual self-insurer-provided
1673 self-insurance program as set forth in s. 624.46225. The
1674 department ~~division~~ may adopt rules to administer this
1675 subsection.

1676 (2)(a) The department ~~of Insurance~~ shall adopt rules by
1677 which businesses may become qualified to provide underwriting
1678 claims-adjusting, loss control, and safety engineering services
1679 to self-insurers.

1680 (b) The department ~~of Insurance~~ shall adopt rules



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1681 requiring self-insurers to file any reports necessary to fulfill
 1682 the requirements of this chapter. Any self-insurer who fails to
 1683 file any report as prescribed by the rules adopted by the
 1684 department ~~of Insurance~~ shall be subject to a civil penalty.

1685 (3)(a) The license of any stock company or mutual company
 1686 or association or exchange authorized to do insurance business
 1687 in the state shall for good cause, upon recommendation of the
 1688 department division, be suspended or revoked by the office
 1689 ~~Department of Insurance~~. No suspension or revocation shall
 1690 affect the liability of any carrier already incurred.

1691 (b) The department ~~of Insurance~~ shall suspend or revoke
 1692 any authorization to a self-insurer for failure to comply with
 1693 this section or for good cause, as defined by rule of the
 1694 department ~~of Insurance~~. No suspension or revocation shall
 1695 affect the liability of any self-insurer already incurred.

1696 (c) Violation of s. 440.381 by a self-insurance fund shall
 1697 result in the imposition of a fine not to exceed \$1,000 per
 1698 audit if the self-insurance fund fails to act on said audits by
 1699 correcting errors in employee classification or accepted
 1700 applications for coverage where it knew employee classifications
 1701 were incorrect. Such fines shall be levied by the department
 1702 ~~division~~ and deposited into the Workers' Compensation
 1703 Administration Trust Fund.

1704 (4)(a) A carrier of insurance, including the parties to
 1705 any mutual, reciprocal, or other association, may not write any
 1706 compensation insurance under this chapter without a certificate
 1707 of authority permit from the office ~~Department of Insurance~~.
 1708 Such certificate of authority permit shall be given, upon
 1709 application therefor, to any insurance or mutual or reciprocal
 1710 insurance association upon the office's ~~department's~~ being



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1711 satisfied of the solvency of such corporation or association and
 1712 its ability to perform all its undertakings. The office
 1713 ~~Department of Insurance~~ may revoke any certificate of authority
 1714 ~~permit~~ so issued for violation of any provision of this chapter.

1715 (b) A carrier of insurance, including the parties to any
 1716 mutual, reciprocal, or other association, may not write any
 1717 compensation insurance under this chapter unless such carrier
 1718 has a claims adjuster, either in-house or under contract,
 1719 situated within this state. Self-insurers whose compensation
 1720 payments are administered through a third party and carriers of
 1721 insurance shall maintain a claims adjuster within this state
 1722 during any period for which there are any open claims against
 1723 such self-insurer or carrier arising under the compensation
 1724 insurance written by the self-insurer or carrier. Individual
 1725 self-insurers whose compensation payments are administered by
 1726 employees of the self-insurer shall not be required to have
 1727 their claims adjuster situated within this state. Individual
 1728 self-insurers shall not be required to have their claims
 1729 adjusters situated within this state.

1730 Section 15. Subsections (1) and (3) of section 440.381,
 1731 Florida Statutes, are amended to read:

1732 440.381 Application for coverage; reporting payroll;
 1733 payroll audit procedures; penalties.--

1734 (1) Applications by an employer to a carrier for coverage
 1735 required by s. 440.38 must be made on a form prescribed by the
 1736 Financial Services Commission ~~Department of Insurance~~. The
 1737 Financial Services Commission ~~Department of Insurance~~ shall
 1738 adopt rules for applications for coverage required by s. 440.38.
 1739 The rules must provide that an application include information
 1740 on the employer, the type of business, past and prospective



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1741 payroll, estimated revenue, previous workers' compensation
1742 experience, employee classification, employee names, and any
1743 other information necessary to enable a carrier to accurately
1744 underwrite the applicant. The rules must include a provision
1745 that a carrier or self-insurance fund may require that an
1746 employer update an application monthly to reflect any change in
1747 the required application information.

1748 (3) The Financial Services Commission, in consultation
1749 with the department, shall establish by rule minimum
1750 requirements for audits of payroll and classifications in order
1751 to ensure that the appropriate premium is charged for workers'
1752 compensation coverage. The rules shall ensure that audits
1753 performed by both carriers and employers are adequate to provide
1754 that all sources of payments to employees, subcontractors, and
1755 independent contractors have been reviewed and that the accuracy
1756 of classification of employees has been verified. The rules
1757 shall provide that employers in all classes other than the
1758 construction class be audited not less frequently than
1759 biennially and may provide for more frequent audits of employers
1760 in specified classifications based on factors such as amount of
1761 premium, type of business, loss ratios, or other relevant
1762 factors. In no event shall employers in the construction class,
1763 generating more than the amount of premium required to be
1764 experience rated, be audited less than annually. The annual
1765 audits required for construction classes shall consist of
1766 physical onsite audits. Payroll verification audit rules must
1767 include, but need not be limited to, the use of state and
1768 federal reports of employee income, payroll and other accounting
1769 records, certificates of insurance maintained by subcontractors,
1770 and duties of employees. At the completion of an audit, the



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1771 employer or officer of the corporation and the auditor must
 1772 print and sign their names on the audit document and attach
 1773 proof of identification to the audit document.

1774 Section 16. Section 440.385, Florida Statutes, is amended
 1775 to read:

1776 440.385 Florida Self-Insurers Guaranty Association,
 1777 Incorporated.--

1778 (1) CREATION OF ASSOCIATION.--

1779 (a) There is created a nonprofit corporation to be known
 1780 as the "Florida Self-Insurers Guaranty Association,
 1781 Incorporated," hereinafter referred to as "the association."
 1782 Upon incorporation of the association, all individual self-
 1783 insurers as defined in ss. 440.02(23)(a) and 440.38(1)(b), other
 1784 than individual self-insurers which are public utilities or
 1785 governmental entities, shall be members of the association as a
 1786 condition of their authority to individually self-insure in this
 1787 state. The association shall perform its functions under a plan
 1788 of operation as established and approved under subsection (5)
 1789 and shall exercise its powers and duties through a board of
 1790 directors as established under subsection (2). The association
 1791 shall have those powers granted or permitted corporations not
 1792 for profit, as provided in chapter 617. The activities of the
 1793 association shall be subject to review by the department of
 1794 ~~Insurance~~. The department of ~~Insurance~~ shall have oversight
 1795 responsibility as set forth in this section. The association is
 1796 specifically authorized to enter into agreements with this state
 1797 to perform specified services.

1798 (b) A member may voluntarily withdraw from the association
 1799 when the member voluntarily terminates the self-insurance
 1800 privilege and pays all assessments due to the date of such



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1801 termination. However, the withdrawing member shall continue to
1802 be bound by the provisions of this section relating to the
1803 period of his or her membership and any claims charged pursuant
1804 thereto. The withdrawing member who is a member on or after
1805 January 1, 1991, shall also be required to provide to the
1806 association upon withdrawal, and at 12-month intervals
1807 thereafter, satisfactory proof, including, if requested by the
1808 association, a report of known and potential claims certified by
1809 a member of the American Academy of Actuaries, that it continues
1810 to meet the standards of s. 440.38(1)(b)1. in relation to claims
1811 incurred while the withdrawing member exercised the privilege of
1812 self-insurance. Such reporting shall continue until the
1813 withdrawing member demonstrates to the association that there is
1814 no remaining value to claims incurred while the withdrawing
1815 member was self-insured. If a withdrawing member fails or
1816 refuses to timely provide an actuarial report to the
1817 association, the association may obtain an order from a circuit
1818 court requiring the member to produce such a report and ordering
1819 any other relief that the court determines appropriate. The
1820 association is entitled to recover all reasonable costs and
1821 attorney's fees expended in such proceedings. If during this
1822 reporting period the withdrawing member fails to meet the
1823 standards of s. 440.38(1)(b)1., the withdrawing member who is a
1824 member on or after January 1, 1991, shall thereupon, and at 6-
1825 month intervals thereafter, provide to the association the
1826 certified opinion of an independent actuary who is a member of
1827 the American Academy of Actuaries of the actuarial present value
1828 of the determined and estimated future compensation payments of
1829 the member for claims incurred while the member was a self-
1830 insurer, using a discount rate of 4 percent. With each such



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1831 opinion, the withdrawing member shall deposit with the
 1832 association security in an amount equal to the value certified
 1833 by the actuary and of a type that is acceptable for qualifying
 1834 security deposits under s. 440.38(1)(b). The withdrawing member
 1835 shall continue to provide such opinions and to provide such
 1836 security until such time as the latest opinion shows no
 1837 remaining value of claims. The association has a cause of
 1838 action against a withdrawing member, and against any successor
 1839 of a withdrawing member, who fails to timely provide the
 1840 required opinion or who fails to maintain the required deposit
 1841 with the association. The association shall be entitled to
 1842 recover a judgment in the amount of the actuarial present value
 1843 of the determined and estimated future compensation payments of
 1844 the withdrawing member for claims incurred during the time that
 1845 the withdrawing member exercised the privilege of self-
 1846 insurance, together with reasonable attorney's fees. The
 1847 association is also entitled to recover reasonable attorney's
 1848 fees in any action to compel production of any actuarial report
 1849 required by this section. For purposes of this section, the
 1850 successor of a withdrawing member means any person, business
 1851 entity, or group of persons or business entities, which holds or
 1852 acquires legal or beneficial title to the majority of the assets
 1853 or the majority of the shares of the withdrawing member.

1854 (2) BOARD OF DIRECTORS.--The board of directors of the
 1855 association shall consist of nine persons and shall be organized
 1856 as established in the plan of operation. All board members shall
 1857 be experienced in self-insurance in this state. Each director
 1858 shall serve for a 4-year term and may be reappointed.
 1859 Appointments after January 1, 2002, shall be made by the
 1860 department of ~~Insurance~~ upon recommendation of members of the



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1861 association. Any vacancy on the board shall be filled for the
1862 remaining period of the term in the same manner as appointments
1863 other than initial appointments are made. Each director shall be
1864 reimbursed for expenses incurred in carrying out the duties of
1865 the board on behalf of the association.

1866 (3) POWERS AND DUTIES.--

1867 (a) Upon creation of the Insolvency Fund pursuant to the
1868 provisions of subsection (4), the association is obligated for
1869 payment of compensation under this chapter to insolvent members'
1870 employees resulting from incidents and injuries existing prior
1871 to the member becoming an insolvent member and from incidents
1872 and injuries occurring within 30 days after the member has
1873 become an insolvent member, provided the incidents giving rise
1874 to claims for compensation under this chapter occur during the
1875 year in which such insolvent member is a member of the guaranty
1876 fund and was assessable pursuant to the plan of operation, and
1877 provided the employee makes timely claim for such payments
1878 according to procedures set forth by a court of competent
1879 jurisdiction over the delinquency or bankruptcy proceedings of
1880 the insolvent member. Such obligation includes only that amount
1881 due the injured worker or workers of the insolvent member under
1882 this chapter. In no event is the association obligated to a
1883 claimant in an amount in excess of the obligation of the
1884 insolvent member. The association shall be deemed the insolvent
1885 employer for purposes of this chapter to the extent of its
1886 obligation on the covered claims and, to such extent, shall have
1887 all rights, duties, and obligations of the insolvent employer as
1888 if the employer had not become insolvent. However, in no event
1889 shall the association be liable for any penalties or interest.

1890 (b) The association may:



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- 1891 1. Employ or retain such persons as are necessary to
 1892 handle claims and perform other duties of the association.
- 1893 2. Borrow funds necessary to effect the purposes of this
 1894 section in accord with the plan of operation.
- 1895 3. Sue or be sued.
- 1896 4. Negotiate and become a party to such contracts as are
 1897 necessary to carry out the purposes of this section.
- 1898 5. Purchase such reinsurance as is determined necessary
 1899 pursuant to the plan of operation.
- 1900 6. Review all applicants for membership in the association
 1901 to determine whether the applicant is qualified for membership
 1902 under the law. The association shall recommend to the department
 1903 ~~of Insurance~~ that the application be accepted or rejected based
 1904 on the criteria set forth in s. 440.38(1)(b). The department ~~of~~
 1905 ~~Insurance~~ shall approve or disapprove the application as
 1906 provided in paragraph (6)(a).
- 1907 7. Collect and review financial information from employers
 1908 and make recommendations to the department ~~of Insurance~~
 1909 regarding the appropriate security deposit and reinsurance
 1910 amounts necessary for an employer to demonstrate that it has the
 1911 financial strength necessary to ensure the timely payment of all
 1912 current and future claims. The association may audit and examine
 1913 an employer to verify the financial strength of its current and
 1914 former members. If the association determines that a current or
 1915 former self-insured employer does not have the financial
 1916 strength necessary to ensure the timely payment of all current
 1917 and estimated future claims, the association may recommend to
 1918 the department ~~of Insurance~~ that the department:
- 1919 a. Revoke the employer's self-insurance privilege.
- 1920 b. Require the employer to provide a certified opinion of



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1921 an independent actuary who is a member of the American Academy
 1922 of Actuaries as to the actuarial present value of the employer's
 1923 estimated current and future compensation payments, using a 4-
 1924 percent discount rate.

1925 c. Require an increase in the employer's security deposit
 1926 in an amount determined by the association to be necessary to
 1927 ensure payment of compensation claims. The department ~~of~~
 1928 ~~Insurance~~ shall act on such recommendations as provided in
 1929 paragraph (6)(a). The association has a cause of action against
 1930 an employer, and against any successor of an employer, who fails
 1931 to provide an additional security deposit required by the
 1932 department ~~of Insurance~~. The association shall file an action
 1933 in circuit court to recover a judgment in the amount of the
 1934 requested additional security deposit together with reasonable
 1935 attorney's fees. For the purposes of this section, the
 1936 successor of an employer is any person, business entity, or
 1937 group of persons or business entities which holds or acquires
 1938 legal or beneficial title to the majority of the assets or the
 1939 majority of the shares of the employer.

1940 8. Charge fees to any member of the association to cover
 1941 the actual costs of examining the financial and safety
 1942 conditions of that member.

1943 9. Charge an applicant for membership in the association a
 1944 fee sufficient to cover the actual costs of examining the
 1945 financial condition of the applicant.

1946 10. Implement any procedures necessary to ensure
 1947 compliance with regulatory actions taken by the department ~~of~~
 1948 ~~Insurance~~.

1949 (c)1. To the extent necessary to secure funds for the
 1950 payment of covered claims and also to pay the reasonable costs



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1951 to administer them, the association, subject to approval by the
 1952 department of ~~Insurance~~, shall levy assessments based on the
 1953 annual written premium each employer would have paid had the
 1954 employer not been self-insured. Every assessment shall be made
 1955 as a uniform percentage of the figure applicable to all
 1956 individual self-insurers, provided that the assessment levied
 1957 against any self-insurer in any one year shall not exceed 1
 1958 percent of the annual written premium during the calendar year
 1959 preceding the date of the assessment. Assessments shall be
 1960 remitted to and administered by the board of directors in the
 1961 manner specified by the approved plan. Each employer so
 1962 assessed shall have at least 30 days' written notice as to the
 1963 date the assessment is due and payable. The association shall
 1964 levy assessments against any newly admitted member of the
 1965 association so that the basis of contribution of any newly
 1966 admitted member is the same as previously admitted members,
 1967 provision for which shall be contained in the plan of operation.

1968 2. If, in any one year, funds available from such
 1969 assessments, together with funds previously raised, are not
 1970 sufficient to make all the payments or reimbursements then
 1971 owing, the funds available shall be prorated, and the unpaid
 1972 portion shall be paid as soon thereafter as sufficient
 1973 additional funds become available.

1974 3. Funds may be allocated or paid from the Workers'
 1975 Compensation Administration Trust Fund to contract with the
 1976 association to perform services required by law. However, no
 1977 state funds of any kind shall be allocated or paid to the
 1978 association or any of its accounts for payment of covered claims
 1979 or related expenses except those state funds accruing to the
 1980 association by and through the assignment of rights of an



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1981 insolvent employer. The department of ~~Insurance~~ may not levy any
 1982 assessment on the association.

1983 (4) INSOLVENCY FUND.--Upon the adoption of a plan of
 1984 operation, there shall be created an Insolvency Fund to be
 1985 managed by the association.

1986 (a) The Insolvency Fund is created for purposes of meeting
 1987 the obligations of insolvent members incurred while members of
 1988 the association and after the exhaustion of any security
 1989 deposit, as required under this chapter. However, if such
 1990 security deposit or reinsurance policy is payable to the
 1991 association, the association shall commence to provide benefits
 1992 out of the Insolvency Fund and be reimbursed from the security
 1993 deposit or reinsurance policy. The method of operation of the
 1994 Insolvency Fund shall be defined in the plan of operation as
 1995 provided in subsection (5).

1996 (b) The department of ~~Insurance~~ shall have the authority
 1997 to audit the financial soundness of the Insolvency Fund
 1998 annually.

1999 (c) The department of ~~Insurance~~ may offer certain
 2000 amendments to the plan of operation to the board of directors of
 2001 the association for purposes of assuring the ongoing financial
 2002 soundness of the Insolvency Fund and its ability to meet the
 2003 obligations of this section.

2004 (5) PLAN OF OPERATION.--The association shall operate
 2005 pursuant to a plan of operation approved by the board of
 2006 directors. The plan of operation in effect on January 1, 2002,
 2007 and approved by the Department of Labor and Employment Security
 2008 shall remain in effect. However, any amendments to the plan
 2009 shall not become effective until approved by the Department of
 2010 Financial Services Insurance.



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2011 (a) The purpose of the plan of operation shall be to
 2012 provide the association and the board of directors with the
 2013 authority and responsibility to establish the necessary programs
 2014 and to take the necessary actions to protect against the
 2015 insolvency of a member of the association. In addition, the
 2016 plan shall provide that the members of the association shall be
 2017 responsible for maintaining an adequate Insolvency Fund to meet
 2018 the obligations of insolvent members provided for under this act
 2019 and shall authorize the board of directors to contract and
 2020 employ those persons with the necessary expertise to carry out
 2021 this stated purpose. By January 1, 2003, the board of directors
 2022 shall submit to the department ~~of Insurance~~ a proposed plan of
 2023 operation for the administration of the association. The
 2024 department ~~of Insurance~~ shall approve the plan by order,
 2025 consistent with this section. The department ~~of Insurance~~ shall
 2026 approve any amendments to the plan, consistent with this
 2027 section, which are determined appropriate to carry out the
 2028 duties and responsibilities of the association.

2029 (b) All member employers shall comply with the plan of
 2030 operation.

2031 (c) The plan of operation shall:

2032 1. Establish the procedures whereby all the powers and
 2033 duties of the association under subsection (3) will be
 2034 performed.

2035 2. Establish procedures for handling assets of the
 2036 association.

2037 3. Establish the amount and method of reimbursing members
 2038 of the board of directors under subsection (2).

2039 4. Establish procedures by which claims may be filed with
 2040 the association and establish acceptable forms of proof of



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2041 covered claims. Notice of claims to the receiver or liquidator
 2042 of the insolvent employer shall be deemed notice to the
 2043 association or its agent, and a list of such claims shall be
 2044 submitted periodically to the association or similar
 2045 organization in another state by the receiver or liquidator.

2046 5. Establish regular places and times for meetings of the
 2047 board of directors.

2048 6. Establish procedures for records to be kept of all
 2049 financial transactions of the association and its agents and the
 2050 board of directors.

2051 7. Provide that any member employer aggrieved by any final
 2052 action or decision of the association may appeal to the
 2053 department ~~of Insurance~~ within 30 days after the action or
 2054 decision.

2055 8. Establish the procedures whereby recommendations of
 2056 candidates for the board of directors shall be submitted to the
 2057 department ~~of Insurance~~.

2058 9. Contain additional provisions necessary or proper for
 2059 the execution of the powers and duties of the association.

2060 (d) The plan of operation may provide that any or all of
 2061 the powers and duties of the association, except those specified
 2062 under subparagraphs (c)1. and 2., be delegated to a corporation,
 2063 association, or other organization which performs or will
 2064 perform functions similar to those of this association or its
 2065 equivalent in two or more states. Such a corporation,
 2066 association, or organization shall be reimbursed as a servicing
 2067 facility would be reimbursed and shall be paid for its
 2068 performance of any other functions of the association. A
 2069 delegation of powers or duties under this subsection shall take
 2070 effect only with the approval of both the board of directors and



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2071 the department ~~of Insurance~~ and may be made only to a
 2072 corporation, association, or organization which extends
 2073 protection which is not substantially less favorable and
 2074 effective than the protection provided by this section.

2075 (6) POWERS AND DUTIES OF DEPARTMENT ~~OF INSURANCE~~.--The
 2076 department ~~of Insurance~~ shall:

2077 (a) Review recommendations of the association concerning
 2078 whether current or former self-insured employers or members of
 2079 the association have the financial strength necessary to ensure
 2080 the timely payment of all current and estimated future claims.
 2081 If the association determines an employer does not have the
 2082 financial strength necessary to ensure the timely payment of all
 2083 current and future claims and recommends action pursuant to
 2084 paragraph (3)(b), the department shall take such action as
 2085 necessary to order the employer to comply with the
 2086 recommendation, unless the department finds by clear and
 2087 convincing evidence that the recommendation is erroneous.

2088 (b) Contract with the association for services, which may
 2089 include, but are not limited to:

- 2090 1. Processing applications for self-insurance.
- 2091 2. Collecting and reviewing financial statements and loss
 2092 reserve information from individual self-insurers.
- 2093 3. Collecting and maintaining files for original security
 2094 deposit documents and reinsurance policies from individual self-
 2095 insurers and, if necessary, perfecting security interests in
 2096 security deposits.
- 2097 4. Processing compliance documentation for individual
 2098 self-insurers and providing copies of such documentation to the
 2099 department.
- 2100 5. Collecting all data necessary to calculate annual



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2101 premium for all individual self-insurers, including individual
 2102 self-insurers that are public utilities or governmental
 2103 entities, and providing such calculated annual premium to the
 2104 department ~~division~~ for assessment purposes.

2105 6. Inspecting and auditing annually, if necessary, the
 2106 payroll and other records of each individual self-insurer,
 2107 including individual self-insurers that are public utilities or
 2108 governmental entities, in order to determine the wages paid by
 2109 each individual self-insurer, the premium such individual self-
 2110 insurer would have to pay if insured, and all payments of
 2111 compensation made by such individual self-insurer during each
 2112 prior period with the results of such audit provided to the
 2113 department ~~division~~. For purposes of this section, the payroll
 2114 records of each individual self-insurer shall be open to
 2115 inspection and audit by the association and the department, or
 2116 their authorized representatives, during regular business hours.

2117 7. Processing applications and making recommendations with
 2118 respect to the qualification of a business to be approved to
 2119 provide or continue to provide services to individual self-
 2120 insurers in the areas of underwriting, claims adjusting, loss
 2121 control, and safety engineering.

2122 8. Providing legal representation to implement the
 2123 administration and audit of individual self-insurers and making
 2124 recommendations regarding prosecution of any administrative or
 2125 legal proceedings necessitated by the regulation of the
 2126 individual self-insurers by the department.

2127 (c) Contract with an attorney or attorneys recommended by
 2128 the association for representation of the department in any
 2129 administrative or legal proceedings necessitated by the
 2130 recommended regulation of the individual self-insurers.



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2131 (d) Direct the association to require from each individual
 2132 self-insurer, at such time and in accordance with such
 2133 regulations as the department prescribes, reports relating to
 2134 wages paid, the amount of premiums such individual self-insurer
 2135 would have to pay if insured, and all payments of compensation
 2136 made by such individual self-insurer during each prior period
 2137 and to determine the amounts paid by each individual self-
 2138 insurer and the amounts paid by all individual self-insurers
 2139 during such period. For purposes of this section, the payroll
 2140 records of each individual self-insurer shall be open to annual
 2141 inspection and audit by the association and the department, or
 2142 their authorized representative, during regular business hours,
 2143 and if any audit of such records of an individual self-insurer
 2144 discloses a deficiency in the amount reported to the association
 2145 or in the amounts paid to the department ~~division~~ by an
 2146 individual self-insurer for its assessment for the Workers'
 2147 Compensation Administration Trust Fund, the department or the
 2148 association may assess the cost of such audit against the
 2149 individual self-insurer.

2150 (e) Require that the association notify the member
 2151 employers and any other interested parties of the determination
 2152 of insolvency and of their rights under this section. Such
 2153 notification shall be by mail at the last known address thereof
 2154 when available; but, if sufficient information for notification
 2155 by mail is not available, notice by publication in a newspaper
 2156 of general circulation shall be sufficient.

2157 (f) Suspend or revoke the authority of any member employer
 2158 failing to pay an assessment when due or failing to comply with
 2159 the plan of operation to self-insure in this state. As an
 2160 alternative, the department may levy a fine on any member



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2161 employer failing to pay an assessment when due. Such fine shall
2162 not exceed 5 percent of the unpaid assessment per month, except
2163 that no fine shall be less than \$100 per month.

2164 (g) Revoke the designation of any servicing facility if
2165 the department finds that claims are being handled
2166 unsatisfactorily.

2167 (7) EFFECT OF PAID CLAIMS.--

2168 (a) Any person who recovers from the association under
2169 this section shall be deemed to have assigned his or her rights
2170 to the association to the extent of such recovery. Every
2171 claimant seeking the protection of this section shall cooperate
2172 with the association to the same extent as such person would
2173 have been required to cooperate with the insolvent member. The
2174 association shall have no cause of action against the employee
2175 of the insolvent member for any sums the association has paid
2176 out, except such causes of action as the insolvent member would
2177 have had if such sums had been paid by the insolvent member. In
2178 the case of an insolvent member operating on a plan with
2179 assessment liability, payments of claims by the association
2180 shall not operate to reduce the liability of the insolvent
2181 member to the receiver, liquidator, or statutory successor for
2182 unpaid assessments.

2183 (b) The receiver, liquidator, or statutory successor of an
2184 insolvent member shall be bound by settlements of covered claims
2185 by the association or a similar organization in another state.
2186 The court having jurisdiction shall grant such claims priority
2187 against the assets of the insolvent member equal to that to
2188 which the claimant would have been entitled in the absence of
2189 this section. The expense of the association or similar
2190 organization in handling claims shall be accorded the same



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2191 priority as the expenses of the liquidator.

2192 (c) The association shall file periodically with the
 2193 receiver or liquidator of the insolvent member statements of the
 2194 covered claims paid by the association and estimates of
 2195 anticipated claims on the association, which shall preserve the
 2196 rights of the association against the assets of the insolvent
 2197 member.

2198 (8) NOTIFICATION OF INSOLVENCIES.--To aid in the detection
 2199 and prevention of employer insolvencies: Upon determination by
 2200 majority vote that any member employer may be insolvent or in a
 2201 financial condition hazardous to the employees thereof or to the
 2202 public, it shall be the duty of the board of directors to notify
 2203 the department ~~of Insurance~~ of any information indicating such
 2204 condition.

2205 (9) EXAMINATION OF THE ASSOCIATION.--The association shall
 2206 be subject to examination and regulation by the department ~~of~~
 2207 ~~Insurance~~. No later than March 30 of each year, the board of
 2208 directors shall submit an audited financial statement for the
 2209 preceding calendar year in a form approved by the department.

2210 (10) IMMUNITY.--There shall be no liability on the part
 2211 of, and no cause of action of any nature shall arise against,
 2212 any member employer, the association or its agents or employees,
 2213 the board of directors, or the department ~~of Insurance~~ or its
 2214 representatives for any action taken by them in the performance
 2215 of their powers and duties under this section.

2216 (11) STAY OF PROCEEDINGS; REOPENING OF DEFAULT
 2217 JUDGMENTS.--All proceedings in which an insolvent employer is a
 2218 party, or is obligated to defend a party, in any court or before
 2219 any quasi-judicial body or administrative board in this state
 2220 shall be stayed for up to 6 months, or for such additional



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2221 period from the date the employer becomes an insolvent member,
 2222 as is deemed necessary by a court of competent jurisdiction to
 2223 permit proper defense by the association of all pending causes
 2224 of action as to any covered claims arising from a judgment under
 2225 any decision, verdict, or finding based on the default of the
 2226 insolvent member. The association, either on its own behalf or
 2227 on behalf of the insolvent member, may apply to have such
 2228 judgment, order, decision, verdict, or finding set aside by the
 2229 same court or administrator that made such judgment, order,
 2230 decision, verdict, or finding and shall be permitted to defend
 2231 against such claim on the merits. If requested by the
 2232 association, the stay of proceedings may be shortened or waived.

2233 (12) LIMITATION ON CERTAIN ACTIONS.--Notwithstanding any
 2234 other provision of this chapter, a covered claim, as defined
 2235 herein, with respect to which settlement is not effected and
 2236 pursuant to which suit is not instituted against the insured of
 2237 an insolvent member or the association within 1 year after the
 2238 deadline for filing claims with the receiver of the insolvent
 2239 member, or any extension of the deadline, shall thenceforth be
 2240 barred as a claim against the association.

2241 (13) CORPORATE INCOME TAX CREDIT.--Any sums acquired by a
 2242 member by refund, dividend, or otherwise from the association
 2243 shall be payable within 30 days of receipt to the Department of
 2244 Revenue for deposit with the Chief Financial Officer ~~Treasurer~~
 2245 to the credit of the General Revenue Fund. All provisions of
 2246 chapter 220 relating to penalties and interest on delinquent
 2247 corporate income tax payments apply to payments due under this
 2248 subsection.

2249 Section 17. Subsections (2), (3), and (4) of section
 2250 440.386, Florida Statutes, are amended to read:



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2251 440.386 Individual self-insurers' insolvency;
 2252 conservation; liquidation.--

2253 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The
 2254 department ~~of Insurance~~ or the Florida Self-Insurers Guaranty
 2255 Association, Incorporated, may commence a delinquency proceeding
 2256 by application to the court for an order directing the
 2257 individual self-insurer to show cause why the department or
 2258 association should not have the relief sought. On the return of
 2259 such order to show cause, and after a full hearing, the court
 2260 shall either deny the application or grant the application,
 2261 together with such other relief as the nature of the case and
 2262 the interests of the claimants, creditors, stockholders,
 2263 members, subscribers, or public may require. The department and
 2264 the association shall give reasonable written notice to each
 2265 other of all hearings which pertain to an adjudication of
 2266 insolvency of a member individual self-insurer.

2267 (3) GROUNDS FOR LIQUIDATION.--The department ~~of Insurance~~
 2268 or the association may apply to the court for an order
 2269 appointing a receiver and directing the receiver to liquidate
 2270 the business of a domestic individual self-insurer if such
 2271 individual self-insurer is insolvent.

2272 (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL SELF-
 2273 INSURERS.--

2274 (a) The department ~~of Insurance~~ or the association may
 2275 apply to the court for an order appointing a receiver or
 2276 ancillary receiver, and directing the receiver to conserve the
 2277 assets within this state, of a foreign individual self-insurer
 2278 if such individual self-insurer is insolvent.

2279 (b) An order to conserve the assets of an individual self-
 2280 insurer shall require the receiver forthwith to take possession



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2281 of the property of the receiver within the state and to conserve
 2282 it, subject to the further direction of the court.

2283 Section 18. Subsections (3), (4), and (6) of section
 2284 440.44, Florida Statutes, are amended to read:

2285 440.44 Workers' compensation; staff organization.--

2286 (3) EXPENDITURES.--The department, the agency, the office,
 2287 the Department of Education, and the director of the Division of
 2288 Administrative Hearings shall make such expenditures, including
 2289 expenditures for personal services and rent at the seat of
 2290 government and elsewhere, for law books; for telephone services
 2291 and WATS lines; for books of reference, periodicals, equipment,
 2292 and supplies; and for printing and binding as may be necessary
 2293 in the administration of this chapter. All expenditures in the
 2294 administration of this chapter shall be allowed and paid as
 2295 provided in s. 440.50 upon the presentation of itemized vouchers
 2296 therefor approved by the department, the agency, the office, the
 2297 Department of Education, or the director of the Division of
 2298 Administrative Hearings.

2299 (4) PERSONNEL ADMINISTRATION.--Subject to the other
 2300 provisions of this chapter, the department, the agency, the
 2301 office, the Department of Education, and the Division of
 2302 Administrative Hearings may appoint, and prescribe the duties
 2303 and powers of, bureau chiefs, attorneys, accountants, medical
 2304 advisers, technical assistants, inspectors, claims examiners,
 2305 and such other employees as may be necessary in the performance
 2306 of their duties under this chapter.

2307 (6) SEAL.--The department and the judges of compensation
 2308 claims shall have a seal upon which shall be inscribed the words
 2309 "State of Florida Department of Financial Services ~~Insurance~~--
 2310 Seal" and "Division of Administrative Hearings--Seal,"



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2311 respectively.

2312 Section 19. Subsections (3) and (4) of section 440.52,
 2313 Florida Statutes, are amended to read:

2314 440.52 Registration of insurance carriers; notice of
 2315 cancellation or expiration of policy; suspension or revocation
 2316 of authority.--

2317 (3) If the department finds, after due notice and a
 2318 hearing at which the insurance carrier is entitled to be heard
 2319 in person or by counsel and present evidence, that the insurance
 2320 carrier has repeatedly failed to comply with its obligations
 2321 under this chapter, the department may request the office to
 2322 suspend or revoke the authorization of such insurance carrier to
 2323 write workers' compensation insurance under this chapter. Such
 2324 suspension or revocation shall not affect the liability of any
 2325 such insurance carrier under policies in force prior to the
 2326 suspension or revocation.

2327 (4) In addition to the penalties prescribed in subsection
 2328 (3), violation of s. 440.381 by an insurance carrier shall
 2329 result in the imposition of a fine not to exceed \$1,000 per
 2330 audit, if the insurance carrier fails to act on said audits by
 2331 correcting errors in employee classification or accepted
 2332 applications for coverage where it knew employee classifications
 2333 were incorrect. Such fines shall be levied by the office
 2334 ~~Department of Insurance~~ and deposited into the Insurance
 2335 ~~Commissioner's~~ Regulatory Trust Fund.

2336 Section 20. Section 440.525, Florida Statutes, is amended
 2337 to read:

2338 440.525 Examination of carriers.--The department and
 2339 office may examine each carrier as often as is warranted to
 2340 ensure that carriers are fulfilling their obligations under this



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2341 chapter ~~the law~~. The examination may cover any period of the
 2342 carrier's operations since the last previous examination.

2343 Section 21. Paragraph (k) of subsection (1) of section
 2344 553.74, Florida Statutes, is amended to read:

2345 553.74 Florida Building Commission.--

2346 (1) The Florida Building Commission is created and shall
 2347 be located within the Department of Community Affairs for
 2348 administrative purposes. Members shall be appointed by the
 2349 Governor subject to confirmation by the Senate. The commission
 2350 shall be composed of 23 members, consisting of the following:

2351 (k) One member who represents the Department of Financial
 2352 Services Insurance.

2353 Section 22. Effective October 1, 2003, paragraph (k) of
 2354 subsection (1) of section 553.74, Florida Statutes, as amended
 2355 by chapter 2002-293, Laws of Florida, is amended to read:

2356 553.74 Florida Building Commission.--

2357 (1) The Florida Building Commission is created and shall
 2358 be located within the Department of Community Affairs for
 2359 administrative purposes. Members shall be appointed by the
 2360 Governor subject to confirmation by the Senate. The commission
 2361 shall be composed of 23 members, consisting of the following:

2362 (k) One member who represents the Department of Financial
 2363 Services Insurance.

2364
 2365 Any person serving on the commission under paragraph (c) or
 2366 paragraph (h) on October 1, 2003, and who has served less than
 2367 two full terms is eligible for reappointment to the commission
 2368 regardless of whether he or she meets the new qualification.

2369 Section 23. Section 624.05, Florida Statutes, is amended
 2370 to read:



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624.05 "Department," "commission," and "office"
 defined.--As used in the Insurance Code:
 (1) "Department" means the Department of Financial
Services. The term does not mean the Financial Services
Commission or any office of the Financial Services Commission
~~Insurance of this state, unless the context otherwise requires.~~
 (2) "Commission" means the Financial Services Commission.
 (3) "Office" means the Office of Insurance Regulation of
the Financial Services Commission.

Section 24. Subsections (2) and (5) of section 624.155,
 Florida Statutes, are amended to read:

624.155 Civil remedy.--

(2)(a) As a condition precedent to bringing an action
 under this section, the office ~~department~~ and the insurer must
 have been given 60 days' written notice of the violation. If
 the office ~~department~~ returns a notice for lack of specificity,
 the 60-day time period shall not begin until a proper notice is
 filed.

(b) The notice shall be on a form adopted by the
commission and provided by the office ~~department~~ and shall state
 with specificity the following information, and such other
 information as the commission requires ~~department may require~~:

1. The statutory provision, including the specific
 language of the statute, which the insurer allegedly violated.
2. The facts and circumstances giving rise to the
 violation.
3. The name of any individual involved in the violation.
4. Reference to specific policy language that is relevant
 to the violation, if any. If the person bringing the civil
 action is a third party claimant, she or he shall not be



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2401 required to reference the specific policy language if the
 2402 insurer has not provided a copy of the policy to the third party
 2403 claimant pursuant to written request.

2404 5. A statement that the notice is given in order to
 2405 perfect the right to pursue the civil remedy authorized by this
 2406 section.

2407 (c) Within 20 days of receipt of the notice, the office
 2408 ~~department~~ may return any notice that does not provide the
 2409 specific information required by this section, and the office
 2410 ~~department~~ shall indicate the specific deficiencies contained in
 2411 the notice. A determination by the office ~~department~~ to return a
 2412 notice for lack of specificity shall be exempt from the
 2413 requirements of chapter 120.

2414 (d) No action shall lie if, within 60 days after filing
 2415 notice, the damages are paid or the circumstances giving rise to
 2416 the violation are corrected.

2417 (e) The insurer that is the recipient of a notice filed
 2418 pursuant to this section shall report to the office ~~department~~
 2419 on the disposition of the alleged violation.

2420 (f) The applicable statute of limitations for an action
 2421 under this section shall be tolled for a period of 65 days by
 2422 the mailing of the notice required by this subsection or the
 2423 mailing of a subsequent notice required by this subsection.

2424 (5) This section shall not be construed to authorize a
 2425 class action suit against an insurer or a civil action against
 2426 the commission, the office, or the department or any of their
 2427 ~~its employees, or the Insurance Commissioner,~~ or to create a
 2428 cause of action when a health insurer refuses to pay a claim for
 2429 reimbursement on the ground that the charge for a service was
 2430 unreasonably high or that the service provided was not medically



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2431 necessary.

2432 Section 25. Section 624.303, Florida Statutes, is amended
 2433 to read:

2434 624.303 Seal; certified copies as evidence.--

2435 (1) The department, commission, and office shall each have
 2436 an official seal by which its respective proceedings are
 2437 authenticated.

2438 (2) All certificates executed by the department or office,
 2439 other than licenses of agents, solicitors, or adjusters or
 2440 similar licenses or permits, shall bear its respective seal.

2441 (3) Any written instrument purporting to be a copy of any
 2442 action, proceeding, or finding of fact by the department,
 2443 commission, or office or any record of the department,
 2444 commission, or office or copy of any document on file in its
 2445 office when authenticated under hand of the respective agency
 2446 head or his or her designee ~~commissioner~~ by the seal shall be
 2447 accepted by all the courts of this state as prima facie evidence
 2448 of its contents.

2449 Section 26. Section 624.305, Florida Statutes, is amended
 2450 to read:

2451 624.305 Prohibited interests, rewards.--

2452 (1) No employee of the department, commission, or office,
 2453 including the members of the commission, but not including
 2454 employees of the Office of Financial Institutions and Securities
 2455 Regulation, Insurance Commissioner and Treasurer shall:

2456 (a) Be financially interested, directly or indirectly, in
 2457 any insurer or insurance agency authorized to transact insurance
 2458 in this state, or in any insurance transaction except as a
 2459 policyholder or claimant under a policy; or

2460 (b) Be given or receive any fee, compensation, loan, gift,



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2461 or other thing of value in addition to the compensation and
 2462 expense allowance provided by law, for any service rendered or
 2463 to be rendered in her or his capacity as a department,
 2464 commission, or office employee.

2465 (2) This section shall not be deemed to prohibit an
 2466 insurer from making, in the regular course of business, a loan
 2467 to any employee of the department, commission, or office, if
 2468 such loan is adequately secured by a mortgage upon real estate
 2469 or other collateral and qualifies as an eligible investment of
 2470 the insurer under part II of chapter 625.

2471 (3) When there is no conflict of interest, the department,
 2472 commission, and office may each employ or retain from time to
 2473 time an insurance actuary, accountant, or other professional
 2474 person who is independently practicing her or his profession
 2475 even though such person is similarly employed or retained by
 2476 insurers or others.

2477 (4) Any person employed by the department, commission, or
 2478 office on January 7, 2003, including a member of the commission,
 2479 who was not subject to this section prior to that date, has
 2480 until January 1, 2004, to comply with this section.

2481 Section 27. Section 624.316, Florida Statutes, is amended
 2482 to read:

2483 624.316 Examination of insurers.--

2484 (1)(a) The office ~~department~~ shall examine the affairs,
 2485 transactions, accounts, records, and assets of each authorized
 2486 insurer and of the attorney in fact of a reciprocal insurer as
 2487 to its transactions affecting the insurer as often as it deems
 2488 advisable, except as provided in this section. The examination
 2489 may include examination of the affairs, transactions, accounts,
 2490 and records relating directly or indirectly to the insurer and



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2491 of the assets of the insurer's managing general agents and
 2492 controlling or controlled person, as defined in s. 625.012. The
 2493 examination shall be pursuant to a written order of the office
 2494 ~~department~~. Such order shall expire upon receipt by the office
 2495 ~~department~~ of the written report of the examination.

2496 (b) As a part of its examination procedure, the office
 2497 ~~department~~ shall examine each insurer regarding all of the
 2498 information required by s. 627.915.

2499 (c) The office ~~department~~ shall examine each insurer
 2500 according to accounting procedures designed to fulfill the
 2501 requirements of generally accepted insurance accounting
 2502 principles and practices and good internal control and in
 2503 keeping with generally accepted accounting forms, accounts,
 2504 records, methods, and practices relating to insurers. To
 2505 facilitate uniformity in examinations, the commission ~~department~~
 2506 may adopt, by rule, the Market ~~and Financial~~ Conduct Examiners
 2507 ~~Examination~~ Handbook and the Financial Condition Examiners
 2508 Handbook of the National Association of Insurance Commissioners,
 2509 2002 ~~1990~~, and may adopt subsequent amendments thereto, if the
 2510 examination methodology remains substantially consistent.

2511 (2)(a) Except as provided in paragraph (f), the office
 2512 ~~department~~ may examine each insurer as often as may be warranted
 2513 for the protection of the policyholders and in the public
 2514 interest, and shall examine each domestic insurer not less
 2515 frequently than once every 3 years. The examination shall cover
 2516 the preceding 3 fiscal years of the insurer and shall be
 2517 commenced within 12 months after the end of the most recent
 2518 fiscal year being covered by the examination. The examination
 2519 may cover any period of the insurer's operations since the last
 2520 previous examination. The examination may include examination of



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2521 events subsequent to the end of the most recent fiscal year and
2522 the events of any prior period that affect the present financial
2523 condition of the insurer. In lieu of making its own examination,
2524 the office ~~department~~ may accept an independent certified public
2525 accountant's audit report prepared on a statutory basis
2526 consistent with the Florida Insurance Code on that specific
2527 company. The office ~~department~~ may not accept the report in lieu
2528 of the requirement imposed by paragraph (1)(b). When an
2529 examination is conducted by the office ~~department~~ for the sole
2530 purpose of examining the 3 preceding fiscal years of the insurer
2531 within 12 months after the opinion date of an independent
2532 certified public accountant's audit report prepared on a
2533 statutory basis on that specific company consistent with the
2534 Florida Insurance Code, the cost of the examination as charged
2535 to the insurer pursuant to s. 624.320 shall be reduced by the
2536 cost to the insurer of the independent certified public
2537 accountant's audit reports. Requests for the reduction in cost
2538 of examination must be submitted to the office ~~department~~ in
2539 writing no later than 90 days after the conclusion of the
2540 examination and shall include sufficient documentation to
2541 support the charges incurred for the statutory audit performed
2542 by the independent certified public accountant.

2543 (b) The office ~~department~~ shall examine each insurer
2544 applying for an initial certificate of authority to transact
2545 insurance in this state before granting the initial certificate.

2546 (c) In lieu of making its own examination, the office
2547 ~~department~~ may accept a full report of the last recent
2548 examination of a foreign insurer, certified to by the insurance
2549 supervisory official of another state.

2550 (d) The examination by the office ~~department~~ of an alien



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2551 insurer shall be limited to the alien insurer's insurance
2552 transactions and affairs in the United States, except as
2553 otherwise required by the office ~~department~~.

2554 (e) The commission ~~department~~ shall adopt rules providing
2555 that, upon agreement between the office ~~department~~ and the
2556 insurer, an examination under this section may be conducted by
2557 independent certified public accountants, actuaries meeting
2558 criteria specified by rule, and reinsurance specialists meeting
2559 criteria specified by rule. The rules shall provide:

2560 1. That the agreement of the insurer is not required if
2561 the office ~~department~~ reasonably suspects criminal misconduct on
2562 the part of the insurer.

2563 2. That the office ~~department~~ shall provide the insurer
2564 with a list of three firms acceptable to the office ~~department~~,
2565 and that the insurer shall select the firm to conduct the
2566 examination from the list provided by the office ~~department~~.

2567 3. That the insurer being examined must make payment for
2568 the examination directly to the firm performing the examination
2569 in accordance with the rates and terms agreed to by the office
2570 ~~department~~, the insurer, and the firm performing the
2571 examination.

2572 4. That if the examination is conducted without the
2573 consent of the insurer, the insurer must pay all reasonable
2574 charges of the examining firm if the examination finds
2575 impairment, insolvency, or criminal misconduct on the part of
2576 the insurer.

2577 (f)1.

2578 a. An examination under this section must be conducted at
2579 least once every year with respect to a domestic insurer that
2580 has continuously held a certificate of authority for less than 3



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2581 | years. The examination must cover the preceding fiscal year or
 2582 | the period since the last examination of the insurer. The office
 2583 | ~~department~~ may limit the scope of the examination.

2584 | b. The office ~~department~~ may not accept an independent
 2585 | certified public accountant's audit report in lieu of an
 2586 | examination required by this subparagraph.

2587 | c. An insurer may not be required to pay more than \$25,000
 2588 | to cover the costs of any one examination under this
 2589 | subparagraph.

2590 | 2. An examination under this section must be conducted not
 2591 | less frequently than once every 5 years with respect to an
 2592 | insurer that has continuously held a certificate of authority,
 2593 | without a change in ownership subject to s. 624.4245 or s.
 2594 | 628.461, for more than 15 years. The examination must cover the
 2595 | preceding 5 fiscal years of the insurer or the period since the
 2596 | last examination of the insurer. This subparagraph does not
 2597 | limit the ability of the office ~~department~~ to conduct more
 2598 | frequent examinations.

2599 | Section 28. Section 624.317, Florida Statutes, is amended
 2600 | to read:

2601 | 624.317 Investigation of agents, adjusters,
 2602 | administrators, service companies, and others.--If it has reason
 2603 | to believe that any person has violated or is violating any
 2604 | provision of this code, or upon the written complaint signed by
 2605 | any interested person indicating that any such violation may
 2606 | exist:~

2607 | (1) The department shall conduct such investigation as it
 2608 | deems necessary of the accounts, records, documents, and
 2609 | transactions pertaining to or affecting the insurance affairs of
 2610 | any~



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2611 ~~(1)~~ general agent, surplus line agent, managing general
 2612 agent, adjuster, administrator, service company, or other
 2613 person.

2614 ~~(2)~~ insurance agent, customer representative, service
 2615 representative, or other person subject to its jurisdiction ~~or~~
 2616 ~~solicitor~~, subject to the requirements of s. 626.601.

2617 (2) The office shall conduct such investigation as it
 2618 deems necessary of the accounts, records, documents, and
 2619 transactions pertaining to or affecting the insurance affairs of
 2620 any:

2621 (a) Adjuster, administrator, service company, or other
 2622 person subject to its jurisdiction.

2623 (b)~~(3)~~ Person having a contract or power of attorney under
 2624 which she or he enjoys in fact the exclusive or dominant right
 2625 to manage or control an insurer.

2626 (c)~~(4)~~ Person engaged in or proposing to be engaged in the
 2627 promotion or formation of:

2628 1.~~(a)~~ A domestic insurer;

2629 2.~~(b)~~ An insurance holding corporation; or

2630 3.~~(e)~~ A corporation to finance a domestic insurer or in
 2631 the production of the domestic insurer's business.

2632 Section 29. Subsections (2), (3), (4), (5), and (7) of
 2633 section 624.404, Florida Statutes, are amended to read:

2634 624.404 General eligibility of insurers for certificate of
 2635 authority.--To qualify for and hold authority to transact
 2636 insurance in this state, an insurer must be otherwise in
 2637 compliance with this code and with its charter powers and must
 2638 be an incorporated stock insurer, an incorporated mutual
 2639 insurer, or a reciprocal insurer, of the same general type as
 2640 may be formed as a domestic insurer under this code; except



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2641 that:

2642 (2) No foreign or alien insurer or exchange shall be
 2643 authorized to transact insurance in this state unless it is
 2644 otherwise qualified therefor under this code and has operated
 2645 satisfactorily for at least 3 years in its state or country of
 2646 domicile; however, the office ~~department~~ may waive the 3-year
 2647 requirement if the foreign or alien insurer or exchange:

2648 (a) Has operated successfully and has capital and surplus
 2649 of \$5 million;

2650 (b) Is the wholly owned subsidiary of an insurer which is
 2651 an authorized insurer in this state;

2652 (c) Is the successor in interest through merger or
 2653 consolidation of an authorized insurer; or

2654 (d) Provides a product or service not readily available to
 2655 the consumers of this state.

2656 (3)(a) The office ~~department~~ shall not grant or continue
 2657 authority to transact insurance in this state as to any insurer
 2658 the management, officers, or directors of which are found by it
 2659 to be incompetent or untrustworthy; or so lacking in insurance
 2660 company managerial experience as to make the proposed operation
 2661 hazardous to the insurance-buying public; or so lacking in
 2662 insurance experience, ability, and standing as to jeopardize the
 2663 reasonable promise of successful operation; or which it has good
 2664 reason to believe are affiliated directly or indirectly through
 2665 ownership, control, reinsurance transactions, or other insurance
 2666 or business relations, with any person or persons whose business
 2667 operations are or have been marked, to the detriment of
 2668 policyholders or stockholders or investors or creditors or of
 2669 the public, by manipulation of assets, accounts, or reinsurance
 2670 or by bad faith.



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2671 (b) The office ~~department~~ shall not grant or continue
2672 authority to transact insurance in this state as to any insurer
2673 if any person, including any subscriber, stockholder, or
2674 incorporator, who exercises or has the ability to exercise
2675 effective control of the insurer, or who influences or has the
2676 ability to influence the transaction of the business of the
2677 insurer, does not possess the financial standing and business
2678 experience for the successful operation of the insurer.

2679 (c) The office ~~department~~ may deny, suspend, or revoke the
2680 authority to transact insurance in this state of any insurer if
2681 any person, including any subscriber, stockholder, or
2682 incorporator, who exercises or has the ability to exercise
2683 effective control of the insurer, or who influences or has the
2684 ability to influence the transaction of the business of the
2685 insurer, has been found guilty of, or has pleaded guilty or nolo
2686 contendere to, any felony or crime punishable by imprisonment of
2687 1 year or more under the law of the United States or any state
2688 thereof or under the law of any other country which involves
2689 moral turpitude, without regard to whether a judgment of
2690 conviction has been entered by the court having jurisdiction in
2691 such case. However, in the case of an insurer operating under a
2692 subsisting certificate of authority, the insurer shall remove
2693 any such person immediately upon discovery of the conditions set
2694 forth in this paragraph when applicable to such person or upon
2695 the order of the office ~~department~~, and the failure to so act by
2696 said insurer shall be grounds for revocation or suspension of
2697 the insurer's certificate of authority.

2698 (d) The office ~~department~~ may deny, suspend, or revoke the
2699 authority of an insurer to transact insurance in this state if
2700 any person, including any subscriber, stockholder, or



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2701 incorporator, who exercises or has the ability to exercise
2702 effective control of the insurer, or who influences or has the
2703 ability to influence the transaction of the business of the
2704 insurer, which person the office ~~department~~ has good reason to
2705 believe is now or was in the past affiliated directly or
2706 indirectly, through ownership interest of 10 percent or more,
2707 control, or reinsurance transactions, with any business,
2708 corporation, or other entity that has been found guilty of or
2709 has pleaded guilty or nolo contendere to any felony or crime
2710 punishable by imprisonment for 1 year or more under the laws of
2711 the United States, any state, or any other country, regardless
2712 of adjudication. However, in the case of an insurer operating
2713 under a subsisting certificate of authority, the insurer shall
2714 immediately remove such person or immediately notify the office
2715 ~~department~~ of such person upon discovery of the conditions set
2716 forth in this paragraph, either when applicable to such person
2717 or upon order of the office ~~department~~; the failure to remove
2718 such person, provide such notice, or comply with such order
2719 constitutes grounds for suspension or revocation of the
2720 insurer's certificate of authority.

2721 (4)(a) No authorized insurer shall act as a fronting
2722 company for any unauthorized insurer which is not an approved
2723 reinsurer.

2724 (b) A "fronting company" is an authorized insurer which by
2725 reinsurance or otherwise generally transfers more than 50
2726 percent to one unauthorized insurer which does not meet the
2727 requirements of s. 624.610(3)(a), (b), or (c), or more than 75
2728 percent to two or more unauthorized insurers which do not meet
2729 the requirements of s. 624.610(3)(a), (b), or (c), of the entire
2730 risk of loss on all of the insurance written by it in this



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2731 state, or on one or more lines of insurance, on all of the
 2732 business produced through one or more agents or agencies, or on
 2733 all of the business from a designated geographical territory,
 2734 without obtaining the prior approval of the office ~~department~~.

2735 (c) The office ~~department~~ may, in its discretion, approve
 2736 a transfer of risk in excess of the limits in paragraph (b) upon
 2737 presentation of evidence, satisfactory to the office ~~department~~,
 2738 that the transfer would be in the best interests of the
 2739 financial condition of the insurer and in the best interests of
 2740 the policyholders.

2741 (5) No insurer shall be authorized to transact insurance
 2742 in this state which, during the 3 years immediately preceding
 2743 its application for a certificate of authority, has violated any
 2744 of the insurance laws of this state and after being informed of
 2745 such violation has failed to correct the same; except that, if
 2746 all other requirements are met, the office ~~department~~ may
 2747 nevertheless issue a certificate of authority to such an insurer
 2748 upon the filing by the insurer of a sworn statement of all such
 2749 insurance so written in violation of law, and upon payment to
 2750 the office ~~department~~ of a sum of money as additional filing fee
 2751 equivalent to all premium taxes and other state taxes and fees
 2752 as would have been payable by the insurer if such insurance had
 2753 been lawfully written by an authorized insurer under the laws of
 2754 this state. This fee, when collected, shall be deposited to the
 2755 credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

2756 (7) For the purpose of satisfying the requirements of ss.
 2757 624.407 and 624.408, the investment portfolio of an insurer
 2758 applying for an initial certificate of authority to do business
 2759 in this state shall value its bonds and stocks in accordance
 2760 with the provisions of the latest edition of the publication



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2761 "Purposes and Procedures Manual of the NAIC Securities Valuation
 2762 Office" "Valuations of Securities" by the National Association
 2763 of Insurance Commissioners, July 1, 2002 ~~1990~~, and subsequent
 2764 amendments thereto, if the valuation methodology remains
 2765 substantially unchanged.

2766 Section 30. Subsection (1) of section 624.4072, Florida
 2767 Statutes, is amended to read:

2768 624.4072 Minority-owned property and casualty insurers;
 2769 limited exemption for taxation and assessments.--

2770 (1) A minority business that is at least 51 percent owned
 2771 by minority persons, as defined in s. 288.703(3), initially
 2772 issued a certificate of authority in this state as an authorized
 2773 insurer after May 1, 1998, and before January 1, 2002, to write
 2774 property and casualty insurance shall be exempt, for a period
 2775 not to exceed 10 years from the date of receiving its
 2776 certificate of authority, from the following taxes and
 2777 assessments:

2778 (a) Taxes imposed under ss. 175.101, 185.08, and 624.509;

2779 (b) Assessments by the Citizens Property Insurance
 2780 Corporation ~~Florida Residential Property and Casualty Joint~~
 2781 ~~Underwriting Association or by the Florida Windstorm~~
 2782 ~~Underwriting Association, as provided under s. 627.351, except~~
 2783 for emergency assessments collected from policyholders pursuant
 2784 to s. 627.351(6)(b)3.d. ~~s. 627.351(2)(b)2.d.(III) and(6)(b)3.d.~~
 2785 Any such insurer shall be a member insurer of the Citizens
 2786 Property Insurance Corporation ~~Florida Windstorm Underwriting~~
 2787 ~~Association and the Florida Residential Property and Casualty~~
 2788 ~~Joint Underwriting Association~~. The premiums of such insurer
 2789 shall be included in determining, for the Citizens Property
 2790 Insurance Corporation ~~Florida Windstorm Underwriting~~



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2791 ~~Association, the aggregate statewide direct written premium for~~
 2792 ~~property insurance and in determining, for the Florida~~
 2793 ~~Residential Property and Casualty Joint Underwriting~~
 2794 ~~Association, the aggregate statewide direct written premium for~~
 2795 the subject lines of business for all member insurers.

2796 Section 31. Subsection (1) of section 624.413, Florida
 2797 Statutes, is amended to read:

2798 624.413 Application for certificate of authority.--

2799 (1) To apply for a certificate of authority, an insurer
 2800 shall file its application therefor with the office ~~department~~,
 2801 upon a form adopted by the commission and furnished by the
 2802 office ~~it~~, showing its name; location of its home office and, if
 2803 an alien insurer, its principal office in the United States;
 2804 kinds of insurance to be transacted; state or country of
 2805 domicile; and such additional information as the commission
 2806 ~~department may~~ reasonably requires ~~require~~, together with the
 2807 following documents:

2808 (a) One copy of its corporate charter, articles of
 2809 incorporation, existing and proposed nonfacultative reinsurance
 2810 contracts, declaration of trust, or other charter documents,
 2811 with all amendments thereto, certified by the public official
 2812 with whom the originals are on file in the state or country of
 2813 domicile.

2814 (b) If a mutual insurer, a copy of its bylaws, as amended,
 2815 certified by its secretary or other officer having custody
 2816 thereof.

2817 (c) If a foreign or alien reciprocal insurer, a copy of
 2818 the power of attorney of its attorney in fact and of its
 2819 subscribers' agreement, if any, certified by the attorney in
 2820 fact; and, if a domestic reciprocal insurer, the declaration



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2821 provided for in s. 629.081.

2822 (d) A copy of its financial statement as of December 31
2823 next preceding, containing information generally included in
2824 insurer financial statements prepared in accordance with
2825 generally accepted insurance accounting principles and practices
2826 and in a form generally utilized by insurers for financial
2827 statements, sworn to by at least two executive officers of the
2828 insurer, or certified by the public official having supervision
2829 of insurance in the insurer's state of domicile or of entry into
2830 the United States. To facilitate uniformity in financial
2831 statements, the commission ~~department~~ may by rule adopt the form
2832 for financial statements approved by the National Association of
2833 Insurance Commissioners in 2002 ~~1990~~, and may adopt subsequent
2834 amendments thereto if the form remains substantially consistent.

2835 (e) Supplemental quarterly financial statements for each
2836 calendar quarter since the beginning of the year of its
2837 application for the certificate of authority, sworn to by at
2838 least two of its executive officers. To facilitate uniformity in
2839 financial statements, the commission ~~department~~ may by rule
2840 adopt the form for quarterly financial statements approved by
2841 the National Association of Insurance Commissioners in 2002
2842 ~~1990~~, and may adopt subsequent amendments thereto if the form
2843 remains substantially consistent.

2844 (f) If a foreign or alien insurer, a copy of the report of
2845 the most recent examination of the insurer certified by the
2846 public official having supervision of insurance in its state of
2847 domicile or of entry into the United States. The end of the
2848 most recent year covered by the examination must be within the
2849 3-year period preceding the date of application. In lieu of the
2850 certified examination report, the office ~~department~~ may accept



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2851 an audited certified public accountant's report prepared on a
 2852 basis consistent with the insurance laws of the insurer's state
 2853 of domicile, certified by the public official having supervision
 2854 of insurance in its state of domicile or of entry into the
 2855 United States.

2856 (g) If a foreign or alien insurer, a certificate of
 2857 compliance from the public official having supervision of
 2858 insurance in its state or country of domicile showing that it is
 2859 duly organized and authorized to transact insurance therein and
 2860 the kinds of insurance it is so authorized to transact.

2861 (h) If a foreign or alien insurer, a certificate of the
 2862 public official having custody of any deposit maintained by the
 2863 insurer in another state in lieu of a deposit or part thereof
 2864 required in this state under s. 624.411 or s. 624.412, showing
 2865 the amount of such deposit and the assets or securities of which
 2866 comprised.

2867 (i) If a life insurer, a certificate of valuation.

2868 (j) If an alien insurer, a copy of the appointment and
 2869 authority of its United States manager, certified by its officer
 2870 having custody of its records.

2871 Section 32. Section 624.424, Florida Statutes, is amended
 2872 to read:

2873 624.424 Annual statement and other information.--

2874 (1)(a) Each authorized insurer shall file with the office
 2875 ~~department~~ full and true statements of its financial condition,
 2876 transactions, and affairs. An annual statement covering the
 2877 preceding calendar year shall be filed on or before March 1, and
 2878 quarterly statements covering the periods ending on March 31,
 2879 June 30, and September 30 shall be filed within 45 days after
 2880 each such date. The office ~~department~~ may, for good cause, grant



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2881 an extension of time for filing of an annual or quarterly
 2882 statement. The statements shall contain information generally
 2883 included in insurers' financial statements prepared in
 2884 accordance with generally accepted insurance accounting
 2885 principles and practices and in a form generally utilized by
 2886 insurers for financial statements, sworn to by at least two
 2887 executive officers of the insurer or, if a reciprocal insurer,
 2888 by the oath of the attorney in fact or its like officer if a
 2889 corporation. To facilitate uniformity in financial statements
 2890 and to facilitate office ~~department~~ analysis, the commission
 2891 ~~department~~ may by rule adopt the form for financial statements
 2892 approved by the National Association of Insurance Commissioners
 2893 in 2002 ~~1990~~, and may adopt subsequent amendments thereto if the
 2894 methodology remains substantially consistent, and may by rule
 2895 require each insurer to submit to the office ~~department~~ or such
 2896 organization as the office ~~department~~ may designate all or part
 2897 of the information contained in the financial statement in a
 2898 computer-readable form compatible with the electronic data
 2899 processing system specified by the office ~~department~~.

2900 (b) Each insurer's annual statement must contain a
 2901 statement of opinion on loss and loss adjustment expense
 2902 reserves made by a member of the American Academy of Actuaries
 2903 or by a qualified loss reserve specialist, under criteria
 2904 established by rule of the commission ~~department~~. In adopting
 2905 the rule, the commission ~~department~~ must consider any criteria
 2906 established by the National Association of Insurance
 2907 Commissioners. The office ~~department~~ may require semiannual
 2908 updates of the annual statement of opinion as to a particular
 2909 insurer if the office ~~department~~ has reasonable cause to believe
 2910 that such reserves are understated to the extent of materially



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2911 misstating the financial position of the insurer. Workpapers in
2912 support of the statement of opinion must be provided to the
2913 office ~~department~~ upon request. This paragraph does not apply to
2914 life insurance or title insurance.

2915 (c) The commission ~~department~~ may by rule require reports
2916 or filings required under the insurance code to be submitted on
2917 a computer-diskette compatible with the electronic data
2918 processing equipment specified by the commission ~~department~~.

2919 (2) The statement of an alien insurer shall be verified by
2920 the insurer's United States manager or other officer duly
2921 authorized. It shall be a separate statement, to be known as
2922 its general statement, of its transactions, assets, and affairs
2923 within the United States unless the office ~~department~~ requires
2924 otherwise. If the office ~~department~~ requires a statement as to
2925 the insurer's affairs elsewhere, the insurer shall file such
2926 statement with the office ~~department~~ as soon as reasonably
2927 possible.

2928 (3) Each insurer having a deposit as required under s.
2929 624.411 shall file with the office ~~department~~ annually with its
2930 annual statement a certificate to the effect that the assets so
2931 deposited have a market value equal to or in excess of the
2932 amount of deposit so required.

2933 (4) At the time of filing, the insurer shall pay the fee
2934 for filing its annual statement in the amount specified in s.
2935 624.501.

2936 (5) The office ~~department~~ may refuse to continue, or may
2937 suspend or revoke, the certificate of authority of an insurer
2938 failing to file its annual or quarterly statements and
2939 accompanying certificates when due.

2940 (6) In addition to information called for and furnished in



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2941 connection with its annual or quarterly statements, an insurer
2942 shall furnish to the office ~~department~~ as soon as reasonably
2943 possible such information as to its transactions or affairs as
2944 the office ~~department~~ may from time to time request in writing.

2945 All such information furnished pursuant to the office's
2946 ~~department's~~ request shall be verified by the oath of two
2947 executive officers of the insurer or, if a reciprocal insurer,
2948 by the oath of the attorney in fact or its like officers if a
2949 corporation.

2950 (7) The signatures of all such persons when written on
2951 annual or quarterly statements or other reports required by this
2952 section shall be presumed to have been so written by authority
2953 of the person whose signature is affixed thereon. The affixing
2954 of any signature by anyone other than the purported signer
2955 constitutes a felony of the second degree, punishable as
2956 provided in s. 775.082, s. 775.083, or s. 775.084.

2957 (8)(a) All authorized insurers must have conducted an
2958 annual audit by an independent certified public accountant and
2959 must file an audited financial report with the office ~~department~~
2960 on or before June 1 for the preceding year ending December 31.
2961 The office ~~department~~ may require an insurer to file an audited
2962 financial report earlier than June 1 upon 90 days' advance
2963 notice to the insurer. The office ~~department~~ may immediately
2964 suspend an insurer's certificate of authority by order if an
2965 insurer's failure to file required reports, financial
2966 statements, or information required by this subsection or rule
2967 adopted pursuant thereto creates a significant uncertainty as to
2968 the insurer's continuing eligibility for a certificate of
2969 authority.

2970 (b) Any authorized insurer otherwise subject to this



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2971 section having direct premiums written in this state of less
 2972 than \$1 million in any calendar year and fewer ~~less~~ than 1,000
 2973 policyholders or certificateholders of directly written policies
 2974 nationwide at the end of such calendar year is exempt from this
 2975 section for such year unless the office ~~department~~ makes a
 2976 specific finding that compliance is necessary in order for the
 2977 office ~~department~~ to carry out its statutory responsibilities.
 2978 However, any insurer having assumed premiums pursuant to
 2979 contracts or treaties or reinsurance of \$1 million or more is
 2980 not exempt. Any insurer subject to an exemption must submit by
 2981 March 1 following the year to which the exemption applies an
 2982 affidavit sworn to by a responsible officer of the insurer
 2983 specifying the amount of direct premiums written in this state
 2984 and number of policyholders or certificateholders.

2985 (c) The board of directors of an insurer shall hire the
 2986 certified public accountant that prepares the audit required by
 2987 this subsection and the board shall establish an audit committee
 2988 of three or more directors of the insurer or an affiliated
 2989 company. The audit committee shall be responsible for discussing
 2990 audit findings and interacting with the certified public
 2991 accountant with regard to her or his findings. The audit
 2992 committee shall be comprised solely of members who are free from
 2993 any relationship that, in the opinion of its board of directors,
 2994 would interfere with the exercise of independent judgment as a
 2995 committee member. The audit committee shall report to the board
 2996 any findings of adverse financial conditions or significant
 2997 deficiencies in internal controls that have been noted by the
 2998 accountant. The insurer may request the office ~~department~~ to
 2999 waive this requirement of the audit committee membership based
 3000 upon unusual hardship to the insurer.



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3001 (d) An insurer may not use the same accountant or partner
 3002 of an accounting firm responsible for preparing the report
 3003 required by this subsection for more than 7 consecutive years.
 3004 Following this period, the insurer may not use such accountant
 3005 or partner for a period of 2 years, but may use another
 3006 accountant or partner of the same firm. An insurer may request
 3007 the office ~~department~~ to waive this prohibition based upon an
 3008 unusual hardship to the insurer and a determination that the
 3009 accountant is exercising independent judgment that is not unduly
 3010 influenced by the insurer considering such factors as the number
 3011 of partners, expertise of the partners or the number of
 3012 insurance clients of the accounting firm; the premium volume of
 3013 the insurer; and the number of jurisdictions in which the
 3014 insurer transacts business.

3015 (e) The commission ~~department~~ shall adopt rules to
 3016 implement this subsection, which rules must be in substantial
 3017 conformity with the 1998 ~~1990~~ Model Rule Requiring Annual
 3018 Audited Financial Reports adopted by the National Association of
 3019 Insurance Commissioners, except where inconsistent with the
 3020 requirements of this subsection. Any exception to, waiver of, or
 3021 interpretation of accounting requirements of the commission
 3022 ~~department~~ must be in writing and signed by an authorized
 3023 representative of the office ~~department~~. No insurer may raise as
 3024 a defense in any action, any exception to, waiver of, or
 3025 interpretation of accounting requirements, unless previously
 3026 issued in writing by an authorized representative of the office
 3027 ~~department~~.

3028 (9)(a) Each authorized insurer shall, pursuant to s.
 3029 409.910(20), provide records and information to the Agency for
 3030 Health Care Administration to identify potential insurance



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3031 coverage for claims filed with that agency and its fiscal agents
 3032 for payment of medical services under the Medicaid program.

3033 (b) Each authorized insurer shall, pursuant to s.
 3034 409.2561(5)(c), notify the Medicaid agency of a cancellation or
 3035 discontinuance of a policy within 30 days if the insurer
 3036 received notification from the Medicaid agency to do so.

3037 (c) Any information provided by an insurer under this
 3038 subsection does not violate any right of confidentiality or
 3039 contract that the insurer may have with covered persons. The
 3040 insurer is immune from any liability that it may otherwise incur
 3041 through its release of such information to the Agency for Health
 3042 Care Administration.

3043 (10) Each insurer or insurer group doing business in this
 3044 state shall file on a quarterly basis in conjunction with
 3045 financial reports required by paragraph (1)(a) a supplemental
 3046 report on an individual and group basis on a form prescribed by
 3047 the commission ~~department~~ with information on personal lines and
 3048 commercial lines residential property insurance policies in this
 3049 state. The supplemental report shall include separate
 3050 information for personal lines property policies and for
 3051 commercial lines property policies and totals for each item
 3052 specified, including premiums written for each of the property
 3053 lines of business as described in ss. 215.555(2)(c) and
 3054 627.351(6)(a). The report shall include the following
 3055 information for each county on a monthly basis:

3056 (a) Total number of policies in force at the end of each
 3057 month.

3058 (b) Total number of policies canceled.

3059 (c) Total number of policies nonrenewed.

3060 (d) Number of policies canceled due to hurricane risk.



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3061 (e) Number of policies nonrenewed due to hurricane risk.

3062 (f) Number of new policies written.

3063 (g) Total dollar value of structure exposure under
3064 policies that include wind coverage.

3065 (h) Number of policies that exclude wind coverage.

3066 Section 33. Subsections (2), (3), and (4) of section
3067 624.476, Florida Statutes, are amended to read:

3068 624.476 Impaired self-insurance funds.--

3069 (2) If any fund levies an assessment pursuant to
3070 subsection (1), the office ~~department~~ shall require the fund to
3071 consent to administrative supervision under part VI of this
3072 chapter. The office ~~department~~ may waive the requirement to
3073 consent to administrative supervision for good cause.

3074 (3) If the trustees fail to make an assessment as required
3075 by subsection(1), the office ~~department~~ shall order the trustees
3076 to do so. If the deficiency is not sufficiently made up within
3077 60 days after the date of the order, the fund shall be deemed
3078 insolvent and grounds shall exist to proceed against the fund as
3079 provided for in part I of chapter 631.

3080 (4) Notwithstanding the requirement of the fund to make an
3081 assessment pursuant to subsection (1) or subsection (3), the
3082 office ~~department~~ may at any time request that the department ~~to~~
3083 be appointed receiver for purposes of rehabilitation or
3084 liquidation if it is able to demonstrate that any grounds for
3085 rehabilitation or liquidation exist pursuant to s. 631.051 or s.
3086 631.061.

3087 Section 34. Section 624.477, Florida Statutes, is amended
3088 to read:

3089 624.477 Liquidation, rehabilitation, reorganization, and
3090 conservation.--Any rehabilitation, liquidation, conservation, or



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3091 dissolution of a self-insurance fund shall be conducted under
 3092 the supervision of the office and department, which shall each
 3093 have all power with respect thereto granted to the fund under
 3094 part I of chapter 631 governing the rehabilitation, liquidation,
 3095 conservation, or dissolution of insurers and including all
 3096 grounds for the appointment of a receiver contained in ss.
 3097 631.051 and 631.061.

3098 Section 35. Section 625.01115, Florida Statutes, is
 3099 amended to read:

3100 625.01115 Definitions.--As used in this chapter, the term
 3101 "statutory accounting principles" means accounting principles as
 3102 defined in the National Association of Insurance Commissioners
 3103 Accounting Practices and Procedures Manual as of March 2002 and
 3104 subsequent amendments thereto if the methodology remains
 3105 substantially consistent ~~effective January 1, 2001.~~

3106 Section 36. Subsections (2), (3), and (4), paragraphs (c),
 3107 (d), (g), (h), (i), and (j) of subsection (5), paragraph (e) of
 3108 subsection (6), subsection (10), paragraph(b) of subsection
 3109 (12), and subsection (14) of section 625.121, Florida Statutes,
 3110 are amended to read:

3111 625.121 Standard Valuation Law; life insurance.--

3112 (2) ANNUAL VALUATION.--The office ~~department~~ shall
 3113 annually value, or cause to be valued, the reserve liabilities,
 3114 hereinafter called "reserves," for all outstanding life
 3115 insurance policies and annuity and pure endowment contracts of
 3116 every life insurer doing business in this state, and may certify
 3117 the amount of any such reserves, specifying the mortality table
 3118 or tables, rate or rates of interest, and methods, net-level
 3119 premium method or others, used in the calculation of such
 3120 reserves. In the case of an alien insurer, such valuation shall



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3121 be limited to its insurance transactions in the United States.
3122 In calculating such reserves, the office ~~department~~ may use
3123 group methods and approximate averages for fractions of a year
3124 or otherwise. It may accept in its discretion the insurer's
3125 calculation of such reserves. In lieu of the valuation of the
3126 reserves herein required of any foreign or alien insurer, it may
3127 accept any valuation made or caused to be made by the insurance
3128 supervisory official of any state or other jurisdiction when
3129 such valuation complies with the minimum standard herein
3130 provided and if the official of such state or jurisdiction
3131 accepts as sufficient and valid for all legal purposes the
3132 certificate of valuation of the office ~~department~~ when such
3133 certificate states the valuation to have been made in a
3134 specified manner according to which the aggregate reserves would
3135 be at least as large as if they had been computed in the manner
3136 prescribed by the law of that state or jurisdiction. When any
3137 such valuation is made by the office ~~department~~, it may use the
3138 actuary of the office ~~department~~ or employ an actuary for the
3139 purpose; and the reasonable compensation of the actuary, at a
3140 rate approved by the office ~~department~~, and reimbursement of
3141 travel expenses pursuant to s. 624.320 upon demand by the office
3142 ~~department~~, supported by an itemized statement of such
3143 compensation and expenses, shall be paid by the insurer. When a
3144 domestic insurer furnishes the office ~~department~~ with a
3145 valuation of its outstanding policies as computed by its own
3146 actuary or by an actuary deemed satisfactory for the purpose by
3147 the office ~~department~~, the valuation shall be verified by the
3148 actuary of the office ~~department~~ without cost to the insurer.

3149 (3) ACTUARIAL OPINION OF RESERVES.--

3150 (a)1. Each life insurance company doing business in this



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3151 state shall annually submit the opinion of a qualified actuary
3152 as to whether the reserves and related actuarial items held in
3153 support of the policies and contracts specified by the
3154 commission ~~department~~ by rule are computed appropriately, are
3155 based on assumptions which satisfy contractual provisions, are
3156 consistent with prior reported amounts, and comply with
3157 applicable laws of this state. The commission ~~department~~ by rule
3158 shall define the specifics of this opinion and add any other
3159 items determined to be necessary to its scope.

3160 2. The opinion shall be submitted with the annual
3161 statement reflecting the valuation of such reserve liabilities
3162 for each year ending on or after December 31, 1992.

3163 3. The opinion shall apply to all business in force,
3164 including individual and group health insurance plans, in the
3165 form and substance acceptable to the office ~~department~~ as
3166 specified by rule of the commission.

3167 4. The commission ~~department~~ may adopt rules providing the
3168 standards of the actuarial opinion consistent with standards
3169 adopted by the Actuarial Standards Board on December 31, 2002
3170 ~~October 1, 1991~~, and subsequent revisions thereto, provided that
3171 the standards remain substantially consistent.

3172 5. In the case of an opinion required to be submitted by a
3173 foreign or alien company, the office ~~department~~ may accept the
3174 opinion filed by that company with the insurance supervisory
3175 official of another state if the office ~~department~~ determines
3176 that the opinion reasonably meets the requirements applicable to
3177 a company domiciled in this state.

3178 6. For the purposes of this subsection, "qualified
3179 actuary" means a member in good standing of the American Academy
3180 of Actuaries who also meets the requirements specified by rule



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3181 of the commission ~~department~~.

3182 7. Disciplinary action by the office ~~department~~ against
3183 the company or the qualified actuary shall be in accordance with
3184 the insurance code and related rules adopted by the commission
3185 ~~department~~.

3186 8. A memorandum in the form and substance specified by
3187 rule shall be prepared to support each actuarial opinion.

3188 9. If the insurance company fails to provide a supporting
3189 memorandum at the request of the office ~~department~~ within a
3190 period specified by rule of the commission, or if the office
3191 ~~department~~ determines that the supporting memorandum provided by
3192 the insurance company fails to meet the standards prescribed by
3193 rule of the commission, the office ~~department~~ may engage a
3194 qualified actuary at the expense of the company to review the
3195 opinion and the basis for the opinion and prepare such
3196 supporting memorandum as is required by the office ~~department~~.

3197 10. Except as otherwise provided in this paragraph, any
3198 memorandum or other material in support of the opinion is
3199 confidential and exempt from the provisions of s. 119.07(1);
3200 however, the memorandum or other material may be released by the
3201 office ~~department~~ with the written consent of the company, or to
3202 the American Academy of Actuaries upon request stating that the
3203 memorandum or other material is required for the purpose of
3204 professional disciplinary proceedings and setting forth
3205 procedures satisfactory to the office ~~department~~ for preserving
3206 the confidentiality of the memorandum or other material. If any
3207 portion of the confidential memorandum is cited by the company
3208 in its marketing or is cited before any governmental agency
3209 other than a state insurance department or is released by the
3210 company to the news media, no portion of the memorandum is



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3211 confidential.

3212 (b) In addition to the opinion required by subparagraph
3213 (a)1., the office department may, pursuant to commission by
3214 rule, require an opinion of the same qualified actuary as to
3215 whether the reserves and related actuarial items held in support
3216 of the policies and contracts specified by the commission
3217 ~~department~~ by rule, when considered in light of the assets held
3218 by the company with respect to the reserves and related
3219 actuarial items, including but not limited to the investment
3220 earnings on the assets and considerations anticipated to be
3221 received and retained under the policies and contracts, make
3222 adequate provision for the company's obligations under the
3223 policies and contracts, including, but not limited to, the
3224 benefits under, and expenses associated with, the policies and
3225 contracts.

3226 (c) The commission department may provide by rule for a
3227 transition period for establishing any higher reserves which the
3228 qualified actuary may deem necessary in order to render the
3229 opinion required by this subsection.

3230 (4) MINIMUM STANDARD FOR VALUATION OF POLICIES AND
3231 CONTRACTS ISSUED BEFORE OPERATIVE DATE OF STANDARD NONFORFEITURE
3232 LAW.--The minimum standard for the valuation of all such
3233 policies and contracts issued prior to the operative date of s.
3234 627.476 (Standard Nonforfeiture Law) shall be any basis
3235 satisfactory to the office department. Any basis satisfactory to
3236 the former Department of Insurance on the effective date of this
3237 code shall be deemed to meet such minimum standards.

3238 (5) MINIMUM STANDARD FOR VALUATION OF POLICIES AND
3239 CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF STANDARD
3240 NONFORFEITURE LAW.--Except as otherwise provided in paragraph



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3241 (h) and subsections (6), (11), and (14), the minimum standard
3242 for the valuation of all such policies and contracts issued on
3243 or after the operative date of s. 627.476 (Standard
3244 Nonforfeiture Law for Life Insurance) shall be the
3245 commissioners' reserve valuation method defined in subsections
3246 (7), (11), and (14); 5 percent interest for group annuity and
3247 pure endowment contracts and 3.5 percent interest for all other
3248 such policies and contracts, or in the case of life insurance
3249 policies and contracts, other than annuity and pure endowment
3250 contracts, issued on or after July 1, 1973, 4 percent interest
3251 for such policies issued prior to October 1, 1979, and 4.5
3252 percent interest for such policies issued on or after October 1,
3253 1979; and the following tables:

3254 (c) For individual annuity and pure endowment contracts,
3255 excluding any disability and accidental death benefits in such
3256 policies, the 1937 Standard Annuity Mortality Table or, at the
3257 option of the insurer, the Annuity Mortality Table for 1949,
3258 Ultimate, or any modification of either of these tables approved
3259 by the office ~~department~~.

3260 (d) For group annuity and pure endowment contracts,
3261 excluding any disability and accidental death benefits in such
3262 policies, the Group Annuity Mortality Table for 1951; any
3263 modification of such table approved by the office ~~department~~;
3264 or, at the option of the insurer, any of the tables or
3265 modifications of tables specified for individual annuity and
3266 pure endowment contracts.

3267 (g) For group life insurance, life insurance issued on the
3268 substandard basis, and other special benefits, such tables as
3269 may be approved by the office ~~department~~ as being sufficient
3270 with relation to the benefits provided by such policies.



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3271 (h) Except as provided in subsection (6), the minimum
3272 standard for the valuation of all individual annuity and pure
3273 endowment contracts issued on or after the operative date of
3274 this paragraph and for all annuities and pure endowments
3275 purchased on or after such operative date under group annuity
3276 and pure endowment contracts shall be the commissioners' reserve
3277 valuation method defined in subsection (7) and the following
3278 tables and interest rates:

3279 1. For individual annuity and pure endowment contracts
3280 issued prior to October 1, 1979, excluding any disability and
3281 accidental death benefits in such contracts, the 1971 Individual
3282 Annuity Mortality Table, or any modification of this table
3283 approved by the office ~~department~~, and 6 percent interest for
3284 single-premium immediate annuity contracts and 4 percent
3285 interest for all other individual annuity and pure endowment
3286 contracts.

3287 2. For individual single-premium immediate annuity
3288 contracts issued on or after October 1, 1979, and prior to
3289 October 1, 1986, excluding any disability and accidental death
3290 benefits in such contracts, the 1971 Individual Annuity
3291 Mortality Table, or any modification of this table approved by
3292 the office ~~department~~, and 7.5 percent interest. For such
3293 contracts issued on or after October 1, 1986, the 1983
3294 Individual Annual Mortality Table, or any modification of such
3295 table approved by the office ~~department~~, and the applicable
3296 calendar year statutory valuation interest rate as described in
3297 subsection (6).

3298 3. For individual annuity and pure endowment contracts
3299 issued on or after October 1, 1979, and prior to October 1,
3300 1986, other than single-premium immediate annuity contracts,



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3301 excluding any disability and accidental death benefits in such
3302 contracts, the 1971 Individual Annuity Mortality Table, or any
3303 modification of this table approved by the office ~~department~~,
3304 and 5.5 percent interest for single-premium deferred annuity and
3305 pure endowment contracts and 4.5 percent interest for all other
3306 such individual annuity and pure endowment contracts. For such
3307 contracts issued on or after October 1, 1986, the 1983
3308 Individual Annual Mortality Table, or any modification of such
3309 table approved by the office ~~department~~, and the applicable
3310 calendar year statutory valuation interest rate as described in
3311 subsection (6).

3312 4. For all annuities and pure endowments purchased prior
3313 to October 1, 1979, under group annuity and pure endowment
3314 contracts, excluding any disability and accidental death
3315 benefits purchased under such contracts, the 1971 Group Annuity
3316 Mortality Table, or any modification of this table approved by
3317 the office ~~department~~, and 6 percent interest.

3318 5. For all annuities and pure endowments purchased on or
3319 after October 1, 1979, and prior to October 1, 1986, under group
3320 annuity and pure endowment contracts, excluding any disability
3321 and accidental death benefits purchased under such contracts,
3322 the 1971 Group Annuity Mortality Table, or any modification of
3323 this table approved by the office ~~department~~, and 7.5 percent
3324 interest. For such contracts purchased on or after October 1,
3325 1986, the 1983 Group Annuity Mortality Table, or any
3326 modification of such table approved by the office ~~department~~,
3327 and the applicable calendar year statutory valuation interest
3328 rate as described in subsection (6).

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3331 After July 1, 1973, any insurer may have filed ~~file~~ with the
 3332 former Department of Insurance a written notice of its election
 3333 to comply with the provisions of this paragraph after a
 3334 specified date before January 1, 1979, which shall be the
 3335 operative date of this paragraph for such insurer. However, an
 3336 insurer may elect a different operative date for individual
 3337 annuity and pure endowment contracts from that elected for group
 3338 annuity and pure endowment contracts. If an insurer makes no
 3339 such election, the operative date of this paragraph for such
 3340 insurer shall be January 1, 1979.

3341 (i) In lieu of the mortality tables specified in this
 3342 subsection, and subject to rules previously adopted by the
 3343 former Department of Insurance, the insurance company may, at
 3344 its option:

3345 1. Substitute the applicable 1958 CSO or CET Smoker and
 3346 Nonsmoker Mortality Tables, in lieu of the 1980 CSO or CET
 3347 mortality table standard, for policies issued on or after the
 3348 operative date of s. 627.476(9) and before January 1, 1989.

3349 2. Substitute the applicable 1980 CSO or CET Smoker and
 3350 Nonsmoker Mortality Tables in lieu of the 1980 CSO or CET
 3351 mortality table standard;

3352 3. Use the Annuity 2000 Mortality Table for determining
 3353 the minimum standard of valuation for individual annuity and
 3354 pure endowment contracts issued on or after January 1, 1998, and
 3355 ~~before July 1, 1998 the operative date of this section until the~~
 3356 ~~department, on a date certain that is on or after January 1,~~
 3357 ~~1998, adopts by rule that table for determining the minimum~~
 3358 ~~standard for valuation purposes.~~

3359 4. Use the 1994 GAR Table for determining the minimum
 3360 standard of valuation for annuities and pure endowments



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3361 purchased on or after January 1, 1998, and before July 1, 1998,
 3362 ~~the operative date of this section~~ under group annuity and pure
 3363 endowment contracts ~~until the department, on a date certain that~~
 3364 ~~is on or after January 1, 1998, adopts by rule that table for~~
 3365 ~~determining the minimum standard for valuation purposes.~~

3366 (j) The commission ~~department~~ may adopt by rule the model
 3367 regulation for valuation of life insurance policies as approved
 3368 by the National Association of Insurance Commissioners in March
 3369 1999, including tables of select mortality factors, and may make
 3370 the regulation effective for policies issued on or after January
 3371 1, 2000.

3372 (6) MINIMUM STANDARD OF VALUATION.--

3373 (e) The interest rate index shall be the Moody's Corporate
 3374 Bond Yield Average-Monthly Average Corporates as published by
 3375 Moody's Investors Service, Inc., as long as this index is
 3376 calculated by using substantially the same methodology as used
 3377 by it on January 1, 1981. If Moody's corporate bond yield
 3378 average ceases to be calculated in this manner, the interest
 3379 rate index shall be the index approved by rule promulgated by
 3380 the commission ~~department~~. The methodology used in determining
 3381 the index approved by rule shall be substantially the same as
 3382 the methodology employed on January 1, 1981, for determining
 3383 Moody's Corporate Bond Yield Average-Monthly Average Corporates
 3384 as published by Moody's Investors Services, Inc.

3385 (10) LOWER VALUATIONS.--An insurer which at any time had
 3386 adopted any standard of valuation producing greater aggregate
 3387 reserves than those calculated according to the minimum standard
 3388 herein provided may, with the approval of the office ~~department~~,
 3389 adopt any lower standard of valuation, but not lower than the
 3390 minimum herein provided; however, for the purposes of this



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3391 subsection, the holding of additional reserves previously
 3392 determined by a qualified actuary to be necessary to render the
 3393 opinion required by subsection (3) shall not be deemed to be the
 3394 adoption of a higher standard of valuation.

3395 (12) ALTERNATE METHOD FOR DETERMINING RESERVES IN CERTAIN
 3396 CASES.--In the case of any plan of life insurance which provides
 3397 for future premium determination, the amounts of which are to be
 3398 determined by the insurer based on then estimates of future
 3399 experience, or in the case of any plan of life insurance or
 3400 annuity which is of such a nature that the minimum reserves
 3401 cannot be determined by the methods described in subsection (7),
 3402 the reserves which are held under any such plan shall:

3403 (b) Be computed by a method which is consistent with the
 3404 principles of this section, as determined by rules promulgated
 3405 by the commission ~~department~~.

3406 (14) MINIMUM STANDARDS FOR HEALTH PLANS.--The commission
 3407 ~~department~~ shall adopt a rule containing the minimum standards
 3408 applicable to the valuation of health plans in accordance with
 3409 sound actuarial principles.

3410 Section 37. Subsections (1), (2), and (4) of section
 3411 625.151, Florida Statutes, are amended to read:

3412 625.151 Valuation of other securities.--

3413 (1) Securities, other than those referred to in s.
 3414 625.141, held by an insurer shall be valued, in the discretion
 3415 of the office ~~department~~, at their market value, or at their
 3416 appraised value, or at prices determined by it as representing
 3417 their fair market value.

3418 (2) Preferred or guaranteed stocks or shares while paying
 3419 full dividends may be carried at a fixed value in lieu of market
 3420 value, at the discretion of the office ~~department~~ and in



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3421 accordance with such method of valuation as it may approve.

3422 (4) No valuations under this section shall be inconsistent
 3423 with any applicable valuation or method contained in the latest
 3424 edition of the publication "Valuation of Securities" published
 3425 by the National Association of Insurance Commissioners or its
 3426 successor organization; provided that such valuation methodology
 3427 is substantially similar to the methodology used by the National
 3428 Association of Insurance Commissioners in its July 1, 2002, ~~1988~~
 3429 edition of such publication.

3430 Section 38. Section 625.317, Florida Statutes, is amended
 3431 to read:

3432 625.317 Corporate bonds and debentures.--An insurer may
 3433 invest in bonds, notes, or other interest-bearing or interest-
 3434 accruing obligations of any solvent corporation organized under
 3435 the laws of the United States or Canada or under the laws of any
 3436 state, the District of Columbia, any territory or possession of
 3437 the United States, or any Province of Canada or in bonds or
 3438 notes issued by the Citizens Property Insurance Corporation as
 3439 authorized by s. 627.351(6) ~~Florida Windstorm Underwriting~~
 3440 ~~Association or a private nonprofit corporation, a private~~
 3441 ~~nonprofit unincorporated association, or a nonprofit mutual~~
 3442 ~~company organized by that association, all as authorized in s.~~
 3443 ~~627.351(2)(c), or any subsidiary or affiliate thereof authorized~~
 3444 ~~by the Department of Insurance to issue such bonds or notes.~~

3445 Section 39. Subsection (4) of section 625.325, Florida
 3446 Statutes, is amended to read:

3447 625.325 Investments in subsidiaries and related
 3448 corporations.--

3449 (4) DEBT OBLIGATIONS.--Debt obligations, other than
 3450 mortgage loans, made under the authority of this section must



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3451 meet amortization requirements in accordance with the latest
 3452 edition of the publication "Valuation of Securities" by the
 3453 National Association of Insurance Commissioners or its successor
 3454 organization; provided that such amortization methodology is
 3455 substantially similar to the methodology used by the National
 3456 Association of Insurance Commissioners in its July 1, 2002, 1988
 3457 edition of such publication.

3458 Section 40. Subsections (6) and (11) of section 626.015,
 3459 Florida Statutes, are amended, and present subsections (7)-(19)
 3460 of said section are renumbered as subsections (6)-(18),
 3461 respectively, to read:

3462 626.015 Definitions.--As used in this part:

3463 ~~(6) "Department" means the Department of Insurance.~~

3464 (10)(11) "License" means a document issued by the
 3465 department or office authorizing a person to be appointed to
 3466 transact insurance or adjust claims for the kind, line, or class
 3467 of insurance identified in the document.

3468 Section 41. Section 626.016, Florida Statutes, is created
 3469 to read:

3470 626.016 Powers and duties of department, commission, and
 3471 office.--

3472 (1) The powers and duties of the Chief Financial Officer
 3473 and the department specified in this chapter apply only with
 3474 respect to insurance agents, managing general agents,
 3475 reinsurance intermediaries, viatical settlement brokers,
 3476 customer representatives, service representatives, agencies, and
 3477 unlicensed persons subject to the regulatory jurisdiction of the
 3478 department.

3479 (2) The powers and duties of the commission and office
 3480 specified in this chapter apply only with respect to insurance



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3481 adjusters, service companies, administrators, viatical
3482 settlement providers and contracts, and unlicensed persons
3483 subject to the regulatory jurisdiction of the commission and
3484 office.

3485 (3) The department has jurisdiction to enforce provisions
3486 of this chapter with respect to persons who engage in actions
3487 for which a license issued by the department is legally
3488 required. The office has jurisdiction to enforce provisions of
3489 this chapter with respect to persons who engage in actions for
3490 which a license or certificate of authority issued by the office
3491 is legally required. For persons who violate a provision of this
3492 chapter for whom a license or certificate of authority issued by
3493 either the department or office is not required, either the
3494 department or office may take administrative action against such
3495 person as authorized by this chapter, pursuant to agreement
3496 between the office and department.

3497 (4) Nothing in this section is intended to limit the
3498 authority of the department and the Division of Insurance Fraud,
3499 as specified in s. 626.989.

3500 Section 42. Subsection (16) of section 626.025, Florida
3501 Statutes, is amended to read:

3502 626.025 Consumer protections.--To transact insurance,
3503 agents shall comply with consumer protection laws, including the
3504 following, as applicable:

3505 (16) Any other licensing requirement, restriction, or
3506 prohibition designated a consumer protection by the Chief
3507 Financial Officer ~~Insurance Commissioner~~, but not inconsistent
3508 with the requirements of Subtitle C of the Gramm-Leach-Bliley
3509 Act, 15 U.S.C.A. ss. 6751 et seq.

3510 Section 43. Paragraph (a) of subsection (1) of section



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3511 626.112, Florida Statutes, is amended to read:

3512 626.112 License and appointment required; agents, customer
 3513 representatives, adjusters, insurance agencies, service
 3514 representatives, managing general agents.--

3515 (1)(a) No person may be, act as, or advertise or hold
 3516 himself or herself out to be an insurance agent, or customer
 3517 representative, ~~or adjuster~~ unless he or she is currently
 3518 licensed by the department and appointed by one or more
 3519 insurers. No person may be, act as, or advertise or hold himself
 3520 or herself out to be an insurance adjuster unless he or she is
 3521 currently licensed by the office and appointed by one or more
 3522 insurers.

3523

3524 However, an employee leasing company licensed pursuant to
 3525 chapter 468 which is seeking to enter into a contract with an
 3526 employer that identifies products and services offered to
 3527 employees may deliver proposals for the purchase of employee
 3528 leasing services to prospective clients of the employee leasing
 3529 company setting forth the terms and conditions of doing
 3530 business; classify employees as permitted by s. 468.529; collect
 3531 information from prospective clients and other sources as
 3532 necessary to perform due diligence on the prospective client and
 3533 to prepare a proposal for services; provide and receive
 3534 enrollment forms, plans, and other documents; and discuss or
 3535 explain in general terms the conditions, limitations, options,
 3536 or exclusions of insurance benefit plans available to the client
 3537 or employees of the employee leasing company were the client to
 3538 contract with the employee leasing company. Any advertising
 3539 materials or other documents describing specific insurance
 3540 coverages must identify and be from a licensed insurer or its



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3541 licensed agent or a licensed and appointed agent employed by the
3542 employee leasing company. The employee leasing company may not
3543 advise or inform the prospective business client or individual
3544 employees of specific coverage provisions, exclusions, or
3545 limitations of particular plans. As to clients for which the
3546 employee leasing company is providing services pursuant to s.
3547 468.525(4), the employee leasing company may engage in
3548 activities permitted by ss. 626.7315, 626.7845, and 626.8305,
3549 subject to the restrictions specified in those sections. If a
3550 prospective client requests more specific information concerning
3551 the insurance provided by the employee leasing company, the
3552 employee leasing company must refer the prospective business
3553 client to the insurer or its licensed agent or to a licensed and
3554 appointed agent employed by the employee leasing company.

3555 Section 44. Section 626.161, Florida Statutes, is amended
3556 to read:

3557 626.161 Licensing forms.--The department shall prescribe
3558 and furnish all printed forms required in connection with the
3559 application for issuance of and termination of all licenses and
3560 appointments, except that, with respect to adjusters, the
3561 commission shall prescribe and the office shall furnish such
3562 forms.

3563 Section 45. Subsections (1), (2), and (5) of section
3564 626.171, Florida Statutes, are amended to read:

3565 626.171 Application for license.--

3566 (1) The department or office shall not issue a license as
3567 agent, customer representative, adjuster, insurance agency,
3568 service representative, managing general agent, or reinsurance
3569 intermediary to any person except upon written application
3570 therefor filed with it, qualification therefor, and payment in



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3571 advance of all applicable fees. Any such application shall be
3572 made under the oath of the applicant and be signed by the
3573 applicant. Beginning November 1, 2002, the department shall
3574 accept the uniform application for nonresident agent licensing.
3575 The department may adopt revised versions of the uniform
3576 application by rule.

3577 (2) In the application, the applicant shall set forth:

3578 (a) His or her full name, age, social security number,
3579 residence, and place of business.

3580 (b) Proof that he or she has completed or is in the
3581 process of completing any required prelicensing course.

3582 (c) Whether he or she has been refused or has voluntarily
3583 surrendered or has had suspended or revoked a license to solicit
3584 insurance by the department or by the supervising officials of
3585 any state.

3586 (d) Whether any insurer or any managing general agent
3587 claims the applicant is indebted under any agency contract or
3588 otherwise and, if so, the name of the claimant, the nature of
3589 the claim, and the applicant's defense thereto, if any.

3590 (e) Proof that the applicant meets the requirements for
3591 the type of license for which he or she is applying.

3592 (f) Such other or additional information as the department
3593 or office may deem proper to enable it to determine the
3594 character, experience, ability, and other qualifications of the
3595 applicant to hold himself or herself out to the public as an
3596 insurance representative.

3597 (5) An application for a license as an agent, customer
3598 representative, adjuster, insurance agency, service
3599 representative, managing general agent, or reinsurance
3600 intermediary must be accompanied by a set of the individual



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3601 applicant's fingerprints, or, if the applicant is not an
3602 individual, by a set of the fingerprints of the sole proprietor,
3603 majority owner, partners, officers, and directors, on a form
3604 adopted by rule of the department or commission and accompanied
3605 by the fingerprint processing fee set forth in s. 624.501. The
3606 fingerprints shall be certified by a law enforcement officer.

3607 Section 46. Section 626.181, Florida Statutes, is amended
3608 to read:

3609 626.181 Number of applications for licensure
3610 required.--After a license as agent, customer representative, or
3611 adjuster has been issued to an individual, the same individual
3612 shall not be required to take another examination for a similar
3613 license, regardless, in the case of an agent, of the number of
3614 insurers to be represented by him or her as agent, unless:

3615 (1) Specifically ordered by the department or office to
3616 complete a new application for license; or

3617 (2) During any period of 48 months since the filing of the
3618 original license application, such individual was not appointed
3619 as an agent, customer representative, or adjuster, unless the
3620 failure to be so appointed was due to military service, in which
3621 event the period within which a new application is not required
3622 may, in the discretion of the department or office, be extended
3623 to 12 months following the date of discharge from military
3624 service if the military service does not exceed 3 years, but in
3625 no event to extend under this clause for a period of more than 6
3626 years from the date of filing of the original application for
3627 license.

3628 Section 47. Section 626.191, Florida Statutes, is amended
3629 to read:

3630 626.191 Repeated applications.--The failure of an



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3631 applicant to secure a license upon an application shall not
 3632 preclude him or her from applying again as many times as
 3633 desired, but the department or office shall not give
 3634 consideration to or accept any further application by the same
 3635 individual for a similar license dated or filed within 30 days
 3636 subsequent to the date the department or office denied the last
 3637 application, except as provided in s. 626.281.

3638 Section 48. Section 626.201, Florida Statutes, is amended
 3639 to read:

3640 626.201 Investigation.--The department or office may
 3641 propound any reasonable interrogatories in addition to those
 3642 contained in the application, to any applicant for license or
 3643 appointment, or on any renewal, reinstatement, or continuation
 3644 thereof, relating to his or her qualifications, residence,
 3645 prospective place of business, and any other matter which, in
 3646 the opinion of the department or office, is deemed necessary or
 3647 advisable for the protection of the public and to ascertain the
 3648 applicant's qualifications. The department or office may, upon
 3649 completion of the application, make such further investigation
 3650 as it may deem advisable of the applicant's character,
 3651 experience, background, and fitness for the license or
 3652 appointment. Such an inquiry or investigation shall be in
 3653 addition to any examination required to be taken by the
 3654 applicant as hereinafter in this chapter provided.

3655 Section 49. Section 626.202, Florida Statutes, is amended
 3656 to read:

3657 626.202 Fingerprinting requirements.--If there is a change
 3658 in ownership or control of any entity licensed under this
 3659 chapter, or if a new partner, officer, or director is employed
 3660 or appointed, a set of fingerprints of the new owner, partner,



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3661 officer, or director must be filed with the department or office
 3662 within 30 days after the change. The acquisition of 10 percent
 3663 or more of the voting securities of a licensed entity is
 3664 considered a change of ownership or control. The fingerprints
 3665 must be certified by a law enforcement officer and be
 3666 accompanied by the fingerprint processing fee in s. 624.501.

3667 Section 50. Section 626.211, Florida Statutes, is amended
 3668 to read:

3669 626.211 Approval, disapproval of application.--

3670 (1) If upon the basis of a completed application for
 3671 license and such further inquiry or investigation as the
 3672 department or office may make concerning an applicant the
 3673 department or office is satisfied that, subject to any
 3674 examination required to be taken and passed by the applicant for
 3675 a license, the applicant is qualified for the license applied
 3676 for and that all pertinent fees have been paid, it shall approve
 3677 the application. The department or office shall not deny,
 3678 delay, or withhold approval of an application due to the fact
 3679 that it has not received a criminal history report based on the
 3680 applicant's fingerprints.

3681 (2) Upon approval of an applicant for license as agent,
 3682 customer representative, or adjuster who is subject to written
 3683 examination, the department or office shall notify the applicant
 3684 when and where he or she may take the required examination.

3685 (3) Upon approval of an applicant for license who is not
 3686 subject to examination, the department or office shall promptly
 3687 issue the license.

3688 (4) If upon the basis of the completed application and
 3689 such further inquiry or investigation the department or office
 3690 deems the applicant to be lacking in any one or more of the



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3691 required qualifications for the license applied for, the
3692 department or office shall disapprove the application and notify
3693 the applicant, stating the grounds of disapproval.

3694 Section 51. Section 626.221, Florida Statutes, is amended
3695 to read:

3696 626.221 Examination requirement; exemptions.--

3697 (1) The department or office shall not issue any license
3698 as agent, customer representative, or adjuster to any individual
3699 who has not qualified for, taken, and passed to the satisfaction
3700 of the department or office a written examination of the scope
3701 prescribed in s. 626.241.

3702 (2) However, no such examination shall be necessary in any
3703 of the following cases:

3704 (a) An applicant for renewal of appointment as an agent,
3705 customer representative, or adjuster, unless the department or
3706 office determines that an examination is necessary to establish
3707 the competence or trustworthiness of such applicant.

3708 (b) An applicant for limited license as agent for personal
3709 accident insurance, baggage and motor vehicle excess liability
3710 insurance, credit life or disability insurance, credit
3711 insurance, credit property insurance, in-transit and storage
3712 personal property insurance, or communications equipment
3713 property insurance or communication equipment inland marine
3714 insurance.

3715 (c) In the discretion of the department or office, an
3716 applicant for reinstatement of license or appointment as an
3717 agent, customer representative, or adjuster whose license has
3718 been suspended within 2 years prior to the date of application
3719 or written request for reinstatement.

3720 (d) An applicant who, within 2 years prior to application



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3721 for license and appointment as an agent, customer
3722 representative, or adjuster, was a full-time salaried employee
3723 of the department or office and had continuously been such an
3724 employee with responsible insurance duties for not less than 2
3725 years and who had been a licensee within 2 years prior to
3726 employment by the department or office with the same class of
3727 license as that being applied for.

3728 (e) An individual who qualified as a managing general
3729 agent, service representative, customer representative, or all-
3730 lines adjuster by passing a general lines agent's examination
3731 and subsequently was licensed and appointed and has been
3732 actively engaged in all lines of property and casualty insurance
3733 may, upon filing an application for appointment, be licensed and
3734 appointed as a general lines agent for the same kinds of
3735 business without taking another examination if he or she holds
3736 any such currently effective license referred to in this
3737 paragraph or held the license within 24 months prior to the date
3738 of filing the application with the department.

3739 (f) A person who has been licensed and appointed ~~by the~~
3740 ~~department~~ as a public adjuster or independent adjuster, or
3741 licensed and appointed either as an agent or company adjuster as
3742 to all property, casualty, and surety insurances, may be
3743 licensed and appointed as a company adjuster as to any of such
3744 insurances, or as an independent adjuster or public adjuster,
3745 without additional written examination if an application for
3746 appointment is filed with the office ~~department~~ within 24 months
3747 following the date of cancellation or expiration of the prior
3748 appointment.

3749 (g) A person who has been licensed ~~by the department~~ as an
3750 adjuster for motor vehicle, property and casualty, workers'



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3751 compensation, and health insurance may be licensed as such an
 3752 adjuster without additional written examination if his or her
 3753 application for appointment is filed with the office ~~department~~
 3754 within 24 months after cancellation or expiration of the prior
 3755 license.

3756 (h) An applicant for temporary license, except as provided
 3757 in this code.

3758 (i) An applicant for a life or health license who has
 3759 received the designation of chartered life underwriter (CLU)
 3760 from the American College of Life Underwriters and who has been
 3761 engaged in the insurance business within the past 4 years,
 3762 except that such an individual may be examined on pertinent
 3763 provisions of this code.

3764 (j) An applicant for license as a general lines agent,
 3765 customer representative, or adjuster who has received the
 3766 designation of chartered property and casualty underwriter
 3767 (CPCU) from the American Institute for Property and Liability
 3768 Underwriters and who has been engaged in the insurance business
 3769 within the past 4 years, except that such an individual may be
 3770 examined on pertinent provisions of this code.

3771 (k) An applicant for license as a customer representative
 3772 who has the designation of Accredited Advisor in Insurance (AAI)
 3773 from the Insurance Institute of America, the designation of
 3774 Certified Insurance Counselor (CIC) from the Society of
 3775 Certified Insurance Service Counselors, the designation of
 3776 Accredited Customer Service Representative (ACSR) from the
 3777 Independent Insurance Agents of America, the designation of
 3778 Certified Professional Service Representative (CPSR) from the
 3779 National Association of Professional Insurance Agents, the
 3780 designation of Certified Insurance Service Representative (CISR)



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3781 from the Society of Certified Insurance Service Representatives.
 3782 Also, an applicant for license as a customer representative who
 3783 has the designation of Certified Customer Service Representative
 3784 (CCSR) from the Florida Association of Insurance Agents, or the
 3785 designation of Registered Customer Service Representative (RCSR)
 3786 from a regionally accredited postsecondary institution in this
 3787 state, or the designation of Professional Customer Service
 3788 Representative (PCSR) from the Professional Career Institute,
 3789 whose curriculum has been approved by the department and whose
 3790 curriculum includes comprehensive analysis of basic property and
 3791 casualty lines of insurance and testing at least equal to that
 3792 of standard department testing for the customer representative
 3793 license. The department shall adopt rules establishing standards
 3794 for the approval of curriculum.

3795 (l) An applicant for license as an adjuster who has the
 3796 designation of Accredited Claims Adjuster (ACA) from a
 3797 regionally accredited postsecondary institution in this state,
 3798 or the designation of Professional Claims Adjuster (PCA) from the
 3799 Professional Career Institute, whose curriculum has been
 3800 approved by the office ~~department~~ and whose curriculum includes
 3801 comprehensive analysis of basic property and casualty lines of
 3802 insurance and testing at least equal to that of standard office
 3803 ~~department~~ testing for the all-lines adjuster license. The
 3804 commission ~~department~~ shall adopt rules establishing standards
 3805 for the approval of curriculum.

3806 (m) An applicant qualifying for a license transfer under
 3807 s. 626.292, if the applicant:

- 3808 1. Has successfully completed the prelicensing examination
- 3809 requirements in the applicant's previous state which are
- 3810 substantially equivalent to the examination requirements in this



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3811 state, as determined by the department ~~Insurance Commissioner of~~
 3812 ~~this state~~;

3813 2. Has received the designation of chartered property and
 3814 casualty underwriter (CPCU) from the American Institute for
 3815 Property and Liability Underwriters and has been engaged in the
 3816 insurance business within the past 4 years if applying to
 3817 transfer a general lines agent license; or

3818 3. Has received the designation of chartered life
 3819 underwriter (CLU) from the American College of Life Underwriters
 3820 and has been engaged in the insurance business within the past 4
 3821 years, if applying to transfer a life or health agent license.

3822 (n) An applicant for a nonresident agent license, if the
 3823 applicant:

3824 1. Has successfully completed prelicensing examination
 3825 requirements in the applicant's home state which are
 3826 substantially equivalent to the examination requirements in this
 3827 state, as determined by the department ~~Insurance Commissioner of~~
 3828 ~~this state~~, as a requirement for obtaining a resident license in
 3829 his or her home state;

3830 2. Held a general lines agent license, life agent license,
 3831 or health agent license prior to the time a written examination
 3832 was required;

3833 3. Has received the designation of chartered property and
 3834 casualty underwriter (CPCU) from the American Institute for
 3835 Property and Liability Underwriters and has been engaged in the
 3836 insurance business within the past 4 years, if an applicant for
 3837 a nonresident license as a general lines agent; or

3838 4. Has received the designation of chartered life
 3839 underwriter (CLU) from the American College of Life Underwriters
 3840 and has been in the insurance business within the past 4 years,



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3841 if an applicant for a nonresident license as a life agent or
3842 health agent.

3843 (3) An individual who is already licensed as a customer
3844 representative shall not be licensed as a general lines agent
3845 without application and examination for such license.

3846 Section 52. Section 626.231, Florida Statutes, is amended
3847 to read:

3848 626.231 Eligibility for examination.--No person shall be
3849 permitted to take an examination for license until his or her
3850 application for the license has been approved and the required
3851 fees have been received by the department or office or a person
3852 designated by the department or office to administer the
3853 examination.

3854 Section 53. Subsection (1) of section 626.241, Florida
3855 Statutes, is amended to read:

3856 626.241 Scope of examination.--

3857 (1) Each examination for a license as agent, customer
3858 representative, or adjuster shall be of such scope as is deemed
3859 by the department or office to be reasonably necessary to test
3860 the applicant's ability and competence and knowledge of the
3861 kinds of insurance and transactions to be handled under the
3862 license applied for, of the duties and responsibilities of such
3863 a licensee, and of the pertinent provisions of the laws of this
3864 state.

3865 Section 54. Section 626.251, Florida Statutes, is amended
3866 to read:

3867 626.251 Time and place of examination; notice.--

3868 (1) The department or office or a person designated by the
3869 department or office shall mail written notice of the time and
3870 place of the examination to each applicant for license required



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3871 to take an examination who will be eligible to take the
3872 examination as of the examination date. The notice shall be so
3873 mailed, postage prepaid, and addressed to the applicant at his
3874 or her address shown on the application for license or at such
3875 other address as requested by the applicant in writing filed
3876 with the department or office prior to the mailing of the
3877 notice. Notice shall be deemed given when so mailed.

3878 (2) The examination shall be held in an adequate and
3879 designated examination center in this state.

3880 (3) The department or office shall make an examination
3881 available to the applicant, to be taken as soon as reasonably
3882 possible after the applicant is eligible therefor. Any
3883 examination required under this part shall be available in this
3884 state at a designated examination center.

3885 Section 55. Section 626.261, Florida Statutes, is amended
3886 to read:

3887 626.261 Conduct of examination.--

3888 (1) The applicant for license shall appear in person and
3889 personally take the examination for license at the time and
3890 place specified by the department or office or by a person
3891 designated by the department or office.

3892 (2) The examination shall be conducted by an employee of
3893 the department or office or a person designated by the
3894 department or office for that purpose.

3895 (3) The questions propounded shall be as prepared by the
3896 department or office, or by a person designated by the
3897 department or office for that purpose, consistent with the
3898 applicable provisions of this code.

3899 (4) All examinations shall be given and graded in a fair
3900 and impartial manner and without unfair discrimination in favor



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3901 of or against any particular applicant.

3902 Section 56. Section 626.266, Florida Statutes, is amended
 3903 to read:

3904 626.266 Printing of examinations or related materials to
 3905 preserve examination security.--A contract let for the
 3906 development, administration, or grading of examinations or
 3907 related materials by the department or office ~~of Insurance~~
 3908 pursuant to the various agent, customer representative,
 3909 solicitor, or adjuster licensing and examination provisions of
 3910 this code may include the printing or furnishing of these
 3911 examinations or related materials in order to preserve security.
 3912 Any such contract shall be let as a contract for a contractual
 3913 service pursuant to s. 287.057.

3914 Section 57. Subsection (1) of section 626.271, Florida
 3915 Statutes, is amended to read:

3916 626.271 Examination fee; determination, refund.--

3917 (1) Prior to being permitted to take an examination, each
 3918 applicant who is subject to examination shall pay to the
 3919 department or office or a person designated by the department or
 3920 office an examination fee. A separate and additional
 3921 examination fee shall be payable for each separate class of
 3922 license applied for, notwithstanding that all such examinations
 3923 are taken on the same date and at the same place.

3924 Section 58. Section 626.281, Florida Statutes, is amended
 3925 to read:

3926 626.281 Reexamination.--

3927 (1) Any applicant for license who has either:

3928 (a) Taken an examination and failed to make a passing
 3929 grade, or

3930 (b) Failed to appear for the examination or to take or



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3931 complete the examination at the time and place specified in the
 3932 notice of the department or office,

3933

3934

3935 may take additional examinations, after filing with the
 3936 department or office an application for reexamination together
 3937 with applicable fees. The failure of an applicant to pass an
 3938 examination or the failure to appear for the examination or to
 3939 take or complete the examination does not preclude the applicant
 3940 from taking subsequent examinations.

3941 (2) The department or office may require any individual
 3942 whose license as an agent, customer representative, or adjuster
 3943 has expired or has been suspended to pass an examination prior
 3944 to reinstating or relicensing the individual as to any class of
 3945 license. The examination fee shall be paid as to each
 3946 examination.

3947 Section 59. Subsections (5) and (6) of section 626.2815,
 3948 Florida Statutes, are amended to read:

3949 626.2815 Continuing education required; application;
 3950 exceptions; requirements; penalties.--

3951 (5) The department ~~of Insurance~~ shall refuse to renew the
 3952 appointment of any agent who has not had his or her continuing
 3953 education requirements certified unless the agent has been
 3954 granted an extension by the department. The department may not
 3955 issue a new appointment of the same or similar type, with any
 3956 insurer, to an agent who was denied a renewal appointment for
 3957 failure to complete continuing education as required until the
 3958 agent completes his or her continuing education requirement.

3959 (6)(a) There is created an 11-member continuing education
 3960 advisory board to be appointed by the Chief Financial Officer



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3961 ~~Insurance Commissioner and Treasurer.~~ Appointments shall be for
 3962 terms of 4 years. The purpose of the board is to advise the
 3963 department in determining standards by which courses may be
 3964 evaluated and categorized as basic, intermediate, or advanced.
 3965 ~~The board shall establish such criteria and the department shall~~
 3966 ~~implement such criteria by January 1, 1997.~~ The board shall
 3967 submit recommendations to the department of changes needed in
 3968 such criteria not less frequently than every 2 years thereafter.
 3969 The department shall require all approved course providers to
 3970 submit courses for approval to the department using the
 3971 criteria. All materials, brochures, and advertisements related
 3972 to the approved courses must specify the level assigned to the
 3973 course.

3974 (b) The board members shall be appointed as follows:

3975 1. Seven members representing agents of which at least one
 3976 must be a representative from each of the following
 3977 organizations: the Florida Association of Insurance Agents; the
 3978 Florida Association of Life Underwriters; the Professional
 3979 Insurance Agents of Florida, Inc.; the Florida Association of
 3980 Health Underwriters; the Specialty Agents' Association; the
 3981 Latin American Agents' Association; and the National Association
 3982 of Insurance Women. Such board members must possess at least a
 3983 bachelor's degree or higher from an accredited college or
 3984 university with major coursework in insurance, risk management,
 3985 or education or possess the designation of CLU, CPCU, CHFC, CFP,
 3986 AAI, or CIC. In addition, each member must possess 5 years of
 3987 classroom instruction experience or 5 years of experience in the
 3988 development or design of educational programs or 10 years of
 3989 experience as a licensed resident agent. Each organization may
 3990 submit to the department a list of recommendations for



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3991 appointment. If one organization does not submit a list of
 3992 recommendations, the Chief Financial Officer ~~Insurance~~
 3993 ~~Commissioner~~ may select more than one recommended person from a
 3994 list submitted by other eligible organizations.

3995 2. Two members representing insurance companies at least
 3996 one of whom must represent a Florida Domestic Company and one of
 3997 whom must represent the Florida Insurance Council. Such board
 3998 members must be employed within the training department of the
 3999 insurance company. At least one such member must be a member of
 4000 the Society of Insurance Trainers and Educators.

4001 3. One member representing the general public who is not
 4002 directly employed in the insurance industry. Such board member
 4003 must possess a minimum of a bachelor's degree or higher from an
 4004 accredited college or university with major coursework in
 4005 insurance, risk management, training, or education.

4006 4. One member, appointed by the Chief Financial Officer
 4007 ~~Insurance Commissioner~~, who represents the department.

4008 (c) The members of the board shall serve at the pleasure
 4009 of the Chief Financial Officer ~~Insurance Commissioner and~~
 4010 ~~Treasurer~~. Each board member shall be entitled to reimbursement
 4011 for expenses pursuant to s. 112.061. The board shall designate
 4012 one member as chair. The board shall meet at the call of the
 4013 chair or the Chief Financial Officer ~~Insurance Commissioner and~~
 4014 ~~Treasurer~~.

4015 Section 60. Section 626.2817, Florida Statutes, is amended
 4016 to read:

4017 626.2817 Regulation of course providers, instructors,
 4018 school officials, and monitor groups involved in prelicensure
 4019 education for insurance agents and other licensees.--

4020 (1) Any course provider, instructor, school official, or



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4021 monitor group must be approved by and registered with the
4022 department or office before offering prelicensure education
4023 courses for insurance agents and other licensees.

4024 (2) The department or commission shall adopt rules
4025 establishing standards for the approval, registration,
4026 discipline, or removal from registration of course providers,
4027 instructors, school officials, and monitor groups. The standards
4028 must be designed to ensure that such persons have the knowledge,
4029 competence, and integrity to fulfill the educational objectives
4030 of the prelicensure requirements of this chapter and chapter 648
4031 and to assure that insurance agents and licensees are competent
4032 to engage in the activities authorized under the license.

4033 (3) The department or commission shall adopt rules to
4034 establish a process for determining compliance with the
4035 prelicensure requirements of this chapter and chapter 648 and
4036 shall establish a prelicensure cycle for insurance agents and
4037 other licensees. The department or commission shall adopt rules
4038 prescribing the forms necessary to administer the prelicensure
4039 requirements.

4040 Section 61. Section 626.291, Florida Statutes, is amended
4041 to read:

4042 626.291 Denial, issuance of license.--

4043 (1) Within 30 days after the applicant has completed any
4044 examination required under s. 626.221, the department or office
4045 or its designee shall provide a score report; and, if it finds
4046 that the applicant has received a passing grade, the department
4047 or office shall within such period notify the applicant and
4048 issue and transmit the license to which such examination
4049 related. If it finds that the applicant did not make a passing
4050 grade on the examination for a particular license, the



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4051 department or office or its designee shall within this period
4052 provide notice to the applicant to that effect and of its denial
4053 of the license.

4054 (2) As to an applicant for a license for which no
4055 examination is required, the department or office shall promptly
4056 issue the license applied for as soon as it has approved the
4057 application.

4058 (3) The department or office shall not deny, delay, or
4059 withhold issuance of a license due to the fact that it has not
4060 received a criminal history report based on the applicant's
4061 fingerprints.

4062 Section 62. Paragraph (d) of subsection (2) of section
4063 626.292, Florida Statutes, is amended to read:

4064 626.292 Transfer of license from another state.--

4065 (2) To qualify for a license transfer, an individual
4066 applicant must meet the following requirements:

4067 (d) The individual shall satisfy prelicensing education
4068 requirements in this state, unless the completion of
4069 prelicensing education requirements was a prerequisite for
4070 licensure in the other state and the prelicensing education
4071 requirements in the other state are substantially equivalent to
4072 the prelicensing requirements of this state as determined by the
4073 department ~~Insurance Commissioner of this state.~~

4074 Section 63. Section 626.301, Florida Statutes, is amended
4075 to read:

4076 626.301 Form and contents of licenses, in general.--Each
4077 license issued by the department or office shall be in such form
4078 as the department or commission may designate and contain the
4079 licensee's name, lines of authority the licensee is authorized
4080 to transact, the licensee's personal identification number, the



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4081 date of issuance, and any other information the department or
 4082 commission deems necessary to fully identify the licensee and
 4083 the authority being granted. The department or commission may by
 4084 rule require photographs of applicants as a part of the
 4085 licensing process.

4086 Section 64. Section 626.322, Florida Statutes, is amended
 4087 to read:

4088 626.322 License, appointment; certain military
 4089 installations.--A natural person, not a resident of this state,
 4090 may be licensed and appointed to represent an authorized life
 4091 insurer domiciled in this state or an authorized foreign life
 4092 insurer which maintains a regional home office in this state,
 4093 provided such person represents such insurer exclusively at a
 4094 United States military installation located in a foreign
 4095 country. The department may, upon request of the applicant and
 4096 the insurer on application forms furnished by the department and
 4097 upon payment of fees as prescribed in s. 624.501, issue a
 4098 license and appointment to such person. The insurer shall
 4099 certify to the department that the applicant has the necessary
 4100 training to hold himself or herself out as a life insurance
 4101 representative, and the insurer shall further certify that it is
 4102 willing to be bound by the acts of such applicant within the
 4103 scope of his or her employment. Appointments shall be continued
 4104 as prescribed in s. 626.381 and upon payment of a fee as
 4105 prescribed in s. 624.501, unless sooner terminated. Such fees
 4106 received shall be credited to the Insurance ~~Commissioner's~~
 4107 Regulatory Trust Fund as provided for in s. 624.523.

4108 Section 65. Section 626.361, Florida Statutes, is amended
 4109 to read:

4110 626.361 Effective date of appointments.--All appointments



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4111 shall be submitted to the department or office on a monthly
4112 basis no later than 45 days after the date of appointment. All
4113 appointments shall be effective as of the date requested on the
4114 appointment form.

4115 Section 66. Section 626.371, Florida Statutes, is amended
4116 to read:

4117 626.371 Payment of fees, taxes for appointment period
4118 without appointment.--If, upon application and qualification for
4119 an appointment and such investigation as the department or
4120 office may make, it appears to the department or office that an
4121 individual who was formerly appointed has been actively engaged
4122 or is currently actively engaged as such an appointee, but
4123 without being appointed as required, the department or office
4124 may, if it finds that such failure to be appointed was an
4125 inadvertent error on the part of the insurer or employer so
4126 represented, nevertheless issue the appointment as applied for
4127 but subject to the condition that, before the appointment is
4128 issued, all fees and taxes which would have been due had the
4129 applicant been so appointed during such current and prior
4130 periods, together with a continuation fee for such current and
4131 prior terms of appointment, shall be paid to the department or
4132 office.

4133 Section 67. Subsections (2), (3), and (4), of section
4134 626.381, Florida Statutes, are amended to read:

4135 626.381 Renewal, continuation, reinstatement, or
4136 termination of appointment.--

4137 (2) Each appointing entity shall file with the department
4138 or office the lists, statements, and information as to
4139 appointees whose appointments are being renewed or terminated,
4140 accompanied by payment of the applicable renewal fees and taxes



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4141 as prescribed in s. 624.501, by a date set forth by the
 4142 department or office following the month during which the
 4143 appointments will expire.

4144 (3) Renewal of an appointment which is received on a date
 4145 set forth by the department or office in the succeeding month
 4146 may be renewed by the department or office without penalty and
 4147 shall be effective as of the day the appointment would have
 4148 expired.

4149 (4) Renewal of an appointment which is received by the
 4150 department or office after the date set by the department or
 4151 office may be accepted and effectuated by the department or
 4152 office in its discretion if an additional appointment,
 4153 continuation, and reinstatement fee accompanies the renewal
 4154 pursuant to s. 624.501.

4155 Section 68. Subsection (2) of section 626.431, Florida
 4156 Statutes, is amended to read:

4157 626.431 Effect of expiration of license and appointment.--

4158 (2) When a licensee's last appointment for a particular
 4159 class of insurance has been terminated or not renewed, the
 4160 department or office must notify the licensee that his or her
 4161 eligibility for appointment as such an appointee will expire
 4162 unless he or she is appointed prior to expiration of the 48-
 4163 month period referred to in subsection (3).

4164 Section 69. Section 626.451, Florida Statutes, is amended
 4165 to read:

4166 626.451 Appointment of agent or other representative.--

4167 (1) Each appointing entity appointing an agent, adjuster,
 4168 service representative, customer representative, or managing
 4169 general agent in this state shall file the appointment with the
 4170 department or office and, at the same time, pay the applicable



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4171 appointment fee and taxes. Every appointment shall be subject
4172 to the prior issuance of the appropriate agent's, adjuster's,
4173 service representative's, customer representative's, or managing
4174 general agent's license.

4175 (2) As a part of each appointment there shall be a
4176 certified statement or affidavit of an appropriate officer or
4177 official of the appointing entity stating what investigation the
4178 appointing entity has made concerning the proposed appointee and
4179 his or her background and the appointing entity's opinion to the
4180 best of its knowledge and belief as to the moral character,
4181 fitness, and reputation of the proposed appointee and any other
4182 information the department or office may reasonably require
4183 relative to the proposed appointee.

4184 (3) In the appointment of an agent, adjuster, service
4185 representative, customer representative, or managing general
4186 agent the appointing entity shall also certify therein that it
4187 is willing to be bound by the acts of the agent, adjuster,
4188 service representative, customer representative, or managing
4189 general agent, within the scope of his or her employment.

4190 (4) Each appointing entity shall advise the department or
4191 office in writing within 15 days after it or its general agent,
4192 officer, or other official becomes aware that an appointee has
4193 pleaded guilty or nolo contendere to or has been found guilty of
4194 a felony after being appointed.

4195 (5) Any law enforcement agency or state attorney's office
4196 that is aware that an agent, adjuster, service representative,
4197 customer representative, or managing general agent has pleaded
4198 guilty or nolo contendere to or has been found guilty of a
4199 felony shall notify the department or office of such fact.

4200 (6) Upon the filing of an information or indictment



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4201 against an agent, adjuster, service representative, customer
 4202 representative, or managing general agent, the state attorney
 4203 shall immediately furnish the department or office a certified
 4204 copy of the information or indictment.

4205 Section 70. Section 626.461, Florida Statutes, is amended
 4206 to read:

4207 626.461 Continuation of appointment of agent or other
 4208 representative.--Subject to renewal or continuation by the
 4209 appointing entity, the appointment of the agent, adjuster,
 4210 solicitor, service representative, customer representative, or
 4211 managing general agent shall continue in effect until the
 4212 person's license is revoked or otherwise terminated, unless
 4213 written notice of earlier termination of the appointment is
 4214 filed with the department or office by either the appointing
 4215 entity or the appointee.

4216 Section 71. Subsections (2), (3), (4), and (5) of section
 4217 626.471, Florida Statutes, are amended to read:

4218 626.471 Termination of appointment.--

4219 (2) As soon as possible and at all events within 30 days
 4220 after terminating the appointment of an appointee, other than as
 4221 to an appointment terminated by the appointing entity's failure
 4222 to continue or renew it, the appointing entity shall file
 4223 written notice thereof with the department or office, together
 4224 with a statement that it has given the appointee notice thereof
 4225 as provided in subsection (1) and shall file with the department
 4226 or office the reasons and facts involved in such termination as
 4227 required under s. 626.511.

4228 (3) Upon termination of the appointment of an appointee,
 4229 whether by failure to renew or continue the appointment, the
 4230 appointing entity shall:



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4231 (a) File with the department or office the information
4232 required under s. 626.511.

4233 (b) Subject to the exceptions provided under subsection
4234 (1), continue the outstanding contracts transacted by an agent
4235 until the expiration date or anniversary date when the policy is
4236 a continuous policy with no expiration date. This paragraph
4237 shall not be construed to prohibit the cancellation of such
4238 contracts when not otherwise prohibited by law.

4239 (4) An appointee may terminate the appointment at any time
4240 by giving written notice thereof to the appointing entity and
4241 filing a copy of the notice with the department or office. Such
4242 termination shall be subject to the appointee's contract rights,
4243 if any.

4244 (5) Upon receiving notice of termination, the department
4245 or office shall terminate the appointment.

4246 Section 72. Section 626.511, Florida Statutes, is amended
4247 to read:

4248 626.511 Reasons for termination; confidential
4249 information.--

4250 (1) Any insurer terminating the appointment of an agent;
4251 any general lines agent terminating the appointment of a
4252 customer representative or a crop hail or multiple-peril crop
4253 insurance agent; and any employer terminating the appointment of
4254 an adjuster, service representative, or managing general agent,
4255 whether such termination is by direct action of the appointing
4256 insurer, agent, or employer or by failure to renew or continue
4257 the appointment as provided, shall file with the department or
4258 office a statement of the reasons, if any, for and the facts
4259 relative to such termination. In the case of termination of the
4260 appointment of an agent, such information may be filed by the



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4261 insurer or by the general agent of the insurer.

4262 (2) In the case of terminations by failure to renew or
 4263 continue the appointment, the information required under
 4264 subsection (1) shall be filed with the department or office as
 4265 soon as possible, and at all events within 30 days, after the
 4266 date notice of intention not to so renew or continue was filed
 4267 with the department or office as required in this chapter. In
 4268 all other cases, the information required under subsection (1)
 4269 shall be filed with the department or office at the time, or at
 4270 all events within 10 days after, notice of the termination was
 4271 filed with the department or office.

4272 (3) Any information, document, record, or statement
 4273 furnished to the department or office under subsection (1) is
 4274 confidential and exempt from the provisions of s. 119.07(1).

4275 Section 73. Subsections (2), (3), and (5) of section
 4276 626.521, Florida Statutes, are amended to read:

4277 626.521 Character, credit reports.--

4278 (2) If requested by the department or office, the insurer,
 4279 manager, general agent, general lines agent, or employer, as the
 4280 case may be, shall furnish to the department or office on a form
 4281 adopted by the department or commission and furnished by the
 4282 department or office, such information as it may reasonably
 4283 require relative to such individual and investigation.

4284 (3) As to an applicant for an adjuster's or reinsurance
 4285 intermediary's license who is to be self-employed, the
 4286 department or office may secure, at the cost of the applicant, a
 4287 full detailed credit and character report made by an established
 4288 and reputable independent reporting service relative to the
 4289 applicant.

4290 (5) Information contained in credit or character reports



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4291 furnished to or secured by the department or office under this
 4292 section is confidential and exempt from the provisions of s.
 4293 119.07(1).

4294 Section 74. Subsections (1) and (2) of section 626.541,
 4295 Florida Statutes, are amended to read:

4296 626.541 Firm, corporate, and business names; officers;
 4297 associates; notice of changes.--

4298 (1) Any licensed agent or adjuster doing business under a
 4299 firm or corporate name or under any business name other than his
 4300 or her own individual name shall, within 30 days after the
 4301 initial transaction of insurance under such business name, file
 4302 with the department or office, on forms adopted by the
 4303 department or commission and furnished by the department or
 4304 office ~~it~~, a written statement of the firm, corporate, or
 4305 business name being so used, the address of any office or
 4306 offices or places of business making use of such name, and the
 4307 name and social security number of each officer and director of
 4308 the corporation and of each individual associated in such firm
 4309 or corporation as to the insurance transactions thereof or in
 4310 the use of such business name.

4311 (2) In the event of any change of such name, or of any of
 4312 the officers and directors, or of any of such addresses, or in
 4313 the personnel so associated, written notice of such change must
 4314 be filed with the department or office within 30 days by or on
 4315 behalf of those licensees terminating any such firm, corporate,
 4316 or business name or continuing to operate thereunder.

4317 Section 75. Section 626.551, Florida Statutes, is amended
 4318 to read:

4319 626.551 Notice of change of address, name.--Every licensee
 4320 shall notify the department or office in writing within 60 days



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4321 after a change of name, residence address, principal business
4322 street address, or mailing address. Any licensed agent who has
4323 moved his or her residence from this state shall have his or her
4324 license and all appointments immediately terminated by the
4325 department or office. Failure to notify the department or office
4326 within the required time period shall result in a fine not to
4327 exceed \$250 for the first offense and, for subsequent offenses,
4328 a fine of not less than \$500 or suspension or revocation of the
4329 license pursuant to s. 626.611 or s. 626.621.

4330 Section 76. Subsections (1) and (2) of section 626.561,
4331 Florida Statutes, are amended to read:

4332 626.561 Reporting and accounting for funds.--

4333 (1) All premiums, return premiums, or other funds
4334 belonging to insurers or others received by an agent, customer
4335 representative, or adjuster in transactions under his or her
4336 license are trust funds received by the licensee in a fiduciary
4337 capacity. An agent shall keep the funds belonging to each
4338 insurer for which he or she is not appointed, other than a
4339 surplus lines insurer, in a separate account so as to allow the
4340 department or office to properly audit such funds. The licensee
4341 in the applicable regular course of business shall account for
4342 and pay the same to the insurer, insured, or other person
4343 entitled thereto.

4344 (2) The licensee shall keep and make available to the
4345 department or office books, accounts, and records as will enable
4346 the department or office to determine whether such licensee is
4347 complying with the provisions of this code. Every licensee shall
4348 preserve books, accounts, and records pertaining to a premium
4349 payment for at least 3 years after payment; provided, however,
4350 the preservation of records by computer or photographic



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4351 reproductions or records in photographic form shall constitute
 4352 compliance with this requirement. All other records shall be
 4353 maintained in accordance with s. 626.748. The 3-year
 4354 requirement shall not apply to insurance binders when no policy
 4355 is ultimately issued and no premium is collected.

4356 Section 77. Section 626.591, Florida Statutes, is amended
 4357 to read:

4358 626.591 Penalty for violation of s. 626.581.--

4359 (1) If any ~~insurer or~~ agent is found by the department to
 4360 be in violation of s. 626.581, the department may, in its
 4361 discretion, suspend or revoke ~~the insurer's certificate of~~
 4362 ~~authority and~~ the agent's license. If any insurer is found by
 4363 the office to be in violation of s. 626.581, the office may, in
 4364 its discretion, suspend or revoke the insurer's certificate of
 4365 authority.

4366 (2) Any such suspension or revocation shall be for a
 4367 period of not less than 6 months, and the insurer or agent shall
 4368 not subsequently be authorized or licensed to transact insurance
 4369 unless the office or department is satisfied that the insurer or
 4370 agent will not again violate any of the provisions of s.
 4371 626.581.

4372 Section 78. Subsection (1) of section 626.592, Florida
 4373 Statutes, is amended to read:

4374 626.592 Primary agents.--

4375 (1) Each person operating an insurance agency and each
 4376 location of a multiple location agency shall designate a primary
 4377 agent for each insurance agency location and shall file the name
 4378 of the person so designated, and the address of the insurance
 4379 agency location where he or she is primary agent, with the
 4380 department ~~of Insurance~~, on a form approved by the department.



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4381 The designation of the primary agent may be changed at the
4382 option of the agency, and any change shall be effective upon
4383 notification to the department. Notice of change must be sent to
4384 the department within 30 days after such change.

4385 Section 79. Section 626.601, Florida Statutes, is amended
4386 to read:

4387 626.601 Improper conduct; inquiry; fingerprinting.--

4388 (1) The department or office may, upon its own motion or
4389 upon a written complaint signed by any interested person and
4390 filed with the department or office, inquire into any alleged
4391 improper conduct of any licensed agent, adjuster, service
4392 representative, managing general agent, customer representative,
4393 title insurance agent, title insurance agency, continuing
4394 education course provider, instructor, school official, or
4395 monitor group under this code. The department or office may
4396 thereafter initiate an investigation of any such licensee if it
4397 has reasonable cause to believe that the licensee has violated
4398 any provision of the insurance code. During the course of its
4399 investigation, the department or office shall contact the
4400 licensee being investigated unless it determines that contacting
4401 such person could jeopardize the successful completion of the
4402 investigation or cause injury to the public.

4403 (2) In the investigation by the department or office of
4404 the alleged misconduct, the licensee shall, whenever so required
4405 by the department or office, cause his or her books and records
4406 to be open for inspection for the purpose of such inquiries.

4407 (3) The complaints against any licensee may be informally
4408 alleged and need not be in any such language as is necessary to
4409 charge a crime on an indictment or information.

4410 (4) The expense for any hearings or investigations under



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4411 this law, as well as the fees and mileage of witnesses, may be
4412 paid out of the appropriate fund.

4413 (5) If the department or office, after investigation, has
4414 reason to believe that a licensee may have been found guilty of
4415 or pleaded guilty or nolo contendere to a felony or a crime
4416 related to the business of insurance in this or any other state
4417 or jurisdiction, the department or office may require the
4418 licensee to file with the department or office a complete set of
4419 his or her fingerprints, which shall be accompanied by the
4420 fingerprint processing fee set forth in s. 624.501. The
4421 fingerprints shall be certified by an authorized law enforcement
4422 officer.

4423 (6) The complaint and any information obtained pursuant to
4424 the investigation by the department or office are confidential
4425 and are exempt from the provisions of s. 119.07, unless the
4426 department or office files a formal administrative complaint,
4427 emergency order, or consent order against the licensee. Nothing
4428 in this subsection shall be construed to prevent the department
4429 or office from disclosing the complaint or such information as
4430 it deems necessary to conduct the investigation, to update the
4431 complainant as to the status and outcome of the complaint, or to
4432 share such information with any law enforcement agency.

4433 Section 80. Section 626.611, Florida Statutes, is amended
4434 to read:

4435 626.611 Grounds for compulsory refusal, suspension, or
4436 revocation of agent's, title agency's, adjuster's, customer
4437 representative's, service representative's, or managing general
4438 agent's license or appointment.--The department or office shall
4439 deny an application for, suspend, revoke, or refuse to renew or
4440 continue the license or appointment of any applicant, agent,



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4441 title agency, adjuster, customer representative, service
4442 representative, or managing general agent, and it shall suspend
4443 or revoke the eligibility to hold a license or appointment of
4444 any such person, if it finds that as to the applicant, licensee,
4445 or appointee any one or more of the following applicable grounds
4446 exist:

4447 (1) Lack of one or more of the qualifications for the
4448 license or appointment as specified in this code.

4449 (2) Material misstatement, misrepresentation, or fraud in
4450 obtaining the license or appointment or in attempting to obtain
4451 the license or appointment.

4452 (3) Failure to pass to the satisfaction of the department
4453 or office any examination required under this code.

4454 (4) If the license or appointment is willfully used, or to
4455 be used, to circumvent any of the requirements or prohibitions
4456 of this code.

4457 (5) Willful misrepresentation of any insurance policy or
4458 annuity contract or willful deception with regard to any such
4459 policy or contract, done either in person or by any form of
4460 dissemination of information or advertising.

4461 (6) If, as an adjuster, or agent licensed and appointed to
4462 adjust claims under this code, he or she has materially
4463 misrepresented to an insured or other interested party the terms
4464 and coverage of an insurance contract with intent and for the
4465 purpose of effecting settlement of claim for loss or damage or
4466 benefit under such contract on less favorable terms than those
4467 provided in and contemplated by the contract.

4468 (7) Demonstrated lack of fitness or trustworthiness to
4469 engage in the business of insurance.

4470 (8) Demonstrated lack of reasonably adequate knowledge and



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4471 technical competence to engage in the transactions authorized by
 4472 the license or appointment.

4473 (9) Fraudulent or dishonest practices in the conduct of
 4474 business under the license or appointment.

4475 (10) Misappropriation, conversion, or unlawful withholding
 4476 of moneys belonging to insurers or insureds or beneficiaries or
 4477 to others and received in conduct of business under the license
 4478 or appointment.

4479 (11) Unlawfully rebating, attempting to unlawfully rebate,
 4480 or unlawfully dividing or offering to divide his or her
 4481 commission with another.

4482 (12) Having obtained or attempted to obtain, or having
 4483 used or using, a license or appointment as agent or customer
 4484 representative for the purpose of soliciting or handling
 4485 "controlled business" as defined in s. 626.730 with respect to
 4486 general lines agents, s. 626.784 with respect to life agents,
 4487 and s. 626.830 with respect to health agents.

4488 (13) Willful failure to comply with, or willful violation
 4489 of, any proper order or rule of the department, commission, or
 4490 office or willful violation of any provision of this code.

4491 (14) Having been found guilty of or having pleaded guilty
 4492 or nolo contendere to a felony or a crime punishable by
 4493 imprisonment of 1 year or more under the law of the United
 4494 States of America or of any state thereof or under the law of
 4495 any other country which involves moral turpitude, without regard
 4496 to whether a judgment of conviction has been entered by the
 4497 court having jurisdiction of such cases.

4498 (15) Fraudulent or dishonest practice in submitting or
 4499 aiding or abetting any person in the submission of an
 4500 application for workers' compensation coverage under chapter 440



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4501 containing false or misleading information as to employee
4502 payroll or classification for the purpose of avoiding or
4503 reducing the amount of premium due for such coverage.

4504 (16) Sale of an unregistered security that was required to
4505 be registered, pursuant to chapter 517.

4506 Section 81. Section 626.621, Florida Statutes, is amended
4507 to read:

4508 626.621 Grounds for discretionary refusal, suspension, or
4509 revocation of agent's, adjuster's, customer representative's,
4510 service representative's, or managing general agent's license or
4511 appointment.--The department or office may, in its discretion,
4512 deny an application for, suspend, revoke, or refuse to renew or
4513 continue the license or appointment of any applicant, agent,
4514 adjuster, customer representative, service representative, or
4515 managing general agent, and it may suspend or revoke the
4516 eligibility to hold a license or appointment of any such person,
4517 if it finds that as to the applicant, licensee, or appointee any
4518 one or more of the following applicable grounds exist under
4519 circumstances for which such denial, suspension, revocation, or
4520 refusal is not mandatory under s. 626.611:

4521 (1) Any cause for which issuance of the license or
4522 appointment could have been refused had it then existed and been
4523 known to the department or office.

4524 (2) Violation of any provision of this code or of any
4525 other law applicable to the business of insurance in the course
4526 of dealing under the license or appointment.

4527 (3) Violation of any lawful order or rule of the
4528 department, commission, or office.

4529 (4) Failure or refusal, upon demand, to pay over to any
4530 insurer he or she represents or has represented any money coming



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4531 into his or her hands belonging to the insurer.

4532 (5) Violation of the provision against twisting, as
4533 defined in s. 626.9541(1)(1).

4534 (6) In the conduct of business under the license or
4535 appointment, engaging in unfair methods of competition or in
4536 unfair or deceptive acts or practices, as prohibited under part
4537 IX of this chapter, or having otherwise shown himself or herself
4538 to be a source of injury or loss to the public or detrimental to
4539 the public interest.

4540 (7) Willful overinsurance of any property or health
4541 insurance risk.

4542 (8) Having been found guilty of or having pleaded guilty
4543 or nolo contendere to a felony or a crime punishable by
4544 imprisonment of 1 year or more under the law of the United
4545 States of America or of any state thereof or under the law of
4546 any other country, without regard to whether a judgment of
4547 conviction has been entered by the court having jurisdiction of
4548 such cases.

4549 (9) If a life agent, violation of the code of ethics.

4550 (10) Cheating on an examination required for licensure or
4551 violating test center or examination procedures published
4552 orally, in writing, or electronically at the test site by
4553 authorized representatives of the examination program
4554 administrator. Communication of test center and examination
4555 procedures must be clearly established and documented.

4556 (11) Failure to inform the department or office in writing
4557 within 30 days after pleading guilty or nolo contendere to, or
4558 being convicted or found guilty of, any felony or a crime
4559 punishable by imprisonment of 1 year or more under the law of
4560 the United States or of any state thereof, or under the law of



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4561 any other country without regard to whether a judgment of
 4562 conviction has been entered by the court having jurisdiction of
 4563 the case.

4564 (12) Knowingly aiding, assisting, procuring, advising, or
 4565 abetting any person in the violation of or to violate a
 4566 provision of the insurance code or any order or rule of the
 4567 department, commission, or office.

4568 Section 82. Section 626.631, Florida Statutes, is amended
 4569 to read:

4570 626.631 Procedure for refusal, suspension, or revocation
 4571 of license.--

4572 (1) If any licensee is convicted by a court of a violation
 4573 of this code or a felony, the licenses and appointments of such
 4574 person shall be immediately revoked by the department or office.

4575 The licensee may subsequently request a hearing pursuant to ss.
 4576 120.569 and 120.57, and the department or office shall expedite
 4577 any such requested hearing. The sole issue at such hearing
 4578 shall be whether the revocation should be rescinded because such
 4579 person was not in fact convicted of a violation of this code or
 4580 a felony.

4581 (2) The papers, documents, reports, or evidence of the
 4582 department or office relative to a hearing for revocation or
 4583 suspension of a license or appointment pursuant to the
 4584 provisions of this chapter and chapter 120 are confidential and
 4585 exempt from the provisions of s. 119.07(1) until after the same
 4586 have been published at the hearing. However, such papers,
 4587 documents, reports, or items of evidence are subject to
 4588 discovery in a hearing for revocation or suspension of a license
 4589 or appointment.

4590 Section 83. Subsections (1) and (2) of section 626.641,



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4591 Florida Statutes, are amended to read:

4592 626.641 Duration of suspension or revocation.--

4593 (1) The department or office shall, in its order
4594 suspending a license or appointment or in its order suspending
4595 the eligibility of a person to hold or apply for such license or
4596 appointment, specify the period during which the suspension is
4597 to be in effect; but such period shall not exceed 2 years. The
4598 license, appointment, or eligibility shall remain suspended
4599 during the period so specified, subject, however, to any
4600 rescission or modification of the order by the department or
4601 office, or modification or reversal thereof by the court, prior
4602 to expiration of the suspension period. A license, appointment,
4603 or eligibility which has been suspended shall not be reinstated
4604 except upon request for such reinstatement; but the department
4605 or office shall not grant such reinstatement if it finds that
4606 the circumstance or circumstances for which the license,
4607 appointment, or eligibility was suspended still exist or are
4608 likely to recur.

4609 (2) No person or appointee under any license or
4610 appointment revoked by the department or office, nor any person
4611 whose eligibility to hold same has been revoked by the
4612 department or office, shall have the right to apply for another
4613 license or appointment under this code within 2 years from the
4614 effective date of such revocation or, if judicial review of such
4615 revocation is sought, within 2 years from the date of final
4616 court order or decree affirming the revocation. The department
4617 or office shall not, however, grant a new license or appointment
4618 or reinstate eligibility to hold such license or appointment if
4619 it finds that the circumstance or circumstances for which the
4620 eligibility was revoked or for which the previous license or



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4621 appointment was revoked still exist or are likely to recur; if
 4622 an individual's license as agent or customer representative or
 4623 eligibility to hold same has been revoked upon the ground
 4624 specified in s. 626.611(12), the department or office shall
 4625 refuse to grant or issue any new license or appointment so
 4626 applied for.

4627 Section 84. Subsection (2) of section 626.661, Florida
 4628 Statutes, is amended to read:

4629 626.661 Surrender of license.--

4630 (2) This section shall not be deemed to require the
 4631 surrender to the department or office of any license unless such
 4632 surrender has been requested by the department or office.

4633 Section 85. Section 626.681, Florida Statutes, is amended
 4634 to read:

4635 626.681 Administrative fine in lieu of or in addition to
 4636 suspension, revocation, or refusal of license, appointment, or
 4637 disapproval.--

4638 (1) Except as to insurance agencies, if the department or
 4639 office finds that one or more grounds exist for the suspension,
 4640 revocation, or refusal to issue, renew, or continue any license
 4641 or appointment issued under this chapter, or disapproval of a
 4642 continuing education course provider, instructor, school
 4643 official, or monitor groups, the department or office may, in
 4644 its discretion, in lieu of or in addition to such suspension or
 4645 revocation, or in lieu of such refusal, or disapproval, and
 4646 except on a second offense or when such suspension, revocation,
 4647 or refusal is mandatory, impose upon the licensee, appointee,
 4648 course provider, instructor, school official, or monitor group
 4649 an administrative penalty in an amount up to \$500 or, if the
 4650 department or office has found willful misconduct or willful



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4651 violation on the part of the licensee, appointee, course
4652 provider, instructor, school official, or monitor group up to
4653 \$3,500. The administrative penalty may, in the discretion of the
4654 department or office, be augmented by an amount equal to any
4655 commissions received by or accruing to the credit of the
4656 licensee or appointee in connection with any transaction as to
4657 which the grounds for suspension, revocation, or refusal
4658 related.

4659 (2) With respect to insurance agencies, if the department
4660 finds that one or more grounds exist for the suspension,
4661 revocation, or refusal to issue, renew, or continue any license
4662 issued under this chapter, the department may, in its
4663 discretion, in lieu of or in addition to such suspension or
4664 revocation, or in lieu of such refusal, impose upon the licensee
4665 an administrative penalty in an amount not to exceed \$10,000 per
4666 violation. The administrative penalty may, in the discretion of
4667 the department, be augmented by an amount equal to any
4668 commissions received by or accruing to the credit of the
4669 licensee in connection with any transaction as to which the
4670 grounds for suspension, revocation, or refusal related.

4671 (3) The department or office may allow the licensee,
4672 appointee, or continuing education course provider, instructor,
4673 school official, or monitor group a reasonable period, not to
4674 exceed 30 days, within which to pay to the department or office
4675 the amount of the penalty so imposed. If the licensee,
4676 appointee, course provider, instructor, school official, or
4677 monitor group fails to pay the penalty in its entirety to the
4678 department or office within the period so allowed, the license,
4679 appointments, approval, or status of that person shall stand
4680 suspended or revoked or issuance, renewal, or continuation shall



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4681 be refused, as the case may be, upon expiration of such period.

4682 Section 86. Section 626.691, Florida Statutes, is amended
4683 to read:

4684 626.691 Probation.--

4685 (1) If the department or office finds that one or more
4686 grounds exist for the suspension, revocation, or refusal to
4687 renew or continue any license or appointment issued under this
4688 part, the department or office may, in its discretion, except
4689 when an administrative fine is not permissible under s. 626.681
4690 or when such suspension, revocation, or refusal is mandatory, in
4691 lieu of or in addition to such suspension or revocation, or in
4692 lieu of such refusal, or in connection with any administrative
4693 monetary penalty imposed under s. 626.681, place the offending
4694 licensee or appointee on probation for a period, not to exceed 2
4695 years, as specified by the department or office in its order.

4696 (2) As a condition to such probation or in connection
4697 therewith, the department or office may specify in its order
4698 reasonable terms and conditions to be fulfilled by the
4699 probationer during the probation period. If during the
4700 probation period the department or office has good cause to
4701 believe that the probationer has violated a term or condition,
4702 it shall suspend, revoke, or refuse to issue, renew, or continue
4703 the license or appointment of the probationer, as upon the
4704 original grounds referred to in subsection (1).

4705 Section 87. Section 626.692, Florida Statutes, is amended
4706 to read:

4707 626.692 Restitution.--If any ground exists for the
4708 suspension, revocation, or refusal of a license or appointment,
4709 the department or office may, in addition to any other penalty
4710 authorized under this chapter, order the licensee to pay



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4711 restitution to any person who has been deprived of money by the
 4712 licensee's misappropriation, conversion, or unlawful withholding
 4713 of moneys belonging to insurers, insureds, beneficiaries, or
 4714 others. In no instance shall the amount of restitution required
 4715 to be paid under this section exceed the amount of money
 4716 misappropriated, converted, or unlawfully withheld. Nothing in
 4717 this section limits or restricts a person's right to seek other
 4718 remedies as provided for by law.

4719 Section 88. Section 626.7315, Florida Statutes, is amended
 4720 to read:

4721 626.7315 Prohibition against the unlicensed transaction of
 4722 general lines insurance.--With respect to any line of authority
 4723 as defined in s. 626.015(6)~~(7)~~, no individual shall, unless
 4724 licensed as a general lines agent:

4725 (1) Solicit insurance or procure applications therefor;

4726 (2) In this state, receive or issue a receipt for any
 4727 money on account of or for any insurer, or receive or issue a
 4728 receipt for money from other persons to be transmitted to any
 4729 insurer for a policy, contract, or certificate of insurance or
 4730 any renewal thereof, even though the policy, certificate, or
 4731 contract is not signed by him or her as agent or representative
 4732 of the insurer;

4733 (3) Directly or indirectly represent himself or herself to
 4734 be an agent of any insurer or as an agent, to collect or forward
 4735 any insurance premium, or to solicit, negotiate, effect,
 4736 procure, receive, deliver, or forward, directly or indirectly,
 4737 any insurance contract or renewal thereof or any endorsement
 4738 relating to an insurance contract, or attempt to effect the
 4739 same, of property or insurable business activities or interests,
 4740 located in this state;



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4741 (4) In this state, engage or hold himself or herself out
4742 as engaging in the business of analyzing or abstracting
4743 insurance policies or of counseling or advising or giving
4744 opinions, other than as a licensed attorney at law, relative to
4745 insurance or insurance contracts, for fee, commission, or other
4746 compensation, other than as a salaried bona fide full-time
4747 employee so counseling and advising his or her employer relative
4748 to the insurance interests of the employer and of the
4749 subsidiaries or business affiliates of the employer;

4750 (5) In any way, directly or indirectly, make or cause to
4751 be made, or attempt to make or cause to be made, any contract of
4752 insurance for or on account of any insurer;

4753 (6) Solicit, negotiate, or in any way, directly or
4754 indirectly, effect insurance contracts, if a member of a
4755 partnership or association, or a stockholder, officer, or agent
4756 of a corporation which holds an agency appointment from any
4757 insurer; or

4758 (7) Receive or transmit applications for suretyship, or
4759 receive for delivery bonds founded on applications forwarded
4760 from this state, or otherwise procure suretyship to be effected
4761 by a surety insurer upon the bonds of persons in this state or
4762 upon bonds given to persons in this state.

4763 Section 89. Subsection (3) of section 626.732, Florida
4764 Statutes, is amended to read:

4765 626.732 Requirement as to knowledge, experience, or
4766 instruction.--

4767 (3) An individual who was or became qualified to sit for
4768 an agent's, customer representative's, or adjuster's examination
4769 at or during the time he or she was employed by the department
4770 or office and who, while so employed, was employed in



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4771 responsible insurance duties as a full-time bona fide employee
 4772 shall be permitted to take an examination if application for
 4773 such examination is made within 90 days after the date of
 4774 termination of his or her employment with the department or
 4775 office.

4776 Section 90. Section 626.742, Florida Statutes, is amended
 4777 to read:

4778 626.742 Nonresident agents; service of process.--

4779 (1) Each licensed nonresident agent shall appoint the
 4780 Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as
 4781 his or her attorney to receive service of legal process issued
 4782 against the agent in this state, upon causes of action arising
 4783 within this state out of transactions under the agent's license
 4784 and appointment. Service upon the Chief Financial Officer
 4785 ~~Insurance Commissioner and Treasurer~~ as attorney shall
 4786 constitute effective legal service upon the agent.

4787 (2) The appointment of the Chief Financial Officer
 4788 ~~Insurance Commissioner and Treasurer~~ for service of process
 4789 shall be irrevocable for as long as there could be any cause of
 4790 action against the agent arising out of his or her insurance
 4791 transactions in this state.

4792 (3) Duplicate copies of such legal process against such
 4793 agent shall be served upon the Chief Financial Officer ~~Insurance~~
 4794 ~~Commissioner and Treasurer~~ by a person competent to serve a
 4795 summons.

4796 (4) Upon receiving such service, the Chief Financial
 4797 Officer ~~Insurance Commissioner and Treasurer~~ shall forthwith
 4798 send one of the copies of the process, by registered mail with
 4799 return receipt requested, to the defendant agent at his or her
 4800 last address of record with the department.



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4801 (5) The Chief Financial Officer ~~Insurance Commissioner and~~
4802 ~~Treasurer~~ shall keep a record of the day and hour of service
4803 upon him or her of all such legal process.

4804 Section 91. Subsections (4) and (7) of section 626.7451,
4805 Florida Statutes, are amended to read:

4806 626.7451 Managing general agents; required contract
4807 provisions.--No person acting in the capacity of a managing
4808 general agent shall place business with an insurer unless there
4809 is in force a written contract between the parties which sets
4810 forth the responsibility for a particular function, specifies
4811 the division of responsibilities, and contains the following
4812 minimum provisions:

4813 (4) Separate records of business written by the managing
4814 general agent shall be maintained unless the managing general
4815 agent is a controlled or controlling person. The insurer shall
4816 have access and the right to copy all accounts and records
4817 related to its business in a form usable by the insurer, and the
4818 department and office shall have access to all books, bank
4819 accounts, and records of the managing general agent in a form
4820 usable to the department and office. The records shall be
4821 retained according to s. 626.561.

4822 (7) If the contract permits the managing general agent to
4823 settle claims on behalf of the insurer:

4824 (a) All claims must be reported to the company in a timely
4825 manner and all claims must be adjusted by properly licensed
4826 persons.

4827 (b) Notice shall be sent by the managing general agent to
4828 the insurer as soon as it becomes known that the claim:

- 4829 1. Exceeds the limit set by the insurer;
4830 2. Involves a coverage dispute;



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4831 3. Exceeds the managing general agent's claims settlement
4832 authority;

4833 4. Is open for more than 6 months; or

4834 5. Is closed by payment of an amount set by the office
4835 ~~department~~ or an amount set by the insurer, whichever is less.

4836 (c) All claims files shall be the joint property of the
4837 insurer and managing general agent. However, upon an order of
4838 liquidation of the insurer the claims and related application
4839 files shall become the sole property of the insurer or its
4840 estate. The managing general agent shall have reasonable access
4841 to and the right to copy the files on a timely basis.

4842 (d) Any settlement authority granted to the managing
4843 general agent may be terminated for cause upon the insurer's
4844 written notice to the managing general agent or upon the
4845 termination of the contract. The insurer may suspend the
4846 settlement authority during the pendency of any dispute
4847 regarding the cause for termination.

4848
4849 For the purposes of this section and ss. 626.7453 and 626.7454,
4850 the term "controlling person" or "controlling" has the meaning
4851 set forth in s. 625.012(5)(b)1., and the term "controlled
4852 person" or "controlled" has the meaning set forth in s.
4853 625.012(5)(b)2.

4854 Section 92. Subsections (1), (5), and (6) of section
4855 626.7454, Florida Statutes, are amended to read:

4856 626.7454 Managing general agents; duties of insurers.--

4857 (1) The insurer shall have on file for each managing
4858 general agent with which it has done business an independent
4859 financial examination in a form acceptable to the office
4860 ~~department~~.



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4861 (5) Within 30 days after entering into or terminating a
4862 contract with a managing general agent, the insurer shall
4863 provide written notification of the appointment or termination
4864 to the department and office. Notices of appointment of a
4865 managing general agent shall include a statement of duties which
4866 the applicant is expected to perform on behalf of the insurer,
4867 the lines of insurance for which the applicant is to be
4868 authorized to act, and any other information the department or
4869 office may request.

4870 (6) An insurer shall review its books and records on a
4871 quarterly basis to determine if any producer has become a
4872 managing general agent as defined in s. 626.015. If the insurer
4873 determines that a producer has become a managing general agent,
4874 the insurer shall promptly notify the producer and the
4875 department and office of such determination and the insurer and
4876 producer must fully comply with the provisions of this section
4877 and ss. 626.7451, 626.7452, and 626.7453 within 30 days after
4878 such determination.

4879

4880

4881 Subsections (1), (3), and (4) do not apply to a managing
4882 general agent that is a controlled or controlling person.

4883 Section 93. Subsections (6), (7), and (8) of section
4884 626.7491, Florida Statutes, are amended to read:

4885 626.7491 Business transacted with producer controlled
4886 property and casualty insurer.--

4887 (6) AUDIT COMMITTEE.--Every controlled insurer shall have
4888 an audit committee of the board of directors composed of
4889 independent directors. The audit committee shall annually meet
4890 with management, the insurer's independent certified public



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4891 accountants, and an independent casualty actuary or other
4892 independent loss reserve specialist acceptable to the office
4893 ~~department~~ to review the adequacy of the insurer's loss
4894 reserves.

4895 (7) REPORTING REQUIREMENTS.--

4896 (a) In addition to any other required loss reserve
4897 certification, the controlled insurer shall, on April 1 of each
4898 year, file with the office ~~department~~ the opinion of an
4899 independent casualty actuary, or such other independent loss
4900 reserve specialist acceptable to the office ~~department~~,
4901 reporting loss ratios for each line of business written and
4902 attesting to the adequacy of loss reserves established for
4903 losses incurred and outstanding as of the year end, including
4904 incurred but not reported losses, on business placed by the
4905 producer.

4906 (b) The controlled insurer shall annually report to the
4907 office ~~department~~ the amount of commissions paid to the
4908 producer, the percentage such amount represents of the net
4909 premiums written, and comparable amounts and percentages paid to
4910 noncontrolling producers for placements of the same kinds of
4911 insurance.

4912 (8) PENALTIES.--

4913 (a) If the department believes that the controlling
4914 producer or any other person has not materially complied with
4915 this section, or any rule adopted or order issued hereunder, the
4916 department may order the controlling producer to cease placing
4917 business with the controlled insurer.

4918 (b) If, due to such material noncompliance, the controlled
4919 insurer or any policyholder thereof has suffered any loss or
4920 damage, the department or office may maintain a civil action or



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4921 | intervene in an action brought by or on behalf of the insurer or
 4922 | policyholder for recovery of compensatory damages for the
 4923 | benefit of the insurer or policyholder or other appropriate
 4924 | relief.

4925 | (c) If an order for liquidation or rehabilitation of the
 4926 | controlled insurer has been entered pursuant to chapter 631 and
 4927 | the receiver appointed under such order believes that the
 4928 | controlling producer or any other person has not materially
 4929 | complied with this section or any rule adopted or order issued
 4930 | hereunder and the insurer has suffered any loss or damage
 4931 | therefrom, the receiver may maintain a civil action for recovery
 4932 | of damages or other appropriate sanctions for the benefit of the
 4933 | insurer.

4934 | (d) Nothing contained in this section shall affect the
 4935 | right of the department or office to impose any other penalties
 4936 | provided for in the Florida Insurance Code.

4937 | (e) Nothing contained in this section is intended to or
 4938 | shall in any manner alter or affect the rights of policyholders,
 4939 | claimants, creditors, or other third parties.

4940 | Section 94. Paragraph (e) of subsection (3) and
 4941 | subsections (11) and (12) of section 626.7492, Florida Statutes,
 4942 | are amended to read:

4943 | 626.7492 Reinsurance intermediaries.--

4944 | (3) LICENSURE.--

4945 | (e) If the applicant for a reinsurance intermediary
 4946 | license is a nonresident, the applicant, as a condition
 4947 | precedent to receiving or holding a license, must designate the
 4948 | Chief Financial Officer ~~Insurance Commissioner~~ as agent for
 4949 | service of process in the manner, and with the same legal
 4950 | effect, provided for by this section for designation of service



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4951 of process upon unauthorized insurers. Such applicant shall also
 4952 furnish the department with the name and address of a resident
 4953 of this state upon whom notices or orders of the department or
 4954 process affecting the nonresident reinsurance intermediary may
 4955 be served. The licensee shall promptly notify the department in
 4956 writing of each change in its designated agent for service of
 4957 process, and the change shall not become effective until
 4958 acknowledged by the department.

4959 (11) PENALTIES AND LIABILITIES.--

4960 (a) A reinsurance intermediary found by the department, or
 4961 an insurer, or reinsurer found by the office, ~~department~~ to be
 4962 in violation of any provision of this section must:

4963 1. For each separate violation pay a penalty in an amount
 4964 not to exceed \$5,000;

4965 2. Be subject to revocation or suspension of its license;
 4966 and

4967 3. If a violation was committed by the reinsurance
 4968 intermediary, the reinsurance intermediary must make restitution
 4969 to the insurer, reinsurer, rehabilitator, or liquidator of the
 4970 insurer or reinsurer for the net losses incurred by the insurer
 4971 or reinsurer attributable to the violation.

4972 (b) Nothing contained in this section shall affect the
 4973 right of the office or department to impose any other penalties
 4974 provided in the Florida Insurance Code.

4975 (c) Nothing contained in this section is intended to or
 4976 shall in any manner limit or restrict the rights of
 4977 policyholders, claimants, creditors, or other third parties or
 4978 confer any rights to these persons.

4979 ~~(12) No insurer or reinsurer may continue to use the~~
 4980 ~~services of a reinsurance intermediary on or after April 8,~~



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4981 ~~1992, unless such use is in compliance with this section.~~

4982 Section 95. Subsection (5) of section 626.752, Florida
 4983 Statutes, is amended to read:

4984 626.752 Exchange of business.--

4985 (5) Within 15 days after the last day of each month, any
 4986 insurer accepting business under this section shall report to
 4987 the department the name, address, telephone number, and social
 4988 security number of each agent from which the insurer received
 4989 more than 24 personal lines risks during the calendar year,
 4990 except for risks being removed from the Citizens Property
 4991 Insurance Corporation Residential Property and Casualty Joint
 4992 Underwriting Association and placed with that insurer by a
 4993 brokering agent. Once the insurer has reported pursuant to this
 4994 subsection an agent's name to the department, additional reports
 4995 on the same agent shall not be required. However, the fee set
 4996 forth in s. 624.501 shall be paid for the agent by the insurer
 4997 for each year until the insurer notifies the department that the
 4998 insurer is no longer accepting business from the agent pursuant
 4999 to this section. The insurer may require that the agent
 5000 reimburse the insurer for the fee.

5001 Section 96. Subsection (2) of section 626.7845, Florida
 5002 Statutes, is amended to read:

5003 626.7845 Prohibition against unlicensed transaction of
 5004 life insurance.--

5005 (2) Except as provided in s. 626.112(6), with respect to
 5006 any line of authority specified in s. 626.015(11)(12), no
 5007 individual shall, unless licensed as a life agent:

5008 (a) Solicit insurance or annuities or procure
 5009 applications; or



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5010 (b) In this state, engage or hold himself or herself out
 5011 as engaging in the business of analyzing or abstracting
 5012 insurance policies or of counseling or advising or giving
 5013 opinions to persons relative to insurance or insurance contracts
 5014 other than:

- 5015 1. As a consulting actuary advising an insurer; or
- 5016 2. As to the counseling and advising of labor unions,
 5017 associations, trustees, employers, or other business entities,
 5018 the subsidiaries and affiliates of each, relative to their
 5019 interests and those of their members or employees under
 5020 insurance benefit plans.

5021 Section 97. Section 626.7851, Florida Statutes, is amended
 5022 to read:

5023 626.7851 Requirement as to knowledge, experience, or
 5024 instruction.--No applicant for a license as a life agent, except
 5025 for a chartered life underwriter (CLU), shall be qualified or
 5026 licensed unless within the 4 years immediately preceding the
 5027 date the application for a license is filed with the department
 5028 he or she has:

- 5029 (1) Successfully completed 40 hours of classroom courses
 5030 in insurance satisfactory to the department at a school or
 5031 college, or extension division thereof, or other authorized
 5032 course of study, approved by the department. Courses must
 5033 include instruction on the subject matter of unauthorized
 5034 entities engaging in the business of insurance, to include the
 5035 Florida Nonprofit Multiple-Employer Welfare Arrangement Act and
 5036 the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001
 5037 et seq., as it relates to the provision of life insurance by
 5038 employers to their employees and the regulation thereof;

- 5039 (2) Successfully completed a correspondence course in



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5040 insurance satisfactory to the department and regularly offered
 5041 by accredited institutions of higher learning in this state,
 5042 approved by the department. Courses must include instruction on
 5043 the subject matter of unauthorized entities engaging in the
 5044 business of insurance, to include the Florida Nonprofit
 5045 Multiple-Employer Welfare Arrangement Act and the Employee
 5046 Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as
 5047 it relates to the provision of life insurance by employers to
 5048 their employees and the regulation thereof;

5049 (3) Held an active license in life, or life and health,
 5050 insurance in another state. This provision may not be utilized
 5051 unless the other state grants reciprocal treatment to licensees
 5052 formerly licensed in Florida; or

5053 (4) Been employed by the department or office for at least
 5054 1 year, full time in life or life and health insurance
 5055 regulatory matters and who was not terminated for cause, and
 5056 application for examination is made within 90 days after the
 5057 date of termination of his or her employment with the department
 5058 or office.

5059 Section 98. Section 626.8305, Florida Statutes, is amended
 5060 to read:

5061 626.8305 Prohibition against the unlicensed transaction of
 5062 health insurance.--Except as provided in s. 626.112(6), with
 5063 respect to any line of authority specified in s. 626.015~~(7)(8)~~,
 5064 no individual shall, unless licensed as a health agent:

- 5065 (1) Solicit insurance or procure applications; or
- 5066 (2) In this state, engage or hold himself or herself out
 5067 as engaging in the business of analyzing or abstracting
 5068 insurance policies or of counseling or advising or giving
 5069 opinions to persons relative to insurance contracts other than:



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5070 (a) As a consulting actuary advising insurers; or

5071 (b) As to the counseling and advising of labor unions,
 5072 associations, trustees, employers, or other business entities,
 5073 the subsidiaries and affiliates of each, relative to their
 5074 interests and those of their members or employees under
 5075 insurance benefit plans.

5076 Section 99. Subsection (4) of section 626.8311, Florida
 5077 Statutes, is amended to read:

5078 626.8311 Requirement as to knowledge, experience, or
 5079 instruction.--No applicant for a license as a health agent,
 5080 except for a chartered life underwriter (CLU), shall be
 5081 qualified or licensed unless within the 4 years immediately
 5082 preceding the date the application for license is filed with the
 5083 department he or she has:

5084 (4) Been employed by the department or office for at least
 5085 1 year, full time in health insurance regulatory matters and who
 5086 was not terminated for cause, and application for examination is
 5087 made within 90 days after the date of termination of his or her
 5088 employment with the department or office.

5089 Section 100. Subsection (1) of section 626.8427, Florida
 5090 Statutes, is amended to read:

5091 626.8427 Number of applications for licensure required;
 5092 exemption; effect of expiration of license.--

5093 (1) After a license as a title insurance agent has been
 5094 issued to a title insurance agent, the agent is not required to
 5095 file another license application for a similar license,
 5096 irrespective of the number of insurers to be represented by the
 5097 agent, unless:

5098 (a) The agent is specifically ordered by the department to
 5099 complete a new application; or



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5100 (b) During any period of 48 months since the filing of the
5101 original license application, the agent was not appointed,
5102 unless in the case of individuals the failure to be so appointed
5103 was due to military service, in which event the period within
5104 which a new application is not required may, in the discretion
5105 of the department ~~of Insurance~~, be extended for 12 months
5106 following the date of discharge from military service if the
5107 military service does not exceed 3 years, but in no event shall
5108 the period be extended under this clause for a period of more
5109 than 6 years from the date of filing the original application.

5110 Section 101. Subsections (1) and (3) of section 626.8463,
5111 Florida Statutes, are amended to read:

5112 626.8463 Witnesses and evidence.--

5113 (1) As to the subject of any examination, investigation,
5114 or hearing being conducted by him or her under s. 624.5015, ss.
5115 626.8417-626.847, or s. 627.791, an examiner appointed by the
5116 department or office ~~of Insurance~~ may administer oaths, examine
5117 and cross-examine witnesses, and receive oral and documentary
5118 evidence and shall have the power to subpoena witnesses, compel
5119 their attendance and testimony, and require by subpoena the
5120 production of books, papers, records, files, correspondence,
5121 documents, or other evidence which the examiner deems relevant
5122 to the inquiry.

5123 (3) If a person refuses to comply with any such subpoena
5124 or to testify as to any matter concerning which the person may
5125 be lawfully interrogated, the circuit court in and for Leon
5126 County, or the county in which such examination, investigation,
5127 or hearing is being conducted, or the county in which such
5128 person resides, upon application by the department or office,
5129 may issue an order requiring such person to comply with the



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5130 subpoena and to testify. A person who fails to obey such an
 5131 order of the court may be punished by the court for contempt.

5132 Section 102. Section 626.8467, Florida Statutes, is
 5133 amended to read:

5134 626.8467 Testimony compelled; immunity from prosecution.--

5135 (1) If a person asks to be excused from attending or
 5136 testifying or from producing any books, papers, records,
 5137 contracts, documents, or other evidence in connection with any
 5138 examination, hearing, or investigation being conducted under s.
 5139 624.5015, ss. 626.8417-626.847, or s. 627.791 by the department
 5140 or office or its examiner on the ground that the testimony or
 5141 evidence required of the person may tend to incriminate him or
 5142 her or subject him or her to a penalty or forfeiture and
 5143 notwithstanding is directed to give such testimony or produce
 5144 such evidence, the person must, if so directed by the Department
 5145 of Financial Services Insurance and the Department of Legal
 5146 Affairs or by the office and the Department of Legal Affairs,
 5147 nonetheless comply with such direction, but he or she shall not
 5148 thereafter be prosecuted or subjected to any penalty or
 5149 forfeiture for or on account of any transaction, matter, or
 5150 thing concerning which he or she may have so testified or
 5151 produced evidence, and no testimony so given or evidence
 5152 produced shall be received against the person upon any criminal
 5153 action, investigation, or proceeding. However, a person so
 5154 testifying shall not be exempt from prosecution or punishment
 5155 for any perjury committed by him or her in such testimony, and
 5156 the testimony or evidence so given or produced shall be
 5157 admissible against him or her upon any criminal action,
 5158 investigation, or proceeding concerning such perjury; and such
 5159 person shall not be exempt from the refusal, suspension, or



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5160 revocation of any license or appointment, permission, or
 5161 authority conferred or to be conferred pursuant to s. 624.5015,
 5162 ss. 626.8417-626.847, or s. 627.791.

5163 (2) Any such person may execute, acknowledge, and file
 5164 with in the office of the Department of Financial Services or
 5165 the office, as appropriate, Insurance a statement expressly
 5166 waiving such immunity or privilege with respect to any
 5167 transaction, matter, or thing specified in the statement, and
 5168 thereupon the testimony of such person or such evidence in
 5169 relation to such transaction, matter, or thing may be received
 5170 or produced before any judge or justice, court, tribunal, or
 5171 grand jury or otherwise and, if so received or produced, such
 5172 person shall not be entitled to any immunity or privilege on
 5173 account of any testimony he or she may so give or evidence so
 5174 produced.

5175 Section 103. Section 626.847, Florida Statutes, is amended
 5176 to read:

5177 626.847 Penalty for refusal to testify.--A person who
 5178 refuses or fails, without lawful cause, to testify relative to
 5179 the affairs of any title insurer or other person when subpoenaed
 5180 under s. 626.8463 and requested by the department or office of
 5181 ~~Insurance~~ to so testify is guilty of a misdemeanor of the second
 5182 degree and, upon conviction, is punishable as provided in s.
 5183 775.082 or s. 775.083.

5184 Section 104. Subsection (3) of section 626.8473, Florida
 5185 Statutes, is amended to read:

5186 626.8473 Escrow; trust fund.--

5187 (3) All funds received by a title insurance agent to be
 5188 held in trust shall be immediately placed in a financial
 5189 institution that is located within this state and is a member of



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5190 the Federal Deposit Insurance Corporation or the National Credit
 5191 Union Share Insurance Fund. These funds shall be invested in an
 5192 escrow account in accordance with the investment requirements
 5193 and standards established for deposits and investments of state
 5194 funds in s. 17.57 ~~18.10~~, where the funds shall be kept until
 5195 disbursement thereof is properly authorized.

5196 Section 105. Section 626.8582, Florida Statutes, is
 5197 amended to read:

5198 626.8582 "Nonresident public adjuster" defined.--A
 5199 "nonresident public adjuster" is a person who:

- 5200 (1) Is not a resident of this state;
- 5201 (2) Is a currently licensed public adjuster in his or her
 5202 state of residence for the type or kinds of insurance for which
 5203 the licensee intends to adjust claims in this state or, if a
 5204 resident of a state that does not license public adjusters, has
 5205 passed the office's ~~department's~~ adjuster examination as
 5206 prescribed in s. 626.8732(1)(b); and
- 5207 (3) Is a self-employed public adjuster or associated with
 5208 or employed by a public adjusting firm or other public adjuster.

5209 Section 106. Section 626.8584, Florida Statutes, is
 5210 amended to read:

5211 626.8584 "Nonresident independent adjuster" defined.--A
 5212 "nonresident independent adjuster" is a person who:

- 5213 (1) Is not a resident of this state;
- 5214 (2) Is a currently licensed independent adjuster in his or
 5215 her state of residence for the type or kinds of insurance for
 5216 which the licensee intends to adjust claims in this state or, if
 5217 a resident of a state that does not license independent
 5218 adjusters, has passed the office's ~~department's~~ adjuster
 5219 examination as prescribed in s. 626.8734(1)(b); and



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5220 (3) Is a self-employed independent adjuster or associated
 5221 with or employed by an independent adjusting firm or other
 5222 independent adjuster.

5223 Section 107. Section 626.859, Florida Statutes, is amended
 5224 to read:

5225 626.859 "Catastrophe" or "emergency" adjuster defined.--A
 5226 "catastrophe" or "emergency" adjuster is a person who is not a
 5227 licensed adjuster under this part, but who has been designated
 5228 and certified to the office ~~department~~ by insurers as qualified
 5229 to adjust claims, losses, or damages under policies or contracts
 5230 of insurance issued by such insurer, and whom the office
 5231 ~~department~~ may license, in the event of a catastrophe or
 5232 emergency, for the purposes and under the conditions which the
 5233 office ~~department~~ shall fix and for the period of the emergency
 5234 as the office ~~department~~ shall determine, to adjust claims,
 5235 losses, or damages under the policies of insurance issued by the
 5236 insurers.

5237 Section 108. Subsection (2) of section 626.861, Florida
 5238 Statutes, is amended to read:

5239 626.861 Insurer's officers, insurer's employees,
 5240 reciprocal insurer's representatives; adjustments by.--

5241 (2) If any such officer, employee, attorney, or agent in
 5242 connection with the adjustment of any such claim, loss, or
 5243 damage engages in any of the misconduct described in or
 5244 contemplated by s. 626.611(6), the office ~~department~~ may suspend
 5245 or revoke the insurer's certificate of authority.

5246 Section 109. Subsection (2) of section 626.863, Florida
 5247 Statutes, is amended to read:

5248 626.863 Licensed independent adjusters required; insurers'
 5249 responsibility.--



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5250 (2) Before referring any claim or loss, the insurer shall
 5251 ascertain from the office ~~department~~ whether the proposed
 5252 independent adjuster is currently licensed and appointed as
 5253 such. Having once ascertained that a particular person is so
 5254 licensed and appointed, the insurer may assume that he or she
 5255 will continue to be so licensed and appointed until the insurer
 5256 has knowledge, or receives information from the office
 5257 ~~department~~, to the contrary.

5258 Section 110. Section 626.865, Florida Statutes, is amended
 5259 to read:

5260 626.865 Public adjuster's qualifications, bond.--

5261 (1) The office ~~department~~ shall issue a license to an
 5262 applicant for a public adjuster's license upon determining that
 5263 the applicant has paid the applicable fees specified in s.
 5264 624.501 and possesses the following qualifications:

5265 (a) Is a natural person at least 18 years of age.

5266 (b) Is a bona fide resident of this state.

5267 (c) Is trustworthy and has such business reputation as
 5268 would reasonably assure that the applicant will conduct his or
 5269 her business as insurance adjuster fairly and in good faith and
 5270 without detriment to the public.

5271 (d) Has had sufficient experience, training, or
 5272 instruction concerning the adjusting of damages or losses under
 5273 insurance contracts, other than life and annuity contracts, is
 5274 sufficiently informed as to the terms and effects of the
 5275 provisions of those types of insurance contracts, and possesses
 5276 adequate knowledge of the laws of this state relating to such
 5277 contracts as to enable and qualify him or her to engage in the
 5278 business of insurance adjuster fairly and without injury to the
 5279 public or any member thereof with whom the applicant may have



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5280 business as a public adjuster.

5281 (e) Has passed any required written examination.

5282 (2) At the time of application for license as a public
 5283 adjuster, the applicant shall file with the office ~~department~~ a
 5284 bond executed and issued by a surety insurer authorized to
 5285 transact such business in this state, in the amount of \$50,000,
 5286 conditioned for the faithful performance of his or her duties as
 5287 a public adjuster under the license applied for. The bond shall
 5288 be in favor of the office ~~department~~ and shall specifically
 5289 authorize recovery by the office ~~department~~ of the damages
 5290 sustained in case the licensee is guilty of fraud or unfair
 5291 practices in connection with his or her business as public
 5292 adjuster. The aggregate liability of the surety for all such
 5293 damages shall in no event exceed the amount of the bond. Such
 5294 bond shall not be terminated unless at least 30 days' written
 5295 notice is given to the licensee and filed with the office
 5296 ~~department~~.

5297 Section 111. Section 626.866, Florida Statutes, is amended
 5298 to read:

5299 626.866 Independent adjuster's qualifications.--The office
 5300 ~~department~~ shall issue a license to an applicant for an
 5301 independent adjuster's license upon determining that the
 5302 applicable license fee specified in s. 624.501 has been paid and
 5303 that the applicant possesses the following qualifications:

- 5304 (1) Is a natural person at least 18 years of age.
- 5305 (2) Is a bona fide resident of this state.
- 5306 (3) Is trustworthy and has such business reputation as
 5307 would reasonably assure that the applicant will conduct his or
 5308 her business as insurance adjuster fairly and in good faith and
 5309 without detriment to the public.



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5310 (4) Has had sufficient experience, training, or
 5311 instruction concerning the adjusting of damage or loss under
 5312 insurance contracts, other than life and annuity contracts, is
 5313 sufficiently informed as to the terms and the effects of the
 5314 provisions of such types of contracts, and possesses adequate
 5315 knowledge of the insurance laws of this state relating to such
 5316 contracts as to enable and qualify him or her to engage in the
 5317 business of insurance adjuster fairly and without injury to the
 5318 public or any member thereof with whom he or she may have
 5319 relations as an insurance adjuster and to adjust all claims in
 5320 accordance with the policy or contract and the insurance laws of
 5321 this state.

5322 (5) Has passed any required written examination.

5323 Section 112. Section 626.867, Florida Statutes, is amended
 5324 to read:

5325 626.867 Company employee adjuster's qualifications.--The
 5326 office department shall issue a license to an applicant for a
 5327 company employee adjuster's license upon determining that the
 5328 applicable license fee specified in s. 624.501 has been paid and
 5329 that the applicant possesses the following qualifications:

5330 (1) Is a natural person at least 18 years of age.

5331 (2) Is a bona fide resident of this state.

5332 (3) Is trustworthy and has such business reputation as
 5333 would reasonably assure that the applicant will conduct his or
 5334 her business as insurance adjuster fairly and in good faith and
 5335 without detriment to the public.

5336 (4) Has had sufficient experience, training, or
 5337 instruction concerning the adjusting of damage or loss of risks
 5338 described in his or her application, is sufficiently informed as
 5339 to the terms and the effects of the provisions of insurance



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5340 contracts covering such risks, and possesses adequate knowledge
 5341 of the insurance laws of this state relating to such insurance
 5342 contracts as to enable and qualify him or her to engage in such
 5343 business as insurance adjuster fairly and without injury to the
 5344 public or any member thereof with whom he or she may have
 5345 relations as an insurance adjuster and to adjust all claims in
 5346 accordance with the policy or contract and the insurance laws of
 5347 this state.

5348 (5) Has passed any required written examination.

5349 Section 113. Subsection (5) of section 626.869, Florida
 5350 Statutes, is amended to read:

5351 626.869 License, adjusters.--

5352 (5) Any person holding a license for 24 consecutive months
 5353 or longer and who engages in adjusting workers' compensation
 5354 insurance must, beginning in their birth month and every 2 years
 5355 thereafter, have completed 24 hours of courses, 2 hours of which
 5356 relate to ethics, in subjects designed to inform the licensee
 5357 regarding the current workers' compensation laws of this state,
 5358 so as to enable him or her to engage in business as a workers'
 5359 compensation insurance adjuster fairly and without injury to the
 5360 public and to adjust all claims in accordance with the policy or
 5361 contract and the workers' compensation laws of this state. In
 5362 order to qualify as an eligible course under this subsection,
 5363 the course must:

5364 (a) Have a course outline approved by the office
 5365 ~~department~~.

5366 (b) Be taught at a school training facility or other
 5367 location approved by the office ~~department~~.

5368 (c) Be taught by instructors with at least 5 years of
 5369 experience in the area of workers' compensation, general lines



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5370 of insurance, or other persons approved by the office
 5371 ~~department~~. However, a member of The Florida Bar is exempt from
 5372 the 5 years' experience requirement.

5373 (d) Furnish the attendee a certificate of completion. The
 5374 course provider shall send a roster to the office ~~department~~ in
 5375 a format prescribed by the commission ~~department~~.

5376 Section 114. Section 626.8695, Florida Statutes, is
 5377 amended to read:

5378 626.8695 Primary adjuster.--

5379 (1) Each person operating an adjusting firm and each
 5380 location of a multiple location adjusting firm must designate a
 5381 primary adjuster for each such firm or location and must file
 5382 with the office ~~department~~ the name of such primary adjuster and
 5383 the address of the firm or location where he or she is the
 5384 primary adjuster, on a form approved by the commission
 5385 ~~department~~. The designation of the primary adjuster may be
 5386 changed at the option of the adjusting firm. Any such change is
 5387 effective upon notification to the office ~~department~~. Notice of
 5388 change must be sent to the office ~~department~~ within 30 days
 5389 after such change.

5390 (2)(a) For purposes of this section, a "primary adjuster"
 5391 is the licensed adjuster who is responsible for the hiring and
 5392 supervision of all individuals within an adjusting firm location
 5393 who deal with the public and who acts in the capacity of a
 5394 public adjuster as defined in s. 626.854, or an independent
 5395 adjuster as defined in s. 626.855. An adjuster may be
 5396 designated as a primary adjuster for only one adjusting firm
 5397 location.

5398 (b) For purposes of this section, an "adjusting firm" is a
 5399 location where an independent or public adjuster is engaged in



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5400 the business of insurance.

5401 (3) The office ~~department~~ may suspend or revoke the
5402 license of the primary adjuster if the adjusting firm employs
5403 any person who has had a license denied or any person whose
5404 license is currently suspended or revoked. However, if a person
5405 has been denied a license for failure to pass a required
5406 examination, he or she may be employed to perform clerical or
5407 administrative functions for which licensure is not required.

5408 (4) The primary adjuster in an unincorporated adjusting
5409 firm, or the primary adjuster in an incorporated adjusting firm
5410 in which no officer, director, or stockholder is an adjuster, is
5411 responsible and accountable for the acts of salaried employees
5412 under his or her direct supervision and control while acting on
5413 behalf of the adjusting firm. Nothing in this section renders
5414 any person criminally liable or subject to any disciplinary
5415 proceedings for any act unless the person personally committed
5416 or knew or should have known of the act and of the facts
5417 constituting a violation of this code.

5418 (5) The office ~~department~~ may suspend or revoke the
5419 license of any adjuster who is employed by a person whose
5420 license is currently suspended or revoked.

5421 (6) An adjusting firm location may not conduct the
5422 business of insurance unless a primary adjuster is designated.
5423 Failure of the person operating the adjusting firm to designate
5424 a primary adjuster for the firm, or for each location, as
5425 applicable, on a form prescribed by the commission ~~department~~
5426 within 30 days after inception of the firm or change of primary
5427 adjuster designation, constitutes grounds for requiring the
5428 adjusting firm to obtain an adjusting firm license pursuant to
5429 s. 626.8696.



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5430 (7) Any adjusting firm may request, on a form prescribed
 5431 by the commission ~~department~~, verification from the office
 5432 ~~department~~ of any person's current licensure status. If a
 5433 request is mailed to the office ~~department~~ within 5 working days
 5434 after the date an adjuster is hired, and the office ~~department~~
 5435 subsequently notifies the adjusting firm that an employee's
 5436 license is currently suspended, revoked, or has been denied, the
 5437 license of the primary adjuster shall not be revoked or
 5438 suspended if the unlicensed person is immediately dismissed from
 5439 employment as an adjuster with the firm.

5440 Section 115. Subsections (1) and (5) of section 626.8696,
 5441 Florida Statutes, are amended to read:

5442 626.8696 Application for adjusting firm license.--

5443 (1) The application for an adjusting firm license must
 5444 include:

5445 (a) The name of each majority owner, partner, officer, and
 5446 director of the adjusting firm.

5447 (b) The resident address of each person required to be
 5448 listed in the application under paragraph (a).

5449 (c) The name of the adjusting firm and its principal
 5450 business address.

5451 (d) The location of each adjusting firm office and the
 5452 name under which each office conducts or will conduct business.

5453 (e) Any additional information which the commission
 5454 ~~department~~ may require.

5455 (5) An adjusting firm required to be licensed pursuant to
 5456 s. 626.8695 must remain so licensed for a period of 3 years from
 5457 the date of licensure, unless the license is suspended or
 5458 revoked. The office ~~department~~ may suspend or revoke the
 5459 adjusting firm's authority to do business for activities



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5460 occurring during the time the firm is licensed, regardless of
 5461 whether the licensing period has terminated.

5462 Section 116. Section 626.8697, Florida Statutes, is
 5463 amended to read:

5464 626.8697 Grounds for refusal, suspension, or revocation of
 5465 adjusting firm license.--

5466 (1) The office ~~department~~ shall deny, suspend, revoke, or
 5467 refuse to continue the license of any adjusting firm if it
 5468 finds, as to any adjusting firm or as to any majority owner,
 5469 partner, manager, director, officer, or other person who manages
 5470 or controls the firm, that any of the following grounds exist:

5471 (a) Lack by the firm of one or more of the qualifications
 5472 for the license as specified in this code.

5473 (b) Material misstatement, misrepresentation, or fraud in
 5474 obtaining the license or in attempting to obtain the license.

5475 (2) The office ~~department~~ may, in its discretion, deny,
 5476 suspend, revoke, or refuse to continue the license of any
 5477 adjusting firm if it finds that any of the following applicable
 5478 grounds exist with respect to the firm or any owner, partner,
 5479 manager, director, officer, or other person who is otherwise
 5480 involved in the operation of the firm:

5481 (a) Any cause for which issuance of the license could have
 5482 been refused had it then existed and been known to the office
 5483 ~~department~~.

5484 (b) Violation of any provision of this code or of any
 5485 other law applicable to the business of insurance.

5486 (c) Violation of any order or rule of the office or
 5487 commission ~~department~~.

5488 (d) An owner, partner, manager, director, officer, or
 5489 other person who manages or controls the firm having been found



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5490 guilty of or having pleaded guilty or nolo contendere to a
5491 felony or a crime punishable by imprisonment of 1 year or more
5492 under the laws of the United States or of any state or under the
5493 laws of any other country, without regard to whether
5494 adjudication was made or withheld by the court.

5495 (e) Failure to inform the office ~~department~~ in writing
5496 within 30 days after a pleading by an owner, partner, manager,
5497 director, officer, or other person managing or controlling the
5498 firm of guilty or nolo contendere to, or being convicted or
5499 found guilty of, any felony or a crime punishable by
5500 imprisonment of 1 year or more under the laws of the United
5501 States or of any state, or under the laws of any other country,
5502 without regard to whether adjudication was made or withheld by
5503 the court.

5504 (f) Knowingly aiding, assisting, procuring, advising, or
5505 abetting any person in the violation of or to violate a
5506 provision of the insurance code or any order or rule of the
5507 office or commission ~~department~~.

5508 (g) Knowingly employing any individual in a managerial
5509 capacity or in a capacity dealing with the public who is under
5510 an order of revocation or suspension issued by the office
5511 ~~department~~.

5512 (h) Committing any of the following acts with such a
5513 frequency as to have made the operation of the adjusting firm
5514 hazardous to the insurance-buying public or other persons:

5515 1. Misappropriation, conversion, or unlawful or
5516 unreasonable withholding of moneys belonging to insurers or
5517 insureds or beneficiaries or claimants or to others and received
5518 in the conduct of business under the license.

5519 2. Misrepresentation or deception with regard to the



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5520 business of insurance, dissemination of information, or
 5521 advertising.

5522 3. Demonstrated lack of fitness or trustworthiness to
 5523 engage in the business of insurance adjusting arising out of
 5524 activities related to insurance adjusting or the adjusting firm.

5525 (i) Failure to appoint a primary adjuster.

5526 (3) In lieu of discretionary refusal, suspension, or
 5527 revocation of an adjusting firm's license, the office ~~department~~
 5528 may impose an administrative penalty of up to \$1,000 for each
 5529 violation or ground provided under this section, not to exceed
 5530 an aggregate amount of \$10,000 for all violations or grounds.

5531 (4) If any adjusting firm, having been licensed,
 5532 thereafter has such license revoked or suspended, the firm shall
 5533 terminate all adjusting activities while the license is revoked
 5534 or suspended.

5535 Section 117. Section 626.8698, Florida Statutes, is
 5536 amended to read:

5537 626.8698 Disciplinary guidelines for public
 5538 adjusters.--The office ~~department~~ may deny, suspend, or revoke
 5539 the license of a public adjuster, and administer a fine not to
 5540 exceed \$5,000 per act, for any of the following:

5541 (1) Violating any provision of this chapter or a rule or
 5542 order of the office or commission ~~department~~;

5543 (2) Receiving payment or anything of value as a result of
 5544 an unfair or deceptive practice;

5545 (3) Receiving or accepting any fee, kickback, or other
 5546 thing of value pursuant to any agreement or understanding, oral
 5547 or otherwise; entering into a split-fee arrangement with another
 5548 person who is not a public adjuster; or being otherwise paid or
 5549 accepting payment for services that have not been performed;



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5550 (4) Violating s. 316.066 or s. 817.234;

5551 (5) Soliciting or otherwise taking advantage of a person
 5552 who is vulnerable, emotional, or otherwise upset as the result
 5553 of a trauma, accident, or other similar occurrence; or

5554 (6) Violating any ethical rule of the commission
 5555 ~~department~~.

5556 Section 118. Section 626.870, Florida Statutes, is amended
 5557 to read:

5558 626.870 Application for license.--

5559 (1) Application for a license under this part shall be
 5560 made as provided in s. 626.171 and related sections of this
 5561 code.

5562 (2) The commission ~~department~~ shall so prepare the form of
 5563 the application as to elicit and require from the applicant the
 5564 information necessary to enable the office ~~department~~ to
 5565 determine whether the applicant possesses the qualifications
 5566 prerequisite to issuance of the license to the applicant.

5567 (3) The commission ~~department~~ may, in its discretion,
 5568 require that the application be supplemented by the certificate
 5569 or affidavit of such person or persons as it deems necessary for
 5570 its determination of the applicant's residence, business
 5571 reputation, and reputation for trustworthiness. The commission
 5572 ~~department~~ shall prescribe and the office may furnish the forms
 5573 for such certificates and affidavits.

5574 Section 119. Section 626.871, Florida Statutes, is amended
 5575 to read:

5576 626.871 Reappointment after military service.--The office
 5577 ~~department~~ may, without requiring a further written examination,
 5578 issue an appointment as an adjuster to a formerly licensed and
 5579 appointed adjuster of this state who held a current adjuster's



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5580 appointment at the time of entering service in the Armed Forces
5581 of the United States, subject to the following conditions:

5582 (1) The period of military service must not have been in
5583 excess of 3 years;

5584 (2) The application for the appointment must be filed with
5585 the office ~~department~~ and the applicable fee paid, within 12
5586 months following the date of honorable discharge of the
5587 applicant from the military service; and

5588 (3) The new appointment will be of the same type and class
5589 as that currently effective at the time the applicant entered
5590 military service; but, if such type and class of appointment is
5591 not being currently issued under this code, the new appointment
5592 shall be of that type and class or classes most closely
5593 resembling those of the former appointment.

5594 Section 120. Subsections (1) and (5) of section 626.872,
5595 Florida Statutes, are amended to read:

5596 626.872 Temporary license.--

5597 (1) The office ~~department~~ may, in its discretion, issue a
5598 temporary license as an independent adjuster or as a company
5599 employee adjuster, subject to the following conditions:

5600 (a) The applicant must be an employee of an adjuster
5601 currently licensed by the office ~~department~~, an employee of an
5602 authorized insurer, or an employee of an established adjusting
5603 firm or corporation which is supervised by a currently licensed
5604 independent adjuster.

5605 (b) The application must be accompanied by a certificate
5606 of employment and a report as to the applicant's integrity and
5607 moral character on a form prescribed by the commission
5608 ~~department~~ and executed by the employer.

5609 (c) The applicant must be a natural person of at least 18



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5610 years of age, must be a bona fide resident of this state, must
5611 be trustworthy, and must have such business reputation as would
5612 reasonably assure that the applicant will conduct his or her
5613 business as an adjuster fairly and in good faith and without
5614 detriment to the public.

5615 (d) The applicant's employer is responsible for the
5616 adjustment acts of any licensee under this section.

5617 (e) The applicable license fee specified must be paid
5618 before issuance of the temporary license.

5619 (f) The temporary license shall be effective for a period
5620 of 1 year, but subject to earlier termination at the request of
5621 the employer, or if the licensee fails to take an examination as
5622 an independent adjuster or company employee adjuster within 6
5623 months after issuance of the temporary license, or if suspended
5624 or revoked by the office ~~department~~.

5625 (5) The office ~~department~~ shall not issue a temporary
5626 license as an independent adjuster or as a company employee
5627 adjuster to any individual who has ever held such a license in
5628 this state.

5629 Section 121. Subsection (1) of section 626.873, Florida
5630 Statutes, is amended to read:

5631 626.873 Nonresident company employee adjusters.--

5632 (1) The office ~~department~~ shall, upon application
5633 therefor, issue a license to an applicant for a nonresident
5634 adjuster's license upon determining that the applicant has paid
5635 the applicable license fees required under s. 624.501 and:

5636 (a) Is a currently licensed insurance adjuster in his or
5637 her home state, if such state requires a license.

5638 (b) Is an employee of an insurer, or a wholly owned
5639 subsidiary of an insurer, admitted to do business in this state.



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5640 (c) Has filed a certificate or letter of authorization
 5641 from the insurance department of his or her home state, if such
 5642 state requires an adjuster to be licensed, stating that he or
 5643 she holds a current license or authorization to adjust insurance
 5644 losses. Such certificate or authorization must be signed by the
 5645 insurance commissioner, or his or her deputy, of the adjuster's
 5646 home state and must reflect whether or not the adjuster has ever
 5647 had his or her license or authorization in the adjuster's home
 5648 state suspended or revoked and, if such is the case, the reason
 5649 for such action.

5650 Section 122. Section 626.8732, Florida Statutes, is
 5651 amended to read:

5652 626.8732 Nonresident public adjuster's qualifications,
 5653 bond.--

5654 (1) The office ~~department~~ shall, upon application
 5655 therefor, issue a license to an applicant for a nonresident
 5656 public adjuster's license upon determining that the applicant
 5657 has paid the applicable license fees required under s. 624.501
 5658 and:

5659 (a) Is a natural person at least 18 years of age.

5660 (b) Has passed to the satisfaction of the office
 5661 ~~department~~ a written Florida public adjuster's examination of
 5662 the scope prescribed in s. 626.241(6); however, the requirement
 5663 for such an examination does not apply to any of the following:

5664 1. An applicant who is licensed as a resident public
 5665 adjuster in his or her state of residence, when that state
 5666 requires the passing of a written examination in order to obtain
 5667 the license and a reciprocal agreement with the appropriate
 5668 official of that state has been entered into by the office
 5669 ~~department~~; or



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5670 2. An applicant who is licensed as a nonresident public
 5671 adjuster in a state other than his or her state of residence
 5672 when the state of licensure requires the passing of a written
 5673 examination in order to obtain the license and a reciprocal
 5674 agreement with the appropriate official of the state of
 5675 licensure has been entered into by the office ~~department~~.

5676 (c) Is self-employed as a public adjuster or associated
 5677 with or employed by a public adjusting firm or other public
 5678 adjuster. Applicants licensed as nonresident public adjusters
 5679 under this section must be appointed as such in accordance with
 5680 the provisions of ss. 626.112 and 626.451. Appointment fees in
 5681 the amount specified in s. 624.501 must be paid to the office
 5682 ~~department~~ in advance. The appointment of a nonresident public
 5683 adjuster shall continue in force until suspended, revoked, or
 5684 otherwise terminated, but subject to biennial renewal or
 5685 continuation by the licensee in accordance with procedures
 5686 prescribed in s. 626.381 for licensees in general.

5687 (d) Is trustworthy and has such business reputation as
 5688 would reasonably assure that he or she will conduct his or her
 5689 business as a nonresident public adjuster fairly and in good
 5690 faith and without detriment to the public.

5691 (e) Has had sufficient experience, training, or
 5692 instruction concerning the adjusting of damages or losses under
 5693 insurance contracts, other than life and annuity contracts; is
 5694 sufficiently informed as to the terms and effects of the
 5695 provisions of those types of insurance contracts; and possesses
 5696 adequate knowledge of the laws of this state relating to such
 5697 contracts as to enable and qualify him or her to engage in the
 5698 business of insurance adjuster fairly and without injury to the
 5699 public or any member thereof with whom he or she may have



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5700 business as a public adjuster.

5701 (2) The applicant shall furnish the following with his or
5702 her application:

5703 (a) A complete set of his or her fingerprints. The
5704 applicant's fingerprints must be certified by an authorized law
5705 enforcement officer. The office ~~department~~ may not authorize an
5706 applicant to take the required examination or issue a
5707 nonresident public adjuster's license to the applicant until the
5708 office ~~department~~ has received a report from the Florida
5709 Department of Law Enforcement and the Federal Bureau of
5710 Investigation relative to the existence or nonexistence of a
5711 criminal history report based on the applicant's fingerprints.

5712 (b) If currently licensed as a resident public adjuster in
5713 the applicant's state of residence, a certificate or letter of
5714 authorization from the licensing authority of the applicant's
5715 state of residence, stating that the applicant holds a current
5716 or comparable license to act as a public adjuster. The
5717 certificate or letter of authorization must be signed by the
5718 insurance commissioner or his or her deputy or the appropriate
5719 licensing official and must disclose whether the adjuster has
5720 ever had any license or eligibility to hold any license
5721 declined, denied, suspended, revoked, or placed on probation or
5722 whether an administrative fine or penalty has been levied
5723 against the adjuster and, if so, the reason for the action.

5724 (c) If the applicant's state of residence does not require
5725 licensure as a public adjuster and the applicant has been
5726 licensed as a resident insurance adjuster, agent, broker, or
5727 other insurance representative in his or her state of residence
5728 or any other state within the past 3 years, a certificate or
5729 letter of authorization from the licensing authority stating



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5730 that the applicant holds or has held a license to act as such an
5731 insurance adjuster, agent, or other insurance representative.
5732 The certificate or letter of authorization must be signed by the
5733 insurance commissioner or his or her deputy or the appropriate
5734 licensing official and must disclose whether or not the
5735 adjuster, agent, or other insurance representative has ever had
5736 any license or eligibility to hold any license declined, denied,
5737 suspended, revoked, or placed on probation or whether an
5738 administrative fine or penalty has been levied against the
5739 adjuster and, if so, the reason for the action.

5740 (3) At the time of application for license as a
5741 nonresident public adjuster, the applicant shall file with the
5742 office ~~department~~ a bond executed and issued by a surety insurer
5743 authorized to transact surety business in this state, in the
5744 amount of \$50,000, conditioned for the faithful performance of
5745 his or her duties as a nonresident public adjuster under the
5746 license applied for. The bond must be in favor of the office
5747 ~~department~~ and must specifically authorize recovery by the
5748 office ~~department~~ of the damages sustained if the licensee
5749 commits fraud or unfair practices in connection with his or her
5750 business as nonresident public adjuster. The aggregate liability
5751 of the surety for all the damages may not exceed the amount of
5752 the bond. The bond may not be terminated unless at least 30
5753 days' written notice is given to the licensee and filed with the
5754 office ~~department~~.

5755 (4) The usual and customary records pertaining to
5756 transactions under the license of a nonresident public adjuster
5757 must be retained for at least 3 years after completion of the
5758 adjustment and must be made available in this state to the
5759 office ~~department~~ upon request. The failure of a nonresident



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5760 public adjuster to properly maintain records and make them
 5761 available to the office ~~department~~ upon request constitutes
 5762 grounds for the immediate suspension of the license issued under
 5763 this section.

5764 (5) After licensure as a nonresident public adjuster, as a
 5765 condition of doing business in this state, the licensee must
 5766 annually on or before January 1, on a form prescribed by the
 5767 commission ~~department~~, submit an affidavit certifying that the
 5768 licensee is familiar with and understands the insurance code and
 5769 rules adopted thereunder and the provisions of the contracts
 5770 negotiated or to be negotiated. Compliance with this filing
 5771 requirement is a condition precedent to the issuance,
 5772 continuation, reinstatement, or renewal of a nonresident public
 5773 adjuster's appointment.

5774 Section 123. Subsections (1), (3), and (4) of section
 5775 626.8734, Florida Statutes, are amended to read:

5776 626.8734 Nonresident independent adjuster's
 5777 qualifications.--

5778 (1) The office ~~department~~ shall, upon application
 5779 therefor, issue a license to an applicant for a nonresident
 5780 independent adjuster's license upon determining that the
 5781 applicant has paid the applicable license fees required under s.
 5782 624.501 and:

5783 (a) Is a natural person at least 18 years of age.

5784 (b) Has passed to the satisfaction of the office
 5785 ~~department~~ a written Florida independent adjuster's examination
 5786 of the scope prescribed in s. 626.241(6); however, the
 5787 requirement for the examination does not apply to any of the
 5788 following:

5789 1. An applicant who is licensed as a resident independent



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5790 adjuster in his or her state of residence when that state
 5791 requires the passing of a written examination in order to obtain
 5792 the license and a reciprocal agreement with the appropriate
 5793 official of that state has been entered into by the office
 5794 ~~department~~; or

5795 2. An applicant who is licensed as a nonresident
 5796 independent adjuster in a state other than his or her state of
 5797 residence when the state of licensure requires the passing of a
 5798 written examination in order to obtain the license and a
 5799 reciprocal agreement with the appropriate official of the state
 5800 of licensure has been entered into by the office ~~department~~.

5801 (c) Is self-employed or associated with or employed by an
 5802 independent adjusting firm or other independent adjuster.
 5803 Applicants licensed as nonresident independent adjusters under
 5804 this section must be appointed as such in accordance with the
 5805 provisions of ss. 626.112 and 626.451. Appointment fees in the
 5806 amount specified in s. 624.501 must be paid to the office
 5807 ~~department~~ in advance. The appointment of a nonresident
 5808 independent adjuster shall continue in force until suspended,
 5809 revoked, or otherwise terminated, but subject to biennial
 5810 renewal or continuation by the licensee in accordance with
 5811 procedures prescribed in s. 626.381 for licensees in general.

5812 (d) Is trustworthy and has such business reputation as
 5813 would reasonably assure that he or she will conduct his or her
 5814 business as a nonresident independent adjuster fairly and in
 5815 good faith and without detriment to the public.

5816 (e) Has had sufficient experience, training, or
 5817 instruction concerning the adjusting of damages or losses under
 5818 insurance contracts, other than life and annuity contracts; is
 5819 sufficiently informed as to the terms and effects of the



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5820 provisions of those types of insurance contracts; and possesses
 5821 adequate knowledge of the laws of this state relating to such
 5822 contracts as to enable and qualify him or her to engage in the
 5823 business of insurance adjuster fairly and without injury to the
 5824 public or any member thereof with whom he or she may have
 5825 business as an independent adjuster.

5826 (3) The usual and customary records pertaining to
 5827 transactions under the license of a nonresident independent
 5828 adjuster must be retained for at least 3 years after completion
 5829 of the adjustment and must be made available in this state to
 5830 the office ~~department~~ upon request. The failure of a nonresident
 5831 independent adjuster to properly maintain records and make them
 5832 available to the office ~~department~~ upon request constitutes
 5833 grounds for the immediate suspension of the license issued under
 5834 this section.

5835 (4) After licensure as a nonresident independent adjuster,
 5836 as a condition of doing business in this state, the licensee
 5837 must annually on or before January 1, on a form prescribed by
 5838 the commission ~~department~~, submit an affidavit certifying that
 5839 the licensee is familiar with and understands the insurance laws
 5840 and administrative rules of this state and the provisions of the
 5841 contracts negotiated or to be negotiated. Compliance with this
 5842 filing requirement is a condition precedent to the issuance,
 5843 continuation, reinstatement, or renewal of a nonresident
 5844 independent adjuster's appointment.

5845 Section 124. Section 626.8736, Florida Statutes, is
 5846 amended to read:

5847 626.8736 Nonresident independent or public adjusters;
 5848 service of process.--

5849 (1) Each licensed nonresident independent or public



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5850 adjuster shall appoint the Chief Financial Officer ~~Insurance~~
5851 ~~Commissioner and Treasurer~~ and his or her successors in office
5852 as his or her attorney to receive service of legal process
5853 issued against the nonresident independent or public adjuster in
5854 this state, upon causes of action arising within this state out
5855 of transactions under his license and appointment. Service upon
5856 the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~
5857 as attorney shall constitute effective legal service upon the
5858 nonresident independent or public adjuster.

5859 (2) The appointment of the Chief Financial Officer
5860 ~~Insurance Commissioner and Treasurer~~ for service of process
5861 shall be irrevocable for as long as there could be any cause of
5862 action against the nonresident independent or public adjuster
5863 arising out of his or her insurance transactions in this state.

5864 (3) Duplicate copies of legal process against the
5865 nonresident independent or public adjuster shall be served upon
5866 the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~
5867 by a person competent to serve a summons.

5868 (4) Upon receiving the service, the Chief Financial
5869 Officer ~~Insurance Commissioner and Treasurer~~ shall forthwith
5870 send one of the copies of the process, by registered mail with
5871 return receipt requested, to the defendant nonresident
5872 independent or public adjuster at his or her last address of
5873 record with the office ~~department~~.

5874 (5) The Chief Financial Officer ~~Insurance Commissioner and~~
5875 ~~Treasurer~~ shall keep a record of the day and hour of service
5876 upon him or her of all legal process received under this
5877 section.

5878 Section 125. Section 626.8738, Florida Statutes, is
5879 amended to read:



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5880 626.8738 Penalty for violation.--In addition to any other
 5881 remedy imposed pursuant to this code, any person who acts as a
 5882 resident or nonresident public adjuster or holds himself or
 5883 herself out to be a public adjuster to adjust claims in this
 5884 state, without being licensed by the office ~~department~~ as a
 5885 public adjuster and appointed as a public adjuster, commits a
 5886 felony of the third degree, punishable as provided in s.
 5887 775.082, s. 775.083, or s. 775.084. Each act in violation of
 5888 this section constitutes a separate offense.

5889 Section 126. Section 626.874, Florida Statutes, is amended
 5890 to read:

5891 626.874 Catastrophe or emergency adjusters.--

5892 (1) In the event of a catastrophe or emergency, the office
 5893 ~~department~~ may issue a license, for the purposes and under the
 5894 conditions which it shall fix and for the period of emergency as
 5895 it shall determine, to persons who are residents or nonresidents
 5896 of this state and who are not licensed adjusters under this part
 5897 but who have been designated and certified to it as qualified to
 5898 act as adjusters by independent resident adjusters or by an
 5899 authorized insurer or by a licensed general lines agent to
 5900 adjust claims, losses, or damages under policies or contracts of
 5901 insurance issued by such insurers. The fee for the license
 5902 shall be as provided in s. 624.501(12)(c).

5903 (2) If any person not a licensed adjuster who has been
 5904 permitted to adjust such losses, claims, or damages under the
 5905 conditions and circumstances set forth in subsection (1),
 5906 engages in any of the misconduct described in or contemplated by
 5907 ss. 626.611 and 626.621, the office ~~department~~, without notice
 5908 and hearing, shall be authorized to issue its order denying such
 5909 person the privileges granted under this section; and thereafter



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5910 it shall be unlawful for any such person to adjust any such
 5911 losses, claims, or damages in this state.

5912 Section 127. Section 626.878, Florida Statutes, is amended
 5913 to read:

5914 626.878 Rules; code of ethics.--An adjuster shall
 5915 subscribe to the code of ethics specified in the rules of the
 5916 commission ~~department~~.

5917 Section 128. Paragraphs (d) and (m) of subsection (1) of
 5918 section 626.88, Florida Statutes, are amended to read:

5919 626.88 Definitions of "administrator" and "insurer".--

5920 (1) For the purposes of this part, an "administrator" is
 5921 any person who directly or indirectly solicits or effects
 5922 coverage of, collects charges or premiums from, or adjusts or
 5923 settles claims on residents of this state in connection with
 5924 authorized commercial self-insurance funds or with insured or
 5925 self-insured programs which provide life or health insurance
 5926 coverage or coverage of any other expenses described in s.
 5927 624.33(1) or any person who, through a health care risk contract
 5928 as defined in s. 641.234 with an insurer or health maintenance
 5929 organization, provides billing and collection services to health
 5930 insurers and health maintenance organizations on behalf of
 5931 health care providers, other than any of the following persons:

5932 (d) A health care services plan, health maintenance
 5933 organization, professional service plan corporation, or person
 5934 in the business of providing continuing care, possessing a valid
 5935 certificate of authority issued by the office ~~department~~, and
 5936 the sales representatives thereof, if the activities of such
 5937 entity are limited to the activities permitted under the
 5938 certificate of authority.

5939 (m) A person approved by the department ~~of Insurance~~ who



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5940 administers only self-insured workers' compensation plans.

5941

5942

5943 A person who provides billing and collection services to health
5944 insurers and health maintenance organizations on behalf of
5945 health care providers shall comply with the provisions of ss.
5946 627.6131, 641.3155, and 641.51(4).

5947 Section 129. Section 626.8805, Florida Statutes, is
5948 amended to read:

5949 626.8805 Certificate of authority to act as
5950 administrator.--

5951 (1) It is unlawful for any person to act as or hold
5952 himself or herself out to be an administrator in this state
5953 without a valid certificate of authority issued by the office
5954 ~~department~~ pursuant to ss. 626.88-626.894. To qualify for and
5955 hold authority to act as an administrator in this state, an
5956 administrator must otherwise be in compliance with this code and
5957 with its organizational agreement. The failure of any person to
5958 hold such a certificate while acting as an administrator shall
5959 subject such person to a fine of not less than \$5,000 or more
5960 than \$10,000 for each violation.

5961 (2) The administrator shall file with the office
5962 ~~department~~ an application for a certificate of authority upon a
5963 form to be adopted by the commission and furnished by the office
5964 ~~department~~, which application shall include or have attached the
5965 following information and documents:

5966 (a) All basic organizational documents of the
5967 administrator, such as the articles of incorporation, articles
5968 of association, partnership agreement, trade name certificate,
5969 trust agreement, shareholder agreement, and other applicable



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5970 documents, and all amendments to those documents.

5971 (b) The bylaws, rules, and regulations or similar
 5972 documents regulating the conduct or the internal affairs of the
 5973 administrator.

5974 (c) The names, addresses, official positions, and
 5975 professional qualifications of the individuals who are
 5976 responsible for the conduct of the affairs of the administrator,
 5977 including all members of the board of directors, board of
 5978 trustees, executive committee, or other governing board or
 5979 committee, the principal officers in the case of a corporation,
 5980 the partners or members in the case of a partnership or
 5981 association, and any other person who exercises control or
 5982 influence over the affairs of the administrator.

5983 (d) Annual statements or reports for the 3 most recent
 5984 years, or such other information as the office ~~department~~ may
 5985 require in order to review the current financial condition of
 5986 the applicant.

5987 (e) If the applicant is not currently acting as an
 5988 administrator, a statement of the amounts and sources of the
 5989 funds available for organization expenses and the proposed
 5990 arrangements for reimbursement and compensation of incorporators
 5991 or other principals.

5992 (3) The applicant shall make available for inspection by
 5993 the office ~~department~~ copies of all contracts with insurers or
 5994 other persons utilizing the services of the administrator.

5995 (4) The office ~~department~~ shall not issue a certificate of
 5996 authority if it determines that the administrator or any
 5997 principal thereof is not competent, trustworthy, financially
 5998 responsible, or of good personal and business reputation or has
 5999 had an insurance license denied for cause by any state.



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6000 (5) A certificate of authority issued under this section
 6001 shall remain valid, unless suspended or revoked by the office
 6002 ~~department~~, so long as the certificateholder continues in
 6003 business in this state.

6004 (6) A certificate of authority issued under this section
 6005 shall indicate that the administrator is authorized to
 6006 administer commercial self-insurance funds or life and health
 6007 programs or both, except that a certificate of authority issued
 6008 prior to October 1, 1988, does not authorize the administration
 6009 of commercial self-insurance funds.

6010 Section 130. Section 626.8809, Florida Statutes, is
 6011 amended to read:

6012 626.8809 Fidelity bond.--An administrator shall have and
 6013 keep in full force and effect a fidelity bond equal to at least
 6014 10 percent of the amount of the funds handled or managed
 6015 annually by the administrator. However, the office ~~department~~
 6016 may not require a bond greater than \$500,000 unless the office
 6017 ~~department~~, after due notice to all interested parties and
 6018 opportunity for hearing and after consideration of the record,
 6019 requires an amount in excess of \$500,000 but not more than 10
 6020 percent of the amount of the funds handled or managed annually
 6021 by the administrator.

6022 Section 131. Section 626.8814, Florida Statutes, is
 6023 amended to read:

6024 626.8814 Disclosure of ownership or affiliation.--Each
 6025 administrator shall identify to the office ~~department~~ any
 6026 ownership interest or affiliation of any kind with any insurance
 6027 company responsible for providing benefits directly or through
 6028 reinsurance to any plan for which the administrator provides
 6029 administrative services.



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6030 Section 132. Subsection (2) of section 626.884, Florida
 6031 Statutes, is amended to read:

6032 626.884 Maintenance of records by administrator; access;
 6033 confidentiality.--

6034 (2) The office ~~department~~ shall have access to books and
 6035 records maintained by the administrator for the purpose of
 6036 examination, audit, and inspection. Information contained in
 6037 such books and records is confidential and exempt from the
 6038 provisions of s. 119.07(1) if the disclosure of such information
 6039 would reveal a trade secret as defined in s. 688.002. However,
 6040 the office ~~department~~ may use such information in any proceeding
 6041 instituted against the administrator.

6042 Section 133. Subsections (1) and (3) of section 626.89,
 6043 Florida Statutes, are amended to read:

6044 626.89 Annual financial statement and filing fee; notice
 6045 of change of ownership.--

6046 (1) Each authorized administrator shall file with the
 6047 office ~~department~~ a full and true statement of its financial
 6048 condition, transactions, and affairs. The statement shall be
 6049 filed annually on or before March 1 or within such extension of
 6050 time therefor as the office ~~department~~ for good cause may have
 6051 granted and shall be for the preceding calendar year. The
 6052 statement shall be in such form and contain such matters as the
 6053 commission ~~department~~ prescribes and shall be verified by at
 6054 least two officers of such administrator.

6055 (3) In addition, the administrator shall immediately
 6056 notify the office ~~department~~ of any material change in its
 6057 ownership.

6058 Section 134. Section 626.891, Florida Statutes, is amended
 6059 to read:



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6060 626.891 Grounds for suspension or revocation of
6061 certificate of authority.--

6062 (1) The certificate of authority of an administrator shall
6063 be suspended or revoked if the office ~~department~~ determines that
6064 the administrator:

6065 (a) Is in an unsound financial condition;

6066 (b) Has used or is using such methods or practices in the
6067 conduct of its business so as to render its further transaction
6068 of business in this state hazardous or injurious to insured
6069 persons or the public; or

6070 (c) Has failed to pay any judgment rendered against it in
6071 this state within 60 days after the judgment has become final.

6072 (2) The office ~~department~~ may, in its discretion, suspend
6073 or revoke the certificate of authority of an administrator if it
6074 finds that the administrator:

6075 (a) Has violated any lawful rule or order of the
6076 commission or office ~~department~~ or any provision of this
6077 chapter;

6078 (b) Has refused to be examined or to produce its accounts,
6079 records, and files for examination, or if any of its officers
6080 has refused to give information with respect to its affairs or
6081 has refused to perform any other legal obligation as to such
6082 examination, when required by the office ~~department~~;

6083 (c) Has, without just cause, refused to pay proper claims
6084 or perform services arising under its contracts or has, without
6085 just cause, compelled insured persons to accept less than the
6086 amount due them or to employ attorneys or bring suit against the
6087 administrator to secure full payment or settlement of such
6088 claims;

6089 (d) Is or was affiliated with and under the same general



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6090 management or interlocking directorate or ownership as another
 6091 administrator which transacts business in this state without
 6092 having a certificate of authority;

6093 (e) At any time fails to meet any qualification for which
 6094 issuance of the certificate could have been refused had such
 6095 failure then existed and been known to the office ~~department~~;

6096 (f) Has been convicted of, or has entered a plea of guilty
 6097 or nolo contendere to, a felony relating to the business of
 6098 insurance or insurance administration in this state or in any
 6099 other state without regard to whether adjudication was withheld;
 6100 or

6101 (g) Is under suspension or revocation in another state.

6102 (3) The office ~~department~~ may, pursuant to s. 120.60, in
 6103 its discretion and without advance notice or hearing thereon,
 6104 immediately suspend the certificate of any administrator if it
 6105 finds that one or more of the following circumstances exist:

6106 (a) The administrator is insolvent or impaired.

6107 (b) The fidelity bond required by s. 626.8809 is not
 6108 maintained.

6109 (c) A proceeding for receivership, conservatorship,
 6110 rehabilitation, or other delinquency proceeding regarding the
 6111 administrator has been commenced in any state.

6112 (d) The financial condition or business practices of the
 6113 administrator otherwise pose an imminent threat to the public
 6114 health, safety, or welfare of the residents of this state.

6115 (4) The violation of this part by any insurer shall be a
 6116 ground for suspension or revocation of the certificate of
 6117 authority of that insurer in this state.

6118 Section 135. Section 626.892, Florida Statutes, is amended
 6119 to read:



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6120 626.892 Order of suspension or revocation of certificate
6121 of authority; notice.--

6122 (1) The suspension or revocation of a certificate of
6123 authority of an administrator shall be effected by order of the
6124 office ~~department~~ mailed to the administrator by registered or
6125 certified mail.

6126 (2) In its discretion, the office ~~department~~ may cause
6127 notice of any such revocation or suspension to be published in
6128 one or more newspapers of general circulation published in this
6129 state.

6130 Section 136. Subsections (1), (3), and (4) of section
6131 626.894, Florida Statutes, are amended to read:

6132 626.894 Administrative fine in lieu of suspension or
6133 revocation.--

6134 (1) If the office ~~department~~ finds that one or more
6135 grounds exist for the suspension or revocation of a certificate
6136 of authority issued under this part, the office ~~department~~ may,
6137 in lieu of such suspension or revocation, impose a fine upon the
6138 administrator.

6139 (3) With respect to any knowing and willful violation of a
6140 lawful order or rule of the office or commission ~~department~~ or a
6141 provision of this part, the office ~~department~~ may impose a fine
6142 upon the administrator in an amount not to exceed \$5,000 for
6143 each such violation. In no event may such fine exceed an
6144 aggregate amount of \$25,000 for all knowing and willful
6145 violations arising out of the same action. In addition to such
6146 fine, the administrator shall make restitution when due in
6147 accordance with the provisions of subsection (2).

6148 (4) The failure of an administrator to make restitution
6149 when due as required under this section constitutes a willful



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6150 violation of this part. However, if an administrator in good
 6151 faith is uncertain as to whether any restitution is due or as to
 6152 the amount of restitution due, it shall promptly notify the
 6153 office ~~department~~ of the circumstances; and the failure to make
 6154 restitution pending a determination of whether restitution is
 6155 due or the amount of restitution due will not constitute a
 6156 violation of this part.

6157 Section 137. Section 626.895, Florida Statutes, is amended
 6158 to read:

6159 626.895 Definition of "service company" or "service
 6160 agent".--For the purpose of this part, a "service company" is
 6161 any business entity which has met all the requirements of ss.
 6162 626.895-626.899, which does not control funds, and which has
 6163 obtained office ~~department~~ approval to contract with self-
 6164 insurers or multiple-employer welfare arrangements for the
 6165 purpose of providing all or any part of the services necessary
 6166 to establish and maintain a multiple-employer welfare
 6167 arrangement as defined in s. 624.437(1). The term "service
 6168 agent" is synonymous with the term "service company" as used in
 6169 this part.

6170 Section 138. Subsection (3) of section 626.896, Florida
 6171 Statutes, is amended to read:

6172 626.896 Servicing requirements for self-insurers and
 6173 multiple-employer welfare arrangements.--

6174 (3) It is the responsibility of the self-insurer or
 6175 multiple-employer welfare arrangement to notify the office
 6176 ~~department~~ within 90 days of changing its method of fulfilling
 6177 its servicing requirements from those which were previously
 6178 filed with the office ~~department~~.

6179 Section 139. Subsection (2) of section 626.897, Florida



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6180 Statutes, is amended to read:

6181 626.897 Application for authorization to act as service
6182 company; bond.--

6183 (2) Any business desiring to act as a service company for
6184 individual self-insurers or multiple-employer welfare
6185 arrangements shall be approved by the office ~~department~~. Any
6186 business acting as a service company prior to October 1, 1983,
6187 will be approved as a service company upon complying with the
6188 filing requirements of this section and s. 626.898. The failure
6189 of any person to obtain such approval while acting as a service
6190 company shall subject such person to a fine of not less than
6191 \$5,000 or more than \$10,000 for each violation.

6192 Section 140. Subsections (3) and (10) of section 626.898,
6193 Florida Statutes, are amended to read:

6194 626.898 Requirements for retaining authorization as
6195 service company; recertification.--

6196 (3)(a) Each service company shall maintain at one or more
6197 locations within this state copies of all contracts with each
6198 self-insurer or multiple-employer welfare arrangement that it
6199 services and records relating thereto which are sufficient in
6200 type and quantity to verify the accuracy and completeness of all
6201 reports and documents submitted to the office ~~department~~
6202 pursuant to this part. In the event that the service company has
6203 its records distributed in multiple locations, it shall inform
6204 the office ~~department~~ as to the location of each type of record,
6205 as well as the location of specific records for the self-
6206 insurers or multiple-employer welfare arrangements it services.

6207 (b) These records shall be open to inspection by
6208 representatives of the office ~~department~~ during regular business
6209 hours. All records shall be retained according to the schedule



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6210 adopted by the commission ~~department~~ for similar documents. The
 6211 location of these records shall be made known to the office
 6212 ~~department~~ as necessary.

6213 (10) Each service company shall identify to the office
 6214 ~~department~~ any ownership interest or affiliation of any kind
 6215 with any insurance company responsible directly or through
 6216 reinsurance for providing benefits to any plan for which it
 6217 provides services.

6218 Section 141. Section 626.899, Florida Statutes, is amended
 6219 to read:

6220 626.899 Withdrawal of authorization as service
 6221 company.--The failure to comply with any provision of ss.
 6222 626.895-626.899 or with any rule or any order of the commission
 6223 or office ~~department~~ within the time prescribed shall be
 6224 considered good cause for withdrawal of the certificate of
 6225 approval. The office ~~department~~ shall by registered or
 6226 certified mail give to the service company prior written notice
 6227 of such withdrawal. The service company shall have 30 days from
 6228 the date of mailing to request a hearing. The failure to
 6229 request a hearing within the time prescribed shall result in the
 6230 withdrawal becoming effective 45 days from the date of mailing
 6231 of the original notice. In no event shall the withdrawal of the
 6232 certificate of approval be effective prior to the date upon
 6233 which a hearing, if requested, is scheduled. Copies of such
 6234 notice of withdrawal of a certificate of approval shall be
 6235 furnished by the office ~~department~~ to each self-funded program
 6236 serviced.

6237 Section 142. Subsection (4) of section 626.901, Florida
 6238 Statutes, is amended to read:

6239 626.901 Representing or aiding unauthorized insurer



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6240 prohibited.--

6241 (4) This section does not apply to:

6242 (a) Matters authorized to be done by the office department
 6243 under the Unauthorized Insurers Process Law, ss. 626.904-
 6244 626.912.

6245 (b) Surplus lines insurance when written pursuant to the
 6246 Surplus Lines Law, ss. 626.913-626.937.

6247 (c) Transactions as to which a certificate of authority is
 6248 not required of an insurer, as stated in s. 624.402.

6249 (d) Independently procured coverage written pursuant to s.
 6250 626.938.

6251 Section 143. Section 626.906, Florida Statutes, is amended
 6252 to read:

6253 626.906 Acts constituting Chief Financial Officer
 6254 ~~Insurance Commissioner and Treasurer~~ as process agent.--Any of
 6255 the following acts in this state, effected by mail or otherwise,
 6256 by an unauthorized foreign insurer, alien insurer, or person
 6257 representing or aiding such an insurer is equivalent to and
 6258 shall constitute an appointment by such insurer or person
 6259 representing or aiding such insurer of the Chief Financial
 6260 Officer ~~Insurance Commissioner and Treasurer, and his or her~~
 6261 ~~successor or successors in office,~~ to be its true and lawful
 6262 attorney, upon whom may be served all lawful process in any
 6263 action, suit, or proceeding instituted by or on behalf of an
 6264 insured or beneficiary, arising out of any such contract of
 6265 insurance; and any such act shall be signification of the
 6266 insurer's or person's agreement that such service of process is
 6267 of the same legal force and validity as personal service of
 6268 process in this state upon such insurer or person representing
 6269 or aiding such insurer:



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6270 (1) The issuance or delivery of contracts of insurance to
 6271 residents of this state or to corporations authorized to do
 6272 business therein;

6273 (2) The solicitation of applications for such contracts;

6274 (3) The collection of premiums, membership fees,
 6275 assessments, or other considerations for such contracts; or

6276 (4) Any other transaction of insurance.

6277 Section 144. Subsection (1) of section 626.907, Florida
 6278 Statutes, is amended to read:

6279 626.907 Service of process; judgment by default.--

6280 (1) Service of process upon an insurer or person
 6281 representing or aiding such insurer pursuant to s. 626.906 shall
 6282 be made by delivering to and leaving with the Chief Financial
 6283 Officer ~~Insurance Commissioner and Treasurer~~ or some person in
 6284 apparent charge of his or her office two copies thereof. The
 6285 Chief Financial Officer ~~Insurance Commissioner and Treasurer~~
 6286 shall forthwith mail by registered mail one of the copies of
 6287 such process to the defendant at the defendant's last known
 6288 principal place of business and shall keep a record of all
 6289 process so served upon him or her. The service of process is
 6290 sufficient, provided notice of such service and a copy of the
 6291 process are sent within 10 days thereafter by registered mail by
 6292 plaintiff or plaintiff's attorney to the defendant at the
 6293 defendant's last known principal place of business, and the
 6294 defendant's receipt, or receipt issued by the post office with
 6295 which the letter is registered, showing the name of the sender
 6296 of the letter and the name and address of the person to whom the
 6297 letter is addressed, and the affidavit of the plaintiff or
 6298 plaintiff's attorney showing a compliance herewith are filed
 6299 with the clerk of the court in which the action is pending on or



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6300 before the date the defendant is required to appear, or within
6301 such further time as the court may allow.

6302 Section 145. Section 626.909, Florida Statutes, is amended
6303 to read:

6304 626.909 Jurisdiction of office and department; service of
6305 process on Secretary of State.--

6306 (1) The Legislature hereby declares that it is a subject
6307 of concern that the purpose of the Unauthorized Insurers Process
6308 Law as expressed in s. 626.905 may be denied by the possibility
6309 that the right of service of process provided for in that law
6310 may be restricted only to those actions, suits, or proceedings
6311 brought by insureds or beneficiaries. It therefore declares that
6312 it is the intent of s. 626.905 that it is the obligation and
6313 duty of the state to protect its residents and also proceed
6314 under this law through the office or department in the courts of
6315 this state. It further declares that it is also the intent of
6316 the Legislature to subject unauthorized insurers and persons
6317 representing or aiding such insurers to the jurisdiction of the
6318 office or department in proceedings, examinations, or hearings
6319 before it as provided for in this code.

6320 (2) In addition to the procedure for service of process on
6321 unauthorized insurers or persons representing or aiding such
6322 insurers contained in ss. 626.906 and 626.907, the office or
6323 department shall have the right to bring any action, suit, or
6324 proceeding in the name of the state or conduct any proceeding,
6325 examination, or hearing provided for in this code against any
6326 unauthorized insurer or person representing or aiding such
6327 insurer for violation of any lawful order of the office or
6328 department or any provision of this code, specifically including
6329 but not limited to the regulation of trade practices provided



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6330 for in part IX of this chapter, if the insurer or person
6331 representing or aiding such insurer transacts insurance in this
6332 state as defined in ss. 624.10 and 626.906 and the insurer does
6333 not transact such business under a subsisting certificate of
6334 authority as required by s. 624.401. In the event the
6335 transaction of business is done by mail, the venue of the act is
6336 at the point where the matter transmitted by mail is delivered
6337 and takes effect.

6338 (3) In addition to the right of action, suit, or
6339 proceeding authorized by subsection (2), the office or
6340 department shall have the right to bring a civil action in the
6341 name of the state, as parens patriae on behalf of any insured,
6342 beneficiary of any insured, claimant or dependent, or any other
6343 person or class of persons injured as a result of the
6344 transaction of any insurance business as defined in s. 626.906
6345 by any unauthorized insurer, as defined in s. 624.09 who is also
6346 an ineligible insurer as set forth in ss. 626.917 and 626.918,
6347 or any person who represents or aids any unauthorized insurer,
6348 in violation of s. 626.901, to recover actual damages on behalf
6349 of individuals who were residents at the time the transaction
6350 occurred and the cost of such suit, including a reasonable
6351 attorney's fee. The court shall exclude from the amount of
6352 monetary relief awarded in such action any amount of monetary
6353 relief which duplicates amounts which have been awarded for the
6354 same injury.

6355 (4) Transaction of business in this state, as so defined,
6356 by any unauthorized insurer or person representing or aiding
6357 such insurer shall be deemed consent by the insurer or person
6358 representing or aiding such insurer to the jurisdiction of the
6359 office or department in proceedings, examinations, and hearings



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6360 before it as provided for in this code and shall constitute an
6361 irrevocable appointment by the insurer or person representing or
6362 aiding such insurer of the Secretary of State and his or her
6363 successor or successors in office as its true and lawful
6364 attorney upon whom may be served all lawful process in any
6365 action, suit, or proceeding in any court by the office or
6366 department or by the state and upon whom may be served all
6367 notices and orders of the office or department arising out of
6368 any such transaction of business; and such transaction of
6369 business shall constitute the agreement of the insurer or person
6370 representing or aiding such insurer that any such process
6371 against it or any such notice or order which is so served shall
6372 be of the same legal force and validity as if served personally
6373 within this state on the insurer or person representing or
6374 aiding such insurer. Service of process shall be in accordance
6375 with and in the same manner as now provided for service of
6376 process upon nonresidents under the provision of s. 48.161, and
6377 service of process shall also be valid if made as provided in s.
6378 626.907(2).

6379 (5) No plaintiff shall be entitled to a judgment by
6380 default or a decree pro confesso under this section until the
6381 expiration of 30 days after date of the filing of the affidavit
6382 of compliance.

6383 (6) Nothing in this section shall limit or abridge the
6384 right to serve any process, notice, orders, or demand upon the
6385 insurer or person representing or aiding such insurer in any
6386 other manner now or hereafter permitted by law.

6387 (7) Nothing in this section shall apply as to surplus
6388 lines insurance when written pursuant to the Surplus Lines Law,
6389 ss. 626.913-626.937, or as to transactions as to which a



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6390 certificate of authority is not required of the insurer, as
6391 stated in s. 624.402.

6392 Section 146. Section 626.910, Florida Statutes, is amended
6393 to read:

6394 626.910 Penalty for violation by unauthorized insurers and
6395 persons representing or aiding such insurers.--Any unauthorized
6396 insurer or person representing or aiding such insurer
6397 transacting insurance in this state and subject to service of
6398 process as referred to in s. 626.909 shall forfeit and pay to
6399 the state a civil penalty of not more than \$1,000 for each
6400 nonwillful violation, or not more than \$10,000 for each willful
6401 violation, of any lawful order of the office or department or
6402 any provision of this code.

6403 Section 147. Section 626.912, Florida Statutes, is amended
6404 to read:

6405 626.912 Exemptions from ss. 626.904-626.911.--The
6406 provisions of ss. 626.904-626.911 do not apply to any action,
6407 suit, or proceeding against any unauthorized foreign insurer,
6408 alien insurer, or person representing or aiding such an insurer
6409 arising out of any contract of insurance:

6410 (1) Covering reinsurance, wet marine and transportation,
6411 commercial aircraft, or railway insurance risks;

6412 (2) Against legal liability arising out of the ownership,
6413 operation, or maintenance of any property having a permanent
6414 situs outside this state;

6415 (3) Against loss of or damage to any property having a
6416 permanent situs outside this state; or

6417 (4) Issued under and in accordance with the Surplus Lines
6418 Law, when such insurer or person representing or aiding such
6419 insurer enters a general appearance or when such contract of



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6420 insurance contains a provision designating the Chief Financial
 6421 Officer ~~Insurance Commissioner and Treasurer and his or her~~
 6422 ~~successor or successors in office~~ or designating a Florida
 6423 resident agent to be the true and lawful attorney of such
 6424 unauthorized insurer or person representing or aiding such
 6425 insurer upon whom may be served all lawful process in any
 6426 action, suit, or proceeding instituted by or on behalf of an
 6427 insured or person representing or aiding such insurer or
 6428 beneficiary arising out of any such contract of insurance; and
 6429 service of process effected on such Chief Financial Officer
 6430 ~~Insurance Commissioner and Treasurer, his or her successor or~~
 6431 ~~successors in office~~, or such resident agent shall be deemed to
 6432 confer complete jurisdiction over such unauthorized insurer or
 6433 person representing or aiding such insurer in such action.

6434 Section 148. Subsection (2) of section 626.914, Florida
 6435 Statutes, is amended to read:

6436 626.914 Definitions.--As used in this Surplus Lines Law,
 6437 the term:

6438 (2) "Eligible surplus lines insurer" means an unauthorized
 6439 insurer which has been made eligible by the office ~~department~~ to
 6440 issue insurance coverage under this Surplus Lines Law.

6441 Section 149. Subsections (1) and (2) of section 626.916,
 6442 Florida Statutes, are amended to read:

6443 626.916 Eligibility for export.--

6444 (1) No insurance coverage shall be eligible for export
 6445 unless it meets all of the following conditions:

6446 (a) The full amount of insurance required must not be
 6447 procurable, after a diligent effort has been made by the
 6448 producing agent to do so, from among the insurers authorized to
 6449 transact and actually writing that kind and class of insurance



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6450 in this state, and the amount of insurance exported shall be
6451 only the excess over the amount so procurable from authorized
6452 insurers. Surplus lines agents must verify that a diligent
6453 effort has been made by requiring a properly documented
6454 statement of diligent effort from the retail or producing agent.

6455 However, to be in compliance with the diligent effort
6456 requirement, the surplus lines agent's reliance must be
6457 reasonable under the particular circumstances surrounding the
6458 export of that particular risk. Reasonableness shall be assessed
6459 by taking into account factors which include, but are not
6460 limited to, a regularly conducted program of verification of the
6461 information provided by the retail or producing agent.

6462 Declinations must be documented on a risk-by-risk basis. If it
6463 is not possible to obtain the full amount of insurance required
6464 by layering the risk, it is permissible to export the full
6465 amount.

6466 (b) The premium rate at which the coverage is exported
6467 shall not be lower than that rate applicable, if any, in actual
6468 and current use by a majority of the authorized insurers for the
6469 same coverage on a similar risk.

6470 (c) The policy or contract form under which the insurance
6471 is exported shall not be more favorable to the insured as to the
6472 coverage or rate than under similar contracts on file and in
6473 actual current use in this state by the majority of authorized
6474 insurers actually writing similar coverages on similar risks;
6475 except that a coverage may be exported under a unique form of
6476 policy designed for use with respect to a particular subject of
6477 insurance if a copy of such form is filed with the office
6478 ~~department~~ by the surplus lines agent desiring to use the same
6479 and is subject to the disapproval of the office ~~department~~



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6480 within 10 days of filing such form exclusive of Saturdays,
6481 Sundays, and legal holidays if it finds that the use of such
6482 special form is not reasonably necessary for the principal
6483 purposes of the coverage or that its use would be contrary to
6484 the purposes of this Surplus Lines Law with respect to the
6485 reasonable protection of authorized insurers from unwarranted
6486 competition by unauthorized insurers.

6487 (d) Except as to extended coverage in connection with fire
6488 insurance policies and except as to windstorm insurance, the
6489 policy or contract under which the insurance is exported shall
6490 not provide for deductible amounts, in determining the existence
6491 or extent of the insurer's liability, other than those available
6492 under similar policies or contracts in actual and current use by
6493 one or more authorized insurers.

6494 (2) The commission ~~department~~ may by rule ~~rules and~~
6495 ~~regulations~~ declare eligible for export generally, and
6496 notwithstanding the provisions of paragraphs (a), (b), (c), and
6497 (d) of subsection (1), any class or classes of insurance
6498 coverage or risk for which it finds, after a hearing, that there
6499 is no reasonable or adequate market among authorized insurers.
6500 Any such rules ~~and regulations~~ shall continue in effect during
6501 the existence of the conditions upon which predicated, but
6502 subject to termination by the commission ~~department~~.

6503 Section 150. Subsection (1) of section 626.917, Florida
6504 Statutes, is amended to read:

6505 626.917 Eligibility for export; wet marine and
6506 transportation, aviation risks.--

6507 (1) Insurance coverage of wet marine and transportation
6508 risks, as defined in this code in s. 624.607(2), or aviation
6509 risks, including airport and products liability incidental



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6510 thereto and hangarkeeper's liability, may be exported under the
 6511 following conditions:

6512 (a) The insurance must be placed only by or through a
 6513 licensed Florida surplus lines agent; and

6514 (b) The insurer must be one made eligible by the office
 6515 ~~department~~ specifically for such coverages, based upon
 6516 information furnished by the insurer and indicating that the
 6517 insurer is well able to meet its financial obligations.

6518 Section 151. Section 626.918, Florida Statutes, is amended
 6519 to read:

6520 626.918 Eligible surplus lines insurers.--

6521 (1) No surplus lines agent shall place any coverage with
 6522 any unauthorized insurer which is not then an eligible surplus
 6523 lines insurer, except as permitted under subsections (5) and
 6524 (6).

6525 (2) No unauthorized insurer shall be or become an eligible
 6526 surplus lines insurer unless made eligible by the office
 6527 ~~department~~ in accordance with the following conditions:

6528 (a) Eligibility of the insurer must be requested in
 6529 writing by the Florida Surplus Lines Service Office;

6530 (b) The insurer must be currently an authorized insurer in
 6531 the state or country of its domicile as to the kind or kinds of
 6532 insurance proposed to be so placed and must have been such an
 6533 insurer for not less than the 3 years next preceding or must be
 6534 the wholly owned subsidiary of such authorized insurer or must
 6535 be the wholly owned subsidiary of an already eligible surplus
 6536 lines insurer as to the kind or kinds of insurance proposed for
 6537 a period of not less than the 3 years next preceding. However,
 6538 the office ~~department~~ may waive the 3-year requirement if the
 6539 insurer provides a product or service not readily available to



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6540 the consumers of this state or has operated successfully for a
6541 period of at least 1 year next preceding and has capital and
6542 surplus of not less than \$25 million;

6543 (c) Before granting eligibility, the requesting surplus
6544 lines agent or the insurer shall furnish the office ~~department~~
6545 with a duly authenticated copy of its current annual financial
6546 statement in the English language and with all monetary values
6547 therein expressed in United States dollars, at an exchange rate
6548 (in the case of statements originally made in the currencies of
6549 other countries) then-current and shown in the statement, and
6550 with such additional information relative to the insurer as the
6551 office ~~department~~ may request;

6552 (d)1. The insurer must have and maintain surplus as to
6553 policyholders of not less than \$15 million; in addition, an
6554 alien insurer must also have and maintain in the United States a
6555 trust fund for the protection of all its policyholders in the
6556 United States under terms deemed by the office ~~department~~ to be
6557 reasonably adequate, in an amount not less than \$5.4 million.
6558 Any such surplus as to policyholders or trust fund shall be
6559 represented by investments consisting of eligible investments
6560 for like funds of like domestic insurers under part II of
6561 chapter 625 provided, however, that in the case of an alien
6562 insurance company, any such surplus as to policyholders may be
6563 represented by investments permitted by the domestic regulator
6564 of such alien insurance company if such investments are
6565 substantially similar in terms of quality, liquidity, and
6566 security to eligible investments for like funds of like domestic
6567 insurers under part II of chapter 625;

6568 2. For those surplus lines insurers that were eligible on
6569 January 1, 1994, and that maintained their eligibility



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6570 thereafter, the required surplus as to policyholders shall be:
 6571 a. On December 31, 1994, and until December 30, 1995, \$2.5
 6572 million.
 6573 b. On December 31, 1995, and until December 30, 1996, \$3.5
 6574 million.
 6575 c. On December 31, 1996, and until December 30, 1997, \$4.5
 6576 million.
 6577 d. On December 31, 1997, and until December 30, 1998, \$5.5
 6578 million.
 6579 e. On December 31, 1998, and until December 30, 1999, \$6.5
 6580 million.
 6581 f. On December 31, 1999, and until December 30, 2000, \$8
 6582 million.
 6583 g. On December 31, 2000, and until December 30, 2001, \$9.5
 6584 million.
 6585 h. On December 31, 2001, and until December 30, 2002, \$11
 6586 million.
 6587 i. On December 31, 2002, and until December 30, 2003, \$13
 6588 million.
 6589 j. On December 31, 2003, and thereafter, \$15 million.
 6590 3. The capital and surplus requirements as set forth in
 6591 subparagraph 2. do not apply in the case of an insurance
 6592 exchange created by the laws of individual states, where the
 6593 exchange maintains capital and surplus pursuant to the
 6594 requirements of that state, or maintains capital and surplus in
 6595 an amount not less than \$50 million in the aggregate. For an
 6596 insurance exchange which maintains funds in the amount of at
 6597 least \$12 million for the protection of all insurance exchange
 6598 policyholders, each individual syndicate shall maintain minimum
 6599 capital and surplus in an amount not less than \$3 million. If



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6600 the insurance exchange does not maintain funds in the amount of
6601 at least \$12 million for the protection of all insurance
6602 exchange policyholders, each individual syndicate shall meet the
6603 minimum capital and surplus requirements set forth in
6604 subparagraph 2.;

6605 4. A surplus lines insurer which is a member of an
6606 insurance holding company that includes a member which is a
6607 Florida domestic insurer as set forth in its holding company
6608 registration statement, as set forth in s. 628.801 and rules
6609 adopted thereunder, may elect to maintain surplus as to
6610 policyholders in an amount equal to the requirements of s.
6611 624.408, subject to the requirement that the surplus lines
6612 insurer shall at all times be in compliance with the
6613 requirements of chapter 625.

6614
6615
6616 The election shall be submitted to the office ~~department~~ and
6617 shall be effective upon the office's ~~department's~~ being
6618 satisfied that the requirements of subparagraph 4. have been
6619 met. The initial date of election shall be the date of office
6620 ~~department~~ approval. The election approval application shall be
6621 on a form adopted by commission ~~department~~ rule. The office
6622 ~~department~~ may approve an election form submitted pursuant to
6623 subparagraph 4. only if it was on file with the former
6624 Department of Insurance before February 28, 1998;

6625 (e) The insurer must be of good reputation as to the
6626 providing of service to its policyholders and the payment of
6627 losses and claims;

6628 (f) The insurer must be eligible, as for authority to
6629 transact insurance in this state, under s. 624.404(3); and



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6630 (g) This subsection does not apply as to unauthorized
6631 insurers made eligible under s. 626.917 as to wet marine and
6632 aviation risks.

6633 (3) The office ~~department~~ shall from time to time publish
6634 a list of all currently eligible surplus lines insurers and
6635 shall mail a copy thereof to each licensed surplus lines agent
6636 at his or her office of record with the office ~~department~~.

6637 (4) This section shall not be deemed to cast upon the
6638 office ~~department~~ any duty or responsibility to determine the
6639 actual financial condition or claims practices of any
6640 unauthorized insurer; and the status of eligibility, if granted
6641 by the office ~~department~~, shall indicate only that the insurer
6642 appears to be sound financially and to have satisfactory claims
6643 practices and that the office ~~department~~ has no credible
6644 evidence to the contrary.

6645 (5) When it appears that any particular insurance risk
6646 which is eligible for export, but on which insurance coverage,
6647 in whole or in part, is not procurable from the eligible surplus
6648 lines insurers, after a search of eligible surplus lines
6649 insurers, then the surplus lines agent may file a supplemental
6650 signed statement setting forth such facts and advising the
6651 office ~~department~~ that such part of the risk as shall be
6652 unprocurable, as aforesaid, is being placed with named
6653 unauthorized insurers, in the amounts and percentages set forth
6654 in the statement. Such named unauthorized insurer shall,
6655 however, before accepting any risk in this state, deposit with
6656 the department cash or securities acceptable to the office and
6657 department of the market value of \$50,000 for each individual
6658 risk, contract, or certificate, which deposit shall be held by
6659 the department for the benefit of Florida policyholders only;



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6660 and the surplus lines agent shall procure from such unauthorized
 6661 insurer and file with the office ~~department~~ a certified copy of
 6662 its statement of condition as of the close of the last calendar
 6663 year. If such statement reveals, including both capital and
 6664 surplus, net assets of at least that amount required for
 6665 licensure of a domestic insurer, then the surplus lines agent
 6666 may proceed to consummate such contract of insurance. Whenever
 6667 any insurance risk, or any part thereof, is placed with an
 6668 unauthorized insurer, as provided herein, the policy, binder, or
 6669 cover note shall contain a statement signed by the insured and
 6670 the agent with the following notation: "The insured is aware
 6671 that certain insurers participating in this risk have not been
 6672 approved to transact business in Florida nor have they been
 6673 declared eligible as surplus lines insurers by the Office of
 6674 Insurance Regulation ~~Department of Insurance~~ of Florida. The
 6675 placing of such insurance by a duly licensed surplus lines agent
 6676 in Florida shall not be construed as approval of such insurer by
 6677 the Office of Insurance Regulation ~~Department of Insurance~~ of
 6678 Florida. Consequently, the insured is aware that the insured
 6679 has severely limited the assistance available under the
 6680 insurance laws of Florida. The insured is further aware that he
 6681 or she may be charged a reasonable per policy fee, as provided
 6682 in s. 626.916(4), Florida Statutes, for each policy certified
 6683 for export." All other provisions of this code shall apply to
 6684 such placement the same as if such risks were placed with an
 6685 eligible surplus lines insurer.

6686 (6) When any particular insurance risk subject to
 6687 subsection (5) is eligible for placement with an unauthorized
 6688 insurer and not more than 12.5 percent of the risk is so
 6689 subject, the office ~~Department of Insurance~~ may, at its



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6690 discretion, permit the agent to obtain from the insured a signed
 6691 statement as indicated in subsection (5). All other provisions
 6692 of this code apply to such placement the same as if such risks
 6693 were placed with an eligible surplus lines insurer.

6694 Section 152. Section 626.919, Florida Statutes, is amended
 6695 to read:

6696 626.919 Withdrawal of eligibility; surplus lines
 6697 insurer.--

6698 (1) If at any time the office ~~department~~ has reason to
 6699 believe that any unauthorized insurer then on the list of
 6700 eligible surplus lines insurers is insolvent or in unsound
 6701 financial condition, or does not make reasonable prompt payment
 6702 of just losses and claims in this state, or that it is no longer
 6703 eligible under the conditions therefor provided in s. 626.918,
 6704 it shall withdraw the eligibility of the insurer to insure
 6705 surplus lines risks in this state.

6706 (2) If the office ~~department~~ finds that an insurer
 6707 currently eligible as a surplus lines insurer has willfully
 6708 violated the laws of this state or a rule of the commission
 6709 ~~department~~, it may, in its discretion, withdraw the eligibility
 6710 of the insurer to insure surplus lines risks in this state.

6711 (3) The office ~~department~~ shall promptly mail notice of
 6712 all such withdrawals of eligibility to each surplus lines agent
 6713 at his or her address of record with the department.

6714 Section 153. Subsection (8) of section 626.921, Florida
 6715 Statutes, is amended to read:

6716 626.921 Florida Surplus Lines Service Office.--

6717 (8)(a) Information furnished to the department under s.
 6718 626.923 or contained in the records subject to examination by
 6719 the department under s. 626.930 is confidential and exempt from



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6720 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State
6721 Constitution if the disclosure of the information would reveal
6722 information specific to a particular policy or policyholder.
6723 The exemption does not apply to any proceeding instituted by the
6724 department or office against an agent or insurer.

6725 (b) Information furnished to the Florida Surplus Lines
6726 Service Office under the Surplus Lines Law is confidential and
6727 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
6728 of the State Constitution if the disclosure of the information
6729 would reveal information specific to a particular policy or
6730 policyholder. This exemption does not prevent the disclosure of
6731 any information by the Florida Surplus Lines Service Office to
6732 the department, but the exemption applies to records obtained by
6733 the department from the Florida Surplus Lines Service Office.
6734 The exemption does not apply to any proceeding instituted by the
6735 department or office against an agent or insurer. This paragraph
6736 is subject to the Open Government Sunset Review Act of 1995 in
6737 accordance with s. 119.15, and shall stand repealed on October
6738 2, 2006, unless reviewed and saved from repeal through
6739 reenactment by the Legislature.

6740 Section 154. Subsection (5) of section 626.931, Florida
6741 Statutes, is amended to read:

6742 626.931 Agent affidavit and insurer reporting
6743 requirements.--

6744 (5) The department may ~~Insurance Commissioner shall have~~
6745 ~~the authority to~~ waive the filing requirements described in
6746 subsections(3) and (4).

6747 Section 155. Subsections (2) and (5) of section 626.932,
6748 Florida Statutes, are amended to read:

6749 626.932 Surplus lines tax.--



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6750 (2)(a) The surplus lines agent shall make payable to the
 6751 department of ~~Insurance~~ the tax related to each calendar
 6752 quarter's business as reported to the Florida Surplus Lines
 6753 Service Office, and remit the tax to the Florida Surplus Lines
 6754 Service Office at the same time as provided for the filing of
 6755 the quarterly affidavit, under s. 626.931. The Florida Surplus
 6756 Lines Service Office shall forward to the department the taxes
 6757 and any interest collected pursuant to paragraph (b), within 10
 6758 days of receipt.

6759 (b) The agent shall pay interest on the amount of any
 6760 delinquent tax due, at the rate of 9 percent per year,
 6761 compounded annually, beginning the day the amount becomes
 6762 delinquent.

6763 (5) The department shall deposit 55 percent of all taxes
 6764 collected under this section to the credit of the Insurance
 6765 ~~Commissioner's~~ Regulatory Trust Fund. Forty-five percent of all
 6766 taxes collected under this section shall be deposited into the
 6767 General Revenue Fund.

6768 Section 156. Section 626.936, Florida Statutes, is amended
 6769 to read:

6770 626.936 Failure to file reports or pay tax or service fee;
 6771 administrative penalty.--

6772 (1) Any licensed surplus lines agent who neglects to file
 6773 a report or an affidavit in the form and within the time
 6774 required or provided for in the Surplus Lines Law may be fined
 6775 up to \$50 per day for each day the neglect continues, beginning
 6776 the day after the report or affidavit was due until the date the
 6777 report or affidavit is received. All sums collected under this
 6778 section shall be deposited into the Insurance ~~Commissioner's~~
 6779 Regulatory Trust Fund.



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6780 (2) Any licensed surplus lines agent who neglects to pay
 6781 the taxes or service fees as required under the Surplus Lines
 6782 Law and within the time required may be fined up to \$500 per day
 6783 for each day the failure to pay continues, beginning the day
 6784 after the tax or service fees were due. The agent shall pay
 6785 interest on the amount of any delinquent tax due, at the rate of
 6786 9 percent per year, compounded annually, beginning the day the
 6787 amount becomes delinquent. The department shall deposit all
 6788 sums collected under this section into the Insurance
 6789 ~~Commissioner's~~ Regulatory Trust Fund.

6790 Section 157. Section 626.9361, Florida Statutes, is
 6791 amended to read:

6792 626.9361 Failure to file report; administrative
 6793 penalty.--Any eligible surplus lines insurer who fails to file a
 6794 report in the form and within the time required or provided for
 6795 in the Surplus Lines Law may be fined up to \$500 per day for
 6796 each day such failure continues, beginning the day after the
 6797 report was due, until the date the report is received. Failure
 6798 to file a report may also result in withdrawal of eligibility as
 6799 a surplus lines insurer in this state. All sums collected by the
 6800 department under this section shall be deposited into the
 6801 Insurance ~~Commissioner's~~ Regulatory Trust Fund.

6802 Section 158. Subsections (2), (3), and (4) of section
 6803 626.937, Florida Statutes, are amended to read:

6804 626.937 Actions against insurer; service of process.--

6805 (2) The unauthorized insurer accepting the risk or issuing
 6806 the policy shall be deemed thereby to have authorized service of
 6807 process against it in the manner and to the effect as provided
 6808 in this section, and to have appointed the Chief Financial
 6809 Officer ~~Insurance Commissioner and Treasurer~~ as its agent for



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6810 service of process issuing upon any cause of action arising in
 6811 this state under any such policy, contract, or insurance.

6812 (3) Each unauthorized insurer requesting eligibility
 6813 pursuant to s. 626.918 shall file with the department its
 6814 appointment of the Chief Financial Officer ~~Insurance~~
 6815 ~~Commissioner and Treasurer and his or her successors in office,~~
 6816 on a form as furnished by the department, as its attorney to
 6817 receive service of all legal process issued against it in any
 6818 civil action or proceeding in this state, and agreeing that
 6819 process so served shall be valid and binding upon the insurer.
 6820 The appointment shall be irrevocable, shall bind the insurer and
 6821 any successor in interest as to the assets or liabilities of the
 6822 insurer, and shall remain in effect as long as there is
 6823 outstanding in this state any obligation or liability of the
 6824 insurer resulting from its insurance transactions therein.

6825 (4) At the time of such appointment of the Chief Financial
 6826 Officer ~~Insurance Commissioner and Treasurer~~ as its process
 6827 agent, the insurer shall file with the department designation of
 6828 the name and address of the person to whom process against it
 6829 served upon the Chief Financial Officer ~~Insurance Commissioner~~
 6830 ~~and Treasurer~~ is to be forwarded. The insurer may change the
 6831 designation at any time by a new filing.

6832 Section 159. Subsections (3) and (7) of section 626.938,
 6833 Florida Statutes, are amended to read:

6834 626.938 Report and tax of independently procured
 6835 coverages.--

6836 (3) For the general support of the government of this
 6837 state, there is levied upon the obligation, chose in action, or
 6838 right represented by the premium charged for such insurance a
 6839 tax at the rate of 5 percent of the gross amount of such premium



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6840 and a 0.3 percent service fee pursuant to s. 626.9325. The
 6841 insured shall withhold the amount of the tax and service fee
 6842 from the amount of premium charged by and otherwise payable to
 6843 the insurer for such insurance. Within 30 days after the
 6844 insurance is procured, continued, or renewed, and simultaneously
 6845 with the filing of the report provided for in subsection (1)
 6846 with the Florida Surplus Lines Service Office, the insured shall
 6847 make payable to the department of ~~Insurance~~ the amount of the
 6848 tax and make payable to the Florida Surplus Lines Service Office
 6849 the amount of the service fee. The insured shall remit the tax
 6850 and the service fee to the Florida Surplus Lines Service Office.
 6851 The Florida Surplus Lines Service Office shall forward to the
 6852 department the taxes, and any interest collected pursuant to
 6853 subsection (5), within 10 days after receipt.

6854 (7) The department shall deposit 55 percent of all taxes
 6855 and interest collected under this section to the credit of the
 6856 Insurance ~~Commissioner's~~ Regulatory Trust Fund. Forty-five
 6857 percent of all taxes and interest collected under this section
 6858 shall be deposited into the General Revenue Fund.

6859 Section 160. Section 626.9511, Florida Statutes, is
 6860 amended to read:

6861 626.9511 Definitions.--When used in this part:

6862 (1) "Person" means any individual, corporation,
 6863 association, partnership, reciprocal exchange, interinsurer,
 6864 Lloyds insurer, fraternal benefit society, or business trust or
 6865 any entity involved in the business of insurance.

6866 ~~(2) "Department" means the Department of Insurance of this~~
 6867 ~~state.~~

6868 (2)~~(3)~~ "Insurance policy" or "insurance contract" means a
 6869 written contract of, or a written agreement for or effecting,



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6870 insurance, or the certificate thereof, by whatever name called,
 6871 and includes all clauses, riders, endorsements, and papers which
 6872 are a part thereof.

6873 Section 161. Paragraphs (h), (o), (w), and (aa) of
 6874 subsection (1) of section 626.9541, Florida Statutes, are
 6875 amended to read:

6876 626.9541 Unfair methods of competition and unfair or
 6877 deceptive acts or practices defined.--

6878 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
 6879 ACTS.--The following are defined as unfair methods of
 6880 competition and unfair or deceptive acts or practices:

6881 (h) Unlawful rebates.--

6882 1. Except as otherwise expressly provided by law, or in an
 6883 applicable filing with the office ~~department~~, knowingly:

6884 a. Permitting, or offering to make, or making, any
 6885 contract or agreement as to such contract other than as plainly
 6886 expressed in the insurance contract issued thereon;

6887 b. Paying, allowing, or giving, or offering to pay, allow,
 6888 or give, directly or indirectly, as inducement to such insurance
 6889 contract, any unlawful rebate of premiums payable on the
 6890 contract, any special favor or advantage in the dividends or
 6891 other benefits thereon, or any valuable consideration or
 6892 inducement whatever not specified in the contract;

6893 c. Giving, selling, or purchasing, or offering to give,
 6894 sell, or purchase, as inducement to such insurance contract or
 6895 in connection therewith, any stocks, bonds, or other securities
 6896 of any insurance company or other corporation, association, or
 6897 partnership, or any dividends or profits accrued thereon, or
 6898 anything of value whatsoever not specified in the insurance
 6899 contract.



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6900 2. Nothing in paragraph (g) or subparagraph 1. of this
6901 paragraph shall be construed as including within the definition
6902 of discrimination or unlawful rebates:

6903 a. In the case of any contract of life insurance or life
6904 annuity, paying bonuses to all policyholders or otherwise
6905 abating their premiums in whole or in part out of surplus
6906 accumulated from nonparticipating insurance; provided that any
6907 such bonuses or abatement of premiums is fair and equitable to
6908 all policyholders and for the best interests of the company and
6909 its policyholders.

6910 b. In the case of life insurance policies issued on the
6911 industrial debit plan, making allowance to policyholders who
6912 have continuously for a specified period made premium payments
6913 directly to an office of the insurer in an amount which fairly
6914 represents the saving in collection expenses.

6915 c. Readjustment of the rate of premium for a group
6916 insurance policy based on the loss or expense thereunder, at the
6917 end of the first or any subsequent policy year of insurance
6918 thereunder, which may be made retroactive only for such policy
6919 year.

6920 d. Issuance of life insurance policies or annuity
6921 contracts at rates less than the usual rates of premiums for
6922 such policies or contracts, as group insurance or employee
6923 insurance as defined in this code.

6924 e. Issuing life or disability insurance policies on a
6925 salary savings, bank draft, preauthorized check, payroll
6926 deduction, or other similar plan at a reduced rate reasonably
6927 related to the savings made by the use of such plan.

6928 3.a. No title insurer, or any member, employee, attorney,
6929 agent, agency, or solicitor thereof, shall pay, allow, or give,



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6930 or offer to pay, allow, or give, directly or indirectly, as
6931 inducement to title insurance, or after such insurance has been
6932 effected, any rebate or abatement of the agent's, agency's, or
6933 title insurer's share of the premium or any charge for related
6934 title services below the cost for providing such services, or
6935 provide any special favor or advantage, or any monetary
6936 consideration or inducement whatever. Nothing herein contained
6937 shall preclude an abatement in an attorney's fee charged for
6938 legal services.

6939 b. Nothing in this subparagraph shall be construed as
6940 prohibiting the payment of fees to attorneys at law duly
6941 licensed to practice law in the courts of this state, for
6942 professional services, or as prohibiting the payment of earned
6943 portions of the premium to duly appointed agents or agencies who
6944 actually perform services for the title insurer.

6945 c. No insured named in a policy, or any other person
6946 directly or indirectly connected with the transaction involving
6947 the issuance of such policy, including, but not limited to, any
6948 mortgage broker, real estate broker, builder, or attorney, any
6949 employee, agent, agency, or representative thereof, or any other
6950 person whatsoever, shall knowingly receive or accept, directly
6951 or indirectly, any rebate or abatement of said charge, or any
6952 monetary consideration or inducement, other than as set forth in
6953 sub-subparagraph b.

6954 (o) Illegal dealings in premiums; excess or reduced
6955 charges for insurance.--

6956 1. Knowingly collecting any sum as a premium or charge for
6957 insurance, which is not then provided, or is not in due course
6958 to be provided, subject to acceptance of the risk by the
6959 insurer, by an insurance policy issued by an insurer as



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6960 permitted by this code.

6961 2. Knowingly collecting as a premium or charge for
6962 insurance any sum in excess of or less than the premium or
6963 charge applicable to such insurance, in accordance with the
6964 applicable classifications and rates as filed with and approved
6965 by the office ~~department~~, and as specified in the policy; or, in
6966 cases when classifications, premiums, or rates are not required
6967 by this code to be so filed and approved, premiums and charges
6968 in excess of or less than those specified in the policy and as
6969 fixed by the insurer. This provision shall not be deemed to
6970 prohibit the charging and collection, by surplus lines agents
6971 licensed under part VIII of this chapter, of the amount of
6972 applicable state and federal taxes, or fees as authorized by s.
6973 626.916(4), in addition to the premium required by the insurer
6974 or the charging and collection, by licensed agents, of the exact
6975 amount of any discount or other such fee charged by a credit
6976 card facility in connection with the use of a credit card, as
6977 authorized by subparagraph (q)3., in addition to the premium
6978 required by the insurer. This subparagraph shall not be
6979 construed to prohibit collection of a premium for a universal
6980 life or a variable or indeterminate value insurance policy made
6981 in accordance with the terms of the contract.

6982 3.a. Imposing or requesting an additional premium for a
6983 policy of motor vehicle liability, personal injury protection,
6984 medical payment, or collision insurance or any combination
6985 thereof or refusing to renew the policy solely because the
6986 insured was involved in a motor vehicle accident unless the
6987 insurer's file contains information from which the insurer in
6988 good faith determines that the insured was substantially at
6989 fault in the accident.



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6990 b. An insurer which imposes and collects such a surcharge
6991 or which refuses to renew such policy shall, in conjunction with
6992 the notice of premium due or notice of nonrenewal, notify the
6993 named insured that he or she is entitled to reimbursement of
6994 such amount or renewal of the policy under the conditions listed
6995 below and will subsequently reimburse him or her or renew the
6996 policy, if the named insured demonstrates that the operator
6997 involved in the accident was:

6998 (I) Lawfully parked;

6999 (II) Reimbursed by, or on behalf of, a person responsible
7000 for the accident or has a judgment against such person;

7001 (III) Struck in the rear by another vehicle headed in the
7002 same direction and was not convicted of a moving traffic
7003 violation in connection with the accident;

7004 (IV) Hit by a "hit-and-run" driver, if the accident was
7005 reported to the proper authorities within 24 hours after
7006 discovering the accident;

7007 (V) Not convicted of a moving traffic violation in
7008 connection with the accident, but the operator of the other
7009 automobile involved in such accident was convicted of a moving
7010 traffic violation;

7011 (VI) Finally adjudicated not to be liable by a court of
7012 competent jurisdiction;

7013 (VII) In receipt of a traffic citation which was dismissed
7014 or nolle prossed; or

7015 (VIII) Not at fault as evidenced by a written statement
7016 from the insured establishing facts demonstrating lack of fault
7017 which are not rebutted by information in the insurer's file from
7018 which the insurer in good faith determines that the insured was
7019 substantially at fault.



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7020 c. In addition to the other provisions of this
7021 subparagraph, an insurer may not fail to renew a policy if the
7022 insured has had only one accident in which he or she was at
7023 fault within the current 3-year period. However, an insurer may
7024 nonrenew a policy for reasons other than accidents in accordance
7025 with s. 627.728. This subparagraph does not prohibit nonrenewal
7026 of a policy under which the insured has had three or more
7027 accidents, regardless of fault, during the most recent 3-year
7028 period.

7029 4. Imposing or requesting an additional premium for, or
7030 refusing to renew, a policy for motor vehicle insurance solely
7031 because the insured committed a noncriminal traffic infraction
7032 as described in s. 318.14 unless the infraction is:

7033 a. A second infraction committed within an 18-month
7034 period, or a third or subsequent infraction committed within a
7035 36-month period.

7036 b. A violation of s. 316.183, when such violation is a
7037 result of exceeding the lawful speed limit by more than 15 miles
7038 per hour.

7039 5. Upon the request of the insured, the insurer and
7040 licensed agent shall supply to the insured the complete proof of
7041 fault or other criteria which justifies the additional charge or
7042 cancellation.

7043 6. No insurer shall impose or request an additional
7044 premium for motor vehicle insurance, cancel or refuse to issue a
7045 policy, or refuse to renew a policy because the insured or the
7046 applicant is a handicapped or physically disabled person, so
7047 long as such handicap or physical disability does not
7048 substantially impair such person's mechanically assisted driving
7049 ability.



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7050 7. No insurer may cancel or otherwise terminate any
7051 insurance contract or coverage, or require execution of a
7052 consent to rate endorsement, during the stated policy term for
7053 the purpose of offering to issue, or issuing, a similar or
7054 identical contract or coverage to the same insured with the same
7055 exposure at a higher premium rate or continuing an existing
7056 contract or coverage with the same exposure at an increased
7057 premium.

7058 8. No insurer may issue a nonrenewal notice on any
7059 insurance contract or coverage, or require execution of a
7060 consent to rate endorsement, for the purpose of offering to
7061 issue, or issuing, a similar or identical contract or coverage
7062 to the same insured at a higher premium rate or continuing an
7063 existing contract or coverage at an increased premium without
7064 meeting any applicable notice requirements.

7065 9. No insurer shall, with respect to premiums charged for
7066 motor vehicle insurance, unfairly discriminate solely on the
7067 basis of age, sex, marital status, or scholastic achievement.

7068 10. Imposing or requesting an additional premium for motor
7069 vehicle comprehensive or uninsured motorist coverage solely
7070 because the insured was involved in a motor vehicle accident or
7071 was convicted of a moving traffic violation.

7072 11. No insurer shall cancel or issue a nonrenewal notice
7073 on any insurance policy or contract without complying with any
7074 applicable cancellation or nonrenewal provision required under
7075 the Florida Insurance Code.

7076 12. No insurer shall impose or request an additional
7077 premium, cancel a policy, or issue a nonrenewal notice on any
7078 insurance policy or contract because of any traffic infraction
7079 when adjudication has been withheld and no points have been



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7080 assessed pursuant to s. 318.14(9) and (10). However, this
7081 subparagraph does not apply to traffic infractions involving
7082 accidents in which the insurer has incurred a loss due to the
7083 fault of the insured.

7084 (w) Soliciting or accepting new or renewal insurance risks
7085 by insolvent or impaired insurer prohibited; penalty.--

7086 1. Whether or not delinquency proceedings as to the
7087 insurer have been or are to be initiated, but while such
7088 insolvency or impairment exists, no director or officer of an
7089 insurer, except with the written permission of the office
7090 ~~Department of Insurance~~, shall authorize or permit the insurer
7091 to solicit or accept new or renewal insurance risks in this
7092 state after such director or officer knew, or reasonably should
7093 have known, that the insurer was insolvent or impaired.

7094 "Impaired" includes impairment of capital or surplus, as defined
7095 in s. 631.011(12) and (13).

7096 2. Any such director or officer, upon conviction of a
7097 violation of this paragraph, is guilty of a felony of the third
7098 degree, punishable as provided in s. 775.082, s. 775.083, or s.
7099 775.084.

7100 (aa) Churning.--

7101 1. Churning is the practice whereby policy values in an
7102 existing life insurance policy or annuity contract, including,
7103 but not limited to, cash, loan values, or dividend values, and
7104 in any riders to that policy or contract, are utilized to
7105 purchase another insurance policy or annuity contract with that
7106 same insurer for the purpose of earning additional premiums,
7107 fees, commissions, or other compensation:

7108 a. Without an objectively reasonable basis for believing
7109 that the replacement or extraction will result in an actual and



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7110 demonstrable benefit to the policyholder;

7111 b. In a fashion that is fraudulent, deceptive, or
7112 otherwise misleading or that involves a deceptive omission;

7113 c. ~~Effective October 1, 1995,~~ When the applicant is not
7114 informed that the policy values including cash values,
7115 dividends, and other assets of the existing policy or contract
7116 will be reduced, forfeited, or utilized in the purchase of the
7117 replacing or additional policy or contract, if this is the case;
7118 or

7119 d. ~~Effective October 1, 1995,~~ Without informing the
7120 applicant that the replacing or additional policy or contract
7121 will not be a paid-up policy or that additional premiums will be
7122 due, if this is the case.

7123

7124

7125 Churning by an insurer or an agent is an unfair method of
7126 competition and an unfair or deceptive act or practice.

7127 2. ~~Effective October 1, 1995,~~ Each insurer shall comply
7128 with sub-subparagraphs 1.c. and 1.d. by disclosing to the
7129 applicant at the time of the offer on a form designed and
7130 adopted by rule by the commission ~~department~~ if, how, and the
7131 extent to which the policy or contract values (including cash
7132 value, dividends, and other assets) of a previously issued
7133 policy or contract will be used to purchase a replacing or
7134 additional policy or contract with the same insurer. The form
7135 shall include disclosure of the premium, the death benefit of
7136 the proposed replacing or additional policy, and the date when
7137 the policy values of the existing policy or contract will be
7138 insufficient to pay the premiums of the replacing or additional
7139 policy or contract.



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7140 3. ~~Effective October 1, 1995,~~ Each insurer shall adopt
 7141 written procedures to reasonably avoid churning of policies or
 7142 contracts that it has issued, and failure to adopt written
 7143 procedures sufficient to reasonably avoid churning shall be an
 7144 unfair method of competition and an unfair or deceptive act or
 7145 practice.

7146 Section 162. Subsections (3), (5), (7), (8), (10), and
 7147 (11) of section 626.9543, Florida Statutes, are amended to read:
 7148 626.9543 Holocaust victims.--

7149 (3) DEFINITIONS.--For the purpose of this section, the
 7150 term:

7151 ~~(a) "Department" means the Department of Insurance.~~

7152 (a)(b) "Holocaust victim" means any person who lost his or
 7153 her life or property as a result of discriminatory laws,
 7154 policies, or actions targeted against discrete groups of persons
 7155 between 1920 and 1945, inclusive, in Nazi Germany, areas
 7156 occupied by Nazi Germany, or countries allied with Nazi Germany.

7157 (b)(e) "Insurance policy" means, but is not limited to,
 7158 life insurance, property insurance, or education policies.

7159 (c)(d) "Legal relationship" means any parent, subsidiary,
 7160 or affiliated company with an insurer doing business in this
 7161 state.

7162 (d)(e) "Proceeds" means the face or other payout value of
 7163 policies and annuities plus reasonable interest to date of
 7164 payments without diminution for wartime or immediate postwar
 7165 currency devaluation.

7166 (5) PROOF OF A CLAIM.--Any insurer doing business in this
 7167 state, in receipt of a claim from a Holocaust victim or from a
 7168 beneficiary, descendant, or heir of a Holocaust victim, shall:

7169 (a) Diligently and expeditiously investigate all such



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7170 claims.

7171 (b) Allow such claimants to meet a reasonable, not unduly
 7172 restrictive, standard of proof to substantiate a claim, pursuant
 7173 to standards established by rule of the commission ~~department~~.

7174 (c) Permit claims irrespective of any statute of
 7175 limitations or notice requirements imposed by any insurance
 7176 policy issued, provided the claim is submitted within 10 years
 7177 after the effective date of this section.

7178 (7) REPORTS FROM INSURERS.--Any insurer doing business in
 7179 this state shall have an affirmative duty to ascertain to the
 7180 extent possible and report to the office ~~department~~ within 90
 7181 days after the effective date of this section and annually
 7182 thereafter all efforts made and results of such efforts to
 7183 ascertain:

7184 (a) Any legal relationship with an international insurer
 7185 that issued an insurance policy to a Holocaust victim between
 7186 1920 and 1945, inclusive.

7187 (b) The number and total value of such policies.

7188 (c) Any claim filed by a Holocaust victim, his or her
 7189 beneficiary, heir, or descendant that has been paid, denied
 7190 payment, or is pending.

7191 (d) Attempts made by the insurer to locate the
 7192 beneficiaries of any such policies for which no claim of
 7193 benefits has been made.

7194 (e) An explanation of any denial or pending payment of a
 7195 claim to a Holocaust victim, his or her beneficiary, heir, or
 7196 descendant.

7197 (8) REPORTS TO THE LEGISLATURE.--The office and department
 7198 shall jointly report to the Legislature 1 year after the
 7199 effective date of this section and annually thereafter:



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7200 (a) The number of insurers doing business in this state
 7201 which have a legal relationship with an international insurer
 7202 that could have issued a policy to a Holocaust victim between
 7203 1920 and 1945, inclusive.

7204 (b) A list of all claims paid, denied, or pending to a
 7205 Holocaust victim, his or her beneficiary, heir, or descendant.

7206 (c) A summary of the length of time for the processing and
 7207 disposition of a claim by the insurer.

7208 (10) PRIVATE RIGHT OF ACTION.--An action to recover
 7209 damages caused by a violation of this section must be commenced
 7210 within 5 years after the cause of action has accrued. Any
 7211 person who shall sustain damages by the reason of a violation of
 7212 this section shall recover threefold the actual damages
 7213 sustained thereby, as well as costs not exceeding \$50,000, and
 7214 reasonable attorneys' fees. At or before the commencement of
 7215 any civil action by a party, notice thereof shall be served upon
 7216 the office ~~department~~.

7217 (11) RULES.--The commission ~~department~~, by rule, shall
 7218 provide for the implementation of the provisions of this section
 7219 by establishing procedures and related forms for facilitating,
 7220 monitoring, and verifying compliance with this section and for
 7221 the establishment of a restitution program for Holocaust
 7222 victims, survivors, and their heirs and beneficiaries.

7223 Section 163. Section 626.9545, Florida Statutes, is
 7224 amended to read:

7225 626.9545 Improper charge identification incentive
 7226 program.--No section or provision of the Florida Insurance Code
 7227 shall be construed as prohibiting an insurer from establishing a
 7228 financial incentive program for remunerating a policyholder or
 7229 an insured person with a selected percentage or stated portion



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7230 of any health care charge identified by the policyholder or the
 7231 insured person as an error or overcharge if the health care
 7232 charge is recovered by the insurer. The financial incentive
 7233 program shall be written and shall be available for inspection
 7234 by the office ~~department~~.

7235 Section 164. Subsection (5) of section 626.9551, Florida
 7236 Statutes, is amended to read:

7237 626.9551 Favored agent or insurer; coercion of debtors.--

7238 (5) The department or office may investigate the affairs
 7239 of any person to whom this section applies to determine whether
 7240 such person has violated this section. If a violation of this
 7241 section is found to have been committed knowingly, the person in
 7242 violation shall be subject to the same procedures and penalties
 7243 as provided in ss. 626.9571, 626.9581, 626.9591, and 626.9601.

7244 Section 165. Section 626.9561, Florida Statutes, is
 7245 amended to read:

7246 626.9561 Power of department and office.--The department
 7247 and office shall each have power within its respective
 7248 regulatory jurisdiction to examine and investigate the affairs
 7249 of every person involved in the business of insurance in this
 7250 state in order to determine whether such person has been or is
 7251 engaged in any unfair method of competition or in any unfair or
 7252 deceptive act or practice prohibited by s. 626.9521, and shall
 7253 each have the powers and duties specified in ss. 626.9571-
 7254 626.9601 in connection therewith.

7255 Section 166. Section 626.9571, Florida Statutes, is
 7256 amended to read:

7257 626.9571 Defined practices; hearings, witnesses,
 7258 appearances, production of books and service of process.--

7259 (1) Whenever the department or office has reason to



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7260 believe that any person has engaged, or is engaging, in this
7261 state in any unfair method of competition or any unfair or
7262 deceptive act or practice as defined in s. 626.9541 or s.
7263 626.9551 or is engaging in the business of insurance without
7264 being properly licensed as required by this code and that a
7265 proceeding by it in respect thereto would be to the interest of
7266 the public, it shall conduct or cause to have conducted a
7267 hearing in accordance with chapter 120.

7268 (2) The department or office, a duly empowered hearing
7269 officer, or an administrative law judge shall, during the
7270 conduct of such hearing, have those powers enumerated in s.
7271 120.569; however, the penalties for failure to comply with a
7272 subpoena or with an order directing discovery shall be limited
7273 to a fine not to exceed \$1,000 per violation.

7274 (3) Statements of charges, notices, and orders under this
7275 act may be served by anyone duly authorized by the department or
7276 office, either in the manner provided by law for service of
7277 process in civil actions or by certifying and mailing a copy
7278 thereof to the person affected by such statement, notice, order,
7279 or other process at his or her or its residence or principal
7280 office or place of business. The verified return by the person
7281 so serving such statement, notice, order, or other process,
7282 setting forth the manner of the service, shall be proof of the
7283 same, and the return postcard receipt for such statement,
7284 notice, order, or other process, certified and mailed as
7285 aforesaid, shall be proof of service of the same.

7286 Section 167. Section 626.9581, Florida Statutes, is
7287 amended to read:

7288 626.9581 Cease and desist and penalty orders.--After the
7289 hearing provided in s. 626.9571, the department or office shall



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7290 enter a final order in accordance with s. 120.569. If it is
 7291 determined that the person charged has engaged in an unfair or
 7292 deceptive act or practice or the unlawful transaction of
 7293 insurance, the department or office shall also issue an order
 7294 requiring the violator to cease and desist from engaging in such
 7295 method of competition, act, or practice or the unlawful
 7296 transaction of insurance. Further, if the act or practice is a
 7297 violation of s. 626.9541 or s. 626.9551, the department or
 7298 office may, at its discretion, order any one or more of the
 7299 following:

7300 (1) Suspension or revocation of the person's certificate
 7301 of authority, license, or eligibility for any certificate of
 7302 authority or license, if he or she knew, or reasonably should
 7303 have known, he or she was in violation of this act.

7304 (2) Such other relief as may be provided in the insurance
 7305 code.

7306 Section 168. Section 626.9591, Florida Statutes, is
 7307 amended to read:

7308 626.9591 Appeals from the department or office.--Any
 7309 person subject to an order of the department or office under s.
 7310 626.9581 or s. 626.9601 may obtain a review of such order by
 7311 filing an appeal therefrom in accordance with the provisions and
 7312 procedures for appeal from the orders of the department or
 7313 office in general under s. 120.68.

7314 Section 169. Section 626.9601, Florida Statutes, is
 7315 amended to read:

7316 626.9601 Penalty for violation of cease and desist
 7317 orders.--Any person who violates a cease and desist order of the
 7318 department or office under s. 626.9581 while such order is in
 7319 effect, after notice and hearing as provided in s. 626.9571,



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7320 shall be subject, at the discretion of the department or office,
 7321 to any one or more of the following:

7322 (1) A monetary penalty of not more than \$50,000 as to all
 7323 matters determined in such hearing.

7324 (2) Suspension or revocation of such person's certificate
 7325 of authority, license, or eligibility to hold such certificate
 7326 of authority or license.

7327 (3) Such other relief as may be provided in the insurance
 7328 code.

7329 Section 170. Section 626.9611, Florida Statutes, is
 7330 amended to read:

7331 626.9611 Rules.--The department or commission may, in
 7332 accordance with chapter 120, adopt ~~promulgate~~ reasonable rules
 7333 as are necessary or proper to identify specific methods of
 7334 competition or acts or practices which are prohibited by s.
 7335 626.9541 or s. 626.9551, but the rules shall not enlarge upon or
 7336 extend the provisions of ss. 626.9541 and 626.9551.

7337 Section 171. Section 626.9621, Florida Statutes, is
 7338 amended to read:

7339 626.9621 Provisions of part additional to existing
 7340 law.--The powers vested in the department, commission, and
 7341 office by this part shall be additional to any other powers to
 7342 enforce any penalties, fines, or forfeitures authorized by law.

7343 Section 172. Section 626.9631, Florida Statutes, is
 7344 amended to read:

7345 626.9631 Civil liability.--The provisions of this part are
 7346 cumulative to rights under the general civil and common law, and
 7347 no action of the department, commission, or office shall
 7348 abrogate such rights to damages or other relief in any court.

7349 Section 173. Subsection (1) of section 626.9641, Florida



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7350 Statutes, is amended to read:

7351 626.9641 Policyholders, bill of rights.--

7352 (1) The principles expressed in the following statements
7353 shall serve as standards to be followed by the department,
7354 commission, and office in exercising their ~~its~~ powers and
7355 duties, in exercising administrative discretion, in dispensing
7356 administrative interpretations of the law, and in adopting
7357 ~~promulgating~~ rules:

7358 (a) Policyholders shall have the right to competitive
7359 pricing practices and marketing methods that enable them to
7360 determine the best value among comparable policies.

7361 (b) Policyholders shall have the right to obtain
7362 comprehensive coverage.

7363 (c) Policyholders shall have the right to insurance
7364 advertising and other selling approaches that provide accurate
7365 and balanced information on the benefits and limitations of a
7366 policy.

7367 (d) Policyholders shall have a right to an insurance
7368 company that is financially stable.

7369 (e) Policyholders shall have the right to be serviced by a
7370 competent, honest insurance agent or broker.

7371 (f) Policyholders shall have the right to a readable
7372 policy.

7373 (g) Policyholders shall have the right to an insurance
7374 company that provides an economic delivery of coverage and that
7375 tries to prevent losses.

7376 (h) Policyholders shall have the right to a balanced and
7377 positive regulation by the department, commission, and office.

7378 Section 174. Section 626.9651, Florida Statutes, is
7379 amended to read:



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7380 626.9651 Privacy.--The department and commission shall
 7381 each adopt rules consistent with other provisions of the Florida
 7382 Insurance Code to govern the use of a consumer's nonpublic
 7383 personal financial and health information. These rules must be
 7384 based on, consistent with, and not more restrictive than the
 7385 Privacy of Consumer Financial and Health Information Regulation,
 7386 adopted September 26, 2000, by the National Association of
 7387 Insurance Commissioners; however, the rules must permit the use
 7388 and disclosure of nonpublic personal health information for
 7389 scientific, medical, or public policy research, in accordance
 7390 with federal law. In addition, these rules must be consistent
 7391 with, and not more restrictive than, the standards contained in
 7392 Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-
 7393 102. If the office ~~department~~ determines that a health insurer
 7394 or health maintenance organization is in compliance with, or is
 7395 actively undertaking compliance with, the consumer privacy
 7396 protection rules adopted by the United States Department of
 7397 Health and Human Services, in conformance with the Health
 7398 Insurance Portability and Affordability Act, that health insurer
 7399 or health maintenance organization is in compliance with this
 7400 section.

7401 Section 175. Paragraph (e) of subsection (4) and
 7402 subsections (5) and (9) of section 626.989, Florida Statutes,
 7403 are amended to read:

7404 626.989 Investigation by department or Division of
 7405 Insurance Fraud; compliance; immunity; confidential information;
 7406 reports to division; division investigator's power of arrest.--

7407 (4)

7408 (e) The Chief Financial Officer ~~Insurance Commissioner~~ and
 7409 any employee or agent of the department, commission, office, or



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7410 division, when acting without malice and in the absence of fraud
7411 or bad faith, is not subject to civil liability for libel,
7412 slander, or any other relevant tort, and no civil cause of
7413 action of any nature exists against such person by virtue of the
7414 execution of official activities or duties of the department,
7415 commission, or office under this section or by virtue of the
7416 publication of any report or bulletin related to the official
7417 activities or duties of the department, ~~or~~ division, commission,
7418 or office under this section.

7419 (5) The office's and the department's papers, documents,
7420 reports, or evidence relative to the subject of an investigation
7421 under this section are confidential and exempt from the
7422 provisions of s. 119.07(1) until such investigation is completed
7423 or ceases to be active. For purposes of this subsection, an
7424 investigation is considered "active" while the investigation is
7425 being conducted by the office or department with a reasonable,
7426 good faith belief that it could lead to the filing of
7427 administrative, civil, or criminal proceedings. An investigation
7428 does not cease to be active if the office or department is
7429 proceeding with reasonable dispatch and has a good faith belief
7430 that action could be initiated by the office or department or
7431 other administrative or law enforcement agency. After an
7432 investigation is completed or ceases to be active, portions of
7433 records relating to the investigation shall remain exempt from
7434 the provisions of s. 119.07(1) if disclosure would:

7435 (a) Jeopardize the integrity of another active
7436 investigation;

7437 (b) Impair the safety and soundness of an insurer;

7438 (c) Reveal personal financial information;

7439 (d) Reveal the identity of a confidential source;



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7440 (e) Defame or cause unwarranted damage to the good name or
 7441 reputation of an individual or jeopardize the safety of an
 7442 individual; or

7443 (f) Reveal investigative techniques or procedures.
 7444 Further, such papers, documents, reports, or evidence relative
 7445 to the subject of an investigation under this section shall not
 7446 be subject to discovery until the investigation is completed or
 7447 ceases to be active. Office, department, or division
 7448 investigators shall not be subject to subpoena in civil actions
 7449 by any court of this state to testify concerning any matter of
 7450 which they have knowledge pursuant to a pending insurance fraud
 7451 investigation by the division.

7452 (9) In recognition of the complementary roles of
 7453 investigating instances of workers' compensation fraud and
 7454 enforcing compliance with the workers' compensation coverage
 7455 requirements under chapter 440, the department ~~of Insurance~~ is
 7456 directed to prepare and submit a joint performance report to the
 7457 President of the Senate and the Speaker of the House of
 7458 Representatives by November 1, 2003, and then by November 1
 7459 every 3 years thereafter, describing the results obtained in
 7460 achieving compliance with the workers' compensation coverage
 7461 requirements and reducing the incidence of workers' compensation
 7462 fraud.

7463 Section 176. Subsection (1) of section 626.9892, Florida
 7464 Statutes, is amended to read:

7465 626.9892 Anti-Fraud Reward Program; reporting of insurance
 7466 fraud.--

7467 (1) The Anti-Fraud Reward Program is hereby established
 7468 within the department, to be funded from the Insurance
 7469 ~~Commissioner's~~ Regulatory Trust Fund.



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7470 Section 177. Paragraph (k) of subsection (5) of section
7471 626.99, Florida Statutes, is amended to read:

7472 626.99 Life insurance solicitation.--

7473 (5) GENERAL RULES RELATING TO SOLICITATION.--

7474 (k) If an appropriately licensed agent proposes to replace
7475 a life insurance policy or an in-force annuity with a registered
7476 securities product, preapplication notice requirements ~~to the~~
7477 ~~department~~ shall not apply.

7478 Section 178. Section 626.9911, Florida Statutes, is
7479 amended to read:

7480 626.9911 Definitions.--As used in this act, the term:

7481 ~~(1) "Department" means the Department of Insurance.~~

7482 (1)~~(2)~~ "Independent third-party trustee or escrow agent"

7483 means an attorney, certified public accountant, financial
7484 institution, or other person providing escrow services under the
7485 authority of a regulatory body. The term does not include any
7486 person associated, affiliated, or under common control with a
7487 viatical settlement provider or viatical settlement broker.

7488 (2)~~(3)~~ "Person" has the meaning specified in s. 1.01.

7489 (3)~~(4)~~ "Viatical settlement broker" means a person who, on
7490 behalf of a viator and for a fee, commission, or other valuable
7491 consideration, offers or attempts to negotiate viatical
7492 settlement contracts between a viator resident in this state and
7493 one or more viatical settlement providers. Notwithstanding the
7494 manner in which the viatical settlement broker is compensated, a
7495 viatical settlement broker is deemed to represent only the
7496 viator and owes a fiduciary duty to the viator to act according
7497 to the viator's instructions and in the best interest of the
7498 viator. The term does not include an attorney, licensed
7499 Certified Public Accountant, or investment adviser lawfully



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7500 registered ~~with the department of Banking and Finance~~ under
7501 chapter 517, who is retained to represent the viator and whose
7502 compensation is paid directly by or at the direction and on
7503 behalf of the viator.

7504 (4)~~(5)~~ "Viatical settlement contract" means a written
7505 agreement entered into between a viatical settlement provider,
7506 or its related provider trust, and a viator. The viatical
7507 settlement contract includes an agreement to transfer ownership
7508 or change the beneficiary designation of a life insurance policy
7509 at a later date, regardless of the date that compensation is
7510 paid to the viator. The agreement must establish the terms
7511 under which the viatical settlement provider will pay
7512 compensation or anything of value, which compensation or value
7513 is less than the expected death benefit of the insurance policy
7514 or certificate, in return for the viator's assignment, transfer,
7515 sale, devise, or bequest of the death benefit or ownership of
7516 all or a portion of the insurance policy or certificate of
7517 insurance to the viatical settlement provider. A viatical
7518 settlement contract also includes a contract for a loan or other
7519 financial transaction secured primarily by an individual or
7520 group life insurance policy, other than a loan by a life
7521 insurance company pursuant to the terms of the life insurance
7522 contract, or a loan secured by the cash value of a policy.

7523 (5)~~(6)~~ "Viatical settlement provider" means a person who,
7524 in this state, from this state, or with a resident of this
7525 state, effectuates a viatical settlement contract. The term
7526 does not include:

7527 (a) Any bank, savings bank, savings and loan association,
7528 credit union, or other licensed lending institution that takes
7529 an assignment of a life insurance policy as collateral for a



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7530 loan.~~†~~

7531 (b) A life and health insurer that has lawfully issued a
 7532 life insurance policy that provides accelerated benefits to
 7533 terminally ill policyholders or certificateholders.~~†~~~~or~~

7534 (c) Any natural person who enters into no more than one
 7535 viatical settlement contract with a viator in 1 calendar year,
 7536 unless such natural person has previously been licensed under
 7537 this act or is currently licensed under this act.

7538 (d) A trust that meets the definition of a "related
 7539 provider trust."

7540 (e) A viator in this state.

7541 (f) A viatical settlement purchaser.

7542 (g) A financing entity.

7543 ~~(6)~~~~(7)~~ "Viator" means the owner of a life insurance policy
 7544 or a certificateholder under a group policy who enters or seeks
 7545 to enter into a viatical settlement contract. This term does not
 7546 include a viatical settlement purchaser or a viatical settlement
 7547 provider or any person acquiring a policy or interest in a
 7548 policy from a viatical settlement provider, nor does it include
 7549 an independent third-party trustee or escrow agent.

7550 ~~(7)~~~~(8)~~ "Related provider trust" means a titling trust or
 7551 other trust established by a licensed viatical settlement
 7552 provider or financing entity for the sole purpose of holding the
 7553 ownership or beneficial interest in purchased policies in
 7554 connection with a financing transaction. The trust must have a
 7555 written agreement with a licensed viatical settlement provider
 7556 or financing entity under which the licensed viatical settlement
 7557 provider or financing entity is responsible for insuring
 7558 compliance with all statutory and regulatory requirements and
 7559 under which the trust agrees to make all records and files



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7560 relating to viatical settlement transactions available to the
7561 office department as if those records and files were maintained
7562 directly by the licensed viatical settlement provider. This term
7563 does not include an independent third-party trustee or escrow
7564 agent or a trust that does not enter into agreements with a
7565 viator. A related provider trust shall be subject to all
7566 provisions of this act that apply to the viatical settlement
7567 provider who established the related provider trust, except s.
7568 626.9912, which shall not be applicable. A viatical settlement
7569 provider may establish no more than one related provider trust,
7570 and the sole trustee of such related provider trust shall be the
7571 viatical settlement provider licensed under s. 626.9912. The
7572 name of the licensed viatical settlement provider shall be
7573 included within the name of the related provider trust.

7574 (8)~~(9)~~ "Viatical settlement purchase agreement" means a
7575 contract or agreement, entered into by a viatical settlement
7576 purchaser, to which the viator is not a party, to purchase a
7577 life insurance policy or an interest in a life insurance policy,
7578 which is entered into for the purpose of deriving an economic
7579 benefit. The term also includes purchases made by viatical
7580 settlement purchasers from any person other than the provider
7581 who effectuated the viatical settlement contract.

7582 (9)~~(10)~~ "Viatical settlement purchaser" means a person who
7583 gives a sum of money as consideration for a life insurance
7584 policy or an equitable or legal interest in the death benefits
7585 of a life insurance policy that has been or will be the subject
7586 of a viatical settlement contract, for the purpose of deriving
7587 an economic benefit, including purchases made from any person
7588 other than the provider who effectuated the viatical settlement
7589 contract or an entity affiliated with the provider. The term



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7590 does not include a licensee under this part, an accredited
7591 investor as defined in Rule 501, Regulation D of the Securities
7592 Act Rules, or a qualified institutional buyer as defined by Rule
7593 144(a) of the Federal Securities Act, a special purpose entity,
7594 a financing entity, or a contingency insurer. The above
7595 references to Rule 501, Regulation D and Rule 144(a) of the
7596 Federal Securities Act are used strictly for defining purposes
7597 and shall not be interpreted in any other manner. Any person who
7598 claims to be an accredited investor shall sign an affidavit
7599 stating that he or she is an accredited investor, the basis of
7600 that claim, and that he or she understands that as an accredited
7601 investor he or she will not be entitled to certain protections
7602 of the Viatical Settlement Act. This affidavit must be kept with
7603 other documents required to be maintained by this act.

7604 (10)~~(11)~~ "Viatical settlement sales agent" means a person
7605 other than a licensed viatical settlement provider who arranges
7606 the purchase through a viatical settlement purchase agreement of
7607 a life insurance policy or an interest in a life insurance
7608 policy.

7609 (11)~~(12)~~ "Viaticated policy" means a life insurance
7610 policy, or a certificate under a group policy, which is the
7611 subject of a viatical settlement contract.

7612 (12)~~(13)~~ "Related form" means any form, created by or on
7613 behalf of a licensee, which a viator or viatical settlement
7614 purchaser is required to sign or initial. The forms include, but
7615 are not limited to, a power of attorney, a release of medical
7616 information form, a suitability questionnaire, a disclosure
7617 document, or any addendum, schedule, or amendment to a viatical
7618 settlement contract or viatical settlement purchase agreement
7619 considered necessary by a provider to effectuate a viatical



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7620 settlement transaction.

7621 (13)~~(14)~~ "Special purpose entity" means an entity
7622 established by a licensed viatical settlement provider or by a
7623 financing entity, which may be a corporation, partnership,
7624 trust, limited liability company, or other similar entity formed
7625 solely to provide, either directly or indirectly, access to
7626 institutional capital markets to a viatical settlement provider
7627 or financing entity. A special purpose entity shall not enter
7628 into a viatical settlement contract or a viatical settlement
7629 purchase agreement.

7630 (14)~~(15)~~ "Financing entity" means an underwriter,
7631 placement agent, lender, purchaser of securities, or purchaser
7632 of a policy or certificate from a viatical settlement provider,
7633 credit enhancer, or any entity that has direct ownership in a
7634 policy or certificate that is the subject of a viatical
7635 settlement contract, but whose principal activity related to the
7636 transaction is providing funds or credit enhancement to effect
7637 the viatical settlement or the purchase of one or more viatical
7638 policies and who has an agreement in writing with one or more
7639 licensed viatical settlement providers to finance the
7640 acquisition of viatical settlement contracts. The term does not
7641 include a nonaccredited investor, a viatical settlement
7642 purchaser, or other natural person. A financing entity may not
7643 enter into a viatical settlement contract.

7644 Section 179. Section 626.9912, Florida Statutes, is
7645 amended to read:

7646 626.9912 Viatical settlement provider license required;
7647 application for license.--

7648 (1) A person may not perform the functions of a viatical
7649 settlement provider as defined in this act or enter into or



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7650 solicit a viatical settlement contract without first having
 7651 obtained a license from the office ~~department~~.

7652 (2) Application for a viatical settlement provider license
 7653 must be made to the office ~~department~~ by the applicant on a form
 7654 prescribed by the commission ~~department~~, under oath and signed
 7655 by the applicant. The application must be accompanied by a fee
 7656 of \$500. If the applicant is a corporation, the application must
 7657 be under oath and signed by the president and the secretary of
 7658 the corporation.

7659 (3) In the application, the applicant must provide all of
 7660 the following:

7661 (a) The applicant's full name, age, residence address, and
 7662 business address, and all occupations engaged in by the
 7663 applicant during the 5 years preceding the date of the
 7664 application.

7665 (b) A copy of the applicant's basic organizational
 7666 documents, if any, including the articles of incorporation,
 7667 articles of association, partnership agreement, trust agreement,
 7668 or other similar documents, together with all amendments to such
 7669 documents.

7670 (c) Copies of all bylaws, rules, regulations, or similar
 7671 documents regulating the conduct of the applicant's internal
 7672 affairs.

7673 (d) A list showing the name, business and residence
 7674 addresses, and official position of each individual who is
 7675 responsible for conduct of the applicant's affairs, including,
 7676 but not limited to, any member of the applicant's board of
 7677 directors, board of trustees, executive committee, or other
 7678 governing board or committee and any other person or entity
 7679 owning or having the right to acquire 10 percent or more of the



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7680 voting securities of the applicant.

7681 (e) With respect to each individual identified under
7682 paragraph (d):

7683 1. A sworn biographical statement on forms adopted by the
7684 commission and supplied by the office ~~department~~.

7685 2. A set of fingerprints on forms prescribed by the
7686 commission ~~department~~, certified by a law enforcement officer,
7687 and accompanied by the fingerprinting fee specified in s.
7688 624.501.

7689 3. Authority for release of information relating to the
7690 investigation of the individual's background.

7691 (f) All applications, viatical settlement contract forms,
7692 viatical settlement purchase agreement forms, escrow forms, and
7693 other related forms proposed to be used by the applicant.

7694 (g) Such other information as the commission or office
7695 ~~department~~ deems necessary to determine that the applicant and
7696 the individuals identified under paragraph (d) are competent and
7697 trustworthy and can lawfully and successfully act as a viatical
7698 settlement provider.

7699 (4) The office ~~department~~ may not issue a license to an
7700 entity other than a natural person if it is not satisfied that
7701 all officers, directors, employees, stockholders, partners, and
7702 any other persons who exercise or have the ability to exercise
7703 effective control of the entity or who have the ability to
7704 influence the transaction of business by the entity meet the
7705 standards of this act and have not violated any provision of
7706 this act or rules of the commission ~~department~~ related to the
7707 business of viatical settlement contracts or viatical settlement
7708 purchase agreements.

7709 (5) Upon the filing of a sworn application and the payment



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7710 of the license fee, the office ~~department~~ shall investigate each
 7711 applicant and may issue the applicant a license if the office
 7712 ~~department~~ finds that the applicant:

7713 (a) Has provided a detailed plan of operation.

7714 (b) Is competent and trustworthy and intends to act in
 7715 good faith in the business authorized by the license applied
 7716 for.

7717 (c) Has a good business reputation and has had experience,
 7718 training, or education that qualifies the applicant to conduct
 7719 the business authorized by the license applied for.

7720 (d) If the applicant is a corporation, is a corporation
 7721 incorporated under the laws of this state, or is a foreign
 7722 corporation authorized to transact business in this state.

7723 (e) Has designated the Chief Financial Officer ~~Insurance~~
 7724 ~~Commissioner and Treasurer~~ as its agent for service of process.

7725 (f) Has made the deposit required by s. 626.9913(3).

7726 Section 180. Subsections (2) and (3) of section 626.9913,
 7727 Florida Statutes, are amended to read:

7728 626.9913 Viatical settlement provider license continuance;
 7729 annual report; fees; deposit.--

7730 (2) Annually, on or before March 1, the viatical
 7731 settlement provider licensee shall file a statement containing
 7732 information the commission ~~department~~ requires and shall pay to
 7733 the office ~~department~~ a license fee in the amount of \$500. A
 7734 viatical settlement provider shall include in all statements
 7735 filed with the office ~~department~~ all information requested by
 7736 the office ~~department~~ regarding a related provider trust
 7737 established by the viatical settlement provider. The office
 7738 ~~department~~ may require more frequent reporting. Failure to
 7739 timely file the annual statement or to timely pay the license



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7740 fee is grounds for immediate suspension of the license.

7741 (3) A viatical settlement provider licensee must deposit
7742 and maintain deposited in trust with the department securities
7743 eligible for deposit under s. 625.52, having at all times a
7744 value of not less than \$100,000. As an alternative to meeting
7745 the \$100,000 deposit requirement, the provider may deposit and
7746 maintain deposited in trust with the department such securities
7747 in the amount of \$25,000 and post with the office ~~department~~ a
7748 surety bond acceptable to the office ~~department~~ in the amount of
7749 \$75,000.

7750 Section 181. Section 626.9914, Florida Statutes, is
7751 amended to read:

7752 626.9914 Suspension, revocation, or nonrenewal of viatical
7753 settlement provider license; grounds; administrative fine.--

7754 (1) The office ~~department~~ shall suspend, revoke, or refuse
7755 to renew the license of any viatical settlement provider if the
7756 office ~~department~~ finds that the licensee:

7757 (a) Has made a misrepresentation in the application for
7758 the license;

7759 (b) Has engaged in fraudulent or dishonest practices, or
7760 otherwise has been shown to be untrustworthy or incompetent to
7761 act as a viatical settlement provider;

7762 (c) Demonstrates a pattern of unreasonable payments to
7763 viators;

7764 (d) Has been found guilty of, or has pleaded guilty or
7765 nolo contendere to, any felony, or a misdemeanor involving fraud
7766 or moral turpitude, regardless of whether a judgment of
7767 conviction has been entered by the court;

7768 (e) Has issued viatical settlement contracts that have not
7769 been approved pursuant to this act;



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7770 (f) Has failed to honor contractual obligations related to
7771 the business of viatical settlement contracts;

7772 (g) Deals in bad faith with viators;

7773 (h) Has violated any provision of the insurance code or of
7774 this act;

7775 (i) Employs any person who materially influences the
7776 licensee's conduct and who fails to meet the requirements of
7777 this act; or

7778 (j) No longer meets the requirements for initial
7779 licensure.

7780 (2) The office ~~department~~ may, in lieu of or in addition
7781 to any suspension or revocation, assess an administrative fine
7782 not to exceed \$2,500 for each nonwillful violation or \$10,000
7783 for each willful violation by a viatical settlement provider
7784 licensee. The office ~~department~~ may also place a viatical
7785 settlement provider licensee on probation for a period not to
7786 exceed 2 years.

7787 (3) If an employee of a viatical settlement provider
7788 violates any provision of this act, the office ~~department~~ may
7789 take disciplinary action against such employee as if the
7790 employee were licensed under this act, including suspending or
7791 otherwise prohibiting the employee from performing the functions
7792 of a viatical settlement provider or viatical settlement broker
7793 as defined in this act.

7794 (4) If a viatical settlement provider establishes a
7795 related provider trust as permitted by this act, the viatical
7796 settlement provider shall be liable and responsible for the
7797 performance of all obligations of the related provider trust
7798 under all viatical settlement contracts entered into by the
7799 related provider trust, and for the compliance of the related



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7800 provider trust with all provisions of this act. Any violation of
 7801 this act by the related provider trust shall be deemed a
 7802 violation of this act by the viatical settlement provider as
 7803 well as the related provider trust. If the related provider
 7804 trust violates any provisions of this act, the office ~~department~~
 7805 may exercise all remedies set forth in this act for such
 7806 violations against the viatical settlement provider, as well as
 7807 the related provider trust.

7808 Section 182. Subsections (1), (2), and (4) of section
 7809 626.9915, Florida Statutes, are amended to read:

7810 626.9915 Effect of suspension or revocation of viatical
 7811 settlement provider license; duration of suspension;
 7812 reinstatement.--

7813 (1) When its license is suspended or revoked, the provider
 7814 must proceed, immediately following the effective date of the
 7815 suspension or revocation, to conclude the affairs it is
 7816 transacting under its license. The provider may not solicit,
 7817 negotiate, advertise, or effectuate new contracts. The office
 7818 ~~department~~ retains jurisdiction over the provider until all
 7819 contracts have been fulfilled or canceled or have expired. A
 7820 provider whose license is suspended or revoked may continue to
 7821 maintain and service viaticated policies subject to the approval
 7822 of the office ~~department~~.

7823 (2) The suspension of the license of a viatical settlement
 7824 provider licensee may be for such period, not to exceed 2 years,
 7825 as determined by the office ~~department~~. The office ~~department~~
 7826 may shorten, rescind, or modify the suspension.

7827 (4) If, upon expiration of the suspension order, the
 7828 license has not otherwise been terminated, the office ~~department~~
 7829 must reinstate the license only upon written request by the



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7830 suspended licensee unless the office ~~department~~ finds that the
7831 grounds giving rise to the suspension have not been removed or
7832 that the licensee is otherwise not in compliance with the
7833 requirements of this act. The office ~~department~~ shall give the
7834 licensee notice of its findings no later than 90 days after
7835 receipt of the request or upon expiration of the suspension
7836 order, whichever occurs later. If a license is not reinstated
7837 pursuant to the procedures set forth in this subsection, it
7838 expires at the end of the suspension or on the date it otherwise
7839 would have expired, whichever is sooner.

7840 Section 183. Subsections (7), (8), and (9) of section
7841 626.9916, Florida Statutes, are amended to read:

7842 626.9916 Viatical settlement broker license required;
7843 application for license.--

7844 (7) Upon the filing of a sworn application and the payment
7845 of the license fee and all other applicable fees under this act,
7846 the department shall investigate each applicant and may issue
7847 the applicant a license if the department finds that the
7848 applicant:

7849 (a) Is competent and trustworthy and intends to act in
7850 good faith in the business authorized by the license applied
7851 for.

7852 (b) Has a good business reputation and has had experience,
7853 training, or education that qualifies the applicant to conduct
7854 the business authorized by the license applied for.

7855 (c) Except with respect to applicants for nonresident
7856 licenses, is a bona fide resident of this state and actually
7857 resides in this state at least 180 days a year. If an applicant
7858 holds a similar license or an insurance agent's or broker's
7859 license in another state at the time of applying for a license



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7860 under this section, the applicant may be found to meet the
7861 residency requirement of this paragraph only after he or she
7862 furnishes a letter of clearance satisfactory to the department
7863 or other proof that the applicant's resident licenses have been
7864 canceled or changed to nonresident status and that the applicant
7865 is in good standing with the licensing authority.

7866 (d) Is a corporation, a corporation incorporated under the
7867 laws of this state, or a foreign corporation authorized to
7868 transact business in this state.

7869 (e) Has designated the Chief Financial Officer ~~Insurance~~
7870 ~~Commissioner and Treasurer~~ as its agent for service of process.

7871 (8) An applicant for a nonresident viatical settlement
7872 broker license must, in addition to designating the Chief
7873 Financial Officer ~~Insurance Commissioner and Treasurer~~ as agent
7874 for service of process as required by this section, also furnish
7875 the department with the name and address of a resident of this
7876 state upon whom notices or orders of the department or process
7877 affecting the applicant or licensee may be served. After
7878 issuance of the license, the licensee must also notify the
7879 department of change of the person to receive such notices,
7880 orders, or process; such change is not effective until
7881 acknowledged by the department.

7882 (9) ~~Beginning July 1, 1997,~~ The department may, by rule,
7883 specify experience, educational, or other training standards
7884 required for licensure under this section.

7885 Section 184. Section 626.9919, Florida Statutes, is
7886 amended to read:

7887 626.9919 Notice of change of licensee address or
7888 name.--Each viatical settlement provider licensee, viatical
7889 settlement broker licensee, and viatical settlement sales agent



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7890 licensee must provide the office or department, as applicable,
 7891 at least 30 days' advance notice of any change in the licensee's
 7892 name, residence address, principal business address, or mailing
 7893 address.

7894 Section 185. Section 626.9921, Florida Statutes, is
 7895 amended to read:

7896 626.9921 Filing of forms; required procedures; approval.--

7897 (1) A viatical settlement contract form, viatical
 7898 settlement purchase agreement form, escrow form, or related form
 7899 may be used in this state only after the form has been filed
 7900 with the office ~~department~~ and only after the form has been
 7901 approved by the office ~~department~~.

7902 (2) The viatical settlement contract form, viatical
 7903 settlement purchase agreement form, escrow form, or related form
 7904 must be filed with the office ~~department~~ at least 60 days before
 7905 its use. The form is considered approved on the 60th day after
 7906 its date of filing unless it has been previously disapproved by
 7907 the office ~~department~~. The office ~~department~~ must disapprove a
 7908 viatical settlement contract form, viatical settlement purchase
 7909 agreement form, escrow form, or related form that is
 7910 unreasonable, contrary to the public interest, discriminatory,
 7911 or misleading or unfair to the viator or the purchaser.

7912 (3) If a viatical settlement provider elects to use a
 7913 related provider trust in accordance with this act, the viatical
 7914 settlement provider shall file notice of its intention to use a
 7915 related provider trust with the office ~~department~~, including a
 7916 copy of the trust agreement of the related provider trust. The
 7917 organizational documents of the trust must be submitted to and
 7918 approved by the office ~~department~~ before the transacting of
 7919 business by the trust.



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7920 (4) The commission ~~department~~ may adopt, by rule,
7921 standardized forms to be used by licensees, at the licensee's
7922 option in place of separately approved forms.

7923 Section 186. Section 626.9922, Florida Statutes, is
7924 amended to read:

7925 626.9922 Examination.--

7926 (1) The office or department may examine the business and
7927 affairs of any of its respective licensees or applicants
7928 ~~licensee or applicant~~ for a license. The office or department
7929 may order any such licensee or applicant to produce any records,
7930 books, files, advertising and solicitation materials, or other
7931 information and may take statements under oath to determine
7932 whether the licensee or applicant is in violation of the law or
7933 is acting contrary to the public interest. The expenses
7934 incurred in conducting any examination or investigation must be
7935 paid by the licensee or applicant. Examinations and
7936 investigations must be conducted as provided in chapter 624, and
7937 licensees are subject to all applicable provisions of the
7938 insurance code.

7939 (2) All accounts, books and records, documents, files,
7940 contracts, and other information relating to all transactions of
7941 viatical settlement contracts or viatical settlement purchase
7942 agreements must be maintained by the licensee for a period of at
7943 least 3 years after the death of the insured and must be
7944 available to the office or department for inspection during
7945 reasonable business hours.

7946 (3) All such records or accurate copies of such records
7947 must be maintained at the licensee's home office. As used in
7948 this section, the term "home office" means the principal place
7949 of business and any other single storage facility, the street



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7950 address of which shall be disclosed to the office or department
 7951 within 20 days after its initial use, or within 20 days of the
 7952 effective date of this subsection.

7953 (4) The originals of records required to be maintained
 7954 under this section must be made available to the office or
 7955 department for examination at the office's or department's
 7956 request.

7957 Section 187. Subsection (2) of section 626.99235, Florida
 7958 Statutes, is amended to read:

7959 626.99235 Disclosures to viatical settlement purchasers;
 7960 misrepresentations.--

7961 (2) The viatical settlement provider and the viatical
 7962 settlement sales agent, themselves or through another person,
 7963 shall provide in writing the following disclosures to any
 7964 viatical settlement purchaser or purchaser prospect:

7965 (a) That the return represented as being available under
 7966 the viatical settlement purchase agreement is directly tied to
 7967 the projected life span of one or more insureds.

7968 (b) If a return is represented, the disclosure shall
 7969 indicate the projected life span of the insured or insureds
 7970 whose life or lives are tied to the return.

7971 (c) If required by the terms of the viatical settlement
 7972 purchase agreement, that the viatical settlement purchaser shall
 7973 be responsible for the payment of insurance premiums on the life
 7974 of the insured, late or surrender fees, or other costs related
 7975 to the life insurance policy on the life of the insured or
 7976 insureds which may reduce the return.

7977 (d) The amount of any trust fees, commissions, deductions,
 7978 or other expenses, if any, to be charged to the viatical
 7979 settlement purchaser.



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7980 (e) The name and address of the person responsible for
7981 tracking the insured.

7982 (f) That group policies may contain limitations or caps in
7983 the conversion rights, that additional premiums may have to be
7984 paid if the policy is converted, and that the party responsible
7985 for the payment of such additional premiums shall be identified.

7986 (g) That the life expectancy and rate of return are only
7987 estimates and cannot be guaranteed.

7988 (h) That the purchase of a viatical settlement contract
7989 should not be considered a liquid purchase, since it is
7990 impossible to predict the exact timing of its maturity and the
7991 funds may not be available until the death of the insured.

7992 (i) The name and address of the person with the
7993 responsibility for paying the premium until the death of the
7994 insured.

7995

7996

7997 The written disclosure required under this subsection shall be
7998 conspicuously displayed in any viatical settlement purchase
7999 agreement, and in any solicitation material furnished to the
8000 viatical settlement purchaser by such viatical settlement
8001 provider, related provider trust, or person, and shall be in
8002 contrasting color and in not less than 10-point type or no
8003 smaller than the largest type on the page if larger than 10-
8004 point type. The commission may ~~department is authorized to~~ adopt
8005 by rule the disclosure form to be used. The disclosures need not
8006 be furnished in an invitation to inquire, the objective of which
8007 is to create a desire to inquire further about entering into a
8008 viatical settlement purchase agreement. The invitation to
8009 inquire may not quote rates of return, may not include material



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8010 attendant to the execution of any specific viatical settlement
 8011 purchase agreement, and may not relate to any specific viator.

8012 Section 188. Section 626.99245, Florida Statutes, is
 8013 amended to read:

8014 626.99245 Conflict of regulation of viaticals.--

8015 (1) A viatical settlement provider who from this state
 8016 enters into a viatical settlement purchase agreement with a
 8017 purchaser who is a resident of another state that has enacted
 8018 statutes or adopted regulations governing viatical settlement
 8019 purchase agreements, shall be governed in the effectuation of
 8020 that viatical settlement purchase agreement by the statutes and
 8021 regulations of the purchaser's state of residence. If the state
 8022 in which the purchaser is a resident has not enacted statutes or
 8023 regulations governing viatical settlement purchase agreements,
 8024 the provider shall give the purchaser notice that neither
 8025 Florida nor his or her state regulates the transaction upon
 8026 which he or she is entering. For transactions in these states,
 8027 however, the viatical settlement provider is to maintain all
 8028 records required as if the transactions were executed in
 8029 Florida. However, the forms used in those states need not be
 8030 approved by the office ~~department~~.

8031 (2) A viatical settlement provider who from this state
 8032 enters into a viatical settlement contract with a viator who is
 8033 a resident of another state that has enacted statutes or adopted
 8034 regulations governing viatical settlement contracts shall be
 8035 governed in the effectuation of that viatical settlement
 8036 contract by the statutes and regulations of the viator's state
 8037 of residence. If the state in which the viator is a resident has
 8038 not enacted statutes or regulations governing viatical
 8039 settlement agreements, the provider shall give the viator notice



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8040 that neither Florida nor his or her state regulates the
8041 transaction upon which he or she is entering. For transactions
8042 in those states, however, the viatical settlement provider is to
8043 maintain all records required as if the transactions were
8044 executed in Florida. The forms used in those states need not be
8045 approved by the office ~~department~~.

8046 (3) This section does not affect the requirement of ss.
8047 626.9911~~(5)-(6)~~ and 626.9912(1) that a viatical settlement
8048 provider doing business from this state must obtain a viatical
8049 settlement license from the office ~~department~~. As used in this
8050 subsection, the term "doing business from this state" includes
8051 effectuating viatical settlement contracts and effectuating
8052 viatical settlement purchase agreements from offices in this
8053 state, regardless of the state of residence of the viator or the
8054 viatical settlement purchaser.

8055 Section 189. Section 626.9925, Florida Statutes, is
8056 amended to read:

8057 626.9925 Rules.--The commission ~~department~~ may adopt rules
8058 to administer this act, including rules establishing standards
8059 for evaluating advertising by licensees; rules providing for the
8060 collection of data, for disclosures to viators or purchasers,
8061 and for the reporting of life expectancies; and rules defining
8062 terms used in this act and prescribing recordkeeping
8063 requirements relating to executed viatical settlement contracts
8064 and viatical settlement purchase agreements.

8065 Section 190. Section 626.9926, Florida Statutes, is
8066 amended to read:

8067 626.9926 Rate regulation not authorized.--Nothing in this
8068 act shall be construed to authorize the office or department to
8069 directly or indirectly regulate the amount paid as consideration



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8070 for entry into a viatical settlement contract or viatical
 8071 settlement purchase agreement.

8072 Section 191. Subsection (2) of section 626.9927, Florida
 8073 Statutes, is amended to read:

8074 626.9927 Unfair trade practices; cease and desist;
 8075 injunctions; civil remedy.--

8076 (2) In addition to the penalties and other enforcement
 8077 provisions of this act, if any person violates this act or any
 8078 rule implementing this act, the office or department, as
 8079 appropriate, may seek an injunction in the circuit court of the
 8080 county where the person resides or has a principal place of
 8081 business and may apply for temporary and permanent orders that
 8082 the office or department determines necessary to restrain the
 8083 person from committing the violation.

8084 Section 192. Section 626.99272, Florida Statutes, is
 8085 amended to read:

8086 626.99272 Cease and desist orders and fines.--

8087 (1) The office or department as appropriate may issue a
 8088 cease and desist order upon a person that violates any provision
 8089 of this part, any rule or order adopted by the commission,
 8090 office, or department, or any written agreement entered into
 8091 with the office or department.

8092 (2) When the office or department finds that such an
 8093 action presents an immediate danger to the public which requires
 8094 an immediate final order, it may issue an emergency cease and
 8095 desist order reciting with particularity the facts underlying
 8096 such findings. The emergency cease and desist order is effective
 8097 immediately upon service of a copy of the order on the
 8098 respondent and remains effective for 90 days. If the office or
 8099 department begins nonemergency cease and desist proceedings



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8100 under subsection(1), the emergency cease and desist order
 8101 remains effective, absent an order by an appellate court of
 8102 competent jurisdiction pursuant to s. 120.68, until the
 8103 conclusion of proceedings under ss. 120.569 and 120.57.

8104 (3) The office or department may impose and collect an
 8105 administrative fine not to exceed \$10,000 for each nonwillful
 8106 violation and \$25,000 for each willful violation of any
 8107 provision of this part.

8108 Section 193. Section 626.99285, Florida Statutes, is
 8109 amended to read:

8110 626.99285 Applicability of insurance code.--In addition to
 8111 other applicable provisions cited in the insurance code, the
 8112 office or department, as appropriate, has the authority granted
 8113 under ss. 624.310, 626.901, and 626.989 to regulate viatical
 8114 settlement providers, viatical settlement brokers, viatical
 8115 settlement sales agents, viatical settlement contracts, viatical
 8116 settlement purchase agreements, and viatical settlement
 8117 transactions.

8118 Section 194. Section 626.99295, Florida Statutes, is
 8119 amended to read:

8120 626.99295 Grace period.--An unlicensed viatical settlement
 8121 provider or viatical settlement broker that was legally
 8122 transacting business in this state on June 30, 2000, may
 8123 continue to transact such business, in the absence of any orders
 8124 by the office, department, or the former Department of Insurance
 8125 to the contrary, until the office or department, as applicable,
 8126 approves or disapproves the viatical settlement provider's
 8127 application for licensure if the viatical settlement provider or
 8128 viatical settlement broker filed ~~files~~ with the former
 8129 department an application for licensure no later than August 1,



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8130 2000, and if the viatical settlement provider or viatical
 8131 settlement broker complies with all other provisions of this
 8132 act. Any form for which former department approval was ~~is~~
 8133 required under this part must have been ~~be~~ filed by August 1,
 8134 2000, and may continue to be used until disapproved by the
 8135 office or department.

8136 Section 195. Paragraphs (a), (b), and (c) of subsection
 8137 (2) and paragraph (c) of subsection(3) of section 627.0628,
 8138 Florida Statutes, are amended to read:

8139 627.0628 Florida Commission on Hurricane Loss Projection
 8140 Methodology.--

8141 (2) COMMISSION CREATED.--

8142 (a) There is created the Florida Commission on Hurricane
 8143 Loss Projection Methodology, which is assigned to the State
 8144 Board of Administration. For the purposes of this section, the
 8145 term "commission" means the Florida Commission on Hurricane Loss
 8146 Projection Methodology. The commission shall be administratively
 8147 housed within the State Board of Administration, but it shall
 8148 independently exercise the powers and duties specified in this
 8149 section.

8150 (b) The commission shall consist of the following 11
 8151 members:

8152 1. The insurance consumer advocate.
 8153 2. The senior employee of the State Board of
 8154 Administration responsible for operations ~~Chief Operating~~
 8155 ~~Officer~~ of the Florida Hurricane Catastrophe Fund.

8156 3. The Executive Director of the Citizens Property
 8157 Insurance Corporation ~~Residential Property and Casualty Joint~~
 8158 ~~Underwriting Association.~~

8159 4. The Director of the Division of Emergency Management of



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8160 the Department of Community Affairs.

8161 5. The actuary member of the Florida Hurricane Catastrophe
8162 Fund Advisory Council.

8163 6. Six members appointed by the Chief Financial Officer
8164 ~~Insurance Commissioner~~, as follows:

8165 a. An employee of the office ~~Department of Insurance~~ who
8166 is an actuary responsible for property insurance rate filings.

8167 b. An actuary who is employed full time by a property and
8168 casualty insurer which was responsible for at least 1 percent of
8169 the aggregate statewide direct written premium for homeowner's
8170 insurance in the calendar year preceding the member's
8171 appointment to the commission.

8172 c. An expert in insurance finance who is a full time
8173 member of the faculty of the State University System and who has
8174 a background in actuarial science.

8175 d. An expert in statistics who is a full time member of
8176 the faculty of the State University System and who has a
8177 background in insurance.

8178 e. An expert in computer system design who is a full time
8179 member of the faculty of the State University System.

8180 f. An expert in meteorology who is a full time member of
8181 the faculty of the State University System and who specializes
8182 in hurricanes.

8183 (c) Members designated under subparagraphs (b)1.-5. shall
8184 serve on the commission as long as they maintain the respective
8185 offices designated in subparagraphs (b)1.-5. Members appointed
8186 by the Chief Financial Officer ~~Insurance Commissioner~~ under
8187 subparagraph (b)6. shall serve on the commission until the end
8188 of the term of office of the Chief Financial Officer ~~Insurance~~
8189 ~~Commissioner~~ who appointed them, unless earlier removed by the



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8190 Chief Financial Officer ~~Insurance Commissioner~~ for cause.

8191 Vacancies on the commission shall be filled in the same manner
8192 as the original appointment.

8193 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

8194 (c) With respect to a rate filing under s. 627.062, an
8195 insurer may employ actuarial methods, principles, standards,
8196 models, or output ranges found by the commission to be accurate
8197 or reliable to determine hurricane loss factors for use in a
8198 rate filing under s. 627.062, which findings and factors are
8199 admissible and relevant in consideration of a rate filing by the
8200 office ~~department~~ or in any arbitration or administrative or
8201 judicial review.

8202 Section 196. Paragraph (b) of subsection (2) and
8203 subsections (5), (6), and (9) of section 627.0629, Florida
8204 Statutes, are amended to read:

8205 627.0629 Residential property insurance; rate filings.--

8206 (2)

8207 (b) A rate filing for residential property insurance made
8208 more than 150 days after approval by the office ~~department~~ of a
8209 building code rating factor plan submitted by a statewide rating
8210 organization shall include positive and negative rate factors
8211 that reflect the manner in which building code enforcement in a
8212 particular jurisdiction addresses risk of wind damage. The rate
8213 filing shall include variations from standard rate factors on an
8214 individual basis based on inspection of a particular structure
8215 by a licensed home inspector. If an inspection is requested by
8216 the insured, the insurer may require the insured to pay the
8217 reasonable cost of the inspection. This paragraph applies to
8218 structures constructed or renovated after the implementation of
8219 this paragraph.



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8220 (5) In order to provide an appropriate transition period,
8221 an insurer may, in its sole discretion, implement an approved
8222 rate filing for residential property insurance over a period of
8223 years. An insurer electing to phase in its rate filing must
8224 provide an informational notice to the office ~~department~~ setting
8225 out its schedule for implementation of the phased-in rate
8226 filing.

8227 (6) An insurer may not write a residential property
8228 insurance policy without providing windstorm coverage or
8229 hurricane coverage as defined in s. 627.4025. This subsection
8230 does not apply with respect to risks located in an area eligible
8231 for coverage under the high-risk account of the Citizens
8232 Property Insurance Corporation pursuant to s. 627.351(6) ~~Florida~~
8233 ~~Windstorm Underwriting Association under s. 627.351(2).~~

8234 (9) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL
8235 SOUNDNESS.--

8236 (a) It is the intent of the Legislature to provide a
8237 program whereby homeowners may obtain an evaluation of the wind
8238 resistance of their homes with respect to preventing damage from
8239 hurricanes, together with a recommendation of reasonable steps
8240 that may be taken to upgrade their homes to better withstand
8241 hurricane force winds.

8242 (b) To the extent that funds are provided for this purpose
8243 in the General Appropriations Act, the Legislature hereby
8244 authorizes the establishment of a program to be administered by
8245 the Citizens Property Insurance Corporation for homeowners
8246 insured in the high-risk account ~~Florida Windstorm Underwriting~~
8247 ~~Association.~~

8248 (c) The program shall provide grants to homeowners, for
8249 the purpose of providing homeowner applicants with funds to



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8250 conduct an evaluation of the integrity of their homes with
 8251 respect to withstanding hurricane force winds, recommendations
 8252 to retrofit the homes to better withstand damage from such
 8253 winds, and the estimated cost to make the recommended retrofits.

8254 (d) The Department of Community Affairs shall establish by
 8255 rule standards to govern the quality of the evaluation, the
 8256 quality of the recommendations for retrofitting, the eligibility
 8257 of the persons conducting the evaluation, and the selection of
 8258 applicants under the program. In establishing the rule, the
 8259 Department of Community Affairs shall consult with the advisory
 8260 committee to minimize the possibility of fraud or abuse in the
 8261 evaluation and retrofitting process, and to ensure that funds
 8262 spent by homeowners acting on the recommendations achieve
 8263 positive results.

8264 (e) The Citizens Property Insurance Corporation Florida
 8265 ~~Windstorm Underwriting Association~~ shall identify areas of this
 8266 state with the greatest wind risk to residential properties and
 8267 recommend annually to the Department of Community Affairs
 8268 priority target areas for such evaluations and inclusion with
 8269 the associated residential construction mitigation program.

8270 Section 197. Subsections (2) and (3) and paragraphs (a),
 8271 (b), (c), (e), (f), and (g) of subsection (4) of section
 8272 627.311, Florida Statutes, are amended to read:

8273 627.311 Joint underwriters and joint reinsurers.--

8274 (2) If the office ~~department~~ finds that any activity or
 8275 practice of any such group, association, or other organization
 8276 is unfair or unreasonable or otherwise inconsistent with the
 8277 provisions of this chapter, it may issue a written order
 8278 specifying in what respects such activity or practice is unfair
 8279 or unreasonable or otherwise inconsistent with the provisions of



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8280 this chapter, and requiring the discontinuance of such activity
8281 or practice.

8282 (3) The office ~~department~~ may, after consultation with
8283 insurers licensed to write automobile insurance in this state,
8284 approve a joint underwriting plan for purposes of equitable
8285 apportionment or sharing among insurers of automobile liability
8286 insurance and other motor vehicle insurance, as an alternate to
8287 the plan required in s. 627.351(1). All insurers authorized to
8288 write automobile insurance in this state shall subscribe to the
8289 plan and participate therein. The plan shall be subject to
8290 continuous review by the office ~~department~~ which may at any time
8291 disapprove the entire plan or any part thereof if it determines
8292 that conditions have changed since prior approval and that in
8293 view of the purposes of the plan changes are warranted. Any
8294 disapproval by the office ~~department~~ shall be subject to the
8295 provisions of chapter 120. If adopted, the plan and the
8296 association created under the plan:

8297 (a) Must be subject to all provisions of s. 627.351(1),
8298 except apportionment of applicants.

8299 (b) May provide for one or more designated insurers, able
8300 and willing to provide policy and claims service, to act on
8301 behalf of all other insurers to provide insurance for applicants
8302 who are in good faith entitled to, but unable to, procure
8303 insurance through the voluntary insurance market at standard
8304 rates.

8305 (c) Must provide that designated insurers will issue
8306 policies of insurance and provide policyholder and claims
8307 service on behalf of all insurers for the joint underwriting
8308 association.

8309 (d) Must provide for the equitable apportionment among



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8310 insurers of losses and expenses incurred.

8311 (e) Must provide that the joint underwriting association
8312 will operate subject to the supervision and approval of a board
8313 of governors consisting of 11 individuals, including 1 who will
8314 be elected as chair. Five members of the board must be appointed
8315 by the Chief Financial Officer ~~Insurance Commissioner~~. Two of
8316 the Chief Financial Officer's ~~commissioner's~~ appointees must be
8317 chosen from the insurance industry. Any board member appointed
8318 by the Chief Financial Officer ~~Insurance Commissioner~~ may be
8319 removed and replaced by her or him at any time without cause.
8320 Six members of the board must be appointed by the participating
8321 insurers, two of whom must be from the insurance agents'
8322 associations. All board members, including the chair, must be
8323 appointed to serve for 2-year terms beginning annually on a date
8324 designated by the plan.

8325 (f) Must provide that an agent appointed to a servicing
8326 carrier must be a licensed general lines agent of an insurer
8327 which is authorized to write automobile liability and physical
8328 damage insurance in the state and which is actively writing such
8329 coverage in the county in which the agent is located, or the
8330 immediately adjoining counties, or an agent who places a volume
8331 of other property and casualty insurance in an amount equal to
8332 the premium volume placed with the Florida Joint Underwriting
8333 Association. The office ~~department~~ may, however, determine that
8334 an agent may be appointed to a servicing carrier if, after
8335 public hearing, the office ~~department~~ finds that consumers in
8336 the agent's operating area would not have adequate and
8337 reasonable access to the purchase of automobile insurance if the
8338 agent were not appointed to a servicing carrier.

8339 (g) Must make available noncancelable coverage as provided



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8340 in s. 627.7275(2).

8341 (h) Must provide for the furnishing of a list of insureds
8342 and their mailing addresses upon the request of a member of the
8343 association or an insurance agent licensed to place business
8344 with an association member. The list must indicate whether the
8345 insured is currently receiving a good driver discount from the
8346 association. The plan may charge a reasonable fee to cover the
8347 cost incurred in providing the list.

8348 (i) Must not provide a renewal credit or discount or any
8349 other inducement designed to retain a risk.

8350 (j) Must not provide any other good driver credit or
8351 discount that is not actuarially sound. In addition to other
8352 criteria that the plan may specify, to be eligible for a good
8353 driver credit, an insured must not have any criminal traffic
8354 violations within the most recent 36-month period preceding the
8355 date the discount is received.

8356 (k) Shall have no liability, and no cause of action of any
8357 nature shall arise against, any member insurer or its agents or
8358 employees, agents or employees of the association, members of
8359 the board of governors of the association, the Chief Financial
8360 Officer, or the office ~~department~~ or its representatives, for
8361 any action taken by them in the performance of their duties or
8362 responsibilities under this subsection. Such immunity does not
8363 apply to actions for or arising out of breach of any contract or
8364 agreement pertaining to insurance, or any willful tort.

8365 (l)1. Shall be subject to the public records requirements
8366 of chapter 119 and the public meeting requirements of s.
8367 286.011. However, the following records of the Florida
8368 Automobile Joint Underwriting Association are confidential and
8369 exempt from s. 119.07(1) and s. 24(a), Art. I of the State



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8370 Constitution:

8371 a. Underwriting files, except that a policyholder or an
8372 applicant shall have access to his or her own underwriting
8373 files.

8374 b. Claims files, until termination of all litigation and
8375 settlement of all claims arising out of the same incident,
8376 although portions of the claims files may remain exempt, as
8377 otherwise provided by law. Confidential and exempt claims file
8378 records may be released to other governmental agencies upon
8379 written request and demonstration of need; such records held by
8380 the receiving agency remain confidential and exempt as provided
8381 by this paragraph.

8382 c. Records obtained or generated by an internal auditor
8383 pursuant to a routine audit, until the audit is completed or, if
8384 the audit is conducted as part of an investigation, until the
8385 investigation is closed or ceases to be active. An
8386 investigation is considered "active" while the investigation is
8387 being conducted with a reasonable, good faith belief that it
8388 could lead to the filing of administrative, civil, or criminal
8389 proceedings.

8390 d. Matters reasonably encompassed in privileged attorney-
8391 client communications.

8392 e. Proprietary information licensed to the association
8393 under contract when the contract provides for the
8394 confidentiality of such proprietary information.

8395 f. All information relating to the medical condition or
8396 medical status of an association employee which is not relevant
8397 to the employee's capacity to perform his or her duties, except
8398 as otherwise provided in this paragraph. Information which is
8399 exempt shall include, but is not limited to, information



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8400 relating to workers' compensation, insurance benefits, and
8401 retirement or disability benefits.

8402 g. All records relative to an employee's participation in
8403 an employee assistance program designed to assist any employee
8404 who has a behavioral or medical disorder, substance abuse
8405 problem, or emotional difficulty which affects the employee's
8406 job performance, except as otherwise provided in s.
8407 112.0455(11).

8408 h. Information relating to negotiations for financing,
8409 reinsurance, depopulation, or contractual services, until the
8410 conclusion of the negotiations.

8411 i. Minutes of closed meetings regarding underwriting
8412 files, and minutes of closed meetings regarding an open claims
8413 file until termination of all litigation and settlement of all
8414 claims with regard to that claim, except that information
8415 otherwise confidential or exempt by law must be redacted.

8416

8417

8418 When an authorized insurer is considering underwriting a risk
8419 insured by the association, relevant underwriting files and
8420 confidential claims files may be released to the insurer
8421 provided the insurer agrees in writing, notarized and under
8422 oath, to maintain the confidentiality of such files. When a
8423 file is transferred to an insurer, that file is no longer a
8424 public record because it is not held by an agency subject to the
8425 provisions of the public records law. The association may make
8426 the following information obtained from underwriting files and
8427 confidential claims files available to licensed general lines
8428 insurance agents: name, address, and telephone number of the
8429 automobile owner or insured; location of the risk; rating



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8430 information; loss history; and policy type. The receiving
8431 licensed general lines insurance agent must retain the
8432 confidentiality of the information received.

8433 2. Portions of meetings of the Florida Automobile Joint
8434 Underwriting Association during which confidential underwriting
8435 files or confidential open claims files are discussed are exempt
8436 from the provisions of s. 286.011 and s. 24(b), Art. I of the
8437 State Constitution. All portions of association meetings which
8438 are closed to the public shall be recorded by a court reporter.

8439 The court reporter shall record the times of commencement and
8440 termination of the meeting, all discussion and proceedings, the
8441 names of all persons present at any time, and the names of all
8442 persons speaking. No portion of any closed meeting shall be off
8443 the record. Subject to the provisions of this paragraph and s.
8444 119.07(2)(a), the court reporter's notes of any closed meeting
8445 shall be retained by the association for a minimum of 5 years.
8446 A copy of the transcript, less any exempt matters, of any closed
8447 meeting during which claims are discussed shall become public as
8448 to individual claims after settlement of the claim.

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8451 This paragraph is subject to the Open Government Sunset Review
8452 Act of 1995 in accordance with s. 119.15, and shall stand
8453 repealed on October 2, 2003, unless reviewed and saved from
8454 repeal through reenactment by the Legislature.

8455 (4)(a) ~~Effective upon this act becoming a law,~~ The office
8456 ~~department~~ shall, after consultation with insurers, approve a
8457 joint underwriting plan of insurers which shall operate as a
8458 nonprofit entity. For the purposes of this subsection, the term
8459 "insurer" includes group self-insurance funds authorized by s.



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8460 624.4621, commercial self-insurance funds authorized by s.
8461 624.462, assessable mutual insurers authorized under s.
8462 628.6011, and insurers licensed to write workers' compensation
8463 and employer's liability insurance in this state. The purpose of
8464 the plan is to provide workers' compensation and employer's
8465 liability insurance to applicants who are required by law to
8466 maintain workers' compensation and employer's liability
8467 insurance and who are in good faith entitled to but who are
8468 unable to purchase such insurance through the voluntary market.
8469 ~~The joint underwriting plan shall issue policies beginning~~
8470 ~~January 1, 1994.~~ The plan must have actuarially sound rates that
8471 assure that the plan is self-supporting.

8472 (b) The operation of the plan is subject to the
8473 supervision of a 13-member board of governors. The board of
8474 governors shall be comprised of:

8475 1. Five of the 20 domestic insurers, as defined in s.
8476 624.06(1), having the largest voluntary direct premiums written
8477 in this state for workers' compensation and employer's liability
8478 insurance, which shall be elected by those 20 domestic insurers;

8479 2. Five of the 20 foreign insurers as defined in s.
8480 624.06(2) having the largest voluntary direct premiums written
8481 in this state for workers' compensation and employer's liability
8482 insurance, which shall be elected by those 20 foreign insurers;

8483 3. One person, who shall serve as the chair, appointed by
8484 the Chief Financial Officer ~~Insurance Commissioner~~;

8485 4. One person appointed by the largest property and
8486 casualty insurance agents' association in this state; and

8487 5. The consumer advocate appointed under s. 627.0613 or
8488 the consumer advocate's designee.

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Each board member shall serve a 4-year term and may serve consecutive terms. No board member shall be an insurer which provides service to the plan or which has an affiliate which provides services to the plan or which is serviced by a service company or third-party administrator which provides services to the plan or which has an affiliate which provides services to the plan. The minutes, audits, and procedures of the board of governors are subject to chapter 119.

(c) The operation of the plan shall be governed by a plan of operation that is prepared at the direction of the board of governors. The plan of operation may be changed at any time by the board of governors or upon request of the office department. The plan of operation and all changes thereto are subject to the approval of the office department. The plan of operation shall:

1. Authorize the board to engage in the activities necessary to implement this subsection, including, but not limited to, borrowing money.

2. Develop criteria for eligibility for coverage by the plan, including, but not limited to, documented rejection by at least two insurers which reasonably assures that insureds covered under the plan are unable to acquire coverage in the voluntary market. Any insured may voluntarily elect to accept coverage from an insurer for a premium equal to or greater than the plan premium if the insurer writing the coverage adheres to the provisions of s. 627.171.

3. Require notice from the agent to the insured at the time of the application for coverage that the application is for coverage with the plan and that coverage may be available through an insurer, group self-insurers' fund, commercial self-



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8520 insurance fund, or assessable mutual insurer through another
8521 agent at a lower cost.

8522 4. Establish programs to encourage insurers to provide
8523 coverage to applicants of the plan in the voluntary market and
8524 to insureds of the plan, including, but not limited to:

8525 a. Establishing procedures for an insurer to use in
8526 notifying the plan of the insurer's desire to provide coverage
8527 to applicants to the plan or existing insureds of the plan and
8528 in describing the types of risks in which the insurer is
8529 interested. The description of the desired risks must be on a
8530 form developed by the plan.

8531 b. Developing forms and procedures that provide an insurer
8532 with the information necessary to determine whether the insurer
8533 wants to write particular applicants to the plan or insureds of
8534 the plan.

8535 c. Developing procedures for notice to the plan and the
8536 applicant to the plan or insured of the plan that an insurer
8537 will insure the applicant or the insured of the plan, and notice
8538 of the cost of the coverage offered; and developing procedures
8539 for the selection of an insuring entity by the applicant or
8540 insured of the plan.

8541 d. Provide for a market-assistance plan to assist in the
8542 placement of employers. All applications for coverage in the
8543 plan received 45 days before the effective date for coverage
8544 shall be processed through the market-assistance plan. A market-
8545 assistance plan specifically designed to serve the needs of
8546 small good policyholders as defined by the board must be
8547 finalized by January 1, 1994.

8548 5. Provide for policy and claims services to the insureds
8549 of the plan of the nature and quality provided for insureds in



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8550 the voluntary market.

8551 6. Provide for the review of applications for coverage
8552 with the plan for reasonableness and accuracy, using any
8553 available historic information regarding the insured.

8554 7. Provide for procedures for auditing insureds of the
8555 plan which are based on reasonable business judgment and are
8556 designed to maximize the likelihood that the plan will collect
8557 the appropriate premiums.

8558 8. Authorize the plan to terminate the coverage of and
8559 refuse future coverage for any insured that submits a fraudulent
8560 application to the plan or provides fraudulent or grossly
8561 erroneous records to the plan or to any service provider of the
8562 plan in conjunction with the activities of the plan.

8563 9. Establish service standards for agents who submit
8564 business to the plan.

8565 10. Establish criteria and procedures to prohibit any
8566 agent who does not adhere to the established service standards
8567 from placing business with the plan or receiving, directly or
8568 indirectly, any commissions for business placed with the plan.

8569 11. Provide for the establishment of reasonable safety
8570 programs for all insureds in the plan.

8571 12. Authorize the plan to terminate the coverage of and
8572 refuse future coverage to any insured who fails to pay premiums
8573 or surcharges when due; who, at the time of application, is
8574 delinquent in payments of workers' compensation or employer's
8575 liability insurance premiums or surcharges owed to an insurer,
8576 group self-insurers' fund, commercial self-insurance fund, or
8577 assessable mutual insurer licensed to write such coverage in
8578 this state; or who refuses to substantially comply with any
8579 safety programs recommended by the plan.



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8580 13. Authorize the board of governors to provide the
 8581 services required by the plan through staff employed by the
 8582 plan, through reasonably compensated service providers who
 8583 contract with the plan to provide services as specified by the
 8584 board of governors, or through a combination of employees and
 8585 service providers.

8586 14. Provide for service standards for service providers,
 8587 methods of determining adherence to those service standards,
 8588 incentives and disincentives for service, and procedures for
 8589 terminating contracts for service providers that fail to adhere
 8590 to service standards.

8591 15. Provide procedures for selecting service providers and
 8592 standards for qualification as a service provider that
 8593 reasonably assure that any service provider selected will
 8594 continue to operate as an ongoing concern and is capable of
 8595 providing the specified services in the manner required.

8596 16. Provide for reasonable accounting and data-reporting
 8597 practices.

8598 17. Provide for annual review of costs associated with the
 8599 administration and servicing of the policies issued by the plan
 8600 to determine alternatives by which costs can be reduced.

8601 18. Authorize the acquisition of such excess insurance or
 8602 reinsurance as is consistent with the purposes of the plan.

8603 19. Provide for an annual report to the office ~~department~~
 8604 on a date specified by the office ~~department~~ and containing such
 8605 information as the office ~~department~~ reasonably requires.

8606 20. Establish multiple rating plans for various
 8607 classifications of risk which reflect risk of loss, hazard
 8608 grade, actual losses, size of premium, and compliance with loss
 8609 control. At least one of such plans must be a preferred-rating



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8610 plan to accommodate small-premium policyholders with good
8611 experience as defined in sub-subparagraph 22.a.

8612 21. Establish agent commission schedules.

8613 22. Establish three subplans as follows:

8614 a. Subplan "A" must include those insureds whose annual
8615 premium does not exceed \$2,500 and who have neither incurred any
8616 lost-time claims nor incurred medical-only claims exceeding 50
8617 percent of their premium for the immediate 2 years.

8618 b. Subplan "B" must include insureds that are employers
8619 identified by the board of governors as high-risk employers due
8620 solely to the nature of the operations being performed by those
8621 insureds and for whom no market exists in the voluntary market,
8622 and whose experience modifications are less than 1.00.

8623 c. Subplan "C" must include all other insureds within the
8624 plan.

8625 (e) The plan shall establish and use its rates and rating
8626 plans, and the plan may establish and use changes in rating
8627 plans at any time, but no more frequently than two times per any
8628 rating class for any calendar year. By December 1, 1993, and
8629 December 1 of each year thereafter, the board shall establish
8630 and use actuarially sound rates for use by the plan to assure
8631 that the plan is self-funding while those rates are in effect.
8632 Such rates and rating plans must be filed with the office
8633 ~~department~~ within 30 calendar days after their effective dates,
8634 and shall be considered a "use and file" filing. Any disapproval
8635 by the office ~~department~~ must have an effective date that is at
8636 least 60 days from the date of disapproval of the rates and
8637 rating plan and must have prospective effect only. The plan may
8638 not be subject to any order by the office ~~department~~ to return
8639 to policyholders any portion of the rates disapproved by the



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8640 office department. The office department may not disapprove any
 8641 rates or rating plans unless it demonstrates that such rates and
 8642 rating plans are excessive, inadequate, or unfairly
 8643 discriminatory.

8644 (f) No later than June 1 of each year, the plan shall
 8645 obtain an independent actuarial certification of the results of
 8646 the operations of the plan for prior years, and shall furnish a
 8647 copy of the certification to the office department. If, after
 8648 the effective date of the plan, the projected ultimate incurred
 8649 losses and expenses and dividends for prior years exceed
 8650 collected premiums, accrued net investment income, and prior
 8651 assessments for prior years, the certification is subject to
 8652 review and approval by the office department before it becomes
 8653 final.

8654 (g) Whenever a deficit exists, the plan shall, within 90
 8655 days, provide the office department with a program to eliminate
 8656 the deficit within a reasonable time. The deficit may be funded
 8657 through increased premiums charged to insureds of the plan for
 8658 subsequent years, through the use of policyholder surplus
 8659 attributable to any year, and through assessments on insureds in
 8660 the plan if the plan uses assessable policies.

8661 Section 198. Section 627.3111, Florida Statutes, is
 8662 amended to read:

8663 627.3111 Public records exemption.--All bank account
 8664 numbers and debit, charge, and credit card numbers, and all
 8665 other personal financial and health information of a consumer
 8666 held by the department or office ~~of Insurance~~ or their ~~its~~
 8667 service providers or agents, relating to a consumer's complaint
 8668 or inquiry regarding a matter or activity regulated under the
 8669 Florida Insurance Code, are confidential and exempt from s.



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8670 119.07(1) and s. 24(a), Art. I of the State Constitution. For
8671 the purpose of this section, the term "consumer" includes but is
8672 not limited to a prospective purchaser, purchaser, or
8673 beneficiary of, or applicant for, any product or service
8674 regulated under the Florida Insurance Code, and a family member
8675 or dependent of a consumer, a subscriber under a group policy,
8676 or a policyholder. This information shall be redacted from
8677 records that contain nonexempt information prior to disclosure.

8678 This exemption applies to information made confidential and
8679 exempt by this section held by the department or office ~~of~~
8680 ~~Insurance~~ or their ~~its~~ service providers or agents before, on,
8681 or after the effective date of this exemption. Such confidential
8682 and exempt information may be disclosed to another governmental
8683 entity, if disclosure is necessary for the receiving entity to
8684 perform its duties and responsibilities, and may be disclosed to
8685 the National Association of Insurance Commissioners. The
8686 receiving governmental entity and the association must maintain
8687 the confidential and exempt status of such information. The
8688 information made confidential and exempt by this section may be
8689 used in a criminal, civil, or administrative proceeding so long
8690 as the confidential and exempt status of such information is
8691 maintained. This exemption does not include the name and address
8692 of an inquirer or complainant to the department or office or the
8693 name of an insurer or other regulated entity which is the
8694 subject of the inquiry or complaint. This section is subject to
8695 the Open Government Sunset Review Act of 1995 in accordance with
8696 s. 119.15 and shall stand repealed on October 2, 2007, unless
8697 reviewed and saved from repeal through reenactment by the
8698 Legislature.

8699 Section 199. Subsection (1), paragraphs (a) and (c) of



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8700 subsection (3), paragraphs (a), (c), and (d) of subsection (4),
 8701 and subsections (5) and (6) of section 627.351, Florida
 8702 Statutes, are amended, and paragraph (f) is added to subsection
 8703 (2) of that section to read:

8704 627.351 Insurance risk apportionment plans.--

8705 (1) MOTOR VEHICLE INSURANCE RISK

8706 APPORTIONMENT.--Agreements may be made among casualty and surety
 8707 insurers with respect to the equitable apportionment among them
 8708 of insurance which may be afforded applicants who are in good
 8709 faith entitled to, but are unable to, procure such insurance
 8710 through ordinary methods, and such insurers may agree among
 8711 themselves on the use of reasonable rate modifications for such
 8712 insurance. Such agreements and rate modifications shall be
 8713 subject to the approval of the office ~~department~~. The office
 8714 ~~department~~ shall, after consultation with the insurers licensed
 8715 to write automobile liability insurance in this state, adopt a
 8716 reasonable plan or plans for the equitable apportionment among
 8717 such insurers of applicants for such insurance who are in good
 8718 faith entitled to, but are unable to, procure such insurance
 8719 through ordinary methods, and, when such plan has been adopted,
 8720 all such insurers shall subscribe thereto and shall participate
 8721 therein. Such plan or plans shall include rules for
 8722 classification of risks and rates therefor. The plan or plans
 8723 shall make available noncancelable coverage as provided in s.
 8724 627.7275(2). Any insured placed with the plan shall be notified
 8725 of the fact that insurance coverage is being afforded through
 8726 the plan and not through the private market, and such
 8727 notification shall be given in writing within 10 days of such
 8728 placement. To assure that plan rates are made adequate to pay
 8729 claims and expenses, insurers shall develop a means of obtaining



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8730 loss and expense experience at least annually, and the plan
8731 shall file such experience, when available, with the office
8732 ~~department~~ in sufficient detail to make a determination of rate
8733 adequacy. Prior to the filing of such experience with the office
8734 ~~department~~, the plan shall poll each member insurer as to the
8735 need for an actuary who is a member of the Casualty Actuarial
8736 Society and who is not affiliated with the plan's statistical
8737 agent to certify the plan's rate adequacy. If a majority of
8738 those insurers responding indicate a need for such
8739 certification, the plan shall include the certification as part
8740 of its experience filing. Such experience shall be filed with
8741 the office ~~department~~ not more than 9 months following the end
8742 of the annual statistical period under review, together with a
8743 rate filing based on said experience. The office ~~department~~
8744 shall initiate proceedings to disapprove the rate and so notify
8745 the plan or shall finalize its review within 60 days of receipt
8746 of the filing. Notification to the plan by the office ~~department~~
8747 of its preliminary findings, which include a point of entry to
8748 the plan pursuant to chapter 120, shall toll the 60-day period
8749 during any such proceedings and subsequent judicial review. The
8750 rate shall be deemed approved if the office ~~department~~ does not
8751 issue notice to the plan of its preliminary findings within 60
8752 days of the filing. In addition to provisions for claims and
8753 expenses, the ratemaking formula shall include a factor for
8754 projected claims trending and 5 percent for contingencies. In no
8755 instance shall the formula include a renewal discount for plan
8756 insureds. However, the plan shall reunderwrite each insured on
8757 an annual basis, based upon all applicable rating factors
8758 approved by the office ~~department~~. Trend factors shall not be
8759 found to be inappropriate if not in excess of trend factors



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8760 normally used in the development of residual market rates by the
 8761 appropriate licensed rating organization. Each application for
 8762 coverage in the plan shall include, in boldfaced 12-point type
 8763 immediately preceding the applicant's signature, the following
 8764 statement:

8765

8766 "THIS INSURANCE IS BEING AFFORDED THROUGH THE FLORIDA JOINT
 8767 UNDERWRITING ASSOCIATION AND NOT THROUGH THE PRIVATE MARKET.
 8768 PLEASE BE ADVISED THAT COVERAGE WITH A PRIVATE INSURER MAY BE
 8769 AVAILABLE FROM ANOTHER AGENT AT A LOWER COST. AGENT AND COMPANY
 8770 LISTINGS ARE AVAILABLE IN THE LOCAL YELLOW PAGES."

8771

8772 The plan shall annually report to the office ~~department~~ the
 8773 number and percentage of plan insureds who are not surcharged
 8774 due to their driving record.

8775 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

8776 (f) As used in this subsection, the term "department"
 8777 means the former Department of Insurance.

8778 (3) POLITICAL SUBDIVISION; CASUALTY INSURANCE RISK
 8779 APPORTIONMENT.--

8780 (a) The office ~~department~~ shall, after consultation with
 8781 the casualty insurers licensed in this state, adopt a plan or
 8782 plans for the equitable apportionment among them of casualty
 8783 insurance coverage which may be afforded political subdivisions
 8784 which are in good faith entitled to, but are unable to, procure
 8785 such coverage through the voluntary market at standard rates or
 8786 through a statutorily approved plan authorized by the office
 8787 ~~department~~. The office ~~department~~ may adopt a joint underwriting
 8788 plan which shall provide for one or more designated insurers
 8789 able and willing to provide policyholder and claims service,



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8790 including the issuance of insurance policies, to act on behalf
8791 of all other insurers required to participate in the joint
8792 underwriting plan. Any joint underwriting plan adopted shall
8793 provide for the equitable apportionment of any profits realized,
8794 or of losses and expenses incurred, among participating
8795 insurers. The plan shall include, but shall not be limited to:

8796 1. Rules for the classification of risks and rates which
8797 reflect the past loss experience and prospective loss experience
8798 in different geographic areas.

8799 2. A rating plan which reasonably reflects the prior
8800 claims experience of the insureds.

8801 3. Excess coverage by insurers if the office ~~Insurance~~
8802 ~~Commissioner~~, in its ~~his or her~~ discretion, requires such
8803 coverage by insurers participating in the joint underwriting
8804 plan.

8805 (c) Any deficit sustained under the plan shall first be
8806 recovered through a premium contingency assessment.
8807 Concurrently, the rates for insureds shall be adjusted for the
8808 next year so as to be actuarially sound in conformance with
8809 rules adopted by ~~of the commission~~ ~~department~~.

8810 (4) MEDICAL MALPRACTICE RISK APPORTIONMENT.--

8811 (a) The office ~~department~~ shall, after consultation with
8812 insurers as set forth in paragraph (b), adopt a joint
8813 underwriting plan as set forth in paragraph (d).

8814 (c) The Joint Underwriting Association shall operate
8815 subject to the supervision and approval of a board of governors
8816 consisting of representatives of five of the insurers
8817 participating in the Joint Underwriting Association, an attorney
8818 to be named by The Florida Bar, a physician to be named by the
8819 Florida Medical Association, a dentist to be named by the



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8820 Florida Dental Association, and a hospital representative to be
8821 named by the Florida Hospital Association. The board of
8822 governors shall choose, during the first meeting of the board
8823 after June 30 of each year, one of its members to serve as chair
8824 of the board and another member to serve as vice chair of the
8825 board. There shall be no liability on the part of, and no cause
8826 of action of any nature shall arise against, any member insurer,
8827 self-insurer, or its agents or employees, the Joint Underwriting
8828 Association or its agents or employees, members of the board of
8829 governors, or the office ~~department~~ or its representatives for
8830 any action taken by them in the performance of their powers and
8831 duties under this subsection.

8832 (d) The plan shall provide coverage for claims arising out
8833 of the rendering of, or failure to render, medical care or
8834 services and, in the case of health care facilities, coverage
8835 for bodily injury or property damage to the person or property
8836 of any patient arising out of the insured's activities, in
8837 appropriate policy forms for all health care providers as
8838 defined in paragraph (h). The plan shall include, but shall not
8839 be limited to:

8840 1. Classifications of risks and rates which reflect past
8841 and prospective loss and expense experience in different areas
8842 of practice and in different geographical areas. To assure that
8843 plan rates are adequate to pay claims and expenses, the Joint
8844 Underwriting Association shall develop a means of obtaining loss
8845 and expense experience; and the plan shall file such experience,
8846 when available, with the office ~~department~~ in sufficient detail
8847 to make a determination of rate adequacy. Within 60 days after a
8848 rate filing, the office ~~department~~ shall approve such rates or
8849 rate revisions as are fully supported by the filing. In addition



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8850 to provisions for claims and expenses, the ratemaking formula
8851 may include a factor for projected claims trending and a margin
8852 for contingencies. The use of trend factors shall not be found
8853 to be inappropriate.

8854 2. A rating plan which reasonably recognizes the prior
8855 claims experience of insureds.

8856 3. Provisions as to rates for:

8857 a. Insureds who are retired or semiretired.

8858 b. The estates of deceased insureds.

8859 c. Part-time professionals.

8860 4. Protection in an amount not to exceed \$250,000 per
8861 claim, \$750,000 annual aggregate for health care providers other
8862 than hospitals and in an amount not to exceed \$1.5 million per
8863 claim, \$5 million annual aggregate for hospitals. Such coverage
8864 for health care providers other than hospitals shall be
8865 available as primary coverage and as excess coverage for the
8866 layer of coverage between the primary coverage and the total
8867 limits of \$250,000 per claim, \$750,000 annual aggregate. The
8868 plan shall also provide tail coverage in these amounts to
8869 insureds whose claims-made coverage with another insurer or
8870 trust has or will be terminated. Such tail coverage shall
8871 provide coverage for incidents that occurred during the claims-
8872 made policy period for which a claim is made after the policy
8873 period.

8874 5. A risk management program for insureds of the
8875 association. This program shall include, but not be limited to:
8876 investigation and analysis of frequency, severity, and causes of
8877 adverse or untoward medical injuries; development of measures to
8878 control these injuries; systematic reporting of medical
8879 incidents; investigation and analysis of patient complaints; and



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8880 auditing of association members to assure implementation of this
 8881 program. The plan may refuse to insure any insured who refuses
 8882 or fails to comply with the risk management program implemented
 8883 by the association. Prior to cancellation or refusal to renew
 8884 an insured, the association shall provide the insured 60 days'
 8885 notice of intent to cancel or nonrenew and shall further notify
 8886 the insured of any action which must be taken to be in
 8887 compliance with the risk management program.

8888 (5) PROPERTY AND CASUALTY INSURANCE RISK

8889 APPORTIONMENT.--The commission ~~department~~ shall adopt by rule a
 8890 joint underwriting plan to equitably apportion among insurers
 8891 authorized in this state to write property insurance as defined
 8892 in s. 624.604 or casualty insurance as defined in s. 624.605,
 8893 the underwriting of one or more classes of property insurance or
 8894 casualty insurance, except for the types of insurance that are
 8895 included within property insurance or casualty insurance for
 8896 which an equitable apportionment plan, assigned risk plan, or
 8897 joint underwriting plan is authorized under s. 627.311 or
 8898 subsection (1), subsection (2), subsection(3), subsection (4),
 8899 or subsection (5) and except for risks eligible for flood
 8900 insurance written through the federal flood insurance program to
 8901 persons with risks eligible under subparagraph (a)1. and who are
 8902 in good faith entitled to, but are unable to, obtain such
 8903 property or casualty insurance coverage, including excess
 8904 coverage, through the voluntary market. For purposes of this
 8905 subsection, an adequate level of coverage means that coverage
 8906 which is required by state law or by responsible or prudent
 8907 business practices. The Joint Underwriting Association shall not
 8908 be required to provide coverage for any type of risk for which
 8909 there are no insurers providing similar coverage in this state.



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8910 The office ~~department~~ may designate one or more participating
 8911 insurers who agree to provide policyholder and claims service,
 8912 including the issuance of policies, on behalf of the
 8913 participating insurers.

8914 (a) The plan shall provide:

8915 1. A means of establishing eligibility of a risk for
 8916 obtaining insurance through the plan, which provides that:

8917 a. A risk shall be eligible for such property insurance or
 8918 casualty insurance as is required by Florida law if the
 8919 insurance is unavailable in the voluntary market, including the
 8920 market assistance program and the surplus lines market.

8921 b. A commercial risk not eligible under sub-subparagraph
 8922 a. shall be eligible for property or casualty insurance if:

8923 (I) The insurance is unavailable in the voluntary market,
 8924 including the market assistance plan and the surplus lines
 8925 market;

8926 (II) Failure to secure the insurance would substantially
 8927 impair the ability of the entity to conduct its affairs; and

8928 (III) The risk is not determined by the Risk Underwriting
 8929 Committee to be uninsurable.

8930 c. In the event the Federal Government terminates the
 8931 Federal Crime Insurance Program established under 44 C.F.R. ss.
 8932 80-83, Florida commercial and residential risks previously
 8933 insured under the federal program shall be eligible under the
 8934 plan.

8935 d.(I) In the event a risk is eligible under this paragraph
 8936 and in the event the market assistance plan receives a minimum
 8937 of 100 applications for coverage within a 3-month period, or 200
 8938 applications for coverage within a 1-year period or less, for a
 8939 given class of risk contained in the classification system



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8940 defined in the plan of operation of the Joint Underwriting
8941 Association, and unless the market assistance plan provides a
8942 quotation for at least 80 percent of such applicants, such
8943 classification shall immediately be eligible for coverage in the
8944 Joint Underwriting Association.

8945 (II) Any market assistance plan application which is
8946 rejected because an individual risk is so hazardous as to be
8947 practically uninsurable, considering whether the likelihood of a
8948 loss for such a risk is substantially higher than for other
8949 risks of the same class due to individual risk characteristics,
8950 prior loss experience, unwillingness to cooperate with a prior
8951 insurer, physical characteristics and physical location shall
8952 not be included in the minimum percentage calculation provided
8953 above. In the event that there is any legal or administrative
8954 challenge to a determination by the office ~~department~~ that the
8955 conditions of this subparagraph have been met for eligibility
8956 for coverage in the Joint Underwriting Association for a given
8957 classification, any eligible risk may obtain coverage during the
8958 pendency of any such challenge.

8959 e. In order to qualify as a quotation for the purpose of
8960 meeting the minimum percentage calculation in this subparagraph,
8961 the quoted premium must meet the following criteria:

8962 (I) In the case of an admitted carrier, the quoted premium
8963 must not exceed the premium available for a given classification
8964 currently in use by the Joint Underwriting Association or the
8965 premium developed by using the rates and rating plans on file
8966 with the office ~~department~~ by the quoting insurer, whichever is
8967 greater.

8968 (II) In the case of an authorized surplus lines insurer,
8969 the quoted premium must not exceed the premium available for a



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8970 given classification currently in use by the Joint Underwriting
8971 Association by more than 25 percent, after consideration of any
8972 individual risk surcharge or credit.

8973 f. Any agent who falsely certifies the unavailability of
8974 coverage as provided by sub-subparagraphs a. and b., is subject
8975 to the penalties provided in s. 626.611.

8976 2. A means for the equitable apportionment of profits or
8977 losses and expenses among participating insurers.

8978 3. Rules for the classification of risks and rates which
8979 reflect the past and prospective loss experience.

8980 4. A rating plan which reasonably reflects the prior
8981 claims experience of the insureds. Such rating plan shall
8982 include at least two levels of rates for risks that have
8983 favorable loss experience and risks that have unfavorable loss
8984 experience, as established by the plan.

8985 5. Reasonable limits to available amounts of insurance.
8986 Such limits may not be less than the amounts of insurance
8987 required of eligible risks by Florida law.

8988 6. Risk management requirements for insurance where such
8989 requirements are reasonable and are expected to reduce losses.

8990 7. Deductibles as may be necessary to meet the needs of
8991 insureds.

8992 8. Policy forms which are consistent with the forms in use
8993 by the majority of the insurers providing coverage in the
8994 voluntary market for the coverage requested by the applicant.

8995 9. A means to remove risks from the plan once such risks
8996 no longer meet the eligibility requirements of this paragraph.
8997 For this purpose, the plan shall include the following
8998 requirements: At each 6-month interval after the activation of
8999 any class of insureds, the board of governors or its designated



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9000 committee shall review the number of applications to the market
9001 assistance plan for that class. If, based on these latest
9002 numbers, at least 90 percent of such applications have been
9003 provided a quotation, the Joint Underwriting Association shall
9004 cease underwriting new applications for such class within 30
9005 days, and notification of this decision shall be sent to the
9006 office Insurance Commissioner, the major agents' associations,
9007 and the board of directors of the market assistance plan. A
9008 quotation for the purpose of this subparagraph shall meet the
9009 same criteria for a quotation as provided in sub-subparagraph
9010 1.e sub-subparagraph d. All policies which were previously
9011 written for that class shall continue in force until their
9012 normal expiration date, at which time, subject to the required
9013 timely notification of nonrenewal by the Joint Underwriting
9014 Association, the insured may then elect to reapply to the Joint
9015 Underwriting Association according to the requirements of
9016 eligibility. If, upon reapplication, those previously insured
9017 Joint Underwriting Association risks meet the eligibility
9018 requirements, the Joint Underwriting Association shall provide
9019 the coverage requested.

9020 10. A means for providing credits to insurers against any
9021 deficit assessment levied pursuant to paragraph (c), for risks
9022 voluntarily written through the market assistance plan by such
9023 insurers.

9024 11. That the Joint Underwriting Association shall operate
9025 subject to the supervision and approval of a board of governors
9026 consisting of 13 individuals appointed by the Chief Financial
9027 Officer Insurance Commissioner, and shall have an executive or
9028 underwriting committee. At least four of the members shall be
9029 representatives of insurance trade associations as follows: one



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9030 member from the American Insurance Association, one member from
9031 the Alliance of American Insurers, one member from the National
9032 Association of Independent Insurers, and one member from an
9033 unaffiliated insurer writing coverage on a national basis. Two
9034 representatives shall be from two of the statewide agents'
9035 associations. Each board member shall be appointed to serve for
9036 2-year terms beginning on a date designated by the plan and
9037 shall serve at the pleasure of the Chief Financial Officer
9038 ~~commissioner~~. Members may be reappointed for subsequent terms.

9039 (b) Rates used by the Joint Underwriting Association shall
9040 be actuarially sound. To the extent applicable, the rate
9041 standards set forth in s. 627.062 shall be considered by the
9042 office ~~department~~ in establishing rates to be used by the joint
9043 underwriting plan. The initial rate level shall be determined
9044 using the rates, rules, rating plans, and classifications
9045 contained in the most current Insurance Services Office (ISO)
9046 filing with the office ~~department~~ or the filing of other
9047 licensed rating organizations with an additional increment of 25
9048 percent of premium. For any type of coverage or classification
9049 which lends itself to manual rating for which the Insurance
9050 Services Office or another licensed rating organization does not
9051 file or publish a rate, the Joint Underwriting Association shall
9052 file and use an initial rate based on the average current market
9053 rate. The initial rate level for the rate plan shall also be
9054 subject to an experience and schedule rating plan which may
9055 produce a maximum of 25 percent debits or credits. For any risk
9056 which does not lend itself to manual rating and for which no
9057 rate has been promulgated under the rate plan, the board shall
9058 develop and file with the office ~~commissioner~~, subject to its
9059 ~~his or her~~ approval, appropriate criteria and factors for rating



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9060 the individual risk. Such criteria and factors shall include,
9061 but not be limited to, loss rating plans, composite rating
9062 plans, and unique and unusual risk rating plans. The initial
9063 rates required under this paragraph shall be adjusted in
9064 conformity with future filings by the Insurance Services Office
9065 with the office ~~department~~ and shall remain in effect until such
9066 time as the Joint Underwriting Association has sufficient data
9067 as to independently justify an actuarially sound change in such
9068 rates.

9069 (c)1. In the event an underwriting deficit exists for any
9070 policy year the plan is in effect, any surplus which has accrued
9071 from previous years and is not projected within reasonable
9072 actuarial certainty to be needed for payment for claims in the
9073 year the surplus arose shall be used to offset the deficit to
9074 the extent available.

9075 2. As to any remaining deficit, the board of governors of
9076 the Joint Underwriting Association shall levy and collect an
9077 assessment in an amount sufficient to offset such deficit. Such
9078 assessment shall be levied against the insurers participating in
9079 the plan during the year giving rise to the assessment. Any
9080 assessments against insurers for the lines of property and
9081 casualty insurance issued to commercial risks shall be recovered
9082 from the participating insurers in the proportion that the net
9083 direct premium of each insurer for commercial risks written
9084 during the preceding calendar year bears to the aggregate net
9085 direct premium written for commercial risks by all members of
9086 the plan for the lines of insurance included in the plan. Any
9087 assessments against insurers for the lines of property and
9088 casualty insurance issued to personal risks eligible under sub-
9089 subparagraph (a)1.a. or sub-subparagraph (a)1.c. shall be



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9090 recovered from the participating insurers in the proportion that
 9091 the net direct premium of each insurer for personal risks
 9092 written during the preceding calendar year bears to the
 9093 aggregate net direct premium written for personal risks by all
 9094 members of the plan for the lines of insurance included in the
 9095 plan.

9096 3. The board shall take all reasonable and prudent steps
 9097 necessary to collect the amount of assessment due from each
 9098 participating insurer and policyholder, including, if prudent,
 9099 filing suit to collect such assessment. If the board is unable
 9100 to collect an assessment from any insurer, the uncollected
 9101 assessments shall be levied as an additional assessment against
 9102 the participating insurers and any participating insurer
 9103 required to pay an additional assessment as a result of such
 9104 failure to pay shall have a cause of action against such
 9105 nonpaying insurer.

9106 4. Any funds or entitlements that the state may be
 9107 eligible to receive by virtue of the Federal Government's
 9108 termination of the Federal Crime Insurance Program referenced in
 9109 sub-subparagraph (a)1.c. may be used under the plan to offset
 9110 any subsequent underwriting deficits that may occur from risks
 9111 previously insured with the Federal Crime Insurance Program.

9112 5. Assessments shall be included as an appropriate factor
 9113 in the making of rates as provided in s. 627.3512.

9114 6.a. The Legislature finds that the potential for
 9115 unlimited assessments under this paragraph may induce insurers
 9116 to attempt to reduce their writings in the voluntary market, and
 9117 that such actions would worsen the availability problems that
 9118 the association was created to remedy. It is the intent of the
 9119 Legislature that insurers remain fully responsible for covering



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9120 any deficits of the association; however, it is also the intent
 9121 of the Legislature to provide a means by which assessment
 9122 liabilities may be amortized over a period of years.

9123 b. The total amount of deficit assessments under this
 9124 paragraph with respect to any year may not exceed 10 percent of
 9125 the statewide total gross written premium for all insurers for
 9126 the coverages referred to in the introductory language of this
 9127 subsection for the prior year, except that if the deficit with
 9128 respect to any plan year exceeds such amount and bonds are
 9129 issued under sub-subparagraph c. to defray the deficit, the
 9130 total amount of assessments with respect to such deficit may not
 9131 in any year exceed 10 percent of the deficit, or such lesser
 9132 percentage as is sufficient to retire the bonds as determined by
 9133 the board, and shall continue annually until the bonds are
 9134 retired.

9135 c. The governing body of any unit of local government, any
 9136 residents or businesses of which are insured by the association,
 9137 may issue bonds as defined in s. 125.013 or s. 166.101 from time
 9138 to time to fund an assistance program, in conjunction with the
 9139 association, for the purpose of defraying deficits of the
 9140 association. Revenue bonds may not be issued until validated
 9141 pursuant to chapter 75, unless a state of emergency is declared
 9142 by executive order or proclamation of the Governor pursuant to
 9143 s. 252.36 making such findings as are necessary to determine
 9144 that it is in the best interests of, and necessary for, the
 9145 protection of the public health, safety, and general welfare of
 9146 residents of this state and the protection and preservation of
 9147 the economic stability of insurers operating in this state, and
 9148 declaring it an essential public purpose to permit certain
 9149 municipalities or counties to issue such bonds as will provide



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9150 relief to claimants and policyholders of the joint underwriting
9151 association and insurers responsible for apportionment of
9152 association losses. The unit of local government shall enter
9153 into such contracts with the association as are necessary to
9154 carry out this paragraph. Any bonds issued under this sub-
9155 subparagraph shall be payable from and secured by moneys
9156 received by the association from assessments under this
9157 paragraph, and assigned and pledged to or on behalf of the unit
9158 of local government for the benefit of the holders of such
9159 bonds. The funds, credit, property, and taxing power of the
9160 state or of the unit of local government shall not be pledged
9161 for the payment of such bonds. If any of the bonds remain unsold
9162 60 days after issuance, the office ~~department~~ shall require all
9163 insurers subject to assessment to purchase the bonds, which
9164 shall be treated as admitted assets; each insurer shall be
9165 required to purchase that percentage of the unsold portion of
9166 the bond issue that equals the insurer's relative share of
9167 assessment liability under this subsection. An insurer shall not
9168 be required to purchase the bonds to the extent that the office
9169 ~~department~~ determines that the purchase would endanger or impair
9170 the solvency of the insurer.

9171 7. The plan shall provide for the deferment, in whole or
9172 in part, of the assessment of an insurer if the office
9173 ~~department~~ finds that payment of the assessment would endanger
9174 or impair the solvency of the insurer. In the event an
9175 assessment against an insurer is deferred in whole or in part,
9176 the amount by which such assessment is deferred may be assessed
9177 against the other member insurers in a manner consistent with
9178 the basis for assessments set forth in subparagraph 2.

9179 (d) Upon adoption of the plan, all insurers authorized in



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9180 this state to underwrite property or casualty insurance shall
 9181 participate in the plan.

9182 (e) A Risk Underwriting Committee of the Joint
 9183 Underwriting Association composed of three members experienced
 9184 in evaluating insurance risks is created to review risks
 9185 rejected by the voluntary market for which application is made
 9186 for insurance through the joint underwriting plan. The committee
 9187 shall consist of a representative of the market assistance plan
 9188 created under s. 627.3515, a member selected by the insurers
 9189 participating in the Joint Underwriting Association, and a
 9190 member named by the Chief Financial Officer Insurance
 9191 ~~Commissioner~~. The Risk Underwriting Committee shall appoint such
 9192 advisory committees as are provided for in the plan and are
 9193 necessary to conduct its functions. The salaries and expenses of
 9194 the members of the Risk Underwriting Committee and its advisory
 9195 committees shall be paid by the joint underwriting plan. The
 9196 plan approved by the office ~~department~~ shall establish criteria
 9197 and procedures for use by the Risk Underwriting Committee for
 9198 determining whether an individual risk is so hazardous as to be
 9199 uninsurable. In making this determination and in establishing
 9200 the criteria and procedures, the following shall be considered:

9201 1. Whether the likelihood of a loss for the individual
 9202 risk is substantially higher than for other risks of the same
 9203 class; and

9204 2. Whether the uncertainty associated with the individual
 9205 risk is such that an appropriate premium cannot be determined.

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9207

9208 The acceptance or rejection of a risk by the underwriting
 9209 committee shall be construed as the private placement of



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9210 insurance, and the provisions of chapter 120 shall not apply.

9211 (f) There shall be no liability on the part of, and no
 9212 cause of action of any nature shall arise against, any member
 9213 insurer or its agents or employees, the Florida Property and
 9214 Casualty Joint Underwriting Association or its agents or
 9215 employees, members of the board of governors, the Chief
 9216 Financial Officer, or the office ~~department~~ or its
 9217 representatives for any action taken by them in the performance
 9218 of their duties under this subsection. Such immunity does not
 9219 apply to actions for breach of any contract or agreement
 9220 pertaining to insurance, or any other willful tort.

9221 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

9222 (a)1. The Legislature finds that actual and threatened
 9223 catastrophic losses to property in this state from hurricanes
 9224 have caused insurers to be unwilling or unable to provide
 9225 property insurance coverage to the extent sought and needed. It
 9226 is in the public interest and a public purpose to assist in
 9227 assuring that property in the state is insured so as to
 9228 facilitate the remediation, reconstruction, and replacement of
 9229 damaged or destroyed property in order to reduce or avoid the
 9230 negative effects otherwise resulting to the public health,
 9231 safety, and welfare; to the economy of the state; and to the
 9232 revenues of the state and local governments needed to provide
 9233 for the public welfare. It is necessary, therefore, to provide
 9234 property insurance to applicants who are in good faith entitled
 9235 to procure insurance through the voluntary market but are unable
 9236 to do so. The Legislature intends by this subsection that
 9237 property insurance be provided and that it continues, as long as
 9238 necessary, through an entity organized to achieve efficiencies
 9239 and economies, all toward the achievement of the foregoing



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9240 public purposes. Because it is essential for the corporation to
 9241 have the maximum financial resources to pay claims following a
 9242 catastrophic hurricane, it is the intent of the Legislature that
 9243 the income of the corporation be exempt from federal income
 9244 taxation and that interest on the debt obligations issued by the
 9245 corporation be exempt from federal income taxation.

9246 2. The Residential Property and Casualty Joint
 9247 Underwriting Association originally created by this statute
 9248 shall be known, as of July 1, 2002, as the Citizens Property
 9249 Insurance Corporation. The corporation shall provide insurance
 9250 for residential and commercial property, for applicants who are
 9251 in good faith entitled, but are unable, to procure insurance
 9252 through the voluntary market. The corporation shall operate
 9253 pursuant to a plan of operation approved by order of the office
 9254 ~~department~~. The plan is subject to continuous review by the
 9255 office ~~department~~. The office ~~department~~ may, by order, withdraw
 9256 approval of all or part of a plan if the office ~~department~~
 9257 determines that conditions have changed since approval was
 9258 granted and that the purposes of the plan require changes in the
 9259 plan. For the purposes of this subsection, residential coverage
 9260 includes both personal lines residential coverage, which
 9261 consists of the type of coverage provided by homeowner's, mobile
 9262 home owner's, dwelling, tenant's, condominium unit owner's, and
 9263 similar policies, and commercial lines residential coverage,
 9264 which consists of the type of coverage provided by condominium
 9265 association, apartment building, and similar policies.

9266 (b)1. All insurers authorized to write one or more subject
 9267 lines of business in this state are subject to assessment by the
 9268 corporation and, for the purposes of this subsection, are
 9269 referred to collectively as "assessable insurers." Insurers



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9270 writing one or more subject lines of business in this state
 9271 pursuant to part VIII of chapter 626 are not assessable
 9272 insurers, but insureds who procure one or more subject lines of
 9273 business in this state pursuant to part VIII of chapter 626 are
 9274 subject to assessment by the corporation and are referred to
 9275 collectively as "assessable insureds." An authorized insurer's
 9276 assessment liability shall begin on the first day of the
 9277 calendar year following the year in which the insurer was issued
 9278 a certificate of authority to transact insurance for subject
 9279 lines of business in this state and shall terminate 1 year after
 9280 the end of the first calendar year during which the insurer no
 9281 longer holds a certificate of authority to transact insurance
 9282 for subject lines of business in this state.

9283 2.a. All revenues, assets, liabilities, losses, and
 9284 expenses of the corporation shall be divided into three separate
 9285 accounts as follows:

9286 (I) A personal lines account for personal residential
 9287 policies issued by the corporation or issued by the Residential
 9288 Property and Casualty Joint Underwriting Association and renewed
 9289 by the corporation that provide comprehensive, multiperil
 9290 coverage on risks that are not located in areas eligible for
 9291 coverage in the Florida Windstorm Underwriting Association as
 9292 those areas were defined on January 1, 2002 and for such
 9293 policies that do not provide coverage for the peril of wind on
 9294 risks that are located in such areas;

9295 (II) A commercial lines account for commercial residential
 9296 policies issued by the corporation or issued by the Residential
 9297 Property and Casualty Joint Underwriting Association and renewed
 9298 by the corporation that provide coverage for basic property
 9299 perils on risks that are not located in areas eligible for



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9300 coverage in the Florida Windstorm Underwriting Association as
 9301 those areas were defined on January 1, 2002, and for such
 9302 policies that do not provide coverage for the peril of wind on
 9303 risks that are located in such areas; and

9304 (III) A high-risk account for personal residential
 9305 policies and commercial residential and commercial
 9306 nonresidential property policies issued by the corporation or
 9307 transferred to the corporation that provide coverage for the
 9308 peril of wind on risks that are located in areas eligible for
 9309 coverage in the Florida Windstorm Underwriting Association as
 9310 those areas were defined on January 1, 2002. The high-risk
 9311 account must also include quota share primary insurance under
 9312 subparagraph (c)2. The area eligible for coverage under the
 9313 high-risk account also includes the area within Port Canaveral,
 9314 which is bordered on the south by the City of Cape Canaveral,
 9315 bordered on the west by the Banana River, and bordered on the
 9316 north by Federal Government property. The office ~~department~~ may
 9317 remove territory from the area eligible for wind-only and quota
 9318 share coverage if, after a public hearing, the office ~~department~~
 9319 finds that authorized insurers in the voluntary market are
 9320 willing and able to write sufficient amounts of personal and
 9321 commercial residential coverage for all perils in the territory,
 9322 including coverage for the peril of wind, such that risks
 9323 covered by wind-only policies in the removed territory could be
 9324 issued a policy by the corporation in either the personal lines
 9325 or commercial lines account without a significant increase in
 9326 the corporation's probable maximum loss in such account. Removal
 9327 of territory from the area eligible for wind-only or quota share
 9328 coverage does not alter the assignment of wind coverage written
 9329 in such areas to the high-risk account.



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9330 b. The three separate accounts must be maintained as long
9331 as financing obligations entered into by the Florida Windstorm
9332 Underwriting Association or Residential Property and Casualty
9333 Joint Underwriting Association are outstanding, in accordance
9334 with the terms of the corresponding financing documents. When
9335 the financing obligations are no longer outstanding, in
9336 accordance with the terms of the corresponding financing
9337 documents, the corporation may use a single account for all
9338 revenues, assets, liabilities, losses, and expenses of the
9339 corporation.

9340 c. Creditors of the Residential Property and Casualty
9341 Joint Underwriting Association shall have a claim against, and
9342 recourse to, the accounts referred to in sub-sub-subparagraphs
9343 a.(I) and (II) and shall have no claim against, or recourse to,
9344 the account referred to in sub-sub-subparagraph a.(III).
9345 Creditors of the Florida Windstorm Underwriting Association
9346 shall have a claim against, and recourse to, the account
9347 referred to in sub-sub-subparagraph a.(III) and shall have no
9348 claim against, or recourse to, the accounts referred to in sub-
9349 sub-subparagraphs a.(I) and (II).

9350 d. Revenues, assets, liabilities, losses, and expenses not
9351 attributable to particular accounts shall be prorated among the
9352 accounts.

9353 e. The Legislature finds that the revenues of the
9354 corporation are revenues that are necessary to meet the
9355 requirements set forth in documents authorizing the issuance of
9356 bonds under this subsection.

9357 f. No part of the income of the corporation may inure to
9358 the benefit of any private person.

9359 3. With respect to a deficit in an account:



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9360 a. When the deficit incurred in a particular calendar year
9361 is not greater than 10 percent of the aggregate statewide direct
9362 written premium for the subject lines of business for the prior
9363 calendar year, the entire deficit shall be recovered through
9364 regular assessments of assessable insurers under paragraph (g)
9365 and assessable insureds.

9366 b. When the deficit incurred in a particular calendar year
9367 exceeds 10 percent of the aggregate statewide direct written
9368 premium for the subject lines of business for the prior calendar
9369 year, the corporation shall levy regular assessments on
9370 assessable insurers under paragraph (g) and on assessable
9371 insureds in an amount equal to the greater of 10 percent of the
9372 deficit or 10 percent of the aggregate statewide direct written
9373 premium for the subject lines of business for the prior calendar
9374 year. Any remaining deficit shall be recovered through emergency
9375 assessments under sub-subparagraph d.

9376 c. Each assessable insurer's share of the amount being
9377 assessed under sub-subparagraph a. or sub-subparagraph b. shall
9378 be in the proportion that the assessable insurer's direct
9379 written premium for the subject lines of business for the year
9380 preceding the assessment bears to the aggregate statewide direct
9381 written premium for the subject lines of business for that year.
9382 The assessment percentage applicable to each assessable insured
9383 is the ratio of the amount being assessed under sub-subparagraph
9384 a. or sub-subparagraph b. to the aggregate statewide direct
9385 written premium for the subject lines of business for the prior
9386 year. Assessments levied by the corporation on assessable
9387 insurers under sub-subparagraphs a. and b. shall be paid as
9388 required by the corporation's plan of operation and paragraph
9389 (g). Assessments levied by the corporation on assessable



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9390 insureds under sub-subparagraphs a. and b. shall be collected by
 9391 the surplus lines agent at the time the surplus lines agent
 9392 collects the surplus lines tax required by s. 626.932 and shall
 9393 be paid to the Florida Surplus Lines Service Office at the time
 9394 the surplus lines agent pays the surplus lines tax to the
 9395 Florida Surplus Lines Service Office. Upon receipt of regular
 9396 assessments from surplus lines agents, the Florida Surplus Lines
 9397 Service Office shall transfer the assessments directly to the
 9398 corporation as determined by the corporation.

9399 d. Upon a determination by the board of governors that a
 9400 deficit in an account exceeds the amount that will be recovered
 9401 through regular assessments under sub-subparagraph a. or sub-
 9402 subparagraph b., the board shall levy, after verification by the
 9403 office department, emergency assessments, for as many years as
 9404 necessary to cover the deficits, to be collected by assessable
 9405 insurers and the corporation and collected from assessable
 9406 insureds upon issuance or renewal of policies for subject lines
 9407 of business, excluding National Flood Insurance policies. The
 9408 amount of the emergency assessment collected in a particular
 9409 year shall be a uniform percentage of that year's direct written
 9410 premium for subject lines of business and all accounts of the
 9411 corporation, excluding National Flood Insurance Program policy
 9412 premiums, as annually determined by the board and verified by
 9413 the office department. The office department shall verify the
 9414 arithmetic calculations involved in the board's determination
 9415 within 30 days after receipt of the information on which the
 9416 determination was based. Notwithstanding any other provision of
 9417 law, the corporation and each assessable insurer that writes
 9418 subject lines of business shall collect emergency assessments
 9419 from its policyholders without such obligation being affected by



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9420 any credit, limitation, exemption, or deferment. Emergency
9421 assessments levied by the corporation on assessable insureds
9422 shall be collected by the surplus lines agent at the time the
9423 surplus lines agent collects the surplus lines tax required by
9424 s. 626.932 and shall be paid to the Florida Surplus Lines
9425 Service Office at the time the surplus lines agent pays the
9426 surplus lines tax to the Florida Surplus Lines Service Office.
9427 The emergency assessments so collected shall be transferred
9428 directly to the corporation on a periodic basis as determined by
9429 the corporation and shall be held by the corporation solely in
9430 the applicable account. The aggregate amount of emergency
9431 assessments levied for an account under this sub-subparagraph in
9432 any calendar year may not exceed the greater of 10 percent of
9433 the amount needed to cover the original deficit, plus interest,
9434 fees, commissions, required reserves, and other costs associated
9435 with financing of the original deficit, or 10 percent of the
9436 aggregate statewide direct written premium for subject lines of
9437 business and for all accounts of the corporation for the prior
9438 year, plus interest, fees, commissions, required reserves, and
9439 other costs associated with financing the original deficit.

9440 e. The corporation may pledge the proceeds of assessments,
9441 projected recoveries from the Florida Hurricane Catastrophe
9442 Fund, other insurance and reinsurance recoverables, market
9443 equalization surcharges and other surcharges, and other funds
9444 available to the corporation as the source of revenue for and to
9445 secure bonds issued under paragraph (g), bonds or other
9446 indebtedness issued under subparagraph (c)3., or lines of credit
9447 or other financing mechanisms issued or created under this
9448 subsection, or to retire any other debt incurred as a result of
9449 deficits or events giving rise to deficits, or in any other way



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9450 that the board determines will efficiently recover such
9451 deficits. The purpose of the lines of credit or other financing
9452 mechanisms is to provide additional resources to assist the
9453 corporation in covering claims and expenses attributable to a
9454 catastrophe. As used in this subsection, the term "assessments"
9455 includes regular assessments under sub-subparagraph a., sub-
9456 subparagraph b., or subparagraph (g)1. and emergency assessments
9457 under sub-subparagraph d. Emergency assessments collected under
9458 sub-subparagraph d. are not part of an insurer's rates, are not
9459 premium, and are not subject to premium tax, fees, or
9460 commissions; however, failure to pay the emergency assessment
9461 shall be treated as failure to pay premium. The emergency
9462 assessments under sub-subparagraph d. shall continue as long as
9463 any bonds issued or other indebtedness incurred with respect to
9464 a deficit for which the assessment was imposed remain
9465 outstanding, unless adequate provision has been made for the
9466 payment of such bonds or other indebtedness pursuant to the
9467 documents governing such bonds or other indebtedness.

9468 f. As used in this subsection, the term "subject lines of
9469 business" means insurance written by assessable insurers or
9470 procured by assessable insureds on real or personal property, as
9471 defined in s. 624.604, including insurance for fire, industrial
9472 fire, allied lines, farmowners multiperil, homeowners
9473 multiperil, commercial multiperil, and mobile homes, and
9474 including liability coverage on all such insurance, but
9475 excluding inland marine as defined in s. 624.607(3) and
9476 excluding vehicle insurance as defined in s. 624.605(1) other
9477 than insurance on mobile homes used as permanent dwellings.

9478 g. The Florida Surplus Lines Service Office shall
9479 determine annually the aggregate statewide written premium in



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9480 subject lines of business procured by assessable insureds and
 9481 shall report that information to the corporation in a form and
 9482 at a time the corporation specifies to ensure that the
 9483 corporation can meet the requirements of this subsection and the
 9484 corporation's financing obligations.

9485 h. The Florida Surplus Lines Service Office shall verify
 9486 the proper application by surplus lines agents of assessment
 9487 percentages for regular assessments and emergency assessments
 9488 levied under this subparagraph on assessable insureds and shall
 9489 assist the corporation in ensuring the accurate, timely
 9490 collection and payment of assessments by surplus lines agents as
 9491 required by the corporation.

9492 (c) The plan of operation of the corporation:

9493 1. Must provide for adoption of residential property and
 9494 casualty insurance policy forms and commercial residential and
 9495 nonresidential property insurance forms, which forms must be
 9496 approved by the office ~~department~~ prior to use. The corporation
 9497 shall adopt the following policy forms:

9498 a. Standard personal lines policy forms that are
 9499 comprehensive multiperil policies providing full coverage of a
 9500 residential property equivalent to the coverage provided in the
 9501 private insurance market under an HO-3, HO-4, or HO-6 policy.

9502 b. Basic personal lines policy forms that are policies
 9503 similar to an HO-8 policy or a dwelling fire policy that provide
 9504 coverage meeting the requirements of the secondary mortgage
 9505 market, but which coverage is more limited than the coverage
 9506 under a standard policy.

9507 c. Commercial lines residential policy forms that are
 9508 generally similar to the basic perils of full coverage
 9509 obtainable for commercial residential structures in the admitted



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9510 voluntary market.

9511 d. Personal lines and commercial lines residential
 9512 property insurance forms that cover the peril of wind only. The
 9513 forms are applicable only to residential properties located in
 9514 areas eligible for coverage under the high-risk account referred
 9515 to in sub-subparagraph (b)2.a.

9516 e. Commercial lines nonresidential property insurance
 9517 forms that cover the peril of wind only. The forms are
 9518 applicable only to nonresidential properties located in areas
 9519 eligible for coverage under the high-risk account referred to in
 9520 sub-subparagraph (b)2.a.

9521 2.a. Must provide that the corporation adopt a program in
 9522 which the corporation and authorized insurers enter into quota
 9523 share primary insurance agreements for hurricane coverage, as
 9524 defined in s. 627.4025(2)(a), for eligible risks, and adopt
 9525 property insurance forms for eligible risks which cover the
 9526 peril of wind only. As used in this subsection, the term:

9527 (I) "Quota share primary insurance" means an arrangement
 9528 in which the primary hurricane coverage of an eligible risk is
 9529 provided in specified percentages by the corporation and an
 9530 authorized insurer. The corporation and authorized insurer are
 9531 each solely responsible for a specified percentage of hurricane
 9532 coverage of an eligible risk as set forth in a quota share
 9533 primary insurance agreement between the corporation and an
 9534 authorized insurer and the insurance contract. The
 9535 responsibility of the corporation or authorized insurer to pay
 9536 its specified percentage of hurricane losses of an eligible
 9537 risk, as set forth in the quota share primary insurance
 9538 agreement, may not be altered by the inability of the other
 9539 party to the agreement to pay its specified percentage of



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9540 hurricane losses. Eligible risks that are provided hurricane
9541 coverage through a quota share primary insurance arrangement
9542 must be provided policy forms that set forth the obligations of
9543 the corporation and authorized insurer under the arrangement,
9544 clearly specify the percentages of quota share primary insurance
9545 provided by the corporation and authorized insurer, and
9546 conspicuously and clearly state that neither the authorized
9547 insurer nor the corporation may be held responsible beyond its
9548 specified percentage of coverage of hurricane losses.

9549 (II) "Eligible risks" means personal lines residential and
9550 commercial lines residential risks that meet the underwriting
9551 criteria of the corporation and are located in areas that were
9552 eligible for coverage by the Florida Windstorm Underwriting
9553 Association on January 1, 2002.

9554 b. The corporation may enter into quota share primary
9555 insurance agreements with authorized insurers at corporation
9556 coverage levels of 90 percent and 50 percent.

9557 c. If the corporation determines that additional coverage
9558 levels are necessary to maximize participation in quota share
9559 primary insurance agreements by authorized insurers, the
9560 corporation may establish additional coverage levels. However,
9561 the corporation's quota share primary insurance coverage level
9562 may not exceed 90 percent.

9563 d. Any quota share primary insurance agreement entered
9564 into between an authorized insurer and the corporation must
9565 provide for a uniform specified percentage of coverage of
9566 hurricane losses, by county or territory as set forth by the
9567 corporation board, for all eligible risks of the authorized
9568 insurer covered under the quota share primary insurance
9569 agreement.



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9570 e. Any quota share primary insurance agreement entered
9571 into between an authorized insurer and the corporation is
9572 subject to review and approval by the office ~~department~~.
9573 However, such agreement shall be authorized only as to insurance
9574 contracts entered into between an authorized insurer and an
9575 insured who is already insured by the corporation for wind
9576 coverage.

9577 f. For all eligible risks covered under quota share
9578 primary insurance agreements, the exposure and coverage levels
9579 for both the corporation and authorized insurers shall be
9580 reported by the corporation to the Florida Hurricane Catastrophe
9581 Fund. For all policies of eligible risks covered under quota
9582 share primary insurance agreements, the corporation and the
9583 authorized insurer shall maintain complete and accurate records
9584 for the purpose of exposure and loss reimbursement audits as
9585 required by Florida Hurricane Catastrophe Fund rules. The
9586 corporation and the authorized insurer shall each maintain
9587 duplicate copies of policy declaration pages and supporting
9588 claims documents.

9589 g. The corporation board shall establish in its plan of
9590 operation standards for quota share agreements which ensure that
9591 there is no discriminatory application among insurers as to the
9592 terms of quota share agreements, pricing of quota share
9593 agreements, incentive provisions if any, and consideration paid
9594 for servicing policies or adjusting claims.

9595 h. The quota share primary insurance agreement between the
9596 corporation and an authorized insurer must set forth the
9597 specific terms under which coverage is provided, including, but
9598 not limited to, the sale and servicing of policies issued under
9599 the agreement by the insurance agent of the authorized insurer



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9600 producing the business, the reporting of information concerning
 9601 eligible risks, the payment of premium to the corporation, and
 9602 arrangements for the adjustment and payment of hurricane claims
 9603 incurred on eligible risks by the claims adjuster and personnel
 9604 of the authorized insurer. Entering into a quota sharing
 9605 insurance agreement between the corporation and an authorized
 9606 insurer shall be voluntary and at the discretion of the
 9607 authorized insurer.

9608 3. May provide that the corporation may employ or
 9609 otherwise contract with individuals or other entities to provide
 9610 administrative or professional services that may be appropriate
 9611 to effectuate the plan. The corporation shall have the power to
 9612 borrow funds, by issuing bonds or by incurring other
 9613 indebtedness, and shall have other powers reasonably necessary
 9614 to effectuate the requirements of this subsection. The
 9615 corporation may, but is not required to, seek judicial
 9616 validation of its bonds or other indebtedness under chapter 75.
 9617 The corporation may issue bonds or incur other indebtedness, or
 9618 have bonds issued on its behalf by a unit of local government
 9619 pursuant to subparagraph(g)2., in the absence of a hurricane or
 9620 other weather-related event, upon a determination by the
 9621 corporation, subject to approval by the office ~~department~~, that
 9622 such action would enable it to efficiently meet the financial
 9623 obligations of the corporation and that such financings are
 9624 reasonably necessary to effectuate the requirements of this
 9625 subsection. The corporation is authorized to take all actions
 9626 needed to facilitate tax-free status for any such bonds or
 9627 indebtedness, including formation of trusts or other affiliated
 9628 entities. The corporation shall have the authority to pledge
 9629 assessments, projected recoveries from the Florida Hurricane



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9630 Catastrophe Fund, other reinsurance recoverables, market
 9631 equalization and other surcharges, and other funds available to
 9632 the corporation as security for bonds or other indebtedness. In
 9633 recognition of s. 10, Art. I of the State Constitution,
 9634 prohibiting the impairment of obligations of contracts, it is
 9635 the intent of the Legislature that no action be taken whose
 9636 purpose is to impair any bond indenture or financing agreement
 9637 or any revenue source committed by contract to such bond or
 9638 other indebtedness.

9639 4.a. Must require that the corporation operate subject to
 9640 the supervision and approval of a board of governors consisting
 9641 of 7 individuals who are residents of this state, from different
 9642 geographical areas of this state, appointed by the Chief
 9643 Financial Officer ~~Treasurer~~. The Chief Financial Officer
 9644 ~~Treasurer~~ shall designate one of the appointees as chair. All
 9645 board members serve at the pleasure of the Chief Financial
 9646 Officer ~~Treasurer~~. All board members, including the chair, must
 9647 be appointed to serve for 3-year terms beginning annually on a
 9648 date designated by the plan. Any board vacancy shall be filled
 9649 for the unexpired term by the Chief Financial Officer ~~Treasurer~~.
 9650 The Chief Financial Officer ~~Treasurer~~ shall appoint a technical
 9651 advisory group to provide information and advice to the board of
 9652 governors in connection with the board's duties under this
 9653 subsection. The executive director and senior managers of the
 9654 corporation shall be engaged by the Chief Financial Officer
 9655 ~~Treasurer~~ and serve at the pleasure of the Chief Financial
 9656 Officer ~~Treasurer~~. The executive director is responsible for
 9657 employing other staff as the corporation may require, subject to
 9658 review and concurrence by the Office of the Chief Financial
 9659 Officer ~~Treasurer~~.



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9660 ~~b. To ensure the effective and efficient implementation of~~
 9661 ~~this subsection, the Treasurer shall appoint the board of~~
 9662 ~~governors by July 1, 2002. The board of governors shall work in~~
 9663 ~~conjunction with the Residential Property Insurance Market~~
 9664 ~~Coordinating Council to address appropriate organizational,~~
 9665 ~~operational, and financial matters relating to the corporation.~~
 9666 ~~In addition, after consultation with the Residential Property~~
 9667 ~~Insurance Market Coordinating Council, the bond trustees and~~
 9668 ~~rating agencies, the Treasurer may postpone for a period not to~~
 9669 ~~exceed 180 days after the effective date, the implementation of~~
 9670 ~~the corporation or the implementation of one or more of the~~
 9671 ~~provisions relating to transfer of Florida Windstorm~~
 9672 ~~Underwriting Association policies, obligations, rights, assets,~~
 9673 ~~and liabilities into the high-risk accounts and such other~~
 9674 ~~provisions that may be affected thereby if the Treasurer~~
 9675 ~~determines that postponement is necessary:~~

- 9676 ~~(I) Due to emergency conditions;~~
- 9677 ~~(II) To ensure the effective and efficient implementation~~
 9678 ~~of the corporation's operations; or~~
- 9679 ~~(III) To maintain existing financing arrangements without~~
 9680 ~~a material adverse effect on the creditors of the Residential~~
 9681 ~~Property and Casualty Joint Underwriting Association or the~~
 9682 ~~Florida Windstorm Underwriting Association.~~

9683 5. Must provide a procedure for determining the
 9684 eligibility of a risk for coverage, as follows:

9685 a. Subject to the provisions of s. 627.3517, with respect
 9686 to personal lines residential risks, if the risk is offered
 9687 coverage from an authorized insurer at the insurer's approved
 9688 rate under either a standard policy including wind coverage or,
 9689 if consistent with the insurer's underwriting rules as filed



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9690 with the office ~~department~~, a basic policy including wind
 9691 coverage, the risk is not eligible for any policy issued by the
 9692 corporation ~~association~~. If the risk is not able to obtain any
 9693 such offer, the risk is eligible for either a standard policy
 9694 including wind coverage or a basic policy including wind
 9695 coverage issued by the corporation ~~association~~; however, if the
 9696 risk could not be insured under a standard policy including wind
 9697 coverage regardless of market conditions, the risk shall be
 9698 eligible for a basic policy including wind coverage unless
 9699 rejected under subparagraph 8. The corporation ~~association~~ shall
 9700 determine the type of policy to be provided on the basis of
 9701 objective standards specified in the underwriting manual and
 9702 based on generally accepted underwriting practices.

9703 (I) If the risk accepts an offer of coverage through the
 9704 market assistance plan or an offer of coverage through a
 9705 mechanism established by the corporation ~~association~~ before a
 9706 policy is issued to the risk by the corporation ~~association~~ or
 9707 during the first 30 days of coverage by the corporation
 9708 ~~association~~, and the producing agent who submitted the
 9709 application to the plan or to the corporation ~~association~~ is not
 9710 currently appointed by the insurer, the insurer shall:

9711 (A) Pay to the producing agent of record of the policy,
 9712 for the first year, an amount that is the greater of the
 9713 insurer's usual and customary commission for the type of policy
 9714 written or a fee equal to the usual and customary commission of
 9715 the corporation ~~association~~; or

9716 (B) Offer to allow the producing agent of record of the
 9717 policy to continue servicing the policy for a period of not less
 9718 than 1 year and offer to pay the agent the greater of the
 9719 insurer's or the corporation's ~~association's~~ usual and customary



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9720 commission for the type of policy written.

9721

9722

9723 If the producing agent is unwilling or unable to accept
 9724 appointment, the new insurer shall pay the agent in accordance
 9725 with sub-sub-sub-subparagraph (A).

9726 (II) When the corporation ~~association~~ enters into a
 9727 contractual agreement for a take-out plan, the producing agent
 9728 of record of the corporation ~~association~~ policy is entitled to
 9729 retain any unearned commission on the policy, and the insurer
 9730 shall:

9731 (A) Pay to the producing agent of record of the
 9732 corporation ~~association~~ policy, for the first year, an amount
 9733 that is the greater of the insurer's usual and customary
 9734 commission for the type of policy written or a fee equal to the
 9735 usual and customary commission of the corporation ~~association~~;
 9736 or

9737 (B) Offer to allow the producing agent of record of the
 9738 corporation ~~association~~ policy to continue servicing the policy
 9739 for a period of not less than 1 year and offer to pay the agent
 9740 the greater of the insurer's or the corporation's ~~association's~~
 9741 usual and customary commission for the type of policy written.

9742

9743

9744 If the producing agent is unwilling or unable to accept
 9745 appointment, the new insurer shall pay the agent in accordance
 9746 with sub-sub-sub-subparagraph (A).

9747 b. With respect to commercial lines residential risks, if
 9748 the risk is offered coverage under a policy including wind
 9749 coverage from an authorized insurer at its approved rate, the



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9750 risk is not eligible for any policy issued by the corporation
 9751 ~~association~~. If the risk is not able to obtain any such offer,
 9752 the risk is eligible for a policy including wind coverage issued
 9753 by the corporation ~~association~~.

9754 (I) If the risk accepts an offer of coverage through the
 9755 market assistance plan or an offer of coverage through a
 9756 mechanism established by the corporation ~~association~~ before a
 9757 policy is issued to the risk by the corporation ~~association~~ or
 9758 during the first 30 days of coverage by the corporation
 9759 ~~association~~, and the producing agent who submitted the
 9760 application to the plan or the corporation ~~association~~ is not
 9761 currently appointed by the insurer, the insurer shall:

9762 (A) Pay to the producing agent of record of the policy,
 9763 for the first year, an amount that is the greater of the
 9764 insurer's usual and customary commission for the type of policy
 9765 written or a fee equal to the usual and customary commission of
 9766 the corporation ~~association~~; or

9767 (B) Offer to allow the producing agent of record of the
 9768 policy to continue servicing the policy for a period of not less
 9769 than 1 year and offer to pay the agent the greater of the
 9770 insurer's or the corporation's ~~association's~~ usual and customary
 9771 commission for the type of policy written.

9772

9773

9774 If the producing agent is unwilling or unable to accept
 9775 appointment, the new insurer shall pay the agent in accordance
 9776 with sub-sub-sub-subparagraph (A).

9777 (II) When the corporation ~~association~~ enters into a
 9778 contractual agreement for a take-out plan, the producing agent
 9779 of record of the corporation ~~association~~ policy is entitled to



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9780 retain any unearned commission on the policy, and the insurer
 9781 shall:

9782 (A) Pay to the producing agent of record of the
 9783 corporation ~~association~~ policy, for the first year, an amount
 9784 that is the greater of the insurer's usual and customary
 9785 commission for the type of policy written or a fee equal to the
 9786 usual and customary commission of the corporation ~~association~~;
 9787 or

9788 (B) Offer to allow the producing agent of record of the
 9789 corporation ~~association~~ policy to continue servicing the policy
 9790 for a period of not less than 1 year and offer to pay the agent
 9791 the greater of the insurer's or the corporation's ~~association's~~
 9792 usual and customary commission for the type of policy written.

9793
 9794
 9795 If the producing agent is unwilling or unable to accept
 9796 appointment, the new insurer shall pay the agent in accordance
 9797 with sub-sub-sub-subparagraph (A).

9798 ~~e. This subparagraph does not require the association to~~
 9799 ~~provide wind coverage or hurricane coverage in any area in which~~
 9800 ~~such coverage is available through the Florida Windstorm~~
 9801 ~~Underwriting Association.~~

9802 6. Must include rules for classifications of risks and
 9803 rates therefor.

9804 7. Must provide that if premium and investment income for
 9805 an account attributable to a particular calendar year are in
 9806 excess of projected losses and expenses for the account
 9807 attributable to that year, such excess shall be held in surplus
 9808 in the account. Such surplus shall be available to defray
 9809 deficits in that account as to future years and shall be used



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9810 for that purpose prior to assessing assessable insurers and
9811 assessable insureds as to any calendar year.

9812 8. Must provide objective criteria and procedures to be
9813 uniformly applied for all applicants in determining whether an
9814 individual risk is so hazardous as to be uninsurable. In making
9815 this determination and in establishing the criteria and
9816 procedures, the following shall be considered:

9817 a. Whether the likelihood of a loss for the individual
9818 risk is substantially higher than for other risks of the same
9819 class; and

9820 b. Whether the uncertainty associated with the individual
9821 risk is such that an appropriate premium cannot be determined.

9822

9823

9824 The acceptance or rejection of a risk by the corporation shall
9825 be construed as the private placement of insurance, and the
9826 provisions of chapter 120 shall not apply.

9827 9. Must provide that the corporation shall make its best
9828 efforts to procure catastrophe reinsurance at reasonable rates,
9829 as determined by the board of governors.

9830 10. Must provide that in the event of regular deficit
9831 assessments under sub-subparagraph (b)3.a. or sub-subparagraph
9832 (b)3.b., in the personal lines account, the commercial lines
9833 residential account, or the high-risk account, the corporation
9834 shall levy upon corporation policyholders in its next rate
9835 filing, or by a separate rate filing solely for this purpose, a
9836 market equalization surcharge arising from a regular assessment
9837 in such account in a percentage equal to the total amount of
9838 such regular assessments divided by the aggregate statewide
9839 direct written premium for subject lines of business for the



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9840 prior calendar year. Market equalization surcharges under this
9841 subparagraph are not considered premium and are not subject to
9842 commissions, fees, or premium taxes; however, failure to pay a
9843 market equalization surcharge shall be treated as failure to pay
9844 premium.

9845 11. The policies issued by the corporation must provide
9846 that, if the corporation or the market assistance plan obtains
9847 an offer from an authorized insurer to cover the risk at its
9848 approved rates, the risk is no longer eligible for renewal
9849 through the corporation.

9850 12. Corporation policies and applications must include a
9851 notice that the corporation policy could, under this section, be
9852 replaced with a policy issued by an authorized insurer that does
9853 not provide coverage identical to the coverage provided by the
9854 corporation. The notice shall also specify that acceptance of
9855 corporation coverage creates a conclusive presumption that the
9856 applicant or policyholder is aware of this potential.

9857 13. May establish, subject to approval by the office
9858 ~~department~~, different eligibility requirements and operational
9859 procedures for any line or type of coverage for any specified
9860 county or area if the board determines that such changes to the
9861 eligibility requirements and operational procedures are
9862 justified due to the voluntary market being sufficiently stable
9863 and competitive in such area or for such line or type of
9864 coverage and that consumers who, in good faith, are unable to
9865 obtain insurance through the voluntary market through ordinary
9866 methods would continue to have access to coverage from the
9867 corporation. When coverage is sought in connection with a real
9868 property transfer, such requirements and procedures shall not
9869 provide for an effective date of coverage later than the date of



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9870 the closing of the transfer as established by the transferor,
 9871 the transferee, and, if applicable, the lender.

9872 14. Must provide that, with respect to the high-risk
 9873 account, any assessable insurer with a surplus as to
 9874 policyholders of \$25 million or less writing 25 percent or more
 9875 of its total countrywide property insurance premiums in this
 9876 state may petition the office ~~department~~, within the first 90
 9877 days of each calendar year, to qualify as a limited
 9878 apportionment company. In no event shall a limited apportionment
 9879 company be required to participate in the portion of any
 9880 assessment, within the high-risk account, pursuant to sub-
 9881 subparagraph (b)3.a. or sub-subparagraph (b)3.b. in the
 9882 aggregate which exceeds \$50 million after payment of available
 9883 high-risk account funds in any calendar year. However, a limited
 9884 apportionment company shall collect from its policyholders any
 9885 emergency assessment imposed under sub-subparagraph (b)3.d. The
 9886 plan shall provide that, if the office ~~department~~ determines
 9887 that any regular assessment will result in an impairment of the
 9888 surplus of a limited apportionment company, the office
 9889 ~~department~~ may direct that all or part of such assessment be
 9890 deferred as provided in subparagraph (g)4. However, there shall
 9891 be no limitation or deferment of an emergency assessment to be
 9892 collected from policyholders under sub-subparagraph(b)3.d.

9893 15. Must provide that the corporation appoint as its
 9894 licensed agents only those agents who also hold an appointment
 9895 as defined in s. 626.104 with an insurer who at the time of the
 9896 agent's initial appointment by the corporation is authorized to
 9897 write and is actually writing personal lines residential
 9898 property coverage, commercial residential property coverage, or
 9899 commercial nonresidential property coverage within the state.



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9900 (d)1. It is the intent of the Legislature that the rates
9901 for coverage provided by the corporation be actuarially sound
9902 and not competitive with approved rates charged in the admitted
9903 voluntary market, so that the corporation functions as a
9904 residual market mechanism to provide insurance only when the
9905 insurance cannot be procured in the voluntary market. Rates
9906 shall include an appropriate catastrophe loading factor that
9907 reflects the actual catastrophic exposure of the corporation.

9908 2. For each county, the average rates of the corporation
9909 for each line of business for personal lines residential
9910 policies excluding rates for wind-only policies shall be no
9911 lower than the average rates charged by the insurer that had the
9912 highest average rate in that county among the 20 insurers with
9913 the greatest total direct written premium in the state for that
9914 line of business in the preceding year, except that with respect
9915 to mobile home coverages, the average rates of the corporation
9916 shall be no lower than the average rates charged by the insurer
9917 that had the highest average rate in that county among the 5
9918 insurers with the greatest total written premium for mobile home
9919 owner's policies in the state in the preceding year.

9920 3. Rates for personal lines residential wind-only policies
9921 must be actuarially sound and not competitive with approved
9922 rates charged by authorized insurers. However, for personal
9923 lines residential wind-only policies issued or renewed between
9924 July 1, 2002, and June 30, 2003, the maximum premium increase
9925 must be no greater than 10 percent of the Florida Windstorm
9926 Underwriting Association premium for that policy in effect on
9927 June 30, 2002, as adjusted for coverage changes and seasonal
9928 occupancy surcharges. The personal lines residential wind-only
9929 rates for the corporation effective July 1, 2003, must be based



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9930 on a rate filing by the corporation which establishes rates
9931 which are actuarially sound and not competitive with approved
9932 rates charged by authorized insurers. Corporation rate manuals
9933 shall include a rate surcharge for seasonal occupancy. To
9934 ensure that personal lines residential wind-only rates effective
9935 on or after July 1, 2003, are not competitive with approved
9936 rates charged by authorized insurers, the office ~~department~~, by
9937 March 1 of each year, shall provide the corporation, for each
9938 county in which there are geographical areas in which personal
9939 lines residential wind-only policies may be issued, the average
9940 rates charged by the insurer that had the highest average rate
9941 in that county for wind coverage in that insurer's rating
9942 territories which most closely approximate the geographical area
9943 in that county in which personal lines residential wind-only
9944 policies may be written by the corporation. The average rates
9945 provided must be from an insurer among the 20 insurers with the
9946 greatest total direct written premium in the state for personal
9947 lines residential property insurance for the preceding year.
9948 With respect to mobile homes, the five insurers with the
9949 greatest total written premium for that line of business in the
9950 preceding year shall be used. The corporation shall certify to
9951 the office ~~department~~ that its average personal lines
9952 residential wind-only rates are no lower in each county than the
9953 average rates provided by the office ~~department~~. The commission
9954 ~~may department is authorized to~~ adopt rules to establish
9955 reporting requirements to obtain the necessary wind-only rate
9956 information from insurers to implement this provision.

9957 4. Rates for commercial lines coverage shall not be
9958 subject to the requirements of subparagraph 2., but shall be
9959 subject to all other requirements of this paragraph and s.



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9960 627.062.

9961 5. Nothing in this paragraph shall require or allow the
9962 corporation to adopt a rate that is inadequate under s. 627.062.

9963 6. The corporation shall make a rate filing at least once
9964 a year, but no more often than quarterly.

9965 7. In addition to the rates otherwise determined pursuant
9966 to this paragraph, the corporation shall impose and collect an
9967 amount equal to the premium tax provided for in s. 624.509 to
9968 augment the financial resources of the corporation.

9969 (e) If coverage in an account is deactivated pursuant to
9970 paragraph (f), coverage through the corporation shall be
9971 reactivated by order of the office ~~department~~ only under one of
9972 the following circumstances:

9973 1. If the market assistance plan receives a minimum of 100
9974 applications for coverage within a 3-month period, or 200
9975 applications for coverage within a 1-year period or less for
9976 residential coverage, unless the market assistance plan provides
9977 a quotation from admitted carriers at their filed rates for at
9978 least 90 percent of such applicants. Any market assistance plan
9979 application that is rejected because an individual risk is so
9980 hazardous as to be uninsurable using the criteria specified in
9981 subparagraph (c)8. shall not be included in the minimum
9982 percentage calculation provided herein. In the event that there
9983 is a legal or administrative challenge to a determination by the
9984 office ~~department~~ that the conditions of this subparagraph have
9985 been met for eligibility for coverage in the corporation, any
9986 eligible risk may obtain coverage during the pendency of such
9987 challenge.

9988 2. In response to a state of emergency declared by the
9989 Governor under s. 252.36, the office ~~department~~ may activate



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9990 coverage by order for the period of the emergency upon a finding
 9991 by the office ~~department~~ that the emergency significantly
 9992 affects the availability of residential property insurance.

9993 (f)1. The corporation shall file with the office
 9994 ~~department~~ quarterly statements of financial condition, an
 9995 annual statement of financial condition, and audited financial
 9996 statements in the manner prescribed by law. In addition, the
 9997 corporation shall report to the office ~~department~~ monthly on the
 9998 types, premium, exposure, and distribution by county of its
 9999 policies in force, and shall submit other reports as the office
 10000 ~~department~~ requires to carry out its oversight of the
 10001 corporation.

10002 2. The activities of the corporation shall be reviewed at
 10003 least annually by the office ~~department~~ to determine whether
 10004 coverage shall be deactivated in an account on the basis that
 10005 the conditions giving rise to its activation no longer exist.

10006 (g)1. The corporation shall certify to the office
 10007 ~~department~~ its needs for annual assessments as to a particular
 10008 calendar year, and for any interim assessments that it deems to
 10009 be necessary to sustain operations as to a particular year
 10010 pending the receipt of annual assessments. Upon verification,
 10011 the office ~~department~~ shall approve such certification, and the
 10012 corporation shall levy such annual or interim assessments. Such
 10013 assessments shall be prorated as provided in paragraph (b). The
 10014 corporation shall take all reasonable and prudent steps
 10015 necessary to collect the amount of assessment due from each
 10016 assessable insurer, including, if prudent, filing suit to
 10017 collect such assessment. If the corporation is unable to collect
 10018 an assessment from any assessable insurer, the uncollected
 10019 assessments shall be levied as an additional assessment against



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10020 the assessable insurers and any assessable insurer required to
 10021 pay an additional assessment as a result of such failure to pay
 10022 shall have a cause of action against such nonpaying assessable
 10023 insurer. Assessments shall be included as an appropriate factor
 10024 in the making of rates. The failure of a surplus lines agent to
 10025 collect and remit any regular or emergency assessment levied by
 10026 the corporation is considered to be a violation of s. 626.936
 10027 and subjects the surplus lines agent to the penalties provided
 10028 in that section.

10029 2. The governing body of any unit of local government, any
 10030 residents of which are insured by the corporation, may issue
 10031 bonds as defined in s. 125.013 or s. 166.101 from time to time
 10032 to fund an assistance program, in conjunction with the
 10033 corporation, for the purpose of defraying deficits of the
 10034 corporation. In order to avoid needless and indiscriminate
 10035 proliferation, duplication, and fragmentation of such assistance
 10036 programs, any unit of local government, any residents of which
 10037 are insured by the corporation, may provide for the payment of
 10038 losses, regardless of whether or not the losses occurred within
 10039 or outside of the territorial jurisdiction of the local
 10040 government. Revenue bonds under this subparagraph may not be
 10041 issued until validated pursuant to chapter 75, unless a state of
 10042 emergency is declared by executive order or proclamation of the
 10043 Governor pursuant to s. 252.36 making such findings as are
 10044 necessary to determine that it is in the best interests of, and
 10045 necessary for, the protection of the public health, safety, and
 10046 general welfare of residents of this state and declaring it an
 10047 essential public purpose to permit certain municipalities or
 10048 counties to issue such bonds as will permit relief to claimants
 10049 and policyholders of the corporation. Any such unit of local



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10050 government may enter into such contracts with the corporation
 10051 and with any other entity created pursuant to this subsection as
 10052 are necessary to carry out this paragraph. Any bonds issued
 10053 under this subparagraph shall be payable from and secured by
 10054 moneys received by the corporation from emergency assessments
 10055 under sub-subparagraph (b)3.d., and assigned and pledged to or
 10056 on behalf of the unit of local government for the benefit of the
 10057 holders of such bonds. The funds, credit, property, and taxing
 10058 power of the state or of the unit of local government shall not
 10059 be pledged for the payment of such bonds. If any of the bonds
 10060 remain unsold 60 days after issuance, the office ~~department~~
 10061 shall require all insurers subject to assessment to purchase the
 10062 bonds, which shall be treated as admitted assets; each insurer
 10063 shall be required to purchase that percentage of the unsold
 10064 portion of the bond issue that equals the insurer's relative
 10065 share of assessment liability under this subsection. An insurer
 10066 shall not be required to purchase the bonds to the extent that
 10067 the office ~~department~~ determines that the purchase would
 10068 endanger or impair the solvency of the insurer.

10069 3.a. The corporation shall adopt one or more programs
 10070 subject to approval by the office ~~department~~ for the reduction
 10071 of both new and renewal writings in the corporation. The
 10072 corporation may consider any prudent and not unfairly
 10073 discriminatory approach to reducing corporation writings, and
 10074 may adopt a credit against assessment liability or other
 10075 liability that provides an incentive for insurers to take risks
 10076 out of the corporation and to keep risks out of the corporation
 10077 by maintaining or increasing voluntary writings in counties or
 10078 areas in which corporation risks are highly concentrated and a
 10079 program to provide a formula under which an insurer voluntarily



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10080 taking risks out of the corporation by maintaining or increasing
 10081 voluntary writings will be relieved wholly or partially from
 10082 assessments under sub-subparagraphs (b)3.a. and b. When the
 10083 corporation enters into a contractual agreement for a take-out
 10084 plan, the producing agent of record of the corporation policy is
 10085 entitled to retain any unearned commission on such policy, and
 10086 the insurer shall either:

10087 (I) Pay to the producing agent of record of the policy,
 10088 for the first year, an amount which is the greater of the
 10089 insurer's usual and customary commission for the type of policy
 10090 written or a policy fee equal to the usual and customary
 10091 commission of the corporation; or

10092 (II) Offer to allow the producing agent of record of the
 10093 policy to continue servicing the policy for a period of not less
 10094 than 1 year and offer to pay the agent the insurer's usual and
 10095 customary commission for the type of policy written. If the
 10096 producing agent is unwilling or unable to accept appointment by
 10097 the new insurer, the new insurer shall pay the agent in
 10098 accordance with sub-sub-subparagraph (I).

10099 b. Any credit or exemption from regular assessments
 10100 adopted under this subparagraph shall last no longer than the 3
 10101 years following the cancellation or expiration of the policy by
 10102 the corporation. With the approval of the office ~~department~~, the
 10103 board may extend such credits for an additional year if the
 10104 insurer guarantees an additional year of renewability for all
 10105 policies removed from the corporation, or for 2 additional years
 10106 if the insurer guarantees 2 additional years of renewability for
 10107 all policies so removed.

10108 c. There shall be no credit, limitation, exemption, or
 10109 deferment from emergency assessments to be collected from



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10110 policyholders pursuant to sub-subparagraph (b)3.d.

10111 4. The plan shall provide for the deferment, in whole or
 10112 in part, of the assessment of an assessable insurer, other than
 10113 an emergency assessment collected from policyholders pursuant to
 10114 sub-subparagraph (b)3.d., if the office ~~department~~ finds that
 10115 payment of the assessment would endanger or impair the solvency
 10116 of the insurer. In the event an assessment against an assessable
 10117 insurer is deferred in whole or in part, the amount by which
 10118 such assessment is deferred may be assessed against the other
 10119 assessable insurers in a manner consistent with the basis for
 10120 assessments set forth in paragraph (b).

10121 (h) Nothing in this subsection shall be construed to
 10122 preclude the issuance of residential property insurance coverage
 10123 pursuant to part VIII of chapter 626.

10124 (i) There shall be no liability on the part of, and no
 10125 cause of action of any nature shall arise against, any
 10126 assessable insurer or its agents or employees, the corporation
 10127 or its agents or employees, members of the board of governors or
 10128 their respective designees at a board meeting, corporation
 10129 committee members, or the office ~~department~~ or its
 10130 representatives, for any action taken by them in the performance
 10131 of their duties or responsibilities under this subsection. Such
 10132 immunity does not apply to:

- 10133 1. Any of the foregoing persons or entities for any
- 10134 willful tort;
- 10135 2. The corporation or its producing agents for breach of
- 10136 any contract or agreement pertaining to insurance coverage;
- 10137 3. The corporation with respect to issuance or payment of
- 10138 debt; or
- 10139 4. Any assessable insurer with respect to any action to



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10140 enforce an assessable insurer's obligations to the corporation
 10141 under this subsection.

10142 (j) For the purposes of s. 199.183(1), the corporation
 10143 shall be considered a political subdivision of the state and
 10144 shall be exempt from the corporate income tax. The premiums,
 10145 assessments, investment income, and other revenue of the
 10146 corporation are funds received for providing property insurance
 10147 coverage as required by this subsection, paying claims for
 10148 Florida citizens insured by the corporation, securing and
 10149 repaying debt obligations issued by the corporation, and
 10150 conducting all other activities of the corporation, and shall
 10151 not be considered taxes, fees, licenses, or charges for services
 10152 imposed by the Legislature on individuals, businesses, or
 10153 agencies outside state government. Bonds and other debt
 10154 obligations issued by or on behalf of the corporation are not to
 10155 be considered "state bonds" within the meaning of s.

10156 215.58(8)(10). The corporation is not subject to the procurement
 10157 provisions of chapter 287, and policies and decisions of the
 10158 corporation relating to incurring debt, levying of assessments
 10159 and the sale, issuance, continuation, terms and claims under
 10160 corporation policies, and all services relating thereto, are not
 10161 subject to the provisions of chapter 120. The corporation is not
 10162 required to obtain or to hold a certificate of authority issued
 10163 by the office ~~department~~, nor is it required to participate as a
 10164 member insurer of the Florida Insurance Guaranty Association.
 10165 However, the corporation is required to pay, in the same manner
 10166 as an authorized insurer, assessments pledged by the Florida
 10167 Insurance Guaranty Association to secure bonds issued or other
 10168 indebtedness incurred to pay covered claims arising from insurer
 10169 insolvencies caused by, or proximately related to, hurricane



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10170 losses. It is the intent of the Legislature that the tax
 10171 exemptions provided in this paragraph will augment the financial
 10172 resources of the corporation to better enable the corporation to
 10173 fulfill its public purposes. Any bonds issued by the
 10174 corporation, their transfer, and the income therefrom, including
 10175 any profit made on the sale thereof, shall at all times be free
 10176 from taxation of every kind by the state and any political
 10177 subdivision or local unit or other instrumentality thereof;
 10178 however, this exemption does not apply to any tax imposed by
 10179 chapter 220 ~~chapter 200~~ on interest, income, or profits on debt
 10180 obligations owned by corporations other than the corporation.

10181 (k) Upon a determination by the office ~~department~~ that the
 10182 conditions giving rise to the establishment and activation of
 10183 the corporation no longer exist, the corporation is dissolved.
 10184 Upon dissolution, the assets of the corporation ~~association~~
 10185 shall be applied first to pay all debts, liabilities, and
 10186 obligations of the corporation, including the establishment of
 10187 reasonable reserves for any contingent liabilities or
 10188 obligations, and all remaining assets of the corporation shall
 10189 become property of the state and be deposited in the Florida
 10190 Hurricane Catastrophe Fund. However, no dissolution shall take
 10191 effect as long as the corporation has bonds or other financial
 10192 obligations outstanding unless adequate provision has been made
 10193 for the payment of the bonds or other financial obligations
 10194 pursuant to the documents authorizing the issuance of the bonds
 10195 or other financial obligations.

10196 (l)1. Effective July 1, 2002, policies of the Residential
 10197 Property and Casualty Joint Underwriting Association shall
 10198 become policies of the corporation. All obligations, rights,
 10199 assets and liabilities of the Residential Property and Casualty



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10200 Joint Underwriting Association, including bonds, note and debt
10201 obligations, and the financing documents pertaining to them
10202 become those of the corporation as of July 1, 2002. The
10203 corporation is not required to issue endorsements or
10204 certificates of assumption to insureds during the remaining term
10205 of in-force transferred policies.

10206 2. Effective July 1, 2002, policies of the Florida
10207 Windstorm Underwriting Association are transferred to the
10208 corporation and shall become policies of the corporation. All
10209 obligations, rights, assets, and liabilities of the Florida
10210 Windstorm Underwriting Association, including bonds, note, and
10211 debt obligations, and the financing documents pertaining to them
10212 are transferred to and assumed by the corporation on July 1,
10213 2002. The corporation is not required to issue endorsement or
10214 certificates of assumption to insureds during the remaining term
10215 of in-force transferred policies.

10216 3. The Florida Windstorm Underwriting Association and the
10217 Residential Property and Casualty Joint Underwriting Association
10218 shall take all actions as may be proper to further evidence the
10219 transfers and shall provide the documents and instruments of
10220 further assurance as may reasonably be requested by the
10221 corporation for that purpose. The corporation shall execute
10222 assumptions and instruments as the trustees or other parties to
10223 the financing documents of the Florida Windstorm Underwriting
10224 Association or the Residential Property and Casualty Joint
10225 Underwriting Association may reasonably request to further
10226 evidence the transfers and assumptions, which transfers and
10227 assumptions, however, are effective on the date provided under
10228 this paragraph whether or not, and regardless of the date on
10229 which, the assumptions or instruments are executed by the



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10230 corporation. Subject to the relevant financing documents
 10231 pertaining to their outstanding bonds, notes, indebtedness, or
 10232 other financing obligations, the moneys, investments,
 10233 receivables, choses in action, and other intangibles of the
 10234 Florida Windstorm Underwriting Association shall be credited to
 10235 the high-risk account of the corporation, and those of the
 10236 personal lines residential coverage account and the commercial
 10237 lines residential coverage account of the Residential Property
 10238 and Casualty Joint Underwriting Association shall be credited to
 10239 the personal lines account and the commercial lines account,
 10240 respectively, of the corporation.

10241 4. Effective July 1, 2002, a new applicant for property
 10242 insurance coverage who would otherwise have been eligible for
 10243 coverage in the Florida Windstorm Underwriting Association is
 10244 eligible for coverage from the corporation as provided in this
 10245 subsection.

10246 5. The transfer of all policies, obligations, rights,
 10247 assets, and liabilities from the Florida Windstorm Underwriting
 10248 Association to the corporation and the renaming of the
 10249 Residential Property and Casualty Joint Underwriting Association
 10250 as the corporation shall in no way affect the coverage with
 10251 respect to covered policies as defined in s. 215.555(2)(c)
 10252 provided to these entities by the Florida Hurricane Catastrophe
 10253 Fund. The coverage provided by the Florida Hurricane Catastrophe
 10254 Fund to the Florida Windstorm Underwriting Association based on
 10255 its exposures as of June 30, 2002, and each June 30 thereafter
 10256 shall be redesignated as coverage for the high-risk account of
 10257 the corporation. Notwithstanding any other provision of law, the
 10258 coverage provided by the Florida Hurricane Catastrophe Fund to
 10259 the Residential Property and Casualty Joint Underwriting



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10260 Association based on its exposures as of June 30, 2002, and each
 10261 June 30 thereafter shall be transferred to the personal lines
 10262 account and the commercial lines account of the corporation.
 10263 Notwithstanding any other provision of law, the high-risk
 10264 account shall be treated, for all Florida Hurricane Catastrophe
 10265 Fund purposes, as if it were a separate participating insurer
 10266 with its own exposures, reimbursement premium, and loss
 10267 reimbursement. Likewise, the personal lines and commercial lines
 10268 accounts shall be viewed together, for all Florida Hurricane
 10269 Catastrophe Fund purposes, as if the two accounts were one and
 10270 represent a single, separate participating insurer with its own
 10271 exposures, reimbursement premium, and loss reimbursement. The
 10272 coverage provided by the Florida Hurricane Catastrophe Fund to
 10273 the corporation shall constitute and operate as a full transfer
 10274 of coverage from the Florida Windstorm Underwriting Association
 10275 and Residential Property and Casualty Joint Underwriting to the
 10276 corporation.

10277 (m) Notwithstanding any other provision of law:

10278 1. The pledge or sale of, the lien upon, and the security
 10279 interest in any rights, revenues, or other assets of the
 10280 corporation created or purported to be created pursuant to any
 10281 financing documents to secure any bonds or other indebtedness of
 10282 the corporation shall be and remain valid and enforceable,
 10283 notwithstanding the commencement of and during the continuation
 10284 of, and after, any rehabilitation, insolvency, liquidation,
 10285 bankruptcy, receivership, conservatorship, reorganization, or
 10286 similar proceeding against the corporation under the laws of
 10287 this state.

10288 2. No such proceeding shall relieve the corporation of its
 10289 obligation, or otherwise affect its ability to perform its



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10290 obligation, to continue to collect, or levy and collect,
 10291 assessments, market equalization or other surcharges under
 10292 subparagraph (c)10., or any other rights, revenues, or other
 10293 assets of the corporation pledged pursuant to any financing
 10294 documents.

10295 3. Each such pledge or sale of, lien upon, and security
 10296 interest in, including the priority of such pledge, lien, or
 10297 security interest, any such assessments, market equalization or
 10298 other surcharges, or other rights, revenues, or other assets
 10299 which are collected, or levied and collected, after the
 10300 commencement of and during the pendency of, or after, any such
 10301 proceeding shall continue unaffected by such proceeding. As
 10302 used in this subsection, the term "financing documents" means
 10303 any agreement or agreements, instrument or instruments, or other
 10304 document or documents now existing or hereafter created
 10305 evidencing any bonds or other indebtedness of the corporation or
 10306 pursuant to which any such bonds or other indebtedness has been
 10307 or may be issued and pursuant to which any rights, revenues, or
 10308 other assets of the corporation are pledged or sold to secure
 10309 the repayment of such bonds or indebtedness, together with the
 10310 payment of interest on such bonds or such indebtedness, or the
 10311 payment of any other obligation or financial product, as defined
 10312 in the plan of operation of the corporation related to such
 10313 bonds or indebtedness.

10314 4. Any such pledge or sale of assessments, revenues,
 10315 contract rights, or other rights or assets of the corporation
 10316 shall constitute a lien and security interest, or sale, as the
 10317 case may be, that is immediately effective and attaches to such
 10318 assessments, revenues, or contract rights or other rights or
 10319 assets, whether or not imposed or collected at the time the



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10320 pledge or sale is made. Any such pledge or sale is effective,
 10321 valid, binding, and enforceable against the corporation or other
 10322 entity making such pledge or sale, and valid and binding against
 10323 and superior to any competing claims or obligations owed to any
 10324 other person or entity, including policyholders in this state,
 10325 asserting rights in any such assessments, revenues, or contract
 10326 rights or other rights or assets to the extent set forth in and
 10327 in accordance with the terms of the pledge or sale contained in
 10328 the applicable financing documents, whether or not any such
 10329 person or entity has notice of such pledge or sale and without
 10330 the need for any physical delivery, recordation, filing, or
 10331 other action.

10332 (n)1. The following records of the corporation are
 10333 confidential and exempt from the provisions of s. 119.07(1) and
 10334 s. 24(a), Art. I of the State Constitution:

10335 a. Underwriting files, except that a policyholder or an
 10336 applicant shall have access to his or her own underwriting
 10337 files.

10338 b. Claims files, until termination of all litigation and
 10339 settlement of all claims arising out of the same incident,
 10340 although portions of the claims files may remain exempt, as
 10341 otherwise provided by law. Confidential and exempt claims file
 10342 records may be released to other governmental agencies upon
 10343 written request and demonstration of need; such records held by
 10344 the receiving agency remain confidential and exempt as provided
 10345 for herein.

10346 c. Records obtained or generated by an internal auditor
 10347 pursuant to a routine audit, until the audit is completed, or if
 10348 the audit is conducted as part of an investigation, until the
 10349 investigation is closed or ceases to be active. An



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10350 investigation is considered "active" while the investigation is
10351 being conducted with a reasonable, good faith belief that it
10352 could lead to the filing of administrative, civil, or criminal
10353 proceedings.

10354 d. Matters reasonably encompassed in privileged attorney-
10355 client communications.

10356 e. Proprietary information licensed to the corporation
10357 under contract and the contract provides for the confidentiality
10358 of such proprietary information.

10359 f. All information relating to the medical condition or
10360 medical status of a corporation employee which is not relevant
10361 to the employee's capacity to perform his or her duties, except
10362 as otherwise provided in this paragraph. Information which is
10363 exempt shall include, but is not limited to, information
10364 relating to workers' compensation, insurance benefits, and
10365 retirement or disability benefits.

10366 g. Upon an employee's entrance into the employee
10367 assistance program, a program to assist any employee who has a
10368 behavioral or medical disorder, substance abuse problem, or
10369 emotional difficulty which affects the employee's job
10370 performance, all records relative to that participation shall be
10371 confidential and exempt from the provisions of s. 119.07(1) and
10372 s. 24(a), Art. I of the State Constitution, except as otherwise
10373 provided in s. 112.0455(11).

10374 h. Information relating to negotiations for financing,
10375 reinsurance, depopulation, or contractual services, until the
10376 conclusion of the negotiations.

10377 i. Minutes of closed meetings regarding underwriting
10378 files, and minutes of closed meetings regarding an open claims
10379 file until termination of all litigation and settlement of all



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10380 claims with regard to that claim, except that information
10381 otherwise confidential or exempt by law will be redacted.

10382

10383

10384 When an authorized insurer is considering underwriting a risk
10385 insured by the corporation, relevant underwriting files and
10386 confidential claims files may be released to the insurer
10387 provided the insurer agrees in writing, notarized and under
10388 oath, to maintain the confidentiality of such files. When a
10389 file is transferred to an insurer that file is no longer a
10390 public record because it is not held by an agency subject to the
10391 provisions of the public records law. Underwriting files and
10392 confidential claims files may also be released to staff of and
10393 the board of governors of the market assistance plan established
10394 pursuant to s. 627.3515, who must retain the confidentiality of
10395 such files, except such files may be released to authorized
10396 insurers that are considering assuming the risks to which the
10397 files apply, provided the insurer agrees in writing, notarized
10398 and under oath, to maintain the confidentiality of such files.
10399 Finally, the corporation or the board or staff of the market
10400 assistance plan may make the following information obtained from
10401 underwriting files and confidential claims files available to
10402 licensed general lines insurance agents: name, address, and
10403 telephone number of the residential property owner or insured;
10404 location of the risk; rating information; loss history; and
10405 policy type. The receiving licensed general lines insurance
10406 agent must retain the confidentiality of the information
10407 received.

10408 2. Portions of meetings of the corporation are exempt from
10409 the provisions of s. 286.011 and s. 24(b), Art. I of the State



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10410 Constitution wherein confidential underwriting files or
 10411 confidential open claims files are discussed. All portions of
 10412 corporation meetings which are closed to the public shall be
 10413 recorded by a court reporter. The court reporter shall record
 10414 the times of commencement and termination of the meeting, all
 10415 discussion and proceedings, the names of all persons present at
 10416 any time, and the names of all persons speaking. No portion of
 10417 any closed meeting shall be off the record. Subject to the
 10418 provisions hereof and s. 119.07(2)(a), the court reporter's
 10419 notes of any closed meeting shall be retained by the corporation
 10420 for a minimum of 5 years. A copy of the transcript, less any
 10421 exempt matters, of any closed meeting wherein claims are
 10422 discussed shall become public as to individual claims after
 10423 settlement of the claim.

10424 (o) It is the intent of the Legislature that the
 10425 amendments to this subsection enacted in 2002 should, over time,
 10426 reduce the probable maximum windstorm losses in the residual
 10427 markets and should reduce the potential assessments to be levied
 10428 on property insurers and policyholders statewide. In
 10429 furtherance of this intent:

10430 1. The board shall, on or before February 1 of each year,
 10431 provide a report to the President of the Senate and the Speaker
 10432 of the House of Representatives showing the reduction or
 10433 increase in the 100-year probable maximum loss attributable to
 10434 wind-only coverages and the quota share program under this
 10435 subsection combined, as compared to the benchmark 100-year
 10436 probable maximum loss of the Florida Windstorm Underwriting
 10437 Association. For purposes of this paragraph, the benchmark 100-
 10438 year probable maximum loss of the Florida Windstorm Underwriting
 10439 Association shall be the calculation dated February 2001 and



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10440 based on November 30, 2000, exposures. In order to ensure
10441 comparability of data, the board shall use the same methods for
10442 calculating its probable maximum loss as were used to calculate
10443 the benchmark probable maximum loss.

10444 2. Beginning February 1, 2007, if the report under
10445 subparagraph 1. for any year indicates that the 100-year
10446 probable maximum loss attributable to wind-only coverages and
10447 the quota share program combined does not reflect a reduction of
10448 at least 25 percent from the benchmark, the board shall reduce
10449 the boundaries of the high-risk area eligible for wind-only
10450 coverages under this subsection in a manner calculated to reduce
10451 such probable maximum loss to an amount at least 25 percent
10452 below the benchmark.

10453 3. Beginning February 1, 2012, if the report under
10454 subparagraph 1. for any year indicates that the 100-year
10455 probable maximum loss attributable to wind-only coverages and
10456 the quota share program combined does not reflect a reduction of
10457 at least 50 percent from the benchmark, the boundaries of the
10458 high-risk area eligible for wind-only coverages under this
10459 subsection shall be reduced by the elimination of any area that
10460 is not seaward of a line 1,000 feet inland from the Intracoastal
10461 Waterway.

10462 (p) In enacting the provisions of this section, the
10463 Legislature recognizes that both the Florida Windstorm
10464 Underwriting Association and the Residential Property and
10465 Casualty Joint Underwriting Association have entered into
10466 financing arrangements that obligate each entity to service its
10467 debts and maintain the capacity to repay funds secured under
10468 these financing arrangements. It is the intent of the
10469 Legislature that nothing in this section be construed to



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10470 compromise, diminish, or interfere with the rights of creditors
 10471 under such financing arrangements. It is further the intent of
 10472 the Legislature to preserve the obligations of the Florida
 10473 Windstorm Underwriting Association and Residential Property and
 10474 Casualty Joint Underwriting Association with regard to
 10475 outstanding financing arrangements, with such obligations
 10476 passing entirely and unchanged to the corporation and,
 10477 specifically, to the applicable account of the corporation. So
 10478 long as any bonds, notes, indebtedness, or other financing
 10479 obligations of the Florida Windstorm Underwriting Association or
 10480 the Residential Property and Casualty Joint Underwriting
 10481 Association are outstanding, under the terms of the financing
 10482 documents pertaining to them, the governing board of the
 10483 corporation shall have and shall exercise the authority to levy,
 10484 charge, collect, and receive all premiums, assessments,
 10485 surcharges, charges, revenues, and receipts that the
 10486 associations had authority to levy, charge, collect, or receive
 10487 under the provisions of subsection (2) and this subsection,
 10488 respectively, as they existed on January 1, 2002, to provide
 10489 moneys, without exercise of the authority provided by this
 10490 subsection, in at least the amounts, and by the times, as would
 10491 be provided under those former provisions of subsection (2) or
 10492 this subsection, respectively, so that the value, amount, and
 10493 collectability of any assets, revenues, or revenue source
 10494 pledged or committed to, or any lien thereon securing such
 10495 outstanding bonds, notes, indebtedness, or other financing
 10496 obligations will not be diminished, impaired, or adversely
 10497 affected by the amendments made by this act and to permit
 10498 compliance with all provisions of financing documents pertaining
 10499 to such bonds, notes, indebtedness, or other financing



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10500 obligations, or the security or credit enhancement for them, and
 10501 any reference in this subsection to bonds, notes, indebtedness,
 10502 financing obligations, or similar obligations, of the
 10503 corporation shall include like instruments or contracts of the
 10504 Florida Windstorm Underwriting Association and the Residential
 10505 Property and Casualty Joint Underwriting Association to the
 10506 extent not inconsistent with the provisions of the financing
 10507 documents pertaining to them.

10508 ~~(g) Effective January 7, 2003, any reference in this~~
 10509 ~~subsection to the Treasurer shall be deemed to be a reference to~~
 10510 ~~the Chief Financial Officer and any reference to the Department~~
 10511 ~~of Insurance shall be deemed to be a reference to the Department~~
 10512 ~~of Insurance and Financial Services or other successor to the~~
 10513 ~~Department of Insurance specified by law.~~

10514 (g)(r) The corporation shall not require the securing of
 10515 flood insurance as a condition of coverage if the insured or
 10516 applicant executes a form approved by the office ~~department~~
 10517 affirming that flood insurance is not provided by the
 10518 corporation and that if flood insurance is not secured by the
 10519 applicant or insured in addition to coverage by the corporation,
 10520 the risk will not be covered for flood damage. A corporation
 10521 policyholder electing not to secure flood insurance and
 10522 executing a form as provided herein making a claim for water
 10523 damage against the corporation shall have the burden of proving
 10524 the damage was not caused by flooding. Notwithstanding other
 10525 provisions of this subsection, the corporation may deny coverage
 10526 to an applicant or insured who refuses to execute the form
 10527 described herein.

10528 Section 200. Section 627.3511, Florida Statutes, is
 10529 amended to read:



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10530 627.3511 Depopulation of Citizens Property Insurance
 10531 Corporation Residential Property and Casualty Joint Underwriting
 10532 Association.--

10533 (1) LEGISLATIVE INTENT.--The Legislature finds that the
 10534 public policy of this state requires the maintenance of a
 10535 residual market for residential property insurance. It is the
 10536 intent of the Legislature to provide a variety of financial
 10537 incentives to encourage the replacement of the highest possible
 10538 number of Citizens Property Insurance Corporation Residential
 10539 Property and Casualty Joint Underwriting Association policies
 10540 with policies written by admitted insurers at approved rates.

10541 (2) TAKE-OUT BONUS.--The Citizens Property Insurance
 10542 Corporation Residential Property and Casualty Joint Underwriting
 10543 Association shall pay the sum of up to \$100 to an insurer for
 10544 each risk that the insurer removes from the corporation
 10545 association, either by issuance of a policy upon expiration or
 10546 cancellation of the corporation association policy or by
 10547 assumption of the corporation's association's obligations with
 10548 respect to an in-force policy. Such payment is subject to
 10549 approval of the corporation association board. In order to
 10550 qualify for the bonus under this subsection, the take-out plan
 10551 must include a minimum of 25,000 policies. Within 30 days after
 10552 approval by the board, the office department may reject the
 10553 insurer's take-out plan and disqualify the insurer from the
 10554 bonus, based on the following criteria:

10555 (a) The capacity of the insurer to absorb the policies
 10556 proposed to be taken out of the corporation association and the
 10557 concentration of risks of those policies.

10558 (b) Whether the geographic and risk characteristics of
 10559 policies in the proposed take-out plan serve to reduce the



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10560 exposure of the corporation ~~association~~ sufficiently to justify
 10561 the bonus.

10562 (c) Whether coverage for risks to be taken out otherwise
 10563 exists in the admitted voluntary market.

10564 (d) The degree to which the take-out bonus is promoting
 10565 new capital being allocated by the insurer to Florida
 10566 residential property coverage.

10567 (3) EXEMPTION FROM DEFICIT ASSESSMENTS.--

10568 (a) The calculation of an insurer's assessment liability
 10569 under s. 627.351(6)(b)3.a. or b. shall, for an insurer that in
 10570 any calendar year removes 50,000 or more risks from the Citizens
 10571 Property Insurance Corporation Residential Property and Casualty
 10572 ~~Joint Underwriting Association~~, either by issuance of a policy
 10573 upon expiration or cancellation of the corporation ~~association~~
 10574 policy or by assumption of the corporation's ~~association's~~
 10575 obligations with respect to in-force policies, exclude such
 10576 removed policies for the succeeding 3 years, as follows:

10577 1. In the first year following removal of the risks, the
 10578 risks are excluded from the calculation to the extent of 100
 10579 percent.

10580 2. In the second year following removal of the risks, the
 10581 risks are excluded from the calculation to the extent of 75
 10582 percent.

10583 3. In the third year following removal of the risks, the
 10584 risks are excluded from the calculation to the extent of 50
 10585 percent.

10586
 10587
 10588 If the removal of risks is accomplished through assumption of
 10589 obligations with respect to in-force policies, the corporation



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10590 ~~association~~ shall pay to the assuming insurer all unearned
 10591 premium with respect to such policies less any policy
 10592 acquisition costs agreed to by the corporation ~~association~~ and
 10593 assuming insurer. The term "policy acquisition costs" is defined
 10594 as costs of issuance of the policy by the corporation
 10595 ~~association~~ which includes agent commissions, servicing company
 10596 fees, and premium tax. This paragraph does not apply to an
 10597 insurer that, at any time within 5 years before removing the
 10598 risks, had a market share in excess of 0.1 percent of the
 10599 statewide aggregate gross direct written premium for any line of
 10600 property insurance, or to an affiliate of such an insurer. This
 10601 paragraph does not apply unless either at least 40 percent of
 10602 the risks removed from the corporation ~~association~~ are located
 10603 in Dade, Broward, and Palm Beach Counties, or at least 30
 10604 percent of the risks removed from the corporation ~~association~~
 10605 are located in such counties and an additional 50 percent of the
 10606 risks removed from the corporation ~~association~~ are located in
 10607 other coastal counties.

10608 (b) An insurer that first wrote personal lines residential
 10609 property coverage in this state on or after July 1, 1994, is
 10610 exempt from regular deficit assessments imposed pursuant to s.
 10611 627.351(6)(b)3.a. and b., but not emergency assessments
 10612 collected from policyholders pursuant to s. 627.351(6)(b)3.d.,
 10613 of the Citizens Property Insurance Corporation ~~Residential~~
 10614 ~~Property and Casualty Joint Underwriting Association~~ until the
 10615 earlier of the following:

10616 1. The end of the calendar year in which it first wrote
 10617 0.5 percent or more of the statewide aggregate direct written
 10618 premium for any line of residential property coverage; or

10619 2. December 31, 1997, or December 31 of the third year in



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10620 which it wrote such coverage in this state, whichever is later.

10621 (c) Other than an insurer that is exempt under paragraph
 10622 (b), an insurer that in any calendar year increases its total
 10623 structure exposure subject to wind coverage by 25 percent or
 10624 more over its exposure for the preceding calendar year is, with
 10625 respect to that year, exempt from deficit assessments imposed
 10626 pursuant to s. 627.351(6)(b)3.a. and b., but not emergency
 10627 assessments collected from policyholders pursuant to s.
 10628 627.351(6)(b)3.d., of the Citizens Property Insurance
 10629 Corporation Residential Property and Casualty Joint Underwriting
 10630 ~~Association~~ attributable to such increase in exposure.

10631 (d) Any exemption or credit from regular assessments
 10632 authorized by this section shall last no longer than 3 years
 10633 following the cancellation or expiration of the policy by the
 10634 corporation association. With the approval of the office
 10635 ~~department~~, the board may extend such credits for an additional
 10636 year if the insurer guarantees an additional year of
 10637 renewability for all policies removed from the corporation
 10638 ~~association~~, or for 2 additional years if the insurer guarantees
 10639 2 additional years of renewability for all policies so removed.

10640 (4) AGENT BONUS.--When the corporation Residential
 10641 ~~Property and Casualty Joint Underwriting Association~~ enters into
 10642 a contractual agreement for a take-out plan that provides a
 10643 bonus to the insurer, the producing agent of record of the
 10644 corporation association policy is entitled to retain any
 10645 unearned commission on such policy, and the insurer shall
 10646 either:

10647 (a) Pay to the producing agent of record of the
 10648 association policy, for the first year, an amount that is the
 10649 greater of the insurer's usual and customary commission for the



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10650 type of policy written or a fee equal to the usual and customary
 10651 commission of the corporation ~~association~~; or

10652 (b) Offer to allow the producing agent of record of the
 10653 corporation ~~association~~ policy to continue servicing the policy
 10654 for a period of not less than 1 year and offer to pay the agent
 10655 the greater of the insurer's or the corporation's ~~association's~~
 10656 usual and customary commission for the type of policy written.

10657
 10658
 10659 If the producing agent is unwilling or unable to accept
 10660 appointment, the new insurer shall pay the agent in accordance
 10661 with paragraph (a). The requirement of this subsection that the
 10662 producing agent of record is entitled to retain the unearned
 10663 commission on an association policy does not apply to a policy
 10664 for which coverage has been provided in the association for 30
 10665 days or less or for which a cancellation notice has been issued
 10666 pursuant to s. 627.351(6)(c)11. during the first 30 days of
 10667 coverage.

10668 (5) APPLICABILITY.--

10669 (a) The take-out bonus provided by subsection (2) and the
 10670 exemption from assessment provided by paragraph (3)(a) apply
 10671 only if the corporation ~~association~~ policy is replaced by either
 10672 a standard policy including wind coverage or, if consistent with
 10673 the insurer's underwriting rules as filed with the office
 10674 ~~department~~, a basic policy including wind coverage; however,
 10675 with respect to risks located in areas where coverage through
 10676 the high-risk account of the corporation ~~Florida Windstorm~~
 10677 ~~Underwriting Association~~ is available, the replacement policy
 10678 need not provide wind coverage. The insurer must renew the
 10679 replacement policy at approved rates on substantially similar



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10680 terms for two additional 1-year terms, unless canceled by the
 10681 insurer for a lawful reason other than reduction of hurricane
 10682 exposure. If an insurer assumes the corporation's ~~association's~~
 10683 obligations for a policy, it must issue a replacement policy for
 10684 a 1-year term upon expiration of the corporation ~~association~~
 10685 policy and must renew the replacement policy at approved rates
 10686 on substantially similar terms for two additional 1-year terms,
 10687 unless canceled by the insurer for a lawful reason other than
 10688 reduction of hurricane exposure. For each replacement policy
 10689 canceled or nonrenewed by the insurer for any reason during the
 10690 3-year coverage period required by this paragraph, the insurer
 10691 must remove from the corporation ~~association~~ one additional
 10692 policy covering a risk similar to the risk covered by the
 10693 canceled or nonrenewed policy. In addition to these
 10694 requirements, the corporation ~~association~~ must place the bonus
 10695 moneys in escrow for a period of 3 years; such moneys may be
 10696 released from escrow only to pay claims. A take-out bonus
 10697 provided by subsection (2) or subsection (6) shall not be
 10698 considered premium income for purposes of taxes and assessments
 10699 under the Florida Insurance Code and shall remain the property
 10700 of the corporation ~~Residential Property and Casualty Joint~~
 10701 ~~Underwriting Association~~, subject to the prior security interest
 10702 of the insurer under the escrow agreement until it is released
 10703 from escrow, and after it is released from escrow it shall be
 10704 considered an asset of the insurer and credited to the insurer's
 10705 capital and surplus.

10706 (b) It is the intent of the Legislature that an insurer
 10707 eligible for the exemption under paragraph (3)(a) establish a
 10708 preference in appointment of agents for those agents who lose a
 10709 substantial amount of business as a result of risks being



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10710 removed from the corporation ~~association~~.

10711 (6) COMMERCIAL RESIDENTIAL TAKE-OUT PLANS.--

10712 (a) The corporation ~~Residential Property and Casualty~~
 10713 ~~Joint Underwriting Association~~ shall pay a bonus to an insurer
 10714 for each commercial residential policy that the insurer removes
 10715 from the corporation ~~association~~ pursuant to an approved take-
 10716 out plan, either by issuance of a new policy upon expiration of
 10717 the corporation ~~association~~ policy or by assumption of the
 10718 corporation's ~~association's~~ obligations with respect to an in-
 10719 force policy. The corporation ~~association~~ board shall determine
 10720 the amount of the bonus based on such factors as the coverage
 10721 provided, relative hurricane risk, the length of time that the
 10722 property has been covered by the corporation ~~association~~, and
 10723 the criteria specified in paragraphs (b) and (c). The amount of
 10724 the bonus with respect to a particular policy may not exceed 25
 10725 percent of the corporation's ~~association's~~ 1-year premium for
 10726 the policy. Such payment is subject to approval of the
 10727 corporation ~~association~~ board. In order to qualify for the bonus
 10728 under this subsection, the take-out plan must include policies
 10729 reflecting at least \$100 million in structure exposure.

10730 (b) In order for a plan to qualify for approval:

10731 1. At least 40 percent of the policies removed from the
 10732 corporation ~~association~~ under the plan must be located in Dade,
 10733 Broward, and Palm Beach Counties, or at least 30 percent of the
 10734 policies removed from the corporation ~~association~~ under the plan
 10735 must be located in such counties and an additional 50 percent of
 10736 the policies removed from the corporation ~~association~~ must be
 10737 located in other coastal counties.

10738 2. The insurer must renew the replacement policy at
 10739 approved rates on substantially similar terms for two additional



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10740 1-year terms, unless canceled or nonrenewed by the insurer for a
10741 lawful reason other than reduction of hurricane exposure. If an
10742 insurer assumes the corporation's ~~association's~~ obligations for
10743 a policy, it must issue a replacement policy for a 1-year term
10744 upon expiration of the corporation ~~association~~ policy and must
10745 renew the replacement policy at approved rates on substantially
10746 similar terms for two additional 1-year terms, unless canceled
10747 by the insurer for a lawful reason other than reduction of
10748 hurricane exposure. For each replacement policy canceled or
10749 nonrenewed by the insurer for any reason during the 3-year
10750 coverage period required by this subparagraph, the insurer must
10751 remove from the corporation ~~association~~ one additional policy
10752 covering a risk similar to the risk covered by the canceled or
10753 nonrenewed policy.

10754 (c) A take-out plan is deemed approved unless the office
10755 ~~department~~, within 120 days after the board votes to recommend
10756 the plan, disapproves the plan based on:

10757 1. The capacity of the insurer to absorb the policies
10758 proposed to be taken out of the corporation ~~association~~ and the
10759 concentration of risks of those policies.

10760 2. Whether the geographic and risk characteristics of
10761 policies in the proposed take-out plan serve to reduce the
10762 exposure of the corporation ~~association~~ sufficiently to justify
10763 the bonus.

10764 3. Whether coverage for risks to be taken out otherwise
10765 exists in the admitted voluntary market.

10766 4. The degree to which the take-out bonus is promoting new
10767 capital being allocated by the insurer to residential property
10768 coverage in this state.

10769 (d) The calculation of an insurer's regular assessment



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10770 liability under s. 627.351(b)3.a. and b., but not emergency
10771 assessments collected from policyholders pursuant to s.
10772 627.351(6)(b)3.d., shall, with respect to commercial residential
10773 policies removed from the corporation ~~association~~ under an
10774 approved take-out plan, exclude such removed policies for the
10775 succeeding 3 years, as follows:

10776 1. In the first year following removal of the policies,
10777 the policies are excluded from the calculation to the extent of
10778 100 percent.

10779 2. In the second year following removal of the policies,
10780 the policies are excluded from the calculation to the extent of
10781 75 percent.

10782 3. In the third year following removal of the policies,
10783 the policies are excluded from the calculation to the extent of
10784 50 percent.

10785 (e) An insurer that first wrote commercial residential
10786 property coverage in this state on or after June 1, 1996, is
10787 exempt from regular assessments under s. 627.351(6)(b)3.a. and
10788 b., but not emergency assessments collected from policyholders
10789 pursuant to s. 627.351(6)(b)3.d., with respect to commercial
10790 residential policies until the earlier of:

10791 1. The end of the calendar year in which such insurer
10792 first wrote 0.5 percent or more of the statewide aggregate
10793 direct written premium for commercial residential property
10794 coverage; or

10795 2. December 31 of the third year in which such insurer
10796 wrote commercial residential property coverage in this state.

10797 (f) An insurer that is not otherwise exempt from regular
10798 assessments under s. 627.351(6)(b)3.a. and b. with respect to
10799 commercial residential policies is, for any calendar year in



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10800 which such insurer increased its total commercial residential
 10801 hurricane exposure by 25 percent or more over its exposure for
 10802 the preceding calendar year, exempt from regular assessments
 10803 under s. 627.351(6)(b)3.a. and b., but not emergency assessments
 10804 collected from policyholders pursuant to s. 627.351(6)(b)3.d.,
 10805 attributable to such increased exposure.

10806 (7) A minority business, which is at least 51 percent
 10807 owned by minority persons as described in s. 288.703(3),
 10808 desiring to operate or become licensed as a property and
 10809 casualty insurer may exempt up to \$50 of the escrow requirements
 10810 of the take-out bonus, as described in this section. Such
 10811 minority business, which has applied for a certificate of
 10812 authority to engage in business as a property and casualty
 10813 insurer, may simultaneously file the business' proposed take-out
 10814 plan, as described in this section, with the corporation ~~to the~~
 10815 ~~Residential Property and Casualty Joint Underwriting~~
 10816 ~~Association.~~

10817 Section 201. Section 627.3513, Florida Statutes, is
 10818 amended to read:

10819 627.3513 Standards for sale of bonds by Citizens Property
 10820 Insurance Corporation ~~underwriting associations.--~~

10821 (1)(a) The purpose of this section is to provide standards
 10822 for the sale of bonds pursuant to s. 627.351(2) and (6).

10823 (b) The term "corporation," as used in this section, means
 10824 the Citizens Property Insurance Corporation. ~~"Association" or~~
 10825 ~~"associations," for purposes of this section, means the Florida~~
 10826 ~~Windstorm Underwriting Association and the Residential Property~~
 10827 ~~and Casualty Joint Underwriting Association as established~~
 10828 ~~pursuant to s. 627.351(2) and (6), and any corporation or other~~
 10829 ~~entity established pursuant to those subsections.~~



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10830 (2) The plan of operation of the corporation ~~each~~
 10831 ~~association~~ shall provide for the selection of financial
 10832 services providers and underwriters. Such provisions shall
 10833 include the method for publicizing or otherwise providing
 10834 reasonable notice to potential financial services providers,
 10835 underwriters, and other interested parties, which may include
 10836 expedited procedures and methods for emergency situations. The
 10837 corporation ~~associations~~ shall not engage the services of any
 10838 person or firm as a securities broker or bond underwriter that
 10839 is not eligible to be engaged by the state under the provisions
 10840 of s. 215.684. The corporation ~~associations~~ shall make all
 10841 selections of financial service providers and managing
 10842 underwriters at a noticed public meeting.

10843 (3) The plan of operation of the corporation ~~each~~
 10844 ~~association~~ shall provide for any managing underwriter or
 10845 financial adviser to provide to the corporation ~~association~~ a
 10846 disclosure statement containing at least the following
 10847 information:

10848 (a) An itemized list setting forth the nature and
 10849 estimated amounts of expenses to be incurred by the managing
 10850 underwriter in connection with the issuance of such bonds.
 10851 Notwithstanding the foregoing, any such list may include an item
 10852 for miscellaneous expenses, provided such item includes only
 10853 minor items of expense which cannot be easily categorized
 10854 elsewhere in the statement.

10855 (b) The names, addresses, and estimated amounts of
 10856 compensation of any finders connected with the issuance of the
 10857 bonds.

10858 (c) The amount of underwriting spread expected to be
 10859 realized and the amount of fees and expenses expected to be paid



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10860 to the financial adviser.

10861 (d) Any management fee charged by the managing
10862 underwriter.

10863 (e) Any other fee, bonus, or compensation estimated to be
10864 paid by the managing underwriter in connection with the bond
10865 issue to any person not regularly employed or retained by it.

10866 (f) The name and address of each financial adviser or
10867 managing underwriter, if any, connected with the bond issue.

10868 (g) Any other disclosure which the corporation ~~association~~
10869 may require.

10870 (4)(a) No underwriter, commercial bank, investment banker,
10871 or financial consultant or adviser shall pay any finder any
10872 bonus, fee, or gratuity in connection with the sale of bonds
10873 issued by the corporation ~~association~~ unless full disclosure is
10874 made in writing to the corporation ~~association~~ prior to or
10875 concurrently with the submission of a purchase proposal for
10876 bonds by the underwriter, commercial bank, investment banker, or
10877 financial consultant or adviser, providing the name and address
10878 of any finder and the amount of bonus, fee, or gratuity paid to
10879 such finder. A violation of this subsection shall not affect the
10880 validity of the bond issue.

10881 (b) As used in this subsection, the term "finder" means a
10882 person who is neither regularly employed by, nor a partner or
10883 officer of, an underwriter, bank, banker, or financial
10884 consultant or adviser and who enters into an understanding with
10885 either the issuer or the managing underwriter, or both, for any
10886 paid or promised compensation or valuable consideration,
10887 directly or indirectly, expressed or implied, to act solely as
10888 an intermediary between such issuer and managing underwriter for
10889 the purpose of influencing any transaction in the purpose of



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10890 such bonds.

10891 (5) This section is not intended to restrict or prohibit
 10892 the employment of professional services relating to bonds issued
 10893 under s. 627.351(6) ~~s. 627.351(2) or (6)~~ or the issuance of
 10894 bonds by the corporation ~~associations~~.

10895 (6) The failure of the corporation ~~association~~ to comply
 10896 with one or more provisions of this section shall not affect the
 10897 validity of the bond issue; however, the failure of the
 10898 corporation ~~either association~~ to comply in good faith both with
 10899 this section and with the plan as amended shall be a violation
 10900 of its plan of operation and a violation of the insurance code.

10901 Section 202. Section 627.3515, Florida Statutes, is
 10902 amended to read:

10903 627.3515 Market assistance plan; property and casualty
 10904 risks.--

10905 (1) The office ~~department~~ shall adopt a market assistance
 10906 plan to assist in the placement of risks of applicants who are
 10907 unable to procure property insurance as defined in s. 624.604 or
 10908 casualty insurance as defined in s. 624.605(1)(b), (e), (f),
 10909 (g), or (h) from authorized insurers when such insurance is
 10910 otherwise generally available from insurers authorized to
 10911 transact and actually writing that kind and class of insurance
 10912 in this state. Through such measures as are found appropriate by
 10913 the board of governors, the market assistance plan shall take
 10914 affirmative steps to assist in the removal from the Citizens
 10915 Property Insurance Corporation ~~Residential Property and Casualty~~
 10916 ~~Joint Underwriting Association~~ any risk that can be placed in
 10917 the voluntary market. All property and casualty insurers
 10918 licensed in this state shall participate in the plan.

10919 (2)(a) Each person serving as a member of the board of



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10920 governors of the Citizens Property Insurance Corporation
 10921 ~~Residential Property and Casualty Joint Underwriting Association~~
 10922 shall also serve as a member of the board of governors of the
 10923 market assistance plan.

10924 (b) The plan shall be funded through payments from the
 10925 Citizens Property Insurance Corporation ~~Residential Property and~~
 10926 ~~Casualty Joint Underwriting Association~~ and annual assessments
 10927 of residential property insurers in the amount of \$450.

10928 (c) The plan is not required to assist in the placement of
 10929 any workers' compensation, employer's liability, malpractice, or
 10930 motor vehicle insurance coverage.

10931 Section 203. Subsections (2), (4), and (6), paragraphs (c)
 10932 and (h) of subsection (7), and subsection (8) of section
 10933 627.357, Florida Statutes, are amended to read:

10934 627.357 Medical malpractice self-insurance.--

10935 (2) A group or association of health care providers
 10936 composed of any number of members, is authorized to self-insure
 10937 against claims arising out of the rendering of, or failure to
 10938 render, medical care or services, or against claims for injury
 10939 or death to the insured's patients arising out of the insured's
 10940 activities, upon obtaining approval from the office ~~department~~
 10941 and upon complying with the following conditions:

10942 (a) Establishment of a Medical Malpractice Risk Management
 10943 Trust Fund to provide coverage against professional medical
 10944 malpractice liability.

10945 (b) Employment of professional consultants for loss
 10946 prevention and claims management coordination under a risk
 10947 management program.

10948 (4) The fund is subject to regulation and investigation by
 10949 the office ~~department~~. The fund is subject to rules of the



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10950 ~~commission department~~ and to part IX of chapter 626, relating to
 10951 trade practices and frauds.

10952 (6) The ~~commission department~~ shall adopt rules to
 10953 implement this section, including rules that ensure that a trust
 10954 fund maintains a sufficient reserve to cover contingent
 10955 liabilities under subsection (7) in the event of its
 10956 dissolution.

10957 (7)

10958 (c) The trust fund may from time to time assess members of
 10959 the fund liable therefor under the terms of their policies and
 10960 pursuant to this section. The ~~office department~~ may assess the
 10961 members in the event of liquidation of the fund.

10962 (h) If the trust fund fails to make an assessment as
 10963 required by paragraph(g), the ~~office department~~ shall order the
 10964 fund to do so. If the deficiency is not sufficiently made up
 10965 within 60 days after the date of the order, the fund is deemed
 10966 insolvent and grounds exist to proceed against the fund as
 10967 provided for in part I of chapter 631.

10968 (8) The expense factors associated with rates used by a
 10969 fund shall be filed with the ~~office department~~ at least 30 days
 10970 prior to use and may not be used until approved by the ~~office~~
 10971 ~~department~~. The ~~office department~~ shall disapprove the rates
 10972 unless the filed expense factors associated therewith are
 10973 justified and reasonable for the benefits and services provided.

10974 Section 204. Paragraph (a) of subsection (3) of section
 10975 627.4236, Florida Statutes, is amended to read:

10976 627.4236 Coverage for bone marrow transplant procedures.--

10977 (3)(a) The Agency for Health Care Administration shall
 10978 adopt rules specifying the bone marrow transplant procedures
 10979 that are accepted within the appropriate oncological specialty



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10980 and are not experimental for purposes of this section. The rules
 10981 must be based upon recommendations of an advisory panel
 10982 appointed by the secretary of the agency, composed of:

10983 1. One adult oncologist, selected from a list of three
 10984 names recommended by the Florida Medical Association;

10985 2. One pediatric oncologist, selected from a list of three
 10986 names recommended by the Florida Pediatric Society;

10987 3. One representative of the J. Hillis Miller Health
 10988 Center at the University of Florida;

10989 4. One representative of the H. Lee Moffitt Cancer Center
 10990 and Research Institute, Inc.;

10991 5. One consumer representative, selected from a list of
 10992 three names recommended by the Chief Financial Officer ~~Insurance~~
 10993 ~~Commissioner~~;

10994 6. One representative of the Health Insurance Association
 10995 of America;

10996 7. Two representatives of health insurers, one of whom
 10997 represents the insurer with the largest Florida health insurance
 10998 premium volume and one of whom represents the insurer with the
 10999 second largest Florida health insurance premium volume; and

11000 8. One representative of the insurer with the largest
 11001 Florida small group health insurance premium volume.

11002 Section 205. Paragraphs (a) and (e) of subsection (2),
 11003 subsection (3), paragraphs (e), (j), and (k) of subsection (4),
 11004 and subsection (6) of section 627.6488, Florida Statutes, are
 11005 amended to read:

11006 627.6488 Florida Comprehensive Health Association.--

11007 (2)(a) The association shall operate subject to the
 11008 supervision and approval of a three-member board of directors.

11009 The board of directors shall be appointed by the Chief Financial



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11010 Officer ~~Insurance Commissioner~~ as follows:

11011 1. The chair of the board shall be the Chief Financial
11012 Officer ~~Insurance Commissioner~~ or his or her designee.

11013 2. One representative of policyholders who is not
11014 associated with the medical profession, a hospital, or an
11015 insurer.

11016 3. One representative of insurers.

11017

11018

11019 The administrator or his or her affiliate shall not be a member
11020 of the board. Any board member appointed by the Chief Financial
11021 Officer ~~commissioner~~ may be removed and replaced by him or her
11022 at any time without cause.

11023 (e) There shall be no liability on the part of, and no
11024 cause of action of any nature shall arise against, any member
11025 insurer, or its agents or employees, agents or employees of the
11026 association, members of the board of directors of the
11027 association, or the Chief Financial Officer's ~~departmental~~
11028 representatives for any act or omission taken by them in the
11029 performance of their powers and duties under this act, unless
11030 such act or omission by such person is in intentional disregard
11031 of the rights of the claimant.

11032 (3) The association shall adopt a plan pursuant to this
11033 act and submit its articles, bylaws, and operating rules to the
11034 office ~~department~~ for approval. If the association fails to
11035 adopt such plan and suitable articles, bylaws, and operating
11036 rules within 180 days after the appointment of the board, the
11037 commission ~~department~~ shall adopt rules to effectuate the
11038 provisions of this act; and such rules shall remain in effect
11039 until superseded by a plan and articles, bylaws, and operating



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11040 rules submitted by the association and approved by the office
 11041 ~~department~~.

11042 (4) The association shall:

11043 (e) Require that all policy forms issued by the
 11044 association conform to standard forms developed by the
 11045 association. The forms shall be approved by the office
 11046 ~~department~~.

11047 (j) Make a report to the Governor, the office ~~Insurance~~
 11048 ~~Commissioner~~, the President of the Senate, the Speaker of the
 11049 House of Representatives, and the Minority Leaders of the Senate
 11050 and House of Representatives, not later than 45 days after the
 11051 close of each calendar quarter, which includes, for the prior
 11052 quarter, current data and estimates of net written and earned
 11053 premiums, the expenses of administration, and the paid and
 11054 incurred losses. The report shall identify any statutorily
 11055 mandated program that has not been fully implemented by the
 11056 board.

11057 (k) To facilitate preparation of assessments and for other
 11058 purposes, the board shall direct preparation of annual audited
 11059 financial statements for each calendar year as soon as feasible
 11060 following the conclusion of that calendar year, and shall,
 11061 within 30 days after rendition of such statements, file with the
 11062 office ~~department~~ the annual report containing such information
 11063 as required by the office ~~department~~ to be filed on March 1 of
 11064 each year.

11065 (6) The office ~~department~~ shall examine and investigate
 11066 the association in the manner provided in part II of chapter
 11067 624.

11068 Section 206. Paragraph (a) of subsection (3), paragraphs
 11069 (c), (d), (e), and (i) of subsection (5), paragraphs (a) and (b)



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11070 of subsection (6), paragraphs (b), (c), and (d) of subsection
 11071 (8), paragraphs (a) and (b) of subsection (9), subsection (10),
 11072 paragraphs (b), (c), (d), (e), (g), (h), (j), and (m) of
 11073 subsection (11), subsection (12), paragraph (i) of subsection
 11074 (13), paragraph(a) of subsection (15), and subsection (16) of
 11075 section 627.6699, Florida Statutes, are amended to read:

11076 627.6699 Employee Health Care Access Act.--

11077 (3) DEFINITIONS.--As used in this section, the term:

11078 (a) "Actuarial certification" means a written statement,
 11079 by a member of the American Academy of Actuaries or another
 11080 person acceptable to the office ~~department~~, that a small
 11081 employer carrier is in compliance with subsection (6), based
 11082 upon the person's examination, including a review of the
 11083 appropriate records and of the actuarial assumptions and methods
 11084 used by the carrier in establishing premium rates for applicable
 11085 health benefit plans.

11086 (5) AVAILABILITY OF COVERAGE.--

11087 (c) Every small employer carrier must, as a condition of
 11088 transacting business in this state:

11089 1. ~~Beginning July 1, 2000,~~ Offer and issue all small
 11090 employer health benefit plans on a guaranteed-issue basis to
 11091 every eligible small employer, with 2 to 50 eligible employees,
 11092 that elects to be covered under such plan, agrees to make the
 11093 required premium payments, and satisfies the other provisions of
 11094 the plan. A rider for additional or increased benefits may be
 11095 medically underwritten and may only be added to the standard
 11096 health benefit plan. The increased rate charged for the
 11097 additional or increased benefit must be rated in accordance with
 11098 this section.

11099 2. ~~Beginning July 1, 2000, and until July 31, 2001, offer~~



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11100 ~~and issue basic and standard small employer health benefit plans~~
 11101 ~~on a guaranteed issue basis to every eligible small employer~~
 11102 ~~which is eligible for guaranteed renewal, has less than two~~
 11103 ~~eligible employees, is not formed primarily for the purpose of~~
 11104 ~~buying health insurance, elects to be covered under such plan,~~
 11105 ~~agrees to make the required premium payments, and satisfies the~~
 11106 ~~other provisions of the plan. A rider for additional or~~
 11107 ~~increased benefits may be medically underwritten and may be~~
 11108 ~~added only to the standard benefit plan. The increased rate~~
 11109 ~~charged for the additional or increased benefit must be rated in~~
 11110 ~~accordance with this section. For purposes of this subparagraph,~~
 11111 ~~a person, his or her spouse, and his or her dependent children~~
 11112 ~~shall constitute a single eligible employee if that person and~~
 11113 ~~spouse are employed by the same small employer and either one~~
 11114 ~~has a normal work week of less than 25 hours.~~

11115 2.3. ~~Beginning August 1, 2001,~~ Offer and issue basic and
 11116 standard small employer health benefit plans on a guaranteed-
 11117 issue basis, during a 31-day open enrollment period of August 1
 11118 through August 31 of each year, to every eligible small
 11119 employer, with fewer than two eligible employees, which small
 11120 employer is not formed primarily for the purpose of buying
 11121 health insurance and which elects to be covered under such plan,
 11122 agrees to make the required premium payments, and satisfies the
 11123 other provisions of the plan. Coverage provided under this
 11124 subparagraph shall begin on October 1 of the same year as the
 11125 date of enrollment, unless the small employer carrier and the
 11126 small employer agree to a different date. A rider for additional
 11127 or increased benefits may be medically underwritten and may only
 11128 be added to the standard health benefit plan. The increased
 11129 rate charged for the additional or increased benefit must be



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11130 rated in accordance with this section. For purposes of this
11131 subparagraph, a person, his or her spouse, and his or her
11132 dependent children constitute a single eligible employee if that
11133 person and spouse are employed by the same small employer and
11134 either that person or his or her spouse has a normal work week
11135 of less than 25 hours.

11136 ~~3.4.~~ This paragraph does not limit a carrier's ability to
11137 offer other health benefit plans to small employers if the
11138 standard and basic health benefit plans are offered and
11139 rejected.

11140 (d) A small employer carrier must file with the office
11141 ~~department~~, in a format and manner prescribed by the committee,
11142 a standard health care plan and a basic health care plan to be
11143 used by the carrier.

11144 (e) The office ~~department~~ at any time may, after providing
11145 notice and an opportunity for a hearing, disapprove the
11146 continued use by the small employer carrier of the standard or
11147 basic health benefit plan on the grounds that such plan does not
11148 meet the requirements of this section.

11149 (i)1. A small employer carrier need not offer coverage or
11150 accept applications pursuant to paragraph (a):

11151 a. To a small employer if the small employer is not
11152 physically located in an established geographic service area of
11153 the small employer carrier, provided such geographic service
11154 area shall not be less than a county;

11155 b. To an employee if the employee does not work or reside
11156 within an established geographic service area of the small
11157 employer carrier; or

11158 c. To a small employer group within an area in which the
11159 small employer carrier reasonably anticipates, and demonstrates



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11160 to the satisfaction of the office ~~department~~, that it cannot,
 11161 within its network of providers, deliver service adequately to
 11162 the members of such groups because of obligations to existing
 11163 group contract holders and enrollees.

11164 2. A small employer carrier that cannot offer coverage
 11165 pursuant to sub-subparagraph 1.c. may not offer coverage in the
 11166 applicable area to new cases of employer groups having more than
 11167 50 eligible employees or small employer groups until the later
 11168 of 180 days following each such refusal or the date on which the
 11169 carrier notifies the office ~~department~~ that it has regained its
 11170 ability to deliver services to small employer groups.

11171 3.a. A small employer carrier may deny health insurance
 11172 coverage in the small-group market if the carrier has
 11173 demonstrated to the office ~~department~~ that:

11174 (I) It does not have the financial reserves necessary to
 11175 underwrite additional coverage; and

11176 (II) It is applying this sub-subparagraph uniformly to all
 11177 employers in the small-group market in this state consistent
 11178 with this section and without regard to the claims experience of
 11179 those employers and their employees and their dependents or any
 11180 health-status-related factor that relates to such employees and
 11181 dependents.

11182 b. A small employer carrier, upon denying health insurance
 11183 coverage in connection with health benefit plans in accordance
 11184 with sub-subparagraph a., may not offer coverage in connection
 11185 with group health benefit plans in the small-group market in
 11186 this state for a period of 180 days after the date such coverage
 11187 is denied or until the insurer has demonstrated to the office
 11188 ~~department~~ that the insurer has sufficient financial reserves to
 11189 underwrite additional coverage, whichever is later. The office



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11190 ~~department~~ may provide for the application of this sub-
11191 subparagraph on a service-area-specific basis.

11192 4. ~~Beginning in 1994,~~ The commission ~~department~~ shall, by
11193 rule, require each small employer carrier to report, on or
11194 before March 1 of each year, its gross annual premiums for all
11195 health benefit plans issued to small employers during the
11196 previous calendar year, and also to report its gross annual
11197 premiums for new, but not renewal, standard and basic health
11198 benefit plans subject to this section issued during the previous
11199 calendar year. No later than May 1 of each year, the office
11200 ~~department~~ shall calculate each carrier's percentage of all
11201 small employer group health premiums for the previous calendar
11202 year and shall calculate the aggregate gross annual premiums for
11203 new, but not renewal, standard and basic health benefit plans
11204 for the previous calendar year.

11205 (6) RESTRICTIONS RELATING TO PREMIUM RATES.--

11206 (a) The commission ~~department~~ may, by rule, establish
11207 regulations to administer this section and to assure that rating
11208 practices used by small employer carriers are consistent with
11209 the purpose of this section, including assuring that differences
11210 in rates charged for health benefit plans by small employer
11211 carriers are reasonable and reflect objective differences in
11212 plan design, not including differences due to the nature of the
11213 groups assumed to select particular health benefit plans.

11214 (b) For all small employer health benefit plans that are
11215 subject to this section and are issued by small employer
11216 carriers on or after January 1, 1994, premium rates for health
11217 benefit plans subject to this section are subject to the
11218 following:

11219 1. Small employer carriers must use a modified community



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11220 rating methodology in which the premium for each small employer
11221 must be determined solely on the basis of the eligible
11222 employee's and eligible dependent's gender, age, family
11223 composition, tobacco use, or geographic area as determined under
11224 paragraph (5)(j) and in which the premium may be adjusted as
11225 permitted by this paragraph.

11226 2. Rating factors related to age, gender, family
11227 composition, tobacco use, or geographic location may be
11228 developed by each carrier to reflect the carrier's experience.
11229 The factors used by carriers are subject to office ~~department~~
11230 review and approval.

11231 3. Small employer carriers may not modify the rate for a
11232 small employer for 12 months from the initial issue date or
11233 renewal date, unless the composition of the group changes or
11234 benefits are changed. However, a small employer carrier may
11235 modify the rate one time prior to 12 months after the initial
11236 issue date for a small employer who enrolls under a previously
11237 issued group policy that has a common anniversary date for all
11238 employers covered under the policy if:

11239 a. The carrier discloses to the employer in a clear and
11240 conspicuous manner the date of the first renewal and the fact
11241 that the premium may increase on or after that date.

11242 b. The insurer demonstrates to the office ~~department~~ that
11243 efficiencies in administration are achieved and reflected in the
11244 rates charged to small employers covered under the policy.

11245 4. A carrier may issue a group health insurance policy to
11246 a small employer health alliance or other group association with
11247 rates that reflect a premium credit for expense savings
11248 attributable to administrative activities being performed by the
11249 alliance or group association if such expense savings are



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11250 specifically documented in the insurer's rate filing and are
 11251 approved by the office ~~department~~. Any such credit may not be
 11252 based on different morbidity assumptions or on any other factor
 11253 related to the health status or claims experience of any person
 11254 covered under the policy. Nothing in this subparagraph exempts
 11255 an alliance or group association from licensure for any
 11256 activities that require licensure under the insurance code. A
 11257 carrier issuing a group health insurance policy to a small
 11258 employer health alliance or other group association shall allow
 11259 any properly licensed and appointed agent of that carrier to
 11260 market and sell the small employer health alliance or other
 11261 group association policy. Such agent shall be paid the usual and
 11262 customary commission paid to any agent selling the policy.

11263 5. Any adjustments in rates for claims experience, health
 11264 status, or duration of coverage may not be charged to individual
 11265 employees or dependents. For a small employer's policy, such
 11266 adjustments may not result in a rate for the small employer
 11267 which deviates more than 15 percent from the carrier's approved
 11268 rate. Any such adjustment must be applied uniformly to the rates
 11269 charged for all employees and dependents of the small employer.
 11270 A small employer carrier may make an adjustment to a small
 11271 employer's renewal premium, not to exceed 10 percent annually,
 11272 due to the claims experience, health status, or duration of
 11273 coverage of the employees or dependents of the small employer.
 11274 Semiannually, small group carriers shall report information on
 11275 forms adopted by rule by the commission ~~department~~, to enable
 11276 the office ~~department~~ to monitor the relationship of aggregate
 11277 adjusted premiums actually charged policyholders by each carrier
 11278 to the premiums that would have been charged by application of
 11279 the carrier's approved modified community rates. If the



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11280 aggregate resulting from the application of such adjustment
11281 exceeds the premium that would have been charged by application
11282 of the approved modified community rate by 5 percent for the
11283 current reporting period, the carrier shall limit the
11284 application of such adjustments only to minus adjustments
11285 beginning not more than 60 days after the report is sent to the
11286 office ~~department~~. For any subsequent reporting period, if the
11287 total aggregate adjusted premium actually charged does not
11288 exceed the premium that would have been charged by application
11289 of the approved modified community rate by 5 percent, the
11290 carrier may apply both plus and minus adjustments. A small
11291 employer carrier may provide a credit to a small employer's
11292 premium based on administrative and acquisition expense
11293 differences resulting from the size of the group. Group size
11294 administrative and acquisition expense factors may be developed
11295 by each carrier to reflect the carrier's experience and are
11296 subject to office ~~department~~ review and approval.

11297 6. A small employer carrier rating methodology may include
11298 separate rating categories for one dependent child, for two
11299 dependent children, and for three or more dependent children for
11300 family coverage of employees having a spouse and dependent
11301 children or employees having dependent children only. A small
11302 employer carrier may have fewer, but not greater, numbers of
11303 categories for dependent children than those specified in this
11304 subparagraph.

11305 7. Small employer carriers may not use a composite rating
11306 methodology to rate a small employer with fewer than 10
11307 employees. For the purposes of this subparagraph, a "composite
11308 rating methodology" means a rating methodology that averages the
11309 impact of the rating factors for age and gender in the premiums



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11310 charged to all of the employees of a small employer.

11311 8.a. A carrier may separate the experience of small
 11312 employer groups with less than 2 eligible employees from the
 11313 experience of small employer groups with 2-50 eligible employees
 11314 for purposes of determining an alternative modified community
 11315 rating.

11316 b. If a carrier separates the experience of small employer
 11317 groups as provided in sub-subparagraph a., the rate to be
 11318 charged to small employer groups of less than 2 eligible
 11319 employees may not exceed 150 percent of the rate determined for
 11320 small employer groups of 2-50 eligible employees. However, the
 11321 carrier may charge excess losses of the experience pool
 11322 consisting of small employer groups with less than 2 eligible
 11323 employees to the experience pool consisting of small employer
 11324 groups with 2-50 eligible employees so that all losses are
 11325 allocated and the 150-percent rate limit on the experience pool
 11326 consisting of small employer groups with less than 2 eligible
 11327 employees is maintained. Notwithstanding s. 627.411(1), the rate
 11328 to be charged to a small employer group of fewer than 2 eligible
 11329 employees, insured as of July 1, 2002, may be up to 125 percent
 11330 of the rate determined for small employer groups of 2-50
 11331 eligible employees for the first annual renewal and 150 percent
 11332 for subsequent annual renewals.

11333 (8) MAINTENANCE OF RECORDS.--

11334 (b) Each small employer carrier must file with the office
 11335 ~~department~~ on or before March 15 of each year an actuarial
 11336 certification that the carrier is in compliance with this
 11337 section and that the rating methods of the carrier are
 11338 actuarially sound. The certification must be in a form and
 11339 manner and contain the information prescribed by the commission



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11340 ~~department~~. The carrier must retain a copy of the certification
 11341 at its principal place of business.

11342 (c) A small employer carrier must make the information and
 11343 documentation described in paragraph (a) available to the office
 11344 ~~department~~ upon request. The information constitutes
 11345 proprietary and trade secret information and may not be
 11346 disclosed by the office ~~department~~ to persons outside the office
 11347 ~~department~~, except as agreed to by the carrier or as ordered by
 11348 a court of competent jurisdiction.

11349 (d) Each small employer carrier must file with the office
 11350 ~~department~~ quarterly an enrollment report as directed by the
 11351 office ~~department~~. Such report shall not constitute proprietary
 11352 or trade secret information.

11353 (9) SMALL EMPLOYER CARRIER'S ELECTION TO BECOME A RISK-
 11354 ASSUMING CARRIER OR A REINSURING CARRIER.--

11355 (a) A small employer carrier must elect to become either a
 11356 risk-assuming carrier or a reinsuring carrier. Each small
 11357 employer carrier must make an initial election, binding through
 11358 January 1, 1994. The carrier's initial election must be made no
 11359 later than October 31, 1992. By October 31, 1993, all small
 11360 employer carriers must file a final election, which is binding
 11361 for 2 years, from January 1, 1994, through December 31, 1995,
 11362 after which an election shall be binding for a period of 5
 11363 years. Any carrier that is not a small employer carrier on
 11364 October 31, 1992, and intends to become a small employer carrier
 11365 after October 31, 1992, must file its designation when it files
 11366 the forms and rates it intends to use for small employer group
 11367 health insurance; such designation shall be binding for 2 years
 11368 after the date of approval of the forms and rates, and any
 11369 subsequent designation is binding for 5 years. The office



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11370 ~~department~~ may permit a carrier to modify its election at any
11371 time for good cause shown, after a hearing.

11372 (b) The commission ~~department~~ shall establish an
11373 application process for small employer carriers seeking to
11374 change their status under this subsection.

11375 (10) ELECTION PROCESS TO BECOME A RISK-ASSUMING CARRIER.--

11376 (a)1. A small employer carrier may become a risk-assuming
11377 carrier by filing with the office ~~department~~ a designation of
11378 election under subsection (9) in a format and manner prescribed
11379 by the commission ~~department~~. The office ~~department~~ shall
11380 approve the election of a small employer carrier to become a
11381 risk-assuming carrier if the office ~~department~~ finds that the
11382 carrier is capable of assuming that status pursuant to the
11383 criteria set forth in paragraph (b).

11384 2. The office ~~department~~ must approve or disapprove any
11385 designation as a risk-assuming carrier within 60 days after
11386 filing.

11387 (b) In determining whether to approve an application by a
11388 small employer carrier to become a risk-assuming carrier, the
11389 office ~~department~~ shall consider:

11390 1. The carrier's financial ability to support the
11391 assumption of the risk of small employer groups.

11392 2. The carrier's history of rating and underwriting small
11393 employer groups.

11394 3. The carrier's commitment to market fairly to all small
11395 employers in the state or its service area, as applicable.

11396 4. The carrier's ability to assume and manage the risk of
11397 enrolling small employer groups without the protection of the
11398 reinsurance program provided in subsection (11).

11399 (c) A small employer carrier that becomes a risk-assuming



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11400 carrier pursuant to this subsection is not subject to the
 11401 assessment provisions of subsection(11).

11402 (d) The office ~~department~~ shall provide public notice of a
 11403 small employer carrier's designation of election under
 11404 subsection(9) to become a risk-assuming carrier and shall
 11405 provide at least a 21-day period for public comment prior to
 11406 making a decision on the election. The office ~~department~~ shall
 11407 hold a hearing on the election at the request of the carrier.

11408 (e) The office ~~department~~ may rescind the approval granted
 11409 to a risk-assuming carrier under this subsection if the office
 11410 ~~department~~ finds that the carrier no longer meets the criteria
 11411 of paragraph (b).

11412 (11) SMALL EMPLOYER HEALTH REINSURANCE PROGRAM.--

11413 (b)1. The program shall operate subject to the supervision
 11414 and control of the board.

11415 2. Effective upon this act becoming a law, the board shall
 11416 consist of the Chief Financial Officer ~~commissioner~~ or his or
 11417 her designee, who shall serve as the chairperson, and 13
 11418 additional members who are representatives of carriers and
 11419 insurance agents and are appointed by the Chief Financial
 11420 Officer ~~commissioner~~ and serve as follows:

11421 a. The Chief Financial Officer ~~commissioner~~ shall include
 11422 representatives of small employer carriers subject to assessment
 11423 under this subsection. If two or more carriers elect to be
 11424 risk-assuming carriers, the membership must include at least two
 11425 representatives of risk-assuming carriers; if one carrier is
 11426 risk-assuming, one member must be a representative of such
 11427 carrier. At least one member must be a carrier who is subject
 11428 to the assessments, but is not a small employer carrier.

11429 Subject to such restrictions, at least five members shall be



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11430 selected from individuals recommended by small employer carriers
11431 pursuant to procedures provided by rule of the commission
11432 ~~department~~. Three members shall be selected from a list of
11433 health insurance carriers that issue individual health insurance
11434 policies. At least two of the three members selected must be
11435 reinsuring carriers. Two members shall be selected from a list
11436 of insurance agents who are actively engaged in the sale of
11437 health insurance.

11438 b. A member appointed under this subparagraph shall serve
11439 a term of 4 years and shall continue in office until the
11440 member's successor takes office, except that, in order to
11441 provide for staggered terms, the Chief Financial Officer
11442 ~~commissioner~~ shall designate two of the initial appointees under
11443 this subparagraph to serve terms of 2 years and shall designate
11444 three of the initial appointees under this subparagraph to serve
11445 terms of 3 years.

11446 3. The Chief Financial Officer ~~commissioner~~ may remove a
11447 member for cause.

11448 4. Vacancies on the board shall be filled in the same
11449 manner as the original appointment for the unexpired portion of
11450 the term.

11451 5. The Chief Financial Officer ~~commissioner~~ may require an
11452 entity that recommends persons for appointment to submit
11453 additional lists of recommended appointees.

11454 (c)1. ~~No later than August 15, 1992,~~ The board shall
11455 submit to the office ~~department~~ a plan of operation to assure
11456 the fair, reasonable, and equitable administration of the
11457 program. The board may at any time submit to the office
11458 ~~department~~ any amendments to the plan that the board finds to be
11459 necessary or suitable.



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11460 2. ~~No later than September 15, 1992,~~ The office department
 11461 shall, after notice and hearing, approve the plan of operation
 11462 if it determines that the plan submitted by the board is
 11463 suitable to assure the fair, reasonable, and equitable
 11464 administration of the program and provides for the sharing of
 11465 program gains and losses equitably and proportionately in
 11466 accordance with paragraph (j).

11467 3. The plan of operation, or any amendment thereto,
 11468 becomes effective upon written approval of the office
 11469 department.

11470 (d) The plan of operation must, among other things:

11471 1. Establish procedures for handling and accounting for
 11472 program assets and moneys and for an annual fiscal reporting to
 11473 the office department.

11474 2. Establish procedures for selecting an administering
 11475 carrier and set forth the powers and duties of the administering
 11476 carrier.

11477 3. Establish procedures for reinsuring risks.

11478 4. Establish procedures for collecting assessments from
 11479 participating carriers to provide for claims reinsured by the
 11480 program and for administrative expenses, other than amounts
 11481 payable to the administrative carrier, incurred or estimated to
 11482 be incurred during the period for which the assessment is made.

11483 5. Provide for any additional matters at the discretion of
 11484 the board.

11485 (e) The board shall recommend to the office department
 11486 market conduct requirements and other requirements for carriers
 11487 and agents, including requirements relating to:

11488 1. Registration by each carrier with the office department
 11489 of its intention to be a small employer carrier under this



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11490 section;

11491 2. Publication by the office ~~department~~ of a list of all
11492 small employer carriers, including a requirement applicable to
11493 agents and carriers that a health benefit plan may not be sold
11494 by a carrier that is not identified as a small employer carrier;

11495 3. The availability of a broadly publicized, toll-free
11496 telephone number for access by small employers to information
11497 concerning this section;

11498 4. Periodic reports by carriers and agents concerning
11499 health benefit plans issued; and

11500 5. Methods concerning periodic demonstration by small
11501 employer carriers and agents that they are marketing or issuing
11502 health benefit plans to small employers.

11503 (g) A reinsuring carrier may reinsure with the program
11504 coverage of an eligible employee of a small employer, or any
11505 dependent of such an employee, subject to each of the following
11506 provisions:

11507 1. With respect to a standard and basic health care plan,
11508 the program must reinsure the level of coverage provided; and,
11509 with respect to any other plan, the program must reinsure the
11510 coverage up to, but not exceeding, the level of coverage
11511 provided under the standard and basic health care plan.

11512 2. Except in the case of a late enrollee, a reinsuring
11513 carrier may reinsure an eligible employee or dependent within 60
11514 days after the commencement of the coverage of the small
11515 employer. A newly employed eligible employee or dependent of a
11516 small employer may be reinsured within 60 days after the
11517 commencement of his or her coverage.

11518 3. A small employer carrier may reinsure an entire
11519 employer group within 60 days after the commencement of the



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11520 group's coverage under the plan. The carrier may choose to
11521 reinsure newly eligible employees and dependents of the
11522 reinsured group pursuant to subparagraph 1.

11523 4. The program may not reimburse a participating carrier
11524 with respect to the claims of a reinsured employee or dependent
11525 until the carrier has paid incurred claims of at least \$5,000 in
11526 a calendar year for benefits covered by the program. In
11527 addition, the reinsuring carrier shall be responsible for 10
11528 percent of the next \$50,000 and 5 percent of the next \$100,000
11529 of incurred claims during a calendar year and the program shall
11530 reinsure the remainder.

11531 5. The board annually shall adjust the initial level of
11532 claims and the maximum limit to be retained by the carrier to
11533 reflect increases in costs and utilization within the standard
11534 market for health benefit plans within the state. The adjustment
11535 shall not be less than the annual change in the medical
11536 component of the "Consumer Price Index for All Urban Consumers"
11537 of the Bureau of Labor Statistics of the Department of Labor,
11538 unless the board proposes and the office ~~department~~ approves a
11539 lower adjustment factor.

11540 6. A small employer carrier may terminate reinsurance for
11541 all reinsured employees or dependents on any plan anniversary.

11542 7. The premium rate charged for reinsurance by the program
11543 to a health maintenance organization that is approved by the
11544 Secretary of Health and Human Services as a federally qualified
11545 health maintenance organization pursuant to 42 U.S.C. s.
11546 300e(c)(2)(A) and that, as such, is subject to requirements that
11547 limit the amount of risk that may be ceded to the program, which
11548 requirements are more restrictive than subparagraph 4., shall be
11549 reduced by an amount equal to that portion of the risk, if any,



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11550 which exceeds the amount set forth in subparagraph 4. which may
11551 not be ceded to the program.

11552 8. The board may consider adjustments to the premium rates
11553 charged for reinsurance by the program for carriers that use
11554 effective cost containment measures, including high-cost case
11555 management, as defined by the board.

11556 9. A reinsuring carrier shall apply its case-management
11557 and claims-handling techniques, including, but not limited to,
11558 utilization review, individual case management, preferred
11559 provider provisions, other managed care provisions or methods of
11560 operation, consistently with both reinsured business and
11561 nonreinsured business.

11562 (h)1. The board, as part of the plan of operation, shall
11563 establish a methodology for determining premium rates to be
11564 charged by the program for reinsuring small employers and
11565 individuals pursuant to this section. The methodology shall
11566 include a system for classification of small employers that
11567 reflects the types of case characteristics commonly used by
11568 small employer carriers in the state. The methodology shall
11569 provide for the development of basic reinsurance premium rates,
11570 which shall be multiplied by the factors set for them in this
11571 paragraph to determine the premium rates for the program. The
11572 basic reinsurance premium rates shall be established by the
11573 board, subject to the approval of the office ~~department~~, and
11574 shall be set at levels which reasonably approximate gross
11575 premiums charged to small employers by small employer carriers
11576 for health benefit plans with benefits similar to the standard
11577 and basic health benefit plan. The premium rates set by the
11578 board may vary by geographical area, as determined under this
11579 section, to reflect differences in cost. The multiplying



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11580 factors must be established as follows:

11581 a. The entire group may be reinsured for a rate that is
11582 1.5 times the rate established by the board.

11583 b. An eligible employee or dependent may be reinsured for
11584 a rate that is 5 times the rate established by the board.

11585 2. The board periodically shall review the methodology
11586 established, including the system of classification and any
11587 rating factors, to assure that it reasonably reflects the claims
11588 experience of the program. The board may propose changes to the
11589 rates which shall be subject to the approval of the office
11590 ~~department~~.

11591 (j)1. Before March 1 of each calendar year, the board
11592 shall determine and report to the office ~~department~~ the program
11593 net loss for the previous year, including administrative
11594 expenses for that year, and the incurred losses for the year,
11595 taking into account investment income and other appropriate
11596 gains and losses.

11597 2. Any net loss for the year shall be recouped by
11598 assessment of the carriers, as follows:

11599 a. The operating losses of the program shall be assessed
11600 in the following order subject to the specified limitations.
11601 The first tier of assessments shall be made against reinsuring
11602 carriers in an amount which shall not exceed 5 percent of each
11603 reinsuring carrier's premiums from health benefit plans covering
11604 small employers. If such assessments have been collected and
11605 additional moneys are needed, the board shall make a second tier
11606 of assessments in an amount which shall not exceed 0.5 percent
11607 of each carrier's health benefit plan premiums. Except as
11608 provided in paragraph (n), risk-assuming carriers are exempt
11609 from all assessments authorized pursuant to this section. The



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11610 amount paid by a reinsuring carrier for the first tier of
11611 assessments shall be credited against any additional assessments
11612 made.

11613 b. The board shall equitably assess carriers for operating
11614 losses of the plan based on market share. The board shall
11615 annually assess each carrier a portion of the operating losses
11616 of the plan. The first tier of assessments shall be determined
11617 by multiplying the operating losses by a fraction, the numerator
11618 of which equals the reinsuring carrier's earned premium
11619 pertaining to direct writings of small employer health benefit
11620 plans in the state during the calendar year for which the
11621 assessment is levied, and the denominator of which equals the
11622 total of all such premiums earned by reinsuring carriers in the
11623 state during that calendar year. The second tier of assessments
11624 shall be based on the premiums that all carriers, except risk-
11625 assuming carriers, earned on all health benefit plans written in
11626 this state. The board may levy interim assessments against
11627 carriers to ensure the financial ability of the plan to cover
11628 claims expenses and administrative expenses paid or estimated to
11629 be paid in the operation of the plan for the calendar year prior
11630 to the association's anticipated receipt of annual assessments
11631 for that calendar year. Any interim assessment is due and
11632 payable within 30 days after receipt by a carrier of the interim
11633 assessment notice. Interim assessment payments shall be credited
11634 against the carrier's annual assessment. Health benefit plan
11635 premiums and benefits paid by a carrier that are less than an
11636 amount determined by the board to justify the cost of collection
11637 may not be considered for purposes of determining assessments.

11638 c. Subject to the approval of the office ~~department~~, the
11639 board shall make an adjustment to the assessment formula for



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11640 reinsuring carriers that are approved as federally qualified
11641 health maintenance organizations by the Secretary of Health and
11642 Human Services pursuant to 42 U.S.C. s. 300e(c)(2)(A) to the
11643 extent, if any, that restrictions are placed on them that are
11644 not imposed on other small employer carriers.

11645 3. Before March 1 of each year, the board shall determine
11646 and file with the office ~~department~~ an estimate of the
11647 assessments needed to fund the losses incurred by the program in
11648 the previous calendar year.

11649 4. If the board determines that the assessments needed to
11650 fund the losses incurred by the program in the previous calendar
11651 year will exceed the amount specified in subparagraph 2., the
11652 board shall evaluate the operation of the program and report its
11653 findings, including any recommendations for changes to the plan
11654 of operation, to the office ~~department~~ within 90 days following
11655 the end of the calendar year in which the losses were incurred.

11656 The evaluation shall include an estimate of future assessments,
11657 the administrative costs of the program, the appropriateness of
11658 the premiums charged and the level of carrier retention under
11659 the program, and the costs of coverage for small employers. If
11660 the board fails to file a report with the office ~~department~~
11661 within 90 days following the end of the applicable calendar
11662 year, the office ~~department~~ may evaluate the operations of the
11663 program and implement such amendments to the plan of operation
11664 the office ~~department~~ deems necessary to reduce future losses
11665 and assessments.

11666 5. If assessments exceed the amount of the actual losses
11667 and administrative expenses of the program, the excess shall be
11668 held as interest and used by the board to offset future losses
11669 or to reduce program premiums. As used in this paragraph, the



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11670 term "future losses" includes reserves for incurred but not
11671 reported claims.

11672 6. Each carrier's proportion of the assessment shall be
11673 determined annually by the board, based on annual statements and
11674 other reports considered necessary by the board and filed by the
11675 carriers with the board.

11676 7. Provision shall be made in the plan of operation for
11677 the imposition of an interest penalty for late payment of an
11678 assessment.

11679 8. A carrier may seek, from the office ~~commissioner~~, a
11680 deferment, in whole or in part, from any assessment made by the
11681 board. The office ~~department~~ may defer, in whole or in part,
11682 the assessment of a carrier if, in the opinion of the office
11683 ~~department~~, the payment of the assessment would place the
11684 carrier in a financially impaired condition. If an assessment
11685 against a carrier is deferred, in whole or in part, the amount
11686 by which the assessment is deferred may be assessed against the
11687 other carriers in a manner consistent with the basis for
11688 assessment set forth in this section. The carrier receiving such
11689 deferment remains liable to the program for the amount deferred
11690 and is prohibited from reinsuring any individuals or groups in
11691 the program if it fails to pay assessments.

11692 (m) The board shall monitor compliance with this section,
11693 including the market conduct of small employer carriers, and
11694 shall report to the office ~~department~~ any unfair trade practices
11695 and misleading or unfair conduct by a small employer carrier
11696 that has been reported to the board by agents, consumers, or any
11697 other person. The office ~~department~~ shall investigate all
11698 reports and, upon a finding of noncompliance with this section
11699 or of unfair or misleading practices, shall take action against



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11700 the small employer carrier as permitted under the insurance code
 11701 or chapter 641. The board is not given investigatory or
 11702 regulatory powers, but must forward all reports of cases or
 11703 abuse or misrepresentation to the office ~~department~~.

11704 (12) STANDARD, BASIC, AND LIMITED HEALTH BENEFIT PLANS.--

11705 (a)1. ~~By May 15, 1993,~~ The Chief Financial Officer
 11706 ~~commissioner~~ shall appoint a health benefit plan committee
 11707 composed of four representatives of carriers which shall include
 11708 at least two representatives of HMOs, at least one of which is a
 11709 staff model HMO, two representatives of agents, four
 11710 representatives of small employers, and one employee of a small
 11711 employer. The carrier members shall be selected from a list of
 11712 individuals recommended by the board. The Chief Financial
 11713 Officer ~~commissioner~~ may require the board to submit additional
 11714 recommendations of individuals for appointment.

11715 2. The plans shall comply with all of the requirements of
 11716 this subsection.

11717 3. The plans must be filed with and approved by the office
 11718 ~~department~~ prior to issuance or delivery by any small employer
 11719 carrier.

11720 4. After approval of the revised health benefit plans, if
 11721 the office ~~department~~ determines that modifications to a plan
 11722 might be appropriate, the Chief Financial Officer ~~commissioner~~
 11723 shall appoint a new health benefit plan committee in the manner
 11724 provided in subparagraph 1. to submit recommended modifications
 11725 to the office ~~department~~ for approval.

11726 (b)1. Each small employer carrier issuing new health
 11727 benefit plans shall offer to any small employer, upon request, a
 11728 standard health benefit plan and a basic health benefit plan
 11729 that meets the criteria set forth in this section.



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11730 2. For purposes of this subsection, the terms "standard
 11731 health benefit plan" and "basic health benefit plan" mean
 11732 policies or contracts that a small employer carrier offers to
 11733 eligible small employers that contain:

11734 a. An exclusion for services that are not medically
 11735 necessary or that are not covered preventive health services;
 11736 and

11737 b. A procedure for preauthorization by the small employer
 11738 carrier, or its designees.

11739 3. A small employer carrier may include the following
 11740 managed care provisions in the policy or contract to control
 11741 costs:

11742 a. A preferred provider arrangement or exclusive provider
 11743 organization or any combination thereof, in which a small
 11744 employer carrier enters into a written agreement with the
 11745 provider to provide services at specified levels of
 11746 reimbursement or to provide reimbursement to specified
 11747 providers. Any such written agreement between a provider and a
 11748 small employer carrier must contain a provision under which the
 11749 parties agree that the insured individual or covered member has
 11750 no obligation to make payment for any medical service rendered
 11751 by the provider which is determined not to be medically
 11752 necessary. A carrier may use preferred provider arrangements or
 11753 exclusive provider arrangements to the same extent as allowed in
 11754 group products that are not issued to small employers.

11755 b. A procedure for utilization review by the small
 11756 employer carrier or its designees.

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 11759 This subparagraph does not prohibit a small employer carrier



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11760 from including in its policy or contract additional managed care
 11761 and cost containment provisions, subject to the approval of the
 11762 office ~~department~~, which have potential for controlling costs in
 11763 a manner that does not result in inequitable treatment of
 11764 insureds or subscribers. The carrier may use such provisions to
 11765 the same extent as authorized for group products that are not
 11766 issued to small employers.

11767 4. The standard health benefit plan shall include:

11768 a. Coverage for inpatient hospitalization;

11769 b. Coverage for outpatient services;

11770 c. Coverage for newborn children pursuant to s. 627.6575;

11771 d. Coverage for child care supervision services pursuant
 11772 to s. 627.6579;

11773 e. Coverage for adopted children upon placement in the
 11774 residence pursuant to s. 627.6578;

11775 f. Coverage for mammograms pursuant to s. 627.6613;

11776 g. Coverage for handicapped children pursuant to s.
 11777 627.6615;

11778 h. Emergency or urgent care out of the geographic service
 11779 area; and

11780 i. Coverage for services provided by a hospice licensed
 11781 under s. 400.602 in cases where such coverage would be the most
 11782 appropriate and the most cost-effective method for treating a
 11783 covered illness.

11784 5. The standard health benefit plan and the basic health
 11785 benefit plan may include a schedule of benefit limitations for
 11786 specified services and procedures. If the committee develops
 11787 such a schedule of benefits limitation for the standard health
 11788 benefit plan or the basic health benefit plan, a small employer
 11789 carrier offering the plan must offer the employer an option for



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11790 increasing the benefit schedule amounts by 4 percent annually.

11791 6. The basic health benefit plan shall include all of the
11792 benefits specified in subparagraph 4.; however, the basic health
11793 benefit plan shall place additional restrictions on the benefits
11794 and utilization and may also impose additional cost containment
11795 measures.

11796 7. Sections 627.419(2), (3), and (4), 627.6574, 627.6612,
11797 627.66121, 627.66122, 627.6616, 627.6618, 627.668, and 627.66911
11798 apply to the standard health benefit plan and to the basic
11799 health benefit plan. However, notwithstanding said provisions,
11800 the plans may specify limits on the number of authorized
11801 treatments, if such limits are reasonable and do not
11802 discriminate against any type of provider.

11803 8. Each small employer carrier that provides for inpatient
11804 and outpatient services by allopathic hospitals may provide as
11805 an option of the insured similar inpatient and outpatient
11806 services by hospitals accredited by the American Osteopathic
11807 Association when such services are available and the osteopathic
11808 hospital agrees to provide the service.

11809 (c) If a small employer rejects, in writing, the standard
11810 health benefit plan and the basic health benefit plan, the small
11811 employer carrier may offer the small employer a limited benefit
11812 policy or contract.

11813 (d)1. Upon offering coverage under a standard health
11814 benefit plan, a basic health benefit plan, or a limited benefit
11815 policy or contract for any small employer, the small employer
11816 carrier shall provide such employer group with a written
11817 statement that contains, at a minimum:

11818 a. An explanation of those mandated benefits and providers
11819 that are not covered by the policy or contract;



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11820 b. An explanation of the managed care and cost control
 11821 features of the policy or contract, along with all appropriate
 11822 mailing addresses and telephone numbers to be used by insureds
 11823 in seeking information or authorization; and

11824 c. An explanation of the primary and preventive care
 11825 features of the policy or contract.

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11828 Such disclosure statement must be presented in a clear and
 11829 understandable form and format and must be separate from the
 11830 policy or certificate or evidence of coverage provided to the
 11831 employer group.

11832 2. Before a small employer carrier issues a standard
 11833 health benefit plan, a basic health benefit plan, or a limited
 11834 benefit policy or contract, it must obtain from the prospective
 11835 policyholder a signed written statement in which the prospective
 11836 policyholder:

11837 a. Certifies as to eligibility for coverage under the
 11838 standard health benefit plan, basic health benefit plan, or
 11839 limited benefit policy or contract;

11840 b. Acknowledges the limited nature of the coverage and an
 11841 understanding of the managed care and cost control features of
 11842 the policy or contract;

11843 c. Acknowledges that if misrepresentations are made
 11844 regarding eligibility for coverage under a standard health
 11845 benefit plan, a basic health benefit plan, or a limited benefit
 11846 policy or contract, the person making such misrepresentations
 11847 forfeits coverage provided by the policy or contract; and

11848 d. If a limited plan is requested, acknowledges that the
 11849 prospective policyholder had been offered, at the time of



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11850 application for the insurance policy or contract, the
 11851 opportunity to purchase any health benefit plan offered by the
 11852 carrier and that the prospective policyholder had rejected that
 11853 coverage.

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 11856 A copy of such written statement shall be provided to the
 11857 prospective policyholder no later than at the time of delivery
 11858 of the policy or contract, and the original of such written
 11859 statement shall be retained in the files of the small employer
 11860 carrier for the period of time that the policy or contract
 11861 remains in effect or for 5 years, whichever period is longer.

11862 3. Any material statement made by an applicant for
 11863 coverage under a health benefit plan which falsely certifies as
 11864 to the applicant's eligibility for coverage serves as the basis
 11865 for terminating coverage under the policy or contract.

11866 4. Each marketing communication that is intended to be
 11867 used in the marketing of a health benefit plan in this state
 11868 must be submitted for review by the office ~~department~~ prior to
 11869 use and must contain the disclosures stated in this subsection.

11870 (e) A small employer carrier may not use any policy,
 11871 contract, form, or rate under this section, including
 11872 applications, enrollment forms, policies, contracts,
 11873 certificates, evidences of coverage, riders, amendments,
 11874 endorsements, and disclosure forms, until the insurer has filed
 11875 it with the office ~~department~~ and the office ~~department~~ has
 11876 approved it under ss. 627.410 and 627.411 and this section.

11877 (13) STANDARDS TO ASSURE FAIR MARKETING.--

11878 (i) The commission ~~department~~ may establish regulations
 11879 setting forth additional standards to provide for the fair



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11880 marketing and broad availability of health benefit plans to
 11881 small employers in this state.

11882 (15) APPLICABILITY OF OTHER STATE LAWS.--

11883 (a) Except as expressly provided in this section, a law
 11884 requiring coverage for a specific health care service or
 11885 benefit, or a law requiring reimbursement, utilization, or
 11886 consideration of a specific category of licensed health care
 11887 practitioner, does not apply to a standard or basic health
 11888 benefit plan policy or contract or a limited benefit policy or
 11889 contract offered or delivered to a small employer unless that
 11890 law is made expressly applicable to such policies or contracts.
 11891 A law restricting or limiting deductibles, coinsurance,
 11892 copayments, or annual or lifetime maximum payments does not
 11893 apply to any health plan policy, including a standard or basic
 11894 health benefit plan policy or contract, offered or delivered to
 11895 a small employer unless such law is made expressly applicable to
 11896 such policy or contract. However, every small employer carrier
 11897 must offer to eligible small employers the standard benefit plan
 11898 and the basic benefit plan, as required by subsection (5), as
 11899 such plans have been approved by the office ~~department~~ pursuant
 11900 to subsection (12).

11901 (16) RULEMAKING AUTHORITY.--The commission ~~department~~ may
 11902 adopt rules to administer this section, including rules
 11903 governing compliance by small employer carriers and small
 11904 employers.

11905 Section 207. Section 627.7015, Florida Statutes, is
 11906 amended to read:

11907 627.7015 Alternative procedure for resolution of disputed
 11908 property insurance claims.--

11909 (1) PURPOSE AND SCOPE.--This section sets forth a



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11910 nonadversarial alternative dispute resolution procedure for a
11911 mediated claim resolution conference prompted by the need for
11912 effective, fair, and timely handling of property insurance
11913 claims. There is a particular need for an informal,
11914 nonthreatening forum for helping parties who elect this
11915 procedure to resolve their claims disputes because most
11916 homeowner's insurance policies obligate insureds to participate
11917 in a potentially expensive and time-consuming adversarial
11918 appraisal process prior to litigation. The procedure set forth
11919 in this section is designed to bring the parties together for a
11920 mediated claims settlement conference without any of the
11921 trappings or drawbacks of an adversarial process. Before
11922 resorting to these procedures, insureds and insurers are
11923 encouraged to resolve claims as quickly and fairly as possible.
11924 This section is available with respect to claims under personal
11925 lines policies for all claimants and insurers prior to
11926 commencing the appraisal process, or commencing litigation. If
11927 requested by the insured, participation by legal counsel shall
11928 be permitted. Mediation under this section is also available to
11929 litigants referred to the department by a county court or
11930 circuit court. This section does not apply to commercial
11931 coverages, to private passenger motor vehicle insurance
11932 coverages, or to disputes relating to liability coverages in
11933 policies of property insurance.

11934 (2) At the time a first-party claim within the scope of
11935 this section is filed, the insurer shall notify all first-party
11936 claimants of their right to participate in the mediation program
11937 under this section. The department shall prepare a consumer
11938 information pamphlet for distribution to persons participating
11939 in mediation under this section.



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11940 (3) The costs of mediation shall be reasonable, and the
11941 insurer shall bear all of the cost of conducting mediation
11942 conferences, except as otherwise provided in this section. If an
11943 insured fails to appear at the conference, the conference shall
11944 be rescheduled upon the insured's payment of the costs of a
11945 rescheduled conference. If the insurer fails to appear at the
11946 conference, the insurer shall pay the insured's actual cash
11947 expenses incurred in attending the conference if the insurer's
11948 failure to attend was not due to a good cause acceptable to the
11949 department. An insurer will be deemed to have failed to appear
11950 if the insurer's representative lacks authority to settle the
11951 full value of the claim. The insurer shall incur an additional
11952 fee for a rescheduled conference necessitated by the insurer's
11953 failure to appear at a scheduled conference. The fees assessed
11954 by the administrator shall include a charge necessary to defray
11955 the expenses of the department related to its duties under this
11956 section and shall be deposited in the Insurance ~~Commissioner's~~
11957 Regulatory Trust Fund.

11958 (4) The department shall adopt by rule a property
11959 insurance mediation program to be administered by the department
11960 or its designee. The department may also adopt special rules
11961 which are applicable in cases of an emergency within the state.
11962 The rules shall be modeled after practices and procedures set
11963 forth in mediation rules of procedure adopted by the Supreme
11964 Court. The rules shall provide for:

11965 (a) Reasonable requirement for processing and scheduling
11966 of requests for mediation.

11967 (b) Qualifications of mediators as provided in s. 627.745
11968 and in the Florida Rules of Certified and Court Appointed
11969 Mediators, and for such other individuals as are qualified by



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11970 education, training, or experience as the department determines
 11971 to be appropriate.

11972 (c) Provisions governing who may attend mediation
 11973 conferences.

11974 (d) Selection of mediators.

11975 (e) Criteria for the conduct of mediation conferences.

11976 (f) Right to legal counsel.

11977 (5) All statements made and documents produced at a
 11978 mediation conference shall be deemed to be settlement
 11979 negotiations in anticipation of litigation within the scope of
 11980 s. 90.408. All parties to the mediation must negotiate in good
 11981 faith and must have the authority to immediately settle the
 11982 claim. Mediators are deemed to be agents of the department and
 11983 shall have the immunity from suit provided in s. 44.107.

11984 (6) Mediation is nonbinding; however, if a written
 11985 settlement is reached, the insured has 3 business days within
 11986 which the insured may rescind the settlement unless the insured
 11987 has cashed or deposited any check or draft disbursed to the
 11988 insured for the disputed matters as a result of the conference.
 11989 If a settlement agreement is reached and is not rescinded, it
 11990 shall be binding and act as a release of all specific claims
 11991 that were presented in that mediation conference.

11992 (7) If the insurer requests the mediation, and the
 11993 mediation results are rejected by either party, the insured
 11994 shall not be required to submit to or participate in any
 11995 contractual loss appraisal process of the property loss damage
 11996 as a precondition to legal action for breach of contract against
 11997 the insurer for its failure to pay the policyholder's claims
 11998 covered by the policy.

11999 (8) The department may designate an entity or person to



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12000 serve as administrator to carry out any of the provisions of
 12001 this section and may take this action by means of a written
 12002 contract or agreement.

12003 Section 208. Section 627.745, Florida Statutes, is amended
 12004 to read:

12005 627.745 Mediation of claims.--

12006 (1)(a) In any claim filed with an insurer for personal
 12007 injury in an amount of \$10,000 or less or any claim for property
 12008 damage in any amount, arising out of the ownership, operation,
 12009 use, or maintenance of a motor vehicle, either party may demand
 12010 mediation of the claim prior to the institution of litigation.

12011 (b) A request for mediation shall be filed with the office
 12012 ~~department~~ on a form approved by the office ~~department~~. The
 12013 request for mediation shall state the reason for the request for
 12014 mediation and the issues in dispute which are to be mediated.
 12015 The filing of a request for mediation tolls the applicable time
 12016 requirements for filing suit for a period of 60 days following
 12017 the conclusion of the mediation process or the time prescribed
 12018 in s. 95.11, whichever is later.

12019 (c) The insurance policy must specify in detail the terms
 12020 and conditions for mediation of a first-party claim.

12021 (d) The mediation shall be conducted as an informal
 12022 process in which formal rules of evidence and procedure need not
 12023 be observed. Any party participating in a mediation must have
 12024 the authority to make a binding decision. All parties must
 12025 mediate in good faith.

12026 (e) The office ~~department~~ shall randomly select mediators.
 12027 Each party may once reject the mediator selected, either
 12028 originally or after the opposing side has exercised its option
 12029 to reject a mediator.



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12030 (f) Costs of mediation shall be borne equally by both
 12031 parties unless the mediator determines that one party has not
 12032 mediated in good faith.

12033 (g) Only one mediation may be requested for each claim,
 12034 unless all parties agree to further mediation.

12035 (2) Upon receipt of a request for mediation, the office
 12036 ~~department~~ shall refer the request to a mediator. The mediator
 12037 shall notify the applicant and all interested parties, as
 12038 identified by the applicant, and any other parties the mediator
 12039 believes may have an interest in the mediation, of the date,
 12040 time, and place of the mediation conference. The conference may
 12041 be held by telephone, if feasible. The mediation conference
 12042 shall be held within 45 days after the request for mediation.

12043 (3)(a) The office ~~department~~ shall approve mediators to
 12044 conduct mediations pursuant to this section. All mediators must
 12045 file an application under oath for approval as a mediator.

12046 (b) To qualify for approval as a mediator, a person must
 12047 meet the following qualifications:

12048 1. Possess a masters or doctorate degree in psychology,
 12049 counseling, business, accounting, or economics, be a member of
 12050 The Florida Bar, be licensed as a certified public accountant,
 12051 or demonstrate that the applicant for approval has been actively
 12052 engaged as a qualified mediator for at least 4 years prior to
 12053 July 1, 1990.

12054 2. Within 4 years immediately preceding the date the
 12055 application for approval is filed with the office ~~department~~,
 12056 have completed a minimum of a 40-hour training program approved
 12057 by the office ~~department~~ and successfully passed a final
 12058 examination included in the training program and approved by the
 12059 office ~~department~~. The training program shall include and



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12060 address all of the following:

- 12061 a. Mediation theory.
- 12062 b. Mediation process and techniques.
- 12063 c. Standards of conduct for mediators.
- 12064 d. Conflict management and intervention skills.
- 12065 e. Insurance nomenclature.

12066 (4) The commission ~~department~~ must adopt rules of
 12067 procedure for claims mediation, taking into consideration a
 12068 system which:

- 12069 (a) Is fair.
- 12070 (b) Promotes settlement.
- 12071 (c) Avoids delay.
- 12072 (d) Is nonadversarial.
- 12073 (e) Uses a framework for modern mediating technique.
- 12074 (f) Controls costs and expenses of mediation.

12075 (5) Disclosures and information divulged in the mediation
 12076 process are not admissible in any subsequent action or
 12077 proceeding relating to the claim or to the cause of action
 12078 giving rise to the claim. A person demanding mediation under
 12079 this section may not demand or request mediation after a suit is
 12080 filed relating to the same facts already mediated.

12081 Section 209. Section 628.4615, Florida Statutes, is
 12082 amended to read:

12083 628.4615 Specialty insurers; acquisition of controlling
 12084 stock, ownership interest, assets, or control; merger or
 12085 consolidation.--

12086 (1) For the purposes of this section, the term "specialty
 12087 insurer" means any person holding a license or certificate of
 12088 authority as:

- 12089 (a) A motor vehicle service agreement company authorized



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12090 to issue motor vehicle service agreements as those terms are
 12091 defined in s. 634.011~~(7)(8)~~ and~~(8)(9)~~;

12092 (b) A home warranty association authorized to issue "home
 12093 warranties" as those terms are defined in s. 634.301~~(3)(4)~~ and
 12094 ~~(4)(5)~~;

12095 (c) A service warranty association authorized to issue
 12096 "service warranties" as those terms are defined in s.
 12097 634.401~~(13)(14)~~ and ~~(14)(15)~~;

12098 (d) A prepaid limited health service organization
 12099 authorized to issue prepaid limited health service contracts, as
 12100 those terms are defined in chapter 636 ~~An optometric service~~
 12101 ~~plan corporation authorized to issue optometric service plan~~
 12102 ~~contracts as those terms are defined in s. 637.001(2) and (3);~~

12103 ~~(e) A pharmaceutical service plan corporation authorized~~
 12104 ~~to issue pharmaceutical service plan contracts as those terms~~
 12105 ~~are defined in s. 637.1701(2) and (3);~~

12106 ~~(f) A dental service plan corporation licensed to issue~~
 12107 ~~contracts for dental services pursuant to a dental service plan~~
 12108 ~~as that term is defined in s. 637.401(1);~~

12109 ~~(g) An ambulance service association authorized to issue~~
 12110 ~~ambulance service contracts as those terms are defined in s.~~
 12111 ~~638.021(1) and (2);~~

12112 ~~(e)(h)~~ An authorized health maintenance organization
 12113 operating pursuant to s. 641.21;

12114 ~~(f)(i)~~ An authorized prepaid health clinic operating
 12115 pursuant to s. 641.405;

12116 ~~(g)(j)~~ A legal expense insurance corporation authorized to
 12117 engage in a legal expense insurance business pursuant to s.
 12118 642.021;

12119 ~~(h)(k)~~ A provider which is licensed to operate a facility



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12120 which undertakes to provide continuing care as those terms are
 12121 defined in s. 651.011(2), (4), (5), and (6), ~~and (7)~~;

12122 (i)~~(l)~~ A multiple-employer welfare arrangement operating
 12123 pursuant to ss. 624.436-624.446;

12124 (j)~~(m)~~ A premium finance company authorized to finance
 12125 insurance premiums pursuant to s. 627.828; or

12126 (k)~~(n)~~ A corporation authorized to accept donor annuity
 12127 agreements pursuant to s. 627.481.

12128 (2) No person shall, individually or in conjunction with
 12129 any affiliated person of such person, directly or indirectly,
 12130 conclude a tender offer or exchange offer for, enter into any
 12131 agreement to exchange securities for, or otherwise finally
 12132 acquire, 10 percent or more of the outstanding voting securities
 12133 of a specialty insurer which is a stock corporation or of a
 12134 controlling company of a specialty insurer which is a stock
 12135 corporation; or conclude an acquisition of, or otherwise finally
 12136 acquire, 10 percent or more of the ownership interest of a
 12137 specialty insurer which is not a stock corporation or of a
 12138 controlling company of a specialty insurer which is not a stock
 12139 corporation, unless:

12140 (a) The person or affiliated person has filed with the
 12141 office ~~department~~ and sent by registered mail to the principal
 12142 office of the specialty insurer and controlling company an
 12143 application, signed under oath and prepared on forms prescribed
 12144 by the commission ~~department~~, that contains the information
 12145 specified in subsection(4) no later than 5 days after any form
 12146 of tender offer or exchange offer is proposed, or no later than
 12147 5 days after the acquisition of the securities or ownership
 12148 interest if no tender offer or exchange offer is involved.

12149 (b) The office ~~department~~ has approved the tender offer or



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12150 exchange offer, or acquisition if no tender offer or exchange
 12151 offer is involved.

12152 (3) This section does not apply to any acquisition of
 12153 voting securities or ownership interest of a specialty insurer
 12154 or of a controlling company by any person who, on July 9, 1986,
 12155 is the owner of a majority of such voting securities or
 12156 ownership interest or who, on or after July 9, 1986, becomes the
 12157 owner of a majority of such voting securities or ownership
 12158 interest with the approval of the office ~~department~~ pursuant to
 12159 this section.

12160 (4) The application to be filed with the office ~~department~~
 12161 and furnished to the specialty insurer and controlling company
 12162 shall contain the following information and any additional
 12163 information as the office deems ~~department may deem~~ necessary to
 12164 determine the character, experience, ability, and other
 12165 qualifications of the person or affiliated person of such person
 12166 for the protection of the insureds of the insurer and of the
 12167 public:

12168 (a)1. The identity of, and the background information
 12169 specified in subsection (5) on, each natural person by whom, or
 12170 on whose behalf, the acquisition is to be made; and,

12171 2. If the acquisition is to be made by, or on behalf of, a
 12172 person other than a natural person and as to any person who
 12173 controls, either directly or indirectly, such other person, the
 12174 identity of, and the background information specified in
 12175 subsection (5) on:

12176 a. Each director, officer, or trustee, if a corporation,
 12177 or

12178 b. Each partner, owner, manager, or joint venturer, or
 12179 other person performing duties similar to those of persons in



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12180 the aforementioned positions, if not a corporation,

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12183 for the person.

12184 (b) The source and amount of the funds or other
12185 consideration used, or to be used, in making the acquisition.

12186 (c) Any plans or proposals which such persons may have
12187 made to liquidate the specialty insurer, to sell any of its
12188 assets or merge or consolidate it with any person, or to make
12189 any other major change in its business or corporate structure or
12190 management; and any plans or proposals which such persons may
12191 have made to liquidate any controlling company of the specialty
12192 insurer, to sell any of its assets or merge or consolidate it
12193 with any person, or to make any other major change in its
12194 business or corporate structure or management.

12195 (d) The nature and the extent of the controlling interest
12196 which the person or affiliated person of such person proposes to
12197 acquire, the terms of the proposed acquisition, and the manner
12198 in which the controlling interest is to be acquired of a
12199 specialty insurer or controlling company which is not a stock
12200 corporation.

12201 (e) The number of shares or other securities which the
12202 person or affiliated person of such person proposes to acquire,
12203 the terms of the proposed acquisition, and the manner in which
12204 the securities are to be acquired.

12205 (f) Information as to any contract, arrangement, or
12206 understanding with any party with respect to any of the
12207 securities of the specialty insurer or controlling company,
12208 including, but not limited to, information relating to the
12209 transfer of any of the securities, option arrangements, puts or



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12210 calls, or the giving or withholding of proxies, which
 12211 information names the party with whom the contract, arrangement,
 12212 or understanding has been entered into and gives the details
 12213 thereof.

12214 (5)(a) The information as to the background and identity
 12215 of each natural person, which information is required to be
 12216 furnished pursuant to paragraph(4)(a), shall include:

12217 1. The natural person's occupations, positions of
 12218 employment, and offices held during the past 10 years.

12219 2. The principal business and address of any business,
 12220 corporation, or organization in which each such office of the
 12221 natural person was held, or in which each such occupation or
 12222 position of employment was carried on.

12223 3. Whether the natural person was, at any time during such
 12224 10-year period, convicted of any crime other than a traffic
 12225 violation.

12226 4. Whether the natural person has been, during such 10-
 12227 year period, the subject of any proceeding for the revocation of
 12228 any license and, if so, the nature of the proceeding and the
 12229 disposition of the proceeding.

12230 5. Whether, during the 10-year period, the natural person
 12231 has been the subject of any proceeding under the federal
 12232 Bankruptcy Act; or whether, during the 10-year period, any
 12233 person or other business or organization in which the natural
 12234 person was a director, officer, trustee, partner, owner,
 12235 manager, or other official has been subject to any such
 12236 proceeding, either during the time in which the natural person
 12237 was a director, officer, or trustee, if a corporation, or a
 12238 partner, owner, manager, joint venturer, or other official, if
 12239 not a corporation, or within 12 months thereafter.



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12240 6. Whether, during the 10-year period, the natural person
 12241 has been enjoined, either temporarily or permanently, by a court
 12242 of competent jurisdiction from violating any federal or state
 12243 law regulating the business of insurance, securities, or
 12244 banking, or from carrying out any particular practice or
 12245 practices in the course of the business of insurance,
 12246 securities, or banking, together with details as to any such
 12247 event.

12248 7. Fingerprints of each person referred to in subsection
 12249 (4).

12250 (b) Any person filing the statement required by this
 12251 section shall give all required information that is within the
 12252 knowledge of:

12253 1. The directors, officers, or trustees, if a corporation,
 12254 or

12255 2. The partners, owners, managers, or joint venturers, or
 12256 others performing functions similar to those of a director,
 12257 officer, or trustee, if not a corporation,

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 12259
 12260 of the person making the filing and of any person controlling
 12261 either directly or indirectly such person. If any material
 12262 change occurs in the facts set forth in the application filed
 12263 with the office ~~department~~ pursuant to this section, an
 12264 amendment setting forth such changes shall be filed immediately
 12265 with the office ~~department~~, and a copy of the amendment shall be
 12266 sent by registered mail to the principal office of the specialty
 12267 insurer and to the principal office of the controlling company.

12268 (6)(a) The acquisition application shall be reviewed in
 12269 accordance with chapter 120. The office ~~department~~ may on its



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12270 own initiate, or, if requested to do so in writing by a
 12271 substantially affected person, shall conduct, a proceeding to
 12272 consider the appropriateness of the proposed filing. Time
 12273 periods for purposes of chapter 120 shall be tolled during the
 12274 pendency of the proceeding. Any written request for a proceeding
 12275 must be filed with the office ~~department~~ within 10 days of the
 12276 date notice of the filing is given. During the pendency of the
 12277 proceeding or review period by the office ~~department~~, any person
 12278 or affiliated person complying with the filing requirements of
 12279 this section may proceed and take all steps necessary to
 12280 conclude the acquisition so long as the acquisition becoming
 12281 final is conditioned upon obtaining office ~~departmental~~
 12282 approval. The office ~~department~~ shall, however, at any time it
 12283 finds an immediate danger to the public health, safety, and
 12284 welfare of the insureds exists, immediately order, pursuant to
 12285 s. 120.569(2)(n), the proposed acquisition disapproved and any
 12286 further steps to conclude the acquisition ceased.

12287 (b) During the pendency of the office's ~~department's~~
 12288 review of any acquisition subject to the provisions of this
 12289 section, the acquiring person shall not make any material change
 12290 in the operation of the specialty insurer or controlling company
 12291 unless the office ~~department~~ has specifically approved the
 12292 change nor shall the acquiring person make any material change
 12293 in the management of the specialty insurer unless advance
 12294 written notice of the change in management is furnished to the
 12295 office ~~department~~. A material change in the operation of the
 12296 specialty insurer is a transaction which disposes of or
 12297 obligates 5 percent or more of the capital and surplus of the
 12298 specialty insurer. A material change in the management of the
 12299 specialty insurer is any change in management involving officers



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12300 or directors of the specialty insurer or any person of the
 12301 specialty insurer or controlling company having authority to
 12302 dispose of or obligate 5 percent or more of the specialty
 12303 insurer's capital or surplus. The office ~~department~~ shall
 12304 approve a material change in operations if it finds the
 12305 applicable provisions of subsection (8) have been met. The
 12306 office ~~department~~ may disapprove a material change in management
 12307 if it finds that the applicable provisions of subsection (8)
 12308 have not been met and in such case the specialty insurer shall
 12309 promptly change management as acceptable to the office
 12310 ~~department~~.

12311 (c) If a request for a proceeding is filed, the proceeding
 12312 shall be conducted within 60 days after the date the written
 12313 request for a proceeding is received by the office ~~department~~. A
 12314 recommended order shall be issued within 20 days of the date of
 12315 the close of the proceedings. A final order shall be issued
 12316 within 20 days of the date of the recommended order or, if
 12317 exceptions to the recommended order are filed, within 20 days of
 12318 the date the exceptions are filed.

12319 (7) The office ~~department~~ may disapprove any acquisition
 12320 subject to the provisions of this section by any person or any
 12321 affiliated person of such person who:

12322 (a) Willfully violates this section;

12323 (b) In violation of an order of the office ~~department~~
 12324 issued pursuant to subsection (11), fails to divest himself or
 12325 herself of any stock or ownership interest obtained in violation
 12326 of this section or fails to divest himself or herself of any
 12327 direct or indirect control of such stock or ownership interest,
 12328 within 25 days after such order; or

12329 (c) In violation of an order issued by the office



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12330 ~~department~~ pursuant to subsection (11), acquires an additional
 12331 stock or ownership interest in a specialty insurer or
 12332 controlling company or direct or indirect control of such stock
 12333 or ownership interest, without complying with this section.

12334 (8) The person or persons filing the application required
 12335 by subsection(2) shall have the burden of proof. The office
 12336 ~~department~~ shall approve any such acquisition if it finds, on
 12337 the basis of the record made during any proceeding or on the
 12338 basis of the filed application if no proceeding is conducted,
 12339 that:

12340 (a) Upon completion of the acquisition, the specialty
 12341 insurer will be able to satisfy the requirements for the
 12342 issuance of a license or certificate to write the line of
 12343 insurance for which it is presently licensed or certificated.

12344 (b) The financial condition of the acquiring person or
 12345 persons will not jeopardize the financial stability of the
 12346 specialty insurer or prejudice the interests of its insureds or
 12347 the public.

12348 (c) Any plan or proposal which the acquiring person has,
 12349 or acquiring persons have, made:

12350 1. To liquidate the specialty insurer, sell its assets, or
 12351 merge or consolidate it with any person, or to make any other
 12352 major change in its business or corporate structure or
 12353 management, or

12354 2. To liquidate any controlling company, sell its assets,
 12355 or merge or consolidate it with any person, or to make any major
 12356 change in its business or corporate structure or management
 12357 which would have an effect upon the specialty insurer,
 12358
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12360 is fair and free of prejudice to the insureds of the specialty
12361 insurer or to the public.

12362 (d) The competence, experience, and integrity of those
12363 persons who will control directly or indirectly the operation of
12364 the specialty insurer indicate that the acquisition is in the
12365 best interest of the insureds of the insurer and in the public
12366 interest.

12367 (e) The natural persons for whom background information is
12368 required to be furnished pursuant to this section have such
12369 backgrounds as to indicate that it is in the best interests of
12370 the insureds of the specialty insurer and in the public interest
12371 to permit such persons to exercise control over the specialty
12372 insurer.

12373 (f) The directors and officers, if such specialty insurer
12374 or controlling company is a stock corporation, or the trustees,
12375 partners, owners, managers, or joint venturers or other persons
12376 performing duties similar to those of persons in the
12377 aforementioned positions, if such specialty insurer or
12378 controlling company is not a stock corporation, to be employed
12379 after the acquisition have sufficient insurance experience and
12380 ability to assure reasonable promise of successful operation.

12381 (g) The management of the specialty insurer after the
12382 acquisition will be competent and trustworthy, and will possess
12383 sufficient managerial experience so as to make the proposed
12384 operation of the specialty insurer not hazardous to the
12385 insurance-buying public.

12386 (h) The management of the specialty insurer after the
12387 acquisition shall not include any person who has directly or
12388 indirectly through ownership, control, reinsurance transactions,
12389 or other insurance or business relations unlawfully manipulated



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12390 the assets, accounts, finances, or books of any insurer or
 12391 otherwise acted in bad faith with respect thereto.

12392 (i) The acquisition is not likely to be hazardous or
 12393 prejudicial to the insureds of the insurer or to the public.

12394 (j) The effect of the acquisition would not substantially
 12395 lessen competition in the line of insurance for which the
 12396 specialty insurer is licensed or certified in this state or
 12397 would not tend to create a monopoly therein.

12398 (9) No vote by the stockholder of record, or by any other
 12399 person, of any security acquired in contravention of the
 12400 provisions of this section is valid. Any acquisition contrary
 12401 to the provisions of this section is void. Upon the petition of
 12402 the specialty insurer or the controlling company, the circuit
 12403 court for the county in which the principal office of the
 12404 specialty insurer is located may, without limiting the
 12405 generality of its authority, order the issuance or entry of an
 12406 injunction or other order to enforce the provisions of this
 12407 section. There shall be a private right of action in favor of
 12408 the specialty insurer or controlling company to enforce the
 12409 provisions of this section. No demand upon the office
 12410 ~~department~~ that it perform its functions shall be required as a
 12411 prerequisite to any suit by the specialty insurer or controlling
 12412 company against any other person, and in no case shall the
 12413 office ~~department~~ be deemed a necessary party to any action by
 12414 the specialty insurer or controlling company to enforce the
 12415 provisions of this section. Any person who makes or proposes an
 12416 acquisition requiring the filing of an application pursuant to
 12417 this section, or who files such an application, shall be deemed
 12418 to have thereby designated the Chief Financial Officer Insurance
 12419 ~~Commissioner and Treasurer~~, or his or her assistant or deputy or



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12420 another person in charge of his or her office, as such person's
12421 agent for service of process under this section and shall
12422 thereby be deemed to have submitted himself or herself to the
12423 administrative jurisdiction of the office ~~department~~ and to the
12424 jurisdiction of the circuit court.

12425 (10) Any approval by the office ~~department~~ under this
12426 section does not constitute a recommendation by the office
12427 ~~department~~ of the tender offer or exchange offer, or
12428 acquisition, if no tender offer or exchange offer is involved.
12429 It is unlawful for a person to represent that the office's
12430 ~~department's~~ approval constitutes a recommendation. A person who
12431 violates the provisions of this subsection commits a felony of
12432 the third degree, punishable as provided in s. 775.082, s.
12433 775.083, or s. 775.084. The statute-of-limitations period for
12434 the prosecution of an offense committed under this subsection is
12435 5 years.

12436 (11) If the office ~~department~~ determines that any person
12437 or any affiliated person of such person has acquired 10 percent
12438 or more of the outstanding voting securities of a specialty
12439 insurer or controlling company which is a stock corporation, or
12440 10 percent or more of the ownership interest of a specialty
12441 insurer or controlling company which is not a stock corporation,
12442 without complying with the provisions of this section, the
12443 office ~~department~~ may order that the person and any affiliated
12444 person of such person cease acquisition of the specialty insurer
12445 or controlling company and, if appropriate, divest itself of any
12446 stock or ownership interest acquired in violation of this
12447 section.

12448 (12)(a) The office ~~department~~ shall, if necessary to
12449 protect the public interest, suspend or revoke the certificate



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12450 of authority of any specialty insurer or controlling company
 12451 acquired in violation of this section.

12452 (b) If any specialty insurer is subject to suspension or
 12453 revocation pursuant to paragraph (a), the specialty insurer
 12454 shall be deemed to be in such condition, or to be using or to
 12455 have been subject to such methods or practices in the conduct of
 12456 its business, as to render its further transaction of insurance
 12457 presently or prospectively hazardous to its insureds, creditors,
 12458 or stockholders or to the public.

12459 (13)(a) For the purpose of this section, the term
 12460 "acquisition" includes:

12461 1. A tender offer or exchange offer for securities,
 12462 assets, or other ownership interest;

12463 2. An agreement to exchange securities for other
 12464 securities, assets, or other ownership interest;

12465 3. A merger of a person or affiliated person into a
 12466 specialty insurer or a merger of any person with a specialty
 12467 insurer;

12468 4. A consolidation; or

12469 5. Any other form of change of control

12470
 12471
 12472 whereby any person or affiliated person acquires or attempts to
 12473 acquire, directly or indirectly, 10 percent or more of the
 12474 ownership interest or assets of a specialty insurer or of a
 12475 controlling company. However, in the case of a health
 12476 maintenance organization organized as a for-profit corporation,
 12477 the provisions of s. 628.451 shall govern with respect to any
 12478 merger or consolidation, and, in the case of a health
 12479 maintenance organization organized as a not-for-profit



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12480 corporation, the provisions of s. 628.471 shall govern with
 12481 respect to any merger or consolidation.

12482 (b) For the purpose of this section, the term "affiliated
 12483 person" of another person includes:

12484 1. The spouse of such other natural person;

12485 2. The parents of such other natural person and their
 12486 lineal descendants and the parents of such other natural
 12487 person's spouse and their lineal descendants;

12488 3. Any person who directly or indirectly owns or controls,
 12489 or holds with power to vote, 10 percent or more of the
 12490 outstanding voting securities of such other person;

12491 4. Any person who directly or indirectly owns 10 percent
 12492 or more of the outstanding voting securities which are directly
 12493 or indirectly owned or controlled, or held with power to vote,
 12494 by such other person;

12495 5. Any person or group of persons who directly or
 12496 indirectly control, are controlled by, or are under common
 12497 control with such other person;

12498 6. Any director, officer, trustee, partner, owner,
 12499 manager, joint venturer, or employee, or other person performing
 12500 duties similar to those of persons in the aforementioned
 12501 positions, of such other person;

12502 7. If such other person is an investment company, any
 12503 investment adviser of such company or any member of an advisory
 12504 board of such company;

12505 8. If such other person is an unincorporated investment
 12506 company not having a board of directors, the depositor of such
 12507 company; or

12508 9. Any person who has entered into an agreement, written
 12509 or unwritten, to act in concert with such other person in



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12510 acquiring, or limiting the disposition of, securities of a
 12511 specialty insurer or controlling company which is a stock
 12512 corporation or in acquiring, or limiting the disposition of, an
 12513 ownership interest of a specialty insurer or controlling company
 12514 which is not a stock corporation.

12515 (c) For the purposes of this section, the term
 12516 "controlling company" means any corporation, trust, or
 12517 association owning, directly or indirectly, 25 percent or more
 12518 of the voting securities of one or more specialty insurance
 12519 companies which are stock corporations, or 25 percent or more of
 12520 the ownership interest of one or more specialty insurance
 12521 companies which are not stock corporations.

12522 (d) For the purpose of this section, the term "natural
 12523 person" means an individual.

12524 (e) For the purpose of this section, the term "person"
 12525 includes a natural person, corporation, association, trust,
 12526 general partnership, limited partnership, joint venture, firm,
 12527 proprietorship, or any other entity which may hold a license or
 12528 certificate as a specialty insurer.

12529 (14) The commission ~~may department is authorized to~~ adopt,
 12530 amend, or repeal rules that are necessary to implement the
 12531 provisions of this section, pursuant to chapter 120.

12532 Section 210. Section 628.917, Florida Statutes, is amended
 12533 to read:

12534 628.917 Insolvency and liquidation.--In the event that a
 12535 captive insurer is insolvent as defined in chapter 631, the
 12536 office ~~department~~ shall liquidate the captive insurer pursuant
 12537 to the provisions of part I of chapter 631; except that the
 12538 office ~~department~~ shall make no attempt to rehabilitate such
 12539 insurer.



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12540 Section 211. Subsection (3) of section 631.021, Florida
 12541 Statutes, is amended to

12542 631.021 Jurisdiction of delinquency proceeding; venue;
 12543 change of venue; exclusiveness of remedy; appeal.--

12544 (3) A delinquency proceeding pursuant to this chapter
 12545 constitutes the sole and exclusive method of liquidating,
 12546 rehabilitating, reorganizing, or conserving an insurer. No court
 12547 shall entertain a petition for the commencement of such a
 12548 proceeding unless the petition has been filed in the name of the
 12549 state on the relation of the office ~~department~~. The Florida
 12550 Insurance Guaranty Association, Incorporated, the Florida
 12551 Workers' Compensation Insurance Guaranty Association,
 12552 Incorporated, and the Florida Life and Health Guaranty
 12553 Association, Incorporated, shall be given reasonable written
 12554 notice by the office ~~department~~ of all hearings which pertain to
 12555 an adjudication of insolvency of a member insurer.

12556 Section 212. Section 631.025, Florida Statutes, is amended
 12557 to read:

12558 631.025 Persons subject to this part.--Delinquency
 12559 proceedings authorized by this part may be initiated against any
 12560 insurer, as defined in s. 631.011(15), if the statutory grounds
 12561 are present as to that insurer, and the court may exercise
 12562 jurisdiction over any person required to cooperate with the
 12563 department and office pursuant to s. 631.391 and over all
 12564 persons made subject to the court's jurisdiction by other
 12565 provisions of law. Such persons include, but are not limited to:

12566 (1) A person transacting, or that has transacted,
 12567 insurance business in or from this state and against whom claims
 12568 arising from that business may exist now or in the future.

12569 (2) A person purporting to transact an insurance business



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12570 in this state and any person who acts as an insurer, transacts
 12571 insurance, or otherwise engages in insurance activities in or
 12572 from this state, with or without a certificate of authority or
 12573 proper authority from the office ~~department~~, against whom claims
 12574 arising from that business may exist now or in the future.

12575 (3) An insurer with policyholders resident in this state.

12576 (4) All other persons organized or in the process of
 12577 organizing with the intent to transact an insurance business in
 12578 this state.

12579 Section 213. Section 631.031, Florida Statutes, is amended
 12580 to read:

12581 631.031 Commencement of delinquency proceeding.--The
 12582 office ~~department~~ may commence any such proceeding by
 12583 application to the court for an order directing the insurer to
 12584 show cause why the office ~~department~~ should not have the relief
 12585 prayed for. On the return of such order to show cause, and after
 12586 a full hearing, the court shall either deny the application or
 12587 grant the application, together with such other relief as the
 12588 nature of the case and the interests of the policyholders,
 12589 creditors, stockholders, members, subscribers, or public may
 12590 require. The office ~~department~~ may also commence any such
 12591 proceeding by application to the court by petition for the entry
 12592 of a consent order of conservation, rehabilitation, or
 12593 liquidation.

12594 Section 214. Subsections (2), (3), (4), and (5) of section
 12595 631.041, Florida Statutes, are amended to read:

12596 631.041 Automatic stay; relief from stay; injunctions.--

12597 (2) Upon written request of a person or entity subject to
 12598 the stay against obtaining or enforcing a judgment against an
 12599 insurer or affiliate provided in paragraph (1)(b) the court,



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12600 with notice to the office and department and upon hearing, may
12601 grant relief from the stay provided the movant, who has the
12602 burden of proof, establishes by clear and convincing evidence
12603 that the judgment is not voidable or void by a receiver and that
12604 property from which the judgment would be satisfied does not
12605 constitute premium funds or another asset which belongs to the
12606 insurer.

12607 (3) Upon application by the office or department pursuant
12608 to this part for an order to show cause or upon petition, or at
12609 any time thereafter, the court may without notice issue an
12610 injunction restraining the insurer and its officers, directors,
12611 stockholders, members, subscribers, and agents and all other
12612 persons from the transaction of its business or the waste or
12613 disposition of its property until the further order of the
12614 court.

12615 (4) The court may without notice at any time during a
12616 proceeding under this chapter issue such other injunctions or
12617 orders as may be deemed necessary to prevent interference with
12618 the office or department or the proceeding; waste of the assets
12619 of the insurer; the commencement or prosecution of any actions;
12620 the obtaining of preferences, judgments, attachments, or other
12621 liens; or the making of any levy against the insurer or against
12622 its assets or any part thereof.

12623 (5) Notwithstanding any other provision of law, no bond
12624 shall be required of the office or department as a prerequisite
12625 for the issuance of any injunction or restraining order pursuant
12626 to this section.

12627 Section 215. Subsections (1) and (4) of section 631.042,
12628 Florida Statutes, are amended to read:

12629 631.042 Extension of time.--



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12630 (1) With respect to any action by or against an insurer,
 12631 no statute of limitations or defense of laches shall run between
 12632 the date the office ~~department~~ files a petition for a
 12633 delinquency proceeding against an insurer and the date the court
 12634 enters an order granting or denying that petition. If the
 12635 petition is denied, any action against the insurer that might
 12636 have been commenced when the petition was filed may be commenced
 12637 no later than 60 days after the order denying such relief or the
 12638 remaining unexpired time under the applicable statute of
 12639 limitations or defense of laches that was available on the day
 12640 the petition was filed, whichever is longer.

12641 (4) For actions not covered by subsection (2), if any
 12642 unexpired time period is fixed by any agreement or in any
 12643 proceeding for doing any act for the benefit of the estate, the
 12644 receiver shall have 180 days, or for good cause shown more than
 12645 180 days as allowed by the court, from the date the court enters
 12646 the order granting the office's ~~department's~~ petition for a
 12647 delinquency proceeding.

12648 Section 216. Section 631.051, Florida Statutes, is amended
 12649 to read:

12650 631.051 Grounds for rehabilitation; domestic
 12651 insurers.--The office ~~department~~ may petition for an order
 12652 directing it to rehabilitate a domestic insurer or an alien
 12653 insurer domiciled in this state on any one or more of the
 12654 following grounds, that the insurer:

12655 (1) Is impaired or insolvent;
 12656 (2) Has failed to comply with an order of the office
 12657 ~~department~~ to make good an impairment of capital or surplus or
 12658 both;

12659 (3) Is found by the office ~~department~~ to be in such



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12660 condition or is using or has been subject to such methods or
 12661 practices in the conduct of its business, as to render its
 12662 further transaction of insurance presently or prospectively
 12663 hazardous to its policyholders, creditors, stockholders, or the
 12664 public;

12665 (4) Has failed, or its parent corporation, subsidiary, or
 12666 affiliated person controlled by either the insurer or the parent
 12667 corporation has failed, to submit its books, documents,
 12668 accounts, records, and affairs pertaining to the insurer to the
 12669 reasonable inspection or examination of the office ~~department~~ or
 12670 its authorized representative; or any individual exercising any
 12671 executive authority in the affairs of the insurer, or parent
 12672 corporation, or subsidiary, or affiliated person has refused to
 12673 be examined under oath by the office ~~department~~ or its
 12674 authorized representative, whether within this state or
 12675 otherwise, concerning the pertinent affairs of the insurer, or
 12676 parent corporation or subsidiary or affiliated person; or if
 12677 examined under oath refuses to divulge pertinent information
 12678 reasonably known to her or him; or officers, directors, agents,
 12679 employees, or other representatives of the insurer or parent
 12680 corporation, subsidiary, or affiliated person have failed to
 12681 comply promptly with the reasonable requests of the office
 12682 ~~department~~ or its authorized representative for the purposes of,
 12683 and during the conduct of, any such examination;

12684 (5) Has concealed or removed records or assets or
 12685 otherwise violated s. 628.271 or s. 628.281;

12686 (6) Through its board of directors or governing body is
 12687 deadlocked in the management of the insurer's affairs and that
 12688 the members of a mutual, reciprocal, or any other type of
 12689 organization or stockholders are unable to break the deadlock



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12690 and that irreparable injury to the insurer, its creditors, its
 12691 policyholders, its members or subscribers, or the public is
 12692 threatened by reason thereof;

12693 (7) Has transferred or attempted to transfer substantially
 12694 its entire property or business, or has entered into any
 12695 transaction the effect of which is to merge substantially its
 12696 entire property or business into that of any other insurer or
 12697 entity without having first obtained the written approval of the
 12698 office ~~department~~ under the provisions of s. 628.451, s.
 12699 628.461, or s. 628.4615, as the case may be;

12700 (8) Has willfully violated its charter or certificate of
 12701 incorporation or any law of this state;

12702 (9) Is in such a position that control of it, whether by
 12703 stock ownership or otherwise, and whether direct or indirect, is
 12704 in one or more persons found by the office ~~department~~ after
 12705 notice and hearing to be dishonest or untrustworthy; or that the
 12706 insurer has failed, upon order of the office ~~department~~ and
 12707 expiration of such reasonable time for such removal as the
 12708 office ~~department~~ shall specify in the order, to remove any
 12709 person who in fact has executive authority, directly or
 12710 indirectly, in the insurer, whether as an officer, director,
 12711 manager, agent, employee, or otherwise, and if such person has
 12712 been found by the office ~~department~~ after notice and hearing, to
 12713 be incompetent, dishonest, untrustworthy, or so lacking in
 12714 insurance company managerial experience as to be hazardous to
 12715 the insurance-buying public;

12716 (10) Has been or is the subject of an application for the
 12717 appointment of a receiver, trustee, custodian, or sequestrator
 12718 of the insurer or its property otherwise than pursuant to the
 12719 provisions of this code, but only if such an appointment has



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12720 been made or is imminent;

12721 (11) Has consented to such an order through a majority of
12722 its directors, stockholders, members, or subscribers;

12723 (12) Has failed to pay a final judgment rendered against
12724 it in this state upon any insurance contract issued or assumed
12725 by it, within 60 days after the judgment became final, within 60
12726 days after the time for taking an appeal has expired, or within
12727 30 days after dismissal of an appeal before final determination,
12728 whichever date is the later;

12729 (13) Has been the victim of embezzlement, wrongful
12730 sequestration, conversion, diversion, or encumbering of its
12731 assets; forgery or fraud affecting it; or other illegal conduct
12732 in, by, or with respect to it, which if established would
12733 threaten its solvency; or that the office ~~department~~ has
12734 reasonable cause to so believe any of the foregoing has occurred
12735 or may occur;

12736 (14) Is engaging in a systematic practice of reaching
12737 settlements with and obtaining releases from policyholders or
12738 third-party claimants and then unreasonably delaying payment of,
12739 or failing to pay, the agreed-upon settlements; or

12740 (15) Within the previous 12 months has systematically
12741 attempted to compromise with creditors on the ground that it is
12742 financially unable to pay its claims in full.

12743 Section 217. Section 631.0515, Florida Statutes, is
12744 amended to read:

12745 631.0515 Appointment of receiver; insurance holding
12746 company.--A delinquency proceeding pursuant to this chapter
12747 constitutes the sole and exclusive method of dissolving,
12748 liquidating, rehabilitating, reorganizing, conserving, or
12749 appointing a receiver of a Florida corporation which is not



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12750 insolvent as defined by s. 607.01401(16); which through its
 12751 shareholders, board of directors, or governing body is
 12752 deadlocked in the management of its affairs; and which directly
 12753 or indirectly owns all of the stock of a Florida domestic
 12754 insurer. The office ~~department~~ may petition for an order
 12755 directing the department ~~it~~ to rehabilitate such corporation if
 12756 the interests of policyholders or the public will be harmed as a
 12757 result of the deadlock. The department shall use due diligence
 12758 to resolve the deadlock. Whether or not the office ~~department~~
 12759 petitions for an order, the circuit court shall not have
 12760 jurisdiction pursuant to s. 607.271, s. 607.274, or s. 607.277
 12761 to dissolve, liquidate, or appoint receivers with respect to, a
 12762 Florida corporation which directly or indirectly owns all of the
 12763 stock of a Florida domestic insurer and which is not insolvent
 12764 as defined by s. 607.01401(16).

12765 Section 218. Section 631.061, Florida Statutes, is amended
 12766 to read:

12767 631.061 Grounds for liquidation.--The office ~~department~~
 12768 may apply to the court for an order appointing the department ~~it~~
 12769 as receiver (if its appointment as receiver is not then in
 12770 effect) and directing the department ~~it~~ to liquidate the
 12771 business of a domestic insurer or of the United States branch of
 12772 an alien insurer having trusteed assets in this state,
 12773 regardless of whether or not there has been a prior order
 12774 directing it to rehabilitate such insurer, upon any of the
 12775 grounds specified in s. 631.051, or if such insurer:

12776 (1) Is or is about to become insolvent.

12777 (2) Is an insolvent insurer and has commenced or is
 12778 attempting to commence voluntary liquidation or dissolution
 12779 except under this code.



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12780 (3) Has not completed its organization and obtained a
 12781 certificate of authority as an insurer within the time allowed
 12782 therefor under any applicable law.

12783 Section 219. Section 631.071, Florida Statutes, is amended
 12784 to read:

12785 631.071 Grounds for conservation; foreign insurers.--The
 12786 office department may apply to the court for an order appointing
 12787 the department ~~it~~ as receiver or ancillary receiver, and
 12788 directing it to conserve the assets within this state, of a
 12789 foreign insurer upon any of the following grounds:

12790 (1) Upon any of the grounds specified in s. 631.051 or s.
 12791 631.061, or

12792 (2) Upon the ground that its property has been
 12793 sequestered in its domiciliary sovereignty or in any other
 12794 sovereignty.

12795 Section 220. Section 631.081, Florida Statutes, is amended
 12796 to read:

12797 631.081 Grounds for conservation; alien insurers.--The
 12798 office department may apply to the court for an order appointing
 12799 the department ~~it~~ as receiver or ancillary receiver, and
 12800 directing it to conserve the assets within this state, of any
 12801 alien insurer upon any of the following grounds:

12802 (1) Upon any of the grounds specified in s. 631.051 or s.
 12803 631.061;

12804 (2) Upon the ground that the insurer has failed to comply,
 12805 within the time designated by the office department, with an
 12806 order made by it to make good an impairment of its trusteed
 12807 funds; or

12808 (3) Upon the ground that the property of the insurer has
 12809 been sequestered in its domiciliary sovereignty or elsewhere.



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12810 Section 221. Section 631.091, Florida Statutes, is amended
 12811 to read:

12812 631.091 Grounds for ancillary liquidation; foreign
 12813 insurers.--The office ~~department~~ may apply to the circuit court
 12814 for an order appointing the department ~~it~~ as ancillary receiver
 12815 of, and directing it to liquidate the business and assets of, a
 12816 foreign insurer which has assets, business, or claims in this
 12817 state upon the appointment in the domiciliary state of such
 12818 insurer of a receiver, liquidator, conservator, rehabilitator,
 12819 or other officer by whatever name called for the purpose of
 12820 liquidating the business of such insurer.

12821 Section 222. Subsection (3) of section 631.111, Florida
 12822 Statutes, is amended to read:

12823 631.111 Order of liquidation; domestic insurers.--
 12824 (3) The department or office may apply for and secure an
 12825 order dissolving the corporate existence of a domestic insurer
 12826 upon the ~~its~~ application for an order of liquidation of such
 12827 insurer or at any time after such order has been granted.

12828 Section 223. Subsection (1) of section 631.152, Florida
 12829 Statutes, is amended to read:

12830 631.152 Conduct of delinquency proceeding; foreign
 12831 insurers.--
 12832 (1) Whenever under this chapter an ancillary receiver is
 12833 to be appointed in a delinquency proceeding for an insurer not
 12834 domiciled in this state, the court shall appoint the department
 12835 as ancillary receiver. The office ~~department~~ shall file a
 12836 petition requesting the appointment on the grounds set forth in
 12837 s. 631.091:

12838 (a) If it finds that there are sufficient assets of the
 12839 insurer located in this state to justify the appointment of an



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12840 ancillary receiver, or

12841 (b) If 10 or more persons resident in this state having
 12842 claims against such insurer file a petition with the office
 12843 ~~department~~ requesting the appointment of such ancillary
 12844 receiver.

12845 Section 224. Paragraph (d) of subsection (6) of section
 12846 631.154, Florida Statutes, is amended to read:

12847 631.154 Funds, assets, or other property in the possession
 12848 of third person.--

12849 (6) Should the receiver be successful in establishing its
 12850 claim or any part thereof, the receiver shall be entitled to
 12851 recover judgment for the following:

12852 (d) All costs, investigative and other expenses,
 12853 including, but not limited to, those for department and office
 12854 staff, incurred in the recovery of the property, assets, or
 12855 funds, and reasonable attorney's fees. Department and office
 12856 staff costs and expenses include staff salaries.

12857
 12858
 12859 It is the intent of this section that a person found to be
 12860 holding receivership assets fully reimburse the receiver for any
 12861 and all efforts made to recover those assets.

12862 Section 225. Section 631.221, Florida Statutes, is amended
 12863 to read:

12864 631.221 Deposit of moneys collected.--The moneys collected
 12865 by the department in a proceeding under this chapter shall be
 12866 deposited in a qualified public depository as defined in s.
 12867 280.02, which depository with regards to such funds shall
 12868 conform to and be bound by all the provisions of chapter 280, or
 12869 invested with the Chief Financial Officer ~~State Treasurer~~



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12870 pursuant to chapter 18. For the purpose of accounting for the
12871 assets and transactions of the estate, the receiver shall use
12872 such accounting books, records, and systems as the court directs
12873 after it hears and considers the recommendations of the
12874 receiver.

12875 Section 226 Section 631.231, Florida Statutes, is amended
12876 to read:

12877 631.231 Exemption from fees.--The department or office
12878 shall not be required to pay any fee to any public officer in
12879 this state for filing, recording, issuing a transcript or
12880 certificate, or authenticating any paper or instrument
12881 pertaining to the exercise by the department or office of any of
12882 the powers or duties conferred upon it under this chapter,
12883 whether or not such paper or instrument be executed by the
12884 department or office or their ~~its~~ employees or attorneys of
12885 record and whether or not it is connected with the commencement
12886 of any action or proceeding by or against the department or
12887 office, or with the subsequent conduct of such action or
12888 proceeding.

12889 Section 227 Section 631.361, Florida Statutes, is amended
12890 to read:

12891 631.361 Seizure under court order.--

12892 (1) Upon filing by the office ~~department~~ in the circuit
12893 court in and for Leon County of its verified petition alleging
12894 any ground for a formal delinquency proceeding against an
12895 insurer under this chapter, alleging that the interests of the
12896 insurer's policyholders, claimants, or creditors or the public
12897 will be endangered or jeopardized by delay, and setting forth
12898 the order deemed necessary by the office ~~department~~, the court
12899 may, ex parte and without notice or hearing, issue forthwith the



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12900 requested order. The requested order may:

12901 (a) Direct the department to take possession and control
 12902 of all or part of the property, books, documents, accounts, and
 12903 other records of the insurer and the premises occupied by it for
 12904 transaction of its business and premium funds and other property
 12905 of the insurer held by an affiliate; and

12906 (b) Until further order of court, enjoin the insurer and
 12907 any affiliate and their officers, directors, managers, agents,
 12908 and employees from removal, concealment, or other disposition of
 12909 the insurer's property, books, records, or accounts and from
 12910 transaction of the insurer's business except with the
 12911 department's written consent.

12912 (2) The court's order shall be for such duration specified
 12913 in the order as the court deems necessary to enable the office
 12914 and department to ascertain the insurer's condition. Upon motion
 12915 of any party or affected person, or upon its own motion, the
 12916 court may hold such hearings as it deems desirable, after such
 12917 notice as it deems appropriate, and may extend, shorten, or
 12918 modify the terms of the order. The court shall vacate the
 12919 seizure order if the office ~~department~~ fails to commence a
 12920 formal proceeding under this chapter after having had a
 12921 reasonable opportunity to do so, and a seizure order is
 12922 automatically vacated by issuance of the court's order pursuant
 12923 to a formal delinquency proceeding under this chapter.

12924 (3) Entry of a seizure order under this section shall not
 12925 constitute an anticipatory breach of any contract of the
 12926 insurer.

12927 Section 228 Section 631.371, Florida Statutes, is amended
 12928 to read:

12929 631.371 Seizure under order of the office ~~department~~.--



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12930 (1) Upon the office's ~~department~~ filing a verified
12931 petition with any circuit judge of the proper judicial circuit
12932 as required by s. 631.021(2), which states that it believes that
12933 the interest of policyholders, the insurer, claimants,
12934 creditors, or the public will be endangered or jeopardized and
12935 that prima facie grounds exist for rehabilitation, liquidation,
12936 or conservation of an insurer under s. 631.051, s. 631.061, or
12937 s. 631.131, the office ~~department~~ may request a seizure order
12938 and shall be entitled to an ex parte hearing forthwith and an
12939 appropriate seizure order from the judge or court in the
12940 interest of protecting the public and such insurer and its
12941 policyholders, claimants, or creditors. After a diligent effort
12942 is made to be heard by the judges of the circuit and such judges
12943 or the court fails or refuses to hear such petition for any
12944 reason, the office ~~department~~ shall then file a duplicate
12945 original of said petition and exhibits, if any, in the Circuit
12946 Court of Leon County along with an affidavit which shall state
12947 that a diligent effort was made to obtain such initial hearing
12948 in the judicial circuit where such hearing was sought and that
12949 the request to be heard was refused or that a hearing was not
12950 granted and the reasons therefor, if known. Upon compliance with
12951 the above and if said affidavit further states that the office
12952 ~~department~~ believes that irreparable harm will result to the
12953 public and the insurer and its policyholders, creditors, or
12954 claimants as a result of further delay, it may thereafter issue
12955 a seizure order on any ground that would justify court seizure
12956 under s. 631.361. Such seizure order may contain any or all the
12957 provisions of s. 631.361(1). The office ~~department~~ shall retain
12958 possession and control until the order is vacated or is replaced
12959 by an order of court pursuant to subsection (2) or subsection



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12960 (3) or pursuant to a formal delinquency proceeding under this
 12961 chapter.

12962 (2) The office ~~department~~ may, at any time after seizure
 12963 under its order, report its actions to the proper court; and, in
 12964 the event that the insurer, for any reason, fails to avail
 12965 itself of the judicial review provided for by law, then the
 12966 office ~~department~~ shall forthwith report its actions to the
 12967 proper court. The office ~~department~~ may request the court to
 12968 substitute its order for the office's ~~department's~~ or it may
 12969 seek any other order which it deems appropriate.

12970 (3) Every law enforcement officer of this state authorized
 12971 by law shall assist the office ~~department~~ in making and
 12972 enforcing any such seizure, and every such officer shall furnish
 12973 it with such deputies, patrolmen, patrolwomen, or officers as
 12974 are necessary to assist it in execution of its order.

12975 (4) Entry of a seizure order under this section shall not
 12976 constitute an anticipatory breach of any contract of the
 12977 insurer.

12978 Section 229 Section 631.391, Florida Statutes, is amended
 12979 to read:

12980 631.391 Cooperation of officers and employees.--

12981 (1) Any officer, director, manager, trustee, agent,
 12982 adjuster, employee, or independent contractor of any insurer or
 12983 affiliate and any other person who possesses any executive
 12984 authority over, or who exercises any control over, any segment
 12985 of the affairs of the insurer or affiliate shall fully cooperate
 12986 with the department and office in any proceeding under this
 12987 chapter or any investigation preliminary or incidental to the
 12988 proceeding. An order of rehabilitation or liquidation which
 12989 results in the discharge or suspension of any of the persons



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12990 listed above does not operate to release such person from the
12991 duty to cooperate with the department and office as set out
12992 herein. To "cooperate" includes, but is not limited to, the
12993 following:

12994 (a) To reply promptly in writing to any inquiry from the
12995 department or office requesting such a reply;

12996 (b) Promptly to make available and deliver to the
12997 department or office any books, accounts, documents, other
12998 records, information, data processing software, or property of
12999 or pertaining to the insurer and in her or his possession,
13000 custody, or control; or

13001 (c) Promptly to provide access to all data processing
13002 records in hard copy and in electronic form and to data
13003 processing facilities and services.

13004 (2) No person shall obstruct or interfere with the
13005 department or office in the conduct of any delinquency
13006 proceeding or any investigation preliminary or incidental
13007 thereto.

13008 (3) This section does not prohibit any person from seeking
13009 legal relief from a court when aggrieved by the petition for
13010 liquidation or other delinquency proceeding or by other orders.

13011 (4) Any person referred to in subsection (1) who fails to
13012 cooperate with the department or office, or any other person who
13013 obstructs or interferes with the department or office, in the
13014 conduct of any delinquency proceeding or any investigation
13015 preliminary or incidental thereto, is guilty of a misdemeanor of
13016 the first degree, punishable as provided in s. 775.082 or by
13017 fine of not more than \$10,000.

13018 (5) Refusal by any person referred to in subsection (1) to
13019 provide records upon the request of the department or office is



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13020 grounds for revocation of any insurance-related license,
 13021 including, but not limited to, agent and third-party
 13022 administrator licenses.

13023 Section 230. Section 631.392, Florida Statutes, is amended
 13024 to read:

13025 631.392 Immunity.--There shall be no liability on the part
 13026 of, and no cause of action of any nature shall arise against,
 13027 the Chief Financial Officer, ~~Insurance Commissioner~~ or the
 13028 department, the office, or any of their ~~its~~ employees or agents
 13029 for any action taken by them in the performance of their powers
 13030 and duties under this chapter.

13031 Section 231. Section 631.398, Florida Statutes, is amended
 13032 to read:

13033 631.398 Prevention of insolvencies.--To aid in the
 13034 detection and prevention of insurer insolvencies or impairments:

13035 (1) Any member insurer; agent, employee, or member of the
 13036 board of directors; or representative of any insurance guaranty
 13037 association may make reports and recommendations to the
 13038 department or office upon any matter germane to the solvency,
 13039 liquidation, rehabilitation, or conservation of any member
 13040 insurer or germane to the solvency of any company seeking to do
 13041 an insurance business in this state. Such reports and
 13042 recommendations are confidential and exempt from the provisions
 13043 of s. 119.07(1) until the termination of a delinquency
 13044 proceeding.

13045 (2) The office ~~department~~ shall:

13046 (a) Report to the board of directors of the appropriate
 13047 insurance guaranty association when it has reasonable cause to
 13048 believe from any examination, whether completed or in process,
 13049 of any member insurer that such insurer may be an impaired or



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13050 insolvent insurer.

13051 (b) Seek the advice and recommendations of the board of
 13052 directors of the appropriate insurance guaranty association
 13053 concerning any matter affecting the duties and responsibilities
 13054 of the office ~~department~~ in relation to the financial condition
 13055 of member companies and companies seeking admission to transact
 13056 insurance business in this state.

13057 (3) The office and department jointly shall, no later than
 13058 the conclusion of any domestic insurer insolvency proceeding,
 13059 prepare a summary report containing such information as is in
 13060 their ~~its~~ possession relating to the history and causes of such
 13061 insolvency, including a statement of the business practices of
 13062 such insurer which led to such insolvency.

13063 Section 232. Section 631.54, Florida Statutes, is amended
 13064 to read:

13065 631.54 Definitions.--As used in this part:

13066 (1) "Account" means any one of the three accounts created
 13067 by s. 631.55.

13068 (2) "Association" means the Florida Insurance Guaranty
 13069 Association, Incorporated.

13070 (3) "Covered claim" means an unpaid claim, including one
 13071 of unearned premiums, which arises out of, and is within the
 13072 coverage, and not in excess of, the applicable limits of an
 13073 insurance policy to which this part applies, issued by an
 13074 insurer, if such insurer becomes an insolvent insurer after
 13075 October 1, 1970, and the claimant or insured is a resident of
 13076 this state at the time of the insured event or the property from
 13077 which the claim arises is permanently located in this state.

13078 "Covered claim" shall not include any amount due any reinsurer,
 13079 insurer, insurance pool, or underwriting association, as



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13080 subrogation, contribution, indemnification, or otherwise. Member
 13081 insurers shall have no right of subrogation against the insured
 13082 of any insolvent member.

13083 ~~—— (4) "Department" means the Department of Insurance.~~

13084 (4)~~(5)~~ "Expenses in handling claims" means allocated and
 13085 unallocated expenses, including, but not limited to, general
 13086 administrative expenses and those expenses which relate to the
 13087 investigation, adjustment, defense, or settlement of specific
 13088 claims under, or arising out of, a specific policy.

13089 (5)~~(6)~~ "Insolvent insurer" means a member insurer
 13090 authorized to transact insurance in this state, either at the
 13091 time the policy was issued or when the insured event occurred,
 13092 and against which an order of liquidation with a finding of
 13093 insolvency has been entered by a court of competent jurisdiction
 13094 if such order has become final by the exhaustion of appellate
 13095 review.

13096 (6)~~(7)~~ "Member insurer" means any person who writes any
 13097 kind of insurance to which this part applies under s. 631.52,
 13098 including the exchange of reciprocal or interinsurance
 13099 contracts, and is licensed to transact insurance in this state.

13100 (7)~~(8)~~ "Net direct written premiums" means direct gross
 13101 premiums written in this state on insurance policies to which
 13102 this part applies, less return premiums thereon and dividends
 13103 paid or credited to policyholders on such direct business. "Net
 13104 direct written premiums" does not include premiums on contracts
 13105 between insurers or reinsurers.

13106 (8)~~(9)~~ "Person" means individuals, children, firms,
 13107 associations, joint ventures, partnerships, estates, trusts,
 13108 business trusts, syndicates, fiduciaries, corporations, and all
 13109 other groups or combinations.



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13110 Section 233. Subsection (1) of section 631.55, Florida
 13111 Statutes, is amended to read:

13112 631.55 Creation of the association.--

13113 (1) There is created a nonprofit corporation to be known
 13114 as the "Florida Insurance Guaranty Association, Incorporated."
 13115 All insurers defined as member insurers in s. 631.54~~(6)~~(7) shall
 13116 be members of the association as a condition of their authority
 13117 to transact insurance in this state, and, further, as a
 13118 condition of such authority, an insurer shall agree to reimburse
 13119 the association for all claim payments the association makes on
 13120 said insurer's behalf if such insurer is subsequently
 13121 rehabilitated. The association shall perform its functions under
 13122 a plan of operation established and approved under s. 631.58 and
 13123 shall exercise its powers through a board of directors
 13124 established under s. 631.56. The corporation shall have all
 13125 those powers granted or permitted nonprofit corporations, as
 13126 provided in chapter 617.

13127 Section 234. Subsection (1) of section 631.56, Florida
 13128 Statutes, is amended to read:

13129 631.56 Board of directors.--

13130 (1) The board of directors of the association shall
 13131 consist of not less than five or more than nine persons serving
 13132 terms as established in the plan of operation. The department
 13133 shall approve and appoint to the board persons recommended by
 13134 the member insurers. In the event the department finds that any
 13135 recommended person does not meet the qualifications for service
 13136 on the board, the department shall request the member insurers
 13137 to recommend another person. Each member shall serve for a 4-
 13138 year term and may be reappointed. Vacancies on the board shall
 13139 be filled for the remaining period of the term in the same



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13140 manner as initial appointments. ~~If no members are selected by~~
 13141 ~~November 30, 1970, the department may appoint the initial~~
 13142 ~~members of the board of directors.~~

13143 Section 235. Paragraph (a) of subsection (1) and
 13144 subsection (3) of section 631.57, Florida Statutes, are amended
 13145 to read:

13146 631.57 Powers and duties of the association.--

13147 (1) The association shall:

13148 (a)1. Be obligated to the extent of the covered claims
 13149 existing:

13150 a. Prior to adjudication of insolvency and arising within
 13151 30 days after the determination of insolvency;

13152 b. Before the policy expiration date if less than 30 days
 13153 after the determination; or

13154 c. Before the insured replaces the policy or causes its
 13155 cancellation, if she or he does so within 30 days of the
 13156 determination.

13157 2. The obligation under subparagraph 1. shall include only
 13158 that amount of each covered claim which is in excess of \$100 and
 13159 is less than \$300,000, except with respect to policies covering
 13160 condominium associations or homeowners' associations, which
 13161 associations have a responsibility to provide insurance coverage
 13162 on residential units within the association, the obligation
 13163 shall include that amount of each covered property insurance
 13164 claim which is less than \$100,000 multiplied by the number of
 13165 condominium units or other residential units; however, as to
 13166 homeowners' associations, this subparagraph applies only to
 13167 claims for damage or loss to residential units and structures
 13168 attached to residential units.



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13169 3. In no event shall the association be obligated to a
 13170 policyholder or claimant in an amount in excess of the
 13171 obligation of the insolvent insurer under the policy from which
 13172 the claim arises.

13173
 13174 ~~The foregoing notwithstanding, the association shall have no~~
 13175 ~~obligation to pay covered claims to be paid from the proceeds of~~
 13176 ~~bonds issued under s. 166.111(2). However, the association shall~~
 13177 ~~cause assessments to be made under paragraph (3)(e) for such~~
 13178 ~~covered claims, and such assessments shall be assigned and~~
 13179 ~~pledged under paragraph (3)(e) to or on behalf of the issuer of~~
 13180 ~~such bonds for the benefit of the holders of such bonds. The~~
 13181 ~~association shall administer any such covered claims and present~~
 13182 ~~valid covered claims for payment in accordance with the~~
 13183 ~~provisions of the assistance program in connection with which~~
 13184 ~~such bonds have been issued.~~

13185 (3)(a) To the extent necessary to secure the funds for the
 13186 respective accounts for the payment of covered claims and also
 13187 to pay the reasonable costs to administer the same, the office
 13188 ~~department~~, upon certification of the board of directors, shall
 13189 levy assessments in the proportion that each insurer's net
 13190 direct written premiums in this state in the classes protected
 13191 by the account bears to the total of said net direct written
 13192 premiums received in this state by all such insurers for the
 13193 preceding calendar year for the kinds of insurance included
 13194 within such account. Assessments shall be remitted to and
 13195 administered by the board of directors in the manner specified
 13196 by the approved plan. Each insurer so assessed shall have at
 13197 least 30 days' written notice as to the date the assessment is
 13198 due and payable. Every assessment shall be made as a uniform



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13199 percentage applicable to the net direct written premiums of each
 13200 insurer in the kinds of insurance included within the account in
 13201 which the assessment is made. The assessments levied against
 13202 any insurer shall not exceed in any one year more than 2 percent
 13203 of that insurer's net direct written premiums in this state for
 13204 the kinds of insurance included within such account during the
 13205 calendar year next preceding the date of such assessments.

13206 (b) If sufficient funds from such assessments, together
 13207 with funds previously raised, are not available in any one year
 13208 in the respective account to make all the payments or
 13209 reimbursements then owing to insurers, the funds available shall
 13210 be prorated and the unpaid portion shall be paid as soon
 13211 thereafter as funds become available.

13212 (c) Assessments shall be included as an appropriate factor
 13213 in the making of rates.

13214 (d) No state funds of any kind shall be allocated or paid
 13215 to said association or any of its accounts.

13216 ~~(e)1.a. In addition to assessments otherwise authorized in~~
 13217 ~~paragraph (a), as a temporary measure related to insolvencies~~
 13218 ~~caused by Hurricane Andrew, and to the extent necessary to~~
 13219 ~~secure the funds for the account specified in s. 631.55(2)(c),~~
 13220 ~~or to retire indebtedness, including, without limitation, the~~
 13221 ~~principal, redemption premium, if any, and interest on, and~~
 13222 ~~related costs of issuance of, bonds issued under s. 166.111(2),~~
 13223 ~~and the funding of any reserves and other payments required~~
 13224 ~~under the bond resolution or trust indenture pursuant to which~~
 13225 ~~such bonds have been issued, the department, upon certification~~
 13226 ~~of the board of directors, shall levy assessments upon insurers~~
 13227 ~~holding a certificate of authority as follows:~~

13228 ~~(I) Except as provided in sub-sub-paragraph (II), the~~



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13229 ~~assessments payable under this paragraph by any insurer shall~~
13230 ~~not exceed in any 1 year more than 2 percent of that insurer's~~
13231 ~~direct written premiums, net of refunds, in this state during~~
13232 ~~the preceding calendar year for the kinds of insurance within~~
13233 ~~the account specified in s. 631.55(2)(c).~~

13234 ~~(II) If the amount levied under sub-sub-subparagraph (I)~~
13235 ~~is less than 2 percent of the insurer's direct written premiums,~~
13236 ~~net of refunds, in this state during calendar year 1991 for the~~
13237 ~~kinds of insurance within the account specified in s.~~
13238 ~~631.55(2)(c), in addition to and separate from such assessment,~~
13239 ~~the assessment shall also include the difference between the~~
13240 ~~amount calculated based on calendar year 1991 and the amount~~
13241 ~~determined under sub-sub-subparagraph (I). If this sub-sub-~~
13242 ~~subparagraph is held invalid, the invalidity shall not affect~~
13243 ~~other provisions of this section, and to this end the provisions~~
13244 ~~of this section are declared severable.~~

13245 ~~(III) In addition to any other insurers subject to this~~
13246 ~~subparagraph, this subparagraph also applies to any insurer that~~
13247 ~~held a certificate of authority on August 24, 1992. If this~~
13248 ~~sub-sub-subparagraph is held invalid, the invalidity shall not~~
13249 ~~affect other provisions of this section, and to this end the~~
13250 ~~provisions of this section are declared severable.~~

13251 ~~b. Any assessments authorized under this paragraph shall~~
13252 ~~be levied by the department upon insurers referred to in sub-~~
13253 ~~subparagraph a., upon certification as to the need therefor by~~
13254 ~~the board of directors, in 1992 and in each year that bonds~~
13255 ~~issued under s. 166.111(2) are outstanding, in such amounts up~~
13256 ~~to such 2 percent limit as required in order to provide for the~~
13257 ~~full and timely payment of the principal of, redemption premium,~~
13258 ~~if any, and interest on, and related costs of, issuance of bonds~~



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13259 ~~issued under s. 166.111(2). The assessments provided for in~~
13260 ~~this paragraph are hereby assigned and pledged to a municipality~~
13261 ~~issuing bonds under s. 166.111(2)(b), for the benefit of the~~
13262 ~~holders of such bonds, in order to enable such municipality to~~
13263 ~~provide for the payment of the principal of, redemption premium,~~
13264 ~~if any, and interest on such bonds, the cost of issuance of such~~
13265 ~~bonds, and the funding of any reserves and other payments~~
13266 ~~required under the bond resolution or trust indenture pursuant~~
13267 ~~to which such bonds have been issued, without the necessity of~~
13268 ~~any further action by the association, the department, or any~~
13269 ~~other party. To the extent that bonds are issued under s.~~
13270 ~~166.111(2), the proceeds of assessments levied under this~~
13271 ~~paragraph shall be remitted directly to and administered by the~~
13272 ~~trustee appointed for such bonds.~~

13273 ~~e. Assessments under this paragraph shall be payable in 12~~
13274 ~~monthly installments with the first installment being due and~~
13275 ~~payable at the end of the month after an assessment is levied,~~
13276 ~~and subsequent installments being due not later than the end of~~
13277 ~~each succeeding month.~~

13278 ~~d. The association shall issue a monthly report on the~~
13279 ~~status of the use of the bond proceeds as related to~~
13280 ~~insolvencies caused by Hurricane Andrew. The report must contain~~
13281 ~~the number of claims paid and the amount of claims paid. The~~
13282 ~~association shall also include an analysis of the revenue~~
13283 ~~generated from the additional assessment levied under this~~
13284 ~~subsection. The report must be sent to the Legislature and the~~
13285 ~~Insurance Commissioner monthly.~~

13286 ~~2. In order to assure that insurers paying assessments~~
13287 ~~levied under this paragraph continue to charge rates that are~~
13288 ~~neither inadequate nor excessive, within 90 days after being~~



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13289 ~~notified of such assessments, each insurer that is to be~~
 13290 ~~assessed pursuant to this paragraph shall make a rate filing for~~
 13291 ~~coverage included within the account specified in s.~~
 13292 ~~631.55(2)(c) and for which rates are required to be filed under~~
 13293 ~~s. 627.062. If the filing reflects a rate change that, as a~~
 13294 ~~percentage, is equal to the difference between the rate of such~~
 13295 ~~assessment and the rate of the previous year's assessment under~~
 13296 ~~this paragraph, the filing shall consist of a certification so~~
 13297 ~~stating and shall be deemed approved when made, subject to the~~
 13298 ~~department's continuing authority to require actuarial~~
 13299 ~~justification as to the adequacy of any rate at any time. Any~~
 13300 ~~rate change of a different percentage shall be subject to the~~
 13301 ~~standards and procedures of s. 627.062.~~

13302
 13303 Section 236. Section 631.59, Florida Statutes, is amended
 13304 to read:

13305 631.59 Duties and powers of department and office of
 13306 Insurance.--

13307 (1) The department shall:

13308 (a) Notify the association of the existence of an
 13309 insolvent insurer not later than 3 days after it receives notice
 13310 of the determination of the insolvency; and

13311 (b) Upon request of the board of directors, provide the
 13312 association with a statement of the net direct written premiums
 13313 of each member insurer.

13314 (2) The department may:

13315 ~~(a)~~ require that the association notify the insureds of
 13316 the insolvent insurer and any other interested parties of the
 13317 determination of insolvency and of their rights under this part.

13318 Such notification shall be by mail at their last known



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13319 addresses, when available, but if sufficient information for
 13320 notification by mail is not available, notice by publication in
 13321 a newspaper of general circulation shall be sufficient.

13322 ~~(3)(b)~~ The office may:

13323 (a) Suspend or revoke the certificate of authority to
 13324 transact insurance in this state of any member insurer which
 13325 fails to pay an assessment when due or fails to comply with the
 13326 plan of operation. As an alternative, the office ~~department~~ may
 13327 levy a fine on any member insurer which fails to pay an
 13328 assessment when due. Such fine may not exceed 5 percent of the
 13329 unpaid assessment per month, except that no fine shall be less
 13330 than \$100 per month.

13331 (b)(e) Revoke the designation of any servicing facility if
 13332 it finds claims are being handled unsatisfactorily.

13333 Section 237. Section 631.62, Florida Statutes, is amended
 13334 to read:

13335 631.62 Prevention of insolvencies.--To aid in the
 13336 detection and prevention of insurer insolvencies:

13337 (1) It shall be the duty of the board of directors, upon
 13338 majority vote, to notify the office ~~department~~ of any
 13339 information indicating any member insurer may be insolvent or in
 13340 a financial condition hazardous to the policyholders or the
 13341 public.

13342 (2) The board of directors may, upon majority vote,
 13343 request that the office ~~department~~ order an examination of any
 13344 member insurer which the board in good faith believes may be in
 13345 a financial condition hazardous to the policyholders or the
 13346 public. Within 30 days of the receipt of such request, the
 13347 office ~~department~~ shall begin such examination. The examination
 13348 may be conducted as a National Association of Insurance



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13349 Commissioners examination or may be conducted by such persons as
 13350 the office ~~department~~ designates. The cost of such examination
 13351 shall be paid by the association and the examination report
 13352 shall be treated as are other examination reports pursuant to s.
 13353 624.319. In no event shall such examination report be released
 13354 to the board of directors prior to its release to the public.
 13355 The office ~~department~~ shall notify the board of directors when
 13356 the examination is completed. The request for an examination
 13357 shall be kept on file by the office ~~department~~; such request is
 13358 confidential and exempt from the provisions of s. 119.07(1)
 13359 until the examination report is released to the public.

13360 (3) The board of directors may, upon majority vote, make
 13361 reports and recommendations to the department or office upon any
 13362 matter germane to the solvency, liquidation, rehabilitation, or
 13363 conservation of any member insurer. Such reports and
 13364 recommendations are confidential and exempt from the provisions
 13365 of s. 119.07(1) until the termination of a delinquency
 13366 proceeding.

13367 (4) The board of directors may, upon majority vote, make
 13368 recommendations to the office ~~department~~ for the detection and
 13369 prevention of insurer insolvencies.

13370 Section 238. Section 631.66, Florida Statutes, is amended
 13371 to read:

13372 631.66 Immunity.--There shall be no liability on the part
 13373 of, and no cause of action of any nature shall arise against,
 13374 any member insurer, the association or its agents or employees,
 13375 the board of directors, or the department or office or their ~~its~~
 13376 representatives for any action taken by them in the performance
 13377 of their powers and duties under this part. Such immunity shall
 13378 extend to the participation in any organization of one or more



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13379 other state associations of similar purposes and to any such
 13380 organization and its agents or employees.

13381 Section 239. Section 631.714, Florida Statutes, is amended
 13382 to read:

13383 631.714 Definitions.--As used in this part, the term:

13384 (1) "Account" means any of the three accounts created in
 13385 s. 631.715.

13386 (2) "Association" means the Florida Life and Health
 13387 Insurance Guaranty Association created in s. 631.715.

13388 (3) "Contractual obligation" means any obligation under
 13389 covered policies.

13390 (4) "Covered policy" means any policy or contract set out
 13391 in s. 631.713 and reduced to written, printed, or other tangible
 13392 form.

13393 ~~(5) "Department" means the Department of Insurance.~~

13394 (5)(6) "Impaired insurer" means a member insurer deemed by
 13395 the department to be potentially unable to fulfill its
 13396 contractual obligations and not an insolvent insurer.

13397 (6)(7) "Insolvent insurer" means a member insurer
 13398 authorized to transact insurance in this state, either at the
 13399 time the policy was issued or when the insured event occurred,
 13400 and against which an order of liquidation with a finding of
 13401 insolvency has been entered by a court of competent
 13402 jurisdiction, if such order has become final by the exhaustion
 13403 of appellate review.

13404 (7)(8) "Member insurer" means any person licensed to
 13405 transact in this state any kind of insurance as set out in s.
 13406 631.713.

13407 (8)(9) "Premium" means any direct gross insurance premium
 13408 and any annuity consideration written on covered policies, less



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13409 return premium and consideration thereon and dividends paid or
 13410 credited to policyholders on such direct business. "Premium"
 13411 does not include premium and consideration on contracts between
 13412 insurers and reinsurers.

13413 ~~(9)-(10)~~ "Person" means any individual, corporation,
 13414 partnership, association, or voluntary organization.

13415 ~~(10)-(11)~~ "Resident" means any person who resides in this
 13416 state at the time a member insurer is determined to be an
 13417 impaired or insolvent insurer and to whom contractual
 13418 obligations are owed by such impaired or insolvent member
 13419 insurer.

13420 Section 240. Subsections (2) and (3) of section 631.72,
 13421 Florida Statutes, are amended to read:

13422 631.72 Premium or income tax credits for assessments
 13423 paid.--

13424 (2) If a member insurer ceases doing business in this
 13425 state and surrenders to the office ~~department~~ its certificate of
 13426 authority to transact insurance in this state, all uncredited
 13427 assessments may be credited as provided in this section against
 13428 either its premium or corporate income tax liabilities imposed
 13429 pursuant to ss. 624.509 and 220.11 for the year it ceases doing
 13430 business.

13431 (3) Any sums acquired by refund pursuant to s. 631.718(6)
 13432 from the association which have theretofore been written off by
 13433 contributing insurers and offset against premium or corporate
 13434 income taxes as provided in subsection(1) and which are not
 13435 needed for purposes of this part shall be paid by the insurer to
 13436 the Department of Revenue for deposit with the Chief Financial
 13437 Officer ~~Treasurer~~ to the credit of the General Revenue Fund.

13438 Section 241. Section 631.722, Florida Statutes, is amended



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13439 to read:

13440 631.722 Powers and duties of department and office.--13441 (1) The office ~~department~~ shall:

13442 (a) Upon request of the board of directors, provide the
13443 association with a statement of the premiums in each of the
13444 appropriate states for each member insurer.

13445 (b) When an impairment is declared and the amount of the
13446 impairment is determined, serve a demand upon the impaired
13447 insurer to make good the impairment within a reasonable time.
13448 Notice to the impaired insurer shall constitute notice to its
13449 shareholders, if any. The failure of the insurer to promptly
13450 comply with such demand shall not excuse the association from
13451 the performance of its powers and duties under this part.

13452 (2)(e) The department shall, in any liquidation or
13453 rehabilitation proceeding involving a domestic insurer, be
13454 appointed as the liquidator or rehabilitator. If a foreign or
13455 alien member insurer is subject to a liquidation proceeding in
13456 its domiciliary jurisdiction or state of entry, the department
13457 shall be appointed conservator.

13458 (3)(2) The office ~~department~~ may suspend or revoke, after
13459 notice and hearing, the certificate of authority to transact
13460 insurance in this state of any member insurer that fails to pay
13461 an assessment when due or fails to comply with the approved plan
13462 of operation of the association. As an alternative, the office
13463 ~~department~~ may levy a forfeiture on any member insurer that
13464 fails to pay an assessment when due. Such forfeiture shall not
13465 exceed 5 percent of the unpaid assessment per month, but no
13466 forfeiture shall be less than \$100 per month.

13467 (4)(3) Any action of the board of directors or of the
13468 association may be appealed to the office ~~department~~ by any



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13469 member insurer if such appeal is taken within 30 days of the
 13470 action being appealed. If a member company is appealing an
 13471 assessment, the amount assessed shall be paid to the association
 13472 and available to meet association obligations during the
 13473 pendency of the appeal. If the appeal on the assessment is
 13474 upheld, the amount paid in error or excess shall be returned to
 13475 the member company. Any final action or order of the office
 13476 ~~department~~ shall be subject to judicial review in a court of
 13477 competent jurisdiction.

13478 ~~(5)~~(4) The liquidator, rehabilitator, or conservator of
 13479 any impaired insurer may notify all interested persons of the
 13480 effect of this part.

13481 Section 242. Section 631.723, Florida Statutes, is amended
 13482 to read:

13483 631.723 Prevention of insolvencies.--To aid in the
 13484 detection and prevention of insurer insolvencies or impairments:

13485 (1) The board of directors may, upon majority vote, make
 13486 reports and recommendations to the department or office upon any
 13487 matter germane to the solvency, liquidation, rehabilitation, or
 13488 conservation of any member insurer or germane to the solvency of
 13489 any company seeking to do an insurance business in this state.
 13490 Such reports and recommendations are confidential and exempt
 13491 from the provisions of s. 119.07(1) until the termination of a
 13492 delinquency proceeding.

13493 (2) It is the duty of the board of directors, upon a
 13494 majority vote, to notify the office ~~department~~ of any
 13495 information indicating that any member insurer may be an
 13496 impaired or insolvent insurer.

13497 (3) The board of directors may, upon majority vote,
 13498 request that the office ~~department~~ order an examination of any



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13499 member insurer which the board in good faith believes may be an
 13500 impaired or insolvent insurer. Within 30 days of the receipt of
 13501 such a request, the office ~~department~~ shall begin such an
 13502 examination. The examination may be conducted as a National
 13503 Association of Insurance Commissioners examination or may be
 13504 conducted by such persons as the office ~~Insurance Commissioner~~
 13505 designates. The cost of such examination shall be paid by the
 13506 association, and the examination report shall be treated in a
 13507 manner similar to other examination reports pursuant to s.
 13508 624.319. In no event may such examination report be released to
 13509 the board of directors before its release to the public, but
 13510 this does not preclude the office ~~department~~ from complying with
 13511 s. 631.398(2). The office ~~department~~ shall notify the board of
 13512 directors when the examination is completed. The request for an
 13513 examination shall be kept on file by the office ~~department~~; such
 13514 request is confidential and exempt from the provisions of s.
 13515 119.07(1) until the examination report is released to the
 13516 public.

13517 (4) The board of directors may, upon majority vote, make
 13518 recommendations to the office ~~department~~ for the detection and
 13519 prevention of insurer insolvencies.

13520 Section 243. Section 631.727, Florida Statutes, is amended
 13521 to read:

13522 631.727 Immunity.--There shall be no liability on the part
 13523 of, and no cause of action of any nature shall arise against,
 13524 any member insurer or its agents or employees, the association
 13525 or its agents or employees, members of the board of directors,
 13526 or the department or office or their ~~its~~ representatives for any
 13527 action taken by them in the performance of their powers and
 13528 duties under this part. Such immunity shall extend to the



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13529 participation in any organization of one or more other state
 13530 associations of similar purposes and to any such organization
 13531 and its agents or employees.

13532 Section 244. Section 631.813, Florida Statutes, is amended
 13533 to read:

13534 631.813 Application of part.--This part shall apply to HMO
 13535 contractual obligations to residents of Florida by HMOs
 13536 possessing a valid certificate of authority issued ~~by the~~
 13537 ~~Florida Department of Insurance~~ as provided by part I of chapter
 13538 641. The provisions of this part shall not apply to persons
 13539 participating in medical assistance programs under the Medicaid
 13540 program.

13541 Section 245. Section 631.814, Florida Statutes, is amended
 13542 to read:

13543 631.814 Definitions.--As used in this part, the term:

13544 (1) "Plan" means the Florida Health Maintenance
 13545 Organization Consumer Assistance Plan created by this part.

13546 (2) "Board" means the board of directors of the plan.

13547 (3) "Contractual obligations" means any obligation under
 13548 covered health care policies.

13549 (4) "Covered policy" means any policy or contract issued
 13550 by an HMO for health care services.

13551 (5) "Date of insolvency" means the effective date of an
 13552 order of liquidation entered by a court of competent
 13553 jurisdiction.

13554 ~~(6) "Department" means the Florida Department of~~
 13555 ~~Insurance.~~

13556 (6)~~(7)~~ "Health care services" means comprehensive health
 13557 care services as defined in s. 641.19.

13558 (7)~~(8)~~ "HMO" means a health maintenance organization



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13559 possessing a valid certificate of authority issued by the
13560 department pursuant to part I of chapter 641.

13561 ~~(8)(9)~~ "Insolvent HMO" means an HMO against which an order
13562 of rehabilitation or liquidation has been entered by a court of
13563 competent jurisdiction, with the department appointed as
13564 receiver, even if such order has not become final by the
13565 exhaustion of appellate reviews.

13566 ~~(9)(10)~~ "Person" means any individual, corporation,
13567 partnership, association, or voluntary organization.

13568 ~~(10)(11)~~ "Subscriber" means any resident of this state who
13569 is enrolled for benefits provided by an HMO and who makes
13570 premium payments or for whom premium payments are made.

13571 Section 246. Section 631.821, Florida Statutes, is amended
13572 to read:

13573 631.821 Powers and duties of the department and office.--

13574 (1) The office ~~department~~ may suspend or revoke, after
13575 notice and hearing, the certificate of authority of a member HMO
13576 that fails to pay an assessment when due, fails to comply with
13577 the approved plan of operation of the plan, or fails either to
13578 timely comply with or to timely appeal pursuant to subsection
13579 (2) its appointment under s. 631.818(2).

13580 (2) Any action of the board of directors of the plan may
13581 be appealed to the department by any member HMO if such appeal
13582 is taken within 21 days of the action being appealed; however,
13583 the HMO must comply with such action pending exhaustion of
13584 appeal ~~under s. 631.818(2)~~. Any appeal shall be promptly
13585 determined by the department, and final action or order of the
13586 department shall be subject to judicial review in a court of
13587 competent jurisdiction.

13588 (3) The department may~~+~~



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13589 ~~(a)~~ require that the plan notify the subscriber of the
 13590 insolvent HMO and any other interested parties of the
 13591 determination of insolvency and of their rights under this part.
 13592 Such notification shall be by mail at their last known
 13593 addresses, when available, but if sufficient information for
 13594 notification by mail is not available, notice by publication in
 13595 a newspaper of general circulation shall be sufficient.

13596 ~~(4)(b)~~ The office may revoke the designation of any
 13597 servicing facility or administrator if it finds claims are being
 13598 handled unsatisfactorily.

13599 Section 247. Section 631.825, Florida Statutes, is amended
 13600 to read:

13601 631.825 Immunity.--There shall be no liability on the part
 13602 of, and no cause of action of any nature shall arise against,
 13603 any member HMO or its agents or employees, the plan or its
 13604 agents or employees, members of the board of directors, or the
 13605 department or office or their ~~its~~ representatives for any action
 13606 taken by them in the performance of their powers and duties
 13607 under this part.

13608 Section 248. Section 631.904, Florida Statutes, is amended
 13609 to read:

13610 631.904 Definitions.--As used in this part, the term:

13611 (1) "Corporation" means the Florida Workers' Compensation
 13612 Insurance Guaranty Association, Incorporated.

13613 (2) "Covered claim" means an unpaid claim, including a
 13614 claim for return of unearned premiums, which arises out of, is
 13615 within the coverage of, and is not in excess of the applicable
 13616 limits of, an insurance policy to which this part applies, which
 13617 policy was issued by an insurer and which claim is made on
 13618 behalf of a claimant or insured who was a resident of this state



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13619 at the time of the injury. The term "covered claim" does not
 13620 include any amount sought as a return of premium under any
 13621 retrospective rating plan; any amount due any reinsurer,
 13622 insurer, insurance pool, or underwriting association, as
 13623 subrogation recoveries or otherwise; or any return of premium
 13624 resulting from a policy that was not in force on the date of the
 13625 final order of liquidation. Member insurers have no right of
 13626 subrogation against the insured of any insolvent insurer. This
 13627 provision shall be applied retroactively to cover claims of an
 13628 insolvent self-insurance fund resulting from accidents or losses
 13629 incurred prior to January 1, 1994, regardless of the date the
 13630 ~~Department of Insurance filed a~~ petition in circuit court was
 13631 filed alleging insolvency and the date the court entered an
 13632 order appointing a receiver.

13633 ~~(3) "Department" means the Department of Insurance.~~

13634 (3)(4) "Insolvency" means that condition in which all of
 13635 the assets of the insurer, if made immediately available, would
 13636 not be sufficient to discharge all of its liabilities or that
 13637 condition in which the insurer is unable to pay its debts as
 13638 they become due in the usual course of business. When the
 13639 context of any provision of this part so indicates, insolvency
 13640 also includes impairment of surplus or impairment of capital.

13641 (4)(5) "Insolvent insurer" means an insurer that was
 13642 authorized to transact insurance in this state, either at the
 13643 time the policy was issued or when the insured event occurred,
 13644 and against which an order of liquidation with a finding of
 13645 insolvency has been entered by a court of competent jurisdiction
 13646 if such order has become final by the exhaustion of appellate
 13647 review.

13648 (5)(6) "Insurer" means an insurance carrier or self-



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13649 insurance fund authorized to insure under chapter 440. For
 13650 purposes of this act, "insurer" does not include a qualified
 13651 local government self-insurance fund, as defined in s. 624.4622,
 13652 or an individual self-insurer as defined in s. 440.385.

13653 (6)~~(7)~~ "Self-insurance fund" means a group self-insurance
 13654 fund authorized under s. 624.4621, a commercial self-insurance
 13655 fund writing workers' compensation insurance authorized under s.
 13656 624.462, or an assessable mutual insurer authorized under s.
 13657 628.6011. For purposes of this act, "self-insurance fund" does
 13658 not include a qualified local government self-insurance fund, as
 13659 defined in s. 624.4622, or an individual self-insurer as defined
 13660 in s. 440.385.

13661 Section 249. Subsection (1) of section 631.911, Florida
 13662 Statutes, is amended to read:

13663 631.911 Creation of the Florida Workers' Compensation
 13664 Insurance Guaranty Association, Incorporated; merger; effect of
 13665 merger.--

13666 (1)(a) The Florida Self-Insurance Fund Guaranty
 13667 Association established in former part V of chapter 631 and the
 13668 workers' compensation insurance account, which includes excess
 13669 workers' compensation insurance, established in former s.
 13670 631.55(2)(a) shall be merged, ~~effective October 1, 1997, or as~~
 13671 ~~provided in paragraph (b)~~, in accordance with the plan of
 13672 operation adopted by the interim board of directors. The
 13673 successor nonprofit corporation shall be known as the "Florida
 13674 Workers' Compensation Insurance Guaranty Association,
 13675 Incorporated."

13676 ~~(b) The merger may be effected prior to October 1, 1997,~~
 13677 ~~if:~~

13678 ~~1. The interim board of directors of the Workers'~~



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13679 ~~Compensation Insurance Guaranty Association provides the~~
 13680 ~~Department of Insurance with written notice of its intent to~~
 13681 ~~effectuate the merger as of a date certain and its functional~~
 13682 ~~readiness to initiate operations, such notice setting forth the~~
 13683 ~~plan or summary thereof for effecting the merger; and,~~

13684 ~~2. The department, upon review of the plan or summary~~
 13685 ~~thereof, determines the Workers' Compensation Insurance Guaranty~~
 13686 ~~Association is functionally ready to initiate operations and so~~
 13687 ~~certifies to the interim board of directors.~~

13688 ~~(c) Prior to the effective date of the merger, the Florida~~
 13689 ~~Self-Insurance Fund Guaranty Association shall be the entity~~
 13690 ~~responsible for the claims of insolvent self-insurance funds~~
 13691 ~~resulting from accidents or losses incurred prior to January 1,~~
 13692 ~~1994, regardless of the date the Department of Insurance filed a~~
 13693 ~~petition in circuit court alleging insolvency and the date the~~
 13694 ~~court entered an order appointing a receiver.~~

13695 ~~(b)(d)~~ Upon the effective date of the merger:

13696 1. The Florida Self-Insurance Fund Guaranty Association
 13697 and the workers' compensation insurance account within the
 13698 Florida Insurance Guaranty Association cease to exist and are
 13699 succeeded by the Florida Workers' Compensation Insurance
 13700 Guaranty Association.

13701 2. Title to all assets of any description, all real estate
 13702 and other property, or any interest therein, owned by each party
 13703 to the merger is vested in the successor corporation without
 13704 reversion or impairment.

13705 3. The successor corporation shall be responsible and
 13706 liable for all the liabilities and obligations of each party to
 13707 the merger.

13708 4. Any claim existing or action or proceeding pending by



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13709 or against any party to the merger may be continued as if the
 13710 merger did not occur or the successor corporation may be
 13711 substituted in the proceeding for the corporation or account
 13712 which ceased existence.

13713 5. Neither the rights of creditors nor any liens upon the
 13714 property of any party to the merger shall be impaired by such
 13715 merger.

13716 6. Outstanding assessments levied by the Florida Self-
 13717 Insurance Guaranty Association or the Florida Insurance Guaranty
 13718 Association on behalf of the workers' compensation insurance
 13719 account remain in full force and effect and shall be paid when
 13720 due.

13721 Section 250. Subsections (1) and (3) of section 631.912,
 13722 Florida Statutes, are amended to read:

13723 631.912 Board of directors.--

13724 (1) The board of directors of the corporation shall
 13725 consist of 11 persons, 1 of whom is the insurance consumer
 13726 advocate appointed under s. 627.0613 or designee and 1 of whom
 13727 is designated by the Chief Financial Officer Insurance
 13728 ~~Commissioner~~. The department shall appoint to the board 6
 13729 persons selected by private carriers from among the 20 workers'
 13730 compensation insurers with the largest amount of net direct
 13731 written premium as determined by the department, and 3 persons
 13732 selected by the self-insurance funds. At least two of the
 13733 private carriers shall be foreign carriers authorized to do
 13734 business in this state. The board shall elect a chairperson from
 13735 among its members. The Chief Financial Officer ~~commissioner~~ may
 13736 remove any board member for cause. Each board member shall
 13737 serve for a 4-year term and may be reappointed, ~~except that four~~
 13738 ~~members of the initial board shall have 2-year terms so as to~~



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13739 ~~stagger the periods of service.~~ A vacancy on the board shall be
13740 filled for the remaining period of the term in the same manner
13741 by which the original appointment was made.

13742 ~~(3) Effective upon this act becoming a law, the persons on~~
13743 ~~the board of directors created pursuant to s. 627.311(4)(a) who~~
13744 ~~evidence a willingness to serve in writing, shall serve as an~~
13745 ~~interim board of directors of the corporation until the initial~~
13746 ~~board of directors has been appointed for the corporation in~~
13747 ~~accordance with the provisions of subsection (1). The interim~~
13748 ~~board of directors shall serve for a period not to exceed 6~~
13749 ~~months. The initial meeting shall be called by the commissioner~~
13750 ~~within 30 days after this act becomes a law. The interim board~~
13751 ~~of directors shall establish a process for the selection of~~
13752 ~~persons to serve on the board of the Florida Workers'~~
13753 ~~Compensation Insurance Guaranty Association in accordance with~~
13754 ~~the terms of subsection (1). The board of directors shall adopt~~
13755 ~~an interim plan of operation to effect the merger in s. 631.911~~
13756 ~~and avoid any interruption of benefit payments to injured~~
13757 ~~workers. When necessary and upon approval of the chairs of~~
13758 ~~their respective board of directors, the Florida Self-Insurance~~
13759 ~~Fund Guaranty Association and the Florida Insurance Guaranty~~
13760 ~~Association shall provide staff support to the interim board of~~
13761 ~~directors. The board shall submit the interim plan to the~~
13762 ~~commissioner, who shall approve or disapprove the plan within 30~~
13763 ~~days after receipt.~~

13764 Section 251. Section 631.917, Florida Statutes, is amended
13765 to read:

13766 631.917 Prevention of insolvencies.--To aid in the
13767 detection and prevention of insolvencies or impairments:

13768 (1)(a) The board may make reasonable and lawful



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13769 investigation into the practices of any third-party
 13770 administrator or service company for a self-insurance fund
 13771 declared insolvent by the court.

13772 (b) If the results of an investigation reasonably lead to
 13773 a finding that certain actions taken or not taken by those
 13774 handling, processing, or preparing covered claims for payment or
 13775 other benefit pursuant to any workers' compensation insurance
 13776 policy contributed to the insolvency of an insurer, such
 13777 information may, in the discretion of the board, be provided to
 13778 the department or office in an expedited manner.

13779 (2) The board of directors may make reports and
 13780 recommendations to the department or office upon any matter
 13781 germane to the solvency, liquidation, rehabilitation, or
 13782 conservation of any member insurer or germane to the solvency of
 13783 any insurer seeking to do insurance business in this state.

13784 (3) The board of directors, in its discretion, may notify
 13785 the office ~~department~~ of any information indicating that any
 13786 member insurer may be an impaired or insolvent insurer.

13787 (4) The board of directors, in its discretion, may request
 13788 that the office ~~department~~ order an examination of any member
 13789 insurer which the board in good faith believes may be an
 13790 impaired or insolvent insurer. Within 30 days after receipt of
 13791 such a request, the office ~~department~~ shall begin such an
 13792 examination. The examination may be conducted as a National
 13793 Association of Insurance Commissioners examination or may be
 13794 conducted by such persons as the office ~~Insurance Commissioner~~
 13795 designates. The cost of such examination shall be paid by the
 13796 corporation, and the examination report shall be treated in a
 13797 manner similar to other examination reports pursuant to s.
 13798 624.319. In no event may such examination report be released to



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13799 the board of directors before its release to the public, but
13800 this requirement does not preclude the office ~~department~~ from
13801 complying with s. 631.398(2). The office ~~department~~ shall
13802 notify the board of directors when the examination is completed.
13803 The request for an examination shall be kept on file by the
13804 office ~~department~~.

13805 (5) The board is authorized to assist and aid the
13806 department or office, in any manner consistent with existing
13807 laws and this chapter, in the department's or office's
13808 investigation or referral for prosecution of those whose action
13809 or inaction may have contributed to the impairment or insolvency
13810 of the insurer.

13811 (6) The board may make recommendations to the office
13812 ~~department~~ for the detection and prevention of insurer
13813 insolvencies.

13814 Section 252. Section 631.918, Florida Statutes, is amended
13815 to read:

13816 631.918 Immunity.--There is no liability on the part of,
13817 and a cause of action may not arise against, the corporation,
13818 its agents or employees, or members of its board of directors,
13819 or the department or office or their ~~its~~ agents or employees,
13820 for any action taken by them in the performance of their powers
13821 and duties under this section, unless such action is found to be
13822 a violation of antitrust laws, was in bad faith, or was
13823 undertaken with malicious purpose or in a manner exhibiting
13824 wanton and willful disregard of human rights, safety, or
13825 property.

13826 Section 253. Section 631.931, Florida Statutes, is amended
13827 to read:

13828 631.931 Reports and recommendations by board; public



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13829 records exemption.--Reports and recommendations made by the
 13830 Board of Directors of the Florida Workers' Compensation
 13831 Insurance Guaranty Association ~~to the Department of Insurance~~
 13832 under s. 631.917 upon any matter germane to the solvency,
 13833 liquidation, rehabilitation, or conservation of any member
 13834 insurer are confidential and exempt from the provisions of s.
 13835 119.07(1) and s. 24(a), Art. I of the State Constitution until
 13836 the termination of a delinquency proceeding.

13837 Section 254. Subsections (3) and (4) of section 634.3284,
 13838 Florida Statutes, are amended to read:

13839 634.3284 Civil remedy.--

13840 (3) As a condition precedent to bringing an action under
 13841 this section, the office ~~department~~ and the insurer shall be
 13842 given written notice of the violation. The notice shall state
 13843 with specificity the facts which allegedly constitute the
 13844 violation and the law upon which the plaintiff is relying and
 13845 shall state that such notice is given in order to perfect the
 13846 right to pursue the civil remedy authorized by this section. No
 13847 action will lie if, within 30 days thereafter, the damages are
 13848 paid or the circumstances giving rise to the violation are
 13849 corrected.

13850 (4) This section shall not be construed to authorize a
 13851 class action suit against a home warranty association or a civil
 13852 action against the department or office or their, ~~its~~ employees,
 13853 or the Chief Financial Officer ~~Insurance Commissioner~~.

13854 Section 255. Subsection (2) of section 634.430, Florida
 13855 Statutes, is amended to read:

13856 634.430 Dissolution or liquidation.--

13857 (2) The department and office shall be notified of the
 13858 commencement of voluntary dissolution proceedings of a



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13859 manufacturer licensed under this part. As to the warranty
 13860 operations of a manufacturer in this state, the department shall
 13861 supervise the voluntary dissolution and shall require protection
 13862 of the interests of the department, office, and consumers who
 13863 have been issued service warranties by the manufacturer by the
 13864 continuation of deposits or bonds as required by this part until
 13865 that time as all warranties issued by the manufacturer are no
 13866 longer in effect or all outstanding warranties have been
 13867 assigned to another association approved by the department and
 13868 office. The notification as provided herein shall be made by the
 13869 manufacturer within 30 days of the commencement of any legal
 13870 action for dissolution.

13871 Section 256. Subsections (3) and (4) of section 634.433,
 13872 Florida Statutes, are amended to read:

13873 634.433 Civil remedy.--

13874 (3) As a condition precedent to bringing an action under
 13875 this section, the office ~~department~~ and the insurer shall be
 13876 given written notice of the violation. The notice shall state
 13877 with specificity the facts which allegedly constitute the
 13878 violation and the law upon which the plaintiff is relying and
 13879 shall state that such notice is given in order to perfect the
 13880 right to pursue the civil remedy authorized by this section. No
 13881 action will lie if, within 30 days thereafter, the damages are
 13882 paid or the circumstances giving rise to the violation are
 13883 corrected.

13884 (4) This section shall not be construed to authorize a
 13885 class action suit against a service warranty association or a
 13886 civil action against the department, the office, their ~~its~~
 13887 employees, or the Chief Financial Officer ~~Insurance~~
 13888 ~~Commissioner~~.



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13889 Section 257. Section 636.067, Florida Statutes, is amended
 13890 to read:

13891 636.067 Rules.--The commission may ~~department has~~
 13892 ~~authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54
 13893 to implement the provisions of this act. A violation of any
 13894 such rule subjects the violator to the provisions of s. 636.048.

13895 Section 258. Section 641.183, Florida Statutes, is amended
 13896 to read:

13897 641.183 Statutory accounting procedures; transition
 13898 provisions.--All health maintenance organizations, authorized to
 13899 do business under this chapter on January 1, 2001, shall elect a
 13900 transition method for compliance with statutory accounting
 13901 principles as follows:

13902 (1) Report assets acquired prior to June 30, 2001, in
 13903 accordance with s. 641.35, Florida Statutes (2000), through
 13904 December 31, 2005. Assets acquired on or after June 30, 2001,
 13905 shall be accounted for in accordance with the National
 13906 Association of Insurance Commissioners Accounting Practices and
 13907 Procedures Manual as of 2002 ~~effective January 1, 2001~~. A health
 13908 maintenance organization electing to report assets pursuant to
 13909 this subsection shall maintain complete and detailed records
 13910 reflecting such accounting treatment; or

13911 (2) Report all assets in accordance with the NAIC
 13912 Accounting Practices and Procedures Manual as of 2002 ~~effective~~
 13913 ~~January 1, 2001~~.

13914 Section 259. Section 641.185, Florida Statutes, is amended
 13915 to read:

13916 641.185 Health maintenance organization subscriber
 13917 protections.--

13918 (1) With respect to the provisions of this part and part



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13919 III, the principles expressed in the following statements shall
 13920 serve as standards to be followed by the commission, the office,
 13921 the department, ~~of Insurance~~ and the Agency for Health Care
 13922 Administration in exercising their powers and duties, in
 13923 exercising administrative discretion, in administrative
 13924 interpretations of the law, in enforcing its provisions, and in
 13925 adopting rules:

13926 (a) A health maintenance organization shall ensure that
 13927 the health care services provided to its subscribers shall be
 13928 rendered under reasonable standards of quality of care which are
 13929 at a minimum consistent with the prevailing standards of medical
 13930 practice in the community pursuant to ss. 641.495(1) and 641.51.

13931 (b) A health maintenance organization subscriber should
 13932 receive quality health care from a broad panel of providers,
 13933 including referrals, preventive care pursuant to s. 641.402(1),
 13934 emergency screening and services pursuant to ss. 641.31(12) and
 13935 641.513, and second opinions pursuant to s. 641.51.

13936 (c) A health maintenance organization subscriber should
 13937 receive assurance that the health maintenance organization has
 13938 been independently accredited by a national review organization
 13939 pursuant to s. 641.512, and is financially secure as determined
 13940 by the state pursuant to ss. 641.221, 641.225, and 641.228.

13941 (d) A health maintenance organization subscriber should
 13942 receive continuity of health care, even after the provider is no
 13943 longer with the health maintenance organization pursuant to s.
 13944 641.51(8).

13945 (e) A health maintenance organization subscriber should
 13946 receive timely, concise information regarding the health
 13947 maintenance organization's reimbursement to providers and
 13948 services pursuant to ss. 641.31 and 641.31015 and should receive



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13949 prompt payment from the organization pursuant to s. 641.3155.

13950 (f) A health maintenance organization subscriber should
 13951 receive the flexibility to transfer to another Florida health
 13952 maintenance organization, regardless of health status, pursuant
 13953 to ss. 641.228, 641.3104, 641.3107, 641.3111, 641.3921, and
 13954 641.3922.

13955 (g) A health maintenance organization subscriber should be
 13956 eligible for coverage without discrimination against individual
 13957 participants and beneficiaries of group plans based on health
 13958 status pursuant to s. 641.31073.

13959 (h) A health maintenance organization that issues a group
 13960 health contract must: provide coverage for preexisting
 13961 conditions pursuant to s. 641.31071; guarantee renewability of
 13962 coverage pursuant to s. 641.31074; provide notice of
 13963 cancellation pursuant to s. 641.3108; provide extension of
 13964 benefits pursuant to s. 641.3111; provide for conversion on
 13965 termination of eligibility pursuant to s. 641.3921; and provide
 13966 for conversion contracts and conditions pursuant to s. 641.3922.

13967 (i) A health maintenance organization subscriber should
 13968 receive timely and, if necessary, urgent grievances and appeals
 13969 within the health maintenance organization pursuant to ss.
 13970 641.228, 641.31(5), 641.47, and 641.511.

13971 (j) A health maintenance organization should receive
 13972 timely and, if necessary, urgent review by an independent state
 13973 external review organization for unresolved grievances and
 13974 appeals pursuant to s. 408.7056.

13975 (k) A health maintenance organization subscriber shall be
 13976 given written notice at least 30 days in advance of a rate
 13977 change pursuant to s. 641.31(3)(b). In the case of a group
 13978 member, there may be a contractual agreement with the health



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13979 maintenance organization to have the employer provide the
 13980 required notice to the individual members of the group pursuant
 13981 to s. 641.31(3)(b).

13982 (1) A health maintenance organization subscriber shall be
 13983 given a copy of the applicable health maintenance contract,
 13984 certificate, or member handbook specifying: all the provisions,
 13985 disclosure, and limitations required pursuant to s. 641.31(1)
 13986 and (4); the covered services, including those services, medical
 13987 conditions, and provider types specified in ss. 641.31,
 13988 641.31094, 641.31095, 641.31096, 641.51(11), and 641.513; and
 13989 where and in what manner services may be obtained pursuant to s.
 13990 641.31(4).

13991 (2) This section shall not be construed as creating a
 13992 civil cause of action by any subscriber or provider against any
 13993 health maintenance organization.

13994 Section 260. Section 641.19, Florida Statutes, is amended
 13995 to read:

13996 641.19 Definitions.--As used in this part, the term:

13997 (1) "Affiliate" means any entity that ~~which~~ exercises
 13998 control over or is controlled by the health maintenance
 13999 organization, directly or indirectly, through:

- 14000 (a) Equity ownership of voting securities;
- 14001 (b) Common managerial control; or
- 14002 (c) Collusive participation by the management of the
 14003 health maintenance organization and affiliate in the management
 14004 of the health maintenance organization or the affiliate.

14005 (2) "Agency" means the Agency for Health Care
 14006 Administration.

14007 (3) "Capitation" means the fixed amount paid by an HMO to
 14008 a health care provider under contract with the health



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14009 maintenance organization in exchange for the rendering of
 14010 covered medical services.

14011 (4) "Comprehensive health care services" means services,
 14012 medical equipment, and supplies furnished by a provider, which
 14013 may include, but which are not limited to, medical, surgical,
 14014 and dental care; psychological, optometric, optic, chiropractic,
 14015 podiatric, nursing, physical therapy, and pharmaceutical
 14016 services; health education, preventive medical, rehabilitative,
 14017 and home health services; inpatient and outpatient hospital
 14018 services; extended care; nursing home care; convalescent
 14019 institutional care; technical and professional clinical
 14020 pathology laboratory services; laboratory and ambulance
 14021 services; appliances, drugs, medicines, and supplies; and any
 14022 other care, service, or treatment of disease, or correction of
 14023 defects for human beings.

14024 (5) "Copayment" means a specific dollar amount, except as
 14025 otherwise provided for by statute, that the subscriber must pay
 14026 upon receipt of covered health care services. Copayments may
 14027 not be established in an amount that will prevent a person from
 14028 receiving a covered service or benefit as specified in the
 14029 subscriber contract approved by the office ~~department~~.

14030 ~~(6) "Department" means the Department of Insurance.~~

14031 (6)~~(7)~~ "Emergency medical condition" means:

14032 (a) A medical condition manifesting itself by acute
 14033 symptoms of sufficient severity, which may include severe pain
 14034 or other acute symptoms, such that the absence of immediate
 14035 medical attention could reasonably be expected to result in any
 14036 of the following:

- 14037 1. Serious jeopardy to the health of a patient, including
- 14038 a pregnant woman or a fetus.



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14039 2. Serious impairment to bodily functions.
 14040 3. Serious dysfunction of any bodily organ or part.
 14041 (b) With respect to a pregnant woman:
 14042 1. That there is inadequate time to effect safe transfer
 14043 to another hospital prior to delivery;
 14044 2. That a transfer may pose a threat to the health and
 14045 safety of the patient or fetus; or
 14046 3. That there is evidence of the onset and persistence of
 14047 uterine contractions or rupture of the membranes.
 14048 (7)~~(8)~~ "Emergency services and care" means medical
 14049 screening, examination, and evaluation by a physician, or, to
 14050 the extent permitted by applicable law, by other appropriate
 14051 personnel under the supervision of a physician, to determine if
 14052 an emergency medical condition exists and, if it does, the care,
 14053 treatment, or surgery for a covered service by a physician
 14054 necessary to relieve or eliminate the emergency medical
 14055 condition, within the service capability of a hospital.
 14056 (8)~~(9)~~ "Entity" means any legal entity with continuing
 14057 existence, including, but not limited to, a corporation,
 14058 association, trust, or partnership.
 14059 (9)~~(10)~~ "Geographic area" means the county or counties, or
 14060 any portion of a county or counties, within which the health
 14061 maintenance organization provides or arranges for comprehensive
 14062 health care services to be available to its subscribers.
 14063 (10)~~(11)~~ "Guaranteeing organization" is an organization
 14064 that ~~which~~ is domiciled in the United States; that ~~which~~ has
 14065 authorized service of process against it; and that ~~which~~ has
 14066 appointed the Chief Financial Officer ~~Insurance Commissioner and~~
 14067 ~~Treasurer~~ as its agent for service of process issuing upon any
 14068 cause of action arising in this state, based upon any guarantee



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14069 entered into under this part.

14070 (11)~~(12)~~ "Health maintenance contract" means any contract
14071 entered into by a health maintenance organization with a
14072 subscriber or group of subscribers to provide comprehensive
14073 health care services in exchange for a prepaid per capita or
14074 prepaid aggregate fixed sum.

14075 (12)~~(13)~~ "Health maintenance organization" means any
14076 organization authorized under this part which:

14077 (a) Provides emergency care, inpatient hospital services,
14078 physician care including care provided by physicians licensed
14079 under chapters 458, 459, 460, and 461, ambulatory diagnostic
14080 treatment, and preventive health care services;

14081 (b) Provides, either directly or through arrangements with
14082 other persons, health care services to persons enrolled with
14083 such organization, on a prepaid per capita or prepaid aggregate
14084 fixed-sum basis;

14085 (c) Provides, either directly or through arrangements with
14086 other persons, comprehensive health care services which
14087 subscribers are entitled to receive pursuant to a contract;

14088 (d) Provides physician services, by physicians licensed
14089 under chapters 458, 459, 460, and 461, directly through
14090 physicians who are either employees or partners of such
14091 organization or under arrangements with a physician or any group
14092 of physicians; and

14093 (e) If offering services through a managed care system,
14094 then the managed care system must be a system in which a primary
14095 physician licensed under chapter 458 or chapter 459 and chapters
14096 460 and 461 is designated for each subscriber upon request of a
14097 subscriber requesting service by a physician licensed under any
14098 of those chapters, and is responsible for coordinating the



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14099 health care of the subscriber of the respectively requested
14100 service and for referring the subscriber to other providers of
14101 the same discipline when necessary. Each female subscriber may
14102 select as her primary physician an obstetrician/gynecologist who
14103 has agreed to serve as a primary physician and is in the health
14104 maintenance organization's provider network.

14105 (13)~~(14)~~ "Insolvent" or "insolvency" means that all the
14106 statutory assets of the health maintenance organization, if made
14107 immediately available, would not be sufficient to discharge all
14108 of its liabilities or that the health maintenance organization
14109 is unable to pay its debts as they become due in the usual
14110 course of business. In the event that all the assets of the
14111 health maintenance organization, if made immediately available,
14112 would not be sufficient to discharge all of its liabilities, but
14113 the organization has a written guarantee of the type and subject
14114 to the same provisions as outlined in s. 641.225, the
14115 organization shall not be considered insolvent unless it is
14116 unable to pay its debts as they become due in the usual course
14117 of business.

14118 (14)~~(15)~~ "Provider" means any physician, hospital, or
14119 other institution, organization, or person that furnishes health
14120 care services and is licensed or otherwise authorized to
14121 practice in the state.

14122 (15)~~(16)~~ "Reporting period" means the annual calendar year
14123 accounting period or any part thereof.

14124 (16)~~(17)~~ "Statutory accounting principles" means
14125 accounting principles as defined in the National Association of
14126 Insurance Commissioners Accounting Practices and Procedures
14127 Manual as of 2002 ~~effective January 1, 2001~~.

14128 (17)~~(18)~~ "Subscriber" means an entity or individual who



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14129 has contracted, or on whose behalf a contract has been entered
14130 into, with a health maintenance organization for health care
14131 services or other persons who also receive health care services
14132 as a result of the contract.

14133 (18)~~(19)~~ "Surplus" means total statutory assets in excess
14134 of total liabilities, except that assets pledged to secure debts
14135 not reflected on the books of the health maintenance
14136 organization shall not be included in surplus. Surplus includes
14137 capital stock, capital in excess of par, other contributed
14138 capital, retained earnings, and surplus notes.

14139 (19)~~(20)~~ "Uncovered expenditures" means the cost of health
14140 care services that are covered by a health maintenance
14141 organization, for which a subscriber would also be liable in the
14142 event of the insolvency of the organization.

14143 (20)~~(21)~~ "Health care risk contract" means a contract
14144 under which an individual or entity receives consideration or
14145 other compensation in an amount greater than 1 percent of the
14146 health maintenance organization's annual gross written premium
14147 in exchange for providing to the health maintenance organization
14148 a provider network or other services, which may include
14149 administrative services. The 1-percent threshold shall be
14150 calculated on a contract-by-contract basis for each such
14151 individual or entity and not in the aggregate for all health
14152 care risk contracts.

14153 Section 261. Section 641.2017, Florida Statutes, is
14154 amended to read:

14155 641.2017 Insurance business not authorized.--Nothing in
14156 the Florida Insurance Code or this part shall be deemed to
14157 authorize any health maintenance organization to transact any
14158 insurance business other than that of health maintenance



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14159 organization type insurance or otherwise to engage in any other
 14160 type of insurance unless it is authorized under a certificate of
 14161 authority issued by the office ~~department~~ under the provisions
 14162 of the Florida Insurance Code. However, a health maintenance
 14163 organization may by contract:

14164 (1) Enter into arrangements whereby the expected cost of
 14165 health care services provided directly or through arrangements
 14166 with other persons by the health maintenance organization is
 14167 self-funded by the person contracting with the health
 14168 maintenance organization, but the health maintenance
 14169 organization assumes the risks that costs will exceed that
 14170 amount on a prepaid per capita or prepaid aggregate fixed-sum
 14171 basis; or

14172 (2) Enter into arrangements whereby the cost of health
 14173 care services provided directly or through arrangements with
 14174 other persons by the health maintenance organization is self-
 14175 funded by the person contracting with the health maintenance
 14176 organization.

14177 Section 262. Subsections (1) and (2) of section 641.2018,
 14178 Florida Statutes, are amended to read:

14179 641.2018 Limited coverage for home health care
 14180 authorized.--

14181 (1) Notwithstanding other provisions of this chapter, a
 14182 health maintenance organization may issue a contract that limits
 14183 coverage to home health care services only. The organization and
 14184 the contract shall be subject to all of the requirements of this
 14185 part that do not require or otherwise apply to specific benefits
 14186 other than home care services. To this extent, all of the
 14187 requirements of this part apply to any organization or contract
 14188 that limits coverage to home care services, except the



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14189 requirements for providing comprehensive health care services as
 14190 provided in ss. 641.19(4), (11), and (12), ~~and (13)~~, and
 14191 641.31(1), except ss. 641.31(9), (12), (17), (18), (19), (20),
 14192 (21), and (24) and 641.31095.

14193 (2) Notwithstanding the other provisions of this chapter,
 14194 a health maintenance organization may apply for and obtain a
 14195 certificate of authority from the office ~~department~~ pursuant to
 14196 this part and a health care provider certificate pursuant to
 14197 part III, which certificate limits the authority of the
 14198 organization to the issuance of contracts that limit coverage to
 14199 home health care services pursuant to subsection (1). In
 14200 addition to all applicable requirements of this part, as
 14201 specified in subsection (1), all of the requirements of part III
 14202 apply to an organization applying for such a limited
 14203 certificate, except to the extent that such requirements
 14204 directly conflict with the limited nature of the coverage
 14205 provided.

14206 Section 263. Subsections (1) and (2) of section 641.21,
 14207 Florida Statutes, are amended to read:

14208 641.21 Application for certificate.--

14209 (1) Before any entity may operate a health maintenance
 14210 organization, it shall obtain a certificate of authority from
 14211 the office ~~department~~. The office ~~department~~ shall accept and
 14212 shall begin its review of an application for a certificate of
 14213 authority anytime after an organization has filed an application
 14214 for a health care provider certificate pursuant to part III of
 14215 this chapter. However, the office ~~may department~~ ~~shall~~ not
 14216 issue a certificate of authority to any applicant which does not
 14217 possess a valid health care provider certificate issued by the
 14218 agency. Each application for a certificate shall be on such form



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14219 as the commission ~~department~~ shall prescribe, shall be verified
 14220 by the oath of two officers of the corporation and properly
 14221 notarized, and shall be accompanied by the following:

14222 (a) A copy of the articles of incorporation and all
 14223 amendments thereto;

14224 (b) A copy of the bylaws, rules and regulations, or
 14225 similar form of document, if any, regulating the conduct of the
 14226 affairs of the applicant;

14227 (c) A list of the names, addresses, and official
 14228 capacities with the organization of the persons who are to be
 14229 responsible for the conduct of the affairs of the health
 14230 maintenance organization, including all officers, directors, and
 14231 owners of in excess of 5 percent of the common stock of the
 14232 corporation. Such persons shall fully disclose to the office
 14233 ~~department~~ and the directors of the health maintenance
 14234 organization the extent and nature of any contracts or
 14235 arrangements between them and the health maintenance
 14236 organization, including any possible conflicts of interest;

14237 (d) A complete biographical statement on forms prescribed
 14238 by the commission ~~department~~, and an independent investigation
 14239 report and fingerprints obtained pursuant to chapter 624, of all
 14240 of the individuals referred to in paragraph (c);

14241 (e) A statement generally describing the health
 14242 maintenance organization, its operations, and its grievance
 14243 procedures;

14244 (f) Forms of all health maintenance contracts,
 14245 certificates, and member handbooks the applicant proposes to
 14246 offer the subscribers, showing the benefits to which they are
 14247 entitled, together with a table of the rates charged, or
 14248 proposed to be charged, for each form of such contract. A



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14249 certified actuary shall:

14250 1. Certify that the rates are neither inadequate nor
14251 excessive nor unfairly discriminatory;

14252 2. Certify that the rates are appropriate for the classes
14253 of risks for which they have been computed; and

14254 3. File an adequate description of the rating methodology
14255 showing that such methodology follows consistent and equitable
14256 actuarial principles;

14257 (g) A statement describing with reasonable certainty the
14258 geographic area or areas to be served by the health maintenance
14259 organization;

14260 (h) As to any applicant whose business plan indicates that
14261 it will receive Medicaid funds, a list of all contracts and
14262 agreements and any information relative to any payment or
14263 agreement to pay, directly or indirectly, a consultant fee, a
14264 broker fee, a commission, or other fee or charge related in any
14265 way to the application for a certificate of authority or the
14266 issuance of a certificate of authority, including, but not
14267 limited to, the name of the person or entity paying the fee; the
14268 name of the person or entity receiving the fee; the date of
14269 payment; and a brief description of the work performed. The
14270 contract, agreement, and related information shall, if
14271 requested, be provided to the office ~~department~~.

14272 (i) An audited financial statement prepared on the basis
14273 of statutory accounting principles and certified by an
14274 independent certified public accountant, except that surplus
14275 notes acceptable to the office ~~department~~ and meeting the
14276 requirements of this act shall be included in the calculation of
14277 surplus; and

14278 (j) Such additional reasonable data, financial statements,



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14279 and other pertinent information as the commissioner or office
 14280 requires ~~department may require~~ with respect to the
 14281 determination that the applicant can provide the services to be
 14282 offered.

14283 (2) After submission of the application for a certificate
 14284 of authority, the entity may engage in initial group marketing
 14285 activities solely with respect to employers, representatives of
 14286 labor unions, professional associations, and trade associations,
 14287 so long as it does not enter into, issue, deliver, or otherwise
 14288 effectuate health maintenance contracts, effectuate or bind
 14289 coverage or benefits, provide health care services, or collect
 14290 premiums or charges until it has been issued a certificate of
 14291 authority by the office ~~department~~. Any such activities, oral
 14292 or written, shall include a statement that the entity does not
 14293 possess a valid certificate of authority and cannot enter into
 14294 health maintenance contracts until such time as it has been
 14295 issued a certificate of authority by the office ~~department~~.

14296 Section 264. Section 641.215, Florida Statutes, is amended
 14297 to read:

14298 641.215 Conditions precedent to issuance or maintenance of
 14299 certificate of authority; effect of bankruptcy proceedings.--

14300 (1) As a condition precedent to the issuance or
 14301 maintenance of a certificate of authority, a health maintenance
 14302 organization insurer must file or have on file with the office
 14303 ~~department~~:

14304 (a) An acknowledgment that a delinquency proceeding
 14305 pursuant to part I of chapter 631, or supervision by the office
 14306 ~~department~~ pursuant to ss. 624.80-624.87, constitutes the sole
 14307 and exclusive method for the liquidation, rehabilitation,
 14308 reorganization, or conservation of a health maintenance



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14309 organization.

14310 (b) A waiver of any right to file or be subject to a
14311 bankruptcy proceeding.

14312 (2) The commencement of a bankruptcy proceeding either by
14313 or against a health maintenance organization shall, by operation
14314 of law:

14315 (a) Terminate the health maintenance organization's
14316 certificate of authority.

14317 (b) Vest in the office ~~department~~ for the use and benefit
14318 of the subscribers of the health maintenance organization the
14319 title to any deposits of the insurer held by the department.

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14321

14322 If the proceeding is initiated by a party other than the health
14323 maintenance organization, the operation of subsection (2) shall
14324 be stayed for a period of 60 days following the date of
14325 commencement of the proceeding.

14326 Section 265. Section 641.22, Florida Statutes, is amended
14327 to read:

14328 641.22 Issuance of certificate of authority.--The office
14329 ~~department~~ shall issue a certificate of authority to any entity
14330 filing a completed application in conformity with s. 641.21,
14331 upon payment of the prescribed fees and upon the office's
14332 ~~department's~~ being satisfied that:

14333 (1) As a condition precedent to the issuance of any
14334 certificate, the entity has obtained a health care provider
14335 certificate from the Agency for Health Care Administration
14336 pursuant to part III of this chapter.

14337 (2) The health maintenance organization is actuarially
14338 sound.



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14339 (3) The entity has met the applicable requirements
14340 specified in s. 641.225.

14341 (4) The procedures for offering comprehensive health care
14342 services and offering and terminating contracts to subscribers
14343 will not unfairly discriminate on the basis of age, sex, race,
14344 health, or economic status. However, this section does not
14345 prohibit reasonable underwriting classifications for the
14346 purposes of establishing contract rates, nor does it prohibit
14347 experience rating.

14348 (5) The entity furnishes evidence of adequate insurance
14349 coverage or an adequate plan for self-insurance to respond to
14350 claims for injuries arising out of the furnishing of
14351 comprehensive health care.

14352 (6) The ownership, control, and management of the entity
14353 is competent and trustworthy and possesses managerial experience
14354 that would make the proposed health maintenance organization
14355 operation beneficial to the subscribers. The office ~~department~~
14356 shall not grant or continue authority to transact the business
14357 of a health maintenance organization in this state at any time
14358 during which the office ~~department~~ has good reason to believe
14359 that:

14360 (a) The ownership, control, or management of the
14361 organization includes any person:

14362 1. Who is incompetent or untrustworthy;

14363 2. Who is so lacking in health maintenance organization
14364 expertise as to make the operation of the health maintenance
14365 organization hazardous to potential and existing subscribers;

14366 3. Who is so lacking in health maintenance organization
14367 experience, ability, and standing as to jeopardize the
14368 reasonable promise of successful operation;



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14369 4. Who is affiliated, directly or indirectly, through
14370 ownership, control, reinsurance transactions, or other business
14371 relations, with any person whose business operations are or have
14372 been marked by business practices or conduct that is to the
14373 detriment of the public, stockholders, investors, or creditors;
14374 or

14375 5. Whose business operations are or have been marked by
14376 business practices or conduct that is to the detriment of the
14377 public, stockholders, investors, or creditors;

14378 (b) Any person, including any stock subscriber,
14379 stockholder, or incorporator, who exercises or has the ability
14380 to exercise effective control of the organization, or who
14381 influences or has the ability to influence the transaction of
14382 the business of the health maintenance organization, does not
14383 possess the financial standing and business experience for the
14384 successful operation of the health maintenance organization;

14385 (c) Any person, including any stock subscriber,
14386 stockholder, or incorporator, who exercises or has the ability
14387 to exercise effective control of the organization, or who
14388 influences or has the ability to influence the transaction of
14389 the business of the health maintenance organization, has been
14390 found guilty of, or has pled guilty or no contest to, any felony
14391 or crime punishable by imprisonment of 1 year or more under the
14392 laws of the United States or any state thereof or under the laws
14393 of any other country, which involves moral turpitude, without
14394 regard to whether a judgment or conviction has been entered by
14395 the court having jurisdiction in such case. However, in the case
14396 of a health maintenance organization operating under a
14397 subsisting certificate of authority, the health maintenance
14398 organization shall remove any such person immediately upon



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14399 | discovery of the conditions set forth in this paragraph when
 14400 | applicable to such person or under the order of the office
 14401 | ~~department~~, and the failure to so act by the organization is
 14402 | grounds for revocation or suspension of the health maintenance
 14403 | organization's certificate of authority; or

14404 | (d) Any person, including any stock subscriber,
 14405 | stockholder, or incorporator, who exercises or has the ability
 14406 | to exercise effective control of the organization, or who
 14407 | influences or has the ability to influence the transaction of
 14408 | the business of the health maintenance organization, is now or
 14409 | was in the past affiliated, directly or indirectly, through
 14410 | ownership interest of 10 percent or more, control, or
 14411 | reinsurance transactions, with any business, corporation, or
 14412 | other entity that has been found guilty of or has pleaded guilty
 14413 | or nolo contendere to any felony or crime punishable by
 14414 | imprisonment for 1 year or more under the laws of the United
 14415 | States, any state, or any other country, regardless of
 14416 | adjudication. In the case of a health maintenance organization
 14417 | operating under a subsisting certificate of authority, the
 14418 | health maintenance organization shall immediately remove such
 14419 | person or immediately notify the office ~~department~~ of such
 14420 | person upon discovery of the conditions set forth in this
 14421 | paragraph, either when applicable to such person or upon order
 14422 | of the office ~~department~~. The failure to remove such person,
 14423 | provide such notice, or comply with such order constitutes
 14424 | grounds for suspension or revocation of the health maintenance
 14425 | organization's certificate of authority.

14426 | (7) The entity has a blanket fidelity bond in the amount
 14427 | of \$100,000, issued by a licensed insurance carrier in this
 14428 | state, that will reimburse the entity in the event that anyone



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14429 handling the funds of the entity either misappropriates or
 14430 absconds with the funds. All employees handling the funds shall
 14431 be covered by the blanket fidelity bond. An agent licensed
 14432 under the provisions of the Florida Insurance Code may either
 14433 directly or indirectly represent the health maintenance
 14434 organization in the solicitation, negotiation, effectuation,
 14435 procurement, receipt, delivery, or forwarding of any health
 14436 maintenance organization subscriber's contract or collect or
 14437 forward any consideration paid by the subscriber to the health
 14438 maintenance organization; and the licensed agent shall not be
 14439 required to post the bond required by this subsection.

14440 (8) The entity has filed with the office ~~department~~, and
 14441 obtained approval from the office ~~department~~ of, all reinsurance
 14442 contracts as provided in s. 641.285.

14443 (9) The health maintenance organization has a grievance
 14444 procedure that will facilitate the resolution of subscriber
 14445 grievances and that includes both formal and informal steps
 14446 available within the organization.

14447 Section 266. Subsections (2) and (4), and paragraphs (b)
 14448 and (d) of subsection (6) of section 641.225, Florida Statutes,
 14449 are amended to read:

14450 641.225 Surplus requirements.--

14451 (2) The office ~~department~~ shall not issue a certificate of
 14452 authority, except as provided in subsection (3), unless the
 14453 health maintenance organization has a minimum surplus in an
 14454 amount which is the greater of:

14455 (a) Ten percent of their total liabilities based on their
 14456 startup projection as set forth in this part;

14457 (b) Two percent of their total projected premiums based on
 14458 their startup projection as set forth in this part; or



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14459 (c) \$1,500,000, plus all startup losses, excluding
14460 profits, projected to be incurred on their startup projection
14461 until the projection reflects statutory net profits for 12
14462 consecutive months.

14463 (4) The commission ~~department~~ may adopt rules to set
14464 uniform standards and criteria for the early warning that the
14465 continued operation of any health maintenance organization might
14466 be hazardous to its subscribers, creditors, or the general
14467 public, and to set standards for evaluating the financial
14468 condition of any health maintenance organization.

14469 (6) In lieu of having any minimum surplus, the health
14470 maintenance organization may provide a written guarantee to
14471 assure payment of covered subscriber claims and all other
14472 liabilities of the health maintenance organization, provided
14473 that the written guarantee is made by a guaranteeing
14474 organization which:

14475 (b) Submits a guarantee that is approved by the office
14476 ~~department~~ as meeting the requirements of this part, provided
14477 that the written guarantee contains a provision which requires
14478 that the guarantee be irrevocable unless the guaranteeing
14479 organization can demonstrate to the office ~~department~~ that the
14480 cancellation of the guarantee will not result in the insolvency
14481 of the health maintenance organization and the office ~~department~~
14482 approves cancellation of the guarantee.

14483 (d) Submits annually, within 3 months after the end of its
14484 fiscal year, an audited financial statement certified by an
14485 independent certified public accountant, prepared in accordance
14486 with generally accepted accounting principles. The office
14487 ~~department~~ may, as it deems necessary, require quarterly
14488 financial statements from the guaranteeing organization.



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14489 Section 267. Subsection (1) of section 641.227, Florida
 14490 Statutes, is amended to read:

14491 641.227 Rehabilitation Administrative Expense Fund.--

14492 (1) The office ~~department~~ shall not issue or permit to
 14493 exist a certificate of authority to operate a health maintenance
 14494 organization in this state unless the organization has deposited
 14495 with the department \$10,000 in cash for use in the
 14496 Rehabilitation Administrative Expense Fund as established in
 14497 subsection (2).

14498 Section 268. Subsections (1) and (3) of section 641.228,
 14499 Florida Statutes, are amended to read:

14500 641.228 Florida Health Maintenance Organization Consumer
 14501 Assistance Plan.--

14502 (1) The office ~~department~~ shall not issue a certificate to
 14503 any health maintenance organization after July 1, 1989, until
 14504 the applicant health maintenance organization has paid in full
 14505 its special assessment as set forth in s. 631.819(2)(a).

14506 (3) The office ~~department~~ may suspend or revoke the
 14507 certificate of authority of any health maintenance organization
 14508 which does not timely pay its assessment to the Florida Health
 14509 Maintenance Organization Consumer Assistance Plan.

14510 Section 269. Section 641.23, Florida Statutes, is amended
 14511 to read:

14512 641.23 Revocation or cancellation of certificate of
 14513 authority; suspension of enrollment of new subscribers; terms of
 14514 suspension.--

14515 (1) The maintenance of a valid and current health care
 14516 provider certificate issued pursuant to part III of this chapter
 14517 is a condition of the maintenance of a valid and current
 14518 certificate of authority issued by the office ~~department~~ to



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14519 operate a health maintenance organization. Denial or revocation
14520 of a health care provider certificate shall be deemed to be an
14521 automatic and immediate cancellation of a health maintenance
14522 organization's certificate of authority. At the discretion of
14523 the office ~~Department of Insurance~~, nonrenewal of a health care
14524 provider certificate may be deemed to be an automatic and
14525 immediate cancellation of a health maintenance organization's
14526 certificate of authority if the Agency for Health Care
14527 Administration notifies the office ~~Department of Insurance~~, in
14528 writing, that the health care provider certificate will not be
14529 renewed.

14530 (2) The office ~~department~~ may suspend the authority of a
14531 health maintenance organization to enroll new subscribers or
14532 revoke any certificate issued to a health maintenance
14533 organization, or order compliance within 30 days, if it finds
14534 that any of the following conditions exists:

14535 (a) The organization is not operating in compliance with
14536 this part;

14537 (b) The plan is no longer actuarially sound or the
14538 organization does not have the minimum surplus as required by
14539 this part;

14540 (c) The existing contract rates are excessive, inadequate,
14541 or unfairly discriminatory;

14542 (d) The organization has advertised, merchandised, or
14543 attempted to merchandise its services in such a manner as to
14544 misrepresent its services or capacity for service or has engaged
14545 in deceptive, misleading, or unfair practices with respect to
14546 advertising or merchandising; or

14547 (e) The organization is insolvent.

14548 (3) Whenever the financial condition of the health



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14549 maintenance organization is such that, if not modified or
 14550 corrected, its continued operation would result in impairment or
 14551 insolvency, the office ~~department~~ may order the health
 14552 maintenance organization to file with the office ~~department~~ and
 14553 implement a corrective action plan designed to do one or more of
 14554 the following:

14555 (a) Reduce the total amount of present potential liability
 14556 for benefits by reinsurance or other means.

14557 (b) Reduce the volume of new business being accepted.

14558 (c) Reduce the expenses of the health maintenance
 14559 organization by specified methods.

14560 (d) Suspend or limit the writing of new business for a
 14561 period of time.

14562 (e) Require an increase in the health maintenance
 14563 organization's net worth.

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14566 If the health maintenance organization fails to submit a plan
 14567 within 30 days of the office's ~~department's~~ order or submits a
 14568 plan which is insufficient to correct the health maintenance
 14569 organization's financial condition, the office ~~department~~ may
 14570 order the health maintenance organization to implement one or
 14571 more of the corrective actions listed in this subsection.

14572 (4) The office ~~department~~ shall, in its order suspending
 14573 the authority of a health maintenance organization to enroll new
 14574 subscribers, specify the period during which the suspension is
 14575 to be in effect and the conditions, if any, which must be met by
 14576 the health maintenance organization prior to reinstatement of
 14577 its authority to enroll new subscribers. The order of
 14578 suspension is subject to rescission or modification by further



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14579 order of the office ~~department~~ prior to the expiration of the
14580 suspension period. Reinstatement shall not be made unless
14581 requested by the health maintenance organization; however, the
14582 office ~~department~~ shall not grant reinstatement if it finds that
14583 the circumstances for which the suspension occurred still exist
14584 or are likely to recur.

14585 (5) The commission ~~department~~ shall adopt ~~promulgate~~ rules
14586 establishing an actuarially sound medical loss ratio for
14587 Medicaid. In determining the appropriate medical loss ratio,
14588 the commission ~~department~~ shall consider factors, including but
14589 not limited to, plan age, plan structure, geographic service
14590 area, product mix, provider network, medical inflation, provider
14591 services, other professional services, out of network referrals
14592 and expenditures, in and out of network emergency room
14593 expenditures, inpatient expenditures, other medical
14594 expenditures, incentive pool adjustments, copayments,
14595 coordination of benefits, subrogation, and any other expenses
14596 associated with the delivery of medical benefits. The
14597 commission ~~department~~ shall utilize assistance from the Agency
14598 for Health Care Administration, the State University System, an
14599 independent actuary, and representatives from health maintenance
14600 organizations in developing the rule for appropriate medical
14601 loss ratios.

14602 (6) The office ~~department~~ shall calculate and publish at
14603 least annually the medical loss ratios of all licensed health
14604 maintenance organizations. The publication shall include an
14605 explanation of what the medical loss ratio means and shall
14606 disclose that the medical loss ratio is not a direct reflection
14607 of quality, but must be looked at along with patient
14608 satisfaction and other standards that define quality.



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14609 Section 270. Subsections (1), (2), and (3) of section
 14610 641.234, Florida Statutes, are amended to read:

14611 641.234 Administrative, provider, and management
 14612 contracts.--

14613 (1) The office ~~department~~ may require a health maintenance
 14614 organization to submit any contract for administrative services,
 14615 contract with a provider other than an individual physician,
 14616 contract for management services, and contract with an
 14617 affiliated entity to the office ~~department~~.

14618 (2) After review of a contract the office ~~department~~ may
 14619 order the health maintenance organization to cancel the contract
 14620 in accordance with the terms of the contract and applicable law
 14621 if it determines:

14622 (a) That the fees to be paid by the health maintenance
 14623 organization under the contract are so unreasonably high as
 14624 compared with similar contracts entered into by the health
 14625 maintenance organization or as compared with similar contracts
 14626 entered into by other health maintenance organizations in
 14627 similar circumstances that the contract is detrimental to the
 14628 subscribers, stockholders, investors, or creditors of the health
 14629 maintenance organization; or

14630 (b) That the contract is with an entity that is not
 14631 licensed under state statutes, if such license is required, or
 14632 is not in good standing with the applicable regulatory agency.

14633 (3) All contracts for administrative services, management
 14634 services, provider services other than individual physician
 14635 contracts, and with affiliated entities entered into or renewed
 14636 by a health maintenance organization on or after October 1,
 14637 1988, shall contain a provision that the contract shall be
 14638 canceled upon issuance of an order by the office ~~department~~



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14639 pursuant to this section.

14640 Section 271. Section 641.2342, Florida Statutes, is
 14641 amended to read:

14642 641.2342 Contract providers.--Each health maintenance
 14643 organization shall file, upon the request of the office
 14644 ~~department~~, financial statements for all contract providers of
 14645 comprehensive health care services who have assumed, through
 14646 capitation or other means, more than 10 percent of the health
 14647 care risks of the health maintenance organization. However,
 14648 this provision shall not apply to any individual physician.

14649 Section 272. Section 641.25, Florida Statutes, is amended
 14650 to read:

14651 641.25 Administrative penalty in lieu of suspension or
 14652 revocation.--If the office ~~department~~ finds that one or more
 14653 grounds exist for the revocation or suspension of a certificate
 14654 issued under this part, the office ~~department~~ may, in lieu of
 14655 revocation or suspension, impose a fine upon the health
 14656 maintenance organization. With respect to any nonwillful
 14657 violation, the fine must not exceed \$2,500 per violation. Such
 14658 fines may not exceed an aggregate amount of \$25,000 for all
 14659 nonwillful violations arising out of the same action. With
 14660 respect to any knowing and willful violation of a lawful order
 14661 or rule of the office or commission ~~department~~ or a provision of
 14662 this part, the office ~~department~~ may impose upon the
 14663 organization a fine in an amount not to exceed \$20,000 for each
 14664 such violation. Such fines may not exceed an aggregate amount
 14665 of \$250,000 for all knowing and willful violations arising out
 14666 of the same action. The commission ~~department~~ must adopt by
 14667 rule ~~by January 1, 1997,~~ penalty categories that specify varying
 14668 ranges of monetary fines for willful violations and for



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14669 nonwillful violations.

14670 Section 273. Subsection (2) of section 641.255, Florida
 14671 Statutes, is amended to read:

14672 641.255 Acquisition, merger, or consolidation.--

14673 (2) In addition to the requirements set forth in ss.
 14674 628.451, 628.4615, and 628.471, each party to any transaction
 14675 involving any licensee which, as indicated in its most recent
 14676 quarterly or annual statement, derives income from Medicaid
 14677 funds shall in the filing made with the office ~~department~~
 14678 identify:

14679 (a) Any person who has received any payment from either
 14680 party or any person on that party's behalf; or

14681 (b) The existence of any agreement entered into by either
 14682 party or by any person on that party's behalf to pay a
 14683 consultant fee, a broker fee, a commission, or other fee or
 14684 charge,

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 14686
 14687 which in any way relates to the acquisition, merger, or
 14688 consolidation. The commission ~~department~~ may adopt a form to be
 14689 made part of the application which is to be sworn to by an
 14690 officer of the entity which made or will make the payment. The
 14691 form shall include the name of the person or entity paying the
 14692 fee; the name of the person or entity receiving the fee; the
 14693 date of payment; and a brief description of the work performed.

14694 Section 274. Section 641.26, Florida Statutes, is amended
 14695 to read:

14696 641.26 Annual and quarterly reports.--

14697 (1) Every health maintenance organization shall, annually
 14698 within 3 months after the end of its fiscal year, or within an



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14699 extension of time therefor as the office ~~department~~, for good
 14700 cause, may grant, in a form prescribed by the commission
 14701 ~~department~~, file a report with the office ~~department~~, verified
 14702 by the oath of two officers of the organization or, if not a
 14703 corporation, of two persons who are principal managing directors
 14704 of the affairs of the organization, properly notarized, showing
 14705 its condition on the last day of the immediately preceding
 14706 reporting period. Such report shall include:

14707 (a) A financial statement of the health maintenance
 14708 organization filed on a computer diskette using a format
 14709 acceptable to the office ~~department~~.

14710 (b) A financial statement of the health maintenance
 14711 organization filed on forms acceptable to the office ~~department~~.

14712 (c) An audited financial statement of the health
 14713 maintenance organization, including its balance sheet and a
 14714 statement of operations for the preceding year certified by an
 14715 independent certified public accountant, prepared in accordance
 14716 with statutory accounting principles.

14717 (d) The number of health maintenance contracts issued and
 14718 outstanding and the number of health maintenance contracts
 14719 terminated.

14720 (e) The number and amount of damage claims for medical
 14721 injury initiated against the health maintenance organization and
 14722 any of the providers engaged by it during the reporting year,
 14723 broken down into claims with and without formal legal process,
 14724 and the disposition, if any, of each such claim.

14725 (f) An actuarial certification that:

14726 1. The health maintenance organization is actuarially
 14727 sound, which certification shall consider the rates, benefits,
 14728 and expenses of, and any other funds available for the payment



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14729 of obligations of, the organization.

14730 2. The rates being charged or to be charged are
 14731 actuarially adequate to the end of the period for which rates
 14732 have been guaranteed.

14733 3. Incurred but not reported claims and claims reported
 14734 but not fully paid have been adequately provided for.

14735 4. The health maintenance organization has adequately
 14736 provided for all obligations required by s. 641.35(3)(a).

14737 (g) A report prepared by the certified public accountant
 14738 and filed with the office ~~department~~ describing material
 14739 weaknesses in the health maintenance organization's internal
 14740 control structure as noted by the certified public accountant
 14741 during the audit. The report must be filed with the annual
 14742 audited financial report as required in paragraph (c). The
 14743 health maintenance organization shall provide a description of
 14744 remedial actions taken or proposed to correct material
 14745 weaknesses, if the actions are not described in the independent
 14746 certified public accountant's report.

14747 (h) Such other information relating to the performance of
 14748 health maintenance organizations as is required by the
 14749 commission or office ~~department~~.

14750 (2) The office ~~department~~ may require updates of the
 14751 actuarial certification as to a particular health maintenance
 14752 organization if the office ~~department~~ has reasonable cause to
 14753 believe that such reserves are understated to the extent of
 14754 materially misstating the financial position of the health
 14755 maintenance organization. Workpapers in support of the
 14756 statement of the updated actuarial certification must be
 14757 provided to the office ~~department~~ upon request.

14758 (3) Every health maintenance organization shall file



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14759 quarterly, for the first three calendar quarters of each year,
14760 an unaudited financial statement of the organization as
14761 described in paragraphs (1)(a) and (b). The statement for the
14762 quarter ending March 31 shall be filed on or before May 15, the
14763 statement for the quarter ending June 30 shall be filed on or
14764 before August 15, and the statement for the quarter ending
14765 September 30 shall be filed on or before November 15. The
14766 quarterly report shall be verified by the oath of two officers
14767 of the organization, properly notarized.

14768 (4) Any health maintenance organization that neglects to
14769 file an annual report or quarterly report in the form and within
14770 the time required by this section shall forfeit up to \$1,000 for
14771 each day for the first 10 days during which the neglect
14772 continues and shall forfeit up to \$2,000 for each day after the
14773 first 10 days during which the neglect continues; and, upon
14774 notice by the office ~~department~~ to that effect, the
14775 organization's authority to enroll new subscribers or to do
14776 business in this state shall cease while such default continues.

14777 The office ~~department~~ shall deposit all sums collected by it
14778 under this section to the credit of the Insurance ~~Commissioner's~~
14779 Regulatory Trust Fund. The office ~~department~~ shall not collect
14780 more than \$100,000 for each report.

14781 (5) Each authorized health maintenance organization shall
14782 retain an independent certified public accountant, referred to
14783 in this section as "CPA," who agrees by written contract with
14784 the health maintenance organization to comply with the
14785 provisions of this part.

14786 (a) The CPA shall provide to the HMO audited financial
14787 statements consistent with this part.

14788 (b) Any determination by the CPA that the health



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14789 maintenance organization does not meet minimum surplus
14790 requirements as set forth in this part shall be stated by the
14791 CPA, in writing, in the audited financial statement.

14792 (c) The completed work papers and any written
14793 communications between the CPA firm and the health maintenance
14794 organization relating to the audit of the health maintenance
14795 organization shall be made available for review on a visual-
14796 inspection-only basis by the office ~~department~~ at the offices of
14797 the health maintenance organization, at the office ~~department~~,
14798 or at any other reasonable place as mutually agreed between the
14799 office ~~department~~ and the health maintenance organization. The
14800 CPA must retain for review the work papers and written
14801 communications for a period of not less than 6 years.

14802 (d) The CPA shall provide to the office ~~department~~ a
14803 written report describing material weaknesses in the health
14804 maintenance organization's internal control structure as noted
14805 during the audit.

14806 (6) To facilitate uniformity in financial statements and
14807 to facilitate office ~~department~~ analysis, the commission
14808 ~~department~~ may by rule adopt the form for financial statements
14809 of a health maintenance organization, including supplements as
14810 approved by the National Association of Insurance Commissioners
14811 in 1995, and may adopt subsequent amendments thereto if the
14812 methodology remains substantially consistent, and may by rule
14813 require each health maintenance organization to submit to the
14814 office ~~department~~ all or part of the information contained in
14815 the annual statement in a computer-readable form compatible with
14816 the electronic data processing system specified by the office
14817 ~~department~~.

14818 (7) In addition to information called for and furnished in



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14819 connection with its annual or quarterly statements, the health
 14820 maintenance organization shall furnish to the office ~~department~~
 14821 as soon as reasonably possible such information as to its
 14822 material transactions which, in the office's ~~department's~~
 14823 opinion, may have a material adverse effect on the health
 14824 maintenance organization's financial condition, as the office
 14825 requests ~~department may request~~ in writing. All such information
 14826 furnished pursuant to the office's ~~department's~~ request must be
 14827 verified by the oath of two executive officers of the health
 14828 maintenance organization.

14829 (8) Each health maintenance organization shall file one
 14830 copy of its annual statement convention blank in electronic
 14831 form, along with such additional filings as prescribed by the
 14832 commission ~~department~~ for the preceding calendar year or
 14833 quarter, with the National Association of Insurance
 14834 Commissioners. Each health maintenance organization shall pay
 14835 fees assessed by the National Association of Insurance
 14836 Commissioners to cover costs associated with the filing and
 14837 analysis of the documents by the National Association of
 14838 Insurance Commissioners.

14839 Section 275. Section 641.27, Florida Statutes, is amended
 14840 to read:

14841 641.27 Examination by the department.--

14842 (1) The office ~~department~~ shall examine the affairs,
 14843 transactions, accounts, business records, and assets of any
 14844 health maintenance organization as often as it deems it
 14845 expedient for the protection of the people of this state, but
 14846 not less frequently than once every 3 years. In lieu of making
 14847 its own financial examination, the office ~~department~~ may accept
 14848 an independent certified public accountant's audit report



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14849 prepared on a statutory accounting basis consistent with this
14850 part. However, except when the medical records are requested
14851 and copies furnished pursuant to s. 456.057, medical records of
14852 individuals and records of physicians providing service under
14853 contract to the health maintenance organization shall not be
14854 subject to audit, although they may be subject to subpoena by
14855 court order upon a showing of good cause. For the purpose of
14856 examinations, the office ~~department~~ may administer oaths to and
14857 examine the officers and agents of a health maintenance
14858 organization concerning its business and affairs. The
14859 examination of each health maintenance organization by the
14860 office ~~department~~ shall be subject to the same terms and
14861 conditions as apply to insurers under chapter 624. In no event
14862 shall expenses of all examinations exceed a maximum of \$20,000
14863 for any 1-year period. Any rehabilitation, liquidation,
14864 conservation, or dissolution of a health maintenance
14865 organization shall be conducted under the supervision of the
14866 department, which shall have all power with respect thereto
14867 granted to it under the laws governing the rehabilitation,
14868 liquidation, reorganization, conservation, or dissolution of
14869 life insurance companies.

14870 (2) The office ~~department~~ may contract, at reasonable fees
14871 for work performed, with qualified, impartial outside sources to
14872 perform audits or examinations or portions thereof pertaining to
14873 the qualification of an entity for issuance of a certificate of
14874 authority or to determine continued compliance with the
14875 requirements of this part, in which case the payment must be
14876 made directly to the contracted examiner by the health
14877 maintenance organization examined, in accordance with the rates
14878 and terms agreed to by the office ~~department~~ and the examiner.



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14879 Any contracted assistance shall be under the direct supervision
 14880 of the office ~~department~~. The results of any contracted
 14881 assistance shall be subject to the review of, and approval,
 14882 disapproval, or modification by, the office ~~department~~.

14883 Section 276. Section 641.28, Florida Statutes, is amended
 14884 to read:

14885 641.28 Civil remedy.--In any civil action brought to
 14886 enforce the terms and conditions of a health maintenance
 14887 organization contract, the prevailing party is entitled to
 14888 recover reasonable attorney's fees and court costs. This section
 14889 shall not be construed to authorize a civil action against the
 14890 commission, office, or department, their ~~its~~ employees, or the
 14891 Chief Financial Officer ~~Insurance Commissioner~~ or against the
 14892 Agency for Health Care Administration, its employees, or the
 14893 director of the agency.

14894 Section 277. Section 641.281, Florida Statutes, is amended
 14895 to read:

14896 641.281 Injunction.--In addition to the penalties and
 14897 other enforcement provisions of this part, the office and
 14898 department, within the scope of their regulatory jurisdictions,
 14899 are ~~is~~ vested with the power to seek both temporary and
 14900 permanent injunctive relief when:

14901 (1) A health maintenance organization is being operated by
 14902 any person or entity without a subsisting certificate of
 14903 authority.

14904 (2) Any person, entity, or health maintenance organization
 14905 has engaged in any activity prohibited by this part or any rule
 14906 adopted pursuant thereto.

14907 (3) Any health maintenance organization, person, or entity
 14908 is renewing, issuing, or delivering a health maintenance



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14909 contract or contracts without a subsisting certificate of
 14910 authority.

14911
 14912
 14913 The office's and department's authority to seek injunctive
 14914 relief shall not be conditioned on having conducted any
 14915 proceeding pursuant to chapter 120.

14916 Section 278. Section 641.284, Florida Statutes, is amended
 14917 to read:

14918 641.284 Liquidation, rehabilitation, reorganization, and
 14919 conservation; exclusive methods of remedy.--A delinquency
 14920 proceeding under part I of chapter 631, or supervision by the
 14921 office ~~department~~ under ss. 624.80-624.87, constitute the sole
 14922 and exclusive means of liquidating, reorganizing,
 14923 rehabilitating, or conserving a health maintenance organization.

14924 Section 279. Subsections (1), (2), and (3) of section
 14925 641.285, Florida Statutes, are amended to read:

14926 641.285 Insolvency protection.--

14927 (1) Each health maintenance organization shall deposit
 14928 with the department cash or securities of the type eligible
 14929 under s. 625.52, which shall have at all times a market value in
 14930 the amount set forth in this subsection. The amount of the
 14931 deposit shall be reviewed annually, or more often, as the office
 14932 ~~department~~ deems necessary. The market value of the deposit
 14933 shall be a minimum of \$300,000.

14934 (2) If securities or assets deposited by a health
 14935 maintenance organization under this part are subject to material
 14936 fluctuations in market value, the office ~~department~~ may, in its
 14937 discretion, require the organization to deposit and maintain on
 14938 deposit additional securities or assets in an amount as may be



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14939 reasonably necessary to assure that the deposit will at all
 14940 times have a market value of not less than the amount specified
 14941 under this section. If for any reason the market value of assets
 14942 and securities of a health maintenance organization held on
 14943 deposit in this state under this code falls below the amount
 14944 required, the organization shall promptly deposit other or
 14945 additional assets or securities eligible for deposit sufficient
 14946 to cure the deficiency. If the health maintenance organization
 14947 has failed to cure the deficiency within 30 days after receipt
 14948 of notice thereof by registered or certified mail from the
 14949 office department, the office department may revoke the
 14950 certificate of authority of the health maintenance organization.

14951 (3) Whenever the office department determines that the
 14952 financial condition of a health maintenance organization has
 14953 deteriorated to the point that the policyholders' or
 14954 subscribers' best interests are not being preserved by the
 14955 activities of a health maintenance organization, the office
 14956 ~~department~~ may require such health maintenance organization to
 14957 deposit and maintain deposited in trust with the department for
 14958 the protection of the health maintenance organization's
 14959 policyholders, subscribers, and creditors, for such time as the
 14960 office department deems necessary, securities eligible for such
 14961 deposit under s. 625.52 having a market value of not less than
 14962 the amount that the office department determines is necessary,
 14963 which amount must not be less than \$100,000 or greater than \$2
 14964 million. The deposit required under this subsection is in
 14965 addition to any other deposits required of a health maintenance
 14966 organization pursuant to subsections (1) and (2).

14967 Section 280. Section 641.29, Florida Statutes, is amended
 14968 to read:



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14969 641.29 Fees.--Every health maintenance organization shall
14970 pay to the office ~~department~~ the following fees:

14971 (1) For filing a copy of its application for a certificate
14972 of authority or amendment thereto, a nonrefundable fee in the
14973 amount of \$1,000.

14974 (2) For filing each annual report, which must be filed on
14975 computer diskettes, \$150.

14976 Section 281. Paragraph (b) of subsection (4) of section
14977 641.3007, Florida Statutes, is amended to read:

14978 641.3007 HIV infection and AIDS for contract

14979 (4) UTILIZATION OF MEDICAL TESTS.--

14980 (b) Prior to testing, the health maintenance organization
14981 must disclose its intent to test the person for the HIV
14982 infection or for a specific sickness or medical condition
14983 derived therefrom and must obtain the person's written informed
14984 consent to administer the test. Written informed consent shall
14985 include a fair explanation of the test, including its purpose,
14986 potential uses, and limitations, and the meaning of its results
14987 and the right to confidential treatment of information. Use of
14988 a form approved by the office ~~department~~ shall raise a
14989 conclusive presumption of informed consent.

14990 Section 282. Section 641.305, Florida Statutes, is amended
14991 to read:

14992 641.305 Language used in contracts and advertisements;
14993 translations.--

14994 (1)(a) All health maintenance contracts or forms shall be
14995 printed in English.

14996 (b) If the negotiations by a health maintenance
14997 organization with a member leading up to the effectuation of a
14998 health maintenance contract are conducted in a language other



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14999 than English, the health maintenance organization shall supply
15000 to the member a written translation of the contract, which
15001 translation accurately reflects the substance of the contract
15002 and is in the language used to negotiate the contract. The
15003 written translation shall be affixed to and shall become a part
15004 of the contract or form. Any such translation shall be
15005 furnished to the office ~~department~~ as part of the filing of the
15006 health maintenance contract form. No translation of a health
15007 maintenance contract form shall be approved by the department
15008 unless the translation accurately reflects the substance of the
15009 health maintenance contract form in translation.

15010 (2) The text of all advertisements by a health maintenance
15011 organization, if printed or broadcast in a language other than
15012 English, also shall be available in English and shall be
15013 furnished to the office ~~department~~ upon request. As used in
15014 this subsection, the term "advertisement" means any
15015 advertisement, circular, pamphlet, brochure, or other printed
15016 material disclosing or disseminating advertising material or
15017 information by a health maintenance organization to prospective
15018 or existing subscribers and includes any radio or television
15019 transmittal of an advertisement or information.

15020 Section 283. Subsections (2), (3), (5), and (12) and
15021 paragraphs (c) and (e) of subsection (38) of section 641.31,
15022 Florida Statutes, are amended to read:

15023 641.31 Health maintenance contracts.--

15024 (2) The rates charged by any health maintenance
15025 organization to its subscribers shall not be excessive,
15026 inadequate, or unfairly discriminatory or follow a rating
15027 methodology that is inconsistent, indeterminate, or ambiguous or
15028 encourages misrepresentation or misunderstanding. The



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15029 commission ~~department~~, in accordance with generally accepted
15030 actuarial practice as applied to health maintenance
15031 organizations, may define by rule what constitutes excessive,
15032 inadequate, or unfairly discriminatory rates and may require
15033 whatever information it deems necessary to determine that a rate
15034 or proposed rate meets the requirements of this subsection.

15035 (3)(a) If a health maintenance organization desires to
15036 amend any contract with its subscribers or any certificate or
15037 member handbook, or desires to change any basic health
15038 maintenance contract, certificate, grievance procedure, or
15039 member handbook form, or application form where written
15040 application is required and is to be made a part of the
15041 contract, or printed amendment, addendum, rider, or endorsement
15042 form or form of renewal certificate, it may do so, upon filing
15043 with the office ~~department~~ the proposed change or amendment.
15044 Any proposed change shall be effective immediately, subject to
15045 disapproval by the office ~~department~~. Following receipt of
15046 notice of such disapproval or withdrawal of approval, no health
15047 maintenance organization shall issue or use any form disapproved
15048 by the office ~~department~~ or as to which the office ~~department~~
15049 has withdrawn approval.

15050 (b) Any change in the rate is subject to paragraph (d) and
15051 requires at least 30 days' advance written notice to the
15052 subscriber. In the case of a group member, there may be a
15053 contractual agreement with the health maintenance organization
15054 to have the employer provide the required notice to the
15055 individual members of the group.

15056 (c) The office ~~department~~ shall disapprove any form filed
15057 under this subsection, or withdraw any previous approval
15058 thereof, if the form:



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15059 1. Is in any respect in violation of, or does not comply
15060 with, any provision of this part or rule adopted thereunder.

15061 2. Contains or incorporates by reference, where such
15062 incorporation is otherwise permissible, any inconsistent,
15063 ambiguous, or misleading clauses or exceptions and conditions
15064 which deceptively affect the risk purported to be assumed in the
15065 general coverage of the contract.

15066 3. Has any title, heading, or other indication of its
15067 provisions which is misleading.

15068 4. Is printed or otherwise reproduced in such a manner as
15069 to render any material provision of the form substantially
15070 illegible.

15071 5. Contains provisions which are unfair, inequitable, or
15072 contrary to the public policy of this state or which encourage
15073 misrepresentation.

15074 6. Excludes coverage for human immunodeficiency virus
15075 infection or acquired immune deficiency syndrome or contains
15076 limitations in the benefits payable, or in the terms or
15077 conditions of such contract, for human immunodeficiency virus
15078 infection or acquired immune deficiency syndrome which are
15079 different than those which apply to any other sickness or
15080 medical condition.

15081 (d) Any change in rates charged for the contract must be
15082 filed with the office ~~department~~ not less than 30 days in
15083 advance of the effective date. At the expiration of such 30
15084 days, the rate filing shall be deemed approved unless prior to
15085 such time the filing has been affirmatively approved or
15086 disapproved by order of the office ~~department~~. The approval of
15087 the filing by the office ~~department~~ constitutes a waiver of any
15088 unexpired portion of such waiting period. The office ~~department~~



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15089 may extend by not more than an additional 15 days the period
15090 within which it may so affirmatively approve or disapprove any
15091 such filing, by giving notice of such extension before
15092 expiration of the initial 30-day period. At the expiration of
15093 any such period as so extended, and in the absence of such prior
15094 affirmative approval or disapproval, any such filing shall be
15095 deemed approved.

15096 (e) It is not the intent of this subsection to restrict
15097 unduly the right to modify rates in the exercise of reasonable
15098 business judgment.

15099 (5) Every subscriber shall receive a clear and
15100 understandable description of the method of the health
15101 maintenance organization for resolving subscriber grievances,
15102 and the method shall be set forth in the contract, certificate,
15103 and member handbook. The organization shall also furnish, at
15104 the time of initial enrollment and when necessary due to
15105 substantial changes to the grievance process a separate and
15106 additional communication prepared or approved by the office
15107 ~~department~~ notifying the contract holder of a group contract or
15108 subscriber of an individual contract of their rights and
15109 responsibilities under the grievance process.

15110 (12) Each health maintenance contract, certificate, or
15111 member handbook shall state that emergency services and care
15112 shall be provided to subscribers in emergency situations not
15113 permitting treatment through the health maintenance
15114 organization's providers, without prior notification to and
15115 approval of the organization. Not less than 75 percent of the
15116 reasonable charges for covered services and supplies shall be
15117 paid by the organization, up to the subscriber contract benefit
15118 limits. Payment also may be subject to additional applicable



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15119 copayment provisions, not to exceed \$100 per claim. The health
 15120 maintenance contract, certificate, or member handbook shall
 15121 contain the definitions of "emergency services and care" and
 15122 "emergency medical condition" as specified in s. 641.19 (6)~~(7)~~
 15123 and ~~(7)~~~~(8)~~, shall describe procedures for determination by the
 15124 health maintenance organization of whether the services qualify
 15125 for reimbursement as emergency services and care, and shall
 15126 contain specific examples of what does constitute an emergency.
 15127 In providing for emergency services and care as a covered
 15128 service, a health maintenance organization shall be governed by
 15129 s. 641.513.

15130 (38)

15131 (c) Premiums paid in for the point-of-service riders may
 15132 not exceed 15 percent of total premiums for all health plan
 15133 products sold by the health maintenance organization offering
 15134 the rider. If the premiums paid for point-of-service riders
 15135 exceed 15 percent, the health maintenance organization must
 15136 notify the office ~~department~~ and, once this fact is known, must
 15137 immediately cease offering such a rider until it is in
 15138 compliance with the rider premium cap.

15139 (e) The term "point of service" may not be used by a
 15140 health maintenance organization except with riders permitted
 15141 under this section or with forms approved by the office
 15142 ~~department~~ in which a point-of-service product is offered with
 15143 an indemnity carrier.

15144 Section 284. Subsection (2) of section 641.3105, Florida
 15145 Statutes, is amended to read:

15146 641.3105 Validity of noncomplying contracts.--

15147 (2) Any health maintenance contract delivered or issued
 15148 for delivery in this state covering a subscriber, which



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15149 subscriber, pursuant to the provisions of this part, the
 15150 organization may not lawfully cover under the contract, shall be
 15151 cancelable at any time by the organization, any provision of the
 15152 contract to the contrary notwithstanding; and the organization
 15153 shall promptly cancel the contract in accordance with the
 15154 request of the office ~~department~~ therefor. No such illegality
 15155 or cancellation shall be deemed to relieve the organization of
 15156 any liability incurred by it under the contract while in force
 15157 or to prohibit the organization from retaining the pro rata
 15158 earned premium or rate thereon. This provision does not relieve
 15159 the organization from any penalty otherwise incurred by the
 15160 organization under this part on account of any such violation.

15161 Section 285. Subsection (5), paragraph (b) of subsection
 15162 (7), paragraphs (a) and (e) of subsection (8), paragraph (c) of
 15163 subsection (9), and paragraph (b) of subsection (10) of section
 15164 641.31071, Florida Statutes, are amended to read:

15165 641.31071 Preexisting conditions.--

15166 (5)(a) The term "creditable coverage" means, with respect
 15167 to an individual, coverage of the individual under any of the
 15168 following:

15169 1. A group health plan, as defined in s. 2791 of the
 15170 Public Health Service Act.

15171 2. Health insurance coverage consisting of medical care,
 15172 provided directly, through insurance or reimbursement or
 15173 otherwise, and including terms and services paid for as medical
 15174 care, under any hospital or medical service policy or
 15175 certificate, hospital or medical service plan contract, or
 15176 health maintenance contract offered by a health insurance
 15177 issuer.

15178 3. Part A or part B of Title XVIII of the Social Security



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4. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under s. 1928.

5. Chapter 55 of Title 10, United States Code.

6. A medical care program of the Indian Health Service or of a tribal organization.

7. The Florida Comprehensive Health Association or another state health benefit risk pool.

8. A health plan offered under chapter 89 of Title 5, United States Code.

9. A public health plan as defined by rule of the commission ~~department~~. To the greatest extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.

10. A health benefit plan under s. 5(e) of the Peace Corps Act (22 U.S.C. s. 2504(e)).

(b) Creditable coverage does not include coverage that consists solely of one or more or any combination thereof of the following excepted benefits:

1. Coverage only for accident, or disability income insurance, or any combination thereof.
2. Coverage issued as a supplement to liability insurance.
3. Liability insurance, including general liability insurance and automobile liability insurance.
4. Workers' compensation or similar insurance.
5. Automobile medical payment insurance.
6. Credit-only insurance.
7. Coverage for onsite medical clinics.
8. Other similar insurance coverage, specified in rules adopted by the commission ~~department~~, under which benefits for



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15209 medical care are secondary or incidental to other insurance
 15210 benefits. To the greatest extent possible, such rules must be
 15211 consistent with regulations adopted by the United States
 15212 Department of Health and Human Services.

15213 (c) The following benefits are not subject to the
 15214 creditable coverage requirements, if offered separately;

- 15215 1. Limited scope dental or vision benefits.
- 15216 2. Benefits or long-term care, nursing home care, home
 15217 health care, community-based care, or any combination of these.

15218 3. Such other similar, limited benefits as are specified
 15219 in rules adopted by the commission ~~department~~. To the greatest
 15220 extent possible, such rules must be consistent with regulations
 15221 adopted by the United States Department of Health and Human
 15222 Services.

15223 (d) The following benefits are not subject to creditable
 15224 coverage requirements if offered as independent, noncoordinated
 15225 benefits:

- 15226 1. Coverage only for a specified disease or illness.
- 15227 2. Hospital indemnity or other fixed indemnity insurance.

15228 (e) Benefits provided through Medicare supplemental health
 15229 insurance, as defined under s. 1882(g)(1) of the Social Security
 15230 Act, coverage supplemental to the coverage provided under
 15231 chapter 55 of Title 10, United States Code, and similar
 15232 supplemental coverage provided to coverage under a group health
 15233 plan are not considered creditable coverage if offered as a
 15234 separate insurance policy.

15235 (7)

15236 (b) A health maintenance organization may elect to count
 15237 as creditable coverage, coverage of benefits within each of
 15238 several classes or categories of benefits specified in rules



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15239 adopted by the commission ~~department~~ rather than as provided
15240 under paragraph (a). Such election shall be made on a uniform
15241 basis for all participants and beneficiaries. Under such
15242 election, a health maintenance organization shall count a period
15243 of creditable coverage with respect to any class or category of
15244 benefits if any level of benefits is covered within such class
15245 or category.

15246 (8)(a) Periods of creditable coverage with respect to an
15247 individual shall be established through presentation of
15248 certifications described in this subsection or in such other
15249 manner as may be specified in rules adopted by the commission
15250 ~~department~~.

15251 (e) The commission ~~department~~ shall adopt rules to prevent
15252 an insurer's or health maintenance organization's failure to
15253 provide information under this subsection with respect to
15254 previous coverage of an individual from adversely affecting any
15255 subsequent coverage of the individual under another group health
15256 plan or health maintenance organization coverage.

15257 (9)

15258 (c) As an alternative to the method authorized by
15259 paragraph (a), a health maintenance organization may address
15260 adverse selection in a method approved by the office ~~department~~.

15261 (10)

15262 (b) The commission ~~department~~ shall adopt rules that
15263 provide a process whereby individuals who need to establish
15264 creditable coverage for periods before July 1, 1996, and who
15265 would have such coverage credited but for paragraph (a), may be
15266 given credit for creditable coverage for such periods through
15267 the presentation of documents or other means.

15268 Section 286. Paragraph (b) of subsection (3) of section



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15269 641.31074, Florida Statutes, is amended to read:

15270 641.31074 Guaranteed renewability of coverage.--

15271 (3)

15272 (b)1. In any case in which a health maintenance
 15273 organization elects to discontinue offering all coverage in the
 15274 small group market or the large group market, or both, in this
 15275 state, coverage may be discontinued by the insurer only if:

15276 a. The health maintenance organization provides notice to
 15277 the office ~~department~~ and to each contract holder, and
 15278 participants and beneficiaries covered under such coverage, of
 15279 such discontinuation at least 180 days prior to the date of the
 15280 nonrenewal of such coverage; and

15281 b. All health insurance issued or delivered for issuance
 15282 in this state in such market is discontinued and coverage under
 15283 such health insurance coverage in such market is not renewed.

15284 2. In the case of a discontinuation under subparagraph 1.
 15285 in a market, the health maintenance organization may not provide
 15286 for the issuance of any health maintenance organization contract
 15287 coverage in the market in this state during the 5-year period
 15288 beginning on the date of the discontinuation of the last
 15289 insurance contract not renewed.

15290 Section 287. Subsection (2) of section 641.315, Florida
 15291 Statutes, is amended to read:

15292 641.315 Provider contracts.--

15293 (2)(a) For all provider contracts executed after October
 15294 1, 1991, and within 180 days after October 1, 1991, for
 15295 contracts in existence as of October 1, 1991:

15296 1. The contracts must require the provider to give 60
 15297 days' advance written notice to the health maintenance
 15298 organization and the office ~~department~~ before canceling the



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15299 contract with the health maintenance organization for any
15300 reason; and

15301 2. The contract must also provide that nonpayment for
15302 goods or services rendered by the provider to the health
15303 maintenance organization is not a valid reason for avoiding the
15304 60-day advance notice of cancellation.

15305 (b) All provider contracts must provide that the health
15306 maintenance organization will provide 60 days' advance written
15307 notice to the provider and the office ~~department~~ before
15308 canceling, without cause, the contract with the provider, except
15309 in a case in which a patient's health is subject to imminent
15310 danger or a physician's ability to practice medicine is
15311 effectively impaired by an action by the Board of Medicine or
15312 other governmental agency.

15313 Section 288. Subsections (4) and (5) of section 641.3154,
15314 Florida Statutes, are amended to read:

15315 641.3154 Organization liability; provider billing
15316 prohibited.--

15317 (4) A provider or any representative of a provider,
15318 regardless of whether the provider is under contract with the
15319 health maintenance organization, may not collect or attempt to
15320 collect money from, maintain any action at law against, or
15321 report to a credit agency a subscriber of an organization for
15322 payment of services for which the organization is liable, if the
15323 provider in good faith knows or should know that the
15324 organization is liable. This prohibition applies during the
15325 pendency of any claim for payment made by the provider to the
15326 organization for payment of the services and any legal
15327 proceedings or dispute resolution process to determine whether
15328 the organization is liable for the services if the provider is



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15329 informed that such proceedings are taking place. It is presumed
 15330 that a provider does not know and should not know that an
 15331 organization is liable unless:

15332 (a) The provider is informed by the organization that it
 15333 accepts liability;

15334 (b) A court of competent jurisdiction determines that the
 15335 organization is liable;

15336 (c) The office ~~department~~ or agency makes a final
 15337 determination that the organization is required to pay for such
 15338 services subsequent to a recommendation made by the Statewide
 15339 Provider and Subscriber Assistance Panel pursuant to s.
 15340 408.7056; or

15341 (d) The agency issues a final order that the organization
 15342 is required to pay for such services subsequent to a
 15343 recommendation made by a resolution organization pursuant to s.
 15344 408.7057.

15345 (5) An organization, the office, and the department shall
 15346 report any suspected violation of this section by a health care
 15347 practitioner to the Department of Health and by a facility to
 15348 the agency, which shall take such action as authorized by law.

15349 Section 289. Subsection (12) of section 641.3155, Florida
 15350 Statutes, is amended to read:

15351 641.3155 Prompt payment of claims.--

15352 (12) A permissible error ratio of 5 percent is established
 15353 for health maintenance organizations' claims payment violations
 15354 of paragraphs (3)(a), (b), (c), and (e) and (4)(a), (b), (c), and
 15355 (e). If the error ratio of a particular insurer does not exceed
 15356 the permissible error ratio of 5 percent for an audit period, no
 15357 fine shall be assessed for the noted claims violations for the
 15358 audit period. The error ratio shall be determined by dividing



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15359 the number of claims with violations found on a statistically
 15360 valid sample of claims for the audit period by the total number
 15361 of claims in the sample. If the error ratio exceeds the
 15362 permissible error ratio of 5 percent, a fine may be assessed
 15363 according to s. 624.4211 for those claims payment violations
 15364 which exceed the error ratio. Notwithstanding the provisions of
 15365 this section, the office ~~department~~ may fine a health
 15366 maintenance organization for claims payment violations of
 15367 paragraphs (3)(e) and (4)(e) which create an uncontestable
 15368 obligation to pay the claim. The office ~~department~~ shall not
 15369 fine organizations for violations which the office ~~department~~
 15370 determines were due to circumstances beyond the organization's
 15371 control.

15372 Section 290. Subsection (4), (6), and (7) of section
 15373 641.316, Florida Statutes, are amended to read:

15374 641.316 Fiscal intermediary services.--

15375 (4) A fiscal intermediary services organization, as
 15376 described in subsection (3), shall secure and maintain a surety
 15377 bond on file with the office ~~department~~, naming the intermediary
 15378 as principal. The bond must be obtained from a company
 15379 authorized to write surety insurance in the state, and the
 15380 office ~~department~~ shall be obligee on behalf of itself and third
 15381 parties. The penal sum of the bond may not be less than 5
 15382 percent of the funds handled by the intermediary in connection
 15383 with its fiscal and fiduciary services during the prior year or
 15384 \$250,000, whichever is less. The minimum bond amount must be
 15385 \$10,000. The condition of the bond must be that the intermediary
 15386 shall register with the office ~~department~~ and shall not
 15387 misappropriate funds within its control or custody as a fiscal
 15388 intermediary or fiduciary. The aggregate liability of the surety



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15389 for any and all breaches of the conditions of the bond may not
 15390 exceed the penal sum of the bond. The bond must be continuous in
 15391 form, must be renewed annually by a continuation certificate,
 15392 and may be terminated by the surety upon its giving 30 days'
 15393 written notice of termination to the office ~~department~~.

15394 (6) Any fiscal intermediary services organization, other
 15395 than a fiscal intermediary services organization owned,
 15396 operated, or controlled by a hospital licensed under chapter
 15397 395, an insurer licensed under chapter 624, a third-party
 15398 administrator licensed under chapter 626, a prepaid limited
 15399 health service organization licensed under chapter 636, a health
 15400 maintenance organization licensed under this chapter, or
 15401 physician group practices as defined in s. 456.053(3)(h), must
 15402 register with the office ~~department~~ and meet the requirements of
 15403 this section. In order to register as a fiscal intermediary
 15404 services organization, the organization must comply with ss.
 15405 641.21(1)(c) and (d) and 641.22(6). Should the office ~~department~~
 15406 determine that the fiscal intermediary services organization
 15407 does not meet the requirements of this section, the registration
 15408 shall be denied. In the event that the registrant fails to
 15409 maintain compliance with the provisions of this section, the
 15410 office ~~department~~ may revoke or suspend the registration. In
 15411 lieu of revocation or suspension of the registration, the office
 15412 ~~department~~ may levy an administrative penalty in accordance with
 15413 s. 641.25.

15414 (7) The commission ~~department~~ shall adopt rules necessary
 15415 to administer this section.

15416 Section 291. Subsections (1), (2), (3), and (4), paragraph
 15417 (b) of subsection (6), subsection (8), paragraph (c) of
 15418 subsection (10), subsections (11) and (12), paragraph (a) of



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15419 subsection (14), and subsections (15), (16), and (17) of section
 15420 641.35, Florida Statutes, are amended to read:

15421 641.35 Assets, liabilities, and investments.--

15422 (1) ASSETS.--In any determination of the financial
 15423 condition of a health maintenance organization, there shall be
 15424 allowed as "assets" only those assets that are owned by the
 15425 health maintenance organization and that consist of:

15426 (a) Cash or cash equivalents in the possession of the
 15427 health maintenance organization, or in transit under its
 15428 control, including the true balance of any deposit in a solvent
 15429 bank, savings and loan association, or trust company which is
 15430 domiciled in the United States. Cash equivalents are short-term,
 15431 highly liquid investments, with original maturities of 3 months
 15432 or less, which are both readily convertible to known amounts of
 15433 cash and so near their maturity that they present insignificant
 15434 risk of changes in value because of changes in interest rates.

15435 (b) Investments, securities, properties, and loans
 15436 acquired or held in accordance with this part, and in connection
 15437 therewith the following items:

15438 1. Interest due or accrued on any bond or evidence of
 15439 indebtedness which is not in default and which is not valued on
 15440 a basis including accrued interest.

15441 2. Declared and unpaid dividends on stock and shares,
 15442 unless the amount of the dividends has otherwise been allowed as
 15443 an asset.

15444 3. Interest due or accrued upon a collateral loan which is
 15445 not in default in an amount not to exceed 1 year's interest
 15446 thereon.

15447 4. Interest due or accrued on deposits or certificates of
 15448 deposit in solvent banks, savings and loan associations, and



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15449 trust companies domiciled in the United States, and interest due
 15450 or accrued on other assets, if such interest is in the judgment
 15451 of the office ~~department~~ a collectible asset.

15452 5. Interest due or accrued on current mortgage loans, in
 15453 an amount not exceeding in any event the amount, if any, of the
 15454 excess of the value of the property less delinquent taxes
 15455 thereon over the unpaid principal; but in no event shall
 15456 interest accrued for a period in excess of 90 days be allowed as
 15457 an asset.

15458 (c) Premiums in the course of collection, not more than 3
 15459 months past due, less commissions payable thereon. The
 15460 foregoing limitation shall not apply to premiums payable
 15461 directly or indirectly by any governmental body in the United
 15462 States or by any of their instrumentalities.

15463 (d) The full amount of reinsurance recoverable from a
 15464 solvent reinsurer, which reinsurance is authorized under s.
 15465 624.610.

15466 (e) Pharmaceutical and medical supply inventories.

15467 (f) Goodwill created by acquisitions and mergers occurring
 15468 on or after January 1, 2001.

15469 (g) Loans or advances by a health maintenance organization
 15470 to its parent or principal owner if approved by the office
 15471 ~~department~~.

15472 (h) Other assets, not inconsistent with the provisions of
 15473 this section, deemed by the office ~~department~~ to be available
 15474 for the payment of losses and claims, at values to be determined
 15475 by it.

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15478 The office ~~department~~, upon determining that a health



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15479 maintenance organization's asset has not been evaluated
 15480 according to applicable law or that it does not qualify as an
 15481 asset, shall require the health maintenance organization to
 15482 properly reevaluate the asset or replace the asset with an asset
 15483 suitable to the office department within 30 days of receipt of
 15484 written notification by the office department of this
 15485 determination, if the removal of the asset from the
 15486 organization's assets would impair the organization's solvency.

15487 (2) ASSETS NOT ALLOWED.--In addition to assets impliedly
 15488 excluded by the provisions of subsection (1), the following
 15489 assets expressly shall not be allowed as assets in any
 15490 determination of the financial condition of a health maintenance
 15491 organization:

15492 (a) Subscriber lists, patents, trade names, agreements not
 15493 to compete, and other like intangible assets.

15494 (b) Any note or account receivable from or advances to
 15495 officers, directors, or controlling stockholders, whether
 15496 secured or not, and advances to employees, agents, or other
 15497 persons on personal security only, other than those transactions
 15498 authorized under paragraph (1)(g).

15499 (c) Stock of the health maintenance organization owned by
 15500 it directly or owned by it through any entity in which the
 15501 organization owns or controls, directly or indirectly, more than
 15502 25 percent of the ownership interest.

15503 (d) Leasehold improvements, nonmedical libraries,
 15504 stationery, literature, and nonmedical supply inventories,
 15505 except that leasehold improvements made prior to October 1,
 15506 1985, shall be allowed as an asset and shall be amortized over
 15507 the shortest of the following periods:

15508 1. The life of the lease.



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15509 2. The useful life of the improvements.
 15510 3. The 3-year period following October 1, 1985.
 15511 (e) Furniture, fixtures, furnishings, vehicles, medical
 15512 libraries, and equipment.
 15513 (f) Notes or other evidences of indebtedness which are
 15514 secured by mortgages or deeds of trust which are in default and
 15515 beyond the express period specified in the instrument for curing
 15516 the default.
 15517 (g) Bonds in default for more than 60 days.
 15518 (h) Prepaid and deferred expenses.
 15519 (i) Any note, account receivable, advance, or other
 15520 evidence of indebtedness, or investment in:
 15521 1. The parent of the health maintenance organization;
 15522 2. Any entity directly or indirectly controlled by the
 15523 health maintenance organization parent; or
 15524 3. An affiliate of the parent or the health maintenance
 15525 organization,
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 15528 except as allowed in subsections (1), (11), and (12). The
 15529 office department ~~department~~ may, however, allow all or a portion of such
 15530 asset, at values to be determined by the office department, if
 15531 deemed by the office department to be available for the payment
 15532 of losses and claims.
 15533 (3) LIABILITIES.--In any determination of the financial
 15534 condition of a health maintenance organization, liabilities to
 15535 be charged against its assets shall include:
 15536 (a) The amount, estimated consistently with the provisions
 15537 of this part, necessary to pay all of its unpaid losses and
 15538 claims incurred for or on behalf of a subscriber, on or prior to



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15539 the end of the reporting period, whether reported or unreported,
 15540 including contract and premium deficiency reserves. If a health
 15541 maintenance organization, through a health care risk contract,
 15542 transfers to any entity the obligation to pay any provider for
 15543 any claim arising from services provided to or for the benefit
 15544 of any subscriber, the liabilities of the health maintenance
 15545 organization under this section shall include the amount of
 15546 those losses and claims to the extent that the provider has not
 15547 received payment. No liability need be established if the entity
 15548 has provided to the health maintenance organization a financial
 15549 instrument acceptable to the office ~~department~~ securing the
 15550 obligations under the contract or if the health maintenance
 15551 organization has in place an escrow or withhold agreement
 15552 approved by the office ~~department~~ which assures full payment of
 15553 those claims. Financial instruments may include irrevocable,
 15554 clean, and evergreen letters of credit. As used in this
 15555 paragraph, the term "entity" does not include this state, the
 15556 United States, or an agency thereof or an insurer or health
 15557 maintenance organization authorized in this state.

15558 (b) The amount equal to the unearned portions of the gross
 15559 premiums charged on health maintenance contracts in force.

15560 (c) Taxes, expenses, and other obligations due or accrued
 15561 at the date of the statement.

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15564 The office ~~department~~, upon determining that a health
 15565 maintenance organization has failed to report liabilities that
 15566 should have been reported, shall require a corrected report
 15567 which reflects the proper liabilities to be submitted by the
 15568 organization to the office ~~department~~ within 10 working days of



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15569 receipt of written notification.

15570 (4) INVESTMENTS GENERALLY.--Health maintenance
15571 organizations may invest their funds only in accordance with the
15572 provisions of this part. Notwithstanding the provisions of this
15573 part, however, the office ~~department~~ may, after notice and
15574 hearing, order a health maintenance organization to limit or
15575 withdraw from certain investments or to discontinue certain
15576 investment practices, to the extent that the office ~~department~~
15577 finds the investment practices hazardous to the financial
15578 condition of the organization. At any such hearing, the office
15579 ~~department~~ shall have the burden of presenting a prima facie
15580 case that the investment or investment practices are hazardous
15581 to the financial condition of the organization. If the office
15582 ~~department~~ presents such a prima facie case, then it shall be
15583 the organization's burden to demonstrate that the investment or
15584 investment practices are not hazardous to the financial
15585 condition of the organization.

15586 (6) GENERAL QUALIFICATIONS.--

15587 (b) No security or investment shall be eligible for
15588 purchase at a price above its market value unless it is approved
15589 by the office ~~department~~.

15590 (8) EXCESSIVE COMMISSIONS AND CERTAIN INTERESTS
15591 PROHIBITED.--

15592 (a) No health maintenance organization shall pay any
15593 commission or brokerage for the purchase or sale of property,
15594 whether real or personal, in excess of that usual and customary
15595 at the time and in the locality where the purchases or sales are
15596 made. Information regarding payments of commissions and
15597 brokerage shall be maintained from the date of the most recent
15598 examination by the office ~~department~~ pursuant to s. 641.27 until



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15599 the date of completion of the following examination.

15600 (b) No health maintenance organization shall knowingly
 15601 invest in or loan upon any property, directly or indirectly,
 15602 whether real or personal, in which any officer or director of
 15603 the organization has a financial interest, nor shall any
 15604 organization make a loan of any kind to any officer or director
 15605 of the organization, except that:

15606 1. This paragraph shall not apply to loans in
 15607 circumstances in which the financial interest of the officer or
 15608 director is only nominal, trifling, or so remote as not to give
 15609 rise to a conflict of interest; and

15610 2. In any case, the office ~~department~~ may approve a
 15611 transaction between an organization and its officers or
 15612 directors under this paragraph if it is satisfied that:

15613 a. The transaction is entered into in good faith for the
 15614 advantage and benefit of the organization,

15615 b. The amount of the proposed investment or loan does not
 15616 violate any other provision of this part or exceed the
 15617 reasonable, normal value of the property or the interest which
 15618 the company proposed to acquire,

15619 c. The transaction is otherwise fair and reasonable, and

15620 d. The transaction will not adversely affect, to any
 15621 substantial degree, the liquidity of the organization's
 15622 investments or its ability thereafter to comply with
 15623 requirements of this part or the payment of its claims and
 15624 obligations.

15625 (10) PROPERTY USED IN THE HEALTH MAINTENANCE
 15626 ORGANIZATION'S BUSINESS.--Real estate, including leasehold
 15627 estates, for the convenient accommodation of the organization's
 15628 business operations, including home office, branch



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15629 administrative offices, hospitals, medical clinics, medical
 15630 professional buildings, and any other facility to be used in the
 15631 provision of health care services, or real estate for rental to
 15632 any health care provider under contract with the organization to
 15633 provide health care services which shall be used in the
 15634 provision of health care services to members of the organization
 15635 by that provider, is acceptable as an investment on the
 15636 following conditions:

15637 (c) The greater of the admitted value of the asset, as
 15638 determined by statutory accounting principles, or, if approved
 15639 by the office ~~department~~, the health maintenance organization's
 15640 equity in the real estate plus all encumbrances on the real
 15641 estate owned by the organization under this subsection, when
 15642 added to the value of all personal and mixed property used in
 15643 the organization's business, shall not exceed 75 percent of its
 15644 admitted assets unless, with the permission of the office
 15645 ~~department~~, it finds that the percentage of its admitted assets
 15646 is insufficient to provide convenient accommodation for the
 15647 organization's business and the operations of the organization
 15648 would not otherwise be impaired.

15649 (11) INVESTMENTS IN ADMINISTRATIVE AND MANAGEMENT SERVICE
 15650 ENTITIES AND OTHER HEALTH CARE PROVIDERS.--A health maintenance
 15651 organization may invest directly or indirectly in real estate,
 15652 common and preferred stocks, bonds or debentures, including
 15653 convertible debentures, or other evidences of debts of or equity
 15654 in an entity if the entity is owned by or, with the approval of
 15655 the office ~~department~~, under contract to the organization to
 15656 provide management services, administrative services, or health
 15657 care services for the organization, on the following conditions:

15658 (a) Investments authorized under this subsection shall not



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15659 exceed 50 percent of admitted assets, and these investments
 15660 shall be included in the calculation of the overall limitation
 15661 in paragraph (10)(c) relating to all real and personal property.

15662 (b) Investments may qualify under this section only
 15663 insofar as a provider of management, administrative, or health
 15664 care service relationship as defined herein exists. Upon
 15665 cessation of such relationship, each investment shall be subject
 15666 to the rules applicable to an investment of that type and must
 15667 qualify under the appropriate limitation or, failing that,
 15668 become ineligible and subject to disposal under subsection (17).

15669 (12) EXCHANGES OF FACILITIES OR ASSETS.--Health care or
 15670 administrative service entities, if subsidiaries of or under
 15671 contract to the health maintenance organization to provide
 15672 administrative or health care services to the organization's
 15673 members, may exchange facilities or similar assets to be used in
 15674 the organization's business for stock of the organization.
 15675 However, any exchange involving an entity under contract with
 15676 the health maintenance organization must have the approval of
 15677 the office department prior to the exchange. These facilities
 15678 or assets shall be valued in accordance with statutory
 15679 accounting principles.

15680 (14) SPECIAL LIMITATION INVESTMENTS.--

15681 (a) After satisfying the requirements of this part, any
 15682 funds of the health maintenance organization may be invested in
 15683 the following investments, subject to a cost limitation of 10
 15684 percent of its admitted assets in each category of investment:

15685 1. Anticipation obligations of political subdivisions of a
 15686 state.--Anticipation obligations of any political subdivision of
 15687 any state of the United States, including, but not limited to,
 15688 bond anticipation notes, tax anticipation notes, preliminary



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15689 loan anticipation notes, revenue anticipation notes, and
 15690 construction anticipation notes, for the payment of money within
 15691 12 months from the issuance of the obligation, on the following
 15692 conditions:

15693 a. The anticipation notes are a direct obligation of the
 15694 issuer under conditions set forth in subsection (9).

15695 b. The political subdivision is not in default in the
 15696 payment of the principal or interest on any of its direct
 15697 general obligations or any obligation guaranteed by such
 15698 political subdivision.

15699 c. The anticipated funds are specifically pledged to
 15700 secure the obligations.

15701 2. Revenue obligations of state or municipal public
 15702 utilities.--Obligations of any state of the United States, a
 15703 political subdivision thereof, or a public instrumentality of
 15704 any one or more of the foregoing for the payment of money, on
 15705 the following conditions:

15706 a. The obligations are payable from revenues or earnings
 15707 of a public utility of such state, political subdivision, or
 15708 public instrumentality which are specifically pledged therefor.

15709 b. The law under which the obligations are issued requires
 15710 that such rates for service shall be charged and collected at
 15711 all times so as to produce sufficient revenue or earning,
 15712 together with any other revenues or moneys pledged, to pay all
 15713 operating and maintenance charges of the public utility and all
 15714 principal and interest on such charges.

15715 c. No prior or parity obligations payable from the
 15716 revenues or earnings of that public utility are in default at
 15717 the date of such investment.

15718 3. Other revenue obligations.--Obligations of any state of



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15719 the United States, a political subdivision thereof, or a public
 15720 instrumentality of any of the foregoing for the payment of
 15721 money, on the following conditions:

15722 a. The obligations are payable from revenues or earnings,
 15723 excluding revenues or earnings from public utilities,
 15724 specifically pledged therefor by such state, political
 15725 subdivision, or public instrumentality.

15726 b. No prior or parity obligation of the same issuer
 15727 payable from revenues or earnings from the same source has been
 15728 in default as to principal or interest during the 5 years next
 15729 preceding the date of the investment, but the issuer need not
 15730 have been in existence for that period, and obligations acquired
 15731 under this paragraph may be newly issued.

15732 4. Corporate stocks.--Stocks, common or preferred, of any
 15733 corporation created or existing under the laws of the United
 15734 States or any state thereof. The organization may invest in
 15735 stocks, common or preferred, of any corporation created or
 15736 existing under the laws of any foreign country if such stocks
 15737 are listed and traded on a national securities exchange in the
 15738 United States or, in the alternative, if such investment in
 15739 stocks of any corporation created or existing under the laws of
 15740 any foreign country are first approved by the office ~~department~~.
 15741 Investment in common stock of any one corporation shall not
 15742 exceed 3 percent of the health maintenance organization's
 15743 admitted assets.

15744 (15) INVESTMENT OF EXCESS FUNDS.--

15745 (a) After satisfying the requirements of this part, any
 15746 funds of a health maintenance organization in excess of its
 15747 statutorily required reserves and surplus may be invested:

15748 1. Without limitation in any investments otherwise



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15749 authorized by this part; or

15750 2. In such other investments not specifically authorized
 15751 by this part, provided such investments do not exceed the lesser
 15752 of 5 percent of the health maintenance organization's admitted
 15753 assets or 25 percent of the amount by which a health maintenance
 15754 organization's surplus exceeds its statutorily required minimum
 15755 surplus. A health maintenance organization may exceed the
 15756 limitations of this subparagraph only with the prior written
 15757 approval of the office ~~department~~.

15758 (b) Nothing in this section authorizes a health
 15759 maintenance organization to:

15760 1. Invest any funds in excess of the amount by which its
 15761 actual surplus exceeds its statutorily required minimum surplus;
 15762 or

15763 2. Make any investment prohibited by this code.

15764 (16) PROHIBITED INVESTMENTS AND INVESTMENT UNDERWRITING.--

15765 (a) In addition to investments excluded pursuant to other
 15766 provisions of this act, a health maintenance organization shall
 15767 not directly or indirectly invest in or lend its funds upon the
 15768 security of:

15769 1. Issued shares of its own capital stock, except in
 15770 connection with a plan approved by the office ~~department~~ for
 15771 purchase of the shares by the organization's officers,
 15772 employees, or agents. However, no such stock shall constitute an
 15773 asset of the organization in any determination of its financial
 15774 condition.

15775 2. Except with the consent of the office ~~department~~,
 15776 securities issued by any corporation or enterprise the
 15777 controlling interest of which is, or will after such acquisition
 15778 by the organization be, held directly or indirectly by the



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15779 organization or any combination of the organization and its
 15780 directors, officers, parent corporation, subsidiaries, or
 15781 controlling stockholders. Investments in health care providers
 15782 under subsections (11) and(12) shall not be subject to this
 15783 provision.

15784 3. Any note or other evidence of indebtedness of any
 15785 director, officer, or controlling stockholder of the health
 15786 maintenance organization.

15787 (b) No health maintenance organization shall underwrite or
 15788 participate in the underwriting of an offering of securities or
 15789 property by any other person.

15790 (17) TIME LIMIT FOR DISPOSAL OF INELIGIBLE PROPERTY AND
 15791 SECURITIES; EFFECT OF FAILURE TO DISPOSE.--

15792 (a) Any property or securities lawfully acquired by a
 15793 health maintenance organization which it could not otherwise
 15794 have invested in or loaned its funds upon at the time of such
 15795 acquisition shall be disposed of within 6 months from the date
 15796 of acquisition, unless within such period the security has
 15797 attained to the standard of eligibility; except that any
 15798 security or property acquired under any agreement of merger or
 15799 consolidation may be retained for a longer period if so provided
 15800 in the plan for such merger or consolidation, as approved by the
 15801 office ~~department~~. Upon application by the organization and
 15802 proof to the office ~~department~~ that forced sale of any such
 15803 property or security would materially injure the interests of
 15804 the health maintenance organization, the office ~~department~~ shall
 15805 extend the disposal period for an additional reasonable time.

15806 (b) Notwithstanding the provisions of paragraph (a), any
 15807 ineligible property or securities shall not be allowed as an
 15808 asset of the organization.



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15809 Section 292. Section 641.36, Florida Statutes, is amended
 15810 to read:

15811 641.36 Adoption of rules; penalty for violation.--The
 15812 commission ~~department~~ shall adopt rules necessary to carry out
 15813 the provisions of this part. The office ~~department~~ shall
 15814 collect and make available all health maintenance organization
 15815 rules adopted by the commission ~~department~~. Any violation of a
 15816 rule adopted under this section shall subject the violating
 15817 entity to the provisions of s. 641.23.

15818 Section 293. Subsections (1), (2), and (5) of section
 15819 641.365, Florida Statutes, are amended to read:

15820 641.365 Dividends.--

15821 (1)(a) A health maintenance organization shall not pay any
 15822 dividend or distribute cash or other property to stockholders
 15823 except out of that part of its available and accumulated surplus
 15824 funds which is derived from realized net operating profits on
 15825 its business and net realized capital gains.

15826 (b) Unless prior written approval is obtained from the
 15827 office ~~department~~, a health maintenance organization may not pay
 15828 or declare any dividend or distribute cash or other property to
 15829 or on behalf of any stockholder if, immediately before or after
 15830 such distribution, the health maintenance organization's
 15831 available and accumulated surplus funds, which are derived from
 15832 realized net operating profits on its business and net realized
 15833 gains, are or would be less than zero.

15834 (c) A health maintenance organization may make dividend
 15835 payments or distributions to stockholders without the prior
 15836 written approval of the office ~~department~~ when:

15837 1. The dividend is equal to or less than the greater of:

15838 a. Ten percent of the health maintenance organization's



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15839 accumulated surplus funds which are derived from realized net
15840 operating profits on its business and net realized capital gains
15841 as of the immediate preceding calendar year; or

15842 b. The health maintenance organization's entire net
15843 operating profit and realized net capital gains derived during
15844 the immediately preceding calendar year.

15845 2. The health maintenance organization will have surplus
15846 equal to or exceeding 115 percent of the minimum required
15847 statutory surplus after the dividend or distribution is made.

15848 3. The health maintenance organization has filed a notice
15849 with the office ~~department~~ at least 30 days prior to the
15850 dividend payment or distribution, or such shorter period of time
15851 as approved by the office ~~department~~ on a case-by-case basis.

15852 4. The notice includes a certification by an officer of
15853 the health maintenance organization attesting that after payment
15854 of the dividend or distribution the health maintenance
15855 organization will have at least 115 percent of required
15856 statutory surplus.

15857 5. The health maintenance organization has negative
15858 retained earnings, statutory surplus in excess of \$50 million,
15859 and statutory surplus greater than or equal to 150 percent of
15860 its required statutory surplus before and after the dividend
15861 distribution is made based upon the health maintenance
15862 organization's most recently filed annual financial statement.

15863 (2) The office ~~department~~ shall not approve a dividend or
15864 distribution in excess of the maximum amount allowed in
15865 subsection(1) unless it determines that the distribution or
15866 dividend would not jeopardize the financial condition of the
15867 health maintenance organization, considering:

15868 (a) The liquidity, quality, and diversification of the



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15869 health maintenance organization's assets and the effect on its
15870 ability to meet its obligations.

15871 (b) Any reduction of investment portfolio and investment
15872 income.

15873 (c) History of capital contributions.

15874 (d) Prior dividend distributions of the health maintenance
15875 organization.

15876 (e) Whether the dividend is only a pass-through dividend
15877 from a subsidiary of the health maintenance organization.

15878 (5) The office ~~department~~ may revoke or suspend the
15879 certificate of authority of a health maintenance organization
15880 which has declared or paid such an illegal dividend.

15881 Section 294. Section 641.385, Florida Statutes, is amended
15882 to read:

15883 641.385 Order to discontinue certain advertising.--If in
15884 the opinion of the office ~~department~~ any advertisement by a
15885 health maintenance organization violates any of the provisions
15886 of this part, the department may enter an immediate order
15887 requiring that the use of the advertisement be discontinued. If
15888 requested by the health maintenance organization, the office
15889 ~~department~~ shall conduct a hearing within 10 days of the entry
15890 of such order. If, after the hearing or by agreement with the
15891 health maintenance organization, a final determination is made
15892 that the advertising was in fact violative of any provision of
15893 this part, the office ~~department~~ may, in lieu of revocation of
15894 the certificate of authority, require the publication of a
15895 corrective advertisement; impose an administrative penalty of up
15896 to \$10,000; and, in the case of an initial solicitation, require
15897 that the health maintenance organization, prior to accepting any
15898 application received in response to the advertisement, provide



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15899 an acceptable clarification of the advertisement to each
 15900 individual applicant.

15901 Section 295. Subsection (1) of section 641.39001, Florida
 15902 Statutes, is amended to read:

15903 641.39001 Soliciting or accepting new or renewal health
 15904 maintenance contracts by insolvent or impaired health
 15905 maintenance organization prohibited; penalty.--

15906 (1) Whether or not delinquency proceedings as to a health
 15907 maintenance organization have been or are to be initiated, a
 15908 director or officer of a health maintenance organization, except
 15909 with the written permission of the office ~~Department of~~
 15910 ~~Insurance~~, may not authorize or permit the health maintenance
 15911 organization to solicit or accept new or renewal health
 15912 maintenance contracts or provider contracts in this state after
 15913 the director or officer knew, or reasonably should have known,
 15914 that the health maintenance organization was insolvent or
 15915 impaired. As used in this section, the term "impaired" means
 15916 that the health maintenance organization does not meet the
 15917 requirements of s. 641.225.

15918 Section 296. Subsections (6) and (10) of section 641.3903,
 15919 Florida Statutes, are amended to read:

15920 641.3903 Unfair methods of competition and unfair or
 15921 deceptive acts or practices defined.--The following are defined
 15922 as unfair methods of competition and unfair or deceptive acts or
 15923 practices:

15924 (6) FAILURE TO MAINTAIN COMPLAINT-HANDLING
 15925 PROCEDURES.--Failure of any person to maintain a complete record
 15926 of all the complaints received since the date of the most recent
 15927 examination of the health maintenance organization by the office
 15928 ~~department~~. For the purposes of this subsection, the term



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15929 "complaint" means any written communication primarily expressing
 15930 a grievance and requesting a remedy to the grievance.

15931 (10) ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED
 15932 CHARGES FOR HEALTH MAINTENANCE COVERAGE.--

15933 (a) Knowingly collecting any sum as a premium or charge
 15934 for health maintenance coverage which is not then provided or is
 15935 not in due course to be provided, subject to acceptance of the
 15936 risk by the health maintenance organization, by a health
 15937 maintenance contract issued by a health maintenance organization
 15938 as permitted by this part.

15939 (b) Knowingly collecting as a premium or charge for health
 15940 maintenance coverage any sum in excess of or less than the
 15941 premium or charge applicable to health maintenance coverage, in
 15942 accordance with the applicable classifications and rates as
 15943 filed with the office ~~department~~, and as specified in the health
 15944 maintenance contract.

15945 Section 297. Section 641.3905, Florida Statutes, is
 15946 amended to read:

15947 641.3905 General powers and duties of the department and
 15948 office.--In addition to the powers and duties set forth in s.
 15949 624.307, the department and office shall each have the power
 15950 within its respective regulatory jurisdiction to examine and
 15951 investigate the affairs of every person, entity, or health
 15952 maintenance organization in order to determine whether the
 15953 person, entity, or health maintenance organization is operating
 15954 in accordance with the provisions of this part or has been or is
 15955 engaged in any unfair method of competition or in any unfair or
 15956 deceptive act or practice prohibited by s. 641.3901, and each
 15957 shall have the powers and duties specified in ss. 641.3907-
 15958 641.3913 in connection therewith.



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15959 Section 298. Section 641.3907, Florida Statutes, is
15960 amended to read:

15961 641.3907 Defined unfair practices; hearings, witnesses,
15962 appearances, production of books, and service of process.--

15963 (1) Whenever the department or office has reason to
15964 believe that any person, entity, or health maintenance
15965 organization has engaged, or is engaging, in this state in any
15966 unfair method of competition or any unfair or deceptive act or
15967 practice as defined in s. 641.3903 or is operating a health
15968 maintenance organization without a certificate of authority as
15969 required by this part and that a proceeding by it in respect
15970 thereto would be to the interest of the public, the department
15971 or office shall conduct or cause to have conducted a hearing in
15972 accordance with chapter 120.

15973 (2) The department or office, a duly empowered hearing
15974 officer, or an administrative law judge shall, during the
15975 conduct of such hearing, have those powers enumerated in s.
15976 120.569; however, the penalties for failure to comply with a
15977 subpoena or with an order directing discovery shall be limited
15978 to a fine not to exceed \$1,000 per violation.

15979 (3) Statements of charges, notices, and orders under this
15980 part may be served by anyone duly authorized by the department
15981 or office, either in the manner provided by law for service of
15982 process in civil actions or by certifying and mailing a copy
15983 thereof to the person, entity, or health maintenance
15984 organization affected by the statement, notice, order, or other
15985 process at her or his or its residence or principal office or
15986 place of business. The verified return by the person so serving
15987 such statement, notice, order, or other process, setting forth
15988 the manner of the service, shall be proof of the same, and the



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15989 return postcard receipt for such statement, notice, order, or
 15990 other process, certified and mailed as aforesaid, shall be proof
 15991 of service of the same.

15992 Section 299. Section 641.3909, Florida Statutes, is
 15993 amended to read:

15994 641.3909 Cease and desist and penalty orders.--After the
 15995 hearing provided in s. 641.3907, the department or office shall
 15996 enter a final order in accordance with s. 120.569. If it is
 15997 determined that the person, entity, or health maintenance
 15998 organization charged has engaged in an unfair or deceptive act
 15999 or practice or the unlawful operation of a health maintenance
 16000 organization without a subsisting certificate of authority, the
 16001 department or office shall also issue an order requiring the
 16002 violator to cease and desist from engaging in such method of
 16003 competition, act, or practice or unlawful operation of a health
 16004 maintenance organization. Further, if the act or practice
 16005 constitutes a violation of s. 641.3155, s. 641.3901, or s.
 16006 641.3903, the department or office may, at its discretion, order
 16007 any one or more of the following:

16008 (1) Suspension or revocation of the health maintenance
 16009 organization's certificate of authority if it knew, or
 16010 reasonably should have known, it was in violation of this part.

16011 (2) If it is determined that the person or entity charged
 16012 has engaged in the business of operating a health maintenance
 16013 organization without a certificate of authority, an
 16014 administrative penalty not to exceed \$1,000 for each health
 16015 maintenance contract offered or effectuated.

16016 Section 300. Section 641.3911, Florida Statutes, is
 16017 amended to read:

16018 641.3911 Appeals from the department or office.--Any



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16019 person, entity, or health maintenance organization subject to an
 16020 order of the department or office under s. 641.3909 or s.
 16021 641.3913 may obtain a review of the order by filing an appeal
 16022 therefrom in accordance with the provisions and procedures for
 16023 appeal under s. 120.68.

16024 Section 301. Section 641.3913, Florida Statutes, is
 16025 amended to read:

16026 641.3913 Penalty for violation of cease and desist
 16027 orders.--Any person, entity, or health maintenance organization
 16028 which violates a cease and desist order of the department or
 16029 office under s. 641.3909 while such order is in effect, after
 16030 notice and hearing as provided in s. 641.3907, shall be subject,
 16031 at the discretion of the department or office, to any one or
 16032 more of the following:

16033 (1) A monetary penalty of not more than \$200,000 as to all
 16034 matters determined in such hearing.

16035 (2) Suspension or revocation of the health maintenance
 16036 organization's certificate of authority.

16037 Section 302. Section 641.3917, Florida Statutes, is
 16038 amended to read:

16039 641.3917 Civil liability.--The provisions of this part are
 16040 cumulative to rights under the general civil and common law, and
 16041 no action of the department or office shall abrogate such rights
 16042 to damage or other relief in any court.

16043 Section 303. Subsections (3), (10), and (14) of section
 16044 641.3922, Florida Statutes, are amended to read:

16045 641.3922 Conversion contracts; conditions.--Issuance of a
 16046 converted contract shall be subject to the following conditions:

16047 (3) CONVERSION PREMIUM.--The premium for the converted
 16048 contract shall be determined in accordance with premium rates



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16049 applicable to the age and class of risk of each person to be
 16050 covered under the converted contract and to the type and amount
 16051 of coverage provided. However, the premium for the converted
 16052 contract may not exceed 200 percent of the standard risk rate,
 16053 as established by the office ~~department~~ under s. 627.6675(3).
 16054 The mode of payment for the converted contract shall be
 16055 quarterly or more frequently at the option of the organization,
 16056 unless otherwise mutually agreed upon between the subscriber and
 16057 the organization.

16058 (10) ALTERNATE PLANS.--The health maintenance organization
 16059 shall offer a standard health benefit plan as established
 16060 pursuant to s. 627.6699(12). The health maintenance organization
 16061 may, at its option, also offer alternative plans for group
 16062 health conversion in addition to those required by this section,
 16063 provided any alternative plan is approved by the office
 16064 ~~department~~ or is a converted policy, approved under s. 627.6675
 16065 and issued by an insurance company authorized to transact
 16066 insurance in this state. Approval by the office ~~department~~ of an
 16067 alternative plan shall be based on compliance by the alternative
 16068 plan with the provisions of this part and the rules promulgated
 16069 thereunder, applicable provisions of the Florida Insurance Code
 16070 and rules promulgated thereunder, and any other applicable law.

16071 (14) NOTIFICATION.--A notification of the conversion
 16072 privilege shall be included in each health maintenance contract
 16073 and in any certificate or member's handbook. The organization
 16074 shall mail an election and premium notice form, including an
 16075 outline of coverage, on a form approved by the office
 16076 ~~department~~, within 14 days after any individual who is eligible
 16077 for a converted health maintenance contract gives notice to the
 16078 organization that the individual is considering applying for the



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16079 converted contract or otherwise requests such information. The
 16080 outline of coverage must contain a description of the principal
 16081 benefits and coverage provided by the contract and its principal
 16082 exclusions and limitations, including, but not limited to,
 16083 deductibles and coinsurance.

16084 Section 304. Section 641.402, Florida Statutes, is amended
 16085 to read:

16086 641.402 Definitions.--As used in this part, the term:

16087 (1) "Basic services" includes any of the following:
 16088 emergency care, physician care other than hospital inpatient
 16089 physician services, ambulatory diagnostic treatment, and
 16090 preventive health care services.

16091 ~~(2) "Department" means the Department of Insurance.~~

16092 (2)~~(3)~~ "Guaranteeing organization" means an organization
 16093 that ~~which~~ is domiciled in the United States; that ~~which~~ has
 16094 authorized service of process against it; and that ~~which~~ has
 16095 appointed the Chief Financial Officer ~~Insurance Commissioner and~~
 16096 ~~Treasurer~~ as its agent for service of process in connection with
 16097 any cause of action arising in this state, based upon any
 16098 guarantee entered into under this part.

16099 (3)~~(4)~~ "Insolvent" or "insolvency" means the inability of
 16100 a prepaid health clinic to discharge its liabilities as they
 16101 become due in the normal course of business.

16102 (4)~~(5)~~ "Prepaid health clinic" means any organization
 16103 authorized under this part which provides, either directly or
 16104 through arrangements with other persons, basic services to
 16105 persons enrolled with such organization, on a prepaid per capita
 16106 or prepaid aggregate fixed-sum basis, including those basic
 16107 services which subscribers might reasonably require to maintain
 16108 good health. However, no clinic that ~~which~~ provides or contracts



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16109 for, either directly or indirectly, inpatient hospital services,
 16110 hospital inpatient physician services, or indemnity against the
 16111 cost of such services shall be a prepaid health clinic.

16112 (5)~~(6)~~ "Prepaid health clinic contract" means any contract
 16113 entered into by a prepaid health clinic with a subscriber or
 16114 group of subscribers to provide any of the basic services in
 16115 exchange for a prepaid per capita or prepaid aggregate fixed
 16116 sum.

16117 (6)~~(7)~~ "Provider" means any physician or person other than
 16118 a hospital that furnishes health care services and is licensed
 16119 or authorized to practice in this state.

16120 (7)~~(8)~~ "Reporting period" means the particular span of
 16121 time by or for which accounts are redeemed on an annualized
 16122 basis.

16123 (8)~~(9)~~ "Subscriber" means an individual who has
 16124 contracted, or on whose behalf a contract has been entered into,
 16125 with a prepaid health clinic for health care services.

16126 (9)~~(10)~~ "Surplus" means total unencumbered assets in
 16127 excess of total liabilities. Surplus includes capital stock,
 16128 capital in excess of par, and retained earnings and may include
 16129 surplus notes.

16130 (10)~~(11)~~ "Surplus notes" means debt that ~~which~~ has been
 16131 guaranteed by the United States Government or its agencies or
 16132 debt that ~~which~~ has been subordinated to all claims of
 16133 subscribers and general creditors of the prepaid health clinic.

16134 Section 305. Section 641.403, Florida Statutes, is amended
 16135 to read:

16136 641.403 Rulemaking authority.--The commission may
 16137 ~~Department of Insurance has authority to~~ adopt rules pursuant to
 16138 ss. 120.536(1) and 120.54 to implement the provisions of this



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16139 part.

16140 Section 306. Section 641.405, Florida Statutes, is amended
16141 to read:

16142 641.405 Application for certificate of authority to
16143 operate prepaid health clinic.--

16144 (1) No person may operate a prepaid health clinic without
16145 first obtaining a certificate of authority from the office
16146 ~~department~~. The office ~~department~~ shall not issue a certificate
16147 of authority to any applicant which does not possess a valid
16148 Health Care Provider Certificate issued by the Agency for Health
16149 Care Administration.

16150 (2) Each application for a certificate of authority shall
16151 be on such form as the commission ~~department~~ prescribes, and
16152 such application shall be accompanied by:

16153 (a) A copy of the basic organizational document of the
16154 applicant, if any, such as the articles of incorporation,
16155 articles of association, partnership agreement, trust agreement,
16156 or other applicable document, and all amendments to such
16157 document.

16158 (b) A copy of the constitution, bylaws, rules and
16159 regulations, or similar form of document, if any, regulating the
16160 conduct of the affairs of the applicant.

16161 (c) A list of the names, addresses, and official
16162 capacities with the applicant of the persons who are to be
16163 responsible for the conduct of the affairs of the clinic,
16164 including all members of the governing body, the officers and
16165 directors in the case of a corporation, and the partners or
16166 associates in the case of a partnership or association. Such
16167 persons shall fully disclose to the office ~~department~~ and the
16168 governing body of the clinic the extent and nature of any



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16169 contracts or arrangements between them and the clinic, including
 16170 any possible conflicts of interest.

16171 (d) A statement generally describing the clinic and its
 16172 operations.

16173 (e) Each form of prepaid health clinic contract that the
 16174 applicant proposes to offer the subscribers, showing for each
 16175 form of contract the benefits to which the subscribers are
 16176 entitled, together with a table of the rates charged, or
 16177 proposed to be charged.

16178 (f) A copy of the applicant's Health Care Provider
 16179 Certificate from the Agency for Health Care Administration,
 16180 issued pursuant to part III of this chapter.

16181 (g) A financial statement prepared on the basis of
 16182 generally accepted accounting principles, except that surplus
 16183 notes acceptable to the office ~~department~~ may be included in the
 16184 calculation of surplus.

16185 Section 307. Section 641.406, Florida Statutes, is amended
 16186 to read:

16187 641.406 Issuance of certificate of authority.--The office
 16188 ~~department~~ shall issue a certificate of authority for a prepaid
 16189 health clinic to any applicant filing a properly completed
 16190 application in conformity with s. 641.405, upon payment of the
 16191 prescribed fees and upon the office's ~~department's~~ being
 16192 satisfied that:

16193 (1) As a condition precedent to the issuance of any
 16194 certificate, the applicant has obtained a Health Care Provider
 16195 Certificate from the Agency for Health Care Administration
 16196 pursuant to part III of this chapter.

16197 (2) The proposed rates are actuarially sound for the
 16198 benefits provided, including administrative costs.



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16199 (3) The applicant has met the minimum surplus requirements
 16200 of s. 641.407.

16201 (4) The procedures for offering basic services and
 16202 offering and terminating contracts to subscribers will not
 16203 unfairly discriminate on the basis of age, health, or economic
 16204 status. However, this subsection does not prohibit reasonable
 16205 underwriting classifications for the purposes of establishing
 16206 contract rates, nor does it prohibit experience rating.

16207 (5) The procedures for offering basic services and
 16208 offering and terminating contracts to subscribers will not
 16209 discriminate on the basis of sex, race, or national origin.

16210 (6) The applicant furnishes evidence of adequate insurance
 16211 coverage or an adequate plan for self-insurance to respond to
 16212 claims for injuries arising out of the furnishing of basic
 16213 services.

16214 (7) The ownership, control, or management of the applicant
 16215 is competent and trustworthy and possesses managerial experience
 16216 that would make the proposed clinic operation beneficial to the
 16217 subscribers. The office ~~department~~ shall not grant or continue
 16218 authority to transact the business of a prepaid health clinic in
 16219 this state at any time during which the office ~~department~~ has
 16220 good reason to believe that the ownership, control, or
 16221 management of the clinic is under the control of any person
 16222 whose business operations are or have been marked by business
 16223 practices or conduct that is to the detriment of the public,
 16224 stockholders, investors, or creditors; by the improper
 16225 manipulation of assets or of accounts; or by bad faith.

16226 (8) The application and the applicant are in conformity
 16227 with all requirements of this part.

16228 Section 308. Section 641.4065, Florida Statutes, is



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16229 amended to read:

16230 641.4065 Insurance business not authorized.--Nothing in
 16231 the Florida Insurance Code or this part shall be deemed to
 16232 authorize any prepaid health clinic to transact any insurance
 16233 business other than that issuing prepaid health clinic contracts
 16234 or otherwise to engage in any other type of insurance unless it
 16235 is authorized under a certificate of authority issued by the
 16236 office ~~department~~ under the provisions of the Florida Insurance
 16237 Code.

16238 Section 309. Subsection (2) of section 641.407, Florida
 16239 Statutes, is amended to read:

16240 641.407 Minimum surplus.--

16241 (2) In lieu of having any minimum surplus, the prepaid
 16242 health clinic may provide a written guaranty to assure payment
 16243 of covered subscriber claims if the guaranteeing organization
 16244 has been in operation for at least 3 years and has a surplus,
 16245 not including land, buildings, and equipment, equal to the
 16246 product of 2 times the amount of the required statutory surplus.
 16247 Such guaranteeing organization and such written guaranty must be
 16248 acceptable to, and approved by, the office ~~department~~. The
 16249 office ~~department~~ shall consider the likelihood of the payment
 16250 of subscriber claims in granting or withholding such approval.

16251 Section 310. Section 641.409, Florida Statutes, is amended
 16252 to read:

16253 641.409 Insolvency protection.--

16254 (1) Every prepaid health clinic shall comply with one of
 16255 the following paragraphs:

16256 (a) The prepaid health clinic shall secure insurance to
 16257 the satisfaction of the office ~~department~~ to protect subscribers
 16258 in the event the prepaid health clinic is unable to meet its



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16259 obligations to subscribers under the terms of any prepaid health
 16260 clinic contract issued to a subscriber.

16261 (b) The prepaid health clinic shall file with the office
 16262 ~~department~~ a surety bond issued by an authorized surety insurer.
 16263 The bond shall be for the same purpose as the insurance in lieu
 16264 of which the bond is filed. The office ~~department~~ shall not
 16265 approve any bond under the terms of which the protection
 16266 afforded against insolvency is not equivalent to the protection
 16267 afforded by such insurance. The bond shall guarantee that the
 16268 prepaid health clinic will faithfully and truly perform all the
 16269 conditions of any prepaid health clinic contract. No such bond
 16270 shall be canceled or subject to cancellation unless at least 60
 16271 days' notice of the cancellation, in writing, is filed with the
 16272 office ~~department~~. In the event that the notice of termination
 16273 of the bond is filed with the office ~~department~~, the prepaid
 16274 health clinic insured under the bond shall, within 30 days of
 16275 the filing of the notice of termination, provide the office
 16276 ~~department~~ with a replacement bond meeting the requirements of
 16277 this part or secure insurance as required by paragraph (a). The
 16278 cancellation of a bond does not relieve the obligation of the
 16279 issuer of the bond for claims arising out of contracts issued
 16280 prior to the cancellation of the bond unless a replacement bond
 16281 or insurance is secured. In no event shall the issuer's
 16282 aggregate liability under the bond exceed the face amount of the
 16283 bond. If, within 30 days of filing the notice of termination, a
 16284 replacement bond or insurance has not been secured and filed
 16285 with the office ~~department~~, the office ~~department~~ shall suspend
 16286 the certificate of the prepaid health clinic until the deposit
 16287 requirements are satisfied. Whenever the prepaid health clinic
 16288 ceases to do business in this state and furnishes to the office



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16289 ~~department~~ satisfactory proof that it has discharged or
 16290 otherwise adequately provided for all of its obligations to its
 16291 subscribers, the office ~~department~~ shall release any bond filed
 16292 by the prepaid health clinic.

16293 (2) In determining the sufficiency of the insurance
 16294 required under paragraph (1)(a) or the surety bond required
 16295 under paragraph (1)(b), the office ~~department~~ may consider the
 16296 number of subscribers, the basic services included in subscriber
 16297 contracts, and the cost of providing such basic services to
 16298 subscribers in the geographic area served.

16299 (3) Every prepaid health clinic shall deposit with the
 16300 department a cash deposit in the amount of \$30,000 to guarantee
 16301 that the obligations to the subscribers will be performed.

16302 Section 311. Section 641.41, Florida Statutes, is amended
 16303 to read:

16304 641.41 Annual report of prepaid health clinic;
 16305 administrative penalty.--

16306 (1) Each prepaid health clinic shall file a report with
 16307 the office ~~department~~, annually on or before March 1, or within
 16308 3 months of the end of the reporting period of the clinic, or
 16309 within such extension of time for the filing of the report as
 16310 the office ~~department~~, for good cause, may grant. The report of
 16311 the prepaid health clinic must be filed on forms prescribed by
 16312 the commission ~~department~~ and must be verified under oath by two
 16313 executive officers of the clinic or, if the clinic is not a
 16314 corporation, verified under oath by two persons who are
 16315 principal managing directors of the affairs of the clinic. The
 16316 report of the clinic shall show the condition of the clinic on
 16317 the last day of the immediately preceding reporting period.

16318 Such report shall include:



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16319 (a) A financial statement of the clinic, including its
16320 balance sheet and a statement of operations for the preceding
16321 year;

16322 (b) A list of the name and residence address of every
16323 person responsible for the conduct of the affairs of the clinic,
16324 together with a disclosure of the extent and nature of any
16325 contract or arrangement between such person and the clinic,
16326 including any possible conflicts of interest;

16327 (c) The number of prepaid health clinic contracts issued
16328 and outstanding, and the number of prepaid health clinic
16329 contracts terminated and a compilation of the reasons for such
16330 terminations;

16331 (d) Such statistical information as is requested by the
16332 commission or office ~~department~~, which information shows the
16333 rates of the clinic for all basic services provided under
16334 prepaid health clinic contracts;

16335 (e) The number and amount of damage claims for medical
16336 injury initiated against the clinic and any of the providers
16337 engaged by it during the reporting year, broken down into claims
16338 with and without formal legal process, and the disposition, if
16339 any, of each such claim; and

16340 (f) Such other information relating to the performance of
16341 the clinic as is required by the commission or office
16342 ~~department~~.

16343 (2) Any clinic which neglects to file the annual report in
16344 the form and within the time required by this section is subject
16345 to an administrative penalty, not to exceed \$100 for each day
16346 during which the neglect continues; and, upon notice by the
16347 office ~~department~~ to that effect, the authority of the clinic to
16348 do business in this state shall cease while such default



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16349 continues.

16350 Section 312. Section 641.412, Florida Statutes, is amended
16351 to read:

16352 641.412 Fees.--

16353 (1) Every prepaid health clinic shall pay to the office
16354 ~~department~~ the following fees:

16355 (a) For filing a copy of its application for a certificate
16356 of authority or an amendment to such certificate, a
16357 nonrefundable fee in the amount of \$150.

16358 (b) For filing each annual report, a fee in the amount of
16359 \$150.

16360 (2) The fees charged under this section shall be
16361 distributed as follows:

16362 (a) One-third of the total amount of fees shall be
16363 distributed to the Agency for Health Care Administration; and

16364 (b) Two-thirds of the total amount of fees shall be
16365 distributed to the office ~~Department of Insurance~~.

16366 Section 313. Section 641.418, Florida Statutes, is amended
16367 to read:

16368 641.418 Examination of prepaid health clinic by the office
16369 ~~department~~.--The office ~~department~~ shall examine the affairs,
16370 transactions, accounts, business records, and assets of any
16371 prepaid health clinic as often as the office ~~department~~ deems it
16372 expedient for the protection of the people of this state. Every
16373 clinic shall submit its books and records and take other
16374 appropriate action as may be necessary to facilitate an
16375 examination. However, medical records of individuals and
16376 records of physicians providing services under contracts to the
16377 clinic are not subject to audit, although such records may be
16378 subject to subpoena by court order upon a showing of good cause.



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16379 For the purpose of examinations, the office ~~department~~ may
16380 administer oaths to and examine the officers and agents of a
16381 clinic concerning its business and affairs. The expenses for
16382 the examination of each clinic by the office ~~department~~ are
16383 subject to the same terms and conditions that apply to insurers
16384 under part II of chapter 624. In no event shall the expenses of
16385 all examinations exceed the maximum amount of \$15,000 per year.

16386 Section 314. Subsections (2), (3), (5), and (7) of section
16387 641.42, Florida Statutes, is amended to read:

16388 641.42 Prepaid health clinic contracts.--

16389 (2) The rates charged by any clinic to its subscribers
16390 shall not be excessive, inadequate, or unfairly discriminatory.
16391 The commission ~~department~~, in accordance with generally accepted
16392 actuarial practice, may define by rule what constitutes
16393 excessive, inadequate, or unfairly discriminatory rates and may
16394 require whatever information the commission ~~department~~ deems
16395 necessary to determine that a rate or proposed rate meets the
16396 requirements of this subsection.

16397 (3) No clinic shall issue or agree to issue any prepaid
16398 health clinic contract to a subscriber unless the contract has
16399 first been filed with, and approved by, the office ~~department~~.

16400 (5) Every subscriber shall receive a clear and
16401 understandable description of the method of the clinic for
16402 resolving subscriber grievances; such method shall be set forth
16403 in the contract and shall be approved by the office ~~department~~
16404 on the basis of its underlying fairness.

16405 (7)(a) If a clinic desires to amend any contract with any
16406 of its subscribers or desires to change any rate charged for the
16407 contract, the clinic may do so, upon filing with the office
16408 ~~department~~ the proposed amendment or change in rates.



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16409 (b) No prepaid health clinic contract form or application
16410 form when written application is required and is to be made a
16411 part of the policy or contract, or no printed amendment,
16412 addendum, rider, or endorsement form or form of renewal
16413 certificate, shall be delivered or issued for delivery in this
16414 state, unless the form has been filed with the office ~~department~~
16415 ~~at its offices in Tallahassee~~ by or in behalf of the clinic
16416 which proposes to use such form and has been approved by the
16417 office ~~department~~. Every such filing shall be made not less than
16418 30 days in advance of any such use or delivery. At the
16419 expiration of such 30 days, the form so filed shall be deemed
16420 approved unless prior to the end of the 30 days the form has
16421 been affirmatively approved or disapproved by the office
16422 ~~department~~. The approval of any such form by the office
16423 ~~department~~ constitutes a waiver of any unexpired portion of such
16424 waiting period. The office ~~department~~ may extend by not more
16425 than an additional 15 days the period within which the office
16426 ~~department~~ may so affirmatively approve or disapprove any such
16427 form, by giving notice of such extension before the expiration
16428 of the initial 30-day period. At the expiration of any such
16429 period as so extended, and in the absence of such prior
16430 affirmative approval or disapproval, such form shall be deemed
16431 approved. The office ~~department~~ may, for cause, withdraw a
16432 previous approval. No clinic shall issue or use any form which
16433 has been disapproved by the office ~~department~~ or any form for
16434 which the office ~~department~~ has withdrawn approval.

16435 (c) The office ~~department~~ shall disapprove any form filed
16436 under this subsection, or withdraw any previous approval of the
16437 form, only if the form:

16438 1. Is in any respect in violation of, or does not comply



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16439 with, any provision of this part or rule adopted under this
 16440 part.

16441 2. Contains or incorporates by reference, where such
 16442 incorporation is otherwise permissible, any inconsistent,
 16443 ambiguous, or misleading clauses, or exceptions and conditions
 16444 which deceptively affect the risk purported to be assumed in the
 16445 general coverage of the contract.

16446 3. Has a misleading title, misleading heading, or other
 16447 indication of the provisions of the form which is misleading.

16448 4. Is printed or otherwise reproduced in such manner as to
 16449 render any material provision of the form substantially
 16450 illegible.

16451 5. Provides benefits which are unreasonable in relation to
 16452 the rate charged or contains provisions which are unfair,
 16453 inequitable, or contrary to the public policy of this state or
 16454 encourage misrepresentation.

16455 (d) In determining whether the benefits are reasonable in
 16456 relation to the rate charged, the office ~~department~~, in
 16457 accordance with reasonable actuarial techniques, shall consider:

16458 1. Past loss experience and prospective loss experience.

16459 2. Allocation of expenses.

16460 3. Risk and contingency margins, along with justification
 16461 of such margins.

16462 4. Acquisition costs.

16463 5. Other factors deemed appropriate by the office
 16464 ~~department~~, based on sound actuarial techniques.

16465 Section 315. Section 641.421, Florida Statutes, is amended
 16466 to read:

16467 641.421 Language used in contracts and advertisements;
 16468 translations.--



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16469 (1)(a) All prepaid health clinic contracts or forms shall
16470 be printed in English.

16471 (b) If the negotiations by a prepaid health clinic with a
16472 subscriber leading up to the effectuation of a prepaid health
16473 clinic contract are conducted in a language other than English,
16474 the prepaid health clinic shall supply to the subscriber a
16475 written translation of the contract, which translation
16476 accurately reflects the substance of the contract and is in the
16477 language used to negotiate the contract. Any such translation
16478 shall be furnished to the office ~~department~~ as part of the
16479 filing of the prepaid health clinic contract form and shall be
16480 approved by the office ~~department~~ prior to use. No translation
16481 of a prepaid health clinic contract form shall be approved by
16482 the office ~~department~~ unless the translation accurately reflects
16483 the substance of the prepaid health clinic contract form in
16484 translation. When a translation of a prepaid health clinic
16485 contract is used, the translation shall clearly and
16486 conspicuously state on its face and in the language of the
16487 translation:

16488 READ THIS FIRST

16489 This is a translation of the document that you are about
16490 to sign.

16491
16492 (2) All advertisements by a prepaid health clinic, if
16493 printed or broadcast in a language other than English, also
16494 shall be available in English and shall be furnished to the
16495 office ~~department~~ upon request. As used in this subsection, the
16496 term "advertisement" means any advertisement, circular,
16497 pamphlet, brochure, or other printed material disclosing or
16498 disseminating advertising material or information by a clinic to



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16499 prospective or existing subscribers and includes any radio or
16500 television transmittal of an advertisement or information.

16501 Section 316. Subsection (2) of section 641.424, Florida
16502 Statutes, is amended to read:

16503 641.424 Validity of noncomplying contracts.--

16504 (2) Any contract delivered or issued for delivery in this
16505 state covering a subscriber resident, located, or to be
16506 performed in this state, which subscriber, pursuant to the
16507 provisions of this part, the clinic may not lawfully provide
16508 under such a contract, is cancelable at any time by the clinic,
16509 any provision of the contract to the contrary notwithstanding;
16510 and the clinic shall promptly cancel the contract in accordance
16511 with the request of the office ~~department~~ for such cancellation.
16512 No such illegality or cancellation shall be deemed to relieve
16513 the clinic of any liability incurred by the clinic under the
16514 contract while the contract was in force or to prohibit the
16515 clinic from retaining the pro rata earned premium on the
16516 contract. This provision does not relieve the clinic from any
16517 penalty otherwise incurred by the clinic under this part on
16518 account of any such violation.

16519 Section 317. Section 641.437, Florida Statutes, is amended
16520 to read:

16521 641.437 Investigatory power of office ~~department~~.--The
16522 office ~~department~~ has the power to examine and investigate the
16523 affairs of every person, entity, or prepaid health clinic in
16524 order to determine whether the person, entity, or prepaid health
16525 clinic is operating in accordance with the provisions of this
16526 part or has been or is engaged in any unfair method of
16527 competition or any unfair or deceptive act or practice
16528 prohibited by s. 641.44.



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16529 Section 318. Section 641.443, Florida Statutes, is amended
 16530 to read:

16531 641.443 Temporary restraining orders.--

16532 (1) The office ~~department~~ is vested with the power to seek
 16533 a temporary restraining order:

16534 (a) On behalf of the office ~~department~~ or on behalf of a
 16535 subscriber or subscribers of a prepaid health clinic that is
 16536 being operated by a person or entity without a subsisting
 16537 certificate of authority; or

16538 (b) On behalf of the office ~~department~~ or on behalf of a
 16539 subscriber or subscribers to whom a prepaid health clinic,
 16540 person, or entity is issuing, delivering, or renewing prepaid
 16541 health clinic contracts without an existing certificate of
 16542 authority.

16543 (2) The office ~~department~~ and the Agency for Health Care
 16544 Administration are each vested with the power to seek a
 16545 temporary restraining order on their behalf or on behalf of a
 16546 subscriber or subscribers of a prepaid health clinic that is
 16547 being operated in violation of any provision of this part or any
 16548 rule promulgated under this part, or any other applicable law or
 16549 rule.

16550 Section 319. Section 641.444, Florida Statutes, is amended
 16551 to read:

16552 641.444 Injunction.--In addition to the penalties and
 16553 other enforcement provisions of this part, if a person, entity,
 16554 or prepaid health clinic has engaged in any activity prohibited
 16555 by this part or any rule adopted pursuant to this part, the
 16556 office ~~department~~ may resort to a proceeding for injunction in
 16557 the circuit court of the county where such person, entity, or
 16558 prepaid health clinic is located or has her or his or its



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16559 principal place of business; and the office ~~department~~ may apply
 16560 in such court for such temporary and permanent orders as the
 16561 office ~~department~~ may deem necessary to restrain the person,
 16562 entity, or prepaid health clinic from engaging in any such
 16563 activity, until the person, entity, or prepaid health clinic
 16564 complies with the provisions and rules.

16565 Section 320. Section 641.445, Florida Statutes, is amended
 16566 to read:

16567 641.445 Defined practices; hearings, witnesses,
 16568 appearances, production of books, and service of process.--

16569 (1) Whenever the office ~~department~~ has reason to believe
 16570 that a person, entity, or prepaid health clinic has engaged, or
 16571 is engaging, in this state in any unfair method of competition
 16572 or any unfair or deceptive act or practice as defined in s.
 16573 641.441, or is operating a prepaid health clinic without a
 16574 certificate of authority as required by this part or otherwise
 16575 operating in violation of any provision of this part or rule
 16576 adopted pursuant to this part, and that a proceeding by the
 16577 office ~~department~~ in respect thereto would be in the interest of
 16578 the public, the office ~~department~~ shall conduct, or cause to
 16579 have conducted, a hearing in accordance with chapter 120.

16580 (2) The office ~~department~~, a duly empowered hearing
 16581 officer, or an administrative law judge shall, during the
 16582 conduct of such hearing, have those powers enumerated in s.
 16583 120.569; however, the penalty for the failure to comply with a
 16584 subpoena or with an order directing discovery is limited to a
 16585 fine not to exceed \$1,000 per violation.

16586 (3) A statement of charges, notice, or order under this
 16587 part may be served by anyone duly authorized by the office
 16588 ~~department~~, either in the manner provided by law for service of



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16589 process in civil actions or by certifying and mailing a copy of
 16590 the statement of charges, notice, or order to the person,
 16591 entity, or prepaid health clinic affected by the statement,
 16592 notice, or order or other process at his or her or its residence
 16593 or principal office or place of business. The verified return
 16594 by the person so serving such statement, notice, or order or
 16595 other process, setting forth the manner of the service, is proof
 16596 of such service; and the return postcard receipt for such
 16597 statement, notice, or order or other process, certified and
 16598 mailed as provided in this subsection, is proof of the service
 16599 of the statement, notice, or order or other process.

16600 Section 321. Section 641.446, Florida Statutes, is amended
 16601 to read:

16602 641.446 Cease and desist and penalty orders.--After the
 16603 hearing provided in s. 641.445, the office ~~department~~ shall
 16604 enter a final order in accordance with s. 120.569. If it is
 16605 determined that the person, entity, or prepaid health clinic
 16606 charged has engaged in an unfair or deceptive act or practice or
 16607 the unlawful operation of a prepaid health clinic, the office
 16608 ~~department~~ also shall issue an order requiring the violator to
 16609 cease and desist from engaging in such method of competition,
 16610 act, or practice or unlawful operation of a prepaid health
 16611 clinic. Furthermore, the office ~~department~~ may, at its
 16612 discretion, order any one or more of the following:

16613 (1) The suspension or revocation of the certificate of
 16614 authority of the prepaid health clinic if it knew, or reasonably
 16615 should have known, that it was in violation of this part.

16616 (2) If it is determined that the person or entity charged
 16617 has engaged in the business of operating a prepaid health clinic
 16618 without a certificate of authority, an administrative penalty



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16619 not to exceed \$1,000 for each prepaid health clinic contract
 16620 offered or effectuated.

16621 Section 322. Section 641.447, Florida Statutes, is amended
 16622 to read:

16623 641.447 Appeal from ~~departmental~~ order.--Any person,
 16624 entity, or prepaid health clinic that is subject to an order of
 16625 the office ~~department~~ under s. 641.446 may obtain a review of
 16626 the order by filing an appeal from the order in accordance with
 16627 the provisions and procedures for appeal under s. 120.68.

16628 Section 323. Section 641.448, Florida Statutes, is amended
 16629 to read:

16630 641.448 Penalty for violation of cease and desist
 16631 order.--Any person, entity, or prepaid health clinic that
 16632 violates a cease and desist order of the office ~~department~~ under
 16633 s. 641.446 while such order is in effect, after notice and
 16634 hearing as provided in s. 641.445, is subject, at the discretion
 16635 of the office ~~department~~, to any one or more of the following:

16636 (1) A monetary penalty of not more than \$50,000 as to all
 16637 matters determined in such hearing.

16638 (2) The suspension or revocation of the certificate of
 16639 authority of the prepaid health clinic.

16640 Section 324. Section 641.45, Florida Statutes, is amended
 16641 to read:

16642 641.45 Revocation or cancellation of certificate of
 16643 authority; suspension of authority to enroll new subscribers;
 16644 terms of suspension.--

16645 (1) The maintenance of a valid and current Health Care
 16646 Provider Certificate issued pursuant to part III of this chapter
 16647 is a condition of the maintenance of a valid and current
 16648 certificate of authority issued by the office ~~department~~ to



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16649 operate a prepaid health clinic. Revocation or nonrenewal of a
 16650 Health Care Provider Certificate shall be deemed to be an
 16651 automatic and immediate cancellation of a prepaid health
 16652 clinic's certificate of authority.

16653 (2) The office ~~department~~ may suspend the authority of a
 16654 clinic to enroll new subscribers or revoke any certificate of
 16655 authority issued to a prepaid health clinic, or order compliance
 16656 within 60 days, if the office ~~department~~ finds that any of the
 16657 following conditions exist:

16658 (a) The clinic is not operating in compliance with this
 16659 part or any rule promulgated under this part.

16660 (b) The plan is no longer actuarially sound or the clinic
 16661 does not have the minimum surplus as required by this part.

16662 (c) The existing contract rates are excessive, inadequate,
 16663 or unfairly discriminatory.

16664 (d) The clinic has advertised, merchandised, or attempted
 16665 to merchandise its services in such a manner as to misrepresent
 16666 its services or capacity for services or has engaged in
 16667 deceptive, misleading, or unfair practices with respect to
 16668 advertising or merchandising.

16669 (e) The organization is insolvent.

16670 (f) The clinic has not complied with the grievance
 16671 procedures for subscribers that are set forth in any prepaid
 16672 health clinic contract.

16673 (g) The clinic has not fully satisfied a judgment against
 16674 the clinic within 10 days of the entry of the judgment by any
 16675 court in the state or, in the case of an appeal from such
 16676 judgment, has not fully satisfied the judgment within 60 days
 16677 after affirmance of the judgment by the appellate court.

16678 (3) The office ~~department~~ shall, in its order suspending



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16679 the authority of a clinic to enroll new subscribers, specify the
 16680 period during which the suspension is to be in effect and the
 16681 conditions, if any, which must be met by the clinic prior to
 16682 reinstatement of its authority to enroll new subscribers. The
 16683 order of suspension is subject to rescission or modification by
 16684 further order of the office ~~department~~ prior to the expiration
 16685 of the suspension period. Reinstatement shall not be made unless
 16686 requested by the clinic; however, the office ~~department~~ shall
 16687 not grant reinstatement if it finds that the circumstances for
 16688 which the suspension occurred still exist or are likely to
 16689 recur.

16690 Section 325. Section 641.452, Florida Statutes, is amended
 16691 to read:

16692 641.452 Administrative penalty in lieu of suspension or
 16693 revocation of certificate of authority.--The office ~~department~~
 16694 may, in lieu of suspension or revocation of a certificate of
 16695 authority, levy an administrative penalty in an amount not more
 16696 than \$10,000 for each violation by a prepaid health clinic. In
 16697 levying such fine, the office ~~department~~ shall consider the
 16698 number of members and total revenues of the clinic and whether
 16699 the violation was committed knowingly and willfully.

16700 Section 326. Section 641.453, Florida Statutes, is amended
 16701 to read:

16702 641.453 Civil liability.--The provisions of this part are
 16703 cumulative to the rights under the general civil law and common
 16704 law, and no action of the office ~~department~~ shall abrogate such
 16705 rights to damages or other relief in any court.

16706 Section 327. Section 641.454, Florida Statutes, is amended
 16707 to read:

16708 641.454 Civil action to enforce prepaid health clinic



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16709 contract; attorney's fees; court costs.--In any civil action
 16710 brought to enforce the terms and conditions of a prepaid health
 16711 clinic contract, the prevailing party is entitled to recover
 16712 reasonable attorney's fees and court costs. This section shall
 16713 not be construed to authorize a civil action against the
 16714 commission or office department, or their ~~its~~ employees, ~~or the~~
 16715 ~~Insurance Commissioner and Treasurer~~ or against the Agency for
 16716 Health Care Administration, the employees of the Agency for
 16717 Health Care Administration, or the Secretary of Health Care
 16718 Administration.

16719 Section 328. Section 641.455, Florida Statutes, is amended
 16720 to read:

16721 641.455 Disposition of moneys collected under this
 16722 part.--Fees, administrative penalties, examination expenses, and
 16723 other sums collected by the office department under this part
 16724 shall be deposited to the credit of the Insurance ~~Commissioner's~~
 16725 Regulatory Trust Fund; however, fees, examination expenses, and
 16726 other sums collected by, or allocated to, the Agency for Health
 16727 Care Administration under this part shall be deposited to the
 16728 credit of the General Revenue Fund.

16729 Section 329. Section 641.457, Florida Statutes, is amended
 16730 to read:

16731 641.457 Exemption for certain operational prepaid health
 16732 clinics.--The provisions of this part do not apply to those
 16733 prepaid health clinics providing the services defined in ss.
 16734 641.40 through 641.459, which clinics have been continuously
 16735 engaged in providing such services since January 1, 1947,
 16736 provided that any prepaid health clinic claiming an exemption
 16737 under this section notified ~~notifies~~ the former Department of
 16738 Insurance of its claim on or before January 1, 1985. This



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16739 exemption will terminate upon a change in controlling ownership
 16740 of the organization.

16741 Section 330. Section 641.48, Florida Statutes, is amended
 16742 to read:

16743 641.48 Purpose and application of part.--The purpose of
 16744 this part is to ensure that health maintenance organizations and
 16745 prepaid health clinics deliver high-quality health care to their
 16746 subscribers. To achieve this purpose, this part requires all
 16747 such organizations to obtain a health care provider certificate
 16748 from the agency as a condition precedent to obtaining a
 16749 certificate of authority to do business in Florida from the
 16750 office ~~Department of Insurance~~, under part I or part II of this
 16751 chapter.

16752 Section 331. Subsection (2) of section 641.49, Florida
 16753 Statutes, is amended to read:

16754 641.49 Certification of health maintenance organization
 16755 and prepaid health clinic as health care providers; application
 16756 procedure.--

16757 (2) The office ~~Department of Insurance~~ shall not issue a
 16758 certificate of authority under part I or part II of this chapter
 16759 to any applicant which does not possess a valid health care
 16760 provider certificate issued by the agency under this part.

16761 Section 332. Subsection (4) of section 641.495, Florida
 16762 Statutes, is amended to read:

16763 641.495 Requirements for issuance and maintenance of
 16764 certificate.--

16765 (4) The organization shall ensure that the health care
 16766 services it provides to subscribers, including physician
 16767 services as required by s. 641.19(12)(13)(d) and (e), are
 16768 accessible to the subscribers, with reasonable promptness, with



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16769 respect to geographic location, hours of operation, provision of
 16770 after-hours service, and staffing patterns within generally
 16771 accepted industry norms for meeting the projected subscriber
 16772 needs. The health maintenance organization must provide
 16773 treatment authorization 24 hours a day, 7 days a week. Requests
 16774 for treatment authorization may not be held pending unless the
 16775 requesting provider contractually agrees to take a pending or
 16776 tracking number.

16777 Section 333. Subsections (7), (8), and (11) of section
 16778 641.511, Florida Statutes, are amended to read:

16779 641.511 Subscriber grievance reporting and resolution
 16780 requirements.--

16781 (7) Each organization shall send to the agency a copy of
 16782 its quarterly grievance reports submitted to the office
 16783 ~~Department of Insurance~~ pursuant to s. 408.7056(12).

16784 (8) The agency shall investigate all reports of unresolved
 16785 quality of care grievances received from:

16786 (a) Annual and quarterly grievance reports submitted by
 16787 the organization to the office ~~Department of Insurance~~.

16788 (b) Review requests of subscribers whose grievances remain
 16789 unresolved after the subscriber has followed the full grievance
 16790 procedure of the organization.

16791 (11) Each organization, as part of its contract with any
 16792 provider, must require the provider to post a consumer
 16793 assistance notice prominently displayed in the reception area of
 16794 the provider and clearly noticeable by all patients. The
 16795 consumer assistance notice must state the addresses and toll-
 16796 free telephone numbers of the Agency for Health Care
 16797 Administration, the Statewide Provider and Subscriber Assistance
 16798 Program, and the Department of Financial Services ~~Insurance~~. The



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16799 consumer assistance notice must also clearly state that the
16800 address and toll-free telephone number of the organization's
16801 grievance department shall be provided upon request. The agency
16802 may adopt ~~is authorized to promulgate~~ rules to implement this
16803 section.

16804 Section 334. Subsections (1), (3), and (6) of section
16805 641.512, Florida Statutes, are amended to read:

16806 641.512 Accreditation and external quality assurance
16807 assessment.--

16808 (1)(a) To promote the quality of health care services
16809 provided by health maintenance organizations and prepaid health
16810 clinics in this state, the office ~~department~~ shall require each
16811 health maintenance organization and prepaid health clinic to be
16812 accredited within 1 year of the organization's receipt of its
16813 certificate of authority and to maintain accreditation by an
16814 accreditation organization approved by the office ~~department~~, as
16815 a condition of doing business in the state.

16816 (b) In the event that no accreditation organization can be
16817 approved by the office ~~department~~, the office ~~department~~ shall
16818 require each health maintenance organization and prepaid health
16819 clinic to have an external quality assurance assessment
16820 performed by a review organization approved by the office
16821 ~~department~~, as a condition of doing business in the state. The
16822 assessment shall be conducted within 1 year of the
16823 organization's receipt of its certificate of authority and every
16824 2 years thereafter, or when the office ~~department~~ deems
16825 additional assessments necessary.

16826 (3) A representative of the office ~~department~~ shall
16827 accompany the accreditation or review organization throughout
16828 the accreditation or assessment process, but shall not



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16829 participate in the final accreditation or assessment
 16830 determination. The accreditation or review organization shall
 16831 monitor and evaluate the quality and appropriateness of patient
 16832 care, the organization's pursuance of opportunities to improve
 16833 patient care and resolve identified problems, and the
 16834 effectiveness of the internal quality assurance program required
 16835 for health maintenance organization and prepaid health clinic
 16836 certification pursuant to s. 641.49(3)(p).

16837 (6) The accreditation or review organization shall issue a
 16838 written report of its findings to the health maintenance
 16839 organization's or prepaid health clinic's board of directors. A
 16840 copy of the report shall be submitted to the office ~~department~~
 16841 by the organization within 30 business days of its receipt by
 16842 the health maintenance organization or prepaid health clinic.

16843 Section 335. Section 641.52, Florida Statutes, is amended
 16844 to read:

16845 641.52 Revocation of certificate; suspension of new
 16846 enrollment; suspension of the health care provider certificate;
 16847 administrative fine; notice of action to the office ~~Department~~
 16848 ~~of Insurance~~; penalty for use of unlicensed providers.--

16849 (1) The agency may suspend the authority of an
 16850 organization to enroll new subscribers or revoke the health care
 16851 provider certificate of any organization, or order compliance
 16852 within a time certain, if it finds that any of the following
 16853 conditions exist:

16854 (a) The organization is in substantial violation of its
 16855 contracts.

16856 (b) The organization is unable to fulfill its obligations
 16857 under outstanding contracts entered into with its subscribers.

16858 (c) The organization knowingly utilizes a provider who is



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16859 furnishing or has furnished health care services and who does
16860 not have a subsisting license or other authority to practice or
16861 furnish health care services in this state.

16862 (d) The organization no longer meets the requirements for
16863 the certificate as originally issued.

16864 (e) The organization has violated any lawful rule or order
16865 of the agency or any provision of this part.

16866 (f) The organization has refused to be examined or to
16867 produce its accounts, records, and files for examination or to
16868 perform any other legal obligation as to such examination, when
16869 required by the agency.

16870 (g) The organization has not, after given reasonable
16871 notice, maintained accreditation or received favorable external
16872 quality assurance reviews under s. 641.512 or, following an
16873 investigation under s. 641.515, has been determined to not
16874 materially meet requirements under this part.

16875 (2) Revocation of an organization's certificate shall be
16876 for a period of 2 years. After 2 years, the organization may
16877 apply for a new certificate by compliance with all application
16878 requirements applicable to first-time applicants.

16879 (3) Suspension of an organization's authority to enroll
16880 new subscribers shall be for such period, not to exceed 1 year,
16881 as is fixed by the agency. The agency shall, in its order
16882 suspending the authority of an organization to enroll new
16883 subscribers, specify the period during which the suspension is
16884 to be in effect and the conditions, if any, which must be met by
16885 the organization prior to reinstatement of its authority to
16886 enroll new subscribers. The order of suspension is subject to
16887 rescission or modification by further order of the agency prior
16888 to the expiration of the suspension period. Authority to enroll



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16889 new subscribers shall not be reinstated unless requested by the
16890 organization; however, the agency may not grant reinstatement if
16891 it finds that the circumstances for which the suspension of
16892 authority to enroll new subscribers occurred still exist or are
16893 likely to recur.

16894 (4) The agency may suspend the health care provider
16895 certificate issued to an organization. The agency shall, in its
16896 order suspending the health care provider certificate, specify
16897 the period during which the suspension is to be in effect and
16898 the conditions, if any, which must be met by the organization
16899 for reinstatement. Upon expiration of the suspension period, the
16900 organization's certificate automatically reinstates unless the
16901 agency finds that the causes of the suspension have not been
16902 removed or that the organization is otherwise not in compliance
16903 with this part. If the agency makes such a finding, the health
16904 care provider certificate shall not be reinstated and is
16905 considered to have expired as of the end of the suspension
16906 period.

16907 (5) If the agency finds that one or more grounds exist for
16908 the revocation or suspension of a certificate issued under this
16909 part, the agency may, in lieu of such revocation or suspension,
16910 impose a fine upon the organization. With respect to any
16911 nonwillful violation, the fine may not exceed \$2,500 per
16912 violation. Such fines may not exceed an aggregate amount of
16913 \$25,000 for all nonwillful violations arising out of the same
16914 action. With respect to any knowing and willful violation of a
16915 lawful order or rule of the agency or a provision of this part,
16916 the agency may impose a fine upon the organization in an amount
16917 not to exceed \$20,000 for each such violation. Such fines may
16918 not exceed an aggregate amount of \$250,000 for all knowing and



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16919 willful violations arising out of the same action. The agency
16920 shall, by January 1, 1997, adopt by rule penalty categories that
16921 specify varying ranges of fines for willful violations and for
16922 nonwillful violations.

16923 (6) The agency shall immediately notify the office
16924 ~~Department of Insurance~~ whenever it issues an administrative
16925 complaint or an order or otherwise initiates legal proceedings
16926 resulting in or which may result in suspension or revocation of
16927 an organization's health care provider certificate or suspension
16928 of new enrollment.

16929 (7) Any organization that knowingly utilizes the services
16930 of a provider who is not licensed or otherwise authorized by law
16931 to provide such services is guilty of a felony of the third
16932 degree, punishable as provided in s. 775.082, s. 775.083, or s.
16933 775.084.

16934 Section 336. Subsection (2) of section 641.54, Florida
16935 Statutes, is amended to read:

16936 641.54 Information disclosure.--

16937 (2) The list shall be made available, upon request, to the
16938 office ~~department~~. The list shall also be made available, upon
16939 request:

16940 (a) With respect to negotiation, application, or
16941 effectuation of a group health maintenance contract, to the
16942 employer or other person who will hold the contract on behalf of
16943 the subscriber group. The list may be restricted to include
16944 only physicians and hospitals in the group's geographic area.

16945 (b) With respect to an individual health maintenance
16946 contract or any contract offered to a person who is entitled to
16947 have payments for health care costs made under Medicare, to the
16948 person considering or making application to, or under contract



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16949 with, the health maintenance organization. The list may be
 16950 restricted to include only physicians and hospitals in the
 16951 person's geographic area.

16952 Section 337. Subsection (4) of section 641.55, Florida
 16953 Statutes, is amended to read:

16954 641.55 Internal risk management program.--

16955 (4) The Agency for Health Care Administration shall adopt
 16956 rules necessary to carry out the provisions of this section,
 16957 including rules governing the establishment of required internal
 16958 risk management programs to meet the needs of individual
 16959 organizations and each specific organization type governed by
 16960 this part. The office ~~Department of Insurance~~ shall assist the
 16961 agency in preparing these rules. Each internal risk management
 16962 program shall include the use of incident reports to be filed
 16963 with the risk manager. The risk manager shall have free access
 16964 to all organization or provider medical records. The incident
 16965 reports shall be considered to be a part of the workpapers of
 16966 the attorney defending the organization in litigation relating
 16967 thereto and shall be subject to discovery, but not be admissible
 16968 as evidence in court, nor shall any person filing an incident
 16969 report be subject to civil suit by virtue of the incident report
 16970 and the matters it contains. As a part of each internal risk
 16971 management program, the incident reports shall be utilized to
 16972 develop categories of incidents which identify problem areas.
 16973 Once identified, procedures must be adjusted to correct these
 16974 problem areas.

16975
 16976
 16977 The gross data compiled under this section or s. 395.0197 shall
 16978 be furnished by the agency upon request to organizations to be



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16979 utilized for risk management purposes. The agency shall adopt
 16980 rules necessary to carry out the provisions of this section.

16981 Section 338. Subsection (2) of section 641.58, Florida
 16982 Statutes, is amended to read:

16983 641.58 Regulatory assessment; levy and amount; use of
 16984 funds; tax returns; penalty for failure to pay.--

16985 (2) The office ~~Department of Insurance~~ shall determine the
 16986 amount of gross premiums for the purposes of the regulatory
 16987 assessment, and then the agency shall determine on or before
 16988 December 1 of each year the regulatory assessment percentage
 16989 necessary to be imposed for that calendar year, payable on or
 16990 before the following April 1, as herein prescribed, to provide
 16991 the funds appropriated to the agency to carry out the provisions
 16992 of subsection (4).

16993 Section 339. Subsections (3) and (4) of section 642.0475,
 16994 Florida Statutes, are amended to read:

16995 642.0475 Civil remedy.--

16996 (3) As a condition precedent to bringing an action under
 16997 this section, the office ~~department~~ and the person against whom
 16998 the action is to be brought shall be given notice of the
 16999 violation. The notice shall state with specificity the facts
 17000 which allegedly constitute the violation and the law which the
 17001 plaintiff is relying upon. No action shall lie if, within 30
 17002 days thereafter, the damages are paid or the circumstances
 17003 giving rise to the violation are corrected.

17004 (4) This section shall not be construed to authorize a
 17005 class action suit against a legal expense insurance corporation
 17006 or a civil action against the department, commission, or office
 17007 or their ~~its~~ employees, ~~or the Insurance Commissioner.~~

17008 Section 340. Section 651.119, Florida Statutes, is amended



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17009 to read:

17010 651.119 Assistance to persons affected by closure due to
17011 liquidation or pending liquidation.--

17012 (1) If a facility closes and ceases to operate as a result
17013 of liquidation or pending liquidation and residents are forced
17014 to relocate, the department shall become a creditor of the
17015 facility for the purpose of providing moving expenses for
17016 displaced residents and such other care or services as is made
17017 possible by the unencumbered assets of the facility. To the
17018 extent that another provider provides, as approved by the office
17019 ~~department~~, direct assistance to such residents, the cost of
17020 such direct assistance shall be offset against reserves pursuant
17021 to subsection (4). The department shall provide proportional
17022 reimbursements of such costs to the respective providers from
17023 such unencumbered assets.

17024 (2) If the moneys and direct assistance made available
17025 under subsection(1) are not sufficient to cover moving costs,
17026 the office ~~department~~ may seek voluntary contributions from the
17027 reserves maintained by providers under s. 651.035 in amounts
17028 approved by the office ~~department~~ to provide for the moving
17029 expenses of the residents in moving to another residence within
17030 the state.

17031 (3) If the moneys and direct assistance provided under
17032 subsections (1) and(2) are not sufficient to provide for the
17033 moving expenses of displaced residents in moving to other
17034 residences within the state, the office ~~department~~ may levy pro
17035 rata assessments on the reserves of providers maintained under
17036 s. 651.035 for such moving expenses of any displaced resident
17037 who lacks sufficient assets to pay for such moving expenses. The
17038 assessments for such moving expenses on any particular provider



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17039 may not exceed for any 12-month period an aggregate of 1 percent
 17040 of the unencumbered portion of the reserves maintained by the
 17041 provider under s. 651.035. If the office ~~department~~ determines
 17042 that payment of an assessment under this subsection would impair
 17043 the financial standing of a facility or its residents, the
 17044 office ~~department~~ may waive or temporarily defer all or part of
 17045 the assessment with respect to that provider. The office
 17046 ~~department~~ shall apply any moneys voluntarily paid by a provider
 17047 under subsection (1) or subsection (2) to satisfaction of
 17048 assessments under this subsection.

17049 (4) The office ~~department~~ shall permanently reduce the
 17050 reserves required of a provider under s. 651.035 to the extent
 17051 of the provider's costs under subsection (1), voluntary
 17052 contributions under subsection (2), and assessments under
 17053 subsection (3). However, the office ~~department~~ shall thereafter
 17054 raise the reserve requirements of a provider to the extent of
 17055 reimbursements paid to the provider under subsection (1) unless
 17056 such increase would raise the reserve requirement above the
 17057 amount required under s. 651.035.

17058 (5) No payment, contribution, or assessment may be paid by
 17059 a provider under this section if the release of funds from the
 17060 reserves of the provider would violate a bond or lending
 17061 commitment or covenant.

17062 (6) Moneys received under this section for the support of
 17063 residents shall be kept in a separate fund maintained and
 17064 administered by the department. The Continuing Care Advisory
 17065 Council shall monitor the collection and use of such funds and
 17066 shall advise the office or department on plans for resident
 17067 relocation. The council shall seek the assistance of providers
 17068 licensed under this chapter and other service providers in



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17069 locating alternative housing and care arrangements.

17070 (7) For the purposes of this section, "moving expenses"
 17071 means transportation expenses and the cost of packing and
 17072 relocating personal belongings.

17073 Section 341. Section 252.62, Florida Statutes, is amended
 17074 to read:

17075 252.62 Director of Office of Financial Institutions and
 17076 Securities Regulation ~~Comptroller's~~ powers in a state of
 17077 emergency.--

17078 (1) It is the purpose and intent of this section to
 17079 provide the Director of the Office of Financial Institutions and
 17080 Securities Regulation of the Financial Services Commission
 17081 ~~Comptroller, as head of the Department of Banking and Finance,~~
 17082 the authority to make temporary modifications to or suspensions
 17083 of the financial institutions codes in order to expedite the
 17084 recovery of communities affected by a disaster or other
 17085 emergency and in order to encourage financial institutions to
 17086 meet the credit, deposit, and other financial needs of such
 17087 communities.

17088 (2)(a) When the Governor declares a state of emergency
 17089 pursuant to s. 252.36, the Director of the Office of Financial
 17090 Institutions and Securities Regulation ~~Comptroller~~ may issue:

17091 1. One or more general orders applicable to all financial
 17092 institutions that are subject to the financial institutions
 17093 codes and that serve any portion of the area of the state under
 17094 the state of emergency; or

17095 2. One or more specific orders to particular financial
 17096 institutions that are subject to the financial institution codes
 17097 and that normally derive more than 60 percent of their deposits
 17098 from persons in the area of the state under the state of



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17099 emergency,

17100

17101 which orders may modify or suspend, as to those institutions,
 17102 all or any part of the financial institutions codes, as defined
 17103 in s. 655.005, or any applicable rule, consistent with the
 17104 stated purposes of the financial institutions codes and with
 17105 maintaining the safety and soundness of the financial
 17106 institutions system in this state.

17107 (b) An order issued by the director ~~Comptroller~~ under this
 17108 section becomes effective upon issuance and continues for 120
 17109 days unless it is terminated by the director ~~Comptroller~~. The
 17110 director ~~Comptroller~~ may extend an order for one additional
 17111 period of 120 days if he or she ~~the Comptroller~~ determines that
 17112 the emergency conditions that gave rise to the ~~Comptroller's~~
 17113 initial order still exist. The Legislature, by concurrent
 17114 resolution, may terminate any order issued under this section.

17115 (3) The director ~~Comptroller~~ shall publish, in the next
 17116 available publication of the Florida Administrative Weekly, a
 17117 copy of the text of any order issued under this section,
 17118 together with a statement describing the modification or
 17119 suspension and explaining how the modification or suspension
 17120 will facilitate recovery from the emergency and maintain the
 17121 safety and soundness of financial institutions in this state.

17122 Section 342. Section 288.778, Florida Statutes, is amended
 17123 to read:

17124 288.778 Office of Financial Institutions and Securities
 17125 Regulation ~~Department of Banking and Finance~~.--The Office of
 17126 Financial Institutions and Securities Regulation ~~Department of~~
 17127 ~~Banking and Finance~~ shall review the corporation's activities
 17128 once every 24 months to determine compliance with this part and



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17129 other related laws and rules and to evaluate the corporation's
 17130 operations. The office ~~department~~ shall prepare a report based
 17131 on its review and evaluation with recommendation for any
 17132 corrective action. The president shall submit to the office
 17133 ~~department~~ regular reports on the corporation's activities. The
 17134 content and frequency of such reports shall be determined by the
 17135 office ~~department~~. The office ~~department~~ shall charge a fee for
 17136 conducting the review and evaluation and preparing the related
 17137 report, which fee shall not be in excess of the examination fee
 17138 paid by financial institutions chartered or licensed under the
 17139 financial institutions code of this state.

17140 Section 343. Paragraphs (c) and (e) through (p) of
 17141 subsection (3), paragraphs (a), (b),(c), (d), (g), and (h) of
 17142 subsection (4), paragraph (b) of subsection (5), subsection (7),
 17143 paragraphs (a) and (c) of subsection (8), paragraph (b) of
 17144 subsection (9), paragraphs (a) through (e), (h), and (j) of
 17145 subsection (10), subsections (12), (13), and (14), paragraphs
 17146 (a), (c), (d), (e), and (g) of subsection (15), and subsection
 17147 (17) of section 288.99, Florida Statutes, are amended to read:

17148 288.99 Certified Capital Company Act.--

17149 (3) DEFINITIONS.--As used in this section, the term:

17150 (c) "Certified capital company" means a corporation,
 17151 partnership, or limited liability company which:

17152 1. Is certified by the office ~~department~~ in accordance
 17153 with this act.

17154 2. Receives investments of certified capital from two or
 17155 more unaffiliated certified investors.

17156 3. Makes qualified investments as its primary activity.

17157 (e) "Commission" means the Financial Services Commission

17158 ~~"Department" means the Department of Banking and Finance.~~



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17159 ~~(f)~~ "Director" means the director of the Office of
 17160 ~~Tourism, Trade, and Economic Development.~~

17161 (f)~~(g)~~ "Early stage technology business" means a qualified
 17162 business that is:

17163 1. Involved, at the time of the certified capital
 17164 company's initial investment in such business, in activities
 17165 related to developing initial product or service offerings, such
 17166 as prototype development or the establishment of initial
 17167 production or service processes;

17168 2. Less than 2 years old and has, together with its
 17169 affiliates, less than \$3 million in annual revenues for the
 17170 fiscal year immediately preceding the initial investment by the
 17171 certified capital company on a consolidated basis, as determined
 17172 in accordance with generally accepted accounting principles;

17173 3. The Florida Black Business Investment Board;

17174 4. Any entity that is majority owned by the Florida Black
 17175 Business Investment Board; or

17176 5. Any entity in which the Florida Black Business
 17177 Investment Board holds a majority voting interest on the board
 17178 of directors.

17179 (g)~~(h)~~ "Office" means the Office of Financial Institutions
 17180 and Securities Regulation of the commission ~~Tourism, Trade, and~~
 17181 ~~Economic Development.~~

17182 (h)~~(i)~~ "Premium tax liability" means any liability
 17183 incurred by an insurance company under the provisions of ss.
 17184 624.509 and 624.5091.

17185 (i)~~(j)~~ "Principal" means an executive officer of a
 17186 corporation, partner of a partnership, manager of a limited
 17187 liability company, or any other person with equivalent executive
 17188 functions.



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17189 (j)~~(k)~~ "Qualified business" means the Digital Divide Trust
17190 Fund established under the State of Florida Technology Office or
17191 a business that meets the following conditions as evidenced by
17192 documentation required by commission ~~department~~ rule:

17193 1. The business is headquartered in this state and its
17194 principal business operations are located in this state or at
17195 least 75 percent of the employees are employed in the state.

17196 2. At the time a certified capital company makes an
17197 initial investment in a business, the business would qualify for
17198 investment under 13 C.F.R. s. 121.301(c), which is involved in
17199 manufacturing, processing or assembling products, conducting
17200 research and development, or providing services.

17201 3. At the time a certified capital company makes an
17202 initial investment in a business, the business certifies in an
17203 affidavit that:

17204 a. The business is unable to obtain conventional
17205 financing, which means that the business has failed in an
17206 attempt to obtain funding for a loan from a bank or other
17207 commercial lender or that the business cannot reasonably be
17208 expected to qualify for such financing under the standards of
17209 commercial lending;

17210 b. The business plan for the business projects that the
17211 business is reasonably expected to achieve in excess of \$25
17212 million in sales revenue within 5 years after the initial
17213 investment, or the business is located in a designated Front
17214 Porch community, enterprise zone, urban high crime area, rural
17215 job tax credit county, or nationally recognized historic
17216 district;

17217 c. The business will maintain its headquarters in this
17218 state for the next 10 years and any new manufacturing facility



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17219 | financed by a qualified investment will remain in this state for
 17220 | the next 10 years, or the business is located in a designated
 17221 | Front Porch community, enterprise zone, urban high crime area,
 17222 | rural job tax credit county, or nationally recognized historic
 17223 | district; and

17224 | d. The business has fewer than 200 employees and at least
 17225 | 75 percent of the employees are employed in this state. For
 17226 | purposes of this subsection, the term also includes the Florida
 17227 | Black Business Investment Board, any entity majority owned by
 17228 | the Florida Black Business Investment Board, or any entity in
 17229 | which the Florida Black Business Investment Board holds a
 17230 | majority voting interest on the board of directors.

17231 | 4. The term does not include:

17232 | a. Any business predominantly engaged in retail sales,
 17233 | real estate development, insurance, banking, lending, or oil and
 17234 | gas exploration.

17235 | b. Any business predominantly engaged in professional
 17236 | services provided by accountants, lawyers, or physicians.

17237 | c. Any company that has no historical revenues and either
 17238 | has no specific business plan or purpose or has indicated that
 17239 | its business plan is solely to engage in a merger or acquisition
 17240 | with any unidentified company or other entity.

17241 | d. Any company that has a strategic plan to grow through
 17242 | the acquisition of firms with substantially similar business
 17243 | which would result in the planned net loss of Florida-based jobs
 17244 | over a 12-month period after the acquisition as determined by
 17245 | the office ~~department~~.

17246 | (k)~~(l)~~ "Qualified debt instrument" means a debt
 17247 | instrument, or a hybrid of a debt instrument, issued by a
 17248 | certified capital company, at par value or a premium, with an



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17249 original maturity date of at least 5 years after the date of
17250 issuance, a repayment schedule which is no faster than a level
17251 principal amortization over a 5-year period, and interest,
17252 distribution, or payment features which are not related to the
17253 profitability of the certified capital company or the
17254 performance of the certified capital company's investment
17255 portfolio.

17256 (1)~~(m)~~ "Qualified distribution" means any distribution or
17257 payment by a certified capital company for:

17258 1. Reasonable costs and expenses, including, but not
17259 limited to, professional fees, of forming and syndicating the
17260 certified capital company, if no such costs or expenses are paid
17261 to a certified investor, except as provided in subparagraph
17262 (4)(f)2., and the total cash, cash equivalents, and other
17263 current assets permitted by sub-subparagraph (5)(b)3.g. that can
17264 be converted into cash within 5 business days available to the
17265 certified capital company at the time of receipt of certified
17266 capital from certified investors, after deducting the costs and
17267 expenses of forming and syndicating the certified capital
17268 company, including any payments made over time for obligations
17269 incurred at the time of receipt of certified capital but
17270 excluding other future qualified distributions and payments made
17271 under paragraph (9)(a), are an amount equal to or greater than
17272 50 percent of the total certified capital allocated to the
17273 certified capital pursuant to subsection (7);

17274 2. Reasonable costs of managing and operating the
17275 certified capital company, not exceeding 5 percent of the
17276 certified capital in any single year, including an annual
17277 management fee in an amount that does not exceed 2.5 percent of
17278 the certified capital of the certified capital company;



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17279 3. Reasonable and necessary fees in accordance with
17280 industry custom for professional services, including, but not
17281 limited to, legal and accounting services, related to the
17282 operation of the certified capital company; or

17283 4. Any projected increase in federal or state taxes,
17284 including penalties and interest related to state and federal
17285 income taxes, of the equity owners of a certified capital
17286 company resulting from the earnings or other tax liability of
17287 the certified capital company to the extent that the increase is
17288 related to the ownership, management, or operation of a
17289 certified capital company.

17290 ~~(m)-(n)~~1. "Qualified investment" means the investment of
17291 cash by a certified capital company in a qualified business for
17292 the purchase of any debt, equity, or hybrid security, including
17293 a debt instrument or security that has the characteristics of
17294 debt but which provides for conversion into equity or equity
17295 participation instruments such as options or warrants.

17296 2. The term does not include:

17297 a. Any investment made after the effective date of this
17298 act the contractual terms of which require the repayment of any
17299 portion of the principal in instances, other than default as
17300 determined by commission ~~department~~ rule, within 12 months
17301 following the initial investment by the certified capital
17302 company unless such investment has a repayment schedule no
17303 faster than a level principal amortization of at least 2 years;

17304 b. Any "follow-on" or "add-on" investment except for the
17305 amount by which the new investment is in addition to the amount
17306 of the certified capital company's initial investment returned
17307 to it other than in the form of interest, dividends, or other
17308 types of profit participation or distributions; or



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17309 c. Any investment in a qualified business or affiliate of
 17310 a qualified business that exceeds 15 percent of certified
 17311 capital.

17312 ~~(n)~~~~(e)~~ "Program One" means the \$150 million in premium tax
 17313 credits issued under this section in 1999, the allocation of
 17314 such credits under this section, and the regulation of certified
 17315 capital companies and investments made by them hereunder.

17316 ~~(o)~~~~(p)~~ "Program Two" means the \$150 million in premium tax
 17317 credits to be issued under subsection (17), the allocation of
 17318 such credits under this section, and the regulation of certified
 17319 capital companies and investments made by them hereunder.

17320 (4) CERTIFICATION; GROUNDS FOR DENIAL OR
 17321 DECERTIFICATION.--

17322 (a) To operate as a certified capital company, a
 17323 corporation, partnership, or limited liability company must be
 17324 certified by the Department of Banking and Finance or the office
 17325 pursuant to this act.

17326 (b) An applicant for certification as a certified capital
 17327 company must file a verified application with the Department of
 17328 Banking and Finance on or before December 1, 1998, a date
 17329 determined in rules adopted pursuant to subsection (17) in the
 17330 case of applicants for Program Two, in a form which the
 17331 commission ~~department~~ may prescribe by rule. The applicant shall
 17332 submit a nonrefundable application fee of \$7,500 to the office
 17333 ~~department~~. The applicant shall provide:

17334 1. The name of the applicant and the address of its
 17335 principal office and each office in this state.

17336 2. The applicant's form and place of organization and the
 17337 relevant organizational documents, bylaws, and amendments or
 17338 restatements of such documents, bylaws, or amendments.



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17339 3. Evidence from the Department of State that the
 17340 applicant is registered with the Department of State as required
 17341 by law, maintains an active status with the Department of State,
 17342 and has not been dissolved or had its registration revoked,
 17343 canceled, or withdrawn.

17344 4. The applicant's proposed method of doing business.

17345 5. The applicant's financial condition and history,
 17346 including an audit report on the financial statements prepared
 17347 in accordance with generally accepted accounting principles. The
 17348 applicant must have, at the time of application for
 17349 certification, an equity capitalization of at least \$500,000 in
 17350 the form of cash or cash equivalents. The applicant must
 17351 maintain this equity capitalization until the applicant receives
 17352 an allocation of certified capital pursuant to this act. If the
 17353 date of the application is more than 90 days after preparation
 17354 of the applicant's fiscal year-end financial statements, the
 17355 applicant may file financial statements reviewed by an
 17356 independent certified public accountant for the period
 17357 subsequent to the audit report, together with the audited
 17358 financial statement for the most recent fiscal year. If the
 17359 applicant has been in business less than 12 months, and has not
 17360 prepared an audited financial statement, the applicant may file
 17361 a financial statement reviewed by an independent certified
 17362 public accountant.

17363 6. Copies of any offering materials used or proposed to be
 17364 used by the applicant in soliciting investments of certified
 17365 capital from certified investors.

17366 (c) Within 60 days after receipt of a verified
 17367 application, the office ~~department~~ shall grant or deny
 17368 certification as a certified capital company. If the office



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17369 ~~department~~ denies certification within the time period
17370 specified, the office ~~department~~ shall inform the applicant of
17371 the grounds for the denial. If the office ~~department~~ has not
17372 granted or denied certification within the time specified, the
17373 application shall be deemed approved. The office ~~department~~
17374 shall approve the application if the office ~~department~~ finds
17375 that:

17376 1. The applicant satisfies the requirements of paragraph
17377 (b).

17378 2. No evidence exists that the applicant has committed any
17379 act specified in paragraph (d).

17380 3. At least two of the principals have a minimum of 5
17381 years of experience making venture capital investments out of
17382 private equity funds, with not less than \$20 million being
17383 provided by third-party investors for investment in the early
17384 stage of operating businesses. At least one full-time manager or
17385 principal of the certified capital company who has such
17386 experience must be primarily located in an office of the
17387 certified capital company which is based in this state.

17388 4. The applicant's proposed method of doing business and
17389 raising certified capital as described in its offering materials
17390 and other materials submitted to the office ~~department~~ conforms
17391 with the requirements of this section.

17392 (d) The office ~~department~~ may deny certification or
17393 decertify a certified capital company if the grounds for
17394 decertification are not removed or corrected within 90 days
17395 after the notice of such grounds is received by the certified
17396 capital company. The office ~~department~~ may deny certification or
17397 decertify a certified capital company if the certified capital
17398 company fails to maintain common stock or paid-in capital of at



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17399 | least \$500,000, or if the office ~~department~~ determines that the
 17400 | applicant, or any principal or director of the certified capital
 17401 | company, has:

17402 | 1. Violated any provision of this section;

17403 | 2. Made a material misrepresentation or false statement or
 17404 | concealed any essential or material fact from any person during
 17405 | the application process or with respect to information and
 17406 | reports required of certified capital companies under this
 17407 | section;

17408 | 3. Been convicted of, or entered a plea of guilty or nolo
 17409 | contendere to, a crime against the laws of this state or any
 17410 | other state or of the United States or any other country or
 17411 | government, including a fraudulent act in connection with the
 17412 | operation of a certified capital company, or in connection with
 17413 | the performance of fiduciary duties in another capacity;

17414 | 4. Been adjudicated liable in a civil action on grounds of
 17415 | fraud, embezzlement, misrepresentation, or deceit; or

17416 | 5.a. Been the subject of any decision, finding,
 17417 | injunction, suspension, prohibition, revocation, denial,
 17418 | judgment, or administrative order by any court of competent
 17419 | jurisdiction, administrative law judge, or any state or federal
 17420 | agency, national securities, commodities, or option exchange, or
 17421 | national securities, commodities, or option association,
 17422 | involving a material violation of any federal or state
 17423 | securities or commodities law or any rule or regulation adopted
 17424 | under such law, or any rule or regulation of any national
 17425 | securities, commodities, or options exchange, or national
 17426 | securities, commodities, or options association; or

17427 | b. Been the subject of any injunction or adverse
 17428 | administrative order by a state or federal agency regulating



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17429 banking, insurance, finance or small loan companies, real
 17430 estate, mortgage brokers, or other related or similar
 17431 industries.

17432 (g) On or before December 31 of each year, each certified
 17433 capital company shall pay to the office ~~department~~ an annual,
 17434 nonrefundable renewal certification fee of \$5,000. If a
 17435 certified capital company fails to pay its renewal fee by the
 17436 specified deadline, the company must pay a late fee of \$5,000 in
 17437 addition to the renewal fee on or by January 31 of each year in
 17438 order to continue its certification in the program. On or before
 17439 April 30 of each year, each certified capital company shall file
 17440 audited financial statements with the office ~~department~~. No
 17441 renewal fees shall be required within 6 months after the date of
 17442 initial certification.

17443 (h) The commission and office ~~department~~ shall administer
 17444 and provide for the enforcement of certification requirements
 17445 for certified capital companies as provided in this act. The
 17446 commission ~~department~~ may adopt any rules necessary to carry out
 17447 its duties, obligations, and powers related to certification,
 17448 renewal of certification, or decertification of certified
 17449 capital companies and the commission and office may perform any
 17450 other acts necessary for the proper administration and
 17451 enforcement of such duties, obligations, and powers.

17452 (5) INVESTMENTS BY CERTIFIED CAPITAL COMPANIES.--

17453 (b) All capital not invested in qualified investments by
 17454 the certified capital company:

17455 1. Must be held in a financial institution as defined by
 17456 s. 655.005(1)(h) or held by a broker-dealer registered under s.
 17457 517.12, except as set forth in sub-subparagraph 3.g.

17458 2. Must not be invested in a certified investor of the



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17459 certified capital company or any affiliate of the certified
 17460 investor of the certified capital company, except for an
 17461 investment permitted by sub-subparagraph 3.g., provided
 17462 repayment terms do not permit the obligor to directly or
 17463 indirectly manage or control the investment decisions of the
 17464 certified capital company.

17465 3. Must be invested only in:

17466 a. Any United States Treasury obligations;

17467 b. Certificates of deposit or other obligations, maturing
 17468 within 3 years after acquisition of such certificates or
 17469 obligations, issued by any financial institution or trust
 17470 company incorporated under the laws of the United States;

17471 c. Marketable obligations, maturing within 10 years or
 17472 less after the acquisition of such obligations, which are rated
 17473 "A" or better by any nationally recognized credit rating agency;

17474 d. Mortgage-backed securities, with an average life of 5
 17475 years or less, after the acquisition of such securities, which
 17476 are rated "A" or better by any nationally recognized credit
 17477 rating agency;

17478 e. Collateralized mortgage obligations and real estate
 17479 mortgage investment conduits that are direct obligations of an
 17480 agency of the United States Government; are not private-label
 17481 issues; are in book-entry form; and do not include the classes
 17482 of interest only, principal only, residual, or zero;

17483 f. Interests in money market funds, the portfolio of which
 17484 is limited to cash and obligations described in sub-
 17485 subparagraphs a.-d.; or

17486 g. Obligations that are issued by an insurance company
 17487 that is not a certified investor of the certified capital
 17488 company making the investment, that has provided a guarantee



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17489 indemnity bond, insurance policy, or other payment undertaking
 17490 in favor of the certified capital company's certified investors
 17491 as permitted by subparagraph (3)(1)~~(m)~~1. or an affiliate of such
 17492 insurance company as defined by subparagraph (3)(a)3. that is
 17493 not a certified investor of the certified capital company making
 17494 the investment, provided that such obligations are:

17495 (I) Issued or guaranteed as to principal by an entity
 17496 whose senior debt is rated "AA" or better by Standard & Poor's
 17497 Ratings Group or such other nationally recognized credit rating
 17498 agency as the commission ~~department~~ may by rule determine.

17499 (II) Not subordinated to other unsecured indebtedness of
 17500 the issuer or the guarantor.

17501 (III) Invested by such issuing entity in accordance with
 17502 sub-subparagraphs 3.a.-f.

17503 (IV) Readily convertible into cash within 5 business days
 17504 for the purpose of making a qualified investment unless such
 17505 obligations are held to provide a guarantee, indemnity bond,
 17506 insurance policy, or other payment undertaking in favor of the
 17507 certified capital company's certified investors as permitted by
 17508 subparagraph (3)(1)~~(m)~~1.

17509 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION
 17510 PROCESS.--

17511 (a) The total amount of tax credits which may be allocated
 17512 by the Office of Tourism, Trade, and Economic Development shall
 17513 not exceed \$150 million with respect to Program One and \$150
 17514 million with respect to Program Two. The total amount of tax
 17515 credits which may be used by certified investors under this act
 17516 shall not exceed \$15 million annually with respect to credits
 17517 earned under Program One and \$15 million annually with respect
 17518 to credits earned under Program Two.



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17519 (b) The Office of Tourism, Trade, and Economic Development
17520 shall be responsible for allocating premium tax credits as
17521 provided for in this act to certified capital companies.

17522 (c) Each certified capital company must apply to the
17523 Office of Tourism, Trade, and Economic Development for an
17524 allocation of premium tax credits for potential certified
17525 investors on a form developed by the Office of Tourism, Trade,
17526 and Economic Development with the cooperation of the Department
17527 of Revenue. The form shall be accompanied by an affidavit from
17528 each potential certified investor confirming that the potential
17529 certified investor has agreed to make an investment of certified
17530 capital in a certified capital company up to a specified amount,
17531 subject only to the receipt of a premium tax credit allocation
17532 pursuant to this subsection. No certified capital company shall
17533 submit premium tax allocation claims on behalf of certified
17534 investors that in the aggregate would exceed the total dollar
17535 amount appropriated by the Legislature for the specific program.
17536 No allocation shall be made to the potential investors of a
17537 certified capital company under Program Two unless such
17538 certified capital company has filed premium tax allocation
17539 claims of not less than \$15 million in the aggregate.

17540 (d) The Office of Tourism, Trade, and Economic Development
17541 shall inform each certified capital company of its share of
17542 total premium tax credits available for allocation to each of
17543 its potential investors.

17544 (e) If a certified capital company does not receive
17545 certified capital equaling the amount of premium tax credits
17546 allocated to a potential certified investor for which the
17547 investor filed a premium tax allocation claim within 10 business
17548 days after the investor received a notice of allocation, the



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17549 certified capital company shall notify the Office of Tourism,
 17550 Trade, and Economic Development by overnight common carrier
 17551 delivery service of the company's failure to receive the
 17552 capital. That portion of the premium tax credits allocated to
 17553 the certified capital company shall be forfeited. If the Office
 17554 of Tourism, Trade, and Economic Development must make a pro rata
 17555 allocation under paragraph (f), that ~~the~~ office shall reallocate
 17556 such available credits among the other certified capital
 17557 companies on the same pro rata basis as the initial allocation.

17558 (f) If the total amount of capital committed by all
 17559 certified investors to certified capital companies in premium
 17560 tax allocation claims under Program Two exceeds the aggregate
 17561 cap on the amount of credits that may be awarded under Program
 17562 Two, the premium tax credits that may be allowed to any one
 17563 certified investor under Program Two shall be allocated using
 17564 the following ratio:

$$A/B = X / > \$150,000,000$$

17568 where the letter "A" represents the total amount of certified
 17569 capital certified investors have agreed to invest in any one
 17570 certified capital company under Program Two, the letter "B"
 17571 represents the aggregate amount of certified capital that all
 17572 certified investors have agreed to invest in all certified
 17573 capital companies under Program Two, the letter "X" is the
 17574 numerator and represents the total amount of premium tax credits
 17575 and certified capital that may be allocated to a certified
 17576 capital company on a date determined by rule adopted by the
 17577 commission ~~department~~ pursuant to subsection (17), and \$150
 17578 million is the denominator and represents the total amount of



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17579 premium tax credits and certified capital that may be allocated
17580 to all certified investors under Program Two. Any such premium
17581 tax credits are not first available for utilization until annual
17582 filings are made in 2001 for calendar year 2000 in the case of
17583 Program One, and the tax credits may be used at a rate not to
17584 exceed 10 percent annually per program.

17585 (g) The maximum amount of certified capital for which
17586 premium tax allocation claims may be filed on behalf of any
17587 certified investor and its affiliates by one or more certified
17588 capital companies may not exceed \$15 million for Program One and
17589 \$22.5 million for Program Two.

17590 (h) To the extent that less than \$150 million in certified
17591 capital is raised in connection with the procedure set forth in
17592 paragraphs (c)-(g), the commission ~~department~~ may adopt rules to
17593 allow a subsequent allocation of the remaining premium tax
17594 credits authorized under this section.

17595 (i) The Office of Tourism, Trade, and Economic Development
17596 shall issue a certification letter for each certified investor,
17597 showing the amount invested in the certified capital company
17598 under each program. The applicable certified capital company
17599 shall attest to the validity of the certification letter.

17600 (8) ANNUAL TAX CREDIT; CLAIM PROCESS.--

17601 (a) On an annual basis, on or before January 31, each
17602 certified capital company shall file with the office ~~department~~
17603 and the Office of Tourism, Trade, and Economic Development, in
17604 consultation with the office ~~department~~, on a form prescribed by
17605 the Office of Tourism, Trade, and Economic Development, for each
17606 calendar year:

17607 1. The total dollar amount the certified capital company
17608 received from certified investors, the identity of the certified



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17609 investors, and the amount received from each certified investor
 17610 during the immediately preceding calendar year.

17611 2. The total dollar amount the certified capital company
 17612 invested and the amount invested in qualified businesses,
 17613 together with the identity and location of those businesses and
 17614 the amount invested in each qualified business during the
 17615 immediately preceding calendar year.

17616 3. For informational purposes only, the total number of
 17617 permanent, full-time jobs either created or retained by the
 17618 qualified business during the immediately preceding calendar
 17619 year, the average wage of the jobs created or retained, the
 17620 industry sectors in which the qualified businesses operate, and
 17621 any additional capital invested in qualified businesses from
 17622 sources other than certified capital companies.

17623 (c) The Office of Tourism, Trade, and Economic Development
 17624 shall review the form, and any supplemental documentation,
 17625 submitted by each certified capital company for the purpose of
 17626 verifying:

17627 1. That the businesses in which certified capital has been
 17628 invested by the certified capital company are in fact qualified
 17629 businesses, and that the amount of certified capital invested by
 17630 the certified capital company is as represented in the form.

17631 2. The amount of certified capital invested in the
 17632 certified capital company by the certified investors.

17633 3. The amount of premium tax credit available to certified
 17634 investors.

17635 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE
 17636 PARTICIPATION.--

17637 (b) Cumulative distributions from a certified capital
 17638 company from funds related to a particular program to its



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17639 certified investors and equity holders under such program, other
 17640 than qualified distributions, in excess of the certified capital
 17641 company's original certified capital raised under such program
 17642 and any additional capital contributions to the certified
 17643 capital company with respect to such program may be audited by a
 17644 nationally recognized certified public accounting firm
 17645 acceptable to the office ~~department~~, at the expense of the
 17646 certified capital company, if the office ~~department~~ directs such
 17647 audit be conducted. The audit shall determine whether aggregate
 17648 cumulative distributions from the funds related to a particular
 17649 program made by the certified capital company to all certified
 17650 investors and equity holders under such program, other than
 17651 qualified distributions, have equaled the sum of the certified
 17652 capital company's original certified capital raised under such
 17653 program and any additional capital contributions to the
 17654 certified capital company with respect to such program. If at
 17655 the time of any such distribution made by the certified capital
 17656 company, such distribution taken together with all other such
 17657 distributions from the funds related to such program made by the
 17658 certified capital company, other than qualified distributions,
 17659 exceeds in the aggregate the sum of the certified capital
 17660 company's original certified capital raised under such program
 17661 and any additional capital contributions to the certified
 17662 capital company with respect to such program, as determined by
 17663 the audit, the certified capital company shall pay to the
 17664 Department of Revenue 10 percent of the portion of such
 17665 distribution in excess of such amount. Payments to the
 17666 Department of Revenue by a certified capital company pursuant to
 17667 this paragraph shall not exceed the aggregate amount of tax
 17668 credits used by all certified investors in such certified



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17669 capital company for such program.

17670 (10) DECERTIFICATION.--

17671 (a) The office ~~department~~ shall conduct an annual review
 17672 of each certified capital company to determine if the certified
 17673 capital company is abiding by the requirements of certification,
 17674 to advise the certified capital company as to the eligibility
 17675 status of its qualified investments, and to ensure that no
 17676 investment has been made in violation of this act. The cost of
 17677 the annual review shall be paid by each certified capital
 17678 company.

17679 (b) Nothing contained in this subsection shall be
 17680 construed to limit the Chief Financial Officer's or the office's
 17681 ~~Comptroller's~~ authority to conduct audits of certified capital
 17682 companies as deemed appropriate and necessary.

17683 (c) Any material violation of this section, or a finding
 17684 that the certified capital company or any principal or director
 17685 thereof has committed any act specified in paragraph (4)(d),
 17686 shall be grounds for decertification of the certified capital
 17687 company. If the office ~~department~~ determines that a certified
 17688 capital company is no longer in compliance with the
 17689 certification requirements of this act, the office ~~department~~
 17690 shall, by written notice, inform the officers of such company
 17691 that the company may be subject to decertification 90 days after
 17692 the date of mailing of the notice, unless the deficiencies are
 17693 corrected and such company is again found to be in compliance
 17694 with all certification requirements.

17695 (d) At the end of the 90-day grace period, if the
 17696 certified capital company is still not in compliance with the
 17697 certification requirements, the office ~~department~~ may issue a
 17698 notice to revoke or suspend the certification or to impose an



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17699 administrative fine. The office ~~department~~ shall advise each
17700 respondent of the right to an administrative hearing under
17701 chapter 120 prior to final action by the office ~~department~~.

17702 (e) If the office ~~department~~ revokes a certification, such
17703 revocation shall also deny, suspend, or revoke the
17704 certifications of all affiliates of the certified capital
17705 company.

17706 (h) The Office of Tourism, Trade, and Economic Development
17707 shall send written notice to the address of each certified
17708 investor whose premium tax credit has been subject to recapture
17709 or forfeiture, using the address last shown on the last premium
17710 tax filing.

17711 (j) The certified investor shall file with the Department
17712 of Revenue an amended return or such other report as the
17713 commission ~~department~~ may prescribe by rule ~~regulation~~ and pay
17714 any required tax, not later than 60 days after such
17715 decertification has been agreed to or finally determined,
17716 whichever shall first occur.

17717 (12) REPORTING REQUIREMENTS.--The Office of Tourism,
17718 Trade, and Economic Development shall report on an annual basis
17719 to the Governor, the President of the Senate, and the Speaker of
17720 the House of Representatives on or before April 1:

17721 (a) The total dollar amount each certified capital company
17722 received from all certified investors and any other investor,
17723 the identity of the certified investors, and the total amount of
17724 premium tax credit used by each certified investor for the
17725 previous calendar year.

17726 (b) The total dollar amount invested by each certified
17727 capital company and that portion invested in qualified
17728 businesses, the identity and location of those businesses, the



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17729 amount invested in each qualified business, and the total number
 17730 of permanent, full-time jobs created or retained by each
 17731 qualified business.

17732 (c) The return for the state as a result of the certified
 17733 capital company investments, including the extent to which:

17734 1. Certified capital company investments have contributed
 17735 to employment growth.

17736 2. The wage level of businesses in which certified capital
 17737 companies have invested exceed the average wage for the county
 17738 in which the jobs are located.

17739 3. The investments of the certified capital companies in
 17740 qualified businesses have contributed to expanding or
 17741 diversifying the economic base of the state.

17742 (13) FEES.--All fees and charges of any nature collected
 17743 by the office ~~department~~ pursuant to this act shall be paid into
 17744 the State Treasury and credited to the General Revenue Fund.

17745 (14) RULEMAKING AUTHORITY.--

17746 (a) The Department of Revenue may by rule prescribe forms
 17747 and procedures for the tax credit filings, audits, and
 17748 forfeiture of premium tax credits described in this section, and
 17749 for certified capital company payments under paragraph (9)(b).

17750 (b) The commission and the Office of Tourism, Trade, and
 17751 Economic Development may adopt any rules necessary to carry out
 17752 their respective ~~its~~ duties, obligations, and powers related to
 17753 the administration, review, and reporting provisions of this
 17754 section and may perform any other acts necessary for the proper
 17755 administration and enforcement of such duties, obligations, and
 17756 powers.

17757 (15)(a) CONFIDENTIALITY OF INVESTIGATION AND REVIEW
 17758 INFORMATION.--Except as otherwise provided by this section, any



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17759 information relating to an investigation or office ~~department~~
17760 review of a certified capital company, including any consumer
17761 complaint, is confidential and exempt from the provisions of s.
17762 119.07(1) and s. 24(a), Art. I of the State Constitution until
17763 the investigation or review is complete or ceases to be active.
17764 Such information shall remain confidential and exempt from the
17765 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
17766 Constitution after the investigation or review is complete or
17767 ceases to be active if the information is submitted to any law
17768 enforcement or administrative agency for further investigation,
17769 and shall remain confidential and exempt from the provisions of
17770 s. 119.07(1) and s. 24(a), Art. I of the State Constitution
17771 until that agency's investigation is complete or ceases to be
17772 active. For purposes of this subsection, an investigation or
17773 review shall be considered "active" so long as the office
17774 ~~department~~, a law enforcement agency, or an administrative
17775 agency is proceeding with reasonable dispatch and has a
17776 reasonable good faith belief that the investigation may lead to
17777 the filing of an administrative, civil, or criminal proceeding.
17778 This section shall not be construed to prohibit disclosure of
17779 information which is required by law to be filed with the office
17780 ~~department~~ and which, but for the investigation, would otherwise
17781 be subject to s. 119.07(1).

17782 (c) Nothing in this section shall be construed to prohibit
17783 the office ~~department~~ from providing information to any law
17784 enforcement or administrative agency. Any law enforcement or
17785 administrative agency receiving confidential information in
17786 connection with its official duties shall maintain the
17787 confidentiality of the information so long as it would otherwise
17788 be confidential.



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17789 (d) In the event office ~~department~~ personnel are or have
17790 been involved in an investigation or review of such nature as to
17791 endanger their lives or physical safety or that of their
17792 families, the home addresses, telephone numbers, places of
17793 employment, and photographs of such personnel, together with the
17794 home addresses, telephone numbers, photographs, and places of
17795 employment of spouses and children of such personnel and the
17796 names and locations of schools and day care facilities attended
17797 by the children of such personnel are confidential and exempt
17798 from s. 119.07(1).

17799 (e) All information obtained by the office ~~department~~ from
17800 any person which is only made available to the office ~~department~~
17801 on a confidential or similarly restricted basis shall be
17802 confidential and exempt from s. 119.07(1). This exemption shall
17803 not be construed to prohibit disclosure of information which is
17804 specifically required by law to be filed with the office
17805 ~~department~~ or which is otherwise subject to s. 119.07(1).

17806 (g) A privilege against civil liability is granted to a
17807 person with regard to information or evidence furnished to the
17808 office ~~department~~, unless such person acts in bad faith or with
17809 malice in providing such information or evidence.

17810 (17) Notwithstanding the limitations set forth in
17811 paragraph (7)(a), in the first fiscal year in which the total
17812 insurance premium tax collections as determined by the Revenue
17813 Estimating Conference exceed collections for fiscal year 2000-
17814 2001 by more than the total amount of tax credits issued
17815 pursuant to this section which were used by certified investors
17816 in that year, the Office of Tourism, Trade, and Economic
17817 Development may allocate to certified investors in accordance
17818 with paragraph (7)(a) tax credits for Program Two. The



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17819 commission department shall establish, by rule, a date and
17820 procedures by which certified capital companies must file
17821 applications for allocations of such additional premium tax
17822 credits, which date shall be no later than 180 days from the
17823 date of determination by the Revenue Estimating Conference. With
17824 respect to new certified capital invested and premium tax
17825 credits earned pursuant to this subsection, the schedule
17826 specified in subparagraphs (5)(a)1.-4. is satisfied by
17827 investments by December 31 of the 2nd, 3rd, 4th, and 5th
17828 calendar year, respectively, after the date established by the
17829 commission department for applications of additional premium tax
17830 credits. The commission department shall adopt rules by which an
17831 entity not already certified as a certified capital company may
17832 apply for certification as a certified capital company for
17833 participation in this additional allocation. The insurance
17834 premium tax credit authorized by Program Two may not be used by
17835 certified investors until the annual return due March 1, 2004,
17836 and may be used on all subsequent returns and estimated
17837 payments; however, notwithstanding the provisions of s.
17838 624.5092(2)(b), the installments of taxes due and payable on
17839 April 15, 2004, and June 15, 2004, shall be based on the net tax
17840 due in 2003 not taking into account credits granted pursuant to
17841 this section for Program Two.

17842 Section 344. Paragraph (c) of subsection (1) of section
17843 289.051, Florida Statutes, is amended to read:

17844 289.051 Membership of financial institutions; loans to
17845 corporation, limitations.--

17846 (1) Any financial institution may request membership in
17847 the corporation by making application to the board of directors
17848 on such form and in such manner as said board of directors may



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17849 require, and membership shall become effective upon acceptance
17850 of such application by said board. Each member of the
17851 corporation shall make loans to the corporation as and when
17852 called upon by it to do so, on such terms and other conditions
17853 as shall be approved from time to time by the board of
17854 directors, subject to the following conditions:

17855 (c) The total amount outstanding on loans to the
17856 corporation made by any member at any one time, when added to
17857 the amount of the investment in the capital stock of the
17858 corporation then held by such member, shall not exceed:

17859 1. Twenty percent of the total amount then outstanding on
17860 loans to the corporation by all members, including, in said
17861 total amount outstanding, amounts validly called for loan but
17862 not yet loaned.

17863 2. The following limit, to be determined as of the time
17864 such member becomes a member on the basis of the audited balance
17865 sheet of such member at the close of its fiscal year immediately
17866 preceding its application for membership, or, in the case of an
17867 insurance company, its last annual statement to the Office of
17868 Insurance Regulation of the Financial Services Commission
17869 ~~Department of Insurance~~: 2.5 percent of the capital and surplus
17870 of commercial banks and trust companies; 0.5 percent of the
17871 total outstanding loans made by savings and loan associations
17872 and building and loan associations; 2.5 percent of the capital
17873 and unassigned surplus of stock insurance companies, except fire
17874 insurance companies; 2.5 percent of the unassigned surplus of
17875 mutual insurance companies, except fire insurance companies; 0.1
17876 percent of the assets of fire insurance companies; and such
17877 limits as may be approved by the board of directors of the
17878 corporation for other financial institutions.



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17879 Section 345. Subsection (1) of section 289.081, Florida
 17880 Statutes, is amended to read:

17881 289.081 Amendments to articles of incorporation.--

17882 (1) The articles of incorporation may be amended by the
 17883 votes of the stockholders and the members of the corporation,
 17884 voting separately by classes, and such amendments shall require
 17885 approval by the affirmative vote of two-thirds of the votes to
 17886 which the stockholders shall be entitled and two-thirds of the
 17887 votes to which the members shall be entitled. No amendment of
 17888 the articles of incorporation which is inconsistent with the
 17889 general purposes expressed herein, or which authorizes any
 17890 additional class of capital stock to be issued, or which
 17891 eliminates or curtails the right of the Office of Financial
 17892 Institutions and Securities Regulation of the Financial Services
 17893 Commission ~~Department of Banking and Finance~~ to examine the
 17894 corporation or the obligation of the corporation to make reports
 17895 as provided in s. 289.121, shall be made. No amendment of the
 17896 articles of incorporation which increases the obligation of a
 17897 member to make loans to the corporation, or makes any change in
 17898 the principal amount, interest rate, maturity date, or in the
 17899 security or credit position of any outstanding loan of a member
 17900 to the corporation, or affects a member's right to withdraw from
 17901 membership as provided herein, or affects a member's voting
 17902 rights as provided herein, shall be made without the consent of
 17903 each member affected by such amendment.

17904 Section 346. Section 289.121, Florida Statutes, is amended
 17905 to read:

17906 289.121 Periodic examinations; reports.--The corporation
 17907 shall be examined at least once annually by the Office of
 17908 Financial Institutions and Securities Regulation of the



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17909 Financial Services Commission ~~Department of Banking and Finance~~
 17910 and shall make reports of its condition not less than annually
 17911 to that office ~~said department~~ and more frequently upon call of
 17912 the office ~~department~~, which in turn shall make copies of such
 17913 reports available to the Office of Insurance Regulation of the
 17914 Financial Services Commission ~~Department of Insurance~~ and the
 17915 Governor; and the corporation shall also furnish such other
 17916 information as may from time to time be required by the Office
 17917 of Financial Institutions and Securities Regulation ~~Department~~
 17918 ~~of Banking and Finance~~ and Department of State. The corporation
 17919 shall pay the actual cost of ~~said~~ examinations. The office
 17920 ~~Department of Banking and Finance~~ shall exercise the same power
 17921 and authority over corporations organized under this act as is
 17922 exercised over financial institutions under the provisions of
 17923 the financial institutions codes, when such codes are not in
 17924 conflict with this act.

17925 Section 347. Paragraph (d) of subsection (1) of section
 17926 420.101, Florida Statutes, is amended to read:

17927 420.101 Housing Development Corporation of Florida;
 17928 creation, membership, and purposes.--

17929 (1) Twenty-five or more persons, a majority of whom shall
 17930 be residents of this state, who may desire to create a housing
 17931 development corporation under the provisions of this part for
 17932 the purpose of promoting and developing housing and advancing
 17933 the prosperity and economic welfare of the state and, to that
 17934 end, to exercise the powers and privileges hereinafter provided,
 17935 may be incorporated by filing in the Department of State, as
 17936 hereinafter provided, articles of incorporation. The articles
 17937 of incorporation shall contain:

17938 (d) The names and post office addresses of the members of



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17939 the first board of directors. The first board of directors shall
 17940 be elected by and from the stockholders of the corporation and
 17941 shall consist of 21 members. However, four ~~five~~ of such members
 17942 shall consist of the following persons, who shall be nonvoting
 17943 members: the secretary of the Department of Community Affairs or
 17944 her or his designee; the head of the Department of Financial
 17945 Services ~~Banking and Finance~~ or her or his designee; ~~the head of~~
 17946 ~~the Department of Insurance or her or his designee;~~ one state
 17947 senator appointed by the President of the Senate; and one
 17948 representative appointed by the Speaker of the House of
 17949 Representatives.

17950 Section 348. Section 494.00125, Florida Statutes, is
 17951 amended to read:

17952 494.00125 Confidentiality of information relating to
 17953 investigations and examinations.--

17954 (1)(a) Except as otherwise provided by this section,
 17955 information relative to an investigation or examination by the
 17956 office ~~department~~ pursuant to this chapter, including any
 17957 consumer complaint received by the office or the Department of
 17958 Financial Services, is confidential and exempt from s. 119.07(1)
 17959 until the investigation or examination is completed or ceases to
 17960 be active. The information compiled by the office ~~department~~ in
 17961 such an investigation or examination shall remain confidential
 17962 and exempt from s. 119.07(1) after the office's ~~department's~~
 17963 investigation or examination is completed or ceases to be active
 17964 if the office ~~department~~ submits the information to any law
 17965 enforcement or administrative agency for further investigation.
 17966 Such information shall remain confidential and exempt from s.
 17967 119.07(1) until that agency's investigation is completed or
 17968 ceases to be active. For purposes of this section, an



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17969 investigation or examination shall be considered "active" so
 17970 long as the office ~~department~~ or any law enforcement or
 17971 administrative agency is proceeding with reasonable dispatch and
 17972 has a reasonable good faith belief that the investigation or
 17973 examination may lead to the filing of an administrative, civil,
 17974 or criminal proceeding or to the denial or conditional grant of
 17975 a license. This section shall not be construed to prohibit
 17976 disclosure of information which is required by law to be filed
 17977 with the office ~~department~~ and which, but for the investigation
 17978 or examination, would be subject to s. 119.07(1).

17979 (b) Except as necessary for the office ~~department~~ to
 17980 enforce the provisions of this chapter, a consumer complaint and
 17981 other information relative to an investigation or examination
 17982 shall remain confidential and exempt from s. 119.07(1) after the
 17983 investigation or examination is completed or ceases to be active
 17984 to the extent disclosure would:

- 17985 1. Jeopardize the integrity of another active
- 17986 investigation or examination.
- 17987 2. Reveal the name, address, telephone number, social
- 17988 security number, or any other identifying number or information
- 17989 of any complainant, customer, or account holder.
- 17990 3. Disclose the identity of a confidential source.
- 17991 4. Disclose investigative techniques or procedures.
- 17992 5. Reveal a trade secret as defined in s. 688.002.

17993 (c) In the event that office ~~department~~ personnel are or
 17994 have been involved in an investigation or examination of such
 17995 nature as to endanger their lives or physical safety or that of
 17996 their families, then the home addresses, telephone numbers,
 17997 places of employment, and photographs of such personnel,
 17998 together with the home addresses, telephone numbers,



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17999 | photographs, and places of employment of spouses and children of
 18000 | such personnel and the names and locations of schools and day
 18001 | care facilities attended by the children of such personnel are
 18002 | confidential and exempt from s. 119.07(1).

18003 | (d) Nothing in this section shall be construed to prohibit
 18004 | the office ~~department~~ from providing information to any law
 18005 | enforcement or administrative agency. Any law enforcement or
 18006 | administrative agency receiving confidential information in
 18007 | connection with its official duties shall maintain the
 18008 | confidentiality of the information so long as it would otherwise
 18009 | be confidential.

18010 | (e) All information obtained by the office ~~department~~ from
 18011 | any person which is only made available to the office ~~department~~
 18012 | on a confidential or similarly restricted basis shall be
 18013 | confidential and exempt from s. 119.07(1). This exemption shall
 18014 | not be construed to prohibit disclosure of information which is
 18015 | required by law to be filed with the office ~~department~~ or which
 18016 | is otherwise subject to s. 119.07(1).

18017 | (2) If information subject to subsection (1) is offered in
 18018 | evidence in any administrative, civil, or criminal proceeding,
 18019 | the presiding officer may, in her or his discretion, prevent the
 18020 | disclosure of information which would be confidential pursuant
 18021 | to paragraph (1)(b).

18022 | (3) A privilege against civil liability is granted to a
 18023 | person who furnishes information or evidence to the office
 18024 | ~~department~~, unless such person acts in bad faith or with malice
 18025 | in providing such information or evidence.

18026 | Section 349. Subsection (7) of section 494.00421, Florida
 18027 | Statutes, is amended to read:

18028 | 494.00421 Fees earned upon obtaining a bona fide



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18029 commitment.--Notwithstanding the provisions of ss. 494.001-
 18030 494.0077, any mortgage brokerage business which contracts to
 18031 receive from a borrower a mortgage brokerage fee upon obtaining
 18032 a bona fide commitment shall accurately disclose in the mortgage
 18033 brokerage agreement:

18034 (7)(a) The following statement, in no less than 12-point
 18035 boldface type immediately above the signature lines for the
 18036 borrowers:

18037
 18038
 18039 "You are entering into a contract with a mortgage brokerage
 18040 business to obtain a bona fide mortgage loan commitment under
 18041 the same terms and conditions as stated hereinabove or in a
 18042 separate executed good faith estimate form. If the mortgage
 18043 brokerage business obtains a bona fide commitment under the same
 18044 terms and conditions, you will be obligated to pay the mortgage
 18045 brokerage business fees, including, but not limited to, a
 18046 mortgage brokerage fee, even if you choose not to complete the
 18047 loan transaction. If the provisions of s. 494.00421, Florida
 18048 Statutes, are not met, the mortgage brokerage fee can only be
 18049 earned upon the funding of the mortgage loan. The borrower may
 18050 contact the Department of Financial Services ~~Banking and~~
 18051 ~~Finance~~, Tallahassee, Florida, regarding any complaints that the
 18052 borrower may have against the mortgage broker or the mortgage
 18053 brokerage business. The telephone number of the department ~~as~~
 18054 ~~set by rule of the department~~ is: . . . [insert telephone
 18055 number]"

18056 (b) Paragraph (a) does not apply to nonresidential
 18057 mortgage loan commitments in excess of \$1 million.

18058 Section 350. Subsection (7) of section 517.021, Florida



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18059 Statutes, is amended, present subsections (8)-(20) of said
 18060 section are renumbered as subsections (9)-(21), respectively,
 18061 and a new subsection (8) is added to that section to read:

18062 517.021 Definitions.--When used in this chapter, unless
 18063 the context otherwise indicates, the following terms have the
 18064 following respective meanings:

18065 (7) "Commission" means the Financial Services Commission
 18066 ~~"Department" means the Department of Banking and Finance.~~

18067 (8) "Office" means the Office of Financial Institutions
 18068 and Securities Regulation of the commission.

18069 Section 351. Section 517.03, Florida Statutes, is amended
 18070 to read:

18071 517.03 Rulemaking; immunity for acts in conformity with
 18072 rules.--

18073 (1) The office ~~Department of Banking and Finance~~ shall
 18074 administer and provide for the enforcement of all the provisions
 18075 of this chapter. The commission ~~may department has authority to~~
 18076 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
 18077 the provisions of this chapter conferring powers or duties upon
 18078 the office ~~it~~, including, without limitation, adopting rules and
 18079 forms governing reports. The commission ~~department~~ shall also
 18080 have the nonexclusive power to define by rule any term, whether
 18081 or not used in this chapter, insofar as the definition is not
 18082 inconsistent with the provisions of this chapter.

18083 (2) No provision of this chapter imposing liability shall
 18084 apply to an act done, or omitted to be done, in conformity with
 18085 a rule of the commission ~~department~~ in existence at the time of
 18086 the act or omission, even though such rule may thereafter be
 18087 amended or repealed or determined by judicial or other authority
 18088 to be invalid for any reason.



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18089 Section 352. Section 517.051, Florida Statutes, is amended
 18090 to read:

18091 517.051 Exempt securities.--The exemptions provided herein
 18092 from the registration requirements of s. 517.07 are self-
 18093 executing and do not require any filing with the office
 18094 ~~department~~ prior to claiming such exemption. Any person who
 18095 claims entitlement to any of these exemptions bears the burden
 18096 of proving such entitlement in any proceeding brought under this
 18097 chapter. The registration provisions of s. 517.07 do not apply
 18098 to any of the following securities:

18099 (1) A security issued or guaranteed by the United States
 18100 or any territory or insular possession of the United States, by
 18101 the District of Columbia, or by any state of the United States
 18102 or by any political subdivision or agency or other
 18103 instrumentality thereof; provided that no person shall directly
 18104 or indirectly offer or sell securities, other than general
 18105 obligation bonds, under this subsection if the issuer or
 18106 guarantor is in default or has been in default any time after
 18107 December 31, 1975, as to principal or interest:

18108 (a) With respect to an obligation issued by the issuer or
 18109 successor of the issuer; or

18110 (b) With respect to an obligation guaranteed by the
 18111 guarantor or successor of the guarantor,
 18112
 18113 except by an offering circular containing a full and fair
 18114 disclosure as prescribed by rule of the commission ~~department~~.

18115 (2) A security issued or guaranteed by any foreign
 18116 government with which the United States is maintaining
 18117 diplomatic relations at the time of the sale or offer of sale of
 18118 the security, or by any state, province, or political



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18119 subdivision thereof having the power of taxation or assessment,
 18120 which security is recognized at the time it is offered for sale
 18121 in this state as a valid obligation by such foreign government
 18122 or by such state, province, or political subdivision thereof
 18123 issuing the security.

18124 (3) A security issued or guaranteed by:

18125 (a) A national bank, a federally chartered savings and
 18126 loan association, or a federally chartered savings bank, or the
 18127 initial subscription for equity securities in such national
 18128 bank, federally chartered savings and loan association, or
 18129 federally chartered savings bank;

18130 (b) Any federal land bank, joint-stock land bank, or
 18131 national farm loan association under the provisions of the
 18132 Federal Farm Loan Act of July 17, 1916;

18133 (c) An international bank of which the United States is a
 18134 member; or

18135 (d) A corporation created and acting as an instrumentality
 18136 of the government of the United States.

18137 (4) A security issued or guaranteed, as to principal,
 18138 interest, or dividend, by a corporation owning or operating a
 18139 railroad or any other public service utility; provided that such
 18140 corporation is subject to regulation or supervision whether as
 18141 to its rates and charges or as to the issue of its own
 18142 securities by a public commission, board, or officer of the
 18143 government of the United States, of any state, territory, or
 18144 insular possession of the United States, of any municipality
 18145 located therein, of the District of Columbia, or of the Dominion
 18146 of Canada or of any province thereof; also equipment securities
 18147 based on chattel mortgages, leases, or agreements for
 18148 conditional sale of cars, motive power, or other rolling stock



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18149 mortgaged, leased, or sold to or furnished for the use of or
18150 upon such railroad or other public service utility corporation
18151 or where the ownership or title of such equipment is pledged or
18152 retained in accordance with the provisions of the laws of the
18153 United States or of any state or of the Dominion of Canada to
18154 secure the payment of such equipment securities; and also bonds,
18155 notes, or other evidences of indebtedness issued by a holding
18156 corporation and secured by collateral consisting of any
18157 securities hereinabove described; provided, further, that the
18158 collateral securities equal in fair value at least 125 percent
18159 of the par value of the bonds, notes, or other evidences of
18160 indebtedness so secured.

18161 (5) A security issued or guaranteed by any of the
18162 following which are subject to the examination, supervision, or
18163 control of this state or of the Federal Deposit Insurance
18164 Corporation or the National Credit Union Association:

- 18165 (a) A bank,
- 18166 (b) A trust company,
- 18167 (c) A savings institution,
- 18168 (d) A building or savings and loan association,
- 18169 (e) An international development bank, or
- 18170 (f) A credit union;

18171
18172 or the initial subscription for equity securities of any
18173 institution listed in paragraphs (a)-(f), provided such
18174 institution is subject to the examination, supervision, or
18175 control of this state.

18176 (6) A security, other than common stock, providing for a
18177 fixed return, which security has been outstanding in the hands
18178 of the public for a period of not less than 5 years, and upon



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18179 | which security no default in payment of principal or failure to
18180 | pay the fixed return has occurred for an immediately preceding
18181 | period of 5 years.

18182 | (7) Securities of nonprofit agricultural cooperatives
18183 | organized under the laws of this state when the securities are
18184 | sold or offered for sale to persons principally engaged in
18185 | agricultural production or selling agricultural products.

18186 | (8) A note, draft, bill of exchange, or banker's
18187 | acceptance having a unit amount of \$25,000 or more which arises
18188 | out of a current transaction, or the proceeds of which have been
18189 | or are to be used for current transactions, and which has a
18190 | maturity period at the time of issuance not exceeding 9 months
18191 | exclusive of days of grace, or any renewal thereof which has a
18192 | maturity period likewise limited. This subsection applies only
18193 | to prime quality negotiable commercial paper of a type not
18194 | ordinarily purchased by the general public; that is, paper
18195 | issued to facilitate well-recognized types of current
18196 | operational business requirements and of a type eligible for
18197 | discounting by Federal Reserve banks.

18198 | (9) A security issued by a corporation organized and
18199 | operated exclusively for religious, educational, benevolent,
18200 | fraternal, charitable, or reformatory purposes and not for
18201 | pecuniary profit, no part of the net earnings of which
18202 | corporation inures to the benefit of any private stockholder or
18203 | individual, or any security of a fund that is excluded from the
18204 | definition of an investment company under s. 3(c)(10)(B) of the
18205 | Investment Company Act of 1940; provided that no person shall
18206 | directly or indirectly offer or sell securities under this
18207 | subsection except by an offering circular containing full and
18208 | fair disclosure, as prescribed by the rules of the commission



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18209 ~~department~~, of all material information, including, but not
 18210 limited to, a description of the securities offered and terms of
 18211 the offering, a description of the nature of the issuer's
 18212 business, a statement of the purpose of the offering and the
 18213 intended application by the issuer of the proceeds thereof, and
 18214 financial statements of the issuer prepared in conformance with
 18215 generally accepted accounting principles. Section 6(c) of the
 18216 Philanthropy Protection Act of 1995, Pub. L. No. 104-62, shall
 18217 not preempt any provision of this chapter.

18218 (10) Any insurance or endowment policy or annuity contract
 18219 or optional annuity contract or self-insurance agreement issued
 18220 by a corporation, insurance company, reciprocal insurer, or risk
 18221 retention group subject to the supervision of the insurance
 18222 regulator ~~commissioner~~ or bank regulator ~~commissioner~~, or any
 18223 agency or officer performing like functions, of any state or
 18224 territory of the United States or the District of Columbia.

18225 Section 353. Section 517.061, Florida Statutes, is amended
 18226 to read:

18227 517.061 Exempt transactions.--The exemption for each
 18228 transaction listed below is self-executing and does not require
 18229 any filing with the office ~~department~~ prior to claiming such
 18230 exemption. Any person who claims entitlement to any of the
 18231 exemptions bears the burden of proving such entitlement in any
 18232 proceeding brought under this chapter. The registration
 18233 provisions of s. 517.07 do not apply to any of the following
 18234 transactions; however, such transactions are subject to the
 18235 provisions of ss. 517.301, 517.311, and 517.312:

18236 (1) At any judicial, executor's, administrator's,
 18237 guardian's, or conservator's sale, or at any sale by a receiver
 18238 or trustee in insolvency or bankruptcy, or any transaction



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18239 incident to a judicially approved reorganization in which a
 18240 security is issued in exchange for one or more outstanding
 18241 securities, claims, or property interests.

18242 (2) By or for the account of a pledgeholder or mortgagee
 18243 selling or offering for sale or delivery in the ordinary course
 18244 of business and not for the purposes of avoiding the provisions
 18245 of this chapter, to liquidate a bona fide debt, a security
 18246 pledged in good faith as security for such debt.

18247 (3) The isolated sale or offer for sale of securities when
 18248 made by or on behalf of a vendor not the issuer or underwriter
 18249 of the securities, who, being the bona fide owner of such
 18250 securities, disposes of her or his own property for her or his
 18251 own account, and such sale is not made directly or indirectly
 18252 for the benefit of the issuer or an underwriter of such
 18253 securities or for the direct or indirect promotion of any scheme
 18254 or enterprise with the intent of violating or evading any
 18255 provision of this chapter. For purposes of this subsection,
 18256 isolated offers or sales include, but are not limited to, an
 18257 isolated offer or sale made by or on behalf of a vendor of
 18258 securities not the issuer or underwriter of the securities if:

18259 (a) The offer or sale of securities is in a transaction
 18260 satisfying all of the requirements of subparagraphs (11)(a)1.,
 18261 2., 3., and 4. and paragraph(11)(b); or

18262 (b) The offer or sale of securities is in a transaction
 18263 exempt under s. 4(1) of the Securities Act of 1933, as amended.

18264
 18265 For purposes of this subsection, any person, including, without
 18266 limitation, a promoter or affiliate of an issuer, shall not be
 18267 deemed an underwriter, an issuer, or a person acting for the
 18268 direct or indirect benefit of the issuer or an underwriter with



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18269 respect to any securities of the issuer which she or he has
18270 owned beneficially for at least 1 year.

18271 (4) The distribution by a corporation, trust, or
18272 partnership, actively engaged in the business authorized by its
18273 charter or other organizational articles or agreement, of
18274 securities to its stockholders or other equity security holders,
18275 partners, or beneficiaries as a stock dividend or other
18276 distribution out of earnings or surplus.

18277 (5) The issuance of securities to such equity security
18278 holders or other creditors of a corporation, trust, or
18279 partnership in the process of a reorganization of such
18280 corporation or entity, made in good faith and not for the
18281 purpose of avoiding the provisions of this chapter, either in
18282 exchange for the securities of such equity security holders or
18283 claims of such creditors or partly for cash and partly in
18284 exchange for the securities or claims of such equity security
18285 holders or creditors.

18286 (6) Any transaction involving the distribution of the
18287 securities of an issuer exclusively among its own security
18288 holders, including any person who at the time of the transaction
18289 is a holder of any convertible security, any nontransferable
18290 warrant, or any transferable warrant which is exercisable within
18291 not more than 90 days of issuance, when no commission or other
18292 remuneration is paid or given directly or indirectly in
18293 connection with the sale or distribution of such additional
18294 securities.

18295 (7) The offer or sale of securities to a bank, trust
18296 company, savings institution, insurance company, dealer,
18297 investment company as defined by the Investment Company Act of
18298 1940, pension or profit-sharing trust, or qualified



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18299 institutional buyer as defined by rule of the commission
18300 ~~department~~ in accordance with Securities and Exchange Commission
18301 Rule 144A (17 C.F.R. 230.144(A)(a)), whether any of such
18302 entities is acting in its individual or fiduciary capacity;
18303 provided that such offer or sale of securities is not for the
18304 direct or indirect promotion of any scheme or enterprise with
18305 the intent of violating or evading any provision of this
18306 chapter.

18307 (8) The sale of securities from one corporation to another
18308 corporation provided that:

18309 (a) The sale price of the securities is \$50,000 or more;
18310 and

18311 (b) The buyer and seller corporations each have assets of
18312 \$500,000 or more.

18313 (9) The offer or sale of securities from one corporation
18314 to another corporation, or to security holders thereof, pursuant
18315 to a vote or consent of such security holders as may be provided
18316 by the articles of incorporation and the applicable corporate
18317 statutes in connection with mergers, share exchanges,
18318 consolidations, or sale of corporate assets.

18319 (10) The issuance of notes or bonds in connection with the
18320 acquisition of real property or renewals thereof, if such notes
18321 or bonds are issued to the sellers of, and are secured by all or
18322 part of, the real property so acquired.

18323 (11)(a) The offer or sale, by or on behalf of an issuer,
18324 of its own securities, which offer or sale is part of an
18325 offering made in accordance with all of the following
18326 conditions:

18327 1. There are no more than 35 purchasers, or the issuer
18328 reasonably believes that there are no more than 35 purchasers,



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18329 of the securities of the issuer in this state during an offering
 18330 made in reliance upon this subsection or, if such offering
 18331 continues for a period in excess of 12 months, in any
 18332 consecutive 12-month period.

18333 2. Neither the issuer nor any person acting on behalf of
 18334 the issuer offers or sells securities pursuant to this
 18335 subsection by means of any form of general solicitation or
 18336 general advertising in this state.

18337 3. Prior to the sale, each purchaser or the purchaser's
 18338 representative, if any, is provided with, or given reasonable
 18339 access to, full and fair disclosure of all material information.

18340 4. No person defined as a "dealer" in this chapter is paid
 18341 a commission or compensation for the sale of the issuer's
 18342 securities unless such person is registered as a dealer under
 18343 this chapter.

18344 5. When sales are made to five or more persons in this
 18345 state, any sale in this state made pursuant to this subsection
 18346 is voidable by the purchaser in such sale either within 3 days
 18347 after the first tender of consideration is made by such
 18348 purchaser to the issuer, an agent of the issuer, or an escrow
 18349 agent or within 3 days after the availability of that privilege
 18350 is communicated to such purchaser, whichever occurs later.

18351 (b) The following purchasers are excluded from the
 18352 calculation of the number of purchasers under subparagraph

18353 (a)1.:

18354 1. Any relative or spouse, or relative of such spouse, of
 18355 a purchaser who has the same principal residence as such
 18356 purchaser.

18357 2. Any trust or estate in which a purchaser, any of the
 18358 persons related to such purchaser specified in subparagraph 1.,



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18359 and any corporation specified in subparagraph 3. collectively
18360 have more than 50 percent of the beneficial interest (excluding
18361 contingent interest).

18362 3. Any corporation or other organization of which a
18363 purchaser, any of the persons related to such purchaser
18364 specified in subparagraph 1., and any trust or estate specified
18365 in subparagraph 2. collectively are beneficial owners of more
18366 than 50 percent of the equity securities or equity interest.

18367 4. Any purchaser who makes a bona fide investment of
18368 \$100,000 or more, provided such purchaser or the purchaser's
18369 representative receives, or has access to, the information
18370 required to be disclosed by subparagraph (a)3.

18371 5. Any accredited investor, as defined by rule of the
18372 commission ~~department~~ in accordance with Securities and Exchange
18373 Commission Regulation 230.501 (17 C.F.R. 230.501).

18374 (c)1. For purposes of determining which offers and sales
18375 of securities constitute part of the same offering under this
18376 subsection and are therefore deemed to be integrated with one
18377 another:

18378 a. Offers or sales of securities occurring more than 6
18379 months prior to an offer or sale of securities made pursuant to
18380 this subsection shall not be considered part of the same
18381 offering, provided there are no offers or sales by or for the
18382 issuer of the same or a similar class of securities during such
18383 6-month period.

18384 b. Offers or sales of securities occurring at any time
18385 after 6 months from an offer or sale made pursuant to this
18386 subsection shall not be considered part of the same offering,
18387 provided there are no offers or sales by or for the issuer of
18388 the same or a similar class of securities during such 6-month



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18389 period.

18390 2. Offers or sales which do not satisfy the conditions of
18391 any of the provisions of subparagraph 1. may or may not be part
18392 of the same offering, depending on the particular facts and
18393 circumstances in each case. The commission ~~department~~ may, ~~but~~
18394 ~~is not required to~~, adopt a rule or rules indicating what
18395 factors should be considered in determining whether offers and
18396 sales not qualifying for the provisions of subparagraph 1. are
18397 part of the same offering for purposes of this subsection.

18398 (d) Offers or sales of securities made pursuant to, and in
18399 compliance with, any other subsection of this section or any
18400 subsection of s. 517.051 shall not be considered part of an
18401 offering pursuant to this subsection, regardless of when such
18402 offers and sales are made.

18403 (12) The sale of securities by a bank or trust company
18404 organized or incorporated under the laws of the United States or
18405 this state at a profit to such bank or trust company of not more
18406 than 2 percent of the total sale price of such securities;
18407 provided that there is no solicitation of this business by such
18408 bank or trust company where such bank or trust company acts as
18409 agent in the purchase or sale of such securities.

18410 (13) An unsolicited purchase or sale of securities on
18411 order of, and as the agent for, another by a dealer registered
18412 ~~with the Department of Banking and Finance~~ pursuant to the
18413 provisions of s. 517.12; provided that this exemption applies
18414 solely and exclusively to such registered dealers and does not
18415 authorize or permit the purchase or sale of securities on order
18416 of, and as agent for, another by any person other than a dealer
18417 so registered; and provided, further, that such purchase or sale
18418 is not directly or indirectly for the benefit of the issuer or



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18419 an underwriter of such securities or for the direct or indirect
18420 promotion of any scheme or enterprise with the intent of
18421 violation or evading any provision of this chapter.

18422 (14) The offer or sale of shares of a corporation which
18423 represent ownership, or entitle the holders of the shares to
18424 possession and occupancy, of specific apartment units in
18425 property owned by such corporation and organized and operated on
18426 a cooperative basis, solely for residential purposes.

18427 (15) The offer or sale of securities under a bona fide
18428 employer-sponsored stock option, stock purchase, pension,
18429 profit-sharing, savings, or other benefit plan when offered only
18430 to employees of the sponsoring organization or to employees of
18431 its controlled subsidiaries.

18432 (16) The sale by or through a registered dealer of any
18433 securities option if at the time of the sale of the option:

18434 (a) The performance of the terms of the option is
18435 guaranteed by any dealer registered under the federal Securities
18436 Exchange Act of 1934, as amended, which guaranty and dealer are
18437 in compliance with such requirements or rules as may be approved
18438 or adopted by the commission ~~department~~; or

18439 (b) Such options transactions are cleared by the Options
18440 Clearing Corporation or any other clearinghouse recognized by
18441 the office ~~department~~; and

18442 (c) The option is not sold by or for the benefit of the
18443 issuer of the underlying security; and

18444 (d) The underlying security may be purchased or sold on a
18445 recognized securities exchange or is quoted on the National
18446 Association of Securities Dealers Automated Quotation System;
18447 and

18448 (e) Such sale is not directly or indirectly for the



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18449 purpose of providing or furthering any scheme to violate or
 18450 evade any provisions of this chapter.

18451 (17)(a) The offer or sale of securities, as agent or
 18452 principal, by a dealer registered pursuant to s. 517.12, when
 18453 such securities are offered or sold at a price reasonably
 18454 related to the current market price of such securities, provided
 18455 such securities are:

18456 1. Securities of an issuer for which reports are required
 18457 to be filed by s. 13 or s. 15(d) of the Securities Exchange Act
 18458 of 1934, as amended;

18459 2. Securities of a company registered under the Investment
 18460 Company Act of 1940, as amended;

18461 3. Securities of an insurance company, as that term is
 18462 defined in s. 2(a)(17) of the Investment Company Act of 1940, as
 18463 amended;

18464 4. Securities, other than any security that is a federal
 18465 covered security pursuant to s. 18(b)(1) of the Securities Act
 18466 of 1933 and is not subject to any registration or filing
 18467 requirements under this act, which appear in any list of
 18468 securities dealt in on any stock exchange registered pursuant to
 18469 the Securities Exchange Act of 1934, as amended, and which
 18470 securities have been listed or approved for listing upon notice
 18471 of issuance by such exchange, and also all securities senior to
 18472 any securities so listed or approved for listing upon notice of
 18473 issuance, or represented by subscription rights which have been
 18474 so listed or approved for listing upon notice of issuance, or
 18475 evidences of indebtedness guaranteed by companies any stock of
 18476 which is so listed or approved for listing upon notice of
 18477 issuance, such securities to be exempt only so long as such
 18478 listings or approvals remain in effect. The exemption provided



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18479 for herein does not apply when the securities are suspended from
18480 listing approval for listing or trading.

18481 (b) The exemption provided in this subsection does not
18482 apply if the sale is made for the direct or indirect benefit of
18483 an issuer or controlling persons of such issuer or if such
18484 securities constitute the whole or part of an unsold allotment
18485 to, or subscription or participation by, a dealer as an
18486 underwriter of such securities.

18487 (c) This exemption shall not be available for any
18488 securities which have been denied registration ~~by the department~~
18489 pursuant to s. 517.111. Additionally, the office ~~department~~ may
18490 deny this exemption with reference to any particular security,
18491 other than a federal covered security, by order published in
18492 such manner as the office ~~department~~ finds proper.

18493 (18) The offer or sale of any security effected by or
18494 through a person registered pursuant to s. 517.12(17).

18495 (19) Other transactions defined by rules as transactions
18496 exempted from the registration provisions of s. 517.07, which
18497 rules the commission ~~department~~ may, ~~but is not required to,~~
18498 adopt from time to time, but only after a finding by the office
18499 ~~department~~ that the application of the provisions of s. 517.07
18500 to a particular transaction is not necessary in the public
18501 interest and for the protection of investors because of the
18502 small dollar amount of securities involved or the limited
18503 character of the offering. In conjunction with its adoption of
18504 such rules, the commission ~~department~~ may also provide in such
18505 rules that persons selling or offering for sale the exempted
18506 securities are exempt from the registration requirements of s.
18507 517.12. No rule so adopted may have the effect of narrowing or
18508 limiting any exemption provided for by statute in the other



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18509 subsections of this section.

18510 (20) Any nonissuer transaction by a registered associated
 18511 person of a registered dealer, and any resale transaction by a
 18512 sponsor of a unit investment trust registered under the
 18513 Investment Company Act of 1940, in a security of a class that
 18514 has been outstanding in the hands of the public for at least 90
 18515 days; provided, at the time of the transaction:

18516 (a) The issuer of the security is actually engaged in
 18517 business and is not in the organization stage or in bankruptcy
 18518 or receivership and is not a blank check, blind pool, or shell
 18519 company whose primary plan of business is to engage in a merger
 18520 or combination of the business with, or an acquisition of, any
 18521 unidentified person;

18522 (b) The security is sold at a price reasonably related to
 18523 the current market price of the security;

18524 (c) The security does not constitute the whole or part of
 18525 an unsold allotment to, or a subscription or participation by,
 18526 the broker-dealer as an underwriter of the security;

18527 (d) A nationally recognized securities manual designated
 18528 by rule of the commission or order of the office ~~department~~ or a
 18529 document filed with the Securities and Exchange Commission that
 18530 is publicly available through the commission's electronic data
 18531 gathering and retrieval system contains:

18532 1. A description of the business and operations of the
 18533 issuer;

18534 2. The names of the issuer's officers and directors, if
 18535 any, or, in the case of an issuer not domiciled in the United
 18536 States, the corporate equivalents of such persons in the
 18537 issuer's country of domicile;

18538 3. An audited balance sheet of the issuer as of a date



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18539 within 18 months before such transaction or, in the case of a
 18540 reorganization or merger in which parties to the reorganization
 18541 or merger had such audited balance sheet, a pro forma balance
 18542 sheet; and

18543 4. An audited income statement for each of the issuer's
 18544 immediately preceding 2 fiscal years, or for the period of
 18545 existence of the issuer, if in existence for less than 2 years
 18546 or, in the case of a reorganization or merger in which the
 18547 parties to the reorganization or merger had such audited income
 18548 statement, a pro forma income statement; and

18549 (e) The issuer of the security has a class of equity
 18550 securities listed on a national securities exchange registered
 18551 under the Securities Exchange Act of 1934 or designated for
 18552 trading on the National Association of Securities Dealers
 18553 Automated Quotation System, unless:

18554 1. The issuer of the security is a unit investment trust
 18555 registered under the Investment Company Act of 1940;

18556 2. The issuer of the security has been engaged in
 18557 continuous business, including predecessors, for at least 3
 18558 years; or

18559 3. The issuer of the security has total assets of at least
 18560 \$2 million based on an audited balance sheet as of a date within
 18561 18 months before such transaction or, in the case of a
 18562 reorganization or merger in which parties to the reorganization
 18563 or merger had such audited balance sheet, a pro forma balance
 18564 sheet.

18565 Section 354. Section 517.07, Florida Statutes, is amended
 18566 to read:

18567 517.07 Registration of securities.--

18568 (1) It is unlawful and a violation of this chapter for any



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18569 person to sell or offer to sell a security within this state
18570 unless the security is exempt under s. 517.051, is sold in a
18571 transaction exempt under s. 517.061, is a federal covered
18572 security, or is registered pursuant to this chapter.

18573 (2) No securities that are required to be registered under
18574 this chapter shall be sold or offered for sale within this state
18575 unless such securities have been registered pursuant to this
18576 chapter and unless prior to each sale the purchaser is furnished
18577 with a prospectus meeting the requirements of rules adopted by
18578 the commission ~~department~~.

18579 (3) The office ~~department~~ shall issue a permit when
18580 registration has been granted by the office ~~department~~. A
18581 permit to sell securities is effective for 1 year from the date
18582 it was granted. Registration of securities shall be deemed to
18583 include the registration of rights to subscribe to such
18584 securities if the application under s. 517.081 or s. 517.082 for
18585 registration of such securities includes a statement that such
18586 rights are to be issued.

18587 (4) A record of the registration of securities shall be
18588 kept by ~~in~~ the office ~~of the department~~, in which register of
18589 securities shall also be recorded any orders entered by the
18590 office ~~department~~ with respect to such securities. Such
18591 register, and all information with respect to the securities
18592 registered therein, shall be open to public inspection.

18593 (5) Notwithstanding any other provision of this section,
18594 offers of securities required to be registered by this section
18595 may be made in this state before the registration of such
18596 securities if the offers are made in conformity with rules
18597 adopted by the commission ~~department~~.

18598 Section 355. Subsections (2), (3), (4), and (5) of section



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18599 517.075, Florida Statutes, are amended to read:

18600 517.075 Cuba, prospectus disclosure of doing business
 18601 with, required.--

18602 (2) Any disclosure required by subsection (1) must
 18603 include:

18604 (a) The name of such person, affiliate, or government with
 18605 which the issuer does business and the nature of that business;

18606 (b) A statement that the information is accurate as of the
 18607 date the securities were effective with the United States
 18608 Securities and Exchange Commission or with the office
 18609 ~~department~~, whichever date is later; and

18610 (c) A statement that current information concerning the
 18611 issuer's business dealings with the government of Cuba or with
 18612 any person or affiliate located in Cuba may be obtained from the
 18613 office ~~Department of Banking and Finance~~, which statement must
 18614 include the address and phone number of the office ~~department~~.

18615 (3) If an issuer commences engaging in business with the
 18616 government of Cuba or with any person or affiliate located in
 18617 Cuba, after the date issuer's securities become effective with
 18618 the Securities and Exchange Commission or with the office
 18619 ~~department~~, whichever date is later, or if the information
 18620 reported in the prospectus concerning that business changes in
 18621 any material way, the issuer must provide the office ~~department~~
 18622 notice of that business or change, as appropriate, in a manner
 18623 ~~form~~ acceptable to the office ~~department~~. The commission
 18624 ~~department~~ shall prescribe by rule a form for persons to use to
 18625 report the commencement of such business or any change in such
 18626 business which occurs after the effective registration of such
 18627 securities. This form must include, at a minimum, the
 18628 information required by subsection (2). The information reported



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18629 on the form must be kept current. Information is current if
 18630 reported to the office ~~department~~ within 90 days after the
 18631 commencement of business or within 90 days after the change
 18632 occurs with respect to previously reported information.

18633 (4) The office ~~department~~ shall provide, upon request, a
 18634 copy of any form filed with the office ~~department~~ under
 18635 subsection (3) to any person requesting the form.

18636 (5) Each securities offering sold in violation of this
 18637 section, and each failure of an issuer to timely file the form
 18638 required by subsection (3), subjects the issuer to a fine of up
 18639 to \$5,000. Any fine collected under this section shall be
 18640 deposited into the Anti-Fraud Trust Fund of the office
 18641 ~~Department of Banking and Finance~~.

18642 Section 356. Section 517.081, Florida Statutes, is amended
 18643 to read:

18644 517.081 Registration procedure.--

18645 (1) All securities required by this chapter to be
 18646 registered before being sold in this state and not entitled to
 18647 registration by notification shall be registered in the manner
 18648 provided by this section.

18649 (2) The office ~~department~~ shall receive and act upon
 18650 applications to have securities registered and the commission
 18651 may prescribe forms on which it may require such applications to
 18652 be submitted. Applications shall be duly signed by the
 18653 applicant, sworn to by any person having knowledge of the facts,
 18654 and filed with the office ~~department~~. The commission ~~department~~
 18655 may establish, by rule, procedures for depositing fees and
 18656 filing documents by electronic means provided such procedures
 18657 provide the office ~~department~~ with the information and data
 18658 required by this section. An application may be made either by



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18659 the issuer of the securities for which registration is applied
 18660 or by any registered dealer desiring to sell the same within the
 18661 state.

18662 (3) The office ~~department~~ may require the applicant to
 18663 submit to the office ~~department~~ the following information
 18664 concerning the issuer and such other relevant information as the
 18665 office ~~department~~ may in its judgment deem necessary to enable
 18666 it to ascertain whether such securities shall be registered
 18667 pursuant to the provisions of this section:

18668 (a) The names and addresses of the directors, trustees,
 18669 and officers, if the issuer be a corporation, association, or
 18670 trust; of all the partners, if the issuer be a partnership; or
 18671 of the issuer, if the issuer be an individual.

18672 (b) The location of the issuer's principal business office
 18673 and of its principal office in this state, if any.

18674 (c) The general character of the business actually to be
 18675 transacted by the issuer and the purposes of the proposed issue.

18676 (d) A statement of the capitalization of the issuer.

18677 (e) A balance sheet showing the amount and general
 18678 character of its assets and liabilities on a day not more than
 18679 90 days prior to the date of filing such balance sheet or such
 18680 longer period of time, not exceeding 6 months, as the office
 18681 ~~department~~ may permit at the written request of the issuer on a
 18682 showing of good cause therefor.

18683 (f) A detailed statement of the plan upon which the issuer
 18684 proposes to transact business.

18685 (g)1. A specimen copy of the security and a copy of any
 18686 circular, prospectus, advertisement, or other description of
 18687 such securities.

18688 2. The commission ~~department~~ shall adopt a form for a



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18689 simplified offering circular to be used solely by corporations
18690 to register, under this section, securities of the corporation
18691 that are sold in offerings in which the aggregate offering price
18692 in any consecutive 12-month period does not exceed the amount
18693 provided in s. 3(b) of the Securities Act of 1933. The
18694 following issuers shall not be eligible to submit a simplified
18695 offering circular adopted pursuant to this subparagraph:

18696 a. An issuer seeking to register securities for resale by
18697 persons other than the issuer.

18698 b. An issuer who is subject to any of the
18699 disqualifications described in 17 C.F.R. s. 230.262, adopted
18700 pursuant to the Securities Act of 1933, or who has been or is
18701 engaged or is about to engage in an activity that would be
18702 grounds for denial, revocation, or suspension under s. 517.111.
18703 For purposes of this subparagraph, an issuer includes an
18704 issuer's director, officer, shareholder who owns at least 10
18705 percent of the shares of the issuer, promoter, or selling agent
18706 of the securities to be offered or any officer, director, or
18707 partner of such selling agent.

18708 c. An issuer who is a development-stage company that
18709 either has no specific business plan or purpose or has indicated
18710 that its business plan is to merge with an unidentified company
18711 or companies.

18712 d. An issuer of offerings in which the specific business
18713 or properties cannot be described.

18714 e. Any issuer the office ~~department~~ determines is
18715 ineligible if the form would not provide full and fair
18716 disclosure of material information for the type of offering to
18717 be registered by the issuer.

18718 f. Any corporation which has failed to provide the office



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18719 ~~department~~ the reports required for a previous offering
18720 registered pursuant to this subparagraph.

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18723 As a condition precedent to qualifying for use of the
18724 simplified offering circular, a corporation shall agree to
18725 provide the office ~~department~~ with an annual financial report
18726 containing a balance sheet as of the end of the issuer's fiscal
18727 year and a statement of income for such year, prepared in
18728 accordance with generally accepted accounting principles and
18729 accompanied by an independent accountant's report. If the
18730 issuer has more than 100 security holders at the end of a fiscal
18731 year, the financial statements must be audited. Annual financial
18732 reports must be filed with the office ~~department~~ within 90 days
18733 after the close of the issuer's fiscal year for each of the
18734 first 5 years following the effective date of the registration.

18735 (h) A statement of the amount of the issuer's income,
18736 expenses, and fixed charges during the last fiscal year or, if
18737 in actual business less than 1 year, then for such time as the
18738 issuer has been in actual business.

18739 (i) A statement of the issuer's cash sources and
18740 application during the last fiscal year or, if in actual
18741 business less than 1 year, then for such time as the issuer has
18742 been in actual business.

18743 (j) A statement showing the maximum price at which such
18744 security is proposed to be sold, together with the maximum
18745 amount of commission, including expenses, or other form of
18746 remuneration to be paid in cash or otherwise, directly or
18747 indirectly, for or in connection with the sale or offering for
18748 sale of such securities.



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18749 (k) A copy of the opinion or opinions of counsel
18750 concerning the legality of the issue or other matters which the
18751 office ~~department~~ may determine to be relevant to the issue.

18752 (l) A detailed statement showing the items of cash,
18753 property, services, patents, good will, and any other
18754 consideration in payment for which such securities have been or
18755 are to be issued.

18756 (m) The amount of securities to be set aside and disposed
18757 of and a statement of all securities issued from time to time
18758 for promotional purposes.

18759 (n) If the issuer is a corporation, there shall be filed
18760 with the application a copy of its articles of incorporation
18761 with all amendments and of its existing bylaws, if not already
18762 on file in the office ~~department~~. If the issuer is a trustee,
18763 there shall be filed with the application a copy of all
18764 instruments by which the trust is created or declared and in
18765 which it is accepted and acknowledged. If the issuer is a
18766 partnership, unincorporated association, joint-stock company, or
18767 any other form of organization whatsoever, there shall be filed
18768 with the application a copy of its articles of partnership or
18769 association and all other papers pertaining to its organization,
18770 if not already on file in the office ~~department~~.

18771 (4) All of the statements, exhibits, and documents of
18772 every kind required ~~by the department~~ under this section, except
18773 properly certified public documents, shall be verified by the
18774 oath of the applicant or of the issuer in such manner and form
18775 as may be required by the commission ~~department~~.

18776 (5) The commission ~~department~~ may by rule fix the maximum
18777 discounts, commissions, expenses, remuneration, and other
18778 compensation to be paid in cash or otherwise, not to exceed 20



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18779 percent, directly or indirectly, for or in connection with the
 18780 sale or offering for sale of such securities in this state.

18781 (6) An issuer filing an application under this section
 18782 shall, at the time of filing, pay the office ~~department~~ a
 18783 nonreturnable fee of \$1,000 per application.

18784 (7) If upon examination of any application the office
 18785 ~~department~~ shall find that the sale of the security referred to
 18786 therein would not be fraudulent and would not work or tend to
 18787 work a fraud upon the purchaser, that the terms of the sale of
 18788 such securities would be fair, just, and equitable, and that the
 18789 enterprise or business of the issuer is not based upon unsound
 18790 business principles, it shall record the registration of such
 18791 security in the register of securities; and thereupon such
 18792 security so registered may be sold by any registered dealer,
 18793 subject, however, to the further order of the office ~~department~~.

18794 Section 357. Section 517.082, Florida Statutes, is amended
 18795 to read:

18796 517.082 Notification registration.--

18797 (1) Except as provided in subsection (3), securities
 18798 offered or sold pursuant to a registration statement filed under
 18799 the Securities Act of 1933 shall be entitled to registration by
 18800 notification in the manner provided in subsection (2), provided
 18801 that prior to the offer or sale the registration statement has
 18802 become effective.

18803 (2) An application for registration by notification shall
 18804 be filed with the office ~~department~~, shall contain the following
 18805 information, and shall be accompanied by the following:

18806 (a) An application to sell executed by the issuer, any
 18807 person on whose behalf the offering is made, a dealer registered
 18808 under this chapter, or any duly authorized agent of any such



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18809 person, setting forth the name and address of the applicant, the
 18810 name and address of the issuer, and the title of the securities
 18811 to be offered and sold;

18812 (b) Copies of such documents filed with the Securities and
 18813 Exchange Commission as the Financial Services Commission
 18814 ~~department~~ may by rule require;

18815 (c) An irrevocable written consent to service as required
 18816 by s. 517.101; and

18817 (d) A nonreturnable fee of \$1,000 per application.
 18818
 18819

18820 A registration under this section becomes effective when the
 18821 federal registration statement becomes effective or as of the
 18822 date the application is filed with the office ~~department~~,
 18823 whichever is later, provided that, in addition to the items
 18824 listed in paragraphs (a)-(d), the office ~~department~~ has received
 18825 written notification of effective registration under the
 18826 Securities Act of 1933 or the Investment Company Act of 1940
 18827 within 10 business days from the date federal registration is
 18828 granted. Failure to provide all the information required by
 18829 this subsection to the office ~~department~~ within 60 days of the
 18830 date the registration statement becomes effective with the
 18831 Securities and Exchange Commission shall be a violation of this
 18832 chapter.

18833 (3) Except for units of limited partnership interests or
 18834 such other securities as the commission ~~department~~ describes by
 18835 rule as exempt from this subsection due to high investment
 18836 quality, the provisions of this section may not be used to
 18837 register securities if the offering price at the time of
 18838 effectiveness with the Securities and Exchange Commission is \$5



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18839 or less per share, unless such securities are listed or
18840 designated, or approved for listing or designation upon notice
18841 of issuance, on a stock exchange registered pursuant to the
18842 Securities Exchange Act of 1934 or on the National Association
18843 of Securities Dealers Automated Quotation (NASDAQ) System, or
18844 unless such securities are of the same issuer and of senior or
18845 substantially equal rank to securities so listed or designated.

18846 (4) In lieu of filing with the office ~~department~~ the
18847 application, fees, and documents for registration required by
18848 subsection (2), the commission ~~department~~ may establish, by
18849 rule, procedures for depositing fees and filing documents by
18850 electronic means, provided such procedures provide the office
18851 ~~department~~ with the information and data required by this
18852 section.

18853 Section 358. Section 517.101, Florida Statutes, is amended
18854 to read:

18855 517.101 Consent to service.--

18856 (1) Upon any initial application for registration under s.
18857 517.081 or s. 517.082 or upon request of the office ~~department~~,
18858 the issuer shall file with such application the irrevocable
18859 written consent of the issuer that in suits, proceedings, and
18860 actions growing out of the violation of any provision of this
18861 chapter, the service on the office ~~department~~ of a notice,
18862 process, or pleading therein, authorized by the laws of this
18863 state, shall be as valid and binding as if due service had been
18864 made on the issuer.

18865 (2) Any such action shall be brought either in the county
18866 of the plaintiff's residence or in the county in which the
18867 office ~~department~~ has its official headquarters. The written
18868 consent shall be authenticated by the seal of said issuer, if it



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18869 has a seal, and by the acknowledged signature of a member of the
 18870 copartnership or company, or by the acknowledged signature of
 18871 any officer of the incorporated or unincorporated association,
 18872 if it be an incorporated or unincorporated association, duly
 18873 authorized by resolution of the board of directors, trustees, or
 18874 managers of the corporation or association, and shall in such
 18875 case be accompanied by a duly certified copy of the resolution
 18876 of the board of directors, trustees, or managers of the
 18877 corporation or association, authorizing the officers to execute
 18878 the same. In case any process or pleadings mentioned in this
 18879 chapter are served upon the office ~~department~~, it shall be by
 18880 duplicate copies, one of which shall be filed in the office
 18881 ~~department~~ and another immediately forwarded by the office
 18882 ~~department~~ by registered mail to the principal office of the
 18883 issuer against which said process or pleadings are directed.

18884 Section 359. Section 517.111, Florida Statutes, is amended
 18885 to read:

18886 517.111 Revocation or denial of registration of
 18887 securities.--

18888 (1) The office ~~department~~ may revoke or suspend the
 18889 registration of any security, or may deny any application to
 18890 register securities, if upon examination into the affairs of the
 18891 issuer of such security it shall appear that:

18892 (a) The issuer is insolvent;

18893 (b) The issuer or any officer, director, or control person
 18894 of the issuer has violated any provision of this chapter or any
 18895 rule made hereunder or any order of the office ~~department~~ of
 18896 which such issuer has notice;

18897 (c) The issuer or any officer, director, or control person
 18898 of the issuer has been or is engaged or is about to engage in



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18899 fraudulent transactions;

18900 (d) The issuer or any officer, director, or control person
 18901 of the issuer has been found guilty of a fraudulent act in
 18902 connection with any sale of securities, has engaged, is engaged,
 18903 or is about to engage, in making a fictitious sale or purchase
 18904 of any security, or in any practice or sale of any security
 18905 which is fraudulent or a violation of any law;

18906 (e) The issuer or any officer, director, or control person
 18907 of the issuer has had a final judgment entered against such
 18908 issuer or person in a civil action on the grounds of fraud,
 18909 embezzlement, misrepresentation, or deceit;

18910 (f) The issuer or any officer, director, or control person
 18911 of the issuer has demonstrated any evidence of unworthiness;

18912 (g) The issuer or any officer, director, or control person
 18913 of the issuer is in any other way dishonest or has made any
 18914 fraudulent representations or failed to disclose any material
 18915 information in any prospectus or in any circular or other
 18916 literature that has been distributed concerning the issuer or
 18917 its securities;

18918 (h) The security registered or sought to be registered is
 18919 the subject of an injunction entered by a court of competent
 18920 jurisdiction or is the subject of an administrative stop-order
 18921 or similar order prohibiting the offer or sale of the security;

18922 (i) For any security for which registration has been
 18923 applied pursuant to s. 517.081, the terms of the offer or sale
 18924 of such securities would not be fair, just, or equitable; or

18925 (j) The issuer or any person acting on behalf of the
 18926 issuer has failed to timely complete any application for
 18927 registration filed with the office ~~department~~ pursuant to the
 18928 provisions of s. 517.081 or s. 517.082 or any rule adopted under



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18929 such sections.

18930

18931 In making such examination, the office ~~department~~ shall have
18932 access to and may compel the production of all the books and
18933 papers of such issuer and may administer oaths to and examine
18934 the officers of such issuer or any other person connected
18935 therewith as to its business and affairs and may also require a
18936 balance sheet exhibiting the assets and liabilities of any such
18937 issuer or its income statement, or both, to be certified to by a
18938 public accountant either of this state or of any other state
18939 where the issuer's business is located. Whenever the office
18940 deems ~~department may deem~~ it necessary, it may also require such
18941 balance sheet or income statement, or both, to be made more
18942 specific in such particulars as the office ~~department~~ may
18943 require.

18944 (2) If any issuer shall refuse to permit an examination to
18945 be made by the office ~~department~~, it shall be proper ground for
18946 revocation of registration.

18947 (3) If the office deems ~~department shall deem~~ it
18948 necessary, it may enter an order suspending the right to sell
18949 securities pending any investigation, provided that the order
18950 shall state the office's ~~department's~~ grounds for taking such
18951 action.

18952 (4) Notice of the entry of such order shall be given by
18953 mail, personally, by telephone confirmed in writing, or by
18954 telegraph to the issuer. Before such order is made final, the
18955 issuer applying for registration shall, on application, be
18956 entitled to a hearing.

18957 (5) The office ~~department~~ may deny any request to
18958 terminate any registration or to withdraw any application for



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18959 registration if the office ~~department~~ believes that an act which
 18960 would be grounds for denial, suspension, or revocation under
 18961 this chapter has been committed.

18962 Section 360. Section 517.12, Florida Statutes, is amended
 18963 to read:

18964 517.12 Registration of dealers, associated persons,
 18965 investment advisers, and branch offices.--

18966 (1) No dealer, associated person, or issuer of securities
 18967 shall sell or offer for sale any securities in or from offices
 18968 in this state, or sell securities to persons in this state from
 18969 offices outside this state, by mail or otherwise, unless the
 18970 person has been registered with the office ~~department~~ pursuant
 18971 to the provisions of this section. The office ~~department~~ shall
 18972 not register any person as an associated person of a dealer
 18973 unless the dealer with which the applicant seeks registration is
 18974 lawfully registered with the office ~~department~~ pursuant to this
 18975 chapter.

18976 (2) The registration requirements of this section do not
 18977 apply to the issuers of securities exempted by s. 517.051(1)-(8)
 18978 and (10).

18979 (3) Except as otherwise provided in s. 517.061(11)(a)4.,
 18980 (13), (16), (17), or (19), the registration requirements of this
 18981 section do not apply in a transaction exempted by s. 517.061(1)-
 18982 (12), (14), and (15).

18983 (4) No investment adviser or associated person of an
 18984 investment adviser or federal covered adviser shall engage in
 18985 business from offices in this state, or render investment advice
 18986 to persons of this state, by mail or otherwise, unless the
 18987 federal covered adviser has made a notice filing with the office
 18988 ~~department~~ pursuant to s. 517.1201 or the investment adviser is



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18989 registered pursuant to the provisions of this chapter and
 18990 associated persons of the federal covered adviser or investment
 18991 adviser have been registered with the office ~~department~~ pursuant
 18992 to this section. The office ~~department~~ shall not register any
 18993 person or an associated person of a federal covered adviser or
 18994 an investment adviser unless the federal covered adviser or
 18995 investment adviser with which the applicant seeks registration
 18996 is in compliance with the notice filing requirements of s.
 18997 517.1201 or is lawfully registered with the office ~~department~~
 18998 pursuant to this chapter. A dealer or associated person who is
 18999 registered pursuant to this section may render investment advice
 19000 upon notification to and approval from the office ~~department~~.

19001 (5) No dealer or investment adviser shall conduct business
 19002 from a branch office within this state unless the branch office
 19003 is registered with the office ~~department~~ pursuant to the
 19004 provisions of this section.

19005 (6) A dealer, associated person, investment adviser, or
 19006 branch office, in order to obtain registration, must file with
 19007 the office ~~department~~ a written application, on a form which the
 19008 commission ~~department~~ may by rule prescribe, verified under
 19009 oath. The commission ~~department~~ may establish, by rule,
 19010 procedures for depositing fees and filing documents by
 19011 electronic means provided such procedures provide the office
 19012 ~~department~~ with the information and data required by this
 19013 section. Each dealer or investment adviser must also file an
 19014 irrevocable written consent to service of civil process similar
 19015 to that provided for in s. 517.101. The application shall
 19016 contain such information as the commission or office ~~department~~
 19017 may require concerning such matters as:

19018 (a) The name of the applicant and the address of its



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19019 principal office and each office in this state.

19020 (b) The applicant's form and place of organization; and,
19021 if the applicant is a corporation, a copy of its articles of
19022 incorporation and amendments to the articles of incorporation
19023 or, if a partnership, a copy of the partnership agreement.

19024 (c) The applicant's proposed method of doing business and
19025 financial condition and history, including a certified financial
19026 statement showing all assets and all liabilities, including
19027 contingent liabilities of the applicant as of a date not more
19028 than 90 days prior to the filing of the application.

19029 (d) The names and addresses of all associated persons of
19030 the applicant to be employed in this state and the offices to
19031 which they will be assigned.

19032 (7) The application shall also contain such information as
19033 the commission or office ~~department~~ may require about the
19034 applicant; any partner, officer, or director of the applicant or
19035 any person having a similar status or performing similar
19036 functions; any person directly or indirectly controlling the
19037 applicant; or any employee of a dealer or of an investment
19038 adviser rendering investment advisory services. Each applicant
19039 shall file a complete set of fingerprints taken by an authorized
19040 law enforcement officer. Such fingerprints shall be submitted
19041 to the Department of Law Enforcement or the Federal Bureau of
19042 Investigation for state and federal processing. The commission
19043 ~~department~~ may waive, by rule, the requirement that applicants
19044 must file a set of fingerprints or the requirement that such
19045 fingerprints must be processed by the Department of Law
19046 Enforcement or the Federal Bureau of Investigation. The
19047 commission or office ~~department~~ may require information about
19048 any such applicant or person concerning such matters as:



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19049 (a) His or her full name, and any other names by which he
 19050 or she may have been known, and his or her age, photograph,
 19051 qualifications, and educational and business history.

19052 (b) Any injunction or administrative order by a state or
 19053 federal agency, national securities exchange, or national
 19054 securities association involving a security or any aspect of the
 19055 securities business and any injunction or administrative order
 19056 by a state or federal agency regulating banking, insurance,
 19057 finance, or small loan companies, real estate, mortgage brokers,
 19058 or other related or similar industries, which injunctions or
 19059 administrative orders relate to such person.

19060 (c) His or her conviction of, or plea of nolo contendere
 19061 to, a criminal offense or his or her commission of any acts
 19062 which would be grounds for refusal of an application under s.
 19063 517.161.

19064 (d) The names and addresses of other persons of whom the
 19065 office ~~department~~ may inquire as to his or her character,
 19066 reputation, and financial responsibility.

19067 (8) The commission or office ~~department~~ may require the
 19068 applicant or one or more principals or general partners, or
 19069 natural persons exercising similar functions, or any associated
 19070 person applicant to successfully pass oral or written
 19071 examinations. Because any principal, manager, supervisor, or
 19072 person exercising similar functions shall be responsible for the
 19073 acts of the associated persons affiliated with a dealer or
 19074 investment adviser, the examination standards may be higher for
 19075 a dealer, office manager, principal, or person exercising
 19076 similar functions than for a nonsupervisory associated person.
 19077 The commission ~~department~~ may waive the examination process when
 19078 it determines that such examinations are not in the public



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19079 interest. The office ~~department~~ shall waive the examination
19080 requirements for any person who has passed any tests as
19081 prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934
19082 that relates to the position to be filled by the applicant.

19083 (9)(a) All dealers, except securities dealers who are
19084 designated by the Federal Reserve Bank of New York as primary
19085 government securities dealers or securities dealers registered
19086 as issuers of securities, shall comply with the net capital and
19087 ratio requirements imposed pursuant to the Securities Exchange
19088 Act of 1934. The commission ~~department~~ may by rule require a
19089 dealer to file with the office ~~department~~ any financial or
19090 operational information that is required to be filed by the
19091 Securities Exchange Act of 1934 or any rules adopted under such
19092 act.

19093 (b) The commission ~~department~~ may by rule require the
19094 maintenance of a minimum net capital for securities dealers who
19095 are designated by the Federal Reserve Bank of New York as
19096 primary government securities dealers and securities dealers
19097 registered as issuers of securities and investment advisers, or
19098 prescribe a ratio between net capital and aggregate
19099 indebtedness, to assure adequate protection for the investing
19100 public. The provisions of this section shall not apply to any
19101 investment adviser that maintains its principal place of
19102 business in a state other than this state, provided such
19103 investment adviser is registered in the state where it maintains
19104 its principal place of business and is in compliance with such
19105 state's net capital requirements.

19106 (10) An applicant for registration shall pay an assessment
19107 fee of \$200, in the case of a dealer or investment adviser, or
19108 \$40, in the case of an associated person. The assessment fee of



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19109 | an associated person shall be reduced to \$30, but only after the
 19110 | office department determines, by final order, that sufficient
 19111 | funds have been allocated to the Securities Guaranty Fund
 19112 | pursuant to s. 517.1203 to satisfy all valid claims filed in
 19113 | accordance with s. 517.1203(2) and after all amounts payable
 19114 | under any service contract entered into by the office department
 19115 | pursuant to s. 517.1204, and all notes, bonds, certificates of
 19116 | indebtedness, other obligations, or evidences of indebtedness
 19117 | secured by such notes, bonds, certificates of indebtedness, or
 19118 | other obligations, have been paid or provision has been made for
 19119 | the payment of such amounts, notes, bonds, certificates of
 19120 | indebtedness, other obligations, or evidences of indebtedness.
 19121 | An associated person not having current fingerprint cards filed
 19122 | with the National Association of Securities Dealers or a
 19123 | national securities exchange registered with the Securities and
 19124 | Exchange Commission shall be assessed an additional fee to cover
 19125 | the cost for said fingerprint cards to be processed by the
 19126 | office department. Such fee shall be determined by rule of the
 19127 | commission department. Each dealer and each investment adviser
 19128 | shall pay an assessment fee of \$100 for each office in this
 19129 | state, except its designated principal office. Such fees become
 19130 | the revenue of the state, except for those assessments provided
 19131 | for under s. 517.131(1) until such time as the Securities
 19132 | Guaranty Fund satisfies the statutory limits, and are not
 19133 | returnable in the event that registration is withdrawn or not
 19134 | granted.

19135 | (11) If the office department finds that the applicant is
 19136 | of good repute and character and has complied with the
 19137 | provisions of this chapter and the rules made pursuant hereto,
 19138 | it shall register the applicant. The registration of each



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19139 dealer, investment adviser, and associated person will expire on
19140 December 31, and the registration of each branch office will
19141 expire on March 31, of the year in which it became effective
19142 unless the registrant has renewed its registration on or before
19143 that date. Registration may be renewed by furnishing such
19144 information as the commission ~~department~~ may require, together
19145 with payment of the fee required in subsection (10) for dealers,
19146 investment advisers, associated persons, or branch offices and
19147 the payment of any amount lawfully due and owing to the office
19148 ~~department~~ pursuant to any order of the office ~~department~~ or
19149 pursuant to any agreement with the office ~~department~~. Any
19150 dealer, investment adviser, or associated person registrant who
19151 has not renewed a registration by the time the current
19152 registration expires may request reinstatement of such
19153 registration by filing with the office ~~department~~, on or before
19154 January 31 of the year following the year of expiration, such
19155 information as may be required by the commission ~~department~~,
19156 together with payment of the fee required in subsection (10) for
19157 dealers, investment advisers, or associated persons and a late
19158 fee equal to the amount of such fee. Any reinstatement of
19159 registration granted by the office ~~department~~ during the month
19160 of January shall be deemed effective retroactive to January 1 of
19161 that year.

19162 (12)(a) The office ~~department~~ may issue a license to a
19163 dealer, investment adviser, associated person, or branch office
19164 to evidence registration under this chapter. The office
19165 ~~department~~ may require the return to the office ~~department~~ of
19166 any license it may issue prior to issuing a new license.

19167 (b) Every dealer, investment adviser, or federal covered
19168 adviser shall promptly file with the office ~~department~~, as



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19169 prescribed by rules adopted by the commission ~~department~~, notice
 19170 as to the termination of employment of any associated person
 19171 registered for such dealer or investment adviser in this state
 19172 and shall also furnish the reason or reasons for such
 19173 termination.

19174 (c) Each dealer or investment adviser shall designate in
 19175 writing to, and register with, the office ~~department~~ a manager
 19176 for each office the dealer or investment adviser has in this
 19177 state.

19178 (13) Changes in registration occasioned by changes in
 19179 personnel of a partnership or in the principals, copartners,
 19180 officers, or directors of any dealer or investment adviser or by
 19181 changes of any material fact or method of doing business shall
 19182 be reported by written amendment in such form and at such time
 19183 as the commission ~~department~~ may specify. In any case in which
 19184 a person or a group of persons, directly or indirectly or acting
 19185 by or through one or more persons, proposes to purchase or
 19186 acquire a controlling interest in a registered dealer or
 19187 investment adviser, such person or group shall submit an initial
 19188 application for registration as a dealer or investment adviser
 19189 prior to such purchase or acquisition. The commission ~~department~~
 19190 shall adopt rules providing for waiver of the application
 19191 required by this subsection where control of a registered dealer
 19192 or investment adviser is to be acquired by another dealer or
 19193 investment adviser registered under this chapter or where the
 19194 application is otherwise unnecessary in the public interest.

19195 (14) Every dealer, investment adviser, or branch office
 19196 registered or required to be registered with the office
 19197 ~~department~~ shall keep records of all currency transactions in
 19198 excess of \$10,000 and shall file reports, as prescribed under



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19199 | the financial recordkeeping regulations in 31 C.F.R. part 103,
 19200 | with the office ~~department~~ when transactions occur in or from
 19201 | this state. All reports required by this subsection to be filed
 19202 | with the office ~~department~~ shall be confidential and exempt from
 19203 | s. 119.07(1) except that any law enforcement agency or the
 19204 | Department of Revenue shall have access to, and shall be
 19205 | authorized to inspect and copy, such reports.

19206 | (15) In lieu of filing with the office ~~department~~ the
 19207 | applications specified in subsection (6), the fees required by
 19208 | subsection(10), and the termination notices required by
 19209 | subsection (12), the commission ~~department~~ may by rule establish
 19210 | procedures for the deposit of such fees and documents with the
 19211 | Central Registration Depository of the National Association of
 19212 | Securities Dealers, Inc., as developed under contract with the
 19213 | North American Securities Administrators Association, Inc. ;
 19214 | provided, however, that such procedures shall provide the office
 19215 | ~~department~~ with the information and data as required by this
 19216 | section.

19217 | (16) Except for securities dealers who are designated by
 19218 | the Federal Reserve Bank of New York as primary government
 19219 | securities dealers or securities dealers registered as issuers
 19220 | of securities, every applicant for initial or renewal
 19221 | registration as a securities dealer and every person registered
 19222 | as a securities dealer shall be registered as a broker or dealer
 19223 | with the Securities and Exchange Commission and shall be subject
 19224 | to insurance coverage by the Securities Investor Protection
 19225 | Corporation.

19226 | (17)(a) A dealer that is located in Canada and has no
 19227 | office or other physical presence in this state may, provided
 19228 | the dealer is registered in accordance with this section, effect



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19229 transactions in securities with or for, or induce or attempt to
 19230 induce the purchase or sale of any security by:

19231 1. A person from Canada who temporarily resides in this
 19232 state and with whom the Canadian dealer had a bona fide dealer-
 19233 client relationship before the person entered the United States;
 19234 or

19235 2. A person from Canada who is a resident of this state,
 19236 and whose transactions are in a self-directed tax advantage
 19237 retirement plan in Canada of which the person is the holder or
 19238 contributor.

19239 (b) An associated person who represents a Canadian dealer
 19240 registered under this section may, provided the agent is
 19241 registered in accordance with this section, effect transactions
 19242 in securities in this state as permitted for a dealer, under
 19243 subsection (a).

19244 (c) A Canadian dealer may register under this section
 19245 provided that such dealer:

19246 1. Files an application in the form required by the
 19247 jurisdiction in which the dealer has a head office.

19248 2. Files a consent to service of process.

19249 3. Is registered as a dealer in good standing in the
 19250 jurisdiction from which it is effecting transactions into this
 19251 state and files evidence of such registration with the office
 19252 ~~department~~.

19253 4. Is a member of a self-regulatory organization or stock
 19254 exchange in Canada.

19255 (d) An associated person who represents a Canadian dealer
 19256 registered under this section in effecting transactions in
 19257 securities in this state may register under this section
 19258 provided that such person:



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19259 1. Files an application in the form required by the
19260 jurisdiction in which the dealer has its head office.

19261 2. Is registered in good standing in the jurisdiction from
19262 which he or she is effecting transactions into this state and
19263 files evidence of such registration with the office ~~department~~.

19264 (e) If the office ~~department~~ finds that the applicant is
19265 of good repute and character and has complied with the
19266 provisions of this chapter, the office ~~department~~ shall register
19267 the applicant.

19268 (f) A Canadian dealer registered under this section shall:

19269 1. Maintain its provincial or territorial registration and
19270 its membership in a self-regulatory organization or stock
19271 exchange in good standing.

19272 2. Provide the office ~~department~~ upon request with its
19273 books and records relating to its business in this state as a
19274 dealer.

19275 3. Provide the office ~~department~~ notice of each civil,
19276 criminal, or administrative action initiated against the dealer.

19277 4. Disclose to its clients in this state that the dealer
19278 and its agents are not subject to the full regulatory
19279 requirements under this chapter.

19280 5. Correct any inaccurate information within 30 days, if
19281 the information contained in the application form becomes
19282 inaccurate for any reason before or after the dealer becomes
19283 registered.

19284 (g) An associated person of a Canadian dealer registered
19285 under this section shall:

19286 1. Maintain provincial or territorial registration in good
19287 standing.

19288 2. Provide the office ~~department~~ with notice of each



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19289 civil, criminal, or administrative action initiated against such
 19290 person.

19291 3. Through the dealer, correct any inaccurate information
 19292 within 30 days, if the information contained in the application
 19293 form becomes inaccurate for any reason before or after the
 19294 associated person becomes registered.

19295 (h) Renewal applications for Canadian dealers and
 19296 associated persons under this section must be filed before
 19297 December 31 each year. Every applicant for registration or
 19298 renewal registration under this section shall pay the fee for
 19299 dealers and associated persons under this chapter.

19300 (18) Every dealer or associated person registered or
 19301 required to be registered with the office ~~department~~ shall
 19302 satisfy any continuing education requirements established by
 19303 rule pursuant to law.

19304 (19) The registration requirements of this section which
 19305 apply to investment advisers and associated persons do not apply
 19306 to a commodity trading adviser who:

19307 (a) Is registered as such with the Commodity Futures
 19308 Trading Commission pursuant to the Commodity Exchange Act.

19309 (b) Advises or exercises trading discretion, with respect
 19310 to foreign currency options listed and traded exclusively on the
 19311 Philadelphia Stock Exchange, on behalf of an "appropriate
 19312 person" as defined by the Commodity Exchange Act.

19313
 19314
 19315 The exemption provided in this subsection does not apply to a
 19316 commodity trading adviser who engages in other activities that
 19317 require registration under this chapter.

19318 (20) The registration requirements of this section do not



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19319 apply to any general lines insurance agent or life insurance
 19320 agent licensed under chapter 626 ~~individuals licensed under s.~~
 19321 ~~626.041 or its successor statute, or s. 626.051 or its successor~~
 19322 ~~statute~~, for the sale of a security as defined in s.
 19323 517.021(20)(19)(g), if the individual is directly authorized by
 19324 the issuer to offer or sell the security on behalf of the issuer
 19325 and the issuer is a federally chartered savings bank subject to
 19326 regulation by the Federal Deposit Insurance Corporation. Actions
 19327 under this subsection shall constitute activity under the
 19328 insurance agent's license for purposes of ss. 626.611 and
 19329 626.621.

19330 Section 361. Section 517.1201, Florida Statutes, is
 19331 amended to read:

19332 517.1201 Notice filing requirements for federal covered
 19333 advisers.--

19334 (1) It is unlawful for a person to transact business in
 19335 this state as a federal covered adviser unless such person has
 19336 made a notice filing with the office ~~department~~. A notice
 19337 filing under this section shall consist of a copy of those
 19338 documents that have been filed or are required to be filed by
 19339 the federal covered adviser with the Securities and Exchange
 19340 Commission that the Financial Services Commission ~~department~~ by
 19341 rule requires to be filed, together with a consent to service of
 19342 process and a filing fee of \$200. The commission ~~department~~ may
 19343 establish by rule procedures for the deposit of fees and the
 19344 filing of documents to be made through electronic means, if the
 19345 procedures provide to the office ~~department~~ the information and
 19346 data required by this section.

19347 (2) A notice filing shall be effective upon receipt. A
 19348 notice filing shall expire on December 31 of the year in which



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19349 the filing became effective unless the federal covered adviser
 19350 has renewed the filing on or before that date. A federal covered
 19351 adviser may renew a notice filing by furnishing to the office
 19352 ~~department~~ such information that has been filed or is required
 19353 to be filed with the Securities and Exchange Commission, as the
 19354 Financial Services Commission or office ~~department~~ may require,
 19355 together with a renewal fee of \$200 and the payment of any
 19356 amount due and owing the office ~~department~~ pursuant to any
 19357 agreement with the office ~~department~~. Any federal covered
 19358 adviser who has not renewed a notice filing by the time a
 19359 current notice filing expires may request reinstatement of such
 19360 notice filing by filing with the office ~~department~~, on or before
 19361 January 31 of the year following the year the notice filing
 19362 expires, such information that has been filed or is required to
 19363 be filed with the Securities and Exchange Commission as may be
 19364 required by the Financial Services Commission or office
 19365 ~~department~~, together with the payment of \$200 and a late fee
 19366 equal to \$200. Any reinstatement of a notice filing granted by
 19367 the office ~~department~~ during the month of January shall be
 19368 deemed effective retroactive to January 1 of that year.

19369 (3) The commission ~~department~~ may require, by rule, a
 19370 federal covered adviser who has made a notice filing pursuant to
 19371 this section to file with the office ~~department~~ copies of any
 19372 amendments filed or required to be filed with the Securities and
 19373 Exchange Commission.

19374 (4) The office ~~department~~ may issue a permit to evidence
 19375 the effectiveness of a notice filing for a federal covered
 19376 adviser.

19377 (5) A notice filing may be terminated by filing notice of
 19378 such termination with the office ~~department~~. Unless another



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19379 | date is specified by the federal covered adviser, such notice
 19380 | shall be effective upon its receipt by the office ~~department~~.

19381 | (6) All fees collected under this section become the
 19382 | revenue of the state, except for those assessments provided for
 19383 | under s. 517.131(1) until such time as the Securities Guaranty
 19384 | Fund satisfies the statutory limits, and are not returnable in
 19385 | the event that a notice filing is withdrawn.

19386 | Section 362. Section 517.1203, Florida Statutes, is
 19387 | amended to read:

19388 | 517.1203 Allocation and disbursement of assessment fees.--

19389 | (1) Notwithstanding s. 517.131(1), an additional amount
 19390 | equal to 25 percent of all revenues received as assessment fees
 19391 | pursuant to s. 517.12(10) and (11) from persons applying for or
 19392 | renewing registrations as associated persons shall be allocated
 19393 | to the Securities Guaranty Fund and disbursed as provided in
 19394 | this section. This allocation shall continue until the office
 19395 | ~~department~~ determines, by final order, that sufficient funds
 19396 | have been allocated to the Securities Guaranty Fund pursuant to
 19397 | this section to satisfy all valid claims filed in accordance
 19398 | with subsection (2) and until all amounts payable under any
 19399 | service contract entered into by the office ~~department~~ pursuant
 19400 | to s. 517.1204, and all notes, bonds, certificates of
 19401 | indebtedness, other obligations, or evidences of indebtedness
 19402 | secured by such notes, bonds, certificates of indebtedness, or
 19403 | other obligations, have been paid or provision has been made for
 19404 | the payment of such amounts, notes, bonds, certificates of
 19405 | indebtedness, other obligations, or evidences of indebtedness.
 19406 | This assessment fee shall be part of the regular license fee and
 19407 | shall be transferred to or deposited into the Securities
 19408 | Guaranty Fund. The moneys allocated to the Securities Guaranty



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19409 Fund under this section shall not be included in the calculation
 19410 of the allocation of the assessment fees referred to in s.
 19411 517.131(1)(b). Moneys allocated under this section in excess of
 19412 the valid claims filed pursuant to subsection (2) shall be
 19413 allocated to the Anti-Fraud Trust Fund.

19414 (2)(a) Notwithstanding the provisions of ss. 517.131 and
 19415 517.141, moneys allocated to the Securities Guaranty Fund under
 19416 this section shall be used to pay amounts payable under any
 19417 service contract entered into by the office ~~department~~ pursuant
 19418 to s. 517.1204, subject to annual appropriation by the
 19419 Legislature, and to pay investors who have filed claims with the
 19420 Department of Banking and Finance after October 1, 1996, and on
 19421 or before December 31, 1998, who have:

19422 1. Received a final judgment against an associated person
 19423 of GIC Government Securities, Inc., based upon allegations which
 19424 would amount to a violation of s. 517.07 or s. 517.301; or

19425 2. Demonstrated to the former Department of Banking and
 19426 Finance or office that the claimant has suffered monetary
 19427 damages as a result of the acts or actions of GIC Government
 19428 Securities, Inc., or any associated person thereof, based upon
 19429 allegations which would amount to a violation of s. 517.07 or s.
 19430 517.301.

19431 (b)1. Claims shall be paid in the order that they were
 19432 ~~have been~~ filed with the former Department of Banking and
 19433 Finance, unless the department ~~has~~ noticed its intent to deny
 19434 the claim in whole or in part. If a notice of intent to deny a
 19435 claim in whole or in part was ~~is~~ issued, the claim shall not be
 19436 paid until a final order has been entered which is not subject
 19437 to an order staying its effect.

19438 2. If at any time the money in the Securities Guaranty



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19439 Fund allocated under this section is insufficient to satisfy any
19440 valid claim or portion of a valid claim approved by the
19441 department or office under this section, the office ~~department~~
19442 shall prorate the payment based upon the ratio that the person's
19443 claim bears to the total approved claims filed on the same day.
19444 The office ~~department~~ shall satisfy the unpaid claims as soon
19445 as a sufficient amount of money has been deposited in or
19446 transferred to the fund as provided in this section.

19447 3. A claimant shall not be substantially affected by the
19448 payment of another person's claim.

19449 (c) Claims shall be limited to the amount of the
19450 investment, reduced by any amounts received from a bankruptcy
19451 proceeding or from any other source. If an investor is deceased,
19452 the award shall be made to the surviving spouse. If the investor
19453 and surviving spouse are both deceased, the award shall be made
19454 pursuant to the laws of descent and distribution. Neither the
19455 office ~~department~~ nor the Investment Fraud Restoration Financing
19456 Corporation shall make payment to assignees, secured parties,
19457 lien creditors, or other such entities.

19458 (3) In rendering a determination, the office ~~department~~
19459 may rely on records from the bankruptcy proceeding regarding GIC
19460 Government Securities, Inc., unless there is good cause to
19461 believe that the record is not genuine.

19462 (4) Amounts deposited into the Securities Guaranty Fund
19463 pursuant to this section shall be applied to or allocated for
19464 payment of amounts payable by the office ~~department~~ pursuant to
19465 paragraph (2)(a), under a service contract entered into by the
19466 office ~~department~~ pursuant to s. 517.1204, subject to annual
19467 appropriation by the Legislature, before making or providing for
19468 any other disbursements from the fund.



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19469 Section 363. Subsection (2), paragraph (e) of subsection
 19470 (3), and subsections (4), (5), and(6) of section 517.1204,
 19471 Florida Statutes, are amended to read:

19472 517.1204 Investment Fraud Restoration Financing
 19473 Corporation.--

19474 (2) The corporation shall be governed by a board of
 19475 directors consisting of the director of the office or his or her
 19476 designee ~~assistant comptroller~~, the Secretary of Elderly Affairs
 19477 or the secretary's designee, and the executive director of the
 19478 Department of Veterans' Affairs or the executive director's
 19479 designee. The executive director of the State Board of
 19480 Administration shall be the chief executive officer of the
 19481 corporation and shall direct and supervise the administrative
 19482 affairs of the corporation and shall control, direct, and
 19483 supervise the operation of the corporation. The corporation
 19484 shall also have such other officers as may be determined by the
 19485 board of directors.

19486 (3) The corporation shall have all the powers of a
 19487 corporate body under the laws of this state to the extent not
 19488 inconsistent with or restricted by the provisions of this
 19489 section, including, but not limited to, the power to:

19490 (e) Elect or appoint and employ such officers, agents, and
 19491 employees as the corporation deems advisable to operate and
 19492 manage the affairs of the corporation, which officers, agents,
 19493 and employees may be officers or employees of the office
 19494 ~~department~~ and the state agencies represented on the board of
 19495 directors of the corporation.

19496 (4) The corporation is authorized to enter into one or
 19497 more service contracts with the office ~~department~~ pursuant to
 19498 which the corporation shall provide services to the office



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19499 ~~department~~ in connection with financing the functions and
 19500 activities provided for in s. 517.1203. The office department
 19501 may enter into one or more such service contracts with the
 19502 corporation and provide for payments under such contracts
 19503 pursuant to s. 517.1203(2)(a), subject to annual appropriation
 19504 by the Legislature. The proceeds from such service contracts
 19505 may be used for the costs and expenses of administration of the
 19506 corporation after payments as set forth in subsection(5). Each
 19507 service contract shall have a term not to exceed 15 years and
 19508 shall terminate no later than July 1, 2021. The aggregate
 19509 amount payable from the Securities Guaranty Fund under all such
 19510 service contracts shall not exceed the amount provided by s.
 19511 517.1203(1). In compliance with provisions of s. 287.0641 and
 19512 other applicable provisions of law, the obligations of the
 19513 office department under such service contracts shall not
 19514 constitute a general obligation of the state or a pledge of the
 19515 faith and credit or taxing power of the state nor shall such
 19516 obligations be construed in any manner as an obligation of the
 19517 State Board of Administration or entities for which it invests
 19518 funds, other than the office department as provided in this
 19519 section, but shall be payable solely from amounts available in
 19520 the Securities Guaranty Fund, subject to annual appropriation.
 19521 In compliance with this subsection and s. 287.0582, such service
 19522 contracts shall expressly include the following statement: "The
 19523 State of Florida's performance and obligation to pay under this
 19524 contract is contingent upon an annual appropriation by the
 19525 Legislature."

19526 (5) The corporation may issue and incur notes, bonds,
 19527 certificates of indebtedness, or other obligations or evidences
 19528 of indebtedness payable from and secured by amounts payable to



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19529 the corporation by the office ~~department~~ under a service
 19530 contract entered into pursuant to subsection (4) for the purpose
 19531 of the simultaneous payment of all claims approved pursuant to
 19532 s. 517.1203. The term of any such note, bond, certificate of
 19533 indebtedness, or other obligation or evidence of indebtedness
 19534 shall not exceed 15 years. The corporation may select a
 19535 financing team and issue obligations through competitive bidding
 19536 or negotiated contracts, whichever is most cost-effective. Any
 19537 such indebtedness of the corporation shall not constitute a debt
 19538 or obligation of the state or a pledge of the faith and credit
 19539 or taxing power of the state, but shall be payable from and
 19540 secured by payments made by the office ~~department~~ under the
 19541 service contract pursuant to subsection (4).

19542 (6) The corporation shall pay all claims approved pursuant
 19543 to s. 517.1203 as determined by and at the direction of the
 19544 office ~~department~~.

19545 Section 364. Section 517.121, Florida Statutes, is amended
 19546 to read:

19547 517.121 Books and records requirements; examinations.--

19548 (1) A dealer, investment adviser, branch office, or
 19549 associated person shall maintain such books and records as the
 19550 commission ~~department~~ may prescribe by rule.

19551 (2) The office ~~department~~ shall, at intermittent periods,
 19552 examine the affairs and books and records of each registered
 19553 dealer, investment adviser, branch office, or associated person,
 19554 or require such records and reports to be submitted to it as
 19555 required ~~it may require~~ by rule of the commission, to determine
 19556 compliance with this act.

19557 Section 365. Paragraph (a) of subsection (1), paragraphs
 19558 (b) and (e) of subsection (3), and subsection (4) of section



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19559 517.131, Florida Statutes, are amended to read:

19560 517.131 Securities Guaranty Fund.--

19561 (1)(a) The Chief Financial Officer ~~Treasurer~~ shall
 19562 establish a Securities Guaranty Fund. An amount not exceeding
 19563 20 percent of all revenues received as assessment fees pursuant
 19564 to s. 517.12(10) and (11) for dealers and investment advisers or
 19565 s. 517.1201 for federal covered advisers and an amount not
 19566 exceeding 10 percent of all revenues received as assessment fees
 19567 pursuant to s. 517.12(10) and (11) for associated persons shall
 19568 be allocated to the fund. An additional amount not exceeding
 19569 3.5 percent of all revenues received as assessment fees for
 19570 associated persons pursuant to s. 517.12(10) and (11) shall be
 19571 allocated to the Securities Guaranty Fund but only after the
 19572 office department ~~department~~ determines, by final order, that sufficient
 19573 funds have been allocated to the fund pursuant to s. 517.1203 to
 19574 satisfy all valid claims filed in accordance with s. 517.1203(2)
 19575 and after all amounts payable under any service contract entered
 19576 into by the office department ~~department~~ pursuant to s. 517.1204, and all
 19577 notes, bonds, certificates of indebtedness, other obligations,
 19578 or evidences of indebtedness secured by such notes, bonds,
 19579 certificates of indebtedness, or other obligations, have been
 19580 paid or provision has been made for the payment of such amounts,
 19581 notes, bonds, certificates of indebtedness, other obligations,
 19582 or evidences of indebtedness. This assessment fee shall be part
 19583 of the regular license fee and shall be transferred to or
 19584 deposited in the Securities Guaranty Fund.

19585 (3) Any person is eligible to seek recovery from the
 19586 Securities Guaranty Fund if:

19587 (b) Such person has made all reasonable searches and
 19588 inquiries to ascertain whether the judgment debtor possesses



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19589 real or personal property or other assets subject to being sold
19590 or applied in satisfaction of the judgment, and by her or his
19591 search the person has discovered no property or assets; or she
19592 or he has discovered property and assets and has taken all
19593 necessary action and proceedings for the application thereof to
19594 the judgment, but the amount thereby realized was insufficient
19595 to satisfy the judgment. To verify compliance with such
19596 condition, the office ~~department~~ may require such person to have
19597 a writ of execution be issued upon such judgment and may further
19598 require a showing that no personal or real property of the
19599 judgment debtor liable to be levied upon in complete
19600 satisfaction of the judgment can be found.

19601 (e) The office ~~department~~ waives compliance with the
19602 requirements of paragraph (a) or paragraph (b). The office
19603 ~~department~~ may waive such compliance if the dealer, investment
19604 adviser, or associated person which is the subject of the claim
19605 filed with the office ~~department~~ is the subject of any
19606 proceeding in which a receiver has been appointed by a court of
19607 competent jurisdiction. If the office ~~department~~ waives such
19608 compliance, the office ~~department~~ may, upon petition by the
19609 debtor or the court-appointed trustee, examiner, or receiver,
19610 distribute funds from the Securities Guaranty Fund up to the
19611 amount allowed under s. 517.141. Any waiver granted pursuant to
19612 this section shall be considered a judgment for purposes of
19613 complying with the requirements of this section and of s.
19614 517.141.

19615 (4) Any person who files an action that may result in the
19616 disbursement of funds from the Securities Guaranty Fund pursuant
19617 to the provisions of s. 517.141 shall give written notice by
19618 certified mail to the office ~~department~~ as soon as practicable



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19619 after such action has been filed. The failure to give such
 19620 notice shall not bar a payment from the Securities Guaranty Fund
 19621 if all of the conditions specified in subsection (3) are
 19622 satisfied.

19623 Section 366. Section 517.141, Florida Statutes, is amended
 19624 to read:

19625 517.141 Payment from the fund.--

19626 (1) Any person who meets all of the conditions prescribed
 19627 in s. 517.131 may apply to the office ~~department~~ for payment to
 19628 be made to such person from the Securities Guaranty Fund in the
 19629 amount equal to the unsatisfied portion of such person's
 19630 judgment or \$10,000, whichever is less, but only to the extent
 19631 and amount reflected in the judgment as being actual or
 19632 compensatory damages, excluding costs and attorney's fees.

19633 (2) Regardless of the number of claimants involved,
 19634 payments for claims shall be limited in the aggregate to
 19635 \$100,000 against any one dealer, investment adviser, or
 19636 associated person. If the total claims exceed the aggregate
 19637 limit of \$100,000, the office ~~department~~ shall prorate the
 19638 payment based upon the ratio that the person's claim bears to
 19639 the total claims filed.

19640 (3) No payment shall be made on any claim against any one
 19641 dealer, investment adviser, or associated person before the
 19642 expiration of 2 years from the date any claimant is found by the
 19643 office ~~department~~ to be eligible for recovery pursuant to this
 19644 section. If during this 2-year period more than one claim is
 19645 filed against the same dealer, investment adviser, or associated
 19646 person, or if the office ~~department~~ receives notice pursuant to
 19647 s. 517.131(4) that an action against the same dealer, investment
 19648 adviser, or associated person is pending, all such claims and



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19649 notices of pending claims received during this period against
19650 the same dealer, investment adviser, or associated person may be
19651 handled by the office ~~department~~ as provided in this section.
19652 Two years after the first claimant against that same dealer,
19653 investment adviser, or associated person applies for payment
19654 pursuant to this section:

19655 (a) The office ~~department~~ shall determine those persons
19656 eligible for payment or for potential payment in the event of a
19657 pending action. All such persons may be entitled to receive
19658 their pro rata shares of the fund as provided in this section.

19659 (b) Those persons who meet all the conditions prescribed
19660 in s. 517.131 and who have applied for payment pursuant to this
19661 section will be entitled to receive their pro rata shares of the
19662 total disbursement.

19663 (c) Those persons who have filed notice with the office
19664 ~~department~~ of a pending claim pursuant to s. 517.131(4) but who
19665 are not yet eligible for payment from the fund will be entitled
19666 to receive their pro rata shares of the total disbursement once
19667 they have complied with subsection (1). However, in the event
19668 that the amounts they are eligible to receive pursuant to
19669 subsection (1) are less than their pro rata shares as determined
19670 under this section, any excess shall be distributed pro rata to
19671 those persons entitled to disbursement under this subsection
19672 whose pro rata shares of the total disbursement were less than
19673 the amounts of their claims.

19674 (4) Individual claims filed by persons owning the same
19675 joint account, or claims stemming from any other type of account
19676 maintained by a particular licensee on which more than one name
19677 appears, shall be treated as the claims of one eligible claimant
19678 with respect to payment from the fund. If a claimant who has



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19679 obtained a judgment which qualifies for disbursement under s.
19680 517.131 has maintained more than one account with the dealer,
19681 investment adviser, or associated person who is the subject of
19682 the claims, for purposes of disbursement of the fund, all such
19683 accounts, whether joint or individual, shall be considered as
19684 one account and shall entitle such claimant to only one
19685 distribution from the fund not to exceed the lesser of \$10,000
19686 or the unsatisfied portion of such claimant's judgment as
19687 provided in subsection (1). To the extent that a claimant
19688 obtains more than one judgment against a dealer, investment
19689 adviser, or one or more associated persons arising out of the
19690 same transactions, occurrences, or conduct or out of the
19691 dealer's, investment adviser's, or associated person's handling
19692 of the claimant's account, such judgments shall be consolidated
19693 for purposes of this section and shall entitle the claimant to
19694 only one disbursement from the fund not to exceed the lesser of
19695 \$10,000 or the unsatisfied portion of such claimant's judgment
19696 as provided in subsection (1).

19697 (5) If the final judgment which gave rise to the claim is
19698 overturned in any appeal or in any collateral proceeding, the
19699 claimant shall reimburse the fund all amounts paid to the
19700 claimant on the claim. Such reimbursement shall be paid to the
19701 office ~~department~~ within 60 days after the final resolution of
19702 the appellate or collateral proceedings, with the 60-day period
19703 commencing on the date the final order or decision is entered in
19704 such proceedings.

19705 (6) If a claimant receives payments in excess of that
19706 which is permitted under this chapter, the claimant shall
19707 reimburse the fund such excess within 60 days after the claimant
19708 receives such excess payment or after the payment is determined



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19709 to be in excess of that permitted by law, whichever is later.

19710 (7) The office ~~department~~ may institute legal proceedings
 19711 to enforce compliance with this section and with s. 517.131 to
 19712 recover moneys owed to the fund, and shall be entitled to
 19713 recover interest, costs, and attorney's fees in any action
 19714 brought pursuant to this section in which the office ~~department~~
 19715 prevails.

19716 (8) If at any time the money in the Securities Guaranty
 19717 Fund is insufficient to satisfy any valid claim or portion of a
 19718 valid claim approved by the office ~~department~~, the office
 19719 ~~department~~ shall satisfy such unpaid claim or portion of such
 19720 valid claim as soon as a sufficient amount of money has been
 19721 deposited in or transferred to the fund. When there is more
 19722 than one unsatisfied claim outstanding, such claims shall be
 19723 paid in the order in which the claims were approved by final
 19724 order of the office ~~department~~, which order is not subject to an
 19725 appeal or other pending proceeding.

19726 (9) Upon receipt by the claimant of the payment from the
 19727 Securities Guaranty Fund, the claimant shall assign any
 19728 additional right, title, and interest in the judgment, to the
 19729 extent of such payment, to the office ~~department~~. If the
 19730 provisions of s. 517.131(3)(e) apply, the claimant must assign
 19731 to the office ~~department~~ any right, title, and interest in the
 19732 debt to the extent of any payment by the office ~~department~~ from
 19733 the Securities Guaranty Fund.

19734 (10) All payments and disbursements made from the
 19735 Securities Guaranty Fund shall be made by the Chief Financial
 19736 Officer ~~Treasurer~~ upon authorization ~~a voucher~~ signed by the
 19737 director of the office ~~Comptroller, as head of the department,~~
 19738 or such agent as she or he may designate.



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19739 Section 367. Section 517.151, Florida Statutes, is amended
19740 to read:

19741 517.151 Investments of the fund.--The funds of the
19742 Securities Guaranty Fund shall be invested by the Chief
19743 Financial Officer ~~Treasurer~~ under the same limitations as other
19744 state funds, and the interest earned thereon shall be deposited
19745 to the credit of the fund and available for the same purpose as
19746 other moneys deposited in the Securities Guaranty Fund.

19747 Section 368. Subsection (1), (3), and (5), and paragraph
19748 (b) of subsection (6) of section 517.161, Florida Statutes, are
19749 amended to read:

19750 517.161 Revocation, denial, or suspension of registration
19751 of dealer, investment adviser, associated person, or branch
19752 office.--

19753 (1) Registration under s. 517.12 may be denied or any
19754 registration granted may be revoked, restricted, or suspended by
19755 the office ~~department~~ if the office ~~department~~ determines that
19756 such applicant or registrant:

19757 (a) Has violated any provision of this chapter or any rule
19758 or order made under this chapter;

19759 (b) Has made a material false statement in the application
19760 for registration;

19761 (c) Has been guilty of a fraudulent act in connection with
19762 rendering investment advice or in connection with any sale of
19763 securities, has been or is engaged or is about to engage in
19764 making fictitious or pretended sales or purchases of any such
19765 securities or in any practice involving the rendering of
19766 investment advice or the sale of securities which is fraudulent
19767 or in violation of the law;

19768 (d) Has made a misrepresentation or false statement to, or



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19769 concealed any essential or material fact from, any person in the
19770 rendering of investment advice or the sale of a security to such
19771 person;

19772 (e) Has failed to account to persons interested for all
19773 money and property received;

19774 (f) Has not delivered, after a reasonable time, to persons
19775 entitled thereto securities held or agreed to be delivered by
19776 the dealer, broker, or investment adviser, as and when paid for,
19777 and due to be delivered;

19778 (g) Is rendering investment advice or selling or offering
19779 for sale securities through any associated person not registered
19780 in compliance with the provisions of this chapter;

19781 (h) Has demonstrated unworthiness to transact the business
19782 of dealer, investment adviser, or associated person;

19783 (i) Has exercised management or policy control over or
19784 owned 10 percent or more of the securities of any dealer or
19785 investment adviser that has been declared bankrupt, or had a
19786 trustee appointed under the Securities Investor Protection Act;
19787 or is, in the case of a dealer or investment adviser, insolvent;

19788 (j) Has been convicted of, or has entered a plea of guilty
19789 or nolo contendere to, a crime against the laws of this state or
19790 any other state or of the United States or of any other country
19791 or government which relates to registration as a dealer,
19792 investment adviser, issuer of securities, associated person, or
19793 branch office; which relates to the application for such
19794 registration; or which involves moral turpitude or fraudulent or
19795 dishonest dealing;

19796 (k) Has had a final judgment entered against her or him in
19797 a civil action upon grounds of fraud, embezzlement,
19798 misrepresentation, or deceit;



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19799 (1) Is of bad business repute; or
 19800 (m) Has been the subject of any decision, finding,
 19801 injunction, suspension, prohibition, revocation, denial,
 19802 judgment, or administrative order by any court of competent
 19803 jurisdiction, administrative law judge, or by any state or
 19804 federal agency, national securities, commodities, or option
 19805 exchange, or national securities, commodities, or option
 19806 association, involving a violation of any federal or state
 19807 securities or commodities law or any rule or regulation
 19808 promulgated thereunder, or any rule or regulation of any
 19809 national securities, commodities, or options exchange or
 19810 national securities, commodities, or options association, or has
 19811 been the subject of any injunction or adverse administrative
 19812 order by a state or federal agency regulating banking,
 19813 insurance, finance or small loan companies, real estate,
 19814 mortgage brokers, or other related or similar industries. For
 19815 purposes of this subsection, the office ~~department~~ may not deny
 19816 registration to any applicant who has been continuously
 19817 registered with the office ~~department~~ for 5 years from the entry
 19818 of such decision, finding, injunction, suspension, prohibition,
 19819 revocation, denial, judgment, or administrative order provided
 19820 such decision, finding, injunction, suspension, prohibition,
 19821 revocation, denial, judgment, or administrative order has been
 19822 timely reported to the office ~~department~~ pursuant to the
 19823 commission's ~~department's~~ rules and regulations.
 19824 (3) In the event the office ~~department~~ determines to deny
 19825 an application or revoke a registration, it shall enter a final
 19826 order with its findings on the register of dealers and
 19827 associated persons; and denial, suspension, or revocation of the
 19828 registration of a dealer or investment adviser shall also deny,



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19829 suspend, or revoke the registration of all her or his associated
 19830 persons.

19831 (5) The office ~~department~~ may deny any request to
 19832 terminate or withdraw any application or registration if the
 19833 office ~~department~~ believes that an act which would be a ground
 19834 for denial, suspension, restriction, or revocation under this
 19835 chapter has been committed.

19836 (6) Registration under s. 517.12 may be denied or any
 19837 registration granted may be suspended or restricted if an
 19838 applicant or registrant is charged, in a pending enforcement
 19839 action or pending criminal prosecution, with any conduct that
 19840 would authorize denial or revocation under subsection (1).

19841 (b) Any order of suspension or restriction under this
 19842 subsection shall:

19843 1. Take effect only after a hearing, unless no hearing is
 19844 requested by the registrant or unless the suspension or
 19845 restriction is made in accordance with s. 120.60(6).

19846 2. Contain a finding that evidence of a prima facie case
 19847 supports the charge made in the enforcement action or criminal
 19848 prosecution.

19849 3. Operate for no longer than 10 days beyond receipt of
 19850 notice by the office ~~department~~ of termination with respect to
 19851 the registrant of the enforcement action or criminal
 19852 prosecution.

19853 Section 369. Section 517.181, Florida Statutes, is amended
 19854 to read:

19855 517.181 Escrow agreement.--

19856 (1) If the statement containing information as to
 19857 securities to be registered, as provided for in s. 517.081,
 19858 shall disclose that any such securities or any securities senior



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19859 thereto shall have been or shall be intended to be issued for
19860 any patent right, copyright, trademark, process, formula, or
19861 goodwill; for organization or promotion fees or expenses; or for
19862 goodwill or going-concern value or other intangible assets, then
19863 the amount and nature thereof shall be fully set forth, and the
19864 office department may require that such securities so issued in
19865 payment of such patent right, copyright, trademark, process,
19866 formula, or goodwill; for organization or promotion fees or
19867 expenses; or for other intangible assets shall be delivered in
19868 escrow to the office department or other depository satisfactory
19869 to the office department under an escrow agreement. The escrow
19870 agreement shall be in a form suitable to the office department
19871 and shall provide for the escrow or impoundment of such
19872 securities for a reasonable length of time determined by the
19873 office department to be in the best interest of other
19874 shareholders. The securities subject to escrow shall also
19875 include any dividend, cash, or stock that may be paid during the
19876 life of the escrow and any stock issued through, or by reason
19877 of, any stock split, exchange of shares, recapitalization,
19878 merger, consolidation, reorganization, or similar combination or
19879 subdivision in substitution for or in lieu of any stock subject
19880 to this provision; and in case of dissolution or insolvency
19881 during the time such securities are held in escrow, the owners
19882 of such securities shall not participate in the assets until
19883 after the owners of all other securities shall have been paid in
19884 full.

19885 (2) Any securities held in escrow under this section on
19886 November 1, 1978, may be released to the owners thereof upon
19887 request, if satisfactory financial data is submitted to the
19888 office department showing that the issuer is currently operating



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19889 on sound business principles and has net income in accordance
 19890 with criteria-implementing rules of the commission ~~department~~
 19891 relating to escrow of securities. At any time, the office
 19892 ~~department~~ may review any existing escrow agreement made under
 19893 this section and determine that the same may be amended in order
 19894 to permit a subsequent release of the securities upon terms and
 19895 conditions which are just and equitable as defined by said
 19896 rules.

19897 (3) When it shall appear from information available to the
 19898 office ~~department~~ that the issuer of securities held in escrow
 19899 has been dissolved or disbanded or is defunct or no longer
 19900 actively engaged in business and such securities are of no
 19901 value, the office ~~department~~, after giving at least 60 days'
 19902 notice in at least one newspaper of general circulation and
 19903 after giving interested parties opportunity for hearing, may
 19904 enter its order authorizing the destruction of said securities.

19905 Any affected escrow agent may rely on such order and shall not
 19906 be required to determine the validity or sufficiency thereof.

19907 Section 370. Section 517.191, Florida Statutes, is amended
 19908 to read:

19909 517.191 Injunction to restrain violations.--

19910 (1) When it appears ~~shall appear~~ to the office ~~department~~,
 19911 either upon complaint or otherwise, that a person has engaged or
 19912 is about to engage in any act or practice constituting a
 19913 violation of this chapter or a rule or order hereunder, the
 19914 office ~~department~~ may investigate; and whenever it shall believe
 19915 from evidence satisfactory to it that any such person has
 19916 engaged, is engaged, or is about to engage in any act or
 19917 practice constituting a violation of this chapter or a rule or
 19918 order hereunder, the office ~~department~~ may, in addition to any



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19919 other remedies, bring action in the name and on behalf of the
 19920 state against such person and any other person concerned in or
 19921 in any way participating in or about to participate in such
 19922 practices or engaging therein or doing any act or acts in
 19923 furtherance thereof or in violation of this chapter to enjoin
 19924 such person or persons from continuing such fraudulent practices
 19925 or engaging therein or doing any act or acts in furtherance
 19926 thereof or in violation of this chapter. In any such court
 19927 proceedings, the office ~~department~~ may apply for, and on due
 19928 showing be entitled to have issued, the court's subpoena
 19929 requiring forthwith the appearance of any defendant and her or
 19930 his employees, associated persons, or agents and the production
 19931 of documents, books, and records that may appear necessary for
 19932 the hearing of such petition, to testify or give evidence
 19933 concerning the acts or conduct or things complained of in such
 19934 application for injunction. In such action, the equity courts
 19935 shall have jurisdiction of the subject matter, and a judgment
 19936 may be entered awarding such injunction as may be proper.

19937 (2) In addition to all other means provided by law for the
 19938 enforcement of any temporary restraining order, temporary
 19939 injunction, or permanent injunction issued in any such court
 19940 proceedings, the court shall have the power and jurisdiction,
 19941 upon application of the office ~~department~~, to impound and to
 19942 appoint a receiver or administrator for the property, assets,
 19943 and business of the defendant, including, but not limited to,
 19944 the books, records, documents, and papers appertaining thereto.

19945 Such receiver or administrator, when appointed and qualified,
 19946 shall have all powers and duties as to custody, collection,
 19947 administration, winding up, and liquidation of said property and
 19948 business as shall from time to time be conferred upon her or him



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19949 | by the court. In any such action, the court may issue orders
 19950 | and decrees staying all pending suits and enjoining any further
 19951 | suits affecting the receiver's or administrator's custody or
 19952 | possession of the said property, assets, and business or, in its
 19953 | discretion, may with the consent of the presiding judge of the
 19954 | circuit require that all such suits be assigned to the circuit
 19955 | court judge appointing the said receiver or administrator.

19956 | (3) In addition to any other remedies provided by this
 19957 | chapter, the office ~~department~~ may apply to the court hearing
 19958 | this matter for an order of restitution whereby the defendants
 19959 | in such action shall be ordered to make restitution of those
 19960 | sums shown by the office ~~department~~ to have been obtained by
 19961 | them in violation of any of the provisions of this chapter.
 19962 | Such restitution shall, at the option of the court, be payable
 19963 | to the administrator or receiver appointed pursuant to this
 19964 | section or directly to the persons whose assets were obtained in
 19965 | violation of this chapter.

19966 | Section 371. Section 517.201, Florida Statutes, is amended
 19967 | to read:

19968 | 517.201 Investigations; examinations; subpoenas; hearings;
 19969 | witnesses.--

19970 | (1) The office ~~department~~:

19971 | (a) May make investigations and examinations within or
 19972 | outside of this state as it deems necessary:

19973 | 1. To determine whether a person has violated or is about
 19974 | to violate any provision of this chapter or a rule or order
 19975 | hereunder; or

19976 | 2. To aid in the enforcement of this chapter.

19977 | (b) May require or permit a person to file a statement in
 19978 | writing, under oath or otherwise as the office ~~department~~



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19979 determines, as to all the facts and circumstances concerning the
19980 matter to be investigated.

19981 (2) When it is proposed to conduct an investigation or
19982 examination, the office ~~department~~ may gather evidence in the
19983 matter. The office ~~department~~ may administer oaths, examine
19984 witnesses, and issue subpoenas.

19985 (3) Subpoenas for witnesses whose evidence is deemed
19986 material to any investigation or examination may be issued by
19987 the office ~~department~~ under the seal of the office ~~department~~,
19988 or by any county court judge or clerk of the circuit court or
19989 county court, commanding such witnesses to be or appear before
19990 the office ~~department~~ at a time and place to be therein named
19991 and to bring such books, records, and documents as may be
19992 specified or to submit such books, records, and documents to
19993 inspection; and such subpoenas may be served by an authorized
19994 representative of the office ~~department~~.

19995 (4)(a) In the event of substantial noncompliance with a
19996 subpoena or subpoena duces tecum issued or caused to be issued
19997 by the office ~~department~~ pursuant to this section, the office
19998 ~~department~~ may petition the circuit court of the county in which
19999 the person subpoenaed resides or has its principal place of
20000 business for an order requiring the subpoenaed person to appear
20001 and testify and to produce such books, records, and documents as
20002 are specified in such subpoena duces tecum. The court may grant
20003 injunctive relief restraining the issuance, sale or offer for
20004 sale, purchase or offer to purchase, promotion, negotiation,
20005 advertisement, or distribution in or from offices in this state
20006 of securities or investments by a person or agent, employee,
20007 broker, partner, officer, director, or stockholder thereof, and
20008 may grant such other relief, including, but not limited to, the



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20009 restraint, by injunction or appointment of a receiver, of any
 20010 transfer, pledge, assignment, or other disposition of such
 20011 person's assets or any concealment, alteration, destruction, or
 20012 other disposition of subpoenaed books, records, or documents, as
 20013 the court deems appropriate, until such person has fully
 20014 complied with such subpoena or subpoena duces tecum and the
 20015 office department ~~has~~ completed its investigation or
 20016 examination. The office department is entitled to the summary
 20017 procedure provided in s. 51.011, and the court shall advance the
 20018 cause on its calendar. Costs incurred by the office department
 20019 to obtain an order granting, in whole or in part, such petition
 20020 for enforcement of a subpoena or subpoena duces tecum shall be
 20021 taxed against the subpoenaed person, and failure to comply with
 20022 such order shall be a contempt of court.

20023 (b) When it shall appear to the office department that the
 20024 compliance with a subpoena or subpoena duces tecum issued or
 20025 caused to be issued by the office department pursuant to this
 20026 section is essential and otherwise unavailable to an
 20027 investigation or examination, the office department, in addition
 20028 to the other remedies provided for herein, may, by verified
 20029 petition setting forth the facts, apply to the circuit court of
 20030 the county in which the subpoenaed person resides or has its
 20031 principal place of business for a writ of ne exeat. The court
 20032 shall thereupon direct the issuance of the writ against the
 20033 subpoenaed person requiring sufficient bond conditioned on
 20034 compliance with the subpoena or subpoena duces tecum. The court
 20035 shall cause to be endorsed on the writ a suitable amount of bond
 20036 on payment of which the person named in the writ shall be freed,
 20037 having a due regard to the nature of the case.

20038 (5) Witnesses shall be entitled to the same fees and



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20039 mileage as they may be entitled by law for attending as
 20040 witnesses in the circuit court, except where such examination or
 20041 investigation is held at the place of business or residence of
 20042 the witness.

20043 Section 372. Subsections (1) and (3) of section 517.2015,
 20044 Florida Statutes, are amended to read:

20045 517.2015 Confidentiality of information relating to
 20046 investigations and examinations.--

20047 (1)(a) Except as otherwise provided by this section,
 20048 information relative to an investigation or examination by the
 20049 office ~~department~~ pursuant to this chapter, including any
 20050 consumer complaint, is confidential and exempt from s. 119.07(1)
 20051 until the investigation or examination is completed or ceases to
 20052 be active. The information compiled by the office ~~department~~ in
 20053 such an investigation or examination shall remain confidential
 20054 and exempt from s. 119.07(1) after the office's ~~department's~~
 20055 investigation or examination is completed or ceases to be active
 20056 if the office ~~department~~ submits the information to any law
 20057 enforcement or administrative agency or regulatory organization
 20058 for further investigation. Such information shall remain
 20059 confidential and exempt from s. 119.07(1) until that agency's or
 20060 organization's investigation is completed or ceases to be
 20061 active. For purposes of this section, an investigation or
 20062 examination shall be considered "active" so long as the office
 20063 ~~department~~ or any law enforcement or administrative agency or
 20064 regulatory organization is proceeding with reasonable dispatch
 20065 and has a reasonable good faith belief that the investigation or
 20066 examination may lead to the filing of an administrative, civil,
 20067 or criminal proceeding or to the denial or conditional grant of
 20068 a license, registration, or permit. This section shall not be



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20069 construed to prohibit disclosure of information which is
 20070 required by law to be filed with the office ~~department~~ and
 20071 which, but for the investigation or examination, would be
 20072 subject to s. 119.07(1).

20073 (b) Except as necessary for the office ~~department~~ to
 20074 enforce the provisions of this chapter, a consumer complaint and
 20075 other information relative to an investigation or examination
 20076 shall remain confidential and exempt from s. 119.07(1) after the
 20077 investigation or examination is completed or ceases to be active
 20078 to the extent disclosure would:

20079 1. Jeopardize the integrity of another active
 20080 investigation or examination.

20081 2. Reveal the name, address, telephone number, social
 20082 security number, or any other identifying number or information
 20083 of any complainant, customer, or account holder.

20084 3. Disclose the identity of a confidential source.

20085 4. Disclose investigative techniques or procedures.

20086 5. Reveal a trade secret as defined in s. 688.002.

20087 (c) In the event that office ~~department~~ personnel are or
 20088 have been involved in an investigation or examination of such
 20089 nature as to endanger their lives or physical safety or that of
 20090 their families, then the home addresses, telephone numbers,
 20091 places of employment, and photographs of such personnel,
 20092 together with the home addresses, telephone numbers,
 20093 photographs, and places of employment of spouses and children of
 20094 such personnel and the names and locations of schools and day
 20095 care facilities attended by the children of such personnel are
 20096 confidential and exempt from s. 119.07(1).

20097 (d) Nothing in this section shall be construed to prohibit
 20098 the office ~~department~~ from providing information to any law



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20099 enforcement or administrative agency or regulatory organization.
 20100 Any law enforcement or administrative agency or regulatory
 20101 organization receiving confidential information in connection
 20102 with its official duties shall maintain the confidentiality of
 20103 the information so long as it would otherwise be confidential.

20104 (e) All information obtained by the office ~~department~~ from
 20105 any person which is only made available to the office ~~department~~
 20106 on a confidential or similarly restricted basis shall be
 20107 confidential and exempt from s. 119.07(1). This exemption shall
 20108 not be construed to prohibit disclosure of information which is
 20109 required by law to be filed with the office ~~department~~ or which
 20110 is otherwise subject to s. 119.07(1).

20111 (3) A privilege against civil liability is granted to a
 20112 person who furnishes information or evidence to the office
 20113 ~~department~~, unless such person acts in bad faith or with malice
 20114 in providing such information or evidence.

20115 Section 373. Section 517.221, Florida Statutes, is amended
 20116 to read:

20117 517.221 Cease and desist orders.--

20118 (1) The office ~~department~~ may issue and serve upon a
 20119 person a cease and desist order whenever the office ~~department~~
 20120 has reason to believe that such person is violating, has
 20121 violated, or is about to violate any provision of this chapter,
 20122 any rule or order promulgated by the commission or office
 20123 ~~department~~, or any written agreement entered into with the
 20124 office ~~department~~.

20125 (2) Whenever the office ~~department~~ finds that conduct
 20126 described in subsection (1) presents an immediate danger to the
 20127 public requiring an immediate final order, it may issue an
 20128 emergency cease and desist order reciting with particularity the



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20129 facts underlying such findings. The emergency cease and desist
 20130 order is effective immediately upon service of a copy of the
 20131 order on the respondent named therein and remains effective for
 20132 90 days. If the office ~~department~~ begins nonemergency cease and
 20133 desist proceedings under subsection (1), the emergency cease and
 20134 desist order remains effective until conclusion of the
 20135 proceedings under ss. 120.569 and 120.57.

20136 (3) The office ~~department~~ may impose and collect an
 20137 administrative fine against any person found to have violated
 20138 any provision of this chapter, any rule or order promulgated by
 20139 the commission or office ~~department~~, or any written agreement
 20140 entered into with the office ~~department~~ in an amount not to
 20141 exceed \$5,000 for each such violation. All fines collected
 20142 hereunder shall be deposited as received in the Anti-Fraud Trust
 20143 Fund.

20144 Section 374. Subsection (1) of section 517.241, Florida
 20145 Statutes, is amended to read:

20146 517.241 Remedies.--

20147 (1) Any person aggrieved by a final order of the office
 20148 ~~department~~ may have the order reviewed as provided by chapter
 20149 120, the Administrative Procedure Act.

20150 Section 375. Paragraph (c) of subsection (1) and paragraph
 20151 (b) of subsection (2) of section 517.301, Florida Statutes, are
 20152 amended to read:

20153 517.301 Fraudulent transactions; falsification or
 20154 concealment of facts.--

20155 (1) It is unlawful and a violation of the provisions of
 20156 this chapter for a person:

20157 (c) In any matter within the jurisdiction of the office
 20158 ~~department~~, to knowingly and willfully falsify, conceal, or



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20159 cover up, by any trick, scheme, or device, a material fact, make
 20160 any false, fictitious, or fraudulent statement or
 20161 representation, or make or use any false writing or document,
 20162 knowing the same to contain any false, fictitious, or fraudulent
 20163 statement or entry.

20164 (2) For purposes of ss. 517.311 and 517.312 and this
 20165 section, the term "investment" means any commitment of money or
 20166 property principally induced by a representation that an
 20167 economic benefit may be derived from such commitment, except
 20168 that the term "investment" does not include a commitment of
 20169 money or property for:

20170 (b) The purchase of tangible personal property through a
 20171 person not engaged in telephone solicitation, where said
 20172 property is offered and sold in accordance with the following
 20173 conditions:

20174 1. There are no specific representations or guarantees
 20175 made by the offeror or seller as to the economic benefit to be
 20176 derived from the purchase;

20177 2. The tangible property is delivered to the purchaser
 20178 within 30 days after sale, except that such 30-day period may be
 20179 extended by the office ~~department~~ if market conditions so
 20180 warrant; and

20181 3. The seller has offered the purchaser a full refund
 20182 policy in writing, exercisable by the purchaser within 10 days
 20183 of the date of delivery of such tangible personal property,
 20184 except that the amount of such refund in no event shall exceed
 20185 the bid price in effect at the time the property is returned to
 20186 the seller. If the applicable sellers' market is closed at the
 20187 time the property is returned to the seller for a refund, the
 20188 amount of such refund shall be based on the bid price for such



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20189 property at the next opening of such market.

20190 Section 376. Subsection (3) of section 517.302, Florida
 20191 Statutes, is amended to read:

20192 517.302 Criminal penalties; alternative fine; Anti-Fraud
 20193 Trust Fund; time limitation for criminal prosecution.--

20194 (3) In lieu of a fine otherwise authorized by law, a
 20195 person who has been convicted of or who has pleaded guilty or no
 20196 contest to having engaged in conduct in violation of the
 20197 provisions of this chapter may be sentenced to pay a fine that
 20198 does not exceed the greater of three times the gross value
 20199 gained or three times the gross loss caused by such conduct,
 20200 plus court costs and the costs of investigation and prosecution
 20201 reasonably incurred.

20202 (a) There is created within the office ~~department~~ a trust
 20203 fund to be known as the Anti-Fraud Trust Fund. Any amounts
 20204 assessed as costs of investigation and prosecution under this
 20205 subsection shall be deposited in the trust fund. Funds deposited
 20206 in such trust fund shall be used, when authorized by
 20207 appropriation, for investigation and prosecution of
 20208 administrative, civil, and criminal actions arising under the
 20209 provisions of this chapter. Funds may also be used to improve
 20210 the public's awareness and understanding of prudent investing.

20211 (b) The office ~~department~~ shall report to the Executive
 20212 Office of the Governor annually by November 15, the amounts
 20213 deposited into the Anti-Fraud Trust Fund during the previous
 20214 fiscal year. The Executive Office of the Governor shall
 20215 distribute these reports to the President of the Senate and the
 20216 Speaker of the House of Representatives.

20217 Section 377. Subsections (1) and (2) of section 517.313,
 20218 Florida Statutes, are amended to read:



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20219 517.313 Destroying certain records; reproduction.--

20220 (1) The commission and office may ~~department is authorized~~
 20221 ~~to~~ photograph, microphotograph, or reproduce on film or prints
 20222 documents, records, data, and information of a permanent
 20223 character.

20224 (2) The commission and office may ~~department is authorized~~
 20225 ~~to~~ destroy any of said documents after audit ~~of the office~~ has
 20226 been completed for the period embracing the dates of said
 20227 instruments, after complying with the provisions of chapter 119.

20228 Section 378. Section 517.315, Florida Statutes, is amended
 20229 to read:

20230 517.315 Fees.--All fees and charges of any nature
 20231 collected by the office ~~department~~ pursuant to this chapter,
 20232 except the fees and charges collected pursuant to s. 517.131,
 20233 shall be paid into the State Treasury and credited to the
 20234 General Revenue Fund; and an appropriation shall be made
 20235 annually of necessary funds for the administration of the
 20236 provisions of this chapter.

20237 Section 379. Section 517.32, Florida Statutes, is amended
 20238 to read:

20239 517.32 Exemption from excise tax, certain obligations to
 20240 pay.--There shall be exempt from all excise taxes imposed by
 20241 chapter 201 all promissory notes, nonnegotiable notes, and other
 20242 written obligations to pay money bearing dates subsequent to
 20243 July 1, 1957, when the maker thereof is a security dealer
 20244 registered by the office ~~department~~ under this chapter and when
 20245 such promissory note, nonnegotiable note or notes, or other
 20246 written obligation to pay money shall be for the duration of 30
 20247 days or less and secured by pledge or deposit, as collateral
 20248 security for the payment thereof, security or securities as



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20249 defined in s. 517.021, provided all excise taxes imposed by
20250 chapter 201 shall have been paid upon such collateral security.

20251 Section 380. Section 520.996, Florida Statutes, is amended
20252 to read:

20253 520.996 Investigations and complaints.--

20254 (1)(a) The office ~~department~~ or its agent may, at
20255 intermittent periods, make such investigations and examinations
20256 of any licensee or other person as it deems necessary to
20257 determine compliance with this chapter. For such purposes, it
20258 may examine the books, accounts, records, and other documents or
20259 matters of any licensee or other person. It shall have the power
20260 to compel the production of all relevant books, records, and
20261 other documents and materials relative to an examination or
20262 investigation. Such investigations and examinations shall not
20263 be made more often than once during any 12-month period unless
20264 the office ~~department~~ has good and sufficient reason to believe
20265 the licensee is not complying with the provisions of this
20266 chapter. Such examination fee shall be calculated on an hourly
20267 basis and shall be rounded to the nearest hour.

20268 (b) The office ~~department~~ shall conduct all examinations
20269 at a convenient location in this state unless the office
20270 ~~department~~ determines that it is more effective or cost-
20271 efficient to perform an examination at the licensee's out-of-
20272 state location. For an examination performed at the licensee's
20273 out-of-state location, the licensee shall pay the travel expense
20274 and per diem subsistence at the rate provided by law for up to
20275 thirty 8-hour days per year for each examiner who participates
20276 in such an examination. However, if the examination involves or
20277 reveals possible fraudulent conduct of the licensee, the
20278 licensee shall pay the travel expenses and per diem subsistence



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20279 provided by law, without limitation, for each participating
20280 examiner.

20281 (2) The examination expenses incurred by the office
20282 ~~department~~ in each examination shall be paid by the licensee
20283 examined. The expenses of the office ~~department~~ incurred in
20284 each examination of a home improvement finance seller or of an
20285 employee representing such home improvement finance seller shall
20286 be paid by the home improvement finance seller. Expenses
20287 incurred for each examination of a sales finance company shall
20288 be paid by it. The examination expenses shall be paid by such
20289 licensee examined or such other person obligated to pay such
20290 examination expenses within 30 days after demand therefor by the
20291 office ~~department~~.

20292 (3) Any retail buyer or owner having reason to believe
20293 that the provisions of this chapter have been violated may file
20294 with the office or the Department of Financial Services a
20295 written complaint setting forth the details of such alleged
20296 violations and the office ~~department~~ upon receipt of such
20297 complaint, may inspect the pertinent books, records, letters,
20298 and contracts of the licensee and of the seller involved,
20299 relating to such specific written complaint.

20300 Section 381. Section 520.9965, Florida Statutes, is
20301 amended to read:

20302 520.9965 Confidentiality of information relating to
20303 investigations and examinations.--

20304 (1)(a) Except as otherwise provided by this section,
20305 information relative to an investigation or examination by the
20306 office ~~department~~ pursuant to this chapter, including any
20307 consumer complaint received by the office or the Department of
20308 Financial Services, is confidential and exempt from s. 119.07(1)



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20309 until the investigation or examination is completed or ceases to
 20310 be active. The information compiled by the office ~~department~~ in
 20311 such an investigation or examination shall remain confidential
 20312 and exempt from s. 119.07(1) after the office's ~~department's~~
 20313 investigation or examination is completed or ceases to be active
 20314 if the office ~~department~~ submits the information to any law
 20315 enforcement or administrative agency for further investigation.

20316 Such information shall remain confidential and exempt from s.
 20317 119.07(1) until that agency's investigation is completed or
 20318 ceases to be active. For purposes of this section, an
 20319 investigation or examination shall be considered "active" so
 20320 long as the office ~~department~~ or any law enforcement or
 20321 administrative agency is proceeding with reasonable dispatch and
 20322 has a reasonable good faith belief that the investigation or
 20323 examination may lead to the filing of an administrative, civil,
 20324 or criminal proceeding or to the denial or conditional grant of
 20325 a license, registration, or permit. This section shall not be
 20326 construed to prohibit disclosure of information which is
 20327 required by law to be filed with the office ~~department~~ and
 20328 which, but for the investigation or examination, would be
 20329 subject to s. 119.07(1).

20330 (b) Except as necessary for the office ~~department~~ to
 20331 enforce the provisions of this chapter, a consumer complaint and
 20332 other information relative to an investigation or examination
 20333 shall remain confidential and exempt from s. 119.07(1) after the
 20334 investigation or examination is completed or ceases to be active
 20335 to the extent disclosure would:

- 20336 1. Jeopardize the integrity of another active
- 20337 investigation or examination.
- 20338 2. Reveal the name, address, telephone number, social



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20339 security number, or any other identifying number or information
 20340 of any complainant, customer, or account holder.

20341 3. Disclose the identity of a confidential source.

20342 4. Disclose investigative techniques or procedures.

20343 5. Reveal a trade secret as defined in s. 688.002.

20344 (c) In the event that office ~~department~~ personnel or
 20345 personnel of the former Department of Banking and Finance are or
 20346 have been involved in an investigation or examination of such
 20347 nature as to endanger their lives or physical safety or that of
 20348 their families, then the home addresses, telephone numbers,
 20349 places of employment, and photographs of such personnel,
 20350 together with the home addresses, telephone numbers,
 20351 photographs, and places of employment of spouses and children of
 20352 such personnel and the names and locations of schools and day
 20353 care facilities attended by the children of such personnel are
 20354 confidential and exempt from s. 119.07(1).

20355 (d) Nothing in this section shall be construed to prohibit
 20356 the office ~~department~~ from providing information to any law
 20357 enforcement or administrative agency. Any law enforcement or
 20358 administrative agency receiving confidential information in
 20359 connection with its official duties shall maintain the
 20360 confidentiality of the information so long as it would otherwise
 20361 be confidential.

20362 (e) All information obtained by the office ~~department~~ from
 20363 any person which is only made available to the office ~~department~~
 20364 on a confidential or similarly restricted basis shall be
 20365 confidential and exempt from s. 119.07(1). This exemption shall
 20366 not be construed to prohibit disclosure of information which is
 20367 required by law to be filed with the office ~~department~~ or which
 20368 is otherwise subject to s. 119.07(1).



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20369 (2) If information subject to subsection (1) is offered in
 20370 evidence in any administrative, civil, or criminal proceeding,
 20371 the presiding officer may, in his or her discretion, prevent the
 20372 disclosure of information which would be confidential pursuant
 20373 to paragraph (1)(b).

20374 (3) A privilege against civil liability is granted to a
 20375 person who furnishes information or evidence to the office
 20376 ~~department~~, unless such person acts in bad faith or with malice
 20377 in providing such information or evidence.

20378 Section 382. Paragraph (b) of subsection (2) of section
 20379 527.008, Florida Statutes, is amended to read:

20380 537.008 Title loan agreement.--

20381 (2) The following information shall also be printed on all
 20382 title loan agreements:

20383 (b) The name and address of the Department of Financial
 20384 Services as well as a telephone number to which consumers may
 20385 address complaints.

20386 Section 383. Section 537.009, Florida Statutes, is amended
 20387 to read:

20388 537.009 Recordkeeping; reporting; safekeeping of
 20389 property.--

20390 (1) Every title loan lender shall maintain, at the
 20391 lender's title loan office, such books, accounts, and records of
 20392 the business conducted under the license issued for such place
 20393 of business as will enable the office ~~department~~ to determine
 20394 the licensee's compliance with this act.

20395 (2) The office ~~department~~ may authorize the maintenance of
 20396 books, accounts, and records at a location other than the
 20397 lender's title loan office. The office ~~department~~ may require
 20398 books, accounts, and records to be produced and available at a



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20399 reasonable and convenient location in this state within a
20400 reasonable period of time after such a request.

20401 (3) The title loan lender shall maintain the original copy
20402 of each completed title loan agreement on the title loan office
20403 premises, and shall not obliterate, discard, or destroy any such
20404 original copy, for a period of at least 2 years after making the
20405 final entry on any loan recorded in such office or after an a
20406 department examination by the Office of Financial Institutions
20407 and Securities Regulation, whichever is later.

20408 (4) Loan property which is delivered to a title loan
20409 lender shall be securely stored and maintained at the title loan
20410 office unless the loan property has been forwarded to the
20411 appropriate state agency for the purpose of having a lien
20412 recorded or deleted.

20413 (5) The commission ~~department~~ may prescribe by rule the
20414 books, accounts, and records, and the minimum information to be
20415 shown in the books, accounts, and records, of licensees so that
20416 such records will enable the office ~~department~~ to determine
20417 compliance with the provisions of this act.

20418 Section 384. Subsection (2) and paragraph (c) of
20419 subsection (4) of section 537.011, Florida Statutes, are amended
20420 to read:

20421 537.011 Title loan charges.--

20422 (2) The annual percentage rate that may be charged for a
20423 title loan may equal, but not exceed, the annual percentage rate
20424 that must be computed and disclosed as required by the federal
20425 Truth in Lending Act and Regulation Z of the Board of Governors
20426 of the Federal Reserve System. The maximum annual percentage
20427 rate of interest that may be charged is 12 times the maximum
20428 monthly rate, and the maximum monthly rate must be computed on



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20429 the basis of one-twelfth of the annual rate for each full month.
 20430 The commission ~~Department of Banking and Finance~~ shall establish
 20431 by rule the rate for each day in a fraction of a month when the
 20432 period for which the charge is computed is more or less than 1
 20433 month.

20434 (4) Any interest contracted for or received, directly or
 20435 indirectly, by a title loan lender, or an agent of the title
 20436 loan lender, in excess of the amounts authorized under this
 20437 chapter is prohibited and may not be collected by the title loan
 20438 lender or an agent of the title loan lender.

20439 (c) The office ~~department~~ may order a title loan lender,
 20440 or an agent of the title loan lender, to comply with the
 20441 provisions of paragraphs (a) and (b).

20442 Section 385. Paragraphs (b), (f), and (n) of subsection
 20443 (1) of section 537.013, Florida Statutes, are amended to read:

20444 537.013 Prohibited acts.--

20445 (1) A title loan lender, or any agent or employee of a
 20446 title loan lender, shall not:

20447 (b) Refuse to allow the office ~~department~~ to inspect
 20448 completed title loan agreements, extensions of such agreements,
 20449 or loan property during the ordinary operating hours of the
 20450 title loan lender's business or other times acceptable to both
 20451 parties.

20452 (f) Fail to exercise reasonable care, as defined by
 20453 commission ~~department~~ rule, in the safekeeping of loan property
 20454 or of titled personal property repossessed pursuant to this act.

20455 (n) Act as a title loan lender under this act within a
 20456 place of business in which the licensee solicits or engages in
 20457 business outside the scope of this act if the office ~~department~~
 20458 determines that the licensee's operation of and conduct



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20459 | pertaining to such other business results in an evasion of this
20460 | act. Upon making such a determination, the office ~~department~~
20461 | shall order the licensee to cease and desist from such evasion;
20462 | provided, no licensee shall engage in the pawnbroker business.

20463 | Section 386. Section 537.016, Florida Statutes, is amended
20464 | to read:

20465 | 537.016 Subpoenas; enforcement actions; rules.--

20466 | (1) The office ~~department~~ may issue and serve subpoenas to
20467 | compel the attendance of witnesses and the production of
20468 | documents, papers, books, records, and other evidence before the
20469 | office ~~department~~ in any matter pertaining to this act. The
20470 | office ~~department~~ may administer oaths and affirmations to any
20471 | person whose testimony is required. If any person refuses to
20472 | testify; produce books, records, and documents; or otherwise
20473 | refuses to obey a subpoena issued under this section, the office
20474 | ~~department~~ may enforce the subpoena in the same manner as
20475 | subpoenas issued under the Administrative Procedure Act are
20476 | enforced. Witnesses are entitled to the same fees and mileage as
20477 | they are entitled to by law for attending as witnesses in the
20478 | circuit court, unless such examination or investigation is held
20479 | at the place of business or residence of the witness.

20480 | (2) In addition to any other powers conferred upon the
20481 | office ~~department~~ to enforce or administer this act, the office
20482 | ~~department~~ may:

20483 | (a) Bring an action in any court of competent jurisdiction
20484 | to enforce or administer this act, any rule or order adopted
20485 | under this act, or any written agreement entered into with the
20486 | office ~~department~~. In such action, the office ~~department~~ may
20487 | seek any relief at law or equity, including a temporary or
20488 | permanent injunction, appointment of a receiver or



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20489 administrator, or an order of restitution.

20490 (b) Issue and serve upon a person an order requiring such
 20491 person to cease and desist and take corrective action whenever
 20492 the office ~~department~~ finds that such person is violating, has
 20493 violated, or is about to violate any provision of this act, any
 20494 rule or order adopted under this act, or any written agreement
 20495 entered into with the office ~~department~~.

20496 (c) Whenever the office ~~department~~ finds that conduct
 20497 described in paragraph (b) presents an immediate danger to the
 20498 public health, safety, or welfare requiring an immediate final
 20499 order, the office ~~department~~ may issue an emergency cease and
 20500 desist order reciting with particularity the facts underlying
 20501 such findings. The emergency cease and desist order is effective
 20502 immediately upon service of a copy of the order on the
 20503 respondent named in the order and shall remain effective for 90
 20504 days. If the office ~~department~~ begins nonemergency proceedings
 20505 under paragraph (b), the emergency cease and desist order
 20506 remains effective until the conclusion of the proceedings under
 20507 ss. 120.569 and 120.57.

20508 (3) The commission ~~department~~ may adopt rules to
 20509 administer this act.

20510 Section 387. Section 537.017, Florida Statutes, is amended
 20511 to read:

20512 537.017 Investigations and complaints.--

20513 (1) The office ~~department~~ may make any investigation and
 20514 examination of any licensee or other person the office
 20515 ~~department~~ deems necessary to determine compliance with this
 20516 act. For such purposes, the office ~~department~~ may examine the
 20517 books, accounts, records, and other documents or matters of any
 20518 licensee or other person. The office ~~department~~ may compel the



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20519 production of all relevant books, records, and other documents
20520 and materials relative to an examination or investigation.
20521 Examinations shall not be made more often than once during any
20522 12-month period unless the office ~~department~~ has reason to
20523 believe the licensee is not complying with the provisions of
20524 this act.

20525 (2) The office ~~department~~ shall conduct all examinations
20526 at a convenient location in this state unless the office
20527 ~~department~~ determines that it is more effective or cost-
20528 efficient to perform an examination at the licensee's out-of-
20529 state location. For an examination performed at the licensee's
20530 out-of-state location, the licensee shall pay the travel expense
20531 and per diem subsistence at the rate provided by law for up to
20532 thirty 8-hour days per year for each office ~~department~~ examiner
20533 who participates in such an examination. However, if the
20534 examination involves or reveals possible fraudulent conduct by
20535 the licensee, the licensee shall pay the travel expenses and per
20536 diem subsistence provided by law, without limitation, for each
20537 participating examiner.

20538 (3) Any person having reason to believe that any provision
20539 of this act has been violated may file with the Department of of
20540 Financial Services or the office a written complaint setting
20541 forth the details of such alleged violation, and the office
20542 ~~department~~ may investigate such complaint.

20543 Section 388. Section 559.725, Florida Statutes, is amended
20544 to read:

20545 559.725 Consumer complaints; administrative duties.--

20546 (1) The Division of Consumer Services of the Department of
20547 Agriculture and Consumer Services shall serve as the registry
20548 for receiving and maintaining records of inquiries,



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20549 correspondence, and complaints from consumers concerning any and
20550 all persons who collect debts, including consumer collection
20551 agencies.

20552 (2) The division shall classify complaints by type and
20553 identify the number of written complaints against persons
20554 collecting or attempting to collect debts in this state,
20555 including credit grantors collecting their own debts, debt
20556 collectors generally, and, specifically, consumer collection
20557 agencies as distinguished from other persons who collect debts
20558 such as commercial debt collection agencies regulated under part
20559 V of this chapter. The division shall identify the nature and
20560 number of various kinds of written complaints, including
20561 specifically those alleging violations of s. 559.72.

20562 (3) The division shall inform and furnish relevant
20563 information to the appropriate regulatory body of the state, or
20564 The Florida Bar in the case of attorneys, when any consumer debt
20565 collector exempt from registration under this part has been
20566 named in five or more written consumer complaints alleging
20567 violations of s. 559.72 within a 12-month period.

20568 (4) The division shall furnish a form to each complainant
20569 whose complaint concerns an alleged violation of s. 559.72 by a
20570 consumer collection agency. Such form may be filed with the
20571 office ~~Department of Banking and Finance~~. The form shall
20572 identify the accused consumer collection agency and provide for
20573 the complainant's summary of the nature of the alleged violation
20574 and facts which allegedly support the complaint. The form shall
20575 include a provision for the complainant to state under oath
20576 before a notary public that the allegations therein made are
20577 true.

20578 (5) Upon receipt of such sworn complaint, the office



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20579 ~~department~~ shall promptly furnish a copy of the sworn complaint
20580 to the accused consumer collection agency.

20581 (6) The office ~~department~~ shall investigate sworn
20582 complaints by direct written communication with the complainant
20583 and the affected consumer collection agency. In addition, the
20584 office ~~department~~ shall attempt to resolve each sworn complaint
20585 and shall record the resolution of such complaints.

20586 (7) Periodically, the office ~~department~~ shall identify
20587 consumer collection agencies that have unresolved sworn consumer
20588 complaints from five or more different consumers within a 12-
20589 month period under the provisions of this part.

20590 (8) The office ~~department~~ shall issue a written warning
20591 notice to the accused consumer collection agency if the office
20592 ~~department~~ is unable to resolve all such sworn complaints and
20593 fewer than five unresolved complaints remain. Such notice shall
20594 include a statement that the warning may constitute evidence in
20595 any future investigation of similar complaints against that
20596 agency and in any future administrative determination of the
20597 imposition of other administrative remedies available to the
20598 office ~~department~~ under this part.

20599 (9) The office ~~department~~ may issue a written reprimand
20600 when five or more such unresolved sworn complaints against a
20601 consumer collection agency collectively fall short of
20602 constituting apparent repeated violations that warrant more
20603 serious administrative sanctions. Such reprimand shall include a
20604 statement that the reprimand may constitute evidence in any
20605 future investigation of similar complaints against that agency
20606 and in any future administrative determination of the imposition
20607 of other administrative remedies available to the office
20608 ~~department~~.



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20609 (10) The office ~~department~~ shall issue a notice of intent
 20610 either to revoke or suspend the registration or to impose an
 20611 administrative fine when the office ~~department~~ preliminarily
 20612 determines that repeated violations of s. 559.72 by an accused
 20613 registrant have occurred which would warrant more serious
 20614 administrative sanctions being imposed under this part. The
 20615 office ~~department~~ shall advise each registrant of the right to
 20616 require an administrative hearing under chapter 120, prior to
 20617 the agency's final action on the matter as authorized by s.
 20618 559.730.

20619 (11) The office ~~department~~ shall advise the appropriate
 20620 state attorney, or the Attorney General in the case of an out-
 20621 of-state consumer debt collector, of any determination by the
 20622 office ~~department~~ of a violation of the requirements of this
 20623 part by any consumer collection agency which is not registered
 20624 as required by this part. The office ~~department~~ shall furnish
 20625 the state attorney or Attorney General with the office's
 20626 ~~department's~~ information concerning the alleged violations of
 20627 such requirements.

20628 Section 389. Section 560.128, Florida Statutes, is amended
 20629 to read:

20630 560.128 Consumer disclosure.--

20631 (1) Every money transmitter and authorized vendor shall
 20632 provide each consumer of a money transmitter transaction a toll-
 20633 free telephone number for the purpose of consumer contacts;
 20634 however, in lieu of such toll-free telephone number, the money
 20635 transmitter or authorized vendor may provide the address and
 20636 telephone number of the office and the Division of Consumer
 20637 Services of the Department of Financial Services ~~department~~.

20638 (2) The commission ~~department~~ may by rule require every



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20639 money transmitter to display its registration at each location,
20640 including the location of each person designated by the
20641 registrant as an authorized vendor, where the money transmitter
20642 engages in the activities authorized by the registration.

20643 Section 390. Section 560.129, Florida Statutes, is amended
20644 to read:

20645 560.129 Confidentiality.--

20646 ~~(1) For purposes of this section, the definitions~~
20647 ~~contained in s. 560.103, as created by chapter 94-238, Laws of~~
20648 ~~Florida, and chapter 94-354, Laws of Florida, apply.~~

20649 (1)(2)(a) Except as otherwise provided in this section,
20650 all information concerning an investigation or examination by
20651 the office department pursuant to this chapter, including any
20652 consumer complaint received by the office or the Department of
20653 Financial Services, is confidential and exempt from s. 119.07(1)
20654 and s. 24(a), Art. I of the State Constitution until the
20655 investigation or examination ceases to be active. For purposes
20656 of this section, an investigation or examination is considered
20657 "active" so long as the office department or any other
20658 administrative, regulatory, or law enforcement agency of any
20659 jurisdiction is proceeding with reasonable dispatch and has a
20660 reasonable good faith belief that action may be initiated by the
20661 office department or other administrative, regulatory, or law
20662 enforcement agency.

20663 (b) Notwithstanding paragraph (a), all information
20664 obtained by the office department in the course of its
20665 investigation or examination which is a trade secret, as defined
20666 in s. 688.002, or which is personal financial information shall
20667 remain confidential. If any administrative, civil, or criminal
20668 proceeding against the money transmitter or a money transmitter-



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20669 affiliated party is initiated and the office ~~department~~ seeks to
20670 use matter that a registrant believes to be a trade secret or
20671 personal financial information, such records shall be subject to
20672 an in camera review by the administrative law judge, if the
20673 matter is before the Division of Administrative Hearings, or a
20674 judge of any court of this state, any other state, or the United
20675 States, as appropriate, for the purpose of determining if the
20676 matter is a trade secret or is personal financial information.
20677 If it is determined that the matter is a trade secret, the
20678 matter shall remain confidential. If it is determined that the
20679 matter is personal financial information, the matter shall
20680 remain confidential unless the administrative law judge or judge
20681 determines that, in the interests of justice, the matter should
20682 become public.

20683 (c) If any administrative, civil, or criminal proceeding
20684 against the money transmitter or a money transmitter-affiliated
20685 party results in an acquittal or the dismissal of all of the
20686 allegations against the money transmitter or a money
20687 transmitter-affiliated party, upon the request of any party, the
20688 administrative law judge or the judge may order all or a portion
20689 of the record of the proceeding to be sealed, and it shall
20690 thereafter be confidential and exempt from s. 119.07(1) and s.
20691 24(a), Art. I of the State Constitution.

20692 (d) Except as necessary for the office ~~department~~ or any
20693 other administrative, regulatory, or law enforcement agency of
20694 any jurisdiction to enforce the provisions of this chapter or
20695 the law of any other state or the United States, a consumer
20696 complaint and other information concerning an investigation or
20697 examination shall remain confidential and exempt from s.
20698 119.07(1) and s. 24(a), Art. I of the State Constitution after



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20699 | the investigation or examination ceases to be active to the
 20700 | extent that disclosure would:

20701 | 1. Jeopardize the integrity of another active
 20702 | investigation;

20703 | 2. Reveal personal financial information;

20704 | 3. Reveal the identity of a confidential source; or

20705 | 4. Reveal investigative techniques or procedures.

20706 | (2)~~(3)~~ This section does not prevent or restrict:

20707 | (a) Furnishing records or information to any appropriate
 20708 | regulatory agency if such agency adheres to the confidentiality
 20709 | provisions of the code;

20710 | (b) Furnishing records or information to an independent
 20711 | third party or a certified public accountant who has been
 20712 | approved by the office ~~department~~ to conduct an examination
 20713 | under s. 560.118(1)(b), if the independent third party or
 20714 | certified public accountant adheres to the confidentiality
 20715 | provisions of the code; or

20716 | (c) Reporting any suspected criminal activity, with
 20717 | supporting documents and information, to appropriate law
 20718 | enforcement or prosecutorial agencies.

20719 | (3)~~(4)~~ All quarterly reports submitted by a money
 20720 | transmitter to the office ~~department~~ under s. 560.118(2)(b) are
 20721 | confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 20722 | of the State Constitution.

20723 | (4)~~(5)~~ Examination reports, investigatory records,
 20724 | applications, and related information compiled by the office
 20725 | ~~department~~, or photographic copies thereof, shall be retained by
 20726 | the office ~~department~~ for a period of at least 10 years.

20727 | (5)~~(6)~~ Any person who willfully discloses information made
 20728 | confidential by this section commits a felony of the third



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20729 degree, punishable as provided in s. 775.082 or s. 775.083.

20730 Section 391. Subsection (3), paragraph (b) of subsection
 20731 (19), paragraph (b) of subsection(22), and subsection (23) of
 20732 section 560.404, Florida Statutes, are amended to read:

20733 560.404 Requirements for deferred presentment
 20734 transactions.--

20735 (3) Each written agreement shall contain the following
 20736 information, in addition to any information the commission
 20737 ~~department~~ requires by rule:

20738 (a) The name or trade name, address, and telephone number
 20739 of the deferred presentment provider and the name and title of
 20740 the person who signs the agreement on behalf of the deferred
 20741 presentment provider.

20742 (b) The date the deferred presentment transaction was
 20743 made.

20744 (c) The amount of the drawer's check.

20745 (d) The length of deferral period.

20746 (e) The last day of the deferment period.

20747 (f) The address and telephone number of the office and the
 20748 Division of Consumer Services of the Department of Financial
 20749 Services ~~department~~.

20750 (g) A clear description of the drawer's payment
 20751 obligations under the deferred presentment transaction.

20752 (h) The transaction number assigned by the office's
 20753 ~~department's~~ database.

20754 (19) A deferred presentment provider may not enter into a
 20755 deferred presentment transaction with a person who has an
 20756 outstanding deferred presentment transaction with that provider
 20757 or with any other deferred presentment provider, or with a
 20758 person whose previous deferred presentment transaction with that



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20759 provider or with any other provider has been terminated for less
20760 than 24 hours. The deferred presentment provider must verify
20761 such information as follows:

20762 (b) The deferred presentment provider shall access the
20763 office's ~~department's~~ database established pursuant to
20764 subsection (23) and shall verify whether any other deferred
20765 presentment provider has an outstanding deferred presentment
20766 transaction with a particular person or has terminated a
20767 transaction with that person within the previous 24 hours. Prior
20768 to the time that the office ~~department~~ has implemented such a
20769 database, the deferred presentment provider may rely upon the
20770 written verification of the drawer as provided in subsection
20771 (20).

20772 (22)

20773 (b) At the commencement of the grace period, the deferred
20774 presentment provider shall provide the drawer:

20775 1. Verbal notice of the availability of the grace period
20776 consistent with the written notice in subsection (20).

20777 2. A list of approved consumer credit counseling agencies
20778 prepared by the office ~~department~~. ~~The department shall prepare~~
20779 ~~the list by October 1, 2001.~~ The office ~~department~~ list shall
20780 include nonprofit consumer credit counseling agencies affiliated
20781 with the National Foundation for Credit Counseling which provide
20782 credit counseling services to Florida residents in person, by
20783 telephone, or through the Internet. The office ~~department~~ list
20784 must include phone numbers for the agencies, the counties served
20785 by the agencies, and indicate the agencies that provide
20786 telephone counseling and those that provide Internet counseling.
20787 The office ~~department~~ shall update the list at least once each
20788 year.



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20789 3. The following notice in at least 14-point type in
 20790 substantially the following form:

20791
 20792 AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING THE TERM OF
 20793 YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN ADDITIONAL 60 DAYS,
 20794 UNTIL [DATE], WITHOUT ANY ADDITIONAL FEES, YOU MUST COMPLETE
 20795 CONSUMER CREDIT COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE
 20796 LIST THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO
 20797 AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY
 20798 THE AGENCY. THE COUNSELING MAY BE IN PERSON, BY TELEPHONE, OR
 20799 THROUGH THE INTERNET. YOU MUST NOTIFY US WITHIN SEVEN (7) DAYS,
 20800 BY [DATE], THAT YOU HAVE MADE AN APPOINTMENT WITH SUCH A
 20801 CONSUMER CREDIT COUNSELING AGENCY. YOU MUST ALSO NOTIFY US
 20802 WITHIN SIXTY (60) DAYS, BY [DATE], THAT YOU HAVE COMPLETED THE
 20803 CONSUMER CREDIT COUNSELING. WE MAY VERIFY THIS INFORMATION WITH
 20804 THE AGENCY. IF YOU FAIL TO PROVIDE EITHER THE 7-DAY OR 60-DAY
 20805 NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR COMPLETED THE
 20806 COUNSELING WITHIN THE TIME REQUIRED, WE MAY DEPOSIT OR PRESENT
 20807 YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL
 20808 MEANS TO ENFORCE THE DEBT.

20809 (23) On or before March 1, 2002, the office ~~department~~
 20810 shall implement a common database with real-time access through
 20811 an Internet connection for deferred presentment providers, as
 20812 provided in this subsection. The database must be accessible to
 20813 the office ~~department~~ and the deferred presentment providers to
 20814 verify whether any deferred presentment transactions are
 20815 outstanding for a particular person. Deferred presentment
 20816 providers shall submit such data before entering into each
 20817 deferred presentment transaction in such format as the
 20818 commission ~~department~~ shall require by rule, including the



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20819 drawer's name, social security number or employment
 20820 authorization alien number, address, driver's license number,
 20821 amount of the transaction, date of transaction, the date that
 20822 the transaction is closed, and such additional information as is
 20823 required by the commission ~~department~~. The commission ~~department~~
 20824 may impose a fee not to exceed \$1 per transaction for data
 20825 required to be submitted by a deferred presentment provider. A
 20826 deferred presentment provider may rely on the information
 20827 contained in the database as accurate and is not subject to any
 20828 administrative penalty or civil liability as a result of relying
 20829 on inaccurate information contained in the database. The
 20830 commission ~~department~~ may adopt rules to administer and enforce
 20831 the provisions of this section and to assure that the database
 20832 is used by deferred presentment providers in accordance with
 20833 this section.

20834 Section 392. Section 609.05, Florida Statutes, is amended
 20835 to read:

20836 609.05 Qualification with Office of Financial Institutions
 20837 and Securities Regulation ~~Department of Banking and~~
 20838 ~~Finance~~.--Before any person may offer for sale, barter or sell
 20839 any unit, share, contract, note, bond, mortgage, oil or mineral
 20840 lease or other security of an association doing business under
 20841 what is known as a "declaration of trust" in this state, such
 20842 person shall procure from the Office of Financial Institutions
 20843 and Securities Regulation of the Financial Services Commission
 20844 ~~Department of Banking and Finance~~ a permit to offer for sale and
 20845 sell such securities, which permit shall be applied for and
 20846 granted under the same conditions as like permits are applied
 20847 for and granted to corporations.

20848 Section 393. Section 655.012, Florida Statutes, is amended



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20849 to read:

20850 655.012 General supervisory powers ~~of the department;~~
 20851 rulemaking; seal.--

20852 (1) In addition to other powers conferred by the financial
 20853 institutions codes, the office ~~department~~ shall have:

20854
 20855 (a)(1) General supervision over all state financial
 20856 institutions, their subsidiaries, and service corporations.

20857 (b)(2) Access to all books and records of all persons over
 20858 whom the office ~~department~~ exercises general supervision as is
 20859 necessary for the performance of the duties and functions of the
 20860 office ~~department~~ prescribed by the financial institutions
 20861 codes.

20862 (c)(3) Power to issue orders and declaratory statements,
 20863 disseminate information, and otherwise exercise its discretion
 20864 to effectuate the purposes, policies, and provisions of the
 20865 financial institutions codes.

20866 (2) In addition to other powers conferred by the financial
 20867 institutions codes, the commission shall have the power ~~and~~ to
 20868 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
 20869 the provisions of such codes.

20870 (3) The office shall have an official seal by which its
 20871 proceedings are authenticated.

20872 Section 394. This act shall not affect the validity of any
 20873 administrative or judicial action involving the Department of
 20874 Banking and Finance or the Department of Insurance occurring
 20875 prior to, or pending on, January 7, 2003, and the Department of
 20876 Financial Services or the Financial Services Commission, or the
 20877 respective office, shall be substituted as a party in interest
 20878 on any such pending action.



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20879 Section 395. Any certificate of authority, license, form,
20880 rate, or other filing or action that was approved or authorized
20881 by the Department of Insurance or the Department of Banking and
20882 Finance, or that was otherwise lawfully in use prior to January
20883 7, 2003, may continue to be used or be effective as originally
20884 authorized or permitted, until the Chief Financial Officer, the
20885 Department of Financial Services, the Financial Services
20886 Commission, or either of the respective offices, otherwise
20887 prescribes.

20888 Section 396. In the event of any conflict between any
20889 provision of this act and any provision of other legislation
20890 enacted during the 2003 Regular Session, the provisions of this
20891 act shall control.

20892 Section 397. This act shall take effect upon becoming a
20893 law.